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**EDITORIAL ANALYSIS**

# Transgender Rights Revisited – Can the 2026 Amendment Bill Bridge the Gap?



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# Transgender Rights Revisited — Can the 2026 Amendment Bill Bridge the Gap?

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## INTERVIEW ANGLE



*"The Transgender Persons Act 2019 was criticised for diluting the NALSA judgment. Has the 2026 amendment addressed those concerns?"*

## Transgender Rights Revisited — Can the 2026 Amendment Bill Bridge the Gap?

Parliament passed the Transgender Persons (Protection of Rights) Amendment Bill, 2026 on March 25, 2026, after the Rajya Sabha approved it by voice vote amid an Opposition-led walkout. The Bill, introduced in Lok Sabha on March 13, 2026, overhauls the definition of “transgender person,” replaces self-identification with medical-board certification, and introduces stringent new offences related to forced transgender identity.

### Background — The NALSA Judgment of 2014

The legal foundation of transgender rights in India rests on the Supreme Court judgment in **National Legal Services Authority (NALSA) v. Union of India (2014)**. A two-judge bench of Justices K.S. Radhakrishnan and A.K. Sikri delivered a unanimous verdict that became the Magna Carta for transgender rights in the country.

### Key directions of the NALSA judgment:

DIRECTION	SUBSTANCE
Right to self-identification	Every person has the right to self-identify as male, female, or third gender; no medical or biological test can be imposed
Third gender recognition	Centre and State Governments must legally recognise “third gender” in all official documents
Fundamental rights	Transgender persons enjoy all fundamental rights under Articles 14, 15, 16, 19, and 21 of the Constitution
Reservation	Transgender persons were recognised as Socially and Educationally Backward Classes (SEBC), entitled to reservations in education and public employment
Welfare measures	Governments directed to provide medical care, separate public toilets, HIV surveillance, and social awareness programmes
Anti-discrimination	Directed to treat transgender persons as socially and economically backward, and to frame welfare schemes addressing fear, stigma, depression, and suicidal tendencies

The NALSA judgment drew on the Yogyakarta Principles (2006) on the application of international human rights law to sexual orientation and gender identity, as well as Article 21 (right to life and personal liberty) and Article 19(1)(a) (freedom of expression) of the Indian Constitution.

Four years later, in **Navtej Singh Johar v. Union of India (2018)**, a five-judge Constitution Bench decriminalised consensual sexual conduct between adults by reading down Section 377 of the Indian Penal Code. The Court explicitly noted that Section 377 stigmatised and discriminated against transgender persons, and that its continued existence contradicted the rights recognised in NALSA.

### **The 2019 Act and Its Criticisms**

The Transgender Persons (Protection of Rights) Act, 2019, was Parliament’s legislative response to the NALSA judgment. However, it drew immediate and sustained criticism from the transgender community, civil society organisations, and legal scholars for diluting the Court’s directions.

#### **Major criticisms of the 2019 Act:**

- ❶ **Partial self-identification:** Section 4 acknowledged “self-perceived gender identity,” but Sections 5 and 6 required transgender persons to apply to a District Magistrate for an identity certificate — introducing bureaucratic gatekeeping that NALSA had explicitly rejected.
- ❷ **Surgery requirement for gender change:** Section 7 mandated proof of gender-affirmative surgery for a person to be legally recognised as male or female, contradicting the NALSA direction that SRS (Sex Reassignment Surgery) cannot be a precondition for legal recognition.
- ❸ **No reservation provision:** Despite the Supreme Court recognising transgender persons as SEBC and directing reservations, the 2019 Act contained no reservation clause for education or employment.

- ④ **Weaker criminal penalties:** Sexual abuse of a transgender person carried a maximum punishment of only two years, compared to seven years to life imprisonment for sexual assault of cisgender women under Section 376 of the IPC (now Section 65 of the Bharatiya Nyaya Sanhita, 2023).
- ⑤ **Healthcare barriers:** The certification process created bureaucratic obstacles to accessing gender-affirming healthcare, with community members reporting delays, rejections, and humiliating questioning by District Magistrates.
- ⑥ **No anti-discrimination enforcement mechanism:** While Section 3 prohibited discrimination, it provided no institutional mechanism (such as a dedicated commission or tribunal) for redressal.

As of December 2024, only **23,811 transgender identity certificates** had been issued through the National Portal for Transgender Persons — against an estimated population of **4.88 lakh** (Census 2011, widely acknowledged as a significant undercount; activists estimate the true figure at **25-30 lakh**).

### **What the 2026 Amendment Proposes**

The Transgender Persons (Protection of Rights) Amendment Bill, 2026, introduced by the Ministry of Social Justice and Empowerment, makes sweeping changes to the 2019 framework. The government has framed the amendment as a measure to “protect vulnerable persons from being coerced into assuming transgender identities” and to “strengthen welfare delivery.” Critics, however, view it as a regressive rollback of hard-won rights.

#### **Core changes introduced by the 2026 Amendment:**

- ① **Narrowed definition:** The Bill replaces the inclusive definition of “transgender person” with a restrictive list of three categories: (a) members of socio-cultural communities such as hijra, kinner, aravani, jogta, and “eunuch”; (b) persons with five specified intersex/**congenital** variations in sex characteristics; and © persons who were “compelled” to present as transgender.
- ② **Removal of self-identification:** The explicit statutory guarantee of the right to self-perceived gender identity — the centrepiece of the NALSA judgment — has been deleted from the Act.
- ③ **Medical board certification:** Identity certificates will now be issued by the District Magistrate only after examining the recommendation of a designated medical board headed by a Chief Medical Officer (CMO) or Deputy CMO. This reintroduces the medical gatekeeping model that NALSA had categorically rejected.
- ④ **Mandatory surgery reporting:** Where a transgender person undergoes gender change surgery, the medical institution must furnish surgery details to the District Magistrate, and the person must obtain a revised certificate.
- ⑤ **New criminal offences:** The Bill introduces four new offences targeting forced assumption of transgender identity, with stringent penalties (see table below).

- ⑥ **Enhanced penalties for forced identity:** Kidnapping and causing grievous hurt to force a person to assume a transgender identity carries 10 years to life imprisonment and a minimum fine of Rs 2 lakh (adult victim) or life imprisonment and a minimum fine of Rs 5 lakh (child victim).

### Key Changes — 2019 Act vs 2026 Amendment

ASPECT	2019 ACT	2026 AMENDMENT
<b>Definition</b>	Inclusive: person whose gender does not match birth-assigned gender; includes trans men, trans women, intersex persons, socio-cultural identities	Restrictive: limited to hijra/kinner/aravani/jogta, five intersex conditions, persons “compelled” to present as transgender
<b>Self-identification</b>	Section 4 recognises “self-perceived gender identity”	Self-identification provision deleted
<b>Identity certification</b>	Application to District Magistrate with affidavit	Medical board (headed by CMO/Deputy CMO) recommendation required before District Magistrate issues certificate
<b>Gender change (male/female)</b>	Revised certificate after voluntary surgery; applicant-driven	Surgery details must be furnished by medical institution to District Magistrate; revised certificate mandatory
<b>Trans men and trans women</b>	Explicitly covered under definition	Excluded from the legal definition unless they fall within the three specified categories
<b>Non-binary/genderqueer persons</b>	Covered under the broad “self-perceived” definition	Not recognised
<b>Penalties for forced identity</b>	Not specifically addressed	New offences: 10 years to life (adult), life imprisonment (child) for kidnapping/causing grievous hurt to force transgender identity
<b>Forced begging/servitude</b>	Covered under general anti-trafficking laws	Specific offence: 5-10 years imprisonment and Rs 1 lakh fine for forcing a person to present as transgender and engage in begging or bonded labour
<b>Reservation</b>	Not provided	Not provided (gap persists)

### Global Best Practices

India’s trajectory stands in contrast to the global movement toward self-identification models:

- **Argentina (2012):** The Ley de Genero (Gender Identity Law) allows any person over 18 to change their gender marker through a simple written declaration, with no medical diagnosis, surgery, or judicial approval. The World Health Organization cited Argentina as an exemplary country for transgender rights in 2015.
- **Malta (2015):** The Gender Identity, Gender Expression, and Sex Characteristics Act guarantees the right to bodily integrity and physical autonomy. Malta became the first country to ban non-consensual medical interventions on intersex minors.
- **Denmark (2014):** Removed the requirement of a mental disorder diagnosis and sterilisation surgery for legal gender change. A simple administrative application suffices.
- **Ireland (2015):** The Gender Recognition Act allows persons over 18 to self-declare gender through a statutory declaration, without any medical requirement.

As of January 2026, **23 countries** have enacted laws allowing **gender self-identification** without medical or judicial gatekeeping. The 2026 Amendment moves India in the opposite direction — from a (flawed but aspirational) self-identification model toward a medicalised, state-controlled verification regime.

### **Ethical Dimension — GS4 Angle**

The 2026 Amendment raises fundamental ethical questions about autonomy, dignity, and the role of the state in defining personal identity.

**Autonomy vs paternalism:** The NALSA judgment grounded transgender rights in the constitutional right to personal liberty (Article 21) and the right to dignity. The Court held that an individual’s self-identified gender is an integral part of their personality and one of the most basic aspects of self-determination. Requiring a medical board to “verify” a person’s gender identity substitutes state paternalism for individual autonomy — an ethically fraught choice.

**Dignity and recognition:** Philosopher Charles Taylor’s theory of the “politics of recognition” holds that identity is partly shaped by recognition or its absence. Denying legal recognition to trans men, trans women, and non-binary persons — categories that the 2019 Act did recognise — constitutes a form of misrecognition that, as Taylor argued, can inflict real harm.

**Vulnerability and protection:** The government frames the new offences (forced identity, forced begging) as protecting vulnerable persons. This is a legitimate concern — reports of children being kidnapped into hijra communities do exist. However, ethicists argue that protecting against **coercion** should not require stripping away the rights of the very community the law claims to protect. The challenge is to design safeguards that protect the vulnerable without punishing the community.

**Suicide and mental health:** During the Rajya Sabha debate, TMC MP Saket Gokhale cited data indicating that 31% of transgender persons in India have attempted suicide due to discrimination. Removing legal recognition and imposing medicalised verification processes risks exacerbating the mental health crisis in an already marginalised community.

**The Kantian test:** Immanuel Kant’s categorical imperative demands that persons never be treated merely as means to an end. Requiring a person to undergo medical examination to “prove” their gender identity reduces their selfhood to a set of biological markers — treating the person as an object of state scrutiny rather than as an autonomous moral agent.

### Way Forward

- 1 Restore self-identification:** Align the legal framework with the NALSA judgment and global best practices by reinstating the right to self-perceived gender identity. Medical certification should be optional, not mandatory.
- 2 Implement NALSA-mandated reservations:** The 2019 Act and the 2026 Amendment both fail to provide the OBC-equivalent reservations that the Supreme Court directed. A specific reservation percentage for transgender persons in education and public employment is overdue.
- 3 Inclusive definition:** The definition should be expansive enough to include trans men, trans women, non-binary persons, and persons with diverse gender expressions — not limited to historically recognised socio-cultural communities alone.
- 4 Separate legislation for anti-coercion measures:** The legitimate concern about forced identity and forced begging can be addressed through amendments to anti-trafficking laws (such as the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill) rather than by narrowing the definition of transgender personhood itself.
- 5 Dedicated institutional mechanism:** Establish a National Commission for Transgender Persons (on the lines of the National Commission for Women or the National Commission for Scheduled Castes) to monitor implementation, receive complaints, and recommend policy changes.
- 6 Strengthen welfare delivery:** Scale up the SMILE scheme and Garima Greh shelter homes with adequate funding. As of 2025-26, only Rs 6.8 crore has been utilised under Garima Greh against a total scheme outlay of Rs 365 crore (2021-22 to 2025-26).
- 7 Updated census enumeration:** The 2011 Census recorded only 4.88 lakh transgender persons — widely acknowledged as a massive undercount. The upcoming census must adopt a more inclusive methodology and train enumerators to ensure accurate data collection, which is the foundation for all policy planning.
- 8 Judicial review:** Given that the 2026 Amendment appears to contradict multiple directions of the NALSA judgment (a Supreme Court order), it is likely to face constitutional challenges. The judiciary will need to determine whether Parliament can legislatively override a judgment that was grounded in fundamental rights under Part III of the Constitution.

**UPSC Angle**

**Prelims:** NALSA v. Union of India (2014) — key directions; Navtej Singh Johar v. Union of India (2018) — Section 377; Transgender Persons Act, 2019 — key provisions; Census 2011 transgender data; SMILE scheme; Garima Greh; Yogyakarta Principles; Argentina Gender Identity Law (2012); Malta GIESC Act (2015)

**Mains GS-1:** Social empowerment; role of women and gender issues; impact of globalisation on Indian society; social movements for transgender recognition

**Mains GS-2:** Government policies and interventions; mechanisms, laws, institutions and bodies constituted for protection of vulnerable sections; comparison of Indian and global legislative frameworks; judiciary vs legislature on fundamental rights

## ★ FACTS CORNER — KNOWLEDGEPEDIA

### NALSA V. UNION OF INDIA (2014):

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

Key holding: Right to self-identification of gender; no medical test or SRS can be mandated

Recognised transgender persons as Socially and Educationally Backward Classes (SEBC)

Directed reservations in education and public employment

Drew on Yogyakarta Principles (2006) and Articles 14, 15, 16, 19, 21 of the Constitution

### NAVTEJ SINGH JOHAR V. UNION OF INDIA (2018):

Five-judge Constitution Bench

Decriminalised consensual sexual conduct between adults by reading down Section 377 IPC

Date of judgment: September 6, 2018

Noted that Section 377 stigmatised and discriminated against transgender persons

### TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019:

Passed by Parliament in November 2019

Section 4: recognised self-perceived gender identity

Sections 5-6: required application to District Magistrate for identity certificate

Section 7: mandated proof of surgery for gender change to male/female

Maximum penalty for sexual abuse of transgender person: 2 years (vs 7 years to life for cisgender women)

No reservation provision despite NALSA direction

### TRANSGENDER PERSONS AMENDMENT BILL, 2026:

Introduced in Lok Sabha: March 13, 2026

Passed by Lok Sabha: voice vote (Opposition walkout)

Passed by Rajya Sabha: March 25, 2026

Awaits Presidential assent

Narrows definition to: hijra/kinner/aravani/jogta, five intersex conditions, “compelled” persons

Deletes self-identification provision

Introduces medical board certification (headed by CMO/Deputy CMO)

New offence: forced transgender identity — 10 years to life (adult), life imprisonment (child)

New offence: forced begging/servitude — 5-10 years and Rs 1 lakh fine

#### **CENSUS AND POPULATION DATA:**

Census 2011: 4,87,803 persons recorded under “Other” category (first time in Indian census history)

Activist estimate: 25-30 lakh (true transgender population)

National Portal for Transgender Persons: 23,811 identity certificates issued (as of December 2024)

#### **SMILE SCHEME AND GARIMA GREH:**

SMILE: Support for Marginalised Individuals for Livelihood and Enterprise

Implementing Ministry: Ministry of Social Justice and Empowerment

Total outlay: Rs 365 crore (2021-22 to 2025-26)

Garima Greh: shelter homes for transgender persons providing food, medical care, skill development

Amount utilised under Garima Greh: Rs 6.8 crore (as of April 2025)

Budget allocation for 2025-26: Rs 106.88 crore (projected)

#### **GLOBAL SELF-IDENTIFICATION MODELS:**

Argentina (2012): Ley de Genero — simple written declaration, no medical/judicial requirement

Malta (2015): GIESC Act — first country to ban non-consensual surgery on intersex minors

Denmark (2014): removed diagnosis and sterilisation requirements

Ireland (2015): Gender Recognition Act — statutory self-declaration for persons over 18

As of January 2026: 23 countries allow gender self-identification without medical/judicial approval

#### **OTHER RELEVANT FACTS:**

Yogyakarta Principles: adopted in 2006 in Yogyakarta, Indonesia; 29 principles on application of international human rights law to sexual orientation and gender identity

Article 15(1) of the Constitution prohibits discrimination on grounds of sex — interpreted by NALSA to include gender identity

Article 21: right to life and personal liberty — includes right to dignity and self-determination of gender

Charles Taylor: Canadian philosopher; “politics of recognition” theory — identity shaped by social recognition or its absence

India signed but has not ratified the Yogyakarta Principles (they are non-binding)

## Swati Bidhan Baruah case: constitutional challenge to the 2019 Act pending before the Supreme Court

Sources: [Indian Express](#), [PRS India](#), [LiveLaw](#), [The News Minute](#), [DD News](#), [Human Rights Watch](#), [CLPR](#), [PIB](#)



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