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EVOLUTION OF TRANSGENDER RIGHTS IN INDIA AND GENDER IDENTITY CRISIS

AUTHORED BY - NAVIN CHANDRAKAR

UGC NET

Research Scholar, Department of English, Kalinga University

ABSTRACT

This article traces the evolution of transgender rights in India from the Supreme Court's NALSA judgment (2014), which affirmed gender identity as integral to dignity, autonomy, and self-identification, through the Transgender Rights Law (2019), to the Transgender Persons (Protection of Rights) Amendment Act, 2026, which conditions legal recognition on a government-appointed medical board's favorable recommendation, enabling a District Magistrate to certify a person as transgender. The objective is to evaluate how the 2026 Amendment reconfigures recognition, citizenship entitlements, and constitutional guarantees, and how it contributes to a contemporary gender identity crisis by subjecting transgender identity to medical scrutiny while disregarding gender fluidity and lived self-definition. The study undertakes doctrinal and policy analysis of the 2026 Amendment in relation to NALSA and constitutional protections under Articles 14, 15, 19, and 21. The article concludes that rights-protective governance requires inclusive definitions, dismantling medical gatekeeping, meaningful transgender representation through a national commission, and judicial scrutiny to restore constitutional morality and the right to self-identify and live with dignity.

Keywords: Transgender Amendment Act 2026, Gender Fluidity, Self-Identification, Gender Identity Crisis, Subjectification, Article 21, LGBTQ, Indian Society, Evolution, NALSA judgment, Medical Gatekeeping, Constitutional Morality.

The landmark NALSA judgement by the Supreme Court of India in 2014 recognized Gender Identity as a matter of dignity, autonomy, and self-identification, which later paved the way for the Transgender Rights Law 2019, where an individual has the freedom of self – identification as a transgender person. The Transgender Amendment Law, 2026, restricts the individual from self-identifying as a transgender person; now, the individual has to undergo a medical

examination, and only through this intervention will the individual be certified as transgender. Such laws risk denying legal recognition to people who are trans men, trans women, gender-fluid, non-binary, gender non-conforming, or queer, and curbing their access to full citizenship rights. It limits the definition of a transgender person to certain historically recognized communities, such as *Hijras, Jogtis, and Kinnars*, socio-cultural groups in South Asia, who are often described as eunuch people practicing a kinship system known as the *guru-chela* structure, with longstanding cultural roles in society. They gained prominence during the Mughal Era, where they were neither strictly male nor female and were often believed to hold the power to confer blessings, along with intersex people and those who have experienced forced mutilation or castration.

While the government claims that the law will help to detect fake transgender people who use impersonation to take benefits as transgender persons and who also falsely claim reservation in jobs and employment, thus taking the rights of transgenders, transgender people are of the opinion that it will do more harm than good as identity will now be subject to certificate-Transgender Amendment Act 2026 unlike other heterosexual people.

Rai is the founder of Miss Trans Queen India, the first beauty pageant created for trans women in the country. That confidence, she suggests, came from the possibility of being recognized on one's own terms. 'Certification can only be of the body, not of the soul,' she added. This simple distinction cuts to the heart of the issue. People's lived experiences of gender identity do not always match what can be seen by doctors or confirmed by official documents. 'Many people do not want to belong to any group,' Rai pointed out.

Another transgender person expressed that their concern was less about where they personally stood and more about what lies ahead. 'My whole life has been about resisting the idea that there are only two genders.'

This has somewhat challenged the very idea of a diversified India that embraces every person, regardless of Gender Identity and Expression. Bills are passed by majority votes in parliament, which later take the form of laws. However, making laws for transgender people without actually including them and considering their opinions cannot be considered beneficial. With the passage of time, society evolves, and law becomes more progressive; however, in this case, it seems that it has gone backward and is more restrictive. It will be noteworthy to see whether

this law will stand the test of time or will also undergo changes as demanded by the transgender community.

The social justice and empowerment minister told parliament that the bill aims to protect only those who face severe discrimination for biological reasons. However, the bill puts transgender persons at further risk by introducing additional offenses and up to life in prison for “coercing or alluring” people to become transgender. These are reminiscent of the colonial-era laws that criminalized transgender persons for appearing dressed as women and could be used to criminalize support systems of transgender persons, said the People’s Union for Civil Liberties. Criminalization based on mere suspicion has the potential to harm the majority of the transgender community who are unemployed and solely dependent on begging. Many transgender individuals are deprived of basic education in schools and colleges due to discrimination. Even if they are enrolled, they face bullying and harassment, which are often not reported, and even if reported, no serious action is taken against those complaints.

The ground reality reflects the deep marginalization of such persons despite legal recognition. According to the 2011 Census, the population for the 'other' category is 4,87,803, yet access to identity remains difficult. The National Portal for Transgender has been introduced to simplify the certification process, but the data reveal that out of 1,915 applications, only 227 certificates have been issued, which clearly reflects the bureaucratic barriers in the system. Moreover, a 2017 study by the National Human Rights Commission shows that a large number of transgender persons drop out of schools, remain unemployed, and a significant number of them earn less than INR 10,000 a month. Even the reports of the National Crime Records Bureau indicate that there is under-representation and a very small number of reported cases due to fear and social stigma. Simultaneously, Transgender Protection Cells and Welfare Boards remain limited in their effectiveness. Moreover, although the steps taken, such as the Ayushman Bharat TG Plus Scheme, indicate progress, several issues remain, such as the absence of a law in India that criminalizes cross-dressing, and major datasets such as the NFHS and UDISE do not include transgender categories. There are even restrictions on basic services such as healthcare, education, housing, and banking.

Some people are also of the view that the recent Transgender Amendment Act 2026 has brought back the draconian colonial law. This assent reversed the constitutional gains made in the last decade, which recognized the right to self-identify gender. The 2026 Amendment Act restores

a logic that Parliament has not endorsed since 1952, namely, the Criminal Tribes Act, 1871 (“**1871 Tribes Act**”).

This draconian law presumed trans and gender non-conforming persons to be inherently criminal, required state-supervised registration for legal existence, and criminalized the community structures (guru-chela system) through which they survived. Although framed as protection and welfare, the 2026 Amendment Act strictly regulates who a transgender person is, imposes mandatory medical certification, and threatens community structures. In NALSA, the Court rejected the 1871 Tribes Act as it was brutal legislation with a vicious and savage mindset. The Court, in any future challenge to the 2026 Amendment Act, must ensure that the same fate is given as the 1871 Tribes Act.

The community recognized as being transgender still excludes many other communities that are regionally named by different names and are transgenders. It is high time that the government should make a national commission for the transgender community and not just a national portal for transgender persons and should list all the communities who are falling under the transgender community across India. In the Commission, the representation should be given only to the transgender community, as they are the ones who will guide the government on what policy decisions will benefit the community at large, as they are within the community and understand their problems very well.

The most important aspect is not merely empowering them through laws and legislation but also ensuring a life of dignity, employment, and acceptance in society. All types of harassment and bullying should be viewed seriously, and common folk should be educated to respect every Gender Identity and not mock it as a joke. The change may take some time, but with consistent efforts in the right direction, it will surely happen.

In NALSA, the Supreme Court said, “*the moral failure lies in the society’s unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.*” The 2026 Amendment Act does not change this mindset; rather, it legislates it. The Court entitled trans and gender-non-conforming citizens to constitutional recognition over the course of a decade and must now dismantle what Parliament has reincarnated from the 1871 Tribes Act. The Evolution of law must be progressive and not revert to the old draconian era.

When the majority decides what minorities are entitled to, it is grave discrimination. Democracy is not just a rule of majority or populist opinion, but it is also to protect minorities, whether they are sexual or religious, so that their rights are not compromised. The Transgender Persons (Protection Act- 2026 clearly violates Articles 14, 15, 19, and 21 of the Constitution of India, and raises serious questions about whether any government can legislate and control the bodies of citizens and define them according to its terms without individual identification and choice, thereby reinforcing medical gatekeeping. The Act overrides the constitutional principles that had already guaranteed transgender persons the right to self-identification in the NALSA judgement.

As society changes, the law evolves and offers more progression and inclusion, not regression and restriction. In this case, the law takes a regressive form and restricts even transgender identities subject to medical scrutiny and surveillance. Even today, many complaints filed by these communities for cases of harassment, bullying, and rape are not taken seriously and are mocked. Even common proceedings are not followed in their case. The definition of transgender has been drastically narrowed down and does not include many non-binary, gender-fluid, trans men, and other individuals who may identify themselves as transgender. This may potentially make them vulnerable and susceptible to hate crimes, domestic abuse, workplace discrimination, and violence.

Trans men or individuals who wish to undergo gender-affirming surgery will now have to face scrutiny and breach of privacy by government agencies to update their gender status and are stripped of their rights if they change from female to male.

Laws are made to protect individuals from unjust discrimination and injustice, not to discriminate against them further and restrict their individual freedom in the name of protection. It will be noteworthy to see the consequences of this act if it receives the assent of the highest judicial authority, the Supreme Court. The law must shape and address problems instead of becoming the problem and amplifying it further. Constitutional morality always takes precedence over public or social morality. Transgender is a broad umbrella term, and its beauty lies in the inclusion and acceptance rather than subjectification and despise on narrow lines.

The 2026 Amendment also includes four new offences: abduction and forcing someone into a

transgender identity, carrying a punishment of ten years to life imprisonment for adults and life imprisonment if the victim is a child. Compelling someone to present as trans and subjecting them to begging or servitude carries a punishment of five to ten years for adults and ten to fourteen years if the victim is a child. In contrast, if any crimes such as sexual abuse, physical violence, and economic exploitation are committed against transgender individuals, the punishment is much lighter, ranging from six months to a maximum of two years.

This highlights the important concern that transgender identity is being criminalized instead of crimes against the transgender community. There is no federal law in India that bans begging; therefore, if someone engages in begging due to lack of employment and poverty, how can this be a criminal offence? The transgender community is denied basic services such as education, housing, and respectable employment; as a result, most of them resort to begging. This condition requires serious attention from the government and organizations.

There are petitions filed by people against the act. Two transgender individuals, Akhil K. Thampi (34) and Neethu (38), filed petitions challenging the constitutional validity of the Act. They submitted to the court that both were receiving hormone therapy, which the hospital had discontinued following the amendment act. The court opined that the sudden stoppage of hormone therapy may be dangerous and allowed the therapy to continue, subject to the condition that it was started before the law came into force. The act has harmed the community more than it has helped them in every possible way.

The central question here is whether an identity can be subjected to medical scrutiny and verification or must be treated as an inherent aspect of one's personhood. The law has to face these questions and tensions, and these concerns will eventually decide whether the statute will stand the test of time or will undergo amendment as per the constitutional framework. Identity is an inalienable part of one's selfhood that must be respected by the state.

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