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EDITORIAL ANALYSIS

Architecture of Erasure — How the Transgender Amendment Bill Rolls Back NALSA

INDIAN EXPRESS

25 March 2026

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CURATED & WRITTEN BY**Bharat Choudhary**

UPSC Educator & Content Creator •

[linkedin.com/in/epicbharat](https://www.linkedin.com/in/epicbharat)

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GS2

GS4

ESSAY



The Indian Express

MAINS RELEVANCE:

GS Paper 2

GS Paper 4

Essay Paper



INTERVIEW ANGLE

"The NALSA judgment affirmed self-identification as a fundamental right. Does the 2026 Amendment's medical board requirement represent a legitimate regulatory interest or an unconstitutional rollback?"

WHY IN NEWS

The Lok Sabha passed the Transgender Persons (Protection of Rights) Amendment Bill, 2026, on March 24, replacing self-identification with medical board certification. A Supreme Court-constituted advisory committee headed by former Delhi HC judge Justice Asha Menon has urged the government to withdraw the Bill, flagging it as a breach of the NALSA judgment.

The Editorial Argument

Indian Express argues that the 2026 Amendment represents an “architecture of erasure” — systematically dismantling the self-identification framework established by the Supreme Court in NALSA v. Union of India (2014). By requiring medical certification, the Bill pathologises gender identity, treating it as a condition to be diagnosed rather than an inherent aspect of personhood.

From Self-ID to Medical Gatekeeping

PARAMETER	NALSA JUDGMENT (2014)	2019 ACT	2026 AMENDMENT
Identity basis	Self-identification	Self-perceived gender identity	Socio-cultural identity + medical board
Certification	No medical requirement	DM certificate (self-declaration)	DM certificate after medical board recommendation
Scope	Broad — all gender-diverse persons	Broad — includes self-perceived	Narrow — excludes self-perceived; lists specific identities
Constitutional basis	Article 21 (dignity, autonomy)	Statutory (Act of Parliament)	Statutory amendment

The editorial notes that the Bill removes **Section 4(2)** of the 2019 Act, which enshrined the right to self-identify. This is a direct legislative reversal of a Supreme Court-affirmed right.

The Medical Board Problem

Under the amendment, a **District Magistrate** issues the certificate only after a **medical board** (headed by a Chief Medical Officer) “recommends” the person’s gender. The editorial identifies several problems:

- ❶ **Pathologisation:** The WHO declassified gender incongruence from mental disorders in ICD-11 (2019). India is moving backwards.
- ❷ **Access barriers:** Medical boards exist only in district headquarters; transgender persons in rural areas face geographical and social barriers
- ❸ **Discretionary power:** Medical boards can deny certification based on subjective clinical assessment
- ❹ **Privacy violation:** Forced medical examination violates the right to privacy (Puttaswamy, 2017)

SC Advisory Committee’s Objection

The Supreme Court-constituted advisory committee, headed by **Justice Asha Menon** (retired Delhi HC judge), sent a formal resolution urging the government to **withdraw the Bill**, stating:

- The proposal to “deny self-identification” contravenes the NALSA verdict
- Medical certification amounts to treating gender identity as a pathological condition
- The Bill was not referred to a Standing Committee despite its fundamental rights implications

The Exclusion Problem

The amendment lists specific identities — **kinner, hijra, aravani, jogta, eunuch** — and persons with intersex variations. This enumeration **excludes**:

- Non-binary persons

- Gender-fluid persons
- Persons who identify as transgender but do not fit traditional categories
- Persons who self-identify but lack medical evidence

The editorial argues this creates a hierarchy of recognition — some transgender identities are “valid” (traditional, socio-cultural) while others are “invalid” (modern, self-perceived).

The Broader Rights Framework

The Bill’s constitutional vulnerability lies in its tension with multiple fundamental rights:

- **Article 14:** Creates unreasonable classification between “listed” and “unlisted” transgender identities
- **Article 15:** Discrimination on the basis of gender identity (read into “sex” by NALSA)
- **Article 19(1)(a):** Gender expression is a form of protected speech
- **Article 21:** Right to dignity, autonomy, and self-determination includes gender identity (NALSA + Puttaswamy)

International Context

The editorial notes India is moving against the global trend:

- **Argentina** (2012): First country to allow self-declaration with no medical requirement
- **Malta** (2015): Self-declaration at civil registry
- **WHO ICD-11** (2019): Declassified gender incongruence from mental disorders
- **India** (2026): Moving towards medical certification — a step backward

UPSC RELEVANCE

NALSA 2014 (Justice Radhakrishnan, Justice Sikri), Article 21, Transgender Persons Act 2019, ICD-11 declassification, Section 4(2)

Rights of marginalised sections; self-identification vs state certification; judiciary-legislature tension

Ethics of dignity; autonomy vs paternalism; duty of the state towards vulnerable populations

“When law undoes what justice commands — the paradox of progressive judgments and regressive legislation”

★ **FACTS CORNER — KNOWLEDGEPEDIA**

TRANSGENDER BILL 2026:

- Passed: Lok Sabha, March 24, 2026 (voice vote)
- Minister: Virendra Kumar (Social Justice & Empowerment)
- Key change: self-identification replaced by medical board certification
- Removes Section 4(2) of 2019 Act
- SC advisory committee (Justice Asha Menon): urged withdrawal

NALSA V. UNION OF INDIA (2014):

- Date: April 15, 2014
- Bench: Justice K.S. Radhakrishnan and Justice A.K. Sikri
- Recognised third gender and right to self-identification
- Invoked Articles 14, 15, 16, 19, 21
- Directed OBC-like reservations

KEY JUDGMENTS ON RIGHTS:

- K.S. Puttaswamy v. UOI (2017): right to privacy as fundamental right
- Navtej Singh Johar v. UOI (2018): Section 377 read down
- Supriyo v. UOI (2023): same-sex marriage — Court declined to legalise but affirmed queer rights

OTHER RELEVANT FACTS:

- WHO ICD-11 (2019): gender incongruence removed from mental disorders
- Yogyakarta Principles (2006): international SOGI standards
- Census 2011: 4.88 lakh transgender persons counted
- 44 student bodies submitted joint opposition to the Bill

Sources: [Indian Express](#), [The Leaflet](#), [LiveLaw](#)

CURATED & WRITTEN BY

Bharat Choudhary

UPSC Educator & Content Creator

 [linkedin.com/in/epicbharat](https://www.linkedin.com/in/epicbharat)

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