

India: Need for Gender Reassignment Certificate to Get Passport Changed 'Violative of Constitution': HC

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The court was hearing the petition of a trans person who had her passport cancelled and was unable to get a new one issued for want of a gender reassignment surgery certificate.

New Delhi: The Delhi high court on Monday, April 11, observed that the provisions of the Passport Rules, 1980, which require transgender persons to furnish a gender reassignment surgery certificate from a hospital in order to change their gender on their passport, were, *prima facie*, violative of Article 21 of the constitution.

The court's remarks came while hearing a petition by one Lasya Kahli which challenged the aforementioned passport rules, arguing that the requirement of producing a certificate from a hospital to show that a person has undergone a successful sex-change operation is arbitrary, illegal and violative of Article 21, according to [Bar and Bench](#).

Case details

The petition noted that Kahli had changed her name and gender from male to female in 2019 and was, thereafter, able to get her voter ID, Aadhaar card and PAN card reissued with these details updated.

However, when she went to get her passport reissued, she was told by the regional passport office that she needed to produce a certificate by a surgeon declaring that she had undergone a successful gender reassignment surgery, as per serial number 39 in table three of the Passport Rules.

She was then told that her existing passport had been cancelled and a new passport was put on hold because she was not able to furnish the certificate. The petition notes that Kahli needs her passport to travel to Thailand for her gender reassignment surgery.

The petitioner also contended that asking her for documents regarding a gender reassignment surgery is violative of the Transgender Persons (Protection of Rights) Rules, 2020 and the Transgender Persons (Protection of Rights) Act, 2019.

Moreover, the petitioner held that insisting upon a medical certificate for an individual to identify as a particular gender is unnecessary and violative of an individual's personal choice.

Court's remarks

Citing the [Passport Rules](#), the council for the Union government told the bench of acting Chief Justice Vipin Sanghi and Justice Navin Chawla that if a person wanted a passport issued under a 'Transgender' identity, a declaration would suffice, but in order to change from 'Male' to 'Female' or

vice-versa, a medical certificate is required.

The bench noted that the concerned provisions in the Passport Rules went against the Supreme Court's 2014 judgement in the case of the [*National Legal Services Authority \(NALSA\) versus Union of India*](#).

In the case, the top court had ruled that transgender persons have the right to determine their self-identified gender and that the Union and state governments are required to grant legal recognition to the same.

Importantly, the NALSA judgement also says, "...any insistence for sex reassignment surgery (SRS) for declaring one's gender is immoral and illegal."

As such, the high court remarked that the government should amend the rule a person should be allowed to identify however they choose.

"You should change your rule. You should say what is the orientation of the transgender person. You leave it to the person to decide their orientation. Who are you to say 'get the certificate of surgery'? This is violative of Article 21 right? Come back in a week and please advise your client to have flexibility in this rule," *Bar and Bench* quoted acting Chief Justice Sanghi as saying.

The court directed the Union government's counsel to draft instructions on the same within a week as listed the matter for April 22, noting that the matter would not be passed over or adjourned.

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