
CONSTITUTIONAL RIGHTS VS STATE REGULATION: REASSESSING GENDER IDENTITY UNDER THE TRANSGENDER AMENDMENT BILL, 2026

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I. Introduction

The legal recognition of gender identity in India has never been merely a question of classification; it has been a question of dignity, autonomy, and constitutional morality. Over the past decade, Indian jurisprudence appeared to move decisively toward a rights-based framework that located gender identity within the domain of individual self-determination. However, the Transgender Persons (Protection of Rights) Amendment Bill, 2026 signals a marked shift in this trajectory.

The amendment reintroduces institutional oversight into what had previously been recognised as a deeply personal and self-determined aspect of identity. This raises a foundational constitutional question: **to what extent can the State regulate identity without undermining the very rights the Constitution seeks to protect?**

This article argues that the 2026 Amendment represents a departure from the constitutional ethos articulated by the Supreme Court and risks transforming gender identity from a matter of personal autonomy into one of bureaucratic validation.

II. Constitutional Foundations: The Transformative Vision of NALSA

The contemporary legal framework governing transgender rights in India finds its origins in *National Legal Services Authority v. Union of India* (“NALSA”), a landmark judgment delivered in 2014.¹ The Supreme Court, in a transformative reading of the Constitution, held that gender identity is integral to personal autonomy and dignity, and therefore protected under **Part III**.

¹ Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 S.C.C. 438 (India).

The Court explicitly recognised that the right to self-identify one's gender falls within the ambit of **Articles 14, 19(1)(a), and 21**.² Importantly, it rejected the notion that gender identity must be validated through biological or medical criteria. Instead, it held that **self-identification is sufficient for legal recognition**, thereby locating identity within the individual rather than the State.³

NALSA was not merely declaratory—it imposed positive obligations on the State, including the recognition of transgender persons as socially and educationally backward classes and the provision of affirmative measures.⁴ In doing so, it aligned Indian constitutional law with a broader understanding of substantive equality.

III. Statutory Framework: The 2019 Act and Its Limitations

In response to NALSA, Parliament enacted the **Transgender Persons (Protection of Rights) Act, 2019**.⁵ The legislation sought to prohibit discrimination in key areas such as employment, education, healthcare, and access to public services.⁶ It also introduced a framework for legal recognition through the issuance of identity certificates.

However, the Act attracted criticism for its procedural ambiguities and its partial departure from the principle of absolute self-identification. Although it did not mandate surgical intervention, it required individuals to apply for certification through administrative authorities, thereby introducing a degree of State mediation.⁷

Despite these limitations, the 2019 Act broadly retained the normative foundation laid down in NALSA—namely, that gender identity originates in self-perception and must be respected as such.

IV. The 2026 Amendment: Institutionalising Regulation

The Transgender Persons (Protection of Rights) Amendment Bill, 2026 represents a significant departure from the existing legal framework by displacing the principle of **self-identification**

² Id. at 463–67.

³ Id. at 470.

⁴ Id. at 474–75.

⁵ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, India Code (2019).

⁶ Id. §§ 3–10.

⁷ See id. § 5; see also critiques in Arvind Narrain, *The Transgender Persons Bill and the Limits of Law Reform*, 10 NUJS L. Rev. 321 (2019).

with a regime of **mandatory medical or institutional certification**. In doing so, the amendment effectively reintroduces **medical gatekeeping**, requiring individuals to obtain validation from designated authorities before their gender identity can be legally recognised. This shift not only results in the **narrowing of recognised identities**—potentially excluding non-binary and gender-fluid persons—but also leads to an **expansion of bureaucratic discretion** in determining eligibility for such recognition. The cumulative effect is a **reconfiguration of gender identity from personal autonomy to institutional approval**. From a doctrinal standpoint, this marks a decisive movement away from a **rights-based model** toward a **regulatory framework**, in which identity is no longer presumed but must be verified through state-sanctioned processes, in contrast to the principles laid down in *NALSA v. Union of India*.

V. Constitutional Tensions: Autonomy, Equality, and Dignity

The amendment raises serious concerns under multiple constitutional provisions.

A. Article 14: Equality Before Law

By narrowing the definition of transgender identity and subjecting recognition to external validation, the amendment risks creating **arbitrary classifications**. Individuals who identify outside rigid medical criteria may be excluded, thereby violating the principle of equal protection.⁸

B. Article 19(1)(a): Freedom of Expression

The Supreme Court in *NALSA* recognised gender expression as a form of protected speech.⁹ The requirement of certification potentially restricts this freedom by conditioning expression on prior approval. This transforms a fundamental right into a contingent privilege.

C. Article 21: Life, Liberty, and Dignity

The most profound tension arises under **Article 21**, where the right to life has been expansively interpreted to include **dignity, privacy, and autonomy**.¹⁰ Gender identity, as recognised in

⁸ INDIA CONST. art. 14.

⁹ *NALSA*, (2014) 5 S.C.C. at 466.

¹⁰ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

NALSA v. Union of India, is central to these values. By subjecting identity to medical scrutiny, the amendment arguably infringes upon **bodily autonomy**, **decisional privacy**, and **psychological integrity**, each of which forms an essential component of the broader guarantee of personal liberty. In effect, this shift results in the **recharacterisation of identity from an intrinsic attribute to a state-approved status**, thereby undermining the constitutional protection afforded to individual self-determination.

In effect, it repositions identity from being an **intrinsic attribute** to a **state-approved status**.

VI. Lived Realities and Social Consequences

Beyond doctrinal concerns, the amendment has significant implications for the **lived experiences of transgender persons**. Reports of **protests, institutional resignations, and legal challenges** indicate widespread resistance within the community, reflecting a deep sense of uncertainty and exclusion. At a practical level, the amendment may lead to the **creation of barriers in accessing welfare schemes**, the **generation of uncertainty regarding previously issued identity documents**, and the **reinforcement of social stigma through external validation of identity**. Taken together, these consequences underscore a persistent structural concern within Indian law—namely, the **divergence between formal recognition and substantive inclusion**, where legal acknowledgment does not necessarily translate into meaningful social and economic equality.

VII. Academic and Civil Society Critiques

Legal scholars and civil society organisations have widely criticised the amendment. Scholars have argued that the move toward medical certification reflects a **regressive return to biological essentialism**, undermining the progressive ethos of NALSA.¹¹

Organisations such as the People's Union for Civil Liberties (PUCL) have emphasised that the amendment is constitutionally suspect for its failure to uphold dignity and autonomy.¹² Similarly, public health scholars have pointed out that mandatory medicalisation may exacerbate existing inequalities in access to healthcare.

¹¹ Gautam Bhatia, *The Transformative Constitution and Transgender Rights*, 8 Indian J. Const. L. 1 (2019).

¹² People's Union for Civil Liberties, *Statement on Transgender Rights* (2026).

Emerging scholarship from institutions such as NLSIU and NALSAR has increasingly framed this issue within the broader debate on **constitutional morality versus majoritarian governance**, arguing that rights cannot be subordinated to administrative convenience.

VIII. Comparative Perspective

Globally, there has been a discernible shift toward **self-identification models** of gender recognition. Countries such as Argentina, Ireland, and Malta have adopted frameworks that prioritise autonomy over institutional control.¹³

India's movement in the opposite direction raises questions about its alignment with international human rights norms, particularly those articulated in the Yogyakarta Principles.

IX. The Way Forward: Reclaiming Constitutional Ground

A constitutionally consistent approach to gender identity must prioritise **individual autonomy while addressing legitimate administrative concerns**. In this regard, a balanced path forward would require the **reinstatement of self-identification as the cornerstone of legal recognition**, in line with the principles laid down in *NALSA v. Union of India*. Equally important is the **limitation of state intervention to a facilitative rather than determinative role**, ensuring that the State does not assume authority over personal identity. Further, any meaningful reform must adopt a **community-centric approach to lawmaking**, incorporating the voices and lived experiences of transgender persons in the legislative process. Finally, the emphasis must shift toward the **strengthening of implementation mechanisms**, particularly through the effective enforcement of anti-discrimination protections, rather than the continual redefinition or regulation of identity itself.

X. Conclusion

The Transgender Amendment Bill, 2026 represents more than a statutory modification; it reflects a deeper tension within Indian constitutionalism. On one hand lies a vision of the Constitution as a transformative document that protects individual autonomy and dignity. On the other lies an expanding regulatory State that seeks to classify, verify, and control.

¹³ See Gender Identity Law, Law No. 26.743 (Arg. 2012); Gender Recognition Act 2015 (Ir.); Gender Identity, Gender Expression and Sex Characteristics Act (Malta).

The ultimate question is not merely legal but philosophical:

Can identity, which the Constitution recognises as deeply personal, be legitimately subjected to institutional approval?

The answer to this question will determine not only the future of transgender rights in India but also the integrity of its constitutional promise.

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