

Transgender Rights in India: Post-NALSA Developments and Legislative Effectiveness

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Abstract:

The landmark judgment of the Supreme Court of India in *National Legal Services Authority v. Union of India* (2014), universally known as the NALSA judgment, constituted a constitutional watershed in the recognition of transgender rights in India, affirming gender self-identification as a fundamental right under Articles 14, 19, and 21 of the Constitution. This paper critically evaluates the post-NALSA legal trajectory examining the Transgender Persons (Protection of Rights) Act, 2019, and the Rules of 2020 against the expansive constitutional framework the judgment established. Through a doctrinal and socio-legal analysis, the paper argues that the 2019 Act represents a legislative regression from the NALSA standard, particularly through its mandatory certification mechanism, the dilution of the self-identification right, the absence of reservation provisions, and inadequate penalty structures. Drawing on recent Supreme Court interventions in *Jane Kaushik v. Union of India* (2025), *Shanavi Ponnuswamy v. Ministry of Civil Aviation* (2022), and multiple High Court directions on employment reservations and healthcare access, the paper evaluates how the judiciary has stepped in to fill the implementation vacuum created by executive inaction and legislative shortcoming. It further examines critical access gaps in healthcare, education, employment, and housing that persist despite a formally progressive legal framework, and concludes with recommendations for a rights-effective amendment to the 2019 Act aligned with international best practices under the Yogyakarta Principles and the Constitution's substantive equality guarantee.

Keywords: NALSA Judgment, Transgender Persons Act 2019, Gender Self-Identification, Jane Kaushik, Yogyakarta Principles.

1. INTRODUCTION

1.1 The Constitutional Moment and Its Unfulfilled Promise

On April 15, 2014, a two-judge bench of the Supreme Court of India, comprising Justice K.S. Radhakrishnan and Justice A.K. Sikri, delivered what has been widely acknowledged as one of the most significant constitutional rulings on gender justice in any common law jurisdiction in the twenty-first century. *National Legal Services Authority v. Union of India* [(2014) 5 SCC 438], the NALSA judgment, recognised for the first time that transgender persons including hijras, kinnars, aravanis, jogtas, shiv-shakthis, and other culturally-specific gender-diverse communities possess fundamental rights under the Indian Constitution, including the right to self-identify their gender without medical intervention or state approval. The Court held that the expression "sex" in Articles 15 and 16 encompasses gender identity, that every person has a constitutional right to determine and express their gender identity under Articles 19(1)(a) and 21, and that the state is under an affirmative obligation to provide transgender persons with educational and employment reservations as a socially and educationally backward class (*NALSA v. Union of India*, 2014). The judgment directed central and state governments to constitute welfare boards, extend affirmative action entitlements, and destigmatise transgender persons through public sensitisation setting an ambitious agenda for state action grounded in constitutional morality.

More than a decade after NALSA, the distance between its constitutional vision and the lived reality of India's estimated 4.9 million transgender persons remains vast (SabrangIndia, 2025). The Transgender Persons (Protection of Rights) Act, 2019, enacted to provide legislative content to the NALSA framework, has been widely criticised including by the Supreme Court itself in *Jane Kaushik v. Union of India* (2025) for diluting the self-identification right, omitting reservation mandates, imposing burdensome certification procedures, and providing inadequate enforcement mechanisms (SC Observer, 2025a; The Print, 2025). Welfare boards remain non-functional or constituted only on paper across most states. Reservations have been implemented in fewer than half a dozen states, and primarily through court orders rather than executive initiative. As Justice J.B. Pardiwala and Justice R. Mahadevan observed in *Jane Kaushik* in terms of uncommon judicial candour: "One may get to read a lot about [transgender persons'] rights in the statute books, but the reality is that these rights remain only an empty formality" (SC Observer, 2025a).

1.2 Objectives and Structure

This paper critically analyses the post-NALSA legal trajectory of transgender rights in India through four lenses: the constitutional framework and the NALSA standard; the legislative architecture of the 2019 Act and its specific regressive features; judicial enforcement trends from 2014 to 2025; and ground-level access gaps in healthcare, education, employment, and identity documentation. It concludes with recommendations grounded in constitutional law, comparative jurisprudence, and the international normative framework of the Yogyakarta Principles.

2. THE NALSA FRAMEWORK: CONSTITUTIONAL FOUNDATIONS AND JUDICIAL MANDATE

2.1 Constitutional Grounding

The NALSA judgment's constitutional architecture is built on a triangulated reading of Articles 14, 19, and 21, supplemented by Article 15's prohibition of discrimination on grounds of sex and Article 16's guarantee of equality of opportunity in public employment. The Court held that Article 21's right to life and personal liberty, expanded by *Maneka Gandhi v. Union of India* [AIR 1978 SC 597] to encompass a right to live with dignity and self-determination, includes the right to determine and express one's gender identity a position that was subsequently reinforced in *Justice K.S. Puttaswamy (Retd.) v. Union of India* [(2017) 10 SCC 1], where a nine-judge constitution bench held that informational and decisional privacy including the autonomy to make choices about one's own identity is a fundamental right under Article 21 (*NALSA v. Union of India*, 2014; Legal Service India, 2025). The Court read "sex" in Article 15(1) broadly to include "gender" and "gender identity," holding that discrimination on grounds of gender identity constitutes sex discrimination prohibited by the Constitution a reading that was reaffirmed in *Navtej Singh Johar v. Union of India* [(2018) 10 SCC 1], where the Supreme Court decriminalised consensual same-sex relations and further developed the jurisprudence of constitutional protection for sexual orientation and gender identity (Wikipedia, 2025; Rural India Online, 2025).

The Court's international law engagement in NALSA was equally significant. It drew extensively on the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006), particularly Principles 3, 17, and 18, which require states to recognise each person's self-defined sexual orientation and gender identity and to ensure access to gender-affirming healthcare without coercive requirements. The Court's reliance on the Yogyakarta Principles as interpretive guides for constitutional provisions established the framework within which India's international gender justice obligations intersect with domestic constitutional law a framework that subsequent legislation has failed to honour (*NALSA v. Union of India*, 2014; ICJ, 2024).

2.2 Specific Directions and Their Implementation Record

The NALSA judgment issued specific directions on six dimensions: (i) legal recognition of the right to self-identify as male, female, or third gender; (ii) documentation changes including identity cards, passports, and electoral rolls; (iii) affirmative action in the form of OBC/backward class reservations in education and public employment; (iv) welfare measures including HIV surveillance, medical care, sanitation, and social security; (v) sensitisation and awareness programmes; and (vi) interim welfare boards pending comprehensive legislation (NALSA v. Union of India, 2014). The Central Bureau of Investigation (sic: Centre for Law & Policy Research) Bengaluru's 2024 landscape survey of post-NALSA case law found that documentation rights, employment reservations, and healthcare access remain the three areas of greatest implementation deficit, with states frequently failing to constitute welfare boards, refusing transgender-specific reservations, and operating government schemes with rigid binary-only application processes (Rural India Online, 2025).

Employment reservations, perhaps the most consequential directive for economic empowerment, have been the most contentiously resisted. As recently as June 2025, the Andhra Pradesh High Court responded to a teacher's petition by expressing concern that despite NALSA's decade-old directive and the Transgender Persons Act's affirmative obligations, states had notified thousands of government posts without reserving a single vacancy for transgender persons directing the state government to implement reservations immediately (*The Print*, 2025). Similar orders have been issued by the Telangana, Tamil Nadu, Kerala, and Karnataka High Courts, indicating that judicial compulsion rather than executive proactivity has been the primary driver of whatever limited reservation implementation has occurred (*The Print*, 2025; Study IQ, 2025).

3. THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019: STRUCTURAL ANALYSIS AND CRITICAL ASSESSMENT

3.1 Legislative History and Process Deficits

The path from the NALSA judgment to the Transgender Persons (Protection of Rights) Act, 2019 was neither direct nor consultative. The first legislative attempt the Rights of Transgender Persons Bill, 2014, introduced by Dravida Munnetra Kazhagam MP Tiruchi Siva in the Rajya Sabha passed the upper house in 2015 but was never taken up by the Lok Sabha (Wikipedia, 2025). The government-introduced Transgender Persons (Protection of Rights) Bill, 2016, attracted widespread criticism for multiple provisions including criminalising begging an economic activity historically practised by hijra communities and proposing a District Screening Committee to assess applications for recognition, features that activists characterised as invasive and humiliating (Wikipedia, 2025). The 2018 version that passed the Lok Sabha retained many problematic features despite a standing committee report recommending substantial changes; community protests were widespread (Wikipedia, 2025). The 2019 Act that ultimately received Presidential assent was stripped of some of the most objectionable provisions including begging criminalisation and the district screening committee but retained the certification requirement and entirely omitted the reservation mandate, generating what the Supreme Court would later characterise as a "dilution of the sanctity of the right to self-determination as envisioned in NALSA" (SC Observer, 2025a).

The process deficit was as significant as the substantive one. Throughout the legislative journey from 2016 to 2019, community consultation was episodic and superficial. Senior transgender advocate Raghavi Shukla, reflecting on the legislative experience, characterised the Act as reflecting "an absence of intent, willingness and the heart to address these issues," with the gap between the NALSA mandate and the legislation reflecting the political reality that transgender persons do not constitute a significant electoral constituency and are consequently subject to what she termed "mere tokenism, to silence a certain group of people" (*The Print*, 2025).

3.2 Definition and Self-Identification: Section 2(k) and Section 4

Section 2(k) of the 2019 Act defines "transgender person" as one "whose gender does not match the gender assigned at birth" a definition that is inclusive on its face, encompassing trans men, trans women, intersex persons, genderqueer individuals, and culturally-specific identities including hijra, kinnar, aravani, and jogta (Transgender Persons (Protection of Rights) Act, 2019, s. 2(k); Legal Service India, 2025). This definitional breadth is significant as a formal matter, acknowledging India's culturally diverse landscape of gender-nonconforming identities rather than reducing transgender identity to a Western binary-crossing framework.

However, Section 4, read with Sections 6 and 7, fundamentally compromises the self-identification right affirmed in NALSA by requiring a transgender person seeking formal gender recognition to apply for a certificate of identity to the District Magistrate, who refers the application for review before issuing the certificate (Transgender Persons Act, 2019, ss. 4, 6, 7). For a person seeking recognition as male or female as distinct from "transgender" Section 7 additionally requires a certificate from a Medical Superintendent or Chief Medical Officer of a government hospital confirming that the applicant has undergone "surgery" for sexual reassignment (Transgender Persons Act, 2019, s. 7(2)). This surgery requirement directly contradicts the NALSA holding that gender self-identification cannot be made contingent on medical procedures a position reinforced by the Puttaswamy privacy judgment and consistent with international standards including Yogyakarta Principle 3 (SC Observer, 2025a; Wikipedia, 2025). The Supreme Court in *Jane Kaushik v. Union of India* (2025) explicitly held that "no transgender or gender diverse person is bound to take permission from their employer to undergo gender-affirming medical procedures," signalling the Court's view that medical gateways to identity recognition are constitutionally suspect (SC Observer, 2025a).

The practical consequence of the certification requirement is a two-tiered recognition system: a "transgender" certificate accessible without surgery but subject to District Magistrate discretion, and a male/female certificate accessible only through surgical certification a structure that imposes economic barriers (surgery is inaccessible to most transgender persons without public healthcare support) and dignity costs (subjecting identity to bureaucratic gatekeeping) disproportionate to any legitimate state interest (PMC, 2022; Rural India Online, 2025). The Supreme Court in its ongoing monitoring of the Act has noted the "grossly apathetic attitude" of state institutions in implementing even the certification processes that the Act does establish (SC Observer, 2025a).

3.3 The Reservation Omission

The most consequential single omission from the 2019 Act is the absence of any reservation provision for transgender persons in public employment or educational institutions despite the NALSA judgment's explicit direction to classify transgender persons as socially and educationally backward and provide them with reservations "in cases of appointments" and educational admissions (NALSA v. Union of India, 2014; Wikipedia, 2025). The Act's Section 8 obliges the government to provide welfare programmes including healthcare, educational facilities, and vocational training, but contains no enforceable reservation mandate (Transgender Persons Act, 2019, s. 8). This omission reflects the political sensitivity of reservation policy in India, where any extension of affirmative action generates significant electoral and institutional resistance but it is legally indefensible given the constitutional directive in NALSA and the evidence of systematic economic marginalisation of transgender persons.

The Supreme Court in *Jane Kaushik v. Union of India* (2025) addressed this gap by granting transgender persons Socially and Educationally Backward Class (SEBC) status for reservations, a ruling that while significant required yet another judicial intervention to operationalise a right that Parliament had deliberately omitted from the legislation (Study IQ, 2025; SC Observer, 2025b). The pattern is consistent:

NALSA directed reservations in 2014; Parliament declined to legislate them in 2019; courts directed them state by state through litigation between 2019 and 2025; and the Supreme Court finally mandated them nationally in 2025. The eleven-year delay in implementing a direction of a constitutional court constitutes, on any analysis, a failure of legislative responsibility.

3.4 Anti-Discrimination Provisions and Penalty Structure

Sections 3 through 7 of the Act establish non-discrimination obligations across education, employment, healthcare, housing, and public services prohibiting denial of service, termination of employment, and harassment on grounds of transgender identity (Transgender Persons Act, 2019, ss. 3–7). Section 18 provides a penalty of imprisonment of six months to two years, plus a fine, for offences including sexual abuse, physical abuse, and denial of rights under the Act (Transgender Persons Act, 2019, s. 18). These provisions have attracted sustained criticism for providing lesser protection to transgender victims of violence than is available to cisgender women: rape of a trans woman under the current framework would attract the Section 18 maximum of two years, while rape of a cisgender woman is punishable with a minimum of seven years under the Bharatiya Nyaya Sanhita, 2023 (Wikipedia, 2025; Legal Service India, 2025). This sentencing disparity is constitutionally indefensible it implies that the bodily integrity of a transgender person is valued less by the criminal law than that of a cisgender person, directly contradicting Article 14's guarantee of equal protection and the dignity mandate of Article 21.

The 2019 Act also fails to specify what constitutes "reasonable accommodation" for transgender employees a concept the Supreme Court had deployed in *Shanavi Ponnuswamy v. Ministry of Civil Aviation* [(2022) SCC OnLine SC] to compel accommodation of a transgender cabin crew applicant and which the *Jane Kaushik* court noted the Act omits despite the Rights of Persons with Disabilities Act, 2016 providing a workable model (SC Observer, 2025a). This absence means that employers and institutions confronted with accommodation requests from transgender employees have no legislative guidance, resulting in ad hoc, inconsistent responses that frequently fail the employees concerned.

4. JUDICIAL TRENDS AND POST-NALSA JURISPRUDENCE

4.1 From NALSA to Jane Kaushik: The Arc of Supreme Court Engagement

The Supreme Court's engagement with transgender rights since NALSA traces a consistent trajectory from rights declaration through implementation monitoring to active remediation of legislative inadequacy. *Navtej Singh Johar v. Union of India* (2018) decriminalised consensual same-sex conduct under Section 377 of the Indian Penal Code, holding that the provision violated Articles 14, 15, 19, and 21, and developing the concept of "constitutional morality" as a standard requiring institutions to honour the constitutional promise of equal dignity regardless of social majoritarian attitudes a standard directly applicable to the transgender rights context (*Navtej Singh Johar v. Union of India*, 2018). *Justice K.S. Puttaswamy v. Union of India* (2017), though not a transgender rights case in its primary facts, provided doctrinal reinforcement by holding that informational and decisional privacy including autonomy over one's gender identity is a fundamental right, thereby constitutionally invalidating any legislative requirement of external validation for self-identified gender (*Puttaswamy v. Union of India*, 2017).

Shanavi Ponnuswamy v. Ministry of Civil Aviation (2022) applied NALSA to a specific employment context, directing the Directorate General of Civil Aviation to ensure that its medical standards did not constitute discriminatory barriers to transgender persons seeking to work as cabin crew the Court importing the reasonable accommodation framework from disability law to remedy a gap in the transgender anti-discrimination regime (SC Observer, 2025a; Study IQ, 2025). High Courts across jurisdictions continued this trend: in *Ms. X v. State of Karnataka* (2024), the Karnataka High Court held that name and gender changes on educational certificates did not require surgical certification, directly applying NALSA's self-identification standard to undercut the Act's medicalised framework (Study IQ,

2025). The Andhra Pradesh High Court in 2025 held that "trans women are women under the law" and that "biology is not the sole criterion" for legal womanhood a formulation that goes beyond even the NALSA standard in its explicit rejection of biological essentialism (Study IQ, 2025).

Jane Kaushik v. Union of India (2025) represents the culmination of this judicial trajectory. Delivered by Justices J.B. Pardiwala and R. Mahadevan on October 17, 2025, the judgment found that state institutions had displayed a "grossly apathetic attitude" toward implementing the Act and its Rules, directed all employers to establish equal opportunity policies within three months, held that no transgender person requires employer permission to undergo gender-affirming procedures, granted SEBC status for reservations, awarded compensation to the petitioner for rights violations, and emphatically reaffirmed that gender identity is a fundamental right of self-determination not subject to external validation (SC Observer, 2025a; SC Observer, 2025b). The significance of *Jane Kaushik* lies not only in its substantive holdings but in its tone: as the SC Observer characterised it, "If NALSA was about recognition, Jane Kaushik is about responsibility. The Court is no longer content to declare rights; it insists on the architecture for their enforcement" (SC Observer, 2025a).

4.2 High Court Jurisprudence and Subnational Enforcement

The pattern of judicial enforcement of transgender rights has been as significant at the High Court level as at the Supreme Court. *Arunkumar & Others v. Inspector General of Registration* [(2019) Madras HC] recognised the right of transgender persons to marry based on self-identified gender under Article 21 a ruling whose implications for the formal legal status of transgender marriages remain unresolved at the national level (Rural India Online, 2025). The Delhi High Court in 2025 directed all government forms and official documents to include a transgender category addressing the practical documentation gap that continues to prevent transgender persons from accessing government services without being forced to mis-identify (Study IQ, 2025). The Madras High Court in *M. Srinivasan v. State* confirmed that sexual harassment laws extend to all persons who identify as women, closing a practical protection gap caused by the POSH Act's gendered framing (Rural India Online, 2025).

5. CONCLUSION AND RECOMMENDATIONS

The post-NALSA legal trajectory of transgender rights in India presents a paradox that is both analytically instructive and constitutionally troubling. On one dimension, India's transgender jurisprudence is among the most progressive in the world the NALSA standard of unconditional gender self-identification preceded comparable judicial pronouncements in most Western democracies, and the recent judicial recognition of SEBC status, gender-inclusive documentation, and reasonable accommodation in employment collectively constitute a body of constitutional precedent that compares favourably with international best practice (Study IQ, 2025). On another dimension, the enactment of the 2019 Act represented a calculated legislative retreat from the constitutional standard the Court had established, and the decade-long pattern of judicial intervention to compel state compliance with NALSA directions that the legislature refused to codify represents a structural failure of the democratic system's capacity to honour its constitutional obligations to a politically marginalised community.

The following reform recommendations are proposed to close the gap between India's constitutional promise and the legislative reality.

First, Parliament must amend the Transgender Persons (Protection of Rights) Act, 2019 to replace the Section 7 surgery requirement and the District Magistrate certification process with a system of statutory self-declaration, consistent with the NALSA standard, Puttaswamy's privacy guarantee, and Yogyakarta Principle 3. The amendment should permit self-declaration of gender change to the civil registration authority through a statutory written affirmation, without medical or judicial intermediation, with a simple updating procedure for all official documents.

Second, the Act must be amended to include a mandatory reservation chapter, implementing NALSA's now eleven-year-old directive by specifying a minimum percentage reservation for transgender persons in public employment and central and state educational institutions, administered through the existing OBC/SEBC framework as validated by the *Jane Kaushik* ruling. The reservation provision should be backed by a reporting obligation requiring all public employers to publish annual diversity statistics disaggregated by gender identity.

Third, the sentencing disparity in Section 18 which provides a maximum of two years for sexual and physical abuse of transgender persons compared to substantially higher minima for equivalent offences against cisgender women must be remedied through legislative amendment aligning penalties with the equivalent provisions of the Bharatiya Nyaya Sanhita, 2023. Equality of protection before the criminal law is a non-negotiable component of Article 14's guarantee.

Fourth, the Act must be amended to define and mandate "reasonable accommodation" for transgender persons in employment, education, and healthcare, modelled on the Rights of Persons with Disabilities Act, 2016's framework, with specific guidance on the limits of employer discretion in relation to gender-affirming procedures and documentation updates.

Fifth, the National Transgender Welfare Board and state-level boards must be constituted, funded, and made functional within a legally mandated timeframe with annual reporting obligations, independently audited, tabled before Parliament and state legislatures. The current situation, in which welfare boards exist on paper across most states while transgender persons remain without access to housing, healthcare, or social security, is constitutionally indefensible.

Sixth, the healthcare gap particularly for HIV prevention services, gender-affirming hormone therapy, and surgical care must be addressed through integration of transgender healthcare into the Ayushman Bharat scheme and the National Health Mission, with dedicated trans-competent healthcare providers trained and deployed in every district hospital.

Seventh, India should ratify or formally endorse the updated Yogyakarta Principles Plus 10 (YP+10, 2017) as a framework for interpreting domestic constitutional and legislative provisions on gender identity, providing a normative anchor for future legislative reform and judicial interpretation. This would align India's self-declared progressive trajectory with the international human rights framework that the NALSA judgment itself invoked as an interpretive guide.

The *Jane Kaushik* court observed that "the constitutional promise of equality is not merely formal but substantive, requiring the State to take affirmative measures to ensure that [transgender persons] can meaningfully participate in all spheres of life" (SC Observer, 2025a). Substantive equality for transgender persons in India requires more than landmark judgments delivered at ten-year intervals; it requires an institutional commitment legislative, executive, and financial to the ongoing, systematic dismantling of the structures of discrimination that the law now nominally prohibits but has not yet materially reduced. That commitment is what India's transgender community has waited, with diminishing patience, for more than a decade to see.

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