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The De Facto Registry: Mandatory Medical Reporting, Informational Self-Determination and the Puttaswamy Framework: A Comment on Section 7(1A) of the 2026 Transgender Amendment

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Section 7(1A) of the Transgender Persons (Protection of Rights) Amendment Act 2026 requires every medical institution in which a person undergoes surgery to change gender to furnish that person's details to the District Magistrate and a medical authority, and the person must apply for a certificate reflecting the change. The privacy objection to this provision forms one of the issues in the pending constitutional challenge; this article works it through in full. It argues that the reporting and certification obligations together assemble a de facto state registry of transgender persons and their medical histories, which cannot be reconciled with the right to informational self-determination recognised in K S Puttaswamy v Union of India. Working through the proportionality standard that Puttaswamy laid down, together with the procedural-safeguards requirement added by Kaul J, the article contends that compelled disclosure of gender-affirming care to executive authorities, absent consent, a data-protection regime, or any appellate mechanism, cannot survive constitutional scrutiny. Drawing on the German census decision from which the concept descends, it further argues that the mandate is the structural completion of the amendment's departure from NALSA v Union of India, converting a self-declared identity into a state-surveilled one.

Keywords: *transgender rights, informational self-determination, privacy, Puttaswamy, NALSA.*

INTRODUCTION

On 30 March 2026, the President of India assented to the Transgender Persons (Protection of Rights) Amendment Act 2026, completing a legislative passage that had taken barely seventeen days from tabling to assent.[1] Most of the public argument that followed fixed on a single change: the deletion of the statutory right to self-perceived gender identity and its replacement with certification by a medical authority.[2] That change is grave, and it forms the centre of the constitutional challenge now pending before a three-judge bench of the Supreme Court.[3] This article is concerned with a quieter provision that has drawn less sustained analysis, and which may prove as consequential: the obligation the amendment places on medical institutions to report gender-affirming surgery to the state.

Under the newly inserted section 7(1A), a medical institution in which a person has undergone surgery to change gender must 'furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed,' and the person must in turn apply to the District Magistrate for a certificate indicating the gender change.[4] Read on its own, each limb of this arrangement can be made to look administrative. Read together, the limbs assemble something the statute does not name, but the petitioners have named for it: a mandatory transgender registry, a state-held and continuously updated account of who has transitioned, where, and by what medical means.

The privacy objection to the mandate is not new, and this article does not present it as a discovery. In the weeks after the Amendment's passage, commentators and the petitioners identified section 7(1A) as creating, in effect, a state registry of transgender persons that engages the informational-privacy holding of Puttaswamy, and the Supreme Court has framed one of the issues in the challenge in those terms.[5] What that commentary has not done, and what this article attempts, is to work the objection through in full: to show how

[1] Transgender Persons (Protection of Rights) Amendment Act 2026
[2] Transgender Persons (Protection of Rights) Act 2019; Transgender Persons (Protection of Rights) Amendment Act 2026
[3] *Laxmi Narayan Tripathi v Union of India* WP (C) No 548/2026
[4] Transgender Persons (Protection of Rights) Amendment Act 2026, cl 5
[5] *Laxmi Narayan Tripathi v Union of India* WP (C) No 548/2026

the mandate assembles a registry as a matter of function rather than nomenclature; to run it through each limb of the Puttaswamy proportionality standard, including the procedural-safeguards requirement that is usually named but not applied; to draw the comparative parallel with the German census decision from which the Indian concept of informational self-determination descends; to explain why the mandate is the structural completion of the shift away from self-identification; to show why the general data-protection statute does not cure it; and to meet the strongest defences of it. The contribution is one of doctrinal development rather than novelty of claim.

FROM REPORTING DUTY TO REGISTRY

Where the principal Act of 2019, read with the 2020 Rules, allowed a transgender person to obtain a certificate of identity from the District Magistrate on the strength of an affidavit and without medical examination,[6] the amendment interposes a medical authority whose recommendation the District Magistrate must examine before issuing the certificate of identity under the amended section 6(1). The reporting duty is the enforcement mechanism of this new architecture. It has two interlocking parts: the institutional report tells the state that a transition has occurred, and the compelled application requires the individual to complete the record the report has opened. The state thereby comes to hold, for each person who transitions medically, an identified account linking a named individual to a specific gender-affirming procedure at a specific institution on a specific date. That account is held by executive authorities rather than the treating clinician; it is created without consent, by statutory compulsion; and it is retained without any stated limit of purpose, time, or access.

This combination warrants the description 'registry.' A registry, in the sense that matters constitutionally, is defined not by whether the statute uses the word but by function: a systematically maintained, identified record of a class of persons, held by the state, keyed to a characteristic those persons share. The reporting duty produces exactly that. Two features of the record deserve emphasis. The first is the sensitivity of the datum: information that a person is transgender and has undergone gender-affirming surgery is among the most intimate information about a human being that exists, and its disclosure exposes the person to stigma, discrimination and violence. The second is the identity of the holder: the report

[6] Transgender Persons (Protection of Rights) Act 2019; Transgender Persons (Protection of Rights) Rules 2020

runs not to a health authority bound by clinical confidentiality but to the District Magistrate, a general executive officer, and to a medical authority constituted for verification rather than care. The datum thus leaves the clinical relationship, in which confidentiality is the norm, and enters an administrative one, in which it is not.

THE MANDATE AND THE PUTTASWAMY FRAMEWORK

The nine-judge bench in Puttaswamy held unanimously that privacy is a fundamental right protected by Articles 14, 19 and 21, and gave it an internal structure of three aspects: privacy of the body, informational privacy, and privacy of choice.[7] Informational self-determination, the second aspect, is more than a right against disclosure of secrets. It is a right of control: the authority of the individual to decide when, how and to what extent information about them is collected, used and shared, with consent at its centre. It is described as self-determination rather than confidentiality because what it protects is the person's authorship of their own informational life.[8]

Two points about consent bear on the mandate. Consent in the Puttaswamy conception is not exhausted by a single authorisation at the point of collection; it attaches to each use, so a person who consents to collection for one purpose has not consented to use for another. And consent, to be meaningful, must be free, whereas consent extracted as the price of access to medical care is not. The reporting mandate offends both: it collects by compulsion without any consent, and it makes access to gender-affirming care conditional on submission to the report. The confidentiality framing that the Union's 'verification' defence invites understates the injury. Even a perfectly secure registry, from which nothing ever leaked, would violate informational self-determination, because the injury lies in the compelled creation and state holding of the record, not only in the risk of its escape. Daniel Solove's dismantling of the 'nothing to hide' argument makes the point: the harm of state record-keeping is not that it exposes wrongdoing but that it shifts power to the state and subjects the person to a record they can neither see nor correct.[9] A transgender person has, in the relevant sense, nothing to

[7] *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1
[8] Gautam Bhatia, 'STATE SURVEILLANCE AND THE RIGHT TO PRIVACY IN INDIA: A CONSTITUTIONAL BIOGRAPHY' (2022) 26(2) National Law School of India Review <https://repository.nls.ac.in/nlsir/vol26/iss2/3/> accessed 13 June 2026
[9] Daniel J Solove, ''I've Got Nothing to Hide' and Other Misunderstandings of Privacy' (2007) 44 San Diego Law Review <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=998565> accessed 13 June 2026

hide: transition is not wrongdoing, and the case for the registry cannot be that it exposes anything illicit.

Privacy is not absolute. Puttaswamy allows intrusion on conditions, stated by the plurality in terms that have governed every subsequent challenge: "*An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.*"

An interference must rest on law, pursue a legitimate aim, and adopt means proportionate to that aim, understood to require the least rights-restricting measure that would still achieve it.[10] Kaul J, concurring, added a fourth requirement: procedural safeguards against abuse of the power to interfere, underscoring that personal information must not be used without consent.[11] The mandate clears the first requirement and stumbles at each of the others.

On legitimate aim, the stated justification, in the Amendment's Statement of Objects and Reasons, is that a precise definition is needed to identify the 'genuine oppressed persons' to whom the Act's benefits are meant to reach, and expressly that such identification 'cannot be extended based on' a 'claimed self-perceived identity.' The stated aim is thus, on its own terms, as much about excluding the self-identifying from the protected class as about the integrity of any benefit.[12] Fraud prevention is, in the abstract, a legitimate aim, but the legitimate-aim requirement attends to the aim a measure actually pursues, as revealed by its design. A registry of gender-affirming surgeries is not designed to detect welfare fraud, which turns on facts asserted in a benefit claim and is verified when that claim is made; it is designed to give the state a standing, identified account of transgender persons, since it collects from everyone who transitions medically, whether or not they seek a benefit. On necessity, the mandate collapses. Verification at the point of the benefit claim, a discrete and consented transaction, serves any legitimate aim without a standing surgical registry. It may be objected that the individual must in any event disclose the surgery when applying for a certificate reflecting the change, so that the institutional report adds nothing. The objection misfires, and seeing why locates the injury precisely. What the compelled institutional report

[10] *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1
[11] *Ibid*
[12] Transgender Persons (Protection of Rights) Amendment Bill 2026

adds is not the disclosure but the aggregation: the individual's own application is a single, purpose-bound act of disclosure that they initiate and control, whereas the report converts the same fact into a standing, state-held record compiled without the individual's participation and retained beyond the transaction that occasioned it. The less intrusive means, an application the individual makes and governs, achieves any legitimate documentary aim; the report achieves the surveillance aim on top of it. A measure that imposes the most intrusive available means when a less intrusive means is to hand is the paradigm of a disproportionate one, and the analysis is sharpened by the sensitivity of the data and the executive character of the holder.

The mandate fails Kaul J's fourth requirement most plainly, because on this point there is nothing to weigh. The amendment creates the reporting duty and the state-held record but establishes no safeguards around either: no limit on the purposes for which the record may be used, no cap on retention, no restriction on access, no control on onward sharing, and no appellate mechanism against an adverse determination in the certification process of which the record form's part. A power to compile a registry of a vulnerable population's most intimate information, unaccompanied by any procedural guarantee against abuse, is exactly the power Kaul J's requirement was formulated to forbid. There is a further dimension. The mandate also engages bodily and decisional privacy, because the datum concerns a medical decision about one's own body, and it chills access to gender-affirming healthcare: a person who knows that surgery will trigger a report faces a coercive choice between needed care and privacy, so that the mandate's harms extend to the health and safety of those whose data it holds. For a transgender person, identity, body and information are a single integrated matter, and the mandate intrudes on all three facets of privacy at once.

SURVEILLANCE, THE CENSUS PARALLEL, AND THE LIMITS OF DATA-PROTECTION LAW

The closest constitutional analogue to the Indian mandate is the German Federal Constitutional Court's census decision of 1983, the case in which informational self-determination was first articulated.[13] There, a census statute providing for compulsory

[13] Gerrit Hornung and Christoph Schnabel, 'Data protection in Germany I: the population census decision and the right to informational self-determination' (2009) 25(1) Computer Law & Security Review <https://www.sciencedirect.com/science/article/abs/pii/S0267364908001660> accessed 13 June 2026

collection of personal data, comparable and shareable across administrative registers, was struck down because the individual would be unable to know or control what the state knew about them. The parallel is close: in both cases the state compels collection, renders the data shareable across bodies, and strips the individual of control. If anything, the Indian mandate is graver, because the German census collected broad demographic data across the whole population, whereas the mandate targets a single vulnerable minority defined by a protected characteristic and collects the most intimate information about body and identity. The German court found even generalised census collection incompatible with informational self-determination absent safeguards; a targeted registry of a stigmatised minority's medical transitions, held without safeguards, is a fortiori incompatible with the same right, which Puttaswamy imported in substantially the German form.

The mandate is not a severable defect curable by adding safeguards; it is the logical completion of the shift away from self-identification. In NALSA v Union of India, the Court rejected the biological test for gender and adopted a psychological test, holding that no one may be required to undergo medical procedures as a condition of recognition.[14] Self-identification is the doctrinal expression of a substantive commitment: that the authority to determine one's gender rests with the individual, not the state. Once that authority is relocated to a medical board, the state must have a means of exercising it, which means it must have knowledge, and the registry is the knowledge the relocated authority requires. Self-identification and surveillance are thus two faces of one question about where the power to determine identity lies. NALSA made the individual the author of their gender; Puttaswamy made the individual the author of their informational life; the mandate displaces the individual from both roles at once. It does not merely accompany the loss of self-identification. It records it.

Nor does India's general data-protection statute cure the defect. The Digital Personal Data Protection Act 2023 is built around consent but provides extensive exemptions for the state, permitting non-consensual processing for governmental functions and empowering the Union to exempt state instrumentalities by notification. Its constraints are not yet operative: although the rules under the Act were notified in November 2025, its substantive obligations commence only in May 2027 under a phased schedule, so at the time of writing even such

[14] *National Legal Services Authority v Union of India & Ors* (2014) 5 SCC 438

protection as the Act might offer does not yet bind.[1516] The mandate's relationship to the Act cuts against the individual whichever way it is characterised. Where the reporting institution is a public hospital, the disclosure is processed by an instrumentality of the State performing a statutory function, apt to fall within the Act's state-facing exemptions and so outside the consent requirement altogether. Where the institution is private, the state exemptions do not obviously apply to the hospital, but the fact furnished is a statutory disclosure the hospital is compelled to make, and the District Magistrate's onward holding of it is again processing by the State that the exemptions are apt to cover. Either way, the individual gains no consent-based protection, and the fact that private hospitals process the most sensitive category of data with no heightened statutory safeguard, since the Act recognises no special category of sensitive data, only deepens the gap. Scholarship has already argued that provisions of the 2023 Act themselves fail the Puttaswamy proportionality standard for want of safeguards, so the general law cannot rescue a mandate vulnerable on the same grounds.[17] The mandate thus operates in a regulatory vacuum: the Amendment itself supplies no safeguards; the rules under the Amendment that might have supplied them, governing the form and manner of the reporting, remain unnotified; and the general data-protection statute either exempts the processing, is not yet in force in its substantive part, or is itself of doubtful adequacy on the very ground of inadequate safeguards.

CONCLUSION

Four defences of the mandate can be anticipated, and each fails. First, that it collects no more than the state already holds, since a certificate applicant discloses their status anyway: this has been answered above at the necessity stage, the point being that the injury lies in the aggregation of the fact into a standing state-held record compiled without the individual's participation, not in the individual's own controlled disclosure. Second, that the state keeps registers of many things: but a birth register records an event that is not itself a source of danger, whereas a register of transgender persons records a characteristic that exposes those on it to violence, for a population the state must protect rather than expose. Third, that the

[15] The Digital Personal Data Protection Rules 2025
[16] Digital Personal Data Protection Act 2023
[17] Yash Verma, 'State Exemptions Under the Digital Personal Data Protection Act, 2023: Testing Section 17(2)(a) against the Proportionality Standard' (2026) 8(3) Indian Journal of Law and Legal Research <https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_f12f12592f48458f9c6bd4d393e6fbd7.pdf> accessed 13 June 2026

mandate protects transgender persons by directing welfare to them: but protection requires accessible services and consent-based enrolment, not a compelled registry, and a protective aim pursued through surveillance makes the benefit conditional on the very exposure that endangers the beneficiary. Fourth, and most seriously, that it is a proportionate anti-fraud measure: but fraud is detected at the point of the benefit claim, and a registry that collects from everyone who transitions, including those who never claim a benefit, is drastically over-inclusive, which is the signature of a disproportionate measure. Once these justifications are removed, what remains is a bare state interest in knowing which citizens are transgender, held against them in a permanent record. That is not a legitimate aim capable of sustaining the intrusion; it is the intrusion itself.

The reversal runs against the comparative current. The European Court of Human Rights has held, in A P, Garçon and Nicot v France, that conditioning legal gender recognition on sterilising surgery violates the right to respect for private life, because it forces the individual to choose between recognition and physical integrity.[18] The Indian mandate performs a structurally identical operation in the informational register, conditioning access to care on the surrender of informational privacy. A rights-consistent alternative follows from the analysis: restore self-identification, which removes the state's asserted need to verify and therefore to compile; confine any collection of data about gender-affirming care to the clinical relationship; meet genuine planning needs through anonymised, aggregated data that identifies no individual; and attend any identified collection that a legitimate aim genuinely requires with the purpose limitation, retention limits, access controls and appellate mechanisms that Puttaswamy requires and the amendment omits.

The matter now rests with a three-judge bench, which has issued notice and declined to stay the amendment, though the amendment itself awaits the notification that will bring it into force. The reporting mandate is likely to receive less argument than the deletion of self-identification, which is the centre of the case. It deserves more. The mandate is where the amendment's abstract relocation of authority over identity becomes a concrete apparatus of state knowledge, and it is at that point that Puttaswamy bites most directly. A regime that compels disclosure of a vulnerable population's most intimate information to executive authorities, without consent, without a legitimate and well-fitted aim, and without a single

[18] *A P, Garçon and Nicot v France* [2017] Apps Nos 79885/12, 52471/13 and 52596/13

procedural safeguard, is not a verification framework. It is a registry, and it is the kind of registry that the German census court refused in 1983 and that the right to informational self-determination exists to forbid.