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EDITORIAL ANALYSIS

Walking Back on Hard-Won Rights — The Transgender Amendment Bill, 2026

 **THE HINDU**

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SUBJECTS COVERED**POLITY****SOCIAL ISSUES****GS PAPERS****GS2****GS1****CURATED & WRITTEN BY****Bharat Choudhary**

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 The Hindu

20 March 2026

GS2

GS1

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The Hindu

MAINS RELEVANCE:

GS Paper 2

GS Paper 1



INTERVIEW ANGLE

"The Transgender Persons Amendment Bill 2026 replaces self-identification (established by the Supreme Court in NALSA 2014) with mandatory medical board certification. Is this a legitimate regulatory clarification or a constitutional rollback of Article 21 (right to gender identity) and the right to dignity?"

WHY IN NEWS

The **Transgender Persons (Protection of Rights) Amendment Bill, 2026**, introduced in the Lok Sabha on March 13, 2026, proposes to replace the **self-identification** principle established by the Supreme Court in the **NALSA judgment (2014)** with mandatory **medical board certification** — a move critics call a legislative reversal of a fundamental rights ruling.

BACKGROUND — THE NALSA JUDGMENT (2014)

National Legal Services Authority v. Union of India (NALSA, 2014) was a landmark Supreme Court judgment that fundamentally redefined transgender rights in India:

Bench: Justice K.S. Radhakrishnan and Justice A.K. Sikri

Core holding: Transgender persons have the right to **self-identify** their gender as male, female, or third gender — without requiring surgery, medical diagnosis, or state certification

Constitutional basis: Articles **14** (equality), **19(1)(a)** (freedom of expression — includes gender expression), and **21** (right to life with dignity — includes right to gender identity)

Directive to state: Recognised transgender persons as a **socially and educationally backward class** (OBC equivalent) entitled to reservation in education and public employment

Significance of self-identification: The NALSA principle followed the **Yogyakarta Principles (2006)** — international standards on sexual orientation and gender identity adopted by human rights experts — which held that gender identity is an internal, deeply felt experience that cannot be externally determined by medical

or state authority.

THE TRANSGENDER PERSONS ACT, 2019 — FIRST LEGISLATIVE ROLLBACK

The **Transgender Persons (Protection of Rights) Act, 2019** was Parliament's first attempt to codify NALSA — but it already departed from the judgment's spirit:

Key provisions of the 2019 Act:

Defined “transgender person” — but narrowly, covering only those who do not identify as male or female (effectively excluding trans-men and trans-women)

Required a **District Magistrate's certificate** for gender recognition — a state-mediated process, not pure self-identification

Protected against discrimination in education, employment, healthcare

Prohibited begging — controversially criminalising a livelihood for many marginalised transgender persons

Penalties for offences against transgender persons: Maximum **2 years** imprisonment — significantly lower than for equivalent offences against women under the IPC

Criticism of 2019 Act: The National Human Rights Commission (NHRC), civil society, and the transgender community itself condemned the Act as inadequate — the DM certification requirement, the narrow definition, and the weak penalties were all seen as dilutions of NALSA.

THE 2026 AMENDMENT BILL — WHAT IT CHANGES

The **Transgender Persons (Protection of Rights) Amendment Bill, 2026** introduced March 13 in Lok Sabha proposes:

Provision	2019 Act	2026 Amendment
Gender recognition process	District Magistrate certificate	Mandatory Medical Board certification (district-level board with psychiatrist, endocrinologist, surgeon)
Definition	“Person who does not identify as male or female”	Restricts to those who have undergone or are undergoing gender transition — excludes non-binary, gender-fluid, genderqueer identities
Self-identification	Not explicitly required; DM process could be self-declared	Removed — replaced by medical evaluation
Appeals	DM order — appeal to high court	Medical Board — appeal to state-level board

The editorial’s core objection: Requiring medical board evaluation to determine one’s gender identity **medicalises** what is fundamentally a **social and psychological identity** — and hands state-appointed doctors the power to validate or invalidate a person’s deeply held sense of self. This is precisely what NALSA said the state cannot do.

THE EDITORIAL’S CORE ARGUMENT

The Indian Express editorial makes three structural arguments:

1. THE BILL IS CONSTITUTIONALLY SUSPECT UNDER NALSA

The Supreme Court in NALSA explicitly held that the state **cannot require surgery or medical diagnosis** as a condition for gender recognition. The 2026 Amendment replaces DM certification (imperfect but civil) with medical board certification (more invasive) — moving further from NALSA, not closer.

The editorial argues: A constitutional court ruling that self-identification is a fundamental right cannot be overridden by ordinary legislation. The Bill will almost certainly face a constitutional challenge — and likely fail on Articles 14 and 21 grounds.

2. IT IGNORES THE COMMUNITY’S GROUND REALITY

Census 2011: ~4.9 lakh transgender persons (an acknowledged severe undercount; actual estimates range from 10 lakh to 25 lakh)

Over **90% employment exclusion** — most transgender persons are forced into begging, sex work, or subsistence through lack of formal employment access

Access to medical facilities for gender evaluation is itself deeply inequitable — most transgender persons, being poor and socially excluded, cannot navigate complex medical board processes

The Bill creates a system that is **de facto inaccessible** to those who most need protection

3. THE DEFINITIONAL NARROWING IS EXCLUSIONARY

By restricting the definition to those **undergoing gender transition**, the Bill excludes:

Non-binary persons who do not identify on the male-female spectrum but have not transitioned

Hijra and Kinnar communities — traditional third-gender communities whose identity is cultural and social, not medical

Gender-fluid and genderqueer persons

KEY CONSTITUTIONAL AND LEGAL FRAMEWORK

Article / Provision	Relevance
Article 14	Equality before law — arbitrary medical board gatekeeping = unreasonable classification
Article 15	Prohibition of discrimination — gender identity is analogous to sex
Article 19(1)(a)	Freedom of expression — gender expression is protected speech/expression
Article 21	Right to life with dignity — includes right to gender identity without state interference
Yogyakarta Principles (2006)	International non-binding standards — self-identification; used by NALSA as persuasive authority
NALSA 2014	Landmark SC ruling — self-ID as fundamental right; third gender recognition; OBC reservation

UPSC RELEVANCE

NALSA judgment (2014, Articles 14/19/21/self-identification), Transgender Persons Act 2019 (DM certificate, 2-year penalty), Transgender Amendment Bill 2026 (medical board certification, introduced March 13), Census 2011 transgender count (~4.9 lakh), Yogyakarta Principles (2006).

Mains GS2: *Fundamental rights — Articles 14, 15, 19, 21; transgender rights and judicial activism; legislative rollback of judicial pronouncements; social justice and marginalised communities; Parliament vs. Supreme Court on fundamental rights. GS1:* *Gender, society, marginalised communities, third gender in Indian tradition (Hijra/Kinnar communities).*

★ FACTS CORNER — KNOWLEDGE PEDIA
NALSA JUDGMENT (2014):

Full form: National Legal Services Authority v. Union of India

Bench: Justices K.S. Radhakrishnan + A.K. Sikri

Constitutional basis: Articles 14, 19(1)(a), 21

Core ruling: Right to self-identify gender without surgery/medical certification

State directive: Recognise third gender; treat as socially backward class (OBC-equivalent)

TRANSGENDER PERSONS ACT, 2019:

DM (District Magistrate) certificate required for gender recognition

Defined: Person not identifying as male or female

Penalties for offences: Max 2 years (critics: too low vs. women's provisions)

Begging prohibition: Controversial — major livelihood for many transgender persons

TRANSGENDER AMENDMENT BILL, 2026:

Introduced: March 13, 2026 (Lok Sabha)

Key change: DM certificate → Medical Board certification (psychiatrist + endocrinologist + surgeon)

Definitional change: Restricts to those undergoing/completed gender transition

Exclusion: Non-binary, gender-fluid, traditional Hijra/Kinnar identities

INDIA'S TRANSGENDER POPULATION:

Census 2011: ~4.9 lakh (severe undercount; actual estimates: 10–25 lakh)

Employment exclusion: >90% without formal sector employment

Highest concentration: Uttar Pradesh, Andhra Pradesh, Maharashtra

YOGYAKARTA PRINCIPLES (2006):

Developed by: International human rights experts (Yogyakarta, Indonesia, 2006)

Principle 3: Right to recognition before the law — including self-defined gender identity

Status: Non-binding; used as persuasive authority by courts including SC in NALSA

KEY RELATED CASES:

Suresh Kumar Koushal v. NAZ Foundation (2013): SC recriminalised Section 377 (overturned by Navtej Singh Johar, 2018)

Navtej Singh Johar v. UOI (2018): Decriminalised consensual same-sex relations (Section 377 read down)

Supriyo v. UOI (2023): SC declined to recognise same-sex marriage (5-0); left to Parliament

OTHER RELEVANT FACTS:

Hijra/Kinnar communities: Traditional third-gender communities; historical role in Mughal courts; modern exclusion from formal economy

NHRC: National Human Rights Commission — criticised both 2019 Act and 2026 Amendment as inadequate

Article 15(4): Allows special provisions for socially and educationally backward classes — basis for transgender reservation per NALSA

Sources: Indian Express, PRS India, Supreme Court of India

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