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CONSTITUTIONAL LAW

Can Transgender Women Claim Women-Specific Rights in India? Constitutional Questions Before the Supreme Court

A petition before the Supreme Court asks whether legal recognition of gender identity should decide eligibility for women-specific reservations, sporting categories, prisons and other sex-based protections, and how NALSA's guarantees fit alongside Article 15(3).

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Introduction: When Recognition Becomes a Question of Entitlement

Can the State recognise a person as a woman without necessarily treating that person as eligible for every legal protection reserved for women? Conversely, can the State distinguish between biological sex and gender identity without undermining the dignity and constitutional rights of transgender persons?

These questions, once confined largely to academic debates, have entered the courtroom.

On 28 October 2026, the Supreme Court of India heard a petition filed by Women's Declaration International India challenging aspects of the Transgender Persons (Protection of Rights) Act, 2019, as amended in 2026. The petition raises concerns about the potential implications of legal gender recognition for women-specific reservations, sporting categories, prisons, institutional accommodation and other statutory protections. The Court sought the Union Government's response and tagged the matter with the pending challenges to the 2026 amendment.

What makes this litigation particularly significant is that it approaches the transgender rights debate from a different constitutional direction. While the existing challenges to the 2026 amendment question whether the State can restrict the recognition of gender identity, the present petition asks whether recognition itself can determine eligibility for rights historically attached to biological sex.

The controversy therefore presents a more fundamental question: Does legal recognition of an identity automatically translate into entitlement to every legal consequence associated with that identity?

The Constitutional Starting Point: What Did NALSA Actually Decide?

In *National Legal Services Authority v. Union of India* (2014), the Supreme Court recognised transgender persons' right to self-identify their gender. The judgment affirmed that gender identity forms an essential component of individual autonomy, dignity and personal liberty under Article 21 of the Constitution.

The Court also recognised the constitutional protection available under Articles 14, 15, 16 and 19, directing the State to extend legal recognition and welfare measures to transgender persons. The judgment was transformative because it moved transgender identity away from the margins of administrative recognition and placed it within the framework of fundamental rights.

However, an important distinction emerges when the judgment is examined in the context of the present controversy.

Recognition of gender identity and eligibility for every gender-specific statutory entitlement are not necessarily identical legal questions. *NALSA* established the constitutional importance of gender identity, but the precise treatment of competing claims involving sex-specific reservations, sporting eligibility and institutional arrangements now requires closer examination.

This does not mean that *NALSA* is incomplete or that its protections can be casually diluted. Rather, it raises the question of how its principles should operate when different constitutional interests intersect.

The 2026 amendment has made this question more pressing by changing the statutory definition of a transgender person and removing the earlier express recognition of self-perceived gender identity in Section 4(2) of the 2019 Act. These changes are

themselves under constitutional challenge.

The Supreme Court is therefore confronted with two connected but distinct questions: how far the State can regulate the recognition of transgender identity, and what legal consequences should follow from such recognition.

The Problem with Treating Identity and Eligibility as the Same Question

The law frequently creates classifications to distribute benefits, impose restrictions or protect particular groups. However, the basis of classification depends upon the purpose of the legislation.

For instance, reservations for women seek to address historical and structural disadvantages in political representation and public employment. Provisions relating to pregnancy and reproductive health necessarily engage biological considerations. Sporting regulations may consider physiological factors relevant to safety and competitive fairness.

These categories do not necessarily operate on identical principles.

The difficulty arises when a single legal classification is expected to determine eligibility across all these contexts. A gender identity certificate may serve an important purpose in protecting an individual's dignity and ensuring access to public services. However, whether that certificate should independently determine eligibility for a particular sex-specific benefit is a separate question.

Equally, biological sex cannot become a universal justification for denying transgender persons access to legal protection, public institutions or opportunities.

A more workable constitutional approach would require examining the purpose of each statutory provision, the nature of the benefit involved and the rights of everyone affected.

In other words, the law may need a context-sensitive approach rather than a single definition that automatically resolves every question.

Where the Conflict Becomes Real: Four Areas of Legal Uncertainty

The petition before the Supreme Court identifies several situations in which the distinction between sex and gender identity may have practical consequences.

1. Women's reservations and political representation

In *Anjali Guru Sanjana Jaan v. State of Maharashtra*, the Bombay High Court permitted a transgender woman to contest an election from a constituency reserved for women.

This raises an important question concerning the constitutional purpose of women's reservations. Are such reservations intended exclusively for persons belonging to a particular biological sex, or should legal gender recognition determine eligibility?

The issue becomes particularly significant in the context of the 106th Constitutional Amendment, which provides for one-third reservation for women in the Lok Sabha and State Legislative Assemblies, subject to the constitutional implementation framework.

The question is not merely one of electoral eligibility. It concerns the interpretation of affirmative action and the identification of the beneficiaries for whom such measures were designed.

2. Sports and competitive fairness

The petition also refers to *Anamika v. State of Kerala*, where the Kerala High Court permitted a transgender woman to participate in a district-level judo competition in the women's category in the absence of a separate transgender category.

Sport presents a particularly difficult regulatory question because inclusion and competitive fairness must be considered together. Depending on the discipline, eligibility may involve physiological characteristics, safety considerations and the rules of the relevant sporting authority.

Neither gender identity alone nor a generalised assumption about biological sex can adequately resolve every sporting eligibility dispute. The appropriate framework requires sport-specific evidence and carefully formulated eligibility criteria.

3. Prisons, searches and institutional accommodation

The petition further raises questions concerning women's prisons, hostels, toilets and personal searches.

These situations engage competing rights under Article 21, particularly dignity, privacy and personal liberty. They also require the State to protect individuals from discrimination and ensure safe institutional environments.

The challenge is to develop arrangements that respect transgender persons without disregarding the privacy and safety interests of other individuals.

A constitutional response should not assume that every transgender person presents a security concern. Equally, institutional policies should not ignore legitimate privacy considerations merely because legal recognition has been granted.

4. Public employment and intimate healthcare

The petition also relies upon *S. Mani v. The Additional Chief Secretary to Government*, concerning the appointment of a transgender woman to a female nursing assistant position.

The controversy raises questions about the relationship between equal employment opportunities and the specific nature of professional duties involving intimate patient care.

Here, the law must consider both the employment rights of the individual and the dignity, privacy and preferences of patients. Objective professional standards and appropriate institutional safeguards may offer a more constitutionally sustainable response than categorical exclusion.

The International Perspective: Lessons From the United Kingdom

India is not alone in confronting the legal consequences of gender recognition.

In *For Women Scotland Ltd v. The Scottish Ministers* (2025), the UK Supreme Court examined the meaning of 'woman' and 'sex' under the Equality Act 2010 in the context of statutory protections for women.

The Court held that the terms 'woman' and 'sex' in the relevant statutory context referred to biological sex. The judgment emphasised the importance of interpreting the statutory scheme coherently, particularly where sex-based protections and exceptions were concerned.

The decision is relevant to India because it demonstrates that legal recognition of gender identity and the interpretation of sex-specific statutory provisions can raise distinct questions.

However, the UK judgment cannot simply be transplanted into Indian constitutional law. The statutory framework, constitutional structure and jurisprudential development in India are materially different.

Nevertheless, it offers an important comparative lesson: the legal meaning of sex and gender may require examination in the context of the particular legislation rather than being treated as interchangeable across every legal domain.

The Real Constitutional Test: Can Both Sets of Rights Coexist?

The present dispute should not be reduced to a contest in which the recognition of one group's rights necessarily requires the exclusion of another.

Article 14 guarantees equality before the law. Article 15(3) expressly permits special provisions for women and children. Article 16 protects equality of opportunity in public employment, while Article 21 safeguards dignity and personal liberty.

These provisions must be interpreted harmoniously.

Women's rights and transgender rights are not constitutionally incompatible. The difficulty lies in determining the appropriate legal framework when the protection of one interest appears to intersect with another.

A blanket rule that gender identity automatically determines eligibility for every women-specific benefit may overlook the distinct purposes of particular statutory protections. On the other hand, a blanket rule that biological sex invariably overrides gender identity may undermine the constitutional guarantees recognised in *NALSA*.

The more defensible approach is to require the State to justify classifications with reference to the purpose of the relevant law, the nature of the entitlement and the constitutional rights involved.

This would also place a responsibility on the legislature to avoid leaving sensitive questions entirely to administrative discretion. Clear statutory criteria, transparent procedures and appropriate safeguards are essential to prevent inconsistent decisions across institutions and jurisdictions.

Conclusion: The Law Cannot Afford to Confuse Recognition With Regulation

The Supreme Court's consideration of the present petition may prove to be an important moment in the development of Indian constitutional jurisprudence on sex and gender identity.

The central issue is not whether transgender persons deserve constitutional protection. That question has already received a clear answer in *NALSA*. Nor is it whether women-specific protections should continue to exist. Article 15(3) expressly recognises the constitutional legitimacy of special provisions for women.

The harder question is how these rights should operate when their practical application intersects.

India needs a legal framework that recognises gender identity without assuming that every statutory entitlement must follow automatically from that recognition. Equally, it must preserve sex-specific protections without allowing the distinction between sex and gender to become a basis for arbitrary discrimination.

Ultimately, constitutional equality cannot be achieved by ignoring differences in legal purpose, nor can it be achieved by treating identity as an automatic qualification for every legal benefit. The Supreme Court's task is therefore not simply to decide who qualifies as a woman. It is to determine how a constitutional democracy can protect individual identity while ensuring that the rights created for different forms of disadvantage remain meaningful, coherent and enforceable.

The real test of equality may lie not in choosing between sex and gender identity, but in developing a legal framework capable of recognising both without making either invisible.