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**FROM AUTONOMY TO REGULATION: A COMPARATIVE
LEGAL ANALYSIS OF THE TRANSGENDER PERSONS
(PROTECTION OF RIGHTS) ACT, 2019 AND THE
TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
AMENDMENT BILL, 2026**

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ABSTRACT

The development of transgender rights in India presents an important evolution of constitutional aspiration encountering legal change. The Transgender Persons (Protection of Rights) Act, 2019 (hereinafter “the 2019 Act”)¹ marked a moment, embodying a rights-based system that recognized gender identity as an essential part of individual autonomy, and self-expression. By anchoring legal recognition in the principle of selfhood, the statute sought to translate the constitutional guarantees articulated by the Supreme Court in *National Legal Services Authority v. Union of India*² into an enforceable legislative regime. The Transgender Persons (Protection of Rights) Amendment Bill, 2026 (hereinafter “the 2026 Amendment”),³ signals a clear change in legislative approach. This article undertakes a comparative and legal analysis of the two enactments to determine whether the amendment constitutes a structural refinement or a major change from the foundational principles of transgender rights jurisprudence. It critically analyses key dimensions of the statutory model, including definitional restructuring, validation, certification procedures, and the expansion of penal provisions. The study reveals that the 2026 Amendment reorients the legal framework from an identity-based model to one predicated upon classification and official checking. The substitution of a broad and inclusive definition with a narrower and category-based formulation, coupled with the omission of statutory recognition of self-perceived gender identity, reflects a movement towards administrative control at the potential cost of individual autonomy. The introduction of medical and institutional processes in the certification regime further underscores a transition from declaratory recognition to regulatory validation.

¹ The Transgender Persons (Protection of Rights) Act, No. 40, Acts of Parliament, 2019 (India).

² *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438 (India)

³ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026 (India)

At the same time, the amendment strengthens the penal architecture by introducing specific offences addressing coercion, exploitation, and forced imposition of transgender identity, acknowledging forms of harm that were previously insufficiently addressed within the statutory scheme. This dual character of the amendment, expanding protection while constricting recognition, creates a conflict that lies at the heart of the present analysis. Situating the amendment within the broader constitutional framework, the article examines its implications for equality, expression, and the right to life and personal liberty under Articles 14, 19, and 21 of the Constitution of India⁴. It argues that the shift from autonomy to control raises serious questions regarding the compatibility of the amended structure with established constitutional principles, particularly those affirming dignity, privacy, and self-determination as recognized in *Justice K.S. Puttaswamy v. Union of India*.⁵ The article ultimately contends that the 2026 Amendment represents not merely a legislative adjustment but a reconfiguration of the underlying philosophy of the law. While it enhances administrative clarity and strengthens certain protective methods, it simultaneously narrows the scope of recognition and alters the balance between the individual and the State. The enduring question, is whether the pursuit of definitional precision and administrative efficiency can be reconciled with the constitutional commitment to dignity and autonomy that lies at the core of rights jurisprudence.

I. INTRODUCTION

The question of gender identity has, in recent years, assumed a central place in India's constitutional discourse, bringing into focus the relationship between individual autonomy and the authority of the State. For long, transgender persons existed at the margins of legal recognition, their rights acknowledged neither with clarity nor with consistency. The constitutional framework, though expansive in its promise of equality and dignity, remained chiefly silent in its application to gender-diverse identities until judicial intervention altered the landscape.

A decisive moment in this evolution came with the judgment of the Supreme Court in *National Legal Services Authority v. Union of India*⁶, where the Court affirmed that the right to determine one's gender identity is an essential component of personal liberty and dignity. In doing so, it recognized transgender persons as a distinct category entitled to full constitutional

⁴ INDIA CONST. arts. 14, 19, 21

⁵ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India)

⁶ <https://nalsa.gov.in/social-action-litigation>

protection. More importantly, the judgment placed emphasis on self-identification, treating gender as a matter of personal experience rather than imposition. This marked a shift from invisibility to recognition, and from social tolerance to legal acknowledgement.

The enactment of the Act, 2019 followed as a legislative response to this constitutional development. The statute sought to prohibit discrimination, facilitate access to welfare measures, and establish a system for recognition of identity. Its approach, at least in principle, reflected the understanding that identity could not be reduced to biological criteria alone. Instead, it acknowledged that gender may be experienced and expressed in ways that do not conform to traditional binaries. While the law attracted criticism on certain aspects of implementation, it nonetheless represented a step towards aligning statutory law with constitutional values.⁷ The Bill, 2026 introduces a different direction. The amendment seeks to address perceived ambiguities in the earlier, particularly definition and identification. In doing so, it alters the basis on which recognition is granted. The emphasis shifts from self-identification to a more structured process involving categorization and institutional verification. This change is not merely procedural; it affects the manner in which identity itself is understood in law.

The movement from a self-declared identity to one subject to external scrutiny raises important legal questions. It brings into consideration whether the State can legitimately impose conditions on the validation, and if so, to what extent. It invites scrutiny of the balance between administrative convenience and constitutional guarantees. The concern is not only whether the law can be implemented efficiently, but whether such implementation respects the principles of dignity, equality, and personal liberty that underpin the Constitution. This article examines the 2019 Act and the 2026 Amendment in a comparative manner, focusing on the changes introduced in definitions, recognition, certification procedures, and penal clause. The objective is to assess whether it strengthens the existing structure or departs from its underlying principles. In doing so, the analysis remains anchored in constitutional standards, particularly those relating to equality, freedom of expression, and the right to life and personal liberty.

Ultimately, the issue is not confined to statutory interpretation alone. It concerns the broader

⁷ <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/transgender-rights-reduced-to-a-dead-letters-by-state-indifference/#:~:text=In%202014%2C%20this%20Court%20in,of%20transgender%20people%20in%20India.>

question of how the law engages with identity, and whether it does so in a manner that respects the autonomy of the individual. The answer to this question will determine not only the validity of the amended but its place within the continuing development of rights jurisprudence in India.

II. HISTORICAL CONTEXT AND LEGISLATIVE PHILOSOPHY

The legislative journey of transgender rights in India cannot be understood in isolation from its constitutional and socio-legal antecedents. For decades, transgender persons remained situated at the margins of both law and policy, their identities acknowledged in cultural traditions yet inadequately protected within formal legal structures. The absence of statutory recognition was not merely a legislative omission; it reflected a broader historical pattern of exclusion, where social visibility did not translate into legal entitlement. A decisive shift occurred with the intervention of the judiciary, most notably in *National Legal Services Authority v. Union of India*. The Supreme Court, departing from earlier approaches that viewed gender through a biological lens, affirmed that gender identity is rooted in an individual's internal sense of self. In doing so, it recognized transgender persons as a distinct category and held that the right to self-identify one's gender is an integral part of personal liberty and dignity. The judgment underscored the State's obligation to ensure equality and non-discrimination, situating transgender rights firmly within the fundamental rights.⁸ The 2019 Act emerged as a legislative response to this constitutional mandate. Its stated objective was to provide legal recognition, prohibit discrimination, and create an institutional framework for the welfare of transgender persons. The statute adopted a broadly inclusive definition and acknowledged the principle of self-perceived identity, reflecting, at least in its conceptual design, the normative direction indicated by the Court. It introduced mechanisms such as certification of identity and the establishment of a National Council, signaling an attempt to move from declaratory rights to administrative implementation.⁹

The legislative philosophy underlying the 2019 Act was marked by a degree of ambivalence. While it recognized identity as a matter of self-perception, its process introduced elements of State oversight that generated debate regarding the extent of autonomy actually preserved. This tension between recognition and regulation was not incidental; it reflected the inherent difficulty of translating a rights-based judicial vision into a statutory scheme capable of uniform

⁸ <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity>

⁹ <https://www.icj.org/resource/india-withdraw-and-revise-problematic-transgender-rights-bill>

application. ¹⁰The 2026 Amendment must be situated against this background of both aspiration and contestation. Introduced with the stated aim of addressing definitional ambiguity and improving administrative clarity, the amendment reflects a recalibration of legislative priorities¹¹. The emphasis shifts towards identifying a delineated class of beneficiaries and establishing structured mechanisms for verification. It represents a movement away from the open-textured inclusivity of the earlier towards a more determinate and categorized approach. This shift is not merely technical; it is indicative of a change in purpose of the law. The earlier was informed by the idea that identity is inherently personal and ought to be recognized upon declaration. The amended, by contrast, proceeds on the premise that legal recognition must be anchored in identifiable and verifiable criteria. The concern with administrative manageability, while legitimate, assumes a more prominent role, potentially at the expense of individual autonomy. Such a transition reflects a broader pattern in legislative design, where the pursuit of certainty often leads to the narrowing of scope. The challenge, lies in ensuring that the quest for clarity does not result in the exclusion of those whom the law seeks to protect. In transgender rights, this concern assumes particular significance, given that identity itself resists rigid categorization.

The historical evolution from judicial recognition to statutory enactment and subsequent amendment reveals both progress and reconsideration. It is not a linear movement towards greater inclusion, but a more complex process in which competing considerations of autonomy, administrability, and legal certainty are continuously negotiated. The purpose of the 2026 Amendment must be understood not as an isolated departure, but as part of this ongoing dialogue between constitutional ideals and legislative practice.¹²

III. STRUCTURAL TRANSFORMATION

The structural design of a statute often reveals more about its underlying philosophy than its stated objectives. A comparison between the 2019 Act and the 2026 Amendment indicates not a wholesale replacement of the legislative structure, but a deliberate reconfiguration of its internal architecture. While the earlier enactment was organized around a rights-oriented progression from recognition to welfare, the amended introduces a more layered and controlled

¹⁰ <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/transgender-rights-reduced-to-a-dead-letters-by-state-indifference>

¹¹ <https://www.drishtiiias.com/daily-updates/daily-news-analysis/transgender-persons-amendment-bill-2026>

¹² <https://www.insightsonindia.com/2026/03/14/the-transgender-persons-protection-of-rights-amendment-bill-2026>

structure, particularly identity and its regulation.¹³

The 2019 Act was arranged in a manner that reflected a sequential logic. Beginning with definitions under Section 2, it moved to the prohibition of discrimination under Section 3, followed by recognition of identity under Sections 4 to 7, and thereafter to welfare measures, apparatus, and penal clause. This structure placed the recognition of identity at the center of the statute, with subsequent rules operating as consequences flowing from that recognition. The emphasis, was on enabling inclusion through a relatively direct legal pathway.¹⁴

The 2026 Amendment retains the broad skeletal arrangement of the statute but alters the functioning of its core provisions. The most significant shift lies in the restructuring of the definitional and recognition. Section 2 is amended to replace the earlier inclusive definition with a more specific and category-based formulation, while introducing the concept of an “authority” in the form of a medical board. This insertion is not merely definitional; it creates an institutional foundation that influences subsequent provisions relating to recognition and certification.

A corresponding change is introduced in Section 4, where sub-section (2), which earlier recognized the right to self-perceived gender identity, is omitted. This omission is structurally substantial, as it removes the statutory basis upon which the recognition sections of the Act were previously anchored. The effect is that recognition is no longer centered on self-identification but becomes contingent upon compliance with procedural requirements laid down elsewhere in the statute.

The restructuring continues in Section 6, where the role of the District Magistrate is modified. Under the 2019 Act, the District Magistrate functioned as an issuing authority upon application. The amendment requires the Magistrate to act after examining the recommendation of the designated authority, with the option of consulting additional medical experts. This introduces an additional layer into the decision-making process, transforming what was earlier a relatively straightforward administrative function into a multi-tiered evaluative exercise.

Further structural modification is evident in Section 7, which governs change of gender. The

¹³ <https://www.nextias.com/ca/current-affairs/14-03-2026/transgender-rights-bill-2026>

¹⁴ <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-amendment-bill-2026>

substitution of the expression “may” with “shall” converts what was previously a discretionary provision into a mandatory requirement. The insertion of sub-section (1A), requiring medical institutions to furnish details to the authorities, further embeds institutional oversight within the process. These changes collectively indicate a shift towards a more regulated and monitored system, where individual choice operates within a defined administrative structure.

The amendment revises the composition and functioning of institutional bodies under Section 16 by prescribing a higher level of official representation. While this may be viewed as an attempt to strengthen administrative capacity, it reflects a broader tendency towards centralization and formalization within the statutory scheme.

In contrast to these restrictive and procedural changes, the amendment expands the penal structure under Section 18. The earlier vision, which addressed general forms of abuse and discrimination with limited punishment, is replaced with a detailed enumeration of offences, including those involving coercion, bodily harm, and forced imposition of identity, accompanied by graded punishments extending to life imprisonment. This expansion reflects a recognition of serious forms of exploitation that required more explicit legal treatment.

Taken together, these changes indicate a major structural change in the orientation of the statute. The 2019 Act was organized around the recognition of identity as a starting point, with rights and protections flowing from that recognition. The amended framework, by contrast, places greater emphasis on defining, verifying, and regulating identity before extending such protections. The movement is from a facilitative structure to a more controlled and layered one. It would, be an overstatement to suggest that the amendment abandons the earlier entirely. The prohibition of discrimination, the provision of welfare measures, and the existence of institutional mechanisms remain formally intact. What has changed is the manner in which access to these protections is structured. The law now operates through a more defined and procedural pathway, which prioritizes certainty and administrative control over flexibility.¹⁵

The structural evolution reflects a conscious legislative choice. It seeks to address perceived ambiguities and implementation challenges by introducing greater precision and oversight. At the same time, it alters the balance between individual autonomy and State authority,

¹⁵ <https://www.thehindu.com/news/national/bill-to-provide-precise-definition-of-transgender-introduced-in-lok-sabha/article70739056.ece>

particularly identity. Whether this reconfiguration enhances the effectiveness of the law or restricts its reach is a question that must be examined in light of the substantive that follow.

IV. DEFINITIONS

The definitional clause of a statute serves as its basic idea, determining both the scope of its application and the class of persons entitled to its protections. In the 2019 Act and its 2026 Amendment, the change of Section 2 assumes central importance. The changes introduced are neither incidental nor merely clarificatory; they alter the very basis upon which identity is recognized in law.

A. Scope of Definition under the 2019 Act

Section 2(k) of the 2019 Act adopts a broad and inclusive formulation of the term “transgender person.” It defines such a person as one whose gender does not correspond with the gender assigned at birth, and explicitly includes trans-men, trans-women, persons with intersex variations, genderqueer individuals, and those belonging to recognized socio-cultural identities such as hijra, kinner, aravani and jogta. This definition is momentous for two reasons. First, it does not predicate recognition upon medical or surgical intervention. The inclusion of individuals “whether or not” they have undergone gender-affirming procedures indicates that identity is understood as independent of biological modification. Secondly, the use of an inclusive formulation ensures that the definition remains open-ended, capable of accommodating diverse expressions of gender that may not fit within rigid categories.

The structure of the definition reflects an attempt to align statutory language with the constitutional understanding of gender identity as articulated in *National Legal Services Authority v. Union of India*. By recognizing identity as a matter of lived experience rather than objective verification, the provision situates itself within a rights-based framework that prioritizes autonomy and dignity.¹⁶

B. Revised Definition under the 2026 Amendment

The 2026 Amendment substitutes the earlier definition with a more specific and categorized formulation. Section 2(k), as amended, limits the scope of the term “transgender person” to identifiable classes, including socio-cultural identities such as kinner, hijra, aravani and jogta, persons with intersex variations or congenital biological characteristics, and individuals who

¹⁶ supra

have been compelled to assume a transgender identity through coercive or forced means.¹⁷ At the same time, expressly excludes persons whose identity is based solely on self-perception or gender fluidity. This exclusion is made explicit through a proviso stating that persons with different sexual orientations or self-perceived identities do not fall within the ambit of the definition. This represents a clear departure from the earlier inclusive approach. Introduces the concept of an “authority,” defined as a medical board headed by a Chief Medical Officer or Deputy Chief Medical Officer. Although this definition appears procedural, it has substantive implications, as it establishes an institutional mechanism that interacts with the definitional framework. Identity, under the amended scheme, is not merely described but becomes subject to evaluation through designated bodies.

C. Effect of the Change in Definition

The shift from the 2019 formulation to the amended definition reflects a transition from an identity-based approach to a classification-based one. Under the earlier law, the definition functioned as an enabling provision, extending recognition to a wide spectrum of individuals. Under the amended, it operates as a limiting provision, delineating the boundaries of inclusion with greater precision. This change has both conceptual and practical consequences. Conceptually, it alters the understanding of gender identity from a subjective experience to a status that must correspond with specified categories. Practically, it affects access to rights and protections under the Act, as only those who fall within the revised definition are entitled to its benefits. The rationale for this shift, as reflected in the Statement of Objects and Reasons, lies in the perceived need for clarity and effective implementation. The legislature expresses concern that a broad definition may render the law difficult to administer and may extend benefits beyond the intended class of beneficiaries. This pursuit of definitional precision questions exclusion, particularly in relation to individuals whose identities do not conform to the prescribed categories. The definitional alteration encapsulates the central tension within the amendment. It seeks to achieve certainty and administrative coherence, yet does so by narrowing the scope of recognition. In doing so, it redefines not only the beneficiaries of the statute but the conceptual lens through which identity is understood in law.¹⁸

¹⁷ supra

¹⁸ <https://raceias.com/current-affairs/the-transgender-persons-protection-of-rights-amendment-bill-2026>

V. RECOGNITION OF IDENTITY

The recognition of identity constitutes the normative core of the statutory framework governing transgender rights. It is through this provision that the law determines not merely who is included within its ambit, but the manner in which identity itself is understood. Section 4 of the 2019 Act and its subsequent alteration by the 2026 Amendment reveal a fundamental shift in this understanding, moving from a principle of self-identification to a system of regulated recognition.

A. *Position under the 2019 Act*

Section 4 of the 2019 Act establishes the right of a transgender person to be recognized as such in accordance with the provisions of the statute. More importantly, sub-section (2) explicitly provides that a person recognized shall have the right to self-perceived gender identity. This provision occupies a central position within the statutory scheme. It affirms that identity is not contingent upon external validation but flows from an individual's own understanding of self. The language of the provision reflects a conscious legislative effort to incorporate the principle laid down in *National Legal Services Authority v. Union of India*, the Supreme Court held that gender identity is an aspect of personal autonomy and dignity.

The structure of Section 4, read with Sections 5 and 6, indicates that the certification was intended to be facilitative. The District Magistrate, under this, performed a confirmatory role rather than an adjudicatory one. Recognition preceded certification; the latter operated as evidence of the former, not its source. The 2019 Act treated identity as a matter of personal declaration, with the State assuming a limited administrative function.

B. *Position under the 2026 Amendment*

The 2026 Amendment alters this position by omitting sub-section (2) of Section 4, removing the statutory recognition of the right to self-perceived gender identity. This omission is not an isolated change but part of a broader restructuring of the recognition framework. By deleting the provision that expressly acknowledged self-identification, the amendment shifts the emphasis from personal declaration to institutional determination. The recognition of identity is no longer grounded in the subjective experience of the individual but becomes dependent on compliance with procedural methods introduced elsewhere in the statute.¹⁹

¹⁹ <https://indianexpress.com/article/explained/explained-law/transgender-bill-2026-self-identification-nalsa-explained-10584573>

Contemporary analysis of the amendment indicates that this deletion is accompanied by the introduction of medical and administrative scrutiny in the certification process, reinforcing the movement towards a verification-based model.²⁰ The removal of self-identification has been widely noted as one of the most noteworthy changes introduced by it, as directly affects the manner in which legal recognition is obtained.²¹

C. Doctrinal Consequences of the Shift

The omission of Section 4(2) gives rise to important legal effects. Under the 2019 framework, recognition of identity was conceived as an inherent right, flowing from safeguards of dignity and personal liberty. The role of the State was limited to acknowledging this identity and facilitating access to rights. The amended framework, repositions the State as an active determinant in the process of recognition. This shift questions the nature of identity in law. If identity is treated as something that must be verified rather than declared, it transforms from a matter of personal autonomy into a status conferred through institutional processes. Such a transformation affects constitutional interpretation, particularly Articles 14, 19, and 21.²²

From an equality perspective, the removal of self-identification may result in differential treatment of individuals whose identities do not conform to the categories recognized under the amended definition. From the standpoint of freedom of expression, gender identity constitutes an essential aspect of how an individual presents themselves to society. Limiting the ability to self-identify may be seen as a restriction on expressive autonomy. The change must be examined in light of the liberty under Article 21.²³ Judicial precedents have consistently emphasized that dignity and autonomy are central to this right. The recognition of gender identity as a matter of self-determination was a key element of this understanding. The removal of statutory support for self-identification introduces a tension between legislative policy and constitutional principle. The doctrinal shift may have practical consequences. By linking recognition to procedural requirements, the amended framework risks creating barriers to access, particularly for individuals who may not be able to navigate institutional processes. At the same time, the State justifies this approach on grounds of ease of implementation and the need to ensure that benefits reach a clearly identifiable class.

The transformation of Section 4 encapsulates the broader movement within the amendment

²⁰ *ibid*

²¹ https://timesofindia.indiatimes.com/india/trans-bill-drops-self-perceived-identity-clause/articleshow/129565175.cms?utm_source=chatgpt.com

²² <https://www.mea.gov.in/images/pdf1/part3.pdf>

²³ *ibid*

from autonomy to oversight. It reflects a reorientation of the law from recognizing identity as a matter of personal truth to treating it as a category subject to verification. Whether this reorientation can be reconciled with the constitutional promise to dignity and self-determination remains a question that lies at the center of the present analysis.

VI. CERTIFICATION FRAMEWORK

The certification process under the statute serves as the operational bridge between recognition of identity and the actual enjoyment of legal rights. It is through Sections 5, 6, and 7 that the law translates the abstract idea of identity into an administratively recognized status. A comparison between the 2019 Act and the 2026 Amendment reveals a restructuring of this framework, shifting it from a declaratory process to one characterized by official checking and procedural rigor.

A. Process under the 2019 Act

Under the Transgender Persons Act, 2019, the certification process is governed by Sections 5 and 6. Section 5 enables a transgender person to make an application to the District Magistrate for the issuance of a certificate of identity. Section 6 provides that the District Magistrate shall issue such a certificate in accordance with the prescribed procedure. The statutory scheme, when read alongside Section 4(2), indicates that the process was intended to be facilitative rather than investigative. The certificate functioned as formal recognition of an already existing identity grounded in self-perception. The role of the District Magistrate was administrative, with no requirement of medical examination or external validation. This approach aligned with the principle that identity is not conferred by the State but merely acknowledged by it.

Section 7 further provided that where a transgender person underwent gender-affirming surgery, they could apply for a revised certificate indicating change in gender. Importantly, the use of the term “may” preserved the voluntary nature of this process, ensuring that medical intervention was neither a prerequisite for recognition nor a mandatory step for legal affirmation.²⁴

B. Changes Introduced by the 2026 Amendment

The 2026 Amendment substantially alters this by introducing additional layers of scrutiny and institutional involvement. Section 6 is amended to require that the District Magistrate issue a

²⁴ <https://www.ibanet.org/article/0f3ae21b-0170-4bf7-95dd-45b07ef1caf6>

certificate only after examining the recommendation of a designated “authority,” defined as a medical board headed by a Chief Medical Officer or Deputy Chief Medical Officer. This modification transforms the nature of the certification process. What was earlier a procedure based on application becomes one contingent upon expert evaluation. The District Magistrate is further empowered to seek assistance from other medical experts, reinforcing the evaluative character of the process. Contemporary analyses note that the amendment effectively introduces mandatory medical certification as a condition for legal recognition²⁵. Section 7 undergoes a parallel restructuring. The substitution of the word “may” with “shall” makes the process of obtaining a revised certificate mandatory for persons undergoing gender-affirming procedures. The insertion of sub-section (1A) requires medical institutions to furnish details of such procedures to the District Magistrate and the designated authority. This introduces a system of reporting and oversight that was absent in the earlier framework.

The amended provision requires the District Magistrate to issue a certificate of change in gender only upon verification of medical documentation. The omission of earlier safeguards, including the proviso protecting existing rights, indicates a tightening of procedural control over identity-related documentation.

C. Practical and Legal Implications

The transformation of the certification framework carries doctrinal and practical implications. Under the 2019 Act, certification was an extension of the right to self-identification; it functioned as an administrative acknowledgement of an already recognized identity. The amended framework, by contrast, positions certification as a prerequisite for recognition itself. This shift alters the relationship between the individual and the State. Identity, which was previously asserted by the individual and recognized by law, now becomes subject to inspection. The introduction of medical boards and mandatory reporting systems creates what has been described as a form of “clinical gatekeeping,” where access to legal recognition depends upon compliance with prescribed standards. Constitutionally speaking, this raises concerns regarding autonomy and privacy. The requirement of medical evaluation may be viewed as intrusive, particularly when identity is treated as a matter of personal choice and expression. The mandatory nature of certain procedures further limits individual discretion, especially gender transition and documentation.

At the same time, the State justifies these changes on grounds of better management and the

²⁵ supra

need to ensure that benefits under the Act reach a clearly identifiable class of persons. The introduction of institutional apparatus is intended to address concerns regarding misuse and to streamline implementation. The certification framework becomes the site of a broader tension between two competing considerations: the need for effective administration and the preservation of individual autonomy. The 2019 model leaned towards facilitation, prioritizing access and recognition. The 2026 Amendment moves towards supervision, emphasizing verification and control.

Sections 5, 6, and 7, as amended, do more than modify procedure; they reshape the conceptual basis of identity within the statute. Certification is no longer merely evidentiary but constitutive, determining not just proof of identity but its very legal existence. Whether this reconfiguration enhances the legitimacy of the framework or undermines its constitutional foundations remains a central question for further analysis.²⁶

VII. OFFENCES AND PENALTIES

The penal framework highlights the State's assessment of the gravity of harm suffered by a protected class and the means by which such harm is to be deterred. Section 18 of the 2019 Act and its substitution under the 2026 Amendment illustrate a marked shift in legislative approach from generalized protection to a more structured and graded system of criminal liability. This transformation is significant not only in terms of punishment but in the manner in which the law conceptualizes harm against transgender persons.

A. Penal Framework under the 2019 Act

Section 18 of the 2019 Act criminalizes a range of acts directed against transgender persons, including forced or bonded labor, denial of access to public spaces, forced eviction from residence, and acts causing physical, sexual, verbal, emotional, or economic harm. The provision adopts a broad formulation, capturing various forms of abuse without distinguishing between degrees of severity. The punishment prescribed is uniform, with imprisonment ranging from six months to two years along with fine. This approach shows an intent to provide basic protection against discrimination and violence, but it does without developing a nuanced classification of offences.

From a criminal law perspective, this framework exhibits two limitations. First, the absence of graded punishment fails to account for the varying seriousness of offences, treating minor acts

²⁶ <https://www.hindustantimes.com/india-news/row-over-transgender-amendment-bill-explained-why-are-some-opposed-to-it-101773817693207.html>

of discrimination and severe bodily harm within the same penal bracket. Secondly, the provision does not specifically address certain forms of organized or coercive harm that have been documented in practice. These limitations were a subject of critique, particularly the inadequacy of punishment for serious offences.²⁷

B. Penal Framework under the 2026 Amendment

The 2026 Amendment substitutes Section 18 but retains, in part, the core structure of the earlier penal provision, particularly general acts of discrimination and harm. The provision continues to criminalize conduct such as compelling a transgender person into forced or bonded labor, denial of access to public spaces, forced displacement from residence, and acts causing physical, mental, or economic harm. The punishment prescribed for these acts remains consistent with the earlier framework, providing for imprisonment ranging from six months to two years along with fine. This continuity suggests that the legislature did not intend to dilute the basic protection against everyday forms of discrimination and abuse, but rather to retain these as foundational offences within the statutory scheme.

The significance of the amendment lies not merely in the retention of these provisions but in their repositioning within a broader and more structured penal framework. The retained offences now form the baseline layer of criminal liability²⁸, upon which additional and more specific categories of offences have been constructed in the substituted provision. The legislative approach reflects an attempt to preserve existing protections while simultaneously introducing a more differentiated and graduated system of punishment. The amended Section 18 does not abandon the earlier penal model but incorporates it as a foundational component within a more elaborate framework. The continued recognition of these offences ensures that routine forms of discrimination and abuse remain punishable, even as the statute evolves to address more severe and organized forms of harm.²⁹

C. Doctrinal and Criminal Law Implications

The transformation of Section 18 raises important questions within criminal jurisprudence. At one level, the introduction of graded punishment aligns the statute with established principles of proportionality, ensuring that more serious offences attract correspondingly higher penalties. The explicit criminalization of acts such as forced bodily alteration and coerced identity reflects

²⁷ <https://www.icj.org/icj-theme/sexual-orientation-and-gender-identity/page/8>

²⁸ <https://www.youtube.com/watch?v=Gaa94YQfQrA>

²⁹ Supra

a recognition of the severe forms of exploitation that transgender persons may face. The expanded penal framework introduces certain doctrinal concerns. The language employed in some of the newly introduced offences, particularly those relating to “compelling” or “inducing” a person to assume a transgender identity, is broad and potentially open to varied interpretation. This raises the possibility of over-criminalization, where conduct that is not inherently coercive may nevertheless fall within the ambit of the provision.³⁰

Recent critiques have pointed out that such provisions, if not carefully interpreted, may lead to unintended consequences, including the criminalization of supportive relationships or community practices.³¹ The absence of clearly defined thresholds for coercion or inducement may create uncertainty in enforcement, a concern that is not unfamiliar in criminal law. Another doctrinal issue arises from the coexistence of protective and restrictive elements within the statute. While the penal provisions seek to safeguard bodily integrity and prevent exploitation, they operate within a broader legislative framework that narrows the definition of identity and introduces procedural controls. This creates a tension between protection and regulation, where the same statute both expands criminal liability and restricts the scope of those entitled to its protection.

From a constitutional standpoint, the penal provisions may be justified as measures to protect vulnerable individuals from severe harm. At the same time, their application must be consistent with principles of fairness, non-arbitrariness, and proportionality. The challenge lies in ensuring that the criminal law is used as an instrument of protection rather than as a means of reinforcing stereotypes or enabling intrusive State control.

In effect, the substitution of Section 18 represents a dual movement within the statute. It strengthens the law’s response to serious offences while simultaneously introducing new complexities in interpretation and application. The success of this framework will depend not only on its textual formulation but on the manner in which it is enforced and interpreted by the courts.

VIII. CONSTITUTIONAL ANALYSIS

The constitutional validity of the 2026 Amendment must be examined against the framework of fundamental rights, particularly Articles 14, 19, and 21 of the Constitution of India. The

³⁰ <https://visionias.in/current-affairs/news-today/2026-03-14/social-issues/the-transgender-persons-protection-of-rights-amendment-bill-2026-was-introduced-in-the-lok-sabha>

³¹ <https://www.ndtv.com/india-news/transgender-persons-protection-of-rights-amendment-bill-who-gave-anyone-right-to-decide-my-gender-fierce-pushback-to-trans-bill-11252753>

jurisprudence developed by the Supreme Court in relation to gender identity establishes a clear normative baseline, against which any legislative intervention must be assessed. The central question is whether the amended model, in seeking better management and definitional precision, remains consistent with the constitutional commitment to dignity, equality, and personal freedom.

A. Equality and Non-Discrimination under Article 14

Article 14 guarantees equality before the law and equal protection of the laws. The Supreme Court has interpreted this provision to prohibit arbitrariness and to require that any classification must be based on an intelligible differentia having a rational nexus with the object sought to be achieved. In *National Legal Services Authority v. Union of India*, the Court recognized transgender persons as a distinct class entitled to equal protection and held that discrimination on the basis of gender identity is violative of Article 14. The judgment adopted an expansive understanding of equality, extending beyond formal parity to include substantive validation. The 2026 Amendment, by narrowing the definition of “transgender person” and excluding individuals whose identity is based on self-perception, introduces a classification that may be subject to constitutional scrutiny. The distinction between those who fall within the enumerated categories and those who do not raises the question whether such classification is reasonable or whether it results in arbitrary exclusion.

Further, the introduction of medical and administrative verification vests discretion in authorities without clearly defined standards. As constitutional jurisprudence has consistently held, unfettered discretion is antithetical to equality.³² The risk, is not merely of exclusion but of inconsistent application, which may undermine the guarantee of equal protection.

B. Freedom of Expression and Identity under Article 19(1)(a)

Article 19(1)(a) guarantees the freedom of speech and expression, which has been interpreted to include the right to express one’s identity. Gender identity is not confined to internal perception; it is expressed through appearance, behavior, and social interaction. In *NALSA*, the Court acknowledged that gender expression is an essential aspect of personal freedom, protected under Article 19.¹ This understanding was reinforced in subsequent judgments such as *Navtej Singh Johar v. Union of India*, where the Court emphasized the centrality of identity and choice to constitutional freedom. The reform, by conditioning legal recognition upon prior

³² <https://www.livelaw.in/amp/lawschool/articles/constitutional-debate-transgender-rights-india-529903>

verification, indirectly affects this freedom. Where identity is subject to certification, the ability to express that identity freely may be constrained by the absence of formal recognition. This creates a situation where expression is not inherently free but contingent upon State approval. Any restriction on Article 19(1)(a) must satisfy the test of reasonableness under Article 19(2). The requirement of medical or clerical verification must be justified on grounds recognized by the Constitution.³³ It remains open to question whether such restrictions, framed in the interest of procedural efficiency, meet the threshold of necessity and proportionality.

C. Right to Life, Dignity, and Privacy under Article 21

Article 21, as interpreted by the Supreme Court, encompasses a wide range of rights including dignity, autonomy, and privacy. In *Justice K.S. Puttaswamy v. Union of India*³⁴, the Court affirmed that decisional freedom and bodily integrity form the core of the right to life and personal liberty. The recognition of gender identity as part of this right was explicitly acknowledged in *NALSA*, where the Court held that self-identification is integral to dignity and self-choice. This position establishes that identity is not merely a social attribute but a constitutionally protected aspect of personhood.

The 2026 Amendment, by introducing medical verification and institutional scrutiny, raises concerns regarding intrusion into personal autonomy. The requirement of certification by medical boards may involve examination of physical or psychological characteristics, engaging the right to privacy. Judicial precedent makes it clear that any such intrusion must satisfy the three-fold test of legality, necessity, and proportionality. The question that arises is whether the objective of clearer procedures constitutes a sufficiently compelling State interest to justify such intrusion. While the State may seek to prevent misuse of benefits, the means adopted must be the least restrictive. The imposition of medical verification as a general requirement may be viewed as disproportionate, particularly when less intrusive alternatives could achieve the same objective.³⁵

D. Doctrinal Tension with Judicial Precedents

The constitutional framework governing gender identity in India has been shaped by a series of judicial pronouncements that emphasize autonomy, dignity, and equality. *NALSA* established the right to self-identification; *Puttaswamy* reinforced the centrality of privacy and

³³ <https://www.hhrjournal.org/2026/03/31/proposed-legislation-removes-right-to-self-identify-ones-gender-in-india>

³⁴ https://en.wikipedia.org/wiki/Puttaswamy_v._Union_of_India

³⁵ *ibid*

autonomy; and Navtej Singh Johar affirmed the primacy of constitutional morality over social norms. The 2026 Amendment appears to depart from this jurisprudential course by shifting the basis of recognition from self-determination to institutional verification. This raises a broader doctrinal question: whether Parliament can, through legislation, introduce conditions that effectively dilute rights recognized as fundamental by the judiciary. While legislative competence in this domain is undisputed, such legislation must remain consistent with constitutional limitations. The doctrine of proportionality, as developed in constitutional jurisprudence, requires that any restriction on fundamental rights must be justified, necessary, and proportionate to the objective sought to be achieved.

The reform, operates at a point of tension between legislative policy and constitutional principle.³⁶It seeks to introduce clarity and prevent misuse, in doing so, it potentially redefines the contours of identity in a manner that may be inconsistent with established jurisprudence.

E. Balancing State Interests and Individual Rights

The constitutional analysis ultimately turns on the balance between two competing considerations. On one hand is the State's interest in ensuring effective implementation of the law and preventing misuse of benefits. On the other is the individual's right to autonomy, dignity, and equality. The challenge lies in reconciling these interests without compromising the core of fundamental rights. As constitutional jurisprudence has repeatedly emphasized, administrative convenience cannot override constitutional guarantees. The law must be evaluated not only for its objectives but in terms of the means it employs.

In the present context, the shift from autonomy to directive represents a recalibration of this balance. Whether this recalibration is constitutionally sustainable will depend on its ability to withstand scrutiny under Articles 14, 19, and 21. The answer to this question will ultimately determine the place of the amendment within India's evolving constitutional framework.

IX. CRITICAL EVALUATION

the 2026 Amendment presents a complex legislative intervention that resists simplistic characterization. It is neither wholly regressive nor unambiguously progressive; rather, it embodies a series of competing impulses within the law. A careful evaluation requires an engagement with both the justificatory framework offered by the State and the concerns articulated by affected communities and legal commentators.

³⁶ supra

A. Arguments in Favour of the Amendment

A principal argument advanced in support of the amendment is the need for definitional clarity and administrative workability. The Statement of Objects and Reasons emphasizes that the earlier definition under the 2019 Act was excessively broad, making it difficult to identify the intended beneficiaries of the law. By introducing a more precise and categorized definition, seeks to ensure that the protections and welfare measures reach those who are most vulnerable to social exclusion. From an administrative standpoint, the introduction of verification system, including the role of a medical authority, is presented as a means of preventing misuse. Government justification has centered on the concern that a purely self-declaratory system may allow individuals to claim benefits without belonging to the target group.

The expansion of penal provisions under Section 18 constitutes a significant strength of the new provision. The introduction of specific offences relating to abduction, coercion, and forced identity, accompanied by graded punishments, reflects a more nuanced understanding of the harms faced by transgender persons. These provisions address gaps in the earlier and align the statute with principles of proportionality in criminal law. The amendment may be viewed as an attempt to harmonize the Act with another regime. The legislature has indicated that a broad and open-ended definition created inconsistencies with other statutory provisions, particularly in areas requiring clear categorization. Seeks to enhance coherence within the legal system.

B. Criticisms and Concerns

Notwithstanding these justifications, the amendment has attracted criticism on constitutional and human rights grounds. The most prominent concern relates to the removal of self-identification as the basis of recognition. Critics argue that this change undermines the principle established in *NALSA v. Union of India*, where the Supreme Court recognized gender identity as a matter of personal autonomy. The narrowing of the definition has been criticized for excluding trans-men, trans-women, and non-binary individuals who were explicitly included under the 2019 Act. This exclusion is viewed as a form of legal erasure, potentially denying access to rights and protections for a section of the community. Human rights organizations have described the amendment as a setback that limits recognition to a narrow set of identities while excluding others who rely on self-identification. The introduction of mandatory medical verification has raised concerns regarding privacy and bodily autonomy. Critics argue that such requirements “pathologize” identity and subject individuals to intrusive scrutiny. The involvement of medical boards may create barriers to access, particularly for individuals who lack resources or face social stigma. Another area of concern relates to the breadth of penal

provisions. While the expansion of offences is intended to provide protection, certain provisions have been criticized as being overly broad and susceptible to misuse. The absence of clearly defined thresholds for coercion or inducement may lead to arbitrary enforcement. In some cases, community groups have expressed apprehension that such provisions could inadvertently criminalize consensual relationships or support systems.

The legislative process itself has been questioned. Critics have pointed to the lack of adequate consultation with the transgender community and the speed with which the Bill was enacted. This raises concerns regarding participatory governance and the inclusiveness of law-making in matters directly affecting marginalized groups.

C. Reconciling Protection with Autonomy

The central difficulty in evaluating the amendment lies in reconciling its protective objectives with its restrictive features. On one hand, the law seeks to address serious forms of exploitation and to ensure that benefits are directed towards those in need. On the other, it introduces mechanisms that may constrain individual autonomy and exclude certain identities from recognition. This tension reflects a broader dilemma in rights-based legislation. The pursuit of administrative efficiency often necessitates categorization and verification, while the protection of fundamental rights requires flexibility and respect for individual choice. The amendment leans towards the former, privileging certainty and control over openness and inclusivity. From a constitutional perspective, the critical issue is whether the means adopted by the legislature are proportionate to the objectives sought to be achieved. While the prevention of misuse is a legitimate aim, the methods employed must not unduly infringe upon fundamental rights. The challenge lies in ensuring that the law does not, in its attempt to protect, inadvertently restrict the very individuals it seeks to empower.³⁷

D. Overall Assessment

The 2026 Amendment represents a shift in the orientation of the law from recognition to regulation. Its strengths lie in its attempt to introduce clarity and to address serious forms of harm through a strengthened penal framework. Its limitations arise from the narrowing of identity and the introduction of procedures that may be perceived as intrusive and exclusionary. The amendment occupies an ambivalent position within the legal landscape. It advances certain aspects of protection while retreating from others. Whether it ultimately strengthens or weakens

³⁷ <https://vidhilegalpolicy.in/blog/the-transgender-persons-amendment-bill-2026-and-its-discontents>

the rights of transgender persons will depend on its interpretation and implementation, as well as its ability to withstand constitutional scrutiny.³⁸In its present form, the amendment underscores the continuing tension between legislative policy and constitutional principle. It raises a fundamental question that extends beyond the confines of this statute: whether the law can effectively regulate identity without diminishing the autonomy that gives identity its meaning.

X. CONCLUSION

The Transgender Persons (Protection of Rights) Amendment Bill, 2026 represents a decisive moment in the development of India's legal engagement with gender identity. Emerging from a statutory framework that was itself shaped by a transformative constitutional vision, the amendment does not merely refine existing provisions but reorients the very foundations upon which recognition is constructed. The movement from self-identification to institutional verification, from inclusive definition to categorical delimitation, and from facilitative procedures to regulated processes reflects a conscious legislative shift in approach. This article has sought to demonstrate that the 2019 Act, notwithstanding its imperfections, was anchored in a rights-based understanding of identity, drawing legitimacy from constitutional principles articulated in judicial precedent. The 2026 Amendment, by contrast, proceeds on the premise that legal recognition must be grounded in definitional precision and administrative certainty. In doing so, it attempts to address concerns relating to implementation, misuse, and coherence within the broader legal system. The transition is not without consequence. The narrowing of the definitional framework, the removal of self-perceived identity as a statutory right, and the introduction of medical and institutional oversight collectively reshape the relationship between the individual and the State. Identity, once treated as a matter of personal autonomy, becomes subject to processes of verification and approval. This alteration raises questions that extend beyond statutory interpretation and enter the domain of constitutional principle. The amendment's expanded penal provisions, which recognize and address serious forms of coercion and exploitation, reflect an important and necessary strengthening of the protective dimension of the law. At the same time, the coexistence of enhanced criminal safeguards with a restricted framework of recognition reveals an internal tension within the statute. The law, in its present form, appears to protect the body more robustly than it recognizes the identity that

³⁸ <https://www.awid.org/news-and-analysis/understanding-opposition-indias-trans-amendment-bill-2026-feminist-analysis>

inhabits it. The constitutional analysis undertaken in this article underscores that any legislative intervention in this domain must remain consistent with the guarantees of equality, freedom of expression, and personal liberty. The jurisprudence of the Supreme Court has firmly established that self-respect and autonomy are central to the constitutional order. A framework that conditions recognition upon external validation must withstand scrutiny under the principles of reasonableness and proportionality. It would be reductive to characterize the amendment as either wholly regressive or wholly progressive. Rather, it reflects the inherent difficulty of legislating in an area where identity resists rigid categorization and where the demands of administration intersect with the claims of individual freedom. The law seeks to impose order upon a domain defined by fluidity, and in doing so, risks constraining the very autonomy it seeks to protect. The enduring question, is not merely whether the amendment achieves clarity or efficiency, whether it does so without compromising the constitutional commitment to dignity. The answer will depend not only on the text of the statute nonetheless on its interpretation by courts and its implementation in practice. It is in this interpretive space that the future of transgender rights in India will ultimately be shaped.

In the final analysis, this autonomy to regulation must be carefully navigated. A legal model that aspires to protect must recognize; a statute that seeks to define must accommodate.³⁹ The legitimacy of the law will rest on its ability to reconcile these imperatives, ensuring that the pursuit of certainty does not eclipse the fundamental principle that identity, at its core, belongs to the individual.

³⁹ <https://www.scconline.com/blog/post/2026/03/17/lok-sabha-bill-to-revise-definition-of-transgender-persons>