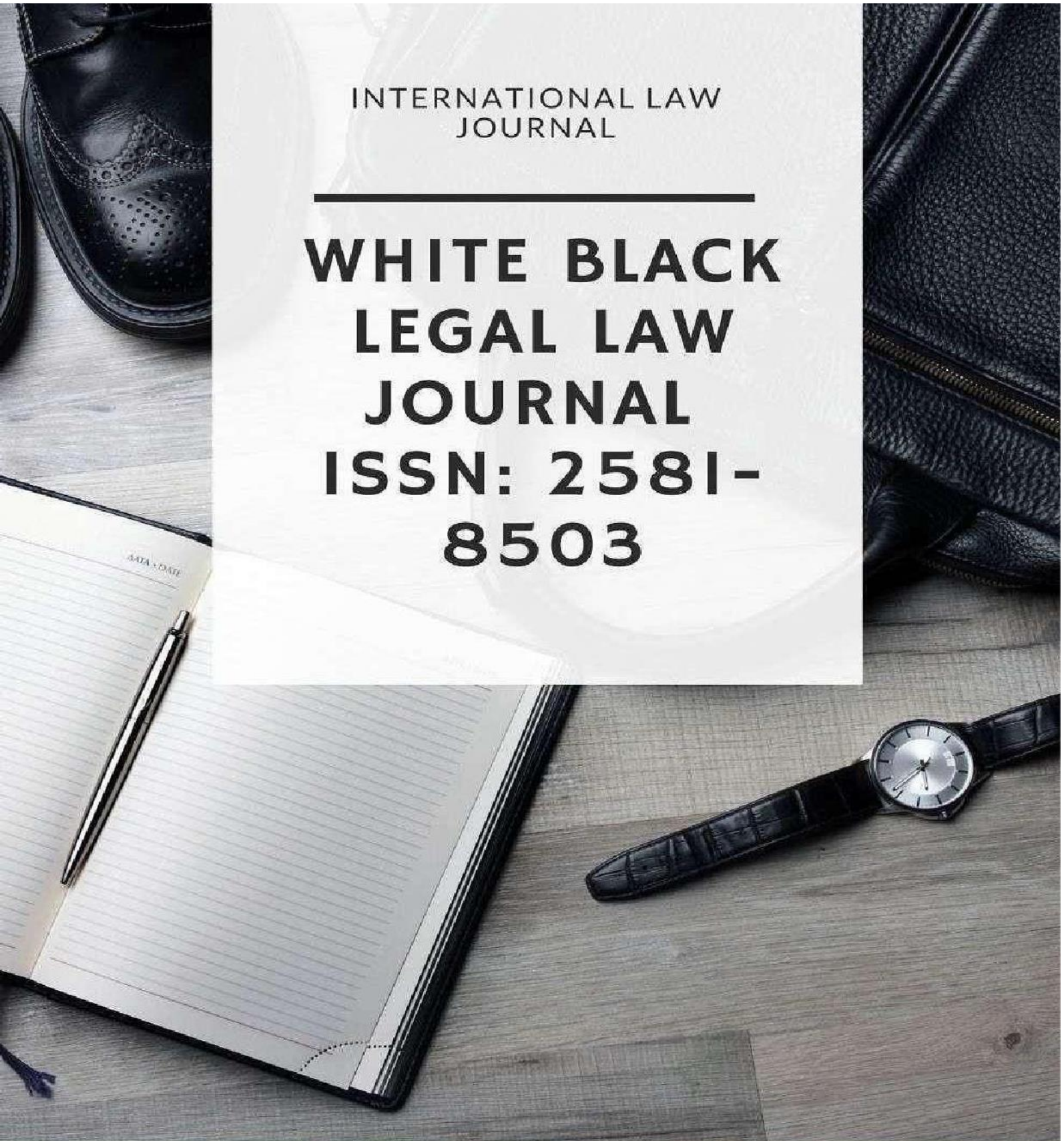




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FROM SELF-IDENTIFICATION TO STATE VERIFICATION: CONSTITUTIONAL CHALLENGES TO THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT BILL, 2026.

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I. Introduction: The Evolution of Transgender Rights in India

The inclusion of transgender individuals in the constitution of India has been an evolving journey marked by a series of steps and legal debates. Gender diverse communities like Hijras, Kinnars, Aravanis and Jogtas have been around for centuries in the Indian subcontinent, but have faced comparable issues of exclusion, stigma and marginalisation in legal and social settings across the region. In the past, these communities had a prominent and visible role in social and cultural life, especially in the area of ritual, blessing and community customs. However, the colonial period fundamentally altered this relationship. British administrators looked at such gender non-conforming communities with suspicion and criminality, leading to legislation like the Criminal Tribes Act, 1871, which required many transgender individuals to be policed and ostracised in society. The repercussions of this marginalization persisted even after independence, leaving transgender people at the fringes of educational and employment opportunities, access to health care and political engagement.

The Constitution of India had guaranteed equality, freedom and dignity to all the citizens. But for decades, the presence of transgender people was not acknowledged in legal texts. Articles 14, 15, 19 and 21 provided equal protection before the law, protection from discrimination, freedom of expression, and the right to life and personal liberty, but these guarantees were applied mainly in relation to the male/female gender. This created a systemic challenge for transgender people in obtaining fundamental rights and state services. Therefore, not only were they excluded from full citizenship, but their social prejudices, based on gender diversity, were also strengthened.

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The landmark decision of Supreme Court in the case of *National Legal Services Authority v. Union of India* ("NALSA") marked a pivotal moment. In 2014, the Court officially declared transgender people to be a "third gender" in line with the Convention's recognition of personal dignity and autonomy in matters of gender identity. The Court considered that the only criterion for legal recognition was not biological, but that each person has the right to make their own choices on their own gender identity. The judgment argued that this principle was directly related to the guarantees of equality, freedom of expression and dignity in the Constitution, noting that self-identified gender is an integral part of personality and selfhood. The Court thus shifted the ground of constitutional jurisprudence from recognition of transgender identities through tolerance to a recognition of their rights³.

The NALSA judgment also contained positive obligations that were imposed on the State. It instructed the governments to consider transgender people as socially and educationally backward classes to provide them with affirmative action, to provide them access to healthcare and public facilities and to provide legal mechanism for the facilitation of recognition of chosen gender identity. Most significantly, the Court provided a foundation for these directives in the broader constitutional obligation to achieve transformative equality. NALSA did not see the issue of transgender rights as a welfare one, but as one of citizenship, dignity, and substantive justice.

The legislative response to *NALSA* emerged in the form of the Transgender Persons (Protection of Rights) Act, 2019⁴. The Act sought to provide statutory recognition to transgender persons and introduced measures aimed at preventing discrimination in areas such as education, employment, healthcare, and access to public services. It also adopted a relatively broad definition of "transgender person," encompassing trans men, trans women, genderqueer individuals, persons with intersex variations, and certain socio-cultural identities. Most significantly, the legislation recognised the right of a transgender person to self-perceived gender identity, reflecting one of the central principles articulated in *NALSA*⁵. Although the Act was criticised by many activists for its certification procedures and perceived limitations, it nonetheless represented an important legislative acknowledgment of transgender persons as rights-bearing citizens entitled to constitutional protection.

³ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

⁴ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 2(k), India Code (2019).

⁵ Id. § 4(2).

In this context, the Transgender Persons (Protection of Rights) Amendment Bill, 2026 introduces new changes in the legal framework of gender recognition. This has sparked significant discussion about the Bill's departure from the NALSA definition of "transgender person" to "medical" verification, and its impact on the constitutional ideals of privacy, dignity and personal autonomy⁶.

This article explores the question of whether the Amendment Bill is consistent with the constitutional vision on gender identity as provided for by the Supreme Court or whether the Amendment Bill departs from the constitutional vision. It contends that the 2026 Amendment Bill is different from the constitutional guarantee of self-identification, since it includes a system of verification by the state and medical examination which raises important questions under the constitutional provisions on self-identification (Article 14, 15, 19 and 21).

II. From Self-Identification to State Verification: Understanding the 2026 Amendment

National Legal Services Authority v. Union of India (NALSA) was the major decision taken by the Supreme Court which was followed by the enactment of the Transgender Persons (Protection of Rights) Act, 2019 by the Parliament. The Act brought some criticism from the transgender rights community for the certification process and the small scope of enforcement, but it did represent a legislative effort to offer legal recognition and protection for transgender individuals in a rights-based approach. The essence of the 2019 Act was to realize that gender identity was not synonymous with biological sex and was to include various gender identities in the Indian law. The Transgender Persons (Protection of Rights) Amendment Bill, 2026, however, makes significant changes to this framework. Taken together, the changes suggest transition from a self-identifying model to a medical or state overseen model.

The major change in the Amendment Bill is the change in the definition of a "transgender person." The 2019 Act defined a transgender person as someone whose gender was not that assigned at birth. The wording explicitly covered trans men, trans women, genderqueer, persons with intersex variations and persons from socio-cultural communities like hijras, kinnars, aravanis and jogtatas⁷. This broad formulation reflected the spirit of *NALSA*, which

⁶ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026, cls. 2–5 (India).

⁷ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 2(k), India Code (2019).

recognised gender identity as a deeply personal aspect of individual autonomy and rejected rigid biological classifications.

The 2026 Amendment is an exception to this inclusive definition, introducing a more specific and category-focused definition. Under the proposed definition, a transgender person includes individuals belonging to certain recognised socio-cultural identities, persons with intersex variations and congenital biological conditions affecting sex characteristics, and individuals who have allegedly been compelled through force, coercion, deception, or other means to assume or present a transgender identity⁸. Significantly, the Amendment removes explicit references to trans men, trans women, and genderqueer persons. It also adds a proviso that excludes people with different sexual orientations and different self-perceived sexual identities from the definition⁹.

A Statement of Objects and Reasons is attached which explains the basis of the legislation for this change. The current definition is overly inclusive and poses problems in determining who the intent of the legislation is to protect, the government said. Therefore, the Amendment aims to replace a self-determination model with one based on objectively verifiable characteristics, that is, those that are biological and that result in severe social exclusion¹⁰.

The other key development relates to the recognition of gender identity. Section 4(2) of the 2019 Act specifically states that a person who is recognised as transgender has a right to his or her own gender identity¹¹. This was one of the most explicit affirmations of the principle enunciated in NALSA. The Bill makes no mention of the existence of a self-perceived gender identity, so this is a symbolic removal as well as a legal one. It does not refer to an idea that people should be their own experts on what they believe they are, and that recognition might rest on outside validation by state institutions.

The Amendment also changes the way legal recognition is gained. The Amendment introduces a new entity called the "authority"¹², which is a medical board chaired by a Chief Medical Officer or Deputy Chief Medical Officer, and requires the District Magistrate to take into

⁸ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026, cl. 2(iv) (India).

⁹ Id.

¹⁰ Id. Statement of Objects and Reasons ¶¶ 2–5.

¹¹ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 4(2), India Code (2019).

¹² Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 6, India Code (2019).

account the recommendations of this authority before issuing the certificate, and to seek further expert medical advice where appropriate¹³.

This change significantly strengthens the role of medical practitioners in deciding eligibility criteria in the process of legal recognition. The process of certification is not necessarily administrative; it becomes dependent of medical evaluation and verification. The new medical review board creates an opportunity to have a state-appointed committee of experts evaluate claims of gender identity before legal recognition is awarded. This is a major shift from the concept of self-identification, which relies more on a person's self-declared identity than on medical evaluation¹⁴.

Additionally, the Amendment adds new reporting requirements to the medical institutions. The Bill not only provides for the issuing of a certificate of identity for a person who has had surgery to alter his gender but also imposes a duty on a medical institution conducting the surgery to provide information about the person to the relevant District Magistrate and medical authority¹⁵. The exact details and process for such provision are left to subordinate legislation, but the Bill does establish a statutory framework for the exchange of personal medical information with government officials¹⁶.

These amendments are not just a bunch of tweaks on procedure. They represent a shift in the legislation's definition of gender identity. Although the 2019 Act made some strides, it acknowledged that transgender identity was an issue closely linked to personal autonomy and self-perception, the 2026 Amendment proposes to fix the ground for recognition with biological parameters, medical evaluation and administrative validation. The framework that has emerged from this is one whereby the power of decision is not vested in the individual but the State, and this poses important questions about the compatibility of the Amendment with constitutional values of dignity, equality, privacy and self-determination. It is these constitutional issues that are the basis for the next.

¹³ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026, cl. 2(ii) (India).

¹⁴ Id. cl. 4(a).

¹⁵ Id. cl. 5(b).

¹⁶ Id. cl. 8(a).

III. Constitutional Challenges to the Amendment Bill

The Transgender Persons (Protection of Rights) Amendment Bill, 2026 has many constitutional issues that goes beyond the legislative policy. The essence of the Bill is to redefine the relationship between the individual and the State in relation to gender identity. The Bill's limitations on transgender and gender non-conforming people, removal of reference to individuals' own sense of gender identity from the definition, and its incorporation of medical experts into the determination of legal gender identity make it vulnerable to challenge under Articles 14, 15 and 21 of the Constitution. Whether these changes are consistent with the Supreme Court's interpretation of the concepts of equality, dignity, autonomy and personal liberty in *NALSA v Union of India*, *Justice K.S. Puttaswamy v Union of India*, and *Navtej Singh Johar v Union of India* will be the deciding factor in determining the constitutionality of the changes.

A. Equality and Non-Discrimination under Articles 14 and 15

Article 14 provides for equality in the law and equal protection of the laws. The Supreme Court has also held that a law should be declared unconstitutional if it is arbitrary and needs no rational justification or if it fails to provide a rationale that justifies the differential treatment of a specific group of people¹⁷. In recent years, the Supreme Court has also established that laws can be struck down under the grounds of manifest arbitrariness when there is no rational basis for the law, or when the law is overly burdensome on a certain class of people¹⁸.

The Amendment Bill distinguishes between people who have a set of characteristics based on their biology or socio-cultural background or a gender identity based on self-identification. The government argues that the Bill results in a significant restriction on the class of people who have rights to protection under the Act because welfare should only be applied to those who are experiencing discrimination based on the conditions that are identifiable¹⁹.

It's unclear whether this classification meets constitutional scrutiny. Gender identity, as acknowledged by the Supreme Court in *NALSA*, does not only rely on biological gender attributes, but also on the psychological and self-identified gender of the transgender²⁰. It seems a challenge to the Court that a gender-specific legislative regime that focuses on biological characteristics and ignores the transgender self-identified as transgender would be at odds with

¹⁷ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1.

¹⁸ *State of W.B. v. Anwar Ali Sarkar*, A.I.R. 1952 S.C. 75.

¹⁹ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026, cl. 2(iv) (India).

²⁰ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438, ¶¶ 69–75.

the Court's conception of gender. Where categories are excluded from the list that have already been identified, this could thus lead to specific concerns regarding under-inclusiveness and arbitrary classification²¹.

The Bill also has an impact on Article 15 of the Constitution, which bars discrimination based on sex. If gender identity is part of the constitutional concept of sex, then excluding a person based on the person's self-perceived gender identity as a medical diagnosis, because the diagnosis is not made, could be considered differential treatment based on a constitutionally protected characteristic.

In addition, the Amendment will remove statutory recognition from categories that the 2019 Act originally encompassed, potentially leading to an unequal recognition and protection of transgender lives. This could also weaken the constitutional imperative of substantive equality which not only means that the State cannot discriminate against a vulnerable group but also must break apart structures of exclusion.

B. Privacy, Dignity, and Personal Autonomy under Article 21

The most important constitutional objection to the Amendment Bill is based on Article 21, which guarantees life and personal liberty. These are recognised in contemporary constitutional jurisprudence as aspects of the guarantee of dignity, privacy, bodily integrity and decisional autonomy²². These are recognised as aspects of the guarantee of dignity, privacy, bodily integrity and decisional autonomy in contemporary constitutional jurisprudence.

In *Puttaswamy*, the Supreme Court held that privacy encompasses decisional autonomy with respect to identity, personal choice, and bodily integrity²³. The Court acknowledged that the Constitution guarantees the right of an individual to make fundamental choices in their life without undue interference by the State. In the same vein, the Court in *NALSA* said the self-determined gender identity is an integral part of dignity and personal autonomy²⁴.

The Amendment Bill's evidence-based process for certifying gender recognition seems to be taking the opposite approach by including state-appointed medical experts as the key players in the process of recognising genders. The law does not recognize an individual's self-assessment of gender identity; instead, a person's gender identity must be assessed by outside authorities prior to legal recognition²⁵. This becomes a form of status quo where gender identity

²¹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

²² *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.

²³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

²⁴ *National Legal Services Authority*, (2014) 5 S.C.C. 438, ¶¶ 69–75.

²⁵ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026, cl. 4(a) (India).

is not something that is self-determined but instead is dependent on institutional approval.

Medical information on gender transition is one of the most personal types of information that medical institutions have to provide to government bodies²⁶. Medical information relating to gender transition is among the most intimate categories of personal data. The collection and transmission of such information by statutory mandate invite questions regarding necessity, proportionality, and procedural safeguards. Although the State may have legitimate administrative interests, constitutional jurisprudence requires that any intrusion into privacy satisfy strict standards of justification²⁷.

Beyond privacy, the Amendment implicates the constitutional value of dignity. The Supreme Court has repeatedly described dignity as the foundation of all fundamental rights²⁸. Dignity encompasses not merely protection from physical harm but also recognition of individual agency and self-worth. Requiring transgender persons to establish the authenticity of their identities before medical boards may be perceived as undermining this principle by treating identity as something that must be verified rather than respected.

IV. Constitutional Morality versus Legislative Policy

Discussions around the constitutional debates on the Transgender Persons (Protection of Rights) Amendment Bill, 2026 cannot just be done based on individual fundamental rights. Articles 14, 15, 19 and 21 give the immediate context for constitutional review, but the issue here is whether there is a relationship between legislative policy and constitutional morality. The Amendment Bill is a particular vision of the legislators' conception of gender identity, which focuses on objective verification, biological features and administrative certainty. It is not only the nature of the text of the Constitution that dictates whether such a vision is constitutionally permissible, but also the interpretative principles that inform it. The doctrine of constitutional morality offers some helpful perspective on the validity of the Amendment in this instance.

The concept of constitutional morality has taken a prime place in the constitutional jurisprudence of India. The word originates from the observations made by Dr. B.R. Ambedkar during the debates in the Constituent Assembly but has been interpreted largely by the judiciary. Constitutional morality demands that public institutions behave according to the

²⁶ Id. cl. 5(b).

²⁷ *Justice K.S. Puttaswamy (Retd.)*, (2017) 10 S.C.C. 1.

²⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

values found in the Constitution which may be in tension with social values or the dominant opinion. Constitutional governance does not only involve respect of the majority opinion, but also respect of values like liberty, equality, dignity and inclusion²⁹.

The Supreme Court has championed the cause of constitutional morality to a greater extent in cases involving historically marginalized and vulnerable groups. In *NALSA v. Union of India*, the Court underscored that “the sanctum sanctorum of the Constitution cannot be denied due to social prejudices or traditional notions of gender”³⁰ and, in *Navtej Singh Johar v. Union of India*, the Court noted that “the constitutional morality takes precedence over social morality when the rights of the minorities are involved.” These decisions demonstrate the court's general approach of guaranteeing that constitutional rights are not waived when legislative or social preferences are otherwise³¹.

In the context of this, the Amendment Bill poses a big constitutional challenge. The principles of the Bill relate to the desire for certainty, identification and targeted distribution of benefits. From a policy point of view, these objections are not entirely unwarranted, because the existing definition is too wide and, as the government itself has argued, it is not sufficient that the person feels they have a legal right to be included. Legislatures have the right to set conditions for welfare schemes and, indeed, they can lawfully aim to stop welfare benefits being abused.

However, constitutional morality requires that such policy choices remain consistent with the constitutional understanding of personhood and dignity. The difficulty with the Amendment Bill lies in the fact that it appears to redefine transgender identity in a manner that departs from the principles recognised in *NALSA*. Whereas the Supreme Court viewed self-identification as central to gender identity, the Amendment privileges medical verification and biological characteristics as the basis of legal recognition³². In doing so, it shifts the focus from individual autonomy to institutional validation.

The Amendment also points to the general conflict between regulatory welfare and recognition of rights. Even if the shortcomings of the 2019 Act are acknowledged, the overall approach of

²⁹ *Government of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501.

³⁰ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

³¹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

³² The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026, Statement of Objects and Reasons ¶¶ 2–5 (India).

the Act towards transgender persons was to treat them as rights bearing citizens who have a right to equal recognition under the Constitution. By contrast, the Amendment seems to be more of a regulatory approach regarding its definition of transgender identity, as it wanted the definition to be as broad as possible to allow for transgender identities that are not solely based on biological features. The recognition of the right to legal assistance is linked to medical evaluation, and the right to the protection is restricted to those categories determined by the State³³.

The move is noteworthy, because it marks a change in the philosophy underlying transgender rights law. A rights-based approach starts with the person and aims to ensure autonomy, dignity and freedom from discrimination. The initial step in a regulatory framework is to establish state boundaries and identify who is to be protected by using a set of criteria. As regards questions of identity and personal autonomy, the general rule is that constitutional morality is on the side of the first, which may seek a legitimate aim; but the second may also be seeking a legitimate aim.

The Supreme Court's recent decisions illustrate a growing reluctance to allow the government too much power. These cases make it apparent that personal autonomy in the exercise of personal identity, relationships and life choices is constitutionally guaranteed, not as a privilege accorded to the individual by the State but as an integral part of human dignity³⁴.

The debate about the Amendment Bill is not just about transgender rights. It is about a larger constitutional issue of how far the State should go in regulating personal identity. Legislative policy must be consistent with the values of dignity, autonomy and equal citizenship which underlie the constitutional order if it is to be constitutional morality. There are concerns that, insofar as the Amendment provides for self-identification to be replaced by state verification as the basis for legal recognition, it serves to the detriment of the constitutional principles. The key question is, of course, whether the Bill is a good administration and whether it is faithful to the transformative vision of equality and liberty that the Constitution embodies.

³³ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026, cls. 2–5 (India).

³⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1; *Shafin Jahan v. Asokan K.M.*, (2018) 16 S.C.C. 368; *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

V. Rethinking Gender Recognition in India: The Way Forward

The debate surrounding the Transgender Persons (Protection of Rights) Amendment Bill, 2026 presents an opportunity to reconsider the future of gender recognition in India. The State certainly has a legitimate interest in securing administrative certainty and preventing that benefits under the statute be misused, but it can do this in a way that respects constitutional assurances of dignity, autonomy, equality and privacy. The question, however, is not just whether gender recognition should be regulated, but how, in a way that does not violate the rights of those over whom a regulation is supposed to protect. Other jurisdictions have achieved a balance between administrative considerations and respect for individual self-determination through comparative experiences.

There are several countries that have enacted legislation that prioritizes self-identification in gender recognition. There are several countries that have passed laws that put self-identification at the heart of gender recognition. One of the most advanced examples is the Gender Identity Law of Argentina 2012. The Argentine model is based on the premise that people know what it means to be a woman or a man, and that the State ought to support and not hinder this process³⁵.

Likewise, Ireland's Gender Recognition Act, 2015 gives adults the right to be legally recognised as the gender they identify as, without needing to have their gender changed on their medical records³⁶. This bill acknowledges that our personal identity of gender is an autonomous aspect of our identity and should not rely on the approval of others. In Malta, the Gender Identity, Gender Expression and Sex Characteristics Act, 2015, explicitly acknowledges all persons' right to gender identity and bans any invasive requirements as the basis for legal recognition³⁷.

These jurisdictions demonstrate a key fact: legal certainty and self-identification do not have to be at odds. Applying the standards of authenticity of an application can be accomplished by administrative procedures, without resorting to medical examinations of an individual or the submission to the state of deeply personal information of his or her identity. The models have lessons to offer India in the context of the constitutional principles in NALSA, Puttaswamy

³⁵ Ley de Identidad de Género [Gender Identity Law], Law No. 26.743, May 23, 2012, B.O. 24/05/2012 (Arg.).

³⁶ Gender Recognition Act 2015 (Act No. 25/2015) (Ir.).

³⁷ Gender Identity, Gender Expression and Sex Characteristics Act, Cap. 540 (2015) (Malta).

and Navtej Johar.

The first step in establishing a rights-based framework for gender recognition in India should be to revive the principle of self-identification, which was explicitly recognized in the 2019 Act. The future law makers should thus recognise that the concept of gender identity is the domain of individual autonomy and not of institutions, as it was done by the Supreme Court while interpreting NALSA³⁸.

There is no full proof way to completely avoid worries about fraudulent claims or administrative abuse. But such concerns can be addressed by narrowly drawn administrative safeguards, not general medical verification ones. For instance, the equivalent of a sworn declaration and penalties for lying are included with applications for legal recognition and standard verification procedures are used in other sectors of civil administration. It would be through these mechanisms that the State would be able to preserve administrative integrity without making the issue of gender identity a medical one.

Protection of privacy should also be a major component of the next reform process. The disclosure of information regarding gender-transition procedures required by the Amendment Bill is concerning in the context of informational privacy and data protection; in the case of public authorities, tight restrictions on access to, retention of, and disclosure of personal medical information should be included in the Act. The protections would be consistent with the Supreme Court's earlier recognition of privacy principles in Puttaswamy and would minimise the risks of discrimination due to unauthorized disclosure of sensitive personal information³⁹.

Participation and consultation is another key issue in the context of reform. When marginalised people are engaged in legislation, they are more likely to have a legitimate and effective law. The debates over the Amendment Bill have brought to the fore issues of the level of consultation with stakeholders before the Bill was introduced. Any future reform should thus include active participation with transgender citizens, community groups, health care providers, lawyers and human rights organizations. Participation is not only about good

³⁸ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438, ¶¶ 69–75.

³⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

governance, but also a constitutional requirement of inclusive decision making and democratic accountability.

Finally, the development of the future-making of gender in India should be directed by the larger constitutional vision of transformational equality. The Constitution is not only calling for formal equality, but also for the elimination of systems of exclusion which prevent part of the population from enjoying a full life on a social, political and economic level. Systemic disadvantages have been seen throughout the history of transgender people and cannot be remedied by welfare provision or administrative scheme alone. Inclusion is meaningful when the law recognizes it as a celebration of dignity and not one dependent on meeting the standards set by the state with respect to being authentic.

So, the answer is not to take one side of the argument, that of administrative efficiency, or the other, of constitutional rights, but to take both and find a compromise between them. A system based on self-identification, coupled with appropriate measures of protection and adequate privacy safeguards would better reflect the constitutional values expressed by the Supreme Court and would allow the State to perform its legitimate functions of regulation. This would make the law a means of inclusion and empowerment – not of exclusion and control.

Conclusion

The story of transgender rights in India is also of a constitutional evolution that attempts to acknowledge dignity, autonomy and substantive equality for the historically outsider groups. The landmark judgment of the Supreme Court in *National Legal Services Authority v. Union of India* was a turning point in this journey that established gender identity as an intrinsic part of the person and that all persons have the right to self-identify their gender. The limitations of the Transgender Persons (Protection of Rights) Act, 2019, aside from that, it tried to provide a statutory framework that broadly matched this constitutional vision by including the concept of ‘gender identity’ and the notion of self-perceived gender identity⁴⁰.

The Transgender Persons (Protection of Rights) Amendment Bill, 2026, however, indicates a radical shift in this direction. The Bill substantially changes the basis for legal recognition, as it is based on the state's verification, rather than on personal self-identification, and introduces

⁴⁰ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, §§ 2(k), 4(2), India Code (2019).

medical authority into the gender recognition process, with a mandatory reporting requirement that applies to gender-transition procedures⁴¹.

As this article has explained, these changes invoke serious constitutional issues. The failure to recognize hitherto acknowledged identities as well as the importance of biological criteria opens the door to challenge based on Articles 14 and 15 of the Constitution. Likewise, the use of medical verification and state monitoring also engages the fundamental freedoms guaranteed under Article 19 and 21 of the Constitution, namely the right to expression, privacy, dignity and personal autonomy. Considering the constitutional principles expressed in the NALSA, Puttaswamy and Navtej Johar, it can be said that the constitutional parameters imply that identity is not just a legal classification but an integral aspect of human dignity that deserves to be protected by the Constitution.

In addition to the issue of individual rights, the Amendment Bill also concerns some of the larger issues of constitutional morality and the function of the State in the regulation of personal identity. Legislatures have the legitimate authority to create welfare schemes and administrative structures, but its powers must be confined to constitutional boundaries. A nation's constitution calls for more than administrative efficiency; it calls for the protection of the vulnerable communities and for respecting individual self-determination. Thus, any law which affects gender identity must continue to be faithful to these core promises.

The constitutional implications of the Amendment Bill go beyond the rights of transsexuals. It is about how far the State can go in defining, regulating and confirming personal identity, in a constitutional democracy. It will be interesting to see if the proposed framework will stand up to challenge in court. The Bill has sparked debate, however, and one of the constitutional lessons to be drawn is that the recognition of identity should not be based on suspicion and verification, but on dignity, autonomy and equal citizenship. These values of the Constitution are essential for the future of trans rights in India, as they will be upheld by both the political system and the judiciary.

⁴¹ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026, cls. 2–5 (India).