

**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)**

IN THE MATTER OF:

KALKI SUBRAMANIAM

.... PETITIONER

VERSUS

THE UNION OF INDIA & ORS.

....RESPONDENTS

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ADVOCATE FOR THE PETITIONER: PALLAVI PRATAP

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION [CIVIL] NO. _____ OF 2026
(Under Article 32 of the Constitution of India)**

IN THE MATTER OF:

KALKI SUBRAMANIAM

.... PETITIONER

VERSUS

THE UNION OF INDIA & ORS.

....RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.
2. The Petition is barred by time and there is delay of ____ days in filing the same,
3. There is delay of ____ days in re-filing the Petition and Petition for Condonation of ____ days delay in refiling has been filed.

BRANCH OFFICER

Place: New Delhi

Dated: 15.06.2026

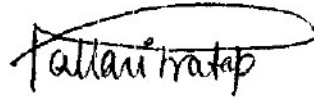
PROFORMA FOR FIRST LISTING

Section: _____

- ☐ Central Act: Constitution of India
 - ☐ Section: Article 32
 - ☐ Central Rule: (Title) N.A.
 - ☐ Rule No (s): N.A.
 - ☐ State Act (Title): N.A.
 - ☐ Section: N.A.
 - ☐ State Rule: (Title) N.A.
 - ☐ Rule No (s): N.A.
 - ☐ Impugned Interim Order: N.A.
 - ☐ Impugned final Order/ Decree: NA
 - ☐ High Court: NA
 - ☐ Names of Judges: NA
 - ☐ Tribunal/Authority: N.A.
1. Nature of Matter: Civil
 2. (a) Petitioner/ Appellant: **KALKI SUBRAMANIAM**
(b) E-mail ID: NA
(c) Mobile Phone Number: N.A.
 3. (a) Respondent: Union of India & Ors.
(b) E-mail ID: NA
(c) Mobile Phone Number: NA
 4. (a) Main Category classification: 48 Others
(b) Sub Classification: 4805
 5. Not to be listed before: N.A.
 6. (a) Similar disposed of matter with citation, if any, & case details: No similar disposed of matter.
(b) Similar pending matter with case details:
 7. Criminal Matters: No
 - a) Whether accused/ convict has surrendered: NA
 - b) FIR No.: NA Date: NA
 - c) Police Station: NA
 - d) Sentence Awarded: NA
 - e) Period of sentence undergone including period of detention/custody undergone: NA
 - f) Whether any earlier case between the same parties is filed: NA
 - g) Particulars of the FIR and case: NA
 - h) Whether any bail application was preferred earlier and decision thereupon: NA
 8. Land Acquisition Matters:
 - (a) Date of Section 4 Notification: N.A.
 - (b) Date of Section 6 Notification: N.A.

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- (c) Date of Section 17 Notification: N.A.
9. Tax Matters: State the tax effect: N.A.
10. Special Category (First petitioner/ appellant only): NA
11. Vehicle Number (in case of Motor Accident Claim matters): N.A.
12. Whether there was/is litigation on the same point of law, if yes, details thereof : No



FILED BY

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PALLAVI PRATAP
Advocate for the Petitioners
AOR Code: 2553

Filed on: 15.06.2026

B

SYNOPSIS

The present Writ Petition under Article 32 of the Constitution challenges the constitutional validity of the Transgender Persons (Protection of Rights) Amendment Act, 2026 (“2026 Amendment Act”). The impugned legislation fundamentally alters the statutory framework governing the recognition, protection, and legal status of transgender persons in India. The Amendment removes the statutory recognition of self-perceived gender identity, introduces mandatory medical certification and scrutiny through government-appointed Medical Boards, narrows the definition of “transgender person” by excluding several recognised identities and self-identified transgender persons, mandates disclosure of gender-affirming medical procedures to executive authorities, and introduces broad penal provisions employing vague and undefined terminology. The Petitioner's case is that these changes directly undermine the constitutional principles recognised by this Hon'ble Court in *NALSA v. Union of India (2014) 5 SCC 438* and violate Articles 14, 15, 19(1)(a), 21 and 29 of the Constitution.

The challenge raised in the present Petition concerns far more than a statutory amendment. The impugned Act reverses the rights-based framework painstakingly developed through constitutional jurisprudence over the last decade. In *NALSA*, this Hon'ble Court recognised that self-identification of gender is an integral facet of dignity, autonomy, and personal liberty under Article 21, and expressly rejected medical or biological tests as a precondition for legal recognition. The 2026 Amendment Act replaces this constitutional

C

framework with one that subjects gender identity to medical scrutiny, executive verification, and institutional approval. In doing so, it converts a constitutionally protected identity into a status contingent upon State recognition.

The impugned legislation assumes particular significance because it was enacted shortly after this Hon'ble Court's decision in *Jane Kaushik v. Union of India*, (2026) 1 SCC 336, wherein this Court expressed serious concern regarding the continuing failure of authorities to implement the Transgender Persons (Protection of Rights) Act, 2019 and issued extensive directions for strengthening institutional protections available to transgender persons. Despite these developments, and despite the existence of the National Council for Transgender Persons ("NCTP"), a statutory body specifically constituted under the 2019 Act to advise the Central Government on legislation affecting transgender persons, the Amendment was introduced and enacted without any consultation with the NCTP or the Advisory Committee constituted pursuant to *Jane Kaushik*.

The Petitioner is a transgender woman, founder of the Sahodari Foundation and former member of the National Council for Transgender Persons. She has worked extensively in the field of transgender rights, education, livelihood, and legal advocacy, and is directly affected by the impugned provisions as a transgender woman whose identity, dignity, autonomy, and legal recognition are impacted by the 2026 Amendment Act.

Transgender persons have historically been recognised as part of India's social fabric, with references appearing in ancient literary texts and historical records. Despite this longstanding presence, transgender

D

persons remained subject to social exclusion and legal marginalisation, particularly during the colonial period. Colonial legislation, including Section 377 of the Indian Penal Code, 1860 and the Criminal Tribes Act, 1871, entrenched discrimination against communities whose identities and social practices did not conform to colonial notions of gender and sexuality.

The constitutional position began to evolve through judicial intervention in the decades that followed. In *Naz Foundation v. Government of NCT of Delhi*, 160 (2009) DLT 277, the Delhi High Court recognised the constitutional harms arising from discrimination founded upon sexual orientation and identity. Similarly, in *S. Swapna (Transgender) v. State of Tamil Nadu*, W.P.(MD) No. 10882 of 2014, the Madras High Court facilitated recognition of a transgender woman's affirmed identity in official educational records, reflecting an emerging judicial recognition of gender identity, dignity, and personal autonomy.

The watershed moment came with the decision of this Hon'ble Court in *NALSA*, which recognised transgender persons as rights-bearing constitutional citizens and affirmed that self-identification of gender is an integral facet of dignity, autonomy, and personal liberty under Article 21. This Hon'ble Court expressly held that gender identity is founded upon self-perception and that no person may be compelled to undergo medical procedures or satisfy biological criteria as a precondition for legal recognition of their gender identity. *NALSA* further directed the State to ensure equal treatment of transgender persons in education, healthcare, employment, and other spheres of public life.

The constitutional protections recognised in *NALSA* were further strengthened by the decision in *Justice K.S. Puttaswamy (Retd.) v. Union*

E

of India (2017) 10 SCC 1, wherein this Hon'ble Court recognised privacy as a fundamental right under Article 21. The judgment affirmed that matters relating to identity, bodily integrity, personal autonomy, and intimate decision-making fall within a protected constitutional zone beyond unwarranted State intrusion. These principles are of particular significance to transgender persons, whose rights to identity, bodily autonomy, and self-determination stand at the centre of the present challenge.

On the legislative plane, the Union Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 (“the 2019 Act”), with Rules notified in 2020. The 2019 Act codified the rights recognised in *NALSA* across the domains of healthcare, livelihood, and rehabilitation, established the NCTP, and created a National Portal for registration and grievance redressal. However, implementation remained alarmingly deficient.

According to Census 2011, 4,87,803 persons were recorded under the transgender/"other" gender category. However, several researchers, international organisations, and community groups have consistently noted that this figure is likely to represent a substantial undercount, given the social stigma, fear of disclosure, and limitations inherent in the census methodology for capturing gender-diverse populations. Despite the enactment of the 2019 Act and the establishment of the National Portal for Transgender Persons, official data released by the Ministry of Social Justice and Empowerment in June 2026 indicated that only 33,189 certificates had been issued through the Portal mechanism nationwide.

F

In 2025, this Hon'ble Court in *Jane Kaushik* expressed its grave concern at the deplorable state of implementation of the 2019 Act over a decade after *NALSA*, and in exercise of its powers under Article 142 of the Constitution, issued binding directions for the constitution of Welfare Boards, Transgender Protection Cells, and appellate mechanisms in every State and Union Territory. The Court further constituted an Advisory Committee to prepare a comprehensive policy framework on employment, gender change procedures, reasonable accommodation, grievance redressal, inclusive medical care, and protections for gender non-conforming persons.

Against this backdrop of persistent institutional neglect and long-awaited reform, the Transgender Persons (Protection of Rights) Amendment Bill, 2026, was introduced in the Lok Sabha on 13 March, 2026, without any prior intimation to or consultation with the NCTP. The Bill was passed by the Lok Sabha on 24 March, 2026, by a voice vote, despite vehement opposition from the NCTP members, civil society organisations, and the Advisory Committee constituted in *Jane Kaushik*. The Rajya Sabha passed the Bill on 25 March 2026 without reference to any parliamentary committee or public consultation. Presidential assent was accorded on 30 March, 2026, notwithstanding urgent pleas to withhold it, and the 2026 Amendment Act was notified in the Gazette of India on 25 May, 2026. Rather than correcting the deficiencies of the 2019 Act as the occasion demanded, the 2026 Amendment Act constitutes a sweeping retrogression from the constitutional guarantees affirmed in *NALSA* and embodied in the 2019 Act, and it is this fundamental constitutional infirmity that is the subject of the present Petition.

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A table highlighting the key differences and the implications of the 2026 Amendment Act is attached below:

Transgender Persons (Protection of Rights) Amendment Act, 2026

Provision of 2026 Amendment Act	Change from the 2019 Act	Relevant provision of the 2019 Act	Consequence
Section 2(ii)	Adds clause (aa) to Section 2 defining “authority” as a medical board headed by a Chief Medical Officer or Deputy Chief Medical Officer appointed by the appropriate Government.	No equivalent provision. The 2019 Act contained no requirement for any medical body in the process of identity recognition.	Introduces a medical gatekeeping body into a process that this Hon’ble Court in <i>NALSA</i> held requires no medical evaluation. It imposes a condition on a constitutional right on institutional, bureaucratic, and class-dependent access to medical infrastructure.

H

Section 2(iii)	Omits clause (i) of Section 2, which defines “person with intersex variations.”	Section 2(i) defined a “person with intersex variations” as a person who at birth shows variation in primary sexual characteristics, external genitalia, chromosomes or hormones from the normative standard of male or female body.	The definition is removed as a standalone provision and absorbed into the new definition of “transgender person” under Section 2(k). This conflates intersex and transgender identities, which are distinct. Most transgender persons do not have intersex variations, and most intersex persons do not identify as transgender. Such conflation, which was part of earlier drafts of the 2019 Act, was later rejected, with intersex persons and transgender persons being defined separately in the final enactment.
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I

Section 2(iv)	Substitutes clause (k) of Section 2, replacing the existing definition of “transgender person.”	Section 2(k) defined a “transgender person” as a person whose gender does not match the gender assigned at birth, including trans men, trans women (with or without surgery or hormone therapy), persons with intersex variations, genderqueer persons, and persons with socio-cultural identities such as kinner, hijra, aravani and jogta.	The new definition limits recognition to named socio-cultural identities and persons with medically diagnosed conditions. Trans men, trans women, non-binary and genderqueer persons without a medical diagnosis are excluded. The definition explicitly excludes persons with “self-perceived identities,” in direct contravention of this Hon’ble Court’s holding in <i>NALSA</i> that gender identity is founded on self-perception.
Section 3	Omits Section 4(2) of the 2019 Act.	Section 4(2) provided that a person recognised as transgender shall have a right to self-	Removes the one provision of the 2019 Act that most directly implemented the <i>NALSA</i> mandate.

J

		perceived gender identity.	
Section 4	Amends Section 6(1) to require the District Magistrate to examine the recommendation of the “authority” (medical board) before issuing a certificate of identity, and inserts Section 6(4) entitling persons issued a certificate to change their first name in official documents.	Section 6(1) required the District Magistrate to issue a certificate of identity as a transgender person after following the prescribed procedure, with no medical board involvement.	The insertion of the medical board’s recommendation as a mandatory step reinstates gatekeeping that the <i>NALSA</i> judgement expressly prohibited. While Section 6(4) on name changes is a positive addition, it benefits only those who first succeed in obtaining a certificate under the now more restrictive process.
Section 5	Amends Section 7 on change of gender: makes the post-surgery application mandatory rather than optional (substituting “shall” for “may”); inserts Section 7(1A)	Section 7(1) permitted (but did not require) a transgender person who had undergone surgery to apply for a revised certificate indicating change in gender. Section	Mandatory reporting by medical institutions to the District Magistrate and medical board introduces State surveillance of transgender persons’ medical decisions.

K

	requiring medical institutions to report surgical gender changes to the District Magistrate and the authority; and omits Section 7(3) and its proviso.	7(3) entitled such a person to change their first name in official documents and preserved their existing rights and entitlements.	The omission of Section 7(3) removes the express protection that a change of gender certificate would not affect a person's existing rights and entitlements under the Act — creating uncertainty about the continuity of those protections.
Section 6	Amends Section 16(2)(f) to require State Government and Union Territory representatives on the National Council to be not below the rank of Director.	Section 16(2)(f) provided for representatives of State Governments and Union Territories by rotation, one each from five regions, to be nominated by the Central Government, with no minimum rank specified.	A procedural change with limited substantive impact on transgender rights. The more significant concern is what is absent: the Amendment Bill makes no changes to ensure meaningful representation of transgender communities themselves on the National Council.

L

Section 7	Substitutes Section 18 in its entirety with new, graded penal provisions.	Section 18 of the 2019 Act prescribed imprisonment of six months to two years and a fine for compelling forced or bonded labour, denying access to public places, forcing eviction from residence, and causing physical, sexual, verbal, emotional or economic abuse against a transgender person.	The new Section 18 retains the original four offences with the same penalties (clauses a–d). However, clauses (e)–(h) create new offences for kidnapping or abducting persons and causing grievous bodily harm in order to compel them to “assume, adopt, or outwardly present a transgender identity.” These provisions frame the expression of transgender identity as a presumptive outcome of coercion, stigmatising transgender communities and creating a risk of misuse against hijra jamaats and other community support structures. The
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M

			Statement of Objects and Reasons provides no empirical evidence of the prevalence of forced gender transition in India to justify this legislative approach.
Section 8	Amends Section 22(2) to add a rule-making power for the form and manner of details to be furnished by medical institutions under the new Section 7(1A), and removes the word “revised” from clause (d).	Section 22(2)(d) empowered the appropriate Government to make rules for the form, period and manner of issuing a “revised certificate” under Section 7(2).	A consequential amendment. The removal of “revised” from Section 22(2)(d) is a drafting change following the omission of Section 7(3). The new rulemaking power for medical institution reporting under Section 7(1A) provides the regulatory basis for State surveillance of gender affirming surgeries.

N

It is respectfully argued that the 2026 Amendment Act fails to satisfy the presumption of constitutionality on account of its prima facie and manifest violations of multiple fundamental rights. The legislative intent underlying the Amendment is to treat transgender persons as a suspect class, arbitrarily targeting self-recognised transgender persons and retrospectively withdrawing their statutory protection in direct derogation of Article 14. The original purpose of the 2019 Act was the protection and welfare of all transgender persons; the Amendment subverts this purpose entirely by excluding categories of self-identified persons who were previously within its protective ambit. Since no scientific data, no consultative process, and no credible legislative basis have been placed on record by the State to justify State action that violates the dignity and autonomy of transgender persons under Article 21, the presumption of constitutionality is substantially weakened. The burden accordingly shifts to the State to provide a cogent constitutional justification for the transgressions that the Amendment imposes upon this already marginalised community.

The most fundamental infirmity of the 2026 Amendment Act is its deliberate extinguishment of the right to self-identification of gender identity, which this Hon'ble Court in *NALSA v. Union of India (2014) 5 SCC 438* recognised as lying at the very heart of the fundamental right to dignity under Article 21. *NALSA* held that self-determination of gender is an integral part of personal autonomy and liberty guaranteed by Article 21, and that no person may be compelled to undergo medical procedures as a precondition for legal recognition of their gender identity. Section 3 of the Amendment specifically omits Section 4(2) of the 2019 Act, which had enshrined the right to self-perceived gender identity as a statutory right. The two-pronged restrictive definition of

O

“transgender person” introduced by Section 2(iv) of the Amendment forecloses recognition of self-identified transgender persons who do not fall within its narrow socio-cultural or medically certified parameters, compelling them either to conform to prescribed binary categorisations or to remain entirely outside the statutory framework and thereby beyond the reach of any legal protection. The positive obligation of the State under Article 21 to protect every individual's right to self-determination of identity admits of no exception and is not contingent upon socio-cultural membership or clinical certification; the Amendment breaches this obligation in the most direct terms.

NALSA held that transgender persons fall within the expression “any person” under Article 14 and cannot be discriminated against on the basis of gender identity. Notwithstanding this settled constitutional position, Section 2(iv) of the 2026 Amendment Act reduces the definition of “transgender person” to an exhaustive enumeration of only five specific socio-cultural identities, leaving several historically recognised and culturally entrenched communities entirely without statutory protection. These excluded communities include the Nupi Maanbi of Manipur, who are deeply embedded in traditional Manipuri theatre (Shumang Leela) and shamanic practices; the Khwaja Siras of Punjab and Kashmir, who are linked to Sufi spiritual traditions; and the Thirunangai and Thirunambi of Tamil Nadu, which are the officially state-recognised nomenclature adopted under Tamil Nadu's Welfare Schemes in dignified replacement of the derogatory older term “aravani” a term that the Amendment itself perpetuates. These communities constitute distinct sections of citizens with their own languages, scripts, and cultures, and are entitled to the constitutional protection of Article 29(1) as affirmed in *In Re: Section 6A of the Citizenship Act, 1955*

P

(2024) 16 SCC 105, which held that a law is unconstitutional to the extent it prevents a section of citizens from taking steps to preserve their culture.

The classification created by the Amendment, distinguishing “genuine” from other transgender persons on the basis of membership in certain enumerated socio-cultural groups, fails the twin tests of intelligible differentia and rational nexus laid down in *State of West Bengal v. Anwar Ali Sarkar* (1952) 1 SCC 1. No rational principle can justify the inclusion of some socio-cultural communities and the exclusion of others, particularly when the excluded communities are equally established, equally vulnerable, and equally entitled to constitutional protection. The classification is not only arbitrary but wilfully indifferent to the regional diversity and plural identity formations that characterise transgender communities across the length and breadth of India, and is therefore violative of Article 14.

The newly inserted proviso to the amended definition of “transgender person” operates retrospectively and without any transitional provision or saving clause, thereby invalidating identity certificates lawfully obtained by over 30,000 transgender persons under the 2019 Act. These certificates constituted the sole documentary basis upon which these persons accessed rights, statutory protection and their legal identity across all government records. Their retrospective nullification plunges an entire class of persons into a legal vacuum. The retrospective extinguishment of vested statutory rights without compelling state interest, proportionate means, or transitional protection is violative of Articles 14, 19, and 21.

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Separately, the Amendment conflates “persons with intersex variations” with “transgender persons” within the amended definition, while simultaneously deleting the standalone definition of intersex variations that had been separately maintained in the 2019 Act. This conflation repudiates the well-settled constitutional distinction between sex and gender as conceptually exclusive categories, a distinction that *NALSA* itself had carefully articulated. The conflation operates prejudicially in both directions: persons with intersex variations who do not identify as transgender are compelled by statutory force to bear a classification they have not chosen, while transgender persons are subjected to a definition that reduces their identity to biological variation, undermining the very constitutional basis of self-perceived gender identity. This capricious conflation, lacking any rational basis, is manifestly arbitrary within the meaning of Article 14 as expounded in *Shayara Bano v. Union of India* (2017) 9 SCC 1, which held that legislation enacted capriciously, irrationally, or disproportionately is manifestly arbitrary and falls foul of the constitutional guarantee of equality.

Section 4 of the 2026 Amendment Act amends Section 6 of the 2019 Act to reintroduce a regime of medical gatekeeping, making the recommendation of a Chief Medical Officer of a government-appointed medical board a mandatory precondition for the District Magistrate to issue a certificate of identity to a transgender person. The 2019 Act contained no such requirement; the entire certification process thereunder was premised on the principle of self-identified gender recognition. *NALSA* expressly 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, and further held that the “biological test” for the

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determination of gender identity is constitutionally impermissible and that the “psychological test” reflecting the self-perception of the person must prevail. The Amendment substitutes this constitutionally mandated standard with an impermissible clinical framework. The medical boards constituted under the Amendment contain no statutory requirement of representation from transgender persons or the LGBTQIA+ community, leaving the determination of identity entirely to cisgender professionals without any guaranteed framework of clinical expertise in gender identity, sensitivity, or confidentiality. Subjecting transgender persons to physical examination before such boards institutionalises the very discrimination, humiliation, and harm that the 2019 Act was designed to prevent, and violates both Article 21 and the guarantee of equal treatment under Article 14.

Section 5 of the Amendment replaces the word “may” with “shall” in Section 7 of the 2019 Act, converting what was a voluntary right of a transgender person to apply for a revised certificate of identity following sex-reassignment surgery (SRS) into a statutory compulsion. The concurrently inserted Section 7(1A) mandates medical institutions to report the details of any SRS performed by them to the District Magistrate, irrespective of the patient's consent or intention to apply for a revised certificate. The information sought to be disclosed relates to an individual's gender transition, medical treatment, and gender identity, all of which constitute highly sensitive personal information. The compulsory collection and transmission of such information by medical institutions to executive authorities, without meaningful consent and without statutory safeguards governing confidentiality, storage, retention, access, or disclosure, constitutes a serious invasion of informational privacy recognised in *Puttaswamy*. These provisions

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together create a regime of state-sanctioned surveillance over the most intimate medical decisions of transgender persons, operating entirely outside their consent. This is a direct and grave violation of the right to privacy and bodily autonomy guaranteed under Article 21, as authoritatively affirmed in *Puttaswamy*, which held that privacy as an intrinsic feature of life and personal liberty enables every individual to resist state compulsion in matters of the most intimate personal significance.

The amended Section 7(2) further requires that even at the stage of applying for a revised certificate, the applicant must undergo a fresh medical examination before the Chief Medical Officer, following which the District Magistrate is empowered to assess the “correctness” of the certificate before issuing it. The term “correctness” is undefined, subjective, and incapable of objective determination, conferring unguided executive discretion over a matter that this Court has held to be one of self-determined identity. This is violative of Article 14. The omission of the erstwhile protective proviso to Section 7(3) of the 2019 Act, which had expressly preserved all existing rights and entitlements of certificate-holders during the process of applying for revised certificates, leaves the applicant stripped of statutory protection precisely at the stage at which the Amendment compels them to engage with the State, creating a legal vacuum without any bridging or saving provision. Section 8 of the Amendment further empowers the appropriate government to prescribe rules mandating disclosure by all medical institutions performing SRS on a default basis, irrespective of individual consent, completing a legislative architecture of pervasive and involuntary state oversight that is wholly disproportionate to any legitimate state interest.

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No cisgender man or woman in India is required to obtain a certificate from a government-appointed medical authority attesting to their gender as a precondition for accessing civic rights, welfare entitlements, or legal recognition. The imposition of such a requirement exclusively upon transgender persons proceeds upon the constitutionally impermissible presumption that transgender identity is inherently suspect and requires external validation. This selective subjection of one class of persons to a regime of medical scrutiny denied entirely to others is a direct and self-evident violation of Article 14. The medical boards constituted under the Amendment afford no statutory representation to transgender persons or the LGBTQIA+ community, leaving the assessment of identity to cisgender professionals without guaranteed competence in gender identity, confidentiality, or sensitivity. Just as no woman may be constitutionally compelled to submit to physical examination before male authorities to establish her identity, no transgender person can be constitutionally compelled to submit their body to a medical board that has no representative voice from the community whose identity it is tasked with adjudicating.

The Amendment's insistence on medical verification as a basis for recognising gender identity is comprehensively repudiated by established global medical science. The World Health Organisation's ICD-11 Framework (2019/2022), the American Psychiatric Association's DSM-5-TR, and the World Professional Association for Transgender Health's Standards of Care (SOC-8) collectively declassify gender non-conformance as a disorder and confirm that invasive medical procedures and adversarial scrutiny of gender identity cause gender dysphoria and amplified psychological trauma. By legislating a framework premised upon a medically discredited approach, the

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Amendment actively harms the physical and mental wellbeing of the very persons it professes to protect, and proceeds upon a scientifically unsound basis that cannot constitute a rational or proportionate justification for the infringement of fundamental rights.

Section 18(d) of the 2026 Amendment Act prescribes a sentence of six months to two years for physical, sexual, verbal, emotional, and economic abuse committed against transgender persons, holding all such offences under one umbrella provision without gradation. The Bharatiya Nyaya Sanhita, 2023, prescribes substantially more severe sentences for comparable offences committed against cisgender women, ranging from three years for sexual harassment, voyeurism, and stalking under Sections 75, 77, and 78, to life imprisonment and the death penalty in aggravated cases of gang rape of a minor under Section 70(2). *NALSA* expressly acknowledged that transgender persons are subjected to extreme violence, including sexual assault, gang rape, and institutional abuse. Maintaining a significantly lower penal framework for comparable offences against transgender persons lacks any rational nexus with the stated object of providing protection and constitutes a manifest violation of Article 14. It further violates Article 15(1), which prohibits discrimination on the ground of sex; *NALSA* held that this prohibition extends to gender identity and that differential treatment of transgender persons vis-à-vis cisgender women on grounds of gender identity is constitutionally impermissible.

The substituted Section 18 of the 2026 Amendment Act inserts new offences under clauses (e) to (h) employing broad and undefined expressions such as “compelling,” “alluring,” “inducement,” and “otherwise,” without any statutory definition, qualifying threshold, or

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objective standard to distinguish between coercion and voluntary conduct. The presumption embedded in these provisions, that a person can be “compelled” into a transgender identity, is without any scientific foundation whatsoever. These provisions fall squarely within the Doctrine of Vagueness, which renders criminal provisions unconstitutional where a person of ordinary intelligence is unable to ascertain what conduct is prohibited. This Hon’ble Court affirmed the Doctrine of Vagueness as a ground for constitutional invalidity in *Shreya Singhal v. Union of India* (2015) 5 SCC 1.

Section 18(h)(i) specifically penalises any conduct that causes a child, whether or not a transgender person, to dress, present, or conduct themselves outwardly as a transgender person, prescribing rigorous imprisonment of ten to fourteen years, and in doing so threatens to criminalise the traditional guru-chela family systems of transgender communities that have historically provided acceptance, belonging, and social sustenance to transgender persons who face rejection by their biological families. It equally creates a chilling effect upon parents, guardians, counsellors, and community members who affirm a person's self-identified gender, exposing them to the risk of severe criminal prosecution for conduct that is not inherently wrongful. The over-criminalisation of vague and undefined conduct, presented as protection while dismantling the very social fabric that sustains transgender communities, is antithetical to the constitutional values affirmed in *NALSA*. The National Human Rights Commission's 2017 Report on Human Rights of Transgender as a Third Gender found that 28% of surveyed transgender persons reported harassment at school, 18.5% reported physical abuse within schools, and approximately 96% were denied employment, compelling many into sex work. These findings

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underscore that the real need is for institutional reform, social inclusion, and systemic redress, and not the imposition of sweeping criminal liability that is capable of weaponisation against the very communities and individuals who provide life-sustaining support to transgender persons.

The 2026 Amendment Act violates the Doctrine of Legitimate Expectations. Thousands of transgender persons have, over more than a decade, structured their lives in reasonable reliance upon the legislative and judicial framework established by *NALSA* and the 2019 Act, obtaining identity certificates, and building a foundation of dignified existence with the assurance of legal recognition. The Doctrine of Legitimate Expectations, as articulated in *Madras City Wine Merchants v. State of Tamil Nadu (1994) 5 SCC 509* and *Food Corporation of India v. Kamdhenu Cattle Feed Industries (1993) 1 SCC 71*, requires the State to act with fairness and consistency in all its interactions with citizens and protects them from the arbitrary frustration of reasonable expectations created by State action and judicial direction. The Amendment's retrospective nullification of vested rights without any transitional provision constitutes a flagrant abuse of legislative power and a violation of the rule of law.

The Amendment equally violates the Doctrine of Progressive Realisation of Rights and its corollary, the Doctrine of Non-Retrogression, both of which were authoritatively affirmed in *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*. These doctrines, grounded in the living and dynamic character of the Constitution, mandate that the State must not retreat from a position of greater rights protection to one of lesser protection without compelling constitutional

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justification. The Amendment replaces a self-identification-based certification regime with one premised on compulsory medical scrutiny, mandatory disclosure, and executive gatekeeping, constituting a direct and comprehensive legislative retrogression of the most serious kind. *Navtej Singh Johar* further held that the concept of constitutional morality demands that the State uphold a pluralistic and inclusive society, and that the fundamental rights of even the most minuscule section of the population cannot be sacrificed at the altar of social morality. The 2026 Amendment Act, driven by a regressive social agenda, is precisely the form of legislative retrogression that the constitutional morality imperative was designed to prevent, and must be examined against this standard.

Section 17 of the 2019 Act established the National Council for Transgender Persons ("NCTP") as a statutory advisory body entrusted with advising the Central Government on the formulation of policies, programmes, legislation, and projects concerning transgender persons, monitoring and evaluating their impact, and addressing grievances affecting the community. The creation of the NCTP reflects a legislative recognition that policies affecting transgender persons ought to be informed by the participation and expertise of the community itself. Notwithstanding this statutory framework, the 2026 Amendment Act was introduced, debated, and enacted without any consultation with the NCTP. The members of the NCTP, including the Petitioner, were excluded from all stages of the legislative process, and the concerns publicly raised by members of the Council regarding the proposed amendments were not considered. This is particularly significant because the Amendment directly regulates the legal recognition,

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identity, bodily autonomy, and civil rights of transgender persons, matters falling squarely within the statutory remit of the NCTP.

The failure to consult the very statutory body constituted by Parliament for advising the Government on legislation affecting transgender persons renders the legislative process arbitrary and irrational. The State chose to enact a law fundamentally altering the rights of transgender persons while disregarding the institutional mechanism specifically created to provide expert and community-informed inputs on such matters. The complete exclusion of the NCTP from the legislative process frustrates the purpose underlying Sections 16 and 17 of the 2019 Act, reflects a failure to consider relevant material and stakeholder perspectives, and contributes to the manifest arbitrariness that vitiates the impugned Amendment under Article 14 of the Constitution.

India is a signatory to the Yogyakarta Principles, 2006, which affirm the right of all persons to recognition before the law regardless of sexual orientation or gender identity, to self-defined gender identity as integral to their personality and dignity, and to be free from compelled medical procedures as a precondition for legal recognition. *NALSA* incorporated these Principles into Indian constitutional jurisprudence, holding that international conventions not inconsistent with fundamental rights must be read into Articles 14, 15, 19, and 21 of the Constitution and given legal effect in the absence of contrary domestic legislation. India has also ratified the International Covenant on Economic, Social and Cultural Rights, 1976, the obligations under which are given constitutional standing through Article 253. Articles 2, 11, and 12 of the ICESCR obligate the State to protect all persons, including transgender persons, from discrimination and to ensure the satisfaction of their basic

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needs. The 2026 Amendment Act contravenes both these instruments by imposing conditions of medical verification, mandatory disclosure, and retrospective invalidation of identity that are expressly prohibited by the Yogyakarta Principles, and by failing entirely to advance the progressive realisation of the social, economic, and cultural rights to which transgender persons are entitled under the ICESCR.

The cumulative effect of the 2026 Amendment Act is to systematically dismantle the rights-based framework painstakingly constructed over decades of progressive constitutional jurisprudence and legislative effort. The Amendment fails the golden triangle test of Articles 14, 19, and 21; it retreats from the established canons of equality, dignity, privacy, and personal liberty; it scorns the rule of law through retrospective nullification of vested rights; it silences the most directly affected community in the making of its own law; and it proceeds upon scientific premises that are universally discredited.

The impugned framework further aggravates the well-documented mental health burdens experienced by transgender persons by subjecting them to compulsory disclosure, repeated medical scrutiny, uncertainty regarding recognition of identity, and the threat of criminal liability. For a community already disproportionately affected by stigma, anxiety, depression, and social exclusion, the Amendment transforms legal recognition from an exercise of autonomy into a source of fear and distress. The resulting impairment of psychological well-being constitutes an additional violation of dignity, autonomy, privacy, and personal liberty.

In its totality, the 2026 Amendment Act offends the conscience of the Constitution. The Petitioner respectfully urges this Hon'ble Court to

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exercise its constitutional authority as the guardian of fundamental rights, to strike down the Transgender Persons (Protection of Rights) Amendment Act, 2026 as unconstitutional, and to grant the reliefs set out in the accompanying Prayer.

LIST OF DATES

Date	Particulars
Ancient and Medieval India	Transgender Persons mentioned in historic texts and official records of emperors
1860	Introduction of Section 377 to the Indian Penal Code, criminalising homosexual intercourse
1871	Enactment of the Criminal Tribes' Act, classifying hijras, kinnars, and eunuchs as criminal tribes
1981	First All-India Hijra Conference held in Agra, attended by over 50,000 community members, discussing common issues and policy reforms
1994	Government of India granted hijras the right to vote in elections as a third gender
2009	Delhi High Court declared Section 377 IPC unconstitutional in <i>Naz Foundation v. Government of NCT of Delhi</i> , 160 (2009) DLT 277
2013	This Hon'ble Court in <i>Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors.</i> , (2014) 1 SCC 1 set aside the judgment in Naz Foundation and restored Section 377 IPC
2014	The Madurai Bench of the Madras High Court in <i>S. Swapna (Transgender) v. State of Tamil Nadu</i> , W.P.(MD) No.

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	<i>10882 of 2014</i> , facilitated recognition of a transgender woman's affirmed identity in official educational records following gender transition.
2014	This Hon'ble Court in <i>NALSA v. Union of India (2014) 5 SCC 438</i> recognised the right to self-identification and equality for transgender persons as the "third gender"
2017	This Hon'ble Court in <i>Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1</i> recognised the right to privacy as a fundamental right under Article 21
2018	This Hon'ble Court in <i>Navtej Singh Johar & Ors. v. Union of India, (2018) 10 SCC 1</i> reads down 377 IPC
2019	Parliament passed the Transgender Persons (Protection of Rights) Act, 2019
25 September, 2020	Transgender Persons (Protection of Rights) Rules, 2020, notified
2025	This Hon'ble Court in <i>Jane Kaushik v. Union of India, 2026 1 SCC 336</i> , noted the deplorable state of implementation of the 2019 Act and issued binding directions under Article 142, including the constitution of an Advisory Committee
13 March, 2026	Transgender Persons (Protection of Rights) Amendment Bill, 2026, introduced in the Lok Sabha
24 March, 2026	Bill passed in the Lok Sabha via a voice vote despite objections raised by members of the Opposition and stakeholders
25 March, 2026	Bill passed in the Rajya Sabha without public consultation or stakeholder recommendations

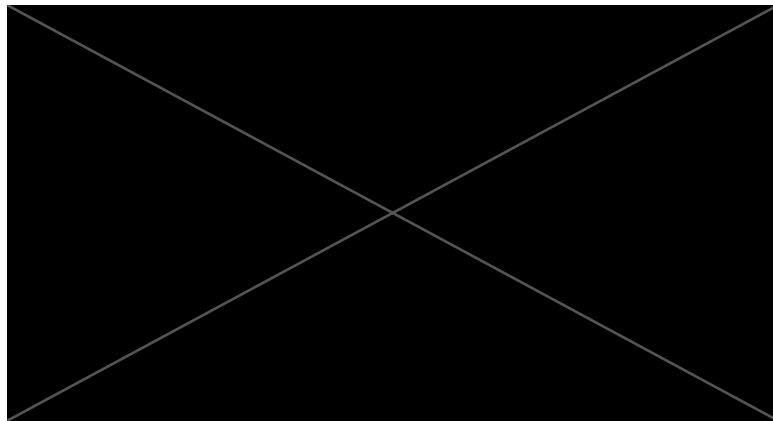
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30 March, 2026	Presidential assent was granted to the Amendment Bill, giving it statutory force
25 May, 2026	2026 Amendment Act notified in the Gazette of India by the Ministry of Social Justice and Empowerment, which includes several provisions violative of the Constitution
15 June, 2026	Present Writ Petition filed before this Hon'ble Court

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WP (C) NO. _____ OF 2026
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. Kalki Subramaniam



....PETITIONER

VERSUS

1. Union of India

Through the Secretary,
Ministry of Social Justice and Empowerment,
Government of India, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi - 110001

2. Ministry of Law and Justice

Through the Secretary,
Government of India, Shastri Bhawan,

Dr. Rajendra Prasad Road, New Delhi –
110001

3. Ministry of Health and Family Welfare

Through the Secretary,
Government of India, Room No. 402-D, Nirman
Bhawan, New Delhi - 110011

....Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA CHALLENGING THE
CONSTITUTIONAL VALIDITY OF THE TRANSGENDER
PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT,
2026**

TO

HON'BLE CHIEF JUSTICE OF INDIA AND
HIS COMPANION HON'BLE JUDGES OF
THE SUPREME COURT

THE HUMBLE PETITION OF
THE PETITIONER ABOVE
NAMED;

MOST RESPECTFULLY SHOWETH:-

1. That the Petitioner is a transgender woman born and residing in Coimbatore, Tamil Nadu. The Petitioner was assigned male at birth but, from an early age, experienced a deep and consistent sense of

identity as a girl and later as a woman. During her childhood and adolescence, the Petitioner faced significant stigma, exclusion, and discrimination on account of her gender identity. Her parents and sisters, however, were aware of her gender identity and sought to understand and support her through this journey.

True Copy of the Certificate of Identity issued to the Petitioner under the Transgender Persons (Protection of Rights) Act, 2019 by the District Collector, Coimbatore, Tamil Nadu on 01.10.2021 recognising the Petitioner as a transgender person is attached herewith as **Annexure P-1 [Page 106]**.

2. That during her formative years, the Petitioner was introduced to Apsara, a transgender woman who had herself experienced discrimination and social exclusion, and who later became her mother within the Thirunangai community. Through Apsara, the Petitioner came into contact with many transgender persons and found a sense of belonging, support, and affirmation within the community. The Thirunangai communities of South India have historically developed kinship structures based on chosen families, often organised through guru-chela relationships and shaped by diverse cultural and religious traditions. Many transgender women who face rejection or stigma from their families seek support within such communities, while others continue to remain connected to both their biological families and their chosen transgender families.

3. That at the age of approximately 12 years, the Petitioner witnessed a deeply traumatic incident involving sexual violence against a close transgender friend. The incident had a profound impact on the Petitioner and brought into sharp focus the vulnerability of transgender persons, particularly transgender women, to violence and abuse. This experience significantly influenced the Petitioner's lifelong commitment to advocating for the dignity, safety, and constitutional rights of transgender persons.
4. That the Petitioner is the founder of the Sahodari Foundation, which is a centre for transgender empowerment based in Coimbatore, Tamil Nadu. Since 2007, the Sahodari Foundation has played a pivotal role in promoting education for transgender persons and has undertaken capacity-building initiatives to secure entrepreneurial opportunities for their livelihood. The Petitioner has worked extensively at the grass-roots level to champion the cause of social inclusion for transgender persons by sensitising society and channelling their rights through legal advocacy, including the landmark judgment of *NALSA v. Union of India (2014) 5 SCC 438*.
5. That the Petitioner has been a dedicated activist by using various platforms such as books, theatre, art, and movies to foster a spirit of solidarity for transgender persons. With her debut in the movie *Narthaki*, she became India's first transgender actor to play a lead in a major motion picture, breaking barriers and redefining representation on screen.

6. That the Petitioner is a powerful voice for inclusion on various platforms. She has addressed large numbers of students and young people across India and has conducted sensitisation workshops globally for advancing the LGBTQI+ movement by delivering lectures in renowned locations such as Harvard, Cornell, and TedX Talks.
7. That the Petitioner has served as a member of the National Council of Transgender Persons until 2026. The Petitioner tendered her resignation from the National Council for Transgender Persons, where she served as the Southern Region Representative of the transgender community, in protest against the 2026 Amendment Act on the ground that it contained regressive provisions and had been enacted without consultation with the National Council or community representatives serving thereon.

True Copy of Gazette Notification S.O. 5116(E) dated 16.11.2023 published in the Gazette of India (Extraordinary), Ministry of Social Justice and Empowerment, re-constituting the National Council for Transgender Persons under Section 16 of the Transgender Persons (Protection of Rights) Act, 2019 and nominating Ms. Kalki Subramaniam as the representative of the transgender community from the South Region is attached herewith as **Annexure P-2 [Page 107-110]**.

True Copy of the resignation letter dated 25.03.2026 submitted by the Petitioner, Ms. Kalki Subramaniam, to the Hon'ble Union Minister for Social Justice and Empowerment resigning from her

position as Member and Southern Region Representative of the National Council for Transgender Persons (NCTP) on account of the enactment of the Transgender Persons (Protection of Rights) Amendment Bill, 2026 without consultation with community representatives is attached herewith as **Annexure P-3 [Page 111-114]**.

8. That the Petitioner has worked tirelessly to promote the rights of transgender persons on a national and international scale to secure justice for them. The Petitioner has been a public figure who has been recognised for her work and has been commended with several awards by various organisations due to her influential role in this issue.

9. That the Petitioner is personally and directly affected by the Transgender Persons (Protection of Rights) Amendment Act, 2026, as a transgender woman whose identity, dignity, autonomy, and legal recognition are impacted by the impugned provisions. The Petitioner has further been at the forefront of efforts to secure socio-legal recognition, equality, and welfare protections for transgender persons across the country. In view of her direct and personal stake in the issues raised herein, coupled with her longstanding engagement with the transgender community, the Petitioner has the requisite locus standi to maintain the present Writ Petition and to place before this Hon'ble Court the concerns of numerous transgender persons whose fundamental rights stand affected by the 2026 Amendment Act.

10. That the Petitioner, through her dedicated team, has undertaken an extensive documentation exercise known as the "Redwall Project" with the objective of recording the lived experiences of transgender persons across India. In the course of the said project, numerous transgender persons from different parts of the country have been interviewed, and written testimonials have been collected concerning their experiences of discrimination, exclusion, physical violence, sexual abuse, and other rights violations allegedly suffered on account of their gender identity. The Petitioner submits that the material collected through the Redwall Project reflects recurring patterns of marginalisation and violence faced by transgender persons and is relevant to understanding the social realities within which the impugned legislation operates. The Petitioner craves leave to place on record, at an appropriate stage, relevant extracts, affidavits, testimonials, reports, or other material generated through the said project in support of the present challenge.

11. That the Petitioner has filed this instant Writ Petition to challenge the constitutionality of Transgender Persons (Protection of Rights) Amendment Act, 2026, since it includes various provisions that directly go against key fundamental rights of Articles 14, 15, 19, 21, and 29 that are also recognised within the basic structure of the Constitution. This Petition would protect the larger interests of various transgender persons who are unable to effectively access this Hon'ble Court due to various financial, time, and social constraints.

12. The Petitioner respectfully submits that the present Writ Petition has been instituted bona fide for the protection and enforcement of fundamental rights guaranteed under the Constitution of India. The Petitioner has no personal, private, pecuniary, or oblique interest in the outcome of the present proceedings beyond the protection of her own constitutional rights and those of similarly situated transgender persons affected by the 2026 Amendment Act.

13. That, to the best of the knowledge of the Petitioner, no other person/body/institution, other than the Respondents and similarly situated such other persons, is likely to be affected by the orders sought in this writ petition. The Petitioner undertakes that all the persons/bodies/institutions likely to be affected by the order sought in this writ petition would be impleaded as parties before this Hon'ble Court if so directed once the response from the Respondents herein is received.

14. That, the Petitioner has not filed any other petition before this Hon'ble Court or any other court in the country on the present subject matter.

BRIEF FACTS

1. That, transgender persons have been victims of discrimination and prejudice since time immemorial. Several historical literary sources of India make references to the presence of transgender persons. Ancient texts such as the epics of Ramayana and

Mahabharata, Patanjali's Mahabhasya, Kama Sutra and the Charaka-Samhita all refer to the presence of transgender persons in India. Further, the formal records of rulers in medieval India went further as to include transgender persons in the administration of their empire, where they played influential roles as political advisors, administrators, and harem guardians, holding prominent positions in royal courts. Figures like Itimad Khan, eunuch officers in Akbar's court, were entrusted with administering state finances, amassing substantial wealth and power. This demonstrates that transgender persons have always existed in Indian society.

2. That, the arrival of the Britishers exposed transgender persons to newer vulnerabilities. The Britishers introduced Section 377 to the erstwhile Indian Penal Code, 1860, in order to criminally prosecute homosexual intercourse since it was deemed to be carnal and against the natural order.
3. That, one of the first instances of direct statutory discrimination against transgender persons was observed through the enactment of the Criminal Tribes' Act, 1871, in British India. This legislation went on to classify socio-cultural groups such as *kinners*, *hijras*, and eunuchs as criminal tribes. This legislation classified certain socio-cultural groups such as hijras, kinners and eunuchs as criminal tribes and contributed to the institutional marginalisation of such communities during the colonial period.
4. That, until the late 20th century, transgender persons were not provided any form of legal or societal acceptance and continued to

be seen through a dogmatic lens. However, various members of this group were finding their voices and attempting to fight for their rights. In 1981, a historic All-India Hijra Conference was held in Agra, which witnessed the participation of over 50,000 members of the community. This conference was the first time a public gathering of transgender persons in India came together to discuss common issues and record the need for reforms in various matters of policy of the nation.

5. That, in a landmark directive of 1994, the government of India granted *hijras* the right to vote in elections as a third gender. Furthermore, the first decade of the 21st century was marked by spreading awareness about misconceptions regarding HIV/AIDS. Several groups also protested against the draconian provision of Section 377, and that culminated in a significant judicial development when the Hon'ble Delhi High Court declared Section 377 to be unconstitutional in the decision of *Naz Foundation v. Government of NCT of Delhi* 160 (2009) DLT 277.
6. That, in 2014, the Madurai Bench of the Madras High Court in *S. Swapna (Transgender) v. State of Tamil Nadu*, W.P.(MD) No. 10882 of 2014, recognised the need to facilitate correction of name and gender particulars in educational records following gender transition and directed the authorities to reconsider the petitioner's request in light of the documentary evidence produced by her. The decision marked an important step towards recognition of the identity and dignity of transgender persons within administrative and educational systems.

True Copy of the order dated 20.08.2014 passed by the Madurai Bench of the Madras High Court in *S. Swapna (Transgender) v. State of Tamil Nadu & Ors., W.P.(MD) No. 10882 of 2014* is attached herewith as **Annexure P-4 [Page 115-120]**.

7. That, notwithstanding certain policy and judicial developments, transgender persons continued to face significant barriers in accessing education, employment, healthcare, housing, and public services. The absence of comprehensive legal recognition and effective implementation of protective measures resulted in continued marginalisation and exclusion of transgender persons from various aspects of social and public life.

8. That, this Hon'ble Court took cognisance of the marginalisation faced by such transgender persons and addressed the institutional discrimination against them in the fields of education, healthcare, and livelihood. The pivotal decision in *NALSA v. Union of India (2014) 5 SCC 438* led to the recognition of the right to Self-identification in furtherance of the right to dignity under Article 21. Further, this Hon'ble Court recognised the right to equality of transgender persons by ensuring that persons of the "third gender" are treated without discrimination. This judgment was widely regarded as the first decision that sought the implementation of a proper policy to elevate the third gender on the same pedestal as the other two binary genders.

True Copy of the judgment dated 15.04.2014 passed by this Hon'ble Court in *National Legal Services Authority v. Union of India & Ors.*, (2014) 5 SCC 438 is attached herewith as 



9. That, after the decision in *NALSA*, the rights of transgender persons were further secured by the decision of *Justice K.S. Puttuswamy v. Union of India* (2017) 10 SCC 1, which recognised the right to privacy as a fundamental right under Article 21. The further implications of this decision ensured that transgender persons were even protected beyond the public sphere by maintaining their dignity in the private domain of their lives.

True Copy of the judgment dated 24.08.2017 passed by the Nine-Judge Bench of this Hon'ble Court in *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, (2017) 10 SCC 1 is attached herewith as **Annexure P-6 [Page 193-829]**.

10. That, these two landmark decisions of this Hon'ble Court formed a substantial basis for various transgender persons and activists to approach various High Courts to seek remedies against discriminatory practices. Despite the steady growth in jurisprudence addressing violations of rights in areas of education, employment, family, criminal law, and personal identity, there was a legislative silence on this issue.
11. That, in 2019, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 and the corresponding Rules were

notified in 2020. The legislation sought to provide a statutory framework governing issues relating to healthcare, welfare, rehabilitation, and protection against discrimination. The Act further established the National Council for Transgender Persons and provided for the creation of institutional mechanisms, including the National Portal for Transgender Persons, to facilitate applications, grievance redressal, and implementation of the statutory framework.

True copy of the Transgender Persons (Protection of Rights) Act, 2019 (Act No. 40 of 2019) is attached herewith as **Annexure P-7 [Page 830-837]**.

True Copy of the Transgender Persons (Protection of Rights) Rules, 2020, notified by the Ministry of Social Justice and Empowerment on 25.09.2020, is attached herewith as **Annexure P-8 [Page 838-852]**.

True Copy of Gazette Notification S.O. 2860(E) dated 21.08.2020 issued by the Ministry of Social Justice and Empowerment constituting the National Council for Transgender Persons is attached herewith as **Annexure P-9 [Page 853-856]**.

12. That, however, the 2019 Act continued to operate without full and effective implementation. Several provisions, obligations, and institutional mechanisms contemplated under the 2019 Act and the Rules framed thereunder were either implemented unevenly or remained inadequately operationalised by the Union and State

Governments. One of the clearest indicators of these implementation gaps was the limited uptake of the identity certification mechanism established under the National Portal for Transgender Persons. According to Census 2011, 4,87,803 persons were recorded under the transgender/"other" gender category. At the same time, researchers, community organisations, and international agencies have consistently observed that the actual transgender population is likely to be substantially higher, owing to social stigma, fear of disclosure, and limitations in the census methodology. Despite the enactment of the 2019 Act and the establishment of the National Portal for Transgender Persons, official data released by the Ministry of Social Justice and Empowerment in June 2026 indicated that only 33,189 certificates had been issued through the Portal mechanism nationwide. This disparity highlighted continuing barriers to legal recognition, including social stigma, fear of discrimination, and difficulties associated with navigating administrative processes.

True Copy of the Press Information Bureau release dated 25.06.2019 issued by the Ministry of Social Justice and Empowerment, Government of India, recording that the population under the "other" gender category in Census 2011 was 4,87,803 and clarifying that the Census did not specifically enumerate transgender persons and that some transgender persons may have identified themselves as male or female is attached herewith as **Annexure P-10 [Page 857-860]**.

True Copy of Press Information Bureau Release dated 11.06.2026 issued by the Ministry of Social Justice and Empowerment recording that 33,189 certificates had been issued through the National Portal for Transgender Persons under the SMILE Scheme is attached herewith as **Annexure P-11 [Page 861-862]**.

13. That, transgender persons encountered numerous challenges on matters pertaining to healthcare, marriage, public utilities, education, employment, childcare, and inheritance since they had been designed for the binary genders. The State's failure to fulfil necessary compliance subjected transgender persons to continuing barriers in accessing rights and entitlements after the *NALSA* case. Thus, numerous cases were filed before High Courts and this Hon'ble Court to enforce the rights vested in the 2019 Act. Amongst these decisions, the landmark judgment of *Jane Kaushik v. Union of India*, 2026 1 SCC 336, delivered by this Hon'ble Court, remarked on the deplorable condition of the rights of transgender persons in India after five years of the 2019 Act and over a decade of the *NALSA* judgment. While the key issue in this judgment was regarding the discrimination in employment faced by *Jane Kaushik* due to her transgender identity, it addressed several issues related to the rights of transgender persons. In this judgment, this Hon'ble Court noted the lack of implementation of the 2019 Act by remarking “154. *We are yet again at our wits' end to understand that despite such legislative obligations and statutory timelines as discussed above and despite the directions issued by this Court in Shanavi Ponnusamy (supra), why the Union of India and the States have been slow to act on bringing the requisite policies and*

supporting measures in place. We are dismayed with such lethargy. Such lethargy has also led to an absence of redressal mechanisms. Such a state of affairs is alarming and calls for immediate intervention.”

True copy of the judgment dated 17.10.2025 passed by this Hon'ble Court in *Jane Kaushik v. Union of India*, (2026) 1 SCC 336 is attached herewith as **Annexure P-12 [Page 863-1001]**.

14. That, after noting the failure of the government in securing rights and equity for transgender persons, this Hon'ble Court exercised its plenary powers under Article 142 to issue certain binding directions for enforcing the provisions of the 2019 Act. This Hon'ble Court directed,

“208.1 That the appellate authority before which a transgender person may exercise their right to appeal against the decision of the District Magistrate be designated as per Rule 9 of the 2020 Rules in every State/UT.

208.2 That a Welfare Board for the transgender persons as envisaged under Rule 10(1) of the 2020 Rules be created in every State/UT for the purpose protecting their rights and interests and also facilitating access to schemes and welfare measures.

208.3 That a Transgender Protection Cell under the charge of the District Magistrate in each District and under the Director General of Police of the State be set up in each State/UT in accordance with Rule 11(5) of the 2020 Rules, in order to monitor cases of offences

against transgender persons and to ensure timely registration, investigation and prosecution of such offences.

208.4 That all States/UTs ensure that every “establishment” designates a complaint officer in accordance with Section 11 of the 2019 Act and Rule 13(1) of the 2020 Rules respectively.

208.5 In the absence of a forum before which an objection can be raised by a transgender person, who is aggrieved with the decision taken by the head of the establishment under Rule 13(3) of the 2020 Rules, the State Human Rights Commission (SHRC) shall be designated as the appropriate authority to look into such objections.

208.6 A dedicated nation-wide toll-free helpline number be set up to address the contravention of any provision of the 2019 Act and the 2020 Rules respectively. If any such information regarding the violation of the provisions of the 2019 Act and 2020 Rules respectively, is received by the helpline, it shall immediately report such information to the Transgender Protection Cells under the charge of the District Magistrate in each District and under the Director General of Police of the State, as the case may require. This nation-wide toll-free helpline number would have a wider scope than the grievance redressal mechanism envisioned under Rule 13(5) of the 2020 Rules.

209. The Union of India and all the State respectively shall ensure that the aforesaid directions are strictly complied with within a period of three months from the date of the pronouncement of this judgment.”

15. That, an Advisory Committee was formed in the decision of *Jane Kaushik* to provide meaningful suggestions to the Union and the State governments for addressing the concerns of the transgender community. The Advisory Committee was assigned the task of formulating a policy on key issues pertaining to the process for change of gender, employment, reasonable accommodation in public spaces, medical care, and grievance redressal mechanisms. This Hon'ble Court constituted the Advisory Committee and stated “215. *The remit of the Committee shall be to prepare a comprehensive report and/or policy draft addressing the following major points:*

215.1 Formulation of an Equal Opportunity Policy: The Committee is tasked with formulating a viable and comprehensive equal opportunity policy for the transgender community in the arenas of employment and education which may serve as a model for adoption by all establishments.

215.2 Study of the 2019 Act and 2020 Rules: The Committee should highlight gaps in the 2019 Act and 2020 Rules respectively and also suggest adequate measures to best address such lacunae.

215.3 Reasonable Accommodation: What best can be done to accommodate transgender persons reasonably in public spaces and workplaces, without them being forced to keep their identity a secret. With such accommodations we would also need to keep in mind that this should not act as measures which reveal the identity of the person, violating their right to privacy.

215.4 Grievance Redressal Mechanism: The Committee must explore what can be a proper mechanism, starting from registration of complaints to the scope for appeals.

215.5 Gender and Name Change: The Committee must identify what are the various documents that require changes in record, and as to how the mechanism for this change can be created, so that no humiliation is caused to the persons seeking changes.

215.6 Inclusive Medical Care for Transgender and Gender Diverse Persons: The Report must also deliberate upon how hospitals and places of medical aid can be made inclusive for transgender persons.

215.7 Protections for Gender Non-Conforming and Gender Diverse Persons: The 2019 Act focuses on the aspect of “medicalisation” of gender, and does not give preponderance to the right to self-perceived identity. The Commission must look into how the State, without excessive bureaucratization, can guarantee rights provided under the 2019 Act to genderqueer and non-binary persons, especially those who do not undergo gender affirmative surgeries.

216. Though these points must be addressed, yet the Committee shall be at a liberty to make further recommendations beyond the specified mandate wherever necessary, to ensure a holistic and effective approach towards addressing the issues faced by the transgender and genderqueer community. The Committee is requested to take into account the views and concerns of stakeholders. To do so, it may consider obtaining the views of the different stakeholders by way of circulating a questionnaire and seeking written responses thereupon.

217. The Committee is also requested to seek representation from and consult the governments of all the States and Union Territories. To facilitate the same, we direct the Chief Secretaries of all the States/Union Territories to nominate a high ranking officer, not below the rank of Joint Secretary in the Department of Social Justice & Empowerment of the respective State/Union Territory, to act as the nodal officer on behalf of the respective State/Union Territory. We further direct all the concerned departments/authorities of the respective State/Union Territory to cooperate with the nodal officer concerned and furnish necessary information, data and assistance as may be sought by such nodal officer.

218. The Secretary, Department of Social Justice & Empowerment, Ministry of Social Justice & Empowerment; the Secretary, Ministry of Women and Child Development; the Secretary, Ministry of Health and Family Welfare; the Secretary, Ministry of Labour and Employment; the Secretary, Ministry of Education; the Secretary, Department of Personnel and Training, Ministry of Personnel; and the Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India, shall collaborate with the Advisory Committee and extend full cooperation by providing all the necessary information, documents, and resources required by the Committee to effectively carry out its mandate.

219. The Ministry of Social Justice & Empowerment, Government of India, shall be responsible for providing all necessary logistical support to facilitate the functioning of the Committee. This shall include making arrangements for travel, accommodation, and secretarial assistance, as well as covering all related expenses that

the Committee members may incur. The Ministry shall provide a sufficiently large office space to the Committee for holding its meetings and also to enable the officials to carry on its day-to-day activities. Additionally, the Ministry shall provide an appropriate honorarium to the members in recognition of their contributions.”

16. That, the constitution of this Advisory Committee was crucial in deliberating upon several pertinent issues that had arisen out of various other forms of litigation related to this issue. After the pronouncement of the *NALSA* decision, the High Courts and this Hon’ble Court were dealing with matters pertaining to admission in educational institutes, gender certificates, medical procedures, rights in the workplace, rights to adopt a child, and general welfare in society. These litigations were instituted by transgender persons and other groups to claim the statutory and fundamental rights of the transgender community by demanding the adoption of requisite steps to enforce the guidelines laid down in *NALSA*.

17. That, on 13 March, 2026, the Transgender Persons (Protection of Rights) Amendment Bill, 2026 was introduced in the Lok Sabha. The introduction of the Bill generated significant concern amongst members of the transgender community, activists, welfare organisations, and other stakeholders. The Bill proposed substantial changes to the framework established under the 2019 Act, including changes relating to the recognition of transgender identity, certification procedures, and the scope of statutory protections available to transgender persons.

True copy of the Transgender Persons (Protection of Rights) Amendment Bill, 2026, together with the Statement of Objects and Reasons, as introduced in the Lok Sabha on 13.03.2026, proposing amendments to the Transgender Persons (Protection of Rights) Act, 2019, is attached herewith as **Annexure P-13 [Page 1002-1013]**.

18. That, on 24 March, 2026, the Bill was passed by the Lok Sabha by voice vote despite objections raised by members of the Opposition as well as concerns expressed by members of the transgender community. The Rajya Sabha passed this Bill on 25 March 2026 without subjecting it to public recommendations or entertaining necessary policy recommendations from relevant stakeholders and parliamentary councils. The Bill was then sent for the receipt of the assent of the Hon'ble President of India. Various stakeholders, including members associated with the Advisory Committee constituted pursuant to the decision in *Jane Kaushik*, expressed concerns regarding the implications of the Bill and sought reconsideration of several of its provisions. Nevertheless, the Bill received Presidential assent on March 30, 2026, which gave it the standing of a statutory Act. Finally, this legislation was notified in the Gazette of India on 25 May, 2026.

True copy of the Transgender Persons (Protection of Rights) Amendment Act, 2026 (Act No. 3 of 2026), published in the Gazette of India on 30.03.2026 after receiving the assent of the President, is attached herewith as **Annexure P-14 [Page 1014-1018]**.

True copy of Notification S.O. 2620(E) dated 22.05.2026 issued by the Ministry of Social Justice and Empowerment, appointing 25.05.2026 as the date on which the provisions of the Transgender Persons (Protection of Rights) Amendment Act, 2026 came into force, is attached herewith as **Annexure P-15 [Page 1019-1020]**.

19. That, this bill was introduced without providing any prior intimation to the National Council for Transgender Persons [NCTP] established under the 2019 Act. Despite the directions provided under Section 17 of the 2019 Act, no consultations regarding the amendments were held with the NCTP. The functions of the NCTP are

“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.”

The Petitioner was a part of the NCTP and offered advice on issues affecting the transgender community. However, the 2026

Amendment Act was introduced in a sudden manner without involving any of the members of the NCTP. Moreover, the members of the NCTP staged protests to oppose the passing of the 2026 Amendment Act since they were excluded from the official consultation process, but the Ministry of Social Justice and Empowerment paid no heed to them in spite of the statutory mandate.

20. That, the failure to consult the NCTP on amendments is another procedural inconsistency that reveals the *mala fide* intention behind excluding the stakeholders for necessary suggestions and instead acting on an unsubstantiated basis to advance the regressive personal agenda of the government. The primary role of the NCTP was to monitor and protect the rights of transgender persons in the country. However, this exclusion serves as a flagrant violation of the spirit of due consultation and ruins the sanctity of the purpose behind the constitution of the NCTP.

21. That, several issues have been identified within the 2026 Amendment Act that abrogate fundamental rights and subject transgender persons to various concerns in the practical application of the 2026 Amendment Act. The factual analysis of the amended statute and its practical consequences has been elucidated hereunder.

22. That, Section 2(iv) of the 2026 Amendment Act amends Section 2(k) of the 2019 Act by altering the definition of “transgender person”. Whereas the 2019 Act recognised transgender persons through a broader framework that included trans men, trans women,

and persons with diverse gender identities, the amended provision limits recognition to specified socio-cultural identities and categories recognised through the amended statutory framework. As a result, several categories of persons who were previously recognised under the 2019 Act stand excluded from explicit statutory recognition under the amended regime.

23. That, the amended definition refers to certain socio-cultural identities associated with transgender communities. However, several regionally recognised identities, including Thirunangai in Tamil Nadu, Nupi Maanbi in Manipur, and Khwaja Sira communities, do not find express mention within the amended definition. The omission of such identities creates uncertainty regarding the continued recognition and protection of several historically recognised transgender communities under the statutory framework.

24. That, Section 2(ii) of the 2026 Amendment Act amends Section 2(aa) of the 2019 Act by expanding the definition of “authority” to include the Chief Medical Officer acting through a designated Medical Board. This amendment materially alters the process governing the issuance of certificates of identity. Under the 2019 Act, the District Magistrate was the authority responsible for processing applications for identity certificates. Under the amended framework, the certification process additionally requires the involvement of a Medical Board headed by the Chief Medical Officer, thereby introducing a medical assessment component into the process of legal recognition of gender identity.

25. That, Section 5 of the 2026 Amendment Act, which amends Section 7 of the 2019 Act, has made it compulsory for any person who has an identity certificate under the amended Section 6, undergoing sex-reassignment surgery [SRS] for identifying as male or female, to mandatorily disclose the same to the District Magistrate. This amendment also inserts Section 7(1A) into the 2019 Act to impose an obligation on the medical institution where the person underwent the sex-change surgery to report it to the District Magistrate or the prescribed authority. Moreover, the amendment of Section 7(2) of the 2019 Act brings about additional fetters into the process of certification because the applicant for the revised certificate under the amended Section 7 would be re-examined by the Chief Medical Officer of the appointed medical board, and the District Magistrate would have the discretion in issuing the new certificate after assessing the “correctness” of the certificate. Section 7(3) of the 2019 Act, which permitted a change of the first name of the applicant, has been omitted and inserted in the newly amended Section 6 of the 2019 Act. However, the proviso to Section 7(3), which protected the existing rights and entitlements of persons having the original gender certificates before applying for the revised certificates, has been intentionally omitted without being inserted elsewhere in the 2026 Amendment Act. Further, Section 8 of the 2026 Amendment Act, which amends Section 22(2)(d) of the 2019 Act, has deleted the word “revised” from the new provision. This implies that the appropriate government is empowered to make rules and notify procedures for all medical institutions where a person undergoes sex-change surgery and encompasses the ability

to make disclosures compulsory on a default basis to register the certificate even when the applicant does not personally wish to apply for a “revised”.

26. That, Section 5 of the 2026 Amendment Act amends Section 7 of the 2019 Act to impose a mandatory obligation upon any recognised transgender person who undergoes SRS for the purpose of identification as male or female to disclose such surgery to the District Magistrate. The newly inserted Section 7(1A) further places an independent statutory obligation upon the medical institution where such SRS is performed to report the same to the District Magistrate or the prescribed medical authority. The 2019 Act contained no such disclosure obligations, and the certification process thereunder remained at the choice of the applicant. The impugned amendments thereby transform a rights-affirming process into a state-monitored mechanism of compulsory reporting.

27. That, the amendment to Section 7(2) of the 2019 Act requires that an applicant seeking a revised identity certificate be re-examined by the Chief Medical Officer, following which the District Magistrate is vested with discretion to issue the revised certificate upon an assessment of its “correctness.” The 2019 Act did not vest any such discretion in the District Magistrate nor subject applicants to a mandatory medical re-examination for the revision of their certificates. The introduction of the undefined standard of “correctness” confers unbridled and unguided discretion upon the District Magistrate.

28. That, Section 7(3) of the 2019 Act, which permitted a change of first name upon the issuance of a revised certificate, has been omitted from Section 7 and inserted into the amended Section 6. However, this amendment has omitted the erstwhile proviso to Section 7(3) of the 2019 Act. This proviso expressly guaranteed the protection of the existing rights and entitlements of persons holding identity certificates prior to the application of revised certificates. This omission extinguishes vested statutory rights of a class of certificate-holders without any transitional provision or saving clause, and is therefore violative of the rule of law. Additionally, Section 8 of the 2026 Amendment Act amends Section 22(2)(d) of the 2019 Act by deleting the word “revised,” thereby empowering the appropriate government to prescribe procedures and mandate disclosures for all medical institutions performing SRS, irrespective of whether the individual concerned has applied for or intends to apply for a revised certificate. This expansion of rule-making power enables the state to impose disclosure obligations on a default basis, which wholly restricts the agency of transgender persons.
29. That, Section 18 of the 2019 Act provided for punishment related to crimes committed against transgender persons. However, Section 7 of the 2026 Amendment Act substitutes Section 18 of the 2019 Act in its entirety. The substituted provision retains clauses (a) to (d) of the original Section 18 but clarifies that the prescribed sentence for offences under each of those clauses ranges from a minimum of six months to a maximum of two years with a fine, whereas under the 2019 Act, the said sentence was specified only under clause (d). The substituted Section 18 further inserts new clauses (e) to (h), which

criminalise acts of “kidnapping, using force, compelling, abducting, alluring,” and allied conduct directed at transgender persons, purportedly with the object of preventing forced conversion into transgender identity or the exploitation of transgender persons for begging or bonded labour. These new clauses prescribe sentences ranging from a minimum of five years to life imprisonment, along with enhanced fines. The scope and application of these expressions, and their potential impact upon families, community structures, counsellors, healthcare providers, and members of transgender communities, have given rise to concerns amongst stakeholders regarding the manner in which these provisions may be implemented in practice.

30. That, certain penal provisions related to sexual abuse, bonded labour, or harassment in the 2026 Amendment Act do not include the same degree of sentencing that the criminal provisions lay down for sexual harassment of cisgender women, which creates a distinction against all transgender persons. The creation of this distinction is without merit because trans men and trans women are subjected to numerous atrocities that warrant sentencing akin to the sentencing provided for crimes such as rape or abuse committed against cisgender women.

31. That, the impugned amendments bear serious consequences for the mental health and well-being of transgender persons, who already contend with pervasive societal stigma, familial rejection, discrimination in employment and housing, and systemic marginalisation in their daily lives. The mandatory disclosure obligations imposed upon individuals and medical institutions

under the amended Section 7, the subjection of applicants to medical re-examination and executive scrutiny under the amended Section 7(2), and the broad penal provisions inserted by the substituted Section 18 collectively subject transgender persons to heightened scrutiny throughout the certification process. The requirement to disclose one's gender transition before executive authorities, coupled with the absence of adequate safeguards relating to confidentiality, increases the risk of involuntary disclosure of identity, social exclusion, harassment, and targeted violence. Various stakeholders and members of the transgender community have expressed concern that such measures may further exacerbate existing mental health challenges faced by transgender persons, including anxiety, depression, and psychological distress.

32. That, concerns have also been expressed by members of the transgender community, activists, welfare organisations, and other stakeholders that the 2026 Amendment Act departs from the trajectory of legal recognition and protection that had developed through judicial pronouncements, policy initiatives, and the framework established under the 2019 Act. It has further been pointed out that, while the impugned amendments substantially alter the process of recognition and certification of transgender persons, the legislation does not address several issues relating to social welfare, healthcare, education, housing, employment, and other institutional barriers that continue to affect transgender persons across the country.

33. Therefore, in view of the foregoing facts and circumstances, the Petitioner is constrained to approach this Hon'ble Court under Article 32 of the Constitution of India seeking protection of the fundamental rights of transgender persons affected by the impugned provisions of the Transgender Persons (Protection of Rights) Amendment Act, 2026.

GROUND

Rebuttal to the Presumption of Constitutionality

A. Because the 2026 Amendment Act fails to pass the test of the presumption of constitutionality due to *prima facie* violations of fundamental rights. The key basis of the failure to satisfy the presumption of constitutionality lies in the intention of the 2026 Amendment Act to treat transgender persons with a suspect classification. The original purpose of the 2019 Act was to grant protection to all transgender persons, but the amendment arbitrarily targets a whole class of self-recognised transgender persons and retrospectively excludes them from the ambit of statutory protection, which vitiates Article 14.

B. Because the presumption of constitutionality cannot be sustained when there is no legislative basis present in justifying State action that violates the dignity and autonomy of transgender persons under Article 21. The State must rely on scientific data and must be aware of the social predicament of the affected transgender persons when imposing baseless fetters of medical board analysis or wrongful exclusion of

various groups of transgender persons from legislative purview. The lack of legislative reasoning weakens the presumption of constitutionality.

- C. Because the burden of proof lies on the State to provide a reasonable explanation for the transgressions done against transgender persons through the retrogressive amendment made to the 2019 Act. The adoption of a law that violates constitutional doctrines, fundamental rights, and the international humanitarian framework cannot prevail as constitutional, thus reversing the burden of proof on the State to justify the *vires* of the 2026 Amendment Act against the general presumption of constitutionality.

Constitutional Violations in the Amended Definition of “Transgender Person”

Violation of Article 21

- D. Because the Transgender Persons (Protection of Rights) Amendment Act, 2026, [2026 Amendment Act] represents a fundamental departure from the constitutional mandate of the right to self-identification under Article 21 established by this Hon’ble Court in *NALSA v. Union of India (2014) 5 SCC 438* [NALSA] in which this Hon’ble Court laid down that:

“74. 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 right to dignity and freedom guaranteed under our Constitution.

- E. Because Section 2(iv) of the 2026 Amendment Act amends the definition of a “transgender person” under Section 2(k) as “(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”. This amended definition brings several legal changes to the framework of laws governing transgender persons with far-reaching social consequences that hamper the well-being of transgender persons, as elucidated further.

F. Because the substituted definition of “transgender person” marks a significant departure from the framework adopted in the 2019 Act. The earlier definition expressly recognised trans men and trans women, irrespective of whether they had undergone surgery or hormone therapy. The Amendment omits these categories and instead restricts recognition to specified socio-cultural identities and persons falling within medically oriented classifications. This omission creates a serious constitutional vacuum. A large number of transgender persons in India identify as trans men or trans women without possessing intersex variations or belonging to any of the specifically enumerated socio-cultural communities. The Amendment provides no rational explanation for excluding such persons from explicit statutory recognition. The effect of this exclusion extends beyond terminology. It creates uncertainty regarding access to healthcare, identity documentation, anti-discrimination and other statutory protections that were previously available under the 2019 Act. By excluding a substantial segment of the transgender community without any intelligible differentia or rational

nexus to the object of the legislation, the Amendment violates Article 14 of the Constitution.

G. Because Section 3 of the 2026 Amendment Act explicitly omits Section 4(2) of the 2019 Act that enshrined the right to self-perceived identity of a transgender person as a fundamental facet of Article 21. This intentional omission also renders it a narrow definition, which is in direct conflict with the personal autonomy of transgender persons whose fundamental rights were recognised in *NALSA*. The idea of self-perception is inherently entrenched in the dignity of individuals. This Hon'ble Court had emphasised the duty of the State to protect this right in *NALSA* by stating

“75. 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.”

Violation of Article 14

H. Because this Hon'ble Court, in *NALSA*, emphasised that transgender persons fall within the ambit of a "person" under Article 14, hence they cannot be discriminated against on the basis of their gender, and they can claim equal rights as cisgender persons. In addition to being restrictive, the amended definition of "transgender person" is highly exclusionary. The definition wrongfully deems transgender persons to mean persons who have specific biological characteristics. Further, it characterises only five socio-cultural identities as transgender persons without considering numerous other identities such as Thirunangai or Khwaja Siras. This exclusion is significantly discriminatory since it effectively erases the identities of trans men, trans women, and non-binary individuals who do not fit into specific socio-cultural or medical categories of the new definition. The creation of new sub-classes of transgender persons without due consultation or regard to the nuanced social realities of various individuals is in contravention of the positive obligation on the State to ensure equality for all citizens of the same class under Article 14, regardless of their gender or sex. This Hon'ble Court had observed the importance of upholding the right to equality of transgender persons in *NALSA* by observing that,

"61. Article 14 of the Constitution of India states that the State shall not deny to "any person" equality before the law or the equal protection of the laws within the territory of India. Equality includes the full and equal enjoyment of all rights and

freedom. Right to equality has been declared as the basic feature of the Constitution and treatment of equals as unequals or unequals as equals will be violative of the basic structure of the Constitution. Article 14 of the Constitution also ensures equal protection and hence a positive obligation on the State to ensure equal protection of laws by bringing in necessary social and economic changes, so that everyone including TGs may enjoy equal protection of laws and nobody is denied such protection. Article 14 does not restrict the word 'person' and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression 'person' and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.

62. Petitioners have asserted as well as demonstrated on facts and figures supported by relevant materials that despite constitutional guarantee of equality, Hijras/transgender persons have been facing extreme discrimination in all spheres of the society. Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. Sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity and there are reliable statistics and materials to support such activities. Further, non-recognition of identity of Hijras /transgender persons results

in them facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc. Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for Hijras/transgender persons, they have to use male toilets where they are prone to sexual assault and harassment. 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.”

- I. Because earlier Section 2(k) of the 2019 Act had defined transgender persons as “...and person having such socio-cultural identities as kinner, hijra, aravani and jogta.” However, after the 2026 Amendment Act the new definition omits the earlier expansive definition with “a person having such socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch...” This has a far-reaching implication where it excludes socio-cultural groups such as:

- i. *Nupi Maanbi* (Manipur): They are individuals who are assigned the male sex at birth, but they resemble women. Their presence is deeply embedded in Manipuri culture, and they are often involved in traditional theatre (Shumang Leela) and as shamans (nupa amaibi).

- ii. *Khwaja Sira* (Punjab and Kashmir): A wider, often spiritual, third-gender identity often linked to Sufi traditions, sometimes acting as social and spiritual mediators.
- iii. *Thirunangai* and *Thirunambi* (Tamil Nadu): This terminology was popularised in the trans socio-political community recognised under the State Welfare Schemes for transgender persons in Tamil Nadu while replacing older derogatory terms like “*aravani*” or other pejorative slang. Yet, the current definition recognises “*aravani*” but excludes the newer dignified and state-recognised term “*thirunangai*”. This exclusion demonstrates how the 2026 Amendment Act fails to respect the linguistic evolution and the cultural identities of the people at the regional level.

True copy of the Status Affidavit dated 14.06.2019 filed by the Commissioner of Social Welfare, Government of Tamil Nadu, before the Madras High Court in W.P. No. 6052 of 2019, setting out the measures undertaken by the State for recognition, identification, welfare, and inclusion of transgender persons and recording the State's recognition of diverse transgender identities including Thirunangais, Kothis, Jogappas and Shiv-Shakhtis is attached herewith as **Annexure P-16 [Page 1021-1029]**.

The above socio-cultural groups are protected under Article 29(1) as per the judgement of this Hon'ble Court in *In Re : Section 6A of the Citizenship Act 1955 (2024) 16 SCC 105*:

“496. The heading to Article 29(1) reads ‘protection of interests of minorities’. However, the text of the provision is not limited to minorities. It confers the right to any ‘section of citizens’ having a distinct language, script or culture. Thus, Article 29 applies to non-minorities as much as it applies to minorities, provided that (a) the section is of citizens; and (b) that section has a distinct language, script or culture. The right that is granted to this beneficiary class is the right to ‘conserve’ their language, script or culture...”

497. Two prominent points must be noted at the outset. First, Article 29(1) confers the right to ‘conserve’ culture, that is, the operation of the law must not interfere with the ability of the section to take steps to protect the culture from harm or destruction. Second, the provision must be read in light of the multi-cultural and plural nation that India is.”

“501. The second principle is that a law or an executive action is unconstitutional to the extent that it prevents a section from taking steps to preserve their culture. At this juncture, it must be noted that it is now settled that the fundamental rights include both negative and positive rights. The negative right flowing from Article 29(1) prevents the State from interfering with the right of the section of citizens to conserve their culture. The Courts must adopt the well-established effects standard to test if the action of the State is violative of Article 29(1). The positive right flowing from Article 29(1) casts a duty on the State to create conditions for the exercise of the right to conserve culture.”

Hence, the intentional exclusion of such regional socio-cultural groups leaves them without a statutory safeguard as is stipulated for the protection of their customs and practices under Article 29(1).

- J. Because the creation of an exhaustive list of socio-cultural groups without accounting for the regional diversity of India goes in contravention of the principle of equality. The transgender persons who do not explicitly adhere to specific practices of certain groups but instead follow their own customs will be unable to seek protection within the ambit of the 2026 Amendment Act. This discrimination of setting a criterion for determining “genuine and non-genuine” transgender persons based on socio-cultural identities and exclusion of self-perceived identities is manifestly arbitrary under Article 14 because it fails to satisfy the twin tests of intelligible differentia and rational nexus laid down in the landmark judgment of *State of West Bengal v. Anwar Ali Sarkar* (1952) 1 SCC 1 that observed:

“85. It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an “abstract symmetry” in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often

require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the

sense I have just explained. The doctrine, as expounded by this Court in the two cases I have mentioned, leaves a considerable latitude to the Court in the matter of the application of Article 14 and consequently has the merit of flexibility.”

The above judgement made it clear that for a classification to be reasonable and valid under Article 14, the criteria should not be vague or arbitrary. However, in the impugned Act, the exhaustive list of only a few groups and the alleged reason of distinction stated by the State as “genuine” and “non-genuine” beneficiaries is entirely outside the contours of reasonability.

Practical Implications of the Abrogation of Article 14

- K. Because, the newly inserted proviso to the amended definition of “transgender person” functions in a retrospective manner. This proviso has far-reaching implications wherein the retrospective operation of the impugned proviso invalidates identity certificates that were lawfully obtained by transgender persons under the 2019 Act in accordance with the procedure prescribed thereunder, thereby extinguishing vested legal rights without the authority of law and in violation of the settled principle that a new legislation cannot retrospectively extinguish accrued rights without being assessed on the touchstone of the Constitution. The invalidation of existing certificates produces an immediate cascade of civil consequences for over 30,000 persons, as such certificates form the documentary basis for recognition, welfare, statutory protection, and legal identity across government records, and their nullification leaves the concerned persons without any

legal standing to claim these. Moreover, the absence of any transitional provision, saving clause, or prescribed timeline for re-registration under the amended definition leaves previously registered transgender persons in a legal limbo, rendering them unable to enforce any statutory right or protection under the 2019 Act during the intervening period. Thus, the effective erasure of the “third gender” as a recognised category through the operation of this restrictive definition constitutes a legislative reversal of a constitutionally recognised identity. This retrospective application not only reverts to the conservative idea of gender binaries but also divides transgender persons into two classes of “recognised” persons as per the new law and “non-recognised” transgender persons who now exist in a legal vacuum. Therefore, this sweeping change, in the absence of compelling state interest and proportionate means, is violative of Articles 14, 19, and 21 of the Constitution of India.

- L. Because, the 2026 Amendment Act wrongly discriminates between two separate classes of persons by conflating “people with intersex variations” with “transgender persons”. The amended definition of “transgender person” brings “people with intersex variations” into its ambit, and the 2026 Amendment Act simultaneously deletes the standalone definition of “people with intersex variations”, which was earlier provided under Section 2(i) of the 2019 Act. This change repudiates the well-settled discourse on the distinction between sex and gender as exclusive concepts. The 2019 Act

had deliberately maintained a conceptual and definitional distinction between intersex variations, which are biological characteristics relating to sex, and transgender identity, which is a matter of gender identity independent of biological sex assigned at birth. The conflation of these two distinct categories under a single amended definition repudiates this well-settled distinction and reflects a fundamental misapprehension of the relationship between sex and gender as mutually exclusive concepts. This Hon'ble Court, in *NALSA*, had rejected a definition that reduces gender identity to biological characteristics for not only being medically unsound but also constitutionally impermissible by noting that –

“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 be 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 grappling 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."

M. Because this legislative mixing of classes of two different persons is manifestly arbitrary under Article 14. The consequence of this conflation is twofold. On the one hand, persons with intersex variations, who may not identify as transgender, are compelled by statutory force to be classified as transgender persons, thereby imposing upon them an identity they have not chosen and may actively reject. On the other hand, transgender persons whose identity is grounded in gender self-identification rather than any biological characteristic are now subjected to a definition that anchors their recognition in biological variation, thereby undermining the very basis of self-perceived gender identity. Thus, such a

capricious form of discrimination between the class of persons with intersex variations and transgender persons lacks any rational ground for fulfilling justified objectives. Hence, such an arbitrary legislative measure violates Article 14 as has been laid down by this Hon'ble Court in the case of *Shayara Bano v. Union of India* (2017) 9 SCC 1 wherein it was held that:

“101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. 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.”

Institutionalised Forced Outing via “Coerced Medical Disclosure and Creation of Medical Board”

Analysis of the Amendment Introducing the Medical Board

N. Because Section 4 of the 2026 Amendment Act amends Section 6 of the 2019 Act to reintroduce a regime of “medical gatekeeping” whereby medical practitioners are vested with discretionary authority to determine the gender identity of a transgender person for the purpose of issuance of an identity certificate. The 2019 Act did not impose any requirement of medical examination or clinical verification upon an applicant seeking an identity certificate under Section 6, and the certification process thereunder was premised upon the principle of self-identified gender recognition. The 2026 Amendment Act reverses this position entirely by subjecting the issuance of identity certificates to the discretionary assessment of medical practitioners, thereby displacing the applicant's self-identification as the primary basis for recognition and substituting it with external clinical scrutiny. This provision proceeds upon the constitutionally impermissible premise that transgender identity is contingent upon biological characteristics such as hormonal levels, chromosomal variations, the presence or absence of particular sex organs, or the undergoing of sex reassignment surgery, rather than upon the individual's internal sense of gender identity. This Hon'ble Court expressly repudiated the requirement of medical or surgical intervention as a precondition for recognition of gender identity, and held in *NALSA*:

O.

“22. ... 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.”

P. Because Section 2(ii) of the 2026 Amendment Act amends Section 2(aa) of the 2019 Act to redefine “authority” to include a designated Chief Medical Officer of a government-appointed medical board, whose recommendation is now a mandatory precondition for the District Magistrate to issue a certificate of identity to an applicant. Under the 2019 Act, no such medical recommendation was required, and the District Magistrate was empowered to issue the certificate of identity upon the applicant's self-declaration without the interposition of any clinical authority. The impugned amendment fundamentally alters this framework by inserting a mandatory layer of medical scrutiny into a process that is, by its very nature, one of identity recognition and not medical certification. The practical consequences of this amendment are severe and discriminatory in their operation. By making the recommendation of a Chief Medical Officer a precondition for certification, the amended provision reduces the recognition of gender identity to a question of biological or clinical assessment, directly contradicting the constitutional position that gender identity is self-determined and does not depend upon medical or surgical intervention. The substitution of the

globally recognised and constitutionally established “psychological test” of determining gender identity with the parochial “biological test” is grossly impermissible. Such a mandate becomes an unreasonable directive that operates without adequate procedural safeguards, which is expressly rejected on the touchstone of fundamental rights. This Hon’ble Court has upheld the need for applying the psychological test over any bio-medical practices for the determination of gender in *NALSA* by stating that:

“30. *Lockhart, J. in Secretary, Department of Social Security v. “SRA”, (1993) 43 FCR 299 and Mathews, J. in R v. Harris & McGuinness (1988) 17 NSWLR 158, made an exhaustive review of the various decisions with regard to the question of recognition to be accorded by Courts to the gender of a transsexual person who had undertaken a surgical procedure. The Courts generally in New Zealand held that the decision in Corbett v. Corbett (supra) and R v. Tan (supra) which applied a purely biological test, should not be followed. In fact, Lockhart. J. in SRA observed that the development in surgical and medical techniques in the field of sexual reassignment, together with indications of changing social attitudes towards transsexuals, would indicate that generally they should not be regarded merely as a matter of chromosomes, which is purely a psychological question, one of self-perception, and partly a social question, how society perceives the individual.*

37. *Judgments referred to above are mainly related to transsexuals, who, whilst belonging physically to one sex, feel*

convinced that they belong to the other, seek to achieve a more integrated unambiguous identity by undergoing medical and surgical operations to adapt their physical characteristic to their psychological nature. When we examine the rights of transsexual persons, who have undergone SRS, the test to be applied is not the “Biological test”, but the “Psychological test”, because psychological factor and thinking of transsexual has to be given primacy than binary notion of gender of that person. Seldom people realize the discomfort, distress and psychological trauma, they undergo and many of them undergo “Gender Dysphoria’ which may lead to mental disorder. Discrimination faced by this group in our society, is rather unimaginable and their rights have to be protected, irrespective of chromosomal sex, genitals, assigned birth sex, or implied gender role. Rights of transgenders, pure and simple, like Hijras, eunuchs, etc. have also to be examined, so also their right to remain as a third gender as well as their physical and psychological integrity. Before addressing those aspects further, we may also refer to a few legislations enacted in other countries recognizing their rights.

75. 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.

76. 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 recognizes 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."

- Q. Because, the amended provision, while permitting a change of first name, omits the protective proviso that was appended to Section 7(3) of the 2019 Act, which guaranteed the preservation of existing socio-legal rights and statutory protection of persons obtaining certificates of identity under Section 6, thereby stripping this class of certificate-holders of statutory protection without any saving or transitional provision. The human cost of this amendment falls most heavily upon marginalised transgender persons, particularly those from economically disadvantaged backgrounds and

remote areas, who will be compelled to present themselves before government-appointed medical boards and endure clinical examination as a condition for obtaining official recognition of their identity. This process exposes such persons to the heightened risk of humiliation, physical harm, exploitation, and institutional discrimination at the hands of medical and administrative authorities who have been vested with unfettered powers.

- R. Because the constitutional infirmity of the Amendment lies not merely in the fact that it subjects transgender persons to medical scrutiny, but in the inevitable effect that such scrutiny produces upon the exercise of fundamental rights. The experience of transgender persons in India demonstrates that interactions with medical authorities, local administrations, and law-enforcement agencies are frequently accompanied by stigma, humiliation, discrimination, and disclosure of deeply personal information. By making access to legal recognition contingent upon examination and recommendation by a Medical Board and subsequent approval by executive authorities, the Amendment creates significant deterrents against the assertion of gender identity itself. The consequence is that many transgender persons, particularly those belonging to economically vulnerable backgrounds, rural areas, and socially marginalised communities, are likely to abstain from seeking recognition altogether, rendering the constitutional guarantee recognised in *NALSA* illusory in practice.

Erosion of Dignity due to the Mandate of Disclosing Gender Identity through State-Monitored Medical Procedures

S. Because Section 5 of the 2026 Amendment Act amends Section 7 of the 2019 Act to replace the word “may” with “shall”, thereby converting what was a voluntary right of a transgender person to apply for a revised certificate of identity after undergoing sex-change surgery into a statutory compulsion. Under the 2019 Act, a transgender person who had undergone SRS retained the freedom to continue identifying as a transgender person and was not obligated to seek a revised certificate recognising them as male or female. The impugned amendment deprives the person of this freedom. The simultaneous insertion of Section 7(1A) compounds this compulsion by directing medical institutions to mandatorily report the details of sex-change surgeries performed by them to the District Magistrate or the prescribed authority, irrespective of whether the concerned person has consented to such disclosure or intends to apply for a revised certificate. The compulsory transmission of such information by medical institutions to executive authorities, without the consent of the individual concerned and without any corresponding safeguards relating to confidentiality, storage, access, retention, or misuse, constitutes a grave invasion of informational privacy. Together, these provisions establish a regime of state-sanctioned surveillance over the most intimate medical decisions of transgender persons, operating entirely outside their consent and in direct violation of the right to privacy and bodily autonomy guaranteed under Article 21 of

the Constitution of India, as affirmed by this Hon'ble Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1. In this decision, this Hon'ble Court had observed that

“271. We need also emphasise the lack of substance in the submission that privacy is a privilege for the few. Every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy which privacy protects. It is privacy as an intrinsic and core feature of life and personal liberty which enables an individual to stand up against a programme of forced sterilization. Then again, it is privacy which is a powerful guarantee if the State were to introduce compulsory drug trials of non-consenting men or women. The sanctity of marriage, the liberty of procreation, the choice of a family life and the dignity of being are matters which concern every individual irrespective of social strata or economic well-being. The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which makes no distinction between the birth marks of individuals.”

- T. Because the amended Section 7(2) replicates the procedure prescribed under the amended Section 6 at the stage of examining an application for a revised certificate, requiring the applicant to again undergo medical scrutiny before the Chief Medical Officer of an appointed medical board, following which the District Magistrate is empowered to verify the “correctness” of the certificate before issuing it. The 2019 Act

did not impose any such requirement of re-examination or executive verification at the revised certificate stage. The use of the term “correctness” as the operative standard for the District Magistrate’s satisfaction is constitutionally impermissible, as it is undefined, subjective, and incapable of objective application, thereby conferring unguided discretion upon an executive authority over a matter that this Hon’ble Court has held to be one of self-determined identity. This replication of gatekeeping at every successive stage of the certification process reveals a legislative design to subject transgender persons to recurring medical and executive scrutiny as a condition for the recognition of their identity, which is violative of Article 21.

- U. Because the proviso to Section 7(3) of the 2019 Act expressly protected the existing rights and entitlements of transgender persons who held original identity certificates at the time of applying for revised certificates, ensuring that the pendency of the revision process did not extinguish the statutory protections already accrued to them. The 2026 Amendment Act omits this proviso entirely without re-enacting or preserving it elsewhere. The consequence of this omission is that a transgender person who is now compulsorily required to apply for a revised certificate under the amended Section 7 stands to lose all protections, entitlements, and recognition attached to their original identity certificate during the pendency of the revision process, with no statutory safeguard to bridge this gap. This exposes an entire class of certificate-holders to a legal vacuum

that the legislature has created by making the application for a revised certificate mandatory while simultaneously removing the only provision that protected their rights during the transition.

V. Because Section 8 of the 2026 Amendment Act amends Section 22(2)(d) of the 2019 Act by deleting the word “revised”, thereby expanding the rule-making power of the appropriate government to encompass all medical institutions performing sex-change surgeries, without limiting such power to cases where a revised certificate has been applied for. This amendment enables the appropriate government to prescribe rules mandating the disclosure of intimate medical records of transgender persons undergoing sex-change surgery on a default basis, regardless of the individual’s choice or consent. The rule-making power is not accompanied by any statutory safeguards governing confidentiality, purpose limitation, data retention, data sharing, or destruction of medical records. In a conjunctive reading of this provision with the mandatory reporting obligation under Section 7(1A) and the compulsory application requirement under the amended Section 7, this expansion of rule-making power completes a legislative framework that systematically subordinates the privacy, autonomy, and dignity of transgender persons to state oversight at every stage, from the surgery itself to the certification process, in a manner that is grossly disproportionate to any legitimate state interest and is therefore unconstitutional.

Selective Discrimination against Transgender Persons through Medical Verification of Gender Identity

W. Because the presence of a system of medical examination to prove one's self-identity is violative of the rights to privacy, dignity, and bodily autonomy guaranteed under Article 21. This selective medical scrutiny reveals that the impugned amendment proceeds upon an unconstitutional presumption that the identity of transgender persons is inherently suspect and requires external validation. The composition of medical boards constituted under the 2026 Amendment Act contains no statutory requirement of representation from transgender persons or members of the LGBTQIA+ community. The consequence of this is that the determination of a transgender person's identity is left entirely to cisgender medical professionals who may have neither the lived experience nor the clinical expertise in gender identity to make such an assessment. Subjecting a transgender person to physical examination before a board comprising exclusively cisgender persons without statutory guarantee of sensitivity, confidentiality, or informed assessment exposes such persons to the institutional discrimination and harm that the 2019 Act sought to prevent.

X. Because no cisgender male or female person in India is required to obtain a certificate from a government-appointed medical authority attesting to their gender identity as a precondition for accessing civic rights, welfare entitlements,

or legal recognition. The imposition of such an arbitrary requirement to prove one's identity, exclusively upon transgender persons, is therefore *prima facie* discriminatory and constitutes a direct violation of the right to equality guaranteed under Article 14 of the Constitution of India. In the manner that no woman may be compelled to submit to physical examination before male authorities for the purpose of establishing her identity, no transgender person can be constitutionally compelled to bare their body before a medical board that has no representative voice from the community whose identity it is tasked with adjudicating. This mandatory medical is devoid of informed consent and structural safeguards, thus violating the right to equality under Article 14.

Failure to Align with Established Medico-Scientific Analysis

Y. Because the global medical research on the physiological and psychological conditions of transgender persons highlights the need for upholding their fundamental right to health. Medical research has conclusively proven that biological anatomy and physical appearance have no correlation with gender. The act of State-sponsored medical logging through an adversarial process of board verification harms the mental and physical health of transgender persons.

The World Health Organisation, in the International Classification of Diseases for Mortality and Morbidity Statistics (ICD)-11, removed 'Gender Identity Disorders' from

the chapter dealing with mental disorders and reclassified 'Gender Incongruence' under the newly created chapter 'Conditions Related to Sexual Health'. WHO expressly explained that this restructuring was intended to permit classification of gender identity-related conditions 'without stigmatisation', while ensuring access to appropriate health services.

True copy of relevant extracts from the World Health Organisation, International Classification of Diseases for Mortality and Morbidity Statistics (ICD-11) Reference Guide (2022), is attached herewith as **Annexure P-17 |Page 1030-1033** |.

Further, the World Professional Association for Transgender Health's Standards of Care (SOC-8) affirm that gender diversity is a common human phenomenon that "should not be seen as inherently negative or pathological" and further recognise that gender incongruence is no longer regarded as a mental disorder by the global health community. SOC-8 emphasises patient-centred and autonomy-respecting models of care designed to reduce barriers to access, and expressly cautions that gatekeeping requirements lacking demonstrated benefit may operate as harmful barriers to care. It further recognises that the psychological distress experienced by many transgender persons is frequently a consequence of stigma, discrimination, and minority stress rather than an inherent feature of transgender identity. By reintroducing

compulsory medical scrutiny and institutional gatekeeping into a process founded on self-identification, the Amendment reinforces the very forms of stigma and exclusion that contemporary medical science identifies as sources of harm, and therefore proceeds upon a medically unsound and constitutionally disproportionate basis.

True copy of relevant extracts from the World Professional Association for Transgender Health (WPATH), *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8 (SOC-8)* (2022), is attached herewith as **Annexure P-18 [Page 1034-1039]**.

The American Psychiatric Association's DSM-5-TR similarly recognises that the clinical concern lies in the distress experienced by an individual and not in gender identity itself, expressly noting that the shift from the earlier classification of "Gender Identity Disorder" to "Gender Dysphoria" was intended to focus on distress rather than identity per se. The DSM-5-TR further acknowledges that many adverse mental health outcomes experienced by transgender persons are closely associated with stigma, discrimination, victimisation, and social exclusion rather than being inherent to transgender identity.

True copy of relevant extracts from the American Psychiatric Association, *Diagnostic and Statistical Manual of Mental*

Disorders, Fifth Edition, Text Revision (DSM-5-TR) (2022), is attached herewith as **Annexure P-19 [Page 1040-1045]**.

Discrimination against Sentencing of Similar Offences for Cisgender Women and Transgender Persons

Z. Because the penal framework under Section 18(d) creates a disparity in the degree of protection afforded to cisgender women vis-à-vis transgender persons. The provision reads as follows:

“(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.”

Although this provision fills the gap in offering protection to transgender persons against abuse, the lesser period of sentencing for the offence does not create sufficient deterrence against the commission of the offence against transgender persons.

The Bharatiya Nyaya Sanhita, 2023, prescribes punishments proportionate to the gravity of sexual offences committed against cisgender women. For instance, sexual harassment, voyeurism and stalking are punishable under Sections 75, 77 and 78, respectively, with punishments extending up to three years, seven years and five years imprisonment. More serious

offences attract significantly harsher punishments, including a minimum sentence of ten years for rape under Section 64, a minimum sentence of twenty years for rape of a woman below sixteen years under Section 65, imprisonment for life, or death, under Section 66, and imprisonment for life, or death, penalty in cases of aggravated gang rape under Section 70(2). Several other provisions of the BNS dealing with sexual and physical violence against women similarly prescribe stringent punishments extending up to life imprisonment depending upon the gravity of the offence.

In contrast, Section 18(d) of the 2026 Amendment Act continues to prescribe a uniform punishment of six months to two years for acts causing "physical, sexual, verbal, emotional or economic abuse" against a transgender person, irrespective of the nature, gravity, or consequences of the offence. While the newly inserted provisions under Section 18 prescribe enhanced punishments for certain vaguely defined offences, the legislature has failed to create a graded and proportionate sentencing framework for different forms of violence committed against transgender persons. This is despite the well-documented vulnerability of transgender persons to sexual violence, physical abuse, and exploitation. The result is that grave acts of sexual violence against transgender persons are treated on par with significantly less serious misconduct, thereby trivialising the harm suffered and denying transgender persons equal protection of the law.

This Hon'ble Court in *NALSA* acknowledged the risks of violence faced by transgender persons as under:

“62. Petitioners have asserted as well as demonstrated on facts and figures supported by relevant materials that despite constitutional guarantee of equality, Hijras/transgender persons have been facing extreme discrimination in all spheres of the society. Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. Sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity and there are reliable statistics and materials to support such activities. Further, non-recognition of identity of Hijras /transgender persons results in them facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc. Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for Hijras/transgender persons, they have to use male toilets where they are prone to sexual assault and harassment. 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.”

Therefore, maintaining lesser punishment for comparable offences committed against cisgender women and transgender persons lacks a rational nexus with the object of protection sought to be achieved by the legislation, and consequently abrogates Article 14.

AA. Because this difference in statutory frameworks in the sentencing for similar nature of offences is further violative of Article 15(1), which prohibits discrimination on the ground of “sex”. This Hon’ble Court, in *NALSA*, has laid down that the constitutional protections of Article 15 extend equally to transgender persons and that discrimination on the basis of gender identity vis-a-vis a cisgender woman is impermissible. The observation is:

“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."

"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 recognizes 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.

83. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.”

The above judgements show that the denial of equal degree protection to transgender persons squarely under the constitutional prohibition against discrimination under Article 15(1).

Criminalisation of Mutual Aid & Interference with Chosen Families

BB. Because the 2026 Amendment Act adds new provisions to erstwhile Section 18 of the 2019 Act containing expressions such as in clauses (g) and (h) “*by force, threat, coercion, allurements, deception, inducement, undue influence or otherwise ...compels... to dress, present, or conduct themselves outwardly as a transgender person against the will of such person...*” that are open-ended, undefined and incapable of objective determination. The presence of such vague terms are liable to be struck down under the Doctrine of

Vagueness, wherein criminal laws can be held to be *void ab initio* when a person of ordinary intelligence is unable to ascertain what is prohibited. This Hon'ble Court has accepted the Doctrine of Vagueness as a ground for finding criminal provisions unconstitutional in *Shreya Singhal v. Union of India* (2015) 5 SCC 1 where this Hon'ble Court observed:

“85. These two cases illustrate how judicially trained minds would find a person guilty or not guilty depending upon the Judge's notion of what is “grossly offensive” or “menacing”. In Collins' case, both the Leicestershire Justices and two Judges of the Queen's Bench would have acquitted Collins whereas the House of Lords convicted him. Similarly, in the Chambers case, the Crown Court would have convicted Chambers whereas the Queen's Bench acquitted him. If judicially trained minds can come to diametrically opposite conclusions on the same set of facts it is obvious that expressions such as “grossly offensive” or “menacing” are so vague that there is no manageable standard by which a person can be said to have committed an offence or not to have committed an offence. Quite obviously, a prospective offender of Section 66A and the authorities who are to enforce Section 66A have absolutely no manageable standard by which to book a person for an offence under Section 66A. This being the case, having regard also to the two English precedents cited by the learned Additional Solicitor General, it is clear that Section 66A is unconstitutionally vague.”

CC. Because the actions constituting the ingredients of the offences under Section 18 remain unclear, as no definitional guidance or objective standard is provided to distinguish between coercion and voluntary conduct. The provisions relating to “*allurement*” or “*otherwise*” could be interpreted to penalise the acts of support by individuals and communities which enable transgender persons to express their identity. Such offences enable the threat of the misuse of these offences against community leaders, support networks, and individuals assisting transgender persons in expressing their identity, as the provision fails to provide any standard to distinguish between coercion and consensual or self-directed expression. Essentially, the presumption of law that an individual can be “compelled” into becoming a transgender person is unsupported by any demonstrable scientific basis. The impugned provisions, by employing vague and overbroad expressions under Section 18, create scope of criminal liability beyond the intent of the 2019 Act. The absence of definitional clarity enables penalisation of conduct that is not inherently wrongful, thereby rendering the provision unconstitutional for violating the guarantee against arbitrary State action under Article 14.

DD. Because Section 18(h)(i) penalises free and voluntary expression of gender since it reads as follows:

“(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... 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.”

The breadth of this provision, read with undefined terms such as “inducement” and “otherwise”, enables its application to situations involving affirmation or support of an individual’s gender identity. In the absence of clear safeguards, the provision can extend to parents, guardians, community members, or other individuals who permit or support expression consistent with self-identified gender. This creates a chilling effect on the support systems of transgender persons, particularly minors, by exposing those who affirm their identity to the risk of criminal prosecution. The broad scope of the amended Section 18 may also be utilised to target certain voluntary “guru-chela” traditions for affirming the dressing and outward treatment of an individual as a transgender person. Such a framework is inconsistent with the principles of privacy and autonomy laid down by this Hon’ble Court in *Puttaswamy* and *NALSA*, which held that such provisions, adopting a wrongful presumption of criminalisation, it violates the rights to autonomy, dignity, and privacy under Article 21.

EE. Because the discrimination faced by transgender persons requires institutional reform, over the inclusion of

disproportionate criminal provisions. The National Human Rights Commission had noted in its 2017 report “*Study on Human Rights of Transgender as a Third Gender*”, wherein it observed that 28% of the participants (transgender persons) reported being harassed at the school level, of which 18.5% were physically abused while 13% were sexually abused within schools. About 96% of transgender persons were denied employment, which forces them into low-paying jobs and engage in sex work due to a lack of other viable choices within the present social structure.

True copy of relevant extracts from the National Human Rights Commission Report titled “Study on Human Rights of Transgender as a Third Gender” (February 2017), is attached herewith as **Annexure P-20 [Page 1046-1059]**.

The need for bringing about practical solutions to resolve such grievous issues was noted and declared in *NALSA* by this Hon’ble Court as follows:

“1...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.”

“135. We, therefore, declare: (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.”

Hence, the abovementioned changes introduced under Section 18 are complacent to the actual challenges experienced by transgender persons in their daily lives and offer a false sense of protection under the garb of the creation of vague and overbroad offences.

FF. Because various transgender communities have distinct cultural and linguistic identities historically recognised in their respective regions. These communities function as an integrated family unit that provides acceptance and belonging to transgender persons who seek assistance from them. However, the failure to recognise their distinct cultures in the 2026 Amendment Act, these communities become susceptible to falling under the sweeping language of Section 18 offences relating to “allurement” and “inducement” to dress or conduct as a transgender person. This consequence poses a severe threat to the flourishing of these diverse groups, who can face extreme oppression, harassment, and abuse based on incorrect criminal presuppositions against their existence.

Contravention of Fundamental Constitutional Doctrines

GG. Because thousands of transgender persons organised their lives, obtained identity certificates, and legal recognition on the basis of the framework established under the 2019 Act and the constitutional principles recognised in *NALSA*. The 2026 Amendment Act substantially alters that framework and places previously recognised identities under uncertainty without providing any compelling justification, transitional safeguards, or protection of accrued rights. Such a legislative reversal undermines the Doctrine of Legitimate Expectation that rights recognised through a statutory and constitutional framework would not be withdrawn arbitrarily and is contrary to the rule of law, fairness, and non-arbitrariness that form integral facets of Article 14. This Doctrine was defined in *Madras City Wine Merchants v. State of Tamil Nadu (1994) 5 SCC 509* as:

“48. ...From the above it is clear that legitimate expectation may arise-

*(a) if there is an express promise given by a public authority;
or*

(b) because of the existence of a regular practice which the claimant can reasonably expect to continue;

(c) Such an expectation must be reasonable.”

Further, it was propounded by this Hon’ble Court that the Doctrine of Legitimate Expectations is a necessary instrumentality to counter undue manifest arbitrariness of the State as per its ruling in *Food Corpn. of India v. Kamdhenu Cattle Feed Industries (1993) 1 SCC 71* that explained

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.”

Therefore, the legislative action of retrospectively amending the definition of “transgender person” to extinguish the fundamental right to self-identity must be construed as a contravention of the legitimate expectations of thousands of transgender persons who relied on the legislative and judicial framework to live a dignified life to counter marginalisation.

HH. Because the Constitution of India is a living document, it is a well-settled principle of constitutional interpretation that fundamental rights must be construed expansively so as to progressively advance the liberty and dignity of individuals rather than curtail them. The internationally recognised Doctrine of Progressive Realisation of Rights in humanitarian law mandates that the state must move towards greater realisation of rights and cannot, without compelling constitutional justification, enact legislation that retreats from a position of greater rights protection to one of lesser protection. This principle is reinforced by the allied Doctrine of Non-Retrogression, which places upon the state a positive obligation to ensure that rights once recognised as fundamental to constitutional governance are not whittled down or reversed by subsequent legislative action. The 2026 Amendment Act, by replacing a self-identification-based certification regime with one premised upon compulsory medical scrutiny, mandatory disclosure, and executive gatekeeping, constitutes a direct legislative retrogression from the rights framework established under the 2019 Act. The relevance of these doctrines in designing rights-based laws and striking down regressive laws has been elucidated in the decision of *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1 by discussing that

“190. When we talk about the rights guaranteed under the Constitution and the protection of these rights, we observe and

comprehend a manifest ascendance and triumphant march of such rights which, in turn, paves the way for the doctrine of progressive realization of the rights under the Constitution. This doctrine invariably reminds us about the living and dynamic nature of a Constitution. Edmund Burke, delineating upon the progressive and the perpetual growing nature of a Constitution, had said that a Constitution is ever-growing and it is perpetually continuous as it embodies the spirit of a nation. It is enriched at the present by the past experiences and influences and makes the future richer than the present.

197. The constitutional courts have to recognize that the constitutional rights would become a dead letter without their dynamic, vibrant and pragmatic interpretation. Therefore, it is necessary for the constitutional courts to inculcate in their judicial interpretation and decision making a sense of engagement and a sense of constitutional morality so that they, with the aid of judicial creativity, are able to fulfill their foremost constitutional obligation, that is, to protect the rights bestowed upon the citizens of our country by the Constitution.

199. What the words of Lord Roskill suggest is that it is not only the interpretation of the Constitution which needs to be pragmatic, due to the dynamic nature of a Constitution, but also the legal policy of a particular epoch must be in consonance with the current and the present needs of the society, which are sensible in the prevalent times and at the same time easy to apply.

200. This also gives birth to an equally important role of the State to implement the constitutional rights effectively. And of

course, when we say State, it includes all the three organs, that is, the legislature, the executive as well as the judiciary. The State has to show concerned commitment which would result in concrete action. The State has an obligation to take appropriate measures for the progressive realization of economic, social and cultural rights.

201. The doctrine of progressive realization of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. As per this doctrine, there must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. The society has to march ahead.

202. The doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise.

203. The aforesaid two doctrines lead us to the irresistible conclusion that if we were to accept the law enunciated in Suresh Koushal's case, it would definitely tantamount to a retrograde step in the direction of the progressive interpretation of the Constitution and denial of progressive realization of rights. It is because Suresh Koushal's view gets wrongly embedded with the minuscule facet and assumes criminality on the bedrock being guided by a sense of social morality. It discusses about health which is no more a phobia and is further moved by the popular morality while totally ignoring the concepts of privacy, individual choice and the orientation. Orientation, in certain senses, does get the

neuro-impulse to express while seeing the other gender. That apart, swayed by data, Suresh Koushal fails to appreciate that the sustenance of fundamental rights does not require majoritarian sanction.”

True copy of the judgment dated 06.09.2018 passed by this Hon'ble Court in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, is attached herewith as **Annexure P-21 [Page 1060-1370].**

II. Because the impugned Amendment Act's legislative regression from the constitutional and statutory framework can be further reaffirmed by this Hon'ble Court's decision in *Jane Kaushik v. Union of India* (2026) 1 SCC 336, wherein it was recognised that the principal constitutional problem lay not in the 2019 Act, but in the failure of the Union and State Governments to effectively implement the rights, protections, and institutional mechanisms already contemplated under it. After recording its concern regarding the continuing barriers faced by transgender persons notwithstanding the enactment of the 2019 Act, this Hon'ble Court exercised its powers under Article 142 and issued binding directions requiring the constitution of Welfare Boards, Transgender Protection Cells, appellate authorities, grievance redressal mechanisms, and other institutional safeguards for the effective enforcement of rights already recognised in law. The constitutional response adopted by this Hon'ble Court was therefore one of strengthening implementation and expanding access to rights.

Rather than implementing the framework whose deficiencies were identified in *Jane Kaushik*, the State has chosen to dilute substantive rights through the Amendment Act.

JJ. Because the 2026 Amendment Act frustrates several progressive rights to constrain the oppressed minority transgender groups into following their traditional metrics. It is the duty of the State to follow the guidance of the spirit of constitutional morality, preserve the true ethos and essence of the rule of law instead of relying on the regressive yardstick of social morality. This ideal has been enshrined in the case of *Navtej Singh Johar*, where this Hon'ble Court applied the notion of constitutional morality to justify conferment of rights in opposition to conservative social morality:

“268.5 Constitutional morality embraces within its sphere several virtues, foremost of them being the espousal of a pluralistic and inclusive society. The concept of constitutional morality urges the organs of the State, including the Judiciary, to preserve the heterogeneous nature of the society and to curb any attempt by the majority to usurp the rights and freedoms of a smaller or minuscule section of the populace. Constitutional morality cannot be martyred at the altar of social morality and it is only constitutional morality that can be allowed to permeate into the Rule of Law. The veil of social morality cannot be used to violate fundamental rights of even a single individual, for the foundation of constitutional

morality rests upon the recognition of diversity that pervades the society.”

The 2026 Amendment Act proceeds upon a framework that treats transgender identity as requiring State validation and supervision rather than constitutional protection. In doing so, it replaces the inclusive constitutional vision affirmed in *NALSA* and *Navtej Singh Johar* with a regime of institutional control over identity. Such legislative regression is incompatible with the constitutional morality that forms a basic feature of Indian constitutionalism.

Non-Consultation with the National Council of Transgender Persons

KK. Because the enactment of the 2026 Amendment Act suffers from a severe procedural incongruity. Section 17 of the 2019 Act had envisaged the role of the NCTP as an advisory body to guide the legislature on matters affecting transgender rights. However, no recommendations were sought from the NCTP to solicit opinions on introducing the 2026 Amendment Act, which contains various provisions that go against the interests of transgender persons. While the advice of the NCTP is not binding on the State, bypassing this consultation left the direct stakeholders out of the discussion for the enactment of a new law. Moreover, the 2026 Amendment Act was passed in both the legislative houses in a hasty and irresponsible manner without holding due debates or bringing it for review before external committees. The intended amendments should have

cured the deficiencies of the 2019 Act; instead, they enforced a position that goes wholly against *NALSA* and constitutional principles.

LL. Because the exclusion of direct stakeholders from the transgender community from participating in the decision-making process for their own rights is a demonstration of the paternalistic view of the State. The members of the transgender community have a right to equal participation and enjoy the right to freedom of speech and expression under Article 19(1)(a) of the Constitution. The 2026 Amendment Act explicitly ignores the lived experiences and socio-legal challenges of transgender persons while putting them at further peril. Thus, the apathetic stance towards treating transgender persons with fairness in the participatory democratic process in areas of their personal choice and identity violates Article 19(1)(a).

MM. Because the failure to consult the National Council for Transgender Persons is not merely a denial of participatory representation. Section 17 of the 2019 Act creates a statutory framework under which the NCTP is entrusted with advising the Central Government on legislation affecting transgender persons. The enactment of sweeping amendments that fundamentally alter the rights of transgender persons without consulting the very statutory body established for that purpose demonstrates a failure to consider relevant material and renders the decision-making process arbitrary. Such exclusion

defeats the legislative purpose underlying the creation of the NCTP itself and is liable to be struck down under Article 14.

NN. Because any concern regarding misuse of identity documentation could be addressed through NCTP consultation, targeted verification mechanisms, auditing procedures, or welfare-specific safeguards without subjecting transgender persons to mandatory medical scrutiny and institutional approval. Further, the severe infringement of dignity, autonomy, privacy, and equality imposed by the Amendment is grossly disproportionate to any speculative administrative benefit claimed by the State. The Amendment therefore fails the constitutional test of proportionality and is liable to be struck down.

Failure to Comply with the International Humanitarian Framework on Rights of Transgender Persons

OO. Because India is a signatory to the Yogyakarta Principles, 2006, which state that all humans are equal irrespective of their gender or sexual orientation. Principle 3 fosters the right to recognition before the law for persons of all sexual orientations and gender identities in all aspects of life. The Principle 3 reads as:

“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. No status, such as marriage or parenthood, may be invoked as such 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 or gender identity. States shall:

- a) Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;*
- b) Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity;*
- c) Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity;*
- d) Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;*

- e) *Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy;*
- f) *Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment”*

True copy of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007), is attached herewith as **Annexure P-22 [Page 1371-1408].**

Furthermore, this Principle has been upheld by this Hon’ble Court in *NALSA* by discussing the need to incorporate all international law principles that align with the spirit of the Constitution as under:

“58. Article 51, as already indicated, has to be read along with Article 253 of the Constitution. If the parliament has made any legislation which is in conflict with the international law, then Indian Courts are bound to give effect to the Indian Law, rather than the international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law... Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into those provisions, e.g., Articles 14, 15, 19 and 21 of the Constitution to enlarge the meaning and content thereof and to promote the object of constitutional

guarantee. Principles discussed hereinbefore on TGs and the International Conventions, including Yogyakarta principles, which we have found not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognized and followed, which has sufficient legal and historical justification in our country.”

PP. Because the recognition and harmonious interpretation of the Yogyakarta Principles and other international human rights instruments in Indian constitutional jurisprudence was intended to secure a rights-based framework for transgender persons grounded in dignity, autonomy, equality and self-determination. India ratified the International Covenant on Economic, Social and Cultural Rights on 10.04.1979 and is obligated to progressively realise the rights guaranteed thereunder without discrimination. Articles 2, 11, 12 and 15 of the Covenant recognise, inter alia, the rights to equality and non-discrimination, an adequate standard of living, the highest attainable standard of physical and mental health, and participation in cultural life. The impugned amendments undermine these protections by imposing exclusionary and regressive barriers upon transgender persons and represent a legislative departure from the progressive rights-based framework recognised under international human rights norms and incorporated into Indian constitutional jurisprudence through decisions of this Hon'ble Court.

True copy of the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly on 16.12.1966 and ratified by India on 10.04.1979, is attached herewith as **Annexure P-23 [Page 1409-1414].**

QQ. Because the implementation of this 2026 Amendment Act raises practical difficulties in the lives of self-identified transgender persons who will be stripped of their legal protection in a retrospective manner. The imposition of the condition of medical verification to prove gender identity takes away their agency. This legislative retrogression coerces self-identified persons to conform to the gender binary against their identity and poses a risk of getting oppressed by their families as well as external groups, as they did before *NALSA*.

RR. Because the impugned amendments inflict serious psychological harm upon transgender persons by subjecting their identity to repeated medical scrutiny, compulsory disclosure, and institutional approval. Transgender persons already experience disproportionately high levels of stigma, family rejection, discrimination, anxiety, depression, and suicidal ideation. By creating barriers to recognition and exposing individuals to involuntary disclosure of their identity and medical history, the Amendment aggravates these existing vulnerabilities and undermines their psychological well-being. The right to life under Article 21 protects not merely physical existence but also dignity, mental integrity, and psychological

autonomy. A statutory framework that exacerbates fear, distress, and uncertainty amongst an already marginalised community is therefore incompatible with Article 21 of the Constitution.

SS. Because the cumulative effect of the impugned Amendment violates various provisions as explained in the grounds above and does not withstand the scrutiny of the golden triangle test of Articles 14, 19, and 21, undermining the Rule of Law, Equality, and the guarantee of dignity and liberty, all of which form part of its Basic Structure. The overall effect of the 2026 Amendment Act is perverse and offends the conscience of the Constitution. It is imperative that such an Amendment is not allowed to prevail for the greater benefit of population that has been victim to systemic marginalisation since time immemorial, providing substantial grounds for this Hon'ble Court to preserve the protectionist spirit embodied in the Constitution by acting as the guardian of people's rights as it has done in the past and declare the Transgender Persons (Protection of Rights) Amendment Act, 2026 as unconstitutional.

PRAYER

It is most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

a. Issue an appropriate writ, order or direction declaring the Transgender Persons (Protection of Rights) Amendment Act, 2026, wholly unconstitutional and void for violating Articles 14, 15, 19(1)(a), 21 and 29 of the Constitution of India;

b. In the alternative, issue an appropriate writ, order or direction declaring unconstitutional and striking down, or in the alternative reading down, or otherwise invalidating Sections 2(ii) (Medical Board-based certification framework), 2(iii) (deletion of the definition of “person with intersex variations”), 2(iv) (amended definition of “transgender person”), 3 (omission of the statutory recognition of self-identification under Section 4(2)), 4(a) (mandatory medical recommendation for issuance of certificate of identity), 5(a), 5(b), 5(c) and 5(d) (mandatory application, disclosure obligations, medical certification requirements and removal of existing safeguards under Section 7), 7 (substituted penal provisions under Section 18), and 8(a) (rule-making powers relating to compulsory disclosure by medical institutions) of the Transgender Persons (Protection of Rights) Amendment Act, 2026, as being violative of Articles 14, 15, 19(1)(a), 21 and 29 of the Constitution of India and contrary to the law laid down by this Hon'ble Court in *NALSA v. Union of India* (2014) 5 SCC 438 and other binding constitutional precedents.

c. Additionally, direct the Union of India to take all necessary measures, including issuance of appropriate directions to States and Union Territories, to ensure that all certificates of identity issued under Sections 6 and 7 of the Transgender Persons (Protection of Rights) Act, 2019 prior to the coming into force of the 2026 Amendment Act remain valid and operative for all purposes, and that no transgender person is denied, suspended from, deprived of, or rendered ineligible for any rights, entitlements, statutory protections and legal recognition flowing therefrom during the pendency of any application, review, verification, reconsideration, or revision under the amended framework.

d. Direct the Union of India to frame, within a time-bound period, a certification and recognition framework consistent with the principles of self-identification, dignity, autonomy, privacy, and equality recognised in NALSA and subsequent constitutional jurisprudence, and to frame appropriate rules, guidelines, and protocols governing its implementation, including safeguards relating to accessibility, confidentiality, transparency, protection of constitutional rights, and collection, storage, retention, sharing and use of sensitive personal and medical information.

e. Direct the Union of India to ensure that any future legislative, executive, regulatory, or rule-making exercise affecting the rights of transgender persons is undertaken only after meaningful consultation with the National Council for

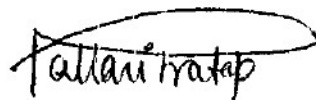
Transgender Persons constituted under Section 16 of the 2019 Act and entrusted under Section 17(a) with advising the Central Government on legislation affecting transgender persons and with representatives of affected transgender communities;

f. Direct the Respondents to establish or designate fair, accessible, confidential and effective grievance redressal mechanisms relating to denial of identity recognition, breach of confidentiality, discriminatory treatment, harassment during certification or medical verification processes, and violations of rights under the 2019 Act and Rules framed thereunder;

g. Direct the Respondents to undertake appropriate sensitisation, awareness, training and compliance measures for public authorities, healthcare institutions, educational institutions, law-enforcement agencies and other authorities responsible for implementation of the 2019 Act, and to ensure that all interactions involving transgender persons are conducted in a manner consistent with dignity, privacy, confidentiality, and self-identified gender;

h. Pass any such further orders as this Hon'ble Court may deem fit and proper in the facts and in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN
DUTY BOUND SHALL EVER PRAY.



Filed by:

—

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New Delhi

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