Kuwait Research Journal of
Business Management (KRJBM)

ISSN Print: 2790-6590 | ISSN Online : 2790-6582 Open Access

BETWEEN SELF-IDENTIFICATION AND INSTITUTIONAL RECOGNITION: A COMPARATIVE STUDY OF TRANSGENDER LEGAL RECOGNITION IN INDIA AND THE UNITED KINGDOM

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Article History
Received: 15.09.2025
Revise : 20.09.2025
Accepted: 21.09.2025
Published: 28.09.2025

DOI:10.61705/KRJBM.1.3.2025.56.61

Keywords: Transgender rights; Legal gender recognition; Self-identification; Comparative law; India; United Kingdom

Abstract: India and the United Kingdom offer different institutional logics and evolutionary paths in the field of transgender legal recognition. India has been led by judicial activism through the pronouncement of a landmark NALSA judgment that established self-identification as the constitutional standard, yet the Transgender Persons (Protection of Rights) Act, 2019 introduced a District Magistrate certification procedure, creating a structural tension between judicial idealism and legislative implementation. The UK, by contrast, built its framework on the Gender Recognition Act 2004, which channels legal recognition through the medicalised assessment of the Gender Recognition Panel; its anti-discrimination architecture is more mature, but self-identification reform has been repeatedly stalled in political contestation. By comparing the recognition models of these two countries, procedural obstacles and institutional tensions, this paper reveals a shared dilemma: the formal expansion of legal recognition does not necessarily produce substantive autonomy. India confronts an inversion of "judicial progress—legislative regression," while the UK is caught in the paradox of "robust protection—conservative recognition."

I. Introduction

The legal recognition of transgender persons is, at its core, a question of where the boundary lies between state power and individual autonomy. By what standard, through what procedure, and under what conditions the state recognises a gender identity a person claims for themselves directly determines whether that individual can enjoy full citizenship in education, employment, healthcare and marriage. Over the past two decades, India and the UK have each responded to this challenge through different institutional paths, and each has encountered difficulties of a distinct nature.

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India's trajectory has been judicial at its centre. In 2014 the Supreme Court in *National Legal Services Authority v. Union of India ("NALSA")* delivered a landmark judgment recognising transgender persons as a "third gender" and anchoring gender self-identification within Articles 14, 15, 19(1)(a) and 21 of the Constitution. Yet the Transgender Persons (Protection of Rights) Act, enacted five years later, did not faithfully implement that constitutional command; instead, it substituted an administrative certification mechanism for the judicially established principle of self-identification. The UK's path has been the reverse: the Gender Recognition Act, 2004 created a formal channel for legal gender change, and the Equality Act 2010 lists "gender reassignment" as a protected characteristic, making its anti-discrimination architecture comparatively mature. But access to a Gender Recognition Certificate has always presupposed medical diagnosis, and after the 2018 consultation the government explicitly abandoned self-identification reform in 2020; in 2025 it reaffirmed that self-identification would not be introduced.

Drawing on the two countries' legal architecture, judicial precedents and policy documents, this paper conducts a comparative analysis along three dimensions—recognition models, procedural obstacles and institutional tensions—in an attempt to answer a central question: why do two countries with such different legal traditions and constitutional structures display a similar gap between "formal progress and substantive shortfall" on the question of transgender legal recognition?

II. India: Judicial Leadership and Legislative Inversion

A. The Constitutional Breakthrough of NALSA

The 2014 NALSA judgment is the watershed of transgender rights in India. The Supreme Court expressly placed gender identity at the core of fundamental rights, holding that "self-determined gender is an integral part of personal autonomy and self-expression, protected under the personal liberty guaranteed by Article 21." The Court further held that transgender persons should be treated as "socially and educationally backward classes," entitled to reservation in educational institutions and public employment. The radicalism of the judgment lies in its explicit rejection of medical or surgical intervention as a precondition for legal recognition, privileging psychological self-identification over biological determinism.

Yet implementation of this judicial command has been deeply unsatisfactory. A briefing published by the International Commission of Jurists on the second anniversary of the judgment noted that the central and state governments had "still not implemented some of the core directions" of the judgment, that the "basic procedure" for legal gender recognition "remains unclear," and that individuals were left to navigate "bewildering bureaucratic obstacles" on their own. This assessment has remained valid in subsequent years and directly shaped the direction of the 2019 legislation.

B. The Administrative Turn of the 2019 Legislation

The Transgender Persons (Protection of Rights) Act, 2019, which was supposed to be the legislative implementation of NALSA, departed from the judicially established standard in its key provisions. Section 4(2) formally recognises the "right to self-perceived gender identity," but the certification mechanism constructed in Sections 5 to 7 places the realisation of that right under the review of the District Magistrate. An applicant must submit an application for an identity certificate to the Magistrate, who conducts administrative verification before a transgender identity certificate can be issued; if the applicant wishes to change the gender marker to "male" or "female," a separate application is required, accompanied by a certificate issued by the Chief Medical Officer attesting that surgery has been undergone.

The core problem of this mechanism is that it converts the "NALSA principle" of "self-identification suffices" into "administrative confirmation is required." As critics have pointed out, this "transforms a personal expression of identity into an administrative privilege subject to bureaucratic approval." For marginalised

ISSN Print: 2790-6590 | ISSN Online : 2790-6582 Open Access

individuals lacking adequate documentation, the district-level administrative process itself constitutes a substantive obstacle. More profoundly, subjecting gender identity, an intensely private attribute, to government scrutiny is itself a symbolic denial of personal autonomy.

C. Constitutional Tension

This legislative path stands in clear conflict with India's constitutional jurisprudence. The *Puttaswamy judgment* (2017) established privacy as a fundamental right under Article 21, expressly encompassing "decisional autonomy" and bodily integrity. The *Navtej Singh Johar judgment* (2018) further confirmed that constitutional morality takes precedence over social morality, and that the state may not restrict individual self-expression on grounds of social prejudice. Against this background, requiring transgender persons to exchange medical intervention and administrative review for legal recognition is difficult to justify under the proportionality test: there is no necessary connection between the aim (preventing welfare fraud) and the means (comprehensive medicalisation and administrative screening), and less restrictive alternatives (such as a declaration-based registration system) exist.

III. The United Kingdom: Institutionalised Protection and Stalled Recognition

A. The Medicalised Framework of the Gender Recognition Act

The UK's Gender Recognition Act, 2004 established the gender recognition certificate system. Applicants must provide two medical reports to the Gender Recognition Panel, one of which must include a diagnosis of gender dysphoria, and must demonstrate having lived in the acquired gender for at least two years. The law does not require applicants to undergo surgery or hormone therapy, but the medical diagnosis itself constitutes an unavoidable threshold. As of 2025 the government's position remains explicit: it will "modernise and simplify" the procedure to "remove indignities" for transgender people, but "retain the need for a diagnosis of gender dysphoria" and "will not introduce self-identification."

The paradox of this position is that it simultaneously acknowledges the "indignity" of the existing procedure while refusing to remove the core mechanism that produces that indignity subjecting individual gender recognition to psychiatric scrutiny. The requirement of a gender dysphoria diagnosis presupposes a pathologising framework: transgender identity can obtain legal recognition only when classified as a "disorder." This stands in sharp contrast to the de-pathologising path represented by NALSA.

B. Protection and Exceptions under the Equality Act

The Equality Act, 2010 lists "gender reassignment" as a protected characteristic, prohibiting direct and indirect discrimination, harassment and victimisation in employment, education, housing and the provision of public services. Protection extends to persons "undergoing, having undergone or proposing to undergo" gender transition, without requiring completion of transition or possession of a gender recognition certificate. In terms of anti-discrimination, this design is considerably forward-looking: it decouples protection from legal recognition, allowing transgender persons who have not yet obtained a certificate to claim the right not to be discriminated against.

Yet the Equality Act simultaneously preserves exceptions for "single-sex spaces," permitting the exclusion of transgender persons on the basis of sex where "proportionate and necessary." In April 2025 the UK Supreme Court in For Women Scotland held that "sex" in the Equality Act means "biological sex," i.e., the sex registered on the birth certificate, and that possession of a gender recognition certificate does not alter this determination. This judgment effectively excludes transgender women from the category of "women" protected under the Equality Act, rendering the gender recognition certificate ineffective on the key question of access to public spaces. The "robustness" of anti-discrimination protection and the "conservatism" of legal recognition here form a sharp contrast: a person may be free from discrimination in employment, yet lawfully excluded from a hospital ward or a shelter.

C. The Failure of Self-Identification Reform

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The UK had an opportunity to move toward a self-identification model. In 2018 the Conservative government launched a public consultation on reform of the Gender Recognition Act, acknowledging that many transgender people found the existing procedure "intrusive, humiliating and burdensome." Yet in September 2020 the government's response abandoned all substantive reform proposals, concluding that the existing law "strikes the right balance." The Labour government's position in 2025 continued this judgment, explicitly rejecting self-identification. The reasons for the failure of reform are multiple: transgender rights have become a highly politicised cultural issue in the UK, the controversy over women's single-sex spaces has been placed at the centre of public debate, and the claims of transgender people themselves have often been marginalised in that debate.

IV. Comparative Analysis

A. Differences in Recognition Models

Transgender legal recognition in India and the UK rests on fundamentally different normative foundations. India's recognition standard was established by constitutional precedent: NALSA expressly places self-identification at the core, and legislation is in theory meant to implement rather than redefine that standard. The UK's recognition standard was set by parliamentary legislation: the Gender Recognition Act adopted a medicalised review model from the outset, and self-identification was never a legal principle.

In practice, however, this difference is offset by two different institutional dynamics. India's legislature chose to depart from the judicial command, substantively hollowing out the NALSA principle of self-identification through administrative procedures; the UK's executive chose to maintain the legislative status quo, substituting "simplifying the procedure" for "changing the principle." The outcomes of the two paths converge: transgender persons still face recognition procedures mediated by medical or administrative authority.

B. The Nature of Procedural Obstacles

India's procedural obstacles are primarily administrative. The District Magistrate's review introduces discretionary space for local bureaucrats, and for transgender persons lacking education, documentation or social capital, contact at this level is often accompanied by stigma and distrust.

The UK's procedural obstacles are concentrated at the level of medical expertise. Although the Gender Recognition Panel's review does not require surgery, obtaining a gender dysphoria diagnosis itself depends on assessment by psychiatric or psychological professionals. Against the background of long waiting lists at NHS gender identity clinics, this requirement constitutes a substantive barrier of time and resources. The core of the procedural obstacle is the filtering of individual declaration by "psychiatric gatekeeping."

The two forms of obstacle differ, but share a logic: the state does not trust transgender persons' claims about their own identity and requires a third-party authority (bureaucrat or doctor) to vouch for its "authenticity."

C. The Decoupling and Re-coupling of Anti-Discrimination Protection and Recognition

A notable feature of the UK model is the relative decoupling of anti-discrimination protection from legal recognition. Protection under the Equality Act does not require a gender recognition certificate, so that transgender persons without legal recognition can still obtain remedies in employment and other fields. But the Supreme Court's 2025 ruling caused this decoupling to fail in a key area: on access to single-sex spaces, the presence or absence of a certificate, together with the determination of "biological sex," jointly determines the lawfulness of exclusion. The formal robustness of anti-discrimination protection is substantively eroded by the biological interpretation of "sex."

India's situation is the opposite. Section 3 of the 2019 Act prohibits discrimination in education, employment, healthcare and other fields, but enforcement of that prohibition depends heavily on whether the individual holds an identity certificate obtained under Sections 5 to 7. In other words, the trigger for anti-discrimination protection presupposes administrative recognition, and administrative recognition in turn is conditioned on medical intervention or bureaucratic discretion. Protection and

ISSN Print: 2790-6590 | ISSN Online : 2790-6582 Open Access

recognition are not decoupled but linked, with recognition as the threshold.

V. Concluding Remarks

The transgender legal recognition systems of India and the UK displays a striking symmetry. India has the rupture between the most radical judicial principle (self-identification as a constitutional right) and the most conservative implementation path (dual administrative-medical review); the UK has the tension between the most mature anti-discrimination framework (broad prohibitions covering employment, education and services) and the most stubborn recognition conservatism (the irremovability of medical diagnosis).

The sources of the two inversions differ. India's legislative departure stems from the state's anxiety over the distribution of welfare resources and from the governmental absorption of the "third gender" category—converting NALSA's recognition into a manageable, verifiable administrative category. The UK's recognition stalemate stems from the politicisation of the single-sex spaces controversy, in which the legal status of transgender women is placed in binary opposition to the safety of women's spaces, and self-identification is constructed as a threat to, rather than an extension of, the existing rights system.

Yet both paths point to the same conclusion: the formal expansion of legal recognition does not automatically produce substantive autonomy. India expanded the normative scope of recognition through judicial precedent, yet narrowed its practical accessibility through administrative procedure; the UK expanded the scope of protection through anti-discrimination legislation, yet narrowed the legal meaning of "sex" through medical diagnosis and biological interpretation. Transgender persons in both systems are required to "prove" themselves in some way to the Magistrate, to the doctor, or to a legal category that refuses to recognise their gender claim.

The real question may not be whether India should learn from the UK's "maturity" or the UK from India's "progress." The experience of the two countries points jointly to a deeper inquiry: when the state demands proof in the name of recognition, whose security is it protecting, and whose order is it maintaining?

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ISSN Print: 2790-6590 | ISSN Online : 2790-6582 Open Access

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