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EDITORIAL ANALYSIS

Transgender Amendment Bill — Self-Identification vs Medical Gatekeeping

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INTERVIEW ANGLE

"When Parliament legislates in a manner that dilutes a Supreme Court judgment on fundamental rights, does it amount to a violation of the basic structure doctrine?"

WHY IN NEWS

Parliament passed the Transgender Persons (Protection of Rights) Amendment Bill, 2026, replacing the self-perceived gender identification principle with medical board-based certification. Prominent activist Kalki Subramaniam resigned from the National Council for Transgender Persons (NCTP) in protest.

The Editorial Argument

The Indian Express editorial argues that the 2026 Amendment represents a fundamental regression from the NALSA judgment's transformative vision. By replacing self-identification with medical gatekeeping, Parliament has effectively subordinated a constitutional right — the right to dignity under Article 21 — to bureaucratic convenience and political considerations.

NALSA v. Union of India (2014) — The Constitutional Foundation

The two-judge bench of Justice K.S. Radhakrishnan and Justice A.K. Sikri delivered a landmark ruling that:

- 1 **Recognised transgender persons as "third gender"** under the Constitution
- 2 **Upheld the right to self-identification** — no requirement of sex reassignment surgery or medical certification
- 3 **Grounded gender identity in Articles 14, 15, 19(1)(a), and 21** — making it a fundamental right, not a medical condition
- 4 **Directed governments** to treat transgender persons as socially and educationally backward classes eligible for reservations

- 5 **Held that sex reassignment surgery cannot be mandated** as a precondition for gender recognition

The philosophical core of NALSA was that **gender identity is an intrinsic aspect of personhood**, not a medical diagnosis to be certified by external authorities.

What the Amendment Changes

ASPECT	NALSA JUDGMENT (2014) + ORIGINAL ACT (2019)	AMENDMENT BILL (2026)
Identity basis	Self-perceived gender identity	Medical board recommendation
Certificate process	District Magistrate issues on self-declaration	DM issues only after medical board report
Medical requirement	Explicitly rejected by SC	Reinstated as mandatory step
New offence	Not applicable	Kidnapping/forcing transgender identity: 10 years to life + Rs 2 lakh fine
Rights framework	Dignity-based (Article 21)	Shifts toward medicalisation model

The Medicalisation Problem

The editorial highlights that the medical model of gender identity — which treats being transgender as a condition requiring diagnosis — was rejected by the World Health Organization in ICD-11 (2019), which removed “gender identity disorders” from the mental health chapter.

International comparison:

COUNTRY	APPROACH
Argentina (2012)	Self-identification; no medical requirement
Malta (2015)	Self-determination; gold standard internationally
Ireland (2015)	Self-declaration to register
Portugal (2018)	Self-determination from age 16
India (2026 Amendment)	Medical board certification required

India’s amendment moves in the **opposite direction** from the global trend toward depathologisation of gender identity.

The New Criminal Offence — Potential for Misuse

The amendment introduces a new offence: kidnapping or forcing someone to assume transgender identity, punishable with 10 years to life imprisonment and Rs 2 lakh fine.

Concerns raised:

- **Overbroad definition:** Could be used against parents who support gender-questioning children
- **Chilling effect:** Transgender support groups and counsellors may face prosecution risk
- **No equivalent offence** for forcing someone to suppress their transgender identity
- **Disproportionate punishment:** Life imprisonment for an offence that is already covered under existing IPC provisions (kidnapping, wrongful confinement)

The Governance Deficit

The editorial notes that even before the amendment, the original 2019 Act had significant implementation gaps:

- **National Portal for Transgender Persons:** Only ~15,000 identity certificates issued nationwide (against an estimated 4.88 lakh transgender population per Census 2011, widely considered an undercount)
- **SMILE Scheme:** Budget allocation of Rs 365 crore (2021-26) — less than Rs 750 per transgender person per year
- **Reservation:** Despite NALSA directing OBC-equivalent reservation, no state has implemented it comprehensively
- **Shelters:** The Act mandates rehabilitation centres, but fewer than 50 exist nationwide

Judicial Activism vs Legislative Override

This case raises a fundamental constitutional question: can Parliament legislatively override a Supreme Court judgment that interprets fundamental rights?

- **NALSA** interpreted Articles 14, 15, 19(1)(a), and 21 to include the right to self-identification
- The **2026 Amendment** effectively reverses this interpretation through legislation
- Under the **basic structure doctrine** (Kesavananda Bharati, 1973), fundamental rights form part of the inviolable core of the Constitution
- The amendment may face **judicial review** — if the Supreme Court finds that self-identification is part of the right to dignity under Article 21, the amendment could be struck down

UPSC RELEVANCE

NALSA v. UOI (2014), Transgender Persons Act 2019, Section 377 (Navtej Singh Johar 2018), ICD-11, NCTP, Articles 14/15/19/21

Rights of vulnerable sections; judicial activism vs legislative action; governance gaps in social welfare implementation

Ethics of medical gatekeeping for identity; dignity vs administrative convenience; rights of marginalised communities

★ FACTS CORNER — KNOWLEDGEPEDIA

NALSA JUDGMENT (2014):

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

Recognised transgender as third gender; upheld self-identification

Constitutional basis: Articles 14, 15, 19(1)(a), 21

Directed: OBC-equivalent reservation, welfare measures, no mandatory SRS

TRANSGENDER PERSONS ACT TIMELINE:

2014: NALSA v. UOI judgment

2018: Section 377 decriminalised (Navtej Singh Johar v. UOI)

2019: Transgender Persons (Protection of Rights) Act enacted

2020: Rules notified; NCTP constituted; National Portal launched

2026: Amendment Bill — medical board certification replaces self-identification

GLOBAL GENDER IDENTITY LAWS:

Argentina (2012): First country with self-identification law

Malta (2015): Gender Identity, Gender Expression and Sex Characteristics Act — gold standard

WHO ICD-11 (2019): Removed gender identity disorders from mental health chapter

Yogyakarta Principles (2006): 29 international principles on SOGI rights

OTHER RELEVANT FACTS:

Census 2011 transgender count: ~4.88 lakh (widely considered undercount; estimates suggest 5-6 million)

SMILE Scheme: Support for Marginalised Individuals for Livelihood and Enterprise (MoSJE)

Kalki Subramaniam: Artist, writer, activist; resigned from NCTP March 2026

Madras HC (2019): Banned sex reassignment surgery on intersex infants without consent

NCTP: National Council for Transgender Persons (under Ministry of Social Justice and Empowerment)

Sources: [Indian Express](#), [PRS India](#), [The Hindu](#)



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