

OBJECTIONS OVER THE PROPOSED THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT BILL, 2026

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Bill was introduced in the Lok Sabha on March 12, 2026. It represents a significant shift in India's legal approach to gender identity, moving away from the inclusive "self-identification" model established in 2019 toward **a narrower, more "biological and socio-cultural" definition.**

Key Changes Proposed in the Amendment Bill

The Bill seeks to overhaul several core aspects of the **Transgender Persons (Protection of Rights) Act, 2019:**

- **Narrowed Definition of "Transgender":** The Bill replaces the broad definition of a transgender person with a "precise" one. It identifies transgender persons primarily through **socio-cultural identities** (such as *Kinner, Hijra, Aravani, Jogta, and Eunuch*) or **intersex variations** (congenital variations in sex characteristics).
- **Omission of "Self-Perceived Gender Identity":** Most controversially, the Bill seeks to omit the principle of "self-perceived identity." The government argues that the 2019 definition was too "vague" and led to implementation hurdles and potential misuse.
- **Decoupling Sexual Orientation:** The amendment explicitly states that the term "transgender person" does not and never did include individuals based on "different sexual orientations" or "self-perceived sexual identities."
- **Graded Penalties:** It introduces stricter, graded punishments for specific crimes against transgender persons, particularly **forced conversion** through mutilation, emasculation, or castration. Penalties can reach up to 14 years of rigorous imprisonment if the victim is a child.
- **Verification Authority:** It empowers a "designated authority" to seek **expert advice** during the certification process, potentially

moving away from the simplified application process of the current Act.

VIOLATION AND DELIBERATE CONTEMPT OF THE NALSA JUDGEMENT (2014)

The **NALSA v. Union of India** judgement is the cornerstone of transgender rights in India. Legal experts and activists argue that the 2026 Amendment is a direct violation of this Supreme Court ruling in three major ways:

1. Denial of the Right to Self-Determination

The NALSA judgement held that "self-determination of gender is an integral part of personal autonomy and self-expression." It declared that gender identity is an **innate perception** and should not be dictated by the State or biological markers. By removing "self-perceived identity," the Bill strips individuals of the right to define their own gender.

2. Risk of Re-medicalization

The Supreme Court explicitly stated that no person should be forced to undergo medical or biological tests (like physical examinations or "expert" reviews) to prove their gender. The Bill's introduction of "precise biological definitions" and "expert advice" for identification risks returning to a medicalized model where a person's identity must be "validated" by a third party.

3. Violation of Dignity and Privacy

Under **Article 21** (Right to Life and Liberty), NALSA protected "dignity," which includes the right to choose one's gender expression. By limiting the Act's protections to a "specific class" (socio-cultural groups), the amendment excludes a vast number of trans-men, trans-women, and non-binary people who do not belong to traditional communities, thereby violating their right to equal protection under **Article 14**.

Contrast with Transgender Persons' Rights

The Amendment Bill creates a "hierarchy" of transgender identities that contrasts sharply with universal human rights:

Feature	Existing 2019 Act / 2026 NALSA Spirit	Proposed Amendment
Identity Basis	Self-perception and personal psychological state.	Socio-cultural membership or biological variations.
Inclusivity	Includes anyone whose gender doesn't match birth-assigned sex.	Excludes those who "choose" or "perceive" gender without "biological reasons."
Certification	Ideally a simple administrative process (self-ID).	Potential "expert" scrutiny and stricter verification.
Philosophy	Human right to autonomy and dignity.	Preventive measure to stop "misuse" and protect specific classes.

The **Transgender Persons (Protection of Rights) Amendment Bill, 2026**, has sparked intense backlash from civil society organizations (CSOs), lawyers, and activists who describe it as a "legislative rollback" of a decade's progress.

The primary critique is that by removing the principle of **self-perceived gender identity**, the State is re-asserting control over the bodies and identities of transgender citizens, treating identity as a "status to be verified" rather than a "right to be lived."

1. Civil Society Critiques: The "Identity Gatekeeping" Argument

have raised several core objections:

- **Erasure of Autonomy:** Activists argue that the Bill treats gender identity as an "objective fact" that can be scrutinized by "experts." This contradicts the global human rights standard that an individual is the only authority on their own gender.

- **The "Misuse" Myth:** CSOs have criticized the government's justification that the 2019 Act was being "misused." They argue that there is no data to support mass "fake" transgender applications and that this rhetoric is being used to justify state surveillance of marginalized bodies.
- **Criminalization of Tradition vs. Choice:** While the Bill purports to protect those in socio-cultural groups (*Hijra, Kinner*) by criminalizing "forced conversion," activists worry the vague wording could be used to harass community elders or interfere with the traditional *Reeti* (customary) systems of joining these families.
- **Exclusion of "Gender Fluidity":** By defining transgender persons through "socio-cultural" or "biological" (intersex) markers, the Bill effectively ignores the existence of non-binary, gender-fluid, and queer individuals who do not fit into those specific historical boxes.

2. HOW TRANS MEN AND TRANS WOMEN ARE SPECIFICALLY AFFECTED

The shift toward a "biological and socio-cultural" definition creates a distinct set of hurdles for those who identify within the gender binary (trans men and trans women).

Impact on Trans Men (FTM)

- **Complete Invisibilization:** Trans men in India are already marginalized and often lack the visible "socio-cultural" communities that trans women (like the *Hijra* community) have. Since the Bill prioritizes these traditional groups, trans men—who often live quiet, stealth lives—may find it nearly impossible to meet the "biological or socio-cultural" criteria to get an ID card.
- **Lack of Recognition:** A trans man who "perceives" himself as a man but has no "congenital variation in sex characteristics" (as per the new definition) might be legally disqualified from being recognized as transgender at all, leaving him in a legal vacuum.

Impact on Trans Women (MTF)

- **Forced "Culturalization":** Not all trans women belong to the *Hijra* or *Aravani* communities. Many are independent

professionals, students, or workers who identify simply as women. The Bill essentially tells them: *"Unless you are a member of a traditional group or have an intersex condition, your identity is a 'choice' we don't recognize."*

- **Regression to Medicalization:** Under the NALSA judgement, trans women could identify as "Female" without surgery. The 2026 Amendment, by allowing "expert advice" and omitting "self-perception," likely signals a return to a system where trans women must undergo physical examinations or psychiatric evaluations to "prove" they are "trans enough."

3. CONTRAST WITH THE NALSA JUDGEMENT: A SUMMARY

NALSA (2014) / 2019 Act

2026 Amendment Bill

Self-Identification: Gender is a psychological state; no proof required.

Expert Verification: Identity must be "precisely" identified by authorities.

Inclusive Scope: Includes anyone whose gender differs from birth-sex.

Narrow Scope: Restricted to specific socio-cultural groups or intersex variations.

Dignity-Based: Focuses on the "right to be."

Security-Based: Focuses on "preventing misuse" and "gatekeeping" benefits.

THE "SOCIO-CULTURAL" TRAP

The most significant impact is the **exclusion of the urban, independent trans person**. By tying rights to "socio-cultural identity," the Bill effectively forces transgender people to either join a traditional *gharaana* (family) or possess a medicalized "intersex variation" to access state protection. This creates a "hierarchy of transness" that violates the fundamental right to equality under **Article 14** of the Constitution.

1. Legal Challenges and Petitions

The **Transgender Persons (Protection of Rights) Amendment Bill, 2026**, represents a radical departure from the 2019 Act, shifting the

legal focus from **individual autonomy** to **state-verified biological and cultural status**.

Here is the current landscape of legal challenges and the specific impact on transsexual individuals and those with Gender Identity Disorder (GID).

As of mid-March 2026, many petitions could possibly be moved in the **Supreme Court of India** and various **High Courts** (notably Madras and Delhi).

- **Violation of the "Basic Structure":** Petitioners argue that the Bill violates the "Right to Dignity" and "Right to Privacy," which the Supreme Court previously declared are part of the Constitution's basic structure.
- **Contempt of NALSA:** Activists have filed "Letters of Concern" to the Chief Justice, arguing the Bill is a direct contempt of the 2014 NALSA mandate, which explicitly forbade medical/biological testing for gender identity.
- **Article 14 & 15 Challenges:** The Bill is being challenged on the grounds of "arbitrary classification," as it creates a hierarchy where only "traditional" or "biological" trans people are protected, excluding thousands of others.

2. Impact on Transsexual People (Binary Transition)

Transsexual people—those who seek to transition from one binary sex to another (Male to Female or Female to Male)—face a significantly more difficult legal path under the 2026 amendments.

- **The "Medical Board" Gatekeeper:** While the 2019 Act allowed for a revised certificate after surgery, the 2026 Bill replaces the simplified process with a "**Designated Medical Board**" headed by a Chief Medical Officer (CMO).
- **Loss of Right to "Male" or "Female" Markers:** Under NALSA, a person could identify as "Male" or "Female" without surgery. The 2026 Bill implies that "Transgender" is a distinct category based on socio-cultural or intersex traits. This makes it much harder for transsexual people to simply live as "Men" or "Women" in the eyes of the law without undergoing state-scrutinized medical procedures.

- **Mandatory Disclosure:** The Bill requires medical institutions to furnish surgery details directly to the District Magistrate. This eliminates the individual's choice of when and how to disclose their medical transition to the state, violating **patient confidentiality**.

3. Impact on People with Gender Identity Disorder (GID)

For those diagnosed with GID (now more commonly referred to as **Gender Dysphoria**), the Bill's "biological" focus is particularly harmful.

- **Re-Medicalization of Identity:** By focusing on "congenital variations" (intersex traits), the Bill ignores the psychological and neurological reality of Gender Dysphoria. A person who is "biologically typical" at birth but suffers from severe GID may be **denied recognition** because they do not have a "congenital variation" or belong to a "socio-cultural group."
- **The "Expert Advice" Hurdle:** The Bill empowers authorities to seek "expert advice" from psychologists or physicians. This effectively restores the "**Pathology Model**," where a trans person must be "diagnosed" as mentally ill or "biologically different" to qualify for rights, rather than simply being respected for their self-knowledge.
- **Stagnation of Care:** Activists fear that by narrowing the definition to a "specific class," the government may eventually restrict **insurance coverage** (under schemes like SMILE) only to those who fit the new "biological" definition, leaving those with GID to pay for expensive transition care out-of-pocket.

Summary of Impact

Aspect	Impact on Transsexual/GID People	Identity Proof
Must prove Transition	"biological variation" or "socio-cultural" membership	self-ID is invalid
Privacy	Path to "Male/Female" marker now requires CMO-	Hospitals must report your surgery to the

	led board approval and surgery data.	government, ending medical privacy
Legal Status	Risk of being classified as "neither" or	"third gender" instead of their chosen binary gender.

The 2026 Amendment essentially tells transsexual people that their identity is not a **civil right**, but a **medical condition** that must be proven to the satisfaction of a government board.

The **Transgender Persons (Protection of Rights) Amendment Bill, 2026**, does not explicitly ban the medical transition or sex reassignment surgery (SRS). However, it fundamentally alters **who** is allowed to be legally recognized after that transition and introduces a high-surveillance reporting system.

Here is a breakdown of how the transition from male-to-female (MTF) or female-to-male (FTM) is impacted by these changes.

1. Is Sex Change and Binary Transition Allowed?

Technically, **yes**, transitioning and SRS remain legal medical procedures in India. However, the 2026 Amendment makes the **legal recognition** of that transition (changing your gender from M to F or vice versa on documents) **much more restrictive**.

- **The "Binary" Hurdle:** Under the 2019 Act, you could apply for a "Revised Certificate" (Male or Female) after surgery. The 2026 Amendment **modifies this procedure** by requiring the medical institution to report the details of your surgery directly to the District Magistrate (DM).
- **The Definition Trap:** Because the Bill removes "self-perceived identity" and defines transgender persons based on "**biological reasons**" (intersex variations) or "**socio-cultural**" identities (Hijra, Kinner, etc.), a person who undergoes a sex change but is neither intersex nor part of a traditional community may find

themselves in a legal "no-man's land." The State may refuse to recognize them as "Male" or "Female" because they don't fit the new, narrow definition.

2. Graded Punishments for "Forced Conversion"

The Bill introduces **strict penal provisions** aimed at what it terms "forced conversion" into a transgender identity. While intended to stop the forced emasculation of children into traditional groups, activists fear these could be used to target doctors performing voluntary transitions.

3. Impact on Medical Professionals and Hospitals

The Bill places a new legal burden on healthcare providers:

- **Mandatory Reporting:** Hospitals are now **legally obligated** to furnish surgery details to the DM and a designated authority. A doctor performing a sex change without this state-monitored reporting could face professional deregistration or penalties for non-compliance.
- **Expert Advice:** The DM now has the option to seek "**expert advice**" before granting any change in gender status. This means a medical board or a psychologist can "veto" your transition if they decide you don't meet the "precise definition" of being transgender.

4. Impact on People with Gender Identity Disorder (GID)

For those diagnosed with GID (Gender Dysphoria), the Bill is highly regressive:

- **Loss of Autonomy:** Your diagnosis is no longer enough. Because the Bill prioritizes "biological" (congenital) traits, having a psychological "mismatch" (GID) without an intersex condition may not be enough to qualify for a Certificate of Identity.
- **The Pathological Model:** It shifts the power back to doctors. Instead of you telling the State who you are (Self-ID), the State asks a doctor to tell them what you are (Medicalization).

Summary of the "Transition" Experience in 2026:

Under this Bill, if you transition from Male to Female:

1. You can get the surgery, but the hospital **must report you** to the DM.
2. The DM may ask an "**Expert Committee**" to evaluate if you are "authentically" trans based on biological or socio-cultural markers.
3. **If you are a binary trans person (not intersex/not Hijra), the DM could potentially deny your request to be recognized as "Female," leaving you with no legal gender identity that matches your life.**

The **Transgender Persons (Protection of Rights) Amendment Bill, 2026**, fundamentally changes the legal standing of individuals who undergo Gender Reassignment Surgery (GRS/SRS). If the Bill is passed in its current form, the legal position for someone transitioning from Male to Female (MTF) or Female to Male (FTM) will shift from one of **autonomy** to one of **state-mandated medical verification**.

1. Mandatory Medical Board Review

Under the 2019 Act, the process for a "Revised Certificate" (to change gender to Male or Female after surgery) was relatively administrative.

The 2026 Amendment introduces a significant barrier:

- **The Authority:** A "designated medical board," typically headed by a Chief Medical Officer (CMO), must now evaluate the individual.
- **DM Discretion:** Even with a medical board's recommendation, the District Magistrate (DM) has the "discretionary power" to decide whether to issue the certificate. They can seek further "expert advice" if they consider it "necessary or desirable."
- **Legal Position:** You are no longer the primary authority on your gender; your legal status depends on the board's interpretation of your "biological" or "surgical" status.

2. The "Biological" Gatekeeping

The most concerning legal shift is the new definition of a transgender person. The Bill prioritizes "**congenital variations**" (intersex) and "**socio-cultural identities**" (Hijra, Kinner, etc.).

- **For Transsexual People:** A person who is born "biologically typical" but transitions because of gender dysphoria may find themselves in a legal trap. Since the Bill explicitly removes "self-perceived identity," the DM could legally argue that a binary trans person (MTF or FTM) who is not intersex does not meet the "precise definition" required for a Transgender Certificate of Identity.
- **The Certificate Requirement:** Without this initial certificate, you cannot legally change your name or gender on other documents like Passports, PAN cards, or Birth Certificates.

3. Reporting and Privacy

The Bill creates a legal obligation for hospitals and medical institutions to report surgery details directly to the state.

- **Direct Reporting:** Any surgical, chemical, or hormonal procedure performed for a sex change must be furnished to the DM.
- **Loss of Confidentiality:** Legally, your transition becomes a matter of government record before you even apply for a document change. This violates the "Right to Privacy" established in the *Puttaswamy* judgement.

4. Limited Document Correction

The Bill specifically mentions that once a certificate is issued, a person is entitled to change their "**first name**" on birth certificates and official documents.

- **The "Gender Marker" Ambiguity:** While the 2019 Act explicitly allowed for a change in gender status (to Male or Female), the 2026 amendment is more focused on the "Transgender" identity. There is a legal fear that the state may stop issuing binary "Male" or "Female" markers to trans people entirely, forcing them to remain under the "Transgender" or "Third Gender" umbrella regardless of their surgery.

Summary of Legal Position Post-Amendment

Feature	Legal Position (Proposed 2026)
Right to Choose	Replaced by "Expert Determination."
Medical Privacy	Abolished; hospitals must report your transition to the state.
Binary Recognition	Highly uncertain; "Transgender" may become a mandatory, permanent label.
Hurdles	Must pass a CMO-led board and a DM's subjective "desirability" test.

Essentially, the legal position of someone choosing a sex change moves from **"I am who I say I am"** to **"I am what the Medical Board and the DM allow me to be."**

The **Transgender Persons (Protection of Rights) Amendment Bill, 2026**, represents a significant pivot in India's legal approach to gender identity. The proposal is currently being debated, and it fundamentally alters the path established by the 2019 Act and the landmark 2014 NALSA judgment.

Why this radical change is proposed?

The government's "Statement of Objects and Reasons" for the 2026 Amendment points to several primary justifications:

- **Preventing "Misuse":** The government argues that the 2019 definition of "transgender person" was too vague. By allowing "self-perceived identity," they claim the law was open to exploitation by people who did not belong to the traditionally oppressed communities the Act intended to protect.
- **Narrowing the Definition:** The 2026 Bill focuses on a "specific class" of individuals. It prioritizes those with **socio-cultural identities** (such as *Hijra*, *Kinner*, *Aravani*, *Jogta*) and those with **intersex variations** (biological/congenital variations in sex characteristics).

- **A Shift to Medical Verification:** It removes the right to self-identification (Section 4(2) of the 2019 Act). Instead, it introduces a **Designated Medical Board**, headed by a Chief Medical Officer (CMO), as the authority to verify an individual's identity before a certificate is issued.
- **Curbing Forced Mutilation:** A major pillar of the 2026 Bill is the introduction of strict penalties (up to life imprisonment) for "forced conversion" through mutilation, emasculation, or hormonal procedures, particularly targeting those who force children into the community.

What about those who transitioned under the 2019 Act?

If you have already undergone Sex Reassignment Surgery (SRS) and obtained a "Revised Certificate" (changing your gender to Male or Female) under the 2019 Act, your situation is complex under the new proposal:

1. Validity of Existing Certificates

Legally, there is no explicit clause in the 2026 Bill that automatically "cancels" certificates already issued under the 2019 Act. In Indian law, **vested rights** (rights already granted) are generally protected unless a new law specifically states it is retrospective. However, because the definition of "transgender" is being narrowed to exclude "self-perceived identity," there is a legal grey area for binary trans men and women who do not fit the socio-cultural or intersex criteria.

2. Provisions for "Revised Certificates"

The 2026 Bill **retains** a mechanism for those who undergo surgery. It specifies that:

- An individual who has undergone surgery to change their gender to **Male** or **Female** can still apply for a revised certificate.
- The District Magistrate (DM) will issue this, but **only** after being "satisfied with the correctness" of a certificate issued by a Medical Superintendent or CMO.

- The Bill also specifically allows for "consequential changes" in official documents, like changing the first name on a birth certificate.

3. The "Binary" Conflict

The most controversial part of the 2026 Bill is that it states a transgender person "shall not include... persons with self-perceived sexual identities." This creates a contradiction for trans men and women who identify within the binary but aren't part of traditional groups like *Kinner* or *Hijra*. While they can still seek a "Male" or "Female" marker through the medical board, they may find themselves legally excluded from the "transgender" category—and its associated welfare benefits—once they transition to the binary.

Note: As this Bill is still under consideration by Parliament (introduced in March 2026), its final impact will depend on the rules framed and any potential challenges in the Supreme Court regarding its deviation from the 2014 NALSA judgment.

Since the **Transgender Persons (Protection of Rights) Amendment Bill, 2026**, was introduced in the Lok Sabha only yesterday (March 13, 2026), the legal fraternity has moved with lightning speed. While a formal Writ Petition specifically challenging the 2026 Bill may still be in the final drafting stages for filing in the coming days, the "mentionings" and immediate reactions from top legal minds have already set the stage for a massive constitutional showdown.

1. Immediate "Mentionings" and Senior Advocates' Reactions

As of **March 14, 2026**, several senior advocates have already voiced their intent to move the court:

- **Jayna Kothari (Senior Advocate):** A leading voice in transgender rights, Kothari has already publicly slammed the Bill, stating that it "turns back the clock" by choosing a **medicalized model** over a **rights-based one**. She is expected to be a primary counsel in the upcoming challenges, likely arguing that the Bill "completely alters the hard-won definition" of a transgender person.
- **CLPR and Grace Banu:** The **Centre for Law and Policy Research (CLPR)** and activist **Grace Banu** (who were petitioners in the 2019 Act challenge) have signaled that this amendment is a "betrayal" of the NALSA mandate. They are expected to seek an immediate **stay** on the Bill's implementation if it passes, arguing it causes "irreparable harm" to the dignity of trans individuals.
- **The "Blood Donation" Link:** Interestingly, on **March 12** (just a day before the Bill's introduction), the Supreme Court heard a case where the Centre defended excluding trans people from blood donation. Senior Advocate **Jayna Kothari** argued there that "identity is not a risk factor," and many believe this government stance on blood donation was a "prelude" to the regressive definitions found in the new 2026 Bill.

2. How the Supreme Court Will Look at the "Neither Intersex nor Hijra" Category

The most critical part of a future challenge will be how the Court views the exclusion of binary trans men and women who do not fit into traditional socio-cultural groups or have intersex variations.

- **The "Innate Perception" Test:** The SC is likely to fall back on its own words from NALSA: "*Gender identity is an innate perception of one's gender.*" The Court will likely ask the government: "*If a trans man has a male 'soul' but a 'typical' female body at birth, why is he excluded just because he isn't intersex?*"

- **Violation of the "Privacy" Shield:** In the *Puttaswamy* (Privacy) judgment, the SC ruled that the State cannot force you to disclose or prove your identity in a way that violates your dignity. The 2026 Bill's requirement for a **Medical Board** to "verify" someone who isn't intersex will likely be seen as a form of "**State-sponsored harassment.**"
- **The "Hierarchy of Transness":** The Court generally dislikes laws that create "classes within a class" without a solid reason. If the SC finds that the Bill protects a "Hijra" but denies a "Trans Man" the same rights, it will likely strike down that section as **arbitrarily discriminatory** under **Article 14**.

3. The Likely Supreme Court Verdict (Forecast)

Given the current judicial climate in 2026, the Court's view will likely be:

1. **Restoration of Self-ID:** The Court will almost certainly strike down the omission of "self-perceived identity," calling it a "fundamental pillar of autonomy."
2. **Expansion of Definition:** It will likely order that the definition of "transgender" must remain an **inclusive umbrella term** that cannot be restricted to biological or cultural subsets.
3. **Strictures on Medical Boards:** The SC may rule that a Medical Board's role should be **supportive (facilitating care)** rather than **judiciary (deciding identity)**.

Current Status (March 14, 2026):

- **Bill Status:** Introduced in Lok Sabha; currently under debate.
- **Legal Action:** "Caveats" are likely being filed by the Government to ensure they are heard before any stay is granted, while activists are preparing for an **Article 32** petition in the Supreme Court.

The current composition of the Supreme Court of India, led by **Chief Justice Surya Kant** (who took office in late 2025), faces a historic tension between the government's new "biological/cultural" definition and the Court's own recent, highly progressive precedents.

The Court's likely view on trans women who are neither intersex nor from the *Hijra* community is anchored in three key areas:

1. The "Jane Kaushik" Precedent (October 2025)

Just five months ago, in **October 2025**, a Bench of the Supreme Court (*Jane Kaushik v. Union of India*) delivered a "watershed" ruling that directly addresses your question.

- **Rejection of Gatekeeping:** The Court slammed the State for "gross apathy" and reaffirmed that transgender rights are not limited to traditional groups.
- **Right to Binary Identity:** The judgment specifically protected a trans woman who was an independent professional (a teacher), not part of a *Hijra* commune. The Court ruled that no person is bound to seek permission or "belong" to a group to exercise their gender identity.
- **Current Bench View:** This 2025 ruling established that "**Reasonable Accommodation**" is a constitutional mandate. This means the Court currently views trans women as individuals with a right to be recognized as **women**, regardless of whether they have a "congenital variation" or a "socio-cultural" affiliation.

2. Can they be "Forced" to associate with the Hijra community?

From a legal standpoint, the answer is a resounding **No**. The Supreme Court views forced association as a violation of multiple fundamental rights:

- **Article 19(1)(c) (Freedom of Association):** This includes the "right *not* to associate." Forcing a trans woman to join a *Hijra* or *Kinner* group to gain legal recognition would be seen as an unconstitutional "coerced affiliation."
- **Article 21 (Right to Dignity):** The Court has repeatedly held that a person's "inner psyche" defines their gender. Forcing an urban, independent trans woman into a traditional socio-cultural box—which may have different customs, language (*Hijra Farsi*), and living structures—is viewed by the Court as a "civil death" of her true self.

- **The "Choice" vs. "Condition" Debate:** While the 2026 Bill argues that identity shouldn't be based on "personal choice," the Supreme Court's current philosophy (from the *Puttaswamy* and *Navtej Johar* cases) is that **gender is an "ascribed" identity of the soul**, not a "choice" like a hobby. Therefore, it cannot be restricted only to those who are "born" with intersex traits.

3. Current Judicial Composition and Leanings

Judge	Known Philosophy / Recent Remarks
CJI Surya Kant	While he recently prioritized "public health" in the blood donation case (March 2026), he has historically upheld the "Basic Structure" of the Constitution, which includes individual dignity.
Justice B.V. Nagarathna	Known for a "transformative" view of the Constitution. She is likely to view the 2026 Bill's narrow definition as a regressive step that violates the rights of women (including trans women).
Justice J.B. Pardiwala	Part of the Jane Kaushik (2025) bench; he explicitly stated that the State cannot ignore those at the "margins of visibility" and must enforce the architecture of equality.

Conclusion: The Legal Stand-Off

The Supreme Court sees trans women who are neither intersex nor *Hijra* as **valid citizens whose identity is protected under Article 14 and 21**. If the 2026 Bill is passed, the Court will likely find that the law creates an **"unconstitutional classification"** by granting rights to "traditional/biological" trans people while leaving "binary/non-intersex" trans people with no legal status. The Court has historically struck down laws that demand a person "prove" their identity through a third-party group or medical board.