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New Transgender Law, in Haste to Govern Efficiently, Trods over Recognising Rights

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The Transgender Rights Amendment Act 2026 is an instance of how the state's impulse to produce a limited and governable category of persons takes priority over constitutional principles of autonomy and dignity.

What is at stake for the transgender community after the Transgender Persons (Protection of Rights) Amendment Act, 2026? Enacted with little consultation with the community and amidst protests from activists, the new law marks a decisive shift in how transgender identity is recognised and regulated in India. It moves away from the language of autonomy and dignity, and towards a framework that prioritises classification, verification, and control.

While it is moot whether transgender persons in India ever meaningfully experienced the rights promised to them, the amendment further erodes recognition of the right to self-identification and the conditions necessary for a life of dignity.

Redefining the Subject of Protection

Until the latest amendment, a transgender person was broadly defined in law as anyone whose gender did not match the gender assigned at birth, explicitly including trans men, trans women (irrespective of medical intervention), intersex persons, genderqueer persons, and socio-cultural identities such as *hijra*, *kinner*, *aravani*, and *jogta*. This flowed from the Transgender Persons (Protection of Rights) Act, 2019, itself enacted to operationalise parts of the Supreme Court's judgement in *NALSA v. Union of India* (2014), which was widely celebrated for affirming the dignity and autonomy of transgender persons.

While piloting the 2026 amendment, the government claimed, without presenting any evidence, that the existing definition was too broad and vague, making it difficult to identify "genuinely oppressed" beneficiaries and, in turn, rendering implementation of legal provisions unworkable. It further argued that the protections of the 2019 act were not meant to extend to all individuals with diverse gender identities or self-perceived gender expressions, but to protect a specific class of persons: those socially and culturally recognised as transgender, who, according to the government, face severe and systemic discrimination.

This interpretation cleaves a divide within what was previously an "umbrella category" of transgender identities, drawing a boundary between those the state deems deserving of protection and those excluded from it. Instead of the inclusive language of the 2019 act, the latest amendment limits recognition to named socio-cultural identities and persons with medically diagnosed conditions (those born with intersex variations). The amendment's limited list of recognised categories effectively excludes trans men, trans women, non-binary, and genderqueer persons without medical certification.

Legible Categories, Erased Identities

The enactment of the amendment reflects a broader shift in governance, away from recognising rights and towards managing populations. Administrative systems function most efficiently when categories are stable, legible, and verifiable. The inclusive definition of the 2019 act, grounded in self-identification, sat uneasily with this logic. It required the state to accept identity without verification and to accommodate fluidity rather than fixity.

> The law leaves untouched the structural conditions that produce exclusion, including the absence of reservations, the inadequacy of protections against transphobic violence, and the continued marginalisation.

The 2026 amendment resolves this tension by privileging administrative certainty over constitutional principle. By narrowing definitions and introducing verification mechanisms, it produces a more governable category of "transgender persons", one that can be identified, counted, and regulated. This impulse toward classification is not new. It echoes earlier forms of governance, including colonial attempts to catalogue and control populations through law.

This shift must also be situated within a wider policy trajectory. Across sectors, there has been a move toward identifying narrowly defined "targeted beneficiaries", where access to rights and entitlements is tied to the state's ability to classify and verify individuals.

This has often been accompanied by a parallel emphasis on identifying and excluding so-called "ineligible" or "undeserving" claimants, framing access to welfare and rights as something that must be tightly controlled and filtered. The 2026 amendment extends this logic to gender identity itself. What is presented as definitional clarity is, in effect, a broader move toward conditional and administratively mediated recognition.

At the same time, this redefinition of who counts as a legitimate beneficiary is not confined to transgender law. It reflects a wider pattern in which the boundaries of legal recognition are being reworked across different domains, often in ways that narrow access to protections for marginalised groups. The emphasis on identifying the "authentic" or "deserving" subject of protection introduces a framework that polices legitimacy and excludes those who do not conform to State-sanctioned categories.

Within this framework, the amendment's reliance on socio-cultural and historically constructed categories of "transness" further constrains recognition. It privileges certain Indic socio-cultural identities as legible and legitimate, while rendering all others invisible. In doing so, it shifts transgender identity from a matter of self-determination to something that must be identified, classified, and governed. This approach risks reducing "transness" to an administratively managed category rather than a lived and self-defined reality.

Finally, the introduction of new offences reflects a parallel moral panic, one that has historically framed gender-diverse persons as socially disruptive or as "fake beneficiaries" advancing fraudulent claims to recognition and entitlements. This panic, visible in earlier forms of legal regulation, persists in contemporary lawmaking. The Amendment Act, therefore, does more than respond to administrative concerns; it also gives legal form to enduring cultural fears.

Continued Administrative Violence

Prioritising administrative convenience over lived realities also reflects a mode of lawmaking where those most affected by the law are excluded from shaping it. Members of the National Council of Transgender Persons (NCTP), a statutory body, have stated that they were not consulted before the amendments were introduced, and two of them resigned in protest. The way in which community voices were sidelined is not new. When the rules implementing the 2019 Act were introduced in 2020, only 13 days were provided for public consultation. This was during the height of the Covid-19 pandemic, when many transgender persons were struggling for basic survival.

> Access to legal recognition and, by extension, to rights and entitlements is mediated through bureaucratic judgment. The law moves from acknowledging identity to authorising it.

In more ways than one, then, the amendment is not an aberration, but a continuation. Even before the amendment, transgender persons were routinely required to satisfy arbitrarily placed bureaucratic expectations, erasing in practice constitutional protections.

NALSA v. Union of India recognised the right of individuals to identify their own gender without requiring them to undergo any medical procedures, including sex reassignment surgery, hormone replacement therapy, or sterilisation. It explicitly held that any insistence on sex reassignment surgery as a precondition for recognition would be unlawful.

Yet the lived experience of transgender persons under the 2019 act that followed tells a more complicated story. Self-identification was recognised in principle under Section 4(2). But another provision introduced a crucial qualification that undermined this promise. While the issuance of a certificate of identity as a "transgender person" under Section 6 was based on self-identification, the issuance of a certificate for change in gender under Section 7, within the male/female binary, continued to rely on proof of medical intervention.

Thus, the principle of self-identification, free of medical requirements, was already diluted in its statutory translation under the 2019 act. While the right to legal recognition of transgender identity was formally independent of SRS procedures and self-identification sufficed, in practice, it remained contingent and subject to arbitrary verification by officials. In the years after the 2019 act came into force, officials continued to impose invasive and arbitrary medical requirements on transgender persons.

The difficulties did not end with obtaining a transgender certificate. For many transgender persons, that was only the beginning of a prolonged and often frustrating process of aligning other official documents. Across jurisdictions, individuals with transgender certificates continued to face significant barriers in updating official documents, despite the law clearly permitting such changes. Passport authorities, educational boards, and other agencies often refused to recognise these certificates, citing a lack of circulars or demanding additional proof. In many cases, authorities either claimed ignorance of the law or imposed requirements that had no basis in it.

As a result, transgender persons were frequently compelled to approach high courts simply to secure recognition of their identity across documents. In one instance, passport authorities insisted on proof of surgical procedures before granting recognition, despite the absence of any such requirement in law. It was only after the Madras High Court passed an order that this position was corrected. Even then, compliance within passport authorities has remained uneven.

These experiences reveal a crucial point: the right to self-identification, though recognised in principle, was rarely realised in practice. It existed as a constitutional promise, but not as an administrative reality.

The 2026 amendment must be understood against this background. It does not introduce state control over gender identity. Rather, it formalises and entrenches an existing practice. What the new law does is remove any residual ambiguity. It totally eliminates the limited legal basis for self-identification and replaces it with explicit mechanisms of state verification.

The omission of Section 4(2) of the 2019 act, which recognised the right to self-perceived gender identity, is central to this shift. The amended framework now requires individuals to obtain clearance from a medical board and to furnish details of medical procedures to the satisfaction of a district magistrate. This introduces a high degree of administrative discretion into the process. What constitutes 'sufficient proof' is left to the whims of administrators, which may vary across states.

Recognition of identity thus becomes contingent not on the individual's assertion, but on the state's approval. Access to legal recognition and, by extension, to rights and entitlements is mediated through bureaucratic judgment. The law moves from acknowledging identity to authorising it.

Criminalisation in the Name of Protection

But the most troubling changes in the 2026 amendment lie in the expansion of offences under Section 18.

The amended provision introduces new offences that criminalise acts such as inducing, compelling, or alluding someone to "assume" or "present" a transgender identity. On its face, this appears to be a protective measure. However, the underlying assumption is deeply problematic: that transgender identity is something that can be imposed or coerced.

> The law becomes more detailed and stringent in regulating transgender identity, while remaining underdeveloped in addressing material disadvantage.

This framing risks reinforcing longstanding stereotypes about transgender communities, particularly the idea that transgender persons indoctrinate or compel others to adopt transgender identity. It also creates the possibility of misuse against community structures such as hijra gharanas, as well as against NGOs, healthcare providers, and workplaces offering gender-affirmative support.

The language of "inducement" and "allurement" echoes colonial-era laws such as the Criminal Tribes Act, 1871, and regional enactments like the Telangana Eunuchs Act, 1919, which treated gender-diverse communities as inherently suspect. As documented in scholarship on colonial regulation of gender and sexuality, such legal frameworks have long treated gender non-conformity as inherently suspect. The new provisions in the 2026 amendment risk reintroducing this colonial logic in contemporary form. By linking gender expression to potential coercion, they create a legal environment in which transgender identity itself becomes suspect.

Unaddressed Issues

While the amendment act introduces these regulatory and penal provisions, it does little to address the structural inequalities faced by transgender persons.

This selective approach becomes even more troubling when viewed against how the law responds to violence against transgender persons. Long-standing demands from activists to strengthen penalties for sexual assault against transgender persons by bringing them in line with those applicable to cisgender women remain entirely unaddressed.

> The law redefines transgender identity as something to be managed rather than affirmed.

Judicial reasoning has, at times, compounded this gap. In *Subham Dewagan v. State of Chhattisgarh*, the Chhattisgarh High Court assessed the "completeness" of gender-affirming surgery to conclude that rape could not have occurred, effectively tying recognition of

sexual violence to anatomical criteria. The case starkly illustrates how transgender bodies are treated differently within the law, where even after medical transition, protection against sexual violence remains uncertain. Against this backdrop, the amendment's focus on preventing "forced" transgender identity appears misplaced. It expands criminal law in areas driven by a moral panic, while leaving the most serious and well-documented forms of harm inadequately addressed.

Additionally, in *NALSA*, the Supreme Court directed the state to treat transgender persons as belonging to a Socially and Educationally Backward Class and to extend reservations in education and employment. These recommendations were central to the judgment's vision of substantive equality. The 2019 act did little to give effect to these mandates. Sections 13 and 14 make only minimal reference to education and employment, restricting themselves to a prohibition on discrimination in educational institutions and a directive for the state to formulate welfare schemes, including vocational training.

As Ambedkarite trans activists such as Gee Semmalar and Grace Banu have argued, these provisions fall far short of what is required for meaningful inclusion. The state treats structural exclusion as a problem that can be addressed through skill-building and self-employment, rather than through redistribution and guaranteed access. Vocational training and welfare schemes, while important, cannot substitute for reservations in education and public employment, especially for communities that face not only social ostracisation but also familial abandonment on account of their gender identity.

The continued absence of reservations in the 2026 amendment reflects a deeper reluctance to recognise transgender persons as a group entitled to substantive equality. The result is a striking imbalance. The law becomes more detailed and stringent in regulating transgender identity, while remaining underdeveloped in addressing material disadvantage.

From Rights to Regulation

At one level, this moment appears as a departure. At another, it reflects a longer trajectory in which the promise of self-identification was never fully realised. Even before the amendment, transgender persons were required to navigate a system that demanded proof, imposed scrutiny, and conditioned recognition on administrative approval. What the amendment does is make this logic explicit.

> The question is no longer whether the law recognises transgender persons, but on what terms such recognition is granted, and at what cost.

This shift in the law's position is about the terms on which the State is willing to recognise and protect certain subjects. By narrowing definitions, introducing verification mechanisms, and expanding criminal provisions, the law redefines transgender identity as something to be managed rather than affirmed. At the same time, it leaves untouched the structural conditions that produce exclusion, including the absence of reservations, the inadequacy of protections against transphobic violence, and the continued marginalisation of transgender persons in education and employment.

In doing so, the amendment act reveals a deeper contradiction. The state expands its power to regulate identity, even as it withdraws from its obligation to secure substantive equality. Recognition becomes conditional, protection becomes selective, and rights become contingent.

The question, then, is no longer whether the law recognises transgender persons, but on what terms such recognition is granted, and at what cost.

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