



FROM RECOGNITION TO ENFORCEMENT: SUBSTANTIVE EQUALITY AND WORKPLACE RIGHTS OF TRANSGENDER PERSONS IN INDIA AFTER THE 2026 AMENDMENT

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Abstract

Indian constitutional law has moved beyond formally recognising transgender identity towards a substantive understanding of equality and dignity. National Legal Services Authority v. Union of India (2014), Justice K.S. Puttaswamy (2017), and Navtej Singh Johar (2018) established a constitutional foundation rooted in dignity, autonomy, privacy, identity and non-discrimination. Parliament later enacted the Transgender Persons (Protection of Rights) Act, 2019 and the Transgender Persons (Protection of Rights) Rules, 2020. Yet legal rights have not necessarily ensured effective access to employment, workplace security, reasonable accommodation or meaningful remedies. The Supreme Court's decision in Jane Kaushik v. Union of India (2025) is particularly significant: it highlights the continuing gap between statutory recognition and lived equality in employment, and calls for institutional measures to make rights effective. This article argues that the central weakness of India's transgender equality framework is not a lack of constitutional recognition, but the absence of a sufficiently coherent enforcement structure. It examines four related questions: whether the 2019 Act's employment provisions offer an effective remedial framework; how affirmative action can be designed without obscuring caste-based and other intersecting identities; whether workplace discrimination requires a civil, evidence-sensitive mechanism distinct from criminal prosecution; and how the Transgender Persons (Protection of Rights) Amendment Act, 2026 changes the constitutional landscape. The article also considers the relationship between transgender equality and the contemporary labour-law framework. It proposes moving from declaratory to operational equality through four measures: an interlocking horizontal reservation model for public employment and education; a statutory civil remedy with a carefully calibrated prima facie burden-shifting mechanism; stronger, more independent workplace grievance enforcement; and the explicit integration of gender identity and gender expression into labour and workplace regulation. It argues that the 2026 Amendment makes this reform agenda more urgent, as changes to the statutory definition and identity-certification framework raise serious questions about autonomy, dignity and the effective scope of statutory protection. The article concludes that substantive equality requires not only recognition of identity, but also representation, accommodation, institutional accountability and accessible remedies.

Keywords: Transgender persons, substantive equality, workplace discrimination, gender identity, horizontal reservation, reasonable accommodation, burden of proof, Transgender Persons (Protection of Rights) Act, 2019, 2026 Amendment.

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1. INTRODUCTION

The constitutional recognition of transgender identity in India represents one of the most important developments in contemporary equality jurisprudence. In *National Legal Services Authority v. Union of India* (NALSA), the Supreme Court rejected a strictly binary understanding of gender and recognised the right to self-perceived gender identity as an aspect of dignity, autonomy and personal liberty. The Court also interpreted the constitutional prohibition against discrimination on the ground of sex as extending to gender identity. Subsequent decisions, particularly *Justice K.S. Puttaswamy (Retd.) v. Union of India* and *Navtej Singh Johar v. Union of India*, strengthened the constitutional foundations of privacy, autonomy, dignity and protection against identity-based exclusion.

The legislative response was the *Transgender Persons (Protection of Rights) Act, 2019* (2019 Act), supplemented by the 2020 Rules. The Act prohibits discrimination and contains specific provisions dealing with employment, establishment-level obligations and grievance redressal. On paper, therefore, the legal framework has moved well beyond the era in which transgender persons were simply invisible within formal law.

The more difficult question is whether legal recognition has been converted into substantive equality. Employment provides an especially revealing site for examining this question. A right to equality in recruitment is of limited practical value if application systems do not recognise gender diversity, recruitment rules do not provide effective access, workplaces lack appropriate facilities, complaints are handled internally without independence, and an employee cannot obtain an effective civil remedy for discriminatory termination. Equality is consequently not exhausted by the prohibition of discrimination. It requires institutional arrangements capable of making equal participation realistic.

The Supreme Court's judgment in *Jane Kaushik v. Union of India* (2025) provides an important contemporary point of departure. The Court observed that, despite the 2019 Act and 2020 Rules, transgender persons continue to face discrimination and barriers in employment and professional spaces. The judgment is significant because it treats the implementation deficit as a constitutional concern rather than as a merely administrative inconvenience. The Court's analysis supports a conception of substantive equality that includes redressing disadvantage, addressing stigma, enhancing participation and accommodating difference.

This article therefore asks whether India's existing legal framework has moved sufficiently from recognition to enforcement. It advances three principal arguments. First, the employment provisions of the 2019 Act should be read together with the constitutional jurisprudence on substantive equality and the 2020 Rules, rather than as isolated anti-discrimination clauses. Second, the absence of an effective civil remedial and evidentiary mechanism remains a major weakness: criminal law cannot by itself provide the most appropriate response to recruitment discrimination, discriminatory performance assessment or wrongful termination. Third, the 2026 Amendment introduces a new constitutional dimension by altering the statutory framework concerning who qualifies as a transgender person and how identity is certified. The resulting questions concerning autonomy and the continuity of existing rights are now before the Supreme Court.

The article adopts a doctrinal and comparative methodology. It examines constitutional provisions, legislation, subordinate legislation, Supreme Court and High Court decisions, and selected comparative equality-law frameworks from the United Kingdom, South Africa and the United States. Comparative law is used not to transplant foreign rules mechanically, but to identify institutional techniques that may be adapted to the Indian legal context.

2. FROM FORMAL RECOGNITION TO SUBSTANTIVE EQUALITY

2.1 The Constitutional Foundation

NALSA transformed the constitutional position of transgender persons by recognising gender identity as an essential component of personal autonomy and dignity. The judgment linked Articles 14, 15, 16, 19 and 21 to a broader conception of equality in which the State cannot compel a person to conform to a legally imposed binary identity. The Court also directed governments to take affirmative measures, including treating transgender persons as socially and educationally backward classes for the purpose of reservations.

Puttaswamy subsequently placed privacy, bodily integrity and decisional autonomy at the centre of constitutional personhood. Navtej further demonstrated that constitutional morality limits the State's ability to preserve legal structures founded upon stigma and majoritarian disapproval. Together, these decisions establish an important proposition: gender identity is not merely an administrative classification; it is connected with dignity, autonomy, expression and equal citizenship.

The constitutional difficulty arises when this normative commitment encounters institutions designed around assumptions of gender uniformity. A formally neutral recruitment form, sanitation arrangement, dress requirement, physical test or workplace policy may appear identical for everyone while producing unequal consequences for persons whose gender identity does not fit the institutional design. Substantive equality therefore requires attention to the effects of institutional rules, not merely their facial neutrality.

2.2 Reasonable Accommodation and Participation

The jurisprudence of substantive equality has increasingly recognised that equality may require structural adjustment. In *Vikash Kumar v. Union Public Service Commission*, the Supreme Court explained the significance of reasonable accommodation in equality law in the disability context. The principle is relevant to transgender equality with appropriate doctrinal caution: the legal content of accommodation must arise from the constitutional and statutory framework applicable to transgender persons rather than from an assumption that disability law and transgender law are identical.

For transgender workers, reasonable accommodation may include recognition of the person's gender identity in records and communication, access to safe sanitation facilities, protection of confidentiality, appropriate dress and appearance policies, and recruitment or workplace procedures that do not impose unnecessary gendered barriers. The 2020 Rules already point in this direction by requiring establishments to provide a safe working environment, publish an equal opportunity policy and address infrastructure, safety, confidentiality and grievance concerns.

Substantive equality is therefore best understood as a four-part institutional obligation: first, preventing direct discrimination; second, removing structural barriers to entry and advancement; third, accommodating legitimate differences without stigma; and fourth, providing accessible remedies when equality fails. This framework is more useful for workplace regulation than a narrow focus on punishment after discrimination has occurred.

2.3 Intersectionality

Transgender identity does not operate independently of caste, class, disability, region, education or economic status. A legal remedy that treats transgender persons as a single homogeneous category may unintentionally benefit those already possessing greater educational and economic resources. Intersectionality is therefore particularly important in affirmative action and workplace regulation.

This does not mean that every transgender person must receive the same remedial treatment. Rather, the legal framework should permit transgender status to operate alongside existing constitutional categories rather than requiring a person to surrender one identity to obtain protection under another. This insight is central to the design of horizontal reservation.

3. EMPLOYMENT RIGHTS UNDER THE 2019 ACT: FROM PROHIBITION TO ENFORCEMENT

3.1 Section 9 and the Employment Guarantee

Section 9 of the 2019 Act expressly prohibits an establishment from discriminating against a transgender person in matters relating to employment, including recruitment and promotion. Section 10 requires establishments to ensure compliance and provide prescribed facilities. Section 11 requires every establishment to designate a complaint officer for complaints concerning violations of the Act.

The statutory design is therefore broader than a criminal prohibition. Employment discrimination is principally addressed through Sections 9–11 and the corresponding obligations under the 2020 Rules. Section 18 should not be treated as the general legal remedy for every instance of discriminatory recruitment or termination. This distinction is critical. The article's proposal for a civil remedial mechanism is consequently not an attempt to convert every workplace dispute into a criminal prosecution; it is an attempt to fill a remedial space that criminal law is poorly designed to occupy.

3.2 The 2020 Rules and the Workplace Compliance Architecture

Rule 12 of the 2020 Rules requires every establishment to implement measures for a safe working environment and to ensure that transgender persons are not discriminated against in matters relating to employment. It also requires an equal opportunity policy and disclosure of relevant facilities and complaint-officer details. Rule 13 requires every establishment to designate a complaint officer and provides time-bound procedures for inquiry and action.

This framework is significant because it converts the general language of Section 9 into operational duties. Yet the legal architecture remains heavily dependent upon establishment-level compliance. The Ministry of Social Justice and Empowerment itself issued an Office Memorandum in February 2023 reminding establishments that Section 11 requires appointment of a complaint officer and noting inadequate compliance. This official

intervention demonstrates that the problem is not merely the absence of statutory language; it is the gap between statutory command and institutional implementation.

A more accurate critique, therefore, is not that the Act excludes smaller establishments through a statutory 100-employee threshold. Section 11 applies to every establishment. The real difficulty is the absence of effective external monitoring, independence of complaint officers, accessible remedies where an establishment does not comply, and practical access for workers in small or informal workplaces.

3.3 Jane Kaushik and the Implementation Deficit

Jane Kaushik provides the strongest recent judicial basis for reframing the debate. The Supreme Court recognised that the statutory framework has not eliminated employment discrimination and that transgender persons continue to face entry barriers in professional spaces. The Court's reasoning places implementation within the domain of substantive equality: a right that cannot be effectively exercised remains substantially incomplete.

The significance of Jane Kaushik for workplace regulation lies in its institutional approach. Rather than treating each discriminatory incident as an isolated wrong, the judgment encourages examination of recruitment systems, accommodation, administrative policies and structural exclusion. This supports a regulatory model in which establishments have continuing duties rather than merely reactive liability after an individual complaint.

4. AFFIRMATIVE ACTION AND INTERLOCKING HORIZONTAL RESERVATION

4.1 Why Vertical Classification is Inadequate

NALSA directed governments to extend reservation benefits to transgender persons. The subsequent policy challenge has been how to implement that direction without collapsing transgender identity into a single caste or social category. Treating all transgender persons as belonging to a single vertical category risks erasing the constitutional identity of transgender persons who are also members of Scheduled Castes, Scheduled Tribes, Other Backward Classes or other recognised categories.

The more coherent approach is horizontal reservation. In *Indra Sawhney v. Union of India*, the Supreme Court explained the distinction between vertical and horizontal reservations. Horizontal reservations operate across vertical categories and are adjusted within them. The same model has subsequently been used for other horizontally reserved groups.

For transgender persons, an interlocking horizontal model would allow a transgender candidate to retain their existing vertical category while receiving the benefit of the horizontal transgender reservation. A transgender Scheduled Caste candidate would be adjusted within the SC quota; a transgender OBC candidate within the OBC quota; and a candidate outside those categories within the applicable open category. The objective is not to create an additional vertical compartment but to ensure representation across existing categories.

4.2 Constitutional Basis

The constitutional foundation for such a model should be stated carefully. Article 16(1), read with the equality jurisprudence of NALSA, provides the principal basis for equal opportunity in public employment. Article 15(3), which specifically concerns women and children, should not be presented as a general constitutional source for transgender reservation. The proposal should instead rest on Articles 14, 15 and 16 as interpreted through NALSA and the jurisprudence on substantive and horizontal equality.

The precise percentage should remain a matter for legislative and empirical justification. A proposal of 1% may be defended as an initial statutory benchmark, but the article should not describe it as constitutionally mandatory or mathematically predetermined. Its implementation should be accompanied by periodic review based on reliable demographic and employment data.

4.3 Administrative Design

The reservation should be implemented through an interlocking roster rather than by creating a separate vertical quota. The legislation should specify that a transgender candidate selected on general merit should not be unnecessarily displaced into the horizontal quota, and that horizontal adjustment should operate within the relevant vertical category. Recruitment authorities should also standardise application forms, identity categories, physical benchmarks where genuinely necessary, and grievance procedures.

The purpose of horizontal reservation is not merely numerical representation. It is to correct a structural exclusion that formal eligibility alone cannot overcome. Reservation should therefore be accompanied by reasonable accommodation and anti-discrimination safeguards; otherwise representation at the entry stage may not translate into retention and advancement.

5. THE CRIMINAL-LAW QUESTION: PROTECTION WITHOUT OVERSTATING THE GAP

The replacement of the IPC, CrPC and Evidence Act by the BNS, BNSS and BSA in 2024 has altered the statutory landscape relevant to sexual violence and transgender persons. The BNS retains gender-specific language in its rape provisions. This creates a serious protection question for victims who fall outside the statutory definition of the victim of rape in Section 63.

The argument should, however, be framed carefully. It would be inaccurate to suggest that every sexual offence against a transgender person is legally unpunishable. The BNS contains multiple offences relating to hurt, assault, sexual harassment and other forms of violence, and the 2019 Act separately criminalises specified forms of abuse. The stronger argument is that the present framework does not provide a comprehensive, gender-neutral statutory rape offence that corresponds to the constitutional commitment to equal bodily integrity.

The problem is therefore one of unequal protection rather than a complete absence of criminal law. A transgender person or other victim outside the gendered scope of Section 63 may have to rely upon offences that do not carry the same legal character or punishment as rape. This difference deserves constitutional scrutiny under Articles 14 and 21.

The BNS also cross-references the definition of transgender person in the 2019 Act. This creates an important doctrinal connection between the general criminal law and the statutory identity framework. Following the 2026 amendment to the definition, the consequences of any narrowing of the statutory beneficiary class may extend beyond identity certification and affect the operation of legislation that incorporates the definition by reference. This issue warrants closer constitutional examination.

6. THE 2026 AMENDMENT: IDENTITY, AUTONOMY AND THE SCOPE OF PROTECTION

6.1 The Shift in the Identity Framework

The Transgender Persons (Protection of Rights) Amendment Act, 2026 significantly changes the 2019 statutory framework. Among other changes, it modifies the statutory definition of a transgender person, omits the earlier statutory provision recognising a transgender person's self-perceived identity in Section 4(2), and modifies the process for certification and change of gender. The amended framework involves a medical board mechanism in the certification process and imposes additional requirements for certain changes in gender certification.

These amendments require analysis at two distinct levels. The first concerns administrative procedure: whether the certification process is accessible, proportionate and consistent with privacy and dignity. The second concerns substantive coverage: whether changing the definition of the protected class narrows the group to whom the employment and anti-discrimination provisions apply.

6.2 Constitutional Concerns

NALSA treated self-perceived gender identity as closely connected with autonomy and dignity. A statutory framework that makes medical assessment a condition for legal recognition therefore raises a serious question about whether the State has moved from recognition of identity to verification of identity. The constitutional validity of that shift cannot be determined merely by asking whether a medical board is administratively efficient. The relevant question is whether the State can impose a medicalised condition on the exercise of an identity right that the Supreme Court has previously located within Articles 14, 19 and 21.

The issue is presently before the Supreme Court in *Laxmi Narayan Tripathi v. Union of India*, W.P.(C) No. 548 of 2026 and connected matters. On 17 August 2026, the Court recorded the Union's statement that consequential benefits attached to transgender identity cards issued earlier would continue to operate subject to the outcome of the proceedings, and the matters were posted for further hearing. The constitutional challenge therefore remains pending.

6.3 The Employment Consequence of a Changed Definition

The most underexplored consequence of the 2026 Amendment is its potential effect on the scope of employment protection. Sections 9–11 of the 2019 Act protect a statutory category defined by Section 2. If the definition is narrowed, the change may indirectly alter the population entitled to statutory workplace protection.

This produces a constitutional question distinct from the certification question: can Parliament narrow the beneficiary class of an anti-discrimination statute in a manner that substantially reduces the practical protection previously available to persons who were within the recognised category? The answer must be tested against Articles 14, 15, 16, 19 and 21, the doctrine of constitutional morality, and the continuing force of NALSA.

The pending litigation is consequently relevant to employment law even though much of the public debate has focused on identity certification. The statutory definition determines the reach of the remedial architecture. A

narrow definition may therefore produce a wider legal consequence than the immediate certification procedure suggests.

7. FROM CRIMINAL LIABILITY TO CIVIL REMEDY: A CASE FOR EVIDENTIARY FAIRNESS

7.1 Why Criminal Law is Not Enough

Workplace discrimination is frequently concealed within apparently legitimate organisational decisions. Recruitment may be denied through interview assessments; promotion may be explained through performance ratings; termination may be attributed to restructuring; workplace exclusion may be presented as a cultural or operational concern. In such circumstances, discriminatory intent is rarely documented in explicit terms.

Criminal prosecution is poorly suited to resolving this evidentiary problem. The criminal law serves an important deterrent function, but a worker seeking reinstatement, compensation, correction of records or protection from retaliation requires a civil or administrative remedy designed for employment disputes. The absence of such a mechanism creates a remedial mismatch.

The appropriate response is not to lower the criminal standard of proof. It is to create a distinct civil equality mechanism. The claimant should first establish facts sufficient to raise a *prima facie* inference of discrimination. The employer should then be required to provide a legitimate, objective and non-discriminatory explanation supported by relevant records. The final determination should remain with the adjudicatory body.

7.2 Comparative Models

The United Kingdom's Equality Act 2010, section 136, provides a useful model of evidentiary allocation in discrimination proceedings. South Africa's Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 similarly incorporates a statutory approach to the allocation of the burden in discrimination disputes. In the United States, the McDonnell Douglas framework provides another well-known model in which a *prima facie* case can require the employer to articulate a legitimate, non-discriminatory reason for the challenged action; *Bostock v. Clayton County* further recognised that discrimination against a person for being transgender is discrimination because of sex under Title VII.

These models should not be transplanted mechanically. Their institutional settings differ from India's. Nevertheless, they demonstrate an important principle: equality law can distinguish between the criminal burden applicable to punishment and the civil evidentiary rules appropriate for resolving workplace discrimination.

7.3 A Proposed Indian Mechanism

A new statutory provision should therefore create a civil cause of action for discrimination in recruitment, promotion, remuneration, termination, workplace accommodation and access to employment benefits. Once the claimant establishes a *prima facie* case, the employer should disclose the decision-making records and demonstrate a legitimate, objective and non-discriminatory basis for the impugned decision.

The remedy should be proportionate and may include reinstatement where legally appropriate, restoration of seniority, compensation for proven loss, correction of employment records, protection against retaliation and directions for institutional compliance. Monetary penalties should be reserved for serious or repeated non-compliance and should be proportionate to the nature and scale of the violation. A fixed percentage of gross annual turnover should not be imposed automatically because such a penalty may become disproportionate and may be difficult to administer across different types of establishments.

8. MAKING WORKPLACE COMPLIANCE OPERATIONAL

The 2020 Rules already contain the basic architecture for workplace equality. The central problem is enforcement. Every establishment must have an equal opportunity policy and a complaint officer, but a complaint mechanism that is formally available and practically ineffective cannot satisfy substantive equality.

Three reforms are particularly important. First, complaint officers should receive prescribed training and should have a degree of functional independence from the person or department against whom the complaint is made. Second, establishments should maintain minimum compliance records concerning equal opportunity policies, complaints and remedial action, subject to privacy safeguards. Third, an external escalation mechanism should exist where the internal process is unavailable, compromised or ineffective.

The Ministry's 2023 Office Memorandum, which reminded government and corporate establishments of the obligation to appoint complaint officers, illustrates the continuing implementation problem. A future regulatory model should therefore move from one-time appointment to continuing compliance monitoring.

9. WORKPLACE SEXUAL HARASSMENT AND DIGNITY PROTECTION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a gender-specific statute. Its statutory design does not provide a comprehensive remedy for every transgender or

gender-diverse worker who experiences sexual harassment. The appropriate response should not be to distort the scope of the POSH Act through judicial interpretation beyond its text. Parliament should instead consider a complementary, gender-inclusive workplace dignity and sexual-harassment mechanism applicable to all workers, while preserving the specialised protections available under the POSH framework.

Such a framework should recognise sexual harassment, gender-based harassment, retaliation and hostile-work-environment conduct. It should provide confidentiality, accessible complaint procedures, interim protection and an independent appellate or external mechanism. Representation of persons with expertise in transgender issues may improve institutional sensitivity, but mandatory community representation should be designed with attention to availability, independence and conflict-of-interest concerns.

10. TRANSGENDER EQUALITY AND THE LABOUR CODES

The four Central Labour Codes provide an opportunity to integrate transgender equality into the broader labour framework. The Code on Wages, 2019, the Industrial Relations Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020, and the Code on Social Security, 2020 should be read consistently with the constitutional commitment to equality and the 2019 Act.

The Code on Wages already prohibits discrimination on the ground of gender in matters relating to wages for the same work or work of a similar nature. The stronger legislative proposal is therefore not simply to replace the word 'sex' with another term, but to expressly recognise gender identity and gender expression where necessary and to ensure that the protection is interpreted consistently with the 2019 Act.

The Industrial Relations Code places unfair labour practices in its Second Schedule. The existing schedule includes victimisation, colourable exercise of employer rights and discharge for patently false reasons. A targeted amendment could expressly identify adverse employment action based on gender identity, gender expression or gender transition as an unfair labour practice. Such an amendment would integrate transgender equality into an existing industrial-relations mechanism rather than creating an entirely parallel labour jurisdiction.

The OSH framework should address safe and accessible workplace facilities without imposing an unnecessary burden on smaller establishments. Guidance on sanitation, changing facilities, privacy and safety can be proportionate to the size and nature of the establishment. The Social Security Code should likewise ensure that transgender workers in informal and platform-based work are not excluded from schemes because of documentation or identity barriers. A separate social-security fund may be considered, but it should follow fiscal and administrative assessment rather than being assumed to be the only solution.

11. A PROPOSED ENFORCEMENT ARCHITECTURE

The preceding analysis suggests that reform should proceed through an integrated architecture rather than a collection of isolated amendments. The following model is proposed.

First, public employment and state-supported education should provide a legislatively defined horizontal reservation for transgender persons, operating across existing vertical categories and periodically reviewed on the basis of data.

Second, Section 9 should be supplemented by an explicit civil remedy covering recruitment, promotion, remuneration, termination, accommodation and retaliation. The remedy should incorporate a prima facie burden-shifting mechanism modelled on comparative equality law but adapted to Indian adjudicatory structures.

Third, the complaint-officer system under Section 11 and Rule 13 should be strengthened through independence requirements, training, record-keeping and an external escalation route.

Fourth, labour-law legislation should expressly recognise gender identity and gender expression within wage equality, unfair labour practices, workplace safety and social-security implementation.

Fifth, the State should establish a specialised national grievance and monitoring mechanism. This does not necessarily require replacing the existing National Council with a completely new commission immediately. A more institutionally cautious approach would be to strengthen the existing statutory framework, confer defined investigative and referral functions, and assess whether experience demonstrates a need for a separate quasi-judicial commission. Institutional duplication should be avoided unless a demonstrable enforcement gap remains.

12. TOWARDS A NARROWER LEGISLATIVE AGENDA

The original tendency in transgender-rights reform proposals has often been to address every area of social disadvantage through a single statute. A more effective legislative strategy would identify the precise mechanisms required to make equality enforceable.

A proposed amendment to the 2019 Act could therefore contain four principal components: (i) horizontal reservation in public employment and education; (ii) a civil discrimination remedy with burden-shifting; (iii)

strengthened complaint-officer and external grievance mechanisms; and (iv) protection against retaliation and institutional non-compliance.

The proposed civil provision could read, in substance:

'Where a transgender person establishes facts from which a prima facie inference of discrimination in employment arises, the adjudicating authority may require the establishment to disclose the material relied upon in taking the impugned decision and to establish that the decision was based on a legitimate, objective and non-discriminatory reason. The authority may grant appropriate relief including compensation, reinstatement where legally appropriate, restoration of seniority, correction of records, reasonable accommodation and protection against retaliation.'

This formulation is deliberately narrower than a blanket reversal of the burden of proof. It protects the claimant from evidentiary disadvantage while preserving the employer's opportunity to justify a legitimate decision. It also avoids treating every adverse employment decision as presumptively discriminatory.

A reservation provision should similarly leave operational details to appropriate rules while establishing the principle of interlocking horizontal reservation. The legislation should require recruitment authorities to publish roster methodology, ensure category-wise adjustment, and periodically review the efficacy of the reservation.

13. DISCUSSION: FROM RECOGNITION TO OPERATIONAL EQUALITY

The central lesson of India's transgender-rights jurisprudence is that judicial recognition, although indispensable, is not self-executing. NALSA transformed constitutional doctrine, but its transformative potential depends upon institutions capable of translating rights into opportunities. The 2019 Act created an important statutory framework, but the existence of Sections 9–11 does not by itself ensure effective workplace equality. The 2020 Rules provide additional institutional duties, yet official reminders regarding complaint officers demonstrate continuing implementation problems. Jane Kaushik reinforces this diagnosis by placing the implementation deficit within the constitutional framework of substantive equality.

The appropriate response is therefore neither to dismiss the existing framework as purely symbolic nor to assume that further declarations will solve the problem. What is required is a shift in regulatory design. Equality should be measurable through representation, accommodation, complaint resolution, remedial outcomes and institutional compliance.

The 2026 Amendment makes this transition particularly urgent. Its revised identity framework and certification requirements are being constitutionally challenged. The Supreme Court has not yet finally determined the validity of the amendments. Existing identity cards and consequential benefits have, however, been the subject of an interim assurance recorded by the Court, pending the final outcome. The litigation demonstrates that identity law and employment law cannot be treated as separate silos. If the statutory definition determines access to employment protection, then changes to identity law can reshape the reach of substantive equality.

The constitutional question is consequently broader than whether a particular certificate should be issued by a particular authority. It concerns the relationship between State recognition and individual autonomy. A system of certification may be constitutionally permissible if it performs an administrative identification function without converting medical evaluation into a substantive test of identity. Conversely, if certification becomes a condition through which the State decides whether a person's self-identified status is legally real, the system raises a much more serious autonomy and dignity concern.

The same logic applies to affirmative action. Representation cannot be secured merely by adding transgender persons to an application form. Nor can a reservation policy be considered successful if it forces transgender candidates to choose between gender identity and caste-based constitutional entitlements. Horizontal reservation, reasonable accommodation and institutional monitoring must operate together.

Finally, workplace equality requires a remedial structure that reflects the nature of discrimination. Employers ordinarily control the documents that explain recruitment, appraisal, promotion and termination decisions. A claimant who lacks access to those records is structurally disadvantaged. A carefully designed civil burden-shifting rule can address this asymmetry without weakening the criminal standard of proof or presuming guilt.

14. CONCLUSION

India's transgender-rights framework has reached an important but incomplete stage. The constitutional recognition of gender identity under NALSA, reinforced by the jurisprudence of privacy, dignity and constitutional morality, has altered the legal status of transgender persons. The 2019 Act and 2020 Rules translated several of these principles into statutory employment protections. Yet the continuing difficulty lies in implementation.

The central argument of this article is that substantive equality in the workplace requires more than a prohibition of discrimination. It requires four mutually reinforcing elements: representation, accommodation, enforcement and remedy. Horizontal reservation can address structural exclusion from public employment; reasonable accommodation can make formal equality meaningful within workplaces; independent and accessible grievance mechanisms can convert statutory duties into institutional practice; and a civil burden-shifting remedy can address the evidentiary imbalance inherent in employment discrimination disputes.

The 2026 Amendment adds a further constitutional dimension. Because the statutory definition of transgender person is connected to the operation of the Act's protective provisions, changes to identity recognition may affect the scope of employment protection itself. The pending challenge in *Laxmi Narayan Tripathi* therefore has implications extending beyond certification. It raises a broader question about whether statutory reform can narrow the practical reach of a rights framework developed through constitutional recognition of autonomy, dignity and equality.

The objective should not be to create an excessively elaborate regulatory regime. It should be to make existing constitutional and statutory commitments operational. India's next phase of transgender equality should therefore move from recognition to measurable participation; from formal non-discrimination to reasonable accommodation; from internal complaint procedures to effective accountability; and from criminalisation alone to accessible civil remedies. The constitutional promise of equality becomes meaningful only when a transgender person can enter a workplace, remain there with dignity, advance on equal terms and obtain an effective remedy when those conditions fail.

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