

3. Transgender Persons (Protection of Rights) Act, 2019 – Polity

The Government of India has proposed significant amendments to the Transgender Persons (Protection of Rights) Act, 2019. These changes represent a major shift in how the state identifies transgender individuals, moving away from self-identification toward a medicalized and socio-biological framework.

1. Background and Context

What are the Transgender Persons (Protection of Rights) Act, 2019?

This Act was originally designed to provide a legal framework for the protection of transgender rights in India, covering aspects like education, employment, and healthcare. It was a response to years of advocacy following the landmark *NALSA v. Union of India* (2014) judgment.

Key Definitions

Transgender Person– Traditionally, someone whose gender identity does not match the sex assigned to them at birth.

Self-Perceived Gender Identity– The internal, personal sense of being a man, woman, or another gender, which may or may not correspond to biological sex.

Sex Reassignment Surgery (SRS)– Medical procedures used to alter a person's physical characteristics to better align with their gender identity.

2. Redefining the "Transgender" Identity

The most fundamental change lies in how a person is legally categorized as transgender.

Comparison of Definition and Identification

Aspect	Current Act (2019)	Proposed Amendment (2026)
Basis of Identity	Based on gender identity not matching sex assigned at birth.	Focuses on socio-cultural identities and biological/congenital variations.
Core Philosophy	Recognizes the right to self-perceived identity.	Removes the right to self-perception; emphasizes medical/biological proof.
Categories Included	Trans-man, trans-woman, intersex, genderqueer, and socio-cultural identities (Kinner, Hijra, etc.).	Hijra, Kinner, Aravani, Jogta, Eunuch, and those with congenital variations in sexual characteristics.
Inclusions/Exclusions	Generally inclusive of the broad spectrum of gender non-conformity.	Includes those forced into the identity; excludes sexual orientation and self-perceived identity.

3. Structural and Administrative Changes

The amendment introduces a more rigorous, "authority-led" process for legal recognition.

Medical Boards and Certification

Introduction of "Authority"– The law proposes a formal medical board to verify identity. This board is to be headed by a Chief Medical Officer (CMO) or Deputy CMO.

Role of the District Magistrate (DM)–

Current– The DM issues certificates based on a procedural application.

Proposed– The DM must examine the medical board's recommendations first. The DM will issue a certificate only if they consider it "necessary or desirable" after review.

Mandatory Reporting– Medical institutions performing SRS must now furnish all procedure details to the District Magistrate.

Name and Gender Changes

Right to Name Change– Transgender persons (under the new definition) gain the right to change their first names on birth certificates and IDs.

Compulsory Revised Certificates– Currently, applying for a revised gender certificate after SRS is optional. The amendment makes this mandatory for any individual who undergoes the surgery.

4. Legal Protection and Penalties

The amendment seeks to strengthen the "teeth" of the law regarding crimes committed against the community.

Expanded Offence Categories- The scope of crimes has been widened to specifically include offences against transgender children.

Graded Punishments- Penalties are now more severe and categorized based on the gravity of the crime.

1. Punishment Range- From rigorous imprisonment to life terms.
2. Fines- Financial penalties can reach up to Rs 5 lakh.

5. The Government's Rationale

The Ministry of Social Justice and Empowerment has cited several practical reasons for these shifts-

Clarity in Implementation- The government argues the 2019 definition was "too vague," leading to administrative "doubts and difficulties."

Targeted Welfare- By using a precise, biological, and socio-cultural definition, the state aims to ensure benefits reach "genuinely marginalized" individuals facing social exclusion due to biological reasons.

Legal Compatibility- The government claims the current definition conflicts with existing personal, civil, and criminal laws (which are often binary). A stricter definition is intended to harmonize these statutes.

6. Key Concerns and Criticisms

The proposed changes have met with significant resistance from human rights activists and the LGBTQ+ community.

Violation of NALSA Judgment- Activists argue that removing "self-perceived identity" directly violates the Supreme Court's 2014 ruling, which upheld gender self-determination as a fundamental right under Article 21.

The "Pathologization" of Identity- By requiring a medical board, the amendment returns to a "medical model" of transgender identity, treating it as a biological condition rather than a human right.

Exclusivity- Critics fear the narrow focus on specific socio-cultural groups (like Hijras or Kinnars) will exclude many individuals who identify as trans-men or non-binary but do not belong to these traditional groups.

Terminology Issues- While including terms like Hijra or Aravani, the bill is criticized for omitting other respectful regional terms and potentially creating hierarchy/division within the community.

Source- <https://www.thehindu.com/news/national/bill-to-provide-precise-definition-of-transgender-introduced-in-lok-sabha/article70739056.ece>