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SELF-DETERMINATION TO STATE REGULATION: ASSESSING THE IMPACT OF THE TRANSGENDER AMENDMENT ACT 2026 ON HEALTH AND EDUCATION POLICIES

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Abstract

The Transgender Persons (Protection of Rights) Amendment Act, 2026 has been brought about by an institutional change in the jurisprudence of law, shifting the regime of gender identity from self-determination to medical verification. In this context, this paper seeks to explore the policy ramifications of the institutional change made by the 2026 Amendment, with a specific focus on its effect on the domains of health and education. The paper will examine how moving from a system of self-declaration of gender identity to one of medical evaluation can create bureaucratic impediments to accessing health services and education. The compatibility of the framework created by the amendment with the constitutional principles of equality, non-discrimination, and the right to healthcare will also be examined.

Keywords: Transgender Persons (Protection of Rights) Amendment Act, 2026, self-determination, medical verification, health services, education, constitutional principles.

Introduction

The legal recognition of gender identity has witnessed a paradigm shift over the last decade. This has been from judicial recognition through self-declaration to enforcement through medical regulations. As per the judgment of *NALSA v. Union of India*,² Justice Radhakrishnan stated, "Recognition of Transgender as third gender is not only a social or medical issue but a human rights issue,"³ and he went on to state that Gender Identity is an essential part of human dignity and freedom. In the beginning, the Transgender Persons (Protection of Rights) Act, 2019, acknowledges the self-perceived gender identity.⁴ The Transgender Persons (Protection

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² AIR 2014 SC 1863.

³ *Ibid*, para 111.

⁴ Transgender Persons (Protection of Rights) Act, 2019, s. 4.

of Rights) Amendment Act, 2026, effective from May 25, 2025, is a significant theoretical and administrative regression, not only in the definition but also in the very crucial section of the Act. This has resulted in a fundamental shift in the legal status of gender-diverse people. The main practical result of this has been the creation of an administrative gateway block. In light of the present executive guidelines, eligibility for accessing the core welfare schemes, including SMILE Scheme (Support for Marginalised Individuals for Livelihood and Enterprise) and Ayushman Bharat, is conditional on the existence of a Transgender Identity Certificate that one must possess. With its focus on the restrictive interpretation of the relevant statutes, the 2026 regime excludes many individuals with diverse genders from acquiring such certificates. Focusing solely on the fields of healthcare and education, this paper discusses the implications of the 2026 Amendment Act.

Psychological model vs Biological model

NALSA judgement highlighted that each person's gender identity forms their personality and is a basic facet of self-determination, dignity and freedom. Second, no one can be compelled to undertake any medical procedure, including sex reassignment surgery, hormone therapy or sterilization, to have his/her gender identity recognized legally.⁵ According to Justice Radhakrishnan in the *NALSA* judgement, while considering gender, the use of the Corbett principle⁶ of a biological test for the determination of gender does not arise. Rather, the psychological test needs to be adopted.⁷ In addition, he mentions that gender identity refers to self-identity of an individual and not a medical or surgical treatment. Yogyakarta Principles on the application of International Human Rights Law in respect to sexual orientation and Gender Identity take into consideration these principles, which are embedded in them and emphasize that gender identity refers to the right to enjoy one's full human rights in society.⁸ It recognizes that each person's gender identity is integral to their personality and a basic facet of self-determination, dignity and freedom.⁹ It further enshrines that no person shall be compelled to undergo any medical procedure, including sex reassignment surgery and sterilization.¹⁰ Forcefully making the individual go through the process of undergoing surgery or any other form of medical procedure amounts to an abuse.

⁵ *National Legal Services v. Union of India*, (2014) 5 SCC 438, para 20.

⁶ *Corbett v. Corbett (otherwise Ashley)*. [1971] P. 83 (prob. Div.).

⁷ Supra note 4, para 75.

⁸ *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007), Principle 1.

⁹ *Ibid*.

¹⁰ *Ibid*, Principle 3.

The decision made in the *NALSA* case prioritizes the right to choose one's gender, which has links to the rights to life and personal liberty. The decision also stated that the fundamental rights of the individuals would not be realized without acknowledging transgender as a gender. Post the judgement of *NALSA*, the government has formulated the guidance issued from the judgement into legislation and enacted an Act known as Transgender Persons Protection of Rights) Act, 2019. Though the Act recognized self-identification of transgender but in reality, the Act indirectly made the district magistrate the guardian for the recognition of the gender by issuing a certificate. The Act gave the authority to the district magistrate to issue the transgender certificate,¹¹ thereby turning it into an administrative process and not a human right. Thereafter, an amendment was brought in the original Act, and some changes were made in the original Act for the welfare of the deserving ones. In the course of doing so, the dignity of the individual cannot be recognized, as, according to the provision, to issue the transgender certificate, the individual has to undergo a medical process. Furthermore, if this process does not satisfy the district magistrate, who is the issuing officer, then he may send it for further examination.¹² The legislature has brought about a drastic change by changing the affidavit model into the biological model.

Argentina was a pioneer in identifying the transgender community. They continue to be at the forefront in terms of gender identity recognition. In 2012, Argentina became the first country to pass the Gender Identity Law that recognizes trans and binary citizens based on their self-identification without requiring any medical intervention.¹³ Later, the country made another paradigm change when issuing identification documents in the name and gender of one's own choice without conducting any medical examination. The people are recognized because of their health concerns and exposure to violence, mental health issues, discrimination, etc.

Whereas initially India seemed to have followed the same international norms in case of *NALSA*, the 2026 act in India marks the reversal of paradigms where the state adopts the static biological model of regulation in place of the psychological autonomy model, as against international standards exemplified by countries like Argentina, which passed their famous Gender Identity Law, which delinked the legal identity from the medical one, on the other hand

¹¹ Transgender Persons (Protection of Rights) Act, 2019, s. 6.

¹² Transgender Persons (Protection of Rights) Act, 2026, s.6

¹³ Cristian Gonzalex Cabrera, *Argentina Recognizes Non-Binary Identities*, Human Rights Watch, (July 22, 2021), available at: Argentina Recognizes Non-Binary Identities | Human Rights Watch (last visited July 27, 2026).

Indian 2026 act subjugates identity to the discretion of the district magistrate and chief medical officer. The reason behind this change has a lot to do with the issue of transgender recognition. This is because this change might bring about the issue of lack of recognition of their gender. When they lack this recognition, then they would not be able to avail themselves of the facilities provided by the government, mainly education and health. The result is that they revert to a period in India when they were struggling for gender recognition.

Structural and administrative redefinition under 2026 Act

The 2019 Act included trans-man, transwoman, and genderqueer in the definition of transgender irrespective of the fact that the person has undergone any process like sex-reassignment surgery, hormone treatment, or laser therapy.¹⁴ This has been omitted in 2026 Act. The 2026 Act restricts the definition of transgender, which is mostly a socio-cultural identity, and intersex.

Self-perceived gender identity is not mentioned in the 2026 Act. The 2026 Act demands a medical process for the identification of transgender. Thus, now the person has to be clinically tested by the medical board to prove him/her transgender.¹⁵

Policy impact on the health and education section

SMILE (support for marginalized individuals for livelihood and enterprise scheme)

The SMILE Scheme was started by the Ministry of Social Justice and Empowerment in India on 12th February 2022. The SMILE Scheme includes two schemes, and these include: (i) Comprehensive Rehabilitation of Persons Engaged in the Act of Begging and (ii) Central Sector Scheme for Comprehensive Rehabilitation for the Welfare of Transgender Persons. The purpose of the second sub-scheme is to provide educational facilities, employment, healthcare facilities, and other welfare measures to transgender persons.¹⁶ Under the SMILE program, scholarships will be awarded to transgender people who are studying from class IX up to post-graduation level. To be eligible for such advantages, transgender people are required to get their transgender certificate from the National Portal for Transgender Persons (NPTP).¹⁷ The

¹⁴ Transgender Persons (Protection of Rights) Act, 2019, s.2(k).

¹⁵ Supra note 11.

¹⁶ *From Margins to Mainstream: How SMILE is Transforming Lives Across India*, Press Information Bureau, Government of India, Apr.20, 2026, available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2253621®=3&lang=1> (last visited July 13, 2026).

¹⁷ *Ibid.*

NPTP was introduced on 25 November 2020. Through the NPTP, one can get their transgender certificate without physically meeting anyone physical interaction.

The scheme is intended to ensure that there are reduced dropouts from schools, encourage completion of education, and help transgender people achieve their educational objectives. This program intends to help them live a dignified life by removing all the social, psychological, and mental barriers. Financial assistance is given to transgender people who are eligible for the same, whether they have enrolled in any government institution or private educational institutions. Along with scholarships, the scheme also helps them develop skills through polytechnic and other vocational training. Along with education, the scheme also intends to develop skills and livelihood options for transgender people.

Literacy problem in the transgender community is a major concern. The literacy ratio of transgender persons is 56.1 per cent, while that of the general population is 73 per cent. This gap is an indication of the educational discrimination suffered by the transgender community.¹⁸

The Act does not specify any timeframe in relation to the issue of transgender certificates. In the past, there have been cases where applicants had to wait for more than a month to receive their certificates. The 2019 Act did not obligate applicants to submit a medical certificate before issuing their transgender certificates. Nevertheless, the recent amendment demands that applicants must take a medical test before being granted a certificate. This additional procedure will add more time to the process of certification and act as a hurdle for transgender people, especially students accessing the SMILE scheme.

Delay in issuing the transgender certificate can result in students who qualify for financial aid not getting their money on time. Moreover, since some gender identities have been left out of the definition of "transgender person" in the Transgender Amendment Act, 2026, it will make it difficult for these people to access educational benefits under the scheme. This will ultimately result in more school dropouts and defeat the main purpose of the SMILE Scheme, which is to ensure educational inclusiveness for transgender persons. It is important to have the transgender certificate and the identity card to be able to access all the benefits that can be given through the different government welfare schemes, especially the SMILE Scheme. Before the amendment, this certificate was only given based on the self-declaration affidavit of the individual

Ayushman Bharat TG Plus scheme

¹⁸ Primary Census Abstract Data, Census of India 2011.

Ayushman Bharat is the broad healthcare scheme introduced by the Indian Government on 23rd September 2018, which aims to enhance healthcare services, particularly for the weak and poor sections of society. This scheme comes under the domain of the Ministry of Health and Family Welfare and was executed through its National Health Authority. The scheme contains a two major components Pradhan Mantri Jan Arogya Yojana (PM-JAY) and Ayushman Arogya Mandirs in this PM-JAY provides a comprehensive health insurance having a coverage upto 5 lakhs to per family per year who are considered to be a poor and vulnerable.¹⁹ Upon considering the inadequacy of healthcare services to the transgender community, the Ministry of Social Justice and Empowerment and the National Health Authority, on August 24, 2022, at the Dr. Ambedkar International Centre, New Delhi, had a meeting of the same and subsequently signed the MOU to extend the healthcare services being provided under the PM-JAY of Ayushman Bharat to transgender people. They named this extension of the Ayushman Bharat scheme as an Ayushman Bharat TG Plus scheme.²⁰ The scheme offers various healthcare facilities, offering upto 50 healthcare facilities, including cosmetic surgery for the transgenders at no cost. Additionally, the policy confers insurance up to 5 lakhs per annum. Under the MOU, the eligible beneficiary should be a transgender person with a valid transgender certificate.

On the other hand, the introduction of the Transgender Amendment Act, 2026 brings about modifications in the process of obtaining a transgender certificate through a medical test and allows the final decision on awarding the certificate to be at the discretion of the District Magistrate, tied with a medical board. Such a modification will affect the identification process, making it difficult to access health benefits through the Ayushman Bharat-PM-JAY scheme, as having a transgender certificate is one of the requirements to enjoy these health benefits.

Constitutional Assessment of the Amendment's Impact on Health and Education

Article 14

The right to equality is provided for under Article 14 of the Constitution of India.²¹ This article

¹⁹ Ministry of Health and Family Welfare, Government of India, *Ayushman Bharat- Pradhan Mantri Jan Arogya Yojana*, MyScheme, available at: <https://www.myscheme.gov.in/schemes/ab-pmjay> (last visited July 19, 2026).

²⁰ *Ministry of Social Justice and Empowerment signed a MoU with National Health Authority*, Ministry of Social Justice & Empowerment, available at: <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1854141®=48&lang=2> (last visited July 19, 2026).

²¹ Constitution of India, art.14.

provides for equality before the law and equal protection of the laws to all persons irrespective of their social status in the territory of India. It guarantees that no discrimination will be done by the State against any person. In the context of the Transgender Persons (Protection of Rights) Amendment Act, 2026, Section 6 introduces a requirement for medical evaluation to obtain a transgender identity certificate. Since access to several welfare schemes and statutory benefits is contingent upon the possession of such a certificate, the mandatory medical certification process may operate as an administrative barrier for transgender persons who are unable to fulfil the prescribed requirements. Consequently, the amendment has the potential to impede their access to benefits that are intended for their welfare. Further, the legislation distinguishes transgender persons based on their self-identified gender by replacing the earlier mechanism of self-declaration with medical verification.

Since gender identity is a core aspect of an individual's personality, the requirement of medical opinion for its legal recognition can create a challenge to the principle of equal treatment under Article 14.

In *National Legal Services Authority v. Union of India*, the Supreme Court, without any ambiguity, declared transgender individuals as the "third gender". It clarified that such individuals have the right to receive equal protection under Article 14.²² The Court observed that the equality principles guaranteed under the Constitution extend to transgender individuals as well, and no one can deny the protection of fundamental rights to these individuals on the ground of their gender identity. Hence, any system of law which creates difficulties in the way of recognition of their identity or availability of statutory privileges to them must be analyzed in the context of Article 14 of the Constitution.

Article 15

Article 15 prescribes that the state cannot discriminate against any citizen based on their religion, caste, sex, and place of birth.²³ The purpose of this article is to protect the people who suffer from social, political, and economic discrimination throughout their lives. In the *NALSA case*, the Supreme Court interpreted the word "sex" under Article 15 extensively, as it includes gender identity beyond the biological attributes of the individual; as a result, any discrimination based on gender identity falls under this article.²⁴ The court further directed the government to take affirmative measures, including healthcare facilities, educational opportunities, social

²² *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para 54.

²³ Constitution of India, art.15.

²⁴ Supra note 21, para 59.

welfare schemes, etc.²⁵ However, instead of providing these services, the Transgender Persons (Protection of Rights) Amendment Act, 2026 introduced an additional layer of procedural requirement in the process of recognition through medical examination. This process impedes the effective enjoyment of the rights and protections given to transgender persons under the Constitution. This additional requirement to prove gender identity amounts to discrimination, as it is not available to cisgender. If legal recognition depends on medical evaluation along with administrative approval, then this procedure creates a barrier to transgender persons, which is considered to be inconsistent with Article 15. This discrimination, as a result, impedes them from accessing the fundamental rights available to them, especially the right to education and the right to healthcare.

Article 21

Access to healthcare facilities and the right to health constitute an important element of the right to life under Article 21 of the Constitution of India. There is no doubt about the fact that the right to life guaranteed under Article 21 is not only the right to physical existence but also the right to live life with dignity, which would include access to healthcare facilities. Before the enactment of the Transgender Persons (Protection of Rights) Amendment Act, 2026, the question of recognizing the gender of an individual was based upon the concept of decisional autonomy, according to which a transgender person has the freedom to choose her gender without taking any kind of medical test. However, the 2026 Amendment has altered everything in that sense, as now the question of issuing a certificate of transgender is dependent upon a process of taking a medical examination.

Conclusion

The transgender act 2026 came into force on 26th May 2026. This has left unsolved questions about transgender persons who are midway through their receiving scheme and the hormone replacement therapy. Against this amendment there was a, multiple petitions were filed before the High Courts of Rajasthan, Kerala. Karnataka and Delhi.²⁶ All these cases before the high courts transferred to the Supreme Court. On May 4, 2026, a Supreme Court bench comprising Justice Surya Kant and Justice Joymalya Bagchi issued a direction to place these cases before

²⁵ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para 129.

²⁶ Courts Hold the Line on Trans Healthcare as Community Challenges 2026 Amendment, Citizens for Justice and Peace (CJP), available at: <https://cjp.org.in/courts-hold-the-line-on-trans-healthcare-as-community-challenges-2026-amendment/> (last visited July 27, 2026).

the three-judge bench which challenged the constitutionality of the amendment, including the issue of a certificate with medical evaluation, removal of self-perceived identity, and violation of privacy in furnishing the information to the magistrate.²⁷ The case has still not been decided by the Supreme Court as of July 2026, and the court also declined to issue an interim stay for the implementation of the Act.²⁸ Before adjudicating the case, the court must consider the vagueness in the statute, specifically about the non-mentioning of criteria on which the medical examination will be done, and also the non-inclusion of the appellate mechanism to hear the grievances of the aggrieved person affected in the medical assessment. Since the transgender certificate is the gateway to welfare schemes such as health care, education, insurance, gender affirmation surgeries, etc., without resolving these issues, it may arbitrarily exclude persons who are eligible for such entitlements.



²⁷ <https://cjp.org.in/courts-hold-the-line-on-trans-healthcare-as-community-challenges-2026-amendment/>

²⁸ Debjani M, *Challenge to Transgender Persons Amendment Act 2026 | Supreme Court issues notice, declines interim stay*, Supreme Court Observer, May 4, 2026, available at: <https://www.scobserver.in/reports/challenge-to-transgender-amendment-act-2026-supreme-court-issues-notice-declines-interim-stay/> (last visited July 27, 2026).