State Bodies

The New Trans Rights Law and the State as Gatekeeper of Gender Identity

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On 30 March 2026, the Transgender Persons (Protection of Rights) Amendment Act, 2026 ("New Trans Rights Act"), received Presidential Assent, completing a legislative process that took less than three weeks from introduction to law. The Bill had cleared both Houses of Parliament amid Opposition walkouts and protests, without pre-legislative public consultation, without referral to a Parliamentary Standing Committee, and without engagement with the National Council for Transgender Persons. What emerged was a law authored without the people most governed by it.

The New Trans Rights Act reorganises the terms on which transgender lives become intelligible to law. Its animating logic, that trans identity is an "acquirable characteristic" the state must verify rather than an irreducible human experience it must recognise, directly confronts the constitutional architecture erected by the Indian Supreme Court in previous case law. The Act re-medicalises identity, re-bureaucratises recognition, and risks criminalising both community kinship (*guru/chela*) structures and legitimate gender-affirming care.

Who is a "transgender person"?

Under the existing Transgender Persons (Protection of Rights) Act, 2019 ("2019 Act"), a transgender person was defined as "a person whose gender does not match with the gender assigned to that person at birth", broad, inclusive of trans men, trans women, genderqueer persons, and persons with intersex variations, and expressly independent of surgical or hormonal intervention. Section 4(2) codified the right to self-perceived gender identity. The New Trans Rights Act removes both.

The new definition of 'transgender person' proceeds in two limbs. The first covers only persons with named socio-cultural identities (*kinner, hijra, aravani, jogta, eunuch*), persons with specified intersex variations, and persons forcibly compelled to assume a transgender identity through mutilation or surgical, chemical, or hormonal procedures. The second limb is a proviso that excludes persons with "self-perceived sexual identities." This is a form of indirect discrimination within the trans community, wherein the hierarchy of recognisability is artificially created by privileging identities that are either culturally codified or medically verifiable over those that are self-perceived.

Trans men, trans women, non-binary persons, and genderqueer individuals, none of whom necessarily belong to the named socio-cultural communities and none of whom necessarily present intersex variations, are excised from the statute entirely. They constitute a substantial portion of persons who have historically sought certificates of identity under the 2019 Act and who face documented discrimination in education, employment, and healthcare.

This narrowing stands in tension with decades of scholarship demonstrating that gender-variant identities in South Asia are neither fixed nor reducible to discrete socio-cultural categories. *Hijra* identities themselves are internally diverse, religiously syncretic, and historically fluid (see Reddy and Loh), while the imposition of rigid classificatory frameworks often reflects colonial and postcolonial state logics rather than lived realities (see Dutta & Roy). It also stands in direct contradiction to *NALSA*'s foundational holding that "transgender" is an umbrella term embracing a wide range of identities and experiences, and that any attempt to confine it to specific socio-cultural communities imports precisely the classificatory errors the Court sought to dismantle (see NALSA, para 19; para 81 (Sikri J.)).

The State's justification for the narrowing rests on three grounds: (a) that the prior definition was "vague," (b) that it made it "impossible to identify the genuine oppressed persons," and (c) that it was incompatible with several existing statutory enactments. Each ground fails on examination. The vagueness argument misunderstands gender identity. Identity is not vague; it is complex, because it is internally experienced rather than externally observable. *NALSA* engaged precisely this complexity and concluded that self-determination, not medical verification, was the constitutionally appropriate response (see *NALSA*, para 19). To call self-determination a source of vagueness is to restate the biomedical premise the Court rejected. The impossibility argument is contradicted by the data, i.e., over 32,000 certificates had been issued as of March 2026 with 5,566 rejected applications, demonstrating a functioning, not unworkable, system. The incompatibility argument is the most constitutionally dangerous, for it recasts rights-bearing identity as administratively suspect. The Statement of Objects and Reasons asserts that a statute conferring rights cannot define its beneficiary class by reference to an "acquirable" characteristic. Applied consistently, this logic would undermine every protective statute defining its beneficiaries by reference to religion, belief, or disability. What is presented as a technical objection is, in substance, an argument against rights themselves.

The inclusion of persons "forcibly compelled" to assume a transgender identity as a definitional category of transgender persons is analytically incoherent. Such persons are victims of abduction and bodily harm, not transgender persons in any meaningful sense. Their inclusion conflates identity with victimisation and stigmatises the entire category by associating transgender identity with coercion and violence. It also produces a legal absurdity. A person forcibly castrated and compelled to present as a *hijra*, even though *hijra* identity is constituted not by bodily presentation but by community membership, kinship, and social belonging, qualifies under the new definition, while a trans man who has lived his gender identity for decades, sought no surgery, and belongs to no named socio-cultural community, does not. This conflation echoes anthropological misreadings that collapsed *hijra* identity into practices of emasculation (see Hossain), ignoring its social, ritual, and kinship dimensions (see Nanda).

The Medical Board as Gatekeeper

The New Trans Rights Act inserts a new provision, i.e., Section 2(aa), which defines an "authority" as a medical board headed by a Chief Medical Officer or Deputy Chief Medical Officer. By amending Section 6 of the 2019 Act, the District Magistrate is now required to examine the recommendation of this authority before issuing a certificate of identity. The District Magistrate may also take the assistance of "other medical experts." The 2020 Trans Rights Rules, enacted under the 2019 Act, had expressly clarified that no medical or physical examination would be required as a precondition to the issuance of a certificate. The New Trans Rights Act reverses this entirely.

The change may appear procedural. It is not. In *NALSA*, the Court held that self-determination of gender identity falls within personal liberty under Article 21 of the Constitution, and directed legal recognition *without* conditioning it on medical procedures. (see *NALSA*, para 69 and para 74). This holding was subsequently affirmed in *Navtej Singh Johar*, where the Court grounded the right to identity in "individual autonomy and liberty, equality for all sans discrimination of any kind, recognition of identity with dignity" as the "cardinal constitutional ideals" (see *Navtej*, para 3, Majority Opinion). Where the 2019 Act treated self-declaration as the trigger for administrative processing, the New Trans Rights Act places a medical board between the person and the state. Recognition is now conditional on institutional validation. A right has become a permission.

The medical board model also carries a structural constitutional problem visible in another domain. Persons with disabilities in India have long experienced the perverse consequences of medical boards applying inconsistent standards, the same individual receiving different disability percentages from different boards, with real consequences for education and

employment. The analogy is instructive: where identity or entitlement is mediated through expert certification, arbitrariness becomes structural rather than exceptional. As Rahul Bajaj notes, in *Vikash Kumar v. UPSC*, the Supreme Court directly addressed the misuse justification for restricting disability facilities. Its response was unequivocal: the mere possibility of misuse cannot justify denying a benefit to an entire class. The same logic compelled this Court in *Navtej* to hold that the existence of Section 377, justified on the same speculative misuse rationale, was unconstitutional (see *Navtej*, para 95). The New Trans Rights Act's implicit justification, preventing fraudulent identity claims, founders on exactly this reasoning. The Statement of Objects and Reasons identifies no specific, documented pattern of fraud under the 2019 Act. Speculative misuse cannot justify systemic exclusion.

There is a deeper epistemological problem. The new definition retains socio-cultural identities, *hijra*, *kinner*, *aravani*, *jogta*, alongside intersex variations, but a medical board can assess only the latter. Whether a person belongs to the hijra socio-cultural community requires engagement with community history, lived experience, and social belonging, questions for which medical expertise is the wrong instrument. *NALSA* itself acknowledged this when it observed that *hijras* "belong to a distinct socio-religious and cultural group" whose identity is determined not by biology but by social belonging (see *NALSA*, para 70).

The Surveillance of Trans Bodies

The New Trans Rights Act also amends the mandatory hospital reporting requirement in Section 7 in two ways. The word "may" is replaced with "shall," making it mandatory for persons who undergo gender-affirming surgery to apply for a revised certificate. A new sub-section 1A requires medical institutions to furnish details of such persons to the District Magistrate and the authority.

The mandatory disclosure requirement raises serious concerns about the right to privacy. State interference with privacy must be backed by law, serve a legitimate state aim, and be proportionate. The first condition is met. The other two are not. The Statement of Objects and Reasons identifies no legitimate aim served by requiring hospitals to report gender-affirming surgeries to district authorities. The Amendment's overall orientation, toward verification and control of who qualifies as transgender, suggests the aim is surveillance rather than welfare. The Yogyakarta Principles, which *NALSA* expressly adopted as a framework, specifically prohibit compelling any person to "undergo medical procedures, including surgery, sterilization or hormonal therapy" as a condition of legal recognition, and equally prohibit state surveillance of gender identity as a condition of protection (see *NALSA*, para 22; Yogyakarta Principle 18) Mass surveillance of a constitutionally protected characteristic cannot constitute a legitimate state aim under Puttaswamy. India's data protection law further requires consent for processing personal health data, a requirement the mandatory reporting provision bypasses without justification.

The practical consequence is a chilling effect on access to care. Trans persons who would otherwise seek legitimate medical transition may avoid hospitals to evade state reporting, being driven toward unregulated and unsafe alternatives. In *Navtej*, the Court expressly recognised that the existence of provisions targeting LGBT persons, regardless of enforcement, produces a chilling effect that "builds insecurity and vulnerability into the daily lives" of those communities. The surveillance apparatus, ostensibly protective, may function to harm.

The New Offences and Their Paradoxes

The substituted Section 18 adds serious new offences: kidnapping combined with grievous hurt to force assumption of transgender identity attracts ten years to life for adults and mandatory life imprisonment for children; forcing a person to present as transgender and engage in begging or servitude attracts five to ten years for adults and ten to fourteen years for children. The State justification, addressing documented abduction and forced bodily modification, is not without foundation or any data. But the provisions as drafted are simultaneously over-inclusive and under-inclusive.

The *gharana* system, the structured kinship network of *guru* and *chela* that organises community life for *hijra*, *kinner*, and related groups, has historically been the primary social safety net for gender non-conforming persons abandoned by natal families (see Goel). The new offences in clauses 18(e) to 18(h) are structured around "allurement," "inducement," "deception," and "compulsion", undefined and elastic terms. *Gharanas*, the only home many trans persons have known, could be mischaracterised as sites of allurement or inducement, exposing community leaders to prosecution for acts of *bona fide* care. Police in India have historically harassed *hijra* communities under vagrancy provisions. New legislative categories carrying life imprisonment will not be applied with greater discernment. As Gopi Shankar Madurai observes, the new clauses target external perpetrators while leaving internal exploitative hierarchies untouched, effectively legitimising the exploitative dimensions of established community structures while criminalising the protective ones.

The inclusion of "surgical, chemical, or hormonal procedures" within "grievous hurt" risks criminalising legitimate gender-affirming care. Medical professionals assisting voluntary transitions may fear prosecution under provisions not clearly confined to coercive contexts. The concern extends further: hormonal procedures prescribed for polycystic ovary syndrome, menopause, or cancer fall within the literal language of the provision. The phrase "outwardly present a transgender identity" compounds this by treating transgender identity as a performance, something one can be compelled to do rather than something one is. *NALSA* held that "values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a)" (see *NALSA*, para 66). Reducing identity to an "outward presentation" enshrines in criminal law the stereotype that trans identity is a choice of appearance, precisely the stereotype that has sustained centuries of stigma and violence against trans communities.

Finally, the asymmetry in penalties exposes the Amendment's true priorities. The existing offences, physical abuse, sexual abuse, and forced displacement of transgender persons retain a two-year maximum sentence, a sentence community advocates have challenged as grossly inadequate. The Amendment creates life imprisonment as maximum punishment for forcing a child to present as transgender (Section 18(e)(f), but leaves at two years the maximum for sexually or physically abusing a transgender person (Section 18(d). The legislation is more concerned with managing the boundaries of transgender identity than with protecting transgender lives.

Conclusion

The Trans Rights Act arrives at a moment when India's constitutional jurisprudence on gender identity, rooted in *NALSA* and awaiting elaboration in the pending challenge to Section 7 of the 2019 Act, was poised to move forward. Instead, it re-medicalises identity, re-bureaucratises recognition, and narrows protection at the precise moment the community needed welfare, upliftment, and expansion of rights. The state's interest in precise definitions and administrative clarity is legitimate, but the Trans Rights Act pursues it at the direct expense of protection, treating identity, that most intimate of human attributes, as a claim requiring verification rather than a person requiring recognition. The Constitution still stands. So does the directive in *NALSA*. Whether courts will act on that directive remains to be seen, but the legislative record is now clear, and it is not a flattering one.

Disclaimer: The post was submitted before the bill was passed.

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