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+91 70421 48991  
editor@ijlar.com  
www.ijlar.com

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## **Preface**

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# **PROTECTION OR POLICING? A CONSTITUTIONAL ANALYSIS OF INDIA'S TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026**

AUTHORED BY - MS NEHA SHREE BHATNAGAR<sup>1</sup>

& DR GUNJAN SHARMA<sup>2</sup>

## ***Abstract***

*The Transgender Persons (Protection of Rights) Amendment Act, 2026 has renewed the debate over how Indian law should balance the prevention of exploitation with the constitutional rights of transgender persons. This paper examines the amendment against the legal framework developed through National Legal Services Authority v. Union of India, the Transgender Persons (Protection of Rights) Act, 2019, and subsequent constitutional decisions on privacy, dignity, equality, and personal autonomy.*

*It focuses on three major aspects of the amendment: the narrowing of the statutory definition of a transgender person, the increased role of medical and administrative verification, and the expansion of criminal provisions dealing with coercion, forced begging, and induced transgender presentation.*

*The paper argues that the state has a legitimate responsibility to prevent trafficking, violence, and non-consensual medical intervention. However, these objectives must be pursued without treating transgender identity itself as suspicious or externally produced. Applying the principles of equality, privacy, freedom of expression, and proportionality, the paper finds that broad criminal language and medicalised certification may conflict with the constitutional right to self-identification.*

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<sup>1</sup> Assistant Professor, School of Law, Bennett University, Greater Noida

<sup>2</sup> Assistant Professor, School of Law, Bennett University, Greater Noida

*It concludes that a rights-based framework should retain an inclusive definition, adopt a declaration-based recognition process, and confine criminal liability to clearly defined acts of coercion and exploitation.*

**Keywords:** *transgender rights, self-identification, gender recognition, constitutional law, proportionality, India.*

## Introduction

India's legal treatment of transgender identity has developed through an uneasy relationship between constitutional recognition and administrative control. A decisive shift occurred in 2014, when the Supreme Court held in *National Legal Services Authority v. Union of India* that transgender persons possess the right to determine and express their own gender identity. The Court connected this right to equality, freedom of expression, dignity, and personal autonomy under Articles 14, 15, 16, 19, and 21 of the Constitution (*National Legal Services Authority v. Union of India*, 2014). The judgment was widely regarded as a significant departure from legal frameworks that had historically treated transgender communities as objects of regulation rather than as equal constitutional citizens. At the same time, scholars have cautioned that legal recognition can remain incomplete when the state continues to classify transgender persons through restrictive cultural, medical, or bureaucratic categories (Dutta, 2014; Kothari, 2020).

The Transgender Persons (Protection of Rights) Act, 2019 sought to convert parts of the *NALSA* judgment into legislation. It prohibited discrimination in areas including education, employment, healthcare, housing, and access to public services. It also stated that transgender persons had a right to their "self-perceived gender identity." However, this recognition was qualified by a certification process administered through the district magistrate. Consequently, the Act attracted criticism for creating a contradiction between the language of self-identification and a system in which legal identity remained dependent on state-issued documentation (Chakrabarti & Das, 2023; Jain, 2022). The Transgender Persons (Protection of Rights) Rules, 2020 attempted to address some of these concerns by adopting an affidavit-based application process and limiting routine physical or medical examination. Nevertheless, the wider conflict between individual self-determination and administrative verification remained unresolved.

The Transgender Persons (Protection of Rights) Amendment Act, 2026 brings this conflict back to the centre of Indian constitutional law. Enacted in March 2026, the amendment revises the 2019 framework in three especially significant respects: the statutory definition of a transgender person, the procedure through which transgender identity is legally recognised, and the criminal provisions dealing with coercion, induced transgender presentation, begging, servitude, and medical intervention (PRS Legislative Research, 2026). The government's concern with trafficking, forced begging, exploitation, and non-consensual bodily harm reflects legitimate and serious public interests. However, the method through which these objectives are pursued has generated concern among legal scholars and human-rights organisations. Critics argue that the amendment narrows the range of identities protected by the law, increases medical or administrative scrutiny, and employs criminal-law concepts such as "allurement" and "undue influence" that may be broad enough to affect consensual forms of family, community, psychological, or medical support (Amnesty International, 2026; Sahoo & Kar, 2026).

The issues mentioned above become especially significant because gender recognition is not only an abstract legal status. The identity documents define the ability of people to get access to education, employment, healthcare and welfare services, bank accounts, housing, and other elements of public life. The study of transgender citizenship in India shows that, therefore, the process of recognition may be either helpful for equality and inclusivity or may be a factor of social exclusion (Chakrabarti & Das, 2023; Upadhyay & Tayenjam, 2024). Moreover, medical verification of one's gender may become the issue of violation of the rights for bodily integrity and informational privacy guaranteed by Article 21 of the Indian Constitution since it was recognized that decision-making in relation to one's body and control of one's personal data are the parts of constitutional right to privacy in Justice K. S. Puttaswamy v. Union of India (2017). Restrictions related to dressing, names, appearance and social transition may be related to Article 19(1)(a) because NALSA treated gender expression as the part of the right to freedom of speech and expression.

Under such circumstances, this paper will discuss the issue of compliance of the 2026 amendment to the Constitution of India with the established framework of equality, dignity, privacy, and expression in terms of achieving the necessary balance between protection from the mentioned



forms of coercion and respect for the autonomy of transgender individuals. It should be noted that the state is able to prohibit such phenomena as trafficking, begging, assault, and non-consensual medical interventions. However, it should not force people to recognize their gender based on such narrow criteria and strict verification.

### **Legal and Constitutional Background**

The constitutional foundation of transgender rights in India was laid by the Supreme Court in *National Legal Services Authority v. Union of India*—commonly known as *NALSA*—in 2014. Before this judgment, transgender persons were largely invisible within India’s formal legal framework, even though communities such as hijras, kinnars, aravanis, and jogtas had long-standing social and cultural histories. In *NALSA*, the Court rejected the view that constitutional rights were confined to the male–female binary. It held that the word “person” under Article 14 includes transgender persons and that discrimination based on gender identity falls within the constitutional prohibition against discrimination on the ground of sex under Articles 15 and 16 (*National Legal Services Authority v. Union of India*, 2014).

More significantly, the Court recognised that gender identity is not determined solely by anatomy, surgery, or the gender assigned to an individual at birth. It affirmed the right of individuals to identify as male, female, or third gender in accordance with their self-identified gender. This recognition was connected to the right to dignity and personal autonomy under Article 21. The Court also treated outward expressions of gender—including dress, appearance, behaviour, and manner of speech—as forms of expression protected by Article 19(1)(a). In this sense, *NALSA* did more than create a third legal category. It located gender identity within the broader constitutional idea that individuals should be able to define and express themselves without being forced into identities imposed by the state or society (Kothari, 2020).

Furthermore, the judgement recognized that any such recognition had to be supplemented by policies that addressed the material deprivation. The directive was to consider transgender persons as backward social classes or as socially or educationally backward classes and provide reservations in education and public employment, ensure better healthcare services, and design welfare programmes. This directive indicated that the conception of equality was more substantive

in nature, and to accord equality to transgender persons was not just about decriminalization of law but responding to their historical social exclusion. Nonetheless, there have been noted some contradictions in NALSA itself. While endorsing self-determination for transgender persons, part of the judgment's rationale was informed by the experiences of hijras and the category of 'third gender'. This understanding of gender identity did not entirely capture the specific experiences of trans men, trans women, those with non-binary identities and transgender persons who were not part of traditional socio-cultural groups (Dutta, 2014; Nagar & DasGupta, 2023).

Later rulings in the Court ensured the constitutional importance of the NALSA ruling. In Justice K. S. Puttaswamy (Retd.) v. Union of India (2017), a nine-judge bench of the Supreme Court ruled that privacy is a fundamental right under the Indian Constitution. Privacy as a fundamental right was not discussed in relation to the transgender identity issue, yet the Court defined privacy as including bodily autonomy, decision-making autonomy, and informational privacy. All of these are relevant to gender recognition as they may include the requirement to disclose one's medical history, undergo physical examination or seek the approval of authorities in the matter of one's own gender identity. Consequently, such gender certification should be evaluated not only as a formal procedure, but potentially as an infringement of privacy and autonomy.

In *Navtej Singh Johar v. Union of India* (2018), the Court elaborated on these ideas invalidating the application of section 377 of the Indian Penal Code to consensual same-sex relations between adults. While *Navtej* primarily addressed sexual orientation rather than transgender identity, its broader constitutional reasoning remains relevant. The judgment emphasised dignity, intimate choice, constitutional morality, and the duty of courts to protect minorities from majoritarian prejudice. Read together, *NALSA*, *Puttaswamy*, and *Navtej* establish that identity-related rights cannot depend entirely on prevailing social approval. The Constitution protects an individual's ability to make intimate decisions about identity and self-expression, particularly where the affected group has historically been subjected to stigma and exclusion.

Parliament sought to provide a statutory framework through the Transgender Persons (Protection of Rights) Act, 2019. The Act prohibited discrimination in education, employment, healthcare, housing, access to public services, movement, property, and participation in public life. Section 4

expressly recognised the right of a transgender person to a “self-perceived gender identity” (Transgender Persons [Protection of Rights] Act, 2019). At the same time, Sections 5 and 6 required a person to apply to the district magistrate for a certificate of identity. Section 7 created a separate process for obtaining a revised certificate after medical intervention to change gender to male or female.

The Act, however, created an internal inconsistency. Firstly, it recognized the right to define one's own gender. Secondly, its effective exercise depended on having an official certificate. Scholars have thus claimed that in the Act, the constitutional notion of self-identification became translated into the bureaucratic mechanism of recognition, giving the State great power over the identification of who is recognized as having the identity (Chakrabarti & Das, 2023; Jain & Kartik, 2020). The difference is important since identity documents play a role in accessing employment, education, healthcare, banks, property, welfare schemes, and other components of citizenship.

The Transgender Persons (Protection of Rights) Rules, 2020 aimed to address at least some of these fears. According to the Rules, when applying for a transgender certificate, an applicant could provide an affidavit, and the district magistrate was generally prohibited from conducting any physical or medical examinations. Medical evidence was still important for issuing revised male or female certificates on the basis of medical procedures undergone, but it did not need to establish whether the individual is "genuinely" transgender (Government of India, Ministry of Social Justice and Empowerment, 2020). This can be seen as moving toward self-declaration of gender, even though state-issued certificates were still required.

It is important to note that the pre-2026 legal framework was not a simple case either of self-identification or medical determination of gender. It included both constitutional protection of personal autonomy and state-based mechanism of recognition. Resolving this tension is crucial for analyzing the 2026 amendment. Not only is the constitutional issue about whether the Parliament can regulate identity documents. It is about whether such regulation follows the principle, formed through NALSA, Puttaswamy, and Navtej cases, according to which the State should enable the recognition of gender identity.

## **Principal Changes Introduced by the 2026 Amendment**

The Transgender Persons (Protection of Rights) Amendment Act, 2026 does not merely add a few procedural requirements to the 2019 legislation. It alters the underlying approach of the statutory framework. While the 2019 Act was presented primarily as an anti-discrimination and welfare measure, the 2026 amendment places greater emphasis on verifying transgender identity and using criminal law to prevent identities from being imposed through force, deception, or exploitation. This shift is important because it changes the role of the state from recognising and protecting an individual's gender identity to determining whether that identity falls within legally acceptable categories.

### **A narrower definition of “transgender person”**

One of the major changes is the definition of a transgender person in the law. Section 2(k) of the 2019 Act defined the term transgender in broad terms as an individual who was a victim of mismatch between their experienced gender and gender assigned to them at birth. The law explicitly included trans men, trans women, persons with intersex variations, genderqueer persons and socio-cultural groups such as hijra, kinner, aravani, jogta (Transgender Persons [Protection of Rights] Act, 2019).

The 2026 amendment seems to have a significantly narrowed scope of the definition of a transgender person. As modern legislation scholars explain, the amendment excludes or narrows down the inclusion of trans men, trans women and genderqueer persons and focuses on persons with intersex variations and socio-cultural groups (Carr-Ryan Center for Human Rights, 2026; PRS Legislative Research, 2026).

Therefore, the 2026 amendment contradicts the idea that being a transgender person means experiencing a mismatch between gender at birth and experienced gender. This is not just a problem of vocabulary. In accordance with the law, the definition of a transgender person plays a critical role in determining one's rights to access identification documents, receive protection from discrimination and get benefits from government welfare programs. For example, a trans woman who is not a member of a hijra or kinner community has an experience of transgender identity protected by NALSA but she could face certain difficulties due to the lack of explicit inclusion of such category in the amended statute. Trans men and non-binary persons might face similar problems since their experiences have been considered less important in Indian legislation and

policy in many cases. The amendment also raises concerns about the relationship between transgender identity and intersex variation. These terms describe different experiences. Intersex variation concerns physical sex characteristics, while transgender identity concerns a person's internal and social experience of gender. Some intersex persons may identify as transgender, but many do not. Similarly, most transgender persons are not intersex. A definition that places excessive weight on physical sex characteristics risks confusing two distinct categories and treating gender identity as primarily a biological condition.

### **Greater medical and administrative scrutiny**

The second significant difference pertains to the process of legal recognition of transgender identity. According to the 2019 Act, the individual had to receive a certificate of identity from the district magistrate. Meanwhile, the 2020 Rules stipulated that an application for a transgender certificate would normally be supplemented with an affidavit and that the district magistrate would not need to order the person to undergo any physical or medical examination (Government of India, Ministry of Social Justice and Empowerment, 2020). Although the continuing necessity of the official certification was still highly controversial, such a procedure with the use of an affidavit at least prevented officials from inspecting the person's body.

According to the 2026 amendment, it will become possible to introduce a formal procedure of medical verification of the person's identity by means of scrutiny by a medical board or other authorised medical bodies. In this case, legal recognition will no longer depend on the individual's statement; instead, it will depend on an outside assessment whether the person meets the statutory requirements (PRS Legislative Research, 2026; Shreya, 2026).

This amendment will lead to further medicalisation of the process of transgender identity recognition. Medical specialists will be able to record the physical traits or treatments undergone by the person. At the same time, none of these parameters determine one's gender identity. There may be various reasons why a transgender individual does not opt for medical procedures such as surgery or hormone therapy. Thus, this amendment might adversely affect the very individuals who are the most vulnerable socially and economically.

The practical implications are important. First, a certificate of identity may be essential to changing an individual's name and/or gender markers in all their official documents. In such cases, delays and denials will lead to mismatched papers that disclose the fact that a person is transgender each

time when identification is required for employment, education, travel, financial transactions, housing, etc.

### **New and enhanced criminal offences**

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**From protection to verification and prevention**

Taken together, these changes represent a wider transformation in the statutory framework. The 2019 Act contained serious limitations, but it began with the language of self-perceived identity, non-discrimination, welfare, healthcare, and social inclusion. The 2026 amendment shifts the centre of gravity toward verification, restricted eligibility, and criminal prohibition.

This does not mean that every provision of the amendment is objectionable. Preventing forced begging, trafficking, violence, and non-consensual medical intervention is an essential responsibility of the state. The difficulty lies in protecting individuals from coercion without treating transgender identity itself as inherently suspicious or externally produced. The constitutional significance of the amendment therefore depends on whether it distinguishes clearly between an identity freely expressed by an individual and an identity or form of labour imposed through force and exploitation.

**IV. Constitutional Analysis of the 2026 Amendment**

However, the constitutional problem with the 2026 amendment is less with its goal than with the approach it employs. Ensuring people protection from being trafficked, exploited into begging, subjected to forced medical treatment or exploitation seems to be a perfectly valid aim of the government. However, Indian constitutional law imposes rationality, necessity and proportionality of limitations on the exercise of fundamental rights. It cannot be allowed for a law aimed at protection to limit freedom and equality of the very people it aims to protect.

The narrower definition of the transgender persons creates problems regarding Articles 14 and 15. *National Legal Services Authority v. Union of India* (2014) decided that constitutional protections are available on the grounds of the gender identity chosen by people themselves. It did not place any reliance on the person's membership in some socio-cultural group or on the intersex status of the individual. If the definition of the transgender persons protects only hijras, kinnars and people with intersex variations and leaves uncertain position of trans men, trans women and non-binary persons, such classification does not seem to be sufficiently connected with the aim of the Act. People are more likely to face discrimination based on their gender identity and expression rather than on their belonging to some official community.

Also, such approach may serve as a tool of reinforcing gender stereotypes. It is well established that the prohibition of the discrimination on the grounds of sex set out in Article 15 includes gender identity and expectations regarding gender roles (National Legal Services Authority v. Union of India, 2014). Legislation that considers only well-established or cultural definition of transgender persons may favour identities easy to categorize for the state and discriminate against other types of identities. Scholars have warned about how hijra identity became a typical example of the transgender experience disregarding the specificities of the position of trans men, non-binary persons and others (Dutta, 2014; Nagar & DasGupta, 2023).

The medical verification process also poses an issue independently of Article 21 concerns. According to the case of Justice K. S. Puttaswamy v. Union of India (2017), the Supreme Court found privacy to encompass both decisional autonomy, bodily integrity and control of personal data. A process involving disclosure of one's medical records or examination by a medical board infringes upon all these rights. While health-care workers can check an applicant's anatomy or therapy, they cannot objectively verify the truthfulness of someone else's gender identification. As explained by Kothari (2020), self-determination is key to transgender equality since any third party's confirmation of it turns the state into a validator of personal self.

Furthermore, the proportionality of the proposed requirement to provide medical information is doubtful. Though the state may seek to prevent fake applications, there are less invasive solutions available – such as sworn statements, sanctions for fraudulent behaviour, time-limited administration proceedings and appeals procedure. Shreya (2026) raises a similar question about the necessity of medical boards if identity verification could be carried out without involving bodily or clinical check-up. Additionally, the burden of such scrutiny would fall on those who lack sufficient access to health-care, especially rural and poor people.

It is important to examine criminal provisions introduced in the amendment with caution as well. It makes sense to punish coercive acts, trafficking and non-consensual interference with someone's body. However, the problem emerges when there are vague terms used without referring to some act of force, exploitation or lack of consent in cases such as "allurement" of an individual, "undue influence," or even "causing" him/her to identify themselves as transgender persons. Such arbitrary



application of criminal laws violates Article 14 and discourages families, counselors, doctors and community organizations from assisting in voluntary gender identification. Since the NALSA recognized social transition as the expression of freedom of speech under Article 19(1)(a), criminal regulations might burden this freedom too.

The amendment therefore appears vulnerable not because the state lacks authority to prevent exploitation, but because it may conflate protection from coercion with suspicion of transgender identity itself. A constitutionally proportionate framework would retain broad self-identification, confine criminal liability to clearly defined coercive conduct, and preserve consensual healthcare and community support. This approach would better reflect the principles of dignity, privacy, equality, and constitutional morality developed in *NALSA*, *Puttaswamy*, and *Navtej Singh Johar v. Union of India* (2018).

## **V. State Justifications and the Test of Proportionality**

Any evaluation of the amendment in 2026 will have to concede that there are several objectives which seem valid in their own right. First, the government has the right and duty to stop trafficking, coerced begging, bonded labour, kidnapping, any sort of physical abuse and non-consensual medical examination. The government may want to protect children and vulnerable adults from any form of exploitation and to provide for proper issuance of identity papers. Nevertheless, the mere presence of these objectives in no way makes all restrictions constitutional. Indian law provides that the restrictions imposed by the state should be proportionate to the harm caused.

This is what is tested during the proportionality test applied in case like *Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016) and *Justice K. S. Puttaswamy v. Union of India* (2017). Proportionality test consists of questions whether the restriction pursues a legitimate aim, whether it is rationally related to that aim, whether it is necessary since no less restrictive alternative exists, and whether there is reasonable balance between public interests and the person's rights. Amendment passes or fails the test on different levels.

There are no problems concerning the restrictions which target trafficking, coerced begging, servitude and non-consensual injury. However, the rationality of the restrictions decreases when the law concerns transgender identity in general. Narrowing of the definition of transgender persons alone does not guarantee protection against exploitation. The requirement of medical confirmation adds to intrusiveness without guaranteeing identity of the applicant. Gender identity cannot be established using only the information about physical appearance and medical history. The risk of falsification can be dealt with less invasive means, like affidavit, punishment for the false claims, document verification and efficient appeal process (Kothari, 2020; Shreya, 2026).

The provisions of the legislation raise a problem of necessity. The criminal acts such as trafficking, kidnapping, assault, forced labor, and exploitation are already covered by general criminal and labor laws. When there is a deficiency in the provisions, Parliament can enact special offences, but those special offences must be backed by evidence of coercion, deception, exploitation or lack of consent. General terms like “allurement” and “undue influence” might cover activities that are helpful rather than harmful. It will discourage parents, doctors, counselors, and organizations in the community from helping individuals who voluntarily discover or express their gender identity.

This means that the legislation appears to be more powerful when punishing specific acts of exploitation and weaker when it considers the process of recognizing the identity or gender as something that may cause harm. Proportionate legislation will enable the state to investigate the cases of coercion without threatening self-identification, consent-based medical care and community assistance.

## **VI. Recommendations for Reform**

The purposes of protection outlined in the amendment can be achieved without undermining the self-identifying constitutional principle. First, the definition of “transgender person” should be made broad again to encompass trans men, trans women, non-binary and genderqueer individuals, persons with intersex variation who identify as transgender, as well as socio-cultural categories of hijras and kinnars. Legal protection should rest on one’s own experience of being transgender and suffering from discrimination, not on the anatomical traits or membership in a particular category.

Second, the procedure of legal gender recognition should revert back to declaration-based system. It would be reasonable to ask for a signed statement and other documents for identification, but not medical examination, diagnosis, surgery or hormone treatment should be necessary for the purpose of recognition. Academic literature on transgender law in India has been continuously arguing against medical certification on the grounds that it contradicts the principle of self-determination as articulated in NALSA and gives excessive power to officials and medical authorities (Kothari, 2020; Shreya, 2026). Issues of possible fraud could be solved by standard verification measures, proportionate punishment and a clear appeals process.

Third, criminal provisions of the amendment should be reworked to make clear distinction between coercion and assistance. Proof of intentional use of force, fraud, exploitation or lack of consent should be provided to prove the violation of this clause. In addition to it, provisions for legal assistance and family and community help should be included into the text of the bill. Otherwise, such vague notions as “allurement” or “undue influence” could discourage any form of legal assistance.

Fourth, further regulations and amendments should be made with the participation of transgender people. This participation should involve trans men, trans women, non-binary persons, hijras and kinnars, persons with disabilities, as well as Dalit, Adivasi and religious minority transgender population. Participation is especially important when legislation directly affects the identity of those, who will have to deal with its results (Jain, 2020).

Reform should therefore move beyond controlling identity and concentrate on enforceable anti-discrimination protections, accessible healthcare, employment opportunities, safe housing, and effective remedies for violence.

## **VII. Conclusion**

It is clear that the passage of the Transgender Persons (Protection of Rights) Amendment Act, 2026 has represented both a significant change and a very problematic one for transgender individuals in India. The aims of the law—to prevent trafficking, forced begging, exploitation, and medically non-consensual interventions—are quite valid. Nevertheless, those aims are clearly

incompatible with a system where transgender identity has been narrowed down, and where medical and bureaucratic gatekeeping has been revived with broadly written criminal offenses.

The idea of the right recognized by NALSA was not only about the existence of a distinct "third gender" category. It was much more than that since the right itself included the idea that gender identity constitutes part of the individual's personal freedom, autonomy, equality, and expression (National Legal Services Authority v. Union of India, 2014; Kothari, 2020). Such idea was reaffirmed in later cases such as Puttaswamy and Navtej. Through the transfer of power from the individual to medical board and other administrative bodies, the 2026 amendment might reverse this trajectory (Sahoo & Kar, 2026; Shreya, 2026).

Finally, in its essence, any protective law must prohibit coercion without making a particular identity suspicious by default. India might fight against the mentioned problems via narrowly crafted and consent-based offenses while maintaining its broad definition and self-declaration procedure.

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