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Eng/Nepali Translation
Dispatch No.: 1864
Date: 22 JAN 2025

Supreme Court, Division Bench

Honorable Chief Justice Mr. Bishwambhar Prasad Shrestha

Honorable Justice Dr. Kumar Chudal

Order

Writ No.: 077-WO-0973

Subject: Including certiorari

Rukshana Kapali, a resident of Ward No. 16, Lalitpur Metropolitan City, Lalitpur.....1

Versus

Government of Nepal, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu.....1

Tribhuvan University, Examination Control Office, Balkhu, Kathmandu.....1

Tribhuvan University, Office of the Vice-Chancellor, Kirtipur, Kathmandu.....1

National Examination Board, Thimi, Bhaktapur.....1

Government of Nepal, Ministry of Home Affairs, Singha Durbar, Kathmandu.....1

Government of Nepal, Ministry of Education, Science and Technology, Singha Durbar, Kathmandu.....1

Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs, Singha Durbar, Kathmandu.....1

Department of National ID and Civil Registration, Singha Durbar, Kathmandu.....1

District Administration Office, Lalitpur.....1

District Education Development and Coordination Unit, Kantibahal, Lalitpur.....1

Lalitpur Metropolitan City Office, Lalitpur.....1

Ward Office of Lalitpur Metropolitan City Ward No. 16, Dhaugal, Lalitpur.....1

National Human Rights Commission, Harihar Bhawan, Lalitpur.....1

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Department of Passport, Kantipath, Kathmandu.....1

Election Commission, Kantipath, Kathmandu.....1

Eden Garden Secondary Boarding School, Lalitpur Metropolitan City, Ward No. 22, Lalitpur..... 1

The brief facts and order of the present writ petition filed under the extraordinary jurisdiction of this court in accordance with Articles 46 and 133 of the Constitution of Nepal are as follows:

Facts:

1. **Substance of the writ petition:**

I, the petitioner, am a Nepali citizen. I am a transgender woman. My gender identity is woman. As a Nepali citizen, it is my fundamental human right to enjoy the constitutionally and legally protected rights, including the right to education, to live a life with true gender identity and self-respect, and to have equal access to state resources. However, I have been deprived of the aforementioned rights, just because I am a transgender woman. Tribhuvan University has denied my TU Registration Form, preventing me from pursuing higher education. Since I haven't been able to amend my personal details on my citizenship, academic certificates, and other legal documents in accordance to my gender identity, it has caused significant harm to my self-respect. Additionally, I have endured privacy violations of my personal details by various state agencies and media, along with receiving humiliating remarks. Despite repeatedly submitting both oral and written petitions to the relevant authorities, my concerns were not heard. This has left me with no other option but to file this petition before the Honorable Court, seeking redress for the injustice I have suffered and the enforcement of my constitutional fundamental rights, in lack of alternative measures.

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Gender identity is realized by a person as they grow up, in accordance to their own experience of gender. A transgender person is someone whose gender identity is different from the gender they were assigned at birth. A Transgender Woman/Trans Woman is a woman who was assigned male at birth. A Transgender Man/Trans Man is a man who was assigned female at birth. I, the applicant, was born on N.S. 1119/05/16, B.S. 2055/11/20 (1999 March 4 A.D) in Lalitpur district, previously Lalitpur sub-metropolitan city ward no. 18, now Lalitpur Metropolitan City ward no. 16. I was assigned male at birth. My guardians and family gave me a name according to our tradition of "*Maca Bū Byaṅkegu* ". Then onwards, from my birth registration to school enrollment, the same name and gender marker was used. My birth certificate and other academic certificates were also issued based on the assigned name and gender. Since childhood, I was addressed and raised as a "boy" by society. However, from a young age, I saw and understood myself as a "girl". After completing my SLC (School Leaving Certificate) in Grade 10, I decided to live my life and establish my identity in accordance with my true gender identity. I chose the name "Rukshana" to represent my gender identity and began to identify myself as a woman. I then sought citizenship in line with my true gender identity. While obtaining citizenship on B.S. 2072/03/11 (2015/06/26 A.D), the then authorities, pointing out the weaknesses in the existing legal provisions, issued my citizenship certificate with the gender field marked as "other", refusing to use the gender marker "female", which is my actual gender identity. Subsequently, I received a recommendation letter from my ward office stating that the name given to me in my childhood and my own name 'Rukshana' belong to the same person. The circumstances in

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needing this kind of recommendation letter arose as my identity documents have not been amended as per my actual gender identity.

The truth is, I was never a man. I am a woman. The difference is that earlier, I had to live according to the gender assigned to me by society based on my sex organs, but now I have freed myself from those social constraints and am living according to my own gender identity. I have the right to explain how I have experienced my gender identity. Determining one's gender identity based on self-realizations also a person's right to self-determination, but I have not been able to exercise this right. This is contrary to the legal principles established in Nepal Law Gazette 2074, Issue 9, Decision No. 9875, and Nepal Law Gazette 2074, Issue 12, Decision No. 9921. Furthermore, my right to privacy has also been violated. Article 28 of the Constitution of Nepal ensures the right to privacy of any person regarding their body, residence, property, documents, data, correspondence, and character. The Personal Privacy Act, 2075 (2018), Section 3, ensures the privacy of a person's physical and private life, and Section 11 ensures the confidentiality of documents.

The right to privacy also includes the right to be forgotten or the right to erasure, which is necessary for me and people like me to establish an identity according to our self-perception. After I have established my identity according to my self-perception or started the process, my dead-name and deceased gender identity should be kept confidential, but this has not yet been possible.

I had obtained a citizenship certificate on B.S. 2072/03/11(2015/6/26 A.D) , where my gender marker says "Others". Due to this, I am unable to get my gender updated to "Female" on other places. I have repeatedly visited and

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requested the Ministry of Home Affairs and other concerned authorities to amend my citizenship certificate to reflect my gender as "Female", but my applications and complaints have not been heard. Due to this, I have also been unable to get my TU registration form processed, blocking my path to higher education. Even though my name was updated from that of my childhood to "Rukshana Kapaali", I have not been able to get my gender identity recognized as "Female". This situation is in direct contravention of Articles 1, 12, 16, 17, 18, 27, 28, 31, 33, 35, 37, 38, 39, 42 of the Constitution of Nepal, as well as international human rights laws like UDHR, ICCPR, CEDEW and judicial practise. Therefore, I request to issue an order against defendants to quash the incorrect gender details in my personal identification documents and records, and officially recognize my name as "Rukshana Kapaali" and my gender as "Female", and also keep my details related to my dead-name and dead identity as confidential.

2. **Preliminary Order of the Court:**

On B.S. 2077/12/31 (2021/4/13 A.D), the court issued an order seeking response from defendant on if there are any reasonable grounds, reasons or evidence indicating why the order should not be issued, the defendant must provide these. The court has directed that a notice be issued to the defendant, requiring them to submit a written reply within 15 days, excluding travel time, from the receipt of the notice. After this period, the matter will be processed according to the rules. Additionally, considering the petitioner's request for an interim order, it has been deemed appropriate to discuss on the matter with both parties present. Therefore, a hearing date has been scheduled for B.S. 2078/01/13 (2021/04/26), and the court issued an order on B.S. 2077/12/31 (2021/04/13), directing that notices regarding the hearing be served to the

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opponents and the Office of the Attorney General to ensure compliance with the applicable rules.

3. **Written response of the Ministry of Education, Science and Technology:**

The writ petitioner has made the Ministry defendant without any reason and has not even specified on what kind of order should be issued on the name of Ministry. It is not sufficient to merely make someone a party in a writ petition; there must also be reasonable grounds and reasons for doing so. The writ petitioner has not been able to specify anywhere in their petition how any action of this Ministry has violated any constitutional or legal rights granted by the Constitution of Nepal and prevailing laws. There is no law preventing the petitioner from applying for amendment of educational records or any educational certificate with the recommendation of the relevant authority. Generally, no education-related act, rule, or directive has created any obstruction for them to obtain educational certificates by establishing their gender identity or to exercise any constitutional and legal rights guaranteed by the Constitution. Therefore, no action of this Ministry or any act, rule, or directive related to this Ministry has violated the petitioner's constitutional and legal rights. This Ministry is committed to protecting the rights of all types of gender diverse Nepali citizens, including the petitioner seeking identity. The current writ petition filed against this Ministry without any clear basis or reason, and merely on speculation, cannot be justified or meaningful. Hence, the writ petition should be quashed.

4. **Written response of the Ministry of Home Affairs:**

The Ministry of Home Affairs is always committed to protecting and promoting the rights of citizens as granted by the Constitution and laws. The rights provided in the Constitution and other prevailing laws apply equally to

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all citizens, and no order has been given to deprive anyone of such legally granted rights. Regarding the petitioner's demand to amend their citizenship certificate to reflect their actual gender identity as female and name as Rukshana Kapali, Section 17(1) of the Nepal Citizenship Act, 2063 (2006) states that if a person wishes to correct any minor errors in their citizenship certificate related to surname, age, or educational qualifications, they must submit an application with necessary evidence to the designated authority. The explanation clause of this subsection defines "minor errors" as those that do not substantially alter the information in the citizenship certificate, such as addition or omission of words like "Kumari", "Devi", "Bahadur", "Prasad", or differences in vowel marks, or other such minor errors. As the issue of what laws should be made or amended falls under the jurisdiction of the legislature, there is no basis or reason to make this Ministry a party in this case. Therefore, this writ petition filed against this Ministry without any grounds or reasons should be quashed.

5. **Written response of the Ministry of Law, Justice and Parliamentary Affairs**:

The writ petition fails to specify how any action or decision of this Ministry has infringed upon the petitioner's legal and constitutional rights. Article 12 of the Constitution of Nepal provides that a person obtaining citizenship by descent can receive a citizenship certificate with gender identity through the name of their mother or father. The Citizenship Act 2063 (2006), National Identity Card and Registration Act 2076 (2019), Passport Act 2076 (2019), and Voter Registration Act 2073 (2016) have provisions for obtaining citizenship certificates, birth registration, passports, and voter ID cards respectively, along with provisions to correct certain information on these

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documents. Regarding amendments to gender identity on such documents, it's necessary to analyze the chain effect of even minor changes to citizenship and other certificates. The citizenship certificate is an important document establishing the legal relationship between the state and citizen. Changes to it can affect not only the individual but also others with legal relationships to that person. The legislature has thus been cautious about amending such documents. Such amendments can create uncomfortable and ambiguous situations for individuals exercising their constitutional and legal rights. The legal provisions are intended to clarify the services provided by the state and the citizen's duties towards the state. There's no doubt that the petitioner's constitutional and legal right to privacy should be protected. Regarding claims about Tribhuvan University refusing to register forms or include the petitioner's actual gender identity on educational certificates, these will be clarified by the written responses of the relevant institutions including Tribhuvan University. We request that the writ petition be quashed.

6. **Written response of the Department of National ID and Civil Registration:**

The Department of National ID and Civil Registration is always committed to protecting and promoting the rights of citizens as granted by the Constitution and laws. The rights provided in the Constitution and other prevailing laws apply equally to all citizens, and no order has been given to deprive anyone of such legally granted rights. Regarding the petitioner's demand to amend their citizenship certificate to reflect their actual gender identity as female and name as Rukshana Kapali, Section 25 of the National Identity Card and Registration Act, 2076 (2019) states that if any information needs to be corrected after the registration of a child born after this Act came

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into effect, the concerned person can apply to the local registrar's office within one year of receiving the certificate, in the prescribed format. Rule 23 of the related Regulations, 2077 (2020) further specifies that to correct information in personal event registration, the concerned person must submit an application to the local registrar's office in the format prescribed in Annex 26. However, the aforementioned Act and Regulations do not specifically mention amendments to gender identity and name as per the petitioner's demand. As the issue of what laws should be made or amended falls under the jurisdiction of the legislature, there is no basis or reason to make this Department a party in this case. Therefore, this writ petition filed against this Department without any grounds or reasons should be quashed.

7. **Written response of the Office of the Prime Minister and Council of Ministers of Nepal:**

The petition does not specify how any action of the Government of Nepal or Council of Ministers has violated the petitioner's rights. The Constitution of Nepal, in Articles 10 to 15, has constitutionally guaranteed provisions related to citizenship. Article 12 of the Constitution states, "A person who obtains Nepali citizenship by descent according to this Constitution may obtain a citizenship certificate of Nepal with gender identity through the name of his/her mother or father." After the promulgation of the Constitution of Nepal, an amendment bill to modify the Citizenship Act, 2063 (2006) in accordance with the Constitution has already been submitted to the Federal Parliament. The Citizenship Act of Nepal, 2063 (2006) and Citizenship Regulations, 2063 (2006) clearly stipulate the process for obtaining citizenship certificates by applying to the relevant authorities following the prescribed procedures. Furthermore, the legal provision of issuing the citizenship identifying the

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gender of a person as "Other" in the gender specification has already been in place under Directive of B.S. 2069 (2012 A.D.) regarding issuing citizenship to sexual and gender minority individuals by mentioning "Other" in the gender specification to eligible applicants like the petitioner to obtain citizenship with their identity recognized upon obtaining recommendation from local bodies and educational institutions.

The petitioner does not seem to have established the legal basis for her claim. The "Correction of Age, Name, and Surname Rules, 2017 (1960)" have already been issued regarding the correction of government documents. Rule 3 of it states that if any person wishes to correct their age, name, or caste on their certificate, must submit an application to the Chief District Officer, who shall render a final decision after examining the available evidence and, if necessary, conducting witness verification. Similarly, Rule 6 stipulates that such applications for correction must be submitted within six months of receiving the certificate. Section 17 of the Nepal Citizenship Act, 2063 (2006), stipulates that individuals seeking to amend minor errors in their Nepali citizenship certificate regarding surname, age, or minor details, must submit an application along with the necessary evidence to the designated authority. Furthermore, Section 18 of the same Act states that any person aggrieved by an order, except those explicitly mentioned in the Act, may file a petition to the Government of Nepal for review. Under these provisions, individuals seeking to amend minor errors in their citizenship certificate should submit an application under Section 17. If they are dissatisfied with the decision, they may file a petition with the government within thirty-five days. Filing a petition through extraordinary jursidiction to amend citizenship, rather than adhering to the established legal procedures, is legally

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unsound. The determination of which laws to enact falls within the purview of legislative discretion. The Government of Nepal is committed to implementing policy measures aimed at identifying and protecting sexual and gender minorities while also fulfilling its international commitments.

As the actions of the Government of Nepal have not infringed upon any individual's freedoms, this petition lacks merit and hence, the writ petition should be quashed.

8. **Written response of the District Education Development and Coordination Unit, Lalitpur:**

As per the restrictive provision of Section 48 of the Education Act, 2028 (1971), the basic level examination shall be conducted by the District Education Office and pursuant to letter No. 1570 dated B.S. 2075/01/19 (2018/5/2 A.D), from the Ministry of Education, Science and Technology, the functions previously performed by the erstwhile District Education Office are now being carried out by this Unit. Similarly, according to Letter No. 379 dated B.S. 2076/11/27 (2020/03/10 A.D) from the Ministry of Education, Science, and Technology, and the ministerial decision approving the "Basic Level Class Eight Examination Conduct and Certification Standards, 2076," Section 15 of these standards specifies that the Examination Committee is responsible for issuing certificates, and the certificate format is provided in Schedule 2 of the said standards. The actions undertaken by this Unit in compliance with prevailing law have not infringed upon any constitutional or legal rights of the petitioner. The respondent writ petitioner has stated in paragraph 5.11 of the writ petition that upon submitting an application to this Unit for the amendmend of the Class Eight DLE certificate, the name was amended, but the gender description was noted as "Other". In this regard, the

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respondent has acknowledged that the name was amended based on necessary documents and evidence. The gender description was amended to "Other" based on the details provided by the petitioner and in compliance with applicable laws. Given that the name and gender details were amended with the petitioner's consent and based on submitted documentary evidence, no constitutional or legal rights of the petitioner have been violated. The writ petition is unsustainable and hence, the writ petition should be quashed.

9. **Written Response of the District Administration Office, Lalitpur:**

The writ petitioner obtained a Nepali Citizenship Certificate Number 28-01-72-00911 on B.S. 2072/03/11 (2015/6/26 A.D) with the name: Rukshana Kapali, date of Birth: 2055/11/20 (1999/3/4 A.D), father's name: Gopal Darshandhari, mother's name: Kalpana Kapali, address: Ward No. 16, Lalitpur Metropolitan City, Lalitpur District and gender: Other. This citizenship certificate was issued with the gender specification marked as "Other", based on the educational certificates, birth certificate, and other documentary evidences provided by the petitioner at the time of application. On 22 Falgun 2076 (March 5, 2020), Rukshana Kapali submitted an application with a recommendation from Ward No. 16 office of Lalitpur Metropolitan City, requesting to amend the gender specification in the citizenship certificate from "Other" to "Female". The petitioner was advised to provide a medical certification or other evidence confirming her gender as female. It was verbally communicated that upon submission of such evidence, the citizenship certificate would be amended to indicate "Female" in the gender cloumn. It is the responsibility of the petitioner to provide the necessary evidence for amending the citizenship certificate. According to Section 17(1) of the Nepal Citizenship Act, 2063 (2006), if a person wants to

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amend information such as surname, age, or educational qualifications on their citizenship certificate due to discrepancies or minor errors, they must submit an application with necessary evidence to the designated authority. Once the petitioner provides evidence confirming female gender, the citizenship certificate will be amended accordingly and a new copy will be issued. Therefore, the claims in the writ petition lack substantive merit and are hereby requested to be quashed.

10. Written response of the Election Commission:

The writ petition does not specify how any action or decision of this Commission has violated the petitioner's constitutional or legal rights. Section 6 of the Voter Registration Act, 2073 (2016) provides for the registration of Nepali citizens' names in the voter list. Section 27 of the same Act mandates that the Commission shall provide voter identity cards to individuals whose names are included in the photo-based voter list. The voter registration form and the Biometric Base Voter Registration System (BBVRS) can only incorporate details exactly as they are mentioned in the citizenship certificate. The Commission has been utilizing BBVRS software to collect voter lists with photographic and biometric details. The Commission collects voter details based on citizenship details issued by the Ministry of Home Affairs and District Administration Offices. In such circumstances, where the citizenship details have been amended by the relevant authority or the gender identification term claimed by the petitioner has been acknowledged, the voter list can be updated accordingly, and voter identity cards can be issued based on that updated list. Therefore, the present writ petition lacks merit and is liable to quashed.

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11. Written response of Eden Garden Secondary Boarding School:

The writ petitioner was enrolled in this school on B.S. 2058/02/08 (2001/5/21 A.D), submitting a birth certificate issued by Lalitpur Municipality dated B.S. 2057/12/31 (2001/3/25 A.D), Registration No. 1330. All school documents were issued using the name and gender details from that original birth certificate. In a petition submitted by the writ petitioner on B.S. 2076/02/26 (2019/06/09 A.D) to this school, it was stated that the Class 8 district-level examination mark sheet bore the dead-name. The petitioner also mentioned that they obtained citizenship under the name Rukshana Kapali in B.S. 2072, and the ward office had verified that both names belonged to the same person. The petitioner requested the District Development and Coordination Unit to recommend the name ammendmend, which was duly recommended by this school to the District Development and Coordination Unit on B.S. 2076/03/03 (2019/06/18 A.D), Reference No. 2076/019/03. However, on B.S. 2077/10/11 (2021/01/4 A.D), the writ petitioner wrote to this school requesting amendment of their name and gender details. The school responded, stating that according to the records of the Examination Control Office in Sano Thimi, Bhaktapur, still show the dead-name of the petitioner. Since the school issues character certificates based on these records, the school cannot unilaterally ammend the details. Therefore, the writ petition filed by the respondent petitioner is dismissible and should be quashed.

12. Written response of the National Human Rights Commission:

Activities such as university enrollment, issuance of citizenship certificates, amendment of passport errors, and providing voter identity cards are not within the purview of this Commission. Therefore, the Commission has been made a respondent in an unrelated matter. In accordance with Article 249 of

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the Constitution of Nepal and Section 4 of the National Human Rights Commission Act, 2068 (2011), the Commission operates within its prescribed duties, responsibilities, and powers. The Commission maintains a clear mandate that all individuals should enjoy human rights without discrimination. The Commission is aware of and active in its constitutional duty to respect, protect, and promote the human rights of all, including the writ petitioner. Therefore, the writ petition filed against the Commission should be quashed.

13. Written response of Tribhuvan University, Office of the Controller of Examinations, and Office of the Vice-Chancellor:

Tribhuvan University is an institution governed by the Tribhuvan University Act, B.S. 2049 (1992 A.D.). Section 4 of the said Act establishes the University as a self-governing, organized institution with perpetual succession. Section 5 further delineates the University's functions, duties, and powers. Tribhuvan University enroll students using the exact name appearing on their School Leaving Certificate (SLC) and +2 level certificates. Students who have not completed +2 level are ineligible for university admission. The petitioner cannot claim university enrollment under a different name from the one used to obtain SLC, +2 certificate, and citizenship. As the petitioner's academic and official documents were issued under a specific name, the University will consequently process enrollment and certification using the same name. Therefore, the writ petition is unsustainable and is requested to be quashed.

14. Written response of the office of Lalitpur Metropolitan City and Ward No. 16 office:

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This institution has not deprived anyone of their rights provided by law. The Local Government Operation Act, 2074 does not provide for the amendment of birth registration. It only grants the authority to register births. The petitioner had previously obtained educational certificates under a specific name and identity and, based on those documents, had also acquired a citizenship certificate. However, merely submitting an application to this Metropolitan Office and the Ward Office seeking amendment of the birth registration does not provide sufficient grounds to amend the gender details as requested. Consequently, the amendment could not be carried out in accordance with the law. Should the petitioner obtain amendment from other authorities, this office can subsequently adjust the birth certificate in accordance with legal procedures. It is acknowledged that the petitioner personally appeared at the office of Ward No. 16 and obtained a recommendation on B.S. 2072/05/23 (2015/09/09 A.D.) confirming that both names refer to the same individual. As no action has been taken that infringes upon the petitioner's constitutional or legal rights, the writ petition is respectfully requested to be dismissed with respect to this office's jurisdiction.

Order Section

15. This writ petition, which was listed in the cause list as per the rules, was presented before this bench for decision after reviewing the petition and its accompanying documents.

16. It is observed that the same petitioner, Rukshana Kapali and others, have previously filed Writ Petitions numbered 077-WO-0695 (seeking a Mandamus order), 077-WO-1243, and 077-WO-1244 (seeking Certiorari), which are currently pending before this Honorable Court. However, during the course of pleading the petitioner and their legal counsel have expressed

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that the present writ petition is independent of the aforementioned writ petitions, and that the subject matter and legal questions involved do not appear to be intricately interconnected. Therefore, it does not seem to pose an obstacle to the judicial determination of this writ petition, and it can be adjudicated separately from the other cases.

17. The learned advocate Mr. Sanjay Adhikari, appearing on behalf of the petitioner, argued that the petitioner is a transgender woman, born on B.S. 2055/11/20 (1999/3/4 A.D) in Ward No. 16 of Lalitpur Metropolitan City, Lalitpur District. At birth, she was identified as a boy based on her genitals, and was named accordingly. Despite initially being assigned a male, the petitioner subsequently self-identified as female and adopted the name "Rukshana". On B.S. 2072/03/11 (2015/6/27 A.D.), when obtaining her citizenship certificate, the gender specification was marked as "Other" instead of "Female", notwithstanding her expressed gender identity. Multiple attempts to amend the gender designation from "Other" to "Female" were systematically rejected by the relevant authorities. Subsequently, the petitioner was compelled to obtain a ward office recommendation certifying that the name initially assigned in infancy and her current name "Rukshana" pertain to the same individual. Based on the principle of self-perception of gender identity, the right to gender recognition is a constitutional right of the individual, a right which the petitioner is currently unable to exercise. Therefore, the petitioner seeks an order directing the respondents to invalidate the current name and gender details on the petitioner's citizenship certificate and other personal identification documents, officially recognize the petitioner's name as "Rukshana Kapali" and gender as "Female," and preserve the confidentiality of the petitioner's dead-name and dead gender designation

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through an appropriate writ of mandamus or any other orders the court may deem just and proper.

18. The learned Deputy Attorney General Mr. Govinda Khanal, appearing on behalf of the government respondents, argued that the petitioner had already obtained a Nepali citizenship certificate on B.S. 2072/03/11 (2015/6/27 A.D) with the name "Rukshana Kapali" and gender "Other". If the petitioner needs to amend any errors such as name or surname on the citizenship certificate, she should follow the procedure prescribed by the Citizenship Act and Regulations and submit an application to the designated authority. Once a citizenship certificate has been issued with gender as "Other", it cannot be changed without any objective evidence. This would adversely affect the social context and practices. A person's gender is not something that keeps changing. Therefore, the writ petition should be dismissed.

19. In this present writ petition, the petitioner argues that as a transgender woman, her fundamental human rights include recognition of her gender identity as female, entitlement to constitutional and legal protections, access to education, and the right to live a life of dignity aligned with her true gender identity. The petitioner asserts that she has been systematically denied these rights solely due to her transgender identity. The petitioner highlights systemic discrimination, citing Tribhuvan University's refusal to process her TU Registration Form, which has hindered her pursuit of higher education. Furthermore, petitioner's legal documents, including citizenship and educational certificates, fail to reflect her gender identity, causing significant harm to her dignity and self-respect. The petition also outlines her prior attempts at resolution, detailing repeated verbal and written requests to relevant authorities, all of which were ignored without any meaningful

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response or hearing. The petitioner provides insight into her personal background, explaining that she was assigned male at birth based on her sex organs and raised as a boy. Her educational documents, from birth certificate to school enrollment, reflected her assigned male name and gender. Despite this, she has identified as a girl internally from a very young age. After completing her Secondary Level Certificate (SLC), the petitioner made a conscious decision to live authentically. The petitioner adopted the name "Rukshana" to represent her true identity and began openly identifying and presenting herself as a woman. The petition fundamentally challenges the systemic barriers that prevent transgender individuals from obtaining legal recognition of their gender identity and seeks judicial intervention to rectify these discriminatory practices. The petitioner seeks to obtain citizenship according to her true gender identity. On B.S. 2072/03/11 (2015/06/26 A.D), the petitioner obtained citizenship. However, citing legal limitations, authorities issued the document with the gender marked as "Other" instead of "Female." The petitioner later secured an official recommendation confirming the name given to her in childhood and her name 'Rukshana' belong to the same person. The petitioner describes her personal gender journey, noting that she was initially compelled to conform to the gender assigned to her at birth. Now liberated from societal constraints, she lives authentically according to her self-perceived gender identity. The right to gender identity based on self-perception is a person's right to self-determination, but the petitioner has not been able to enjoy this right. The petitioner invokes the Personal Privacy Act, 2075 (Sections 3 and 11), emphasizing her right to privacy, including the "right to be forgotten" and the "right to erasure," which are particularly vital for transgender individuals

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asserting their identity. As the petitioner's citizenship certificate mentions gender as "Other", she has been unable to establish her gender as female in other places. The petitioner has encountered systemic barriers, including repeated ignored requests to the Home Ministry and other authorities to update the gender marker on her citizenship. The petitioner's inability to process the TU Registration Form has effectively obstructed her pursuit of higher education. Although her childhood name has been changed to "Rukshana Kapali," she has been unable to establish her gender as female and thus has not received her self-perceived gender identity. The petitioner contends that this actions violates Nepal's Constitution, international human rights law, and judicial best practices. Therefore, as the respondents' actions are contrary to Nepal's constitution, international human rights law, and judicial practices, the petitioner seeks a writ of mandamus and other appropriate orders be issued to the respondents to invalidate of her current name and gender details in personal documents, official recognition of her name as "Rukshana Kapali" and her gender as "Female," and confidentiality of her dead-name and gender records.

20. Regarding the petitioner's demand to amend the citizenship certificate by changing the name and gender details in personal documents to reflect the actual gender identity as female and the name as Rukshana Kapali, there are provisions in the Nepal Citizenship Act, 2063 (2006), National Identity Card and Registration Act, 2076 (2019), Passport Act, 2076 (2019), and Voter List Act, 2073 (2016) that allow for certain details to be corrected. Concerning the correction of government documents, Rule 3 of the "Rules for Correcting Age, Name and Caste, 2017" states that if any person wishes to correct their age, name, and caste in their certificate, they should submit an application to

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the Chief District Officer. If dissatisfied with the decision, they can appeal to the Nepal Government within 35 days. Section 17 of the Nepal Citizenship Act, 2063 (2006 AD) states that if a person wishes to correct any discrepancy in their surname or age mentioned in their Nepali citizenship certificate compared to their educational qualification certificate, or if there are minor errors in the citizenship certificate, they must submit an application with necessary evidence to the designated authority. Section 18 clearly provides a legal provision that if a person is aggrieved by such an order, they can appeal to the Government of Nepal for a review of the decision. In this situation, where there is a clear legal provision to use the jurisdiction of this general law, it is not legally appropriate to file a writ petition through the extraordinary jurisdiction of the Supreme Court to request corrections in citizenship and other documents. Similarly, it is necessary to analyze the chain of effect that a simple amendment to the citizenship certificate and other documents of the applicant would have. The citizenship certificate is an important document that establishes the legal relationship between the State and the citizen. After obtaining citizenship, various legal documents of an individual are issued based on the same name. Therefore, the legislature has taken precautions regarding the amendment of citizenship and other certificates, considering that even a minor change in citizenship affects not only the individual but also other actions and legal documents based on their legal relationships. Amendments or changes to such certificates can create uncomfortable and confusing situations for individuals in the process of enjoying their constitutional and legal rights. Moreover, the legal provisions made with the intention of clarifying the services provided by the state and the citizen's duty towards the state cannot be interpreted otherwise. The

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National Identity Card and Registration Act, 2076 (2019 AD) and its Regulations, 2077 (2020 AD), Rule 23, state that if the details of personal event registration need to be corrected, the concerned person must submit an application in the format prescribed in Annex 26 to the office of the concerned local registrar. However, the aforementioned Act and Regulations do not mention anywhere about amending gender details and name according to gender identity as per the petitioner's demand. If the petitioner provides proof of being female, the citizenship certificate can be amended to reflect "Female" in the gender specification. Therefore, the respondents have requested to quash the writ petition.

21. After hearing the arguments from the petitioner and respondents' learned advocates and carefully examining the petitioner's claims, the respondents' written replies, and the documents attached to the file, this Court identified the following questions requiring judicial determination:

(a) Is this writ petition be filed within the Court's extraordinary jurisdiction?

(b) Does the petitioner possess the right to determine her gender identity based on self-perception?

(c) Can personal identification documents, including citizenship certificates, be amended to reflect the petitioner's self-perceived gender?

(d) Should the confidentiality of the name and gender details mentioned in the petitioner's birth certificate and other personal documentation be maintained?

(e) Should the order be issued as per the petitioner?

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22. The petitioner, a transgender woman, filed this writ petition after repeatedly submitting written requests to various agencies to amend her citizenship, educational certificates and other legal documents containing personal information, to reflect her self-perceived gender identity as female. Despite these attempts, the respondents consistently raised legal obstacles and failed to address her demands. This has allegedly resulted in violations of fundamental rights enshrined in the Constitution of Nepal, specifically: Article 16: Right to live with dignity, Article 18: Right to equality, Article 28: Right to privacy, Article 31: Right to education, Article 33: Right to employment. The petitioner has invoked the Supreme Court's extraordinary jurisdiction under Articles 46 and 133 of the Nepali Constitution to seek enforcement of these fundamental rights that have been allegedly infringed upon by the respondents. The writ petition fundamentally seeks judicial intervention to address systemic barriers preventing the recognition of the petitioner's gender identity and associated constitutional rights.

23. In the written response from the respondent Office of the Prime Minister and Council of Ministers of the Government of Nepal, the following legal arguments were presented: according to the Section 17 of Citizenship Act, 2063 (2006), it is stated: "If any person desires to amend minor errors or discrepancies in their Nepali citizenship certificate regarding surname, age, or educational qualifications, they shall submit an application with necessary evidence to the designated authority." Furthermore, the Rules for Correcting Government Documents, 2017, Rule 3 provides that individuals seeking to amend age, name, or caste in their certificates may submit an application to the Chief District Officer and obtain amendments through ordinary jurisdictional procedures. Given the existence of these legal provisions for

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document amendment, the respondents argue that directly invoking the Supreme Court's extraordinary jurisdiction to amend citizenship bypassing these established procedures not legally appropriate. In this context, it seems relevant to examine the provisions of Section 17 of the Nepal Citizenship Act, 2063 (2006 AD) and Rule 3 of the Correction of Name, Age and Caste Rules, 2017 (1960 AD).

24. Section 17 of Citizenship Act of Nepal, 2063 (2006 AD), under the heading 'Correction of Details':(1) If a person wishes to amend any discrepancy in their surname or age mentioned in their Nepali citizenship certificate compared to their educational qualification certificate, or if there are minor errors in the citizenship certificate, they must submit an application with necessary evidence to the designated authority.

Explanation: For the purpose of this subsection, "minor errors" refers to errors that do not substantially alter the information in the citizenship certificate, such as addition or omission of words like "Kumari", "Devi", "Bahadur", "Prasad", or differences in vowel marks, or other such minor errors. (2) Upon receiving an application as per subsection (1), the concerned authority may, after examining the available evidence and, if necessary, inquiring with witnesses, correct such information by withdrawing the previous citizenship certificate and issuing a new one. (3) If a married or divorced woman applies for amendment of surname, address, or other details, the designated authority may, after necessary inquiry, withdraw the previous citizenship certificate and issue a new one with amended surname, address, or details.

Similarly, Rule 3 of the Correction of Name, Age and Caste Rules, 2017 (1960 AD) states:

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Application for correction of age, name, and caste:

(1) If a person wishes to correct their age, name, or caste in their certificate, they must submit an application to the Chief District Officer, attaching a ten-rupee stamp or its equivalent value, stating their case.

(2) After receiving an application as per sub-rule (1), the Chief District Officer shall make a direct decision after examining the available evidence and, if necessary, inquiring with witnesses, and such decision shall be final.

Upon examining these provisions in the Act and Rules, it appears that a person can apply to correct minor errors in their citizenship or educational certificates, such as addition or omission of words like 'Kumari', 'Devi', 'Bahadur', and 'Prasad', differences in vowel marks, or corrections to age, name, or caste. Married or divorced women can also apply to amend their surname, address, or other details. The concerned authority can make these amendments after examining the necessary evidence. The petitioner's main claim is to change the gender marker from 'Other/Male' to 'Female' in her citizenship certificate and other personal identification documents, as she identifies as a transgender woman. However, the Nepal Citizenship Act, 2063 (2006 AD) and the Correction of Name, Age and Caste Rules, 2017 (1960 AD) do not seem to have provisions for such changes. Contrary to what the Office of the Prime Minister and Council of Ministers stated in their written response, there doesn't appear to be a legal provision allowing the petitioner to apply to the Chief District Officer to change their gender marker from 'Other/Male' to 'Female' in their citizenship certificate and other personal documents. The petitioner, being a transgender woman, claims that the inability to change her gender in her citizenship and educational certificates has violated her constitutional fundamental rights. Therefore, she has filed

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this writ petition invoking this court's extraordinary jurisdiction under Articles 46 and 133 of the Constitution to enforce these violated rights. Indeed, fundamental rights and human rights are related to an individual's life, dignity, equality, and freedom. An individual's life becomes happy and joyful through respect, protection, and promotion of human rights and fundamental rights. Considering this fact, every country prioritizes fundamental rights and provides for remedies in the constitution itself so that remedies can be swift and efficient when such rights are violated. Part 3 of the Constitution of Nepal provides for fundamental rights and guarantees the right to remedy from this court as per Articles 46 and 133 for the enforcement of rights granted by this part. In this petition, the petitioner has filed an application in this Court under Articles 46 and 133 of the Constitution of Nepal for remedy, as their constitutional fundamental rights have been infringed due to the respondents' failure to perform their duty (Act of Omission). Fundamental rights granted by the constitution can be violated by the state's action or inaction (Act of Commission or Act of Omission), and when there is no other provision for remedy or even if there is, such remedy is not effective, any citizen can file a petition adopting the path of this Court's extraordinary jurisdiction for the enjoyment and enforcement of fundamental rights. As this Court has already established jurisprudence by propounding principles on various cases regarding the use of this court's extraordinary jurisdiction and its limits, there is no need for further discussion on this subject. In essence, as there appears to be no alternative path for remedy in this matter claimed by the petitioner, it would not be appropriate to say otherwise to this petition filed using this Court's extraordinary jurisdiction.

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25. Now, considering the second question of whether the petitioner has the right to determine their gender identity based on their self-perception:

The petitioner has stated in her petition that although she was born with male genitalia, she later mentally identified as a woman and thus considers herself a transgender woman. In this context, it is relevant to look at some definitions of 'transgender':

Wikipedia defines transgender as: "Transgender people are people who identify or feel differently from their assigned sex at birth. It is considered a gender modality in which gender identity differs from the gender assigned at birth." According to the Merriam-Webster Dictionary, it is defined as: "A person whose gender identity is different from the sex the person had or was identified as having at birth." Similarly, the Supreme Court of the United States, in the case of Bostock v. Clayton County, defined transgender as: "a transgender person is someone who lives and identifies with a sex different than the sex assigned to the person at birth." The National Centre for Transgender Equality, USA defines it as: "Transgender people are people whose gender identity is different from the gender they were thought to be at birth." According to all these definitions, transgender individuals are those who feel and identify with a gender different from their sex at birth. Furthermore, The Yogyakarta Principles, developed by human rights activists working in the field of sexual orientation and gender identity at a meeting in Jakarta, Indonesia in 2006, defines gender identity as: "Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or other means) and other

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expressions of gender, including dress, speech and mannerisms." This definition also describes gender identity as the personal, internal experience of gender by each individual, which may or may not match the gender assigned at birth.

26. From the above definition, it is clear that being a transgender woman or man is a natural aspect based on one's physical and mental development process and self-realization. Therefore, a person's gender identity is determined according to their physical condition and mental experience. It seems relevant to also look at the context mentioned in some foreign court decisions on this matter. In the case of Corbett v. Corbett, the High Court of England and Wales interpreted that since a person's sex is determined at birth, gender identity is based on factors such as chromosomes, gonads, and genitals, which cannot be changed through surgery or any other medical means. Similarly, in the case of Attorney General v. Otahuhu Family Court, the High Court of New Zealand interpreted that if a person changes their biological sex through surgery, the changed sex should be recognized, and their gender identity should be determined accordingly. Likewise, in the case of Re Kevin and Jennifer v Attorney General for the Commonwealth, the Family Court of Australia interpreted that the basis of a person's gender identity should include, among other things, their self-perception and mental elements (Brain Sex). Thus, observing the decisions made by these foreign courts on this subject, it appears that initially, a person's gender identity was determined solely based on biological factors such as chromosomes, gonads, and genitals, giving importance to biological elements. However, in recent times, the concept has developed that the basis for determining a person's gender

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identity should include not only biological factors but also the individual's self-perception and their Brain Sex.

27. As the petitioner was born with the physical structure of male sexual organs, it can be presumed that her birth registration, citizenship, educational certificates, and other personal identification documents were recorded with her name and gender marked as male. According to our traditions, customs, practices, and prevailing legal framework, such documents, including birth certificates and educational records, are prepared immediately after a person's birth, without knowledge of the individual's self-perceived gender identity. In other words, immediately after a person's birth, their name and gender identity are recorded based on their natural physical characteristics at birth. From the above context, it is evident that the gender identity and name assigned to a person in documents such as birth registration and other personal identification certificates, based on their sexual characteristics at birth, may not align with the individual's self-perceived gender identity in the initial stages of their life. If an individual later expresses behavior, communication, and attire aligning with a gender identity opposite to the one assigned at birth based on their sexual characteristics, the name and gender identity recorded in their identification documents no longer reflect their current identity. In such cases, the name and gender self-identified and declared by the individual, based on their self-perception, must be recognized as their true name and gender.

28. Fundamentally, Article 16 of Nepal's Constitution provides the right to live with dignity, which has many dimensions. The right to live with dignity means not just the right to survive, but also the right to live a life with a sense of self-respect. Gender identity is crucial to an individual's self-respect. The

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issue of gender identity is not merely a private matter. Moreover, the issue of transgender women or men and their gender identity is not just a private matter. This issue is related to the self-respect and right to live with dignity of every individual in such a situation. If a person is born with male genitalia but later identifies as a woman and accordingly adopts female attire, speech, and behavior, or if a person is born with female genitalia but later identifies as a man and adopts male attire, speech, and behavior, forcing them to maintain a gender identity based solely on their biological sex would violate their constitutional right to live with dignity as provided by Article 16. In this context, the Supreme Court, in the case of Sunil Babu Pant, Executive Director of Blue Diamond Society, vs. Government of Nepal, Office of the Prime Minister and Council of Ministers et al. (Nepal Kanoon Patrika 2065, Issue 4, Decision No. 7958), established the principle that " even if a child is born with a particular gender, biological and natural processes can lead to a change in gender identity, where the individual may develop into a different gender from the one assigned at birth. In the case of the petitioner, although their biological sex was male at birth, they later developed into a female gender identity. Therefore, upon self-identifying and recognizing themselves as a woman, the petitioner has the right to self-determine and define their gender identity based on their own experience.

29. Regarding the third question of whether it is possible to change the gender identity on citizenship certificates and other personal documents based on the self-declared gender of the petitioner, the main claim of the petitioner appears to be that, being a transgender woman, she wants her gender to be listed as 'female' on her citizenship certificate and other personal documents. In this context, it seems relevant to consider national and international human rights

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legal provisions to which Nepal is a party. Article 12 of the Constitution of Nepal states, "A person who obtains citizenship of Nepal by descent in accordance with this Constitution may obtain a citizenship certificate of Nepal with gender identity in the name of his/her mother or father." Similarly, Subsection 3 of Section 8 of the Nepal Citizenship Act, 2063 (First Amendment) Act, 2079, stipulates that "the gender identity must be disclosed in the citizenship certificate issued under this Act." According to this constitutional and legal provision, any individual who has the right to obtain Nepali citizenship based on descent should be entitled to receive a citizenship certificate that includes their gender identity.

30. Article 2(1) of the International Covenant on Civil and Political Rights, 1966, states that the parties to the present Covenant undertake to respect and ensure the rights recognized in the Covenant without discrimination on the basis of sex, gender, or any other status for all individuals within their territory and jurisdiction. Similarly, Article 26 of the same Covenant states that all individuals are equal before the law and are entitled to the equal protection of the law without any discrimination. In this regard, the law prohibits any discrimination and guarantees equal and effective protection against discrimination on the basis of sex, gender, or any other status. Similarly, Article 17 of the same Covenant states that no person shall be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence, nor to unlawful attacks on their honor and reputation. Every individual shall have the right to protection against such interference or attacks. Similarly, Article 2(2) of the International Covenant on Economic, Social, and Cultural Rights, 1966, states that the parties to the present Covenant undertake to ensure that the rights outlined in the Covenant are

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enjoyed without discrimination on the grounds of sex, gender, or any other status. The Committee on Economic, Social, and Cultural Rights, while interpreting the term "other status" in this context, has clarified that it includes sexual orientation, thereby extending protection against discrimination based on sexual orientation as well. "Other status" as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace." Thus, from the above definition, it is clarified that the parties to the Covenant must ensure that no individual is discriminated against on the basis of sexual orientation or gender identity in the enjoyment of the rights outlined in the Covenant.

31. Article 18(2) of the Constitution of Nepal states that no discrimination shall be made on any grounds in the application of ordinary law. Subsection (2) of the same article further stipulates that the State shall not discriminate against citizens on the basis of sex, gender, or any other similar ground. Essentially, the term "discrimination on any other grounds" used in Article 18(2) includes individuals in situations similar to that of the petitioner. If a person's gender identity is recorded differently from how they perceive it, they may face humiliation, abuse, and discrimination in various settings such as schools, workplaces, and social events. This creates a situation where the individual is subjected to undue suffering and harm. This situation not only violates the right to equality guaranteed by the Constitution but also infringes upon an

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individual's right to live a peaceful and happy life. The conditions described lead to a continuous violation of the human rights of individuals like the petitioner. There is no dispute that the primary objective of the right to equality guaranteed by the Constitution is the protection of human rights. The meaning of non-discrimination on any grounds includes non-discrimination based on the identity of individuals with transgender status. Although Article 18(2) of the Constitution does not explicitly mention non-discrimination based on different gender identities and sexual orientations, the phrase "any such other grounds" can be interpreted to include these aspects. This interpretation aligns with the Committee on Economic, Social and Cultural Rights' General Comment No. 20, which defines "other status" to include sexual orientation. In this context, the phrase "any such other grounds" used in Article 18 of Nepal's Constitution can be seen to encompass different sexual orientations as well.

32. The petitioner has stated that she is a transgender woman and, due to their gender identity not being reflected in their educational records, Tribhuvan University refused to process her registration form, resulting in denial of access to higher education. In this context, it is pertinent to examine the provisions related to the right to education in the Constitution of Nepal and the international human rights laws to which Nepal is a party.

33. Article 31(1) of the Constitution of Nepal states that every citizen shall have the right to access basic education. Similarly, clause (2) mentions that every citizen shall have the right to compulsory and free education up to the basic level and free education up to the secondary level from the state. Article 26 of the Universal Declaration of Human Rights, 1948, states that everyone has the right to education. Education shall be free, at least in the elementary and

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fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Article 13 of the International Covenant on Economic, Social and Cultural Rights, 1966, recognizes the right of everyone to education. Further interpreting this right to education, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 13, states that educational institutions and programs should be accessible to everyone, without discrimination.

34. The right to education, as recognized by the Constitution of Nepal and international human rights laws to which Nepal is a party, emphasizes that education should be accessible to all without discrimination. The petitioner's denial of access to higher education due to the inability to amend their personal identification documents, including birth certificates and citizenship certificates, to reflect their self-identified gender, and the refusal of Tribhuvan University to process their registration form, constitutes a violation of their right to education as guaranteed by Constitution of Nepal and international human rights laws to which Nepal is committed. According to the principle of human rights, human rights are interrelated. Under this principle, the violation of an individual's right to education leads to the violation of other fundamental rights, such as the right to equality, the right to live with dignity, the right to employment, and the right to health. Moreover, when the right to education is violated, it ultimately jeopardizes the individual's right to equality, the right to live with dignity, and even the right to life itself. In this context, it is relevant to reference a passage from a book by the International Commission of Jurists: "Discrimination on the grounds of sexual orientation and gender identity may give rise to the most egregious human rights

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violations, such as extrajudicial killing, torture and ill-treatment, and arbitrary detention." Demonstrating that discrimination has consequences in the deprivation of enjoyment of all other guaranteed human rights. The passage further states that discrimination based on sexual orientation and gender identity can lead to severe human rights violations, including extrajudicial killing, torture, inhuman treatment, and arbitrary detention. As a result, individuals may be deprived of their fundamental rights, such as the right to life, the right to a fair trial by an independent and impartial tribunal, the right to privacy, the freedom of conscience, the freedom of association, equal access to public services, equality before the law and equal protection of the law, the right to work, the right to social security (including social insurance), the right to the highest attainable standard of health, the right to education, and the right to adequate housing. This highlights the broad range of human rights that can be compromised due to discrimination on the grounds of sexual orientation and gender identity. Article 16 of the Constitution of Nepal guarantees the right of every Nepali citizen to live with dignity. In fact, creating conditions that ensure every citizen can live with dignity is a primary responsibility of the State. Section 2(c) of the National Human Rights Commission Act, 2068 defines human rights as those rights provided by the Constitution and other prevailing laws that are related to an individual's life, liberty, equality, and dignity. This definition highlights the high regard for an individual's equality and dignity within the framework of human rights.

35. In accordance with the aforementioned constitutional provisions, legal frameworks, and international human rights laws to which Nepal is a party, it is evident that the petitioner's right to have "female" recorded under the gender specification in citizenship and other personal identification

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documents, based on their self-identified gender, must be recognized as a matter of fundamental and human rights. As Nepal is a state party to the aforementioned international human rights laws, it is the State's primary obligation, under the Vienna Convention on the Law of Treaties, 1969, the Nepal Treaty Act, 2047, and established principles of human rights jurisprudence, to respect, protect, promote, and fulfill the human rights enshrined in these laws.

36. In Human Rights Jurisprudence, the right to Equality and Non-Discrimination is considered the most fundamental and critical right. The essence of human rights lies not merely in their availability, but in their unencumbered and dignified exercise. If rights are consumed in a discriminatory manner that undermines an individual's dignity, such rights become devoid of meaning and purpose. In the case of Sunilbabu Panta vs. Government of Nepal (Nepal Kanoon Patrika 2065, Issue 4, Decision No. 7958), the Court definitively ruled that discriminatory legal provisions obstructing the establishment of personal identity are unconstitutional. It also held that fundamental rights must be universally accessible without discrimination. In another significant case (Nepal Kanoon Patrika 2074, Issue 9, Decision No. 9875), the Court affirmed that gender identity is a deeply personal matter of self-determination. It ruled that biological sex determination by other individuals, society, the state, or the law is irrelevant and that provisions undermining individual's freedom, dignity and self respect are inherently incompatible with human rights principles. It is asserted that the petitioner has the right to enjoy and exercise the rights enshrined in the Constitution and international human rights laws without discrimination, on par with other individuals. It is

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the responsibility of the State to ensure the necessary legal and structural arrangements to uphold these rights.

37. Article 10(1) of the Constitution of Nepal states, "No Nepali citizen shall be deprived of the right to obtain citizenship." Article 12 provides that "A person who obtains citizenship of Nepal by descent in accordance with the Constitution may obtain a certificate of citizenship of Nepal with gender identity by the name of his/her mother or father." Similarly, Article 42 mentions the right to social justice, including the right of gender and sexual minorities to participate in state bodies based on the principle of proportional inclusion. Article 18(1) states that all citizens are equal before the law, and no one shall be denied equal protection of the law. Article 18(2) prohibits discrimination in the application of general laws on grounds including gender and physical condition, while Article 18(3) states that the state shall not discriminate among citizens on grounds including gender. The proviso to Article 18(3) further states that special provisions by law for the protection, empowerment, or development of citizens, including gender and sexual minorities, shall not be considered discriminatory.

38. Examining these constitutional provisions, it is evident that all citizens are equal under the law, and no one shall be deprived of equal protection of the law, nor discriminated against on any basis including gender, physical condition, or other characteristics. In fact, the provisions embrace the concept of positive discrimination (Substantive Equality) by enabling the creation of special legal provisions for the protection, empowerment, and development of citizens, particularly gender and sexual minorities like the petitioner. Fundamentally, the provision in Article 18(3) relates to creating conditions

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wherein individuals in situations similar to the petitioner can live their lives equally and with necessary state accommodations. For such individuals in special circumstances, education emerges as the most critical aspect of protection and empowerment. The acquisition of education not only facilitates ease through recognition of gender identity but also provides a sense of self-satisfaction and dignity. Essentially, when the state provides special provisions and protection for individuals like the petitioner, it does not adversely impact the rights and privileges of other individuals. The constitutional framework fundamentally aims to create an inclusive environment that respects individual dignity and ensures equal opportunities for all citizens, regardless of their unique characteristics. In reference to the precedential case of Sunilbabu Panta Vs. Government of Nepal, Office of Prime Minister and Council of Ministers (Nepal Kanoon Patrika 2074, Issue 9, Decision No. 9875), the Court established critical legal principles: "Denying modification of a citizenship certificate issued based on biological sex when an individual's sexual identity was not initially known is tantamount to refusing to acknowledge the existence of gender minority community members." The Court further articulated that: In certain circumstances, individuals may recognize and express their gender identity relatively later in life. In such scenarios, legal provisions must safeguard the right to modify citizenship certificates originally issued based on biological physical characteristics. Considering Nepal's commitments to international human rights law and constitutional provisions ensuring, equal rights, non-discriminatory treatment, and fundamental human rights comparable to other citizens, the Court found it appropriate to recognize the petitioner's self-perceived gender identity and modify citizenship and personal documentation

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to reflect "Female" gender designation. This landmark judgment underscores the constitutional imperative of respecting individual gender identity and ensuring equal rights for transgender individuals within the legal framework of Nepal.

39. The petitioner has indicated in her petition that her Permanent Account Number, National ID card, Indigenous Nationality Certificate, and other documents indicate her gender as "female". Similarly, in the first passport bearing No. 10203642, the name is recorded as "Rukshana Kapali" with the gender specification as "Female", whereas in the second passport, the gender specification is noted as "Other". An interim order was issued in Writ Petition No. 078-WO-0999 to establish the gender specification as "Female". Furthermore, in the voter identity card, the gender specification is recorded as "Third Gender", and an interim order was issued in Writ Petition No. 077-WO-1244 to establish the gender specification as "Female". Notwithstanding these interim orders, the petitioner has presented a birth certificate and citizenship certificate wherein the name is recorded as "Rukshana Kapali" with the gender specification as "Other". The petitioner has submitted relevant documentation to substantiate this claim. It is evident from the orders issued in other cases that the petitioner's gender has been recorded as "Female" in various government documents, including her passport. Additionally, interim orders from this court, issued in writ petitions 078-WO-0999 and 077-WO-1244 filed by the petitioner, have directed the issuance of documents recognizing her as "Female."

40. The petitioner's prolonged efforts to establish consistency in her name "Rukshana Kapali" and gender identity as "Female" are evident from the case file. Despite long-standing attempts, the current documentation reveals an

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inconsistent representation of her gender identity, some documents reference her as "Female", some indicate "Third Gender" and her citizenship certificate lists gender as "Other". It appears that, despite interim orders being issued in writ petitions 078-WO-0999 and 077-WO-1244 filed by the petitioner, directing that her passport and voter identity card recognize her as "Female," her gender details in documents such as the citizenship certificate remain recorded as "Other." In light of the discrepancies in the petitioner's gender identification across various personal documents, it appears that, based on the deliberations in the aforementioned cases, the petitioner's citizenship certificate and other personal identification documents can be amended to reflect her gender as "Female."

41. Regarding the fourth question of whether the name and gender details in the petitioner's birth certificate and other personal identification documents based on it should be kept confidential? Article 28 of the Constitution of Nepal ensures the right to privacy, stating that "the privacy of any person, his or her residence, property, document, data, correspondence and character shall be inviolable except in accordance with law." Section 3(1) of the Privacy Act, 2075 (2018) states that the privacy of an individual's physical and mental condition is inviolable, and Section 3(3) provides that every person has the right to maintain the privacy of matters related to their private life such as genetic or inherited identity, gender identity, and sexuality. The petitioner, being a transgender woman, has faced situations where her birth name and gender identity, as recorded in her birth certificate and other documents, do not match her current identity as a woman. This has led to undignified treatment and denial of services from service providers when attempting to access state-provided goods and services. In a welfare state, it is the

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responsibility and duty of the state to provide goods and services to citizens quickly, efficiently, without discrimination, and in a dignified manner. This is also considered an indicator of good governance in state administration. Discriminating against the petitioner based on sexual orientation and gender identity in accessing state services amounts to the state not respecting the petitioner's fundamental and human rights. Given the right to privacy guaranteed by Article 28 of the Constitution and implemented through the Privacy Act, 2075 (2018), which protects the privacy of an individual's physical condition and their right to maintain privacy regarding biological or genetic identity, gender identity, and sexuality, it appears that any person can maintain the confidentiality of these aspects.

42. It has been clearly established through the preceding analysis that the petitioner's citizenship certificate and personal identification documents shall reflect her gender identity as "Female". However, given that certain personal and public details of citizens are directly linked to state-provided services and facilities, updating and documenting such details is essential for promoting a dignified standard of living within the state system. From this perspective, the state has an inherent responsibility to manage and maintain citizens' comprehensive historical and current records in accordance with law and such record management must simultaneously preserve confidentiality. The petitioner has highlighted experiencing repeated humiliation and disrespectful treatment from individuals within social and state mechanisms due to disclosure of her previous name and gender identity. This indicates a violation of her fundamental right to live with dignity. Considering the state's role as a protector and promoter of citizens' fundamental rights, it appears necessary to maintain the confidentiality of the petitioner's dead-name and

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gender identity in her birth certificate and other personal identification documents based on it. This is to protect the petitioner's right to live with dignity and right to equality, guaranteed by Articles 16 and 18 of the Constitution of Nepal, along with other rights.

43. Considering the fifth question of whether an order should be issued as per the petition request: Based on the grounds, reasons, constitutional and legal provisions discussed above, international human rights laws to which Nepal is a party, and the principles established by this court, it is decided that a mandamus order should be issued to the respondents to: amend and update the gender identity information in the petitioner's

Let the copy of the order be sent to the office of the Attorney General for the knowledge of the respondents. The order shall be electronically recorded in the system, the case registry shall be updated accordingly, and the case file shall be transferred to the Records Section in compliance with standard procedural protocols.

Sd..
Chief Justice

I concur above decision.

Judge.

Bench Officer : Basanta Prasad Manali

Computer Operator : Radhika Ghorasaine

Done on : Kartik 20, 2080 B.S. (November 6, 2023 A.D.)

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