

## IMPACT OF THE 2026 AMENDMENT TO TRANSGENDER ACT ON EMPLOYERS AND EMPLOYEES

### BACKGROUND

The principal legislation Transgender Persons (Protection of Rights) Act, 2019 ("**2019 Act**"), was enacted to uphold the mandate of the Supreme Court's landmark *NALSA v. Union of India (2014)* judgment, which recognized the right to "self-perceived gender identity" as a fundamental right under Article 21. Internationally, the UN Human Rights Council and the International Labour Organization (ILO) (specifically Convention C111) have long advocated for the principle of self-determination, emphasizing that gender identity is an internal sense of self and should not be contingent upon medical intervention or external verification. The 2019 Act originally followed this "self-identification" model for obtaining a Certificate of Identity.

### AMENDMENT AND RATIONALE

The Transgender Persons (Protection of Rights) Amendment Act, 2026 ("**2026 Amendment Act**") fundamentally pivots from the self-identification model to a medicalized model. The 2026 Amendment Act has received President's assent and gazetted on March 30, 2026. The main features of the 2026 Amendment Act are:

- The amendment's clear thrust is to replace the earlier self-identification model with a more medical-administrative one: section 2(k) is rewritten to define "transgender person" by reference to socio-cultural identities and certain intersex/medical variations, but it expressly excludes persons with different sexual orientations and self-perceived sexual identities.
- The "Exclusion Clause" - A new proviso explicitly excludes persons with different sexual orientations and self-perceived sexual identities.
- The objectives suggest the amendment aims to "prevent misuse" of the legislation and ensure that statutory benefits reach "biologically verifiable" individuals, citing a need for a "rigorous administrative framework" for identity recognition.

### APPEAL AND CHALLENGE IN SUPREME COURT

The constitutional validity of the 2026 Amendment Act has been challenged in Supreme Court in *Laxmi Narayan Tripathi & Anr. v. Union of India (2026)*:

- The Supreme Court has issued notice to the Central Government; however, no interim stay has been granted as of April 2026. Petitioners argue the Act violates the "Right to Self-Determination" (NALSA), the "Right to Privacy" (Puttaswamy), and Article 14 (Equality), as it creates an arbitrary classification between "medicalized" transgender persons and those who self-identify, effectively stripping the latter of their constitutional personhood.
- Separate challenges have also been reported in the Kerala High Court, Delhi High Court, and Rajasthan High Court, which have already issued notices or begun hearing the matter. The common grounds across these challenges are that the amendment erases self-determination, conflicts with NALSA, and violates Articles 14, 15, 19 and 21.

### IMPACT ON EMPLOYERS AND EMPLOYEES

Many employers adapted the 2019 Act by preparing and including a transgender policy in their employee handbook. This policy was aligned with their global policies which is in line with what was proposed by the UN Human Rights Council and the International Labour Organization (ILO). Considering the uncertainty regarding the enforcement of the 2026 Amendment Act, for employers, the safest current position is to continue their policies in accordance with 2019 Act till the 2026 Amendment Act is formally brought into force and the courts clarify its validity. This would imply maintaining non-discrimination in employment, a complaints officer, and an equal opportunity policy.

For employees, the amendment does not say that existing jobs, salaries, or service histories are automatically terminated or invalidated. However, the main concern remains with respect to the legal uncertainty, possible mismatch between earlier identity recognition and the new certification model, privacy concerns from medical-board scrutiny, and the risk

that some transgender or gender-diverse employees may be left without statutory coverage if they do not fit the new definition. Another issue is if some employees fall outside the narrower statutory definition going forward, will they have to undergo medical tests or be re-classified.

## CONCLUSION

The UN Human Rights Committee specifically urged India to improve enforcement of the 2019 Act and to ensure gender recognition can be obtained without unnecessary medical or administrative hurdles, which is exactly where the new amendment creates friction. The ILO materials also matter here because they describe discrimination and harassment against LGBTIQ+ persons as a workplace reality across the employment cycle, which means the practical risk is not just legal status but also day-to-day treatment at work.

## ELP Comments

*The 2026 Amendment Act is a major shift away from self-identification toward a medicalised, bureaucratic recognition model. As of the Gazette text, it is assented and published but commencement still depends on a further notification, and it is already under active constitutional challenge. The amendment does create a confusion of what steps need to be taken at this point by the employers. In our view, employers should not take any adverse action against existing employees on this basis alone; the prudent course is to maintain current protections and wait for the commencement notification and court guidance.*

We hope you have found this information useful. For any queries/clarifications, please write to us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

**Vivek Daswaney, Partner** – Email - [VivekDaswaney@elp-in.com](mailto:VivekDaswaney@elp-in.com)

**Srivaisanavi Arumugam, Associate** – Email - [SrivaisanaviArumugam@elp-in.com](mailto:SrivaisanaviArumugam@elp-in.com)

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