



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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The Future of Transgender Rights in India: A Critical Examination of the 2026 Amendment Act

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I. Introduction:

The Rajya Sabha on 25th March 2026 cleared the Transgender Persons (Protection of Rights) Amendment Bill, 2026, completing its passage through Parliament.¹ The Bill Amends the Transgender Persons (Protection of Rights) Act 2019,² and its central move is simple to state but far-reaching in consequence: it deletes Section 4(2) of the 2019 Act, which guaranteed every recognised transgender person a right to self-perceived gender identity, and replaces self-identification with verification by a state-appointed medical board.³ This piece traces what that substitution does to the constitutional scaffolding the Supreme Court built around gender identity, and why retroactivity, criminalisation, and definitional conflation deepen the difficulty.

II. From Identity to Diagnosis

The 2018 Act defined a transgender person broadly as someone whose gender does not match the gender assigned at birth.⁴ The Amendment narrows this to three categories: recognised socio-cultural communities such as *hijra*, *kinner*, and *aravni*; persons with intersex variations; and persons compelled into a transgender identity through medical coercion and medical intervention.⁵ Trans men, Trans women and non-binary persons who do not fall within these categories, including many who have undergone hormone therapy or gender affirmation

¹ Transgender Persons (Protection of Rights) Amendment Bill, 2026 Bill No. 48-C of 2026 (India).

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

³ Transgender Persons (Protection of Rights) Amendment Bill, Bill No. 48-C of 2026, § 2 (India).

⁴ Transgender Persons (Protection of Rights) Amendment Bill, Bill No. 48-C of 2026, § 2(k) (India).

⁵ *Id.*



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surgery by choice, lose statutory recognition altogether. Section 2(k) of the Bill goes further, stating that persons with self-perceived sexual identities shall not be included, and shall never have been so included. Recognition that was once an act of self-assertion under Section 4 has been converted into a finding that only a District Magistrate, acting on a medical board's recommendation, may make.⁶

III. The Autonomy Problem

This restructuring goes against the reasoning of the Supreme Court in *National Legal Services Authority v. Union of India* (2014) (NALSA),⁷ where the Court recognized that transgender identity is based on gender identity, expression and behavior, not biology.⁸ The Court also recognized gender identity as a person's deeply felt internal experience of self and ruled that self-determination of gender is a part of the right to personal liberty (Article 21).⁹ Three years later, Justice D.Y. Chandrachud, in his separate opinion in *Justice K.S. Puttaswamy v. Union of India* (2017),¹⁰ recognized the right to autonomy and the right to be different within the right to privacy under Article 21, as against sexual orientation in *Navtej Singh Johar v. Union of India* (2018),¹¹ locating dignity and self-expression in Articles 14, 19 and 21 together. The Court's later jurisprudence on queer rights, in *Supriyo v Union of India* in 2023,¹² reiterated that the right to choose one's gender and the right to intimacy are constitutional values, even as it declined to read marriage rights into this constitutional protection. Viewed through this lens, the deletion of Section 4(2) is no mere administrative act. It takes away the very right which is enshrined with Article 21.

⁷ Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 SCC 438 (India) [hereinafter NALSA].

⁸ NALSA, (2014) 5 SCC 438, ¶ 20.

⁹ NALSA, (2014) 5 SCC 438, ¶ 76.

¹⁰ Justice K.S Puttaswamy v. Union of India, (2017) 10 SCC 1, ¶ 127.

¹¹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India)..

¹² Supriyo @ Supriya Chakraborty v. Union of India, (2023) SCC OnLine SC 1348 (India).



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IV. Erasing Rights Already Granted

Section 2(k)'s retroactive language creates a separate problem from a constitutional perspective, as courts have consistently treated retrospective operation as an exception to the norm.¹³ The Court held in *Hitendra Vishnu Thakur v. State of Maharashtra* that litigants carry vested rights in substantive law that should not be disturbed by retrospective application,¹⁴ and in *Govinddas v. Income Tax Officer*, it held that retrospective effect should not be used to take away an existing right or impose a new liability.¹⁵ A person who obtained a certificate of identity under Section 4 of the 2029 Act,¹⁶ updated official documents, or accessed welfare schemes on that basis now finds that status declared never to have existed. That is not a redefinition for the future; it is the erasure of the past.

V. Criminalising Care, Conflating Categories

The Amendment also introduces a penal framework targeting anyone who compels, forces, or lures a person into presenting as transgender, with sentences extending to life imprisonment. The Telangana High Court's reasoning in *Vyjayanti Vasanta Mogli v. State of Telangana*, which found that similarly worded criminal provisions chill expression and entrench stereotypes about the community, is instructive here:¹⁷ vague language of this kind risks ensnaring supportive parents, doctors performing gender-affirming care, and community networks rather than the traffickers it claims to target. Compounding this, the Bill folds intersex variations into the transgender definition itself. The two are analytically distinct, one a description of biological sex characteristics, the other of gender identity and collapsing them does not serve

¹³ Transgender Persons (Protection of Rights) Amendment Bill, Bill No. 48-C of 2026, § 2(k) (India)

¹⁴ *Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602, ¶ 14 (India).

¹⁵ *Govinddas v. Income Tax Officer*, (1976) 1 SCC 906, ¶ 10 (India).

¹⁷ *Vyjavanti Vasanta Mogli v. State of Telangana W.P. (PIL) No. 558 of 2022* (Telangana H.C.).



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either group; it simply ensures that a transgender woman without an intersex variation or socio-cultural affiliation has nowhere to be recognised at all.

VI. The Missing Half of NALSA

It is worth recalling that NALSA not only recognised self-identification. It directed the Union and State governments to treat the transgender community as a backward class under Articles 15 and 16 and extend affirmative action accordingly. Neither the 2019 Act nor this Amendment acts in that direction.

VII. Conclusion

The Transgender Persons (Protection of Rights) Amendment Act, 2026, moves even further away from the constitutional vision articulated in NALSA, as well as from the privacy and equality jurisprudence that came after. By replacing self-identification with medical verification, restricting the legal definition of transgender persons, and retrospectively excluding previously recognised legal identities, the Amendment shifts the determination of gender identity from personal choice to State decision. This Amendment introduces multiple challenges to Articles 14, 19, and 21 of the Constitution, which guarantee equality, dignity, privacy, and the right to self-determination.

This Amendment can also lead to the practical exclusion of many transgender people, especially those who do not belong to the identified socio-cultural communities or do not have intersex variations. This, combined with vaguely formulated criminal provisions and the conflation of intersex and transgender identities, will likely shift the legal framework from inclusion to uncertainty.

The direction of this Amendment is completely the opposite of what the Constitution requires and what the Supreme Court has recognised. Any future legal framework for gender identity must restore self-identification, maintain the distinction between sex and gender, and protect



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rights from being withdrawn. This must also include the realisation of the rights recognised in NALSA and the directives for affirmative action to provide the necessary services to transgender people.