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SELF-IDENTIFICATION VS CERTIFICATION UNDER THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019: A CONSTITUTIONAL ANALYSIS

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ABSTRACT

The Transgender Persons (Protection of Rights) Act, 2019 is an important enactment which aims at protecting the rights of transgenders in India in the wake of recognition of their gender identities in the landmark judgment in *NALSA v. Union of India*. Although *NALSA* clearly states that self-identification plays an important role in determining gender identity, the legal framework of the Act provides for the certification of transgender identity by administrative authorities. The present study aims at analysing the clash of ideas between self-identification of gender identity and the statutory process of certifying transgender identity provided under the Act. In addition to the above, the present paper attempts at examining the consistency of the procedure of certification with the fundamental rights guaranteed under Articles 14, 19, and 21 of the Constitution of India. Although the legal provision for transgender identity in the Act is laudable, yet the statutory certification of it makes the procedure vulnerable to violation of the principle of self-identification as enunciated in *NALSA*.

RESEARCH QUESTION

To what extent does the certification process under the Transgender Persons (Protection of Rights) Act, 2019 align with the principle of self-identification recognised in *NALSA v. Union of India*?

HYPOTHESIS

The certification process under the Transgender Persons (Protection of Rights) Act, 2019 does not fully comply with the principle of self-identification recognised in *NALSA v. Union of India* as it introduces state-controlled verification that undermines autonomy and dignity.

METHODOLOGY

The present study adopts a doctrinal and analytical research methodology to examine the relationship between the certification process under the Transgender Persons (Protection of Rights) Act, 2019 and the principle of self-identification recognised in *NALSA v. Union of India*. The research primarily relies on secondary sources, including constitutional provisions, statutes, judicial decisions, academic articles, reports, and commentaries relating to transgender rights in India.

INTRODUCTION

The transgender population has been excluded and marginalized in Indian society despite the existence of different gender identities in the social and historical framework of the society. For years, members of this population group have been denied access to education, employment, healthcare, and other social resources. This situation has led many transgenders to be pushed out of social integration and marginalized. The issue of legal invisibility has worsened the problem further. Despite all the fundamental rights granted by the Indian constitution, transgenders have been victims of institutionalized discrimination and legal invisibility.¹

One such very important case in regard to the rights of the transgender community is the decision made by the Supreme Court in the case *NALSA vs. Union of India*, 2014. The court in its judgment has taken cognizance of the rights of the transgender community and declared them as "third gender." This judgment has acknowledged the rights available to the transgender community as mentioned in Article 14, 15, 19, and 21. Also, the court has laid emphasis on the significance of self-identity is an essential part of personal freedom.²

The Transgender Persons (Protection of Rights) Act, 2019 was enacted in light of the seminal *NALSA* judgment and gives legal protection and other rights to transgender people. However,

¹ Mercy Anju, The Socio-Cultural and Demographic Realities of Transgender Identities in India, 4 *Int'l J. for Rsch. Trends in Soc. Sci. & Humanities* 1, 1 (2026).

² *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 5 S.C.C. 438 (India).

the legislation prescribed a procedure for certification whereby transgender individuals had to be certified by the District Magistrate before being recognized as such. Consequently, this raises doubts regarding whether the 2019 legislation conforms to the idea of self-identification established in the NALSA judgment or has only imposed an additional layer of control by the State over gender identity.

The aim of the present research paper is to highlight the problems relating to the notion of self-identification with regard to certification as envisaged under the Act of 2019. The paper discusses if the process of certification is in accordance with the constitutional principles of equality, dignity, autonomy, and privacy.

1. THE RECOGNITION OF TRANSGENDER RIGHTS IN INDIA

The existence of transgenders was recognized in social and royal contexts during the time of the Delhi Sultanate period. However, the arrival of the British Empire caused oppressive laws like the Criminal Tribes Act, 1871 and section 377 of the Indian Penal Code, leading to the isolation of transgenders from the mainstream social process. The same trend continued even after gaining independence; transgenders have always been an oppressed and discriminatory population segment. It was due to the presence of many oppressive acts against transgenders that they received legal recognition in recent times by the case laws like NALSA v. Union of India judgment.³

NALSA vs. Union of India case was filed to ensure that the rights of transgender people in India received proper legal recognition and protection. It was argued in the petition that the transgender population of India did not have access to equal opportunities in education, medical services, job, IDs, and government welfare programs due to the fact that there were only two genders officially recognized under the Indian law. Those two genders included only males and females, while transgender individuals did not get the legal recognition they deserved. Consequently, there was much discrimination and violation of their constitutional rights as per Articles 14 and 21.⁴

Supreme Court made a historic decision regarding the recognition of transgender individuals' rights in the matter of NALSA v. Union of India. Transgenders were recognized as a separate "third" gender in the case and the right to identify one's gender independently was explicitly

³ *Id.* at 1–2.

⁴ Pency Agarwal, Sohini Sarkar & Nipa Mishra, From Recognition to Rights: A Study on Transgender Rights, 1 Avalon J. L. 290, 293 (2026).

provided. The Court highlighted that one's gender identity forms part of one's personality which involves his or her privacy, dignity, and freedom; these are rights guaranteed under Articles 14, 15, 19, and 21 of the Constitution of India. The Government was directed to give legal recognition, identity cards, reservations, welfare schemes, and other facilities like health services to transgenders, and it was specifically noted that no mandatory medical test or surgery would be carried out to authenticate the gender identity of any transgender individual.

Another significant milestone in LGBTQ+ Rights in India was set through the case of Navtej Singh Johar v. Union of India. Discrimination or inequality based on sexual orientation was seen as a violation of Articles 14, 15, 17, 21, and 19 of the Constitution of India. In this regard, the constitutional values were emphasized in the verdict.⁵

Hence, these landmark cases have greatly helped in reinforcing constitutional recognition and protection for the rights of transgender and LGBTQ+ individuals in India through dignity, equality, privacy, and personal autonomy.

2. THE CERTIFICATION PROCESS UNDER THE 2019 ACT

Under the Transgender Persons (Protection of Rights) Act, 2019, the procedure to obtain legal recognition of the transgender status requires an application to the District Magistrate for the issuance of a certificate of identity. As per the provisions of the Act, the individual shall file an application for the certificate in a format prescribed under the law, and thereafter, the District Magistrate would issue a certificate recognizing the individual as transgender.⁶ The certificate would serve as the basis for amending the name and gender on various official documents including the Aadhar Card, Passport, and educational certificates. Moreover, in case of undergoing any treatment regarding gender identity and wishing to get legal recognition in a different gender category, a new certificate may be issued by filing evidence regarding the same. While the provisions of the Act aim to offer legal protection to the transgender community, there have been criticisms on issuing a certificate on obtaining administrative approval, arguing that gender identity is based on personal choice.

Consequently, this requirement contradicts the right to self-identity upheld in the judgment of NALSA v. Union of India and reduces the level of freedom that transgenders have, making legal validation contingent upon the state's consent. The validation is put in the hands of state authorities, and in effect, an individual's gender identity becomes subject to outside inspection

⁵ *Id.* at 302.

⁶ The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 5 (India).

and validation. This may even constitute a violation of the right to privacy and personal liberty guaranteed by the Constitution of India under Articles 14 and 21 of the Constitution.

It was observed that gender identity is a fundamental aspect of the individual's personality and personality rights. The Supreme Court held that everybody has the right to decide their own gender, which may be male, female, or transgender. This cannot be restricted by any biological features or even medical testing. It is important that gender identity comes under the provisions of Articles 14, 15, 19, and 21 of the Constitution as it is closely associated with dignity, privacy, equality, and freedom of expression. Further, the Supreme Court observed that it is not necessary to go through any surgery or hormone treatment for determining one's gender identity legally.⁷

The Supreme Court of India has also drawn support from international human rights principles and the international legal regime governing sexual orientation and gender identity. The Court has referred to crucial international conventions like the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Yogyakarta Principles. According to these principles, every individual, regardless of his sexual orientation or gender identity, is entitled to equality, dignity, privacy, and legal recognition under the law.⁸ By citing these international norms, the Supreme Court enhanced the protection of transgender rights under the Constitution of India in accordance with international human rights laws.

The judgment therefore established that gender identity is a matter of personal choice and self-determination, which must be protected from unnecessary state interference. By recognizing the rights of transgender persons within the framework of constitutional and international human rights principles, the Court laid the foundation for a more inclusive and rights-based approach towards gender identity in India.

3. CONFLICT BETWEEN SELF- IDENTIFICATION AND CERTIFICATION

The process of obtaining a certificate under the Transgender Persons (Protection of Rights) Act, 2019 has faced criticism due to the discretion it allows in the administrative process. The discretionary decision-making power of the District Magistrate for issuing the certificate is based on subjective considerations and stereotypes about gender identity. Scholars argue that administrative officers may not be well-equipped to comprehend the situation of transgender

⁷ NALSA, (2014) 5 S.C.C. ¶ 19.

⁸ NALSA, (2014) 5 S.C.C. 438, ¶¶ 21–22 (India).

people, thus lacking the ability to evaluate and verify the applicant's gender identity. Essentially, the law provides several tiers of authorities with power to determine gender identities of people, contrary to the principle of self-identity established in *NALSA v. Union of India*. While it can be rationalized that the purpose of the certification procedure was to ensure that the welfare services are utilized only by genuine transgender people, the process of verification can be termed unnecessary and unconstitutional.⁹

One of the major issues associated with the Transgender Persons (Protection of Rights) Act, 2019 is that there is a conflict between the concept of self-perceived gender identity and certification for the same. While Section 4 recognizes that the transgender individuals have the freedom to determine their gender identity¹⁰, Sections 5 and 6 state that legal recognition is possible only after issuing a certificate by the District Magistrate¹¹. It implies that the determination of gender identity does not depend solely on the self-perception of the person.

Despite the fact that the Transgender Persons (Protection of Rights) Rules, 2020 did away with compulsory medical examinations and provided for filing the application through affidavits, the fact remains that legal recognition requires a proper procedural and bureaucratic framework through which they can gain legal recognition¹². This means that in order to alter official records, and receive any kind of benefits, they require getting certificates and cards. In other words, even if the framework recognizes self-identification in theory, it still requires state approval and certification from their side in practice.¹³

In addition to this, this is also relevant to the day-to-day life of transgender persons because of the necessity to obtain identification and identity certificates. Mismatch between one's identity and the records may lead to discrimination, ridicule, and difficulty in navigating administrative issues. While the need for certification has been presented as being vital in ensuring that all data remains properly updated, it has also been argued that the system of certifications imposes

⁹ The Problems with the Legal Characterization of Sex: A Critique of the Transgender Persons (Protection of Rights) Act of 2019, Legal 60 (Oct. 13, 2020), <https://www.legal60.com/the-problems-with-the-legal-characterization-of-sex-a-critique-of-the-transgender-persons-protection-of-rights-act-of-2019/>

¹⁰ Transgender Persons (Protection of Rights) Act § 4

¹¹ Transgender Persons (Protection of Rights) Act §§ 5–6.

¹² Transgender Persons (Protection of Rights) Rules, 2020, r. 4; *Jane Kaushik v. Union of India*, 2025 INSC 1248, ¶¶ 159–60 (India).

¹³ Transgender Persons (Protection of Rights) Rules, 2020, r. 4; *Jane Kaushik*, 2025 INSC 1248, at 159–60.

a heavy burden upon transgender persons and forces them to prove themselves in front of the state authorities time and again.¹⁴

The framework for the issuance of the certificate in the Transgender Persons (Protection of Rights) Act, 2019 exhibits a recurring theme of an existing conflict between the constitutional guarantee of self-identity and the administrative power exerted by the State. Although the Act guarantees transgender persons their right to self-perceived gender identity, the need for certification by the District Magistrate amounts to a condition that restricts their freedom of enjoying this right to legal recognition at the hands of administrative officers. The resultant contradiction is evident in the violation of the concept of autonomy and dignity that has been recognized in the landmark case of *NALSA v. Union of India*. In addition, state-sponsored recognition fails to affirm self-identity while placing additional constraints on transgender persons when exercising their rights.

4. CRITICAL ANALYSIS

Alongside the problem arising out of the conflict in the process between the two concepts of self-identity and certification, another issue of the constitutional nature of the legal framework adopted through the Transgender Persons (Protection of Rights) Act, 2019 emerges in respect to the scope of state power in defining identity. With the requirement that persons must obtain official certification from the state as a necessary step towards self-identity, the question arises of how far such an exercise can be accommodated in a constitutional scheme that emphasizes individual autonomy.

In particular, one problem that stands out is that of discretion. Although the process is described as an administrative procedure, there appears to be no clear indication of what substantive guidelines should be used in the assessment of the application made. As a consequence, the possibility exists that different perceptions within the bureaucracy will govern how the procedure will be handled in each individual case.

The scheme further creates apprehensions regarding indirect discrimination. While the Act is ostensibly non-discriminatory, the burden of procedure affects transgender people more adversely, as they are forced to comply with an extra measure of verification to recognize their gender identity, which cisgender people need not go through. This extra procedure may serve

¹⁴ Madhumitha V., *Self Identification vs State Control: A Critical Legal Analysis of the Certification Process Under the Transgender Persons (Protection of Rights) Act, 2019*, 30 *Educ. Admin. Theory & Prac.* 5710, 5714 (2024).

as an indirect barrier to the equal exercise of rights by transgender people, impacting their substantive equality.

The scheme further conflicts with constitutional law in relation to the general principle that fundamental rights should be exercised free from prior restraints. With the condition of prior administrative approval of identity recognition, the right becomes one of privilege than one of natural entitlement. This distinction makes all the difference since it places the State in the position of gatekeeper rather than protector of rights.

In addition, the procedural approach is likely to have a chilling effect on the use of identity rights. The necessity of going through formal processes of application, documentation, and dealing with the state can actually make people shy away from seeking recognition, especially when the levels of stigma and social vulnerability are quite high. Practically speaking, this makes the exercise of the right itself less effective.

In summary, even as the legislation makes an attempt to operationalize recognition of transgender people, there are constitutional concerns in relation to issues of equality, arbitrariness, and the inherent nature of fundamental rights.

5. PRACTICAL IMPACT

The issuance of certificates under the provisions of the Transgender Persons (Protection of Rights) Act, 2019 holds practical importance as far as the rights of transgender persons are concerned since their access to basic legal and social benefits can be greatly hindered by an inability to obtain these certificates. As official documents are necessary for one's engagement with institutions, not being able to get a certificate can hamper one's ability to access basic necessities like education, employment, healthcare, accommodation, and even financial transactions.¹⁵

Moreover, having to go to the District Magistrate for certification may lead to delays in obtaining these certificates, meaning that transgender persons' identities remain unrecognized until the end of the entire procedure. This means that these individuals might run into problems when it comes to applying to educational establishments or getting a job, opening a bank account and completing other formalities. Furthermore, even having received a certificate, updating all records can take considerable time.

¹⁵ *Id.* at 5714

Yet another critical outcome of this procedure is the social-psychological effect arising from administrative verification. It is possible for a person to develop a sense of exclusion when compelled to appear before the administrative authorities to verify their gender identity. Additionally, in some situations, people may be subjected to stigmatization or irrelevant questions by the officials, leading them to abandon any attempts at obtaining legal recognition.

Additionally, the process of certification tends to exacerbate inequalities in accessing this method, especially because people from rural or poor backgrounds find it difficult to go through the process of certification than those residing in urban localities. Limited information, lack of legal support, and fear of stigmatization tend to hinder the process of obtaining legal recognition among these categories.¹⁶

In summary, the process of certification can have an adverse impact on access, making it more difficult for people to benefit from the opportunities provided under the law.

6. CONCLUSION

The acknowledgment of the rights of transgender persons in India can be considered a vital constitutional progress because of its reliance on the principles of equality, dignity, liberty, and respect for human personality. As per the historic judgment passed by the Indian Supreme Court in the case of *NALSA v. Union of India*, the gender identity is an integral part of an individual's personality, and each person should be allowed to identify their gender independently without undergoing any kind of scrutiny. The Transgender Persons (Protection of Rights) Act, 2019 was made with the intent to provide legal recognition and protection to transgender persons. Nonetheless, the procedure for certification created by this Act gives rise to the conflict between the right of constitutional self-identification and the obligation of official recognition. Despite later clarifications made via Rules making it easier by exempting medical procedures and allowing self-declaration applications, the legal recognition of transgenders is still contingent on the grant of a certificate by the District Magistrate.

Through this requirement for state recognition, which is a form of gatekeeping, the Act undermines the dignity, autonomy, privacy, and equality guaranteed to transgender people by Articles 14, 19, and 21 of the Constitution.¹⁷ This requirement will inevitably bring along issues concerning arbitrary discretion, indirect discrimination, and other forms of obstacles which might deter people from taking legal action towards gaining identity.

¹⁶ *Id.* at 5715

¹⁷ *Id.* at 5714

Although the need for record-keeping and ensuring welfare for people might provide justification for some procedural steps, these should not necessarily be done in a way which would condition or limit the exercise of constitutional rights. Under a rights-based approach, it would be necessary for the State to facilitate self-identification and recognition, without having to establish or verify the genuineness of any individual's gender status. Thus, for the legislation to embody the vision as laid out by NALSA in its entirety, greater emphasis should be put on self-declaration and minimum intervention.