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IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. __ OF 2026

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

[PUBLIC INTEREST LITIGATION]

[A writ petition filed under Article 32 of the Constitution of India, challenging the constitutionality of the Transgender Persons (Protection of Rights), Amendment Act 2026, as ultra vires of Articles 14, 15, 19, and 21 of the Constitution of India]

IN THE MATTER OF:

MANVEER YADAV & ORS.

....PETITIONERS

VERSUS

UNION OF INDIA & ORS.

....RESPONDENTS

WITH

I.A. NO. OF 2026

AN APPLICATION SEEKING STAY

PAPER BOOK

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ADVOCATE FOR THE PETITIONER: SHRADDHA DESKHMUKH

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SYNOPSIS

The present writ petition is being filed under Article 32 of the Constitution of India by the Petitioners, who are members of the transgender community and work towards securing and protecting the rights and entitlements of transgender rights with specific reference to issues suffered by trans men and trans masculine identities. The Petitioners are filing the present writ petition praying for issuance of writ/ writs, order/ direction declaring that the Transgender Persons (Protection of Rights) Amendment Act, 2026 (“**2026 Amendment Act**”) as unconstitutional, and in particular the substituted Section 2(k), the omission of Section 4(2), the amended Sections 6, 7, and 7(1A), and the newly inserted Section 18(e)–(h), to be *ultra vires* Articles 14, 15, 16, 19, and 21 of the Constitution.

The 2026 Amendment Act introduces sweeping changes to the Transgender Persons (Protection of Rights) Act, 2019 (“**Trans Rights Act 2019**”), and is in complete derogation of the principles laid by this Hon'ble Court in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (“NALSA”). The most devastating amendment brought is the complete legislative erasure of trans men and trans masculine identities and other gender-diverse identities from the definition of “transgender person.” The 2026 Amendment Act replaces an identity-based, self-determination framework with a categorical list of externally verifiable biological markers and named trans-feminine socio-cultural communities, none of which encompasses trans men.

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In *NALSA* (supra), this Hon’ble Court laid down the constitutional framework governing the rights of transgender and gender diverse (“TGD”) persons. It recognised “transgender” as an umbrella term encompassing a wide and diverse range of identities, trans men and trans masculine identities, trans women, non-binary persons, genderqueer individuals, and socio-cultural groups including *hijras*, *kinnars*, *aravanis*, and *jogtas*, and held that the criterion for recognition must be the ‘Psychological Test’, not the ‘Biological Test.’ It affirmed that gender identity is one of the most fundamental aspects of life, that the right to self-determined gender identity is protected under Articles 14, 15, 19(1)(a), and 21, and that no person shall be required to undergo medical procedures as a precondition for legal recognition.

The Trans Rights Act 2019 was enacted in pursuance of these constitutional directions. Section 2(k) of the unamended Act defined “transgender person” to include trans men and trans women irrespective of medical intervention, persons with intersex variations, genderqueer persons, and named socio-cultural communities. Section 4(2) expressly guaranteed the right to self-perceived gender identity. Together, this framework operationalised the constitutional mandate of *NALSA* (supra). The 2026 Amendment Act systematically dismantles it.

It is respectfully submitted that the 2026 Amendment Act, firstly, replaces the open, identity-based definition of “transgender person”

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under Section 2(k) of the Trans Rights Act 2019 with a categorical and exhaustive list confined to: (i) persons with named socio-cultural identities (*kinner, hijra, aravani, jogta, & eunuch*); (ii) persons with intersex variations defined through biological and chromosomal criteria; and (iii) persons forcibly compelled to assume a transgender identity through bodily modification. A proviso declares that the definition shall “not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.” Simultaneously, Section 4(2), which was the direct statutory instantiation of the binding *NALSA* direction that the right to self-perceived gender identity is constitutionally protected, has been entirely omitted without any legitimate rationale. The combined effect of such an Amendment is to strip, inter-alia, trans men and trans masculine identities, of all statutory recognition and protection.

This Hon’ble Court in *NALSA* (supra) held that “transgender” is constitutionally an umbrella term and that its scope cannot be legislatively narrowed. The substituted Section 2(k) converts this constitutional umbrella into an exhaustive closed list, in complete derogation of this Hon’ble Court’s binding direction. The three limbs of the new definition of term ‘transgender’ impose, a community-ascription test, a reinstated Biological Test, and a coercion test, each expressly rejected in *NALSA* (supra), as the sole bases for recognition.

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Furthermore, every named socio-cultural community in the definition is, without exception, a trans-feminine community of persons assigned as male at birth. Trans men and trans masculine identities have no equivalent named community formation in India, their structural invisibility is itself a defining feature of their experience. The legislature's privileging of community-visible, trans-feminine identities over self-perceived identities is not a neutral classification, it is a prejudice of visibility encoded in statute.

The substituted definition constitutes direct discrimination on the ground of gender identity (a dimension of "sex" under Articles 15 and 16 as held in NALSA); indirect discrimination through disproportionate impact on trans men and non-binary persons; omissive discrimination through the deliberate omission of Section 4(2); and intersectional discrimination compounding disadvantage across multiple axes. It violates the right to self-determined gender identity and bodily autonomy under Article 21; the right to express gender identity under Article 19(1)(a); and the substantive equality guarantee under Articles 14 and 15, assessed against the four-dimensional framework endorsed in *Lt. Col. Nitisha v. Union of India*, (2021) 15 SCC 523 and *Jane Kaushik v. Union of India*, 2025 SCC OnLine SC 2257.

Secondly, the 2026 Amendment Act restructures the certificate regime under the Trans Rights Act 2019, converting a facilitative,

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self-declaration-based process into one of administrative adjudication and compulsory State surveillance over gender transition. Under the 2026 Amendment Act, the District Magistrate is now required to examine the recommendation of a medical board and, where considered “necessary or desirable,” to seek the assistance of other medical experts before issuing a certificate of identity. This directly reintroduces the *Corbett Biological Test* expressly rejected in *NALSA* (supra); pathologises transgender identity; confers uncanalised and unguided discretion in violation of Article 14; imposes a discriminatory medical burden on transgender persons alone in violation of Article 15; and produces a chilling effect on gender expression in violation of Articles 19(1)(a) and 21. The Parliamentary Standing Committee had, in its 43rd Report, expressly cautioned against precisely this kind of medical gatekeeping.

Moreover, the substitution of “may” with “shall” converts an optional pathway into a statutory obligation, compelling a person who has undergone surgery to engage with State authorities regardless of their own choice. The trigger, “undergone surgery”, is void for vagueness as gender-affirming transition is a non-linear, multi-stage process spanning 12–24 months, and the statute provides no guidance as to when the obligation crystallises, thereby imposing an arbitrary and unworkable compulsory burden in violation of Articles 14, 19(1)(a), and 21.

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The Medical institutions are mandated to furnish details of any person who has undergone gender-affirming surgery to the District Magistrate and the designated authority, without consent, purpose limitation, or data protection safeguard. This violates the right to informational privacy, decisional autonomy, and bodily autonomy under Article 21 as recognised in *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1; breaches doctor-patient confidentiality; conflicts with the Digital Personal Data Protection Act, 2023; and creates a State-controlled surveillance architecture over gender transition that is manifestly arbitrary and disproportionate under Article 14. The protection that a change in gender shall not affect existing rights and entitlements under the Act has been omitted, removing a critical statutory safeguard and leaving transitioning persons without protection of their entitlements.

While the 2026 Amendment Act retains the original offences under Section 18(a)–(d), including bonded labour, forced displacement, and sexual abuse, within a uniform ceiling of two years’ imprisonment with fine, it introduced new offences under Sections 18(e)–(h), which criminalise the compulsion of persons to “assume, adopt, or outwardly present a transgender identity” through vaguely defined means including “allurement,” “inducement,” and “undue influence.”

It is respectfully submitted that the uniform ceiling of two years for offences including sexual abuse is grossly disproportionate, bears no

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rational relationship to the gravity of the harms prescribed, and results in lesser protection for transgender persons than is accorded by the Bharatiya Nyaya Sanhita, 2023 and the Bonded Labour System (Abolition) Act, 1976 for analogous conduct against the general population. This violates the proportionality principle and the guarantee of equal protection under Articles 14 and 15.

Furthermore, the terms “inducement,” “allurement,” and “undue influence” are undefined and provide no clear notice of what conduct is prohibited. These provisions, in practical operation, criminalise bona fide gender-affirming medical care, legitimate counselling, peer support networks, community kinship structures including the traditional dera system, and consensual community association, the very life-saving infrastructure upon which isolated trans men and other excluded persons depend. The chilling effect on healthcare providers, NGOs, shelter homes, and community leaders is direct and devastating.

The 2026 Amendment Act, in its singular preoccupation with contracting the definition of “transgender person” and introducing surveillance mechanisms over gender-affirming care, contains not a single provision addressing the substantive welfare and inclusion obligations that this Hon'ble Court in *NALSA* (supra) held to be constitutionally mandatory. The directions issued in *NALSA* were precise and affirmative. The State was directed to seriously address gender dysphoria, social stigma, depression, and suicidal tendencies

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among transgender persons; to create public awareness so that transgender persons feel themselves to be part of social life; to provide medical care, separate public facilities, and social welfare schemes for the community's betterment; and to take measures to regain the respect and place in society which transgender persons once occupied in India's cultural and social life. None of these directions, not one, finds any echo in the 2026 Amendment Act.

There is no provision for gender sensitisation in educational institutions, workplaces, or public authorities; no framework for ensuring access to public places, healthcare, or government services; no mechanism for reservations in education or employment as directed in NALSA and recommended by the Parliamentary Standing Committee in its 43rd Report of 2017; no mandate for public awareness campaigns to combat transphobia; and no timeline, nodal authority, or accountability structure through which any of these obligations are to be discharged.

The 2026 Amendment Act is wholly silent on the question of how transgender and gender diverse persons, and in particular trans men and trans masculine identities, who remain the most invisible segment of the community, are to be included in social, economic, and civic life. What the legislature has produced is a statute that narrows who may be protected and intensifies State control over those who remain within its ambit, while abandoning entirely the

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affirmative, inclusion-oriented mandate of NALSA that was the foundational purpose of transgender rights legislation in India.

In view of the facts and circumstances stated hereinabove, the Petitioners most humbly pray that this Hon'ble Court be pleased to: (a) declare Section 2(k) as substituted by the 2026 Amendment Act to be *ultra vires* Articles 14, 15, 19(1)(a), and 21 of the Constitution of India, and strike down the same; (b) declare the omission of Section 4(2) of the Trans Rights Act 2019 to be unconstitutional and void, and direct that it be read as continuing in force; (c) declare the amendments to Sections 6 and 7, including the insertion of Section 7(1A) and the mandatory substitution in Section 7(1), to be *ultra vires* the Constitution and void; (d) declare that the right to self-perceived gender identity is a fundamental right protected under Articles 14, 15, 19(1)(a), and 21, and direct the Union of India and all State Governments to give it effect in accordance with the binding directions in *NALSA*; and (e) declare the penal provisions under Section 18(a)–(d) as unconstitutionally disproportionate and those under Section 18(e)–(h) as void for vagueness and overbreadth.

Hence, the present writ petition.

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LIST OF DATES AND EVENTS

Date	Events
15.05.2014	This Hon'ble Court in <i>National Legal Services Authority vs Union Of India & Ors, (2014) 5 SCC 438</i> , recognized the rights of transgender and gender diverse persons under the Constitution of India. This Hon'ble Court recognised socio-cultural groups like "Hijras, Eunuchs, and transgender persons" as a "third gender" for the purpose of safeguarding their rights under Part III of the Constitution of India and the laws made by Parliament and the State Legislatures. Importantly, this Hon'ble Court recognised the right of self-perceived gender identity, forming the basis for gender identification attached to Article 19(1)(a) and Article 21, forming part of personal autonomy and expression. In this regard, it was held that no person shall be forced to undergo medical procedures, including Sex Reassignment Surgery, sterilisation, or hormonal therapy, as a requirement for legal recognition of their gender identity
12.12.2014	Following the NALSA Judgment, the Rights of Transgender Persons Bill, 2014 (hereinafter referred to as the ' 2014 Bill '), was tabled as a Private

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	Member's Bill in the Rajya Sabha on 12th December 2014. It was unanimously passed in the Rajya Sabha on 24th April, 2015, without any debate in the Lok Sabha. The Bill was the first effort to frame legislation to provide for the formulation and implementation of a comprehensive national policy for ensuring the overall development of transgender persons and their welfare to be undertaken by the State, and for matters connected therewith and incidental thereto.
02.08.2016	The Transgender Persons (Protection of Rights) Bill, 2016 (hereinafter referred to as the ' 2016 Bill ') was introduced in the Lok Sabha on 2nd August, 2016.
08.09.2016	The Transgender Persons (Protection of Rights) Bill, 2016, was referred to the Standing Committee on Social Justice and Empowerment for examination and recommendations.
21.07.2017	The Standing Committee presented its 43rd Report on the 2016 Bill before the Lok Sabha wherein it recommended several key aspects which <i>inter alia</i> includes the definition of term "transgender" as a category of persons who identify in a gender that is different from their gender assigned at birth, including identifying as 'male', 'female' or 'third

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	gender' (inclusive of distinct socio-cultural identities in India, i.e., hijras, kinnars, aravanis and jogappas, amongst others.”
24.08.2017	A nine-judge bench of this Hon’ble Court, in <i>Justice K.S. Puttaswamy vs. Union of India (2017) 10 SCC 1</i> , recognised right to privacy as a constitutionally protected fundamental right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution.
06.09.2017	A five-judge bench of this Hon’ble Court in <i>Navtej Singh Johar v. Union of India, (2018) 10 SCC 1</i> , upheld the principle laid down in NALSA (supra) while reading down Section 377 (sodomy law) of the Indian Penal Code, 1860, recognising that gender identity and sexual orientation are intrinsic to an individual’s identity, dignity, and autonomy, and are protected under the fundamental rights guaranteed under Articles 14, 19, and 21 of the Constitution.
17.12.2018	The Transgender Persons (Protection of Rights), Bill, 2018 was passed in the Lok Sabha, taking consideration of the recommendations and suggestions from the Standing Committee Report.

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05.08.2019	The Transgender Persons (Protection of Rights) Bill, 2019, was unanimously passed by the Lok Sabha on 05.08.2019.
26.11.2019	The Transgender Persons (Protection of Rights) Bill, 2019, was passed in the Rajya Sabha in its existing form.
05.12.2019	The Transgender Persons (Protection of Rights) Act 2019 received the President's assent and was notified as law in the official gazette.
25.09.2020	The Ministry of Social Justice and Empowerment introduced Transgender Persons (Protection of Rights) Rules, 2020 by virtue of Section 22 of the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019).
17.10.2023	A five-judge bench of this Hon'ble Court in <i>Supriyo and Ors. Vs. Union of India (UOI)</i> , recognised that transgender persons in heterosexual relationships retain the right to marry under the Special Marriage Act, 1954, while unanimously holding that there is no fundamental right to marry guaranteed by the Constitution
11.03.2024	In <i>Devu G. Nair vs. The State of Kerala and Ors.</i> , a three-judge bench of this Hon'ble Court framed

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	guidelines on cases concerning queer individuals, which <i>inter alia</i> included: <i><u>“Sexual orientation and gender identity fall within the core zone of privacy of an individual. These identities are a matter of self-identification, and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+ community. Courts must exercise caution in passing any direction or making any comment which may be perceived as pejorative.”</u></i>
17.10.2025	In <i>Jane Kaushik v. Union of India</i>, this Hon’ble Court, while recognizing the rights of transgender persons as equal citizens entitled to equal opportunity, inclusion, and dignity, through the enactment of the Trans Rights Act 2019 and the 2020 Rules, applied the principle of “reasonable accommodation” as a facet of substantive equality under Article 14 of the Constitution.
13.03.2026	The Ministry of Social Justice and Empowerment introduced Transgender Persons (Protection of Rights) Amendment Bill, 2026, in the Lok Sabha on March 13, 2026, to amend the Transgender Persons (Protection of Rights) Act, 2019.

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24.03.2026	The Transgender Persons (Protection of Rights) Amendment Bill, 2026, was unanimously passed by the Lok Sabha on 24.03.2026.
25.03.2026	The Transgender Persons (Protection of Rights) Amendment Bill, 2026, was unanimously passed by the Rajya Sabha on 25.03.2026.
30.03.2026	The Transgender Persons (Protection of Rights), Amendment Act, 2026 received the President's assent and was notified as law in the Official Gazette.
13.04.2026	Hence, the present Writ Petition.

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
[PUBLIC INTEREST LITIGATION]

IN THE MATTER OF:

1. MANVEER YADAV

Aged about 29 years,

[REDACTED]

....PETITIONER NO. 1

2. VISHWANATH MAITHIL,

Aged about 29 years,

[REDACTED]

....PETITIONER NO. 2

3. VINSHI

Aged about 29 years,

[REDACTED]

....PETITIONER NO. 3

4. ABHINA DHONDIBA AHER,

Aged about 49 years,



....PETITIONER NO. 4

VERSUS

1. UNION OF INDIA,

Through its Secretary

Ministry of Law and Justice

4th Floor, A-Wing, Shastri Bhawan

New Delhi – 110001

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....RESPONDENT NO. 38

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ENFORCEMENT OF THE
FUNDAMENTAL RIGHTS OF THE PETITIONERS BY
WAY OF ISSUANCE OF AN APPROPRIATE WRIT,
ORDER OR DIRECTION IN THE NATURE OF
MANDAMUS AND/ OR CERTIORARI, OR ANY OTHER
WRIT, ORDER OR DIRECTION UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA *INTER-ALIA*
DECLARING THE TRANSGENDER PERSONS
(PROTECTION OF RIGHTS) AMENDMENT ACT, 2026 TO
BE *ULTRA VIRES* PART – III OF THE CONSTITUTION,
AND PARTICULARLY THE GUARANTEE UNDER
ARTICLES 14, 19 AND 21 OF THE CONSTITUTION OF
INDIA**

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA.

THE WRIT PETITION ON BEHALF OF
THE ABOVE-NAMED PETITIONERS:

MOST RESPECTFULLY SHOWETH:

1. That, the present Writ Petition is filed in public interest under Article 32 of the Constitution of India (hereinafter referred to as “**the Constitution**”) by the Petitioners, who are members of the transgender community. By way of this petition, the Petitioners seek issuance of an appropriate writ, order, or direction declaring the Transgender Persons (Protection of Rights) Amendment Act, 2026 (hereinafter referred to as “**2026 Amendment Act**”) as unconstitutional and *ultra vires* Part III of the Constitution of India, on the ground that its provisions are violative of the fundamental rights guaranteed under Articles 14, 15, 19, and 21 of the Constitution.
2. That, the Petitioners are members of the transgender community whose fundamental rights, as enshrined under Part III of the Constitution of India, specifically under Articles 14, 15, 16, 19, and 21 thereof, are directly and adversely affected by the impugned provisions of the Transgender Persons (Protection of Rights) Amendment Act, 2026. Respondent No. 1 is the Union of India, represented through the Ministry of Law and Justice, and Respondent No. 2 is the Union of India,

represented through the Ministry of Social Justice and Empowerment.

3. That, the brief facts and circumstances giving rise to the filing of the present Writ Petition are set out herein below:

PARTICULARS OF THE PETITIONERS:

- I. That, the Petitioners are members of the transgender community and well-known transgender rights activists who have been working for the rights and welfare of trans men and trans masculine identities in India.

- II. That, the Petitioner No. 1, Manveer Yadav, is a transman and a dedicated social work professional who integrates academic knowledge with lived experience to advocate for the rights and empowerment of transgender individuals, particularly trans men. He is presently involved in initiatives where he leads programs focused on education, shelter, livelihood, crisis intervention, and advocacy for the transgender community. His work is focused on crisis intervention, gender sensitization workshops, legal awareness programs, and policy advocacy in collaboration with NGOs, and media. [REDACTED]
[REDACTED]

- III. That, the Petitioner No. 2, Vishwanath Maithil, is a transman based in Gwalior, Madhya Pradesh (currently residing in

IV. That, the Petitioner No. 3, Vinshi, is a transgender woman and holds the distinction of being India's first transgender woman Para Legal Volunteer. She is a graduate of the University of Delhi and is presently pursuing a Master's in Social Work, integrating academic knowledge with over five

years of extensive lived and professional experience in transgender rights advocacy. She is presently part of several advocacy initiatives, having grown from a community mobiliser to a position of senior leadership within said initiative programmes. Her work is focused on crisis intervention, sensitization, policy advocacy, legal awareness, and addressing discrimination and violence against transgender individuals. [REDACTED]

[REDACTED]

- V. That, the Petitioner No. 4, Abhina Aher, is a transgender woman and a pioneering transgender rights activist, policy advocate, and community leader with over three decades of experience working at the intersection of health, human rights, and social inclusion. She holds a diploma in NGO Management from SIES College, Navi Mumbai, and a Diploma in Health Management from the University of Washington. The Petitioner No. 4 presently part of several prominent and acclaimed advocacy initiatives, which are aimed at advancing holistic empowerment of the transgender community through policy advocacy, health programs, and community-led initiatives. Under her leadership, she has inaugurated a shelter home, India's first exclusive shelter for trans men and trans masculine identities, *Garima Greh*, safe housing initiatives, and skilling and livelihood programs for

transgender youth. She is a member of the National Council for Transgender Persons. She has served as a Board Member of international organisations, including IPPF, GATE, IRGT, and the Asia Pacific Transgender Network. She has previously held senior positions as Senior Advisor on Health Equity at USAID, Technical Lead at PATH International, and Associate Director at Alliance India, and has contributed to national and global health programs, including NACO, HIV, and TB initiatives. She has been conferred several distinguished awards, including International Human Rights Awards from Washington D.C., the Rex Award, and the Transgender Leadership Award from the National Transgender Network. [REDACTED]

[REDACTED]

- VI. That, all the Petitioners are transgender and gender-diverse persons. The term “transgender” would also encompass various other terminologies and groups of persons who are referred to under different names, including trans men, transwomen, *hijras*, *kothis*, *aravanis*, *jogappas*, *jogtas*, *shiv-shaktis*, *kinnars*, and other gender non-conforming identities. The Petitioners represent the diversity of the transgender community, particularly trans men and trans masculine identities, across India and collectively embody the lived experiences of discrimination, exclusion, violence, and systemic denial of rights that transgender persons in India

continue to face. The Impugned Provisions of the Transgender Persons (Protection of Rights) Amendment Act, 2026, directly and adversely affect the fundamental rights of all persons falling within the ambit of this community, regardless of the specific identity or terminology by which they are known.

**FROM LEGAL RECOGNITION OF TRANSGENDER
AND GENDER DIVERSE PERSONS TO TRANS
RIGHTS LAW**

A. The NALSA Judgment

- VII. In 2014, this Hon'ble Court, in *National Legal Service Authority v. Union of India*, (2014) 5 SCC 438 (hereinafter referred to as “NALSA”), passed a landmark judgment recognising the rights of transgender persons for the first time in India. This Hon'ble Court recognised *Hijras*, *Eunuchs*, and transgender persons as a “third gender” for the purpose of safeguarding their rights under Part III of the Constitution of India and the laws made by Parliament and the State Legislatures, and discussed the concept of “gender identity” at length.
- VIII. The key holdings of this Hon'ble Court in *NALSA* (supra) are as follows:
- a. **On Article 21 — Right to Life, Dignity and Personal Autonomy**: This Hon'ble Court held that the right to

self-determination of one's gender identity is an integral part of one's right to life, dignity, and personal autonomy guaranteed under Article 21 of the Constitution of India. It was further held that gender identity forms the core of one's personal self, based on self-identification, and not on any surgical or medical procedure, and that any insistence upon Sex Reassignment Surgery for declaring one's gender is both immoral and illegal.

- b. **On Article 19(1)(a) — Right to Freedom of Expression:** This Hon'ble Court held that the freedom of expression guaranteed under Article 19(1)(a) of the Constitution includes the freedom to express one's chosen gender identity through varied ways and means, including expression, speech, mannerism, clothing, and conduct. It was further held that gender identity lies at the core of one's personal identity, gender expression, and presentation, and that the State cannot prohibit, restrict, or interfere with a transgender person's expression of such identity. The values of privacy, self-identity, autonomy, and personal integrity were held to be fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution;

- c. **On Article 14 — Right to Equality:** This Hon'ble Court held that the expression “person” in Article 14 is gender neutral and takes within its sweep Hijras and transgender persons. It was held that discrimination on the ground of sexual orientation or gender identity includes any discrimination, exclusion, restriction, or preference which has the effect of nullifying or transposing equality before law or equal protection of laws as guaranteed under the Constitution. Non-recognition of the identity of transgender persons was held to deny them equal protection of law and to leave them vulnerable to harassment, violence, and sexual assault, thereby violating Article 14 of the Constitution.

- d. **On Articles 15 and 16 — Non-Discrimination and Equal Opportunity:** This Hon'ble Court held that the expression “sex” as used in Articles 15 and 16 of the Constitution is not limited to the biological sex of male or female but includes persons who consider themselves to be neither male nor female. Discrimination on the grounds of gender identity was held to constitute discrimination on the grounds of “sex” within the meaning of Articles 15 and 16. This Hon'ble Court further held that transgender persons are entitled to the benefits available to Socially and Educationally Backward Classes of citizens under

Article 15(4), and to reservations in the matter of appointment under Article 16(4) of the Constitution.

- e. **On the Right to Self-Identification of Gender:** This Hon'ble Court held that every person has the right to identify their gender as male, female, or transgender, and that no person shall be forced to undergo medical procedures, including Sex Reassignment Surgery, sterilisation, or hormonal therapy, as a requirement for legal recognition of their gender identity. It was further held that the Yogyakarta Principles, not being inconsistent with the fundamental rights guaranteed under the Indian Constitution, must be recognised and followed;

IX. This Hon'ble Court, in *NALSA* (supra), issued the following directions to the Central and State Governments:

- a) *Hijras, Eunuchs*, apart from binary gender, should be treated as a “third gender” for the purpose of safeguarding their rights under Part III of our *Constitution* and the laws made by the Parliament and the State Legislature.
- b) Transgender persons’ right to decide their self-identified gender is also upheld, and the Centre and State Governments are directed to grant legal

recognition of their gender identity, such as male, female, or as a third gender.

- c) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
- d) Centre *and* State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues.
- e) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders, such as fear, shame, gender *dysphoria*, social pressure, depression, suicidal tendencies, social stigma, etc., and any insistence that SRS for declaring one's gender is immoral and illegal.
- f) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them with separate public toilets and other facilities.
- g) Centre and State Governments should also take steps to frame various social welfare schemes for their betterment.

- h) Centre and State Governments should take steps to create public awareness so that TGs feel they are part and parcel of social life and are not treated as untouchables.
- i) Centre and *the* State Governments should also take measures to regain their respect and place in the society, which they once enjoyed in our cultural and social life.

B. The Rights of Transgender Persons Bill, 2014

- X. On 12.12.2014, following the judgment in *NALSA* (supra), the Rights of Transgender Persons Bill, 2014 (hereinafter referred to as “**the 2014 Bill**”) was tabled as a Private Member's Bill in the Rajya Sabha. It was unanimously passed in the Rajya Sabha on 24.04.2015; however, it was never debated in the Lok Sabha. The 2014 Bill was the first legislative effort at framing a comprehensive framework for the rights of transgender persons. In line with the directions of this Hon'ble Court in *NALSA* (supra), the 2014 Bill defined transgender persons in psychological terms to encompass persons whose sense of gender does not match the gender assigned at birth, and included trans men & trans masculine identities, transwomen & trans feminine identities, gender queers, and socio-cultural identities such as kinnars, hijras, aravanis, and jogtas. Importantly, the 2014 Bill also provided

for a two percent reservation for the transgender community in all primary, secondary, and higher government-aided educational institutions, and in employment in public establishments under the State. A copy of The Rights of Transgender Persons Bill, 2014, is annexed and marked as **ANNEXURE P-1 (PAGES 401 TO 418)**.

C. The Transgender Persons (Protection of Rights) Bill, 2016

- XI. On 02.08.2016, the Transgender Persons (Protection of Rights) Bill, 2016 (hereinafter referred to as “**the 2016 Bill**”) was introduced in the Lok Sabha. In stark contrast to the 2014 Bill, the 2016 Bill departed significantly from the directions issued by this Hon'ble Court in *NALSA* (supra). Notably, the 2016 Bill defined transgender persons in medical terms, required applicants to appear before a District Screening Committee comprising the Chief Medical Officer, a psychologist or psychiatrist, and other officials for the purpose of obtaining a certificate of identity, and contained no provisions for reservation in educational institutions or public employment. The 2016 Bill was referred to the Standing Committee on Social Justice and Empowerment for its examination on 08.09.2016. A copy of The Rights of Transgender Persons Bill, 2016, is annexed and marked as **ANNEXURE P-2 (PAGES 419 TO 432)**

- XII. The Standing Committee presented its 43rd Report on the 2016 Bill before the Lok Sabha, making several significant recommendations, including, *inter alia*, that:
- a. A transgender person should have the option to choose either 'man', 'woman', or 'transgender' independent of any surgery or hormones; (ii) that the terms 'gender identity' and 'gender expression' be explicitly defined in line with the NALSA judgment;
 - b. Alternative family structures within the transgender community be legally recognised and that the Hijra family system not be criminalised;
 - c. There be graded punishment for different offences against transgender persons, with physical and sexual assault attracting higher penalties;
 - d. The Bill specifically recognises and penalises violence faced by transgender persons from officials in educational institutions, healthcare institutions, police stations, jails, and other places of custody; and
 - e. Reservations be granted to transgender persons as a socially and educationally backward class of citizens, as directed by this Hon'ble Court in *NALSA*.

- XIII. None of these recommendations was incorporated into the legislation that was eventually enacted. A copy of the 43rd Report dated 21.07.2017 presented by the Standing Committee on Social Justice and Empowerment on “The Transgender Persons (Protection of Rights), Bill 2016”, before the Lok Sabha, is annexed herewith and marked as **ANNEXURE P-3 (PAGES 433 TO 562)**.

D. The *K.S. Puttaswamy* Judgment (2017)

- XIV. On 24.08.2017, a nine-judge bench of this Hon'ble Court in *Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1* declared the right to privacy as a constitutionally protected right emerging primarily from the guarantee of life and personal liberty under Article 21 of the Constitution. This Hon'ble Court held that privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation, and that it safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. This Hon'ble Court further held that the right to privacy is an expression of individual autonomy, dignity, and identity, and specifically affirmed, by reference to the judgment in NALSA, that the right to self-recognition of gender identity is an aspect of the right to privacy protected under Article 21 of the Constitution.

E. The Navtej Johar Judgment (2017)

- XV. On 06.09.2017, this Hon'ble Court in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, upheld the *NALSA (supra)* principle, recognising that gender identity and sexual orientation are intrinsic to an individual's identity, dignity, and autonomy, and are protected under the fundamental rights guaranteed by the Constitution, particularly Articles 14, 19, and 21. This Hon'ble Court further emphasised that the right to self-determination of one's identity is central to personal liberty and cannot be subjected to societal prejudices or majoritarian views. It held that any denial of such identity would amount to a violation of the right to live with dignity, privacy, and equality, which form the core of constitutional morality.

F. The Transgender Persons (Protection of Rights) Bill, 2018, and the Trans Rights Act 2019

- XVI. On 17.12.2018, the Transgender Persons (Protection of Rights) Bill, 2018, which was substantially the same as the 2016 Bill, was passed in the Lok Sabha after incorporating some, but not all, suggestions from the Standing Committee Report, and despite widespread opposition from the transgender community and civil society. A copy of The Transgender Persons (Protection of Rights) Bill, 2018, is

annexed and marked as **ANNEXURE P-4 (PAGES 563 TO 570)**.

XVII. On 05.08.2019, the Lok Sabha unanimously passed the Transgender Persons (Protection of Rights) Bill, 2019, and on 26.11.2019, it was passed in the Rajya Sabha in its existing form. On 05.12.2019, the Bill received the assent of the President and was notified as the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as “**2019 Trans Right Act**”) in the Official Gazette. A copy of The Transgender Persons (Protection of Rights) Bill, 2019, is annexed and marked as **ANNEXURE P-5 (PAGES 571 TO 580)**. A copy of The Transgender Persons (Protection of Rights) Act, 2019, is annexed and marked as **ANNEXURE P-6 (PAGES 581 TO 590)**.

XVIII. On 25.09.2020, the Ministry of Social Justice and Empowerment introduced the Transgender Persons (Protection of Rights) Rules, 2020, in exercise of the powers conferred by Section 22 of the Trans Rights Act 2019. A copy of The Transgender Persons (Protection of Rights) Rules, 2020, is annexed and marked as **ANNEXURE P-7 (PAGES 591 TO 605)**

G. The Transgender Persons (Protection of Rights) Amendment Bill 2025, and the 2026 Amendment Act

- XIX. On 13.03.2026, the Ministry of Social Justice and Empowerment introduced the Transgender Persons (Protection of Rights) Amendment Bill, 2026 (hereinafter referred to as “**2026 Amendment Bill**”) in Lok Sabha. The 2026 Amendment Act brings substantial amendments to the Trans Rights Act 2019, which *inter alia* includes:

Provision	Trans Rights Act 2019	2026 Amendment
Section 2(a): Definition of “Appropriate Government” <i>(Inserts Section 2(a)(iii)</i>	(a) ‘appropriate Government’ means— (i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government; (ii) in relation to a State Government or any establishment, wholly or substantially	(a) ‘appropriate Government’ means—(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, the Central Government; (ii) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority within a State, the State Government; <u>(iii) in relation to a Union territory or any establishment wholly or</u>

	financed by that Government, or any local authority, the State Government;”=	<u><i>substantially financed by the Central Government in that Union territory, the Administrator thereof appointed under article 239 of the Constitution or such authority as may be specified by the Central Government;</i></u>
Section 2(aa) Definition of “authority” <i>A new definition has been inserted.</i>	-	<u><i>‘(aa) ‘authority’ means a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration;’</i></u>
Section 2(i): Definition of persons with intersex variations <i>(Omits Section 2(i))</i>	“‘person with intersex variations’ means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;”	“clause (i) shall be omitted.”

Section 2(k): Definition of Transgender Persons	(k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.	<u>‘(k) “transgender person” means— (i) a person having such socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:—</u> <u>(a) primary sexual characteristics; (b) external genitalia;</u> <u>(c) chromosomal patterns;</u> <u>(d) gonadal development;</u> <u>(e) endogenous hormone production or response, or such other medical conditions; or</u> <u>(ii) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a</u>

		<u>transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise:</u> <u>Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.’</u>
Section 4(1): Recognition of identity of transgender person	“(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.”	<u>“sub-section (2) shall be omitted.”</u>
6. Issue of the certificate of identity	S 6. (1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after	The District Magistrate, <u>after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts,</u> shall issue to the applicant under section 5, a certificate of

	following such procedure and in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender.	identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender.
	No previous provision	<u><i>(4) The person who has been issued a certificate of identity under sub-section (1) and is so declared as a transgender person within the definition under this Act shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person.</i></u>
Section 7: Change in Gender	7. Change in gender.—(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change	7. Change in gender.—(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person <u>shall</u> make an application, along

	gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.	with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.
Section 7(1A)	No previous provision	<u>“(1A) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the</u>

		<u><i>authority in such form and manner as may be prescribed.”;</i></u>
Section 7(2)	(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.	<u><i>“(2) A person referred to in sub-section (1) shall also make an application to the District Magistrate who shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.”;</i></u>
Section 7(3)	(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section	<u><i>Sub-section (3) and the proviso shall be omitted.</i></u>

	(2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:	
Section 7, Proviso	Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.	
Section 18. Offences and penalties	Whoever,— (a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public	18. Whoever,— (a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government, <u><i>shall be punishable with imprisonment for a term which shall not be less than</i></u>

	purposes imposed by Government; (b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use; (c) forces or causes a transgender person to leave household, village or other place of residence; and (d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to	<u>six months but which may extend to two years and with fine;</u> (b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use, <u>shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;</u> (c) forces or causes a transgender person to leave household, village or other place of residence, <u>shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;</u> (d) harms or injures or endangers the life, safety, health or well-being,

	do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.	whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, <u>shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;</u> <u>(e) kidnaps or abducts any adult person and causes—</u> <u>(i) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or</u> <u>(ii) permanent or severe injury to the body or bodily functions of such person, with the intent of, or in the course of, compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent</u>

		<u>of such person, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees;</u> <u>(f) kidnaps or abducts any child and causes—</u> <u>(i) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or</u> <u>(ii) permanent or severe injury to the body or bodily functions of such child, with the intent of, or in the course of, compelling such child to assume, adopt, or outwardly present a transgender identity, whether by force, allurement, deceit, undue</u>

		<u>influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;</u> <u>(g) by force, threat, coercion, allurement, deception, inducement, or undue influence—</u> <u>(i) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and</u> <u>(ii) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine</u>

		<u>which shall not be less than one lakh rupees; and</u> <u>(h) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise—</u> <u>(i) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and</u> <u>(ii) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which shall not be less than three lakh rupees.”.</u>

A copy of The Transgender Persons (Protection of Rights) Amendment Bill, 2026 is annexed and marked as **ANNEXURE P-8 (PAGES 606 TO 617)**.

- XX. On 24.03.2026, the Ministry of Social Justice and Empowerment took up the 2026 Amendment Bill for discussion in Lok Sabha, wherein 15 members of Lok Sabha participated in the discussion. After 2 hours and 26 minutes of discussion, the Lok Sabha passed the 2026 Amendment Bill.
- XXI. On 25.03.2026, the 2026 Amendment Bill was taken up for discussion before the Rajya Sabha, wherein 23 members discussed the 2026 Amendment Bill, and subsequently, the 2026 Amendment Bill was also passed in the Rajya Sabha.
- XXII. On 30.03.2026, the President of India gave assent to the 2026 Bill, and the Transgender Persons (Protection of Rights) Amendment Act, 2026 came into force. A copy of the Transgender Persons (Protection of Rights) Amendment Act, 2026 is annexed and marked as **ANNEXURE P-9 (PAGES 618 TO 622)**.
- XXIII. Petitioner No. 1, Manveer Yadav, and Petitioner No. 2, Vishwanath Maithil, jointly administered a structured survey titled “*Gender-Affirming Care and Identification Survey*” to 204 individuals belonging to the transgender community

across India. The survey was conducted between 03.04.2026 and 09.04.2026 *via* Google Forms, with responses received in English, Hindi, and Marathi. A copy of the Report titled “*Gender-Affirming Care and Identification Survey*” collated by Petitioner Nos. 1 and 2, is annexed and marked as **ANNEXURE P-10 (PAGES 623 TO 638)**.

4. **QUESTIONS OF LAW:**

That, the present writ petition involves the following substantial questions of law:

- I. Whether or not, the substituted Section 2(k) of the Transgender Persons (Protection of Rights) Amendment Act, 2026, in confining the definition of “transgender person” to named socio-cultural communities, persons with intersex variations, and persons subjected to bodily compulsion only, is *ultra vires* Articles 14, 15, 19(1)(a), and 21 of the Constitution of India and the binding directions in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438?
- II. Whether or not, the omission of Section 4(2) of the Transgender Persons (Protection of Rights) Act, 2019, which recognised the right to self-perceived gender identity, constitutes a violation of the fundamental rights guaranteed under Articles 14, 15, 19(1)(a), and 21 of the

Constitution and a derogation of the binding judicial direction in *NALSA* (supra)?

- III. Whether or not, the retrospective proviso to the substituted Section 2(k), declaring that “self-perceived sexual identities” were never protected, is unconstitutional on the grounds that: (a) the phrase “self-perceived sexual identities” is void for vagueness; and (b) it conflates gender identity with sexual orientation contrary to judgments pronounced by this Hon’ble Court in *NALSA* and ***Supriyo v. Union of India, 2023 SCC OnLine SC 1348***?

- IV. Whether or not, the amended Section 6, empowering the District Magistrate to seek medical expert assistance where “necessary or desirable” before issuing an identity certificate, is ultra vires Articles 14, 15, 19(1)(a), and 21 by: (a) reintroducing the medical intervention in the identification process which is essentially a biological test expressly rejected in *NALSA*; (b) conferring uncanalised discretion without guiding principles, violating Article 14; (c) imposing a discriminatory burden of medical scrutiny solely upon transgender persons; and (d) producing a chilling effect on gender expression and self-determination?

- V. Whether or not, the amendments to Section 7, (a) converting voluntary certificate revision into a mandatory obligation upon surgery; (b) mandating medical institutions to report gender-affirming surgeries to the District Magistrate without consent, in violation of the right to privacy, doctor-patient confidentiality, and the Digital Personal Data Protection, 2023; and (c) omitting the protection that a change in gender shall not affect existing rights are *ultra vires* Articles 14, 15, 19(1)(a), and 21?
- VI. Whether or not, the term “undergone surgery” stated in Sub-Section (1) of Section 7 read with Rule 2(i) under the Transgender Persons (Protection of Rights) Rules, 2020 defining “medical intervention” is manifestly arbitrary and suffers from vagueness making it unclear when an application under the provision for change in gender is to be made owing to the lack of a proper and guiding definition?
- VII. Whether or not, the uniform maximum of two years' imprisonment under Section 18(a)–(d) for offences including bonded labour, forced displacement, and sexual abuse is unconstitutionally disproportionate, and whether the newly inserted clauses (e)–(h) are void for vagueness and overbreadth under *Shreya Singhal v. Union of India*,

(2015) 5 SCC 1 by criminalising bona fide gender-affirming medical care, legitimate counselling, community kinship structures, and consensual hormonal or surgical procedures?

- VIII. Whether or not the 2026 Amendment Act as a whole constitutes unconstitutional retrogressive legislation violating the principle of non-regression embedded in Articles 14, 15, and 21, the State having deliberately withdrawn, across multiple coordinated provisions and without compelling public interest or heightened justification, the rights previously conferred upon a historically marginalised group?

5. **FOUNDATIONS:**

That, the Petitioners have filed the present Writ Petition seeking protection of their fundamental rights on the following grounds:

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I. CHALLENGE TO THE DEFINITION OF “TRANSGENDER PERSON” UNDER THE 2026 AMENDMENT ACT AND CONSEQUENTIAL

OMISSIONS

1. The Petitioner most respectfully submits that the Transgender Persons (Protection of Rights) Amendment Act, 2026 (hereinafter referred to as “**2026 Amendment Act**”), through the combined operation of the substitution of Section 2(k) and the omission of Section 4(2) of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as “**2019 Trans Right Act**”), strikes at the constitutional root of the rights of transgender and gender diverse persons (hereinafter referred to as “**TGD persons**”) as recognised by this Hon’ble Court in *National Legal Services Authority v. Union of India, (2014) 5 SCC 438* (“hereinafter referred to as “*NALSA*”), reaffirmed in *Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1* (hereinafter referred to as “*Puttaswamy*”), *Navtej Singh Johar v. Union of India, (2018) 10 SCC 1* (hereinafter referred to as “*Navtej Singh Johar*”), and *Supriyo v. Union of India, 2023 SCC OnLine SC 1348* (hereinafter referred to as “*Supriyo*”). The two amendments in the Trans Rights Act 2019 are not isolated drafting modifications. They are architecturally connected interventions that jointly dismantle the fundamental right to self-identified gender identity and gender expression, rights that this Hon’ble

Court has held to be protected under Articles 14, 15, 19(1)(a), and 21 of the Constitution of India.

2. The substituted Section 2(k) converts the constitutionally mandated umbrella of transgender identity, held in *NALSA* (*supra*), to encompass a wide and diverse range of gender identities and experiences, into an exhaustive closed list restricted to named socio-cultural communities, persons with biological intersex variations, and persons who have been forcibly subjected to bodily modification. In so doing, it strips trans men, trans masculine identities, trans women, and trans feminine identities, unaffiliated with named communities, along with non-binary persons, and genderqueer individuals of all statutory recognition and protection. The omitted Section 4(2), which was the direct statutory instantiation of the binding direction in *NALSA* (*supra*) that the right to self-perceived gender identity is constitutionally protected, removes the sole express legislative affirmation of that right without replacement or substitution.
3. Together, these provisions constitute a legislative scheme that simultaneously narrows the class of recognised TGD persons by substituting externally verifiable biological and community-based criteria for the psychological standard mandated by this Hon'ble Court, and

extinguishing the right to self-determination by which such recognition was to be accorded, in direct derogation of the binding constitutional directions in *NALSA* (supra). It is respectfully submitted that the combined operation of the substituted Section 2(k) and the omission of Section 4(2) creates an unconstitutional hierarchy of gender identities, privileges socio-cultural visibility and biological verifiability over self-perceived identity, and effects discrimination against the excluded classes of TGD persons, that is simultaneously direct, indirect, omissive, and intersectional, in violation of Articles 14, 15, 16, 19(1)(a), and 21 of the Constitution of India.

A. DEFINITION OF “TRANSGENDER”: PRE-AMENDMENT POSITION UNDER THE TRANS RIGHTS ACT, 2019

4. It is respectfully submitted that in *NALSA* (supra), this Hon’ble Supreme Court was adjudicating upon a writ petition that sought legal recognition for members of the transgender community. This Hon’ble Court, while acknowledging the trauma, agony, discrimination, and pain, which the TGD person underwent, held that “[g]ender identity is one of the most fundamental aspects of life which refers to a person’s intrinsic sense of being male, female or transgender or transexual person...”

Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means, and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender, or other identified category."

5. Justice Radhakrishnan (as he then was), writing the majority opinion, defined the term "transgender" as:

"11. Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behavior does not conform to their biological sex. TG may also take in persons who do not identify with their sex assigned at birth, which include Hijras/Eunuchs who, in this writ petition, describe themselves as "third gender" and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation. Since Hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional "third

gender". Among Hijras, there are emasculated (castrated, nirvana) men, non-emasculated men (not castrated/akva/akka) and inter-sexed persons (hermaphrodites). **TG also includes persons who intend to undergo Sex Re-Assignment Surgery (SRS) or have undergone SRS to align their biological sex with their gender identity in order to become male or female.** They are generally called transsexual persons. **Further, there are persons like to cross-dress in clothing of opposite gender, i.e transvestites.** Resultantly, the term "transgender", in contemporary usage, has become **an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative and non-operative transsexual people, who strongly identify with the gender opposite to their biological sex; male and female."**

[Emphasis Supplied]

6. It is respectfully submitted that the above definition in *NALSA* (supra) established a clear constitutional mandate that the term "transgender" must be understood as an umbrella term encompassing a wide and diverse range of gender identities and experiences. This mandate was not confined to named socio-cultural communities or to persons who had undergone surgical or medical procedures. It was deliberately expansive, grounded in the

recognition that gender identity is self-determined and that any attempt to confine it to externally verifiable categories would reproduce the very classificatory violence that this Hon’ble Court sought to remedy.

7. Following *NALSA* (supra), the legislative history of the definition of “transgender person” reveals an unbroken constitutional trajectory. Every Bill introduced after *NALSA* (supra), whether by a Private Member or by the Government, was consistently anchored in gender identity as a matter of self-identification. The following table illustrates the evolution of the definition:

Bills, Committee, Act,	Definition of the term “Transgender”
The Rights of Transgender Persons Bill, 2014 (Bill No. XLIXC-C Of 2014) A Private Member Bill introduced by Shri Tiruchi Siva, MP passed by the	Section 2 (t): ‘transgender person’ means a person, whose sense of gender does not match with the gender assigned to that person at birth and includes trans-men and transwomen (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as — <i>kinnars</i> , <i>hijras</i> , <i>aravanis</i> , <i>jogtas</i> etc.

Rajya Sabha on 24 th April, 2015	
The Rights of Transgender Persons Bill, 2015	Section 2 (s): 'Transgender Person' means a person, whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as — <i>kinnars</i> , <i>hijras</i> , <i>aravanis</i> , <i>jogtas</i> etc. A transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/ hormones
The Rights of Transgender Persons Bill, 2016 (Bill No. 210 of 2016)	Section 2(i): "transgender person" means a person who is— (A) neither wholly female nor wholly male; or (B) a combination of female or male; or

	(C) neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.
43rd Report dated 21.07.2017 by the Standing Committee on Social Justice and Empowerment on the 2016 Bill	1.22 “The term 'transgender person' refers to a category of persons who identify in a gender that is different from their gender assigned at birth, including identifying as 'male', 'female' or 'third gender' (inclusive of distinct socio-cultural identities in India, i.e., <i>hijras</i> , <i>kinnars</i> , <i>aravanis</i> and <i>jogappas</i> , amongst others.”
The Rights of Transgender Persons Bill, 2018 (Bill No. 210-C of 2016)	Section 2(k): “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex

As passed by the Lok Sabha on 17.12.2018	variations, genderqueer and person having such socio-cultural identities as <i>kinner</i> , <i>hijra</i> , <i>aravani</i> and <i>jogta</i> .
The Rights of Transgender Persons Bill, 2019 (Bill No. 169 of 2019) As Introduced in the Lok Sabha	Section 2(k): “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as <i>kinner</i> , <i>hijra</i> , <i>aravani</i> and <i>jogta</i> .
The Rights of Transgender Persons Act, 2019 Act No. 40 of 2019 5th December, 2019	Section 2 (k): “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person

	having such socio-cultural identities as <i>kinner</i> , <i>hijra</i> , <i>aravani</i> and <i>jogta</i> .

8. The Parliamentary Standing Committee on Social Justice and Empowerment, in its 43rd Report dated 21.07.2017 on the 2016 Bill, expressly recommended a definition that referred to persons who “identify in a gender that is different from their gender assigned at birth,” placing the locus of transgender identity firmly in the person's own experience. The Committee further noted that the definition should be inclusive of “distinct socio-cultural identities in India, i.e., *hijras*, *kinnars*, *aravanis* and *jogappas*, amongst others,” treating socio-cultural identities as a subset of the broader umbrella, not as its defining or exhaustive content. This recommendation was directly aligned with the constitutional mandate of *NALSA* (supra) and formed the legislative foundation for the Trans Rights Act 2019.
9. The Trans Rights Act 2019 codified this constitutional trajectory into law. Section 2(k) adopted a gender-diverse and identity-inclusive definition that:
 - I. defined transgender personhood through the mismatch between gender identity and gender assigned at birth, a standard of self-identification, not external assessment;

- II. encompassed trans-men, trans-women, non-binary and genderqueer persons as distinct and independent categories;
- III. included persons irrespective of whether they had undergone any surgical, hormonal, laser, or other medical intervention;
- IV. included persons with intersex variations as a separate and distinct category; and
- V. included persons belonging to socio-cultural groups such as *kinners*, *hijras*, *aravanis*, and *jogtas* as one among several recognised categories, not as the sole or primary basis of recognition.

B. THE ERRONEOUS CONFLATION OF TRANSGENDER AND INTERSEX IDENTITIES UNDER THE 2026 AMENDMENT ACT

- 10. It is respectfully submitted, first and foremost, that the 2026 Amendment Act commits a foundational definitional error by dissolving the independent legal identity of intersex persons, previously recognised and defined under Section 2(i) of the 2019 Trans Rights Act, into the substituted definition of “transgender person” under Section 2(k). This conflation is constitutionally

impermissible and scientifically incoherent. Transgender identity and intersex status are distinct and independent phenomena. Transgender identity relates to an individual's deeply felt and self-perceived sense of gender, which does not correspond with the gender assigned at birth; it is an experience of identity, not of biology. Intersex, by contrast, refers to a congenital biological variation in sex characteristics, including chromosomal patterns, hormonal profiles, reproductive anatomy, or external genitalia, that does not fit the normative binary of male or female. An intersex person may identify as male, female, non-binary, or transgender, or may not identify as transgender at all. The two categories are neither synonymous nor coextensive.

11. It is further submitted that the 2019 Trans Rights Act had, in its original form, correctly recognised this distinction by maintaining separate and independent definitions for “transgender persons” under Section 2(k) and “persons with intersex variations” under Section 2(i). The definition under Section 2(i) recognised intersex persons as those who “at birth show variation in primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body”, a definition grounded in biological reality and consistent with the Yogyakarta Principles and

international human rights standards. By omitting Section 2(i) and subsuming intersex persons within the transgender definition, the 2026 Amendment Act not only erases an independent legal identity, but also subjects intersex persons, many of whom neither identify as, nor wish to be legally categorised as, transgender, to a legal framework designed for and around transgender persons. This imposition of a transgender identity upon intersex individuals, without their consent or self-identification, violates their right to self-determination under Part III of the Constitution.

12. It is respectfully submitted that the rights, entitlements, and medical needs of transgender and intersex persons are also fundamentally distinct, and cannot be governed by a single, undifferentiated legal framework. Transgender and gender-diverse persons may seek gender-affirming care, including hormonal therapy and surgery, as an expression of their gender identity. Intersex persons, on the other hand, have historically been subjected to non-consensual, medically unnecessary “normalising” surgeries in infancy or childhood, a practice widely condemned as a human rights violation. The appropriate legal response to intersex persons is, therefore, not one of identity recognition under a transgender framework, but one of protection against forced medical intervention and affirmation of bodily

autonomy. By merging these two communities under a single definition, the 2026 Amendment Act renders the specific medical rights and protections required by transgender persons and intersex persons invisible and unaddressed, in direct contradiction of this Hon'ble Court's directions in *NALSA* (supra) that the State must ensure the welfare of all gender-diverse persons in their full diversity.

13. It is, therefore, submitted that the omission of Section 2(i) and the consequential absorption of intersex persons into the definition of “transgender person” under the substituted Section 2(k) is arbitrary, medically unfounded, and violative of the right to self-perceived identity, dignity, and equality guaranteed under Articles 14, 15, 19(1)(a), and 21 of the Constitution of India. The Legislature's conflation of two legally, medically, and experientially distinct identities cannot be sustained under constitutional scrutiny and is liable to be struck down.

C. THE NARROW DEFINITION RESULTING IN EXPANSIVE EXCLUSION UNDER THE 2026 AMENDMENT ACT

14. It is respectfully submitted that the 2026 Amendment Act substitutes an entirely new Section 2(k) that

fundamentally departs from the constitutional and legislative trajectory established above. The new definition proceeds in two parts. The first part covers :

- a. persons with named socio-cultural identities, *kinner*, *hijra*, *aravani*, *jogta*, and *eunuch*;
- b. persons with intersex variations characterised by congenital variation in primary sexual characteristics, external genitalia, chromosomal patterns, gonadal development, or endogenous hormone production; and
- c. persons who have been forcibly compelled to assume a transgender identity through mutilation, emasculation, castration, amputation, or surgical, chemical, or hormonal procedures.

The second part is a proviso which expressly provides that the definition shall “not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.”

15. A comparative reading of Section 2(k) of the Trans Rights Act 2019 and the substituted Section 2(k) of the 2026 Amendment Act reveals the full extent of the constitutional regression:

The Rights of Transgender Persons Act, 2019	The Rights of Transgender Persons Act, 2026
Section 2 (k): “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, and person having such socio-cultural identities as kinner, hijra, aravani and jogta.	(k) “transgender person” means— (i) a person having such <u>socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch, or a person with intersex variations</u> specified below or a person who, at birth, has a congenital variation in one or more of the following <u>sex characteristics as compared to male or female development</u>:— (a) primary sexual characteristics; (b) external genitalia; (c) chromosomal patterns; (d) gonadal development;

	(e) endogenous hormone production or response, or such other medical conditions; or (ii) <u>any person or child</u> who has been, by <u>force, allurement, inducement, deceit or undue influence</u>, either with or without consent, <u>compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise:</u> Provided that it <u>shall not include</u>, nor <u>shall ever have been so included</u>, persons with different <u>sexual orientations and</u>

	<u><i>self-perceived sexual identities.</i></u>

16. It is respectfully submitted that the following categories, expressly included under the Trans Rights Act 2019, have been entirely removed by the 2026 Amendment Act:
- a. **Trans-men and Trans-Masculine Identities:** persons assigned female at birth who identify as men, irrespective of surgical or hormonal intervention;
 - b. **Trans-women and Trans-Feminine Identities outside named socio-cultural communities:** persons assigned male at birth who identify as women but do not belong to or identify with the *hijra, kinner, aravani, or jogta* communities;
 - c. **Genderqueer persons:** persons whose gender identity does not conform to the binary of male or female; and
 - d. **Non-binary persons:** persons who identify outside the male/female binary entirely.
17. It is respectfully submitted that a structural analysis of the substituted Section 2(k) reveals that it is composed of three internally distinct and architecturally separate limbs,

each reflecting a different and constitutionally problematic criterion of recognition. Read together, these three limbs do not constitute a comprehensive, inclusive, or constitutionally adequate definition of transgender identity. Rather, they operate as a closed and exhaustive list that excludes, by design and by effect, the very identities that this Hon'ble Court in *NALSA* (supra) held the Constitution requires to be protected. Each of the three limbs is examined below.

- a. **The Socio-Cultural Criterion.** The first limb of the substituted Section 2(k)(i) confers recognition upon persons “having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*, or *eunuch*.” The criterion of recognition under this limb is membership of, or belonging to, a named socio-cultural community. This is, in constitutional character, a **“community-ascription test”**, wherein a person qualifies not because of their own intrinsic sense of gender, but because they are capable of being identified as a member of a historically recognised community collectivity. The communities named under this limb are, without exception, trans-feminine communities, that is, communities composed predominantly of persons assigned male at birth who express in feminine

gender expressions or who identify as women or as a third gender. No transmasculine community, and no community constituted around non-binary or genderqueer identity, is named or included. The socio-cultural criterion is therefore simultaneously over-inclusive and under-inclusive, as it extends recognition to persons within the named communities regardless of whether they self-perceive as transgender in any conventional sense, and withholds recognition entirely from transgender persons who do not belong to those communities. It substitutes community legibility, that is, historical visibility to the State's administrative and classificatory apparatus, for the psychologically-grounded, self-identified standard that this Hon'ble Court in *NALSA* (supra) held to be the only constitutionally permissible basis for recognition. The socio-cultural criterion accordingly introduces, at the definitional threshold, the very "classificatory violence" that this Hon'ble Court had sought to remedy.

- b. **The Intersex Criterion.** The second component of the first limb of the substituted Section 2(k)(i) confers recognition upon persons **"with intersex variations,"** defined through congenital variations in

primary sexual characteristics, external genitalia, chromosomal patterns, gonadal development, or endogenous hormone production. The criterion of recognition under this component is biological and physiological: a person qualifies on the basis of an ascertainable medical condition present at or before birth. This is, in constitutional character, a biological test. The constitutional infirmity of this criterion is direct and unambiguous. In *NALSA* (supra), this Hon'ble Court expressly rejected the "Biological Test" for the determination of gender identity and held, unambiguously, that it "prefer[s] to follow the psyche of the person in determining sex and gender and prefer[s] the 'Psychological Test' instead of the 'Biological Test.'" The recognition of intersex persons through a chromosomal and physiological criterion, without any inquiry into the person's own sense of gender, restores exactly the biological test that this Hon'ble Court rejected. Furthermore, as this Hon'ble Court itself noted in *Supriyo* (supra), intersex persons and transgender persons are not the same category. The conflation of intersex variation with transgender identity in the substituted Section 2(k) is therefore constitutionally erroneous in two directions simultaneously: it includes persons who are intersex but do not identify as transgender, and it

excludes transgender persons who are not intersex. A biological criterion that neither tracks identity nor corresponds to the constitutional standard of self-determination cannot constitute a permissible basis for legal recognition under Part III of the Constitution of India.

- c. **The Compulsion Criterion.** The third limb of the substituted Section 2(k)(ii) recognises as transgender any person who has been “by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise.” The criterion of recognition under this limb is, in constitutional character, **“a coercion test”**, wherein a person qualifies not on the basis of their own intrinsic gender identity but on account of having been subjected to non-consensual bodily modification by another. This limb is constitutionally distinctive and deeply troubling for the reason that it extends recognition precisely and exclusively to those who have been victimised. It identifies the victim of forced bodily modification as a “transgender person,” thereby conferring the

statutory category of transgender identity upon a person who may not hold or claim that identity at all, while simultaneously denying that very category to trans men and trans masculine identities, trans women and trans feminine identities, a non-binary, or a genderqueer person who voluntarily and freely inhabits it. The constitutional inversion is stark as it is bodily violation, not self-perception that triggers recognition. The right to self-determined gender identity, described by this Hon'ble Court in *NALSA* (supra) as “integral to the dignity of an individual and at the core of personal autonomy and self-determination,” is thus denied to those who freely exercise it and conferred upon those who have been forcibly stripped of the autonomy it protects.

18. Furthermore, it is respectfully submitted that the constitutional infirmity of the substituted Section 2(k) does not rest solely in what it omits. The *proviso* appended to the substituted definition goes further as it actively, affirmatively, and retrospectively forecloses the very ground of recognition that this Hon'ble Court in *NALSA* (supra) held to be constitutionally non-negotiable. The proviso declares that the definition “shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.”

This Court is respectfully invited to examine this *proviso* on three independent grounds, each of which independently renders it constitutionally unsustainable.

- a. First, the proviso is entirely redundant, and its redundancy is constitutionally revealing. It is settled, on the authority of this Hon'ble Court in *NALSA (supra)* and in the plain text of the Trans Rights Act 2019 itself, that the Trans Rights Act, 2019 was never designed to extend to persons solely on the basis of their sexual orientation. Lesbian, gay, and bisexual persons, persons whose identity is constituted by whom they are attracted to, not by how they experience their own gender, were never within the Act's definitional scope under Section 2(k) of the Trans Rights Act 2019. The Act applied to those “whose gender does not match with the gender assigned to that person at birth”, a standard grounded entirely in gender identity, not in sexual orientation. A *proviso* that excludes persons who were never included serves no clarificatory purpose in law. Its only operative purpose is expressive as it declares, by legislative fiat, that persons who exercise the right to self-perceived gender identity, the right that this Court held in *NALSA (supra)* to be constitutionally protected and that was codified in

Section 4(2) of the Trans Rights Act 2019, are to be treated as persons of a “different sexual orientation.” In other words, it takes the most fundamental right recognised in *NALSA* (supra) and uses it as a basis for exclusion. It converts constitutional recognition into constitutional stigma. This is not a permissible exercise of legislative power. In *NALSA* (supra), this Court expressly held that gender identity and sexual orientation are distinct concepts, , that gender identity and sexual orientation “*refers to each person's deeply felt internal and individual experience,*” and that the conflation of gender non-conformity with deviant sexuality is a prejudice that the law must remedy, not reproduce. The proviso reproduces it. In *NALSA* (supra), this Hon’ble Court noted:

20. Sexual orientation refers to an individual's enduring physical, romantic and/or emotional attraction to another person. Sexual orientation includes transgender and gender-variant people with heavy sexual orientation and their sexual orientation may or may not change during or after gender transmission, which also includes homosexuals, bisexuals, heterosexuals, asexual etc. Gender identity

and sexual orientation, as already indicated, are different concepts. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of selfdetermination, dignity and freedom and no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.

[Emphasis Supplied]

- b. Second, the phrase “self-perceived sexual identities” is void for vagueness. The term “sexual” in this phrase is not defined and is not self-evident in meaning. It may refer to biological sex, to sexual orientation, or to gender in the broader sense used throughout the Act and Statement of Object and Reasons of the 2026 Amendment Act. If “self-perceived sexual identities” is read to mean “self-perceived gender identities”, a reading that is linguistically available and contextually plausible, the proviso would exclude from statutory protection every person who determines their gender through self-perception, which is precisely the entire class of persons that this Hon'ble Court in *NALSA* (supra) directed must be protected. On this reading, the proviso would not merely narrow the Act; it would

hollow it out entirely and render it constitutionally void in its entirety. If, on the other hand, the phrase is read to mean “self-perceived sexual orientation,” the proviso is redundant. In either reading, it fails to give fair notice to the ordinary person; it vests in District Magistrates, medical boards, and enforcement officials an unguided discretion to determine whose identity is “self-perceived” and therefore excluded; and it is incapable of being applied consistently or predictably. A provision that governs access to identity documents, protection from violence, and entitlement to welfare cannot stand in this condition of definitional incoherence.

- c. Third, and most gravely, the retrospective dimension of the proviso, the declaration that the Act “shall not include, nor shall ever have been so included” such persons, is constitutionally impermissible. Persons who obtained identity certificates under Section 6 of the Trans Rights Act 2019 on the basis of their self-perceived gender identity, who changed their names in official documents, who accessed educational and employment protections on the strength of statutory recognition, held vested rights under that Act. The retrospective clause seeks to extinguish those rights

by bare legislative declaration, without compensation, without recourse, and without any justification offered in the Statement of Objects and Reasons of the 2026 Amendment Act. The statutes are presumed to operate prospectively and the retrospective removal of vested rights is constitutionally suspect unless supported by compelling justification. No such justification is offered here. Furthermore, the retrospective clause is, in substance, an attempt by the legislature to declare by ordinary statute that a right recognised by this Court through a constitutional judgment, the right to self-perceived gender identity and sexual orientation affirmed in *NALSA* (supra), never existed in statutory form. Parliament cannot exercise judicial power. It cannot, by legislative declaration, overrule what this Court has held or retrospectively re-interpret a statute that has already been applied and given effect to by courts across the country. To permit such a retrospective declaration would be to collapse the boundary between legislative and judicial power and to permit the legislature to render this Court's directions a nullity by the simple expedient of a proviso. That is not within the bounds of permissible legislation and is liable to be struck down.

19. Therefore, the substituted definition, read as a whole, conditions the benefit of legal recognition on the absence of choice; it is only when identity is externally ascribed, whether through biological condition, limited socio-cultural community membership, or bodily compulsion, that the State is prepared to recognise it. The moment an individual freely claims a gender identity from an internally-held sense of self, unmediated by community, biology, or force, the 2026 Amendment Act withdraws all recognition. This is the precise constitutional hierarchy that the substituted Section 2(k) erects, and it is a hierarchy that the Constitution of India, as interpreted in *NALSA* (supra), *Puttaswamy* (supra), and *Navtej Singh Johar* (supra), does not permit.
20. It is respectfully submitted that the exclusions catalogued above are not peripheral omissions. They go to the constitutional heart of the statute. In *NALSA* (supra), this Hon'ble Court defined “transgender” in terms that were deliberately calibrated to defeat precisely the kind of narrowing that the 2026 Amendment Act now effects. Justice Radhakrishnan (as he then was), writing the majority opinion, held that:

11. “Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does

not conform to their biological sex...the term 'transgender', in contemporary usage, has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative and non-operative transsexual people, who strongly identify with the gender opposite to their biological sex; male and female.

[Emphasis Supplied]

21. The operative constitutional principle encoded in this passage is not merely descriptive. It is prescriptive. By holding that the term ‘transgender’ in contemporary usage has become an umbrella term describing a wide range of identities, this Hon'ble Court placed the scope of the term beyond the reach of any future legislative shrinkage. The substituted Section 2(k) of the 2026 Amendment Act now converts this constitutionally mandated umbrella into an exhaustive closed list. The constitutional significance of the umbrella formulation in *NALSA* (supra) is further reinforced by this Hon'ble Court's enumeration of the specific categories that fall within its scope. This Hon'ble Court held that the umbrella term “transgender” includes not only *hijras, eunuchs, aravanis, jogappas, Shiv-Shakthis*, and other socio-cultural groups, but also “persons who intend to undergo Sex Re-Assignment Surgery (SRS) or have undergone SRS to align their biological sex with their gender identity in order to

become male or female... persons who like to cross-dress in clothing of opposite gender, i.e., transvestites” and, crucially, “trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers.”

22. Each of these categories is expressly excluded by the substituted Section 2(k). The 2026 Amendment Act, thus, removes from statutory protection persons whom this Hon'ble Court, a decade before, held to be constitutionally recognised. Most fundamentally, the *NALSA* (supra) anchored the definition of transgender identity not in external markers, community membership, or biological condition, but in the person's own psyche. Any definition that substitutes an externally verifiable criterion, whether biological condition, community membership, or surgical status, for this internal standard is incompatible with the constitutional mandate of *NALSA* (supra). This Hon'ble Court in *NALSA* (supra) further held that no one shall be forced to undergo medical procedures, including gender-affirming surgeries, sterilisation, or hormonal therapy, as a requirement for legal recognition of their gender identity.
23. The substituted Section 2(k) of the 2026 Amendment Act, in confining recognition to persons with intersex variations defined through biological and chromosomal

criteria, does precisely what *NALSA* (supra) forbids. It restores the biological test as the sole criterion of recognition, and extinguishes the right of individuals, including trans-men and trans-masculine identities, trans-women and trans-feminine identities, non-binary, and genderqueer persons, to have their self-identified gender recognised without a medical precondition.

**D. TRANSGENDER AS THE UMBRELLA TERM:
THE *NALSA* MANDATE**

24. It is respectfully submitted that the constitutional invalidity of the substituted Section 2(k) is most clearly demonstrated by its departure from the judicial understanding of “transgender” as an inherently inclusive umbrella term, a construction that this Hon'ble Court in *NALSA* (supra) held to be the only constitutionally permissible approach to the definition of transgender identity. The term “transgender”, as held in *NALSA* (supra), would not only include *Hijra*, *Kinner*, *eunuchs*, *aravnis*, *jogtas*, *Thirunangi*, *shiv-shaktis*, and other socio-cultural groups but also people, including trans-men and trans-masculine identities, trans-women and trans-feminine identities, non-binary persons, and genderqueer persons.

25. In *NALSA (supra)*, this Hon’ble observed, drawing on the Report of the Expert Committee on Issues relating to Transgender Persons (Ministry of Social Justice and Empowerment, January 2014), that the transgender community in India is itself internally diverse, encompassing *hijras, eunuchs, Aravanis, Jogappas, Shiv-Shakthis*, as well as transsexual persons, transvestites, and cross-dressers.
26. The Report of the Expert Committee (2013) on the Issues relating to Transgender Persons, which was relied by this Hon’ble Court in *NALSA (supra)*, defined the term ‘transgender’ with the following observations:

**“Transgender Persons: Some basic names
and identities used**

5. In terms of categories of gender, one may use the two categories of cisgender and transgender. The category of cisgender is expressed as cis man and cis woman, commonly referred to as man / male or woman / female (In place of cis man and cis woman, the terms cis male and cis female are also used). However when people choose a gender other than the gender assigned at birth, then they express their gender through several identity terms and names, all of which largely fall under the category of transgender.

6. Some of these terms used are described below. Several of these terms may have similar or overlapping meanings. Trans* - **This is a term used in the discipline of gender studies to refer to all persons whose own sense of gender does not match with the gender assigned to them at birth.** Spelt with an asterix, trans* is an umbrella term used to refer to all non-cisgender identities and expressions. This includes transgender, transsexual, male to female (MtF), female to male (FtM), gender queer, third gender, other and so on.

Transgender person – A person, who does not identify with the gender assigned to them at birth. Trans-man: A person who is assigned gender female at birth (PAGFB), but identifies with the gender male. The person may or may not have undergone sex reassignment surgery/procedures.

Trans-woman: A person who is assigned gender male at birth (PAGMB), but identifies with the gender female. The person may or may not have undergone sex reassignment surgery/procedures.

Male to Female Trans person (M to F / MtF): A person who is PAGMB, but identifies with the female gender.

Female to Male Trans person (F to M / FtM): A person who is PAGFB, but identifies with the male gender Transsexual:

Transsexual refers to a person who firmly identifies oneself as belonging to a gender that is opposite to that of the birth-assigned gender.

Genderqueer: *The term Transgender may mean for some people a 'sense of transition' from one gender to the other as is implied in terms such as M to F or F to M transgender (male to female or female to male transition) and this description may work for some, while some others may be more comfortable choosing terms that do not adhere to the notion of gender binaries of male and female. They may see gender as less rigid and may prefer to use the term Genderqueer to refer to their gender identity. Genderqueer implies persons who identify as non cis gender and is used as an umbrella term to refer to a range of nonnormative gender expressions.*

All of the above names except transsexual may be taken by persons who have undergone a sex reassignment surgery (post-operative), who may wish to undergo a sex reassignment surgery eventually (pre-operative) or who may not want a medical intervention for changing their bodies to match their own sense of gender.

Persons with Intersex Variations : *Persons who at birth show variations in their primary sexual characteristics, external*

genitalia, chromosomes, hormones from the normative standard of female or male body are referred to as persons with intersex variations. All persons with intersex variations are also assigned a gender at birth. And like with everyone else, some of these persons may feel comfortable with their assigned gender and will be cis gender and others may not, and be transgender.

7. Sex reassignment surgery/procedure refers to a range of medical procedures, including surgical procedures that people undergo to transform their bodies and or genitalia to that of the supposed opposite sex. This includes a range of procedures such as injection of hormones, laser treatment for removal of body hair, genital re-constructive surgery and so on.

8. In India, there are also several local terminologies and identities that are used to describe gender transgressions. Some of these may further have specific socio-cultural religious connotations such as in the case of 'Hijras' and 'Jogtas'. Some of these are described below:

Kothi: *A local language term used in South East Asia to refer to PAGMB, who identify with characteristics, roles and behaviors conventionally associated with the feminine. Kothis have also been defined as effeminate PAGMBs, who like to cross dress and see*

themselves as women and use the female pronoun to describe themselves. They may take on this identity only while among their peers, but may continue to dress and act like men otherwise.

Hijras: *Hijras are usually PAGMBs and rarely persons with intersex variations but identify with the characteristics, roles and behaviours conventionally associated with the feminine. They cross dress and live their life as women or may identify as belonging to the ‘third gender’. They may or may not undergo castration and often live in a group with their guru. Most Hijras earn a living through sex work, begging or dancing during festivals and auspicious occasions. Similarly there are ‘jogtas’, who are PAGMBs and who as children are dedicated to a goddess and later ritually cross dressed.*

9. *Kothi persons present themselves as males in most spheres of their lives and only reveal their feminine identity in certain social circles, unlike Hijra identified persons who present themselves in their feminine attire all the time. Despite this difference, in present times, the two identities may often overlap, especially in terms of the social and community networks they are associated with.*

[Emphasis Supplied]

27. The said Report, on the definition of the term 'transgender' recommended the following:

The Committee recommends that the term 'transgender' (not trans) will be used, as an inclusive term and will cover various gender identities and expressions, as described in paragraph 6 of chapter one. It will not be confined to any one of the specific socio-cultural identity groups, such as hijras, kothis, etc but will include all such persons who fall under the generic definition of transgender persons as follows:*

Transgender persons: All persons whose own sense of gender does not match with the gender assigned to them at birth. They will include trans-men & trans-women (whether or not they have undergone sex reassignment surgery or hormonal treatment or laser therapy, etc.), genderqueers and a number of socio cultural identities, such as kinnars, hijras, aravanis, jogtas, etc. The term 'transgender' shall be construed accordingly.

[Emphasis Supplied]

28. The United Nations Development Programme (India), in its report titled "*Hijras/Transgender Women In India:*

HIV, Human Rights And Social Exclusion”, which was also relied upon by this Hon’ble Supreme Court in *NALSA* (supra), held that transgender is an umbrella term which includes a wide variety of gender identities. While the UNDP Report was founded on the issues faced by *Hijras* and transgender women by using the social exclusion framework, and highlight the relation between this exclusion and vulnerability to HIV and other health risks. The UNDP Report, noted the following,:

“The term 'transgender people' is generally used to describe those who transgress social gender norms. Transgender is often used as an umbrella term to signify individuals who defy rigid, binary gender constructions, and who express or present a breaking and/or blurring of culturally prevalent stereotypical gender roles. Transgender people may live full- or part-time in the gender role 'opposite' to their biological sex.”

In contemporary usage, “transgender” has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to: pre-operative, post-operative and non-operative transsexual people (who strongly identify with the gender opposite to their biological sex); male and female 'cross-dressers' (sometimes referred to as “transvestites”, “drag queens”, or “drag kings”); and men and women, regardless of

sexual orientation, whose appearance or characteristics are perceived to be genderatypical. A male-to-female transgender person is referred to as 'transgender woman' and a female-to-male transgender person, as 'transgender man'."

Even the umbrella term 'transgender' may hide the complexity and diversity of the various subgroups of gender-variant people in India and may hinder development of subgroup-specific HIV prevention and care interventions, and policies. For example, some Hijra activists may prefer others calling them 'Hijras' and not to subsume Hijras under the broader category 'transgender'. One reason for this is that they feel Hijras have a long history, culture and tradition in India, which would not be evident or which might be overlooked when using the catch-all term 'transgender'. Though some Hijra activists may also identify as 'transgender' for outsiders or in the global platform, they prefer the label 'transgender women' to be applied to those transgender women who are not part of the Hijra communities. However, some other Hijra/Aravani (Hijras in Tamil Nadu) activists may identify as both 'Hijras/Aravanis' and 'transgender woman':

[Emphasis Supplied]

29. The United Nations High Commissioner for Human Rights, in its 2016 Report "Living Free and Equal: What States are Doing to Tackle Violence and Discrimination

against Lesbian, Gay, Bisexual, Transgender and Intersex People,” also defined the term transgender/trans as an umbrella term:

*“Gender identity reflects a deeply felt and experienced sense of one’s own gender. **Everyone has a gender identity, which is part of their overall identity.** A person’s gender identity is typically aligned with the sex assigned to them at birth. **Transgender (sometimes shortened to “trans”) is an umbrella term used to describe people with a wide range of identities – including transsexual people, cross-dressers (sometimes referred to as “transvestites”), people who identify as third gender, and others whose appearance and characteristics are perceived as gender atypical and whose sense of their own gender is different to the sex that they were assigned at birth.**”*

[Emphasis Supplied]

30. In *Supriyo v. Union of India*, 2023 SCC OnLine SC 1348 (“*Supriyo*”), a Constitution bench of five judges was adjudicating on the question of whether gender and sexually diverse individuals have a fundamental right to marry. This Hon’ble Court unanimously held that there is no fundamental right to marry guaranteed by the Constitution, and the right to marry could only be a statutory right guaranteed under the Special Marriage Act and not a fundamental right. However, this Hon’ble Court

unanimously recognised that transgender persons, in a heterosexual relationship, can marry under existing law. Justice Ravindra Bhat (as he then was), writing for himself and Justice Hima Kohli held the following:

119. We are also in agreement with the discussion relating to gender identity [i.e., sex and gender are not the same], and that there are different people whose gender does not match with that assigned at birth, including transgender men and women, intersex persons, other queer gendered persons, and persons with socio-cultural identities 63 such as hijras] as well as the right against discrimination under the Transgender Persons Act 2019.

(Emphasis Supplied)

31. Chief Justice Dhananjay Y. Chandrachud (as he then was), in his minority opinion, while rejecting the argument that the definition under the Trans Act 2019 includes all queer people, clarified that the said legislation applies only to persons with a “genderqueer” or “transgender identity” and not to persons whose sexual orientation is not heterosexual. The relevant paragraphs are reproduced below:

82. In India, persons with a gender queer identity who do not fit into the binary of ‘male’ and ‘female’ have long been known by

different names including hijras, kothis, aravanis, jogappas, thiru nambis, nupi maanbas and nupi maanbis. In fact, the term ‘transgender person’ as it is understood in English or the ‘third gender’ does not always fully or accurately describe the gender identity of those who are known by some of these terms. Additionally, the social structure of the communities of transgender persons in India is unique and does not mirror ‘western’ structures. It is native to our country. The judgment of this Court in NALSA (supra) also explored the presence of the transgender identity and other forms of gender queerness in Indian lore.

229. In addition to the different forms of kinship recognized in Deepika Singh (supra), the guru-chela bond of transgender persons (discussed in the previous section of this judgment) may also be a familial bond. Unlike hijras who often have the option of joining the hijra community and forming the guruchela bond, transmen do not have traditions or customs which may lead to the creation of non-biological familial bonds with other transmen as a group.

257. The gender of a person may not correspond to the sex they were assigned at birth. A transgender person is one whose gender identity does not conform with their sex. Transgender people may choose to undergo hormonal therapy or surgery

(commonly known as gender affirming surgery or sex reassignment surgery) to alter their bodies to make them conform to their gender. People may be transgendered regardless of whether they choose to or are able to undergo a surgery. As noted in preceding segments of this judgment, the term 'transgender' does not fully capture the rich variation in gender identities in India. Historically and socio-culturally, Indian persons with a genderqueer identity go by different names including hijras, kothis, aravanis, jogappas, thiru nambis, nupi maanbas and nupi maanbis. **Persons who are known by these names may identify as male, female, or the 'third gender.'** **Intersex persons are not the same as transgender persons. They have atypical reproductive characteristics. Intersex people may identify as male, female, or transgender.**

261. During the course of the hearings, the Solicitor General advanced the argument that the Transgender Persons Act prohibits discrimination against any member of the queer community and that consequently, the queer community in India no longer faces any stigma due to their gender identity or sexual orientation. He argued that the Transgender Persons Act is a broad-based legislation which includes all persons of the queer community within its ambit. **This argument does not hold any water. The legislation**

applies only to persons with a genderqueer or transgender identity and not to persons whose sexual orientation is not heterosexual.

From the definition, it is clear that the enactment applies to persons whose gender does not match with that assigned to them at birth, which includes:

- a. Transgender men and women;
- b. Intersex persons;
- c. Other genderqueer persons; and
- d. Persons with socio-cultural identities such as hijras.

The word ‘genderqueer’ in Section 2(k) does not refer to sexual orientation but to gender identity. As discussed in the preceding paragraphs, gender identity is not the same as sexual orientation. The term ‘transgender’ is not commonly understood as referring to persons with a sexual orientation other than heterosexual, nor does the Transgender Persons Act use the word ‘transgender’ to include persons of a different sexuality. The Union of India’s argument that the Transgender Persons Act applies to all queer persons including persons who are homosexual, bisexual etc. cannot be accepted. This legislation is clearly applicable only to those people with a gender identity that does not match the one assigned at birth.

(Emphasis Supplied)

32. In *Arunkumar v. Inspector General of Registration*, 2019 SCC OnLine Mad 8779 (for short “Arunkumar”), the High Court of Madras held:

“17. This Court must at this juncture place on record its gratitude to the intersex activist Gopi Shankar of Madurai. This Court had occasion to come across his work and it has been a humbling and enlightening experience. Beyond the man-woman binary, there are as many as 58 gender variants. of course, we use the expression “transgender” as an umbrella term. When a child is born it is usually endowed with male genitalia or female genitalia. But there are children who are born with a genitalia that belongs to neither category. They are known as intersex children. They must be given their time and space to find their true gender identity. But the parents make the infant undergo sex reassignment surgery (SRS).”

(Emphasis Supplied)

33. It is respectfully submitted that the word “umbrella” in *NALSA* (supra) is not a casual descriptor. It is a constitutional characterisation. By holding that “transgender” is an umbrella term for a wide range of identities and experiences, this Hon’ble Court placed the constitutional mandate beyond the reach of any future legislative attempt to confine recognition to a closed,

enumerated list. The substituted Section 2(k) of the 2026 Amendment Act does precisely what *NALSA* (supra) held the Constitution forbids: it converts an inclusive umbrella into an exhaustive closed category, recognising only those identities that are externally verifiable, whether through biological markers or named community membership, and extinguishing recognition for all others.

E. RIGHT TO SELF-PERCEIVE GENDER IDENTITY IS A FUNDAMENTAL RIGHT

34. It is respectfully submitted that Section 4(2) of the Trans Rights Act 2019 provided that “*a person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.*” The 2026 Amendment Act omits this provision entirely. The Petitioner submits that this omission is not a minor legislative revision. Section 4(2) was the direct statutory instantiation of the most fundamental direction issued by this Hon'ble Court in *NALSA (supra)* and reaffirmed in a catena of cases by this Hon'ble Court, that TGD persons have a constitutionally protected right to self-determined gender identity, independent of any medical, surgical, or administrative precondition. Its omission, therefore, constitutes not a permissible exercise of legislative

discretion but a direct violation of a binding judicial direction.

35. It is respectfully submitted that in *NALSA* (supra), this Hon'ble Court held in unambiguous terms that the right to self-identified gender identity is an integral dimension of personal liberty, autonomy, and dignity guaranteed under Article 14, Article 15, Article 19, and Article 21 of the Constitution. Justice Radhakrishnan (as he then was), writing the majority opinion, held the following:

“21. Gender identity is one of the most-fundamental aspects of life which refers to a person’s intrinsic sense of being male, female or transgender or transsexual person. A person’s sex is usually assigned at birth, but a relatively small group of persons may born with bodies which incorporate both or certain aspects of both male and female physiology. At times, genital anatomy problems may arise in certain persons, their innate perception of themselves, is not in conformity with the sex assigned to them at birth and may include pre and post-operative transsexual persons and also persons who do not choose to undergo or do not have access to operation and also include persons who cannot undergo successful operation. Countries, all over the world, including India, are grappled with the question of attribution of gender to persons who believe that they belong to the opposite

sex. Few persons undertake surgical and other procedures to alter their bodies and physical appearance to acquire gender characteristics of the sex which conform to their perception of gender, leading to legal and social complications since official record of their gender at birth is found to be at variance with the assumed gender identity. Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category.

22. Sexual orientation refers to an individual's enduring physical, romantic and/or emotional attraction to another person. Sexual orientation includes transgender and gender-variant people with heavy sexual orientation and their sexual orientation may or may not change during or after gender transmission, which also includes homosexuals, bisexuals, heterosexuals, asexual etc. Gender identity and sexual orientation, as already indicated, are different concepts. Each person's self-defined sexual orientation and gender identity

is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.

66. Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary genders. **Both gender and biological attributes constitute distinct components of sex.** Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but **gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character.** The discrimination on the ground of 'sex' under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. **The expression 'sex' used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female.**

...

69. Article 19(1) of the Constitution guarantees certain fundamental rights, subject to the power of the State to impose restrictions from exercise of those rights. The rights conferred by Article 19 are not available to any person who is not a citizen of India. Article 19(1) guarantees those great basic rights which are recognized and guaranteed as the natural rights inherent in the status of the citizen of a free country. Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behavior or any other form. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.

...

70. The Self-identified gender can be either male or female or a third gender. Hijras are identified as persons of third gender and are not identified either as male or female. Gender identity, as already indicated, refers to a person's internal sense of being male, female or a transgender, for example Hijras do not identify as female because of their lack of female genitalia or lack of reproductive capability. This distinction makes them separate from both male and female genders and they consider themselves neither man nor

woman, but a “third gender”. Hijras, therefore, belong to a distinct socio-religious and cultural group and have, therefore, to be considered as a “third gender”, apart from male and female. [...]

...

72. Gender identity, therefore, lies at the core of one’s personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1) (a) of the Constitution of India. A transgender’s personality could be expressed by the transgender’s behavior and presentation. State cannot prohibit, restrict or interfere with a transgender’s expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or otherwise fail to digest the innate character and identity of such persons. We, therefore, hold 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) of the Constitution of India and the State is bound to protect and recognize those rights.

...

80. Article 21, as already indicated, protects one’s right of self-determination of the gender to which a person belongs. Determination of gender to which a person belongs is to be decided by the person concerned. In other words, gender identity is integral to the dignity

of an individual and is at the core of “personal autonomy” and “self-determination”.

Hijras/Eunuchs, therefore, have to be considered as Third Gender, over and above binary genders under our Constitution and the laws.

81. *Articles 14, 15, 16, 19 and 21, above discussion, would indicate, do not exclude Hijras/Transgenders from its ambit, but Indian law on the whole recognize the paradigm of binary genders of male and female, based on one's biological sex. As already indicated, we cannot accept the Corbett principle of “Biological Test”, rather we prefer to follow the psyche of the person in determining sex and gender and prefer the “Psychological Test” instead of “Biological Test”. Binary notion of gender reflects in the Indian Penal Code, for example, Section 8, 10, etc. and also in the laws related to marriage, adoption, divorce, inheritance, succession and other welfare legislations like NAREGA, 2005, etc. Non-recognition of the identity of Hijras/Transgenders in the various legislations denies them equal protection of law and they face wide-spread discrimination.*

82. *Article 14 has used the expression “person” and the Article 15 has used the expression “citizen” and “sex” so also Article 16. Article 19 has also used the expression “citizen”. Article 21 has used the expression “person”. All these expressions, which are*

“gender neutral” evidently refer to human-beings. Hence, they take within their sweep Hijras/Transgenders and are not as such limited to male or female gender. Gender identity as already indicated forms the core of one’s personal self, based on self identification, not on surgical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender.

(Emphasis Supplied)

36. J. Sikri (as he then was), in his concurring opinion, held that:

“The basic principle of the dignity and freedom of the individual is common to all nations, particularly those having democratic set up. Democracy requires us to respect and develop the free spirit of human being which is responsible for all progress in human history. Democracy is also a method by which we attempt to raise the living standard of the people and to give opportunities to every person to develop his/her personality. It is founded on peaceful co-existence and cooperative living. If democracy is based on the recognition of the individuality and dignity of man, as a fortiori we have to recognize the right of a human being to choose his sex/gender identity which is integral his/her personality and is one of the

most basic aspect of selfdetermination dignity and freedom. In fact, there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity.

(Emphasis Supplied)

37. It is respectfully submitted that Section 4(2) of the Trans Rights Act 2019 gave statutory expression to the NALSA principle by providing that “a person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.” This provision was the direct legislative instantiation of the binding direction in *NALSA* (supra) that TGD persons' right to decide their self-identified gender is also upheld, and the Centre and State Governments are directed to grant legal recognition of their gender identity, such as male, female or as third gender. The said provision was not a mere policy choice; it was a statutory recognition of a constitutionally protected fundamental right under Part III of the Constitution. Its omission by the 2026 Amendment Act, therefore, constitutes not merely a legislative choice but a direct violation of a binding direction of this Hon’ble Court.
38. It is respectfully submitted that the constitutional principle affirmed in *NALSA* (supra) was deepened and expanded by this Hon'ble Court's nine-judge Constitution Bench

decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (“Puttaswamy”). In *Puttaswamy* (supra), this Hon’ble Court unanimously recognised the right to privacy as an intrinsic and inalienable fundamental right protected under Articles 14, 19, and 21 of the Constitution. This Hon’ble Court expressly linked the right to privacy to the right to gender identity, affirming that the principles laid down in *NALSA* (supra) were integral to the constitutional privacy architecture. Dr. Justice D.Y. Chandrachud (as he then was), writing the leading opinion, held:

“95. In National Legal Services Authority v Union of India ('NALSA'), a Bench of two judges, while dealing with the rights of transgenders, adverted to international conventions acceded to by India including the UDHR and ICCPR...Justice K S Radhakrishnan held that: 'Gender identity, therefore, lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India. A transgender's personality could be expressed by the transgender's behaviour and presentation. State cannot prohibit, restrict or interfere with a transgender's expression of such personality, which reflects that inherent personality...We, therefore, hold 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) of the Constitution of India and the State is bound to protect and recognise those rights.'"

Explaining the ambit of Article 21, the Court noted: 'Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty...Article 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc...Article 21, as already indicated, guarantees the protection of 'personal autonomy' of an individual...personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.'

(Emphasis Supplied)

39. In Puttaswamy (supra), this Hon'ble Court further held that privacy enables each individual to assert and control those aspects of human personality that are inseparable from the self. Dr. Justice D.Y. Chandrachud (as he then was), on the essential nature of privacy, held:

“168. Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life...Without the ability to make choices, the inviolability of the personality would be in doubt. Recognizing a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself.”

(Emphasis Supplied)

40. Furthermore, Dr. Justice Chandrachud (as he then was), in *Puttaswamy* (supra), expressly held that when the guarantees of mental integrity and privacy intersect with gender, they create a private space protecting all elements crucial to gender identity:

“169. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which

*protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. **Privacy is the ultimate expression of the sanctity of the individual.** It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.”*

(Emphasis Supplied)

41. This Hon’ble Court in *Puttaswamy* (supra) further held that sexual orientation is an essential attribute of privacy, and that discrimination against an individual on the basis of sexual orientation or gender identity is deeply offensive to the dignity and self-worth of the individual. This Hon’ble Court held that:

“Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental

rights guaranteed by Articles 14, 15 and 21 of the Constitution.

*Sexual orientation is an essential component of identity. **Equal protection demands protection of the identity of every individual without discrimination. The rights of the lesbian, gay, bisexual and transgender population cannot be construed to be 'so-called rights'...Their rights are not 'so-called' but are real rights founded on sound constitutional doctrine. They inhere in the right to life.** They dwell in privacy and dignity. They constitute the essence of liberty and freedom."*

(Emphasis Supplied)

42. The constitutional principle established in *NALSA* (supra) was further affirmed and deepened by this Hon'ble Court in *Navtej Singh Johar* (supra), a five-judge bench of this Hon'ble Court, read down Section 377 of the Indian Penal Code, 1860 which criminalised same-sex relationships. Chief Justice Dipak Misra (as he then was), writing for the majority referred to *NALSA* (supra) and held the following:

*"5. The **natural identity of an individual should be treated to be absolutely essential to his being. What nature gives is natural.** That is called nature within. Thus, that part of the personality of a person has to be respected and not despised or looked down upon. The said inherent nature and the associated natural*

impulses in that regard are to be accepted. Non-acceptance of it by any societal norm or notion and punishment by law on some obsolete idea and idealism affects the kernel of the identity of an individual. Destruction of individual identity would tantamount to crushing of intrinsic dignity that cumulatively encapsulates the values of privacy, choice, freedom of speech and other expressions. It can be viewed from another angle. An individual in exercise of his choice may feel that he/she should be left alone but no one, and we mean, no one, should impose solitude on him/her."

6. The eminence of identity has been luculently stated in National Legal Services Authority v. Union of India [National Legal Services Authority v. Union of India, (2014) 5 SCC 438], popularly known as NALSA case, wherein the Court was dwelling upon the status of identity of the transgenders. Radhakrishnan, J., after referring to a catena of judgments and certain International Covenants, opined that gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person. A person's sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology. The learned Judge further observed that at times, genital anatomy problems may arise in

certain persons in the sense that their innate perception of themselves is not in conformity with the sex assigned to them at birth and may include pre-and post-operative transsexual persons and also persons who do not choose to undergo or do not have access to operation and also include persons who cannot undergo successful operation. Elaborating further, he said : (SCC p. 465, para 21)

“21. ... Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category.”

8. Dealing with the legality of transgender identity, Radhakrishnan, J. ruled: (NALSA case [National Legal Services Authority v. Union of India, (2014) 5 SCC 438] , SCC p. 491, para 76)

“76. The self-identified gender can be either male or female or a third gender. Hijras are identified as persons of third gender and are not identified either as male or female. Gender identity, as already indicated, refers to a person's internal sense of being male, female or a transgender, for example hijras do not identify as female because of their lack of female genitalia or lack of reproductive capability. This distinction makes them separate from both male and female genders and they consider themselves neither man nor woman, but a “third gender”.”

10. The aforesaid judgment, as is manifest, lays focus on inalienable “gender identity” and correctly connects with human rights and the constitutionally guaranteed right to life and liberty with dignity. It lays stress on the judicial recognition of such rights as an inextricable component of Article 21 of the Constitution and decries any discrimination as that would offend Article 14, the “fon juris” of our Constitution.

11. It has to be borne in mind that search for identity as a basic human ideal has reigned the mind of every individual in many a sphere like success, fame, economic prowess,

political assertion, celebrity status and social superiority, etc. But search for identity, in order to have apposite space in law, sans stigmas and sans fear has to have the freedom of expression about his/her being which is keenly associated with the constitutional concept of “identity with dignity”. When we talk about identity from the constitutional spectrum, it cannot be pigeon-holed singularly to one's orientation that may be associated with his/her birth and the feelings he/she develops when he/she grows up. Such a narrow perception may initially sound to subserve the purpose of justice but on a studied scrutiny, it is soon realised that the limited recognition keeps the individual choice at bay. The question that is required to be posed here is whether sexual orientation alone is to be protected or both orientation and choice are to be accepted as long as the exercise of these rights by an individual do not affect another's choice or, to put it succinctly, has the consent of the other where dignity of both is maintained and privacy, as a seminal facet of Article 21, is not dented. At the core of the concept of identity lies self-determination, realisation of one's own abilities visualising the opportunities and rejection of external views with a clear conscience that is in accord with constitutional norms and values or principles that are, to put in a capsule, “constitutionally permissible”. As long as it

is lawful, one is entitled to determine and follow his/her pattern of life. And that is where the distinction between constitutional morality and social morality or ethicality assumes a distinguished podium, a different objective. [..]

[Emphasis Supplied]

43. Chief Justice Dipak Misra (as he then was) concluded his opinion with the following observation:

268.1. The eminence of identity which has been luculently stated in Nalsa case [National Legal Services Authority v. Union of India, (2014) 5 SCC 438] very aptly connects human rights and the constitutional guarantee of right to life and liberty with dignity. With the same spirit, we must recognise that the concept of identity which has a constitutional tenability cannot be pigeon-holed singularly to one's orientation as it may keep the individual choice at bay. At the core of the concept of identity lies self-determination, realisation of one's own abilities visualising the opportunities and rejection of external views with a clear conscience that is in accord with constitutional norms and values or principles that are, to put in a capsule, "constitutionally permissible".

[Emphasis Supplied]

44. Justice Indu Malhotra (as she then was), in her concurring opinion, also upheld the principle laid down in *NALSA* (supra) and held the following:

641.2. *In National Legal Services Authority v. Union of India [National Legal Services Authority v. Union of India, (2014) 5 SCC 438], this Court noted that gender identity is an important aspect of personal identity and is inherent to a person. It was held that transgender persons have the right to express their self-identified gender by way of speech, mannerism, behaviour, presentation and clothing, etc. [Ibid, paras 69-72.] The Court also noted that like gender identity, sexual orientation is integral to one's personality, and is a basic aspect of self-determination, dignity and freedom. [Ibid, para 22.] The proposition that sexual orientation is integral to one's personality and identity was affirmed by the Constitution Bench in *K.S. Puttaswamy v. Union of India [K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, paras 144, 145 and 647.]* .*

[Emphasis Supplied]

45. This Hon'ble Court, in *Navtej Singh Johar* (supra), further held that “individual autonomy and liberty, equality for all sans discrimination of any kind, recognition of identity with dignity and privacy of an individual” are the

“cardinal constitutional ideals” that no legislative act may override. It is respectfully submitted that the omission of Section 4(2) strikes at each of these cardinal ideals simultaneously, it denies autonomy by substituting state verification for self-determination; it denies equality by privileging biologically or socio-culturally fixed identities over self-perceived ones; and it denies dignity by treating a person's most intimate knowledge of themselves as constitutionally insufficient for legal recognition.

46. In *Devu G. Nair Vs. The State of Kerala and Ors.*, MANU/SC/0232/2024 (for short “**Devu Nair**”), a three-judge bench of this Hon’ble Court in a case concerning a same-sex couple in an intimate relationship where one partner was allegedly being forcibly confined by their parents against their will and was prevented from residing with the petitioner, frame the guidelines which *inter alia* included:

m. Sexual orientation and gender identity fall in a core zone of privacy of an individual. These identities are a matter of self-identification and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+ community.

[Emphasis Supplied]

47. In *Supriyo* (supra), Justice Ravindra Bhat (as he then was), writing for himself and Justice Hima Kholi, held the following:

*43. NALSA (supra) was a significant ruling regarding the rights of transgender persons. It was held that “discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India”. **This court, for the first time, recognized what now is obvious but was not perceived to be till then, i.e., that the transgender persons have the same rights and have to be treated as full citizens, entitled to their self-expression of gender identity. In other words, every human being's right to assert what their gender is, not limited by what has been ascribed to them based on their sex at the time of birth.** The court unequivocally declared that the right of transgender persons to non-discrimination is equally contained and resonates in the same manner as it does with other citizens. The court also acknowledged the right to self-determination of one's gender as intrinsic to Article 21 of the Constitution.*

*144. In NALSA (supra), the Court again was confronted with an acute concern wherein the personhood of transgender persons itself, was not recognized. **The court held that the intrinsic worth of every individual and the***

value of individuals to fully realise their rights, was a premise embedded in the Constitution. The Court sought to address hostile discriminatory practices, which included violence that transgender persons were subjected to routinely. *Given all these circumstances, the Court located the right of those identifying themselves as transgender persons squarely under Article 21 of the Constitution.*

[Emphasis Supplied]

48. It is respectfully submitted that, in the years following *NALSA* (supra), the principle of self-perceived gender identity has been affirmed by several High Courts of India.
49. In *Tessy James v. Director General of Police, 2018 SCC OnLine Ker 2140* (“for short “**Tessy James**”), the Hon’ble Kerala High Court adjudicated on a *habeas corpus* petition filed by a mother who alleged that her son, Aby James (18+), had been detained by transgender group. The mother further alleged that her son is a psychiatric patient and is wandering with transgenders exposing himself to the risk of physical abuse and organ transplant. The Hon’ble High Court, taking into consideration the allegations, directed medical/psychological evaluation of the son. The medical report recorded the statement of the son that “he used to

dress himself like girls from childhood. He used to keep company with girls during school life. He has aversion to males and avoid their company. In his words “I have the mind of a woman and the features of a man which does not suit me”. He said he realised there are people like him only when he saw the malayalam movie “Chandupottu”. He asserts that unless he is allowed to live like a woman, he will commit suicide. Also expresses the desire to undergo corrective surgery to change the sex.”

50. In *Tessy James* (supra), the Hon’ble High Court, while recognising the right to self-perceive identity of the son, dismissed the *habeas corpus*. The Court, while quoting Chaz Salvatore Bano, noted:

1. “There’s a gender in your brain and a gender in your body. For 99 percent of people, those things are in alignment. For transgender people, they’re mismatched. That’s all it is. It’s not complicated, it’s not a neurosis. It’s a mix-up. It’s a birth defect, like a cleft palate.”

[.]

8. The self identification of the son [sic] as a transgender is clearly expressed by speech, mannerism, clothing etc. which we noticed during our interaction and fortified by the medical report. The Supreme Court has held that the transgenders are neither male nor

female who however fall within the expression 'person' entitled to all rights recognized by law. The freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India takes within its sweep the right of a person to live as a transgender. The following excerpt from National Legal Services Authority v. Union of India [(2014) 5 SCC 438] dispels any lingering doubt as regards the rights of the detenu as a transgender."

[Emphasis Supplied]

51. In ***Jeeva M. v. State of Karnataka, 2019 SCC OnLine Kar 4456***, the Petitioner was a transgender person who wanted to change his name and gender from female to male in his educational certificates, specifically his SSLC and Pre-University certificates. He had made representations to the Respondents requesting them to change his name and gender in his educational certificates, but the concerned authorities refused to take any action. The Petitioner, therefore, filed a petition before the Hon'ble High Court of Karnataka, seeking a direction to the State authorities to carry out the required changes. The Hon'ble High Court, while referring to NALSA (supra), allowed the said petition and directed the authorities to change the name and gender based on the right to self-perceive gender identity.

52. In *Arunkumar* (supra), the Madurai Bench of the Madras High Court unequivocally affirmed the primacy of self-perceived gender identity, holding that the determination of one's gender lies within the exclusive domain of individual autonomy and dignity. The Court, after noting that gender is distinct from biological sex, emphasized that a transgender person's choice to identify as a woman is an exercise of fundamental rights, particularly those relating to privacy, dignity, and personal liberty. It was categorically observed that such self-identification cannot be subjected to scrutiny or rejection by State authorities, as it forms an integral part of one's personality and identity. The Court further held that legal recognition must align with this self-perceived identity, thereby reinforcing that the State is under a constitutional obligation to respect and uphold an individual's declared gender, without imposing external or medical validation. The Court noted:

*“9. In the case on hand, **the second petitioner herein has chosen to express her gender identity as that of a woman. As held by the Hon'ble Supreme Court this falls within the domain of her personal autonomy and involves her right to privacy and dignity. It is not for the State authorities to question this self determination of the second petitioner herein.***

16. Seen in the light of the march of law, the expression “bride” occurring in Section 5 of the Hindu Marriage Act, 1955 will have to include within its meaning not only a woman but also a transwoman. It would also include an intersex person/transgender person who identifies herself as a woman. The only consideration is how the person perceives herself.”

[Emphasis Supplied]

53. In *X v. State of Uttarakhand*, 2019 SCC OnLine Utt 1097, the Uttarakhand High Court, a transsexual woman, lodged an FIR alleging sexual offences and asserted throughout that she identified herself as female and had also undergone gender reassignment surgery. However, during the investigation, the State authorities relied upon DNA and biological indicators to treat the petitioner as male, leading to the denial of her status as a woman for legal purposes. Aggrieved by such refusal to acknowledge her self-identified gender, the petitioner approached the High Court seeking a direction that she be treated as a female in accordance with the law.

12. What is important to note here is that the Hon'ble Supreme Court did not consider ‘psychological test’ in determining gender alone of a person, but also for determining sex of the person, ‘Psyche test’ has been upheld by the Hon'ble Supreme Court

instead of 'biological test'. If a person psychologically feels different than what his "biological sex" is and determines himself as per his psyche, his sex would be determined accordingly, in view of the judgment in the NALSA's case.

15. There is no enactment, which would prescribe any procedure to confirm the determined sex and gender of TGs. Hon'ble Supreme Court has upheld the right of TGs' to determine sex and gender. Till any legislation is made, definitely the law laid down by the Hon'ble Supreme Court would be the law of the land. It will have, if not more, equal force of an enactment that might be made by legislature. TGs' right to determine their gender and sex cannot wait for any legislation now. It is the law declared by the Hon'ble Supreme Court. If any statute is to be awaited for this purpose it would be further adding to the agony of TGs'. It would be nothing but denying TGs' the fullest form of right to life and liberty and most important it would be defiance of the directions of the Hon'ble Supreme Court in NALSA's case.

19. In view of the foregoing discussion, this Court is of the view that after the judgment of Hon'ble Supreme Court in the NALSA's case, petitioner's right to determine her sex and gender has to be respected and honoured.

The petitioner has identified herself as a 'female', therefore, 'she' has to be treated as a female for all the purposes, whatsoever without any further confirmation from any authority.

[Emphasis Supplied]

54. In *Chinmayee Jena v. State of Odisha*, 2020 SCC OnLine Ori 602 (for short “Chinmayee Jena”), the petitioner, though assigned female at birth, exercised the right of self-determination of gender and identified as male, supported by medical certification of gender dysphoria and living in the preferred gender. The petitioner was in a consensual live-in relationship with his partner, who was forcibly taken away by her family against her will, prompting the petitioner to approach the High Court seeking protection of their autonomy and recognition of his gender identity. In *Chinmayee Jena* (surpa), the High Court of Orissa, expressly upheld the right to self-perceived gender identity as a facet of personal autonomy and dignity, holding that:

“1. The petitioner originally belonging to female gender, has exercised his rights of self gender determination and preferred to be addressed as he/his. Therefore, we have recognized the petitioner's right to be treated as a male and referred him as he/him/his.

*11. Taking into consideration the aforesaid principles of human right, the Hon'ble Supreme Court at Paragraph-74, held that the recognition of one's gender identity lies at the heart of the fundamental right to dignity. It was further held by the Hon'ble Supreme Court that gender constitutes the core of one's sense of being as well as an integral part of a person's identity; legal recognition of gender identity is, therefore, part of the right to dignity and freedom guaranteed under the Constitution. At paragraph-75, the Hon'ble Supreme Court referred to Article 21 of the Constitution and indicated that Articles 21 guarantees the protection of personal autonomy of an individual. Quoting *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1, the Hon'ble Supreme Court reiterated that the personal autonomy includes both the negative right of not to be subject to interference by others and positive rights of individuals to make decisions about their life, to express himself and to choose what activity take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution.*

13. Thus, taking into consideration the aforesaid authoritative pronouncements of

the Hon'ble Supreme Court, there is hardly any scope to take a view other than holding that the petitioner has the right of self-determination of sex/gender and also he has the right to have a live-in relationship with a person of his choice even though such person may belong to the same gender as the petitioner.

[Emphasis Supplied]

55. In *Christina Lobo v. State of Karnataka*, 2020 SCC OnLine Kar 1634 (for short, “Christina Lobo”), the petitioner, though assigned male at birth, consistently identified herself as female from a young age and underwent psychological evaluation and gender reassignment surgery, thereafter formally changing her name and gender in official documents such as Aadhaar and passport. Despite such self-identification and official recognition, the respondent authorities refused to effect corresponding changes in her educational records, compelling the petitioner to approach the High Court seeking recognition of her self-identified gender and consequential corrections in official documents. The High Court allowed the petition and held that “the Transgender persons' right to decide their self-identity is upheld by the Hon'ble Supreme Court of India in the celebrated case in NALSA.”

56. In *Anjali Guru Sanjana Jaan v. State of Maharashtra*, 2021 SCC OnLine Bom 11 (for short “Anjali Guru”), the petitioner, a transgender person, had opted for female gender as her self-perceived identity and submitted her nomination to contest elections from a ward reserved for women. However, her nomination was rejected solely on the grounds that she was a transgender and not eligible to contest from a women-reserved category, despite her categorical assertion of her gender identity. The High Court of Bombay held:

9. The Government of India has introduced the Transgender Persons (Protection of Rights) Act, 2019 and has permitted a transgender person to have a right to be recognized and such transgender is permitted to have a right to self perceived gender identity. In the present case, the petitioner has opted for the female gender as her self perceived gender identity and makes a solemn statement, which is recorded as the statement made to the Court, that henceforth in her lifetime she would not switch over to the male gender driven by opportunism and would continue to opt for the female gender, in future, save and except if there is a reservation provided for transgender in public life.

[Emphasis Supplied]

57. In *Hina Haneefa v. State of Kerala*, 2021 SCC OnLine Ker 4755 (for short “Hina Haneefa”), the petitioner, a transgender woman who had undergone sex reassignment surgery and obtained a transgender identity card reflecting her gender as female, sought enrollment in the National Cadet Corps (NCC). Despite her self-identified gender and official recognition, her request for enrollment in the NCC girls’ division was denied because there was no provision for inclusion of transgender persons, compelling her to approach the High Court alleging violation of her fundamental rights. The High Court emphatically upheld the right to self-perceived gender identity and held that such identity must be recognized and given full legal effect. The Court categorically observed that:

15. In view of the specific provisions in the 2019 Act by which a transgender person has a right to be recognized not only as a transgender but also a right to self perceived gender identity, I am of the opinion that the petitioner who has opted for the female gender and has undergone sex reassignment surgeries for aiding her self perception as a member of the said gender would definitely be entitled to enrollment in the NCC unit reckoning her as a transgender and further as a member of her self perceived gender, that is, the female gender. The fact that the provisions

of the NCC Act do not recognize the third gender or that detailed guidelines are required to be drawn up for the integration of persons of the third gender into the Armed Forces or the National Cadet Corps cannot, according to me, be a justification for denying admission to the petitioner to the NCC unit on the basis of the Identity Card obtained by her.

[Emphasis Supplied]

58. In *Saratha* (supra), the petitioners, belonging to the transgender community, challenged the recruitment notifications issued by the Tamil Nadu Uniformed Services Recruitment Board on the ground that they failed to provide adequate reservations, relaxations, and concessions, and thereby denied equal opportunity in public employment. The grievance arose from the manner in which transgender candidates were either clubbed with other categories or subjected to criteria inconsistent with their self-identified gender, resulting in discrimination despite their assertion of identity. The Hon'ble High Court of Madras, while recognising the right of transgender persons to self-perceived gender identity, held that any denial of benefits based on such identity is unconstitutional. The Court noted:

“31. In the recruitment notifications of TNUSRB, various relaxations/concessions have been

extended to the Women/TGs. These include relaxations in height measurement, endurance tests and physical efficiency tests. Though these appears to be concessions granted to the TGs, the notification restricts these concessions to such TGs, who recognize themselves as “Male” or “Third Gender”. This was never the intent of NALSA. In para 135.2 of NALSA, it was declared that the TGs have a right to decide their self identified gender and the Central and State Governments were accordingly directed to grant legal recognition of their gender identity such as “Male” or “Female” or “Third Gender”. Merely because the TNUSRB had extended the option to the TGs, who choose their self identified gender, they had no right to deprive their fundamental right of equal opportunity in employment, vis-avis the Women and the TGs, who identify themselves as Women. The object behind NALSA's declaration of the TGs' right to decide their self identified gender was to give them a recognition of their identity in various legislations and thereby extend equal protection of law, as well as to avoid discrimination.

32. Thus, depriving the TGs, who recognize themselves as “Male” for the relaxations in the physical tests, is opposed to the object behind NALSA in upholding their right to decide their self identified gender, as well as violative of Articles 14 and 16(1) and therefore unconstitutional.

33. As stated earlier, the decision of TNUSRB to combine the reservation for the TGs, who identify themselves in the female category, along with the 30% vacancies for Women, is opposed to the findings and directions in NALSA. Likewise, the denial of any reservation for the TGs, who identify themselves in the male category, was also not the intent behind the findings in NALSA, as well as in Aradhana's case (*supra*). Moreover, clubbing of reservations of the Women and TGs together is opposed to Article 16(1), since it denies the right of opportunity to the TGs in matters of public employment and therefore unconstitutional. Above all, the TGs who had opted for Men category, have been totally denied of any reservation, which infringes their right under Articles 14 and 16(1). On a overall comprehension of the manner in which TNUSRB had granted a few privileges to these TGs and reservation for a few TGs who opted as female category, this Court is of the view that the claim of the respondents that they have complied with the directions in NALSA and Aradhana is not only irrational, unreasonable, arbitrary and unfair, but also unconstitutional.

41. By adopting the ratio in the aforesaid decisions of the Hon'ble Supreme Court to the facts of the present case, it is seen that the decision of TNUSRB to combine the TGs, who had opted for female category, along with the vacancies reserved for Women deprives equality to them which is violative of Articles 14 and 16(1) of the

Constitution of India. Likewise, when NALSA specifically directed the Central and State Governments to provide reservation for the TGs in matters of public appointments, the conduct of TNUSRB in depriving the TGs, who are in the male category of any kind of reservations in the vacancies, is also opposed to Articles 14 and 16(1). *Thus, the manner in which the respondents had violated the equality of opportunity to the TGs in the impugned notification, is unconstitutional, arbitrary and unfair. If that be so, such an illegal action would be open for judicial review by this Court exercising its powers under Article 226 of the Constitution of India.*

[Emphasis Supplied]

59. It is respectfully submitted that the foregoing jurisprudence of the constitutional jurisprudence of this Hon'ble Court and the High Courts of India discloses an unbroken line of authority that the right to self-perceived gender identity is not a statutory privilege granted by the legislature at its discretion. It is a fundamental right, protected by Articles 14, 15, 19, and 21 of the Constitution, recognised by this Hon'ble Court in *NALSA* (supra) and reaffirmed in *Puttaswamy* (supra), *Navtej Johar* (supra), and *Supriyo* (supra). Every High Court that has addressed the question has arrived at the same conclusion. No court in India has, following *NALSA* (supra), upheld the proposition that self-perceived gender

identity may be denied legal effect on the basis of biological, surgical, or community-membership criteria.

60. The omission of Section 4(2) of the Trans Rights Act 2019 by the 2026 Amendment Act, read with the substituted Section 2(k), produces a regime in which the legislature has assigned to the State the power to determine whose gender identity is valid and whose is not, by reference to externally verifiable criteria that this Hon'ble Court has consistently rejected. Under the substituted Section 2(k), for instance, a trans man, a person assigned female at birth who identifies as male, who has been expressing himself as male in his daily life, and who may have been living as male for years, would no longer be a 'transgender person' within the meaning of the Act, because he does not belong to any of the five named socio-cultural communities, does not present intersex variations, and has not been forcibly subjected to bodily modification. The exclusion is total and unconditional. His gender dysphoria, however clinically documented; his hormonal therapy, however far advanced; his self-perception, however deeply held, none of these are constitutionally sufficient under the substituted definition to bring him within the Act's protection. A trans man who already holds a transgender identity certificate issued by a District Magistrate under the Trans Rights Act 2019 is rendered legally stateless by

the 2026 Amendment Act. He holds a certificate whose definitional basis has been legislatively removed. And a trans man who has undergone gender-affirming surgery or is undergoing the said surgery would also be outside the ambit of the term “transgender.” The Act, as amended, would deny him its protection entirely. This is not a permissible exercise of legislative discretion. It is a violation of the right recognised in *NALSA* (supra). The right to self-perceived gender identity, notwithstanding any hormone therapy or gender-affirming surgery, as held in *NALSA* (supra) and affirmed in *Puttaswamy* (supra), is an aspect of the inalienable right to life and liberty under Article 21, an aspect of the fundamental right to freedom of expression under Article 19(1)(a), and a protected dimension of personal dignity under Articles 14 and 15.

61. Section 4(2) of the Trans Rights Act 2019, which gave statutory expression to each of these constitutional guarantees, was not a dispensable legislative grace. It was the statute's constitutional obligation. Its omission by the 2026 Amendment Act, without any replacement and without any compensating provision, constitutes a direct violation of the binding directions of this Hon'ble Court in *NALSA* (supra) and a fundamental breach of the rights guaranteed by Part III of the Constitution. In these circumstances, the Petitioner respectfully submits that the

omission of Section 4(2) of the Trans Rights Act 2019 by the 2026 Amendment Act is unconstitutional and liable to be struck down.

62. This Hon'ble Court is further respectfully requested to reaffirm that the right to self-perceived gender identity is a fundamental right guaranteed by Articles 14, 15, 19(1)(a), and 21 of the Constitution, and to issue appropriate directions to the Union of India and the State Governments to give effect to that right in the absence of the now-omitted statutory provision.

F. THE 2026 AMENDMENT ACT CREATES AN UNCONSTITUTIONAL HIERARCHY OF GENDER IDENTITIES BY PRIVILEGING SOCIO-CULTURAL VISIBILITY OVER SELF-PERCEIVED GENDER IDENTITY, IN DIRECT VIOLATION OF THE BINDING DIRECTIONS IN NALSA (SUPRA)

63. It is respectfully submitted that the substituted Section 2(k) of the 2026 Amendment Act, read together with its Statement of Objects and Reasons, produces an unconstitutional hierarchy of gender identities, one in which socio-cultural identities (kinner, hijra, aravani, jogta, eunuch) are accorded legal recognition under the

law, while self-perceived gender identities, expressly protected by this Hon'ble Court in *NALSA* (supra), are simultaneously excluded by the proviso as mere “personal choice” or “acquirable characteristics.” The Petitioner humbly submits that this hierarchy of gender identities is constitutionally impermissible.

i. **The Statement of Objects and Reasons: An Explicit Legislative Disavowal of the Constitutional Right to Self-Perceived Gender Identity**

64. It is respectfully submitted that the Statement of Objects and Reasons of the 2026 Amendment Act does not merely restrict the scope of a statute; it articulates, with unusual candour, the intent to create the precise hierarchy that the Constitution forbids. Paragraph 1 of the Statement announces that:

*“It is the legislative policy to recognise a **specific class of transgender persons**, who **face social issues** and to **create a regime for their protection**. The legislative policy was and is intended to protect **only those who face severe social exclusion due to biological reasons for no fault of their own and no choice of their own**.”*

[Emphasis Supplied]

65. This statement is constitutionally revealing in two respects. First, it limits the protection of the law to persons

facing social exclusion “due to biological reasons”, a formulation that imports the biological test that this Hon'ble Court in *NALSA (supra)* expressly rejected in favour of the psychological test. Second, and more fundamentally, it describes the qualifying criterion as the absence of choice, which is itself a constitutional contradiction. The right to self-perceived gender identity is not, as this Hon'ble Court held in *NALSA (supra)*, an acquirable characteristic dependent on external attribution. It is inherent. It is one of the most fundamental aspects of life. Paragraph 3 of the Statement of Objects and Reasons proceeds further and states:

“The intent, object and purpose of the Act is and was to protect a specified class of persons socially and culturally known as transgender people who face societal discrimination of an extreme and oppressive nature. The purpose was and is not to protect each and every class of persons with various gender identities, self-perceived sex/gender identities or gender fluidities.”

[Emphasis Supplied]

66. Paragraph 5 then converts this intent into a legislative instruction:

“It is therefore imperative to give a precise definition for proper and definitive identification

and protection of transgender persons to whom the benefits of the Act must reach. The protection and benefits that are provided under the Act are vast in nature, and therefore, care has to be taken that such identification cannot be extended on the basis of any acquirable characteristics or personal choice or claimed self-perceived identity of an individual.

[Emphasis Supplied]

67. It is respectfully submitted that these passages constitute a direct legislative repudiation of the constitutional right to self-perceived gender identity as recognised in *NALSA* (supra). The Statement of Objects and Reasons characterises:
 - i. Self-perceived gender identity as a mere “personal choice” or “claimed” identity, directly contradicting *NALSA* (supra), which held that gender identity is “one of the most fundamental aspects of life which refers to a person's intrinsic sense” of their gender;
 - ii. Self-perceived identity as an “acquirable characteristic”, directly contradicting *NALSA* (supra), which held that gender identity is “integral to the dignity of an individual and is at the core of personal autonomy and self-determination”; and

iii. The scope of protection as properly limited to a “specified class” defined by “biological reasons”, directly contradicts *NALSA* (supra), which rejected the biological test and held that gender identity is based on “self-identification, not on surgical or medical procedure.”

68. A Statement of Objects and Reasons that characterises constitutional rights as administrative inconveniences to be excised does not clarify a statute; it reveals its unconstitutional purpose. Where the purpose of a statute is itself constitutionally impermissible, the statute must fall; the objects cannot save the means. It is established law that where the object of a legislation is itself *ultra vires* the Constitution, no plea of parliamentary intent can validate it.

ii. The Impossibility of Delimiting the Socio-Cultural Categories

69. It is respectfully submitted that even if this Hon’ble Court, were to accept, which it is submitted it should not, the legislature's decision to confine protection to named socio-cultural communities, a second and independently sufficient constitutional infirmity immediately arises: the 2026 Amendment Act creates a closed legal category out

of communities that cannot, by their own internal nature and by the uniform evidence of decades of ethnographic scholarship, be given the fixed, bounded definition that a restrictive statute demands. The five communities listed in Limb (i) of the substituted Section 2(k), *hijra, kinner, aravani, jogta, eunuch*, are not a coherent, uniform set. They are historically contingent, geographically variable, internally plural, and mutually overlapping communities of gender expression that resist definitional closure. This is not a contested academic position. It is the settled finding of the most authoritative ethnographic scholarship produced on different socio-cultural communities, and it has direct constitutional consequences for a statute that purports to make membership of these communities the *exclusive* basis of legal recognition.

70. The foundational scholarly account of the *hijra* community is Serena Nanda's *Neither Man nor Woman: The Hijras of India*, an early comprehensive ethnographic study of the *hijra* community in South-Central India, drawing on two decades of fieldwork. Nanda opens her study by identifying, with precision, the fundamental problem that any attempt to legally define '*hijra*' must confront:

“One of the difficulties in writing in a clear and accurate way about the hijras is the

disjunctions that exist between the cultural definition of the hijra role and the variety of individually experienced social roles, gender identities, sexual orientations, and life histories of the people who become hijras. These disjunctions appear in several ways.

One important disjunction has to do with the fact that although hijras are culturally defined in terms of their traditional occupation as performers on auspicious occasions, many, if not most, hijras do not earn their living solely in this manner; indeed, many hijras do not perform at all.

A second disjunction has to do with the cultural definition of hijras as neither men nor women and the experienced gender identity of many hijras as women. Thus, whereas many hijras did indeed tell me that they were neither men nor women, other hijras answered my questions by saying, "We hijras are like women," and proceeded to enumerate the ways in which they felt and behaved like women.

A third disjunction has to do with the definition of the hijra role as based on sexual impotence due to an ascribed physical condition of intersexuality, and the reality that most hijras are not hermaphrodites. There is a widespread

belief in India that hijras are born hermaphrodites and are taken away by the hijra community at birth or in childhood, but I found no evidence to support this belief among the hijras I met, all of whom joined the community voluntarily, most often in their teens. The hijra role and identity appear to be adopted by people whose sexual impotence has a psychological rather than an organic basis, but this, of course, does not make it less real. The concept of a psychologically compelling desire that motivates a man to live as a woman is not well understood in India generally and certainly not among the lowermiddle and lower classes from which hijras are generally recruited. This may be part of the reason that hijras say they are "born that way."

Still another disjunction comes from the contrast between the cultural definition of hijras as emasculated men and the fact that not all hijras do undergo the emasculation operation. The problem of knowing whether most hijras are born hermaphrodites or "made" (through emasculation) is exacerbated by the collapsing of the categories of eunuch and hermaphrodite in the Indian folk gender classification so that both people "born that way" and those who have been emasculated, either in childhood or

adulthood, are called hijras. In the absence of medical examinations, there is no way to make an accurate judgment on this point.

Given the small number of people born with a physical condition that would be called hermaphroditic, it would probably be well to assume that most hijras are "made" rather than "born that way." And finally, although the core of the cultural meaning of the hijra role and the basis of the hijras' claim to power rest on their renunciation of male sexuality and their identification with "other-worldly" religious ascetics, in fact, many hijras have sexual relations with men and earn their living through prostitution."

[Emphasis Supplied]

[See, Serena Nanda, *Neither Man nor Woman: The Hijras of India* (2nd ed., Wadsworth, 1999), Introduction pp. xix to xxi]

71. Nanda identifies five distinct internal disjunctions that together demonstrate why hijra identity is irreducible to any single, legally administrable criterion:
 - i. **Occupational Disjunction:** Although *hijras* are culturally defined in terms of their traditional occupation as performers on auspicious occasions, many, if not most, hijras do not earn their living

solely in this manner; indeed, many hijras do not perform at all. The Amendment Act's Limb (i) implicitly associates hijra identity with the performance of *badhai*, the blessing ceremonies at births and marriages, but if legal recognition turns on this cultural association, it would exclude the majority of persons who are hijras by community belonging but do not perform this function.

- ii. **Gender identity disjunction:** Although hijras are culturally defined as neither men nor women, Nanda documents that many hijras identify primarily as women, whereas many hijras did indeed identify that they were neither men nor women, other hijras answered my questions by saying, “We hijras are like women,” and proceeded to enumerate the ways in which they felt and behaved like women. The internal diversity of gender self-identification within the *hijra* community alone, ranging from third gender identity to trans-feminine identity, cannot be captured in a single legislative limb.
- iii. **Physical/intersex disjunction:** The Amendment Act's Limb (i) (intersex) defines intersex through chromosomal and biological criteria and, in Limb

(i), links *hijra* identity to the folk category of hermaphrodite. Yet Nanda is categorical that “most hijras are not hermaphrodites.” She found “no evidence to support this belief among the hijras I met, all of whom joined the community voluntarily, most often in their teens.” *Hijra* identity is adopted through voluntary community membership, not biological condition.

- iv. **Surgical status disjunction:** Although *hijras* are culturally associated with emasculation (the *nirvan* operation), not all hijras undergo this procedure. Nanda documents that “the problem of knowing whether most hijras are born hermaphrodites or 'made' (through emasculation) is exacerbated by the collapsing of the categories of eunuch and hermaphrodite in the Indian folk gender classification so that both people 'born that way' and those who have been emasculated, either in childhood or adulthood, are called *hijras*.” The reintroduction of “eunuch” in the Amendment Act's definition replicates precisely this colonial-era confusion, a conflation that Nanda identifies as ethnographically inaccurate and legally indefensible.

- v. **Sexual practice disjunction:** Although the core of the cultural meaning of the hijra role and the basis of the hijras' claim to power rest on their renunciation of male sexuality, in fact, many hijras have sexual relations with men and earn their living through prostitution. A law that privileges *hijra* cultural identity, while the cultural definition itself is internally contradicted by the lived experience of hijra community members, creates a definitional impossibility.

72. These five disjunctions, documented across two decades of fieldwork, establish that “hijra” is not a fixed, bounded, administratively ascertainable category. It is a relational, historically contingent, internally plural community of identification. Nanda's study has been endorsed in subsequent scholarship as the definitive account of this definitional complexity. A statute that creates legal rights by reference to a category it cannot itself define fails the most elementary test of legislative precision, and, under *NALSA* (supra), the constitutional test of self-determination requires the precise opposite of definitional closure: it requires the law to follow the person's self-identification, not to police the boundaries of their community.

73. Gayatri Reddy's ethnographic study, *With Respect to Sex: Negotiating Hijra Identity in South India*, deepens this analysis by demonstrating that hijra identity in Hyderabad is not merely internally diverse but is actively negotiated through overlapping and shifting axes, gender, sexuality, religion, caste, kinship, and class, none of which can be reduced to a single legally administrable marker. Reddy documents that the Hyderabad *hijra* community encompasses persons who simultaneously identify across multiple categories: *hijras*, *kotis*, *zenana kotis*, *kada-catla kotis*, *jogins*, and *shiva-satis*. As Reddy observes:

“Axes of identity and their salience in an individual's life shift, not just spatially, but categorically and temporally as well, with different configurations of identity emerging at different points in the life course.”

[Emphasis Supplied]

[Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (University of Chicago Press, 2005), p. 77]

74. This observation carries direct constitutional significance: if identity configurations shift “spatially, categorically and temporally” across a single individual's life course, then a legislative provision that freezes legal recognition at a single, externally observable socio-cultural category

cannot capture, and will inevitably misidentify or exclude, the persons it purports to protect.

75. Reddy further documents that even the *nirvan* (emasculatation) operation within the *hijras*, itself operates within a ritual and spiritual framework that no medical authority can evaluate. As Reddy writes, the *hijra nirvan* is constituted through connection to the goddess Bahuchara (or Bedhraj) Mata, from whom *hijras* are believed to receive their power. The emasculatation is described as a *corporeal* symbol *that inscribes and reveals hijras' superior agency, authenticity, and izzat*, a spiritual and relational authentication, not a medical procedure. **[Reddy, *With Respect to Sex*, p. 98 (on corporeal symbol and izzat); p. 77 (on Bahuchara Mata and divine power).]**

76. Each of the communities named in the Amendment Act's Limb (i) represents a distinct tradition with its own specific history, geographical distribution, religious framework, and gender expression, traditions that are not interchangeable, and that differ from each other in constitutionally significant ways. Sumit Dutta, Shamshad Khan, and Robert Lorway, in their ethnographic study, document the jogappa community's distinctiveness from

the hijra community in precisely those dimensions that the 2026 Amendment Act treats as equivalents.

[See, Sumit Dutta, Shamshad Khan, and Robert Lorway, ‘*Following the Divine: An Ethnographic Study of Structural Violence Among Transgender Jogappas in South India*’, *Culture, Health & Sexuality* 21, no. 11 (2019): 1240–56.]

77. *Jogappas*, who are temple servants of the goddess Yellamma in Karnataka and Maharashtra, are distinguished from hijras by their refusal of bodily modification (they *rhetorically oppose body modification on grounds of religiosity*), by the centrality of *goddess possession* in their identity claim, and by their bodily adornment through the *muttu*, the red and white beaded necklace symbolising their marriage to Yellamma, rather than through emasculation. As Gayatri Reddy herself notes, “jogappas are distinguished from hijras by the central importance of goddess possession in their narrative claims of identity and respectability.” [Reddy, *With Respect to Sex*, pp. 67–71]
78. Nanda similarly documents that jogappas are “men who have become women; or more precisely, ordinary men who have become sacred female men”, a self-understanding distinct from the hijra conception of *neither*

man nor woman. Jogappas do not undergo emasculation and are never called eunuchs. [Nanda, *Neither Man nor Woman*, footnote 3, p. 161] The Amendment Act's lumping of *hijras* and *jogtas* into a single definitional limb elides a distinction that both communities actively insist upon, and that is documented across the ethnographic literature.

79. Similarly, the *aravanis* of Tamil Nadu, listed alongside *hijras* and *jogtas* in Limb (i) constitute a distinct community with a discrete mythological origin. Aravanis identify with the Mahabharata story of Aravan (also known as *Koothandavar* or *Iravan*), the son of Arjuna, who agreed to be sacrificed before the Kurukshetra war with the condition that he first be married. Since no woman would marry a man destined to die, the god Krishna assumed female form to become his wife. Aravanis re-enact this narrative in the annual Koovagam festival in Tamil Nadu, a religious ceremony in which they marry the deity and then become widows. [Nanda, *Neither Man nor Woman*, pp. 21–22.]
80. The *aravani* identity is constituted through this specifically Tamil Hindu theological tradition; it is not interchangeable with the *hijra* identity, which is historically associated with the Mughal courts, Urdu

cultural traditions, and the worship of Bahuchara Mata, or with the *jogappa* identity, which is constituted through devotion to *Yellamma*. The Amendment Act's consolidation of these communities into a single legal limb treats as legally equivalent communities that are constitutively distinct.

81. The term *kinner*, used predominantly in North India and especially in Delhi, is etymologically derived from *kinnara*, a class of divine musicians in Hindu mythology who are depicted as half-human, half-divine beings with ambiguous gender. In contemporary usage, *kinner* is primarily a North Indian term for what South Indians call *hijra*, but the communities are not coextensive. *Kinnars* are associated with a distinct set of community structures, *gurukul* traditions, and political formations, including, notably, the election of kinnar representatives to legislative bodies in Madhya Pradesh and Chhattisgarh. The political and community life of kinnar communities is organised through different structures than the *jamaat* system that organises hijra communities in Western and North India, and they hold distinct conceptions of what it means to be *neither a boy nor a girl*, a self-description documented in ethnographic fieldwork with kinnar communities. [See Nanda, *Neither Man nor Woman*, pp. 595–617 on regional variation.] These are not synonyms.

They are distinct traditions that the Amendment Act conflates.

82. It is respectfully submitted that the constitutional infirmity of the 2026 Amendment Act's hierarchy is not merely that it privileges imprecisely defined socio-cultural categories over self-perceived gender identity. It runs deeper because the persons who identify as members of those very socio-cultural communities, *hijras*, *aravanis*, *kinners*, *jogtas*, do so precisely by exercising the right to self-determined gender identity and self-determined gender expression that the Amendment Act's proviso purports to deny. Membership of a socio-cultural gender community is not an alternative to self-perceived gender identity. It is an expression of it. The two are not, as the Amendment Act treats them, mutually exclusive categories, one “biological,” one “acquirable.” They are, as the ethnographic scholarship uniformly establishes, the same phenomenon viewed from different angles. The community membership is the social form through which individual self-determination finds collective expression.
83. Serena Nanda documents this with precision. She establishes that “most hijras join the community voluntarily, most often in their teens”, not because of a biological condition, intersex variation, or compulsion,

but through “a psychologically compelling desire that motivates a man to live as a woman.” The process Nanda describes, gradual self-recognition of cross-gender desire, followed by the deliberate decision to leave one's natal family and affiliate with the hijra jamaat, is, in its constitutional character, precisely the exercise of the right to self-determination of gender identity that this Hon'ble Court in *NALSA* (supra) described as “integral to the dignity of an individual and at the core of personal autonomy.” The Statement of Objects and Reasons of the 2026 Amendment Act characterises self-perceived gender identity as a “personal choice” undeserving of legislative protection. By that same logic, the choice to join a *hijra gharana*, which Nanda and subsequent scholarship uniformly document as a voluntary, identity-driven act, is also a personal choice. The Amendment Act protects the outcome of that choice (community membership) while condemning the constitutional right (self-determination) that produces it. [**Nanda, Neither Man nor Woman**, (supra)]

84. This internal contradiction is corroborated across the full range of socio-cultural communities that the 2026 Amendment Act privileges. Ina Goel, in a study drawing on the ethnographic literature “*Hijra Communities of Delhi*”, summarises that the identification as a *Hijra*

symbolizes a choice to be gender variant, either by altering one's body with hormones or surgery, or both, or by choosing not to do this. This implies that a *hijra* person could take on the role of a woman, a man, or an in-between being. The *aravani* community's identity is similarly constituted through individual and deliberate identification with a specific mythological and ritual narrative, the story of Aravan, and the freely undertaken (though existentially weighted) decision to undergo the *pal utru vizha* ceremony.

[Ina Goel, *Hijra Communities of Delhi, Sexualities*, (2016) 19(5-6), 535-546]

85. As the ethnographic account of aravani theatre-practitioner Pritham Chakravarthy (who is also Assistant Professor of Dramaturgy and film history at the Ramanaidu Film Institute in Hyderabad), Kristen Rudisill documents, “many aravanis never actually go through with the surgery”, they remain aravanis by identity, by community belonging, and by self-perception. Rudisill describes Chakravarthy as:

“Pritham Chakravarthy, an assistant professor of dramaturgy and film history at the Ramanaidu Film Institute in Hyderabad, relates this story near the beginning of her 2001 play Nirvanam (Transcendence), which is about the

life of an aravani. Chakravarthy has had a long, illustrious career as an actress, translator, and writer, but she is not herself an aravani, which is an identity that is self-selected, and typically new individuals will be adopted by more established members of the community, using kinship terms such as “mother” and “daughter” to refer to one another. Pritham is considered a sister and therefore part of the family by a group of aravanis in Chennai, India, who have entrusted her with sharing their stories through theatre.”

[Emphasis Supplied]

[Kristen Rudisill, Pritham Chakravarthy: Performing Aravani s’ Life Stories, Asian Theatre Journal, Volume 32, Number 2, Fall 2015, pp. 536-555]

86. It is respectfully submitted that the 2026 Amendment Act is internally contradicted by its own definitional choices in a manner that reveals its unconstitutional character with particular clarity. On one hand, Paragraph 5 of the Statement of Objects and Reasons expressly removes the right to self-perceived gender identity from the statute's protection, declaring that legal recognition “cannot be extended on the basis of any acquirable characteristics or personal choice or claimed self-perceived identity of an individual.” On the other hand, the very communities that the substituted Section 2(k) chooses to recognise, *hijras*, *aravanis*, *kinners*, *jogtas*, are communities whose

membership is itself constituted through the exercise of self-perceived gender identity and self-determined gender expression. *Hijra* community membership is not assigned by birth or biological condition; it is adopted voluntarily in the teen years, through “a psychologically compelling desire that motivates a man to live as a woman. Even the formal rite of hijra community affiliation, the *rit* (ritual), is a deliberate act of voluntary self-identification; a person becomes free “to join the hijras” upon personal decision. Identification as a *Hijra* symbolizes a choice to be gender variant.

87. The 2026 Amendment Act, therefore, simultaneously removes the right to self-perceived gender identity and recognises communities whose foundational act of membership is the exercise of that very right. It protects the outcome of self-determination, community belonging, while legislatively condemning the constitutional right, self-determination itself, that produces it.
88. This internal contradiction exposes a second and deeper infirmity that the 2026 Amendment Act does not protect the named socio-cultural communities because their members have a stronger or more legitimate claim to gender identity. It protects them because they are visible, because *hijras*, *aravanis*, *kinners*, and *jogtas* present their

gender identity in forms that are historically legible to the State, associated with recognisable occupational roles such as *badhai* performance, sex work, and temple service, and grounded in traditions that colonial and post-colonial administrative practice has long catalogued and registered. The protection that 2026 Amendment Act extends to these communities is, therefore, not premised on a principled constitutional basis, it is premised on a ‘prejudice of visibility’ that the assumption that gender identity is real and deserving of protection when it is publicly performed in traditional, institutionally organised, trans-feminine forms, and “acquirable” or “chosen” when it is experienced privately, expressed outside named community structures, and doesn’t takes a transmasculine, transfeminine beyond these socio-cultural groups, or non-binary form.

89. It is respectfully submitted that the foregoing demonstrates that the constitutional infirmity of the 2026 Amendment Act’s definitional hierarchy operates simultaneously on three interlocking planes, each independently sufficient to sustain the constitutional challenge, and each made worse by its interaction with the others.

90. On the first plane, the substituted Section 2(k) creates legal rights by reference to categories it cannot itself define. The communities listed in Limb (i) *hijra*, *kinner*, *aravani*, *jogta*, *eunuch* are not a coherent or interchangeable set. Each represents a historically contingent, geographically variable, theologically constituted, and internally plural tradition whose boundaries are actively disputed within the communities themselves. The *hijra* community of Hyderabad and the *aravani* community of Tamil Nadu are constituted through distinct mythological lineages, distinct goddess traditions, and distinct ritual practices. The *jogappa* community of Karnataka explicitly rejects the bodily modification that characterises *hijra* identity. The *kinner* community of North India is organised through structures of community and political life that differ from the *jamaat* system of Western and North Indian *hijra* communities. Even within the *hijra* community alone, Nanda's five disjunctions, occupational, gender identity, physical/intersex, surgical status, and sexual practice, establish that no single administratively verifiable criterion can identify who belongs. No medical board can have institutional competence to evaluate spiritual kinship, goddess devotion, or the *rit* (often described as a ritual) ceremony that constitutes community membership. A statute that purports to restrict legal recognition to

membership of communities it cannot define, administered by an authority with no competence to assess the criteria of membership, fails the most elementary requirement of rational basis.

91. On the second plane, the 2026 Amendment Act's hierarchy is internally self-contradicting in a manner that reveals its unconstitutional character with particular clarity. The Statement of Objects and Reasons declares that legal recognition **"cannot be extended on the basis of any acquirable characteristics or personal choice or claimed self-perceived identity of an individual."** Yet the very communities the substituted Section 2(k) recognises, *hijras, aravanis, kinnners, jogtas*, are communities whose foundational act of membership is *itself* the exercise of self-perceived gender identity. *Hijra* community membership is not assigned by birth or biological condition, it is adopted voluntarily, in the teen years or , through a psychologically compelling desire that motivates a man to live as a woman. The formal rite of affiliation, the *rit*, is a deliberate act of voluntary self-identification. The 2026 Amendment Act, therefore, simultaneously removes the right to self-perceived gender identity and recognises communities whose foundational act of membership is the exercise of that very right. It protects the outcome of self-determination and

community belonging, while legislatively condemning the constitutional right, self-determination itself, that produces it. This is not a permissible exercise of legislative judgment. It is a constitutional contradiction enacted as a statute.

92. On the third and deepest plane, the 2026 Amendment Act does not protect these identified socio-cultural communities because their members have a stronger, more legitimate, or more constitutional claim to gender identity than trans men & trans-masculine identities, non-binary persons, or genderqueer individuals. It protects them because they are visible, because *hijras*, *aravanis*, *kinners*, and *jogtas* present their gender identity in forms that are historically legible to the State i.e., associated with recognisable occupational roles such as *badhai* performance, sex work, and temple service, organised through community structures, *jamaats*, *gharanas*, *gurukuls*, that colonial and post-colonial administrative practice has long catalogued and registered, and expressed in publicly performed, institutionalised, trans-feminine forms that the legislature can see and count. The protection the Amendment Act extends to these communities is therefore not premised on a principled constitutional basis. It is premised on a prejudice of visibility based on the legislative assumption that gender

identity is real and deserving of statutory protection when it is publicly performed in traditional, institutionally organised, trans-feminine forms, and is a mere “personal choice” or “acquirable characteristic” when it is experienced privately, expressed outside named community structures, or takes a transmasculine or non-binary form.

93. It is respectfully submitted that 2026 Amendment nullifies the equal protection of self-perceived gender identity by confining statutory recognition to a limited list of socio-cultural communities that it cannot define, that are themselves constituted through the exercise of the very right it removes, and whose privileging over all other transgender persons rests on no constitutional foundation other than their historical visibility to a State apparatus that has always found it easier to recognise what it can see than to protect what it cannot. The substituted Section 2(k) and its proviso are accordingly *ultra vires* Articles 14, 15, 19, and 21 of the Constitution of India and the binding directions of this Hon’ble Court in NALSA (supra), and are liable to be declared void.

iii. **The Structural and Constitutional Exclusion of Trans Men Because the Socio-Cultural Categories Are Predominantly Trans-Feminine**

94. It is respectfully submitted that a second and distinct constitutional infirmity in the 2026 Amendment Act's privileging of named socio-cultural communities is that those communities, *hijra*, *kinner*, *aravani*, *jogta*, *eunuch*, are, without exception, trans-feminine communities i.e., communities of persons assigned male at birth who present in feminine gender expressions, who identify as women or as a third gender, and whose public social role is constituted through feminised performance. Not one of the named communities in Limb (i) of the substituted Section 2(k) encompasses persons assigned female at birth who identify as men. Trans men and transmasculine identities, persons who identify as male but were assigned female at birth, are not members of any of the communities the 2026 Amendment Act names and are, as a direct consequence, entirely excluded from the statute's protection.
95. This exclusion is not incidental. It is constitutive. It follows directly from the legislature's choice to limit recognition to socio-cultural communities that are, by their historical formation and their lived social reality, exclusively or overwhelmingly trans-feminine. The structural invisibility of trans men in Indian society, and the specific mechanisms through which it is produced, is extensively documented in trans studies scholarship.

96. Treesa Petreena, in “Unveiling Trans-Masculinity: A Study on the Invisible Status of Indian Trans-Men”, one of the most detailed scholarly study of transmasculine identity in India, describes this invisibility as the product of a “double marginalisation”. She writes “(e)ven while transgender identities gain visibility in society recently, only the trans-women (male to female) persons get their voices heard, where trans-men (female to male) category remain as the doubly marginalised 'other'. In a country like India, where trans-women community claim very deep roots in nation's history, and also performs a part in tradition and rituals, trans men community still remains invisible leaving their existence ambiguous.”

[See, Treesa Petreena, "Unveiling Trans-Masculinity," Ishal Paithrkam, Issue 28 (2022), p. 285]

97. Petreena identifies the structural mechanism of trans male invisibility with precision that unlike trans women, trans men have no equivalent socio-cultural community structure that makes them socially legible. While transwomen and transfeminine identities in India, *hijras*, *kinnars*, *aravanis*, are organised into *jamaats*, *gharanas*, and named community hierarchies that give them collective social visibility (however precarious), trans men have no such structures. As Petreena documents,

“(w)hile trans-women have a social support system such as the *jamaat*, and live together, trans men have no such support structures and mostly their fight for survival is in an individualistic or personal level.”

[Petreena, p. 289, citing Revathi A., *A Life in Trans Activism*]

98. The 2026 Amendment Act's choice to confine recognition to persons with named community affiliations, therefore, does not neutrally exclude persons whose gender identity is not organised around community membership. It specifically and structurally excludes trans men and transmasculine identities, because the absence of a *jamaat* is not an accident of trans male experience. It is a defining feature of it.
99. This structural exclusion has compounding effects. Petreena documents that a significant proportion of persons experiencing gender dysphoria in India are entirely unaware that trans men exist as a recognised identity. She writes “(m)any of them who are experiencing gender dysphoria or questioning their own gender, they don't even know that trans-men exist.” **[Petreena, p. 289]** When law confirms this invisibility, when the statute that is supposed to protect transgender persons does not even acknowledge transmasculine identity, it does not merely

reflect a social prejudice. It constitutionally entrenches it. The 2026 Amendment Act, by failing to include any provision for the recognition of trans men, gives legal force to what Petreena calls the social condition of “absence before law.”

100. Petreena also documents a specific legal dimension of trans male invisibility that has direct bearing on the constitutional challenge before this Hon'ble Court. She observes that “(d)ue to this unawareness and ignorance, especially the trans-man identity is often disregarded, as there is a common misconception that the rule is only associated with '*Hijras*' or trans-women. Even in 'Transgender Persons (Protection of Rights) Act' of 2019, the term trans-man is only mentioned once without much focus, cementing their invisibility among the public.” **[Petreena, pp. 289–290]** If trans men were already near-invisible in the Principal Act, 2019, which at least expressly included “trans-man” in the definition of “transgender person”, the 2026 Amendment Act completes their legislative erasure. The substituted Section 2(k) removes even that single mention, replacing it with a definition that by its terms cannot accommodate a person assigned female at birth who identifies as male.

iv. Survey On Gender-Affirming Care And Identification: Evidence Of Gender Diversity Within The Transgender Community

101. It is respectfully submitted that Petitioner No. 1, Manveer Yadav, and Petitioner No. 2, Vishwanath Maithil, jointly administered a structured survey titled “*Gender-Affirming Care and Identification Survey*” to 204 individuals belonging to the transgender community across India. The survey was conducted between 03.04.2026 and 09.04.2026 *via* Google Forms, with responses received in English, Hindi, and Marathi. The Petitioners submit that the limited demographic data within a short period of time, gathered through the said survey constitutes direct, primary, and unimpeachable empirical evidence of the profound gender diversity that exists within the transgender community in India, the very diversity that the substituted Section 2(k) of the 2026 Amendment Act categorically fails to recognise and protect.

102. The survey first recorded the gender of participants as reflected on their *Aadhaar* Card, representing the State’s current legal classification, alongside the gender identity that each respondent self-perceives. The contrast between these two columns is itself a constitutional document: it reveals, with precision, the gap between the external,

bureaucratic attribution of identity that the 2026 Amendment Act seeks to entrench, and the lived, self-determined identity that this Hon'ble Court in *NALSA* (supra) held to be the only constitutionally permissible basis for recognition. The comparative data is set out below:

Table 1: Gender on Aadhaar Card vs. Self-Perceived Gender Identity

Category	Aadhaar Card (No.)	Self-Perceived (No.)
Female / Assigned Female at Birth	100	—
Male / Assigned Male at Birth	86	—
Trans Man / FTM (Female-to-Male)	—	144
Trans Woman / MTF (Male-to-Female)	—	27
Other / Non-Binary / Gender-Diverse	—	25
Transgender (recorded on Aadhaar)	8	4 (unspecified)
Other / Not Specified	4	—
Total Participants	204	204

103. That only 8 of 204 participants (3.9%) have the identity “transgender” recorded on their Aadhaar Card, while 100 participants (49.0%), the largest single group, are recorded as “female” on their Aadhaar Card but self-identify as trans men. This data powerfully illustrates the central constitutional infirmity of the 2026 Amendment Act that the State’s administrative classification does not correspond to, and cannot substitute for, the self-perceived gender identity of the individual.

104. The survey next recorded the self-perceived gender identity of each respondent in their own words. The full range of self-perceived gender identities reported by the 204 participants is set out below:

*Table 2: Self-Perceived Gender Identity of Survey
Participants*

Self-Perceived Identity	Gender	No. Participants	of %	% of Total (204)
Trans Man / FTM (Female-to-Male)		144		70.6%
Trans Woman / MTF (Male-to-Female)		27		13.2%

Other / Non-Binary / Gender-Diverse	25	12.3%
Transgender (Unspecified)	4	2.0%
No Response	4	2.0%
Total	204	100%

105. That 144 of 204 participants, constituting 70.6% of the survey sample, self-identify as trans men (“FTM”), the precise identity category that finds no place in the substituted Section 2(k) of the 2026 Amendment Act. A further 25 participants (12.3%) identify as non-binary or gender-diverse, equally excluded from the closed definitional list. Collectively, 169 of 204 participants, 82.8% of the survey sample, belong to identity categories that the 2026 Amendment Act does not recognise. The data confirms what this Hon’ble Court established in *NALSA* (supra): that transgender identity is not a fixed, narrow classification but an umbrella term encompassing a wide and diverse range of identities and experiences. The substituted Section 2(k) converts this constitutional umbrella into a closed list, one that excludes the overwhelming majority of those within this survey.

106. The survey further recorded the experience of gender dysphoria among participants, the clinically recognised condition of distress arising from a disconnect between one's gender identity and the sex assigned at birth, and the possession of a Gender Dysphoria Certificate issued by a qualified medical professional. The data is set out below:

Table 3: Experience of Gender Dysphoria

Status (Gender Dysphoria Experienced)	No. of Participants	% of Total (204)
Yes — Experienced Gender Dysphoria	180	88.2%
No	17	8.3%
Prefer Not to Say	4	2.0%
No Response	3	1.5%
Total	204	100%

107. An overwhelming 88.2% of participants (180 of 204) report having experienced gender dysphoria. Of these, 132 participants (64.7%) hold a Gender Dysphoria Certificate issued by a qualified medical professional, with 9 participants reporting their certificate as pending. The

medical reality of gender dysphoria within the transgender community is therefore not merely asserted, it is documented, certified, and clinically established. The 2026 Amendment Act, by replacing the psychological standard endorsed in *NALSA* (supra) with biological and community-based markers, renders this clinical reality legally invisible for those outside its closed definition.

108. The survey further recorded the hormonal therapy status of participants, being a primary component of gender-affirming care for transgender individuals. Hormonal therapy represents the medical translation of self-perceived gender identity into bodily experience, a process that this Hon'ble Court in *NALSA* (supra) held cannot be made a precondition for legal recognition of gender identity. The data is set out below:

Table 4: Hormonal Therapy Status of Survey Participants

Hormonal Therapy Status	No. of Participants	% of Total (204)
Yes — Currently Undergoing	98	48.0%
Yes — Completed	46	22.5%
No — Desired but Unable to Access	30	14.7%
No — Not Undergone	22	10.8%

Incomplete / Discontinued	4	2.0%
Prefer Not to Say	4	2.0%
Total	204	—

109. That, 144 participants (70.6%) are currently undergoing or have completed hormonal therapy, representing the majority of the survey sample. It is pertinent to note that 30 participants (14.7%) report that they desire hormonal therapy but have been unable to access it, indicating a significant unmet need within the community. A further 4 participants commenced hormonal therapy but were compelled to discontinue, illustrating the precarious conditions under which gender-affirming care is accessed in India. It is respectfully submitted that all of these persons, whether undergoing, completed, desiring, or unable to access hormonal therapy, are transgender persons whose identities are constitutionally protected under *NALSA* (supra). The 2026 Amendment Act would deny statutory protection to the overwhelming majority of them.

110. Finally, the survey recorded the gender-affirming surgical status of respondents. Gender-affirming surgery represents the most intensive form of medical intervention undertaken by some transgender persons in alignment

with their self-perceived identity. The surgical data from the survey is set out below:

Table 5: Gender-Affirming Surgical Status of Survey Respondents

Surgical Status	No. of Participants	% of Total (204)
Yes (Have Undergone Gender-Affirming Surgery)	73	35.8%
No. (Have Not Undergone Surgery)	68	33.3%
Planning to Undergo Surgery in Future	53	26.0%
Prefer Not to Say	6	2.9%
No Response	4	2.0%
Total	204	100%

111. Among the 73 respondents who have undergone gender-affirming surgery, the procedures reported include: chest/top surgery (52 respondents), genital/bottom surgery (22 respondents), uterus removal/hysterectomy (14 respondents), voice masculinisation surgery (6 respondents), and facial feminisation or masculinisation surgery (9 respondents). Of the 73 who underwent surgery, 48 (65.8%) paid entirely out of pocket, with only

8 respondents (10.9%) receiving full coverage through government schemes or insurance.

112. The survey data establishes three propositions of constitutional significance before this Hon'ble Court:

- a. Transgender identity in India is not a monolithic category but a spectrum of deeply felt, self-determined identities encompassing trans men, trans masculine, trans women, trans feminine, non-binary persons, and gender-diverse individuals, all of whom this Hon'ble Court in *NALSA* (supra) held to be constitutionally protected under the umbrella of transgender identity.
- b. The overwhelming majority of participants in this survey (82.8%) belong to identity categories, principally trans men and non-binary persons, that the substituted Section 2(k) of the 2026 Amendment Act does not recognise, thereby extinguishing the statutory protection of the largest segment of the transgender community.
- c. The experience of gender dysphoria (88.2%), the access to hormonal therapy (70.6%), and the undertaking of gender-affirming surgery (35.8%) within this community demonstrate that the self-

perceived gender identities recorded in this survey are not abstract assertions but are grounded in clinical experience, medical care, and deeply lived personal reality.

The 2026 Amendment Act's characterisation of self-perceived gender identity as a mere "personal choice" or "acquirable characteristic" is, in light of this data, not merely legally untenable, it is factually false.

113. Similarly, a community-based research study, "***Our Health Matters: Indian Trans Men and Transmasculine Health Study***" led by a transmasculine Steering committee and researchers (trans and non-trans) from Drexel University Dornsife School of Public Health (Philadelphia, USA) and the Population Council (New Delhi) collected quantitative survey data from 377 transmasculine people. The findings of the research project are as follows:

- Nearly all (98%) survey respondents had changed or wanted to change the gender marker on their identity documents, with over 80% preferring "male" or "man", rather than "transgender", as the gender to be listed on their identification documents.

- Over half (54%) of survey participants wanted, but had not yet been able to, update the gender marker on their identification documents, while only 46% had been able to make this desired change on any of their documents.
- Over 90% of those who had attempted to change their documents reported at least one negative experience during the process, including having to educate officials (65%), receiving offensive comments (17%), and having their request denied altogether (20%).
- 20% of survey participants believed they were ineligible to update the gender on their documents because they had not undergone gender-affirmative medical care, reflecting widespread misunderstanding that medical intervention is a prerequisite, when it is not legally required.
- 16% of respondents said they could not afford to apply for legal gender recognition, highlighting the financial burden of the process, which involves travel, administrative, and notarial costs.
- Among those who attempted to use the National Portal for Transgender Persons, half reported delays, 7% encountered technological issues, 14%

experienced inappropriate verification processes such as unannounced home visits, and 54% of those who did not apply stated they did not understand the process.

- Survey respondents who had successfully updated their documents reported significantly better mental health outcomes, including lower rates of anxiety (31% vs. 55%), depression (20% vs. 41%), suicidal ideation (10% vs. 29%), and suicide attempts (4% vs. 22%), compared to those who had not been able to change their documents.
- Participants identified a critical gap in CBSE's policy, which currently has no provision for retrospectively changing names or gender markers on school certificates, creating compounding barriers in accessing education and employment.

[See, Legal Gender Recognition For Transmasculine People In India: A Policy Brief From The Our Health Matters Research Project]

114. It is, thus, respectfully submitted that the structural exclusion of trans men and trans masculine identities from the 2026 Amendment Act, taking consideration of the survey undertaken by the Petitioner No.1 and Petitioner

No. 2, violates Part III of the Constitution on at least three independently sufficient grounds:

- First, it lacks any rational basis: the legislature's stated purpose, which is the protection of socially excluded transgender persons, is not served by a definition that excludes the most socially invisible transgender population in India. The exclusion of trans men is not incidental to the legislative scheme. It is constitutive of it, a direct consequence of a definitional choice that confines recognition to communities that are historically, exclusively, and by internal constitution trans-feminine.
- Second, it violates the anti-stereotyping principle established in *NALSA* (supra) and affirmed in *Navtej Johar* (supra), by recognising only the socio-cultural identities historically associated with trans-feminine expression, the legislature has encoded in statute a stereotype that transgender identity means feminine gender expression assigned to a male body. This stereotype is constitutionally impermissible.
- Third, it violates the principle of substantive equality: where a community is invisible precisely because it lacks the community structures that confer social legibility, a statute that conditions recognition on

community membership doubly disadvantages that community. It is further respectfully submitted that the exclusion of trans men from the 2026 Amendment Act, when read alongside the absence of any provision for self-perceived gender identity, produces a result that is constitutionally indistinguishable from the denial of recognition that this Hon'ble Court condemned in *NALSA (supra)*.

115. In *NALSA (supra)*, the Court condemned the denial of recognition for transgender persons generally. The 2026 Amendment Act replicates that denial for trans men specifically, and for all self-identified transgender persons who do not belong to the five named communities. The constitutional analysis is identical: the statutory denial of recognition, grounded in external criteria rather than self-identification, violates Articles 14, 15, 19(1)(a), and 21 of the Constitution.

116. The foregoing have established three foundational and interlocking propositions. First, the substituted Section 2(k) of the 2026 Amendment Act effects a radical contraction of the constitutional umbrella of transgender identity as defined in *NALSA (supra)*, replacing an open, identity-based definition with a closed list of externally verifiable biological markers and named socio-cultural

communities. Second, the omission of Section 4(2) of the Trans Rights Act 2019 removes the sole express statutory instantiation of the binding judicial direction in *NALSA* (supra) that the right to self-perceived gender identity is a constitutionally protected fundamental right. Third, the combined operation of the substituted definition and the proviso thereto creates an unconstitutional hierarchy of gender identities, privileging socio-cultural visibility and biological verifiability over the psychologically grounded, self-determined identity that this Hon'ble Court has consistently held to be the only constitutionally permissible basis for legal recognition.

117. These three structural defects do not operate merely as questions of legislative drafting. Each of them, the definitional contraction, the omission of Section 4(2), and the hierarchy created between socio-cultural identity and self-perceived identity, translates directly into a violation of the fundamental rights guaranteed by Articles 14, 15, 16, 19, and 21 of the Constitution. It is respectfully submitted that the 2026 Amendment Act substitutes biological and community-based criteria for the psychological standard mandated by *NALSA* (supra), it discriminates against excluded TGD persons on the constitutionally prohibited ground of gender identity (Articles 14 and 15); because it denies them equal

opportunity in employment and public life (Article 16); because it extinguishes their right to express their gender identity in public life (Article 19(1)(a)); and because it removes from the individual the power of self-determination over the most intimate aspect of human personality (Article 21).

**G. VIOLATION OF ARTICLES 14 AND 15:
DISCRIMINATION ON THE GROUND OF
GENDER IDENTITY**

118. It is respectfully submitted that the amended and substituted definition under Section 2(k) of the 2026 Amendment Act, read with the omission of Section 4(2), constitutes discrimination based on "gender identity" under Articles 14 and 15 of the Constitution against the excluded classes of TGD persons. The discrimination flows directly from the three structural defects identified in Part I: (i) the substitution of an externally-verifiable closed list for the self-identification standard mandated by NALSA (*supra*); (ii) the omission of Section 4(2), which removed the statutory protection for self-perceived gender identity; and (iii) the creation of a hierarchy that treats socio-cultural visibility as a superior claim to recognition over self-determination. Article 14 states:

“Article 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 of the Constitution states:

*Article 15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or **any of them**.*

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to:

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.”

119. It is respectfully submitted that the constitutional guarantee of equality enshrined in Articles 14 and 15 is not exhausted by the formal command that likes be treated alike. As this Court has held in a consistent and unbroken line of authority from State of **Kerala v. N.M. Thomas, (1976) 2 SCC 310**, through *NALSA (supra)*, *Navtej Singh Johar (supra)*, **Lt. Col. Nitisha v. Union of India, (2021) 15 SCC 523** (for short “Nitisha”), and **Jane Kaushik v.**

Union of India, W.P. (C) No. 1405 of 2023 (for short “**Jane Kaushik**”), the constitutional equality code i.e., Articles 14 to 16, operates on two levels simultaneously: the formal level, which prohibits differential treatment of equals; and the substantive level, which requires the State to affirmatively account for the structural disadvantages that certain groups carry on account of prohibited grounds of discrimination. The 2026 Amendment Act offends both levels. The formal violation is the unequal treatment of persons with self-perceived gender identities as compared to persons with biologically or community-ascribed identities. The substantive violation is the entrenchment of the existing cycle of disadvantage for trans men, non-binary persons, and genderqueer individuals, the very groups whose invisibility the Trans Rights Act 2019 was intended to remedy.

120. In *Nitisha (supra)*, this Court, speaking through Dr. Justice D.Y. Chandrachud (as he then was) articulated the tension between formal and substantive conceptions of equality with particular clarity, observing that:

“42. At its heart, this case presents this Court with the opportunity to choose one of two competing visions of the antidiscrimination guarantee embodied in Article 14 and 15(1) of the Constitution: formal versus substantive equality. The formal conception of antidiscrimination law is captured well by

Anatole France's observation: 'The law, in its majestic equality, prohibits the rich and the poor alike from sleeping under bridges, begging in the streets and stealing bread.'"

[Emphasis Supplied]

121. The Court proceeded to endorse, decisively, the substantive conception of equality, drawing on Professor Sandra Fredman's four-dimensional framework, which requires anti-discrimination law to: (i) break the cycle of disadvantage associated with status or out-groups; (ii) promote respect for the dignity and worth of individuals, thereby redressing stigma, stereotyping, humiliation, and violence; (iii) accommodate difference rather than exact conformity as the price of equality; and (iv) facilitate full participation in society, both socially and politically. This Court in *Jane Kaushik* (supra) expressly affirmed that this four-dimensional framework forms part of Indian constitutional jurisprudence on equality and non-discrimination.

[Sandra Fredman, Substantive equality revisited, *International Journal of Constitutional Law*, Volume 14, Issue 3, July 2016, Pages 712–738.]

122. The 2026 Amendment Act, which contracts the definition of “transgender person” to a closed list of externally-verifiable biological markers and named socio-cultural

community memberships while simultaneously excluding persons with self-perceived gender identities through the express proviso to substituted Section 2(k), fails all four dimensions of substantive equality simultaneously. It perpetuates the historical cycle of disadvantage faced by trans men and trans masculine identities; it entrenches stigma and stereotyping by treating self-perceived gender identity as a mere “personal choice”; it exacts conformity to externally ascribable categories as the price of legal recognition; and it forecloses full civic and social participation for those, principally trans men, non-binary persons, and genderqueer persons, who fall outside the named communities. This failure is the direct constitutional consequence of the definitional choices.

a. Direct Discrimination on the Ground of Gender Identity and Sex

123. It is respectfully submitted that the substituted Section 2(k) of the 2026 Amendment Act constitutes direct discrimination on the ground of sex within the meaning of Article 15(1) of the Constitution. This Court in *NALSA* (supra) established, that “sex” in Articles 15 and 16 encompasses gender identity, that discrimination on the ground of gender identity is discrimination on the ground of sex. It is the application of that principle to the

definitional scheme of the 2026 Amendment Act that produces the finding of direct discrimination. This Court in *NALSA* (supra) held, in terms that bear extended reproduction:

“59. Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of 'sex' under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression 'sex' used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female.”

[Emphasis Supplied]

124. This construction of the word “sex” in Article 15 as encompassing gender identity was affirmed by five Judges of this Court in *Navtej Singh Johar* (supra), where Justice Indu Malhotra (as she then was), writing her concurring opinion, held:

“638.2. The term 'sex', as it occurs in Article 15 has been given an expansive interpretation by this Court in NALSA (supra) to include sexual identity. Para 66 of the judgment reads thus: Both gender and biological attributes constitute distinct components of sex. The biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self-image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of sex under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression 'sex' used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves neither male nor female.”

[Emphasis Supplied]

125. The binding legal position, established through a Nine-Judge Bench in *Puttaswamy* (supra), confirmed in *NALSA* (supra) and reiterated in *Navtej Singh Johar* (supra), *Jane Kaushik* (supra), *Supriyo* (supra), and *Nitisha* (supra), is

therefore the following that “sex” in Article 15(1) includes gender identity. Discrimination on the ground of gender identity is discrimination “on the ground of sex” for constitutional purposes.

126. The substituted Section 2(k) of the 2026 Amendment Act directly discriminates against TGD persons on the ground of sex so understood. The mechanism of discrimination flows directly from the definitional architecture. The provision operates as follows: it grants legal recognition and statutory protection to persons whose gender non-conformity is attributable to biological markers (intersex variations) or to membership of named trans-feminine socio-cultural communities; it simultaneously withholds recognition from persons whose gender identity does not fit those externally-verifiable categories, specifically trans men, non-binary persons, genderqueer persons, and trans women who do not belong to the named communities. The sole criterion that separates the recognised from the unrecognised is the ground of “gender identity”- a component of “sex” under Articles 15 and 16 as held in *NALSA* (supra). This is direct discrimination on a constitutionally prohibited ground.
127. The provision further directly discriminates on the ground of “sex” by establishing a regime in which the experience

of gender non-conformity that originates from biological or socio-cultural attribution is protected, while the experience of gender non-conformity that originates from an individual's own intrinsic sense of themselves, which is the very definition of gender identity accepted by this Court in *NALSA* (supra), is excluded. The Act thus penalises persons for the specific, constitutionally-protected form of sex-based characteristic they possess: their self-perceived gender identity. That is direct discrimination. The Statement of Objects and Reasons of the 2026 Amendment Act makes this penalisation explicit, characterising self-perceived gender identity as an “acquirable characteristic” and a “personal choice” undeserving of legislative protection, is a direct repudiation of the binding direction in *NALSA* (supra). That is direct discrimination.

128. Tarunabh Khaitan, in his scholarship “A Theory of Discrimination Law”, identifies the essential structure of direct discrimination as “treatment of a person less favourably on account of a protected characteristic, where the comparator does not share that characteristic.” Applying this analysis, the 2026 Amendment Act treats persons with self-perceived gender identities (who do not belong to named communities and do not exhibit qualifying biological markers) less favourably than

persons who are biologically intersex or are community-affiliated trans-feminine persons. The distinguishing criterion is the nature of their gender-related characteristic: self-perceived identity rather than externally ascribable biological or community-based identity. The ground of distinction is thus gender identity, a dimension of sex, and the differential treatment is therefore direct discrimination under Article 15(1). [Tarunabh Khaitan, *A Theory of Discrimination Law*” (Oxford University Press, 2015)]

b. Indirect Discrimination: The Disproportionate Impact on Trans Men, Non-Binary Persons, and Gender-Diverse Communities

129. It is respectfully submitted that even if this Hon’ble Court were to take the view, which is respectfully contested, that the substituted Section 2(k) is a facially neutral provision rather than one that expressly discriminates on a prohibited ground, the provision would still fail the constitutional test because it constitutes indirect discrimination on the grounds of sex and gender identity. The doctrine of indirect discrimination was authoritatively expounded by this Court in *Nitisha* (supra), where it was held:

“48. We must clarify here that the use of the term 'indirect discrimination' is not to refer to discrimination which is remote, but is, instead, as real as any other form of discrimination. Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion.”

(Emphasis Supplied)

130. This Hon’ble Court in *Nitisha* (supra) drew upon and synthesised comparative jurisprudence from the United Kingdom, South Africa, Canada, and the United States to articulate a framework for indirect discrimination analysis in Indian constitutional law. Distilling those learnings, this Hon’ble Court held:

“66. A study of the above cases and scholarly works gives rise to the following key learnings. First, the doctrine of indirect discrimination is founded on the compelling insight that discrimination can often be a function, not of conscious design or malicious intent, but unconscious/implicit biases or an inability to recognise how existing structures/institutions, and ways of doing things, have the consequence of freezing an unjust status quo. In order to achieve substantive equality prescribed under the Constitution, indirect discrimination, even sans discriminatory intent, must be prohibited.”

[Emphasis Supplied]

131. The same doctrine, applied by this Court in *Navtej Singh Johar* (supra) to strike down Section 377 of the Indian Penal Code as unconstitutional for its disproportionate impact on the LGBT community, is directly applicable to the present challenge. As Chandrachud J. (as he then was) observed in *Navtej Singh Johar* (supra), drawing on the Delhi High Court's reasoning in *Naz Foundation v. Government of NCT of Delhi*, 2009 SCC OnLine Del 1762, indirect discrimination occurs:

“when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.”

[Emphasis Supplied]

132. The substituted Section 2(k) satisfies this definition precisely. The criterion it employs, namely community affiliation or biological variation, is facially presented as a mechanism for identifying a class of persons who deserve protection. But its structural effect is to put persons sharing the protected characteristic of self-perceived gender identity at a particular disadvantage: they are excluded from the protection of the statute in its

entirety. The disproportionate impact is not merely statistical. It is structural and categorical. The structural exclusion of trans men, who constitute the most invisible and least institutionally supported segment of the TGD community, follows directly from the Amendment Act's reliance on socio-cultural community formations that are, by their historical constitution, exclusively trans-feminine.

133. As extensively documented in the scholarly literature, and as discussed in preceding paragraphs of this Petition regarding the structural invisibility of trans men, the effect of the Amendment Act's criterion falls disproportionately and almost exclusively on those transgender persons who have no named socio-cultural community to affiliate with. These are principally: (a) trans men, who have no equivalent of the *hijra jamaat*; (b) non-binary and genderqueer persons, whose identities are constitutively irreducible to any named community; and (c) trans women who have adopted a trans identity but who do not affiliate with or are not accepted by *hijra*, *kinner*, *aravani*, or *jogta* communities. The Amendment Act's criterion is, in substance, a criterion drawn along the axis of trans-femininity versus everything else. It is not a neutral biological or community criterion. It is a gendered criterion that reproduces within the category of

transgender persons the very binary hierarchies of gender that *NALSA* (supra) sought to dismantle.

134. In terms of the two-step Fraser test adopted by this Court in *Nitisha* (supra) from the Supreme Court of Canada's decision in *Fraser v. Canada (Attorney General)*, 2020 SCC 28, the indirect discrimination analysis proceeds as follows. First, the substituted Section 2(k) disproportionately affects persons with self-perceived gender identities who do not belong to named communities: the statistical evidence regarding the exclusion of trans men and non-binary persons from the categories protected, and the near-total structural absence of trans masculine community formations in India, as documented in the scholarly literature, establish the required disproportionate impact. Second, the law has the effect of reinforcing, perpetuating, and exacerbating the disadvantage faced by these groups. As Petreena documents, trans men were “doubly marginalised” even before the 2026 Amendment Act. The Amendment Act completes their legislative erasure and thereby entrenches their exclusion from social, economic, and civic life. Both steps of the *Fraser* test are satisfied.

- c. **Omissive Discrimination: The Discriminatory Effect of Legislative Silence and Deliberate Omission**

135. It is respectfully submitted that the 2026 Amendment Act produces a further and distinct constitutional violation through what this Court in *Jane Kaushik* (supra) has characterised as “omissive discrimination.” In *Jane Kaushik* (supra), a Division Bench of this Court, held:

“66.[/. *discrimination also operates through omission: through the silences, exclusions, and failures of the law to protect certain groups or to recognise particular forms of disadvantage.* Addressing omission in discrimination law, *therefore, requires moving beyond the overtly unequal 'act' to examine the systemic 'inactions' or absences which enable inequality to persist. These omissions may arise from the narrow drafting of statutes, the exclusion of certain identities from legal protection, or the failure to impose positive duties on institutions to prevent discrimination. Recognising and remedying such gaps is crucial for realising substantive equality.*”

(Emphasis Supplied)

136. This Hon’ble Court further held that “omissive discrimination” refers to “privileged omissions” where “the discretion not to act (omission) requires as much attention as the decision to act (commission)” and where such derelictions “operate in a manner that further

discriminates against already marginalised and disadvantaged groups.” This principle is directly applicable to the present challenge.

137. The 2026 Amendment Act commits omissive discrimination in two distinct dimensions. First, the deliberate omission of Section 4(2) of the Trans Rights Act 2019, which was not a minor legislative revision but the direct statutory instantiation of the binding direction in NALSA (supra) that the right to self-perceived gender identity is constitutionally protected, removes the only express statutory protection for the constitutional right to self-perceived gender identity. The omission is not inadvertent. The Statement of Objects and Reasons of the 2026 Amendment Act expressly characterises self-perceived identity as an “acquirable characteristic” and “personal choice” that lies beyond the statute's intended scope. This is an omission in the teeth of a binding constitutional direction, and it constitutes discrimination through legislative silence against the very class that the Constitution requires the State to protect.

138. Second, the substituted Section 2(k) omits from its definition the categories of trans men, non-binary persons, and genderqueer persons that were expressly included in the Trans Rights Act 2019. The omission is structural: the

definition does not accidentally fail to mention these categories; it systematically excludes them by replacing an open-ended, identity-based definition with a closed list of externally ascribable characteristics. This structural omission falls on the most disadvantaged and least visible members of the TGD community, who are precisely those for whom the State's positive obligation to ensure equal protection is most urgent. Omissive discrimination is at its most constitutionally severe when it falls on those whose disadvantage is already most acute.

d. Intersectional Discrimination: The Compound Effect of Exclusion on the Basis of Multiple Grounds

139. It is respectfully submitted that the 2026 Amendment Act also operates as a form of intersectional discrimination, producing a compounded and unique pattern of disadvantage that is not captured by a single-axis analysis of either gender identity alone or biological sex alone. The theory of intersectionality, first articulated by Kimberle Crenshaw in her foundational scholarship “*Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Colour*”, holds that overlapping systems of oppression produce distinctive forms of disadvantage that are qualitatively different from, and

more severe than, the sum of their parts. The said theory has been adopted by this Hon'ble Court in *Patan Jamal Vali v. The State of Andhra Pradesh*, 2021 SCC OnLine SC 343 (for short “**Patan Jamal**”). [See, **Kimberle Crenshaw**, “*Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Colour*” (1991) 43 **Stanford Law Review** 1241.]

140. Professor Shreya Atrey, in her work, “Intersectional Discrimination,” has extended the theory of intersectionality to constitutional and comparative anti-discrimination law. Atrey argues that intersectionality operates in three modes: additive intersectionality, where multiple grounds of discrimination are layered upon each other; structural intersectionality, where overlapping systems of disadvantage produce structurally unique forms of harm; and political intersectionality, where the interests of differently-situated sub-groups within broader categories are elided by single-axis representation. All three modes are operative in the present case.

[See, **Shreya Atrey**, *Intersectional Discrimination* (Oxford University Press, 2019)]

141. The TGD persons most severely affected by the 2026 Amendment Act are not merely disadvantaged on the ground of “gender identity” in isolation. They are

disadvantaged at the intersection of multiple axes of discrimination. Trans men are disadvantaged at the intersection of gender identity (trans masculine identity), biological sex (assigned female at birth), and caste or class (since lower-caste and lower-class trans men are most invisible and least able to access the State structures through which community-affiliated recognition operates). The exclusion of trans men from the Amendment Act, is not incidental but constitutive, a direct consequence of the legislature's choice to limit recognition to trans-feminine socio-cultural communities. That legislative choice, at the intersection of gender identity, sex-at-birth, and community formation, produces a compounded harm that a single-axis analysis fails to capture.

142. The Indian constitutional framework is not unacquainted with the concept of intersectional disadvantage. In *Nitisha* (supra), this Court held that “*exclusive reliance on tools of direct or indirect discrimination may also not effectively account for patterns arising out of multiple axes of discrimination. Therefore, a systemic view of discrimination, in perceiving discriminatory disadvantage as a continuum, would account for not just unjust action but also inaction.*” This Hon’ble Court further held that “*structures, in the form of organisations or otherwise,*

would be probed for the systems or cultures they produce that influence day-to-day interaction and decision-making.” The 2026 Amendment Act itself is such a structure: it institutionalises a particular system of recognition that produces intersectionally compounded disadvantage for those whose gender identities do not fit its categories.

143. In the context of transgender rights specifically, intersectional disadvantage is also produced by the interaction between the 2026 Amendment Act's definition and other structures of law and society. A trans man excluded from the definition of “transgender person” under the substituted Section 2(k) loses not merely abstract recognition but concrete protections: protection from discrimination in employment under Section 3 of the Trans Rights Act 2019; access to gender-affirming healthcare under the welfare provisions; and the right to obtain a Certificate of Identity under Section 6 of the Trans Rights Act 2019. These compounding material deprivations, each individually significant, interact with each other and with the broader social disadvantages of being trans male in India to produce an intersectional pattern of harm that is more severe and more constitutionally indefensible than any single ground of discrimination would produce in isolation.

144. It is respectfully submitted that the Indian courts, at various levels, have consistently held that a narrow, closed, or externally-determined definition of transgender identity is constitutionally impermissible under Articles 14 and 15, and that legal recognition of gender identity must follow the individual's self-identification.
145. In *NALSA* (supra), this Court itself struck down the constitutional invalidity of any legislative or administrative scheme that would condition recognition of transgender identity on biological test or external verification, holding unequivocally:

“76. Article 14 has used the expression 'person' and the Article 15 has used the expression 'citizen' and 'sex' so also Article 16. Article 19 has also used the expression 'citizen'. Article 21 has used the expression 'person'. All these expressions, which are 'gender neutral' evidently refer to human-beings. Hence, they take within their sweep Hijras/ Transgenders and are not as such limited to male or female gender. Gender identity as already indicated forms the core of one's personal self, based on self identification, not on surgical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender.”

[Emphasis Supplied]

146. In *Saratha v. T.N. Uniformed Services Recruitment Board*, 2022 SCC OnLine Mad 925, the Madras High Court held that a recruitment notification's failure to extend reservation benefits to trans persons who identified themselves in the “male” category was unconstitutional as it denied equal protection of law. The Court held that the TNUSRB's conduct in “depriving the TGs, who identify themselves in the male category, is opposed to the object behind NALSA in upholding their right to decide their self identified gender, as well as violative of Articles 14 and 16(1) and therefore unconstitutional.” The principle is directly applicable: the 2026 Amendment Act, by excluding trans men entirely from the definition of “transgender person,” perpetrates precisely the same constitutional wrong as the TNUSRB had committed in depriving trans men of employment benefits.
147. In *Hina Haneefa* (supra), the Kerala High Court held that a transgender woman who had obtained a transgender identity card reflecting her gender as female was entitled to enroll in the NCC girls' division in accordance with her self-perceived gender. The Court emphasised that “in view of the specific provisions in the Trans Rights Act 2019 by which a transgender person has a right to be recognized not only as a transgender but also a right to

self-perceived gender identity,” any denial of that recognition was constitutionally impermissible. The 2026 Amendment Act, by omitting Section 4(2) and by replacing the open definition with a closed one, eliminates the very statutory foundation that the Kerala High Court regarded as conferring constitutional rights.

148. In *Anjali Guru Sanjana Jaan* (supra), the Bombay High Court upheld the right of a transgender person who had opted for female gender as her self-perceived identity to contest elections from a ward reserved for women, finding that the State authorities had no constitutional basis for rejecting her nomination. The right to self-perceived gender identity, the Court held, is a statutory and constitutional right that the State cannot override by reference to chromosomal or surgical criteria. Under the 2026 Amendment Act, persons similarly situated would be denied any recognition at all.
149. In *Christina Lobo* (supra), the Karnataka High Court held that “the Transgender persons right to decide their self-identity is upheld by the Hon'ble Supreme Court of India in the celebrated case in NALSA” and accordingly directed the State to give effect to the petitioner's self-identified gender in her educational records. The omission of the right to self-perceived gender identity from the 2026

Amendment Act directly undermines the constitutional basis for this class of decisions.

150. In *Arunkumar* (supra), the Madurai Bench of the Madras High Court held that “it is not for the State authorities to question this self-determination” and that “the only consideration is how the person perceives herself.” A statute that removes self-perception as the basis for recognition and substitutes biological markers and community affiliation in its place does precisely what the Madras High Court held the State could not constitutionally do.
151. It is respectfully submitted that the substituted Section 2(k) of the 2026 Amendment Act, for the reasons set out above, constitutes: (a) direct discrimination on the ground of gender identity (a component of sex under Articles 15 and 16 as held in NALSA) against trans men, non-binary persons, genderqueer persons, and trans women unaffiliated with named communities; (b) indirect discrimination through a definition criterion that disproportionately excludes those TGD persons, particularly trans men, who lack socio-cultural community formations equivalent to the *hijra*; (c) omissive discrimination through the deliberate omission of Section 4(2) of the Trans Rights Act 2019 and the

deliberate omission of trans men and non-binary persons from the definition; and (d) intersectional discrimination that produces a compound pattern of disadvantage for TGD persons who are marginalised along multiple intersecting axes of gender, sex, caste, class, and community. Each of these four forms of discrimination flows directly from the three structural defects in the 2026 Amendment Act i.e.,: the definitional contraction, the omission of Section 4(2), and the unconstitutional hierarchy of gender identities.

152. The provision fails the test of substantive equality mandated by Articles 14 and 15 as interpreted by this Court across five decades of constitutional jurisprudence from *N.M. Thomas* (supra) through *NALSA* (supra), *Navtej Singh Johar* (supra), *Nitisha* (supra), and *Jane Kaushik* (supra). It offends Professor Fredman's four-dimensional test endorsed by this Court in *Nitisha* (supra) and *Jane Kaushik* (supra). It is inconsistent with binding directions in *NALSA* (supra) and with the unanimous constitutional morality of a nine-judge bench of this Court in *Puttaswamy* (supra), that the right to privacy and the right to self-determination of gender are fundamental rights inhering in all persons. And it has been replicated in no constitutional democracy in the world where the matter has been judicially considered, the universal trend of

comparative jurisprudence, which this Court has consistently treated as persuasive, runs in precisely the opposite direction.

153. The substituted Section 2(k) must accordingly be declared *ultra vires* Articles 14 and 15 of the Constitution of India.

H. VIOLATION OF ARTICLE 21: RIGHT TO PRIVACY, PERSONAL AUTONOMY, BODILY AUTONOMY, AND THE RIGHT TO SELF-DETERMINED GENDER IDENTITY

154. It is respectfully submitted that the right to privacy, as a fundamental right under Article 21 of the Constitution of India, was unanimously affirmed by a Nine-Judge Bench of this Court in *Puttaswamy* (supra). In that decision, this Court expressly affirmed the principles laid down in *NALSA* (supra) regarding the right to self-determined gender identity as an integral part of the constitutional privacy architecture.

155. As Dr. Justice Chandrachud (as he then was) held in *Puttaswamy* (supra), “[g]ender identity, therefore, lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India... We, therefore, hold 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) of the Constitution of India and the State is bound to protect and recognise those rights.” The implications of the substituted Section 2(k) and the omission of Section 4(2) for this constitutional privacy architecture are direct and devastating.

156. Dr. Justice Chandrachud (as he then was), writing for himself and on behalf of three other judges of the nine-judge bench, articulated the foundational proposition as follows:

“Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of her or his life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person

since it is an essential facet of the dignity of the human being.”

[Emphasis Supplied]

157. Justice R.F. Nariman (as he then was), in his judgment in *Puttaswamy* (supra), which was concurred in by three other learned Judges, identified three aspects of the right to privacy directly relevant to the present case:

“521. In the Indian context, a fundamental right to privacy would cover at least the following three aspects: Privacy that involves the person i.e. when there is some invasion by the State of a person's rights relatable to his physical body, such as the right to move freely; Informational privacy which does not deal with a person's body but deals with a person's mind, and therefore recognises that an individual may have control over the dissemination of material that is personal to him... and The privacy of choice, which protects an individual's autonomy over fundamental personal choices.”

[Emphasis Supplied]

158. All three aspects of the right to privacy, as identified in *Puttaswamy* (supra), are directly implicated by the substituted Section 2(k) of the 2026 Amendment Act. The definition intrudes upon: (a) the privacy of the person, by requiring that a person's gender identity conform to externally ascribable biological categories rather than to their own intrinsic experience; (b) informational privacy,

by compelling persons who do not belong to named communities to disclose their medical history or community affiliation in order to access legal recognition; and (c) the privacy of choice, by eliminating the most fundamental personal choice available to a human being, namely the choice of how to define one's own gender.

a. Gender Identity as the Core of Privacy: Personal Autonomy and Self-Determination

159. It is respectfully submitted that in *NALSA* (supra), this Court established that the right to self-determined gender identity is not merely a right to legal recognition of a label. It is the expression of the deepest dimension of personal autonomy protected by Article 21. This principle is directly violated by the substituted Section 2(k) and the omission of Section 4(2). Justice Radhakrishnan (as he then was), writing the majority opinion in *NALSA* (supra), held:

“69. Article 21, as already indicated, guarantees the protection of 'personal autonomy' of an individual. In Anuj Garg v. Hotel Association of India (2008) 3 SCC 1 (paragraphs 34-35), this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities

to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.

[Emphasis Supplied]

160. This Hon'ble Court further held:

“74. Article 21, as already indicated, protects one's right of self-determination of the gender to which a person belongs. Determination of gender to which a person belongs is to be decided by the person concerned. In other words, gender identity is integral to the dignity of an individual and is at the core of 'personal autonomy' and 'self-determination'.

[Emphasis Supplied]

161. Justice Sikri (as he then was), in his concurring opinion in *NALSA* (supra), traced the right to self-determination of gender to the foundational democratic values of individual dignity and freedom, holding that “there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity” and that in a democracy we “have to recognise the right of a human being to choose his sex/gender identity which is integral his/her personality and is one of the most basic aspect of self-determination dignity and freedom.”

162. In *Navtej Singh Johar* (supra), Chief Justice Dipak Misra (as he then was) re-affirmed this principle from *NALSA* (supra) with particular forcefulness, holding that “at the core of the concept of identity lies self-determination, realisation of one's own abilities visualising the opportunities and rejection of external views with a clear conscience that is in accord with constitutional norms and values or principles that are, to put in a capsule, 'constitutionally permissible'.” The Chief Justice further held that “non-recognition in the fullest sense and denial of expression of choice by a majority... is anathema to a constitutional democracy.”
163. The substituted Section 2(k) of the 2026 Amendment Act and the omission of Section 4(2) together constitute precisely the “non-recognition” and “denial of expression of choice” that this Court condemned in *Navtej Singh Johar* (supra). By replacing self-perceived gender identity with externally-determined categories as the legal basis for recognition, the 2026 Amendment Act removes from the individual the very power of self-determination that Article 21 protects. It substitutes state attribution for self-identification. It is, as the Statement of Objects and Reasons makes explicit, an architecturally deliberate reversal of the psychological test endorsed in *NALSA* (supra) in favour of a biological and community-

membership test that this Court specifically rejected. This is an invasion of personal autonomy at its most fundamental level.

b. Bodily Autonomy and the Right Against Non-Consensual Medicalisation

164. It is respectfully submitted that the right to privacy under Article 21, as elaborated in *NALSA* (supra), *Navtej Singh Johar* (supra), and *Puttaswamy* (supra), encompasses the right of a person not to be compelled to undergo medical procedures as a precondition for the legal recognition of their gender identity. This dimension of the right to privacy is directly engaged by the substituted Section 2(k) of the 2026 Amendment Act.

165. *NALSA* (supra) held, in terms that cannot be read as anything other than a binding constitutional direction, that “no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.” The omission of Section 4(2) of the Trans Rights Act 2019, which gave statutory expression to this direction, removes the only legislative embodiment of this constitutional prohibition. This direction flows from the recognition in *NALSA* (supra) that gender identity “refers

to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means.” The word “freely chosen” is constitutionally decisive: medical modification is a choice, not a requirement.

166. The substituted Section 2(k) of the 2026 Amendment Act conditions recognition for intersex persons on the presence of “congenital variation in primary sexual characteristics, external genitalia, chromosomal patterns, gonadal development, or endogenous hormone production.” This criterion requires a medical determination as a precondition for legal recognition. A person who does not exhibit qualifying biological markers, even if they experience profound gender dysphoria and firmly identify as transgender, falls outside the definition. The definition thus reintroduces, through the mechanism of biological prerequisite, the “Biological Test” that NALSA (supra) expressly rejected in preference for the “Psychological Test.”

167. Furthermore, Limb (ii) of the substituted Section 2(k) recognises as transgender only those persons who have

been “compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise.” This limb, purporting to protect victims of forced modification, simultaneously confirms that only persons who have undergone such modification are within the statute's protection. It creates a definition in which bodily modification, whether voluntary or involuntary, is the gateway to recognition. Persons who have not undergone any modification, whether because they chose not to, because they could not afford it, or because they exercised their constitutionally-protected right not to do so, are excluded entirely.

168. In *Navtej Singh Johar* (supra), this Court held that “consent elevates the status of bodily autonomy.” In *Puttaswamy* (supra), it was held that “personal choices governing a way of life are intrinsic to privacy.” The right not to undergo unwanted medical intervention is itself a dimension of the right to bodily autonomy and the right to privacy. A statute that denies legal recognition to persons who have exercised this right, who have chosen not to undergo surgery, hormonal therapy, or other physical modification -- penalises the exercise of the fundamental right itself. This is constitutionally impermissible.

c. **The Right to Present Oneself and to Claim Socio-Cultural Recognition: Privacy and Social Identity**

169. It is respectfully submitted that the right to privacy under Article 21, as interpreted by this Court, encompasses not merely the right to freedom from State intrusion into the intimate sphere of private life but also the right to present oneself to the world in a manner consistent with one's gender identity, and the right to claim the socio-cultural recognition that corresponds to that identity. The substituted Section 2(k) violates privacy in this dimension by conditioning socio-cultural recognition on membership of specific named communities, thereby denying persons the right to present themselves and be recognised in the gender they inhabit.

170. In *NALSA* (supra), this Court held that the Principle 6 of the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, which India has endorsed, recognise as a component of the right to privacy the following:

“Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation.

The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.

[Emphasis Supplied]

171. The right to socio-cultural recognition of one's gender identity is an extension of the right to present oneself consistent with one's sense of self. For a trans person, socio-cultural recognition means the ability to be treated by society, by institutions, and by the State in the gender they inhabit. It means the ability to use the correct pronoun, to access gender-appropriate services, to be listed in the correct category in public documents, and to participate in social life as the person they are. The 2026 Amendment Act denies this right to those trans persons who fall outside its closed definition: they are rendered legally invisible, stripped of the institutional recognition that makes socio-cultural participation possible. The denial of legal recognition is the denial of the right to present oneself to the world in one's true identity, and that denial is an invasion of privacy at its most intimate.
172. In *Devu G. Nair* (supra), a three-judge bench of this Court held that “sexual orientation and gender identity fall in a core zone of privacy of an individual. These identities are

a matter of self-identification and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+ community.” A statute that conditions legal recognition of gender identity on membership of named communities, rather than on self-identification, imposes precisely the “stigma and moral judgment” that this Court has held to be constitutionally impermissible. The socio-cultural communities named in the 2026 Amendment Act cannot themselves be precisely defined by administrative criteria, which means that the supposed alternative to self-identification provides no coherent substitute. The denial of legal recognition is, in effect, absolute for the excluded classes.

d. Self-Perceived Gender Identity as a Protected Dimension of Privacy

173. It is respectfully submitted that the right to self-perceived gender identity as a protected dimension of privacy under Article 21 has been affirmed by numerous High Courts across India, building upon the foundation of *NALSA* (supra) and *Puttaswamy* (supra).

174. In *X v. State of Uttarakhand* (supra), the Uttarakhand High Court held that after *NALSA* (supra), “the petitioner's right to determine her sex and gender has to be respected

and honoured” and that “if a person psychologically feels different than what his 'biological sex' is and determines himself as per his psyche, his sex would be determined accordingly.” The Court further held that “TGs' right to determine their gender and sex cannot wait for any legislation now. It is the law declared by the Hon'ble Supreme Court.” The 2026 Amendment Act, by replacing the psychological test with the biological test and by omitting Section 4(2), directly contravenes the constitutional principle that the Uttarakhand High Court applied.

175. In *Arunkumar v. Inspector General of Registration*, **2019 SCC OnLine Mad 8779**, the Madurai Bench of the Madras High Court held that “as held by the Hon'ble Supreme Court, this falls within the domain of her personal autonomy and involves her right to privacy and dignity. It is not for the State authorities to question this self-determination of the second petitioner herein.” The Court emphasised that “the only consideration is how the person perceives herself.” A statute that removes self-perception as the basis for recognition and substitutes biological criteria is exactly the “questioning of self-determination” that the Madras High Court held to be unconstitutional.

176. In *Chinmayee Jena* (supra), the Orissa High Court held that “the recognition of one’s gender identity lies at the heart of the fundamental right to dignity” and that “gender constitutes the core of one's sense of being as well as an integral part of a person's identity; legal recognition of gender identity is, therefore, part of the right to dignity and freedom guaranteed under the Constitution.” The Court further held that “self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution.”

177. It is respectfully submitted that the substituted Section 2(k) of the 2026 Amendment Act and the omission of Section 4(2) together constitute a composite violation of the right to privacy under Article 21 of the Constitution. The violation operates at four distinct levels: (a) the invasion of personal autonomy, by removing self-determination as the basis for gender recognition; (b) the invasion of bodily autonomy, by conditioning recognition on biological criteria that are ascertainable only through medical examination; (c) the denial of the right to present oneself and to claim socio-cultural recognition consistent with one's gender identity; and (d) the retrogressive withdrawal of the statutory protection for self-perceived

gender identity that existed under Section 4(2) of the Trans Rights Act 2019.

178. Each of these violations is independently established by the binding constitutional authority of *NALSA* (supra), *Puttaswamy* (supra), *Navtej Singh Johar* (supra), and the consistent High Court jurisprudence developed in reliance upon them. Together, they constitute a fundamental assault on the constitutional personality of TGD persons, which this Court has described as the “kernel of the identity of an individual.”

179. The substituted Section 2(k) and the omission of Section 4(2) must accordingly be declared ultra vires Article 21 of the Constitution of India.

I. VIOLATION OF ARTICLE 19(1)(a): THE RIGHT TO EXPRESS GENDER IDENTITY AND THE RESTRICTION OF SOCIO-CULTURAL RECOGNITION

180. It is respectfully submitted that Article 19(1)(a) of the Constitution of India provides that all citizens shall have the right to freedom of speech and expression. In *NALSA* (supra), this Court held, in terms that are binding and directly applicable to the present challenge, that:

"62. Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behavior or any other form. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution."

[Emphasis Supplied]

181. The Court further held:

"66. Gender identity, therefore, lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India. A transgender's personality could be expressed by the transgender's behavior and presentation. State cannot prohibit, restrict or interfere with a transgender's expression of such personality, which reflects that inherent personality. We, therefore, hold 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) of the Constitution of India and the State is bound to protect and recognize those rights."

[Emphasis Supplied]

182. This holding is remarkable in its sweep. The Court did not merely hold that transgender persons have the right not to be punished for expressing their gender. It held, affirmatively, that "the State is bound to protect and recognize those rights." Recognition by the State is thus not merely permitted; it is constitutionally mandated. A statute that withdraws recognition, that contracts the definition of who qualifies as transgender to the point of excluding the majority of gender-diverse persons, is therefore not merely unhelpful; it is unconstitutional as a violation of Article 19(1)(a). The obligation of the State to protect and recognise those rights, as expressly held in *NALSA* (supra), is not discharged by a statute that removes self-identification as the basis for recognition. It is violated by it.

(i). Gender Expression as the Outward Dimension of Gender Identity

183. It is respectfully submitted that gender expression, the outward presentation of one's gender identity through dress, speech, manner, name, and conduct, is constitutionally inseparable from gender identity. . The right to gender expression under Article 19(1)(a), as established in *NALSA* (supra) has two necessary dimensions: the freedom to express one's gender identity,

and the entitlement to State recognition of that expression. The definitional contraction effected by the substituted Section 2(k) severs the second dimension. A trans man whose gender expression is masculine, who dresses, presents, names himself, and conducts himself as a man, cannot have that expression officially recognised by the State if he falls outside the closed definition. His expression exists; its legal effect is extinguished. That extinguishment is a restriction on the freedom of expression protected by Article 19(1)(a).

184. The **Principle 19 of the Yogyakarta Principles** , as endorsed by the United Nations and relied upon by this Court in *NALSA* (supra), define the right to freedom of expression in relation to gender identity as follows:

"19. Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers."

[Emphasis Supplied]

185. The protection of gender expression under Article 19(1)(a) is not limited to private expression. In *NALSA* (supra), this Court observed that the right to gender expression includes public expression: the right to dress in one's chosen gender, to use the name and pronoun corresponding to one's gender, and to conduct oneself in public in a manner consistent with one's gender identity. These are not merely private acts; they are the means by which a person participates in social life and claims their place in the public sphere. A statute that denies legal recognition to a person's gender identity does not merely affect their private self-understanding; it suppresses their ability to express that identity publicly and to be recognised in that expression by the institutions of the State.
186. The substituted Section 2(k) of the 2026 Amendment Act suppresses gender expression in a specific and particularly damaging way: it removes from the legal system the very category of recognition that allows gender expression to have social and civic effect. A trans man who expresses his masculine gender identity through dress, name, conduct, and social role cannot have that expression officially recognised if he does not belong to a named community listed in the substituted Section 2(k). His certificate of identity, if denied because he falls outside the

definition, cannot reflect his expressed gender. His access to gender-affirming healthcare cannot be facilitated by the State. His protection from discrimination in employment and education cannot be claimed under the Act. The suppression of legal recognition suppresses, in practice, the social and civic dimensions of gender expression. That is a restriction on free expression imposed by the legislature, and it is subject to the test of Article 19(2).

ii. The Proviso as a Restriction on Gender Expression: Prejudice and Stereotyping

187. It is respectfully submitted that the proviso to the substituted Section 2(k) of the 2026 Amendment Act, which states that the definition "shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities," is not merely definitionally erroneous. It is also, independently, a restriction on the freedom of expression guaranteed under Article 19(1)(a), because it operates by associating the exercise of the right to self-perceived gender identity with a prohibited category, namely "different sexual orientations," and by using that association to justify exclusion from legal recognition.

188. The proviso conflates gender identity with sexual orientation, reproducing precisely the conflation that this

Court in *NALSA* (supra) and in *Supriyo* (supra) held to be constitutionally impermissible. As Chief Justice Chandrachud (as he then was) held in *Supriyo* (supra), "the word 'genderqueer' in Section 2(k) does not refer to sexual orientation but to gender identity" and that "the term 'transgender' is not commonly understood as referring to persons with a sexual orientation other than heterosexual." The conflation of gender identity with sexual orientation in the proviso is not a definitional refinement; it is a perpetuation of a prejudice -- the prejudice that persons who do not conform to the gender assigned to them at birth are, or should be associated with, persons of a "different" (and implicitly undesirable) sexual orientation.

189. In *Navtej Singh Johar* (supra), this Court held that "social exclusion, identity seclusion and isolation from the social mainstream are still the stark realities faced by the LGBT community" and that the constitutional guarantee of Article 19(1)(a) must provide protection against such exclusion. The proviso to the substituted Section 2(k) entrenches precisely such exclusion, by constructing a legislative category that equates self-perceived gender identity with non-normative sexual orientation and uses that equation to deny legal recognition. This is a prejudice-driven restriction on the freedom to express one's gender identity, and it falls outside the permissible grounds of

restriction in Article 19(2), which does not include the protection of majoritarian prejudice or the enforcement of stereotypical conceptions of gender.

iii. The Chilling Effect on Gender Expression and the Doctrine of Overbreadth

190. It is respectfully submitted that the substituted Section 2(k) also violates Article 19(1)(a) through its chilling effect on gender expression across the TGD community. As this Court held in *Navtej Singh Johar* (supra), a provision that "has a chilling effect on Article 19(1)(a)" by deterring the expression of identity is unconstitutional. The substituted Section 2(k) has this effect in two ways.
191. First, by creating a definition that conditions recognition on membership of named communities or on the exhibition of qualifying biological markers, the provision creates a strong incentive for persons with self-perceived gender identities to suppress or conceal that identity and to claim instead a community affiliation or biological condition that they may not actually possess in order to access legal recognition. This is a form of compelled false expression that is the constitutional inverse of free expression. A law that compels a person to describe themselves in terms they do not identify with, as a

precondition for the exercise of their rights, is a restriction on free expression at its most fundamental.

192. Second, by associating self-perceived gender identity with “different sexual orientations” through the proviso, the statute creates a stigma that deters expression. Persons who are aware of the proviso will be discouraged from identifying publicly as having a “self-perceived” gender identity because the statute explicitly places that form of identity in a suspect category. This chilling effect on the expression of gender identity across the broader TGD community is a restriction on free expression that cannot be justified under any of the grounds listed in Article 19(2).
193. It is respectfully submitted that the right of transgender persons to express their gender identity through dress, conduct, speech, and social presentation has been affirmed as a constitutional right by numerous courts in India, all of which have drawn on the foundational holding of *NALSA* (supra).
194. In *Tessy James* (supra), the Kerala High Court held that the self-identification of a person as a transgender is “clearly expressed by speech, mannerism, clothing etc.” and that “the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of

India takes within its sweep the right of a person to live as a transgender.” The Court further held that the Supreme Court had held that transgenders "are entitled to express themselves in a manner consistent with their identity" and that this right flows directly from Article 19(1)(a).

195. In *Jeeva M.* (supra), the Karnataka High Court held that the right to change one's name and gender in official documents is an exercise of the right to self-identify, protected under Articles 19(1)(a) and 21. The Court directed the authorities to effect the requested changes on the basis of the petitioner's right to self-perceived gender identity, holding that the denial of such recognition was a denial of the freedom of expression. Under the 2026 Amendment Act, the basis for this decision, namely the right to self-perceived gender identity codified in Section 4(2), has been omitted. The legal basis for the Karnataka High Court's decision has been destroyed.

196. In *Saratha* (supra), the Madras High Court held that *NALSA* (supra) had “declared that the TGs have a right to decide their self identified gender” and that this right is protected under Article 19(1)(a) and Article 21. The Court held that any restriction on the ability of a TGD person to express and be recognised in their self-identified gender is unconstitutional. The 2026 Amendment Act imposes

precisely such a restriction on all TGD persons who fall outside its closed definition.

197. It is respectfully submitted that the substituted Section 2(k) of the 2026 Amendment Act and the omission of Section 4(2) constitute a composite violation of Article 19(1)(a) in three distinct dimensions: first, by contracting the legal recognition available to TGD persons, the provisions restrict the civic and social dimensions of gender expression for those who fall outside the closed definition; second, by creating a definitional regime in which only externally ascribable characteristics qualify for recognition, the provisions chill the expression of self-perceived gender identity across the TGD community; and third, by associating self-perceived gender identity with "different sexual orientations" through the proviso, the provisions entrench a prejudice-driven restriction on gender expression that is untethered to any permissible ground in Article 19(2).

198. The substituted Section 2(k) and the omission of Section 4(2) must accordingly be declared ultra vires Article 19(1)(a) of the Constitution of India.

199. It is, therefore, respectfully submitted that the substituted Section 2(k) of the 2026 Amendment Act and the omission

of Section 4(2) of the Trans Rights Act 2019 together constitute a coherent and composite violation of Articles 14, 15, 16, 19(1)(a), and 21 of the Constitution of India. The violations do not arise from independent and unconnected grounds. They arise from a single legislative scheme that is architecturally incompatible with the constitutional mandate of *NALSA* (supra), as deepened and reaffirmed in *Puttaswamy* (supra), *Navtej Singh Johar* (supra), *Supriyo* (supra), and the High Court jurisprudence. The constitutional case may be stated in a single compound proposition that because the 2026 Amendment Act substitutes biological and community-based criteria for the psychological standard mandated by *NALSA* (supra), (i) it discriminates against excluded TGD persons on the constitutionally prohibited ground of gender identity, directly (Articles 14 and 15); (ii) it denies them equal opportunity in employment and public life by removing them from the class of persons entitled to the Act's protections (Article 16); (iii) it extinguishes their right to express and have recognised their gender identity (Article 19(1)(a)); and (iv) it removes from the individual the power of self-determination over the most intimate aspect of human personality (Article 21). Thus, the substitution of Section 2(k) and omission of Section 4(2) should be declared as unconstitutional.

II. **RIGHT TO SELF-PERCEIVE GENDER IDENTITY
UNDER INTERNATIONAL LAW, COMPARATIVE
LAW PRACTICE AND CONSTITUTIONAL LAW
JURISPRUDENCE**

1. It is respectfully submitted that the constitutional questions arising from the 2026 Amendment Act do not fall to be decided in a vacuum. The right to self-perceived gender identity has been recognised, through international treaty obligations, legislative enactment, and judicial decision, across a wide range of jurisdictions. The comparative and international record is not merely persuasive; it is constitutionally material. This Hon'ble Court has consistently drawn upon the Yogyakarta Principles, International Covenants, and the jurisprudence of foreign courts in developing its own understanding of the rights of TGD persons, as is evident from the foundational reasoning in *NALSA* (supra) itself. The following three sections set out: first, the applicable international legal instruments; second, the comparative legislative position across jurisdictions that have enacted self-determination frameworks; and third, the judicial decisions of courts around the world affirming the right to self-determined gender identity.

2. India ratified the International Covenant on Civil and Political Rights, 1966 (hereinafter referred to “ICCPR”) on 10 April 1979. The ICCPR constitutes a binding international obligation of the Republic of India. This Hon'ble Court in *NALSA* (supra) expressly drew upon the ICCPR as a foundational source for the constitutional principles governing the rights of TGD persons, and Dr. Justice Chandrachud in *Puttaswamy* (supra) affirmed the ICCPR's centrality to the constitutional privacy architecture.

3. Article 2 of the ICCPR obliges each State Party to respect and ensure the rights recognised therein **“without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”** The expression **“or other status”** has been consistently interpreted by the UN Human Rights Committee as encompassing gender identity as a protected ground. The open-ended character of Article 2, its enumeration of grounds is explicitly non-exhaustive, was designed to permit the evolution of the non-discrimination guarantee as new forms of prohibited discrimination come to be understood.

4. Article 17 of the ICCPR guarantees to every person the right to privacy: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence..." The UN Human Rights Committee, in ***Toonen v. Australia*, Communication No. 488/1992 (1994)**, interpreted Article 17 as encompassing protection against discrimination on the basis of sexual orientation, and the Committee has subsequently confirmed that this protection extends to gender identity. The Committee observed in *Toonen* that the reference to "sex" in Articles 2(1) and 26 of the ICCPR includes sexual orientation.
5. Article 26 of the ICCPR provides the most significant textual foundation for the protection of gender identity at international law:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

[Emphasis Supplied]

6. The UN Human Rights Committee has confirmed in a series of communications that gender identity constitutes an "other status" within the meaning of Article 26, attracting the equal protection guarantee. In ***G v. Australia, Communication No. 2172/2012 (2017)***, the Committee held the following:

“In this context, the Committee observes that the prohibition against discrimination under article 26 encompasses discrimination on the basis of marital status and gender identity, including transgender status. ...The test for the Committee therefore is whether, in the circumstances of the present communication, the differential treatment between married and unmarried persons who have undergone a sex affirmation procedure and request to amend their sex on their birth certificate meets the criteria of reasonableness, objectivity and legitimacy of aim.”

[Emphasis Supplied]

The Committee found a violation of Article 17 read with Article 2(1) of the ICCPR where Australia's detention conditions failed to respect the gender identity of a transgender detainee, affirming that “a transgender person's gender identity is an integral part of her or his identity.”

7. In *MZBM v. Denmark*, Communication No. 2593/2015 (2017), the Committee at paragraph 6.6 reiterated that gender identity is an "other status" within Article 26 and that States are required to take positive measures to protect persons from discrimination on this ground. In *Nepomnyashchiy v. Russian Federation*, Communication No. 2318/2013 (2018), the Committee at paragraph 7.3 confirmed the same principle, holding that gender identity discrimination is prohibited under Article 26 of the ICCPR. These decisions, affirmed across multiple Committee communications, establish that the ICCPR prohibits discrimination on the ground of gender identity, and that no State Party may condition legal recognition of gender identity upon biological verification or medical intervention.
8. India, is also signatory to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (for short "CAT"). Article 1 of the CAT defines "torture" as, "[f]or the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or

intimidating or coercing him or a third person, or **for any reason based on discrimination of any kind**, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. In its General Comment No. 2 (CAT/C/GC/2 24 January 2008), the Committee on CAT, while emphasising on the obligation to prevent torture extends particularly to protecting vulnerable and marginalized groups who are at greater risk, noted the following:

*“Para 21. **The protection of certain minority or marginalized individuals or populations especially at risk of torture** is a part of the obligation to **prevent torture or ill-treatment**. **States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons**, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, **gender**, sexual orientation, **transgender identity**, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any*

*other status or adverse distinction. **States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured**, by fully prosecuting and punishing all acts of violence and abuse against these individuals and **ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.**”*

9. The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006), subsequently supplemented by the Yogyakarta Principles Plus 10 (2017), were adopted by a distinguished panel of international human rights experts. This Hon'ble Court in *NALSA* (supra) expressly relied upon the Yogyakarta Principles as a primary source of authoritative guidance on the rights of TGD persons. Justice Radhakrishnan cited them extensively in the majority opinion, and the Principles formed the backbone of this Court's recognition of the right to self-identified gender identity.

- Principle 3 of the Yogyakarta Principles defines "gender identity" in terms that are directly relevant to the constitutional question before this Hon'ble Court:

"Gender identity is understood to refer to each person's deeply felt internal and individual

experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or functions by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms."

[Emphasis Supplied]

- Principle 3 further declares the right to recognition before the law in terms unambiguous in their application to the 2026 Amendment Act:

"Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity."

[Emphasis Supplied]

- Principle 6 of the Yogyakarta Principles addresses the right to privacy and is directly applicable to the omission of Section 4(2) of the Trans Rights Act 2019:

“Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference... The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.”

[Emphasis Supplied]

- Principle 19 of the Yogyakarta Principles, addressing the right to freedom of expression, provides:

“Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.”

[Emphasis Supplied]

- The Yogyakarta Principles Plus 10 (YP+10), adopted in November 2017, added Principle 31,

which specifically addresses the right to legal recognition:

“Everyone has the right to legal recognition without reference to, or requiring modification of, bodily appearance, structure, function, medical history, assigned sex, or gender identity at birth. No one shall be required to undergo medical procedures, including surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked so as to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation, gender identity or gender expression.”

[Emphasis Supplied]

10. The YP+10 Principle 31 Supplementary State Obligation (d) further provides that States shall: "Establish simplified, administratively based procedures for changing gender markers, names and other identifiers on official documents and registries, without requiring medical or psychological procedures or evidence." This obligation is directly relevant to the question of whether the 2026 Amendment Act's substituted Section 2(k) — which conditions recognition on biological markers and community

membership — is consistent with India's international obligations.

11. The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 22 (2016) on Article 12, noted the following:

*“23. Non-discrimination, in the context of the right to sexual and reproductive health, also encompasses **the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons,** to be fully respected for their sexual orientation, **gender identity and intersex status.** Criminalization of sex between consenting adults of the same gender or the expression of one’s gender identity is a clear violation of human rights. **Likewise, regulations requiring that lesbian, gay, bisexual transgender and intersex persons be treated as mental or psychiatric patients, or requiring that they be “cured” by so-called “treatment”,** are a clear violation of their right to sexual and reproductive health. **State parties also have an obligation to combat homophobia and transphobia,** which lead to **discrimination, including violation of the right to sexual and reproductive health.***

[Emphasis Supplied]

12. The Independent Expert Committee Report to Human Rights Council (A/HRC/53/37) recommended the State parties to “(e)xamine the historical role of religious

institutions in the perpetration of human rights violations, consider their role in the provision of remedies to injured parties and other measures of redress, including non-repetition, by examining institutional norms, practices and frameworks that may have the effect of creating physical or psychological damage on LGBT persons and consider **the possibility of institutional involvement in perpetuating laws criminalizing same-sex intimacy and gender identity, in practices of conversion and in seeking to unduly prevent legal recognition of gender identity based on self-identification.**”

13. In August 2025, the UN Human Rights Council issued Report A/HRC/60/50, containing recommendations for member states on the protection of intersex persons and gender diverse individuals. The Report expressly urged countries to integrate sex characteristics and gender identity into relevant laws and policies to ensure effective protection and equal treatment, and to ensure that legal recognition procedures are accessible, transparent, and do not condition recognition on medical procedures.
14. The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee)

in its *General Recommendation No. 28 (2010)* on the core obligations of States under Article 2 of CEDAW held at paragraph 18 that “discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation and gender identity.” States parties are required to recognise and prohibit intersecting forms of discrimination.

15. The substituted Section 2(k) of the 2026 Amendment Act, by conditioning recognition on biological markers and named community membership, is incompatible with these international standards.

**A. COMPARATIVE LEGISLATION:
JURISDICTIONS RECOGNISING THE RIGHT
TO SELF-DETERMINED GENDER IDENTITY**

16. The substituted Section 2(k) of the 2026 Amendment Act restores a biological and community-membership test for legal gender recognition at a moment when virtually every constitutional democracy that has legislated on the subject has moved in the opposite direction, toward self-determination as the sole basis for recognition, without surgical, hormonal, or psycho-

medical prerequisites. The following legislative frameworks across jurisdictions demonstrates the universal constitutional trajectory and reinforces the finding that the 2026 Amendment Act is architecturally inconsistent with prevailing international norms.

i. **Argentina: Gender Identity Law, 2012**

17. Argentina enacted the Gender Identity Law on 8 May 2012, becoming the first country in the world to establish a comprehensive self-determination framework for legal gender recognition. The Law is foundational in comparative jurisprudence and has been cited by courts and legislatures across the world as the paradigm of a constitutionally adequate recognition regime. The key operative provisions are: "Article 1 — Right to gender identity. All persons have the right: (a) To the recognition of their gender identity; (b) To the free development of their person according to their gender identity; (c) To be treated according to their gender identity and, particularly, to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there.

Article 2 — Definition. Gender identity is understood as the internal and individual way in which gender is perceived by persons, that can

correspond or not to the gender assigned at birth, including the personal experience of the body. This can involve modifying bodily appearance or functions through pharmacological, surgical or other means, provided it is freely chosen. It also includes other expressions of gender such as dress, ways of speaking and gestures.

Article 3 — Right to the treatment of dignity... Every person has the right to be identified in public and private instruments with the first name/s with which that person identifies...

Article 4 — Requirements. Any person who has reached the age of 18 years may request that the registered sex be amended, updating as well the first name and the image, whenever the same do not accord with the self-perceived gender identity. No surgery, psychological pathologisation or medical treatment of any kind shall be required as a requirement for legal recognition of gender identity."

[Emphasis Supplied]

18. Argentina's 2012 Law thus operationalises, at the level of positive legislation, precisely the principles that this Hon'ble Court articulated in *NALSA* (supra): that gender identity is a self-perceived internal experience; that its legal recognition may not be conditioned on surgical or medical intervention; and that the State is obliged to give effect to a person's self-identified gender in official

documents. The 2026 Amendment Act's substituted Section 2(k), by contrast, conditions recognition on biological markers and community membership, the precise framework that Argentina's 2012 law and the international consensus it reflects have rejected as constitutionally impermissible.

ii. **Germany: Self-Determination Act
(Selbstbestimmungsgesetz / SBGG), 2024**

19. Germany enacted the Self-Determination Act (*Selbstbestimmungsgesetz*, SBGG) in 2024, replacing the former Transsexuals Act of 1980, most provisions of which the Federal Constitutional Court had already declared unconstitutional in 2011 on the ground that gender identity is not determined solely by biological sex but is significantly influenced by self-identification. The SBGG establishes an entirely administrative, self-declaration-based procedure for legal gender recognition. Section 2 of the SBGG provides:

"Section 2 — Declarations regarding gender markers and given names: (1) Each person whose gender identity differs from the gender marker entered in the civil register may make a declaration before the register office that they wish to have the gender marker entered in a German civil register replaced by one of the other

options provided for under section 22(3) of the Civil Status Act or to have it deleted... (2) When making their declaration, the person must give an assurance that: 1. the chosen gender marker or the deletion of the gender marker best corresponds to their gender identity, 2. they are aware of the scope of the consequences of making the declaration."

[Emphasis Supplied]

20. The Federal Constitutional Court's 2011 ruling that grounded the SBGG is directly relevant to the constitutional questions before this Hon'ble Court. The Court held that the individual's self-identified gender, grounded in the psychological test rather than the biological test, is protected under Article 2(1) of the Basic Law (right to free personal development) and Article 1(1) (human dignity). Conditioning legal recognition on surgical modification was held to be disproportionate and unconstitutional. The SBGG translates these principles into a regime in which a simple administrative declaration, without medical evidence, is sufficient.

iii. **Australia: Sex Discrimination Act 1984 (as amended in 2013)**

21. Australia amended the Sex Discrimination Act 1984 (Cth) in 2013 to introduce "gender identity" as an

expressly prohibited ground of discrimination in the provision of goods, services, and facilities. Section 4 of the amended Act defines gender identity as: "gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth."

22. The Australian definition explicitly decouples gender identity from medical intervention and from biological sex assigned at birth. It encompasses gender identity irrespective of whether any surgical, hormonal, or other medical procedure has been undergone, which is the precise standard that NALSA (*supra*) established as the constitutional minimum in India. The 2026 Amendment Act's substituted Section 2(k), by conditioning recognition on biological markers and community membership, is structurally incompatible with this standard.
23. At the state level, most Australian jurisdictions have enacted legal gender recognition frameworks based on self-determination. Queensland's Births, Deaths and Marriages Registration Act 2023 (which replaced the 2003 Act, discussed in *Tickle v. Giggle for Girls (No 2)*),

[2024] FCA 960, below) removed the pre-existing requirement for gender reassignment surgery as a precondition for updating registered sex, establishing a self-declaration-based regime

B. **THE RIGHT TO SELF-DETERMINED GENDER IDENTITY IN COMPARATIVE CONSTITUTIONAL LAW JURISPRUDENCE**

24. The right to self-determined gender identity has been affirmed by courts across multiple jurisdictions and legal traditions. The following decisions establish, with a consistency unbroken across common law, civil law, and international adjudicative systems, that: (i) legal recognition of gender identity may not be conditioned on surgical or hormonal modification; (ii) the applicable standard is the psychological test rather than the biological test; (iii) States are under positive obligations to provide clear, accessible, and transparent recognition procedures; and (iv) the denial of legal recognition to persons who have not undergone medical procedures constitutes a violation of the right to privacy, personal integrity, and equal treatment.

i. **Supreme Court of Nepal and Pakistan**

25. The Supreme Court of Nepal in **Sunil Babu Pant & Ors. v. Nepal Government (Writ Petition No.917 of 2007**

decided on 21st December, 2007), while recognising the rights of sexual and gender diverse individuals held the following:

“the fundamental rights comprised under Part II of the Constitution are enforceable fundamental human rights guaranteed to the citizens against the State. For this reason, the fundamental rights stipulated in Part III are the rights similarly vested in the third gender people as human beings. The homosexuals and third gender people are also human beings as other men and women are, and they are the citizens of this country as well.... Thus, the people other than ‘men’ and ‘women’, including the people of ‘third gender’ cannot be discriminated. The State should recognize the existence of all natural persons including the people of third gender other than the men and women. And it cannot deprive the people of third gender from enjoying the fundamental rights provided by Part III of the Constitution.”

[Emphasis Supplied]

26. The Supreme Court of Pakistan in *Dr. Mohammad Aslam Khaki & Anr. V. Senior Superintendent of Police (Operation) Rawalpindi & Ors.* (Constitution Petition No.43 of 2009) had occasion to consider the rights of *eunuchs* and held as follows:-

“Needless to observe that eunuchs in their rights are citizens of this country and subject to the Constitution of the Islamic Republic of Pakistan,

1973, their rights, obligations including right to life and dignity are equally protected. Thus no discrimination, for any reason, is possible against them as far as their rights and obligations are concerned. The Government functionaries both at federal and provincial levels are bound to provide them protection of life and property and secure their dignity as well, as is done in case of other citizens.”

[Emphasis Supplied]

27. It is crucial to note that in 2018, the Parliament of Pakistan introduced Pakistan Transgender Persons (Protection of Rights) Act, 2018 wherein the Act defined “gender expression” as to a person's presentation of his gender identity and the one that is perceived by others; and “gender identity” means a person's innermost and individual sense of self as male, female or a blend of both or neither that can correspond or not to the sex assigned at birth. Further, the Act defined “transgender person” as a person who is- (i) intersex (khusra) with mixture of male and female genital features or congenital ambiguities; or (ii) eunuch assigned male at birth, but undergoes genital excision or castration; or (iii) a transgender man, transgender women, or any person whose gender identity or gender expression differs from the social norms and cultural

expectations based on the sex they were assigned at the time of their birth.

ii. **European Court of Human Right**

28. In *t*

ECHR 583 (Grand Chamber, 11 July 2002), the applicant, a post-operative male-to-female transsexual, complained of the lack of legal recognition of her changed gender, affecting her employment, social security, pension rights, and ability to marry. The Grand Chamber held, overturning its earlier decisions in *Rees*, *Cossey*, and *Sheffield and Horsham*, that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention. The Grand Chamber's reasoning proceeded from the recognition of an international trend, holding:

93. Having regard to the above considerations, the Court finds that the respondent Government can no longer claim that the matter falls within their margin of appreciation, save as regards the appropriate means of achieving recognition of the right protected under the Convention. Since there are no significant factors of public interest to weigh against the interest of this individual applicant in obtaining legal recognition of her gender re-assignment, it reaches the conclusion that the fair balance that is inherent in the

Convention now tilts decisively in favour of the applicant.”

[Emphasis Supplied]

29. The Grand Chamber further held that Article 8 imposed a positive obligation on States to provide legal recognition of changed gender identity:

“90. The Court is not persuaded that it can still be assumed that these terms must refer to a determination of gender by purely biological criteria... There have been major social changes in the institution of marriage since the adoption of the Convention as well as dramatic changes brought about by developments in medicine and science in the field of transsexuality.”

[Emphasis Supplied]

30. In *A.P., Garçon and Nicot v. France*, [2017] ECHR 272 (6 April 2017), the ECtHR addressed the requirement that recognition of gender identity be conditional on undergoing an operation involving a high probability of sterility. The Court held:

126. “As the Court pointed out above, this meant in all probability that they had to be sterilised. However, not all transgender persons wish to – or can – undergo treatment or surgery leading to such consequences, as illustrated by the example of the second and third applicants in the present case.”

[Emphasis Supplied]

31. The Court accordingly held that the requirement of sterility as a precondition for legal gender recognition violated Article 8 ECHR. This is directly applicable to Limb (ii) of the substituted Section 2(k) of the 2026 Amendment Act, which conditions recognition as a transgender person on having undergone "mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure", thereby making legal recognition conditional on bodily modification of the most severe kind.
32. In *X. and Y. v. Romania*, [2021] ECHR 56 (19 January 2021), the ECtHR held that the domestic authorities' refusal to recognise the gender reassignment of persons who did not wish to undergo surgery violated Article 8. The Court observed

165. "the national courts had presented the applicants, who did not wish to undergo gender reassignment surgery, with an impossible dilemma: either they had to undergo the surgery against their better judgment and forego full exercise of their right to respect for their physical integrity or they had to forego recognition of their gender identity, which also came within the scope of respect for private life."

[Emphasis Supplied]

33. The Court's framing of the “impossible dilemma” in *X. and Y. v. Romania* maps precisely onto the constitutional position produced by the 2026 Amendment Act's substituted Section 2(k) and Limb (ii). Under the 2026 Amendment Act, trans men, non-binary persons, and genderqueer persons who have not undergone the specific bodily modifications enumerated in Limb (ii) and who therefore do not fall within any of the named communities in Limb (i) face precisely this dilemma: they must either submit to medical modification they have not chosen, or forgo all statutory recognition. This is the constitutional injury that the ECtHR identified in *X. and Y. v. Romania* as incompatible with the right to privacy and personal integrity.
34. In *Y.T. v. Bulgaria, Application No. 41701 of 16*, the ECtHR held that the Bulgarian courts' refusal to grant legal recognition to the applicant's gender reassignment, without giving relevant and sufficient reasons and without balancing the public interest against the applicant's right to self-identified gender identity, constituted a violation of Article 8. The Court held:

42. ...[I]n a case concerning the respondent State, that refusing to legally recognize an applicant's claimed gender, without providing sufficient and relevant reasons regarding, inter alia, the nature of

the public interest opposed to the recognition sought, constitutes an unjustified interference with that applicant's right to respect for his or her private life within the meaning of Article 8."

[Emphasis Supplied]

35. The Court's reasoning in *Y.T. v. Bulgaria* is directly relevant to the assessment of the 2026 Amendment Act. The Statement of Objects and Reasons of the 2026 Amendment Act, which limits statutory protection to those facing social exclusion "due to biological reasons for no fault of their own and no choice of their own", purports to articulate a public interest justification for the exclusion of self-identified TGD persons. But, as the ECtHR held in *Y.T.*, the assertion of a public interest does not suffice: the State must specify its exact nature and balance it against the individual's right to legal recognition. The Statement of Objects and Reasons of the 2026 Amendment Act does not engage in this balancing exercise — it declares the right to self-perceived gender identity an "acquirable characteristic" and removes it from the statute without any proportionality analysis.

36. In *W.W. v. Poland*, the ECtHR held that the Polish authorities' refusal to allow a transgender woman in prison to continue prescribed hormone therapy violated Article 8. The Court emphasised at paragraph 63 the particular vulnerability of imprisoned transgender persons undergoing gender transition and held that States are required to provide enhanced protection to TGD persons in State custody. The Court further held that the applicant's hormone therapy was integral to her right to respect for her private life, her gender identity, and that withdrawal of that treatment without justification was disproportionate.

iii. **Court of Justice of the European Union**

37. In *K.M.H. v. Obshtina Stara Zagora (Case C-43/24, Shipova)*, CJEU (Second Chamber), 12 March 2026, the Court of Justice of the European Union (Second Chamber) delivered its judgment on 12 March 2026, the same year as the 2026 Amendment Act, addressing the compatibility with EU law of Bulgarian legislation that prohibited any amendment of gender data in civil status registers for transgender persons. K.M.H. was a Bulgarian national who had resided in Italy since 2014, had been diagnosed with gender dysphoria, and had commenced hormone therapy. Her Bulgarian identity

documents continued to identify her as male, which caused her “considerable inconvenience whenever she had to identify herself to airline or hotel staff, but also to the law enforcement authorities, particularly when crossing a border.” The Bulgarian Constitutional Court had previously held that “sex” under the Bulgarian Constitution meant exclusively biological sex, on the basis of “moral and/or religious rules and principles which must prevail over the interests of transgender persons.

38. The CJEU (Second Chamber) held that Article 21 TFEU (free movement) and Article 4(3) of Directive 2004/38, read in the light of Article 7 of the Charter of Fundamental Rights (right to respect for private and family life), precluded Bulgarian legislation that did not permit the amendment of gender data in civil status registers. The Court stated:

50. “According to the case-law of the European Court of Human Rights, Article 8 ECHR protects a person's gender identity as a constituent element and one of the most intimate aspects of his or her private life. Thus, that Article 8 encompasses the right of each person to establish details of their identity as individual human beings, which includes the right of transgender people to personal development and physical and moral integrity and to respect for and recognition

of their gender identity. To that end, the said Article 8 imposes, inter alia, positive obligations on States, which entails the establishment of effective and accessible procedures guaranteeing effective respect for their right to gender identity, as the recognition of a person's gender identity cannot be made conditional on surgical treatment that is not desired by that person."

(Emphasis Supplied)

39. The Court further held at paragraph 54: "To tolerate discrimination based on the difference between biological sex and gender identity would be tantamount, as regards a transgender person, to a failure to respect the dignity and freedom to which he or she is entitled, and which the Court has a duty to safeguard."
40. Most significantly for the constitutional questions before this Hon'ble Court, the CJEU held at paragraph 55 that national legislation which does not permit legal recognition of gender identity is contrary to the fundamental rights guaranteed by Article 7 of the Charter and cannot enable TGD persons effectively to assert their rights. The Court further held at paragraph 64 that EU law precludes a national court from being bound by the interpretation of national legislation given by a constitutional court if that interpretation constitutes

a legal impediment to gender recognition in contradiction with EU law.

41. The *Shipova* judgment is of exceptional comparative significance to the present proceedings. Its reasoning maps precisely onto the constitutional questions arising from the 2026 Amendment Act: (i) a statutory regime that prohibits gender recognition on the basis of biological criteria alone violates the right to private life; (ii) no justification founded on moral or religious principles suffices to override the right to gender identity; (iii) the State may not make gender recognition conditional on surgical or hormonal treatment; and (iv) even a binding constitutional court interpretation that grounds gender in biological sex may not be allowed to stand if it contradicts the applicable human rights standard. The CJEU's reasoning in 2026 thus converges with this Hon'ble Court's reasoning in *NALSA* (supra) in 2014, across two separate constitutional traditions, to the same conclusion.

iv. **Australian Federal Court**

42. In *Tickle v. Giggle for Girls Pty Ltd (No 2)*, [2024] FCA 960, the Federal Court of Australia (Bromwich J) held that the imposition of a condition, that a user of an app must appear to be a cisgender female indirectly

discriminated against transgender women in the provision of services, contrary to section 22 of the Sex Discrimination Act 1984 (Cth) (“SDA”). The case is significant in comparative jurisprudence for three independently material reasons. First, the Court confirmed the constitutional and legislative definition of gender identity:

“74. Gender identity is identified broadly in s 4, as encompassing a person's gender-related identity, appearance or mannerisms or other gender-related characteristics, with or without regard to the person's designated sex at birth. That definition is plainly capable of referring to a person's transgender identity, which refers to the position where a person's current gender differs from their assigned sex at birth.”

[Emphasis Supplied]

43. Second, the Court upheld the validity of gender identity discrimination provisions under the ICCPR (Article 26) as a head of constitutional power. Bromwich J held:

“188. Article 26 creates an obligation for States Parties to prohibit discrimination on a number of grounds, which may readily extend to gender identity as being another status as substantial, yet potentially changeable, among those expressly and non-exhaustively listed of language, religion, political or other opinion, or property. The

prohibition on gender identity discrimination contained in s 22 of the SDA, read with s 5B, constitutes an implementation of that obligation.”
(Emphasis Supplied)

44. Third, the Court definitively rejected the argument that a person's biological sex assigned at birth determines their legal gender for anti-discrimination purposes, holding:

“64. The construction of s 5 proposed by the respondents is fundamentally at odds with the text, broader context and purpose of the SDA with the gender identity discrimination provisions added and the other changes made. The respondents' construction of s 5 cannot be accepted. The respondents' contention that Ms Tickle was discriminated against as a man misunderstands the concept of sex in s 5.”
(Emphasis Supplied)

45. The Court's reasoning in *Tickle* is directly relevant to the substituted Section 2(k) of the 2026 Amendment Act. The Amendment Act's proviso, which declares that the definition "shall not include... persons with different sexual orientations and self-perceived sexual identities, conflates gender identity with sexual orientation in precisely the manner that both *Tickle* and *NALSA* (supra) have held to be constitutionally and legally impermissible. The Court's insistence that "gender

identity discrimination cannot be evaded by creating false distinctions" (paragraph 76) is equally applicable to the 2026 Amendment Act's proviso.

v. **Colombian Constitutional Court**

46. The Colombian Constitutional Court has, in a series of decisions, recognised the right to self-determined gender identity as a fundamental constitutional right. In *T-063/15*, the Court held that the right to gender identity is an autonomous fundamental right, derived from the constitutional values of human dignity, free personal development, and equality, and that the State may not impose any requirement, whether surgical, medical, or administrative, as a precondition for the legal recognition of gender identity. The Court further held that gender identity discrimination is a form of sex discrimination prohibited under the Colombian Constitution.
47. In *T-099/15*, the Colombian Court reiterated that the psychological test governs the determination of gender identity, not the biological test, and that transgender persons are entitled to have their self-identified gender reflected in all official documents without undergoing any medical procedure. The Colombian Constitutional Court's development of self-determination doctrine

predates, and has influenced, the subsequent legislative developments in Argentina and the evolving ECtHR jurisprudence.

vi. **Inter-American Court of Human Rights**

48. Advisory Opinion OC-24/17, issued by the Inter-American Court of Human Rights on 24 November 2017, represents the most comprehensive regional human rights pronouncement on the right to self-determined gender identity. The Court was asked whether the American Convention on Human Rights required States to recognise gender identity as a protected ground and to provide legal recognition procedures based on self-determination. The Court held at paragraph 94 of the Opinion:

“94. Gender identity has been defined as the internal and individual experience of gender as each person feels it, which may or may not correspond with the sex assigned at birth, including the personal experience of the body (which may involve modification of bodily appearance or function by medical, surgical or other means, provided this is freely chosen) as well as other expressions of gender, including dress, speech and gestures.”

49. The Court further held: (Emphasis Supplied)

"100. Accordingly, the State, as guarantor of all rights, must respect and ensure the coexistence of individuals with varied identities, gender expressions and sexual orientations and, therefore, must ensure that they are all able to live and develop with dignity and the respect to which everyone has a right to. The Court considers that this protection does not refer merely to the content of those rights, but that, through their protection, the State would also be ensuring the full enjoyment and exercise of other rights of individuals whose gender identity differs from the one associated with the sex assigned to them at birth.."

(Emphasis Supplied)

50. The Court further addressed the impermissibility of requiring surgical procedures:

"129. ... these bodies have recommended that the procedure for the recognition of gender identity should not require applicants to meet abusive preconditions such as the presentation of medical certificates or evidence of unmarried civil status; nor should applicants be subjected to medical or psychological appraisals related to their self-perceived gender identity, or other requirements that undermine the principle according to which gender identity is not to be proven.

(Emphasis Supplied)

51. Advisory Opinion OC-24/17 is binding upon States parties to the American Convention and has influenced

legislative and judicial developments across Latin America and beyond. Its reasoning converges completely with the principles established by this Hon'ble Court in *NALSA* (supra) and with the ICCPR standards identified above: self-determination is the constitutional minimum; no State may condition legal gender recognition on medical procedures; and the denial of recognition produces the kind of daily harm to dignity and liberty that no constitutional system may tolerate.

52. The above foregoing comparative perspective reflects that the right to self-determined gender identity is a universal right. The most common and applicable standard, adopted by most of the common law countries, is the psychological test, not the biological test. Legal recognition may not be conditioned on surgical modification, hormonal intervention, or community membership. The State is under a positive obligation to provide accessible, transparent, and non-pathologising recognition procedures.
53. This convergence of international and comparative authority is of direct constitutional relevance to the questions before this Hon'ble Court. In *NALSA* (supra), this Court drew extensively upon the Yogyakarta

Principles, the ICCPR, and the jurisprudence of foreign courts to establish that the right to self-identified gender identity is a fundamental right under Articles 14, 15, 19, and 21 of the Constitution of India.

54. It is accordingly submitted that the 2026 Amendment Act does not represent a permissible exercise of legislative discretion within the margin of appreciation recognised by international human rights law. It represents a retrogression from the international minimum standard, a legislative act that this Hon'ble Court and the community of constitutional democracies have consistently held to be constitutionally impermissible.
55. It is further stated that the contentions herein are without prejudice to challenge pending against the provisions itself mandating the requirements of an identity certification and card pending before this Hon'ble Court in *Swati Bidhan Baruah v Union of India (WP(C) 51/2020)*.

III. THE IMPUGNED AMENDMENTS TO SECTIONS 6 AND 7 ESTABLISH AN UNCONSTITUTIONAL REGIME OF MEDICALISATION, SURVEILLANCE, AND ADMINISTRATIVE CONTROL OVER GENDER IDENTITY

**A. RECOGNITION OF RIGHTS OF
TRANSGENDER PERSONS UNDER THE TRANS
RIGHTS ACT 2019 - THE STATE'S
FACILITATORY OBLIGATION OF RIGHTS
RECOGNITION**

56. This Hon'ble Court, in *NALSA (Supra)*, has documented the profound historical injustice and continuing marginalisation suffered by transgender persons in India. This Hon'ble Court traced the systematic erosion of their social status to the colonial period, wherein oppressive legislations, most notably the Criminal Tribes Act, 1871, branded entire communities as inherently criminal, thereby institutionalising stigma, exclusion, and State surveillance. This deeply entrenched prejudice was further compounded by the misuse of criminal law, leading to sustained patterns of targeting, harassment, and social ostracisation, the effects of which continue to pervade both societal attitudes and institutional practices.
57. This Hon'ble Court further recognised that, despite constitutional guarantees of equality and non-discrimination, transgender persons continue to face pervasive and multi-layered discrimination across

nearly every sphere of life, including access to education, employment, healthcare, and public spaces. Subjected to systemic exclusion, economic deprivation, and the denial of basic dignity, they remain among the most vulnerable sections of society. Emphasising that transgender persons are equal citizens entitled to realise their full human potential, this Hon'ble Court held that issues of gender identity must be approached from a human rights perspective including one that affirms dignity, autonomy, and inclusion, and seeks to dismantle, rather than reproduce, the structural conditions of stigma and marginalisation. It is relevant to recount the following portions of the said judgment:

“116.1 Historically, though in the past TGs in India were treated with great respect, that does not remain the scenario any longer. Attrition in their status was triggered with the passing of the Criminal Tribes Act, 1871 which deemed the entire community of the hijra persons as innately "criminal" and "adapted to the systematic commission of non-bailable offences". This dogmatism and indoctrination of the Indian people with aforesaid presumption, was totally capricious and nefarious. There could not have been more harm caused to this community with the passing of the aforesaid brutal legislation during the British Regime with the vicious and savage mind-set. To add insult to the irreparable injury caused, Section 377 of the Penal Code

was misused and abused as there was a tendency, in British period, to arrest and prosecute TG persons under Section 377 merely on suspicion. To undergo this sordid historical harm caused to TGs of India, there is a need for incessant efforts with effervescence.

116.2 There may have been marginal improvement in the social and economic condition of TGs in India. It is still far from satisfactory and these TGs continue to face different kinds of economic blockade and social degradation. They still face multiple forms of oppression in this country. Discrimination qua them is clearly discernable in various fields including healthcare, employment, education, social cohesion, etc.

116.3 TGs are also citizens of this country. They also have equal right to achieve their full potential as human beings. For this purpose, not only are they entitled to proper education, social assimilation, access to public and other places but employment opportunities as well.

117. By recognising such TGs as third gender, they would be able to enjoy their human rights, to which they are largely deprived of for want of this recognition. The issue of transgender is not merely a social or medical issue but there is a need to adopt human right approach towards transgenders which may focus on functioning as an interaction between a person and their environment highlighting the role of society and

changing the stigma attached to them. TGs face many disadvantages due to various reasons, particularly for gender abnormality which in certain level leads to physical and mental disability.”

(Emphasis Supplied)

58. While holding that “*Social justice does not mean equality before law in papers but to translate the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to TGs which legitimately belongs to them*”, this Hon’ble Court in its judgment held and directed the following:

“135. We, therefore, declare:

135.1. Hijras, eunuchs, apart from binary genders, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.

135.2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

135.3. We direct the Centre and the State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

135.4. The Centre and State Governments are directed to operate separate HIV serosurveillance centres since hijras/transgenders face several sexual health issues.

135.5. The Centre and State Governments should seriously address the problems being faced by hijras/transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.

135.6. The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

135.7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

135.8. The Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

135.9. The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.”

(Emphasis Supplied)

59. Hence, the coming of the Trans Rights Act 2019 for the protection of the rights of transgender persons. This is reflected in the Statement of Objects and Reasons of the Trans Rights Act 2019 (prior to the coming of the Impugned 2026 Amendment) which provided the interpretive backdrop against which the provisions of the Act must be understood. The objects of the Act reflects the legislative recognition of the historical marginalisation of transgender persons and articulates the underlying objective of the statute as one aimed at securing dignity, equality, and substantive inclusion for a community that has long faced systemic discrimination and exclusion across multiple spheres of life.
60. Pursuant to the Trans Rights Act 2019, the Ministry of Social Justice and Empowerment (“**the Ministry**”), on 25.09.2020, notified the Transgender Persons (Protection of Rights) Rules, 2020 (“**2020 Rules**”). The Notified Rules were introduced after inviting objections and suggestions by the Ministry incorporating several

modifications in an attempt to bridge the gap between the Act and this Hon'ble Court's judgment in *NALSA (Supra)*. The following changes and procedure prescribed under the draft rules and the finally notified Rules have been tabulated herein under:

Rule	1st Draft (April 2020)	2nd Draft (July 2020)	Final Rules (Sept 2020)
Rule 3 – Application Process	Application allowed in person / post / later online	Same structure retained, but adds clarification for minors & pre- existing identity holders	Same as 2nd draft, retained almost verbatim
Rule 4 – Procedure for Section 6	Requires psychologist report + DM verification (no medical exam but psychologic al input mandatory)	Removes psychologist requirement → shifts to self- declaration <i>via</i> affidavit only	Retains pure affidavit-based model (no medical/psycholo gical certification)
Nature of Identity Recognition	Hybrid model: self- declaration + institutional validation	Moves to pure self- identification (NALSA aligned)	Same as 2nd draft (self-ID retained)

	(psychologist)		
Timeline for Certificate (Section 6)	60 days for issuance	Reduced to 30 days	Retained at 30 days
Rule 5 – Effect of Certificate	Allows change of name/gender in documents; includes detailed procedural obligations	Same, but language streamlined	Same as 2nd draft
Rule 6 – Change of Gender (Section 7)	Requires medical certificate after surgery	Same requirement retained	Same retained (medical proof required only for binary change)
Rule 7 – Revised Certificate	15-day timeline for revised certificate	Same	Same
Rejection of Application (Rule 8)	DM must communicate reasons	Same	Same

Right to Appeal (Rule 9)	Appeal within 30 days	Expanded structure: review + appeal mechanism clarified; appeal period extended (60 days)	Further expanded: appeal period extended to 90 days

61. Chapter III of the Transgender Persons (Protection of Rights) Act, 2019 provides for the “*Recognition of Identity of Transgender Persons*” and lays down the statutory framework governing the legal recognition of gender identity. In its original, unamended form, the scheme of the Act contemplated a recognition regime premised on *self-identification*, wherein the role of the State was largely facilitative, rather than adjudicatory or determinative. The procedure for recognition, as originally enacted, was structured as follows:

- i. **Recognition of the Right (Section 4):** Section 4 establishes the foundational right of recognition under the Act. It first affirms that every transgender person, which was then subject to a broader and more inclusive definition, is entitled to be legally recognised. Crucially, under Sub-Section (2), it further

guarantees that such recognition would be anchored in the individual's self-perceived gender identity, thereby placing the determination of gender identity within the subjective domain of the person rather than external authorities.

- ii. **Certificate of Identity Application Procedure (Section 5 read with Rule 3):** Section 5 gives teeth to the right recognised under Section 4 by providing a procedural mechanism for its enforcement. It enables a transgender person to apply to the District Magistrate for the **issuance** of a certificate of identity as prescribed under the Act's corresponding Rules. The provision was entirely facilitative in nature, treating the application process as a means to formalise an already existing right to self-identified gender identity. In the case of a minor, the application is required to be made by a parent or guardian.
- iii. **Issuance of the Certificate of Identity (Section 6 read with Rule 4 and 5):** Section 6 gives full legal effect to the **right** of self-identified gender identity by requiring the District Magistrate to issue a certificate of identity upon application,

without contemplating any substantive adjudication of such identity. The provision ensures that such recognition is uniformly reflected across official records and treats the certificate as conclusive proof of identity, thereby reinforcing that the State's role is limited to formal recognition rather than verification of gender identity.

- **Application Number Generation and Format of Affidavit [FORM 2] (Rule 4):** In terms of Rule 4(1) of the 2020 Rules, subject to the correctness of the particulars submitted by the applicant, the District Magistrate *process* the certificate of identity in terms of affidavit submitted declaring the gender, ***without any medical or physical examination***. The said Rule has been reproduced herein under:

“4. Procedure for issue of certificate of identity. - (1) The District Magistrate shall, subject to the correctness of the applicant's particular's, get the application processed based on the affidavit submitted declaring the gender identity of any person in Form-2, without any medical

or physical examination, and thereafter issue an identification number to the applicant, which may be quoted of proof of application.”

- **Certificate of Identity Issued by the District Magistrate [FORM 3] (Rule 5):**

In terms of Rule 5(2), upon following the procedure contemplated under Rule 4, the Certificate, within 30 days of receipt of the application, would have to be issued by the District Magistrate. The relevant portion of the said Rule reads as follows:

“5. Issue of certificate of identity for a transgender person under Section 6 -

(1) The District Magistrate shall issue to the applicant, a certificate of identity in Form-3 following the procedure provided in Rule 4 indicating the gender of such person.

*(2) The said certificate of identity shall be issued **within thirty days** of receipt of duly filled in application along with the affidavit”*

- **Issuance of Transgender Identity Card [FORM 5]:** At the time of issuance, as

contemplated in Rule 5(4), the District Magistrate would also be required to issue a Transgender Identity Card (“**TG Card**”) to the applicant. The said provision reads as follows:

“5. Issue of certificate of identity for a transgender person under Section 6 - (4) The District Magistrate shall, at the time of issuance of the certificate of identity under sub-rule (1), issue a transgender identity card in Form 5 to the applicant.”

- iv. **Revision of Certificate Details Upon Surgery (Section 7 read with Rule 6 and 7):** Section 7 provides an additional, optional pathway for legal recognition in cases where a transgender person undergoes surgery to change gender to male or female. It enables such a person to apply for a revised certificate of identity upon furnishing certification from the concerned medical authority. Upon receipt of such application, the District Magistrate is required to issue a revised certificate reflecting the change in gender. The provision further entitles the individual to effect corresponding changes in name and gender across official documents,

while expressly preserving all rights and entitlements under the Act irrespective of such revision.

- Similar to Rule 5 dealing with issuance of the certificate, Rule 7 prescribes the procedure for issuance of a revised certificate of identity in cases of change in gender. It enables a transgender person who has undergone gender-affirming medical intervention to apply, in the prescribed form, along with certification from the concerned medical authority.
- Upon receipt of such an application, the District Magistrate is required to verify the genuineness of the medical certificate, without conducting any physical examination, and process the application subject only to proof of residence by way of affidavit.
- The Rule further mandates the issuance of a revised certificate within a stipulated fifteen days, facilitates corresponding changes in name, gender, and photograph across official documents, and ensures continuity of identity by retaining existing reference details, thereby providing a structured, time-bound, and

documentation-based mechanism for giving full legal effect to a change in gender.

- v. **Rejection of Application and Right to Appeal (Rule 8 and 9):** Rules 8 and 9 incorporate procedural safeguards to mitigate the consequences of an adverse decision in **the** recognition process. While Rule 8 requires the District Magistrate to furnish reasons for rejection and permits a limited review upon the applicant's response, Rule 9 provides a right of appeal to a designated authority. These provisions, taken together, reflect a framework that, while administrative in nature, is tempered by requirements of reasoned decision-making and the availability of corrective remedies.

B. THE 2026 AMENDMENTS TO SECTION 6 AND 7—THE STATE'S ADJUDICATORY AND DETERMINATIVE CONTROL OVER IDENTITY ASTRAY FROM *NALSA*'s SELF-DETERMINATION RIGHTS RECOGNITION

- 62. The amendments introduced to Sections 6 and 7 fundamentally alter the architecture of the rights recognition under Trans Rights Act 2019. While the unamended scheme was premised on self-identification,

with the role of the State being largely facilitative, the impugned amendments reconfigure this by introducing elements of verification, discretion, and external validation entirely in the control of external forces in evident violation of self-determination. In doing so, they shift the locus of determination from the individual to the State and its designated authorities, thereby subjecting the recognition of gender identity to adjudicatory control. The nature and extent of this departure from the original statutory scheme, and its inconsistency with the principle of self-determination recognised in *NALSA (Supra)*. The change in the procedure for the recognition of the rights under the Trans Rights Act 2019 has been depicted in the following comparative flow chart:

i. **Amendment to Section 6 and its Violation of Part III of the Constitution**

63. The amended Section 6 introduces a scheme of prior scrutiny by requiring the District Magistrate to examine the recommendation of an authority and, where considered “*necessary or desirable*”, to seek the assistance of medical experts before issuing a certificate of identity. This marks a clear departure from the earlier facilitative recognition of rights, by subjecting the

recognition of gender identity to discretionary evaluation and external validation, thereby converting a process of self-identification into one of administrative adjudication. The extent of this departure is evident from the comparative table set out hereinbelow:

Provision	Unamended (Trans Rights Act 2019)	Amended (2026 Act)
Section 6: Issue of certificate of identity	(1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender.	(1) The <u><i>[District Magistrate, after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts,]</i></u> shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender.

		[Challenged Provision]
	(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).	(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).
	(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.	(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.
	-	<u>[(4) The person who has been issued a certificate of identity under sub-section (1) and is so declared as a transgender person within the definition under this Act shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person.]</u>

64. The amendment to Sub-Section (2) of Section 6 is ultra vires Part III of the Constitution of India for the following reasons:

a) **The Discretion For Engaging Medical Experts For Evaluation Effectively Reintroduces The Long-Banished Corbett Principles Which Is Premised On Biological And Other Medical Markers For Gender Identification**

- a. It is submitted that the impugned amendment to Section 6, by enabling the District Magistrate to rely upon the recommendation of a medical board and to seek the assistance of medical experts, in effect reintroduces a framework akin to the discredited “biological test” for determining gender identity. By bringing medical expertise into the process of recognition, the provision shifts the focus from the individual’s self-identified gender to an external assessment that is inherently rooted in clinical or biological parameters.
- b. Such an approach marks a departure from a self-identification based framework and revives a model where gender is treated as a matter capable of objective verification through medical scrutiny. This risks reinstating a binary/heteronormative and biologically

anchored understanding of gender identity, which has historically led to exclusion and marginalisation. In doing so, the provision undermines the recognition of gender identity as an aspect of personal autonomy and instead subjects it to external determination, thereby reintroducing, in substance, the very paradigm that contemporary constitutional jurisprudence has moved away from.

- c. In *Corbett v. Corbett, 1970 (2) All ER 33*, the genesis and crystallization of the now rejected determinative criteria for gender identification which was premised on biological tests, the following was held:

“I must now deal with the anatomical and physiological anomalies of the sex organs, although I think that this part of the evidence is of marginal significance only in the present case. In other cases, it may be of cardinal importance. All the medical witnesses accept that there are, at least, four criteria for assessing the sexual condition of an individual. These are- (i) Chromosomal factors. (ii) Gonadal factors (i.e., presence or absence of testes or ovaries). (iii) Genital factors (including internal sex organs). (iv) Psychological factors. Some of the witnesses would add- (v) Hormonal factors or secondary sexual

characteristics (such as distribution of hair, breast development, physique etc. which are thought to reflect the balance between the male and female sex hormones in the body).

..... The question then becomes what is meant by the word 'woman' in the context of a marriage, for I am not concerned to determine the 'legal sex' of the respondent at large. Having regard to the essentially heterosexual character of the relationship which is called marriage, the criteria must, in my judgment, be biological, for even the most extreme degree of transsexualism in a male or the most severe hormonal imbalance which can exist in a person with male chromosomes, male gonads and male genitalia cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage. In other words, the law should adopt, in the first place, the first three of the doctors' criteria, i.e. the chromosomal, gonadal and genital tests, and, if all three are congruent, determine the sex for the purpose of marriage accordingly, and ignore any operative intervention.....
 ” ”

- d. While rejecting the principle, in *NALSA (Supra)*, this Hon'ble Court, observed and held

from the prism of Articles 14, 15, 16, 19 and 21 of the Indian Constitution, a psychological test/evaluation would be the only acceptable for recognising transgenders while holding as follows:

“81. Articles 14, 15, 16, 19 and 21, above discussion, would indicate, do not exclude hijras/transgenders from their ambit, but the Indian law on the whole recognise the paradigm of binary genders of male and female, based on one's biological sex. As already indicated, we cannot accept the Corbett Principle of "biological test", rather we prefer to follow the psyche of the person in determining sex and gender and prefer the "psychological test" instead of "biological test". Binary notion of gender reflects in the Penal Code, 1860 for example, Section 8, 10, etc. and also in the laws related to marriage, adoption, divorce, inheritance, succession and other welfare legislations like NREGA, 2005, etc. Non-recognition of the identity of hijras/transgenders in the various legislations denies them equal protection of law and they face widespread discrimination.”

(Emphasis Supplied)

- e. It is emphasised that gender identity is inherently a matter of personal and psychological *self-perception*, rooted in an individual's inner sense of self, and not

susceptible to objective medical or biological determination. In such circumstances, the involvement of a medical board or the consultation of medical experts in the process of recognition serves no rational or legitimate purpose. Any such engagement is wholly misplaced and devoid of relevance, as it seeks to subject a fundamentally psychological and personal attribute to clinical assessment. The impugned provision, by permitting recourse to medical expertise, introduces an external evaluative mechanism into a domain that admits of no such verification, thereby rendering the exercise not only futile but constitutionally impermissible. It results in an unwarranted intrusion into personal autonomy and dignity, and imposes an unjustified restriction on the free expression of gender identity, in violation of Articles 19(1)(a) and 21 of the Constitution.

**b) Breach Of Protection Under Gender Identity
Article 19(1)(a) - State Granted With The Elected
Option Of Interfering With Expression Of
Gender Identity Without Justifiable Cause Or
Appropriate Safeguards**

- f. It is submitted that gender identity is an essential facet of expression protected under Article 19(1)(a) of the Constitution. The Hon'ble Supreme Court in *NALSA (Supra)*, has recognised that gender identity lies at the core of personal identity and is expressed through an individual's behaviour, presentation, and self-perception. Such expression is integral to dignity, autonomy, and personal integrity, and the State is under a constitutional obligation not to interfere with its manifestation. The relevant portion of the judgment is reproduced herein under:

“71. The principles referred to above clearly indicate that the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one's chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing, etc.

72. Gender identity, therefore, lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India. A transgender's personality could be expressed by the transgender's behaviour and

presentation. State cannot prohibit, restrict or interfere with a transgender's expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or otherwise fail to digest the innate character and identity of such persons. We, therefore, hold 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) of the Constitution of India and the State is bound to protect and recognise those rights.”

(Emphasis Supplied)

- g. The impugned amendment to Section 6 empowers the District Magistrate to examine the recommendation of an “authority”, defined as a medical board, and, where considered necessary or desirable, to seek the assistance of medical experts prior to issuing a certificate of identity. Although the provision does not make such scrutiny mandatory in every case, it authorises the State to subject the expression of gender identity to external evaluation and possible validation. It is relevant to highlight that the Standing Committee on Social Justice and Empowerment (43rd Report, 2017), while

examining the earlier Bill introduced in 2016, cautioned that the inclusion of medical experts in the decision-making process as creating a serious risk of subjecting gender identity to medical, biological, or psychological “eligibility” criteria. Such an approach was noted to have the effect of pathologising transgender identities and undermining the principle of self-identification. Even though these observations were made in the context of a proposed screening mechanism, the underlying concern squarely applies to the present amendment, which similarly enables recourse to medical expertise. The reintroduction of medical involvement, despite such clear legislative caution, demonstrates a disregard for the recognised principle that gender identity is not a matter to be assessed through clinical or expert evaluation, but one that must be accepted on the basis of the individual’s self-identification. The observations made by the standing committee were as follows:

“3.6 The Committee observe that the Bill does not even spell out specific and concrete procedure to be followed for legal gender recognition which is likely to

violate this right. it does not specify any grounds for the District Screening Committee to make its recommendations, or for the District Magistrate to follow them. The presence of medical professionals on the panel increases the risk that the recognition of the gender identity of the applicant will be based on some kind of assessment of medical, biological or psychological 'eligibility', which would risk pathologising trans identities, and violate the right of transgender persons ' under the Supreme Court judgement and international human rights law and standards - to have their self-identified gender recognized.'

(Emphasis Supplied)

- h. It is submitted that the conferment of such discretion itself amounts to an impermissible restriction on the freedom of expression under Article 19(1)(a). The freedom to express one's gender identity cannot be made contingent upon the satisfaction of an administrative authority or exposed to the possibility of medical scrutiny. By enabling such intervention, the amendment renders the exercise of a fundamental right conditional and uncertain, and opens the door to intrusive inquiry.

- i. The involvement of a medical board, even at the discretion of the District Magistrate, treats gender identity as a matter open to clinical assessment, thereby undermining its character as an expression of personal identity. This results in a restriction on expression that does not fall within any of the grounds permissible under Article 19(2), and is therefore constitutionally impermissible.
- j. In effect, the provision creates a chilling effect on the exercise of the right under Article 19(1)(a), as individuals may be deterred from asserting their gender identity due to the risk of scrutiny, evaluation, and potential denial.

c) Violation Of Self-Determination Forming Part Of “Personal Autonomy” And “Self-Expression” Protected Under Article 21

- k. It is submitted that the right to self-determination of gender identity forms an integral part of the guarantee of life and personal liberty under Article 21 of the Constitution. The right to life has consistently been interpreted to include those facets of existence that render life meaningful, including dignity, personal autonomy, and the freedom to

express one's identity. Gender identity lies at the core of an individual's sense of self, and its recognition is essential to the preservation of dignity and the full development of personality.

1. Personal autonomy, as protected under Article 21, encompasses both the right to be free from unwarranted State interference and the right to make intimate and personal decisions concerning one's life and identity. The determination of one's gender is among the most fundamental of such decisions, as it relates directly to an individual's personhood and self-expression. Any framework that conditions or restricts this determination undermines the autonomy guaranteed to every individual. This position has been affirmed by this Hon'ble Court in *NALSA (Supra)*, wherein the following was held:

“74. The recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of the right to dignity and freedom guaranteed under our Constitution.”

75. Article 21, as already indicated, guarantees the protection of "personal autonomy" of an individual. In Anuj Garg v. Hotel Assn. of India (SCC p. 15, paras 34-35), this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.

(Emphasis Supplied)

- m. The impugned amendment to Section 6 violates this guarantee by subjecting the recognition of gender identity to the discretion of the District Magistrate, including the power to seek recommendations from a medical board and to involve medical experts. By introducing the possibility of external evaluation and validation, the provision interferes with the individual's right to determine their own identity and replaces it with a system of State-mediated approval.

- n. It is respectfully submitted that self-determination of gender identity, being an intrinsic aspect of personal autonomy and self-expression, cannot be made contingent upon administrative satisfaction or medical scrutiny. The involvement of external authorities in assessing an individual's identity amounts to an intrusion into the most intimate sphere of personal liberty, where the Constitution affords the highest degree of protection.
- o. In effect, the impugned provision transforms a constitutionally protected right into a conditional entitlement, dependent upon the approval of State authorities. Such a framework is incompatible with the guarantee of dignity, autonomy, and personal liberty under Article 21, and is therefore liable to be struck down.

**d) Violation Of Privacy And Decisional Autonomy
In Matters Of Gender Identity Under Article 21**

- p. The amended Section 6 infringes the right to privacy under Article 21 by mandating that the recognition of gender identity be preceded by examination of an authority's recommendation and, where considered "necessary or

desirable”, consultation with medical experts. This subjects an individual’s gender identity to external scrutiny without any clearly defined standards, thereby enabling access to and assessment of deeply personal information by State actors.

- q. The provision is constitutionally infirm as it permits such intrusion without demonstrating necessity or proportionality, and without incorporating procedural safeguards to regulate the scope or manner of inquiry. The conferment of unguided discretion on the District Magistrate to determine the extent of such scrutiny renders the invasion of privacy both arbitrary and excessive, resulting in an impermissible encroachment upon the individual’s protected sphere under Article 21 as has been held by this Hon’ble Court in ***K.S. Puttaswamy (Privacy-9J.) (Supra)*** as follows:

“96. Nalsa [National Legal Services Authority v. Union of India, (2014) 5 SCC 438] indicates the rationale for grounding of a right to privacy in the protection of gender identity within Article 15. The intersection of Article 15 with Article 21 locates a constitutional right to privacy as an expression of individual autonomy, dignity and identity. Nalsa [National

Legal Services Authority v. Union of India, (2014) 5 SCC 438] indicates that the right to privacy does not necessarily have to fall within the ambit of any one provision in the Chapter on Fundamental Rights. Intersecting rights recognise the right to privacy. Though primarily, it is in the guarantee of life and personal liberty under Article 21 that a constitutional right to privacy dwells, it is enriched by the values incorporated in other rights which are enumerated in Part III of the Constitution.

...

322. *Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy subserves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.*

323. *Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture.*

While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.

(Emphasis Supplied)

- r. From the above, it is clear, therefore that, Gender identity recognition is not a standalone right but arises from the intersection of autonomy, expression, and dignity under Article 21, as recognised in *NALSA* and *Puttaswamy (9-Judges)*.

e) **Unguided Discretion And Manifest Arbitrariness**
In Violation Of Article 14

- s. It is also relevant to state that the use of open-ended expressions such as “*necessary or desirable*”, in the absence of any statutory criteria, guidelines, or procedural safeguards, confers an uncanalised and subjective power upon the District Magistrate in determining an individual’s entitlement to recognition of their gender identity. Such discretion, which directly

implicates fundamental rights, is constitutionally impermissible.

- t. It is submitted that the conferment of such wide discretion, without any intelligible differentia or rational nexus, renders the provision manifestly arbitrary and violative of Article 14. The amendment neither delineates the circumstances in which such recommendations or medical consultations may be sought, nor does it prescribe any limits on the nature or scope of such inquiry. This creates a situation where the Amended provision is susceptible to inconsistent application, where similarly situated individuals may be subjected to varying degrees of scrutiny based solely on the subjective satisfaction of the authority concerned. The absence of uniform standards or procedural safeguards thus defeats the guarantee of equal protection of the laws.
- u. The Hon'ble Supreme Court has consistently held, including in *Shayara Bano v. Union of India (2017) 9 SCC 1*, that a provision which confers unbridled and unguided discretion, particularly where it affects fundamental rights, is liable to be struck down on the ground

of manifest arbitrariness. The impugned amendment falls squarely within this prohibition, as it enables the State, through its officers, to subject the recognition of gender identity to discretionary evaluation without any objective benchmarks. This Hon'ble Court held as follows:

“101. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

(Emphasis Supplied)

f) Discriminatory Imposition Of Medical Scrutiny Upon Transgender Persons In Violation Of Article 15

- v. It is submitted that the impugned amendment to Section 6 imposes a disproportionate and intrusive burden exclusively upon transgender persons, thereby resulting in discrimination on the ground of gender identity, which is encompassed within the prohibition of “sex”

under Article 15 of the Constitution. While cisgender/binary persons are not required to undergo any form of certification, scrutiny, or validation for the recognition of their gender, the amended provision subjects transgender persons to a framework where their identity may be examined, evaluated, and potentially verified by authorities and medical experts. This differential treatment is not merely procedural but substantive in nature. It proceeds on the implicit assumption that transgender identity is doubtful or requires external confirmation through medical experts (even though optional), whereas cisgender identity is treated as self-evident and beyond scrutiny. Such a framework creates an unequal and stigmatising standard, whereby one class of persons is required to justify and prove their identity, while another is presumed and accepted without question.

- w. The discriminatory nature of this burden is further evident when contrasted with other State frameworks of identity recognition, such as the Aadhaar system, where demographic particulars, including gender, are accepted on the basis of self-declaration without any

requirement of medical or expert validation. The State, therefore, recognises and relies upon self-identification in the ordinary course, yet departs from this standard only in the case of transgender persons, thereby singling them out for heightened scrutiny.

- x. It is submitted that such selective imposition of verification and potential medical scrutiny lacks any rational or constitutional justification and results in discrimination both in purpose and effect. By subjecting only transgender persons to a regime of possible external validation, the impugned provision reinforces stigma, perpetuates unequal treatment, and violates the guarantee of non-discrimination under Article 15 of the Constitution.
- y. The impugned provision is a clear instance of what Sociologist Peter Conrad describes as medicalisation, where a social phenomenon is defined and regulated through a medical framework. By requiring medical opinion, expert involvement, or institutional certification for recognition, the provision reframes gender identity as a matter requiring medical validation rather than self-

determination. This operates at both the conceptual level, by imposing a medical lens to understand identity, and the institutional level, by creating gatekeeping structures through authorities and medical professionals. In effect, the provision does not merely prescribe a procedure but alters the nature of the right itself, making its recognition contingent on medicalisation and thereby enabling a form of social control. On the subject, the following has been stated in his famous 1992 piece titled

“Medicalization and Social Control”:

“The key to medicalization is the definitional issue. Medicalization consists of defining a problem in medical terms, using medical language to describe a problem, adopting a medical framework to understand a problem, or using a medical intervention to “treat” it. This is a sociocultural process that may or may not involve the medical profession, lead to medical social control or medical treatment, or be the result of intentional expansion by the medical profession. Medicalization occurs when a medical frame or definition has been applied to understand or manage a problem; this is as true for epilepsy as for “gender dysphoria” (transsexualism). The interest in medicalization has predominantly focused on previously nonmedical problems that have been medicalized (and, often, thought to be inappropriately medicalized), but actually medicalization

must include all problems that come to be defined in medical terms.

While the definitional issue remains central, a broader conceptual frame helps clarify the meaning of medicalization (Conrad & Schneider 1980b). Medicalization can occur on at least three distinct levels: the conceptual, the institutional, and the interactional levels. On the conceptual level a medical vocabulary (or model) is used to "order" or define the problem at hand; few medical professionals need be involved, and medical treatments are not necessarily applied. On the institutional level, organizations may adopt a medical approach to treating a particular problem in which the organization specializes. Physicians may function as gatekeepers for benefits that are only legitimate in organizations that adopt a medical definition and approach to a problem, but where the everyday routine work is accomplished by nonmedical personnel. On the interactional level, physicians are most directly involved. Medicalization occurs here as part of doctor-patient interaction, when a physician defines a problem as medical (i.e. gives a medical diagnosis) or treats a "social" problem with a medical form of treatment (e.g. prescribing tranquilizer drugs for an unhappy family life). Thus it becomes clearer that medicalization is a broad definitional process, which may or may not directly include physicians and their treatments (although it often does). Subcultures, groups, or individuals may vary in their readiness to apply, accept, or

reject medicalized definitions (Cornwell 1984).”

(Emphasis Supplied)

[See: Peter Conrad. 1992. Medicalization and Social Control. Annual Review Sociology. 18:209-232.]

- z. The dangers of medicalisation within legal systems have been widely acknowledged, particularly for entrenching forms of medical gatekeeping in the recognition of gender identity. This concern is not confined to adjudicatory practices but extends equally to law-making presumptions, where legislation itself is structured on the premise that gender identity must be validated through medical or expert frameworks. In this context, Lindsey Ruff, in *“Trans-cending the Medicalization of Gender: Improving Legal Protections for People Who are Transgender and Incarcerated,”* published in the Cornell Journal of Law and Public Policy, cogently observes:

“...the legal system’s reliance on a medical model of gender prioritizes transgender plaintiffs who have been diagnosed as Gender Dysphoric and have either undergone or are undergoing hormone therapy or surgical treatment. This approach wrongly positions the

medical establishment as a gatekeeping institution that polices gender conformity. Further, this approach creates a hierarchy of transgender people and fails to protect vulnerable transgender populations. First, reliance on a medical model of gender excludes people who do not match the diagnostic criteria of medical categories. There is great diversity of gender identity and expression within the transgender community; many transgender people do not require medical treatment (e.g., a trans woman may conceptualize her penis as a woman's penis), some choose to embrace gender fluidity or a non-binary identity (e.g., genderqueer and agender individuals), and many prefer non-medical forms of gender expression (e.g., wigs, binding breasts, or cosmetics). Second, reliance on a medical model of gender also excludes many young, low-income, or undocumented people who may want, but do not have access to, legal, trans affirming healthcare. By predating legal rights on medical treatment, and relying on medical experts to legitimize a transgender individual's identity, those who do not need or do not have access to trans affirming healthcare are excluded from legal protections. As such, the legal system effectively coerces transgender people into undergoing medical procedures which can be inaccessible, dangerous, and simply unnecessary.

Further, the legal system's reliance on a medical model of gender contributes to the stigmatization of the transgender

community overall. Conceptualizing trans experience as a mental illness glorifies normative gendered behavior and delegitimizes trans individuals' attempts to claim self-constructed gender identities. There is a distinction between the reality of gender and the medicalized gendered framework in which current law operates. This disparity inhibits the creation of legal rules that protect the entire trans community and frustrates the long-term goal of expanding society's sex-gender code."

(Emphasis Supplied)

[See: Page 10-Ruff, Lindsey (2018) "Transcending the Medicalization of Gender: Improving Legal Protections for People Who are Transgender and Incarcerated," Cornell Journal of Law and Public Policy: Vol. 28 : Iss. 1 , Article 6.]

- aa. In such terms, it is submitted that by enabling the District Magistrate to subject an individual's identity to examination by an authority and medical experts pursuant to the amended Sub-Section (1) of Section 6, the provision shifts the locus of determination from the individual to the State, and reintroduces a form of verification that is both unwarranted, unnecessarily medicalised and intrusive, especially when the judgment in

NALSA (Supra) makes it clear that gender identification would be entirely premised on self-perception. The impugned amendment thereby undermines personal autonomy, interferes with the free expression of gender identity, and imposes a discriminatory burden upon transgender persons that is not borne by others. In doing so, it violates the guarantees of equality, non-discrimination, freedom of expression, dignity, and personal liberty under Articles 14, 15, 19(1)(a), and 21 of the Constitution, and is therefore liable to be struck down.

ii. **Amendments to Section 7 and its Violation of Part III of the Constitution**

- a. The amendments to Section 7 significantly expand the scope of State involvement in the process of change of gender by introducing additional layers of obligation, disclosure, and administrative control. While the unamended provision contemplated an optional mechanism for obtaining a revised certificate upon undergoing surgery, the amended provision renders such application mandatory and requires medical institutions to furnish details of the individual to the District Magistrate and the designated authority. This

moves the provision away from a facilitative process and introduces compulsory engagement with State authorities, along with third-party disclosure of sensitive personal information. The amended scheme thereby subjects an individual's gender transition and its legal recognition to heightened oversight and control by the State. The extent of this departure is evident from the comparative table set out hereinbelow:

Provision	Unamended (Trans Rights Act 2019)	Amended (2026 Act)
Section 7: Change in gender	(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate	(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, <u>such person shall</u> make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and

	for revised certificate, in such form and manner as may be prescribed.	manner as may be prescribed. [Challenged Provision]
	-	<u>“(1A) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed.”</u> [Challenged Provision]
	(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and	<u>(2) A person referred to in sub-section (1) shall also make an application to the District Magistrate who shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating</u>

	within such time, as may be prescribed.	<u><i>change in gender in such form and manner and within such time, as may be prescribed.</i></u> [Challenged Provision]
	(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person: Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.	<u><i>Sub-Section (3) has been omitted.</i></u>

b. The amendment to Sub-Sections (1), (1A) and (2) of Section 7 is ultra vires Part III of the Constitution of India for the following reasons:

a) **The Mandatory Requirement Of Making An Application Upon Undergoing Surgery Not**

**Only Stands Against The Constitutionally
Protected Right Of Self-Perception But Is
Violative Of Articles 14, 15, 19(1)(a) And 21 Of
The Constitution**

- a. It is submitted that the Amendment to Section 7(1) and (2), by substituting the permissive term “may” with the mandatory term “shall”, fundamentally changes the nature of the provision from an enabling mechanism to a compulsory statutory obligation. Under the unamended provision, a transgender person who had undergone surgery was given the option to apply for a revised certificate, thereby preserving the individual’s autonomy in deciding whether and when to seek formal recognition of such change. The amended provision, however, mandates that such an individual must make an application to the District Magistrate, thereby removing this element of choice.
- b. This shift from discretion to compulsion results in an unwarranted intrusion into personal autonomy. The decision to seek legal recognition of one’s gender, even after undergoing surgery, remains a deeply personal choice, dependent on individual

circumstances, privacy concerns, and social context. By requiring mandatory engagement with State authorities, the provision compels individuals to disclose sensitive aspects of their identity and medical history, irrespective of their willingness to do so.

- c. It is respectfully submitted that such compulsion cannot be justified in the absence of any legitimate State interest. The amendment does not serve any identifiable purpose that necessitates mandatory application, nor does it provide any safeguards against misuse of the information so disclosed. Instead, it imposes an additional procedural burden that operates to the detriment of the individual, particularly in light of the sensitive nature of gender transition. It is reiterated that, as has been held by this Hon'ble Court, gender identity is entirely divorced from physical/biological traits and being in intimate domain to the individual, is protected under Part III of the Constitution.
- d. In effect, the impugned provision transforms a facilitative right into a statutory obligation, compelling individuals to subject themselves

to State processes even where they may not seek or require such recognition. This undermines the autonomy of the individual in matters concerning identity and self-expression, and is therefore incompatible with the guarantees of personal liberty and dignity under Article 21 and 19(1)(a) of the Constitution.

b) **The Requirement For Applying For The Revised Certificate Under Section 7(1) Subjects An Applicant To A Vague Condition Of Applying After Having “Undergone Surgery” - Determination Of Which Ought To Entirely Remain Within The Individual’s Domain To Decide When The Application Is To Be Made And At What Stage**

- e. It is submitted that the vagueness inherent in the amended Section 7(1) is further exacerbated when read in light of the existing Rules, which continue to recognise gender-affirming processes as varied, non-linear, and inclusive of multiple forms of medical intervention. The unamended Rules expressly define “medical intervention” to include a wide spectrum of procedures, including

counselling, hormonal therapy, and surgical intervention, and treat the decision to apply for a revised certificate as optional. This framework acknowledges that transition is an individualised process and permits the applicant to determine the appropriate stage for seeking legal recognition. In an attempt to reconcile the unamended Section 7(1) and its lack of definition of the term “undergone surgery”, the term “medical intervention was introduced” in the 2020 Rules which reads as follows:

*“2(i) **“medical intervention”** includes any gender affirming medical intervention undertaken by an individual to facilitate the transition to their self-identified gender, including but not limited to counseling, hormonal therapy, and surgical intervention, if any.”*

- f. Furthermore, Rule 6, concerning the unamended provision, reads as follows:

“6. Procedure for issue of a certificate of identity for change of gender.-

(1) If a transgender person undergoes medical intervention towards a gender affirming procedure, either as a male or female, such person may apply in the Form – 1, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that

person has undergone the said medical intervention, to the District Magistrate for the issue of a revised certificate of identity.”

- g. In contrast, the amended provision makes the application mandatory upon a person having “undergone surgery”, without clarifying what stage of the transition process would satisfy this requirement. Given that gender-affirming procedures may involve multiple stages, combinations of interventions, or even partial transitions depending on individual choice, the absence of any statutory or regulatory guidance renders the trigger for compliance wholly uncertain. The law fails to specify whether the obligation arises upon initiation of a procedure, completion of a particular surgery, or culmination of the entire transition process.
- h. This disconnect between the flexible, individual-centric approach under the Rules and the rigid, mandatory requirement under the amended provision creates an unworkable standard. Individuals are left without any clear indication of when their legal obligation crystallises, thereby exposing them to the risk

of non-compliance with a provision that lacks definitional clarity. Such indeterminacy is impermissible, particularly where a mandatory obligation is imposed.

- i. It is submitted that a provision which compels action based on an undefined and shifting factual threshold is manifestly arbitrary. The phrase “undergone surgery”, when read in the context of diverse and multi-stage gender-affirming procedures, fails to provide any intelligible standard and results in uncertainty, overbreadth, and potential misuse. The impugned provision is therefore liable to be struck down as violative of Article 14.
- j. This Hon’ble Court, in *Shayara Bano (Supra)*, in explicit terms held that “manifest arbitrariness” would include legislation or executive action that is “*capriciously, irrationally and/or without adequate determining principles. Also something which is excessive or disproportionate.*” It is evident from the provision itself, that there are no determining principles concerning the when the requirement for making the application before the District Magistrate.

- k. In this regard, it is highlighted that gender reaffirming surgery is a long and painstaking process involving many procedures over the span of 12 months-24 months. In such terms, the vagueness of the provision would severely affect those individuals who are making their applications at an early, intermediate or later stage to affirm their gender in accordance with their exercisable right of self-perception. It is relevant to tabulate the various gender affirming procedures for transitioning from Female to Male and the typical timelines associated with the said procedures as recognised in the Standard Operating Procedures for Medical Treatment of Transgender Persons, 2024- Ministry of Health and Welfare:

Procedure Cluster	Specific Procedure(s)	What it Involves (Combined Description)	Timeline (Procedure + Recovery)

Metoidioplasty Pathway	Metoidioplasty + urethral lengthening + scrotoplasty + testicular prosthesis	Construction of a phallus using hormonally enlarged clitoral tissue, often combined with urethral extension for standing urination, creation of a scrotum, and later insertion of prosthetic implants	Surgery: 2–6 hours (may be staged) Initial recovery: 2–6 weeks Full recovery: 3–6 months (with possible staged additions up to 12 months)
Phalloplasty (Multi-stage Reconstruction)	Radial forearm flap (RFF), Anterolateral thigh (ALT) flap, urethroplasty, erectile implant	Construction of a full-size penis using graft tissue (forearm/thigh), often requiring multiple surgeries including urethral reconstruction and later insertion of erectile devices	Per stage: 6–12 hours surgery Recovery per stage: 4–8 weeks Total timeline: 12–24+ months (multi-stage, revisions common)

Internal Organ Removal	Hysterectomy + salpingo-oophorectomy + vaginectomy	Removal of uterus, ovaries, fallopian tubes, and vaginal canal, often as preparatory or parallel procedures for genital reconstruction	Surgery: 1–4 hours Recovery: 4–8 weeks Full recovery: 2–3 months
Composite / Advanced Combined Surgery	Combined: hysterectomy + oophorectomy + vaginectomy + urethroplasty + clitoral transposition + perineal reconstruction	Highly complex procedures combining internal organ removal with genital reconstruction and urethral modification, sometimes performed in stages or as extended surgeries	Surgery: 6–10+ hours Recovery: 6–8 weeks Full recovery: 6–12 months+ (often staged with revisions)

1. From the survey undertaken by the Petitioners, the following the following data on the status of gender-affirming surgeries among respondents is submitted as direct evidence of the gravity of the definitional exclusion wrought by the 2026 Amendment Act: of the 73 respondents who have

undergone gender-affirming surgery, 52 underwent chest/top surgery, 22 underwent genital/bottom surgery, and 14 underwent hysterectomy. All of these persons would, under the substituted Section 2(k), fall outside the statutory definition of “transgender person” because they are trans men who do not belong to any named socio-cultural community. The compulsory disclosure obligation under Section 7(1A) would apply to their medical institutions, while the Act's protection would be denied to them entirely.

c) **Mandatory Disclosure Under Section 7(1A) Of Gender-Affirming Surgery By Medical Institutions: Unconstitutional Invasion Of Privacy, Autonomy, And Equality**

- m. It is submitted that Section 7(1A), by mandating that medical institutions furnish details of individuals who have undergone gender-affirming surgery to the District Magistrate and the designated authority, introduces a regime of compulsory disclosure of deeply personal and sensitive information without the consent of the individual. The provision shifts control over such information

from the individual to third-party institutions and the State, thereby creating a system of involuntary reporting that is intrusive, disproportionate, and constitutionally impermissible.

d) **Infringement Of Informational Privacy And Decisional Autonomy As Guaranteed Under Article 21 Falling Foul Of Any Legality, Legitimate Aim And Proportionality**

- n. The impugned provision directly infringes the right to privacy, including the right to control dissemination of personal information relating to one's body, identity, and medical history. Information concerning gender-affirming surgery constitutes highly sensitive personal data, lying at the core of decisional and bodily privacy. In *K.S. Puttaswamy (9-judges) (Supra)*, this Hon'ble Court recognised that medical information attracts a reasonable expectation of privacy and that informational self-determination is intrinsic to dignity and liberty. By mandating medical institutions to disclose such information to State authorities, without any requirement of consent, the provision deprives individuals of

control over their personal data and subjects them to involuntary disclosure.

- o. It is submitted that any invasion of privacy must satisfy the tests of legality, necessity, and proportionality. While Section 7(1A) may satisfy the threshold of legality, it fails the tests of necessity and proportionality. No legitimate State interest is identified that necessitates blanket, automatic disclosure of such sensitive information. Further, the provision is overbroad in that it applies uniformly to all individuals undergoing surgery, without regard to whether they seek revised certification or wish to disclose such information. The absence of safeguards, limitations, or consent requirements renders the provision disproportionate and unconstitutional. The following are the relevant portions of the said judgments:

“307. The sphere of privacy stretches at one end to those intimate matters to which a reasonable expectation of privacy may attach. It expresses a right to be left alone. A broader connotation which has emerged in academic literature of a comparatively recent origin is related to the protection of one's identity. Data protection relates closely with the latter sphere. Data such

as medical information would be a category to which a reasonable expectation of privacy attaches. There may be other data which falls outside the reasonable expectation paradigm. Apart from safeguarding privacy, data protection regimes seek to protect the autonomy of the individual. This is evident from the emphasis in the European data protection regime on the centrality of consent. Related to the issue of consent is the requirement of transparency which requires a disclosure by the data recipient of information pertaining to data transfer and use.

308. Another aspect which data protection regimes seek to safeguard is the principle of non-discrimination which ensures that the collection of data should be carried out in a manner which does not discriminate on the basis of racial or ethnic origin, political or religious beliefs, genetic or health status or sexual orientation.

...

310. While it intervenes to protect legitimate State interests, the State must nevertheless put into place a robust regime that ensures the fulfilment of a threefold requirement. These three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based mandate of Article 21. The

first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. Second, the requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary State action. The pursuit of a legitimate State aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not reappreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the threefold requirement for a valid law arises out of

the mutual interdependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms.”

(Emphasis Supplied)

- p. The Amendment fails to meet the three-fold test for the following reasons:
- **Legality:** While the impugned measure is backed by statute, mere existence of law does not satisfy the constitutional requirement. The law must also be just, fair, and non-arbitrary. The provision, by mandating disclosure of sensitive medical information without consent or safeguards, suffers from manifest arbitrariness and therefore fails to meet the substantive requirement embedded within Article 21.
 - **Legitimate State Aim:** The provision does not disclose any legitimate State interest necessitating the compulsory and blanket disclosure of such

sensitive personal data. The objective of identity recognition or administrative processing does not inherently require the State to collect or be furnished with details of medical procedures. The absence of any clearly articulated or rational nexus between the measure and a legitimate aim renders the provision constitutionally infirm.

- **Proportionality:** The measure is manifestly disproportionate. It mandates automatic disclosure in all cases, irrespective of consent, purpose, or necessity, and without any procedural safeguards, data protection standards, or limitations on use. Less restrictive alternatives, including voluntary or consent-based disclosure, are not considered. The provision is therefore overbroad and imposes a disproportionate burden on the individual's right to privacy and informational self-determination.

e) **Breach Of Medical Information Confidentiality
And Doctor–Patient Privilege Violative Of
Article 21**

- q. It is further submitted that Section 7(1A) undermines the foundational principle of confidentiality in the doctor–patient relationship. Medical information, particularly relating to gender-affirming procedures, is among the most sensitive categories of personal data, and its disclosure without consent is recognised as a serious breach of professional and ethical obligations. The provision compels medical institutions to act as reporting agencies of the State, thereby eroding trust in healthcare systems and deterring individuals from seeking necessary medical care. Such a statutory override of confidentiality, without safeguards or justification, is manifestly arbitrary and violative of dignity and privacy. In this regard it is relevant to place reference on this Hon’ble Court’s judgment in *K.S. Puttaswamy (Privacy-9J.)*, wherein the following was held:

“307. The sphere of privacy stretches at one end to those intimate matters to

which a reasonable expectation of privacy may attach. It expresses a right to be left alone. A broader connotation which has emerged in academic literature of a comparatively recent origin is related to the protection of one's identity. Data protection relates closely with the latter sphere. Data such as medical information would be a category to which a reasonable expectation of privacy attaches. There may be other data which falls outside the reasonable expectation paradigm. Apart from safeguarding privacy, data protection regimes seek to protect the autonomy of the individual. This is evident from the emphasis in the European data protection regime on the centrality of consent. Related to the issue of consent is the requirement of transparency which requires a disclosure by the data recipient of information pertaining to data transfer and use.”

(Emphasis Supplied)

- r. In this regard, it is relevant to place reference on the Hon’ble Constitutional Court of South Africa’s decision in *NM v. Smith (2007)*, wherein it was held that the disclosure of private and confidential medical information in a book without the full and informed consent from the individuals was an infringement of their right to privacy. The

relevant portion of the said judgment, as has been relied upon by this Hon'ble Court in *Puttaswamy (Supra)*, reads as follows:

"Private and confidential medical information contains highly sensitive and personal information about individuals. The personal and intimate nature of an individual's health information, unlike other forms of documentation, reflects delicate decisions and choices relating to issues pertaining to bodily and psychological integrity and personal autonomy..."

Individuals value the privacy of confidential medical information because of the vast number of people who could have access to the information and the potential harmful effects that may result from disclosure. The lack of respect for private medical information and its subsequent disclosure may result in fear jeopardising an individual's right to make certain fundamental choices that he/she has a right to make. There is therefore a strong privacy interest in maintaining confidentiality."

(Emphasis Supplied)

- s. It is also relevant to place reliance on this Hon'ble Court's judgment in *Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481*, wherein it was held,

though indicatively, that medical records, treatments, choice of medicine, and any associated findings would amount to personal information under the Right to Information Act, 2005. It was held in categorical terms that such information would be entitled to protections from “*unwarranted invasions of privacy*” unless stipulations of larger public interest were satisfied. It is highlighted that in the present case there has been no justification to the collection and reporting of medical related information serving any public interest purpose to justify the blatant invasion of the constitutionally protected privacy rights of the individual undergoing gender reaffirming surgery. The relevant portion of the judgment is reproduced herein under:

*“70. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. **Medical records, treatment, choice of medicine, list***

of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive.”

(Emphasis Supplied)

f) **The Insertion Of Sub-Section (1a) To Section 7 Leads To The Creation Of A Surveillance Regime Over Gender Identity With The Lack Of Any Safeguards**

- t. The impugned provision effectively establishes a mechanism for the State to collect and maintain records of individuals undergoing gender-affirming surgery. By mandating disclosure to both the District Magistrate and the authority, the provision facilitates the creation of a State-controlled database of gender transition. This introduces an element of surveillance over an individual’s identity and bodily autonomy, which is constitutionally impermissible. The

State cannot, under the guise of administrative regulation, monitor or track the exercise of a fundamental right.

- u. The impugned provision establishes a mechanism for the systematic collection and transmission of information relating to individuals undergoing gender-affirming surgery. By mandating medical institutions to furnish such details to the District Magistrate and the designated authority, it facilitates the creation of a State-controlled repository of highly sensitive personal data, effectively enabling the tracking and profiling of individuals on the basis of their gender identity and medical history. This goes beyond administrative regulation and creates an architecture of identity-based surveillance.
- v. The provision also has a demonstrable chilling effect on the exercise of fundamental rights including Article 19(1)(a). The prospect of automatic reporting to State authorities may deter individuals from undergoing gender-affirming procedures or asserting their gender identity. In ***K.S. Puttaswamy (Supra)***, this Hon'ble Court

recognised that privacy is essential to the exercise of personal choices and identity. Similarly, in *Navtej Singh Johar (Supra)*, the Constitution Bench of this Hon'ble Court affirmed that the State cannot subject intimate aspects of identity to public scrutiny or control. The impugned provision, by rendering such choices visible to the State, undermines this constitutional guarantee. Furthermore, it is relevant to emphasise that this Hon'ble Court in *K.S. Puttaswamy (Supra)* held that the mere collection of information by the State would not satisfy a constitutional breach of privacy. Such measures are constitutionally valid if they satisfy a balancing test—i.e., the restriction is reasonable, serves a legitimate public interest, and contains adequate safeguards against misuse or unnecessary disclosure. In essence, privacy may be limited where justified, but only with strict protections against arbitrary dissemination. The relevant portion of the said judgment is reproduced herein under:

“495. ... Statutory provisions that deal with aspects of privacy would continue to be tested on the ground that they would violate the fundamental right to

privacy, and would not be struck down, if it is found on a balancing test that the social or public interest and the reasonableness of the restrictions would outweigh the particular aspect of privacy claimed. If this is so, then statutes which would enable the State to contractually obtain information about persons would pass muster in given circumstances, provided they safeguard the individual right to privacy as well. A simple example would suffice. If a person was to paste on Facebook vital information about himself/herself, such information, being in the public domain, could not possibly be claimed as a privacy right after such disclosure. But, in pursuance of a statutory requirement, if certain details need to be given for the statutory purpose concerned, then such details would certainly affect the right to privacy, but would on a balance, pass muster as the State action concerned has sufficient inbuilt safeguards to protect this right—viz. the fact that such information cannot be disseminated to anyone else, save on compelling grounds of public interest.”

(Emphasis Supplied)

- w. Further, the absence of any procedural safeguards renders the regime manifestly arbitrary. There is no specification of purpose, no limitation on retention, no requirement of

confidentiality, and no independent oversight. This stands in stark contrast to the principles of data minimisation, purpose limitation, and consent, which have been recognised as essential components of informational privacy. In such terms, the provision converts the exercise of a deeply personal and constitutionally protected choice into a reportable and recordable event subject to State scrutiny, thereby creating a surveillance regime around gender identity. Such a framework is incompatible with the guarantees of dignity, autonomy, and privacy under Article 21, and is liable to be struck down.

- x. The impugned provision is also in direct conflict with the statutory framework under the Digital Personal Data Protection Act, 2023 (“**DPDP Act**”) for the following reasons:
 - Under Section 4 read with Section 6 of the Act, personal data can be processed only for a lawful purpose and on the basis of consent of the Data Principal, unless it falls within

narrowly defined legitimate uses under Section 7. Information relating to gender-affirming surgery constitutes highly sensitive personal data, yet the impugned provision mandates its disclosure by medical institutions without any consent of the individual.

- Further, such disclosure does not fall within any of the recognised “legitimate uses” under Section 7, as it is neither necessary for compliance with any legal obligation of the Data Principal nor for any clearly defined State function that requires such intrusive data collection. The provision therefore authorises processing of personal data in a manner that is *ex facie* contrary to Sections 4, 6, and 7 of the DPDP Act.

g) Violation Of Article 14: Manifest Arbitrariness And Overbreadth:

- y. Section 7(1A) is manifestly arbitrary in that it mandates blanket disclosure without any

intelligible differentia or rational nexus to the object of the Act. The provision applies uniformly to all individuals undergoing surgery, irrespective of whether they seek a revised certificate or consent to such disclosure. It fails to distinguish between situations where disclosure may be necessary and those where it is not, and instead imposes an inflexible and overbroad obligation. The absence of procedural safeguards, limitations on use of data, or mechanisms for consent or review further renders the provision excessive and disproportionate. Such uncanalised and sweeping intrusion into fundamental rights is arbitrary and violative of Article 14.

h) Violation Of Article 15: Discriminatory Targeting Of Transgender Persons:

- z. It is submitted that the impugned provision singles out transgender persons for mandatory disclosure of sensitive medical information for gender identification, a burden not imposed on any other class of persons. Individuals undergoing other forms of medical procedures are not subjected to compulsory reporting of their medical details

to State authorities. The provision thus imposes a unique and intrusive burden based on gender identity, which falls within the ambit of “sex” under Article 15, and results in discriminatory treatment. By subjecting only transgender persons to a regime of compulsory disclosure and potential surveillance, the provision reinforces stigma and treats their identity as a matter requiring State monitoring, thereby violating the guarantee of non-discrimination.

IV. THE INTRODUCTION OF THE PENAL OFFENCES IN SECTION 18 DEMONSTRATES DISPROPORTIONATE AND DILUTED PUNISHMENTS FOR THE GRAVITY OF OFFENCES SUFFERED BY TRANSGENDER PERSONS

1. In addition to the offences previously introduced under the Trans Rights Act 2019, the following offences have been added as tabulated herein under:

Clauses	Offence under Section 18 under Chapter VIII of the Transgender (Protection of Rights) (Amendment) Act, 2026	Punishment (TG Act Amendment)

18(e)	Kidnapping/abduction of adult + causing grievous hurt (incl. mutilation, castration, hormonal/surgical intervention) + intent to compel transgender identity	Min 10 years to life + fine $\geq$ ₹2 lakh
18(f)	Kidnapping/abduction of child + grievous hurt + intent to compel transgender identity	Life imprisonment + fine $\geq$ ₹5 lakh
18(g)	Compelling any person (adult) by force, coercion, deception etc. to present as transgender + using them for begging/forced labour	Min 5 years to 10 years + fine $\geq$ ₹1 lakh
18(h)	Same as (g) but for child	Min 10 years to 14 years + fine $\geq$ ₹3 lakh

2. The following were the penal offences introduced under the Trans Rights Act 2019 which have been retained with the coming of the 2026 Amendment:

Clause	Nature of Offence	Description of Conduct	Punishment (Trans Rights Act 2019 – Retained in 2026 Amendment)

18(a)	Forced / Bonded Labour	Compelling or enticing a transgender person into forced or bonded labour (excluding compulsory public service imposed by Government)	Imprisonment: Minimum 6 months to 2 years + fine
18(b)	Denial of Access to Public Spaces	Denying or obstructing a transgender person from accessing or using public places available to others	Imprisonment: Minimum 6 months to 2 years + fine
18(c)	Forced Displacement	Forcing or causing a transgender person to leave their household, village, or place of residence	Imprisonment: Minimum 6 months to 2 years + fine
18(d)	Harm / Abuse / Endangerment	Causing or tending to cause harm to life, safety, health, or well-being (including physical, sexual, verbal, emotional, or economic abuse)	Imprisonment: Minimum 6 months to 2 years + fine

3. A sub-section wise comparison makes the constitutional infirmity even more apparent. Each of the offences under clauses (a) to (d) corresponds to well-recognised and serious offences suffered by transgender persons, yet the punishment prescribed under the special statute is uniformly minimal. For instance, conduct amounting to forced labour or trafficking under clause (a), which ordinarily attracts stringent punishment, is reduced to a maximum of two years' imprisonment when the victim is a transgender person. Similarly, clause (d), which explicitly includes sexual abuse, collapses offences of the highest gravity into a low and undifferentiated sentencing bracket.
4. This results in a direct failure of the proportionality requirement. The severity of punishment under clauses (a) to (d) bears no reasonable relationship to the gravity of the offences or the harm caused. On the contrary, when read alongside the punishments prescribed for analogous offences under clauses (e) to (h) through the Bharatiya Nyaya Sanhita, 2023, it becomes evident that identical acts are punished far more leniently solely on account of the statutory classification. Such a distinction is not only irrational but also undermines the deterrent purpose of criminal law.
5. Further, the absence of gradation within these sub-sections exacerbates the arbitrariness. By treating vastly different forms of harm, ranging from denial of access to public spaces to acts

of sexual violence, within a single punishment range, the provision disregards established principles of criminal jurisprudence that require sentencing to be proportionate to culpability. This flattening of offences reflects a legislative failure to adequately recognise the seriousness of violence and abuse faced by transgender persons.

6. In this regards, it is relevant to place reliance on this Hon'ble Court's judgment in *Vikram Singh v. Union of India*, (2015) 9 SCC 502, wherein the following was held:

"52. To sum up:

52.1. Punishments must be proportionate to the nature and gravity of the offences for which the same are prescribed.

52.2. Prescribing punishments is the function of the legislature and not the Courts.

52.3. The legislature is presumed to be supremely wise and aware of the needs of the people and the measures that are necessary to meet those needs.

52.4. Courts show deference to the legislative will and wisdom and are slow in upsetting the enacted provisions dealing with the quantum of punishment prescribed for different offences.

52.5. Courts, however, have the jurisdiction to interfere when the punishment prescribed is so outrageously disproportionate to the offence or so inhuman or brutal that the same cannot be accepted by any standard of decency.

52.6. Absence of objective standards for determining the legality of the prescribed sentence makes the job of the Court reviewing the punishment difficult."

(Emphasis Supplied)

7. In effect, the sub-section wise disparity demonstrates that the statute, while ostensibly protective, operates to dilute accountability for serious offences committed against a vulnerable group. This internal inconsistency renders the provision manifestly arbitrary and violative of Article 14, and it fails the proportionality test by adopting means that are neither adequate nor commensurate with the stated objective of protection.
8. A comparative analysis with other special legislations prescribing penalties for offences further demonstrates the failure to meet the disproportionality standards:

A. SECTION 18(a) AND SECTION 16 OF THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976:

Offence	Punishment under TG Act, 2019	Punishment under Special Law
Section 18(a)- Compelling or enticing a transgender person into forced or bonded labour (excluding	Imprisonment: Minimum 6 months to 2 years + fine	Section 16 of the Bonded Labour System (Abolition) Act, 1976- Punishment for enforcement of bonded labour - 3

compulsory public service imposed by Government)		years with fine up to two thousand rupees

Section 18(a) reveals a clear and unjustifiable dilution in penal consequences when compared to the general legal framework governing bonded labour. While Section 16 of the Bonded Labour System (Abolition) Act, 1976 prescribes imprisonment up to three years along with fine for the enforcement of bonded labour, the impugned provision limits punishment to a range of six months to two years for the same or closely analogous conduct when the victim is a transgender person. This creates an anomalous situation where an offence of identical gravity, namely coercion into bonded labour, attracts a lesser punishment solely on account of the identity of the victim. Such under penalisation undermines the deterrent purpose of the law and fails to secure equal protection for transgender persons against exploitative labour practices, rendering the provision manifestly arbitrary and disproportionate.

B. DILUTION OF THE PUNISHMENTS UNDER SECTION 18(d) SEEN IN RELATION TO THE CORRESPONDING PROVISION OF THE BHARATIYA NYAY SANHITA, 2023:

Component of Section 18(d)	Nature of Conduct	Corresponding BNS Offence	Punishment under BNS
Physical abuse	Causing bodily harm, injury	Voluntarily causing hurt / grievous hurt	Hurt: up to 1 year or more; Grievous hurt: up to 7 years or more depending on severity
Sexual abuse	Non-consensual sexual acts, assault	Sexual assault, rape, aggravated sexual offences	10 years to life imprisonment (or more in aggravated cases)
Verbal abuse	Insult, intimidation, humiliation	Criminal intimidation, intentional insult to provoke breach of peace	Up to 2 years, or more if aggravated
Emotional / psychological abuse	Mental harassment, coercion, threats	Criminal intimidation, harassment	Up to 2–7 years depending on gravity
Economic abuse	Deprivation of financial resources, control over livelihood	Cheating, extortion, criminal breach of trust	3 to 7 years or more depending on offence

Combined aggravated abuse	Overlapping physical + sexual + coercive harm	Aggravated offences (including grievous hurt, sexual violence)	7 years to life imprisonment

Section 18(d) suffers from a clear dilution of offences by collapsing a wide spectrum of serious and qualitatively distinct harms into a single, minimal punishment range of six months to two years with fine. The provision encompasses physical abuse, sexual abuse, emotional and economic harm, each of which, in ordinary criminal law, is treated as a separate offence with graded and often severe penalties reflecting the gravity of the conduct. By prescribing a uniform and low sentencing bracket irrespective of the nature or severity of the abuse, the law erases critical distinctions in culpability and consequence. This not only weakens deterrence but also trivialises serious violations of bodily integrity, dignity, and autonomy when committed against transgender persons, resulting in a manifestly disproportionate and constitutionally infirm penal framework.

9. It is also submitted that owing to the new provision suffering from vagueness and ambiguity, transgender persons are likely to suffer from the chilling effect of the provisions for the following reasons:

- a. The newly introduced clauses (e) to (h) are liable to produce a chilling and overbroad effect in their practical application, particularly upon existing community structures such as the gharana system. These provisions, by employing vague expressions such as “inducement”, “allurement”, or “compulsion”, risk mischaracterising long-standing kinship networks and systems of mutual support as inherently coercive. In the absence of clear statutory safeguards or definitional precision, bona fide acts of shelter, care, and community integration may be subjected to criminal scrutiny, exposing already vulnerable communities to targeted prosecution and prolonged legal harassment. It is relevant to place reference on this Hon’ble Court’s judgment in *Shreya Singhal v. Union of India, (2015) 5 SCC 1*, wherein this Hon’ble Court unequivocally held that a penal provision which is vague and undefined is liable to be struck down for violating constitutional guarantees. This Hon’ble Court emphasised that criminal law must clearly delineate the scope of prohibited conduct so as to provide adequate notice to individuals and to prevent arbitrary and discriminatory enforcement. In the present case, the use of indeterminate expressions such as “inducement”, “allurement”, or “compulsion”, without any statutory guidance or limiting principles, renders the impugned provisions susceptible to precisely such arbitrary application, thereby producing a chilling effect on

legitimate and protected forms of association within the transgender community. The relevant portion of the said judgment is reproduced herein under:

“59. It was further held that a penal law is void for vagueness if it fails to define the criminal offence with sufficient definiteness. Ordinary people should be able to understand what conduct is prohibited and what is permitted. Also, those who administer the law must know what offence has been committed so that arbitrary and discriminatory enforcement of the law does not take place.”

(Emphasis Supplied)

- b. Further, the inclusion of “hormonal or surgical procedures” within the ambit of grievous hurt raises serious concerns of overcriminalisation. Gender-affirming care, which is increasingly recognised as essential to dignity, autonomy, and health, may be inadvertently brought within the fold of criminal liability. This creates a chilling effect not only on members of the transgender community seeking transition-related care but also on medical professionals, who may refrain from providing legitimate treatment due to fear of prosecution. The provision is additionally susceptible to misapplication in contexts entirely unrelated to gender identity, such as hormone therapies for medical conditions including PCOS, menopause, or cancer, thereby expanding criminal liability in an arbitrary and unintended manner.

- c. The language employed in the provision also reflects and reinforces problematic stereotypes about transgender identity. By criminalising acts that compel a person to “assume, adopt, or outwardly present” a transgender identity, the law proceeds on an erroneous assumption that gender identity is merely a matter of external presentation or choice. This framing not only undermines the lived realities of transgender persons but also risks conflating voluntary participation in community structures with coercive conduct. It blurs the critical distinction between genuine criminal acts such as abduction or forced harm and consensual association within traditional support systems, which are already regulated under general criminal law.
- d. Additionally, the provisions relating to begging, solicitation, and forced labour are particularly vulnerable to misuse. Given the socio-economic marginalisation of transgender persons, where traditional livelihoods often include forms of solicitation, the criminalisation of such conduct when linked to gender presentation is both overbroad and discriminatory in effect. It creates a heightened risk of arbitrary arrest, custodial abuse, and targeted policing, especially against community leaders and members of gharanas, without any demonstrable legislative basis or empirical justification.

- e. Finally, the introduction of these offences results in unnecessary duplication of existing legal frameworks. Many of the acts sought to be criminalised under clauses (f) and (h), particularly in relation to children, are already comprehensively addressed under general criminal law and specialised statutes. The absence of any demonstrated gap in enforcement or need for additional criminalisation renders these provisions excessive and disproportionate. Instead of strengthening protections, they risk creating confusion, enabling misuse, and disproportionately burdening the very communities the statute seeks to protect.

V. PRACTICAL CONSEQUENCES OF DEFINITIONAL EXCLUSION: LEGAL LIMBO FOR TRANS MEN IN ONGOING MEDICAL TRANSITION, AND THE CONSEQUENTIAL RISK OF CONVERSION PRACTICES AND GENDER-BASED VIOLENCE

1. It is respectfully submitted that the definitional exclusion of trans men and other gender diverse identities from the substituted Section 2(k) of the 2026 Amendment Act produces concrete, irreversible, and life-threatening consequences for individuals who are, at this very moment, in the midst of

gharanas, without any demonstrable legislative basis or empirical justification.

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V. PRACTICAL CONSEQUENCES OF DEFINITIONAL EXCLUSION: LEGAL LIMBO FOR TRANS MEN IN ONGOING MEDICAL TRANSITION, AND THE CONSEQUENTIAL RISK OF CONVERSION PRACTICES AND GENDER-BASED VIOLENCE

1. It is respectfully submitted that the definitional exclusion of trans men and other gender diverse identities from the substituted Section 2(k) of the 2026 Amendment Act produces concrete, irreversible, and life-threatening consequences for individuals who are, at this very moment, in the midst of

medical processes that their bodies and their constitutional rights demand. The survey data placed before this Hon'ble Court by Petitioner Nos. 1 and 2, titled “*Gender-Affirming Care and Identification Survey*”, documents the lived reality of this harm with precision. Of the 204 survey respondents, 144 (70.6%) identify as trans men or FTM (female-to-male) persons, the single largest group within the survey sample, and the group that the substituted Section 2(k) most completely erases. The Petitioner respectfully submits that the deprivation of legal identity for this group is not theoretical. It is imminent. It is ongoing. And the harm it will cause cannot be undone.

2. The Survey records that 98 respondents (48.0%) are *currently* undergoing hormonal therapy at the time of the survey, and a further 46 respondents (22.5%) have completed hormonal therapy, a combined total of 144 respondents, or 70.6% of the survey sample, who have already commenced or completed the primary phase of gender-affirming medical care. An additional 30 respondents (14.7%) desire hormonal therapy but are unable to access it, and 4 respondents have been compelled to discontinue therapy mid-course. Alongside this, 73 respondents (35.8%) have undergone gender-affirming surgery, with a further 53 respondents (26.0%) planning to undergo surgery in the future. Of those who have undergone surgery, the procedures include chest/top surgery (52

respondents), genital/bottom surgery (22 respondents), hysterectomy/uterus removal (14 respondents), and voice masculinisation (6 respondents). These are not lifestyle choices. These are irreversible medical procedures, undertaken under medical supervision, documented by Gender Dysphoria Certificates held by 132 respondents (64.7%), in response to a clinically recognised condition experienced by 180 of 204 respondents (88.2%). The persons reflected in this data are mid-process. They have had surgery. They have injections scheduled. They have pre-operative appointments. And as of 30 March 2026, the statute that was meant to protect them no longer recognises them.

3. The legal consequences of this erasure are immediate and compounding. A trans man who holds a transgender identity certificate issued under Section 6 of the Trans Rights Act 2019, who is currently on testosterone therapy, and who has undergone chest surgery, occupies a position of profound legal uncertainty under the 2026 Amendment Act. He was issued his certificate as a “transgender person” under the Trans Rights Act 2019's definition, which expressly included trans men as persons whose gender did not match their gender assigned at birth. That certificate was issued on the basis of a statutory right that the 2026 Amendment Act has now excised. The amended Section 6 conditions the issuance of such a certificate on a medical board's recommendation; the

amended Section 7(1) *compels* him, if he has undergone surgery, to mandatorily apply for a revised certificate; and Section 7(1A) *compels* the medical institution to disclose his surgery to the District Magistrate. Yet the substituted Section 2(k), which defines who a “transgender person” is, no longer includes him. He is therefore simultaneously *surveilled* by the Act, his surgery is mandatorily reported, his medical details are transmitted to a State official, and *unprotected* by it, because he no longer falls within its definitional scope. He is trapped in a legal structure that imposes obligations without conferring rights. This is not a mere drafting inconsistency. It is a constitutional nullity as it deprives a person of liberty through a procedure that is neither fair, nor just, nor reasonable.

4. It is respectfully submitted that the removal of legal protection from trans men does not merely leave them without statutory rights. It actively exposes them to conversion practices. Conversion therapy, the practice of attempting to change a person's gender identity through psychological coercion, familial pressure, religious intervention, or medical procedure, is not a relic of the past in India. It is a documented, ongoing practice, particularly directed against persons whose gender non-conformity is perceived as amenable to correction. Trans men, who are assigned female at birth, are specifically targeted on the premise that their transmasculine

identity is a deviation from femininity that can be “corrected.” So long as a trans man held legal recognition as a transgender person under the Trans Rights Act 2019, that recognition operated as a statutory shield: it acknowledged that his identity was valid, clinically supported, and legally protected. The 2026 Amendment Act removes that shield. Without statutory recognition, trans men become legally invisible, and legally invisible persons cannot invoke the protection of the law against the families, institutions, and practitioners who seek to override their identity.

5. The vague and overbroad language of the new Section 18 offences compounds this danger. The terms “allurement,” “inducement,” and “undue influence” in Sections 18(g) and (h) are undefined. A doctor who administers testosterone to a trans man could be characterised as using “chemical” means to cause him to “present a transgender identity.” A counsellor who affirms a trans man's identity to his family could be characterised as using “inducement.” A support group for trans men could be characterised as “employing” or “using” persons to “present” as transgender. The result is a statutory framework that criminalises gender-affirming care while simultaneously withdrawing the legal recognition that would have protected its recipients.

6. The most grave consequence of this legal erasure is the exposure of trans men to corrective rape and gender-based sexual violence. Corrective rape, the sexual assault of a person with the expressed or implicit intent of ‘correcting’ their gender identity or sexual orientation, is a form of gender-based violence that has been documented against trans men in India, as well as against lesbian and bisexual women. It is committed by family members, community members, and strangers, frequently with impunity, and it is enabled by two conditions that the 2026 Amendment Act reproduces precisely: first, the absence of legal recognition for the victim's identity, which renders the identity itself illegitimate in the eyes of the perpetrator; and second, the absence of statutory protection, which signals to perpetrators that the State does not regard the victim's identity as worthy of defence.
7. Trans men who are physically perceived as female, who have not undergone chest surgery or who are in the process of transitioning, are particularly vulnerable, as their gender identity is legible to their communities as a deviation from feminine norms that the community may seek to “correct.” The legal recognition conferred by the Trans Rights Act 2019, the transgender identity certificate, the right to self-perceived identity under Section 4(2), the protection from harm under Section 18(d), provided these persons a degree of legal

acknowledgment that, however imperfect in enforcement, placed their identity within the law's protection. The 2026 Amendment Act withdraws that acknowledgment entirely.

8. It is respectfully submitted that a legislature that erases the legal identity of a class of persons in circumstances where such erasure foreseeably exposes them to sexual violence cannot claim to have acted in their welfare. The stated purpose of the Transgender Persons (Protection of Rights) Act is the protection of rights. A statute that achieves the opposite, that removes the only legal protection that stands between a trans man and the violence directed at his identity, is constitutionally indefensible.
9. It is therefore respectfully submitted that taking consideration of the practical consequences, the legal limbo of trans men and trans masculine identities in ongoing medical transition, the chilling effect on gender-affirming healthcare, the enablement of conversion practices, and the heightened risk of gender-based violence including corrective rape, are not incidental or unforeseeable effects of the 2026 Amendment Act. They are the direct, proximate, and inevitable consequence of the legislature's choice to erase trans men from the statutory definition of "transgender person." This erasure, when read alongside the omission of Section 4(2) and the overbroad criminalisation in Section 18, constitutes a violation not merely of Articles 14, 15, 19, and 21 of the

Constitution, but of the most fundamental obligation of the State under Article 21, the obligation to protect life, dignity, and bodily integrity. This Hon'ble Court is respectfully requested to take cognisance of these consequences in the exercise of its constitutional jurisdiction.

10. The practical consequences of the 2026 Amendment Act must also be understood in light of the ongoing efforts of civil society organisations and NGOs to break the historical cycle of economic dependency that has confined many transgender persons, particularly those belonging to the *hijra*, *kinner*, and other socio-cultural communities, to traditional livelihoods centred on begging (*badhai*) and sex work. Organisations and a wide network of community-based NGOs have, in recent years, actively developed educational programmes, skill-building initiatives, vocational training, and livelihood opportunities expressly designed to offer transgender youth an alternative pathway into formal employment and economic participation. This work proceeds from the recognition that economic marginalisation, rooted in the absence of legal identity and social acceptance, is itself a driver of vulnerability. The substituted Section 2(k), by confining statutory recognition to the five named socio-cultural communities, which are historically associated in public perception with *badhai* performance, begging, and sex work, as their defining economic activities, sends an unmistakable

legislative signal to young transgender persons: that the only identities the State will acknowledge are those that are already visibly embedded in these traditional livelihoods.

11. By notifying only those identities that the State apparatus has long catalogued through the lens of *badhai* and sex work, the 2026 Amendment Act structurally incentivises young transgender persons, including those who might otherwise have pursued education, formal employment, or professional careers, to affiliate with, or present themselves as members of, the named communities in order to access any legal protection whatsoever. This is not a constitutionally neutral outcome. It is the legislative entrenchment of precisely the cycle of dependency that the State's own welfare programmes and civil society partners have been working to dismantle. A statute that, by its definitional architecture, pushes young transgender persons toward traditional trans-community livelihoods rather than toward education and employment does not protect rights; it forecloses them.
12. Furthermore, the most grave and irreversible consequence of the 2026 Amendment Act is the heightened risk of suicide among transgender persons, and specifically among trans men and transmasculine youth, who are abandoned by their families and deprived of community support. The Our Health Matters Study documented that transgender persons who had

not been able to change their identity documents reported rates of suicidal ideation of 29%, compared to 10% among those who had successfully done so, a difference that is not merely statistical but reflects the life-or-death significance of legal recognition for the mental health and survival of transgender persons. The same Study found that 22% of those without changed documents had attempted suicide in the past year, compared to 4% among those who had. This data directly establishes the causal relationship between legal erasure and suicide risk.

13. In the context of the 2026 Amendment Act, the removal of statutory recognition for trans men and transmasculine identities does not merely deprive them of documents; it signals that the State regards their identity as legally non-existent. For a young transgender person who has already been abandoned by their family of origin, that signal is devastating. It is precisely in such circumstances, where family support has collapsed, that NGOs, community-based organisations, shelter homes, and peer support networks serve a life-saving function. Organisations such as *Garima Greh*, *Sangama*, and a range of registered societies provide shelter, counselling, crisis intervention, and community support to transgender persons who are abandoned or fleeing family-based violence.

14. The overbroad and vaguely drafted provisions of Section 18(g) and (h) of the 2026 Amendment Act, which criminalise acts by which any person is caused to “adopt, or outwardly present a transgender identity” through “inducement”, “allurement”, or “undue influence”, create a direct and serious risk of prosecution for any NGO, shelter, or community worker who provides support, affirmation, or assistance to a young transgender person. A counsellor who affirms a trans man's identity, a shelter that houses a transmasculine youth who has been expelled from the family home, or a community leader who assists a young person in accessing transition-related care could, under the impugned provisions, be characterised as using “inducement” to cause a person to “present a transgender identity.”
15. This chilling effect is not speculative. It is the foreseeable consequence of vague penal provisions directed at a community whose structures of support are, by the Legislature's own characterisation, linked to transgender identity and livelihood. The result is that the persons most at risk of suicide, young transgender people rejected by their families and dependent upon NGOs for survival, are now in a position where the organisations providing them with life-saving support face criminal exposure under Section 18. Without such support, and without legal recognition, the risk of suicide among this population is not merely elevated; it is

imminent. This Hon'ble Court has consistently held, including in *NALSA* (supra) and in its directions under Article 135.5, that the State must “seriously address the problems being faced by hijras/transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma.” The 2026 Amendment Act, by criminalising the organisations that address these very problems, does not fulfil this direction; it directly repudiates it.

16. The combined effect of the 2026 Amendment Act's definitional exclusion, the incentive structure it creates toward named socio-cultural community affiliation, the withdrawal of educational protections, the criminalisation of community support organisations, and the heightened suicide risk among isolated transgender youth is to structurally push trans men and other excluded gender-diverse persons back into the *dera* system, the hierarchical, *guru-chela* based household formation that organises the *hijra*, *kinner*, and other socio-cultural communities. The *dera* system, described in the ethnographic literature and relied upon by this Hon'ble Court in *NALSA* (supra) and by Chief Justice Chandrachud (as he then was) in *Supriyo* (supra), operates as an alternative family structure for transgender persons who have been rejected by their natal families.

17. While the *dera* system provides community, solidarity, and economic sustenance to those within it, it also, as documented in the scholarship of Serena Nanda and Gayatri Reddy, replicates its own forms of internal hierarchy, economic control, and social constraint. Trans men, who have no equivalent community formation and who, as documented by Treesa Petreena, have historically fought for survival “at an individualised or personal level” precisely because they lack a jamaat structure, are now, under the 2026 Amendment Act, faced with a choice: either affiliate with a *hijra* or *kinner* dera in order to access the statutory protection available to named community members, or remain entirely outside the law's protection.
18. The *dera* system was not designed for, and does not reflect the lived identities of, trans men. For a trans man to present himself as a member of a trans-feminine *hijra* community in order to obtain legal recognition is not a choice; it is a coerced misrepresentation of identity demanded by a statute that offers no alternative. It is the precise constitutional hierarchy that this Hon'ble Court in NALSA (*supra*) condemned, one that conditions legal recognition on conformity to externally imposed community categories rather than on self-identification. It is respectfully submitted that the 2026 Amendment Act, in its practical operation, does not merely fail to protect trans men; it creates the conditions under which

they are compelled to forfeit their identity as the price of survival.

19. Another issue that directly affects transgender persons (as previously defined under the 2019 Act) is that of “corrective” or forced marriages, wherein families seek to enforce heteronormative marital arrangements in order to suppress or “correct” gender identity incongruence. Rooted in patriarchal and heteronormative norms, particularly the expectation that individuals must conform to assigned gender roles through heterosexual marriage, such practices are used to erase or discipline transgender identities. In the Indian context, strong social and familial pressures to ensure marriage as a perceived duty further intensify this phenomenon. For transgender persons, forced heterosexual marriage is not merely a social outcome but a targeted mechanism of control, deployed to deny identity, avoid stigma, and enforce conformity. In this sense, such marriages operate as a form of conversion practice, resulting in significant emotional, psychological, and social harm.

**VI. THE 2026 AMENDMENT ACT CONSTITUTES
RETROGRESSIVE LEGISLATION AND INDEPENDENTLY
VIOLATES THE CONSTITUTIONAL PRINCIPLE OF NON-
REGRESSION**

1. It is respectfully submitted that the constitutional infirmity of the 2026 Amendment Act is also independently impugnable on the ground that it constitutes *retrogressive legislation*. The principle of non-regression stipulates that the State may not use its legislative power to roll back the constitutional floor of protection recognised for a marginalised class, is embedded in the foundational structure of Articles 14, 15, and 21 of the Constitution and has been affirmed by this Hon'ble Court in a consistent line of authority from *N.M. Thomas* (supra) through *NALSA* (supra), *Puttaswamy* (supra), *Navtej Singh Johar* (supra), *Nitisha* (supra), and *Jane Kaushik* (supra).
2. It is respectfully submitted that the retrogressive character of the 2026 Amendment Act is demonstrable with precision by mapping, across all four grounds argued above, the specific rights and protections that have been removed:
 - A. The right to self-perceived gender identity, constitutionally protected under Articles 14, 15, 19(1)(a), and 21 as held in *NALSA* (supra), and codified in Section 4(2) of the Trans Rights Act 2019, has been omitted without replacement or substitution.
 - B. The broad, identity-based umbrella definition of “transgender person” under Section 2(k) of the Trans Rights Act 2019, which encompassed trans

men, trans women, genderqueer persons, and non-binary persons as distinct and independent categories, has been replaced by a closed biological and community-based list that structurally excludes each of those categories.

- C. The facilitative, self-declaration-based procedure for issuance of a certificate of identity under Section 6 of the Trans Rights Act 2019, which the 2020 Rules expressly provided could be completed “without *any medical or physical examination*”, has been replaced by a scheme of prior scrutiny by a medical board and, at the District Magistrate's unguided discretion, consultation with external medical experts.
- D. The optional, individual-centric pathway under Section 7(1) of the Trans Rights Act 2019 has been converted into a mandatory statutory obligation; Section 7(3) and its protective proviso have been omitted; and Section 7(1A) has introduced compulsory third-party disclosure of gender-affirming surgery to State authorities without consent, creating a surveillance architecture over gender transition.

- E. The penal framework under Section 18 of the Trans Rights Act 2019 has been restructured in a manner that introduces vague and overbroad provisions susceptible to misuse against the transgender community itself, and that prescribes punishments disproportionate to the gravity of the offences they nominally address.
 - F. Persons who hold valid certificates of identity issued under the Trans Rights Act 2019 on the basis of self-perceived gender identity, who are currently mid-transition, and who have undergone irreversible medical procedures in reliance upon their statutory recognition, have been rendered legally stateless by the combined operation of all the above provisions.
3. It is respectfully submitted that this Hon'ble Court in *Jane Kaushik* (supra) affirmed that the constitutional equality code under Articles 14 to 16 operates simultaneously at the formal and substantive levels, and that the State bears a positive obligation not to entrench or reproduce cycles of disadvantage for marginalised groups. This positive obligation carries within it a corresponding negative obligation: the State may not legislate in ways that deliberately undo the protections through which existing disadvantage has been partially

remedied. In *Nitisha* (supra), this Court drew upon Professor Sandra Fredman's four-dimensional framework of substantive equality and held that anti-discrimination law must break the cycle of disadvantage, promote respect for dignity, accommodate difference rather than exact conformity, and facilitate full participation in social and political life. The 2026 Amendment Act fails all four dimensions simultaneously and across every one of its challenged provisions. It perpetuates the historical cycle of disadvantage by removing the statutory framework that partially remedied it; it entrenches stigma by characterising self-perceived gender identity as a mere personal choice; it exacts biological and community-based conformity as the price of legal recognition; and it forecloses civic and social participation for the largest identifiable segments of the TGD community. The Act is therefore a composite retrogressive act that offends the constitutional equality guarantee at its most foundational level.

4. It is further respectfully submitted that this Hon'ble Court in *Puttaswamy* (supra) held that constitutional rights, once identified and protected under Part III, represent a floor below which the State cannot descend. Dr. Justice D.Y. Chandrachud (as he then was) held that privacy is "*the ultimate expression of the sanctity of the individual*" and a "*constitutional value which straddles across the spectrum of*

fundamental rights," protecting for each individual "*a zone of choice and self-determination.*" In the specific context of gender identity, this Court affirmed the principles of *NALSA* (supra) as constituting the constitutional minimum and held that the right to self-determined gender identity is integral to the right to life and liberty under Article 21. A legislative act that descends below this constitutionally identified minimum, removing the statutory instantiation of the right, and substituting a regime of State verification and surveillance, violates not merely the specific articles under which the right has been located, but the constitutional structure of fundamental rights protection itself.

5. It is respectfully submitted that three conditions are simultaneously present in this case, each of which independently elevates the standard of constitutional review. First, the group whose protections have been removed is a historically marginalised class whose systemic exclusion has been judicially documented at length by this Court in *NALSA* (supra) and affirmed in every subsequent constitutional decision on TGD rights. Second, the retrogressive act is architecturally deliberate, as the Statement of Objects and Reasons of the 2026 Amendment Act demonstrates with unusual candour, it expressly characterises the right to self-perceived gender identity as an "*acquirable characteristic*" and a "*personal choice*" undeserving of statutory protection, a

characterisation that directly contradicts the binding holdings of this Court. Third, the protections that have been removed were themselves the direct product of binding judicial directions issued by this Court in *NALSA* (supra), which the legislature was constitutionally obliged to implement and is constitutionally prohibited from repudiating by ordinary statutory enactment. Where these three conditions are present together, a judicially recognised vulnerable class, a deliberately retrogressive act, and a derogation from binding judicial directions, the standard of justification that the State must discharge is at its highest.

6. It is respectfully submitted that the minimum the constitutional non-regression standard requires is: (a) a compelling public interest sufficient to justify the specific degree of rollback effected; (b) a demonstration that less retrogressive alternatives were considered and rejected for principled reasons; and (c) a specific justification for each element of the withdrawal of protection. The Statement of Objects and Reasons of the 2026 Amendment Act discharges none of these requirements. It engages in no proportionality analysis. It identifies no public interest capable of sustaining the retrogression. It considers no alternative to wholesale definitional exclusion. The 2026 Amendment Act accordingly fails the non-regression standard at every level of analysis,

and the burden of justification that lies with the State has not been discharged.

7. It is respectfully submitted that this conclusion is powerfully reinforced by the international material set out in the preceding section. The United Nations Committee on Economic, Social and Cultural Rights, in *General Comment No. 3 (1990)*, held that "*any deliberately retrogressive measures... would require the most careful consideration and would need to be fully justified,*" and placed the burden of proof upon the State. *General Comment No. 20 (2009)* confirms that gender identity falls within the protected ground of "*other status*" under Article 2(2) of the ICESCR and that the non-regression principle applies with full force in the context of the rights of gender diverse persons. *General Comment No. 14 (2000)* on the right to the highest attainable standard of health, relied upon by this Court in *NALSA* (supra) in the context of healthcare access for TGD persons, holds at paragraph 32 that retrogressive measures must be justified after "*the most careful consideration of all alternatives.*" The Yogyakarta Principles Plus 10 (2017), Principle 31 and its Supplementary State Obligations, direct States to establish simplified, self-determination-based procedures for legal gender recognition and affirm that the movement from a self-declaration model to a medicalised, externally-verified model is a retrogression that no State may effect while remaining

compliant with its international obligations. The convergence of constitutional and international authority on this point is complete.

6. It is therefore respectfully submitted that, independently of and in addition to the specific violations of Articles 14, 15, 16, 19(1)(a), and 21 established in Grounds I through IV above, the Transgender Persons (Protection of Rights) Amendment Act, 2026, taken as a whole, constitutes an act of unconstitutional retrogression that deploys legislative power to dismantle the constitutional floor of protection for TGD persons as recognised and directed by this Hon'ble Court. No compelling public interest has been identified, no less retrogressive alternative has been considered, and the burden of justification that lies upon the State has not been discharged. The Act is accordingly liable to be declared *ultra vires* the Constitution of India in its entirety on this ground alone, and each of its challenged provisions is additionally liable to be struck down for the specific violations.
7. That the Petitioners have not filed any other petition before this Hon'ble Court or any other court seeking the same relief.
8. That, the present Petition is filed bona fide in public interest for the benefit of a large and identifiable class of transgender persons who, owing to entrenched social stigma,

discrimination, and structural barriers, are unable to effectively access welfare schemes, healthcare services, including gender-affirming care, and legal entitlements, and are consequently impeded in the full realisation and enforcement of their fundamental rights under the Constitution of India.

9. That, the Petitioners are directly concerned with and affected by the issues raised herein. However, the reliefs sought are systemic, and policy-oriented in nature, aimed at addressing structural deficiencies in the implementation of transgender welfare measures and sensitisation frameworks, and are not confined to the redressal of any individual grievance.
10. That, no civil, criminal, or revenue litigation having a direct nexus with the systemic constitutional issues concerning the rights, dignity, and welfare of transgender persons raised in the present Petition is pending or has been decided against the Petitioners before this Hon'ble Court or any other Court.
11. That, no other Public Interest Litigation seeking substantially similar or identical systemic reliefs in relation to transgender welfare schemes, sensitisation measures, and enforcement of constitutional protections has been filed by the Petitioners before this Hon'ble Court or any other Court.
12. That, all relevant documents in possession of the Petitioners have been disclosed and annexed to the present Petition, and

the contents of the Petition are true and correct to the best of the Petitioners' knowledge and belief.

PRAYER

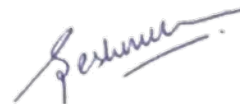
13. In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-
 - a. Issue writs, order, or direction in the nature of *certiorari* declaring Section 2(k) as substituted by the Transgender Persons (Protection of Rights) Amendment Act, 2026, to be *ultra vires* Articles 14, 15, 19(1)(a), and 21 of the Constitution of India, and to strike down the same;
 - b. Issue a writ, order, or direction declaring the omission of Section 4(2) of the Transgender Persons (Protection of Rights) Act, 2019 by the 2026 Amendment Act to be unconstitutional and void, and directing that Section 4(2) be read as continuing in force;
 - c. Issue a writ, order, or direction declaring the amendments to Section 6(1) of the Transgender Persons (Protection of Rights) Act, 2019 by the 2026 Amendment Act to be *ultra vires* the Constitution and void;

- d. Issue a writ, order, or direction declaring amendments to Section 7 of the Transgender Persons (Protection of Rights) Act, 2019 by the 2026 Amendment Act, including the insertion of Section 7(1A) and the substitution of “may” for “shall” in Section 7(1) & (2), to be *ultra vires* Articles 14, 15, 19(1)(a), and 21 of the Constitution of India, and void;
- e. Issue a writ, order, or direction, declaring that the penal provisions under Section 18(a)–(d) as unconstitutionally disproportionate and the provisions under Section 18(e)–(h) as void for vagueness and overbreadth, and direct that appropriate graded and proportionate penalties be prescribed.
- f. Issue a writ, order, or direction, declaring that the right to self-perceived gender identity is a fundamental right protected under Articles 14, 15, 19(1)(a), and 21 of the Constitution, and directing the Union of India and all State Governments to give effect to that right in accordance with the directions of this Hon'ble Court in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438;

- g. Issue appropriate writ(s), order(s), or direction(s), including a writ in the nature of *mandamus*, directing the Respondents to frame, notify, and effectively implement comprehensive and inclusive welfare schemes for transgender and gender diverse persons, including healthcare, with access to gender-affirming care, education, employment, housing, and social security, and to ensure continuity of and non-discriminatory access to existing entitlements, without arbitrary or invasive conditions, in consonance with Articles 14, 15, 19, and 21 of the Constitution of India;
- h. Issue an appropriate writ(s), order(s), or direction(s) directing the Respondents to design and implement mandatory sensitisation and awareness programmes, and to establish effective monitoring and grievance redressal mechanisms, for public officials, law enforcement agencies, healthcare providers, and educational institutions, so as to secure the full and effective realisation of the rights recognised in *NALSA* (supra);
- i. Grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONER
SHALL, AS IN DUTY BOUND EVER PRAY**

FILED BY:

A handwritten signature in blue ink, appearing to read 'Shraddha Deshmukh', with a horizontal line underneath.

**SHRADDHA DESHMUKH
(ADVOCATE FOR THE PETITIONER)**

DATE: 15.04.2026

PLACE: NEW DELHI

1. Amendment of Section 2:**Sec. 2. Definitions.—In this Act, unless the context otherwise requires,—**

‘(k) “transgender person” means— (i) a person having such socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:— (a) primary sexual characteristics; (b) external genitalia; (c) chromosomal patterns; (d) gonadal development; (e) endogenous hormone production or response, or such other medical conditions; or (ii) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise: Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.’.

2. In section 4 of the principal Act, sub-section (2) shall be omitted

Sec. 4. Recognition of identity of transgender person.—“Section 4 (2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.”

3. Amendment of Section 6.

Sec. 6. Issue of certificate of identity.—(1) The District Magistrate, District Magistrate, after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts, shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

4. Amendment of Section 7.

Sec. 7. Change in gender.—(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person shall make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(1A) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed.;

(2) “(2) A person referred to in sub-section (1) shall also make an application to the District Magistrate who shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.”;

5. Amendments to Section 18.

Sec. 18. Offences and penalties— (a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine; (b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine; (c) forces or causes a transgender person to leave household, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

(e) kidnaps or abducts any adult person and causes— (i) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or (ii) permanent or severe injury to the body or bodily functions of such person, with the intent of, or in the course of, compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees;

(f) kidnaps or abducts any child and causes— (i) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or (ii) permanent or severe injury to the body or bodily functions of such child, with the intent of, or in the course of, compelling such child to assume, adopt, or outwardly present a transgender identity, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;

(g) by force, threat, coercion, allurement, deception, inducement, or undue influence— (i) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and (ii) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and

(h) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise— (i) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and (ii) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which shall not be less than three lakh rupees.”.

ANNEXURE P-1

AS PASSED BY THE RAJYA SABHA
ON 24TH APRIL, 2015

Bill No. XLIXC-C of 2014

THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014

ARRANGEMENT OF CLAUSES

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1. Short title, extent and commencement.
2. Definitions.
3. Guiding Principles.

CHAPTER II**RIGHTS AND ENTITLEMENTS**

4. Equality and non-discrimination.
5. Transgender children.
6. Right to life and personal liberty.
7. Right to live in the community.
8. Right to integrity.
9. Protection from torture or cruel, inhuman or degrading treatment or punishment.
10. Protection from abuse, violence and exploitation.
11. Right to home and family.
12. Freedom of speech, etc.

CHAPTER III**EDUCATION**

13. Duty of educational institutions to provide inclusive education to transgender students.
14. Adult education for transgender persons.

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15. Vocational training and self-employment.
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19. Rehabilitation of transgenders.
20. Leisure, culture and recreation.
21. Reservation in primary, secondary and higher educational institutions.
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AS PASSED BY THE RAJYA SABHA
ON 24TH APRIL, 2015

Bill No. XLIXC-C of 2014

THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014

(AS PASSED BY THE RAJYA SABHA)

A

BILL

to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by the State and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Rights of Transgender Persons Act, 2014.

Short title,
extent and
commencement.

5 (2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires;

Definition.

(a) 'abuse' includes verbal and physical abuse;

10 (b) 'appropriate government' means;

- (i) In relation to an establishment of the Central Government, or an establishment, wholly or substantially owned or financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 1924, or a Union Territory without legislature, or the provider of a service which pertains to List 1 in Schedule VII of the Constitution, the Central Government; 2 of 1924. 5
- (ii) In all other cases, the State Government or, as the case may be, the Government of a Union Territory with legislature. 5
- (b) 'barrier' means any factor including attitudinal, cultural, economic, institutional, political, religious, social or structural factors which hampers the full and effective participation, of transgender persons in society; 10
- (c) 'discrimination' means any distinction, exclusion or restriction on the basis of gender identity and expression which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination, including denial of reasonable accommodation; 15
- (d) 'establishment' means and includes;
- (i) Departments and Ministries of Government;
- (ii) Local authorities and authorities or bodies owned, controlled or aided by the Central or State Government; 20
- (iii) Any statutory or non-statutory body created, owned, financially or administratively controlled or aided by the Central or State Government or any such body performing public or civic functions and includes Government Companies as defined in Section 617 of the Companies Act, 1956; 25
- (iv) Any company, firm, cooperative or other society, association, trust, agency, institution, organization, union, industry, supplier of goods or services, factory or other non-statutory body which is not covered under clause (a) to (c) and provides services as defined in clause (r) section 2; 30
- (e) 'exclusive transgender rights court' means a court notified under section 47 of this Act;
- (f) 'exploitation' means using a transgender person to one's own advantage to which one is not otherwise entitled, or to the latter's disadvantage, to which such latter person is not otherwise liable; 35
- (g) 'higher education' means a course of education which can be pursued after completing twelve years of school education;
- (h) 'human rights' shall have the meaning assigned to it in Clause (d) of Section 2 of the Protection of Human Rights Act, 1993; 10 of 1994. 40
- (i) 'inclusive education' means a system of education wherein all students learn together, most or all of the time; 40
- (j) 'institution' means an institution for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons;
- (k) 'local authority' means a municipality, a Cantonment Board, a Panchayat or any other authority, established under an Act of Parliament, or a State Legislature to administer the civic affairs of any habitation as defined in or under such Act; 45

(l) 'National Commission' means the National Commission for Transgender Persons constituted under Section 26 of this Act.

(m) 'prescribed' means prescribed by rules made under this Act;

5 (n) 'public building' means a building, irrespective of ownership, which is used and accessed by the public at large; and includes its entrance, exit, parking space, footpath and other appurtenant lands;

(o) 'reasonable accommodation' means an accommodation needed to ensure transgender persons the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

10 (p) 'registered organization' means an association of transgender persons, or a voluntary, non-governmental or charitable organization or trust, society, non-profit company working for transgender persons, duly registered under an Act of Parliament or a State Legislature;

15 (q) 'rehabilitation' refers to a process aimed at enabling transgender persons to attain and maintain maximum independence, full physical, sensory, intellectual psychiatric, social and vocational ability, and inclusion and participation in all aspects of life

20 (r) 'services' means services provided by members of any profession or trade, or provided by any Government, local authority or establishment and includes services relating to banking and finance; education; health; insurance; rehabilitation; entertainment recreation and hospitality; transport or travel; and telecommunications;

(s) 'State Commission' means a State Commission for Transgender Persons constituted under Section 38 this Act.

25 (t) 'transgender person' means a person, whose sense of gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as —*kinnars, hijras, aravanis, jogtas* etc.

(u) 'violence' means causing physical or mental harm or injury.

30 **3.** The appropriate Government and local authorities shall, subject to the provisions of this Act and any other law for the time being in force, take the following necessary steps to secure for transgender persons:—

Guiding Principles.

(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

35 (b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of transgender persons as part of human diversity and humanity;

(e) equality of opportunity; and

40 (f) accessibility.

CHAPTER II

RIGHTS AND ENTITLEMENTS

Equality and Non-Discrimination.	4. (1) The appropriate Government shall take all necessary steps to ensure that transgender persons enjoy the right of equality guaranteed by article 15 of the Constitution of India on an equal basis with others.	5
	(2) The appropriate Government shall take all necessary steps to ensure reasonable accommodation for the transgender persons.	
Transgender Children.	5. (1) The appropriate Government and local authorities shall take all necessary measures to ensure that transgender children enjoy human rights on an equal basis with other children.	
	(2) The appropriate Government and local authorities shall ensure that all transgender children shall have on an equal basis with all other children a right to freely express their views on all matters affecting them; and provide them appropriate support for the exercise of the right.	10
Right to Life and Personal Liberty.	6. (1) The appropriate Government shall take necessary steps to ensure that transgender persons enjoy the right to life with dignity and to personal liberty guaranteed by article 21 of the Constitution of India on an equal basis with others.	15
	(2) No person shall be deprived of his personal liberty only on the ground of being a transgender.	
Right to live in Community.	7. (1) All transgender persons shall have the right to live in the community with choices equal to others.	20
	(2) The appropriate Government and local authorities shall take appropriate measures to ensure full enjoyment of the right mentioned in sub-section (1) of section 7 by:—	
	(a) ensuring that transgender persons have access to a range of in-house, residential and other community support services, including assistance necessary to support living and inclusion with community; and	25
	(b) making community services and facilities for the general population available on an equal basis to transgender persons.	
Right to Integrity.	8. Every transgender person has a right to respect for his or her physical and mental integrity on an equal basis with others.	
Protection from torture or cruel, inhuman or degrading treatment or punishment.	9. The appropriate Government and local authorities shall take all appropriate administrative and other measures to protect persons from being subjected to torture, or cruel, inhuman or degrading treatment or punishment.	30
Protection from abuse, Violence and Exploitation.	10. (1) The appropriate Government and local authorities shall take all appropriate administrative, social, educational and other measures to protect transgender persons, both within and outside the home, from all forms of abuse, violence and exploitation.	35
	(2) Any person, or registered organization who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any transgender person, may give information about it to the Executive Magistrate in whose jurisdiction such incident occurs or is likely to occur, who, on receipt of such information, shall take immediate steps to stop it or prevent its occurrence as the case may be, or pass such order as he deems fit for the protection of such transgender person including an order,—	40
	(a) to rescue the victim by authorizing the police or any reliable organization working for transgender persons to provide for the safe custody, or rehabilitation of such transgender person, or both, as the case may be;	45

(b) for providing protective custody to the transgender person if such person so desires; and

(c) to provide for maintenance to such transgender person.

(3) No civil or criminal liability shall be incurred by any person who in good faith furnishes information under sub-section (2) of section 10;

(4) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any transgender person shall inform the aggrieved person of:

(a) the right to apply for protection under sub-section (2) of section 10.

(b) the particulars of the nearest organization or institution working for the rehabilitation of transgender person who have been subject to abuse, violence or exploitation;

(c) the particulars of the Executive Magistrate having jurisdiction to provide assistance to aggrieved persons;

(d) the right of the transgender person to free legal services under the Legal Services Authorities Act, 1987 and any other services offered by the National Legal Services Authority or the State Legal Services Authority for the benefit of transgender persons; and

(e) the right to file a complaint under the relevant provisions of the Indian Penal Code, 1860 or any other law dealing with such crimes:

Provided that nothing in this section shall be construed to free such Police Officer of his obligation to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

(5) If the Executive Magistrate finds that the alleged act or behaviour would also be an offence under the Indian Penal Code, 1860 or under any other law imposing criminal sanctions on such acts, he may forward a complaint to that effect to the judicial or metropolitan magistrate, as the case may be, having jurisdiction in the matter, whereupon the latter shall act on it forthwith in accordance with law.

(6) The appropriate Government shall take all appropriate measures to prevent abuse, violence and exploitation against transgender persons by, *inter alia* providing information and raising awareness on:

(a) taking cognizance of incidents of abuse, violence and exploitation;

(b) the legal remedies available against such incidents;

(c) steps to be taken for avoiding such incidents;

(d) procedure for reporting such incidents; and

(e) steps required for the rescue, protection and rehabilitation of transgender persons who have been victims of such incidents.

11. (1) No child who is a transgender shall be separated from his or her parents on grounds of being a transgender except on an order of competent Court, if required in the best interest of the child.

Right to
Home and
Family.

(2) Where the immediate family is unable to care for a transgender child, the competent Court shall make every effort to place such child within his or her extended family, or within the community in a family setting.

Explanation—‘Family’ means a group of people related by blood, marriage or adoption to a transgender person.

Freedom of
Speech, etc.

12. The appropriate Government and local authorities shall take steps to ensure that transgender persons are able to enjoy the rights regarding freedom of speech, etc., provided by Article 19 of the Constitution of India, on an equal basis with others.

CHAPTER III

EDUCATION

5

Duty of
Educational
Institutions
to provide
Inclusive
Education to
Transgender
Students.

13. The appropriate Government and local authorities shall ensure that all educational institutions funded or recognized by them, provide inclusive education, and *inter alia*,—

(i) admit transgender students without discrimination and provide them education as also opportunities for sports, recreation and leisure activities on an equal basis with other;

10

(ii) provide reasonable accommodation of the individual's requirements;

(iii) provide necessary support in environments that maximize academic and social development, consistent with the goal of full inclusion;

(iv) monitor participation, progress in terms of attainment levels, and completion of education, in respect of every transgender student.

15

Adult
Education for
Transgender
Persons.

14. The Appropriate Government and local authorities shall ensure participation of transgender persons in adult education and continuing education programmes on an equal basis with others.

CHAPTER IV

20

SKILL DEVELOPMENT & EMPLOYMENT

Vocational
Training and
Self-
Employment.

15. (1) The appropriate Government shall formulate schemes and programmes to facilitate and support employment of transgender persons especially for their vocational training and self-employment.

(2) The appropriate Government shall institute mechanisms for provision of loans at concessional rates to transgender persons for self-employment ventures, and for marketing of their products.

25

Non-
Discrimination
in
Employment.

16. (1) No establishment shall discriminate against any transgender person in any matter relating to employment including but not limited to recruitment, promotion and other related issues.

30

(2) Any transgender person, if eligible for any post which is to be filled, shall have the right to appear for selection and hold the post if selected.

CHAPTER V

SOCIAL SECURITY, HEALTH, REHABILITATION & RECREATION

Social
Security.

17. (1) The appropriate Government shall promulgate necessary schemes and programmes to safeguard and promote right of transgender persons to adequate standard of living and living conditions to enable them to live independently and in the community.

35

(2) the schemes under sub-section (1) of section 17 shall *inter-alia* provide:—

(a) safe and hygienic community centres with decent living conditions in terms of nutritious food, sanitation, health care and counselling;

40

(b) facilities for persons including transgender children who have no families or have been abandoned, or are without shelter or livelihood;

(c) access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas.

(d) pension to transgender persons subject to such income ceiling as may be prescribed;

(e) unemployment allowance to unemployed transgender persons registered with special employment exchange for more than two years and who could not be placed in any gainful occupation.

18. (1) The appropriate Government and local authorities shall take necessary measures to provide transgender persons:—

Health case facilities.

(a) separate HIV Sero-surveillance Centres since they face several sexual health issues;

(b) sex reassignment surgery, free of cost;

(c) barrier-free access in the hospitals and other healthcare institutions and centres;

(2) To fulfil its obligation under this Section, the appropriate Governments shall make schemes and programmes with participation and involvement of transgender persons and care-givers that *inter alia* makes provision for coverage of medical expenses and therapeutic intervention by a comprehensive insurance scheme for transgender persons.

19. (1) The appropriate Government and local authorities shall undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all transgender persons.

Rehabilitation of transgenders.

(2) The service and programmes shall be designed so to begin at the earliest possible stage and to be based on a comprehensive assessment of issues faced by transgender persons.

(3) For purposes of sub-section (1) of section 19, read with sub-section (2), the appropriate Government and local authorities shall, subject to fulfilment of financial and other norms, and availability of budgetary allocation, grant financial assistance to non-governmental organizations.

(4) The appropriate Government and local authorities, while formulating rehabilitation policies, shall consult the non-governmental organizations working for the cause of transgender persons.

(5) Without prejudice to the generality of sub-section (1) of section 19, the appropriate Government shall by notification formulate schemes to provide aid to transgender persons.

20. (1) The appropriate Government and local authorities shall take suitable measures to promote and protect the right of all transgender persons to have a cultural life and to participate in leisure and recreational activities on an equal basis with others.

Leisure, Culture and Recreation.

(2) Without prejudice to the general obligation in sub-section (1) of section 20, such measures shall include,—

(a) Sponsoring of transgender film, theatre, music and dance festivals;

(b) establishment of a transgender history museum which chronicles and interprets the historical experiences of transgender persons;

21. All Government institutions of primary, secondary and higher education and all primary, secondary and higher education institutions receiving aid from the Government shall reserve two percent of the total seats in each class or course for transgender persons:

Reservation in Primary, Secondary and Higher Educational Institutions.

Provided that transgender persons are not to be prevented from competing for seats which are not reserved for them.

22. Every appropriate Government shall reserve, in every establishment under them, not less than two per cent of the vacancies meant to be filled by direct recruitment, for transgender persons.

Reservation of Posts for Transgender Persons.

Incentive to employers in the Private Sector.

23. The appropriate Government shall, within a period of one year from the commencement of this Act, provide incentives to employers in the private sector to ensure that at least two per cent of their work force is composed of transgender persons within a period of five years from the commencement of the Act.

Special Employment Exchange.

24. (1) The appropriate Government may, by notification, specify that the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for transgender persons that have occurred or are about to occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such information. 5

(2) The form in which and the intervals of time for which information or returns shall be furnished and the particulars, they shall contain shall be such as may be prescribed. 10

CHAPTER VI

DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENT

Awareness Raising.

25. (1) The appropriate Government in consultation with the National or State Commission, as the case may be, shall conduct, sponsor, encourage, support or promote on a regular and continuous basis information campaigns and sensitization programmes to ensure that the rights recognized in this legislation are respected, protected and promoted. 15

(2) The campaigns shall aim at enabling both state and civil society to comprehend transgenderism as an integral part of the human condition, to recognize the capabilities and contributions of transgender persons, and to combat the stereotypes, prejudices and harmful practices which impede the participation of transgender persons on an equal basis with others; 20

(3) Without prejudice to the general awareness raising obligation in sub-section (1) of section 25, such programmes, campaigns and workshops shall *inter-alia*,—

(a) Promote values of inclusion, tolerance, empathy and respected for diversity; 25

(b) advance recognition of the skills, merits and abilities of transgender persons and of their contributions to the workforce, labour market and professional fee;

(c) Foster respect for the decisions made by transgender persons on all matters related to family life, relationships, bearing and raising children;

(d) Provide orientation and sensitization at the school, college, university and professional training level on the human condition of transgenderism and the rights of transgender persons; and 30

(e) Provide orientation and sensitization on transgenderism and rights of transgender persons to employers, administrators and co-workers.

CHAPTER VII

35

NATIONAL AND STATE COMMISSIONS FOR TRANSGENDER PERSONS

A. National Commission

Constitution of National Commission for Transgender Persons.

26. (1) The Central government shall, by notification, constitute a body to be known as the National Commission for transgender persons to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act. 40

(2) The Commission shall consist of the following Members, namely,—

(a) a Chairperson, who is an eminent person with a distinguished record of service in the field of transgender rights and rehabilitation; and

(b) six members, of whom at least three shall be transgender persons and to be popularly acknowledged by the representatives of the transgender community and the other three members must have a distinguished record of service in the fields of rehabilitation, advocacy, law, relating to transgenders. 45

(3) The Chairperson and the Members shall be appointed by the Central Government on the recommendation of a Selection Committee with such composition as may be prescribed.

(4) The Headquarters of the National Commission should be at such place as the Central Government may by notification, specify.

5 **27.** The Chairperson and a Member of the National Commission shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty five years, whichever is earlier and shall be eligible for reappointment for another term of three years.

Term of office of Chairperson and members.

10 **28. (1)** The Chairperson or any Member may, by notice in writing under his hand addressed to the President, resign his office.

Resignation and Removal of Chairperson.

(2) Subject to the provisions of sub-section (3) of Section 28, the Chairperson or any Member shall only be removed from his office by order of the President on the ground of proven misbehaviour or incapacity has, on an inquiry held in accordance with the procedure, prescribed under this Act.

15 **(3)** Notwithstanding anything in sub-section (2) of Section 28, the President may, by order, remove from office the Chairperson or any Member, if the Chairperson or such Member, as the case may be:—

(a) is adjudged an insolvent; or

20 (b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.

25 **29. (1)** In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

Member to act as Chairperson or to Discharge his Functions in Certain Circumstances.

30 (2) If the Chairperson is unable to discharge his functions', owing to absence on leave or otherwise, one of the Member, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

30. The salaries and allowances payable to and other terms and conditions of service of, the Chairperson and the Members shall be such as may be prescribed:

Terms and Conditions of Service of Chairperson and Members.

35 **Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a member shall be varied to his disadvantage after his appointment.**

31. No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

Vacancies, etc., not to Invalidate the Proceedings of the Commission.

40 **32. (1)** The Commission shall meet at such time and place as the Chairperson may think fit.

Procedure to be Regulated by the Commission.

(2) Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down, by regulations, its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorised by the Chairperson in this behalf.

Officers and
Other Staff
of the
Commission.

33. (1) The Central Government shall make available to the Commission an officer of the rank of an Additional Secretary to the Government of India who shall be the Secretary to the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative and technical officers and staff, as it may consider necessary. 5

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) of section 33 shall be such as may be prescribed.

Functions of
the
Commission.

34. The Commission shall perform all or any of the following functions, namely:—

(a) identify, *suo-moto*, or on a representation received, provisions of any laws, policies, programmes and procedures, which are inconsistent with this Act, and recommend necessary corrective steps; 10

(b) review and coordinate the activities of all Departments of Government and other Governmental and non-Governmental Organizations which are dealing with matters concerning transgender persons; 15

(c) inquire, *suo-moto* or on a complaint by an affected transgender person or any person or organization on his behalf, with respect to deprivation of his rights and safeguards in respect of matters for which the Central Government is the appropriate Government and take the up the matter with the appropriate authorities for corrective action, as necessary; 20

(d) intervene in any proceeding involving any allegation of violation of the rights of transgender persons pending before a court with the approval of such court;

(e) review the safeguards provided by or under this Act or any law for the time being in force for the protection of rights of transgender persons and review the factors that inhibit the enjoyment of rights of transgender persons and recommend appropriate remedial measures; 25

(f) study treaties and other international instruments on the rights of transgender persons and make recommendations for their effective implementation;

(g) undertake and promote research in the field of the rights of transgender persons; 30

(h) promote awareness of the rights of transgender persons and promote awareness of the safeguards available for their protection;

(i) monitor implementation of the provisions of this Act and of schemes, programmes, etc., meant for transgender persons;

(j) monitor utilization of funds disbursed by the Central Government for the benefit of transgender persons; and 35

(k) such other functions as the Central Government may assign.

Action by
Appropriate
Authorities
on the
Commission's
Recommendations made
after Enquiry.

35. Whenever the Commission makes a recommendation to an authority in pursuance of clause (c) of Section 34, that authority shall take necessary action on it, and inform the Commission of the action taken within three months from the date of receipt of the recommendation: 40

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the Commission within the above period of three months, and shall also inform the aggrieved person.

5 of 1908. **36. (1)** The Commission shall, for the purpose of discharging its functions under the Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely,— Powers of the Commission.

- 5 (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) reinvesting for any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents; or
- 10 (f) any other matter which may be prescribed.

(2) The Commission may, while investigating a complaint, make written requests to furnish information, question people, review documents or visit the premises to determine upon the nature of violation or non-compliance of regulations.

15 (3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code 1860 and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973

45 of 1860.
2 of 1974.

37. (1) The National Commission shall submit an annual report to the Central Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report. Annual and Special Reports of the Commission.

(2) The Central Government shall cause the annual and special reports of the Commission to be laid before each House of Parliament, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission, and the reasons for non-acceptance of the recommendations, if any.

25

B. State Commission

38. (1) Every State Government may constitute a body to be known as the State Commission (name of the State) for transgender persons to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter. Constitution of State Commission for Transgender Persons.

30 (2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—

- (a) a Chairperson, who is an eminent person with a distinguished record of service in the field of transgender rights; and
- 35 (b) six members, of whom at least three shall be transgender persons and to be popularly acknowledged by the representatives of the transgender community and the other three members must have a distinguished record of service in the field of rehabilitation, advocacy, law, relating to transgenders.

(3) The Chairperson and the Members shall be appointed by the State Government on the recommendation of Selection Committee with such composition as may be prescribed.

40 (4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire *suo-moto* or on a complaint by an affected transgender person or any person or organization on his behalf, with respect to deprivation of his rights and safeguards in respect of matters for which the State Government is the appropriate Government.

45

Resignation
and Removal
of
Chairperson
and Members.

39. (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the Governor resign his office.

(2) Subject to the provisions of sub-section (3) of section 39, the Chairperson or any Member shall only be removed from his office by order of the Governor on the ground of proved misbehaviour or incapacity has, on inquiry held in accordance with the procedure prescribed under this Act. 5

(3) Notwithstanding anything in sub-section (2) of section 39 the Governor may, by order, remove from office the Chairperson or any Member, if the Chairperson or such Member, as the case may be—

(a) is adjudged an insolvent; or

10

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.

Term of
Office of
Chairperson
and Members.

40. The Chairperson and Members of the State Commission shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment for another term of three years. 15

Member to
act as
Chairperson
or to
Discharge his
Functions in
Certain
Circumstances.

41. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of the death, resignation or otherwise, the Governor may, by notification authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy. 20

(2) If the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, one of the Member as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties. 25

Terms and
Conditions of
Service of
Chairpersons
and Members.

42. The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and the Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment. 30

Officers and
other staff of
the
Commission.

43. (1) The State Government shall make available to the Commission an officer of the rank of the Secretary to the State Government who shall be the Secretary to the Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the Commission may appoint such other administrative and technical officers and staff as it may consider necessary. 35

(3) The salaries, allowances and conditions of service of the officers and other appointed under sub-section (2) of section 43, shall be such as may be prescribed.

Annual and
Special
Reports of
State
Commission.

44. (1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report. 40

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature, where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any. 45

45. The provisions of section 32, 34 and 35 shall apply, *mutatis mutandis* to a State Commission and shall have effect, subject to the following Modifications, namely,—

Application of certain provisions relating to National Commission to State Commissions.

(a) reference to "commission" shall be construed as references to "State Commission"; and

5 (b) in section 34, clause (f) shall be omitted.

(c) reference to "central Government" be construed as references to "State Government".

CHAPTER VIII

TRANSGENDER RIGHTS COURTS

10 46. For the purpose of speedy disposal of suits of a civil nature which may be filed by on behalf of transgender persons regarding infringement of their rights as a transgender person, under this or any other law for the time being in force, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, specify for each sub-division, a court to be a Special Transgender Rights Court for
15 the hearing and disposal of such suits and criminal cases, as prescribed.

Special Transgender Rights Courts.

47. Notwithstanding anything contained in Section 46, the State Government, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette:—

Exclusive transgender rights Courts.

(i) may establish for each district, and

20 (ii) shall establish for each city with a population of 10 lakh or more as per the last Census, a court as an exclusive Transgender Rights Court, and such court shall hear and dispose of only suits of the type mentioned in Section 46.

48. Where a district has one or more exclusive Transgender Rights Courts established under Section 47, their jurisdiction *vis-a-vis* that of Special Transgender Rights Courts
25 specified under Section 46, shall be such as the State Government may, by notification in the official Gazette, specify.

Jurisdiction of transgender rights courts.

CHAPTER IX

OFFENCES & PENALTIES

30 49. (1) Where any offence under this Act has been committed by an establishment, every person who, at the time the offence was committed, was the appointed head or was directly in charge of, and was responsible to the establishment for the conduct of its business, as well as the establishment, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Offences by Establishments.

35 Provided that nothing contained in sub-section (1) of Section 49, shall render any such person liable to any punishment provided in this Act, if he proved that the offence was committed without his knowledge or that all due diligence was exercised to prevent the commission of such offence.

40 (2) Notwithstanding anything contained in sub-section (1) of section 49, Where an offence under this Act has been committed by an establishment and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any other officer of the establishment, such person shall also deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

45 50. Whoever voluntarily or knowingly commits or abets the offence by words, either spoken or written, or by signs or by visible representations or otherwise, shall be punished with imprisonment for a term which may extend to one year and with fine.

Penalty for Hate Speech.

Penalty for
Failure to
Furnish
Information.

51. Whoever fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, he is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, shall be punishable with fine which may extend to rupees twenty-five thousand in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to rupees one thousand for each day, of continued failure or refusal after the date of original order imposing punishment of fine. 5

CHAPTER X

MISCELLANEOUS

10

Central
Government
to provide
funds.

52. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds, from time to time, for carrying out the purposes of this Act.

Act to be in
Addition to
and not in
derogation of
any other law.

53. The provisions of this Act or the rules made there under shall be in addition and not in derogation of any other legislation, rules, orders or instructions which provides any entitlement or benefit to transgender persons. 15

Action taken
in good faith.

54. No suit prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under this Act or any rule there made under.

Power to
remove
difficulties.

55. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty: 20

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act. 25

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power of
appropriate
Government
to make rules.

56. (1) Subject to the other Provisions of this Act, the appropriate Government may, by notification, make rules for carrying out the provisions of this Act.

(2) Prior to the formation of the rules, the appropriate Government shall make available the draft of the rules in accessible formats to the members of the public and invite their suggestions and objections to the same. 30

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule of both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form, or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 35

(4) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House.

Powers of
National
Commission
to make
Regulations.

57. (1) The National Commission may with the previous approval of Central Government, by notification make regulations consistent with this Act and the rules for the effective implementation of the purposes of this Act, in respect of the matters to any of the entries enumerated in List I and List III in the Seventh Schedule to the Constitution. 45

(2) Without prejudice to the generality of sub-section (1) of section 57, the National Commission shall make regulations relating to the,—

(a) establishment of such committees as may be required for the efficient performances of its functions;

5 (b) composition, membership, qualification, terms and conditions of appointment, removal, tenure, meetings, quorum and resignation of the Committees, formed by the National Commission;

(c) rules of procedure for transaction of business;

10 (d) rules of procedure for convening meetings of Chairpersons of State Commissions;

(e) form in which and the time at which the meetings to be called;

(f) manner in which and the time at which meetings of National Commission to be convened ; and

(g) any other matter incidental or ancillary for the enforcement of this Act.

15 (3) Prior to be finalization of the regulations, the National Commission shall make available the draft rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

20 **58. (1)** The State Commission shall have the power to issue regulations with the Previous approval of State Governments, which are in conformity with the Act and the Rules for the effective implementation of the purposes of this Act, in respect of the matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Power of the State Commission to make Regulations.

25 Provided that where any regulation has already been issued in any such matter pertaining to List III by the National Commission, such regulations shall prevail over the regulations of the State Commission pertaining to the said matter.

(2) Without prejudice to the generality of sub-section (1) of Section 58, the State Commission shall make regulations relating to the,—

(a) establishment of such Committees as may be required for the efficient performance of its functions;

30 (b) composition, membership, qualifications, terms and conditions of appointment, removal, tenure, meetings, quorum and resignation of the Committees formed by the State Commission; and

(c) any other matter incidental or ancillary for the enforcement of this Act.

35 (3) Prior to the finalization of the regulations, the State Commission shall make available the draft rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

ANNEXURE P-2

RAJYA SABHA

A

BILL

to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by the State and for matters connected therewith and incidental thereto.

(As passed by the Rajya Sabha)

AS INTRODUCED IN LOK SABHA

Bill No. 210 of 2016

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
BILL, 2016

A

BILL

to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 1. (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2016. Short title, extent and commencement.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 10 2. In this Act, unless the context otherwise requires,— Definitions.
- (a) "appropriate Government" means,—
- (i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;
- 15 (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

(b) "establishment" means—

(i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and includes a Department of the Government; or

5 18 of 2013.

(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

(c) "inclusive education" means a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such students;

10

(d) "institution" means an institution, whether public or private, for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons;

(e) "local authority" means the municipal corporation or municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

15

(f) "National Council" means the National Council for Transgender Persons established under section 17;

(g) "notification" means a notification published in the Gazette;

20

(h) "prescribed" means prescribed by rules made by the appropriate Government under this Act;

(i) "transgender person" means a person who is—

(A) neither wholly female nor wholly male; or

(B) a combination of female or male; or

25

(C) neither female nor male; and

whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.

CHAPTER II

30

PROHIBITION OF CERTAIN ACTS

Prohibition
against
discrimination.

3. No person shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

35

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

40

(f) the denial, or, discontinuation of, unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

5 (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

10 **4. (1)** A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act. Recognition of identity of transgender person.

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

15 **5.** A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed: Application for certificate of identity.

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

20 **6. (1)** On the receipt of an application under section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons. District Screening Committee.

(2) The District Screening Committee referred to in sub-section (1) shall comprise—

(a) the Chief Medical Officer;

(b) District Social Welfare Officer;

(c) a Psychologist or Psychiatrist;

25 (d) a representative of transgender community; and

(e) an officer of the appropriate Government to be nominated by that Government.

7. (1) The District Magistrate shall issue to the applicant under section 5 a certificate of identity as transgender person on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender. Issue of certificate of identity.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

35 **8. (1)** After the issue of a certificate under sub-section (1) of section 7, if there is any change in the gender of a transgender person, he shall make an application to the District Magistrate for revised certificate. Change in gender.

40 (2) The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued revised certificate shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

45 Provided that such change in gender and the issue of revised certificate under sub-section (1) shall not affect the rights and entitlements of such person under this Act.

CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

- Obligation of the appropriate Government.
- 9.** (1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.
- (2) The appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government. 5
- (3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.
- (4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person. 10
- (5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSON

- Non discrimination in employment 15
- 10.** No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.
- Obligations of establishments. 20
- 11.** Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to the transgender person as may be prescribed.
- Grievance redressal mechanism.
- 12.** Every establishment consisting of one hundred or more persons shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.
- Right of residence. 25
- 13.** (1) No transgender person shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such person.
- (2) Every transgender person shall have—
- (a) a right to reside in the house-hold where parent or immediate family members reside;
- (b) a right not to be excluded from such house-hold or any part thereof; 30
- (c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.
- (3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre. 35

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSON

- Obligation of educational institutions to provide inclusive education to transgender persons. 40
- 14.** All educational institutions funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others.

15. The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

Vocational training and self-employment.

16. The appropriate Government shall take the following measures in relation to the transgender persons, namely:—

Health care facilities.

(a) a separate human immunodeficiency virus Sero-surveillance Centres;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) pre and post sex reassignment surgery and hormonal therapy counselling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

17. (1) The Central Government shall by notification constitute a National Council for Transgender to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

National Council for Transgender.

(2) The Council shall consist of—

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, *ex officio*;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, *ex officio*;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, *ex officio*;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing, Urban and Poverty Alleviation, Development, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and NITI Ayog, not below the rank of Joint Secretaries to Government of India, Members, *ex officio*;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries of Government of India, Members, *ex officio*;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members;

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member-Secretary, *ex officio*.

(3) A Member of National Council, other than *ex officio* member, shall hold office for a term of three years from the date of his nomination. 5

Functions of
the Council.

18. The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons; 10

(c) to review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to perform such other functions as may be prescribed by the Central Government. 15

CHAPTER VIII

OFFENCES AND PENALTIES

Offences and
penalties.

19. Whoever,—

(a) compels or entices a transgender person to indulge in the act of begging or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; 20

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave house-hold, village or other place of residence; 25

(d) harms or injures or endangers the life, safety, health, or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine. 30

CHAPTER IX

MISCELLANEOUS

Grants by
Central
Government.

20. The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Council as may be necessary for carrying out the purposes of this Act. 35

Act not in
derogation of
any other law.

21. The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.

Protection of
action taken
in good faith.

22. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder. 40

Power of
appropriate
Government
to make rules.

23. (1) The appropriate Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which an application shall be made under section 5;

5 (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7;

(c) the form and manner in which an application shall be made under sub-section (2) of section 8;

(d) facilities to be provided under section 10;

(e) other functions of the National Council under section 18;

10 (f) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the
15 successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

20 (4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one house, before that house.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such directions, by order published in the Official
25 Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid
30 before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Transgender community is one of the most marginalized communities in the country because they do not fit into the general categories of gender of 'male' or 'female'. Consequently, they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on.

2. Though article 14 of the Constitution of India guarantees to all persons equality before law, clauses (1) and (2) of article 15 and clause (2) of article 16, *inter alia* prohibit in express terms discrimination on the ground only of sex and sub-clause (a) of clause (1) of article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against the transgender persons continue to take place.

3. The Hon'ble Supreme Court, vide its order dated 15th April, 2014, passed in the case of National Legal Services Authority Vs. Union of India, *inter alia*, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by the Parliament and the State Legislature.

4. The Transgender Persons (Protection of Rights) Bill, 2016 seeks to—

- (a) define a transgender person;
- (b) prohibit discrimination against transgender person;
- (c) confer right upon transgender person to be recognised as such, and a right to self-perceived gender identity;
- (d) issue of certificate of identity to transgender persons;
- (f) provide that no establishment shall discriminate against transgender person in matters relating to employment, recruitment, promotion and other related issues;
- (g) provide for grievance redressal mechanism in each establishment;
- (h) establishment of a National Council for Transgender;
- (i) punishment for contraventions of the provisions of the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 27th July, 2016.

THAAWARCHAND GEHLOT.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA

[Copy of D.O. No. 13011/5(11)/2014-DP.III dated 29 July, 2016 from Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment to the Secretary General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Transgender Persons (Protection of Rights) Bill, 2016 recommends introduction of the Bill in the House under article 117(1) of the Constitution of India.

FINANCIAL MEMORANDUM

Sub-clause 2 of clause 9 of the Bill states that the appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government.

2. Sub-clause 3 of clause 9 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

3. Clause 15 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

4. Clause 16 (1) (g) of the Bill contains provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

5. Clause 17 of the Bill proposes to constitution of a National Council for Transgender.

6. Clause 20 of the Bill provides that the Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Council as may be necessary for carrying out the purposes of this Act.

7. For the current financial year, an amount of 15 crore rupees has been allocated as budgetary expenditure for the transgender scheme. It is not possible at this juncture to estimate the full financial burden likely to be incurred if all the provisions of the proposed legislation if enacted were implemented. The above expenditure will be met from the budgetary allocation of the Plan Scheme for transgenders.

8. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the appropriate Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are— (a) the form and manner in which an application shall be made under section 5; (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7; (c) the form and manner in which an application shall be made under sub-section (2) of section 8; (d) facilities to be provided under section 10; (e) other functions of the National Council under clause (d) of section 18; (f) any other matter which is required to be or may be prescribed.

The matters in respect of which rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

A

BILL

to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

(Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment)

CORRIGENDA

to

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016

[To be/As introduced in Lok Sabha]

1. Page 3, line 5,-

for "the denial of"

read "(i) the denial of"
2. Page 5, *for* line 6,-

read "(a) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organisation in this behalf;"
3. Page 5, line 31,-

for "Housing, Urban and Poverty Alleviation, Development, Human Resources"

read "Housing and Urban and Poverty Alleviation, Minority Affairs, Human Resources"
4. Page 5, line 34,-

for "Secretaries to Government"

read "Secretaries to the Government"
5. Page 5, line 36,-

for "Joint Secretaries of Government"

read "Joint Secretaries to the Government"
6. Page 7, line 8,-

for "section 10"

read "section 11"
7. Page 7, line 9,-

for "under section 18"

read "under clause (d) of section 18"

8. Page 8, line 2,-

for “marginalized communities”

read “marginalised communities”

9. Page 10, line 7,-

for “section 10”

read “section 11”

10. Page 10, line 9,-

omit "and regulations"

NEW DELHI;

August 1, 2016

Shravana 10, 1938 (Saka)

ANNEXURE P-3

N I O C CE AND
EMPOWERMENT (2016-2017)

(SIXTEENTH LOK SABHA)

MINISTRY OF O A US A WERMENT
(EP F OC S AN EM /ERMENT)

[A R OT I S) BILL, 2016]

FORTY-THIRD REPORT



LOK SABHA SECRETARIAT
NEW DELHI

July, 2017/Ashadha, 1939 (Saka)

434

FORTY-THIRD REPORT

**S AN I M T E OC U IC : AND
EMPOWERMENT (2016-2017)**

(SIXTEENTH LOK SABHA)

MINISTRY OF SOCIAL JUSTICE A WERMENT

(EP F OC S AN EM /ERMENT)

[A R OT I S) BILL, 2016]

Presented to Lok Sabha on 1 2 17

Laid in Rajya Sabha on 21.07.2017



**LOK SABHA SECRETARIAT
NEW DELHI**

July, 2017/Ashadha, 1939 (Saka)

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**COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL
JUSTICE AND EMPOWERMENT (2016-2017)**

SHRI RAMESH BAIS - CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Kantilal Bhuria
3. Shri Santokh Singh Chaudhary
4. Shri Sher Singh Ghubaya
5. Shri Jhina Hikaka
6. Shri Sadashiv Kisan Lokhande
7. Smt. K. Maragatham
8. Shri Kariya Munda
9. Prof. Seetaram Azmeera Naik
10. Shri Asaduddin Owaisi
11. Sadhvi Savitri Bai Phule
12. Dr. Udit Raj
13. Smt. Satabdi Roy (Banerjee)
14. Kunwar Bhartendra Singh
15. Prof. Sadhu Singh
16. Smt. Mamata Thakur
17. Shri Mansukhbhai Dhanjibhai Vasava
18. Shri Tej Pratap Singh Yadav
19. Vacant*
20. Vacant*
21. Vacant[#]

RAJYA SABHA

22. Smt. Jharna Das Baidya
23. Dr. Tazeen Fatma
24. Shri Chunibhai Kanjibhai Gohel
25. Shri Ahamed Hassan
26. Smt. Sarojini Hembram
27. Dr. Narendra Jadhav
28. Smt. Vijila Sathyananth
29. Smt. Wansuk Syiem
30. Smt. Chhaya Verma
31. Shri Ramkumar Verma

* Shri Bhagwant Khuba and Shri Mohanbhai K. Kundariya changed their nomination w.e.f. 19.10.2016.

Shri Prakash B. Hukkeri changed his nomination w.e.f. 23.11.2016.

LOK SABHA SECRETARIAT

1.	Shri Ashok Kumar Singh	-	Additional Secretary
2.	Shri S.C. Chaudhary	-	Joint Secretary
3.	Shri Ashok Sajwan	-	Director
4.	Smt. Mamta Kemwal	-	Additional Director
5.	Smt. Shilpa Kant	-	Sr. Executive Assistant

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Social Justice and Empowerment (2016-17) having been authorized by the Committee to present the Report on its behalf, do present this Forty Third Report of the Committee on "The Transgender Persons (Protection of Rights) Bill, 2016".

2. The Bill was introduced in Lok Sabha on 02.08.2016 and referred to the Standing Committee on Social Justice and Empowerment on 08.09.2016 for examination and Report.

3. The Committee issued a Press Release inviting memoranda/views from individuals and other stakeholders. In response, a large number of individuals/organizations/stakeholders/NGOs submitted their written representations to the Committee. The Committee considered all these representations/submissions.

4. The Committee held five sittings during the course of examination of the Bill, *i.e.*, on 5.10.2016, 30.11.2016, 28.12.2016, 25.04.2017 and 19.07.2017.

5. The Committee considered the draft Report and adopted the same on 19.07.2017.

6. The Committee relied on the following documents in finalization of the Report:-

- (i) The Transgender Persons (Protection of Rights) Bill, 2016.

- (ii) The Report of the Expert Committee, constituted by the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment).
- (iii) Background Notes on the Bill received from the Department of Social Justice and Empowerment.
- (iv) Presentation, clarifications, briefing, oral evidence and replies to the list of points furnished by the Department of Social Justice and Empowerment.
- (v) Memoranda/Submissions received by the Committee on the Bill from various institutes/ organizations/ associations/ NGOs/ stakeholders/ Experts.
- (vi) NGOs/ stakeholders/ Experts who appeared before the Committee to express their views/ make their submissions on the Bill in Delhi were :-
 - 1. Vidhi Centre for Legal Policy
 - 2. Sampoorana Working Group
 - 3. Amnesty International India
 - 4. South Indian Transgenders Federation
 - 5. Lawyers Collective
 - 6. All India Hijra Transgender Samiti
 - 7. Kinnar Bharti
 - 8. Dr. Kaveri Rajaraman, Neuroscientist and Genderqueer Transgender boy

7. The Committee also undertook on-the-spot study visit to Mumbai on 5th November, 2016 and interacted with Lakshmi Narayan Tripathi, Consultant, UNDP; Dr. Ketaki Ranade, Professor; Brandt D'mello; Shals Mahajan; Shri Siddhant More and Dr. Piyush Saxena, Chairperson, SOOE.

8. On behalf of the Committee, I would like to acknowledge with thanks the huge contribution made by not only those who deposed before the Committee but also those who gave their valuable suggestions to the Committee through written submissions. The Committee, no doubt, benefitted immensely by their views and valuable suggestions.

9. ***The Committee would like to assure and remind to all the members of transgender community that, "A historic shift is underway, you are not alone in your struggle for the end of violence and discrimination. It is a shared struggle. Transgender is not an anomaly. It is a part of the spectrum of people's realities. While there is no shame in being gay, lesbian, bisexual, transgender or intersex or even straight - there is a most certainly shame and dishonor in being a homophobe, a transphobe and a bigot".***

New Delhi;
19 July, 2017
 28 Ashadha, 1939(Saka)

RAMESH BAIS,
Chairperson,
Standing Committee on
Social Justice and Empowerment

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REPORT

PART A

INTRODUCTION

"Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the Transgender community and in public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables, forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change." (Justice K.S. Radhakrishnan of Hon'ble Supreme Court, while delivering judgement on 15th April, 2014 in Writ Petition No.400/2012 filed by National Legal Services Authority Vs Union of India).

B. Eunuchs are ubiquitous in India, standing out in crowds throughout the length and breadth of the country. Their fortunes are determined to a large extent by their looks. Intersexual people are not visibly distinguishable in the West. In marked contrast, eunuchs in the Indian subcontinent are

found to dress and behave differently, in addition to living apart in bands and groups.

C. India and other South Asian countries are the only places where the tradition of eunuchs is prevalent today. According to a survey carried out by Salvation Of Oppressed Eunuchs (SOOE), the number of eunuchs in India is around 19 lakhs, as of March 1, 2011. The figures are approximate, since eunuchs live in a secretive, shadowy world that they have created for themselves, away from the abuse and persecution of society in general. Here, the term 'eunuch' refers to only those people who wish to be treated as neither male nor female and embrace a lifestyle that is in conformity with their sexual divergence. This group does not include those intersex people who pretend to lead their lives as either males or females and embrace a normal lifestyle. For most Indians today, eunuch are 'diabolic creatures', a source of eternal disgust and perennial fear. They are looked upon as hapless and strange creatures, bereft of sexual potency. This is evident from the way the word 'hijra' is used in the day-to-day conversations of people. It is often found being used to abuse people. Even dictionaries in Hindi define hijra in derogatory terms. The very utterance of the word carries with it an obvious sense of denigration. In India they are a stigmatised, socially marginalised and economically impoverished people.

D. The eunuch community and its traditions, including their very basic form of 'gender change' from male to eunuch, has a recorded history of over 2,000 years in India. This widespread practice enables transsexual kids to escape the trauma and fate of masculinisation as teenagers and provides a safe though very low place in society. The agonising extremes to which these transsexual youngsters will subject themselves to in order to 'approximately have a female gender', with the full knowledge that they will never see their families again and will face social degradation for the rest of their lives, is a testimonial to the reality and extremity of the gender conflict that they face within themselves.

E. Eunuchs lived fairly secure lives working as domestic 'girls' in the homes of wealthy people and by performing during numerous ritual ceremonies. This role of eunuchs ended with the advent of the British rule and abolition of many kingdoms. Eunuchs were left with no means of supporting themselves. Hence, they exist in this pitiable condition in the Indian subcontinent.

F. The roots of contemporary violence against the hijra community can in fact be traced back to the historical form that modern law in post-colonial India has adopted. It took the form of the enactment of the Criminal Tribes Act, 1871, which was an extraordinary legislation that departed from the

principles on which the Indian Penal Code was based. Once a tribe was notified as a criminal tribe, all members of the tribe including women and children, would have to register with the specified authority, with non-registration rendering the person liable to prosecution.

G. The link between criminality and sexual non-conformity was made even more explicit in the 1897 amendment to the said Act, which was subtitled 'An Act for the Registration of Criminal Tribes and Eunuchs'. Under the provisions of this statute, a eunuch was 'deemed to include all members of the male sex who admit themselves or on medical inspection clearly appear to be impotent'. Being a eunuch was itself a criminal occurrence, with surveillance being the everyday reality. The surveillance mechanism criminalised the quotidian reality of a eunuch's existence, by making its manifest sign, i.e. cross-dressing, a criminal offence.

H. A Public Interest Litigation (PIL) No.1 of 2012 was filed in Bombay High Court by Salvation Of Oppressed Eunuchs (SOOE) in the year 2012 in which Union of India was made the respondent. The Cabinet Secretariat, in July 2012, decided that the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) would handle that PIL and the related matters thereto, in consultation with other relevant sectoral Ministry/Ministries. Subsequently, the work relating to the welfare of

Transgender Persons has been allocated to this Ministry in the Government of India (Allocation of Business Rules), 1961 vide notification dated 21.5.2016.

I. An Expert Committee was constituted in the Ministry to make an in-depth study of the problems being faced by the Transgender Community and suggest suitable measures to ameliorate their conditions. The Committee submitted its report on 27th January, 2014. The recommendations of the Committee, *inter alia*, include declaring transgender as 'third gender'.

J. The key recommendations of the Expert Committee were:

- i. Transgender should be declared as the third gender, and a transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. Only the nomenclature 'transgender' should be used and nomenclatures like 'other' or 'others' should not be used.
- ii. Certificate that a person is a transgender person should be issued by a State level authority duly designated or constituted by the respective State/UT on the lines of Tamil Nadu Aravanis Welfare Board on the recommendation of a District Level Screening

Committee headed by Collector/DM and comprising District Social Welfare Officer, psychologist, psychiatrist, a social worker and two representatives of transgender community and such other person or official as the State/UT Administration deems appropriate.

- iii. Change of gender either as male, female or transgender should be allowed to be carried out on the birth certificate of the person after the age of eighteen years or above. The certificate issued should be acceptable to all authorities for indicating the gender on official documents like driving license, ration card, passport, etc.
- iv. The third gender i.e. transgender may be recognized by a Government order and for the long run, it may be examined whether a separate law will be desirable for this purpose. For this purpose, the Government may refer the matter to the Law Commission.
- v. An Umbrella Scheme for transgender persons may be formulated for empowerment of this community.
- vi. To cope up with trauma and violence, Crisis Counselling Services could be set on the model of Rape and Crisis Intervention Centres.
- vii. Formation of groups of transgender children for meetings, holding film screening for sensitization of students and staff, setting up of resource centre, augmenting libraries with books and audio-visual materials on transgender issues.

- viii. Existing forums such as the Anganwadi Centres and Self-Help Groups may be oriented on transgender issues, and involved in providing information to parents of gender non-conforming youths.
- ix. Criminal and disciplinary action against delinquent police officials in cases of violation of human rights of transgender persons.
- x. Work place sexual harassment policies should be made transgender inclusive.
- xi. Ministry of Rural Development and Ministry of Housing and Urban Poverty Alleviation to ensure housing assistance schemes to help transgender persons.
- xii. Another Section under IPC to cover the cases of sexual assault on transgender persons.
- xiii. Slurs based on real or perceived gender identity may be included in Section 153A of the IPC.
- xiv. Government should provide scholarship/entitlements, fee-waiver, free textbooks, free hostel accommodation and other facilities at subsidized rates for students belonging to this group.
- xv. All the educational institutions/Universities should establish an anti-discrimination cell to monitor any form of discrimination against the transgender community.

- xvi. Contents on transgender to be included in the curriculum of adolescent education in schools.
- xvii. Abandonment of child is a punishable offence under Section 317 of the IPC if child is abandoned under the age of twelve years. The Ministry of Home Affairs (MHA) may be requested to consider enhancing the age of child for this offence to eighteen years.
- xviii. Generate more data/information to identify and understand the problems related to various aspects of their life and help frame policies through research and academic program.
- xix. Establishment of Helpline for Career Guidance and Online Placement Support.
- xx. Widening the mandate of one of the Corporations for providing the economic support to transgender community.
- xxi. Establishment of effective linkages with vocational training centres run by private and Government agencies for providing vocational training to this community.
- xxii. A National Council for Transgender persons may be considered on similar lines as that of the National Councils for Senior Citizens.
- xxiii. To carry out survey in association with Ministry of Statistics for ascertaining their population in the country.

- xxiv. Bureau of Police Research and Training (BPR&D) may undertake a study on crime against transgender persons, as also about cases registered against them as accused.
- xxv. Intensive publicity campaigns.

Supreme Court Judgement in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs Union of India

K. In a landmark judgement dated 15.04.2014 delivered by Hon'ble Supreme Court in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs UOI, the Court has given following directions:

- (i) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- (ii) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
- (iii) Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

- (iv) Centre and State Governments to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders (TGs) face several sexual health issues.
- (v) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
- (vi) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- (vii) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
- (viii) Centre and State Governments should take steps to create public awareness so that TGs feel that they are also part and parcel of the social life and be not treated as untouchables.
- (ix) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

L. The Hon'ble Court directed the report of the Expert Committee be examined in the light of legal declarations in its judgement and its recommendation be implemented within a time frame of six months. Accordingly, Expert Committee's recommendations should have been implemented by 14th October, 2014. Meanwhile, a clarificatory application was filed by the Ministry of Social Justice and Empowerment in the Supreme Court in September, 2014 seeking, *inter alia*, clarification in definition of transgender. The Hon'ble Court in its judgement dated 30th June, 2016 has clarified that lesbian, gay or bisexual may not be included in the category of Transgender.

M. A Private Member Bill titled "The Rights of Transgender Persons Bill, 2014" was introduced in Rajya Sabha on 12th December, 2014 by Shri Tiruchi Siva, MP. The Bill was passed by Rajya Sabha on 24th April, 2015.

N. A Private Member Bill was also introduced in Lok Sabha in May 2015. The Bill is, however, pending for consideration.

O. As the Private Member Bill (of Shri Tiruchi Siva, MP) suffered from some infirmities, it was not possible for the Ministry of Social Justice and Empowerment to agree to all the provisions of the Private Member Bill in *toto* viz. (i) Special Employment Exchange for Transgender (ii) National and

State Commissions for Transgender Persons (iii) Transgender Right Courts; and (iv) Reservation in Primary, Secondary and Higher Educational Institutions. The Minister of Social Justice and Empowerment during the discussion in Rajya Sabha, assured that the Ministry would bring its own Bill in view of the Expert Committee's detailed recommendations. Accordingly, a draft Government Bill was uploaded on the Ministry's website on 3.12.2015 seeking comments of general public. Thereafter, a pre-legislative consultation meeting with stakeholders was conducted on 18.01.2016. Subsequently, a Drafting Committee was constituted in the Ministry to finalize the draft Bill. After two meetings of the Drafting Committee on 4th February, 2016 and 23rd February, 2016, the draft Bill was finalized by the Legislative Ministry on 20th-21st April, 2016. The Cabinet approved the Bill on 20th July, 2016.

P. The Government introduced the Bill (present Bill) in Lok Sabha on 2nd August, 2016.

Q. Though most of the provisions of the Private Member Bill of Shri Tiruchi Siva, MP have been accommodated in the present Bill except provisions for Exclusive Transgender Rights Courts, reservation in primary, secondary and higher educational institutions, incentives to employers in

private sector, special employment exchanges and National and State Commissions for Transgender Persons.

R. Some salient features of the Transgender Persons (Protection of Rights) Bill, 2016 are as under:

- (i) Transgender Person is defined as a person who is (i) neither wholly female nor wholly male; or (ii) a combination of female or male; or (iii) neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.
- (ii) Non discrimination against a Transgender Person in educational institutions, employment, healthcare services etc.
- (iii) Recognition of identity of Transgender Persons and to confer upon them right to self perceived gender identity.
- (iv) Provision of certificate by the District Magistrate to a Transgender Person on the recommendation of a District Screening Committee under Chief Medical Officer.
- (v) Provision for Transgender Persons to change gender and in consequence to change the first name in the birth certificate and all other official documents relating to the identity of such person.

- (vi) Provision of Right of Residence with parents and immediate family members.
- (vii) Provision for formulation of welfare schemes and programmes for education, social security and health of Transgender Person.
- (viii) Provision for National Council for Transgender Persons to advice, monitor and evaluate measures for the protection of their rights.
- (ix) Provisions for penalties for offences against Transgender Persons.

THE PRESENT POSITION OF TRANSGENDER PERSONS IN THE COUNTRY AND THE LIKELY IMPACT ON THEIR LIVES AFTER ENACTMENT OF THE BILL:

S. Transgender community is among one of the most marginalized communities in the country because they don't fit into the stereotypical categories of gender of 'men' or 'women'. Consequently they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on. The discrimination based on their class and gender makes the 'Transgender' community one of the most disempowered and deprived groups in Indian Society.

T. The presence of the Transgender Person in the country is highly scattered and they are unevenly settled. As per the information provided by the Registrar General of India (RGI) "Census of India does not collect any data specifically on transgenders. During Population Enumeration of

Census 2011, three codes were provided *i.e.*; Male-1, Female-2, and Others-3. In case the respondent wished to record neither '1' not '2', then enumerator was instructed to record sex as "other" and give code '3'. Thus the category of 'Other' would not only include transgenders but also any person who desired to record sex under the category of 'Other'. It is also possible that transgenders would also have registered themselves either male or female depending on their choice. Thus, the precise number of transgender persons in the country is not known. However, as per Census of India 2011, it is stated that population of persons who has registered as 'others' as their gender (Neither male nor female) constitutes 4,87,803. Further, there was no enumeration of data on others which may include transgender engaged/employed.

U. This will benefit a large number of transgender persons, mitigate the stigma, discrimination and abuse against this marginalized section and bring them into the mainstream of society. This will lead to inclusiveness and will make the transgender persons productive members of the society. Through this Bill, the Central Government and the State Governments will extend support for financial security, health care, shelter, welfare and other needs of Transgender Persons, make available opportunities for development of their potential, seek participation, and provide services so that they can improve the quality of their lives. The Bill will also bring

greater accountability on the part of the Central Government and State Governments/Union Territory Administrations for issues concerning Transgender persons. The Bill will make all the stakeholders responsive and accountable for upholding the principles underlying the Bill.

The Transgender Persons (Protection of Rights) Bill, 2016

V. The Transgender Persons (Protection of Rights) Bill, 2016 to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto was introduced in Lok Sabha on 2nd August, 2016. The statement of objects and reasons of the Bill states as under:

"Transgender community is one of the most marginalized communities in the country because they do not fit into the general categories of gender of 'male' or 'female'. Consequently, they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on.

Though Article 14 of the Constitution of India guarantees to all persons equality before law, Clauses (1) and (2) of Article 15 and Clause (2) of Article 16, *inter alia* prohibit in express terms discrimination on the ground only of sex and sub-clause (a) of Clause (1) of Article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against the transgender persons continue to take place.

The Hon'ble Supreme Court, vide its order dated 15th April, 2014, passed in the case of National Legal Services Authority vs. Union of India, *inter alia*, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of

safeguarding their rights under Part III of the Constitution and other laws made by the Parliament and the State Legislature."

- W.** The Transgender Persons (Protection of Rights) Bill, 2016 seeks to -
- (a) define a transgender person;
 - (b) prohibit discrimination against transgender person;
 - (c) confer right upon transgender person to be recognised as such, and a right to self-perceived gender identity;
 - (d) issue of certificate of identity to transgender persons;
 - (f) provide that no establishment shall discriminate against transgender person in matters relating to employment, recruitment, promotion and other related issues;
 - (g) provide for grievance redressal mechanism in each establishment;
 - (h) establishment of a National Council for Transgender;
 - (i) punishment for contraventions of the provisions of the Bill.

The Bill seeks to achieve the above objects.

CHAPTER I

PRELIMINARY

Title of the Bill

1.1 The title of the Bill is "The Transgender Persons (Protection of Rights) Bill, 2016"¹. The Committee find that the Bill does not *per se* include, address and protect the interest of intersex persons as concerns of transgender persons and intersex persons continue to be different. The Committee feel that the Bill should be renamed as "The Transgender and Intersex Persons (Protection of Rights) Bill, 2016.

1.2 When the Ministry were asked to furnish their views on this, the Ministry in their written submission stated that:

"Transgender is an umbrella term which includes intersex persons also. Re-wording the title of the Bill would not serve any purpose".

1.3 The Committee are convinced with the reply of the Ministry. The Committee are of the view that there is no need to change the title of the Bill as transgender persons would also include intersex persons and therefore, the Bill will take care and address the concerns of the intersex persons.

¹ Please see Appendix (i)

Definitions

1.4 Clause 2(c) of the Bill defines 'inclusive education' as " a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such students".

1.5 The Committee interacted extensively with large number of stakeholders so as to ascertain their views on 'inclusive education'. The Committee find that transgender persons face severe hardships and discrimination in accessing education, primarily owing to their gender non-conformity.

1.6 The Committee feel that the term 'transgender student' appears to be a misnomer since children, though gender non-confirming, often may not be in a position to identify as 'transgender persons' and therefore, the phrase 'transgender and gender non-conforming students' may be used instead of 'transgender students'.

1.7 The Committee also feel that any notion of 'inclusive education' has to take into account the specific concerns regarding bullying and harassment suffered by the gender non-confirming students.

1.8 The Committee, therefore, recommend that Clause 2(c) may be reframed as under:-

"inclusive education" means a system of education wherein transgender and gender non-conforming students along with other students learn together without the fear of bullying, singling out and other forms of harassment and the system of teaching and learning is suitably adapted to meet the learning needs of such students.

1.9 Clause 2(d) of the Bill defines 'institution' as " an institution, whether public or private, for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons".

1.10 During their interaction with many stakeholders, the Committee were informed that the word 'rehabilitation' has a negative connotation indicating lack of agency for the transgender persons and would be better if substituted with the word 'housing' in order to take care of the pressing shelter needs of the transgender persons.

1.11 The Committee, therefore, desire that in Clause 2(d) the word 'rehabilitation' be replaced with the word 'housing' in order to take care of the pressing shelter needs of the transgender persons.

1.12 Clause 2(i) of the Bill defines the 'transgender person'. It says 'transgender person' means a person who is -

- A. neither wholly female nor wholly male;
- B. a combination of female or male; or
- C. neither female nor male, and

whose sense of gender does not match with the gender assigned to the person at the time of birth, and includes trans-men and trans-women, persons with inter-sex variations and gender-queers.

1.13 The Committee feel that the definition of 'transgender person' will be the fulcrum of any legislation on transgender rights and welfare and the whole law would depend on the scope of this definition. The Committee feel that the proposed definition of 'transgender person' in the Bill is in stark contrast to global developments, where transgender persons have been granted the right to self determine and to seek benefits according to such identity/expression. More so, it not only violates the fundamental rights to equality, dignity, autonomy but also freedom of transgender persons guaranteed under Articles 14, 19 and 21 of the Constitution.

1.14 Attention of the Ministry was drawn by the Committee towards the landmark judgement of Hon'ble Supreme Court in 2014 (in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs Union

of India) which *inter-alia* stated that "every person must have the right to decide his/her gender expression and identity, including transsexuals, transgender, hijras and should have right to freely express their gender identity and be considered as a third sex."

1.15 The Ministry were even reminded that the above decision of the Hon'ble Supreme Court was also accepted by the Expert Committee, constituted by the Ministry which recommended that "Transgender should be declared as the third gender, and a transgender person should have the option to choose either 'man', 'women' or 'female' or 'transgender'.

1.16 When the Ministry were confronted that why it should not be left to the transgender person to have the option to choose either 'man', 'women' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones and on what basis the definition of 'transgender person' has been framed in the Bill, the Ministry in their written note stated as under -

"An Expert Committee was constituted in the Ministry in October, 2013 under the chairmanship of Additional Secretary(SJE) to make an in-depth study of the problems being faced by the Transgender Community. The Committee has submitted its report on 27th January, 2014. The Committee has recommended that transgender should be declared as the third gender, and a Transgender Person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. Only the nomenclature 'transgender' should be used and nomenclatures like 'other' or 'others' should not be used.

The Expert Committee further recommended that the term 'transgender' (not trans) will be used, as an inclusive term and will cover various gender identities and expressions like trans-men, trans-women, male to female transpersons, female to male transpersons, transsexuals, genderqueer, persons with intersex variations etc. It will not be confined to any one of the specific socio-cultural identity groups, such as hijras, kothis, etc but will include all such persons who fall under the generic definition of transgender persons as follows:

Transgender Persons: All persons whose own sense of gender does not match with the gender assigned to them at birth. They will include trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormonal treatment or laser therapy, etc.) genderqueers and a number of socio-cultural identities, such as Kinnars, hijras, aravanis, jogtas, etc. The term 'transgender' shall be construed accordingly."

1.17 Subsequently, the definition of Transgender persons was also revisited with respect to international practices as per Sex Discrimination Amendment (Sexual Orientation, Gender, Identity and Intersex Status) Bill, Australia, 2013. Intersex status means the status of having physical, hormonal or genetic features that are :

- (a) neither wholly female nor wholly male; or
- (b) a combination of female and male; or
- (c) neither female nor male.

1.18 The definition of the Transgender Person has been framed in Section 2(i) Chapter-I of the Bill. However, as per Section 4(2) of the Bill, a person

recognized as Transgender under sub-section(1) has right to self perceived gender identity".

1.19 An official of the Ministry during the evidence before the Committee further submitted that, "We have taken this present definition as given by the Expert Committee. We have only made certain clarifications in the definition given by the Expert Committee".

1.20 The Committee also note that the proposed definition of transgender persons appears to be two-fold; the first part focuses on '*biological sex*', as mentioned in sub-clauses (A) to (C), while the second part focuses on '*psychological sex*'. NALSA has explicitly laid emphasis on the '*psychological test*' and not '*biological test*', wherein the psychological factor and thinking of that person has to be given primacy over the binary notion of gender of that person. In fact, the jurisprudence in the last 30 years from most parts of the world has rejected the emphasis on 'biological sex' and has given way to self-identified gender for the purpose of legal recognition. Thus, any definition of 'transgender person' only should relate to gender identity and not to biological sex of that person.

1.21 Further, the phrases '*neither wholly female nor wholly male*', '*a combination of female or male*' and '*neither female nor male*' are unscientific and primitive, and are based on the underlying assumption of

'*biological determinism*', i.e., all persons are born with innate and immutable biological attributes, i.e., chromosomes, hormone prevalence and internal and external sexual anatomy. It further fails to recognise that many persons are born with ambiguous or typical sexual organs, whether external or internal, and identify themselves as male, female or transgender (generally known as persons with intersex variation).

1.22 In view of the foregoing, it is clear that the term 'transgender person' refers to a category of persons who identify in a gender that is different from their gender assigned at birth, including identifying as 'male', 'female' or 'third gender' (inclusive of distinct socio-cultural identities in India, i.e., hijras, kinnars, aravanis and jogappas, amongst others).

1.23 The Committee would even like to remind the Ministry that the draft Bill which they had uploaded on their website in December, 2015 used the following definition of 'transgender person' :-

"Transgender Person means a person, whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as - kinnars, hijras, aravanis, jotgtas, etc."

1.24 The Committee find that there are fundamental issues with this definition since it conflates intersex and transgender persons even though

'intersex' and 'transgender' are not the same in any jurisprudence. Intersex status means the status of having physical, hormonal or genetic features that are : (a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male. The Committee also note that by conflating these definitions, the Bill completely misunderstands trans identities and severely restricts the constitutionally guaranteed right of transgender persons to self-identify, which NALSA has upheld. Even a transgender person who identifies as a woman, for instance, would be seen under this Bill as a combination of male or female, or as neither of the two and the law would thus completely fail to recognise her self-perceived identity as female.

1.25 The Committee, therefore, are of the firm view that the present definition of 'transgender person' does not conform with the definition prescribed by the Hon'ble Supreme Court in NALSA, the Expert Committee Report and not even with the Clarification Petition filed by the Government before the Hon'ble Supreme Court.

1.26 The Committee, therefore, are of considered view that the proposed definition of transgender person not only takes away the right to self determined gender identity which was guaranteed by the Hon'ble Supreme Court in NALSA judgement but also adversely effects significant part of the

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transgender population - specially pre-op/non-op transmen and transwomen, trans people who cannot or do not wish to undergo surgical interventions, gender fluid, gender neutral, and intergender persons.

1.27 In view of the foregoing, the Committee conclude that a transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. The Committee, therefore, recommend that Clause 2(i) of the Bill may be reframed as under :

"transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as - kinnars, hijras, aravanis, jogtas etc.

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CHAPTER II

PROHIBITION OF CERTAIN ACTS

2.1 In Clause 3 of the Bill, there are 9 Clauses from 3(a) to 3(i), which elaborate prohibition of discrimination against transgender persons. Clause 3 states:

"3.No person shall discriminate against a transgender person on any of the following grounds, namely:-

- (a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;
- (b) the unfair treatment in, or in relation to, employment or occupation;
- (c) the denial of, or termination from, employment or occupation;
- (d) the denial or discontinuation of, or unfair treatment in, healthcare services;
- (e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;
- (f) the denial, or, discontinuation of, unfair treatment with regard to the right of movement;
- (g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;
- (h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

- (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be."

2.2 The Committee find that Clause 3 of the Bill prohibits the denial or discontinuation of, or unfair treatment in, several areas including employment, healthcare, and the right of movement. The Committee, however, do not find any definition of 'discrimination' in the Bill.

2.3 It is an open fact that Transgender persons have historically faced a range of discrimination by the State and citizens which go beyond the categories enumerated in Articles 15(1) and 15(2) of the Constitution. For example, transgender persons routinely face discrimination in access to education, employment, healthcare, and housing. The Committee are of the view that without a definition of 'discrimination' for the purpose of this Act/law, it would be almost impossible to prohibit the same by the appropriate Governments.

2.4 The Committee also find that the Bill does not provide for any mechanism by which the acts prohibited in Clause 3, if committed, either by the Government or by a private establishment/individual, can be made liable. In other words, if a transgender person faces discrimination in any of the listed fields, there is no remedy provided in the Bill to rectify the same.

2.5 It is well known that, anti- discrimination legislations have clearly spelt the specific acts that would amount to discrimination and the procedure for bringing a claim of discrimination by an affected individual, including providing for a presumption in favour of the affected individual that he/she/they have been discriminated on the basis of prohibited grounds.

2.6 The Committee, hence, recommend that a definition of 'discrimination' be included, in Chapter I of the Bill which must cover a range of violations that transgender persons face. If need be, the Government can utilize the definition of discrimination given in the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which the Hon'ble Supreme Court also mentioned and referred to in NALSA judgement.

2.7 The Committee note that Clause 3 of the Bill prohibits acts of discrimination by 'person(s)'.

2.8 The Committee, in this connection, perused the General Clauses Act, 1897. According to section 3 of the Act, the term 'person' would include natural persons and private establishments i.e., companies, associations and bodies of individuals (whether incorporated or not). However, public establishments are excluded entirely from the purview of this provision.

2.9 The Committee feel that discrimination on the grounds so listed may be faced not just from private individuals and establishments, but also from the State too. The Committee, therefore, recommend extension of this provision not just to 'person(s)', but also to all establishments (public and private) as defined in Clause 2(b) of the Bill. The Committee also recommend that the word 'or establishment' be added after the words "No person"" in Clause -3.

2.10 The Committee observe that there is no grievance redressal mechanism proposed in the Bill by which these acts prohibited under Sub-clauses (a) to (i) in Clause 3, if committed, either by Government or by a private establishment, can be made liable.

2.11 The Committee believe that the Transgender Persons have a right to formal recognition of their self-defined gender identity, and Governments are obligated to respect this right. The Yogyakarta Principles expect States to "take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity." The Supreme Court has also clarified that transgender persons have a right to decide their self-identified gender. In NALSA case, the Court ruled that self-determination of gender flowed from the rights to freedom of expression and personal liberty under Articles 19 and 21 of the Constitution of India. It ruled: "We, therefore, declare that...transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender."

2.12 When the Ministry were asked as to why there is no grievance redressal mechanism in the Bill, the Ministry in their written submission stated as under:-

"Chapter VII of the Bill provides for a National Council of Transgender Persons which shall perform functions as assigned to it under the Act. While framing the rules, provision could be made that in case a person violates the provisions contained in Clause 3 in Chapter II, the aggrieved Transgender Person may approach National Council for Transgender Persons for redressal of his/her grievance. Moreover, the mechanism of Indian Judicial system is robust for taking care of any violations of the Act either by a person or an Establishment."

2.13 The Committee note that Clause 3 of the Bill provides nine provisions for prohibition of certain acts for the welfare of transgender persons. However, the Committee find that there is no mechanism provided in the Bill by which acts prohibited in the proposed Clause 3 either by Government or a private establishment can be made liable in case of violation of these prohibited acts. The Committee also observe that the National Council for Transgender Persons is not empowered to address or penalize a person or establishment in case of violation of the prohibited acts mentioned in Clause 3. As the nature and powers of the National Council have not been defined, neither there is any provision of redressal of grievance mechanism under functions or power of the National Council, the Committee recommend that an appropriate provision in Clause 3 of the Bill be added, providing a mechanism by which the acts prohibited in the proposed Clause 3, if committed, either by Government or by a private establishment, can be made liable, should be incorporated.

CHAPTER III**RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS**

3.1 Clauses 4-7 of the proposed Bill provide for the recognition of identity of transgender persons along with laying down the procedure for issuance of certificate of identity by a District Screening Committee. In particular, under Clause 4, a transgender person shall have the right to be recognised as such in accordance with the provisions of the Act as well as the right to be self-perceived gender identity. Clause 5 provides for the procedure for certification, wherein a transgender person may make an application to the District Magistrate for issuing a certificate of transgender identity in such form and documents that may be prescribed.

3.2 The Committee also note that detailing the procedure, Clause 6 provides that the District Magistrate ('DM'), on receipt of such application, shall refer the same to the District Screening Committee to be set up by the appropriate Government for the purpose of recognition of transgender persons. The Committee would comprise of the Chief Medical Officer, District Social Welfare Officer, a Psychologist/Psychiatrist, a representative of transgender community and an officer of the appropriate Government. Clause 7 mandates the DM to issue a certificate of transgender identity,

based on the recommendation of the Committee, which shall be recorded in all official documents and be a proof of recognition of transgender identity.

3.3 The Committee note that the Bill makes the recognition of identity of transgender persons contingent on the issuance of certificate of transgender identity, pursuant to the recommendation of the District Screening Committee, in turn changing the nature of the issue from 'identification' of transgender persons, to 'recognition of transgender persons in law'. When the Ministry were asked to offer their views in this regard, the Ministry in their written submission stated as under :-

"The Constitution does not discriminate against transgender persons. The Constitution of India is 'sex blind', that is to say, the basic premise of equality before the law and equal protection of the law is based on a Constitutional mandate that the sex of a person is irrelevant save where the Constitution itself requires special provisions to be made for women [Article 15(3)]. Article 14 guarantees to all persons equality before the law. Article 19(1) ensures for all citizens freedom of speech and expression. Article 21 guarantees life of dignity to all persons. Articles 15(1), 15(2) and 16(2) in express terms prohibit discrimination on the ground of sex. Recognition of identity of Transgender persons is being made contingent on the issuance of certificate of transgender identity is to their recognition availing of different benefits and opportunities thereby mainstreaming them".

3.4 In this context, the Committee examined the Report of the Expert Committee on the issues relating to transgender. It says "gender identity" refers to a person's internal, deeply felt sense of being either man or

woman, or something other or in between. Because gender identity is internal and personally defined, it is not visible to others. In contrast, a person's "gender expression" is external and socially perceived. Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

3.5 The Committee also find that the Hon'ble Supreme Court has also clarified that transgender persons have a right to decide their self-identified gender. In the NALSA case, the Court ruled that self-determination of gender flowed from the 'rights to freedom of expression and personal liberty' under Articles 19 and 21 of the Constitution of India. It ruled: "We, therefore, declare that...transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender." More so, the requirement of a screening process runs counter to progressive international jurisprudence.

3.6 The Committee observe that the Bill does not even spell out specific and concrete procedure to be followed for legal gender recognition which is likely to violate this right. It does not specify any grounds for the District Screening Committee to make its recommendations, or for the District

Magistrate to follow them. The presence of medical professionals on the panel increases the risk that the recognition of the gender identity of the applicant will be based on some kind of assessment of medical, biological or psychological 'eligibility', which would risk pathologising trans identities, and violate the right of transgender persons ' under the Supreme Court judgement and international human rights law and standards - to have their self-identified gender recognized.

3.7 The Committee strongly feel that any procedure for 'identification of transgender persons' which goes beyond self-identification, and is likely to involve an element of medical, biological or mental assessment, would violate transgender persons' rights under Article 19 and 21 of the Constitution.

3.8 The Committee also note that the Bill only provides for applicants to receive identity certificates as transgender persons, which restricts the right to recognition of their gender identity. In accordance with the Supreme Court ruling, trans persons must be able to secure recognition of their self-identified gender as male, female or transgender. The Bill, by stating that persons who receive identity certificates will be able to change their first names, also implies that transgender persons will not be able to change their last names on official identity documents. Since cisgender persons

can officially change both their first and last names, this provision can create a discriminatory restriction against trans persons.

3.9 The Committee also do not find any clarity on the role of District Screening Committee or the nature of assessment by the same and has been left to the Government to frame rules. Further, it is unclear on what basis the Committee would make recommendations to the District Magistrate, and whether the Committee can refuse to make recommendations or reject any application.

3.10 The Committee after examining the provisions of Clause 4(1) and 4(2) thoroughly are of the firm view that it is essential in the Bill to explicitly define the terms 'gender identity' and 'gender expression' since the right to self determination has been recognised and upheld in the directions given in NALSA judgement. NALSA judgement also upholds the right to self-identified gender i.e. male, female or third gender in absolute terms. The Committee, therefore, recommend that such key definition of 'gender identity' may be adopted in the Bill as "'gender identity' refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and/or functions by medical, surgical or other means) and other expressions of gender such as dress, mannerisms, speech patterns and social interactions".

3.11 The Committee further note that by a cursory inspection of Clause 4, it is not clear as to what recognition is being envisaged, whether only as a transgender person or as a male/female/transgender, irrespective of gender assigned at birth. Further, the Bill doesn't address the issue of those transgender persons who identify in the binary of 'male' or 'female' and do not want a certificate of transgender identity, since they want to be identified as 'male' or 'female', in accordance with their self-identified gender and not in gender assigned at birth. Though they are covered under the definition of 'transgender persons', they would require recognition as 'male' or 'female'.

3.12 When the Ministry were asked to comment, the Ministry replied that they have proposed the definition of Transgender Persons as follows:

"A person who is :

- (A) neither wholly female nor wholly male; or
- (B) a combination of female or male; or
- (C) neither female nor male; and

whose sense of gender does not match with the gender assigned to that person at the time of birth and include trans-men and trans-women, persons with intersex variations and gender-queers."

3.13 The Ministry further clarified that "it may be seen that if the word 'and' in (C) above is replaced by 'or' any person can approach the Screening Committee for getting the certificate of Transgender Person stating that

their gender is not matching with their present gender and it would be difficult for the Screening Committee to assign him or her a certificate of Transgender Person. Provisions in Clauses (A) to (C) are the basic criteria for defining a Transgender Person. Therefore, it is envisaged that by replacing the word 'and' by 'or' would widen the scope of inclusion of any person in the definition of Transgender Person and in turn may be misused".

3.14 The Committee concur with the contentions of the Ministry that by replacing the word 'and' by 'or' would widen the scope of inclusion of any person in the definition of Transgender Person and in turn may be misused. The Committee, however, recommend that Clause 7(1) may be redrafted indicating clearly that certificate will be issued only as a 'transgender person', not as a 'male' or 'female'. Accordingly, the word 'only' may be inserted after such person in Clause 7(1) and Clause 7(1) may be redrafted as under:-

"The District Magistrate shall issue a certificate of identity to the applicant under Section 5 on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person only as 'transgender'."

3.15 The Committee observe that for the purpose of recognition of identity, a provision for constitution of a District Screening Committee is there in the Bill. Clause 6(1) and (2) provides the details of the District Screening Committee as follows:

- 6 (1) "On the receipt of an application under Section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons."
- (2) "The District Screening Committee referred to in sub-section (1) shall comprise -
 - (a) the Chief Medical Officer;
 - (b) District Social Welfare Officer;
 - (c) a Psychologist or Psychiatrist;
 - (d) a representative of transgender community; and
 - (e) an officer of the appropriate Government to be nominated by that Government."

3.16 The Committee also note that there is no clarity on the role of District Screening Committee or the nature of assessment by the same and has been left to the Government to frame rules. Further, it is unclear on what basis the Committee would make recommendations to the District Magistrate, and whether the Committee can refuse to make recommendations or reject any application.

3.17 The Committee observe that Clause 7(2) also does not specify which official documents are being referred to and how the gender of transgender persons would be recorded in such documents. Does it include

education certificates too, i.e., Class X or XII or college certificates? Does it mean that following the certificate issued to a person under Clause 7(1), other State authorities like Passport Authority, Election Commission, Income Tax Ministry, etc would automatically record the transgender identity of persons in their documents (Passport, Voter's ID, PAN card)?

3.18 Further, Clause 7(3) is unable to specify whether the proof of recognition as a transgender person is for all purposes, including marriage, divorce, adoption, inheritance, criminal law, etc or is it limited to recognition of transgender identity only.

3.19 During the briefing of the Committee by the stakeholders, the Committee were informed that "the State can lay down a procedure to facilitate the recognition of self-identified gender of persons, whether as male, female or transgender, but cannot prescribe a procedure that does against the principles of self-determination and self-identification". It was also suggested that "for recognition of identity of Transgender Person, the Screening Committee may comprise only three persons, one representative from the Male to Female (MTF) trans community, one representative from the Female to Male (FTM) trans community and one from the Social Welfare Ministry".

3.20 When the Ministry were confronted on this, the Ministry stated that, "the District Screening Committee is being constituted on the lines of Transgender Welfare Board constituted by the Government of Tamil Nadu in order to help the Transgender persons lead a decent life and mainstream them into the society. In order to enlist the transgender persons as members of the Transgender Welfare Board and provide them welfare measures, the Government has constituted the District Level Screening Committees. The District Level Screening Committee comprises the District Collector as the Chairperson, and Deputy Director, Medical and Rural Health Services, the District Social Welfare Officer, Clinical Psychologist / Psychiatrist and a representative of the Transgender Community nominated by the District Collector as members of the Committee. This Committee examines the Transgender persons and certifies them as Transgender. After certification by the District Level Screening Committee, they are registered with Transgender Welfare Board and given an identity card. By recognizing them as Transgender, they are also provided with ration cards, health insurance cards, house site pattas, voter ID, housing, etc. This procedure is successful in Tamil Nadu".

3.21 The Committee, after a careful examination of Clauses 5 and 6, recommend that process of obtaining a certificate from the Screening Committee be made as simple as possible, hassle free and applicant friendly. A strict and reasonable timeline must be mentioned for issuance of a certificate of identity. Further, a strict code of guidelines may also be introduced to ensure that the screening process neither becomes an arbitrary affair nor a source of any harassment to transgender persons.

3.22 As regards, the presence of the Chief Medical Officer in the Screening Committee and medical examination of a transgender person, the Committee note that "the screening procedure envisaged under the proposed provision seems to involve a medical assessment, which is intrusive and demeaning and subjects the transgender person to unnecessary scrutiny of their non-confirming gender. This procedure of 'screening' of transgender persons is problematic and constitutes violation of fundamental rights to equality, dignity, autonomy and bodily integrity and freedom of gender expression guaranteed under Articles 14, 19 and 21 of the Constitution, as affirmed by the Supreme Court in NALSA judgement."

3.23 When the Committee perused the NALSA judgement, the Committee found that the Supreme Court also made it amply clear in the judgement that each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.

3.24 When the Ministry were asked to offer their comments on this, the Ministry stated that, "if the medical practitioner is not involved, it is likely that certificate may be misused. Therefore, involvement of medical practitioner in the Committee for deciding a gender of the person is essential".

3.25 The Committee are in agreement with the contention of the Ministry and feel that the role of Screening Committee is very critical in declaring a person as transgender and the role of the Chief Medical Officer too is equally important while issuing a certificate to a transgender person and without it, it would be difficult to check the misuse of the certificate. As the role likely to be played by the Chief Medical Officer has not been defined in the District Screening Committee, the Committee recommend that the role of the Chief Medical Officer be clearly defined.

3.26 The Committee observe that in Clause 6(2)(b), it has been mentioned that the District Screening Committee referred to in sub-section (1) shall comprise, among other members, (b) 'District Social Welfare Officer'.

3.27 When asked the reasons for appointing a District Welfare Officer in the Screening Committee and not prescribing any qualification for him, the Ministry during their evidence before the Committee submitted as under:

"...a District Social Welfare Officer is responsible for looking after social welfare of all the people in that District. Therefore, we have appointed District Social Welfare Officer also in the Screening Committee... District Social Welfare Officer is there by virtue of his designation in this Committee. As a representative of transgender community is already there in the District Screening Committee, it is not necessary to replace the District Social Welfare Officer with a representative of transgender community again on this position."

3.28 The Committee find that the membership of a District Social Welfare Officer is only by virtue of his designation in that District. The Committee feel that there is no need of a District Social Welfare Officer in the Screening Committee. The Committee, however, are of the considered view that if at all there has to be a District Social Welfare Officer, he should have atleast five years experience of working with/among transgender persons, must have a fair knowledge about their specific needs, activities and be well acquainted with the temperament and aptitude of the transgender persons.

3.29 The Committee are also aware that it would not be easy for any State Government to find a person with above qualification for being nominated as a District Social Welfare Officer in every District. The Committee, therefore, recommend that instead of a mandatory membership of a District Welfare Officer, renowned person in the field of welfare of transgender persons in that District may be appointed as a member of the District Screening Committee in place of the District Social Welfare Officer.

3.30 For applying for certificate of identity in Clause 5 of the Bill, it is provided that:

"5. A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child."

3.31 Clause 7(1) states as follows:

"7(1). The District Magistrate shall issue to the applicant under section 5 a certificate of identity as transgender person on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender."

3.32 Clause 8 states as follows:

"8(1). After the issue of a certificate under sub-section (1) of section 7, if there is any change in the gender of a transgender person, he shall make an application to the District Magistrate for revised certificate."

"8(2). The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed."

3.33 Asked to elaborate and clarify the procedure for applying for a revised certificate, the Ministry in their written submission stated that :

"Sex Re-assignment Surgery (SRS) would not be mandatory for a person to be declared as a transgender person in the first instance. Their gender shall be recorded in all official documents like passport, ration card, voter card, Aadhar card etc. as per the certificate issued by the District Magistrate. However, as per the provision under

Clause 8(1), if transgender persons (either trans-men or trans-women) desire to change their gender after going through SRS, they, for the second time, may make an application to the District Magistrate for the revised certificate. On production of certificate from a competent Medical Officer regarding their SRS, the District Magistrate shall, *suo-motu*, issue them the revised certificate regarding their being either a trans-man or trans-woman under Clause 8(1) of the proposed Bill".

3.34 The Ministry further submitted that "however provisions contained in Clause 8(2) viz 'The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed' may be deleted from the Bill."

3.35 The Committee, after going through the submission of the Ministry on one hand and hearing the contentions of the stakeholders on the other hand, observe that the transgender persons, no doubt, are reluctant to undergo physical examination in front of the District Screening Committee for obtaining a certificate of a transgender person in the first instance. The Committee wonder why will then the same person would apply again for a certificate and undergo the same procedure which he went earlier. Concurring with the views of the Ministry, the Committee recommend that Clause 8(2) may be deleted from the Bill, being superfluous.

3.36 The Committee also desire that the right to appeal against the decision of the Screening Committee may also be incorporated in the Bill itself.

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CHAPTER -IV

WELFARE MEASURES BY GOVERNMENT

4.1 Clause 9 of the Bill states:

- "9(1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.
- (2) The appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government.
- (3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.
- (4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person.
- (5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities."

4.2 The Committee observe that Clause 9 provides for the obligation of the appropriate Government, including to secure full participation of transgender persons in society, take measures to protect the rights of transgender persons and facilitate their access to welfare schemes, which are non-stigmatizing and non-discriminatory, and to take steps for the rescue, protection and rehabilitation of transgender persons, amongst others.

4.3 The Committee find that welfare measures to be undertaken by the 'appropriate Government', without clarifying the duties of different agencies, unclear and undefined division of responsibilities between the Central and State Governments would lead to passing the buck on each other resulting in delays in implementation of welfare measures for the transgender persons besides diluting the accountability. More so, there is no obligation on the Government to redress the grievances of transgender persons, in case of violation of any provision of the Bill.

4.4 With respect to Clause 9(4), the Committee note that the policy of institutionalization of marginalised individuals, especially adults, whether women, or those charged with begging offence, or persons with intellectual/mental disabilities, amongst others, has not made much headway over the last 65 years in India. The notion of institutionalization denudes people of their agency to decide for themselves and to live a life of dignity and respect. The transgender persons do not need to be rehabilitated by the State, but need protection of their rights guaranteed by the Constitution as well as redressal of their grievances, whether of discrimination, violence or financial penury.

4.5 When enquired from the Ministry as to why there is no obligation on the Government to redress the grievances of transgender persons and why specific welfare measures to be undertaken by the Union Government and the State Governments have not been laid down or explicitly spelt out, the Ministry replied that, "it is informed that welfare measures undertaken by the Centre as well as State Government, do not make any discrimination on the basis of their gender. The present Bill seeks to reiterate their rights and is a step in protection of their rights. Accordingly, Clause 9 (1 to 5), which pertain to welfare measures by the Government highlight directions to appropriate Governments for taking specific measures for their welfare. As far as redressal of their grievance is concerned, Chapter VII of the Bill provides for National Council of Transgender persons. It shall perform such functions assigned to it under the Act. Further, Clause 18(d) brings out the functions of the National Council. The Council is a broad based entity including representatives from transgender community. It is expected that their grievances shall be addressed by the Council. Chapter VIII further provides penalties for the offenses and lays down stringent measures for securing the rights of transgender persons with respect to their life, safety, well being etc. The State law and order mechanism shall take care of their immediate concerns".

4.6 The Committee find that there is a lack of clarity in the division of responsibilities between the Central and State Governments, as well as other authorities where relevant. The Committee are of the considered opinion that this lack of clarity in the division of responsibilities would lead to administrative delays, confusion, and added regulatory costs, apart from impeding the effective implementation of the provision of Clause 9. The Committee recommend that the responsibilities of the Central and State Governments be clearly demarcated so as to avoid administrative delays.

4.7 As there are no provisions in the Bill regarding directions to the State Governments and civil society to implement measures for awareness generation and sensitization, the Committee desire that there should be a separate Clause directing Central Government, States and civil society to adopt measures for generating awareness at various levels such as schools/colleges, Government and private offices, police stations, etc. regarding concerns of transgender persons.

4.8 The Committee also desire that there should be a separate provision directing that application forms or any other documentation

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required for accessing welfare schemes provided to the general public, should also provide an option for 'transgender', in place of 'other' .

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CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSON

5.1 Clauses 10-12 provide for the obligation of establishments, whether Government or private, to ensure that no transgender person is discriminated in any matter relating to employment, and provide for the setting up of a Complaint Officer in every establishment (with 100 or more persons).

5.2 It is a fact that most transgender persons either are not employed or have to leave their jobs, owing to diverse reasons. Many transgender persons, in particular, trans-men and trans-women, do not even apply for jobs, on account of discrepancy between the gender recorded in their educational certificates and their gender identity and expression, while others are forced to leave jobs, when they start transitioning or after undergoing SRS.

5.3 The Committee observe that no proper and effective enforcement mechanism exists in the Bill to make the private sector comply with the provisions of the Bill. In fact, the only obligation is on establishments with more than 100 'persons' to establish a Complaint Officer. The Bill also does not lay down the exact powers of the Complaint Officer or what action can be taken by such an officer, in case of discrimination against a transgender

person. Further, the Bill does not specify any obligation on the private establishments with less than 100 employees/persons.

5.4 When the Committee confronted the Ministry as to why the Bill does not specify any obligation on the private establishments with less than 100 employees/persons and why the definition of establishment provided in the Bill leaves out scores of unorganized sector workers, and trans persons in organization with less than 100 employees, the Ministry responded as under:

"the obligation to ensure compliance with the provisions of this Act is for all establishments including which have less than 100 persons. However, Clause 12 provides for designation a person to be a Complaint Officer for establishment having more than 100 persons to deal with the complaints relating to violation of the provisions of this Act. It is not practically feasible for small establishments to designate a Complaint Officer. However, the mechanism of police system is robust in India for taking care of such grievances".

5.5 The Ministry further submitted that "this Clause may be reworded as every establishment shall designate a person to be a Complaint Officer to deal with the complaints relating to violation of the provisions of this Act".

5.6 The Committee take note of the fact that restricting the obligation to set up grievance redressal mechanisms at the institutional level to establishments with more than a hundred employees might potentially leave transgender persons exposed to harassment and discrimination with no recourse except in the courts. The Committee feel that, since the designation of one Complaint Officer in an institution is not an onerous or resource-intensive measure, this requirement should ideally be extended to all establishments under the Act. The Committee, therefore, recommend that it should be clearly mentioned in this Clause of the Bill that all establishments, including Government and private, irrespective of the number of employees, shall designate a Complaint Officer to deal with the complaints relating to violation of provisions of this Act.

5.7 The Committee note that the Bill currently does not specify the functions of the Complaint Officer or vest the authority with any powers. To ensure effective implementation of the Act, it is imperative to specify the types of complaints the Complaint Officer can look into, and the kinds of orders it can pass and remedies it can provide. The Committee desire that duties and responsibilities of the Complaint Officer be specified and the types of complaints he can look into and remedies offer, be also mentioned on the lines of the Sexual

Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

5.8 Clause 13 of the Bill States :

- "13(1) No transgender person shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such person.
- (2) Every transgender person shall have -
- (a) a right to reside in the house-hold where parent or immediate family members reside;
 - (b) a right not to be excluded from such house-hold or any part thereof;
 - (c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.
- (3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre."

5.9 As may be seen, Clause 13 provides for right to residence of transgender persons, including right to reside in the family household, right not to be separated from parents or immediate family, right not to be excluded from such household or right to enjoy and use the household facilities.

5.10 The Committee, in other words, find that the Bill assumes the 'family' as a protection unit for transgender persons. However, the truth is that most transgender persons face severe abuse and harassment at the hands of their family/immediate relatives, including physical and sexual violence. In fact, it is the family that is the seat of violence, abuse and a denial of

identity for young trans-person. For transgender children and minors, the family and the natal home become places where the right to self determine gender and to express that gender through various means, are severely curtailed. They have to often leave their homes to escape from the domestic abuse and have nowhere to go, including no legal protection for domestic violence. The only recourse for such transgender children is to run away from the natal home. For them, the Hijra families, the 'Jamaats' or 'dormitories' are places of refuge, the 'Hijra elders' their adoptive parents, the 'Hijra community' their family and friends. The Bill ignores this critical aspect of transgender persons' lives.

5.11 The Committee also observe that Clause 13(3), which is about rehabilitation of transgender persons, in case the parents/family of transgender person being unable to take care, is extremely elusive. It is not clear what the nature of these 'rehabilitation centres' is, or what the rehabilitation of transgender persons would entail. As is well-known, families either abandon transgender persons or compel them to live and behave in their gender assigned at birth. As a result, transgender persons often leave their families and homes at an adolescent age, owing to stigma and discrimination, and do not need rehabilitation, but they require State assistance to rebuild their lives, either through education or employment. They require protection against domestic violence, since majority of

violence faced by transgender persons is on account of their self-identified gender.

5.12 The Committee, further, find that the Bill does not mention about the inheritance rights of transgender persons, wherein they cannot be disinherited from their rightful share in parental property on the ground of gender entity.

5.13 When asked how the Ministry propose to address these important issues and problems of transgender persons, the Ministry in their written submission stated as under:

"Clause 13 (1to 3) was primarily aimed at retention of transgender children within their immediate family. Punishments envisaged in chapter VIII are expected to bring down cases of domestic/familial violence. The spirit of the Bill is to integrate transgender persons and community in to the society rather than to create separate structures. If we allow two parallel systems to exist then the Bill have no meaning for the transgender community. However, where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre".

5.14 The Ministry further submitted that "as long as Transgender Person is a child, he/she should not have a choice to reside other than the household where parent or immediate family reside as it would increase the chances of his physical and sexual abuse. Such child may also not get a chance of proper education. It would, therefore, be in the interest of the child to be

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with his/her family. A Transgender Person, after becoming an adult may have his choice of residing anywhere".

5.15 The Committee, after going through the wordings of Clause 13(1) carefully *vis a vis* reply of the Ministry, are not convinced by the justification given by them. The Committee recommend that Clause 13(1) may be redrafted as:

"No child who is a transgender shall be separated from his or her parents or immediate family on the ground of being a transgender except on an order of a competent Court, in the interest of such child."

5.16 Further, the Committee feel that it is imperative that alternative family structures are recognized, especially in the context of transgender persons. Accordingly, there is a need to recognize alternate support structures in the transgender community. The Committee desire that there is a need to define the word 'family' so that the Hijra or Aravani community elders, who adopt young transgender children are not put under risk and the Hijra family system is not criminalized. The Committee, therefore, recommend that a sub-clause may be added in Clause 2 of Chapter-I of the Bill giving appropriate definition of the word 'family', *viz.*, a group of people related by blood, marriage or by adoption of a transgender person.

5.17 The Committee further recommend that Clause 13(3) may be reworded as under:

"Where any parent or a member of his immediate family is unable to take care of a transgender child or the child does not want to live with them, the competent court shall make every effort, if need be, by an order, to place such child with his or her extended family, or in the Community in a family setting or rehabilitation centre".

5.18 The Committee find that there are no specific directions to the States to establish rehabilitation centres for transgender persons. The Committee feel that general rehabilitation centres meant for male, female and children would not cater to the specific needs of the transgender persons. The Committee, therefore, recommend that directions should be given to the State Governments to set up specific rehabilitation centres meant only for transgender persons, which would cater to their specific needs.

**EDUCATION, SOCIAL SECURITY AND HEALTH OF
TRANSGENDER PERSON**

6.1 Clause 14 of the Bill states:

"14. All educational institutions funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others."

6.2 The Committee note that above Clause provides obligation of educational institutions to provide inclusive education to transgender persons, but there is lack of clarity on inclusive education. When asked to comment, the Ministry in their written note stated that "Clause 2 (c) of the proposed Bill defines "inclusive education " as a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such students. However, a transgender child enjoys full right as others. However, in order to protect the education, social security and health care of transgender persons, Clauses 14 to 17 have been added as a safeguard".

6.3 The Committee wonder when a transgender child enjoys full and all rights as enjoyed by other normal children, what and where is the need to bring this legislation for protection of their rights. The Committee find that

this Clause does not impose any tangible obligation on the educational institutions.

6.4 The Committee also find that, education remains one of the least accessible options for the transgender persons, due to plethora of reasons, including bullying for gender non-conformity in schools, lack of recognition of gender non-conforming children in the Right of Children to Free and Compulsory Education Act, 2009, recording of gender assigned at birth in educational certificates, which are impossible to change, and entrenched stigma and discrimination in colleges and university campuses against gender non-conforming behaviour and expression, resulting in frequent drop outs and discontinuation of education, etc.

6.5 The Committee desire that a provision for obligations imposed on private educational institutions in line with the provisions of the Right to Education Act, 2009 should be there in the Bill. There should also be a provision regarding obligations on the Government for formulation of educational and communication programmes which are 'age-appropriate, gender-sensitive, non-stigmatising and non-discriminatory'.

6.6 The Committee also urge the Ministry to include following sub-Clauses under Clause 14 of the Bill:

"14(1) It is unlawful for an educational authority to discriminate against a person on transgender grounds:

(a) by refusing or failing to accept the person's application for admission as a student, or

(b) in the terms on which it is prepared to admit the person as a student.

14(2) It is unlawful for an educational authority to discriminate against a student on transgender grounds:

(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or

(b) by expelling the student or subjecting the student to any other detriment."

6.7 The Committee after carefully perusing Clause 15, do not find any schemes and programmes which are being provided by the Government to support livelihood of the transgender persons nor any meaningful livelihood options for vocational training or self-employment to the transgender persons.

6.8 The Committee wish to draw the attention of the Ministry towards the fact that very few transgender persons are part of formal employment system, owing to lack of equal and non-discriminatory educational and employment opportunities as well as gender-incongruent identity norms.

6.9 When the Ministry were asked as to what specific schemes and programmes have been provided in the Bill, the Ministry replied that "it is not possible to put everything in the Bill as the same is derivative in nature".

6.10 The Committee observe that with regard to vocational training and self-employment of the transgender persons, the proposed Clause 15 is too vague and limited and will hardly provide any meaningful livelihood option to the transgender persons. It is important that the Government provide appropriate facilities for vocational and technical training to transgender persons, many of whom are interested in creative fields like fashion design, photography, interior designing, etc. in order to make them self sufficient and self-reliant. Due to lack of equal and non-discriminatory educational and employment opportunities in addition to gender-incongruent identity documents, very few transgender persons are part of formal employment system. Therefore, the Committee desire that adequate facilities for vocational and technical training to transgender persons should be provided in the Bill.

6.11 Further, a separate provision should also be made under which directions should be issued to undertake specific measures such as counselling, career guidance and sensitizing employers regarding concerns of transgender persons, a suggestion which was also made by the Expert Committee constituted by the Ministry on the issues relating to transgenders.

6.12 Clause 16 of the Bill states :

"16. The appropriate Government shall take the following measures in relation to the transgender persons, namely :-

- (a) a separate human immunodeficiency virus Sero-surveillance Centres;
- (b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;
- (c) pre and post sex reassignment surgery and hormonal therapy counselling;
- (d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;
- (e) review of medical curriculum and research for doctors to address their specific health issues;
- (f) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centres;
- (g) provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons."

6.13 Commenting on the provisions made in this Clause, the Ministry stated that "...Clause 16 provides for taking measures in relation to their medical care facilities including Sex Reassignment Surgery (SRS) and hormonal therapy and bringing out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines".

6.14 The Committee note that there are several measures which have been recommended by the Expert Committee and are germane for the welfare of transgender persons but have not been explicitly incorporated in the Bill, such as, developing trans-friendly hospital policies/guidelines, developing non-discriminatory policies so that transgender persons can have barrier free access to healthcare and funding research for promoting transgender health, etc. The Committee urge the Ministry to ensure that transgender individuals and health activists are part of the consultation process to design any guidelines for SRS or for larger trans-health issues or to incorporate the same into medical curricula.

6.15 The Committee, therefore, desire that these measures should be incorporated in this Clause of the Bill.

6.16 The Committee find that under Clause 16(c), counselling is limited only to Sex Reassignment Surgery, and hormonal therapy and there is no provision for psychological counselling or counselling related to mental health. Therefore, the Committee desire that measures on counselling, review of medical curriculum and insurance coverage must explicitly incorporate mental health concerns of transgender persons.

6.17 Further, the Committee find that Clause 16(g) does not make it clear if the comprehensive insurance scheme is simply for Sex-Reassignment Surgery (SRS) and hormonal therapy, or for any health issues. Therefore, the Committee recommend that Clause 16(g) may be redrafted as follows:

"provision for coverage of medical expenses by a comprehensive insurance scheme for SRS, hormonal therapy and other health issues."

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

7.1 Clause 17 provides for the establishment of a National Council for Transgender Persons by the Central Government, comprising several members from different Ministries and Departments of the Central Government, representatives from the State Governments, autonomous statutory bodies, representatives from the transgender community from different States on a rotation basis and five experts working with transgender persons. All members are to be nominated by the Central Government and will hold office for a period of three years, except the Member Secretary. Clause 18 lists the functions of the Council, including, to advice the Central Government on the formulation of policies, programmes and legislations for the transgender persons, and monitor and evaluate the impact of policies and programmes on transgender persons, amongst others.

7.2 The Committee note that Clause 17 and 18 of the Bill describe the constitution and functions of National Council for Transgender Persons. The Committee find that the National Council is merely an advisory body and does not have any effective powers. The Council is not even empowered to record evidence, call for documents, and does not have the

powers of a Civil Court within the ambit of the Code of Civil Procedure, 1908, unlike the Statutory Commissions.

7.3 When asked why there is no clarity on the nature and powers of the National Council, the Ministry stated that "nature and powers of National Council are clearly outlined in Clause 18 of the Bill. The National Council is headed by Union Minister of Social Justice and Empowerment and is a fairly empowered body". The Ministry, on the functions of the National Council, further, stated that "...in case a person violates the provisions contained in Clause 3 in Chapter II of the Bill, the aggrieved Transgender Person may approach National Council for Transgender Persons for redressal of his/her grievance".

7.4 The Committee are dismayed to find that 'functions' of the National Council for Transgender Persons as detailed by the Ministry in their written submission have not been precisely mentioned in the Bill. The Committee do not find anything in the Council's role for the grievance redressal of the transgender persons in Clause 18. The Committee are equally not satisfied with the reply given by the Ministry. The Committee observe that the National Council has been reduced merely to an advisory body and does not have any effective enforcement powers. The Committee are, therefore, of the opinion that the Council be vested with more teeth and its powers and functions need be elaborated. The Committee recommend that a new Clause indicating clearly the function of the National Council for redressal of grievances as "to redress the grievances of the transgender persons" may be added as sub-clause (e) to Clause 18 of the Bill. The mechanism for enforcing the orders of such body must be clearly expressed in the Bill. A provision for allowing enforcement of the orders of such body should be incorporated in the Bill and non-compliance of which must attract penalties.

7.5 The Committee also recommend that a provision for constitution of State Councils for Transgender Persons should be there in the Bill

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so that enforcement bodies must be set up at the State level by the State Governments.

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CHAPTER - VIII

OFFENCES AND PENALTIES

8.1 Clause 19 of the Bill states :

"19. Whoever,-

- (a) compels or entices a transgender person to indulge in the act of begging or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;
- (b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;
- (c) forces or causes a transgender person to leave house-hold, village or other place of residence;
- (d) harms or injures or endangers the life, safety, health, or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine."

8.2 As may be seen from the above Clause, the Bill recognizes certain categories of crimes committed against transgender persons, including the compelling of transgender persons to engage in begging. All these offences are punishable with imprisonment for up to two years.

8.3 The Committee feel that Clause 19(a), though well-intentioned, is likely to be misused against the other transgender persons, in the garb of protecting them. It is an open fact that most transgender persons are harassed or booked under the begging prohibition laws, even when they are not begging or merely present at public places.

8.4 The Committee observe that the Bill does not fully recognize the range of violence that transgender persons face, and, therefore, does not provide for sentences commensurate with the gravity of the offences. The Indian Penal Code was amended in 2013 to expand the definition of rape and recognize a broader range of offences against women, including acid attacks, voyeurism, stalking, sexual harassment and disrobing. Transgender persons often face similar abuses.

8.5 The Committee also observe that there is also a risk that the Bill could end up criminalizing transgender persons begging of their own volition. The Committee further observe that criminalizing the act of "compelling or enticing transgender persons in begging and other forms of forced or bonded labour" increases the risk that transgender persons - many of whom have limited employment opportunities - will be criminalized due to misuse of the law. The Committee feel that provisions on beggary

under other laws already exist, and are already used to harass and abuse transgender persons.

8.6 The Committee also find that Clause 19(d) is not specific, since there is no definition of 'sexual abuse' given in the Bill. The words "tends to do acts" are vague and ambiguous and have no place in a provision prescribing a criminal offence. This Clause, the Committee feel has to be precise and specific. Though there exists an urgent need to provide for protection against sexual assault and rape of transgender persons, the present provision falls woefully short, since it does not specify the exact non-consensual acts that are sought to be prohibited. Moreover, there is no clarity on how these acts would interplay with Section 377, IPC that criminalizes all penile non-vaginal sexual acts between individuals.

8.7 When asked to give their views on Clause 19 and what the Ministry have to say on the Committee's observations, the Ministry stated as under:

" As far as Clause 19(a) of the Bill is concerned, it speaks only about compelling and enticing transgender persons in begging and other forms of forced or bonded labour. The aim of this provision is to discourage forced beggary/bonded labour system which is a crime under various Acts. However, forced beggary/beggary syndicates shall be dealt with under appropriate provisions of the IPC Act. After the Bill is approved, all efforts would be made to mainstream the transgender community by providing skill training."

8.8 The Committee concur with the suggestion of the Ministry to the extent that beggary/beggary syndicates and bonded labour system must be discouraged being a crime under various Acts irrespective of any gender. The Committee strongly feel that the Bill must recognize these offences as crimes against transgender persons, and provide for sentences commensurate with the gravity of their offences. As Clause 19 provides for the same/similar punishment for offences that are varied in nature and in the harm caused, which violates the principle of proportionality under Article 14 of the Constitution, the Committee recommend that there should be graded punishment for different offences and those involving physical and sexual assault must be met with higher punishment. Further, the Indian Penal Code may be used as a guideline while determining penalties of such abuses/crimes so that principle of proportionality is also preserved.

8.9 The Committee further recommend that the Bill should also specifically recognize, and provide appropriate penalties for, violence that transgender persons face from officials in educational institutions, healthcare institutions, police stations, jails, shelter and remand homes and other places of custody.

8.10 Although beggary is a criminal act but the transgender community does not enjoy parity with other genders when it comes to alternative modes of employment. The Committee, therefore, exhort the Ministry to issue directions to State Governments to provide alternative employment opportunities for transgender persons, such as, recruitment as drivers, conductors, traffic policemen etc. in the Central and State Departments. To provide more employment avenues to transgender persons, the Committee desire that directions may also be given to States to introduce various short term courses designed according to their abilities and requirements for skill development of transgender persons as well.

MISCELLANEOUS

9.1 The Committee further recommend that the Ministry should consider suitably incorporating the following suggestions in "The Transgender Persons (Protection of Rights) Bill, 2016". which the Committee feel are equally important and will have a direct bearing on the welfare of transgender persons:

- (1) In NALSA, the Supreme Court directed the Central Government and the State Governments to take steps to treat transgender persons as socially and educationally backward classes of citizens and extend all kinds of reservation for admission in educational institutions and for public appointments. The Bill is silent on granting reservations to transgender persons under the category of socially and educationally backward classes of citizens.**
- (2) The Bill does not refer to important civil rights like marriage and divorce, adoption, etc, which are critical to transgender persons' lives and reality, wherein many are engaged in marriage like relations, without any legal recognition from the State.**

- (3) There should be separate HIV Sero-surveillance Centres since hijras/transgenders face several sexual health issues operated by Centre and State Governments.**
- (4) There should be a provision to provide the transgender persons separate public toilets and other such facilities.**
- (5) There should be counseling services provided to the transgender persons to cope up with trauma and violence on the model of Rape and Crisis Intervention Centres.**
- (6) Helping for career guidance and online placement support should be established.**
- (7) At the end of Clause 2(i) in Chapter-I of the Bill, definition of 'persons with intersex variations' should be given as "Persons who at birth show variations in their primary sexual characteristics, external genetalia, chromosomes, hormones from the normative standard of female or male body are referred to as persons with intersex variations".**
- (8) A provision providing penal action against abortions of intersex fetuses and forced surgical assignment of sex of intersex infants should be there in the Bill.**
- (9) A provision for separate frisking zones of transgender persons at public places such as airport, Government and**

private office complex, etc. should be there. For this purpose, transgender persons should be appointed.

- (10) Transgender persons remain at risk of criminalization under Section 377. The Bill must at the very least recognize the rights of transgender persons to partnership and marriage.
- (11) The Bill must recognize transgender persons' right to marriage, partnership, divorce and adoption, as governed by their personal laws or other relevant legislation.
- (12) A census for transgender persons is a separate exercise from the drafting of guidelines for self-registration. The Census can be proceeded with independently.

New Delhi;
19 July, 2017
28 Ashadha, 1939(Saka)

RAMESH BAIS,
Chairperson,
Standing Committee on
Social Justice and Empowerment

536

A

PRELIMINARY

5	1. (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2016. (2) It extends to the whole of India. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	Short title, extent and commencement.
10	2. In this Act, unless the context otherwise requires,— (a) "appropriate Government" means,— (i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government; (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;	Definitions.
15		

(b) "establishment" means—

(i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and includes a Department of the Government; or

5 18 of 2013.

(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

(c) "inclusive education" means a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such students;

10

(d) "institution" means an institution, whether public or private, for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons;

(e) "local authority" means the municipal corporation or municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

15

(f) "National Council" means the National Council for Transgender Persons established under section 17;

(g) "notification" means a notification published in the Gazette;

20

(h) "prescribed" means prescribed by rules made by the appropriate Government under this Act;

(i) "transgender person" means a person who is—

(A) neither wholly female nor wholly male; or

(B) a combination of female or male; or

25

(C) neither female nor male; and

whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.

CHAPTER II

30

PROHIBITION OF CERTAIN ACTS

Prohibition
against
discrimination.

3. No person shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

35

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

40

(f) the denial, or, discontinuation of, unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

5 (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

10 **4.** (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act. Recognition of identity of transgender person.

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

15 **5.** A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed: Application for certificate of identity.

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

20 **6.** (1) On the receipt of an application under section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons. District Screening Committee.

(2) The District Screening Committee referred to in sub-section (1) shall comprise—

(a) the Chief Medical Officer;

(b) District Social Welfare Officer;

(c) a Psychologist or Psychiatrist;

25 (d) a representative of transgender community; and

(e) an officer of the appropriate Government to be nominated by that Government.

7. (1) The District Magistrate shall issue to the applicant under section 5 a certificate of identity as transgender person on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender. Issue of certificate of identity.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

35 **8.** (1) After the issue of a certificate under sub-section (1) of section 7, if there is any change in the gender of a transgender person, he shall make an application to the District Magistrate for revised certificate. Change in gender.

40 (2) The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued revised certificate shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

45 Provided that such change in gender and the issue of revised certificate under sub-section (1) shall not affect the rights and entitlements of such person under this Act.

CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

Obligation of
the
appropriate
Government.

9. (1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.

(2) The appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government. 5

(3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

(4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person. 10

(5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSON

15

Non
discrimination
in
employment

10. No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

Obligations of
establishments.

11. Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to the transgender person as may be prescribed. 20

Grievance
redressal
mechanism.

12. Every establishment consisting of one hundred or more persons shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.

Right of
residence.

13. (1) No transgender person shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such person. 25

(2) Every transgender person shall have—

(a) a right to reside in the house-hold where parent or immediate family members reside;

(b) a right not to be excluded from such house-hold or any part thereof; 30

(c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.

(3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre. 35

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSON

Obligation of
educational
institutions to
provide
inclusive
education to
transgender
persons.

14. All educational institutions funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others. 40

15. The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

Vocational training and self-employment.

16. The appropriate Government shall take the following measures in relation to the transgender persons, namely:—

Health care facilities.

(a) a separate human immunodeficiency virus Sero-surveillance Centres;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) pre and post sex reassignment surgery and hormonal therapy counselling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

17. (1) The Central Government shall by notification constitute a National Council for Transgender to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

National Council for Transgender.

(2) The Council shall consist of—

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, *ex officio*;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, *ex officio*;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, *ex officio*;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing, Urban and Poverty Alleviation, Development, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and NITI Ayog, not below the rank of Joint Secretaries to Government of India, Members, *ex officio*;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries of Government of India, Members, *ex officio*;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members;

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member-Secretary, *ex officio*.

(3) A Member of National Council, other than *ex officio* member, shall hold office for a term of three years from the date of his nomination. 5

Functions of
the Council.

18. The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons; 10

(c) to review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to perform such other functions as may be prescribed by the Central Government. 15

CHAPTER VIII

OFFENCES AND PENALTIES

Offences and
penalties.

19. Whoever,—

(a) compels or entices a transgender person to indulge in the act of begging or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; 20

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave house-hold, village or other place of residence; 25

(d) harms or injures or endangers the life, safety, health, or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine. 30

CHAPTER IX

MISCELLANEOUS

Grants by
Central
Government.

20. The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Council as may be necessary for carrying out the purposes of this Act. 35

Act not in
derogation of
any other law.

21. The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.

Protection of
action taken
in good faith.

22. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder. 40

Power of
appropriate
Government
to make rules.

23. (1) The appropriate Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which an application shall be made under section 5;

5 (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7;

(c) the form and manner in which an application shall be made under sub-section (2) of section 8;

(d) facilities to be provided under section 10;

(e) other functions of the National Council under section 18;

10 (f) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the
15 successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

20 (4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one house, before that house.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such directions, by order published in the Official
25 Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to
remove
difficulties.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid
30 before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Transgender community is one of the most marginalized communities in the country because they do not fit into the general categories of gender of 'male' or 'female'. Consequently, they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on.

2. Though article 14 of the Constitution of India guarantees to all persons equality before law, clauses (1) and (2) of article 15 and clause (2) of article 16, *inter alia* prohibit in express terms discrimination on the ground only of sex and sub-clause (a) of clause (1) of article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against the transgender persons continue to take place.

3. The Hon'ble Supreme Court, vide its order dated 15th April, 2014, passed in the case of National Legal Services Authority Vs. Union of India, *inter alia*, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by the Parliament and the State Legislature.

4. The Transgender Persons (Protection of Rights) Bill, 2016 seeks to—

- (a) define a transgender person;
- (b) prohibit discrimination against transgender person;
- (c) confer right upon transgender person to be recognised as such, and a right to self-perceived gender identity;
- (d) issue of certificate of identity to transgender persons;
- (f) provide that no establishment shall discriminate against transgender person in matters relating to employment, recruitment, promotion and other related issues;
- (g) provide for grievance redressal mechanism in each establishment;
- (h) establishment of a National Council for Transgender;
- (i) punishment for contraventions of the provisions of the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 27th July, 2016.

THAAWARCHAND GEHLOT.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA

[Copy of D.O. No. 13011/5(11)/2014-DP.III dated 29 July, 2016 from Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment to the Secretary General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Transgender Persons (Protection of Rights) Bill, 2016 recommends introduction of the Bill in the House under article 117(1) of the Constitution of India.

FINANCIAL MEMORANDUM

Sub-clause 2 of clause 9 of the Bill states that the appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government.

2. Sub-clause 3 of clause 9 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

3. Clause 15 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

4. Clause 16 (1) (g) of the Bill contains provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

5. Clause 17 of the Bill proposes to constitution of a National Council for Transgender.

6. Clause 20 of the Bill provides that the Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Council as may be necessary for carrying out the purposes of this Act.

7. For the current financial year, an amount of 15 crore rupees has been allocated as budgetary expenditure for the transgender scheme. It is not possible at this juncture to estimate the full financial burden likely to be incurred if all the provisions of the proposed legislation if enacted were implemented. The above expenditure will be met from the budgetary allocation of the Plan Scheme for transgenders.

8. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the appropriate Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are— (a) the form and manner in which an application shall be made under section 5; (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7; (c) the form and manner in which an application shall be made under sub-section (2) of section 8; (d) facilities to be provided under section 10; (e) other functions of the National Council under clause (d) of section 18; (f) any other matter which is required to be or may be prescribed.

The matters in respect of which rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

A

BILL

to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

(Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment)

MINUTES OF THE FIRST SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 5th OCTOBER, 2016

The Committee met from 1430 hrs. to 1620 hrs. in Committee Room No. '139', Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRPERSON

**MEMBERS
LOK SABHA**

2. Shri Kantilal Bhuria
3. Shri Sher Singh Ghubaya
4. Shri Bhagwant Khuba
5. Shri Sadashiv Lokhande
6. Smt. K. Maragatham
7. Shri Kariya Munda
8. Kunwar Bharatendra Singh

RAJYA SABHA

9. Shri Ahamed Hassan
10. Dr. Narendra Jadhav
11. Smt. Vijila Sathyananth
12. Smt. Chhaya Verma
13. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1.	Shri Sukhi Chand Chaudhary	-	Joint Secretary
2.	Shri Ashok Sajwan	-	Director
2.	Smt. Mamta Kemwal	-	Additional Director

REPRESENTATIVES OF THE MINISTRY/ORGANIZATION

Sl. No.	Name	Designation and Organization
1.	Smt. Anita Agnihotri	Secretary, Department of Social Justice and Empowerment
2.	Shri Arun Kumar	Special Secretary, Department of Social Justice and Empowerment
3.	Ms. Ghazala Meenai	Joint Secretary, Social Defence
4.	Shri Rajesh Katoch	Director, NISD

2. At the outset, the Chairperson welcomed the Members and the representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) to the sitting of the Committee convened to hear the views of the Ministry on "The Transgender Persons (Protection of Rights) Bill, 2016". Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked the Secretary, Department of Social Justice and Empowerment to give an overview of the Bill.

3. The Secretary accordingly briefed the Committee on the Bill highlighting its background, recommendations of the Expert Committee constituted by the Ministry, decision of the Hon'ble Supreme Court on the rights of the Transgender Persons along with its major recommendations and explaining the salient features of the Bill through power-point presentation. The broad issues discussed at the meeting are as follows:

- (i) Need to conduct more research work by the Ministry to have better understanding of the state of affairs regarding Transgender Persons before finalising the Bill.
- (ii) Forced conversion of small children to include them into Transgender community by the persons of Transgender Community.

- (iii) Requirement of a provision for medical/physical examination of the Transgender Persons before issuing certificate for their identity.
 - (iv) Provisions for rights and facilities for the Transgender Persons, which are not there in the Bill, such as, right to inherit property, right to representation.
 - (v) Need to conduct further research on the means of livelihood of the Transgender Persons and their involvement in criminal activities.
4. The representatives of the Department of Social Justice and Empowerment also responded to the queries by the Members to the extent possible. The Chairperson directed the Secretary to furnish written replies to the unanswered queries raised by Members to the Secretariat at the earliest. The Secretary assured to comply.
5. The Chairperson then thanked the Secretary and other officials of the Department of Social Justice and Empowerment for giving valuable information to the Committee on the subject and expressing their views in a free and frank manner on various issues raised by the Members.
6. A copy of the verbatim proceedings of the sitting has been kept on record.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE SECOND SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 30TH NOVEMBER, 2016.

The Committee met from 1500 hrs. to 1635 hrs. in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRPERSON

**MEMBERS
LOK SABHA**

14. Shri Kantilal Bhuria
15. Shri Santokh Singh Chaudhary
16. Shri Sadashiv Lokhande
17. Smt. K. Margatham
18. Prof. Seetaram Ajmeera Naik
19. Sadhvi Savitri Bai Phule
20. Kunwar Bharatendra Singh
21. Smt. Mamta Thakur
22. Shri Tej Pratap Singh Yadav

RAJYA SABHA

11. Smt. Jharna Das Baidya
12. Dr. Narendra Jadhav
13. Smt. Vijila Sathyananth
14. Smt. Wansuk Syiem
15. Smt. Chhaya Verma

LOK SABHA SECRETARIAT

1. Shri S.C. Chaudhary - Joint Secretary
2. Shri Ashok Sajwan - Director
3. Smt. Mamta Kemwal - Additional Director

LIST OF NON-OFFICIAL WITNESSES

Sl. No.	Name	Organization
1.	Ms. Namrata Mukherjee	Vidhi Centre for Legal Policy
2.	Dr. Kaveri Rajaraman	Neuroscientist and Genderqueer Transgender boy
3.	Ekta Guru	All India Hijra Transgender Samiti

2. At the outset, Hon'ble Chairperson welcomed the Members and representatives of the organizations/stakeholders appearing before the Committee convened in connection with examination of "The Transgender Persons (Protection of Rights) Bill, 2016". Impressing upon the witnesses to keep the proceedings of the Committee 'confidential', the Chairperson requested the stakeholders to brief the Committee on issues related with the Transgender Persons and give concrete advice/suggestions regarding various Clauses of the Bill.

3. The representatives of the organizations/stakeholders then put forth their views/suggestions on the various provisions of the Bill before the Committee. The stakeholders suggested the following changes/amendments in the new proposed legislation:

- (i) More inclusive definition of Transgender Persons.
- (ii) Absolute right to self-determination may be given to Transgender Persons.
- (iii) Inclusion of definition for 'discrimination' for Transgender Persons in the Bill.
- (iv) Implementation of anti-discrimination laws for Transgender Persons in Government establishments also.

- (v) Grievance Redressal Mechanism should be implemented in all the establishments where Transgender Persons are working irrespective of the strength of the establishment.
- (vi) Division of responsibility between State Governments and Central Governments to fix accountability.
- (vii) Specified steps for educational upliftment of Transgender Persons should be there.
- (viii) Specified steps for the health benefits of the Transgender Persons should be there.
- (ix) Reservation in employment should be provided for Transgender Persons.
- (x) Provision of Third Gender option in forms should be mandatory for all the Government and private forms.
- (xi) Inclusion of different crimes against Transgender Persons in the Bill, such as, deliberate outrage of privacy of Transgender Persons, forceful medical intervention. Provision of security measures for Transgender Persons should be there in court premises while they appear for Court Proceedings.
- (xii) Exclusive Chapter on 'Rights' of the Transgender Persons should be added in the Bill.
- (xiii) Inclusion of gender sensitization in the syllabus of schools.
- (xiv) Separate provision to deal with employment for transgender boys/men.
- (xv) Certificate of education should also be issued with changed name and gender by the District Magistrate along with certificate of gender identity.

- (xvi) In Chapter VIII Clause 19(c) in the Bill, while deciding Offences and Penalties for a person who "forces or causes a Transgender Person to leave household, village or other place of residence", in addition to house, village or place of residence, 'school' and 'job' should also be added.
 - (xvii) Complaint Officer should be a neutral person i.e., he should not belong to the same organization where complaint has been lodged.
 - (xviii) IPC Acts/Provisions for rape against women should also be applied to Transgender Persons.
 - (xix) Provision for atrocities against Transgender Persons specifying the types of atrocities.
 - (xx) Freedom of choice of residence.
4. The stakeholders also responded to the queries raised by the Members to the extent possible.
5. The Chairperson thanked the stakeholders for briefing the Committee and also appreciated the work being done by them.

The witnesses then withdrew.

A copy of the verbatim proceedings was kept on record.

The Committee then adjourned.

MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 28TH DECEMBER, 2016.

The Committee met from 1130 hrs. to 1430 hrs. in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRPERSON

**MEMBERS
LOK SABHA**

23. Shri Santokh Singh Chaudhary
24. Shri Sadashiv Lokhande
25. Shri Kariya Munda
26. Prof. Seetaram Ajmeera Naik
27. Sadhvi Savitri Bai Phule
28. Smt. Satabdi Roy (Banerjee)
29. Kunwar Bharatendra Singh
30. Shri Mansukhbhai Dhanjibhai Vasava

RAJYA SABHA

10. Shri Chunibhai Kanjibhai Gohel
11. Shri Ahamed Hassan
12. Dr. Narendra Jadhav
13. Smt. Vijila Sathyananth
14. Smt. Chhaya Verma
15. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1. Shri A.K. Singh - Additional Secretary
2. Shri Ashok Sajwan - Director
3. Smt. Mamta Kemwal - Additional Director

LIST OF NON-OFFICIAL WITNESSES

Sl. No.	Name	Organization
1.	Shri Satya Rai Nagpaul	Sampoorna Working Group
2.	Shri Anand Grover	Lawyers Collective
3.	Ms. Sindhuja Iyengar	Amnesty International India
4.	Ms. Subiksha	South Indian Transgenders Federation
5.	Ms. Seeta	Kinnar Bharti

2. At the outset, Hon'ble Chairperson welcomed the Members and representatives of the organizations/stakeholders appearing before the Committee convened in connection with examination of "The Transgender Persons (Protection of Rights) Bill, 2016". Impressing upon the witnesses to keep the proceedings of the Committee 'confidential', the Chairperson requested the stakeholders to brief the Committee on issues related with the Transgender Persons and give concrete advice/suggestions regarding various Clauses of the Bill.

3. The representatives of the organizations/stakeholders then put forth their views/suggestions on the various provisions of the Bill before the Committee. The stakeholders suggested the following changes/amendments in the new proposed legislation:

- (xxi) NALSA judgement should be followed in all the Clauses of the Bill.
- (xxii) Medical Practitioner should be excluded from the Screening Committee.
- (xxiii) Inclusion of provision for reservation in education and employment for Transgender Persons.
- (xxiv) Every Clause should explicitly indicate transmen and intersex persons also in the Bill while providing facilities and rights to the Transgender Persons.

- (xxv) 'Workplace' should be defined more appropriately. A broad and inclusive definition of workplace/establishment should be provided in the current Bill.
 - (xxvi) Inclusion of provision for facilities and protection of Transgender Persons/intersex in hospitals and provision for medical insurance for Transgender Persons/intersex.
 - (xxvii) Clause of criminalization of 'beggary' should be deleted.
 - (xxviii) Inclusion of a provision in the Bill to provide 'identification' and 'social recognition' to the 'trans-masculine persons' and 'intersex people'.
 - (xxix) Definition of the 'Transgender Persons' should be according to NALSA Judgement. Emphasis on 'self-identity' should be given. Definition of 'Transgender Persons' and 'intersex' should be added separately.
 - (xxx) Inclusion of provision for prevention of forced castration of any kind, either in society or within the systems of State.
 - (xxxi) Inclusion of a provision of a separate 'Atrocities Act' which covers all the violence and discrimination that the trans-community faces.
4. The stakeholders also responded to the queries raised by the Members to the extent possible.
 5. The Chairperson thanked the stakeholders for briefing the Committee and also appreciated the work being done by them.

The witnesses then withdrew.

A copy of the verbatim proceedings has been kept for record.

The Committee then adjourned.

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON TUESDAY, 25th APRIL, 2017

The Committee met from 1145 hrs. to 1245 hrs. in Committee Room 'E',
Basement, Parliament House Annexe, New Delhi.

PRESENT

SHRI SANTOKH SINGH CHAUDHARY - IN THE CHAIR

**MEMBERS
LOK SABHA**

31. Shri Sadashiv Lokhande
32. Smt. Satabdi Roy (Banerjee)
33. Smt. Mamata Thakur

RAJYA SABHA

34. Shri Chunibhai Kanjibhai Gohel
35. Shri Ahamed Hassan
36. Smt. Sarojini Hembram
37. Smt. Vijila Sathyananth
38. Smt. Wansuk Syiem
39. Smt. Chhaya Verma
40. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1.	Shri Sukhi Chand Chaudhary	-	Joint Secretary
2.	Shri Ashok Sajwan	-	Director
3.	Smt. Mamta Kemwal	-	Additional Director

**REPRESENTATIVES OF THE MINISTRY OF SOCIAL JUSTICE AND
EMPOWERMENT (DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT)**

Sl. No.	Name	Designation and Organization
1.	Shri N.S.Kang	Secretary-in-Charge, Department of Social Justice and Empowerment
2.	Smt. Ghazala Meenai	Joint Secretary, Department of Social Justice and Empowerment
3.	Shri Khagesh Garg	Director, Department of Social Justice and Empowerment

2. As the Chairperson could not attend the sitting due to some unavoidable circumstances, the Members of the Committee chose Shri Santokh Singh Chaudhary, MP and a Member of the Committee, to act as Chairperson under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha. The acting Chairperson then welcomed the Members and the representatives of the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) to the sitting of the Committee convened to hear the views of the Ministry on "The Transgender Persons (Protection of Rights) Bill, 2016". Impressing upon the witnesses to keep the proceedings of the Committee 'Confidential', the Chairperson asked the Secretary-in-Charge, Department of Social Justice and Empowerment to give an overview of the Bill.

3. As the Secretary of Department of Empowerment of Persons with Disabilities was given the additional charge of the Secretary, Department of Social Justice and Empowerment, he accompanied the officials of the Department of Social Justice and Empowerment. However, the Joint Secretary of the Department of Social Justice and Empowerment briefed the Committee on the Bill. The broad issues discussed at the meeting are as follows:

- (vi) Census of transgender persons.

- (vii) Definition of transgender persons.
- (viii) Recognition of identity of transgender persons.
- (ix) Right to decide self-identified gender by the transgender persons.
- (x) Constitution and role of District Screening Committee.
- (xi) Anti-discriminatory provisions for the transgender persons in the Bill.
- (xii) Meaning and definition of 'rehabilitation' of transgender persons in the Bill.

4. The representatives of the Department of Social Justice and Empowerment also responded to the queries by the Members to the extent possible. The Chairperson directed the Secretary to furnish written replies to the unanswered queries raised by Members to the Secretariat at the earliest. The Secretary assured to comply.

5. The Chairperson then thanked the Secretary and other officials of the Department of Social Justice and Empowerment for giving valuable information to the Committee on the subject and expressing their views in a free and frank manner on various issues raised by the Members.

6. A copy of the verbatim proceedings of the sitting has been kept on record.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE FIFTH SITTING OF THE STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON WEDNESDAY, 19th JULY, 2017

The Committee met from 1000 hrs. to 1030 hrs. in Chairperson's Chamber, Room No. 113, First Floor, Block-B, Parliament House Annexe Extension Building, New Delhi.

PRESENT

SHRI RAMESH BAIS - CHAIRPERSON

MEMBERS**LOK SABHA**

2. Shri Santokh Singh Chaudhary
3. Shri Sher Singh Ghubaya
4. Shri Sadashiv Lokhande
5. Smt. K. Maragatham
6. Dr. (Prof.) Azmeera Seetaram Naik
7. Sadhvi Savitri Bai Phule
8. Dr. Udit Raj
9. Smt. Satabdi Roy (Banerjee)
10. Kunwar Bhartendra Singh
11. Smt. Mamata Thakur

RAJYA SABHA

12. Smt. Jharna Das Baidya
13. Shri Chunibhai Kanjibhai Gohel
14. Smt. Sarojini Hembram
15. Dr. Narendra Jadhav
16. Smt. Vijila Sathyananth
17. Smt. Wansuk Syiem
18. Smt. Chhaya Verma
19. Shri Ramkumar Verma

LOK SABHA SECRETARIAT

1.	Shri S.C. Chaudhary	-	Joint Secretary
2.	Shri Ashok Sajwan	-	Director
3.	Smt. Mamta Kemwal	-	Additional Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee.

3. The Committee then took up for consideration the 43rd Report on "The Transgender Persons (Protection of Rights) Bill, 2016".

4. The Chairperson then requested the Members to give their suggestions on the draft Report, if any. The Report, thereafter, was adopted by the Committee without any modifications. The Committee then authorized the Chairperson to finalize the draft Report in the light of consequential changes that might arise out of factual verification of the draft Report and to present the same to both the Houses.

The Committee then adjourned.

ANNEXURE P-4

AS PASSED BY LOK SABHA ON 17.12.2018

Bill No. 210-C of 2016THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
BILL, 2018

A

BILL

to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

Be it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 2018. **1.** (1) This Act may be called the Transgender Persons (Protection of Rights) Act, Short title,
extent and
commencement.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 2.** In this Act, unless the context otherwise requires,— Definitions.
- 10 (a) "appropriate Government" means,—
- (i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State
- 15 Government;

(b) "establishment" means—

(i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and includes a Department of the Government; or

5 18 of 2013.

(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

(c) "family" means a group of people related by blood or marriage or by adoption made in accordance with law;

(d) "inclusive education" means a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students;

10

(e) "institution" means an institution, whether public or private, for the reception, care, protection, education, training, or any other service of transgender persons;

15

(f) "local authority" means the municipal corporation or municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(g) "National Council" means the National Council for Transgender Persons established under section 17;

20

(h) "notification" means a notification published in the Official Gazette;

(i) "person with intersex variations" means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;

25

(j) "prescribed" means prescribed by rules made by the appropriate Government under this Act;

(k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender-queer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

30

CHAPTER II

PROHIBITION OF CERTAIN ACTS

35

Prohibition
against
discrimination.

3. No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

(b) the unfair treatment in, or in relation to, employment or occupation;

40

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

45

(f) the denial, or, discontinuation of, unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

5 (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

10 **4. (1)** A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act. Recognition of identity of transgender person.

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

15 **5.** A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed: Application for certificate of identity.

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

20 **6. (1)** On the receipt of an application under section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons. District Screening Committee.

(2) The District Screening Committee referred to in sub-section (1) shall comprise—

(a) the Chief Medical Officer;

(b) District Social Welfare Officer;

(c) a Psychologist or Psychiatrist;

25 (d) a representative of transgender community; and

(e) an officer of the appropriate Government to be nominated by that Government.

7. (1) The District Magistrate shall issue to the applicant under section 5 a certificate of identity as transgender person on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender. Issue of certificate of identity.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

35 **8. (1)** After the issue of a certificate under sub-section (1) of section 7, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, alongwith a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed. Change in gender.

40 (2) The District Magistrate shall, on receipt of an application alongwith the Certificate under sub-section (1), and on being satisfied with the correctness of such certificate issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

45 (3) The person who has been issued a certificate of identity under section 7 or a revised certificate shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

- Obligation of the appropriate Government. **9. (1)** The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society. 5
- (2) The appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government.
- (3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory. 10
- (4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person.
- (5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities. 15

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSON

- Non discrimination in employment. **10.** No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues. 20
- Obligations of establishments. **11.** Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to the transgender person as may be prescribed.
- Grievance redressal mechanism. **12.** Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.
- Right of residence. **13. (1)** No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child. 25
- (2) Every transgender person shall have—
- (a) a right to reside in the house-hold where parent or immediate family members reside;
- (b) a right not to be excluded from such house-hold or any part thereof; 30
- (c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.
- (3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre. 35

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSON

- Obligation of educational institutions to provide inclusive education to transgender persons. **14.** Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others. 40

15. The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

Vocational training and self-employment.

16. The appropriate Government shall take the following measures in relation to the transgender persons, namely:—

Health care facilities.

(a) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organisation in this behalf;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) before and after sex reassignment surgery and hormonal therapy counselling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

17. (1) The Central Government shall by notification constitute a National Council for Transgender to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

National Council for Transgender.

(2) The National Council shall consist of—

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, *ex officio*;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, *ex officio*;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, *ex officio*;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing and Urban Affairs, Minority Affairs, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and National Institute for Transforming India Aayog, not below the rank of Joint Secretaries to the Government of India, Members, *ex officio*;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries to the Government of India, Members, *ex officio*;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members;

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member-Secretary, *ex officio*. 5

(3) A Member of National Council, other than *ex officio* member, shall hold office for a term of three years from the date of his nomination.

Functions of
the Council.

18. The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons; 10

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons;

(c) to review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons; 15

(d) to redress the grievances of transgender persons;

(e) to perform such other functions as may be prescribed by the Central Government.

CHAPTER VIII

20

OFFENCES AND PENALTIES

Offences and
penalties.

19. Whoever,—

(a) compels or entices a transgender person to indulge in the act of begging or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; 25

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave house-hold, village or other place of residence; 30

(d) harms or injures or endangers the life, safety, health, or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine. 35

CHAPTER IX

MISCELLANEOUS

Grants by
Central
Government.

20. The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the National Council as may be necessary for carrying out the purposes of this Act. 40

Act not in
derogation of
any other law.

21. The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.

Protection of
action taken
in good faith.

22. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder. 45

23. (1) The appropriate Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

Power of appropriate Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- 5 (a) the form and manner in which an application shall be made under section 5;
- (b) the form and manner in which a certificate of identity is issued under sub-section (1) of section 7;
- (c) the form and manner in which an application shall be made under sub-section (1) of section 8;
- 10 (d) the form, period and manner for issuing revised certificate under sub-section (2) of section 8;
- (e) facilities to be provided under section 11;
- (f) other functions of the National Council under clause (d) of section 18;
- (g) any other matter which is required to be or may be prescribed.

- 15 (3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or
- 20 both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

- 25 (4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House.

- 30 **24.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

LOK SABHA

A

BILL

to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

(As passed by Lok Sabha)

ANNEXURE P-5

AS INTRODUCED IN LOK SABHA

Bill No. 169 of 2019THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
BILL, 2019

A

BILL

to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2019.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means,—

(i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government; 5

(b) "establishment" means—

(i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and includes a Department of the Government; or 10 18 of 2013.

(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

(c) "family" means a group of people related by blood or marriage or by adoption made in accordance with law; 15

(d) "inclusive education" means a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students; 20

(e) "institution" means an institution, whether public or private, for the reception, care, protection, education, training or any other service of transgender persons;

(f) "local authority" means the municipal corporation or Municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction; 25

(g) "National Council" means the National Council for Transgender Persons established under section 16;

(h) "notification" means a notification published in the Official Gazette;

(i) "person with intersex variations" means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body; 30

(j) "prescribed" means prescribed by rules made by the appropriate Government under this Act; and

(k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*. 35 40

CHAPTER II

PROHIBITION AGAINST DISCRIMINATION

Prohibition
against
discrimination.

3. No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

5 (d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily
10 available to the public;

(f) the denial or discontinuation of, or unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

15 (h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

20 CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

4. (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act.

Recognition of identity of transgender person.

25 (2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

5. A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Application for certificate of identity.

30 Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

6. (1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

Issue of certificate of identity.

35 (2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

Change in
gender.

7. (1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

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(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

10

(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

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CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

Obligation of
appropriate
Government.

8. (1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.

(2) The appropriate Government shall take such welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government.

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(3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

(4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons.

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(5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSONS

30

Non-
discrimination
in
employment.

9. No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

Obligations of
establishments.

10. Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to transgender persons as may be prescribed.

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Grievance
redressal
mechanism.

11. Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.

Right of
residence.

12. (1) No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child.

(2) Every transgender person shall have—

40

(a) a right to reside in the household where parent or immediate family members reside;

(b) a right not to be excluded from such household or any part thereof; and

(c) a right to enjoy and use the facilities of such household in a non-discriminatory manner.

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(3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.

CHAPTER VI

5 EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSONS

13. Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

Obligation of educational institutions to provide inclusive education to transgender persons.

10 **14.** The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

Vocational training and self-employment.

15. The appropriate Government shall take the following measures in relation to transgender persons, namely:—

Healthcare facilities.

15 (a) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organisation in this behalf;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) before and after sex reassignment surgery and hormonal therapy counselling;

20 (d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

25 (f) to facilitate access to transgender persons in hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

CHAPTER VII

30 NATIONAL COUNCIL FOR TRANSGENDER PERSONS

16. (1) The Central Government shall by notification constitute a National Council for Transgender Persons to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

National Council for Transgender Persons.

(2) The National Council shall consist of—

35 (a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, *ex officio*;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, *ex officio*;

40 (c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, *ex officio*;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing and Urban Affairs, Minority Affairs, Human Resources

Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and National Institute for Transforming India Aayog, not below the rank of Joint Secretaries to the Government of India, Members, *ex officio*;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries to the Government of India, Members, *ex officio*; 5

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*; 10

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members; and 15

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member Secretary, *ex officio*.

(3) A Member of National Council, other than *ex officio* member, shall hold office for a term of three years from the date of his nomination. 20

Functions of Council.

17. The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons; 25

(c) to review and coordinate the activities of all the departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to redress the grievances of transgender persons; and 30

(e) to perform such other functions as may be prescribed by the Central Government.

CHAPTER VIII

OFFENCES AND PENALTIES

Offences and penalties.

18. Whoever,— 35

(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use; 40

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, 45

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

CHAPTER IX

MISCELLANEOUS

- 5 **19.** The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the National Council as may be necessary for carrying out the purposes of this Act. Grants by Central Government.
- 20.** The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force. Act not in derogation of any other law.
- 10 **21.** No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder. Protection of action taken in good faith.
- 15 **22.** (1) The appropriate Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act. Power of appropriate Government to make rules.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—
- (a) the form and manner in which an application shall be made under section 5;
- 20 (b) the procedure, form and manner and the period within which a certificate of identity is issued under sub-section (1) of section 6;
- (c) the form and manner in which an application shall be made under sub-section (1) of section 7;
- (d) the form, period and manner for issuing revised certificate under sub-section (2) of section 7;
- 25 (e) welfare measures to be provided under sub-section (2) of section 8;
- (f) facilities to be provided under section 10;
- (g) other functions of the National Council under clause (e) of section 17; and
- (h) any other matter which is required to be or may be prescribed.
- 30 (3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only
- 35 in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- 40 (4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House.
- 23.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty. Power to remove difficulties.
- 40 Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.
- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Transgender community is one of the most marginalised communities in the country because they do not fit into the general categories of gender of male or female. Consequently, they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on.

2. Though article 14 of the Constitution guarantees to all persons equality before law, clauses (1) and (2) of article 15 and clause (2) of article 16, *inter alia*, prohibit in express terms, discrimination on the ground only of sex and sub-clause (a) of clause (1) of article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against the transgender persons continue to take place.

3. The Hon'ble Supreme Court, *vide* its order dated 15th April, 2014, passed in the case of National Legal Services Authority Vs. Union of India, *inter alia*, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by Parliament and the State Legislature.

4. The Transgender Persons (Protection of Rights) Bill, 2019 seeks to—

- (a) define the expression "transgender person";
- (b) prohibit discrimination against transgender persons;
- (c) confer right upon transgender persons to be recognised as such, and a right to self-perceived gender identity;
- (d) make provisions for issue of certificate of identity to transgender persons;
- (e) provide that no establishment shall discriminate against transgender persons in matters relating to employment, recruitment, promotion and other related issues;
- (f) provide for grievance redressal mechanism in each establishment;
- (g) establish a National Council for Transgender Persons;
- (h) provide punishment for contraventions of the provisions of the proposed legislation.

5. The Transgender Persons (Protection of Rights) Bill, 2016, for the aforementioned purpose, which was passed by the Lok Sabha and pending consideration and passing in the Rajya Sabha, lapsed on dissolution of the Sixteenth Lok Sabha. Hence, the Transgender Persons (Protection of Rights) Bill, 2019.

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 11th July, 2019.

THAAWARCHAND GEHLOT

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA

**[D.O. No. 13011/7(4)/2019-DP.III dated 12 July, 2019 from Dr. Thaawarchand Gehlot,
Minister of Social Justice and Empowerment to the Secretary General, Lok Sabha]**

The President, having been informed of the subject matter of the proposed Transgender Persons (Protection of Rights) Bill, 2019, recommends to the House the consideration of the Bill under article 117(3) of the Constitution of India.

FINANCIAL MEMORANDUM

Sub-clause 2 of clause 8 of the Bill states that the appropriate Government shall take such welfare measures as may be necessary to protect the rights and interests of the transgender persons, and facilitate their access to welfare schemes framed by that Government.

2. Sub-clause 3 of clause 8 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

3. Clause 14 of the Bill states that the appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

4. Clause 15 (1) (g) of the Bill contains provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons.

5. Clause 16 of the Bill proposes to constitution of a National Council for Transgender Persons.

6. Clause 19 of the Bill provides that the Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the National Council as may be necessary for carrying out the purposes of this Act.

7. For the current financial year, an amount of one crore rupees has been allocated as budgetary expenditure for the transgender persons scheme. It is not possible at this juncture to estimate the full financial burden likely to be incurred if all the provisions of the proposed legislation, if enacted, were implemented. The above expenditure will be met from the budgetary allocation of the Plan Scheme for transgender persons.

8. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill empowers the appropriate Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are—

- (a) the form and manner in which an application shall be made under section 5;
- (b) the procedure, form and manner in which a certificate of identity is issued under sub-section (1) of section 6;
- (c) the form and manner in which an application shall be made under sub-section (1) of section 7;
- (d) the form, period and manner for issuing revised certificate under sub-section (2) of section 7;
- (e) welfare measures to be provided under sub-section (2) of section 8;
- (f) facilities to be provided under section 10;
- (g) other functions of the National Council under clause (e) of section 17;
- (h) any other matter which is required to be or may be prescribed.

It further provides for laying of rules made thereunder before the appropriate Legislature.

2. The matters in respect of which rules may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE P-6

LOK SABHA

A

BILL

to provide for protection of rights of transgender persons and their welfare and for
matters connected therewith and incidental thereto.

(Shri Thaawarchand Gehlot, Minister of Social Justice and Empowerment)

582
LOK SABHA

CORRIGENDUM

to

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2019

[To be/As introduced in Lok Sabha]

1. Page 7, line 16,-

for “foregoing powers,”

read “foregoing power,”

NEW DELHI;

July 15, 2019

Ashadha 24, 1941 (Saka)

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

ARRANGEMENT OF SECTIONS

SECTIONS

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2. Definitions.

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3. Prohibition against discrimination.

CHAPTER III

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5. Application for certificate of identity.
6. Issue of certificate of identity.
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10. Obligations of establishments.
11. Grievance redressal mechanism.
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13. Obligation of educational institutions to provide inclusive education to transgender persons.
14. Vocational training and self-employment.
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NATIONAL COUNCIL FOR TRANSGENDER PERSONS

16. National Council for Transgender Persons.
17. Functions of Council.

CHAPTER VIII

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18. Offences and penalties.

CHAPTER IX MISCELLANEOUS

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19. Grants by Central Government.
20. Act not in derogation of any other law.
21. Protection of action taken in good faith.
22. Power of appropriate Government to make rules.
23. Power to remove difficulties.

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

ACT NO. 40 OF 2019

[5th December, 2019.]

An Act to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2019.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means, —

(i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

(b) “establishment” means—

(i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013), and includes a Department of the Government; or

(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

(c) “family” means a group of people related by blood or marriage or by adoption made in accordance with law;

(d) “inclusive education” means a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students;

(e) “institution” means an institution, whether public or private, for the reception, care, protection, education, training or any other service of transgender persons;

(f) “local authority” means the municipal corporation or Municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(g) “National Council” means the National Council for Transgender Persons established under section 16;

(h) “notification” means a notification published in the Official Gazette;

1. 10th January, 2020, *vide* notification No. S.O. 135(E), dated 10th January, 2020, *see* Gazette of India, Extraordinary, Part II, sec. 2(ii).

(i) “person with intersex variations” means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;

(j) “prescribed” means prescribed by rules made by the appropriate Government under this Act; and

(k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.

CHAPTER II

PROHIBITION AGAINST DISCRIMINATION

3. Prohibition against discrimination.—No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

(f) the denial or discontinuation of, or unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

4. Recognition of identity of transgender person.—(1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act.

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

5. Application for certificate of identity.—A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

6. Issue of certificate of identity.—(1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

7. Change in gender.—(1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

CHAPTER IV

WELFARE MEASURES BY GOVERNMENT

8. Obligation of appropriate Government.—(1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.

(2) The appropriate Government shall take such welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government.

(3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

(4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons.

(5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS AND OTHER PERSONS

9. Non-discrimination in employment.—No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

10. Obligations of establishments.—Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to transgender persons as may be prescribed.

11. Grievance redressal mechanism.—Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.

12. Right of residence.—(1) No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child.

(2) Every transgender person shall have—

- (a) a right to reside in the household where parent or immediate family members reside;
- (b) a right not to be excluded from such household or any part thereof; and

(c) a right to enjoy and use the facilities of such household in a non-discriminatory manner.

(3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.

CHAPTER VI

EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSONS

13. Obligation of educational institutions to provide inclusive education to transgender persons.—Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

14. Vocational training and self-employment.—The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

15. Healthcare facilities.—The appropriate Government shall take the following measures in relation to transgender persons, namely:—

(a) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organisation in this behalf;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) before and after sex reassignment surgery and hormonal therapy counselling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to transgender persons in hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

16. National Council for Transgender Persons.—(1) The Central Government shall by notification constitute a National Council for Transgender Persons to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The National Council shall consist of—

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, *ex officio*;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, *ex officio*;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, *ex officio*;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing and Urban Affairs, Minority Affairs, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and National Institute for Transforming India Aayog, not below the rank of Joint Secretaries to the Government of India, Members, *ex officio*;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries to the Government of India, Members, *ex officio*;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members; and

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member Secretary, *ex officio*.

(3) A Member of National Council, other than *ex officio* member, shall hold office for a term of three years from the date of his nomination.

17. Functions of Council.—The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons;

(c) to review and coordinate the activities of all the departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to redress the grievances of transgender persons; and

(e) to perform such other functions as may be prescribed by the Central Government.

CHAPTER VIII

OFFENCES AND PENALTIES

18. Offences and penalties.—Whoever,—

(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

CHAPTER IX

MISCELLANEOUS

19. Grants by Central Government.—The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the National Council as may be necessary for carrying out the purposes of this Act.

20. Act not in derogation of any other law.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

21. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made there under.

22. Power of appropriate Government to make rules.—(1) The appropriate Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form and manner in which an application shall be made under section 5;
- (b) the procedure, form and manner and the period within which a certificate of identity is issued under sub-section (1) of section 6;
- (c) the form and manner in which an application shall be made under sub-section (1) of section 7;
- (d) the form, period and manner for issuing revised certificate under sub-section (2) of section 7;
- (e) welfare measures to be provided under sub-section (2) of section 8;
- (f) facilities to be provided under section 10;
- (g) other functions of the National Council under clause (e) of section 17; and
- (h) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House.

23. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

The Transgender Persons (Protection of Rights) Rules, 2020¹

(Transgender Persons (Protection of Rights) Rules, 2020)

[25th September, 2020]

Whereas the draft rules in exercise of the powers conferred by Section 22 of the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019) were published, as required by sub-section (1) of the said section vide notification of the Government of India in the Ministry of Social Justice and Empowerment, number G. S. R. 441(E), dated the 13th July, 2020 in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) inviting objections and suggestions from the persons likely to be affected thereby, before the expiry of the period of thirty days from the date on which copies of the Gazette containing the said notification were made available to the public;

And whereas, the copies of the said Gazetted notification were made available to the public on the 13th July, 2020;

And whereas, the objections and suggestion received from the public in respect of the said draft rules have been considered by the Central Government;

Now, therefore, in exercise of the powers conferred by Section 22 of the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019), the Central Government hereby makes the following rules, namely—

1. Short title and commencement.—(1) These rules may be called the **Transgender Persons (Protection of Rights) Rules, 2020.**

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition.—In these rules, unless the context otherwise requires,—

- (a) "Act" means the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019);
- (b) "applicant" means a transgender person who submits an application under Rule 3;
- (c) "application" means the application form as provided in Form 1;
- (d) "any official documents" include all documents listed in Annexure 1, which the appropriate Government may revise, by notification in the Official Gazette;
- (e) "certificate of identity" means a certificate issued by the District Magistrate under Section 6 or Section 7 of the Act as in Form 3 or Form 4 respectively;
- (f) "form" means a form prescribed to these rules;
- (g) "identity card" means a photo identity card issued in Form 5 to a

transgender person under Section 6 or issued in Form 6 to a transgender person on change of gender under Section 7 on the basis of "certificate of identity" issued by the District Magistrate or an identity card to a transgender person issued by a State authority prior to the coming into force of these rules;

- (h) "medical institution" means any medical institution whether hospital or clinic, private or public, in rural areas or urban or overseas;
- (i) "medical intervention" includes any gender affirming medical intervention undertaken by an individual to facilitate the transition to their self-identified gender, including but not limited to counseling, hormonal therapy, and surgical intervention, if any.
- (j) "section" means a section of the Act;
- (k) all other words and expressions used herein but not defined and defined in the Act shall have the same meaning assigned to them in the Act.

3. Application for issue of certificate of identity under Section 6 or Section 7.—(1) A transgender person desirous of obtaining a certificate of identity shall make an application as prescribed in Form 1.

(2) The application shall be submitted to the District Magistrate in person or by post till online facilities are developed by the State Government concerned and thereafter the application shall be made by online only:

Provided that the appropriate Government may undertake measures, as it deems appropriate, to facilitate the submission of applications for certificate of identity by transgender persons living in remote areas or disadvantaged conditions:

Provided further that in case of a minor child, such application shall be made by a parent or guardian of such minor child and in the case of a child in need of care and protection, by the competent authority under the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(3) Transgender persons who have officially recorded their change in gender, whether as male, female or transgender, prior to the coming into force of the Act shall not be required to submit an application for certificate of identity under these rules:

Provided that such persons shall enjoy all rights and entitlements conferred on transgender persons under the Act.

4. Procedure for issue of certificate of identity.—(1) The District Magistrate shall, subject to the correctness of the applicant's particulars, get the application processed based on the affidavit submitted declaring the gender identity of any person in Form- 2, without any medical or physical examination, and thereafter issue an identification number to the applicant, which may be quoted as proof of application.

(2) For the purpose of determination of the place of residence, the applicant shall have to reside in the area under the jurisdiction of District Magistrate as on

the date of application and an affidavit to this effect shall be submitted in Form-2.

5. Issue of certificate of identity for a transgender person under Section 6.—(1) The District Magistrate shall issue to the applicant, a certificate of identity in Form-3 following the procedure provided in Rule 4 indicating the gender of such person.

(2) The said certificate of identity shall be issued within thirty days of receipt of duly filled in application along with the affidavit.

(3) The certificate of identity issued under sub-rule(1) shall be the basis to change the gender as well as the name and the photograph, if so necessitated, of the transgender person in all such official documents as provided in Annexure -1, in accordance with the gender specified in the said certificate of identity.

(4) The District Magistrate shall, at the time of issuance of the certificate of identity under sub-rule (1), issue a transgender identity card in Form 5 to the applicant.

(5) The appropriate Governments shall maintain a register for the issuance of certificate of identity card and the transgender identity card.

(6) The authority that issued the official document, on an application made by an applicant under Rule 3, shall change the name or gender or photograph or any of this information of the applicant in the official documents within fifteen days of making of such application.

(7) Any official document wherein gender, name and the photograph of transgender are revised based on the said certificate of identity, shall bear the same serial or reference number as in the original official document of such transgender person who seeks change in the name or gender or both in the official documents:

Provided that all benefits that a transgender person was entitled to based on an identity card, if any, issued by a State authority shall continue to be enjoyed by that transgender person based on the certificate of identity issued under these rules.

6. Procedure for issue of a certificate of identity for change of gender.—(1) If a transgender person undergoes medical intervention towards a gender affirming procedure, either as a male or female, such person may apply in the Form 1, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone the said medical intervention, to the District Magistrate for the issue of a revised certificate of identity.

(2) The District Magistrate shall, on receipt of an application referred to in sub-rule (1) shall verify the genuineness of the said medical certificate, which shall not include any physical examination.

(3) The applicant shall be a currently residing in the area under the jurisdiction of the District Magistrate as on the date of application and an affidavit to this effect shall be submitted along with the application in Form-1

and no additional evidence shall be called for.

7. Issue of certificate of identity under Section 7.—(1) The District Magistrate shall issue a revised certificate of identity in Form 4 to the applicant seeking change in gender indicating the gender of such a person as male or female, as the case may be.

(2) The District Magistrate shall issue the revised certificate under sub-rule (1) within fifteen days of its receipt of the application.

(3) The certificate of identity issued under sub-rule (1) shall entitle the applicant to record or change the gender, as well as photograph and name, if so necessitated of transgender person in all such official documents provided in Annexure 1, in accordance with the gender specified in the said certificate of identity as male or female, as the case may be.

(4) The District Magistrate while issuing the certificate of identity for change of gender shall simultaneously issue an identity card in Form 6 to the applicant.

(5) The authority that issued the official document, on an application made by an applicant under sub-rule (3), shall change the name or gender or photograph or any of this information of the applicant in the official documents within fifteen days of making of such application.

(6) Any official document wherein gender, name or photograph of transgender person is revised based on the said certificate of identity shall bear the same serial or reference number as in the original official document of such transgender person who seeks change in the name or gender or both in the official documents.

8. Communication of rejection of application.—(1) In case of rejection of application made under Rule 3, the District Magistrate shall inform the applicant the reason or reasons for such rejection within thirty days from the date of receipt of such application.

(2) The District Magistrate may review the decision of rejection of the application based on the reply submitted by the applicant regarding the reason for rejection communicated in sub-rule (1) of Rule 8 within sixty days from the date of such rejection.

9. Right to appeal.—The applicant shall have a right to appeal, within ninety days from the date of intimation of the rejection of the application, to the appellate authority as designated by the appropriate Government by notification for a final order.

10. Welfare measures, education, social security and health of transgender persons by appropriate Government.—(1) The appropriate Government shall constitute a welfare board for the transgender persons for the purpose of protecting their rights and interests of, and facilitating access to schemes and welfare measures framed by the Government.

(2) The appropriate Government shall review all existing educational, social security, health schemes, welfare measures, vocational training and self-employment schemes to include transgender persons to protect their rights and

interests and facilitate their access to such schemes and welfare measures framed by that Government

(3) The appropriate Government shall formulate educational, social security, health schemes and welfare schemes and programmes as specified in Annexure -II in a manner to be transgender sensitive, non-stigmatising and non-discriminatory to transgender persons.

(4) The appropriate Government shall take adequate steps to prohibit discrimination in any Government or private organisation, or private and public educational institution under their purview, and ensure equitable access to social and public spaces, including burial grounds.

(5) The appropriate Government shall create institutional and infrastructure facilities, including but not limited to, rehabilitation centre referred to in sub-section (3) of Section 12 of the Act, separate human immunodeficiency virus sero-surveillance centres, separate wards in hospitals and washrooms in the establishment, within two years from the date of coming into force of these rules to protect the rights of transgender persons.

(6) The appropriate Government shall carry out an awareness campaign to educate, communicate and train transgender persons to avail themselves of the benefits of welfare schemes, educate and train transgender persons on their rights; eradicate stigma and discrimination against transgender persons and mitigate its effects.

(7) The appropriate Government shall also provide for sensitisation of institutions and establishments under their purview, including—

- (a) sensitization of teachers and faculty in schools and colleges, changes in the educational curriculum to foster respect for equality and gender diversity;
- (b) sensitization of healthcare professionals;
- (c) sensitization programmes in workplaces;
- (d) sensitization programmes for complaints officers.

(8) All educational institutions shall have a committee which shall be accessible for transgender persons in case of any harassment or discrimination, with powers to ensure that transgender students do not have to be affected by the presence of the persons bullying them, including teachers.

(9) The appropriate Government shall create institutional and infrastructure facilities, including but not limited to, temporary shelters, short-stay homes and accommodation, choice of male, female or separate wards in hospitals and washrooms in the establishment within two years from the date of coming into force of these rules to protect the rights of transgender persons.

11. Provisions for non-discrimination.—(1)The appropriate Government shall take adequate steps to prohibit discrimination in any Government or private organisation or establishment including in the areas of education, employment, healthcare, public transportation, participation in public life, sports, leisure and recreation and opportunity to hold public or private office.

(2) The appropriate Government shall within two years from the date of coming into force of these rules, formulate a comprehensive policy on the measures and procedures necessary to protect transgender persons in accordance with the provisions of the Act.

(3) The policy formulated under sub-section (2) shall include preventative administrative and police measures to protect vulnerable transgender communities.

(4) The appropriate Government shall be responsible for the supervision of timely prosecution of individuals charged under Section 18 of the Act, or under any other Law for similar offences committed against the transgender persons.

(5) Every State Government shall set up a Transgender Protection Cell under the charge of the District Magistrate in each District and under Director General of Police in the State to monitor cases of offences against transgender persons and to ensure timely registration, investigation and prosecution of such offences.

12. Equal opportunities in employment.—(1) Every establishment shall implement all measures for providing a safe working environment and to ensure that no transgender person is discriminated in any matter relating to employment including, but not limited to, infrastructure adjustments, recruitment, employment benefits, promotion and other related issues.

(2) Every establishment shall publish an equal opportunity policy for transgender persons.

(3) The establishment shall display the equal opportunity policy, including the details of the complaints officer, preferably on their website, failing which, at conspicuous places in their premises.

(4) The equal opportunity policy of an establishment shall, inter alia, contain details of—

- (a) infrastructural facilities (such as unisex toilets), measures put in for safety and security (transportation and guards) and amenities (such as hygiene products) to be provided to the transgender persons so as to enable them to effectively discharge their duties in the establishment.
- (b) applicability of all rules and regulations of the company regarding service conditions of employees;
- (c) confidentiality of the gender identity of the employees;
- (d) complaint of the officers.

13. Grievance redressal.—The appropriate Government shall ensure that every establishment designates a complaint officer in accordance with Section 11 within thirty days from the date of coming into force notification of these rules.

(2) The complaint officer shall enquire into the complaints received within fifteen days from the date of receipt of such complaints.

(3) The head of the establishment shall take action on the enquiry report submitted by the complaints officer within fifteen days from the date of

submission of the report.

(4) The head of the establishment shall take action forthwith in all cases where action has not been taken in accordance with the above time limits.

(5) The appropriate Government shall also set up within one year a grievance redressal mechanism, operating through a helpline and outreach centres, for ensuring proper implementation of the provisions of Chapter V of the Act with special reference to sub-sections (1) and (2) of Section 12.

(6) The grievance redressal system shall ensure resolution of grievances within thirty days from the date of bringing of such grievance to the helpline, and imposing of penalties as laid down in Section 18.

(7) The appropriate Government shall put in place a monitoring system for tracking the number of complaints filed, enquired and action taken of all the establishments in their jurisdiction.

14. National Council.—(1) The National Council shall perform the functions as per Section 17 of the Act.

(2) National Institute of Social Defence shall give secretarial assistance to the National Council in conduct of its meetings and facilitate in the discharge of the functions of the National Council.

FORM 1

[See Rules 2(d), 3(1) and 6(1)]

Application form for issue of transgender certificate of identity under Rule Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6/7* of the Transgender Persons (Protection of Rights) Act, 2019*

***Strike out whichever is not applicable**

State Emblem		
State Government of (name of the State)		
Office of the District Magistrate		
Application form for issue of a transgender certificate of identity under Rule Transgender Persons (Protection of Rights) Rules, 2020 (read with Section 6*/7* of the Transgender Persons (Protection of Rights) Act, 2019 * Strike out whichever is not applicable		
1	Name	
(i)	Given name (in capital letters)	
(ii)	Changed/Chosen name (in capital letters)	
(iii)	Out of (i) and (ii), name to be printed in the certificate of identity and in the identity card	
2	Gender	
(i)	Assigned at birth	

(ii)	Requested in the application	
3	Date of birth	dd/mm/yyyy
4	Educational qualification	
5	Present address	
6	Permanent address	
7	If there is a source of income, the annual income:	
(i)	Under Rs. 1,00,000	YES/NO
(ii)	Between Rs. 1,00,001 and 3,00,000	YES/NO
(iii)	Above Rs. 3,00,000	Please specify the amount:
8	Do you have any of the following documents? If so, please submit self attested photocopies of the certificates stated below. self-attested photocopies	
(i)	Date of birth certificate	YES/NO
(ii)	Aadhaar card	YES/NO
(iii)	PAN card	YES/NO
(iv)	Election Voter Identity Card	YES/NO
(v)	Ration card	YES/NO
(vii)	Passport	YES/NO
(viii)	Bank passbook	YES/NO
(ix)	MNREGA Card	YES/NO
(x)	Caste certificate (SC/ST/OBC/Others)	YES/NO
9	Medical history (for those applying under Section 7 of the Transgender (Protection of Rights) Act, 2019)	
(i)	Have you undergone any medical intervention in the context of transgender transition?	YES/NO
(ii)	Please give details	
(iii)	Name and complete address of the Hospital or medical institute	
(iv)	Name of the issuing authority along with the date	
(v)	Any other medical status you would like to share	
(vi)	Have you been issued any certificate of identity under Section 6 and Section 7 under the Act, or any other ID Card issued by the	

	State Authority before the commencement of these Rules? If so, enclosed the same.	
10	Any other information you would like to give	
11	Have you attached affidavit prescribed in Form— 2 of the Transgender Persons (Protection of Rights) Act, 2019 under Rule—Transgender Persons Protection of Rights) Rules, 2020	
12	Have you attached the passport size photographs?	Yes/No

Enclosed: documents as mentioned in the application

Declaration

1. I declare that the particulars furnished by me are true and correct.
2. Information provided in this application will be treated as confidential and shall not be shared with any person or organisation save the Central and/or State security agencies, any other agency as provided by Law; and for statistical and policy framing purposes.

Place:	Signature or left hand thumb impression of the
Date:	applicant given name of the applicant

FORM 2

[See Rules 2(b) and 4(1)]

Format of affidavit to be submitted by a person applying for certificate of identity for transgender persons under Rule 4 of the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6 of the Transgender Persons (Protection of Rights) Act, 2019

(Affidavit should be on Non-judicial stamp paper of Rs. 10/-) Competent Notary Civil, District (Name of the District), (Name of the State)

I, (Name), son/daughter/ward/spouse of (name of the parent/guardian/husband), aged (in completed years), residing at (address), (Tehsil), (District), (State) (Pin code) do hereby solemnly affirm and declare as under:

1. I am currently residing in the above address.
2. I perceive myself as a transgender person whose gender does not match with the gender assigned at birth.
3. I declare myself as transgender.
4. I am executing this affidavit to be submitted to the District Magistrate for issue of certificate of identity as transgender person under Section 6 of the Transgender Persons (Protection of Rights) Act, 2019 under Rule Transgender Persons (Protection of Rights) Rules, 2020.

. * strike out whichever is not applicable.

Deponent

(Signature of the Applicant)

Verification

I, (Name), hereby state that whatever is stated here in above serial Nos. 1 to 4 are true to the best of my knowledge.

Deponent

(Signature of the Applicant)

Tehsil

Date

Identified by me

Before Me

Advocate

Notary

Public

FORM 3

[See Rules 2(e) and 5(1)]

Form of certificate of identity to be issued by District Magistrate under Rule 5 Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6 of the Transgender Persons (Protection of Rights) Act, 2019

Photograph of
the certificate
holder District
Magistrate to
attest the
photograph

1. On the basis of the application dated dd/mm/yyyy to the undersigned it is certified that Shri/Smt./Km/Ms (name) son/daughter/ward of Shri/Smt. (name of the parent or Guardian) of (complete residential address of the applicant) is a transgender person.
2. His/her birth name is.....
3. This certificate is issued in terms of the provisions contained under Rule 5 Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6 of the Transgender Persons (Protection of Rights) Act, 2019.
4. It is also certified that Shri/Smt/Km/Ms.....is ordinarily a resident at the address given above.
5. This certificate entitles the holder to change name and gender in all official documents of the holder.

Date
of the District Magistrate
Place

Signature

Seal

FORM 4

[See Rules 2(e) and 7(1)]

Form of certificate of identity for change of gender to be issued by District

Magistrate under Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 7 of the Transgender Persons (Protection of Rights) Act, 2019

Photograph of
the certificate
holder District
Magistrate to
attest the
photograph

1. On the basis of the application submitted to the undersigned along with a medical certificate from the Medical Superintendent or Chief Medical Officer (name of the Hospital and complete address), it is to certify that Shri/Smt./Km/Ms. (name) son/daughter/ward of Shri/Smt. (name of the parent or Guardian) of (complete residential address of the applicant) has undergone medical intervention to change gender.
2. His/Her birth name is.....
3. This certificate is issued in terms of the provisions contained under Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 7 of the Transgender Persons (Protection of Rights) Act, 2019.
4. It is also certified that Shri/Smt/Km/Ms.....is ordinarily a resident at the address given above.
5. This certificate entitles the holder to change name and gender in all official documents of the holder.
6. Such change in name and gender and the issue of this certificate shall not adversely affect the rights and entitlements of the holder of this certificate.

Date
of the District Magistrate
Place

Signature

Seal

FORM 5

[See Rules 2(g) and 5(4)]

Form of Identity Card Front side of identity card

State Emblem

State Government of (name of the State) Office of the District Magistrate

Transgender Identity Card

Identity
card
number

Photograph of
the Card

holder

Name

Mother's name@

Father's or Guardian's name @

Gender

Date

of

birth
dd/mm/yyyy

Transgender
or

Age as on the date of application for issue of
Identity card

Reference number of certificate of years
authority on the basis of which this
card is issued

Back side of the identity card

Present address

Card issue date

Signature of the issuing
authority Designation

Seal of the issuing authority

Issued under Section 6*/7* of the Transgender Persons (Protection of Rights) Act, 2019 and under Rule.....of Transgender Persons (Protection of Rights) Rules, 2020

*** Strike out whichever is not applicable**

@ only in case the applicant is a minor child

FORM 6

[See Rules 2(g) and 7(4)]

Form of Identity Card Front side of identity card

State Emblem

State Government of (name of the State) Office of the District Magistrate

Identity Card

Identity card number

Photograph of
the Card
holder

Name

Mother's name@

Father's/Guardian's name@
Gender _____ Male/Female
Date _____ of _____ birth
or _____ dd/mm/yyyy
Age as on the date of application for issue of _____ years
identity card
Reference number of certificate of
authority on the basis of which this
card is issued

Back side of the identity card

Present address
Permanent address
Card issue date
Signature of the
issuing authority
Designation
seal of the issuing authority
@ only in case of a minor child

ANNEXURE I

Illustrative list of official documents referred to in

Sl. No	Name of the official document
(1)	Birth certificate
(2)	Caste/Tribe certificate
(3)	Any education certificate issued by a school, board, college, university or any such academic institution
(4)	Election Photo Identity Card
(5)	Aadhaar Card
(6)	Permanent Account Number (PAN)
(7)	Driving Licence
(8)	BPL ration card
(9)	Post Office bank/Bank Pass book with photo
(10)	Pass port
(11)	Kisan Pass book
(12)	Marriage certificate
(13)	Electricity/water/gas connection paper
(14)	property papers,
(15)	vehicle registration
(16)	service book, employment papers
(17)	identity card related to bar,
(18)	policy papers

ANNEXURE II

Suggested list of welfare schemes to be considered:

1. Access to health

- a) At least 1 government hospital in every State shall be equipped to offer safe and free gender affirming surgery, counseling and hormone replacement therapy to the transgender community, including all Male to Female (MTF) and Female to Male (FTM) procedures.
- b) State medical insurance shall cover procedures of SRS, hormonal therapy, laser therapy, counselling and other health issues of transgender persons at private hospitals
- c) medical insurance/arogyashri cards,
- d) All healthcare facilities should ensure that there are separate wards for transgender persons

2. Access to education

- a) Scholarship for transgender students
- b) Inclusive and equitable quality education in schools that fosters respect for equality and gender diversity
- c) Protection against ragging in the educational institutions with provisions for grievance redressal
- d) Facilitation of accommodation and schooling for transgender, gender non conforming and intersex children in residential government schools and universities

3. Access to housing:

- a) Affordable housing
- b) Shelters and community centres for at risk transgender youth that provide nutritious food and counselling.
- c) Access to sanitation facilities and safe drinking water

4. Welfare measures

- a) Universal access to Food security schemes and provision of ration cards,
- b) Pension for aged, disabled or other vulnerable transgender persons
- c) Old age and retirement homes for transgender persons facing housing exclusion
- d) Public transport to have harassment-free zones for transgender persons

5. Economic support

- (1) Universal coverage of Life Insurance
- (2) Access to banking and financial services including loans
- (3) Explicit inclusion of transgender persons in employment guarantee schemes such as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) and all social security schemes,
- (4) Formation into self help groups for livelihood activities
- (5) Provisions of zero-interest and other micro-finance schemes

— — —

¹. Ministry of Social Justice and Empowerment, Noti. No. G.S.R. 592(E), dated September 25, 2020 and published in the Gazette of India, Extra., Part II, Section 3(i), dated 29th September, 2020, pp. 14-27, No. 483

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Bill No. 79 of 2026THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS)
AMENDMENT BILL, 2026

A

BILL

to amend the Transgender Persons (Protection of Rights) Act, 2019.

BE it enacted by Parliament in the Seventy-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Transgender Persons (Protection of Rights) Amendment Act, 2026.

Short title and
commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

40 of 2019.

2. In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—

Amendment of
section 2.

(i) for clause (a), the following clause shall be substituted, namely:—

‘(a) “appropriate Government” means—

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority within a State, the State Government;

(iii) in relation to a Union territory or any establishment wholly or substantially financed by the Central Government in that Union territory, the Administrator thereof appointed under article 239 of the Constitution or such authority as may be specified by the Central Government;’;

(ii) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “authority” means a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration;’;

(iii) clause (i) shall be omitted;

(iv) for clause (k), the following clause shall be substituted, namely:—

‘(k) “transgender person” means—

(i) a person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:—

(a) primary sexual characteristics;

(b) external genitalia;

(c) chromosomal patterns;

(d) gonadal development;

(e) endogenous hormone production or response, or such other medical conditions; or

(ii) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise:

Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.’.

Amendment
of section 4.
Amendment of
section 6.

3. In section 4 of the principal Act, sub-section (2) shall be omitted.

4. In section 6 of the principal Act,—

(a) in sub-section (1), for the words “District Magistrate”, the words “District Magistrate, after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts” shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

5 “(4) The person who has been issued a certificate of identity under sub-section (1) and is so declared as a transgender person within the definition under this Act shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person.”.

5. In section 7 of the principal Act,—

Amendment of section 7.

10 (a) in sub-section (1), for the words “such person may”, the words “such person shall” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

15 “(1A) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed.”;

(c) for sub-section (2), the following sub-section shall be substituted, namely:—

20 “(2) A person referred to in sub-section (1) shall also make an application to the District Magistrate who shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.”;

25 (d) sub-section (3) and the proviso shall be omitted.

6. In section 16 of the principal Act, in sub-section (2), for clause (f), the following clause shall be substituted, namely:—

Amendment of section 16.

30 “(f) representatives of the State Governments and Union territories Administration, by rotation, one each from North, South, East, West and North-East regions, not below the rank of Director in the concerned Ministry or Department, to be nominated by the Central Government, Members, *ex officio*.”.

7. For section 18 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 18.

35 “18. Whoever,—

Offences and penalties.

40 (a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

45 (b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

(c) forces or causes a transgender person to leave household, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine; 5

(e) kidnaps or abducts any adult person and causes—

(i) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or 10

(ii) permanent or severe injury to the body or bodily functions of such person,

with the intent of, or in the course of, compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees; 15

(f) kidnaps or abducts any child and causes— 20

(i) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or

(ii) permanent or severe injury to the body or bodily functions of such child, 25

with the intent of, or in the course of, compelling such child to assume, adopt, or outwardly present a transgender identity, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;

(g) by force, threat, coercion, allurement, deception, inducement, or undue influence— 30

(i) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and

(ii) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, 35

shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and 40

(h) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise—

(i) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and 45

(ii) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting,

shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which shall not be less than three lakh rupees.”.

8. In section 22 of the principal Act, in sub-section (2),—

Amendment of
section 22.

5 (a) in clause (c), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “and the form and manner of details to be furnished by the medical institution under sub-section (1A),” shall be inserted;

 (b) in clause (d), the word “revised” shall be omitted.

STATEMENT OF OBJECTS AND REASONS

It is the legislative policy to recognise a specific class of transgender persons, who face social issues and to create a regime for their protection. The legislative policy was and is intended to protect only those who face severe social exclusion due to biological reasons for no fault of their own and no choice of their own.

2. Over the course of time, during the implementation of this enactment, certain doubts and difficulties have arisen and are likely to arise with regard to the expanse of the definition of transgender persons and how the identification of such persons is to be done under the existing definition. This is critical to the implementation of the Act, as it is of prime importance that the enactment is utilised and works towards only those who are in actual need of such protection.

3. The intent, object and purpose of the Act is and was to protect a specified class of persons socially and culturally known as transgender people who face societal discrimination of an extreme and oppressive nature. The purpose was and is not to protect each and every class of persons with various gender identities, self-perceived sex/gender identities or gender fluidities.

4. The existing vague definition of the expression “transgender person” not only makes it impossible to identify the genuine oppressed persons to whom the benefits of the Act are intended to reach, but also makes the operation and enforcement of several provisions under penal, civil and personal laws unworkable. Such a vague and broad definition of the expression “transgender person” is found to have created complex issues in the working of statutory enactments, as this vague definition is not compatible with several statutory provisions of several enactments enacted both by the Parliament and the State Legislatures. Any enactment conferring rights, privileges and protections cannot have a definition clause whereby the status entitling such rights, privileges and protections can be acquired.

5. It is therefore imperative to give a precise definition for proper and definitive identification and protection of transgender persons to whom the benefits of the Act must reach. The protection and benefits that are provided under the Act are vast in nature, and therefore, care has to be taken that such identification cannot be extended on the basis of any acquirable characteristics or personal choice or claimed self-perceived identity of an individual.

6. The Bill also contains provisions for designation of an authority and provisions providing the relevant authorities the option to seek expert advice if required. The Bill also seek to empower the transgender persons to make consequential changes in official documents. The Bill further provides for a change in the constitution of the National Council ensuring that persons, not below the rank of Director, form a part of the same as representatives of the State Governments and Union territories administration, by rotation, one each from North, South, East, West and North-East regions.

7. The Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination and abuse against transgender persons but its penal provision under section 18, as presently enacted, addresses only general wrongs and criminal offences and prescribes a maximum of two years’ imprisonment. It does not adequately address offences of exceptional gravity that have been documented in practice. The abduction of adults and children, the infliction of reversible or irreversible bodily harm upon them through mutilation, emasculation, castration, hormone therapies / other similar therapies or chemical alteration, and their forced assumption of a transgender identity, frequently as a prelude to economic and other forms of exploitation including but not limited to begging or servitude has been observed. While scattered provisions of the Bharatiya Nyaya Sanhita, 2023 and the Juvenile Justice (Care and Protection of Children) Act, 2015 address individual

elements of these wrongs, no existing provision treats this conjunction of abduction, permanent bodily harm, and forced identity as a unified penal approach.

8. The Bill, therefore, also proposes to substitute section 18 of the principal Act, creating specific offences with graded punishments that reflect the gravity of the harm, the irreversibility of the injury, and the particular vulnerability of child victims. The proposed provisions operate cumulatively with the general criminal law and give legislative expression to the constitutional guarantees that every person's bodily integrity is inviolable, that no person may be subjected to forced labour or traffic in human beings.

9. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 12th March, 2026.

DR. VIRENDRA KUMAR.

FINANCIAL MEMORANDUM

The Transgender Persons (Protection of Rights) Amendment Bill, 2026, if enacted, is not likely to involve any expenditure of recurring or non-recurring nature from and out of the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert sub-section (1A) in section 7 of the Transgender Persons (Protection of Rights) Act, 2019. The aforesaid sub-section of the said section empowers the appropriate Government to make rules to provide for the form and manner of details of a person who has undergone surgery to change gender, either male or female, to be furnished by the medical institutions.

The matters in respect of which rules may be made and notification issued are matters of procedure and administrative detail, and it is not practicable to provide for them in the proposed legislation itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019
(40 OF 2019)

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means,—

(i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

(i) “person with intersex variations” means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;

(k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.

CHAPTER III

RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

Recognition of
identity of
transgender
person.

4. (1) *

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

Issue of
certificate of
identity.

6. (1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

Change in
gender.

7. (1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

* * * * *

CHAPTER VII

NATIONAL COUNCIL FOR TRANSGENDER PERSONS

16. (1) * * * * *

National Council
for Transgender
Persons.

(2) The National Council shall consist of—

* * * * *

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, *ex officio*;

* * * * *

CHAPTER VIII

OFFENCES AND PENALTIES

18. Whoever,—

Offences and
penalties.

(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

* * * * *

22. (1) * * * * *

Power of
appropriate
Government to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

* * * * *

(c) the form and manner in which an application shall be made under sub-section (1) of section 7;

(d) the form, period and manner for issuing revised certificate under sub-section (2) of section 7;

* * * * *

617

LOK SABHA

A

BILL

to amend the Transgender Persons (Protection of Rights) Act, 2019.

(Dr. Virendra Kumar, Minister of Social Justice and Empowerment)



भारत का राजपत्र The Gazette of India

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असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 8] नई दिल्ली, सोमवार, मार्च 30, 2026/चैत्र 9, 1948 (शक)
No. 8] NEW DELHI, MONDAY, MARCH 30, 2026/CHAITRA 9, 1948 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 30th March, 2026/Chaitra 9, 1948 (Saka)

The following Act of Parliament received the assent of the President on the 30th March, 2026 and is hereby published for general information:—

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026

(No. 3 of 2026)

[30th March, 2026]

An Act to amend the Transgender Persons (Protection of Rights) Act, 2019.

BE it enacted by Parliament in the Seventy-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Transgender Persons (Protection of Rights) Amendment Act, 2026.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

40 of 2019.

2. In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(i) for clause (a), the following clause shall be substituted, namely:—

‘(a) “appropriate Government” means—

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, the Central Government;

(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority within a State, the State Government;

(iii) in relation to a Union territory or any establishment wholly or substantially financed by the Central Government in that Union territory, the Administrator thereof appointed under article 239 of the Constitution or such authority as may be specified by the Central Government;’;

(ii) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “authority” means a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration;’;

(iii) clause (i) shall be omitted;

(iv) for clause (k), the following clause shall be substituted, namely:—

‘(k) “transgender person” means—

(i) a person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:—

(a) primary sexual characteristics;

(b) external genitalia;

(c) chromosomal patterns;

(d) gonadal development;

(e) endogenous hormone production or response, or such other medical conditions; or

(ii) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise:

Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.’.

Amendment
of section 4.
Amendment of
section 6.

3. In section 4 of the principal Act, sub-section (2) shall be omitted.

4. In section 6 of the principal Act,—

(a) in sub-section (1), for the words “District Magistrate”, the words “District Magistrate, after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts” shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) The person who has been issued a certificate of identity under sub-section (1) and is so declared as a transgender person within the definition under this Act shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person.”.

5. In section 7 of the principal Act,—

Amendment of section 7.

(a) in sub-section (1), for the words “such person may”, the words “such person shall” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed.”;

(c) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) A person referred to in sub-section (1) shall also make an application to the District Magistrate who shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.”;

(d) sub-section (3) and the proviso shall be omitted.

6. In section 16 of the principal Act, in sub-section (2), for clause (f), the following clause shall be substituted, namely:—

Amendment of section 16.

“(f) representatives of the State Governments and Union territories Administration, by rotation, one each from North, South, East, West and North-East regions, not below the rank of Director in the concerned Ministry or Department, to be nominated by the Central Government, Members, *ex officio*.”.

7. For section 18 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 18.

“18. Whoever,—

Offences and penalties.

(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

(c) forces or causes a transgender person to leave household, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine;

(e) kidnaps or abducts any adult person and causes—

(i) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or

(ii) permanent or severe injury to the body or bodily functions of such person,

with the intent of, or in the course of, compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees;

(f) kidnaps or abducts any child and causes—

(i) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or

(ii) permanent or severe injury to the body or bodily functions of such child,

with the intent of, or in the course of, compelling such child to assume, adopt, or outwardly present a transgender identity, whether by force, allurement, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;

(g) by force, threat, coercion, allurement, deception, inducement, or undue influence—

(i) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and

(ii) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting,

shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and

(h) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise—

(i) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and

(ii) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting,

shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which shall not be less than three lakh rupees.”.

8. In section 22 of the principal Act, in sub-section (2),—

Amendment of
section 22.

(a) in clause (c), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “and the form and manner of details to be furnished by the medical institution under sub-section (1A),” shall be inserted;

(b) in clause (d), the word “revised” shall be omitted.

DR. RAJIV MANI,
Secretary to the Govt. of India.

ANNEXURE P-10**SURVEY REPORT****Gender-Affirming Care and Identification***Experiences of the Transgender Community in India*

Total Respondents: 204

Survey Period: 2024–2025

Survey Methodology: Google Forms (Self-reported)

Languages: English, Hindi, Marathi

Collated by: Manveer Yadav & Vishwanath Maithil

1. Preface and Methodological Note

This report presents findings from a structured survey taken by Manveer Yadav and Vishwanath Maithil on gender-affirming care and identification documents, administered to 204 individuals belonging to the transgender community across India. The survey was conducted *via* Google Forms and collected responses in English, Hindi, and Marathi. All Hindi and Marathi responses have been translated into English for the purposes of this report, with their substantive meaning preserved faithfully. The survey covers the following thematic areas: demographic profile, legal identification and documentation, gender dysphoria and certification, hormonal therapy, surgical interventions, mental health support, and barriers to accessing gender-affirming care. This report is prepared for submission as supporting evidence in legal proceedings and should be read as an accurate, data-driven representation of the lived experiences of transgender persons in India.

Manveer Yadav: Manveer Yadav (He/Him) is a transgender rights activist and advocate with lived experience as a transman. He leads programs in crisis intervention, shelter, education, and community empowerment, working at the intersection of social work and policy advocacy to advance the rights and dignity of transgender individuals across India.

Vishwanath Maithil: (He/Him) is India's first transman journalist, currently reporting with TRP WAALA News Media Channel. A spiritual speaker, numerologist, and longtime LGBTQ+ activist based in Gwalior, he is the founder of the Crystal Queer community network and has spent nearly a decade advocating for transgender rights, identity, and social inclusion through journalism, public speaking, and grassroots counselling.

2. Demographic Profile of Respondents

2.1 Age Distribution

The survey captured responses from 203 participants who disclosed their age. Respondents ranged from 16 to 52 years of age, with a mean age of 25.8 years, indicating that the majority of respondents are young adults. The predominance of younger respondents reflects the demographic realities of transgender advocacy and community mobilisation in India.

Age Metric	Value	
Minimum Age	16 years	
Maximum Age	52 years	
Mean (Average) Age	25.8 years	
Total Respondents Disclosing Age	203	

2.2 Gender Identity (As Per Aadhaar Card)

The question regarding gender as recorded on Aadhaar Card reflects the state of legal recognition at the time of survey completion. A significant number of respondents still have their assigned-at-birth sex recorded on official documents, indicating incomplete access to legal gender recognition processes.

Gender on Aadhaar Card	Count	% of Total
Female (Assigned Female at Birth)	100	49.0%
Male (Assigned Male at Birth)	86	42.2%
Transgender	8	3.9%
Other / Not Specified	4	2.0%
Total Responding	198	—

2.3 Self-Perceived Gender Identity

Respondents were asked to describe their self-perceived gender identity, with responses accepted in free text. The responses, many of which were provided in Hindi and have been translated, reveal a rich spectrum of gender identities within the transgender community. The table below reflects consolidated categories derived from the diverse ways respondents described themselves.

Translations and Categorisations Applied: 'Purush' (Hindi: पुरुष) — Man/Male → Trans Man; 'Mela'/'Mele' (colloquial) — Male-presenting → Trans Man; 'Phechan' (Hindi: पहचान) — Identity/Self-identified → categorised as 'Other / Non-binary'; 'Khud se jankar gender identity' (Hindi) — Self-known gender identity → Other / Non-binary.

Self-Perceived Gender Identity	Count	% of Total
Trans Man / FTM (Female-to-Male)	144	70.6%
Trans Woman / MTF (Male-to-Female)	27	13.2%
Other / Non-binary / Gender-diverse	25	12.3%
Transgender (Unspecified)	4	2.0%
Total Responding	200	—

The data demonstrates significant gender diversity within the survey sample. Trans men (FTM) constitute the largest group (72%), consistent with patterns observed in India's urban transgender advocacy landscape. Trans women (MTF) make up 13.5%, while nearly 12.5% of respondents identify with gender expressions outside the binary, including non-binary, gender-fluid, or self-described identities.

2.4 Preferred Pronouns

Respondents' preferred pronouns further reflect the gender diversity of the sample. Note: Several respondents indicated multiple pronoun sets, which is reflected below.

Preferred Pronouns	Count	% of Total
He / Him	149	73.0%
He/Him + She/Her (multiple sets)	46	22.5%
She / Her	0	—
They / Them or Other	5	2.5%

2.5 Religion

The survey sample reflects India's religious diversity. The following categorisation consolidates variants (e.g., responses of 'Hindu', 'Brahman', 'Sanatan Dharma' are grouped under Hinduism):

Religion	Count	% of Total
Hinduism	173	84.8%
Islam	15	7.4%
Sikhism	5	2.5%
Buddhism	3	1.5%
Christianity	1	0.5%
Indigenous / Tribal Beliefs	1	0.5%
Atheist / No Religion	2	1.0%
Other / Unspecified	4	2.0%

2.6 Caste Category

Caste data highlights the intersectionality of caste-based marginalisation and gender identity, with a notable proportion of respondents belonging to Scheduled Caste and Other Backward Classes.

Caste Category	Count	% of Total
General Category	121	59.3%
Schedule Caste (SC)	36	17.6%
Other Backward Classes (OBC)	29	14.2%
Schedule Tribe (ST)	4	2.0%
Not Specified / Other	14	6.9%

2.7 Socio-Economic Background

Responses provided in Hindi have been translated and categorised as follows: 'Garibi rekha ke niche' / 'Garib rekha se niche' / 'Garibi rekha me' — Below Poverty Line; 'Madhyam varg' / 'Madiye varg' —

Middle Class; 'Nimn madhyam varg' — Lower Middle Class; 'Batana nahi chahte' / 'Batna nahi chahte' — Prefer Not to Say.

Socio-Economic Category	Count	% of Total
Middle Class	82	40.2%
Lower Middle Class	43	21.1%
Below Poverty Line	18	8.8%
Prefer Not to Say	35	17.2%
Upper Class	1	0.5%
Total Responding (excluding blank)	179	—

3. Legal Identification and Documentation

3.1 Transgender Identity Certificate (District Magistrate)

Under Section 6 of the Transgender Persons (Protection of Rights) Act, 2019, transgender persons may apply to the District Magistrate for a Certificate of Identity. Survey findings show that despite legal provisions, a majority of respondents do not yet hold this certificate, indicating systemic gaps in implementation.

Note: One respondent wrote in Hindi: 'Hamare yaha par jila magistrate office mein koi transgender card ko ya usse related documents ko koi janta hi nahi hai' — meaning 'In our area, the District Magistrate's office is not even aware of the transgender identity card or related documents.' This response has been categorised under 'Other' and reflects critical awareness gaps among government officials.

Status of Transgender Identity Certificate	Count	% of Total
Yes — Holds Certificate	88	43.1%
No — Does Not Hold Certificate	78	38.2%
Applied — Awaiting Decision	17	8.3%
Pending	16	7.8%
Rejected	3	1.5%
Other (e.g., unaware of process)	2	1.0%

Total Responding	204	—

3.2 Legal Name or Gender Marker Change

Respondents were asked whether they had legally changed their name or gender marker on any official document. Responses also included:

Translated responses: 'Only Aadhaar mein gender change hua hai' — Only the gender marker on Aadhaar has been changed (not other documents). 'I have changed my name but not gender yet' — partial legal change recorded.

Legal Name / Gender Marker Change	Count	% of Total
Yes — Legally Changed	75	36.8%
No — Not Changed	112	54.9%
Pending	14	6.9%
Partial Change Only (name or gender, not both)	3	1.5%
Total Responding	204	—

The data shows that 54.9% of respondents have not yet legally changed their name or gender marker, reflecting continuing barriers to legal gender recognition and document correction despite the provisions of the 2019 Act.

4. Gender Dysphoria: Experience and Certification

4.1 Experience of Gender Dysphoria

Gender Dysphoria refers to the clinically significant distress arising from a discrepancy between an individual's gender identity and the sex assigned at birth. The survey asked respondents whether they had experienced gender dysphoria.

Experience of Gender Dysphoria	Count	% of Total
Yes	180	88.2%
No	17	8.3%

Prefer Not to Say	4	2.0%
No Response	3	1.5%
Total	204	—

An overwhelming 88.2% of respondents reported experiencing gender dysphoria, underscoring the psychological and medical dimensions of transgender experience and the necessity of accessible, gender-affirming healthcare.

4.2 Gender Dysphoria Certificate (Issued by Medical Professional)

A Gender Dysphoria Certificate, issued by a qualified medical professional, is often required for access to gender-affirming procedures and legal processes. The survey reveals that a majority hold or are in process of obtaining this certificate.

Gender Dysphoria Certificate Status	Count	% of Total
Yes — Holds Certificate	132	64.7%
No — Does Not Hold Certificate	62	30.4%
Pending	9	4.4%
Total Responding	203	—

5. Hormonal Therapy

5.1 Access to Hormonal Therapy

Cross-sex hormone therapy is a key component of gender-affirming care for many transgender individuals. The survey data reveal that the majority of respondents have accessed or are currently accessing hormonal therapy.

Translated/contextualised responses included: 'Start nahi kiya abhi' — Not started yet; 'Uncompleted' — Started but incomplete; 'Started but had to stop midway' — categorised under 'Incomplete / Discontinued'.

Hormonal Therapy Status	Count	% of Total
Yes — Currently Undergoing	98	48.0%

Yes — Completed	46	22.5%
No — Desired but Unable to Access	30	14.7%
No — Not Undergone (no desire stated)	22	10.8%
Incomplete / Discontinued	4	2.0%
Prefer Not to Say	4	2.0%
Total Responding	204	—

Notably, 14.7% of respondents want hormonal therapy but have been unable to access it, indicating significant unmet need.

5.2 Mode of Hormonal Therapy

Mode of Hormonal Therapy	Count	Approx. %
Under supervision of a doctor / endocrinologist	110	Majority of HT users
Self-administered (without medical supervision)	22	Minority
Both (supervised and self-administered)	14	Mixed
Not Applicable	48	—
Prefer Not to Say / Other	10	—

The existence of self-administration without medical supervision reflects the barriers to accessing informed healthcare providers and points to risks associated with unsupervised hormone use.

5.3 Difficulties in Accessing Hormonal Therapy

Respondents who faced barriers to accessing hormonal therapy cited multiple overlapping difficulties. Responses are listed by frequency (multiple choices permitted):

Barrier to Hormonal Therapy Access	Count	% of Total
Cost / Financial Constraints	89	43.6%
Family Opposition	54	26.5%
Could Not Find an Informed / Affirming Doctor	48	23.5%
Fear of Discrimination	42	20.6%

Geographic Distance / Lack of Availability	30	14.7%
No Significant Difficulty	19	9.3%
Not Applicable	18	—
Prefer Not to Say	8	—

5.4 Quality of Care During Medical Supervision

For those who received hormone therapy under medical supervision, respondents rated the quality and affirmation of care:

Quality of Care (Medically Supervised HT)	Count	Approx. %
Yes — Provider was respectful and knowledgeable	82	55.4%
Partially — Some issues but generally acceptable	38	25.7%
No — Experienced discrimination or poor treatment	12	8.1%
Not Applicable / Prefer Not to Say	16	—

6. Gender-Affirming Surgical Interventions

6.1 Uptake of Gender-Affirming Surgery

Respondents were asked whether they had undergone any gender-affirming surgical procedure. The data below reflects the current surgical status:

Surgical Status	Count	% of Total
Yes — Have Undergone Surgery	73	35.8%
No — Have Not Undergone Surgery	68	33.3%
Planning to Undergo Surgery in Future	53	26.0%
Prefer Not to Say	6	2.9%
No Response	4	2.0%
Total	204	—

Translated responses: 'Abhi nahi karwaya kuch' — Not undergone anything yet; 'Nahi ki hai' — Have not done it; 'Maine abhi karwai hi nahi hai' — I have not had it done yet; 'Karwane ke liye paise ikatthe

kar raha hun' — Collecting money to get it done; 'Kivanu hai abi process start kruga' — Want to get it done, will start the process — all categorised under 'Planning to Undergo Surgery in Future'.

6.2 Types of Surgical Procedures Undergone

Among the 73 respondents who have undergone surgery, the following types of procedures were reported (multiple procedures per respondent possible):

Type of Surgical Procedure	Count	% of 73 who had surgery
Chest / Top Surgery	52	71.2%
Genital / Bottom Surgery	22	30.1%
Uterus Removal (Hysterectomy)	14	19.2%
Facial Feminisation or Masculinisation Surgery	9	12.3%
Orchiectomy / Other Gonadal Surgery	4	5.5%
Voice Masculinisation Surgery (FTM Voice Surgery)	6	8.2%
Prefer Not to Say	5	—

Note: One respondent noted 'Hormone therapy se voice change hui hai' (Hindi) — meaning voice changes occurred through hormonal therapy, not surgery. This was not counted as a surgical procedure.

6.3 Location Where Surgery Was Performed

Location of Surgery	Count	% of 73 who had surgery
India — Private Hospital	56	76.7%
India — Government / Public Hospital	12	16.4%
AIIMS (All India Institute of Medical Sciences)	2	2.7%
Delhi (unspecified facility)	1	1.4%
Prefer Not to Say / Not Specified	2	—

6.4 Cost Coverage for Surgery

How Surgery Cost Was Covered	Count	% of 73 who had surgery
Paid Entirely Out of Pocket	48	65.8%
Fully Covered by Government Scheme / Insurance	8	11.0%
Partially Covered	6	8.2%
Employer / Company Insurance	2	2.7%
Could Not Afford — Did Not Undergo Surgery for This Reason	5	—
Prefer Not to Say / Not Specified	4	—

The data reveals that 65.8% of those who underwent surgery paid entirely out of pocket, indicating that gender-affirming surgery remains largely inaccessible through public health systems or insurance coverage in India.

7. Mental Health Support

7.1 Access to Mental Health Support Related to Gender Identity

Mental Health Support Access	Count	% of Total
Yes — Have Accessed Support	115	56.4%
No — Did Not Need It	51	25.0%
No — Wanted to But Could Not Access	14	6.9%
Prefer Not to Say	14	6.9%
No Response	10	4.9%
Total	204	—

7.2 Types of Mental Health Support Accessed

Among respondents who accessed mental health support, multiple types of support were utilised:

Type of Mental Health Support	Count	% of 115 who accessed support
Psychologist / Counsellor	78	67.8%

Psychiatrist	62	53.9%
NGO / Community Organisation	55	47.8%
Online Community / Helpline	38	33.0%
Peer Support Group	32	27.8%
Friends / Informal Support	2	1.7%

8. Denial of Medical Care and Discrimination in Healthcare

8.1 Denial of Medical Care Due to Gender Identity

Contextualised response: One respondent wrote: 'Wasn't open about the identity to the general public. Because of lack of awareness in people is triggering to an extent.' — This response indicates concealment of identity to avoid discrimination rather than explicit denial; categorised under 'No'. Another response: 'Kabhi aise kuch kiya nahi meine' (Hindi) — 'I have never experienced this' — categorised as No.

Denial of Medical Care	Count	% of Total
Yes — Denied at a Government Facility	54	26.5%
Yes — Denied at a Private Facility	43	21.1%
Yes — Denied by a Private Practitioner	16	7.8%
No — Not Denied	93	45.6%
Prefer Not to Say	12	5.9%

The data reveals that a combined total of 54.9% of respondents (across multiple selection) reported being denied **medical** care in at least one setting. This is a deeply alarming finding that reflects systemic discrimination against transgender persons in both public and private healthcare in India.

8.2 Discrimination and Mistreatment in Healthcare Settings

Respondents were asked to identify forms of discrimination or mistreatment experienced in healthcare settings (multiple selections permitted):

Translated responses included: 'Mai kabhi gaya nahi isliye koi idea nahi hai' (Hindi) — 'I have never been, so I have no idea' — categorised as No Response. 'Mostly approached private hospitals' — categorised under No (general) with additional context noted.

Form of Discrimination / Mistreatment	Count	% of Total
Verbal Abuse or Humiliation	72	35.3%
Forced to Disclose Identity Unwillingly	19	9.3%
Other Form of Mistreatment	23	11.3%
Refusal of Treatment	15	7.4%
No — Did Not Experience Discrimination	89	43.6%
Prefer Not to Say	14	6.9%

35.3% of respondents reported verbal abuse or humiliation in healthcare settings. Being forced to unwillingly disclose one's identity was reported by 9.3%, while refusal of treatment was reported by 7.4%. These findings point to pervasive healthcare discrimination that violates the rights guaranteed under the Transgender Persons (Protection of Rights) Act, 2019.

9. Barriers to Accessing Gender-Affirming Care

Respondents identified the greatest barriers they had faced in accessing gender-affirming care. Multiple selections were permitted, and the following represents the frequency of each barrier across all 204 respondents:

Barrier to Gender-Affirming Care	Count	% of Total
Cost / Financial Constraints	147	72.1%
Family Opposition or Pressure	85	41.7%
Fear of Discrimination	76	37.3%
Lack of Informed / Affirming Doctors	68	33.3%
Long Waiting Times	56	27.5%
Requirement for Documents Respondent Does Not Have	55	27.0%
Lack of Information on Where to Access Care	54	26.5%

Geographic Distance / No Services Nearby	41	20.1%
No Significant Barriers Faced	13	6.4%

Financial constraints stand as the single greatest barrier, reported by 72.1% of respondents. Family opposition (41.7%), fear of discrimination (37.3%), and lack of affirming doctors (33.3%) follow. Taken together, these findings point to a multi-layered crisis of access that encompasses economic, social, geographic, and systemic dimensions.

Notable additional response: One respondent noted: 'There are various factors, including but not limited to, mainly lack of awareness in people and the mindset of society as a big barrier.' This qualitative insight captures the broader societal context that underlies many of the quantitative barriers identified above.

10. Summary of Key Findings

Key Finding	Statistic	Significance
Predominant gender identity: Trans Man / FTM	144 / 204 (70.6%)	High
Experienced Gender Dysphoria	180 / 204 (88.2%)	Critical
Hold Gender Dysphoria Certificate	132 / 204 (64.7%)	High
Currently on or completed hormonal therapy	144 / 204 (70.6%)	High
Denied medical care due to gender identity	54+ respondents (26.5%+)	Alarming
Experienced verbal abuse in healthcare	72 / 204 (35.3%)	Alarming
Surgery financed entirely out of pocket	48 / 73 who had surgery (65.8%)	Critical
Primary barrier: Financial constraints	147 / 204 (72.1%)	Critical
Do not hold TG Identity Certificate	78 / 204 (38.2%)	Significant
Have not legally changed name/gender marker	112 / 204 (54.9%)	Significant

The findings of this survey present compelling evidence of systemic barriers and discrimination experienced by transgender individuals in India in their efforts to access gender-affirming care and legal recognition. These findings are submitted in support of legal submissions concerning the rights, welfare, and dignity of transgender persons under Indian law and the Transgender Persons (Protection of Rights) Act, 2019.

This report has been compiled from primary survey data collected from 204 individuals self-identifying as members of the transgender community in India. The survey was administered in English, Hindi, and Marathi. All responses have been faithfully captured, and non-English responses have been translated into English for the purposes of this document. The data has been tabulated and analysed with accuracy. Percentages have been calculated to one decimal place. Any open-ended responses have been contextualised and categorised thematically, with the original language of specific notable responses preserved and translated within the body of the report. This report does not disclose the names or personal identifying information of individual respondents.