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THE CRISIS OF IDENTITY: A CRITIQUE OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026

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Abstract: The Transgender Persons (Protection of Rights) Amendment Act, 2026 represents one of the most significant legislative departures from established constitutional jurisprudence in contemporary India. Passed in March 2026 amid parliamentary controversy, the Amendment fundamentally alters the legal framework for transgender recognition established by the Transgender Persons (Protection of Rights) Act, 2019 and the Supreme Court's landmark ruling in National Legal Services Authority v. Union of India (2014). This paper examines the Amendment's core provisions, analysing how it replaces self-perceived gender identity with a medicalised certification regime, narrows the definition of "transgender person" to exclude transgender men and non-binary individuals, and introduces penal provisions that risk criminalising community support networks. Drawing on constitutional principles, judicial precedent, and the lived experiences of affected communities, this paper argues that the Amendment violates the fundamental rights to dignity, privacy, and equality under Articles 14, 19, and 21 of the Constitution. It further contends that the retrogressive shift from recognition to verification, from autonomy to surveillance, and from inclusion to exclusion, represents a crisis that demands judicial intervention

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INTRODUCTION

More than four months have passed since the Transgender Persons (Protection of Rights) Amendment Act, 2026 came into force, yet the controversy it ignited shows no signs of abating. The Bill was tabled in the Lok Sabha on March 13, passed on March 24, affirmed by the Rajya Sabha the following day, and received the President's assent on March 30. In the span of just over two weeks, Parliament enacted legislation that fundamentally alters the socio-legal landscape for transgender persons in India – a landscape that was carefully constructed through years of judicial advocacy, legislative deliberation, and the relentless efforts of human rights activists and community organisations. Opposition members walked out of Parliament, and community organisations staged protests across the country. Since then, petitions challenging the constitutional validity of the law have been filed in the High Courts of Rajasthan, Kerala, Karnataka, Delhi, and now the Supreme Court itself. On May 4, 2026, a bench comprising Chief Justice Surya Kant and Justice Joymalya Bagchi issued notice on a batch of petitions challenging the constitutional validity of the Act, directing that the matter be placed before a three-judge bench. The Court, however, declined to grant interim relief, noting that the law had not yet been formally notified at that time.

This paper undertakes a comprehensive analysis of the Amendment Act, situating it within the rights-based framework established by the Supreme Court in three of its celebrated judgments: NALSA, Puttaswamy, and Navtej Singh Johar. It examines the Amendment's key provisions, analyses the constitutional challenges they raise, and assesses the broader implications for transgender rights and their lived realities.

2. The Constitutional Foundation: NALSA and the Right to Self-Identification

A. The NALSA Framework

The Supreme Court's judgment in National Legal Services Authority v. Union of India (2014) laid the constitutional foundation for transgender rights in India. The Court explicitly rejected the biological test, the principle that chromosomes or genitalia should determine legal sex, in favour of a psychological test grounded in self-perceived identity.

The Court held that:

"Article 19(1)(a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender."

"Article 21, as already indicated, protects one's right of self-determination of the gender to which a person belongs. Determination of gender to which a person belongs is to be decided by the person concerned. In other words, gender identity is integral to the dignity of an individual and is at the core of 'personal autonomy' and 'self-determination'."

In its operative directions, the Court declared that "any insistence for SRS for declaring one's gender is immoral and illegal."

B. The 2019 Act: Legislative Implementation

The legislative response to the NALSA judgment appears in the form of The Transgender Persons (Protection of Rights) Act, 2019. Despite certain loopholes, the Act encoded two foundational principles: first, that gender identity is self-perceived; and second, that transgender persons have an enforceable right to a certificate of identity based on self-declaration alone.

Section 4(2) of the 2019 Act explicitly granted the right to self-perceived gender identity. Under Sections 5 and 6, transgender persons could apply directly to the District Magistrate for a certificate of identity, with no mandatory medical evaluation prerequisite. This framework aligned with international standards, including the Yogyakarta Principles and World Professional Association for Transgender Health guidelines, which emphasise autonomy and informed consent.

3. The 2026 Amendment: Key Provisions and Analysis

A. Redefinition of "Transgender Person"

The Amendment substitutes a new clause (k) in Section 2, fundamentally altering the definition of "transgender person." Under the 2019 Act, a transgender person was defined as "a person whose gender does not match with the gender assigned to that person at birth," explicitly including trans-men, trans-women, genderqueer persons, and those with socio-cultural identities.

The 2026 Amendment narrows this definition to:

(i) Persons with specific socio-cultural identities (kinner, hijra, aravani, jogta, or eunuch) or persons with intersex variations defined through biological criteria including primary sexual characteristics, external genitalia, chromosomal patterns, gonadal development, and endogenous hormone production; and

(ii) Persons compelled through force, allurement, inducement, deceit, or undue influence to assume a transgender identity through mutilation, castration, or other procedures.

Critically, the definition includes a proviso declaring that it "shall not include, nor shall ever have been so

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included, persons with different sexual orientations and self-perceived sexual identities."

B. Removal of Self-Perceived Identity

The Amendment omits Section 4(2) of the 2019 Act, which granted the right to self-perceived gender identity. The Statement of Objects and Reasons justifies this deletion by claiming the Act was never intended to protect persons with various gender identities, and that legislative policy was always aimed only at those facing exclusion due to biological reasons. This justification is constitutionally suspect. In NALSA, the Supreme Court recognised self-identification as an intrinsic facet of dignity, autonomy, and personal liberty. The Court's reasoning in NALSA was not contingent on legislative policy; it was grounded in the fundamental rights guaranteed by the Constitution. Parliament cannot, through ordinary legislation, nullify a constitutional right recognised by the Supreme Court.

C. Medicalised Certification Regime

The Amendment replaces the self-declaration-based certification process with a mandatory two-stage medical filter. Under the new Section 6, applicants must first obtain a positive recommendation from a state-appointed medical board headed by a Chief Medical Officer or Deputy Chief Medical Officer. The District Magistrate may then seek further evaluation from "other medical experts" at their discretion.

This represents a fundamental departure from the NALSA framework. The Court had explicitly held that "no individual should be subjected to compulsory medical or psychological interventions as a precondition for legal recognition." The Amendment reintroduces precisely the kind of medical gatekeeping that the Supreme Court declared "immoral and illegal."

D. Expanded Penal Provisions

The Amendment substitutes a new Section 18, introducing graded punishments for various offences. While the 2019 Act provided uniform punishment of six months to two years for offences including forced labour, denial of public access, and physical or sexual abuse, the Amendment creates a hierarchical penalty structure:

- Section 18(a)-(d): Offences including forced/bonded labour, denial of public access, forced eviction, and physical/sexual/economic abuse—punishable with 6 months to 2 years imprisonment and fine.
- Section 18(e): Kidnapping/adult and causing grievous hurt through mutilation, castration, or hormonal procedures to force transgender identity—10 years to life imprisonment with fine of not less than ₹2 lakh.
- Section 18(f): Same offence against a child—rigorous imprisonment for life with fine of not less than ₹5 lakh.
- Section 18(g): Compelling a person to present as transgender and engage in begging/servitude—5 to 10 years rigorous imprisonment with fine of not less than ₹1 lakh.
- Section 18(h): Same offence against a child—10 to 14 years rigorous imprisonment with fine of not less than ₹3 lakh.

E. Surveillance and Privacy Concerns

The new Section 7(1A) requires every medical institution where gender-affirming surgery is performed to furnish details of that patient to the concerned District Magistrate and the medical board. In Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), the Supreme Court held that any intrusion into informational privacy must be sanctioned by law, pursue a legitimate state aim, and satisfy proportionality.

The Amendment fails this test. It mandates reporting without consent, lacks purpose limitation, and provides no data protection safeguards. Medical records and gender identity information are classified as "Personal Information" under the Digital Personal Data Protection Act, 2023, and processing such information requires explicit prior consent. The Amendment's reporting requirement thus potentially violates both statutory requirements and constitutional privacy rights.

4. Constitutional Challenges

A. Violation of Article 21: Right to Life and Personal Liberty

The Amendment's removal of the right to self-perceived gender identity directly violates Article 21. In NALSA, the Supreme Court recognised that the freedom to determine one's own gender identity is an inseparable part of dignity, autonomy, and personhood. By conditioning recognition on medical certification and bureaucratic approval, the Amendment strips transgender persons of this autonomy, reducing a fundamental right into a contingent state-controlled entitlement.

The Amendment also violates the right to privacy. The mandatory reporting of gender-affirming surgeries to the District Magistrate, without consent or adequate safeguards, breaches doctor-patient

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confidentiality and creates a state-controlled surveillance architecture over gender transition that is manifestly arbitrary and disproportionate.

B. Violation of Article 14: Right to Equality

The Amendment's narrow definition of "transgender person" creates an arbitrary classification that excludes transgender men, trans-masculine persons, non-binary individuals, and genderqueer persons. Every named socio-cultural community in the definition is, without exception, a trans-feminine community. Trans men and trans-masculine identities have no equivalent named community formation in India; their structural invisibility is itself a defining feature of their experience.

The petition filed by transgender rights activists Manveer Yadav and Vishwanath Maithil highlight this omission, arguing that the "legislature's privileging of community-visible, trans-feminine identities over self-perceived identities is not a neutral classification, it is a prejudice of visibility encoded in statute."

C. Violation of Article 19(1)(a): Freedom of Expression

The right to express one's self-identified gender is integral to the freedom of expression. In NALSA, the Supreme Court explicitly recognised this connection. By removing the right to self-perceived gender identity and criminalising certain forms of gender expression through the new penal provisions, the Amendment violates Article 19(1)(a).

D. The Proviso to Section 2(k): Retrospective Exclusion

The proviso to Section 2(k) declares that the definition "shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities." This provision reflects Parliament's intent to retrospectively exclude and de-recognise persons who had already obtained legal recognition as transgender persons based on self-identification under the 2019 Act.

Ankan Biswas, a transgender advocate enrolled with the Bar Council of West Bengal and empanelled with the West Bengal State Legal Services Authority, has challenged this proviso. Assigned female at birth, Biswas identifies as a trans-masculine person and was issued a Transgender Identity Card under the 2019 Act in 2023. The petition contends that the proviso is arbitrary, exclusionary, and retrogressive, violating Articles 14, 15, 19(1)(a), 19(1)(g), and 21.

5. The Crisis of Medical Gatekeeping

A. Re-Pathologising Gender Diversity

The Amendment reintroduces medical or quasi-medical certification, implicitly framing gender identity as something requiring verification or approval. This represents a reversal of contemporary psychiatric and global health frameworks. The International Classification of Diseases, 11th Revision (ICD-11) and the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) have moved towards de-pathologisation, recognising that gender incongruence is not, in itself, a disorder.

The Amendment's medical gatekeeping risks re-pathologising gender diversity, fostering stigma both within healthcare systems and in society at large. As argued by mental health scholars Sahoo and Kar, "identity invalidation is a well-recognised contributor to psychological distress. The minority stress model demonstrates that stigma, discrimination and systemic invalidation significantly increase the risk of depression, anxiety and suicidality among transgender individuals."

B. Chilling Effect on Healthcare Access

The Amendment has already created a chilling effect on access to gender-affirming healthcare. In the Karnataka High Court petitions filed by Akira Mujawar and Sri Maya M, the petitioners argued that the Amendment, by excluding transgender women from the definition and introducing offences that make "presenting a transgender identity" and grievous hurt through "hormonal procedures" elements of crimes, casts a chilling effect on their access to medical care.

Both petitioners were undergoing hormone replacement therapy when the Amendment came into force. The Court issued an interim order on May 7, 2026, permitting them to continue their hormone replacement therapy "as per the existing medical protocol" and directing that "concerned doctors and medical authorities shall facilitate continuation of such treatment without interruption."

This intervention, while welcome, underscores the immediate harm the Amendment has caused. Community leaders report that doctors and mental health professionals have declined to take on transgender patients, and some individuals are reconsidering accessing healthcare, including hormone replacement therapy.

C. Criminalising Community Support Networks

The new penal provisions, particularly Section 18(g) and (h), use terms such as "allurement," "inducement," and "undue influence" without definition. This ambiguity could have serious implications for community networks that provide

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support to queer and transgender individuals.
Mihir Rajamane, a Bengaluru-based lawyer, noted that "anyone who is transphobic, whether they be parents of a trans person or even vigilante groups known to target trans communities, all of them can file a complaint and the police can immediately arrest them, if they interpret the words broadly enough."

Community leaders report that "three-fourths of the trans community just vanished" from public spaces, with many reducing participations in queer events and shifting to less visible communication platforms. Organisations that connect queer individuals with inclusive legal, healthcare, and housing resources are reconsidering their activities.

6. Erasure of Trans Men and Intersex Persons

A. The Erasure of Trans Men

The 2026 Amendment's definition of "transgender person" effectively erases trans men and trans-masculine identities. The petitioners in the Supreme Court challenge filed by Manveer Yadav and Vishwanath Maithil—both trans men—highlight this erasure:
"The 2026 law replaces an identity-based, self-determination framework with a categorical list of externally verifiable biological markers and named trans-feminine socio-cultural communities, none of which encompasses trans men."
The petition further argues that "every named socio-cultural community in the definition is, without exception, a trans-feminine community of persons assigned as male at birth. Trans men and trans masculine identities have no equivalent named community formation in India; their structural invisibility is itself a defining feature of their experience."

B. The Conflation of Intersex and Transgender Identities

Despite the new wording, the Amendment still lumps "persons with intersex variations" inside the definition of a "transgender person." As noted by Gopi Shankar Madurai, the National Human Rights Commission's Special Monitor for SOGIESC Rights, this conflation erases intersex-specific needs:
"Intersex is a natural biological spectrum (recorded 1%-2% globally). Transgender identity is a psychological and social construct. Retaining this conflation under one label violates rights under Article 21 to bodily integrity and privacy. It leaves out intersex infants without any specific ban on 'normalising' surgeries and ignores repeated calls for separate intersex legislation."
The Amendment also fails to align with international standards. The United Nations and the World Health Organization define intersex as innate variations in sex characteristics that do not fit typical male or female binaries, requiring distinct legal recognition and explicit protections against non-consensual medical interventions.

7. Legislative Intent and Parliamentary Debates

A. The Government's Position

The government claims that the Amendment fixes the vagueness and implementation failures of the 2019 Act. Social Justice and Empowerment Minister Dr. Virendra Kumar stated that the Bill "ensures justice, dignity, protection from criminalisation and legal safeguards for transgender persons."
BJP MP Medha Vishram Kulkarni argued that "there is a need for a law that brings justice to real transgender individuals and punishes fake ones," adding that "the benefits should be extended to those who are transgender by birth."

B. Opposition Concerns

Opposition members raised serious constitutional concerns. Congress MP Renuka Chowdhury argued that the Bill "dilutes the privacy of an individual provided under the Constitution" and that "self-identification cannot be taken away through bureaucratic certification."
DMK MP Tiruchi Shiva stated that "even if the Bill is passed in Parliament with a majority, it will be struck down by the Supreme Court," arguing that it violates Articles 14, 15, 19, and 21.
CPI(M)'s John Brittas called it a "black-letter day" and said the Bill is "taking India a century back."

8. Judicial Responses and Litigation

A. Supreme Court Proceedings

On May 4, 2026, a bench comprising Chief Justice Surya Kant and Justice Joymalya Bagchi issued notice on a batch of petitions challenging the constitutional validity of the Act, directing that the matter be placed before a three-judge bench.
During the hearing, Senior Advocate A.M. Singhvi argued that the Amendment "takes away the rights of transgender persons under Article 21 today" and that the "basis of the NALSA judgement was removed by the Amendment Act."
The Court declined to grant interim relief, with the CJI remarking that "since the law has been enacted, it should be notified formally."

B. High Court Challenges

Multiple High Courts are hearing challenges to the Amendment. In the Karnataka High Court,

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petitioners Akira Mujawar and Sri Maya M obtained an interim order permitting continuation of hormone replacement therapy.

The Kerala High Court has also been approached by a petitioner whose hormone therapy was halted by a hospital citing the Amendment.

The Rajasthan High Court, while hearing a separate matter, observed that "the judgment was written on the premise laid down in NALSA... where the right to self-identity gender was recognised as part of dignity, autonomy and personal liberty under Articles 14,15,16 and 21 of the constitution. The subsequent amendment... marks a departure from that said constitutional baseline."

9. Conclusion

At its core, the controversy over the 2026 Amendment is a question about the relationship between the individual and the State: can identity be subjected to verification, or must it be recognised as an inherent aspect of personhood?

In NALSA, the Supreme Court placed identity firmly within the domain of personal autonomy. The Court held that gender identity is integral to the dignity of an individual and is at the core of "personal autonomy" and "self-determination." The 2026 Amendment moves in the direction toward verification, classification, and administrative control, a fundamental departure from the constitutional framework established by the Supreme Court.

The Amendment narrows the definition of transgender persons to exclude those who have historically been most vulnerable to discrimination; it replaces self-declaration with medical gatekeeping; it mandates surveillance of gender-affirming healthcare; and it introduces penal provisions that risk criminalising community support networks.

The petitions now before the Supreme Court raise fundamental questions about the Constitution's guarantee of dignity, autonomy, and equality. As the Court observed in NALSA, "gender identity is integral to the dignity of an individual and is at the core of 'personal autonomy' and 'self-determination.'" The 2026 Amendment, by its very architecture, negates this principle.

How the Court ultimately resolves the tension between legislative authority and constitutional rights will determine not only the fate of this legislation, but the constitutional foundations on which the rights of transgender persons in India rest. The Court must decide: Is the Constitution's promise of dignity and autonomy a matter for self-assertion, or must it be earned through the State's verification?

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