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LEGISLATION TRACKER

Transgender Persons (Protection of Rights) Act, 2019

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CURATED & WRITTEN BY

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ACT NUMBER	YEAR ENACTED
Act No. 40 of 2019	2019

KEY PROVISIONS

- 1 Definition of transgender person and recognition of self-perceived gender identity (Section 4)
- 2 Prohibition of discrimination in education, employment, healthcare, and access to public facilities (Section 3)
- 3 Right to be recognised as transgender and obtain a certificate of identity from the District Magistrate (Section 5-6)
- 4 Establishment of National Council for Transgender Persons (Section 16)
- 5 Obligation on government to provide welfare measures including rehabilitation, education, and social security (Section 8)
- 6 Penalties for offences against transgender persons including sexual abuse, forced labour, and denial of public access (Section 18)
- 7 Right to reside in household and not be separated from family (Section 12)

BACKGROUND

The Transgender Persons (Protection of Rights) Act, 2019 was enacted to protect the rights of transgender persons and provide for their welfare, education, social security, and healthcare. It received Presidential assent on 5 December 2019 and came into effect on 10 January 2020. The Act was a legislative response to the landmark Supreme Court judgment in *NALSA v. Union of India* (2014), which recognised transgender persons as the “third gender” and directed the government to treat them as socially and educationally backward classes.

India has a long history of recognising gender-diverse identities. The Hijra community has been part of the social fabric for centuries, with references in ancient texts and historical records of the Mughal era. Despite this cultural presence, transgender persons have faced severe marginalisation, exclusion from mainstream education and employment, violence, and denial of basic civil rights. The 2011 Census counted approximately 4.88 lakh transgender persons, though activists estimate the actual number to be significantly higher.

The Act was preceded by the Rights of Transgender Persons Bill, 2014 (a private member's bill passed by the Rajya Sabha) and the Transgender Persons (Protection of Rights) Bill, 2016 introduced by the government. The 2019 Act drew criticism from sections of the transgender community for requiring a certificate from the District Magistrate rather than allowing pure self-identification, and for prescribing lower penalties for sexual offences against transgender persons compared to those under the IPC for cisgender women.

KEY CONCEPTS

- **Transgender Person (Section 2(k)):** A person whose gender does not match the gender assigned at birth. Includes trans-men, trans-women, persons with intersex variations, genderqueer, and persons with socio-cultural identities such as Kinnar, Hijra, Aravani, and Jogta.
- **Self-Perceived Gender Identity (Section 4):** Every transgender person has the right to be recognised as such under the Act. However, the Act requires a certificate from the District Magistrate, which has been criticised as diluting the NALSA judgment's endorsement of pure self-identification.
- **Certificate of Identity (Sections 5-6):** A person must apply to the District Magistrate for a certificate of identity as a transgender person. After sex reassignment surgery, the person can apply for a revised certificate indicating the changed gender (male or female).
- **National Council for Transgender Persons (Section 16):** A body chaired by the Union Minister for Social Justice and Empowerment, comprising representatives from key ministries, five members from the transgender community, five experts from NGOs, and state government representatives. It advises the government on policies, monitors implementation, and redresses grievances.
- **Inclusive Education (Section 13):** Government educational institutions must provide inclusive education and facilities for transgender students, including access to sports, recreational activities, and scholarships without discrimination.
- **Obligation of Establishments (Section 10):** No establishment shall discriminate against a transgender person in matters of employment including recruitment, promotion, and other related issues.

IMPORTANT PROVISIONS

- **Section 3 — Prohibition of Discrimination:** No person or establishment shall discriminate against a transgender person on the ground of being transgender in relation to: (a) denial or discontinuation of education, (b) unfair treatment in employment, (c) denial of healthcare, (d) denial of access to goods, facilities, and services available to the public, (e) denial of right to movement, (f)

denial of right to reside, rent, or occupy property, (g) denial of opportunity to hold public or private office, and (h) denial of access to government or private establishment in whose care the person may be.

- **Section 4 — Recognition of Identity:** A transgender person shall have the right to be recognised as such, in accordance with the provisions of the Act. This includes the right to self-perceived gender identity.
- **Section 5-6 — Certificate of Identity:** Application to be made to the District Magistrate who shall issue a certificate of identity as transgender. For change of gender (post-surgery), a revised certificate can be obtained with a certificate from the Medical Superintendent or Chief Medical Officer.
- **Section 12 — Right of Residence:** No transgender person shall be separated from parents or immediate family except by a court order. If the family is unable to care for the person, the court may order placement in a rehabilitation centre.
- **Section 15 — Healthcare:** The government shall take steps to provide healthcare facilities for transgender persons including separate HIV surveillance centres, sex reassignment surgery, and health insurance schemes.
- **Section 18 — Offences and Penalties:** Compelling a transgender person to do forced or bonded labour (excluding compulsory government service), denial of use of public places, physical/sexual/verbal/emotional/economic abuse, and removal from household all attract imprisonment of 6 months to 2 years with fine.

LANDMARK JUDGMENTS

- **NALSA v. Union of India (2014):** The Supreme Court recognised transgender persons as the “third gender” and held that they are entitled to fundamental rights under Articles 14, 15, 16, 19, and 21. The Court directed the Centre and states to treat them as socially and educationally backward classes (OBCs) and extend reservation benefits. It also affirmed the right to self-identification of gender.
- **Navtej Singh Johar v. Union of India (2018):** While primarily concerning Section 377 of IPC, this judgment had significant implications for transgender rights by decriminalising consensual homosexual acts. The Court affirmed constitutional morality over social morality, reinforcing dignity and autonomy of LGBTQ+ individuals.
- **Swati Bidhan Baruah v. Union of India (2020):** The Supreme Court sought a response from the Centre on the constitutional validity of provisions of the Transgender Persons Act, particularly those requiring medical certification and the lower penalty regime compared to IPC offences against cisgender women.

RECENT AMENDMENTS / DEVELOPMENTS

- **Transgender Persons (Protection of Rights) Rules, 2020:** Notified on 25 September 2020, these rules prescribe the form for application for a certificate of identity, the procedure for the National Council meetings, and the process for medical examination in case of sex reassignment surgery.
- **SMILE Scheme (Support for Marginalised Individuals for Livelihood and Enterprise):** Launched by the Ministry of Social Justice and Empowerment, it provides comprehensive measures for welfare of transgender persons including scholarships (up to post-graduation), skill development, housing support through PM Awas Yojana, and pension through National Social Assistance Programme.
- **Garima Greh (Shelter Homes):** The government has established shelter homes called Garima Greh in various cities for transgender persons who face family or social rejection, providing food, shelter, recreation, medical support, and skill development under the SMILE scheme.
- **Transgender Portal and ID Card:** The National Portal for Transgender Persons (transgender.dosje.gov.in) allows online application for the certificate of identity and transgender identity card, reducing bureaucratic hurdles.
- **Jane Kaushik v. Union of India (2025 INSC 1248):** The Supreme Court held that employers who fail to safeguard transgender employees are guilty of “omissive discrimination,” reinforcing workplace protections under the Act and the NALSA judgment.
- **Calcutta High Court Order (2024):** The Calcutta High Court ordered mandatory 1% reservation in public employment for transgender persons in West Bengal, implementing a key directive of the NALSA judgment that had remained unimplemented in the state.
- **Transgender Persons (Protection of Rights) Amendment Bill, 2026:** Introduced in Lok Sabha on March 13, 2026 and passed by both Houses. The Amendment Bill is highly controversial — it replaces self-perceived gender identity (Section 4) with a medical certification process by a designated medical board headed by a Chief Medical Officer; restricts the definition of “transgender person” to three categories: (i) socio-cultural identities (hijra, kinner, aravani, jogta), (ii) persons with 5 specific intersex variations, and (iii) those “compelled” to present as transgender. Critics argue it rolls back the NALSA judgment’s endorsement of self-identification. Human Rights Watch and transgender activists have called it a “huge setback.”

UPSC RELEVANCE

*NALSA judgment year (2014); composition of National Council for Transgender Persons; Section 18 penalty (6 months to 2 years); certificate issuing authority (District Magistrate); definition of transgender person under the Act. **Mains GS-2:** Critical analysis of the Act vs. NALSA judgment – has the legislation diluted judicial directions? Role of self-identification vs. certificate-based recognition; comparison with global models (Argentina’s Gender Identity Law, 2012); welfare measures under SMILE scheme. **Interview:** “The NALSA judgment was progressive, but has the 2019 Act truly empowered the transgender community? What would you change if you were drafting the legislation?”*

RELATED TERMS

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