



The Indian Journal for Research in Law and Management

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FROM PROTECTION TO POLICING: A CRITICAL STUDY OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026 AND ITS INTERACTION WITH EMERGING CRIMINALIZATION TRENDS IN INDIA

-Niraja Ghatak

India is currently following the Transgender Persons (Protection of Rights) Amendment Act, 2026 which has proven to be controversial as compared to its predecessor, Transgender Persons (Protection of Rights) Act, 2019. This paper situates these laws against a history of marginalization and the Supreme Court's NALSA (2014) recognition of gender self-identification. While the 2019 Act marked a rights based framework, recent amendments however suggest a shift toward increased regulation and criminalization of transgender lives. This paper discusses the above problem and three central questions. Firstly, whether the 2019 act with the subsequent Amendment Act, 2026 secure substantive protection. Secondly, does the current Amendment Act, 2026 shift the Transgender Persons to subjects of 'Policing' or 'Protection and Rights'? Thirdly, how does the enacted criminal offences under the Amendment Act, 2026 transform support networks into potentially criminal activities? This paper also discusses some historical parallels between Transgender Persons (Protection of Rights) Amendment Act, 2026 and the Criminal Tribes Act, 1871 and explores its colonial roots. The main aim of this paper is to evaluate whether the Amendment Act, 2026 protects the



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constitutional rights of transgender persons. The research methodology used in this paper is doctrinal and comparative in nature.

Keywords: Transgender Persons, Rights, NALSA, Self-identification

INTRODUCTION

The Transgender Persons (Protection of Rights Act) 2019 is a statute which is primarily significant because it is the first comprehensive statute which is dedicated to the protection of the transgender persons' rights and welfare. This central legislation has been highlighted to mitigate stigma and bring transgender persons into mainstream society because the transgender community has been historically marginalised.

The genesis of this act emerged from a long history of marginalisation and judicial developments over the years. The most significant point in these judicial developments was the Supreme Court's landmark Judgement in NALSA case¹, 2014 which recognized the transgender persons' as the third gender and affirmed their right to self-identification and directed the State to ensure reservations. Following this judgment, the Transgender Persons (Protection of Rights) Bill was

¹ National Legal Services Authority V. Union of India,(2014) 5 SCC 438



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introduced in the Lok Sabha on 19th July 2019 and it was passed by the Lok Sabha on 5th August 2019 and by the Rajya Sabha on 26th November 2019. The Bill received Presidential Assent on 5th December 2019.

The Statute defined the transgender persons as “someone whose gender does not match the one assigned to them at birth. The term includes trans-men and trans-women, whether or not they have undergone a ‘sex reassignment surgery’, or hormone, laser, or other such therapy. It also includes persons with intersex variations, genderqueer persons, and those “having such socio-cultural identities as kinner, hijra, aravani and jogta.” This statute established a National Council for transgender persons, provided welfare measures, clearly defined the obligations of establishments and other persons towards the community and laid down the offences against the transgender persons and subsequent penalties. This act also gave the transgender persons the right of self perceived gender identity and also prescribed the procedure to be recognized as a transgender person.

Despite the much needed changes there were some drawbacks which included the non-addressal civil rights of the transgender persons in regards to marriage, divorce, adoption, succession and guardianship. The 2019 act may not have been perfect yet this statute was better than the Transgender Persons (Protection of Rights) Amendment Act, 2026. Which directly brings us to the main research problem this paper discusses. The Transgender Persons (Protection of Rights Act) 2019 was enacted as a rights protective framework which was introduced as a protective anti-discrimination law but when compared with the recent amendments and policy developments which includes the Transgender Persons (Protection of Rights) Amendment Act,



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2026 and criminal law reforms suggest an evident shift from protecting of their rights to incessant control and criminalization of their activities.

Additionally, this paper addresses a few questions. Firstly, does the Transgender Persons (Protection of Rights) Act, 2019 with the subsequent Transgender Persons (Protection of Rights) Amendment Act, 2026 secure substantive protection or does it embed new forms of state regulation and criminalization? Secondly, measured against the constitutional guarantee of dignity, privacy, autonomy, self determination and equality does the current framework of Transgender Persons (Protection of Rights) Amendment Act, 2026 shift the Transgender Persons to subjects of ‘Policing’ or to subjects of ‘Protection and Rights’ ? Thirdly, how does the enacted criminal offences relating to Transgender communities under the Transgender Persons (Protection of Rights) Amendment Act, 2026 transform support networks, activism and community life into potentially criminal activities?

This paper also discusses some Historical parallels between Transgender Persons (Protection of Rights) Amendment Act, 2026 and the Criminal Tribes Act, 1871 and its colonial roots. Lastly, it draws a cross jurisdictional comparative study of the self Identification regimes.

1.IMPLICATIONS OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026:

Prior to the introduction of the Transgender Persons (Protection of Rights) Amendment Act, 2026, India’s central legislation dedicated to the protection of the transgender communities was the Transgender Persons (Protection of Rights) Act, 2019 as mentioned earlier which owed its



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existence to the landmark Supreme Court Judgement in the case of NALSA v. Union of India (2014).

This act rendered legal recognition of the transgender person as the third gender in India, prohibited discrimination against the transgender individuals, provided for their welfare in the realms of education, health care, social security et cetera. Furthermore, it defined a transgender person under section 2 and the right to a self perceived gender identity under section 4(2). The parliament also introduced the Transgender Persons (Protection of Rights) Rules on 25th September, 2020 for the implementation of the provisions in the 2019 Act. These Rules mandated as per Rule 11(5) for the set up of transgender protection cells by every state government to monitor cases of offences against the transgender individuals and to secure timely registration and investigation of these offences. As per Rule 10(1), Transgender Welfare Boards have also been set up to protect the rights of these individuals and facilitate equal access to welfare schemes. The government also facilitated and designed the SMILE scheme in 2022 for providing holistic skill development and employment through the “Comprehensive Rehabilitation for Welfare of Transgender Persons”, through this scheme, scholarships were provided to fulfil the constitutional guarantee of Right To Education under Article 21A. It provided safe shelter homes and ‘Garima greh’ for the destitute transgender individuals, it also provided gender affirming care and HIV surveillance aligning with the fundamental right to health under Article 21 and introduced a dedicated insurance scheme, ‘Ayushman Bharat TG Plus’ for transgender individuals.²

² Press Information Bureau, Ministry of social justice and empowerment, Govt. of India, *Rights of Transgender Persons in India*, (19 Nov 2025).



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The Central Government introduced the National Council for Transgender Persons on 21st August, 2020 which works as a statutory body under the Ministry of Social Justice and Empowerment to promote the wellbeing of transgender individuals. The government also introduced a National Portal for Transgender Persons to regulate the application for identity certificates. The department of Social Justice and Empowerment also issued an “Equal opportunity policy for Transgender people”

The above discussion gave us a fair idea about the legal landscape of Transgender Rights in India which existed before the introduction of the Transgender Persons (Protection of Rights) Amendment Act, 2026. Which was necessary to understand the subsequent reforms and how it reshaped the existing legal landscape of Transgender rights.

1.1 KEY DISTINCTIONS BETWEEN THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 AND THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026:

- 1) The first notable difference between the two statutes is that of the definition of the transgender persons. The 2019 act provided a broader definition under Section 2(K) and included trans men, trans women and intersex genders aside from the existing communities including hijra, kinner, aravani, jogta. The recent amendment act of 2026 provides for a narrower definition which included hijra, kinner, aravani, jogta and ‘eunuch’ which in particular was revived. However it shied away from naming the trans men and trans women irrespective of them having undergone sex reassignment surgery or



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laser therapy and gender queer as transgender persons under the same section and included a retroactive provision, “Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.” These changes led to a discourse among the concerned unrecognised gender identities. The retroactive provision has clearly stated a bar on the past and future inclusion of those who claimed self determination of their gender identities.

- 2) Another significant change can be observed when it comes to the right of self-identification. In the 2019 act section 4(2) defined the right to self perceived identity but in the 2026 amendment act, section 4(2) was deleted. The right of self-determination was clearly defined as a pivotal right in the *NALSA v. Union of India* (2014) verdict. Hence this statutory codification of the right of self determination has been deleted unfairly affecting millions of transgender individuals and their fundamental rights. Under the 2019 act, 32,000 certificates were issued to the transgender men and women who claimed this status on the basis of self determination who no longer fall within the definition of transgender persons. Their identity, status and certificates are at a risk of being invalidated.
- 3) The process for obtaining an identity certificate has also undergone significant changes. In the 2019 act, an affidavit needed to be filed and the District Magistrate would issue the certificate on the receipt of such affidavit within 30 days. However, under the 2026 amendment act, an application must be filed to the District Magistrate but unlike the 2019 act, the District Magistrate cannot alone decide on the basis of self determination whether the certificate is to be issued. Under Section 6 of the 2026 act, the District Magistrate must examine the medical recommendation of a designated medical board headed by a



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Chief Medical Officer (CMO) or a Deputy Chief Medical Officer (DCMO). The board's responsibilities entail a thorough verification of the applicant and whether they fit the amended definition of transgender persons based on medical records.

- 4) The 2019 act did not require hospital reports of gender affirming surgery to be submitted to the District Magistrate for scrutiny. However, the said hospital reports are to be mandatorily submitted with the application to the District Magistrate under the 2026 act for the scrutiny by the CMO or DCMO under section 7(1A). Concerns over confidentiality and privacy encroachment have been frequent by the Petitioners in court cases.
- 5) In the 2019 act, four criminal offences were laid down and penalties involved fines and imprisonment for six months to two years. However, in the 2026 amendment act under section 18, four new aggravated offences were added and the previous four offences in the 2019 act were retained. The penalties are also stricter in nature, leading to five to ten years of imprisonment depending on the offence and one lakh to five lakh rupees of fines are to be imposed.

1.2 DECODING THE AFTER-EFFECTS OF TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026:

Under the 2019 act, proof of medical intervention or gender confirming surgery was required only as a document which was to be furnished to support the application by the applicant when they sought a change from a “transgender” identity certificate under section 6 to a ‘male’ or ‘female’ identity certificate under section 7 no statutory duty was cast upon the medical



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institutions to report such interventions to the state. In contrast, the Transgender Persons (Protection of Rights) Amendment Act, 2026 expressly mandates that any medical institution where gender-affirming surgery is performed must report the surgery to the District Magistrate for issuance or alteration of a section 7 certificate, thereby making post-certificate gender-confirming surgery a matter of compulsory state notification rather than purely individual disclosure. Turning a process of identity certificate issuance which gives legal recognition to transfer individuals into a mechanism of state surveillance. In practice, this mandate can create a trail of sensitive and personal data breaching their right to privacy under Article 21 of the Indian Constitution and it also enables a continuous monitoring of a person's gender expression by the State.

The amendment act also does not provide an Appellate forum in cases where an applicant's application is rejected by the medical board. They are free to initiate writ petitions under Article 32 and 226 of the Indian Constitution. However the absence of an internal Appellate mechanism can constitute a breach of Article 14 because not every transgender person is financially strong enough to initiate court proceedings. They are subject to discrimination and poverty which forces the marginalized status upon them to this day despite many legal initiatives by the government.

When carefully read, this amendment act has conveniently deleted the Self Identification right conferred by the NALSA v. Union of India landmark judgement with a medical-biological model. It has made access to legal recognition contingent on the findings of a medical board and documentary evidence of medical intervention which thereby amounts to forced medicalisation of the transgender identity. By tying identity certificate and subsequent alternation to mandatory medical assessments by the medical board and reporting of gender confirming surgery, the letter



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of law subtly compels transgender persons to submit to medical scrutiny which is completely incompatible with Article 21. However the Central Government has not yet notified whether the applicants who were issued certificates under the 2019 act are supposed to re-apply under the new act. Currently, State welfare departments are choosing to deem these certificates valid pending a notification from the Central government. In the context of reservation in Employment, the NALSA judgment deemed the transgender individuals as a backward class, “Several States (notably Rajasthan, following the Ganga Kumari direction) operate transgender-specific reservation lists³.”

The 2026 act provided a narrower definition of transgender persons which creates a major problem because many transgender individuals on the State OBC reservation lists may not fit the definition provided by the Central government.

The impact of the 2026 amendment act is not just confined to identity documents or reservations because it cascades into benefits of the welfare schemes for transgender communities. Since central and state welfare schemes for instance SMILE scholarships to Ayushman Bharat TG Plus are accessible to those transgender individuals who are holding a recognised identity card. The recent departure from legally recognising their claims based on the right of self-determination to mandatory medical board certification conditions a selective access to the welfare schemes which these marginalized communities require for basic necessity and survival, only upon compliance with forced medicalisation and surveillance regime.

³ Transgender Persons (Protection of Rights) Amendment Act, 2026: A Full Legal Analysis, IPleaders Blog (14 May, 2026)



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2. DOES THE CURRENT FRAMEWORK OF TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026 SHIFT TRANSGENDER PERSONS TO SUBJECTS OF ‘POLICING’ OR ‘PROTECTION’ ?

This question must be discussed while analysing how this framework when measured against the Constitutional Guarantee of dignity, privacy, autonomy, self determination and equality shift the Transgender Persons to being subjects of ‘policing’ or subjects of ‘Protection and rights.’

Firstly we must trace the genesis of the Transgender Persons (Protection of Rights) Act, 2019 and the core right of self -determination in the case *NALSA v. Union of India* (2014). In this Supreme Court case, the Apex court of India held that Gender Identity is a part of Right to Equality under Article 14 and Right to Expression under Article 19(1)A is indeed protecting gender expression of all the citizens. The Apex court rejected the biological test propounded in the English Case of *Corbett vs Corbett*⁴ This test had restricted sex determination to chromosomes , gonads and genitalia. The Apex court duly held that Gender in Indian Law is based on self-identification which is rooted in a person’s lived experiences and the test was inadequate for a judicial system which was rooted in dignity rather than biology. Three important commands emerged out of this landmark judgement. Firstly, transgender individuals received legal recognition as a third gender beyond the male and female binaries. Secondly, transgender persons were included within the socio and educationally backward classes to receive the benefit

⁴ *Corbett vs Corbett* (1970) 2 All ER 33



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of reservation. Thirdly, it provided for the design of welfare measures, which included health care, public toilets and et cetera. The parliament was expected to turn these commands into statutes. The NALSA judicial bench made two consequential moves in order to justify its reasoning in rejecting the biological test by using The Right to dignity under Article 21 which was expanded further in Justice K.S Puttaswamy (Retd) vs Union of India⁵ it embraced the Right to Self-identification and brought it within the ambit of Article 21.

The right of self perceived identity was clearly mentioned in the Transgender Persons (Protection of Rights) Act, 2019. However, this phrase was deliberately borrowed from the Yogyakarta Principle 3 which is an international instrument dealing with the application of International Human Rights law to Gender Identity. This principle holds that each and every human being has the right to recognition before law and that no person shall be forced to undergo any medical procedure for instance sex reassignment surgery or hormonal therapy as a requirement for Legal recognition of their gender identity. Under the 2019 act, Section 4(2) reflected and aligned with this Principle in Indian law. However with the deletion of this particular Section under the 2026 amendment act led to many discourses about the breach of Right of Self-identification and forced medicalisation owing to the procedure laid down in section 6 of this new act which serves as a substitute of section 4(2) of the previous 2019 act. As discussed before, the medical board layer constitutes many issues including the uncertainty as to the time frame in which the certificate is ought to be issued as opposed to the 30 day time limit under the 2019 act.

Now, we must analyse the Constitutionality of the clauses under Transgender Persons (Protection of Rights) Amendment Act, 2026. Petitioners in many cases before the Supreme Court and

⁵ Justice K.S Puttaswamy (Retd) vs Union of India (2017) 10 SCC 1



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respective High Courts in different states have alleged and argued that deletion of section 4(2) under the 2019 act and the narrow definition of the transgender persons as well as the mandatory examination and recommendation by the medical board violated many Constitutional provisions.

Petitioners have argued that the new definition of transgender persons under section 2(k) of the Amendment Act of 2026 is quite narrow and excludes transgender men and women and gender queer individuals. They have argued that it violates Article 14 of the Indian Constitution because it perpetuates discrimination by excluding the above mentioned categories who by and large face similar situations and disparities for instance a transgender woman and a hijra are similar when it comes to gender non-conformity but they are facing differentiation by this definition of transgender persons. Many have also pointed out that the Amendment is arbitrary. “the manifest-arbitrariness doctrine the Supreme Court has consolidated in its post-2017 equality jurisprudence: the means chosen (definitional narrowing plus medical-board layer) don’t rationally connect to the stated end (preventing welfare misuse)⁶.”

Many have also voiced that Article 15 prohibits discrimination on the grounds of sex among others. And the NALSA judgment held that sex included gender identity. Exclusion of trans-men and trans-women and gender queer persons from the definition of transgender persons is a direct form of discrimination on the ground of sex which is unconstitutional. The alleged misuses of welfare schemes could be dealt with by making the verification process stricter rather than narrowing the definition and excluding these citizens from their rightful identity and benefits. This rationality gap is definitely violative of Article 14 as well as Article 15.

⁶ Transgender Persons (Protection of Rights) Amendment Act, 2026: A Full Legal Analysis, IPleaders Blog (14 May, 2026)



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As mentioned above, Article 19(1)A also protects the freedom of speech and expression and the NALSA judgements have rightfully included gender expression under this fundamental right. However, the recent amendment act of 2026 blatantly compels a person who is claiming to be a transgender individual to undergo medical examination which serves as a prerequisite for legal recognition of their gender identity. Petitioners have also brought many arguments before the court which relay that this restriction on the right of expression is not reasonable and cannot be deemed as an excuse under the guise of reasonable restrictions in Article 19(2) because it does not contemplate medical examination as a ground for Legal recognition of gender identity. But a counter argument may be simply that this procedure is regulatory rather than restrictive.

Article 21 of the Indian Constitution as we know protects the life and liberty of the citizens. However this amendment act of 2026 clearly violates the right of dignity, bodily autonomy and self determination. In the judgement of NALSA v. Union of India (2014), the Supreme Court held that Gender Identity is an aspect of personal autonomy and dignity protected under Article 21. Individuals have the right to self-identity as male, female or a third gender without being forced into medical procedures. This perspective was reinforced in the case of Navtej Singh Johar v. Union of India⁷The Supreme Court held that sexual orientation is an intrinsic aspect of one's identity and that consensual same sex relations fall within the protected sphere of privacy, dignity and autonomy under Article 21. The amendment act of 2026 deleted the statutory right to self perceived gender identity as discussed above which anyways makes recognition contingent on the recommendations of a designated medical board. This kind of a medical board examination is an intrusion into bodily autonomy and the deletion of section 4(2) means a deletion of a fundamental right codification which is a part of the Basic Structure Doctrine hence

⁷ Navtej Singh Johar v. Union of India (2018) 10 SCC 1



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Parliamentary legislations cannot override or remove these fundamental rights. Petitioners have time and again argued that this move under the Transgender Persons (Protection of Rights) Amendment Act, 2026 is a direct rollback of the NALSA mandate and therefore unconstitutional under Article 21.

Additionally, the retrospective provision under section 2(k) of the Transgender Persons (Protection of Rights) Amendment Act, 2026 which reads as, “shall not include nor shall ever have been so included” has been flagged by the Petitioners to be violative of Article 14 and Article 21 because rights restrictive clauses operate prospectively but the language in this section denotes a retrospective deletion of legal recognition which was conferred by a previous act. Which means that this can extinguish past inclusion. However, notification regarding the original legislative intent has not been clarified by the Central government yet. So the central question is whether the 32, 000 identity certificates which have been issued by the 2019 act are still valid because many trans -men and women now fall outside the purview of the narrow definition provided under the Amendment Act of 2026. As of now the State Government departments continue to honour the certificates as valid.

The Transgender Persons (Protection of Rights) Amendment Act, 2026 received the Presidential assent which was serious setback for the human rights in India,⁸

The Supreme Court will most likely apply the three-part proportionality test to assess the Constitutionality of the Amendment Act of 2026. The test was laid down to assess any invasion of privacy and to justify such invasion it needs to fulfil the three part test. Firstly, one must be a

⁸ Amnesty International Press Release: Presidential approval of regressive Transgender Bill a major step backward for human rights, India (March 31, 2026)



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lawful authority for the State action. Secondly there must be a legitimate State aim and Thirdly there must be a proportionality between the means employed and the end pursued. The petitioners have accepted that the Parliament does indeed have the legislative competence to make such law. But they rigorously contest that it fails the 2nd part of the test, “preventing misuse of welfare schemes” is the central rationale stated by the union government for introducing the amendment act of 2026 but it is not a legitimate aim when there is a lack of empirical evidence of misuse under the Transgender Persons (Protection of Rights) Act, 2019’s regime. Petitioners have also contested that the Amendment act fails the 3rd part of the test as well because the medical-board examination mandate is intrusive in nature and a stricter verification procedure would achieve the same end without violating the rights of the people. Hence it is questionable whether the medical board examination mandate is the least intrusive way of achieving the ends.

2.1 THE CONFLICT WITH DIGITAL PERSONAL DATA PROTECTION ACT, 2023 (DPDPA) AND THE RIGHT TO BE FORGOTTEN:

Indian Courts have treated Right to be forgotten as a facet of the broader fundamental right to privacy under Article 21 specifically its informational-privacy dimension. The Right to be forgotten is a significant right because it gives an individual a measure of control over the continued public availability and processing of personal data particularly when the data is harmful to personal dignity and privacy. This right flows from the expansion of Article 21 in the Supreme Court case of Puttaswamy and is being articulated as a part of right to life and personal liberty under Article 21.



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Similarly, under the Digital Personal Data Protection Act, 2023, individuals have a statutory right to seek erasure of their personal data once the original purpose of processing such data is exhausted, content has been withdrawn or retention of such data is no longer necessary under law.

However, we can observe that there is a conflict between the Digital Personal Data Protection Act, The right to be forgotten and the Transgender Persons (Protection of Rights) Amendment Act, 2026. As discussed above, the 2026 amendment act requires medical institutions to mandatorily report gender affirming surgeries to the District Magistrate and other public Authorities and that can embed the trans identity data within official registries. This can create a trail of highly sensitive data like that of the gender identity and medical history of a person can be disseminated. Hence we can see there is an inability to be “forgotten” from the identity and medical registries because this retention of personal data is grounded in a statute that treats identity certification and medical interventions being reported as necessary for Legal recognition and welfare administration. The Transgender Persons hence have less scope of involving the DPDRA’s erasure right against these databases.

The Transgender Persons (Protection of Rights) Amendment Act, 2026 thus imposes mandatory reporting and registry based tracking of gender affirming procedures effectively making intimate medical and identity data permanently accessible to the State. By tying legal recognition of gender identity and access to welfare schemes, the personal data trail imposed by the Amendment act of 2026 sets up a direct conflict with the Right to be Forgotten and undermines a transgender person’s ability to erase harmful data and outdated records in the face of persecution and thereby violates the right to autonomy and privacy under Article 21.



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2.2 RECENT JUDICIAL DEVELOPMENTS:

On 24th April, 2026, Laxmi Narayan Tripathi challenged the constitutionality of the amendment act, 2026 under Article 32 before the Apex court. In the case of Laxmi Narayan Tripathi and another v. Union of India and another⁹ The petitioner argued that the Amendment act was unconstitutional because it violated Article 14, 15, 19, and 21 of the Indian Constitution. The matter was listed before the honourable Supreme Court on 4th May, 2026. “The Court located self-identification within Articles 14, 19 and 21 and held that constitutional rights cannot be made contingent upon medical procedures or state approval. The Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 after the *NALSA* verdict.” The court noted objections concerning the maintainability of the challenge since the Amendment Act has not been notified yet. The court also considered concerns regarding the shift to the medical certification as well. The court did not provide Interim relief and issued notice and placed the matter before a three judge bench. The case as of now is awaiting a hearing¹⁰.

3. DOES THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026 TRANSFORM COMMUNITY INDUCTION AND ACTIVISM INTO CRIMINAL ACTIVITIES?

⁹ Laxmi Narayan Tripathi and another v. Union of India and another (Civil) No. 234 of 2026.

¹⁰ Challenge to the Transgender Persons Amendment Act, 2026, Supreme Court Observer (July 13, 2026)



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The Union Government provided a rationale for the Criminal law reforms under the Amendment Act of 2026 which was to introduce stricter criminal protections for transgender persons against human trafficking. Many petitioners contend that the new offences can risk criminalising voluntary community induction for instance The Guru-Chela and Hijra gharana system.

Section 18 of the Transgender Persons (Protection of Rights) Amendment Act, 2026 is the criminal law backbone of this act and enlarges the categories. It retained the four offences from the 2019 act which included denial of public access, forced labour, forced removal from residence and physical, sexual, verbal, economic and emotional abuse. This act introduced four new aggravated offences related to coercive assumption of transgender identity, kidnapping of the transgender persons, hurt driven transgender identity assumption of an adult. Penalties include ten years to life imprisonment and minimum fine being two lakh rupees. This offence against a child can invite life imprisonment and a minimum fine of five lakh rupees. Compelling any person to dress or present themselves as a transgender person and coercing them to beg or serve can invite five to ten years of imprisonment, the minimum fine being one lakh rupees. And the same offence against a child can invite 10-14 years of imprisonment, minimum fine being three lakh rupees.

Bharatiya Nyaya Sanhita, 2023, section 143 makes trafficking including forced labour illegal. In the amendment act of 2026, clauses (g) and (h) operate simultaneously with BNS. If any criminal act matches the description of both these provisions then investigation can proceed under either or both the provisions. However the dual classification may cause issues and can create problems of overlapping.



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After a fruitful discussion of the new criminal offences, we can clearly analyse the issues that can emerge when it comes to the hijra gharana and guru chela communities. The hijra gharana is a community in which the experienced members denoted as Gurus do accept persons in the form of apprentices (Chela).

The Chelas are provided with basic necessities and shelter. In the meantime, the chela may transition into a gender identity and the community views it as a voluntary identity affirmation. Words such as “coercion or alluring” as mentioned under Section 18 concern many petitioners because these terms may operate as broad terminologies which can bring the voluntary gharana system within its ambit.

As we have observed, mainstream society does reject these marginalized communities and transgender persons hence informal support systems like these are essential for survival and basic needs. The support these communities provide is indispensable. However the language of the new criminal offences and words like ‘abetment’ ‘assembly’ can be misconstrued to cover ordinary acts of support as criminal conspiracies. These chilling consequences can discourage NGOs and elders of such communities from offering guidance and support, weakening the very structure being informal mostly, still protecting the transgender people from isolation and destitution.

The recent legal framework, Transgender Persons (Protection of Rights) Amendment Act, 2026 has excluded the non- kinnar communities like the transgender men and women and other non-binaries. And they are denied legal recognition as transgender persons altogether under this act.



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With recognition tied to certain specific cultural identities, it can be highly difficult to obtain legal documents and access welfare schemes and if these new offences target collective organizations, public expression of gender variance who organize activism online or dispersed in urban areas may face surveillance or even be penalized without benefiting from the traditional community protection. Moreover, combined with the rollback of gender inclusive rape protections, it does leave the non-kinnar transgender and gender diverse individuals facing heightened risk of exclusion, violence, weaker access to protection and criminalization under the new criminal reforms. All because of the lack of legal recognition which used to be rendered under the 2019 Act to these newly excluded categories.

4. HISTORICAL PARALLELS OF TRANSGENDER PERSONS (PROTECTION OF RIGHTS ACT, 2026 WITH THE CRIMINAL TRIBES ACT, 1871:

Petitioners have often contested that the Transgender Persons (Protection of Rights) Amendment Act, 2026 shares a very similar logic when it comes to Criminal Tribes Act, 1871. The colonial Criminal Tribes Act of 1871 was a legal framework which criminalized registration legislation. This statute dealt with the registration of ‘eunuchs’ and also imposed criminal liability for persons who were registered and harboured minor boys in their homes. Part II of this act specifically dealt with the registration. This statute thrived under the British Administration of India until it was repealed in 1952. It was repealed by the Habitual Offenders Act which did



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retain some of the measures and shared a rationale in regards to registration with the CTA act. A few Eunuch Acts existed at the state level for a long time in a revised form.

A notable example would be that in the case of *Vijayanti Vasanta Mogli v. State of Telangana*¹¹, the Telegana High Court struck down the Telegana Eunuchs Act. The court held that this act resembled the CTA, 1871 registration practice which was repealed years ago. This act was found to be violative of Article 14, 15, 19 and 21. The rationale behind this judgement is often cited as a relevant precedent because the amendment act of 2026 also re-introduced a process of registration of gender identity as a prerequisite for Legal recognition in many ways. Starting with the mandatory examination by the medical board which replaced the self-affidavit based declaration to the highly intrusive practice of reporting medical intervention to public authorities.

Regardless of the doctrinal correction by the Supreme Court in the NALSA JUDGEMENT. The current legal framework has undone and undermined many mandates and directions of the Supreme Court.

5. AN INTERNATIONAL CONTEXT: COMPARATIVE STUDY OF THE VARIOUS SELF IDENTIFICATION REGIMES

Ireland adopted a self Identification process of claiming gender identity under the Gender Recognition Act, 2015. The procedure is highly simple with the applicant submitting a

¹¹ *Vijayanti Vasanta Mogli v. State of Telangana* (2023) SCC Online TS 1688



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self-declaration, in contrast to India's current legal framework demanding a complex medical examination. Neither has the Department of Social Protection observed any misuse of the welfare schemes or benefits.

Denmark has also adopted a self declaration pattern of claiming gender identity. Denmark amended its civil law in 2014 to introduce this change. This model functions on a 6 month period reserved for reflection. The Danish Institute for Human Rights have not yet flagged misuse in its periodical review process.

Argentina and its Gender Identity law, 2012 is regarded as a model when it comes to the right of self-identification. Any adult can change their registered gender by a simple declaration with no requirements and when compared to India's current model, the Transgender Persons (Prohibition of Rights) Amendment Act, 2026 falls short miserably because it has complicated the process of issuing an gender identity card under the rationale of misuse patterns. The Gender Identity law has remained operative for more than a decade now and has not documented any misuse or fraudulent activities as per Amnesty International and Human Rights Watch: International commentary.

6. A WAY FORWARD:

In the face of ambiguity while awaiting a decision from the Supreme Court on the questions of Constitutionality of the Transgender Persons (Protection of Rights) Amendment Act, 2026, the central government has not yet notified the rules under this act but has expanded the rules present under section 22 of the 2019 act. As a consequence, the state government departments and



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welfare circulars continue to follow the 2019 act and are honouring the identity certificates of the excluded categories.

In the meantime, the vulnerable non-kinnar communities must be protected because they are excluded from the very definition of transgender persons.

Here are a few recommendations in that regard to come to the aid of excluded categories especially:

- Advocate for their rights on a national level.
- Law Enforcement systems need to be sensitized and made aware of the issues of transgender communities.
- An inclusive approach for these excluded categories must be adopted by the State to protect their fundamental and human rights.
- Provision for free legal aid must be ensured to these categories especially, so that they can timely initiate legal proceedings in the face of discrimination and violence.
- Financial support must be rendered to these excluded categories so that they can sustain their livelihood.

7. REFERENCES:

The Information used in this research paper has been derived from the following sources.

- The following case laws were referred -



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