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WHO GETS TO BELONG? RECOGNITION, REGULATION AND RIGHTS UNDER THE RIGHT OF TRANSGENDER PERSONS ACT, 2026

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Abstract

The Transgender Persons (Protection of Rights) Amendment Act, 2026 raises a constitutional question that extends beyond the narrowing of a statutory definition: whether the legal recognition of gender identity can be transformed into a state-conferred status without undermining the constitutional guarantees affirmed in National Legal Services Authority v. Union of India (NALSA) and Navtej Singh Johar v. Union of India. This paper argues that the 2026 Act marks a significant shift in India's legal framework from a model of recognition, in which gender identity is acknowledged as intrinsic to personhood and protected as a constitutional guarantee, to a model of regulation, in which identity becomes contingent upon state-defined categories, certification, and administrative approval. It traces this transition through the historical evolution of transgender rights in India, the constitutional principles of dignity, equality, autonomy, constitutional morality, and democratic legitimacy, while situating the Indian framework within broader comparative constitutional practice and international human rights standards. By examining constitutional developments across multiple jurisdictions alongside international norms, the paper demonstrates that India's recognition of gender identity has historically evolved in harmony with global constitutional and human rights principles, and assesses whether the 2026 Act departs from this trajectory. Further, through an analysis of the colonial legacy of state surveillance and the operation of Indian personal laws governing marriage, adoption, and succession, it contends that legal recognition forms the foundation upon which the meaningful exercise of civil and constitutional rights depends. The paper concludes that the Act's consultation failures and definitional narrowing risk reviving a regulatory logic that NALSA sought to foreclose. Ultimately, it argues that constitutional citizenship requires the State to recognise, rather than adjudicate, an identity that already exists, ensuring that the constitutional guarantees of

dignity, equality, autonomy, and personhood remain capable of meaningful exercise.

Keywords: Transgender Identity, Constitutional exclusion, Regulation, Recognition, International Comparative Frameworks, Personal Laws.

I. INTRODUCTION AND THE PRESENT CONSTITUTIONAL CRISIS

Who decides who we are? Can the State determine the legitimacy of an identity that the Constitution has already recognised as an intrinsic aspect of personhood? More fundamentally, when does legal recognition cease to be an affirmation of identity and become an instrument of regulation? These questions, once largely confined to constitutional theory, now lie at the heart of one of the most significant debates concerning equality and citizenship in contemporary India. The enactment of the Transgender Persons (Protection of Rights) Amendment Act, 2026 has transformed these questions from abstract constitutional inquiries into immediate legislative realities.¹ The issue is therefore not whether Parliament possesses the competence to regulate transgender rights. Rather, it is whether such regulation remains faithful to the democratic vision that India's own Supreme Court has repeatedly affirmed. India, a country celebrated for its plurality of cultures, religions, languages, and identities, has long prided itself on its foundational commitment to equality.² Yet, to suggest that every gender enjoys equal dignity and protection under the law remains a proposition that many would find difficult to reconcile with lived reality. Articles 14,³ 15,⁴ and 21 of the Constitution of India promise equality before the law, prohibit discrimination, and safeguard the dignity, liberty, and autonomy of every individual.⁵ These guarantees are not simply aspirational ideals; they constitute the normative foundation upon which citizenship itself rests. It is against this backdrop that the 2026 Act warrants careful constitutional scrutiny.

At first glance, the controversy surrounding the Act appears to concern nothing more than the statutory definition of a "transgender person." Such a characterisation, however, significantly understates its legal implications. The issue is not solely who falls within a legislative definition, but who the State chooses to recognise. The distinction is foundationally noteworthy because recognition is not simply a symbolic acknowledgment of identity. It is the legal bridge

¹ The Transgender Persons (Protection of Rights) Amendment Act, 2026 (3 of 2026).

² School of Distance Education, University of Calicut, *Indian Heritage and Plurality of Cultures* (Study Material) <https://sde.uoc.ac.in/sites/default/files/sde_videos/SLM-His-INDIAN%20HERITAGE%20AND%20PLURALITY%20OF%20CULTURES.pdf> accessed 5 July 2026.

³ The Constitution of India 1950, art 14.

⁴ The Constitution of India 1950, art 15.

⁵ The Constitution of India 1950, art 21.

through which numerous institutional and civil rights become enforceable. Once recognition becomes uncertain, the exercise of rights relating to marriage, adoption, succession, inheritance, identity documentation, and equal participation in public life likewise becomes uncertain. The consequences of the Act therefore extend far beyond the statutory language it adopts.

The jurisprudential position, until recently, appeared settled. Under the Transgender Persons (Protection of Rights) Act, 2019,⁶ a transgender person included trans men, trans women, persons with intersex variations, genderqueer individuals, and persons belonging to recognised socio-cultural identities, irrespective of whether they had undergone sex reassignment surgery, hormone therapy, laser therapy, or any other medical procedure.⁷ More considerably, Section 4 recognised every transgender person's right to self-perceived gender identity,⁸ giving legislative expression to the democratic vision articulated by the Supreme Court in *National Legal Services Authority v. Union of India* ("NALSA").⁹ For the first time, transgender persons were acknowledged not merely as beneficiaries of welfare measures but as rights-bearing citizens entitled to dignity, autonomy, equality, and self-determination. The 2026 Act, however, appears to depart from this judicially introduced framework by substantially narrowing the scope of legal affirmation, thereby raising questions regarding its consistency with the principles affirmed in *NALSA*.

Understanding the importance of this departure requires appreciating the distinction between sex and gender. In social sciences, the term 'sex' is used to refer to anatomical and physiological differences that define male, female and other bodies of individuals, whereas 'gender' refers to social, psychological and cultural differences that give specific identities to individuals.¹⁰ Generally, gender refers to the socio-cultural definition of men, women and other identities.¹¹ It refers to the way societies distinguish men, women and other identities and assign them social roles.¹² The two need not always correspond. Gender identity is shaped by autonomy, lived experience, and self-expression, and its legal protection has increasingly been

⁶ The Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019).

⁷ The Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019) s 2(k).

⁸ The Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019) s 4.

⁹ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

¹⁰ Michael R Kaufman, Evan L Eschliman and Tahilin S Karver, 'Differentiating Sex and Gender in Health Research to Achieve Gender Equity' (2023) 101 *Bulletin of the World Health Organization* 666.

¹¹ World Health Organization, 'Gender and Health' (WHO) <https://www.who.int/health-topics/gender#tab=tab_1> accessed 5 July.

¹² Agnes Ronald D'Costa, *Gender, School and Society* (Himalaya Publishing House 2017) <<https://muslimcollegeofeducation.in/pdf/GENDER-SCHOOL-AND-SOCIETY.pdf>> accessed 9 July 2026.

recognised both within India and internationally.¹³ Reflecting this understanding, the 2019 Act expressly acknowledged that a person may identify as a trans woman or trans man irrespective of whether they had undergone any medical intervention.¹⁴ In doing so, Parliament accepted a pivotal proposition that the gender identity is not created by medical procedures or state approval but exists independently as an intrinsic aspect of personhood.

Despite these jurisprudential developments, however, the lived realities of transgender persons continue to reveal persistent structural disadvantage. Across India, transgender persons remain disproportionately excluded from education, employment, housing, healthcare, and access to public services.¹⁵ While legal recognition represented a watershed moment, substantive equality has remained elusive. In a country whose transgender population was recorded at approximately 4,87,803 persons in the 2011 Census,¹⁶ many continue to struggle not merely for legal reform but for the basic acceptance of their dignity and equal place within society.¹⁷ After years of gradual rights-based progress, the community now confronts the possibility that the legal protections painstakingly secured through judicial interpretation and legislative reform may themselves be narrowed. Concerns regarding the legislative process further compound these questions as it has been widely reported that the amended Act was passed without meaningful consultation with the National Council for Transgender Persons, notwithstanding the Council's statutory responsibility to advise the Government on matters affecting the transgender community.¹⁸ More suggestively, the Act appears to move away from both *NALSA* and the 2019 Act by restricting the statutory definition of a "transgender person." The amended definition reportedly confines recognition primarily to specified socio-cultural identities such as kinner, hijra, aravani, jogta, eunuchs, and persons with intersex variations, thereby departing from the broader and more inclusive framework previously recognised under Indian law.¹⁹

¹³ Sri Gagan S, 'Gender Identity and Legal Recognition' (2023) 23(1) Kronika Journal <<https://kronika.ac/wp-content/uploads/7-Kj.pdf>> accessed 17 June 2026.

¹⁴ The Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019).

¹⁵ National Human Rights Commission, *Transgender Persons: Insights from Garima Greh Shelters and Beyond* (NHRC) <https://nhrc.nic.in/assets/uploads/publication/1762169482_24daba17658746356d3a.pdf> accessed 2 July 2026.

¹⁶ Department of Social Justice and Empowerment, 'State/UT wise Population of Others (TG) as per Census 2011' (Government of India) <<https://socialjustice.gov.in/common/77891>> accessed 16 June 2026.

¹⁷ Office of the High Commissioner for Human Rights, 'The Struggle of Trans and Gender-Diverse Persons' (OHCHR) <<https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/struggle-trans-and-gender-diverse-persons>> accessed 19 June 2026.

¹⁸ 'NCTP Members Oppose Transgender Act Amendments, Say Not Consulted' *The Hindu* (5 March 2026) <<https://www.thehindu.com/news/national/nctp-members-oppose-transgender-act-amendments-say-not-consulted/article70753207.ece>> accessed 19 June 2026.

¹⁹ The Transgender Persons (Protection of Rights) Amendment Act, 2026 (3 of 2026).

This article argues that the significance of the Transgender Persons (Protection of Rights) Amendment Act, 2026 lies not merely in the rights it expressly grants or withholds, but in the model of citizenship it appears to endorse. Whereas the Constitution, as interpreted in *NALSA* and reaffirmed in *Navtej Singh Johar v. Union of India*,²⁰ conceives of gender identity as an inherent aspect of personhood deserving of acceptance, the Act risks transforming that identity into a legislatively defined status whose legal status increasingly depends upon state approval. Through an examination of constitutional doctrine, constitutional morality, democratic legitimacy, comparative jurisprudential practice, personal laws, and the practical consequences flowing from legal affirmation, this article contends that the debate surrounding the 2026 Act is ultimately not a contest between two statutory frameworks, but between two competing democratic visions of identity, citizenship, and equality.

II. HISTORICAL LEGACY OF STATE REGULATION: FROM INCLUSION TO CRIMINALISATION

The present controversy is not without precedent. Indian law has moved between recognising gender diversity and suppressing it, and the colonial period marks the point at which that oscillation tilted decisively toward suppression. Pre-colonial sources indicate that gender-diverse persons occupied a recognised place in religious, cultural, and economic life as provided in the Ramayana's account of those who remained at the forest's edge during Rama's exile,²¹ and the Mahabharata's Shikhandi and Brihannala,²² treat gender variance as a possibility within human experience rather than a defect requiring correction.²³ That history did not include the criminalisation, surveillance, or bureaucratic erasure that colonial law would later impose, a distinction that matters because it shows suppression was not the position from which Indian law started, but a departure introduced by colonial administration.

That departure was the product of deliberate policy rather than gradual social change. The Criminal Tribes Act, 1871 classified the hijra community and other gender-diverse communities as hereditarily predisposed to criminality, subjecting them to compulsory registers, restrictions on movement and assembly, and criminal liability for conduct that was

²⁰ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

²¹ 'Hindu Scriptures Always Speak of the Third Gender' *The New Indian Express* (Bengaluru, 12 December 2018) <<https://www.newindianexpress.com/bengaluru/2018/Dec/12/hindu-scriptures-always-speak-of-the-third-gender-1910314.html>> accessed 9 July 2026.

²² Hindu American Foundation, 'Shikhandi: The Mahabharata's Transgender Warrior' <<https://www.hinduamerican.org/blog/shikhandi-the-mahabharatas-transgender-warrior>> accessed 9 July 2026.

²³ 'Legal and Social Status of Transgender Persons in India' (2021) IJRAR21C1932, *International Journal of Research and Analytical Reviews* <<https://ijrar.org/papers/IJRAR21C1932.pdf>> accessed 9 July 2026.

lawful for anyone else.²⁴ The colonial Eunuch Register imposed a parallel taxonomy, reclassifying these communities as objects of administrative surveillance and extending even to a prohibition on the dancing and singing that sustained their livelihoods.²⁵ Although the Criminal Tribes Act was repealed in 1952, the policing practices, spatial marginalisation, and social stigma it produced persisted well beyond the statute as the post-colonial state inherited in practice what the colonial state had established in law.

The relevance of this history to the 2026 Act lies in a structural parallel rather than a rhetorical comparison. The Eunuch Register required individuals to submit to state classification and to carry documentation of an identity that the state, not the individual, had defined.²⁶ The Certificate of Identity mechanism reproduces that same structure, substituting a contemporary bureaucratic register for a colonial one. NALSA's insistence on self-determination over state certification directly repudiated that colonial logic, and it is this specific continuity, not a general history of exclusion, that the 2026 Act's return to certification risks reviving.

III. CONSTITUTIONAL FRAMEWORK

Under the Transgender Persons (Protection of Rights) Act, 2019, statutory acceptance of self-identification marked one of the major advancements in the protection of transgender rights in India. It reflected a shift away from viewing gender identity as something to be determined by the State and towards recognising it as an intrinsic aspect of individual dignity and autonomy.

A. Recognition as a Constitutional Right

Through *NALSA*, perhaps for the first time in Indian jurisprudence, the Court was required to confront a question far deeper than one of statutory interpretation, it was whether identity can be treated as an administrative status, or is it a legal right that inheres in every individual?²⁷ The Court answered this question unequivocally. Interpreting the ground of "sex" under Article 15(1) to include gender identity, it held that discrimination on the basis of gender identity is constitutionally impermissible.²⁸ Drawing upon both lawful guarantees and international

²⁴ Sophie Hunter, 'Hijras and the Legacy of British Colonial Rule in India' (*Engenderings*, 17 June 2019) <<https://blogs.lse.ac.uk/gender/2019/06/17/hijras-and-the-legacy-of-british-colonial-rule-in-india/>> accessed 10 July 2026.

²⁵ 'How Britain tried to 'erase' India's third gender' *BBC News* <<https://www.bbc.com/news/world-asia-india-48442934>> accessed 9 July 2026.

²⁶ Jessica Hinchy, "'Registers of Eunuchs' in Colonial India' (*History Workshop*, 29 April 2019) <<https://www.historyworkshop.org.uk/queer-history/registers-of-eunuchs-in-colonial-india/>> accessed 6 July 2026.

²⁷ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

²⁸ *ibid.*

human rights norms, the Court recognised the right of every individual to self-determine their gender identity and located this right within Articles 14 and 15. It further held that the freedoms guaranteed under Article 19(1)(a), together with the rights to dignity, privacy, and personal autonomy protected by Article 21, necessarily encompass the freedom to express one's gender identity and gender expression.²⁹

This right-oriented vision was subsequently reinforced in *Navtej Singh Johar*, wherein the Supreme Court decriminalised consensual same-sex relations and reaffirmed the principles of dignity, autonomy, privacy, and individual choice.³⁰ The Court recognised that every individual possesses decisional autonomy over matters of identity, intimacy, and personal relationships.³¹ Read together, these cases laid the foundation for a progressive jurisprudence that recognised transgender persons not just as beneficiaries of welfare measures, but as rights-bearing citizens entitled to the full protection of the Constitution.

B. Constitutional Morality and the Limits of Legislative Power

The cruciality of these judgments, however, extends beyond the rights they recognised. At their core lies the doctrine of constitutional morality, a principle requiring the State to uphold values embedded in the constitution which are equality, dignity, liberty, and fraternity even where such values may conflict with prevailing social or majoritarian opinions.³² The protection of fundamental rights cannot be made contingent upon their acceptance by society; rather, it is the Constitution that must guide society, not the other way around.³³ In recognising gender identity as a legitimate right rather than a matter of administrative convenience, the Supreme Court reaffirmed that questions of identity cannot be resolved by popular sentiment or legislative preference alone.³⁴

In *NALSA*, the Court acknowledged the historical exclusion, discrimination, and social stigma suffered by transgender persons, yet categorically held that these realities could never justify the denial of legitimate rights. Similarly, in *Navtej Singh Johar*, the Court rejected the notion that lawful protections could be curtailed merely because sections of society viewed sexual

²⁹ *ibid.*

³⁰ *Navtej Singh Johar and others v. Union of India* (2018) 10 SCC 1.

³¹ *ibid.*

³² 'CONSTITUTIONAL MORALITY AND THE JUDICIAL DECONSTRUCTION OF GENDER ROLES: CAN LAW TRANSFORM CULTURE IN INDIA?' *International Journal of Novel Research and Development* <<https://ijnrd.org/papers/IJNRDL001018.pdf>> accessed 4 July 2026.

³³ 'Challenge to the Transgender Persons Amendment Act, 2026' (*Supreme Court Observer*) <<https://www.scobserver.in/cases/challenge-to-the-transgender-persons-amendment-act-2026/>> accessed 4 July 2026.

³⁴ *ibid.*

and gender minorities unfavourably. The Constitution protects individual dignity and autonomy irrespective of popular opinion, and it is this commitment that distinguishes republican governance from majoritarian rule. Nor has this principle remained confined to LGBTQIA+ jurisprudence as in *Joseph Shine v. Union of India*,³⁵ while striking down the offence of adultery, and in *Indian Young Lawyers Association v. State of Kerala*,³⁶ while addressing the exclusion of women from the Sabarimala temple, the Supreme Court reaffirmed that legal guarantees exist precisely to protect individuals and vulnerable groups where prevailing social morality seeks to exclude them. These decisions collectively establish that constitutional morality is not an abstract ideal but a binding obligation requiring the State to place equality, dignity, and individual liberty above majoritarian preferences.³⁷

C. Democratic Legitimacy and the 2026 Act

For many members of the transgender community, *NALSA*, *Navtej Johar*, and the enactment of the Transgender Persons (Protection of Rights) Act, 2019 represented a long-awaited promise of inclusion. They offered hope to a community that had historically been excluded from mainstream social and legal structures. Yet, more than a decade after these landmark decisions, many members of the same community found themselves protesting outside Parliament while legislation fundamentally affecting their lives was being enacted. Several activists described the passage of the Right of Transgender Persons (Protection of Rights) Amendment Act, 2026 as a black day for transgender rights in India.³⁸ The irony was difficult to ignore: a community that contributes to the nation, pays taxes, and participates in democratic processes found itself excluded from meaningful participation in the legislative process that would redefine its legal status.

Concerns regarding the manner in which the Act was enacted have also been echoed by political leaders and activists.³⁹ As noted by NCP-SP leader Anish Gawande, India's first openly gay national spokesperson of a political party, the Act was passed without any meaningful response to concerns raised by the Opposition and without substantive engagement

³⁵ *Joseph Shine v Union of India* AIR 2018 SC 4898.

³⁶ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

³⁷ People's Union for Civil Liberties, 'Constitutional Morality and the Future of Minority Rights in India' (*PUCL*) <<https://pucl.org/manage-writings/constitutional-morality-and-the-future-of-minority-rights-in-india/>> accessed 12 June 2026.

³⁸ 'Transgender Persons Amendment Bill Opposed by Community Collectives' *The Hindu* (Maharashtra) <<https://www.thehindu.com/news/national/maharashtra/transgender-persons-amendment-bill-opposed-by-community-collectives/article70785286.ece>> accessed 9 July 2026.

³⁹ 'Opposition MPs, Activists Oppose Amendments to Transgender Persons Act' *The Hindu* <<https://www.thehindu.com/news/national/opposition-mps-activists-oppose-amendments-to-transgender-persons-act/article70772965.ece>> accessed 30 June 2026.

with the transgender community during the drafting process.⁴⁰ Such criticism raises broader questions regarding participatory democracy and whether those most directly affected by legislation were afforded a meaningful opportunity to contribute to its formulation.

For many citizens, this process speaks volumes. It leaves behind the impression that the voices of transgender persons were treated as secondary, that their lived experiences were insufficiently valued, and that their participation in the democratic process did not translate into meaningful representation in legislative decision-making.

Viewed through this constitutional lens, the 2026 Act raises a question far deeper than one of legislative policy. The issue becomes whether the manner in which such regulation has been undertaken remains faithful to the constitutional morality that has come to define India's equality jurisprudence. If the same demands that gender identity be recognised as an intrinsic aspect of dignity, autonomy, and personhood, then any legislative framework that narrows the scope of recognition or limits the identities entitled to legal protection must be subjected to careful legal scrutiny. The question is no longer simply whether the State may regulate transgender rights, but whether such regulation transforms a judicially protected identity into one that is recognised only upon satisfying legislatively prescribed categories.

IV. RECOGNITION VERSUS REGULATION: COMPETING MODELS OF GENDER IDENTITY

The most consequential question raised by the 2026 Act, is whether it continues the foundational project of acceptance or whether it quietly reintroduces a regulatory framework through which the state determines who is entitled to acceptance in the first place. This is not a question of policy preference but of an intrinsic framework. The answer determines whether gender identity in India is a right or a permission, whether it belongs to the person who lives it or to the bureaucracy that certifies it.

A. Recognition: The Constitutional Posture

A model of recognition proceeds from a foundational premise, that gender identity is a pre-political fact about a person that the state has an obligation to recognise, protect, and accommodate. The state does not create the identity. It does not evaluate it. It does not require

⁴⁰ 'Exclusive: NCP-SP's Anish Gawande Slams Trans Amendment Bill, No Consultation, Criminalises Support Groups' *Hindustan Times* <<https://www.hindustantimes.com/india-news/exclusive-ncp-sps-anish-gawande-slams-trans-amendment-bill-no-consultation-criminalises-support-groups-101774425187876.html>> accessed 30 June 2026.

the person to justify it. In the recognition model, the state's role is one of affirmation rather than adjudication. It acknowledges an identity rather than authorising it, removes barriers to its expression rather than erecting conditions for its qualification, and protects the person rather than vetting the claim.

This is precisely the posture that the Supreme Court adopted in *NALSA* Judgement. When the Court held that transgender persons possess the right to self-determine their gender identity under Articles 14, 15, 19, and 21 of the Constitution, it was not directing the state to create a new category of persons. It was declaring that a constitutional reality already existed and that the state was obligated to respect it.⁴¹ The right flowed from dignity and autonomy, values that the Constitution treats as inherent rather than conferred. The state's role was not to decide who is transgender but it was to stop treating transgender persons as if their identity were a problem requiring administrative resolution. This posture of affirmation rather than adjudication is precisely what recognition theory, most influentially developed by Axel Honneth and, in its political register, by Charles Taylor, identifies as the basis of identity claims, that recognition is owed to a person because of what they already are, not granted as a reward for satisfying externally imposed criteria.⁴² For Honneth, the denial of recognition is itself a form of injury, one that damages a person's practical relationship to themselves and forecloses their standing as an equal participant in social and legal life.⁴³ Taylor extends this into the political domain, arguing that a polity's refusal to recognise an individual's identity on its own terms actively shapes, and can distort, that person's sense of self-worth.⁴⁴ Read together, their work suggests the harm of misrecognition is not merely dignitary but constitutive as it determines whether a person is permitted to exist, in law, as who they already are. Situating *NALSA* within this scholarship gives the posture of recognition a firmer theoretical footing than doctrine alone provides.

B. Regulation: The Administrative Posture

A regulatory model proceeds from a fundamentally different premise that gender affirmation is a status which the state confers upon a person who satisfies conditions that the state has

⁴¹ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

⁴² Nythamar de Oliveira, Marek Hrubec, Emil Sobottka and Giovanni Saavedra (eds), *Justice and Recognition* (Filosofia 2015) <https://filosofia.flu.cas.cz/upload/_files/Justice_DOL.pdf> accessed 9 July 2026.

⁴³ Melvin L Rogers, 'Rereading Honneth: Exodus Politics and the Paradox of Recognition' (2009) 8(2) *European Journal of Political Theory* 183.

⁴⁴ 'The Politics of Recognition by Charles Taylor — A Summary' (*Clueless Political Scientist*, 4 January 2020) <<https://cluelesspoliticalscientist.wordpress.com/2020/01/04/politics-of-recognition-charles-taylor/>> accessed 9 July 2026.

established. A regulatory model evaluates a claim and defines the categories of eligible persons. It decides who qualifies. Administrative mechanisms, certificates, registers, verification procedures, and statutory definitions are not mere implementation tools in this model. They become the gatekeepers that stand between the individual and their legal personhood.

The 2026 Act operates squarely within this regulatory posture. By narrowing the statutory definition of ‘transgender person’ to those belonging to recognised socio-cultural identities, such as kinner, hijra, aravani, and jogta, the Act does not merely refine a technical definition.⁴⁵ It places the state in the position of deciding which forms of gender diversity are legitimate and which are invisible. Those who fall outside the enumerated categories become legally non-existent for the purpose of claiming the protections the Act purports to confer. The Certificate of Identity mechanism, retained and potentially strengthened under the 2026 framework, reproduces this logic at the individual level that a transgender person who cannot obtain, or is denied, a certificate is left in a legal limbo in which the legitimate rights declared in *NALSA* are formally acknowledged but substantively inaccessible. Where the recognition posture treats the state as the servant of a right the person already holds, this is the regulation posture treating the state as the author of the right itself, and it is this reversal, not any single definitional choice, that the remainder of this section tests.

C. The Critical Question: When Does Regulation Become Exclusion?

Regulation and recognition are not inherently opposed. Judicially recognised rights still require administrative machinery to become legally operative, and acts such as issuing identity documents, registering name changes, or updating official records exist precisely to give that acknowledgement practical effect. What matters, then, is not whether the state regulates at all, but the point at which that regulation stops facilitating recognition and starts substituting for it, or foreclosing it altogether.

The answer lies in the direction of control. Where regulation serves to give effect to a right that the individual already possesses, it is consistent with acknowledgement. Where regulation instead makes the possession of the right contingent upon satisfying state-imposed conditions, it has crossed into a terrain in which the state is no longer the servant of the right but its master. The 2026 Act crosses this line in two ways. First, its definitional narrowing removes categories of persons from the scope of validation altogether, without any legal basis for concluding that

⁴⁵ The Transgender Persons (Protection of Rights) Amendment Act, 2026 (3 of 2026).

those persons' gender identities are less real, less lawfully protected, or less deserving of legal recognition. Second, its certification mechanism makes recognition contingent upon governmental approval, reintroducing precisely the kind of state mediation between the person and their identity that NALSA had sought to foreclose.

The practical consequences of this regulatory posture cascade through every domain of legal personhood. The cascading consequences reach beyond the transactional into the intimate terrain of self-personhood like a transgender person whose certificate does not match their lived identity is routinely funnelled into public washrooms and changing rooms that correspond to neither their self-identification nor their assigned category, left unaccommodated in both and accepted in neither. Access to welfare schemes calibrated by gender, the ability to inherit under personal law, the entitlement to gendered protections under criminal law, each of these rights becomes contingent upon the regulatory gatekeeping of the Certificate of Identity. Recognition, in theory; regulation, in practice.

The central question raised by the 2026 Act, therefore, is not administrative but constitutional that can a right declared by the Supreme Court under Articles 14, 15, 19, and 21 be reduced to a statutory classification that the executive defines and the bureaucracy administers? The answer that India's jurisprudence gives, from 2014-2018, is an unambiguous no. The significance of the 2026 Act lies not merely in the rights it grants or withholds, but in the model of citizenship it embodies: a model in which the most intimate aspect of personhood, one's gender identity, becomes meaningful only upon receiving a certificate of approval from the state.

Underlying this design is a further conceptual question that the Act leaves unanswered. Gender identity, for legal purposes, sits at an unresolved fork between two models of status where one in which it is conferred by the state, comparable to citizenship or a registered marriage, neither of which exists in law until the state creates it, and another in which it is closer to the affirmation of a child's existing legal personality, where the registrar does not create the child but simply records a fact that already obtains. The 2026 Act, as this section has shown, tilts decisively toward the former. These are two genuinely different models of legal status, and the design of the Act answers the question implicitly rather than openly. NALSA answered that question in favour of the latter model: gender identity as a fact to be recorded, not a status to be granted. The 2026 Act, by making the certificate constitutive rather than declaratory of identity, answers it in favour of the former. It is this unresolved choice between two incompatible models of legal status, more than any single definitional dispute, that gives the regulation-versus-recognition framework developed in this section its enduring force.

V. DEMOCRATIC LEGITIMACY AND CONSULTATION FAILURES

The normative deficiencies of the 2026 Act do not exist in isolation. They are compounded by a deeper question that these failures raise is whether legislation affecting a structurally excluded minority can claim full legitimacy when it is produced through a process from which that minority was effectively excluded. Democratic legitimacy, properly understood, requires more than a numerical majority in a legislature, particularly where legislation affects a historically marginalised minority. It requires that the process of law-making itself be inclusive, deliberative, and responsive to the perspectives of those who will bear its consequences.

The 2019 Act established the National Council for Transgender Persons as a statutory body mandated to advise the Central Government on policies, programmes, legislation, and projects affecting transgender persons. Its composition, drawing representatives from transgender communities, civil society organisations, and relevant government ministries, reflects a legislative validation that transgender persons require a structured institutional channel through which their perspectives can inform the laws that govern their lives. Yet, it has been reported that the 2026 Act was passed without meaningful consultation with the Council, despite the statutory mandate. Thus, such passage of the act is not a minor procedural lapse but considering the Council exists precisely to prevent legislation of such magnitude from being enacted without the participation of those it affects, and bypassing it renders the consultation mechanism established by the 2019 Act functionally meaningless.

This is not limited to a question of administrative propriety. Constitutional morality, discussed above, applies not only to what the 2026 Act says but to how it was made. A State that owes transgender persons dignity and equal regard cannot meet that obligation while shutting them out of the process that defines their own legal status. Transgender persons remain among the most structurally excluded groups in Indian public life, with negligible representation in formal political institutions, and their access to the legislative process depends heavily on statutory mechanisms such as the Council. At a time when reservation for transgender persons in public administration should have marked a step toward doing right by the community, bypassing the very Council created to voice their concerns signals the opposite, a retreat from that commitment. Thus, when these mechanisms are bypassed, the resulting democratic deficit is not merely procedural but is foundational in character.

Parliamentary debate records and Standing Committee proceedings show that Opposition concerns about the narrowed definition and the absence of Council consultation went unanswered before the Act's passage, and activist organisations and community

representatives independently describe the same pattern: a legislative process conducted without meaningful engagement with those most directly affected. Parliament itself created the National Council for Transgender Persons through the 2019 Act as the institutional channel through which transgender persons were meant to participate in decisions affecting their legal status. Bypassing that channel does not merely skip a formality but it forecloses the one avenue Parliament had built for the community's voice to reach the legislative process. The question raised here is not whether consultation is invariably mandatory but instead whether democratic participation, once codified as a safeguard, can be quietly reduced to a formality without the State having to answer for it.

The deeper question these failures raise is whether legislation affecting a structurally excluded minority can claim full legitimacy when it is produced through a process from which that minority was effectively excluded. Returning to the question this section opened with, answering it requires separating ideas that the present debate often runs together. Political legitimacy asks only whether a law commands the requisite parliamentary majority and procedural regularity, and on that narrow measure the 2026 Act is not in question. Statutory obligation and good governance ask whether existing mechanisms, such as the Council's advisory mandate, were honoured; on that measure, the Act's passage without meaningful consultation raises a live and serious concern, though the breach of a consultation duty does not, without more, establish a foundational infirmity. Constitutional legitimacy is narrower and more demanding still: it asks whether the process was so exclusionary as to implicate the substantive normative values, dignity, equality, and non-discrimination, that the State is bound to observe in its procedures and not only in its outcomes. The claim advanced here rests on this third and narrowest ground. It is not that Parliament is legally obliged to consult every community affected by every law. It is that the Council's exclusion, combined with the substantive narrowing the Act effects, is itself evidence that the process fell short of the constitutional morality the State otherwise claims to uphold.

VI. FAMILY LAW AND THE CASCADING EFFECT OF RECOGNITION

The recognition of the legitimate right marks the beginning of the journey, not its destination. Rights acquire their true worth only when they can be exercised in everyday life. It therefore becomes necessary to examine whether the judicial promise of recognition meaningfully extends into the sphere of personal laws, where questions relating to marriage, adoption,

succession, inheritance, and family life are ultimately determined. It is within these areas that legal validation ceases to be an abstract guarantee and begins to shape the lived realities of individuals.

At first glance, the consequences of the 2026 Act may appear to be confined to the statutory definition of a “transgender person.” Such an understanding, however, overlooks the far-reaching implications of legal validation within the foundational framework. Recognition is not one right among many; it constitutes the gateway through which lawful identity is translated into enforceable civil rights. Consequently, any alteration to the class of persons entitled to legal acknowledgement inevitably extends beyond the four corners of the statute and into the broader operation of the legal system.

To appreciate the practical implications of this shift, it is useful to consider three individuals. The first is a transgender woman whose identity continues to fall within the categories recognised by law. Her legal position remains substantially unaffected. The second is a genderqueer individual who was expressly recognised under the 2019 Act but whose legal status becomes uncertain if the scope of recognition is narrowed, done through the 2026 Act. The third is a person whose gender identity does not correspond with the categories enumerated under the proposed legislative framework. Unlike the first individual, the latter two encounter uncertainty not because their identities have changed, but because the law no longer recognises them in the same manner.

A. Marriage: Recognition as the Gateway

The importance of this proposition becomes particularly evident within the realm of personal laws. Every personal law statute in India continues to operate upon a fundamentally binary understanding of gender, none having originally been drafted with transgender persons in contemplation. The Hindu Marriage Act, 1955,⁴⁶ for instance, proceeds upon a binary and heterosexual conception of marriage through expressions such as “bride” and “bridegroom”, traditionally understood in exclusively cisnormative terms. The implied limitations of this approach became apparent in *Arunkumar v. Inspector General of Registration*, where the Registrar of Marriages at Tuticorin refused to register the marriage of a transwoman on the ground that she could not be regarded as a “bride” within the meaning of Section 5 of the Hindu Marriage Act.⁴⁷

Rejecting this restrictive interpretation, the Madras High Court held that the expression “bride”

⁴⁶ The Hindu Marriage Act, 1955 (25 of 1955).

⁴⁷ *Arunkumar v Inspector General of Registration* 2019 SCC OnLine Mad 8779.

cannot be assigned a static or immutable meaning but must instead be interpreted in the light of evolving values. Drawing extensively upon the principles articulated in *NALSA*, Justice G.R. Swaminathan recognised that the term “bride” includes not only a cisgender woman but also a transwoman and any transgender or intersex person who identifies as a woman.⁴⁸ The decisive consideration, according to the Court, was not biological classification but the individual’s self-perceived gender identity. Essentially, the Court observed that “for too long, transgender persons and intersex people have been languishing in the margins” and that the Constitution of India, as an enabling document, invites them into the mainstream rather than excludes them from institutions already available to other citizens.⁴⁹

Arunkumar demonstrates that acceptance under jurisprudential law is not an abstract entitlement. It is the interpretive foundation upon which personal law itself begins to operate. If the same is subsequently narrowed, uncertainty arises not because marriage law has changed, but because the legal foundation upon which access to marriage rests has itself become less secure.

B. Adoption: Recognition Without Implementation

The same is particularly visible in the sphere of family formation. In India, adoption is principally governed by the Hindu Adoptions and Maintenance Act, 1956,⁵⁰ and the Juvenile Justice (Care and Protection of Children) Act, 2015.⁵¹ While neither statute expressly excludes transgender persons, both continue to operate within a legal framework originally conceived around binary and heteronormative assumptions of family. Consequently, despite the judicial validation accorded to transgender persons under *NALSA* and the statutory protections introduced through the 2019 Act, meaningful access to adoption remains uncertain for many members of the transgender community.

The practical manifestation of this uncertainty is evident within the regulatory framework administered by the Central Adoption Resource Authority (CARA). Although the Juvenile Justice Act provides the statutory foundation for adoption, the CARA Adoption Regulations continue to prioritise conventional conceptions of marital stability and family structure without

⁴⁸ Devika Sharma, ‘Madras HC | Transgender Female Is a “Bride” under Hindu Marriage Act; No Impediment in Registration of Transgenders Marriage’ (SCC Times, 25 April 2019) <<https://www.sconline.com/blog/post/2019/04/25/transgender-female-is-a-bride-under-hindu-marriage-act/>> accessed 9 July 2026.

⁴⁹ *Arunkumar v. Inspector General of Registration* 2019 SCC OnLine Mad 8779.

⁵⁰ The Hindu Adoptions and Maintenance Act, 1956 (78 of 1956).

⁵¹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

expressly accommodating transgender or gender-diverse parents.⁵²

The persistence of practical and administrative barriers that continue to impede executive implementation came into sharp focus before the Madras High Court in *B. Shama v. Union of India*.⁵³ The Court called upon the Union Government to explain why transgender persons continued to remain effectively excluded from the adoption framework despite the enactment of the 2019 Act. It further questioned the failure of the authorities to amend the CARA Regulations so as to bring them into conformity with the statutory protections already recognised by Parliament.

The impact of *B. Shama* extends well beyond the law of adoption itself. The case demonstrates that even after *NALSA* and the 2019 Act, executive authorities had yet to meaningfully operationalise those rights. The foundational promise of equality had entered judicial doctrine and legislative policy, yet it had not been translated into the administrative framework through which individuals actually exercise their rights. This distinction is considerable when assessing the implications of the 2026 Act. Even before the introduction of the Act, the broader and more inclusive framework established under the 2019 Act had not been fully implemented across executive institutions. The concern, therefore, is not merely that the Act proposes to narrow the statutory framework of recognition but it is that such narrowing occurs before the existing foundational and statutory protections have themselves been meaningfully realised. In effect, the legal system risks limiting rights whose practical implementation has yet to be completed. Executive inaction, however, represents only one dimension of the problem but there is more fundamental difficulty that lies elsewhere. It arises not where recognised rights remain imperfectly implemented, but where the legal system itself is unable to determine how those rights are to operate. That difficulty becomes particularly apparent within the law of succession, where legal validation performs a function far more essential than just recognising identity.

C. Succession: Recognition Without a Legal Category

The disconnect between judicial affirmation and statutory implementation reaches its clearest expression in the law of succession. Unlike marriage or adoption, which principally regulate legal relationships, succession determines the allocation of property and legal entitlements through carefully structured statutory categories. Before a court can determine how property is to devolve, it must first determine the legal identity of the individual claiming succession.

⁵² Adoption Regulations 2022 (Central Adoption Resource Authority).

⁵³ *B Shama Rao v Union Territory of Pondicherry* AIR 1967 SC 1480.

Recognition, therefore, performs a function extending far beyond symbolic affirmation; it constitutes the legal foundation upon which succession rights themselves become enforceable. This structural difficulty is reflected across India's principal succession regimes. The Hindu Succession Act, 1956 allocates inheritance through legally recognised familial categories such as "son", "daughter", "widow", and "husband".⁵⁴ Muslim personal law similarly distributes inheritance through gender-specific fractional shares distinguishing between male and female heirs. Even the Indian Succession Act, though secular in its application, proceeds upon binary legal classifications such as husband, wife, widow, and widower. Despite their doctrinal differences, each of these statutory frameworks proceeds upon a common assumption: every individual can first be situated within a legally recognised binary gender category before the applicable rules of succession can be determined.

The foundational difficulty, however, lies not in the continued use of binary terminology alone. Rather, it lies in the absence of any statutory guidance explaining how inheritance rights are to be determined where an individual's legally recognised identity falls outside those categories.⁵⁵ Although the 2019 Act recognised a broad spectrum of gender identities, including trans men, trans women, persons with intersex variations, genderqueer individuals, and persons belonging to recognised socio-cultural identities, the corresponding succession statutes were never amended to accommodate those identities within their respective schemes of inheritance. Consequently, legal validation and the statutory law of succession have remained fundamentally unreconciled.

The practical implications of this legislative silence are most evident in relation to genderqueer persons and individuals identifying solely as third gender.⁵⁶ While both identities were expressly recognised under the 2019 Act, neither the Hindu Succession Act, the Indian Succession Act,⁵⁷ nor Muslim personal law provides any guidance regarding the statutory provisions through which their inheritance rights are to be determined. The uncertainty therefore does not arise because these individuals lack legal status but rather, it arises because the statutory rules governing succession remain incapable of translating that validation into a coherent scheme of inheritance. The consequence is not necessarily the denial of inheritance

⁵⁴ The Hindu Succession Act, 1956 (30 of 1956).

⁵⁵ 'A CRITICAL STUDY ON TRANSGENDER AND THEIR PROPERTY RIGHTS' (2025) 5(1) *International Journal for Legal Research* <<https://ijlr.iledu.in/wp-content/uploads/2025/06/V5I1082.pdf>> accessed 15 June 2026.

⁵⁶ 'Transgender Persons and Their Succession Rights in India: An Analysis of the Social and Legal Implications' *International Journal of Law, Legal Research and Policy* <<https://www.ijlra.com/post/transgender-persons-and-their-succession-rights-in-india-an-analysis-of-the-social-and-legal-implic>> accessed 15 June 2026.

⁵⁷ The Indian Succession Act, 1925 (39 of 1925).

itself, but the absence of any clear legal principle capable of determining the statutory framework through which those rights are to be enforced.

Against this already incomplete statutory landscape, the Right of Transgender Persons Act, 2026 assumes particular significance. The Act does not create this legislative silence, nor does it automatically require every transgender person to be recognised according to the sex assigned at birth. The concern is considerably more nuanced. Where succession law already fails to accommodate identities beyond the gender binary, a legislative framework that narrows the class of persons entitled to legal status risks deepening an uncertainty that already exists. The question is no longer merely whether succession statutes recognise diverse gender identities, but whether the statutory identity through which inheritance rights are exercised remains sufficiently certain to permit their effective enforcement.

The consequence is a legal paradox regarding how the succession statutes distribute property by reference to legally recognised gender, whereas the Constitution, as interpreted in *NALSA*, recognises gender identity as an intrinsic attribute of personhood rather than a status created by the State. If the statutory framework governing legal status itself becomes narrower, courts may increasingly be required to answer a question that the existing law never contemplated: which statutory scheme governs an individual whose lawfully recognised identity is no longer adequately reflected within the legislative framework? In such circumstances, the operation of succession law risks turning not upon legal personhood, but upon administrative categorisation.

Unlike marriage, where courts have demonstrated a willingness to interpret personal law harmoniously with judicially developed contemporary values, succession presents a more fundamental challenge. A court cannot distribute property until it first determines the legal category into which the claimant falls. Where that category itself becomes uncertain, the uncertainty extends beyond identity and directly affects the operation of inheritance law. Recognition, therefore ceases to function merely as an affirmation of personhood instead it becomes the legal condition upon which proprietary rights themselves depend.

The challenge confronting transgender persons is therefore not confined to a single statute or institution; it is embedded within the continuing disconnect between legally acknowledged identity and the statutory framework through which civil rights are allocated.

VII. THE CONSTITUTIONAL PERSPECTIVES: RECOGNITION, REFORM AND THE PATH FORWARD

The legal acknowledgement of transgender rights in India did not emerge by itself. In both *NALSA* and *Navtej Singh Johar*, the Supreme Court rooted the rights of transgender persons within the guarantees of equality, dignity, autonomy, and personal liberty embodied in the Constitution of India. While doing so, however, the Court consciously recognised that judicial interpretation does not operate within domestic boundaries alone. Rather, while interpreting the scope of these guarantees, it drew guidance from internationally recognised human rights norms affirming the equal dignity of all persons irrespective of their gender identity or sexual orientation.

Particularly significant in this regard are the Yogyakarta Principles,⁵⁸ upon which the Supreme Court expressly relied in both *NALSA* and *Navtej Johar*. Rather than creating new rights, the Principles clarify how universally recognised human rights apply to persons of diverse sexual orientations, gender identities, gender expressions, and sex characteristics. The Court's reliance upon these Principles demonstrates that India's understanding of gender identity has, from its inception, evolved consistently with internationally accepted human rights standards.

A. International Institutional Practice: Recognition as the Foundation of Equality

Across several democracies, gender identity has increasingly come to be understood as an intrinsic aspect of personhood which the law recognises and protects rather than a status whose legitimacy depends upon prior approval by the State. Malta provides one of the clearest illustrations of this approach through its Gender Identity, Gender Expression and Sex Characteristics Act,⁵⁹ which guarantees every individual the right to recognition of, and treatment in accordance with, their self-identified gender. The significance of the Maltese framework lies in its affirmation that gender identity already exists within the individual and that the role of the State is to acknowledge and protect that identity. This philosophy closely mirrors the reasoning adopted by the Supreme Court in *NALSA*.

The same legal progression is evident across several other democratic jurisdictions, including Argentina, Canada, and the United Kingdom, where legal validation has progressively expanded beyond questions of identity into the effective enjoyment of substantive civil rights

⁵⁸ *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007) <<https://yogyakartaprinciples.org/>> accessed 9 July 2026.

⁵⁹ The Gender Identity, Gender Expression and Sex Characteristics Act, 2015 (Malta) (Act XI of 2015), as amended by Act XX of 2015.

such as marriage, adoption, and family life.⁶⁰ These developments reveal a common pattern where once legal status is accepted as the starting point, legislative reform shifts from determining who deserves status to ensuring that recognised persons are able to meaningfully exercise the rights flowing from such status.

This progression has been reinforced through legislative, institutional, and judicial developments. Comparative assessments demonstrate that jurisdictions maintaining sustained jurisprudential commitments have progressively strengthened legal protections and institutional safeguards for transgender persons, while the jurisprudence of the Court of Justice of the European Union has consistently affirmed that legal status should reflect an individual's lived gender identity and should not be conditioned upon intrusive medical procedures or restrictive administrative requirements.⁶¹ Together, these developments illustrate that judicial acknowledgement is gradually translated into legislative reform, institutional accountability, and judicial protection.

Comparative experience further demonstrates that judicial validation frequently extends beyond the legal sphere. Studies examining societal acceptance indicate that jurisdictions combining legal acceptance with sustained legislative reform and institutional commitment generally exhibit greater levels of acceptance towards LGBTQIA+ persons.⁶² While legislation alone cannot eliminate prejudice, these developments suggest that affirmation by courts, legislative reform, and social inclusion exist in a mutually reinforcing relationship. The jurisprudential conversation in these jurisdictions has therefore progressively shifted from determining who deserves legal status to ensuring that recognised persons are able to effectively enjoy the rights flowing from such status.

B. Reaffirming India's Constitutional Commitment: The Way Forward

The comparative developments discussed above are not intended to suggest that India ought to replicate foreign legislative models. Comparative foundational law neither requires legislative uniformity nor constitutional transplantation. Rather, they provide an opportunity to examine whether India's present legislative trajectory remains consistent with the principles embedded in the constitution that it has itself consciously embraced.

⁶⁰ 'LGBT Adoption around the World: Can You Adopt in Your Country?' (*The Motherload*) <<https://the-motherload.co.uk/lgbt-adoption-around-the-world-can-you-adopt-in-your-country/>> accessed 9 July 2026.

⁶¹ TGEU, 'Trans Rights Index & Map 2026' (TGEU) <<https://tgeu.org/trans-rights-index-map-2026/>> accessed 10 July 2026.

⁶² Andrew R Flores, Taylor NT Brown and Andrew S Park, *Public Support for Transgender Rights: A Twenty-Three Country Survey* (Williams Institute, November 2016) <<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Global-Acceptance-Index-LGBTI-Nov-2021.pdf>> accessed 5 July 2026.

India's jurisprudence has long reflected these very principles. In *NALSA*, the Supreme Court unequivocally recognised gender identity as an intrinsic aspect of dignity, autonomy, equality, and self-determination. That vision subsequently found legislative expression in the 2019 Act through its broad and inclusive definition of a transgender person and its acceptance of self-perceived gender identity under Section 4.⁶³ India therefore appeared to have embarked upon the same legal evolution reflected across several democratic jurisdictions.

The concern surrounding the Right of Transgender Persons Act, 2026 is not that India has adopted a legislative framework different from other jurisdictions. Rather, the concern is that the proposed framework appears to depart from the judicial direction established by *NALSA* and the 2019 Act. While several democracies have progressively expanded the rights flowing from legal status, the contemporary legislative discourse in India appears once again to centre upon the antecedent question of who is entitled to status in the first place. The divergence therefore lies not in the destination pursued by different jurisdictions, but in the direction in which their jurisprudential progression appears to be moving.

India's own experience further demonstrates why this democratic continuity is significant. Empirical studies indicate that progress in LGBTQIA+ acceptance has been characterised by periods of advancement as well as stagnation, illustrating that legal progress is neither inevitable nor irreversible. Comparative experience suggests that judicial acknowledgement, legislative reform, institutional commitment, and broader societal acceptance frequently reinforce one another. Conversely, uncertainty surrounding legal validation risks slowing the gradual process through which statutory guarantees are translated into meaningful equality.

Recognising this divergence, however, is only the first step; a constitutional argument of this kind is incomplete without a corresponding institutional remedy. Three possibilities merit consideration, in ascending order of institutional intrusion.

The most modest response would be to open the 2026 Act to a formal public consultation process before its provisions are brought into force, particularly given that the Standing Committee proceedings referenced earlier record that Opposition concerns went unanswered and that the National Council for Transgender Persons was not meaningfully engaged during drafting. A post-enactment consultation window, whether through a Parliamentary Standing Committee review or a structured public comment process supervised by the Ministry concerned, would not undo the procedural infirmity, but it would allow the very community whose legal status the Act redefines to place its objections on the legislative record before the

⁶³ The Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019) s 4.

definitional narrowing takes irreversible administrative effect.

Where consultation alone proves insufficient, a more substantive remedy would be a legislative amendment restoring the inclusive definitional architecture of the 2019 Act, specifically reinstating self-perceived gender identity and reversing the confinement of statutory recognition to enumerated socio-cultural categories. Such an amendment would not require Parliament to abandon regulation altogether; rather, it would require Parliament to redirect regulation toward facilitating recognition already constitutionally settled by NALSA, rather than toward gatekeeping who may claim it.

At the very least, and short of either consultation or amendment, any regulatory mechanism retained under the Act, including the Certificate of Identity, ought to build in a statutory avenue through which an individual denied recognition, or a class of persons excluded from the enumerated categories, may seek review or reconsideration of that denial by an authority bound to apply NALSA's constitutional standard rather than the Act's narrower administrative one. Absent such a mechanism, exclusion from the statutory definition becomes final in practice even where it is contestable in principle, leaving the very persons the Act was reportedly intended to protect without any institutional avenue to contest their own erasure from it.

None of these three measures is mutually exclusive, and each responds to a different institutional failure identified above, the first to the absence of consultation, the second to the substantive narrowing of recognition, and the third to the absence of any corrective avenue once exclusion occurs. What unites them is a single premise: that a regulatory framework governing so foundational an aspect of personhood cannot be permitted to harden into its final form without the participation, in some institutionally meaningful sense, of those it defines.

VIII. CONCLUSION

The struggle of transgender persons in India cannot be understood merely as a consequence of the Transgender Persons (Protection of Rights) Amendment Act, 2026. Rather, it reflects a much deeper legal tension between self-identification and State regulation that has shaped the legal status of gender identity for decades. While the constitutional jurisprudence and the Transgender Persons (Protection of Rights) Act, 2019 appeared to embrace dignity, autonomy, and self-identification, the 2026 Act raises concerns that Indian law may once again be moving towards a framework in which recognition is increasingly conditioned by statutory regulation rather than foundational principle.

The present debate therefore extends well beyond the wording of a statutory definition. At its core lies a question concerning the nature of citizenship itself. Legal recognition is the bridge

through which right-based promises acquire practical meaning, enabling access to family, property, education, employment, healthcare, and the countless ordinary incidents of citizenship that most individuals exercise without question. Once that bridge becomes uncertain, the practical enjoyment of legal rights inevitably becomes uncertain as well.

Ultimately, this article does not suggest that law should cease to regulate. Every legal system necessarily regulates in order to govern effectively. The question is not whether regulation should exist, but what its purpose ought to be, and, just as importantly, who is permitted a voice in shaping it. As explained earlier, that purpose is best served not by narrowing the class of persons entitled to recognition, but by reopening the legislative process itself, whether through public consultation, amendment restoring the 2019 Act's inclusive definition, or, at minimum, a statutory avenue for reviewing exclusion, so that the community most affected by the 2026 Act is not merely spoken about in Parliament, but heard by it.

The Constitution does not ask the State to determine who a person is; it asks the State to respect who that person already is. A democracy is measured not by how narrowly it defines those entitled to rights, but by how faithfully it protects the dignity of every individual within its fold, and by whether those individuals were permitted to shape the terms of that protection. Perhaps the true measure of India's constitutional promise will not be found in the enactment of another statute or the delivery of another landmark judgment, but in the day when recognition no longer remains a legal hurdle to overcome because it has become an ordinary and unquestioned incident of equal citizenship, arrived at with, and not merely for, those it concerns. Until then, the democratic promise of dignity will remain only partially fulfilled; not for want of foundational principle, but for want of its consistent implementation and the participation of those it is meant to protect.