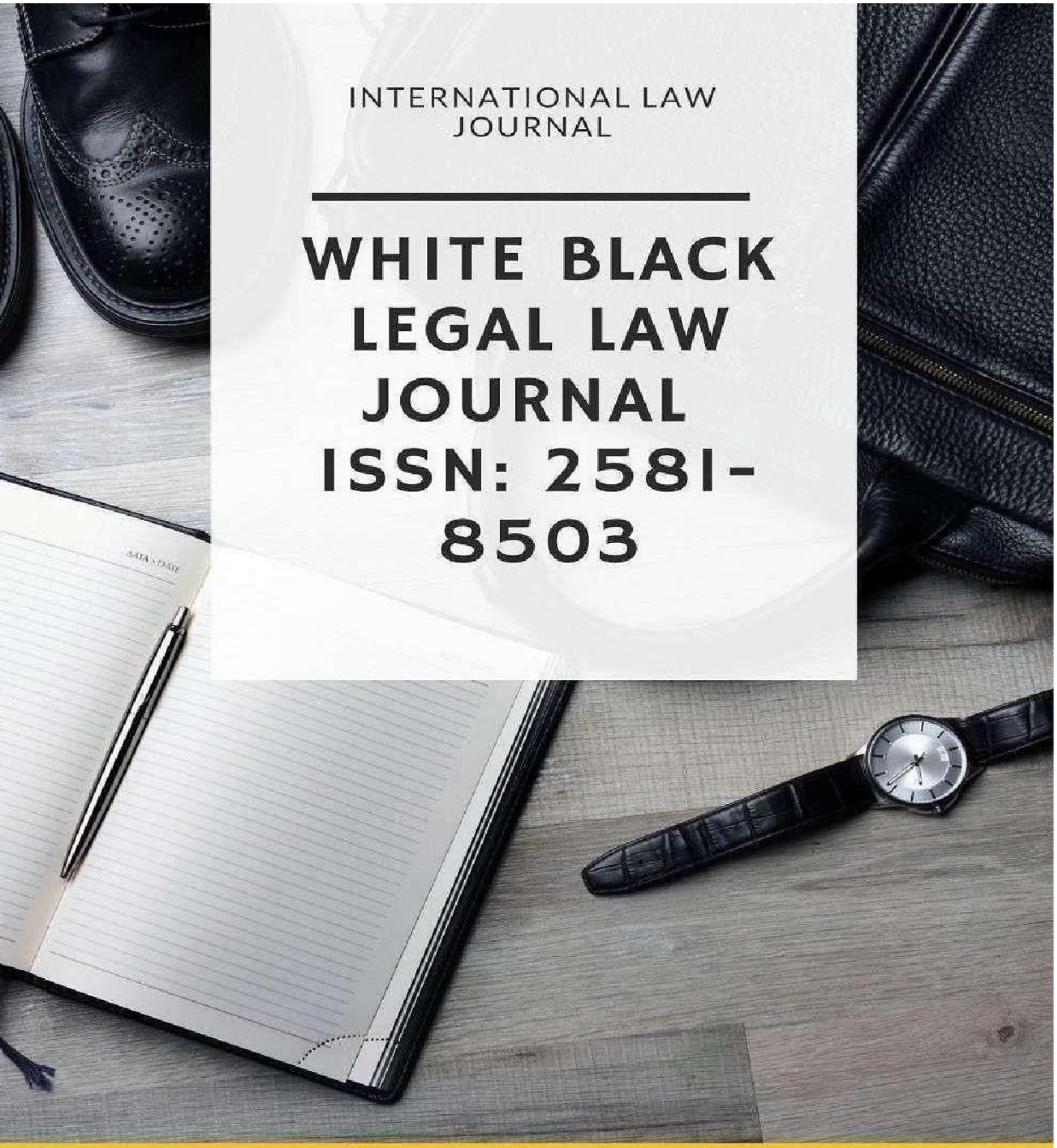


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A CRITICAL STUDY ON TRANSGENDER RIGHTS AND LEGAL RECOGNITION IN INDIA: FROM CONSTITUTIONAL RECOGNITION TO THE 2026 AMENDMENT

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7. Shayara Bano v. Union of India, (2017) 9 SCC 1.
8. Laxmi Narayan Tripathi v. Union of India, W.P.(C) No. 548 of 2026 (pending).

ABSTRACT

The legal status of transgender persons in India has moved from invisibility and criminal stigma to constitutional acknowledgement, and, most recently, to a contested statutory redefinition. In 2014 the Supreme Court recognised gender identity as part of dignity, autonomy and equality, and affirmed that a person may determine their own gender without being required to undergo surgery. The Transgender Persons (Protection of Rights) Act, 2019 gave this recognition a statutory form, although an imperfect one. In March 2026 Parliament passed an amendment that narrows who counts as a transgender person, removes the statutory right to self-perceived gender identity, and routes certification through a medical board and the District Magistrate, while at the same time introducing harsher penalties for forced identity, abduction and bonded labour. This study examines the constitutional foundations, statutory design and judicial history of transgender recognition, evaluates the 2026 Amendment against the principles of equality, dignity, privacy and autonomy, identifies gaps in implementation, and proposes reforms aimed at reconciling protection against exploitation with the right of every person to be recognised as they are.

Keywords: Transgender Rights, Legal Gender Recognition, Self-Identification, NALSA, Transgender Persons (Protection of Rights) Act, 2019, 2026 Amendment, Medical Certification, Article 21, Dignity and Privacy.

CHAPTER I INTRODUCTION

A legal system that cannot say who a person is will struggle to say what that person is owed. For transgender persons in India, the question of legal recognition has therefore never been only a matter of paperwork. A name on an identity card, a gender marker on a school record, or a certificate accepted by a bank or hospital decides whether a person can enrol in education, take up employment, rent a home, access healthcare, or approach the police without being turned away.[1]

Indian law has travelled a long and uneven road on this question. During the colonial period, the Criminal Tribes Act, 1871 subjected hijras and other gender-variant communities to registration and surveillance, and Section 377 of the Indian Penal Code was used to stigmatise gender and sexual non-conformity. After Independence the community remained largely outside the legal imagination of the State. The turning point came in 2014, when the Supreme Court in *National Legal Services Authority v. Union of India* (NALSA) declared that

transgender persons are rights-bearing citizens, recognised a right to self-identified gender, and directed the Union and the States to extend welfare measures and affirmative action.[2] Parliament followed with the Transgender Persons (Protection of Rights) Act, 2019, which, despite sustained criticism from the community, remained the principal statute on the subject for six years.[3]

That settlement was disturbed in March 2026. The Transgender Persons (Protection of Rights) Amendment Act, 2026, introduced in the Lok Sabha on 13 March, passed by both Houses within two weeks, and assented to on 30 March, rewrites the definition of a transgender person, deletes the statutory right to self-perceived gender identity, and replaces self-declaration with a process involving a medical board and the District Magistrate.[4] Its supporters present it as a measure to direct protection to those facing severe social exclusion and to punish exploitation more heavily. Its critics, including the petitioners now before the Supreme Court, regard it as a retreat from the constitutional position established in NALSA.[5]

Against this background, the present study asks how far Indian law, from the Constitution to the 2026 Amendment, protects the dignity and equality of transgender persons, and whether its current design reconciles protection from exploitation with the right to be legally recognised as one truly is.

1.1 Background of the Study

The recognition and protection of transgender rights have emerged as important issues in the development of human rights and constitutional law in India. Transgender persons have historically been one of the most marginalised sections of society, facing discrimination, social exclusion, family rejection, violence and denial of equal opportunities. Despite their presence in Indian society for centuries, they have often been denied equal recognition, dignity and acceptance. Their difficulties extend beyond social discrimination and affect fundamental aspects of life, including education, employment, healthcare, housing and access to justice.

Historically, Indian society recognised different gender identities through communities such as Hijras, Aravanis, Kinners and other gender-diverse groups. These communities occupied certain cultural, religious and traditional positions in society. However, during British colonial rule, their social status and freedom were severely affected by discriminatory laws. The Criminal Tribes Act, 1871 subjected certain transgender communities, particularly Hijras, to surveillance and restrictions. Such colonial legal practices contributed to the development of social stigma and institutional discrimination against transgender persons.

After Independence, the Constitution of India established the principles of equality, liberty,

justice and dignity for all individuals. Articles 14, 15, 16, 19 and 21 provide important constitutional protections that are relevant to transgender persons. However, for several decades, the absence of specific legal recognition and protective legislation created difficulties for transgender individuals in exercising their fundamental rights. They continued to experience discrimination in public institutions and faced obstacles in obtaining identity documents and accessing government welfare schemes.

A significant development in the recognition of transgender rights occurred in 2014 through the landmark judgment in National Legal Services Authority v. Union of India (2014) 5 SCC 438. In this case, the Supreme Court recognised transgender persons as a third gender and affirmed their right to determine their own gender identity. The Court emphasised that gender identity is an essential aspect of personal dignity, autonomy and individual freedom. It also directed the Central and State Governments to take appropriate measures for the protection and welfare of transgender persons.

Following this judgment, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, with the objective of prohibiting discrimination and providing legal recognition and protection to transgender persons. The Act introduced provisions relating to identity certificates, education, employment, healthcare, welfare measures and protection against discrimination. However, certain provisions of the legislation attracted criticism, particularly concerning the certification procedure and the extent to which the Act recognised the right to self-identification.

The legal position was further influenced by important judicial developments, including Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), which recognised privacy as a fundamental right and strengthened the constitutional principles of personal autonomy and individual choice. Similarly, in Navtej Singh Johar v. Union of India (2018), the Supreme Court reinforced the importance of dignity, equality and individual freedom in matters relating to identity and personal relationships. These decisions contributed to the broader constitutional understanding of individual rights and protection against discrimination.

The enactment of the Transgender Persons (Protection of Rights) Amendment Act, 2026, introduced another significant development in this area of law. The amendment changed the statutory definition of transgender persons and revised the mechanism for legal recognition by introducing medical and administrative certification requirements. It also introduced stronger penal provisions against certain forms of exploitation and abuse. While the amendment aims to strengthen protection against exploitation, its provisions have raised important constitutional questions concerning self-identification, equality, privacy, dignity and personal autonomy.

The changes introduced by the 2026 Amendment have therefore created a significant debate regarding the relationship between legislative authority and fundamental rights. In particular, the replacement of self-perceived gender identity with a medical certification mechanism raises questions about whether the amended framework is consistent with the principles established by the Supreme Court in the NALSA judgment. The issue is especially important because legal recognition of gender identity directly affects an individual's ability to access public services, employment opportunities, education and other essential rights.

In this context, the present study, titled "A Critical Study on Transgender Rights and Legal Recognition in India: From Constitutional Recognition to the 2026 Amendment," examines the historical development, constitutional foundations and statutory framework governing transgender rights in India. It critically analyses the effectiveness of the Transgender Persons (Protection of Rights) Act, 2019, the impact of the 2026 Amendment, the role of the judiciary and the practical challenges involved in implementing legal protections. The study also evaluates whether the existing legal framework adequately balances protection against exploitation with the fundamental rights to equality, dignity, privacy and self-determination.

Ultimately, the study seeks to understand whether the legal developments in India have genuinely advanced the rights and recognition of transgender persons or whether certain legislative and administrative restrictions continue to create barriers to their equality and social inclusion. It aims to identify the shortcomings in the existing legal framework and suggest appropriate reforms to ensure that every individual, irrespective of gender identity, enjoys equal protection of the law and lives with dignity and freedom.

1.2 Significance of the Study

The subject is significant for three reasons. First, it concerns people who are among the most marginalised in Indian society. The 2011 Census counted roughly 4.88 lakh persons as "others" in the gender category, a figure widely regarded by community organisations as an undercount, and surveys and reports have repeatedly documented exclusion from families, schools, workplaces and health services.[6]

Second, the question lies at the centre of constitutional law. Legal recognition engages the guarantees of equality (Article 14), non-discrimination on grounds of sex (Article 15), freedom of expression, which includes the expression of identity (Article 19(1)(a)), and life with dignity, privacy and autonomy (Article 21). Since *Puttaswamy*, decisional autonomy and informational privacy are firmly part of the last of these.[7] A statute that makes recognition depend on external medical approval therefore raises questions that go to the core of the constitutional

order.

Third, the subject is unsettled and time-sensitive. The 2026 Amendment came into force on 25 May 2026, according to the Union's submission before the Supreme Court, and a batch of writ petitions challenging it is pending before a three-judge bench.[8] A study that examines the amendment while the law is still contested can inform legislative reform, judicial reasoning and administrative practice, and can help identify the safeguards that any recognition regime must contain.

1.3 Review of Literature

1. **Serena Nanda – *Neither Man nor Woman: The Hijras of India* (1990).** Nanda's ethnography documents the social organisation, kinship structures and ritual roles of hijra communities. It offers valuable background on community life but predates NALSA and does not examine statutory recognition or constitutional questions.
2. **Gayatri Reddy – *With Respect to Sex: Negotiating Hijra Identity in South India* (2005).** Reddy explores how hijras understand respectability, kinship and desire, and how these self-understandings differ from imported categories. The work is anthropological rather than legal, and does not address the design of a certification regime.
3. **A. Revathi, *The Truth About Me* (2010), and Laxmi Narayan Tripathi, *Me Hijra, Me Laxmi* (2015).** These autobiographical accounts record family rejection, violence, sex work, discrimination and resilience from the perspective of those who lived them. They provide evidence of lived reality but are not systematic legal evaluations.
4. **Aniruddha Dutta and Raina Roy – "Decolonizing Transgender in India: SomeReflections" (2014).** The authors caution that the umbrella term "transgender" may flatten distinct regional, caste and class-based identities. Their argument is important for any debate over who should fall within a statutory definition.
5. **Tarunabh Khaitan – *A Theory of Discrimination Law* (2015).** Khaitan offers a theoretical account of why and how discrimination law protects disadvantaged groups. It supplies analytical tools for evaluating classification and exclusion, though it does not deal specifically with transgender legislation in India.
6. **Bobby Choudhary – "From Self-Identification to Medical Gatekeeping" (SSRN, 2026).** This recent paper argues that the 2026 Amendment marks a significant retreat from NALSA, by replacing self-declaration with certification by a government-appointed medical board. Its focus is the constitutional objection rather than implementation or

comparative models.

7. **Public health perspective on the 2026 Amendment (Springer, 2026).** This narrative analysis considers how the amendment may obstruct access to gender-affirming healthcare, aggravate mental health burdens and reinforce existing health inequities.
8. **Government and Parliamentary Documents.** These include the 43rd Report of the Parliamentary Standing Committee on Social Justice and Empowerment (2017) on the 2016 Bill, the 2019 Act, the Rules framed under it, and the Statement of Objects and Reasons of Bill No. 79 of 2026. They explain the stated rationale of the legislature but are not independent evaluations.

1.4 Research Gap

Existing scholarship on transgender persons in India falls largely into two groups: ethnographic and autobiographical works that describe community life, and legal commentaries that explain the text of the 2019 Act.[9] Few studies trace the full arc from the colonial regime through NALSA and the 2019 Act to the 2026 Amendment in a single analysis. The literature on the amendment itself is new, and tends to concentrate on the constitutional objection of departing from NALSA, with less attention to the practical consequences of the certification process, the position of persons who already hold certificates or are midway through medical treatment, the interaction between the amended definition and other laws, and the relationship between the new penal provisions and the general criminal law. Comparative evaluation against jurisdictions that have adopted self-declaration models, and against those that retain medical requirements, is also limited. This study seeks to fill these gaps through a critical appraisal of the legal framework, its judicial treatment and its implementation, culminating in concrete reform proposals.

1.5 Objectives of the Study

1. **To trace the development** of legal recognition of transgender persons in India from the colonial period to the 2026 Amendment.
2. **To examine the constitutional and statutory safeguards** available to transgender persons under Indian law.
3. **To assess the certification and enforcement mechanisms** created by the 2019 Act and altered by the 2026 Amendment.
4. **To identify the challenges** faced by transgender persons, including social exclusion, administrative barriers, medical gatekeeping and weak remedies.

5. **To recommend legal and institutional reforms** that protect persons from exploitation while safeguarding dignity, autonomy and privacy.

1.6 Research Questions

The following research questions guide the study:

1. How have transgender persons been recognised, and excluded, in Indian law and society over time?
2. What constitutional guarantees protect the gender identity of transgender persons?
3. Did the Transgender Persons (Protection of Rights) Act, 2019 give effect to the principles laid down in NALSA?
4. How does the 2026 Amendment alter the definition of a transgender person and the process of legal recognition?
5. Is the replacement of self-perceived identity with medical and administrative certification consistent with Articles 14, 15, 19 and 21?
6. Do the new penal provisions adequately address exploitation of transgender persons, and how do they interact with the general criminal law?
7. What can Indian law learn from other jurisdictions on legal gender recognition?

1.7 Research Methodology

This study follows a **doctrinal, analytical and comparative** method. The doctrinal component is based on primary sources: the Constitution of India, the Transgender Persons (Protection of Rights) Act, 2019, the Amendment Act, 2026 and the Bill as introduced, the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, the Bharatiya Sakshya Adhiniyam, 2023, the Rules framed under the 2019 Act, and judgments of the Supreme Court and High Courts. Secondary sources include books, journal articles, parliamentary reports, news reporting on court proceedings and policy documents.

The analytical component evaluates the scope, internal coherence and constitutional compatibility of the provisions governing definition, recognition, certification and penalties. The comparative component draws selectively on international standards and on laws of other countries to illustrate alternative approaches to legal gender recognition.

The study is primarily qualitative. It relies on legal interpretation and judicial analysis, and uses official figures and reports only as background.

1.8 Limitations of the Study

The study has several limitations. It is doctrinal and does not include field surveys or interviews with transgender persons, officials or medical professionals. The 2026 Amendment is under challenge, and the final position may change as the Supreme Court proceeds; the account here reflects the state of proceedings available at the time of writing. Because the study draws on the Bill as introduced as well as reports of the enacted Act, readers should consult the official Gazette text for the exact wording of the final provisions.

Official statistics on transgender persons are limited and probably understate the population, and data on complaints, certificates issued and prosecutions under the 2019 Act is not consistently available.

Comparative material is used illustratively and does not attempt an exhaustive survey. Finally, the study confines itself to legal recognition and protection of transgender persons, and does not attempt a full treatment of related areas such as marriage, adoption, succession and criminal justice reform, except where these bear directly on the argument.

1.9 Scheme of the Study

The research titled "A Critical Study on Transgender Rights and Legal Recognition in India: From Constitutional Recognition to the 2026 Amendment" is organised into five chapters, moving from concept to law, from law to critique, and from critique to reform.

Chapter I – Introduction: This chapter sets out the background, significance, literature, research gap, objectives, questions, methodology and limitations of the study.

Chapter II – Conceptual Framework of Gender Identity and Transgender Persons: This chapter explains the meaning of transgender identity, traces its history in India, describes the nature of exclusion experienced by transgender persons, and discusses the challenges they face in education, employment, health, family life and access to justice.

Chapter III – Legal Framework for the Recognition and Protection of Transgender Persons in India: This chapter examines constitutional safeguards, the 2019 Act, the judicial history of the right to self-perceived gender identity, the criminal and procedural laws, the 2026 Amendment and the certification machinery.[10]

Chapter IV – Critical Analysis of the Legal Recognition of Transgender Persons: This chapter evaluates the effectiveness and constitutional validity of the existing framework, with attention to judicial approaches, implementation, medical scrutiny, comparative models and enforcement.

Chapter V – Findings, Suggestions and Conclusion: The final chapter summarises findings,

offers recommendations for legislative, administrative and institutional reform, indicates areas for future research, and concludes.

Notes to Chapter I

[1] Constitution of India, arts. 14, 15, 16, 19 and 21; National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

[2] National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

[3] Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019).

[4] Transgender Persons (Protection of Rights) Amendment Bill, 2026 (Bill No. 79 of 2026),as introduced in the Lok Sabha on 13 March 2026; Transgender Persons (Protection of Rights) Amendment Act, 2026 (Act 3 of 2026), assented to on 30 March 2026.

[5] Laxmi Narayan Tripathi v. Union of India, W.P.(C) No. 548 of 2026, Supreme Court ofIndia; Supreme Court Observer, "Challenge to the Transgender Persons Amendment Act, 2026".

[6] Census of India, 2011, Primary Census Abstract (Data Highlights: Transgender);National Human Rights Commission and civil society reports on discrimination against transgender persons.

[7] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; Constitution of India,art. 21.

[8] Reports of Supreme Court proceedings in W.P.(C) No. 548 of 2026 and connectedmatters, including the orders of 4 May, 15 June, 3 August and 17 August 2026 (LiveLaw; Verdictum; Supreme Court Observer).

[9] Transgender Persons (Protection of Rights) Act, 2019; Transgender Persons(Protection of Rights) Rules, 2020.

[10] Constitution of India; Transgender Persons (Protection of Rights) Act, 2019; Transgender Persons (Protection of Rights) Amendment Act, 2026; Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023); Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023); Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023).

CHAPTER II

CONCEPTUAL FRAMEWORK OF GENDER IDENTITY AND TRANSGENDER PERSONS

2.1 Introduction

Law can only protect a group it is able to describe. Before examining the statutes and judgments that govern transgender persons in India, it is therefore necessary to understand what the term means, where it comes from, and how the experience of those it describes shapes the legal problem. The vocabulary is itself contested. Terms such as hijra, kinner, aravani, jogta, kothi, transgender man and woman, genderqueer and intersex describe overlapping but distinct realities, some rooted in long-standing cultural communities and others in modern ideas of gender identity.[11]

This chapter examines the meaning and historical development of transgender recognition, the character of the exclusion experienced by transgender persons, and the practical obstacles they meet when they try to claim their rights. It provides the conceptual base for the legal analysis that follows.

2.2 Meaning of Transgender Identity

In general usage, "transgender" describes a person whose sense of gender does not correspond to the sex assigned at birth. Gender identity, in this sense, is an inner conviction about one's own gender, and it is distinct from sex characteristics and from sexual orientation. A person may be heterosexual, gay, lesbian or bisexual and transgender at once, because orientation concerns whom a person is attracted to, while gender identity concerns who a person is.[12]

Indian law has used the term in at least three senses. The Supreme Court in NALSA adopted a broad understanding that included persons who identify with a gender different from the one assigned at birth, as well as the traditional hijra and similar communities, and it accepted that identity rests on self-perception rather than on surgery or biological test.[13] The 2019 Act followed a similar, inclusive pattern: it defined a transgender person as someone whose gender does not match the gender assigned at birth, whether or not that person has undergone surgery or hormonal or other therapy, and expressly included trans men and women, persons with intersex variations, genderqueer persons and those with socio-cultural identities such as kinner, hijra, aravani and jogta. The 2026 Amendment adopts a narrower, categorical understanding based on listed socio-cultural identities and specified intersex variations, together with persons compelled by force or inducement to present a transgender identity.[14]

These differences are not merely semantic. A person's status under the statute decides whether protection, welfare entitlements and criminal remedies are available. Hence the definition is the most consequential provision in the entire scheme, and each shift in its wording reallocates the legal standing of thousands of people. Intersex persons, whose variations in sex characteristics arise at birth, are conceptually distinct from transgender persons, whose identity relates to gender; Indian law has treated them within one statutory frame for administrative convenience, and the 2026 Amendment merges them in a single clause.

2.3 Historical Evolution of Transgender Recognition

Gender-variant persons are not a modern phenomenon in the subcontinent. Ancient and classical texts refer to a "third nature" (*tritiya prakriti*), and epic and religious narratives feature characters who cross or combine gender categories. During the Mughal period, eunuchs served in courts and households and held positions of trust. Hijra communities developed their own kinship structure of *gurus* and *chelas*, and their own ritual role at births and weddings, which gave them a recognised if ambivalent place in social life.[15]

Colonial rule changed this position. The Criminal Tribes Act, 1871 brought "eunuchs" within a regime of registration and surveillance and criminalised conduct associated with them, treating a whole community as presumptively criminal. Section 377 of the Indian Penal Code, enacted in 1860, penalised "carnal intercourse against the order of nature" and, although it was not framed in terms of gender identity, it was used to stigmatise and police gender and sexual non-conformity. The Criminal Tribes Act was repealed in 1952, but its social residue, and the later enactment of habitual offender laws and local begging and public nuisance statutes, continued to expose hijras to harassment.

After Independence, the constitutional text promised equality, but gender-variant persons remained largely invisible to law. In 2013 the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* reversed the Delhi High Court's reading down of Section 377, observing that only a small fraction of the population was affected, a remark widely criticised.[16] Within months, in April 2014, the Court delivered NALSA, which marked a decisive change by recognising a third gender and a right of self-identification. The 2015 Rajya Sabha passage of a private member's Bill on the rights of transgender persons, the Government's own 2016 Bill and its reference to a Parliamentary Standing Committee, and finally the 2019 Act, followed.[17] States also experimented: Tamil Nadu established a transgender welfare board in 2008, Kerala adopted a transgender policy in 2015, and Karnataka later provided a one per cent horizontal reservation in public employment. In 2018, in *Navtej Singh Johar*, the Court read down Section

377 and overruled *Koushal*, anchoring sexual orientation and gender identity in dignity and autonomy. The 2026 Amendment is the latest, and most contested, turn in this history.

2.4 Nature of Exclusion Faced by Transgender Persons

The exclusion of transgender persons is cumulative, beginning in the family and extending into every institution of public life. Its main features are described below.

2.4.1 Familial and Social Rejection

Many transgender persons are separated from their families in childhood or adolescence, often because of the family's reaction to their gender expression. This severs access to housing, inheritance, emotional support and, frequently, formal education. Community networks such as the hijra *gharana* system have historically offered substitute kinship, but they cannot replace the legal and economic safety that a family provides.

2.4.2 Economic Marginalisation

Exclusion from schooling and employment pushes many transgender persons towards traditional community occupations such as *badhai* (ritual blessing), begging and sex work, which are informal, unsafe and often stigmatised or penalised. Discrimination in hiring, along with the absence of consistent documents, narrows alternatives.

2.4.3 Violence and Impunity

Transgender persons face a high risk of physical, sexual and verbal violence in public spaces, in custody and within households. Fear of ridicule or hostile police response discourages reporting, and violence therefore remains substantially under-documented.

[18]

2.4.4 Invisibility in Law and Data

Where official records do not recognise a person's identity, State policy cannot be designed for that person. Population data on transgender persons are limited, and the 2011 Census figure is widely regarded as an undercount. This invisibility perpetuates itself: without numbers, welfare design and budgeting remain weak.

2.4.5 Intersection with Caste, Class and Region

Exclusion does not fall equally. Transgender persons from Dalit and other marginalised castes, from poor households, from rural areas and from minority communities often experience compounded disadvantage. Transgender men and non-binary persons, who may not belong to the traditional community structures, face their own form of invisibility, because public perception tends to associate transgender identity with hijra communities alone.

2.4.6 Psychological Impact

Prolonged rejection, harassment and uncertainty about legal status can have serious effects on mental well-being, including anxiety, depression and social withdrawal. The experience of being required to prove one's identity to officials, or of having it questioned, can itself be a source of distress.[19]

2.5 Challenges Faced by Transgender Persons

Even where laws and schemes exist, transgender persons confront practical obstacles in securing their benefit. The principal ones are the following.

1. **Lack of Identity Documents.** Almost every entitlement, from school admission to a bank account, a ration card, a passport or a welfare scheme, depends on a document. When a person's documents carry a name and gender that no longer correspond to their identity, or when a recognised certificate cannot be obtained or is delayed, access to all of these is endangered. The shift to a medical and administrative verification process under the 2026 Amendment makes this challenge more acute for applicants whose cases are pending.
2. **Barriers in Education.** Bullying, the absence of gender-neutral facilities, rejection by families and mismatched records lead many transgender students to leave school early. Without education, later employment prospects shrink.
3. **Discrimination in Employment.** Prejudice in recruitment and the workplace, the lack of clear anti-discrimination enforcement and the near absence of reservation in most jurisdictions limit access to stable work, despite the direction in NALSA that transgender persons be treated as socially and educationally backward classes.
4. **Obstacles in Healthcare.** Many persons face refusal or mistreatment by medical staff, limited availability of trained professionals, high costs for hormone therapy or surgery, and a lack of insurance coverage. Interruption of ongoing therapy for persons whose applications are stalled has been placed before the Supreme Court in the current proceedings.[20]
5. **Difficulty in Accessing Justice.** Complaints of violence or discrimination may meet disbelief or hostility at police stations. The 2019 Act's modest penalties and weak enforcement institutions, discussed in Chapter IV, further limit effective remedy.
6. **Housing and Public Spaces.** Landlords frequently refuse to let accommodation to transgender persons, and access to public toilets, transport and shelters remains uneven.

7. **Insufficient Support and Rehabilitation.** Shelters, counselling, skill training and rehabilitation of persons leaving exploitative arrangements are scarce. The Statement of Objects and Reasons of the 2026 Bill itself recognises exploitation through forced begging and servitude, which makes the availability of rehabilitation and protective services a central practical question.

2.6 Conclusion

Transgender identity in India is simultaneously ancient and newly regulated. The community has occupied a recognised cultural position for centuries, been criminalised by colonial law, left in legal obscurity for decades after Independence, acknowledged by the Supreme Court in 2014, and again brought into debate by the 2026 Amendment. The exclusion that transgender persons experience is multi-layered and self-reinforcing: lack of documents leads to lack of education, which leads to lack of employment, which leads to dependence on informal and risky livelihoods. Any legal regime must therefore be assessed by one test above all: whether it makes it easier or harder for a person to be recognised, documented and included. This conceptual foundation underpins the examination of the legal framework in the next chapter.

Notes to Chapter II

[11] Aniruddha Dutta and Raina Roy, "Decolonizing Transgender in India: Some Reflections"(2014) 1(3) Transgender Studies Quarterly 320.

[12] Yogyakarta Principles on the Application of International Human Rights Law inrelation to Sexual Orientation and Gender Identity (2006), and Yogyakarta Principles plus 10 (2017).

[13] National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

[14] Transgender Persons (Protection of Rights) Act, 2019, s. 2(k); Transgender Persons(Protection of Rights) Amendment Bill, 2026 (Bill No. 79 of 2026), cl. 2(iv).

[15] Serena Nanda, *Neither Man nor Woman: The Hijras of India* (1990); Gayatri Reddy, *With Respect to Sex* (2005).

[16] Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1; Navtej Singh Johar v. Unionof India, (2018) 10 SCC 1.

[17] Standing Committee on Social Justice and Empowerment, 43rd Report on theTransgender Persons (Protection of Rights) Bill, 2016 (2017); Transgender Persons (Protection of Rights) Act, 2019.

[18] National Human Rights Commission and civil society documentation on violenceagainst

transgender persons; A. Revathi, *The Truth About Me* (2010).

[19] Laxmi Narayan Tripathi, *Me Hijra, Me Laxmi* (2015).

[20] Supreme Court Observer, "Challenge to the Transgender Persons Amendment Act,2026"; LiveLaw report of the hearing of 17 August 2026 in W.P.(C) No. 548 of 2026.

CHAPTER III

LEGAL FRAMEWORK FOR THE RECOGNITION AND PROTECTION OF TRANSGENDER PERSONS IN INDIA

3.1 INTRODUCTION

Indian law on transgender persons is not found in one place. It draws on constitutional guarantees interpreted by the Supreme Court, a dedicated statute enacted in 2019 and amended in 2026, the general criminal and procedural codes, state-level welfare policies, and administrative machinery for certification. The coherence of this framework depends on how these sources fit together, and the 2026 Amendment has changed several of their points of contact.

This chapter first examines the constitutional foundations, then the 2019 Act, then the history of the right to self-perceived gender identity under Section 4(2), then the criminal and procedural laws, and then the 2026 Amendment with its certification machinery. It closes with an overall assessment.

3.2 Constitutional Protection of Transgender Persons

The Constitution does not mention transgender persons, but its guarantees have been interpreted to include them.

3.2.1 Article 14 – Equality Before Law

Article 14 guarantees equality and equal protection of the laws. Any classification must rest on an intelligible differentia with a rational relation to the object sought, and, following *Shayara Bano*, legislation may also be tested for manifest arbitrariness.[21] A statute that differentiates among persons within the transgender community, or between transgender and cisgender persons in the verification of identity, must satisfy this standard.

3.2.2 Articles 15 and 16 – Non-Discrimination and Equality of Opportunity

In NALSA the Court held that the word "sex" in Articles 15 and 16 is not confined to biological sex and extends to gender identity and expression. Discrimination on the ground of gender identity is therefore constitutionally prohibited in State action and in public employment. The

Court further directed that transgender persons be treated as socially and educationally backward classes for admissions and appointments.[22]

3.2.3 Article 19(1)(a) – Freedom of Expression

The Court recognised that dress, name, behaviour and appearance through which a person expresses gender identity are forms of self-expression protected by Article 19(1) (a), subject to reasonable restrictions under Article 19(2). A legal regime that penalises or conditions such expression must therefore justify itself within those limits.

3.2.4 Article 21 – Life, Dignity, Autonomy and Privacy

Article 21 is the anchor of transgender rights. NALSA treated recognition of gender identity as a part of dignity and personal autonomy. In *Puttaswamy* a nine-judge bench held that privacy is a fundamental right and that it includes decisional autonomy and informational privacy, as well as sexual orientation as an attribute of privacy and dignity. [23] In *Navtej Singh Johar*, the Court emphasised that identity and intimate choice are central to a life with dignity, and held that constitutional morality prevai ls over social morality. Together these decisions indicate that a person's gender identity is an intimate matter on which the State must ordinarily defer to the individual, and that any intrusion, such as compulsory examination of the body, must satisfy the tests of legality, legitimate aim and proportionality.

3.3 Transgender Persons (Protection of Rights) Act, 2019

The 2019 Act, which came into force in January 2020, is the first dedicated central statute on transgender persons. Its principal features were as follows.

- **Definition (Section 2(k)).** A transgender person was defined by reference to a mismatch between current gender and the gender assigned at birth, whether or not surgery or hormonal therapy had been undergone, and the definition expressly included trans men and women, persons with intersex variations, genderqueer persons and those with socio-cultural identities such as kinner, hijra, aravani and jogta.
- **Prohibition of discrimination (Section 3).** The Act barred discrimination in education, employment, healthcare, access to public goods and facilities, movement, residence and public or private office.
- **Recognition and certification (Sections 4 to 7).** Section 4 provided for recognition and, in sub-section (2), the right to self-perceived gender identity; Section 5 provided for an application to the District Magistrate; Section 6 for issue of a certificate of identity; and Section 7 for a revised certificate after surgery to change gender.

- **Residence and health (Sections 12 and 15).** The Act provided that a child should not be separated from parents on the ground of being transgender except by court order, and obliged the government to provide healthcare, including facilities for hormonal therapy and surgery and insurance coverage.
- **National Council (Section 16).** A National Council for Transgender Persons was set up to advise the Government and monitor implementation.
- **Offences (Section 18).** Forced or bonded labour, denial of access to public places, forcing a person to leave residence, and physical, sexual, verbal, emotional and economic abuse attracted imprisonment of six months to two years and fine.[24]

The Act was criticised from the start. Community groups objected that, although Section 4(2) professed self-perception, the requirement of a District Magistrate's certificate and, for a revised male or female certificate, proof of surgery, appeared to undercut it. They also pointed to the absence of reservations, the modest penalties compared with those for sexual offences against women, and limited consultation.[25] Nonetheless, the Act established a recognised legal category and a framework of rights and duties that the 2026 Amendment now reworks.

3.4 Section 4(2) and Its Judicial History

Section 4(2) of the 2019 Act declared that a person recognised as transgender had a right to self-perceived gender identity. Its history is bound up with a line of judicial decisions.

In NALSA, the Supreme Court held that a person's self-identified gender is part of their personality and dignity, that the State must legally recognise a gender chosen by the person, and that insistence on surgery or medical procedure as a condition of recognition is unacceptable. The Court directed the Union and the States to recognise third gender status, to extend welfare measures and to run public awareness programmes.[26]

Subsequent decisions applied these principles in specific contexts. In *K. Prithika Yashini*, the Court enforced NALSA in the context of public recruitment, directing that a transgender candidate be given a fair opportunity under a revised scheme.[27] The Madras High Court in *Arun Kumar v. Inspector*

General of Registration (2019) held that a transgender woman who identifies as a woman is a "bride" for the purposes of the Hindu Marriage Act, 1955, and that identity must be respected without regard to surgery.[28] In *Supriyo* (2023), although the Constitution Bench declined to recognise a right to marry or enter civil unions for same-sex couples, the opinions recorded that transgender persons in heterosexual relationships can marry under existing personal

laws.[29]

In 2026 Parliament deleted Section 4(2). Whether the legislature may, by amending a statute, effectively remove the basis of a judicial declaration is a question the Supreme Court will now have to address. The established principle is that Parliament may alter the legal basis on which a judgment rests, but may not simply override it, and a constitutional right declared by the Court cannot be curtailed by statute.[30] The petitioners argue that NALSA's holding is grounded in Articles 14, 15, 19 and 21 and not in the 2019 Act, so that its removal from the statute leaves the constitutional right intact; the Union argues that NALSA was a decision of a two-judge bench and that Parliament may define the class of beneficiaries of a welfare statute.[31]

3.5 Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS), in force since 1 July 2024, replaced the Indian Penal Code. Although it does not address transgender persons as a distinct category of victim, it matters in three ways.

First, the BNS contains a definition clause for "gender" which states that the pronoun "he" applies to any person, whether male, female or transgender, and which appears to incorporate the meaning of "transgender" given in the 2019 Act. If so, the narrowing of that definition in 2026 has a knock-on effect on the reach of the criminal code, a point the Statement of Objects and Reasons of the 2026 Bill itself touches on when it speaks of difficulties of compatibility with other enactments.[32]

Second, general offences apply to violence against transgender persons: grievous hurt (including emasculation), criminal intimidation, stalking, kidnapping, trafficking, and kidnapping or maiming a child for begging.[33] The new Section 18 offences in the 2026 Amendment operate cumulatively with these provisions, as the Statement of Objects and Reasons confirms.

Third, a significant gap remains. The offence of rape in the BNS is defined with a female victim, and the 2018 reading down of Section 377 was not followed by a gender-neutral offence of sexual assault in the new code. Sexual abuse of a transgender person is therefore addressed principally by the Section 18(d) offence, which carries a maximum of two years, a disparity that commentators and petitioners have highlighted.[34]

3.6 Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) governs the registration of information,

investigation, arrest, bail and trial. For transgender victims, its importance is practical: Section 173, which provides for registration of information in cognisable cases, including electronically and irrespective of territorial jurisdiction, is the point at which many complaints either proceed or are lost. Procedures for medical examination, search of persons and custody raise special questions of dignity for transgender persons, and the Act contains no gender-identity-specific safeguards; guidance for police therefore depends largely on departmental instructions and judicial directions.

The Bharatiya Sakshya Adhiniyam, 2023 (BSA) governs proof. Its provisions on expert opinion (Section 39) and electronic records (Section 63) matter where medical opinion or documentary evidence is used to establish identity or the commission of an offence. In the certification context, the reliance on a medical board under the 2026 Amendment places expert medical opinion at the centre of an administrative, not a judicial, decision, which raises the question of what standard of reasoning and review should attach to it.

[35]

3.7 Transgender Persons (Protection of Rights) Amendment Act, 2026

The Amendment Bill was introduced in the Lok Sabha on 13 March 2026 by the Minister of Social Justice and Empowerment, passed by voice vote on 24 March amid an opposition walkout, passed by the Rajya Sabha on 25 March, and assented to on 30 March. The Union told the Supreme Court in August 2026 that it came into force on 25 May 2026.[36] Its principal features, as set out in the Bill as introduced, are summarised below.

Provision	2019 Act	2026 Amendment
Definition (s. 2(k))	Mismatch between gender identity and birth-assigned gender; includes trans men and women, intersex persons, genderqueer persons and socio-cultural identities	Limited to socio-cultural identities (kinner, hijra, aravani, jogta, eunuch), listed intersex variations, and persons compelled by force or inducement to present a transgender identity; proviso excludes persons with different sexual orientations and selfperceived sexual identities
Self-perceived identity (s. 4(2))	Right to self-perceived gender identity	Sub-section omitted
Certification (s. 6)	District Magistrate issues certificate	District Magistrate acts after examining recommendation of a medical board headed by a Chief

		or Deputy Chief Medical Officer, and may take other medical expert assistance
Change of gender (s. 7)	Person "may" apply for revised certificate after surgery	Person "shall" apply; medical institution must report surgery details to the District Magistrate and the authority
Documents	Entitlement to change first name	Entitlement to change first name in birth certificate and official documents, for persons certified under the amended definition
National Council (s. 16)	State representatives by rotation	State representatives not below the rank of Director
Offences (s. 18)	Six months to two years and fine for listed wrongs	Same for clauses (a) to (d); new offences with terms up to life imprisonment and minimum fines for kidnapping or abduction coupled with mutilation or forced procedures, and for forcing persons or children to present as transgender and to beg or labour

The stated rationale in the Statement of Objects and Reasons is that the Act is meant for a specific class of persons facing severe exclusion for reasons beyond their choice, that the earlier definition was vague and unworkable, that protection should not rest on acquired characteristics or self-perceived identity, and that existing law did not adequately address abduction, bodily harm and forced identity.[37] The new penal provisions are graded: for adult victims of kidnapping with grievous harm, imprisonm ent from ten years to life with a fine of not less than two lakh rupees; for child victims, imprisonment for life with a fine of not less than five lakh rupees; for forcing adults to present as transgender and to beg or labour, five to ten years; and for children, ten to fourteen years.[38]

The Amendment has been challenged in nine petitions under Article 32 on grounds of Articles 14, 15, 19 and 21, led by *Laxmi Narayan Tripathi v. Union of India*. On 4 May 2026 the Court issued notice and declined an interim stay, directing that the matter be placed before a three-judge bench; on 15 June it stayed High Court proceedings on the same challenge while issuing notice on the Union's transfer petition; on 3 August it orally observed that the amendment cannot affect rights that have already accrued; and on 17 August the Union stated that identity cards already issued will continue to be valid, subject to the outcome.[39] The matter remained pending at the time of writing.

3.8 Certification Mechanism and the National Portal

The 2019 Act and the 2020 Rules created an application process through the District Magistrate and, in 2020, a National Portal for Transgender Persons through which applications could be filed online and certificates and identity cards issued. Under the 2026 Amendment, the process adds a medical board as the body whose recommendation the District Magistrate must examine, and requires a person who undergoes genderaffirming surgery to obtain a revised certificate, with the medical institution also reporting the details.

The transition has been uneven. Reports before the Supreme Court indicate that the national identity portal was not functioning, that applications of some persons have stalled, and that some persons undergoing hormone therapy have had treatment interrupted. The Union's assurance that existing cards remain operative addresses part of the problem, but not the position of applicants whose cases were pending when the Amendment took effect.[40] A further unresolved point is how the amended definition will be applied by medical boards: the Act specifies categories but not the clinical criteria, the evidence or the procedure that boards must follow, and these are left to rules and administrative practice.

3.9 Overall Assessment of the Indian Legal Framework

India has in place a broad framework of constitutional principle, statute and administrative machinery concerning transgender persons. The Constitution, as read in NALSA, *Puttaswamy* and *Navtej*, grounds recognition in dignity, autonomy and equality. The 2019 Act, despite its limitations, translated these principles into entitlements and a certification scheme. The BNS, BNSS and BSA supply the general criminal, procedural and evidentiary law, while the 2026 Amendment reorients the scheme by narrowing the protected class, replacing self-declaration with medical and administrative verification, and heightening penalties for particular forms of exploitation.

The framework thus pulls in two directions. Its penal provisions respond to documented abuses such as forced castration, abduction and servitude, which no one disputes should be punished severely. Its recognition provisions, however, move away from the principle that identity belongs to the person. The next chapter assesses whether the two can be reconciled and whether the present design meets constitutional standards.[41]

Notes to Chapter III

[21] Constitution of India, art. 14; Shayara Bano v. Union of India, (2017) 9 SCC 1.

[22] National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (on arts. 15

and16 and reservation).

[23] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; Navtej Singh Joharv. Union of India, (2018) 10 SCC 1.

[24] Transgender Persons (Protection of Rights) Act, 2019, ss. 2(k), 3, 4 to 7, 12, 15, 16 and18; Transgender Persons (Protection of Rights) Rules, 2020.

[25] Standing Committee on Social Justice and Empowerment, 43rd Report (2017); civilsociety critiques of the 2019 Act.

[26] National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

[27] K. Prithika Yashini v. Chairman, Tamil Nadu Uniformed Services Recruitment Board,(2015) 8 SCC 573.

[28] Arun Kumar v. Inspector General of Registration, Madras High Court (22 April 2019) (W.P.(MD) No. 4125 of 2019).

[29] Supriyo @ Supriya Chakraborty v. Union of India, 2023 INSC 920.

[30] Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283 (on thelegislature's power to remove the basis of a judicial decision).

[31] Verdictum and LiveLaw reports of proceedings of 4 May and 15 June 2026 in W.P.(C) No. 548 of 2026 and Transfer Petition (C) Nos. 1686-1692 of 2026.

[32] Bharatiya Nyaya Sanhita, 2023, s. 2 (definitions); Bill No. 79 of 2026, Statement ofObjects and Reasons, para. 4. The cross-reference should be verified against the Gazette text.

[33] Bharatiya Nyaya Sanhita, 2023, ss. 116 and 117 (grievous hurt), 139 (kidnapping ormaiming a child for begging), 143 (trafficking), 78 (stalking) and 351 (criminal intimidation); section numbers to be verified against the official text.

[34] Vision IAS, "Transgender Persons (Protection of Rights) Amendment Act, 2026"(Monthly Magazine, April 2026), noting the disparity between the maximum term under s. 18(d) and penalties for rape of women.

[35] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 173; Bharatiya Sakshya Adhiniyam, 2023,ss. 39 and 63.

[36] Bill No. 79 of 2026 (PRS Legislative Research text); Wikipedia and iPleaderssummaries of the legislative history; counsel's statement to the Supreme Court in August 2026 that the Act came into force on 25 May 2026.

[37] Bill No. 79 of 2026, Statement of Objects and Reasons, paras. 1 to 8 (Dr. VirendraKumar, 12
March 2026).

[38] Bill No. 79 of 2026, cl. 7 (substituted s. 18(a) to (h)). The text of the Act as passedshould be checked against the Bill as introduced.

[39] Supreme Court Observer, "Challenge to the Transgender Persons Amendment Act, 2026" (W.P.(C) No. 548 of 2026); LiveLaw, 17 August 2026; Verdictum, 15 June 2026; The Leaflet, "Supreme Court issues notice on plea challenging 2026 Transgender Amendment Act".

[40] Supreme Court Observer, recap of developments; LiveLaw and Verdictum reports ofhearings on 3 August and 17 August 2026.

[41] Constitution of India; Transgender Persons (Protection of Rights) Act, 2019; Transgender Persons (Protection of Rights) Amendment Act, 2026; Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023.

CHAPTER IV
CRITICAL ANALYSIS OF THE LEGAL RECOGNITION OF TRANSGENDER PERSONS

4.1 Introduction

The previous chapter set out the constitutional, statutory and institutional framework governing transgender persons. This chapter asks how well that framework works and whether its present design can be defended. Two questions run through the analysis. The first is one of effectiveness: do the 2019 Act and its machinery deliver recognition, services and remedies in practice? The second is one of validity and principle: does the 2026 Amendment, by replacing self-declaration with medical and administrative certification, remain consistent with the guarantees of equality, dignity, privacy and autonomy?

The analysis attempts to present fairly the position of the Union, which seeks to concentrate protection on persons facing severe exclusion and to punish serious exploitation, as well as that of the petitioners and community groups, who regard the change as a retreat from NALSA.[42] Because the constitutional challenge is pending, the discussion is analytical and should not be read as predicting the outcome.

4.2 Effectiveness of the 2019 Act

The 2019 Act recognised a legal category, prohibited discrimination and created institutions. Its practical effectiveness, however, was limited by several features, many of which preceded the 2026 Amendment.

First, the Act's central promise of self-perceived identity was qualified by the certification process. A person was recognised in principle by self-perception, but in practice needed a certificate issued by the District Magistrate, and a revised certificate after surgery. Community groups argued that this reintroduced external verification through the administrative route.[43] Second, the penal provisions were weak. A maximum of two years for offences that include sexual abuse and physical violence sat uneasily beside the penalties for comparable offences against other victims, and enforcement data was sparse. The Statement of Objects and Reasons of the 2026 Bill itself concedes that Section 18 as enacted addressed only general wrongs and did not reach offences of exceptional gravity.
[44]

Third, the Act contained no reservation or affirmative action, despite NALSA's direction on backward - class treatment, leaving the question to states and producing uneven outcomes. Fourth, enforcement institutions were thin: a National Council with advisory functions, complaint officers whose practical reach is uncertain, and welfare schemes that depended on budget and political attention. The practical result was that a person's access to the law depended heavily on documents, on awareness of rights, and on the goodwill of local officials. The weaknesses of the 2019 Act are, however, different in kind from the problem identified in the 2026 Amendment. The former were failures of implementation and ambition within a rights-based design; the latter, critics say, changes the design itself.

4.3 Judicial Approach Towards Transgender Rights

The Supreme Court has consistently described the position of transgender persons in terms of dignity, equality and autonomy. NALSA treated gender identity as intrinsic to personality, rejected surgery as a precondition of recognition, and directed State action. *Puttaswamy* and *Navtej* strengthened the doctrinal ground by recognising autonomy, privacy and identity as core elements of Article 21.

The petitioners' challenge to the 2026 Amendment builds on this foundation. Their principal arguments, as reported, are as follows. Under Article 14, the narrowed definition draws a classification that is under-inclusive, in that it excludes trans men, non-binary and genderqueer persons who face discrimination, and arbitrary, in that it requires transgender persons, but not cisgender persons, to submit to medical examination in order to be legally recognised. Under Articles 15 and 21, it is said to deny recognition of identity on the ground of gender and to intrude on bodily integrity, privacy and dignity. Under Article 19(1)(a), the removal of self-perceived identity is said to burden expression of identity. The petitioners also argue that the

amendment removes the very basis of NALSA, and that the proviso excluding persons with "self-perceived sexual identities", which is expressed to apply retrospectively, is unclear and open to misuse.[45]

The Union's position, as reported, is that the Act is a welfare statute and that Parliament is entitled to define the class it intends to benefit; that NALSA was a decision of a two-judge bench and does not freeze the statutory definition; that a verification mechanism is necessary to prevent misuse of identity-based benefits; and that the new penal provisions respond to real and grave abuses. The Court, in the May 2026 hearing, took note of both the concerns about the move from self-identification to medical certification and the questions about possible misuse of benefits.[46]

Two features of the judicial response so far merit mention. The Court declined an interim stay, so the Act is operative; but it has indicated, orally, that the amendment cannot take away rights that have already accrued, and the Union has accepted that existing identity cards remain valid. This approach preserves the position of existing certificate holders but leaves open the position of applicants, of persons outside the new definition, and of persons mid-treatment. In addition, the Rajasthan High Court, in an unrelated reservation case, observed in the epilogue to its judgment that the proposed change risks reducing recognition of gender identity to a State-mediated entitlement, a view that illustrates the concerns the petitioners raise.[47]

As a matter of principle, a few analytical points can be made. The central difficulty for the Union is proportionality: even if the aim of directing benefits to those in genuine need is legitimate, the question is whether a medical-board requirement is a necessary and the least intrusive means of achieving it, when the 2019 scheme already involved a District Magistrate's verification. For the petitioners, the difficulty is to meet the argument that welfare entitlements, such as reservations and schemes, may legitimately require some form of verification, and that recognition for legal purposes and eligibility for benefits can be distinguished. That distinction, between a right to be recognised and an entitlement to specific benefits, is probably the most productive ground for reconciling the competing positions, and the Court may consider whether the Act can be read to preserve the first while regulating the second.

4.4 Certification and Administrative Implementation

The efficacy of any recognition scheme depends on how it works at the counter. Evidence from the 2019 regime, and from the early months of the 2026 Amendment, suggests several problems.

Delay and discretion are the first. Where certificates depend on the discretion of a District

Magistrate with no statutory timeline or reasoned-order requirement, applicants are exposed to delay and inconsistency. The addition of a medical board lengthens the chain. Capacity is the second: medical boards headed by a Chief or Deputy Chief Medical Officer are an existing administrative layer with many other duties, and the Act does not say how they will be constituted, what training they will have, or how a board will be expected to determine socio-cultural identity, which is not a medical fact. The third problem is transition: persons whose applications were pending, or who were undergoing treatment, found their position uncertain, and affidavits before the Supreme Court describe stalled applications and interrupted hormonal therapy.[48]

The fourth is documentary consequence. The amended Section 6(4) entitles a certified person to change the first name in the birth certificate and other official documents, which is a real gain, but the entitlement attaches only to persons certified under the narrower definition. Those who are excluded from that definition have no statutory route at all, and must rely on court orders and general laws on change of name.

4.5 Medical Scrutiny and Its Challenges

The replacement of self-declaration by a medical board raises several interlinked difficulties.

1. **Conceptual mismatch.** Gender identity is an inner conviction, not a pathology or a physical sign that a clinician can observe. The World Health Organization, in ICD-11 (2019), moved gender incongruence out of the chapter on mental disorders and into one on conditions related to sexual health, in recognition that it is not itself a disorder. A board asked to certify identity is therefore being asked to determine something that medicine does not claim to measure. Medical bodies and commentators have criticised the amendment as inconsistent with current standards of transgender healthcare.[49]
2. **Bodily integrity and privacy.** To the extent that board scrutiny involves examination or disclosure of intimate medical information, it engages privacy and bodily integrity under *Puttaswamy*, and the duty of medical institutions to report surgery details to authorities raises concerns about confidentiality and data protection. The Act does not say what safeguards will govern such information.
3. **Asymmetry.** No cisgender person is required to satisfy a medical board in order to be recognised in the gender recorded at birth. The petitioners treat this asymmetry as a form of discrimination; the Union's reply is that the Act confers benefits and that verification is appropriate where benefits are claimed.
4. **Risk of coerced medicalisation.** NALSA specifically condemned the insistence on

surgery as a condition for recognition. The requirement in the amended Section 7 that a person who undergoes surgery "shall" apply for a revised certificate, together with the reporting duty of hospitals, creates an additional administrative and potentially coercive link between medical procedure and legal status. This is in tension with the stated concern of the Act to protect persons from forced procedures.

5. **Health consequences.** Public health commentators warn that restrictive recognition may deter persons from seeking care, interrupt hormone therapy and worsen mental health, and the interruption of therapy for some persons is already before the Court.[50]

   It should be added, for balance, that the concern behind the amendment about forced castration, coerced entry into exploitative arrangements and the abduction of children is serious and documented, and that no part of this analysis questions the need to punish such conduct. The issue is whether the legitimate aim of preventing exploitation requires the removal of self-identification for all, or whether it can be met by the targeted penal provisions alone.

4.6 Comparative Perspectives

Other jurisdictions illustrate a range of approaches.

A number of countries have adopted self-declaration models. Argentina's Gender Identity Law of 2012 allows a person to change gender on documents on the basis of a declaration, without medical or judicial approval. Malta's 2015 legislation on gender identity follows a similar model. Pakistan's Transgender Persons (Protection of Rights) Act, 2018 expressly recognises self-perceived gender identity, and Germany's Self-Determination Act, which took effect in November 2024, replaced a court and expert-assessment procedure with a declaration made before the registry.[51]

Other systems retain medical or judicial gatekeeping, though with a trend toward relaxation. The United Kingdom's Gender Recognition Act, 2004 requires a medical diagnosis, a period of living in the acquired gender and an application to a panel. The European Court of Human Rights, in *A.P., Garçon and Nicot v. France* (2017), held that making legal recognition conditional on sterilisation violates the right to private life. Such decisions reflect a convergence toward the principle that legal recognition should not depend on invasive medical requirements.

Two lessons follow for India. First, jurisdictions that have adopted self-declaration have commonly combined it with criminal law safeguards against fraud and with separate, targeted rules on access to particular benefits or sex-segregated spaces, which suggests that recognition

and benefit-eligibility can be regulated separately. Second, India's own constitutional jurisprudence in NALSA already places it closer to the self-declaration model than to the diagnosis-based model. The comparison also carries a caution: comparative models arise from different constitutional and social settings, and the Indian concern with exploitation of children and community members within *guru-chela* arrangements is specific to India and should not be dismissed.

4.7 Critical Assessment of Enforcement Mechanisms

The framework has real strengths. The Constitution, as interpreted, gives a firm foundation. The 2026 Amendment's heavier penalties for abduction, forced procedures and forced begging respond to documented harms, and the recognition that child victims call for a higher level of protection is well founded. The interaction with the general criminal law gives prosecutors a broad range of charges, and the Union's assurance that existing cards remain valid shows responsiveness to the Court's concerns.

Against these strengths stand significant concerns. The narrowing of the protected class leaves out persons, such as trans men and non-binary persons, whose exclusion has no evident connection with the stated aim of protecting those facing the gravest oppression. The treatment of persons "compelled to present" a transgender identity as themselves transgender persons within the definition is conceptually unusual, because it defines the protected class partly by reference to victimisation. The retention of a two-year ceiling for sexual and physical abuse in Section 18(d), alongside life imprisonment for the new offences, produces an uneven penal scale. Enforcement still depends on police sensitivity, forensic and medical capacity, and administrative bodies whose functioning has been questioned. The absence of statutory timelines and reasoned-order requirements for certification leaves applicants without effective remedy against delay.

It follows that effective protection requires more than redefinition. As with other protective regimes, the law's practical value depends on the quality of implementation, the accessibility of procedure and the confidence of those it seeks to protect. A framework that reduces the number of people who can approach it, or deters them through intrusive procedure, risks failing at the first step, whatever its penal strength.[52]

Notes to Chapter IV

[42] Statement of Objects and Reasons, Bill No. 79 of 2026; petition in Laxmi NarayanTripathi v. Union of India, W.P.(C) No. 548 of 2026.

[43] Standing Committee on Social Justice and Empowerment, 43rd Report (2017);Transgender Persons (Protection of Rights) Act, 2019, ss. 4 to 7.

[44] Bill No. 79 of 2026, Statement of Objects and Reasons, para. 7.

[45] The Leaflet, report of the 4 May 2026 hearing (arguments of Dr. A.M. Singhvi);Supreme Court Observer, case page for W.P.(C) No. 548 of 2026; Bill No. 79 of 2026, cl. 2(iv) (proviso).

[46] LiveLaw, "Supreme Court Seeks Union's Response on Challenge to TransgenderRights (Amendment) Act" (4 May 2026); Verdictum, 15 June 2026 (submissions of the Solicitor General).

[47] Verdictum, report on the Rajasthan High Court's observations in a writ petitionconcerning reservation for transgender persons; LiveLaw, 3 August 2026.

[48] LiveLaw, 17 August 2026 (submissions of Ms. Disha Wadekar on affidavits of affectedpersons); Supreme Court Observer, report of the hearing declining interim stay.

[49] World Health Organization, International Classification of Diseases, 11th Revision(2019); Public Health Implications of the Transgender Persons (Protection of Rights) Amendment Act 2026 in India (Springer, 2026).

[50] Public Health Implications of the Transgender Persons (Protection of Rights) Amendment Act 2026 in India (Springer, 2026); Supreme Court Observer, report of the hearing of 4 May 2026.

[51] Argentina, Ley 26.743 (2012); Malta, Gender Identity, Gender Expression and Sex Characteristics Act, 2015; Pakistan, Transgender Persons (Protection of Rights) Act, 2018; Germany, Selbstbestimmungsgesetz (2024); United Kingdom, Gender Recognition Act, 2004; A.P., Garçon and Nicot v. France, ECtHR (6 April 2017).

[52] Bobby Choudhary, "From Self-Identification to Medical Gatekeeping" (SSRN, 10 August 2026); Tarunabh Khaitan, *A Theory of Discrimination Law* (2015).

CHAPTER V

FINDINGS, SUGGESTIONS AND CONCLUSION

5.1 Introduction

The present research, titled "A Critical Study on Transgender Rights and Legal Recognition in India: From Constitutional Recognition to the 2026 Amendment," has examined how Indian law came to recognise transgender persons, how that recognition was given statutory shape in 2019, and how the 2026 Amendment has altered it. The study has looked at the concept and

history of transgender identity, the exclusion and obstacles that transgender persons face, the constitutional and statutory framework, the judicial treatment of the issue, the certification machinery, and comparative approaches.

The study has followed a doctrinal, analytical and comparative method. It finds that India has a substantial constitutional and statutory framework for the protection of transgender persons, but that the way legal recognition is defined and certified now stands at the centre of a constitutional dispute, and that effective protection will depend on the manner in which that dispute is resolved and on the quality of implementation.[53]

5.2 Overall Analysis of the Study

5.2.1 Recognition Is the Gateway to Every Other Right

The study establishes that legal recognition is not a formality. Documents decide access to education, employment, healthcare, housing and welfare. Any design of recognition must therefore be judged by whether it expands or restricts practical access to these entitlements.

5.2.2 The Constitutional Foundation Is Strong

The constitutional position developed through NALSA, *Puttaswamy* and *Navtej* treats gender identity as part of dignity, autonomy, privacy and equality, and rejects medical procedure as a condition of recognition. These principles rest on Articles 14, 15, 16, 19 and 21, and do not depend on the continued existence of any single statutory provision.

5.2.3 The 2019 Act Was an Incomplete Implementation of NALSA

The 2019 Act created a legal category and prohibited discrimination, but it blended selfperception with administrative certification, contained no affirmative action, prescribed modest penalties and set up weak enforcement institutions. Its deficiencies were chiefly of implementation and ambition.

5.2.4 The 2026 Amendment Alters the Basis of Recognition

The Amendment narrows the definition of a transgender person to listed socio-cultural identities, specified intersex variations and persons compelled to present a transgender identity, excludes persons with different sexual orientations and self-perceived sexual identities, deletes the right to self-perceived gender identity, and routes certification through a medical board and the District Magistrate. It also requires persons who undergo surgery to obtain a revised certificate and obliges medical instituti ons to report them. These changes move the legal system from a model based on identity to one based on institutional verification.

5.2.5 A The Amendment Also Responds to Real Harms

The new penal provisions address forced procedures, abduction, servitude and the exploitation

of children, harms that are grave and documented. The study finds that this part of the Amendment answers a genuine gap in the general criminal law and is, in principle, consistent with the constitutional guarantees of bodily integrity and the prohibition of forced labour and trafficking.

5.2.6 Medical Scrutiny Is Conceptually and Constitutionally Problematic

Gender identity is not a medical fact that a board can measure. A compulsory medical process also engages privacy and bodily integrity, applies to transgender persons but not to others, and may encourage coerced medicalisation. The proportionality of the requirement, in light of the narrower alternatives available, is the most serious constitutional question the Amendment raises.

5.2.7 Administrative Capacity and Transition Remain Unresolved

The Act leaves unspecified the composition, training and procedure of medical boards, the timelines for decision, the standard of reasons and the remedies against refusal. The transition has left some applicants and patients in uncertainty. The Union's assurance that existing identity cards stay valid answers part of the difficulty, but not the position of pending applicants and of those excluded from the new definition.

5.2.8 Penal Scale and Gaps in the General Law

The two-year ceiling for abuse, including sexual abuse, in Section 18(d) sits uneasily with the severe penalties for the new offences and with those for sexual offences against women, and the BNS does not provide a gender-neutral offence of sexual assault. The interaction between the BNS's reference to transgender persons and the narrower 2026 definition requires clarification.

5.2.9 Social Exclusion and Underreporting Persist

Whatever the form of the law, exclusion in families, schools, workplaces and police stations continues, and violence is under-reported. Legal reform that is not accompanied by services, awareness and institutional change will have limited effect.

5.3 Suggestions and Recommendations

5.3.1 Restore Recognition Based on Self-Declaration

The legal recognition of gender identity should be based on a person's own declaration, as NALSA envisaged. Where the Legislature considers verification necessary to prevent misuse, it should be confined to the benefits for which eligibility is claimed, and should not be a condition of recognition as such. A distinction between recognition and entitlement would reconcile the right to identity with the concern for fair distribution of benefits.[54]

5.3.2 Reconsider the Narrow Definition

The definition should be restored or revised so as to include trans men, trans women, nonbinary and genderqueer persons together with traditional socio-cultural identities and persons with intersex variations, treating intersex persons in a separate, appropriately tailored provision. The proviso excluding "self-perceived sexual identities" should be clarified or deleted, and the unusual inclusion of victims of forced procedures within the definition of the protected class should be replaced by a separate victim-protection provision.

5.3.3 If Any Board Is Retained, Confine and Regulate It

Should Parliament or the Court decide that some form of board review must remain, the law should specify its composition, require inclusion of mental health and gender affirming care professionals and community representation, prescribe time limits, require reasoned decisions with a right of appeal, prohibit physical examination, and ensure that no surgery or hormonal therapy is a prerequisite. Deemed recognition should follow if the time limit is not met.

5.3.4 Protect Privacy and Medical Confidentiality

The reporting obligations of medical institutions should be reviewed in light of *Puttaswamy*. Information about surgery or treatment should be shared only to the extent strictly necessary, under clear data protection safeguards, and with purpose limitation.

5.3.5 Protect Accrued Rights and Manage the Transition

The law and its rules should expressly protect certificates and identity cards already issued, provide for disposal of pending applications within a fixed time on the basis of the earlier procedure, and ensure continuity of hormonal and other ongoing treatment in public health facilities.

5.3.6 Rationalise the Penal Provisions

The new offences against abduction, forced procedures and forced begging should be retained and effectively enforced, with trained investigators, and with provision for rehabilitation of survivors. At the same time, the penalty for physical and sexual abuse of transgender persons should be aligned with that for comparable offences under the BNS, and the BNS should be reviewed to provide a gender-neutral offence of sexual assault.

5.3.7 Strengthen Enforcement, Welfare and Affirmative Action

The Central and State Governments should operationalise the National Council and State welfare boards, provide for reservation consistent with NALSA, ensure functioning of the online portal, fund shelters, counselling, education and skill programmes, and mandate sensitisation of police, judicial officers and **medical staff. Complaint mechanisms should have fixed timelines and public reporting.**

5.3.8 Consult the Community

Any further amendment, and the Rules framed under the Act, should be preceded by structured consultation with transgender persons and their organisations, medical experts and child protection authorities, as recommended in the past by the Parliamentary Standing Committee.

5.4 Scope of Future Research

Further work could address several questions. Empirical studies, including interviews with transgender persons, officials and medical professionals, could examine how certification is working in practice, how long it takes, and what happens to those who are refused. Studies of the data on prosecutions under the amended Section 18 would show whether the new penal scheme protects victims or generates unintended effects. Comparative research could examine how particular jurisdictions have balanced recognition against misuse of benefits. Doctrinal research could explore the principle on which a legislature may alter the basis of a judicial declaration of constitutional rights, in light of the Supreme Court's eventual decision. Finally, research on the rights of intersex persons, on marriage, adoption and succession for transgender persons, and on the intersection of caste and gender identity, could deepen the picture.

5.5 Conclusion

The legal history of transgender persons in India is a story of movement from criminalisation and invisibility toward constitutional recognition, and, in 2026, a legislative effort to restructure that recognition. NALSA established that gender identity belongs to the person and that dignity, equality and autonomy require the State to respect it. The 2019 Act gave this principle statutory form, but only partly. The 2026 Amendment responds to genuine evils, such as forced mutilation and the exploitation of children, with more serious penalties, and in that respect it fills a real gap. Yet by replacing selfdeclaration with medical and administrative certification and narrowing the class it protects, it raises a serious doubt as to whether the Constitution permits the State to condition recognition of identity on the approval of others.

The constitutional challenge now before the Supreme Court will decide much of this. Whatever the outcome, the study concludes that sustainable protection requires a legal order that distinguishes recognition from benefit-eligibility, punishes exploitation firmly without making identity a matter of permission, safeguards privacy and bodily integrity, and is backed by capable institutions and by services that reach the people for whom the law is written. A law that protects transgender persons must in the first place be a law that they can use.[55]

Notes to Chapter V

[53] Constitution of India; Transgender Persons (Protection of Rights) Act, 2019; Transgender Persons (Protection of Rights) Amendment Act, 2026.

[54] National Legal Services Authority v. Union of India, (2014) 5 SCC 438; Justice K.S.Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

[55] Supreme Court Observer, "Challenge to the Transgender Persons Amendment Act,2026" (case status to be checked for the latest listing before submission).

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