

# A LEGAL STUDY WITH SPECIAL REFERENCE TO TAMIL NADU ON RESERVATION FOR TRANSGENDER PERSONS IN EDUCATION AND EMPLOYMENT

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## ABSTRACT

Transgender persons in India occupy a paradoxical position in law: formally recognized as equal citizens, yet structurally excluded from the very institutions that make such recognition meaningful. This article undertakes a critical doctrinal examination of the legal framework governing reservation for transgender persons in education and public employment, with sustained attention to the experience of Tamil Nadu. Drawing upon constitutional guarantees of equality and non-discrimination, the watershed ruling of the Supreme Court in *National Legal Services Authority v. Union of India*,

and the statutory architecture of the Transgender Persons (Protection of Rights) Act, 2019, the article interrogates whether existing law provides transgender persons with substantive rather than merely formal equality. The analysis reveals a persistent disjunction between judicial aspiration and legislative reality: while courts have directed affirmative action, no clear and enforceable reservation framework has been institutionalised at the national level. Tamil Nadu emerges as a state that has responded more purposively through welfare institutions such as the Tamil Nadu Transgender Welfare Board, yet even those efforts remain constrained by the absence of structured reservation. The article argues that achieving genuine inclusion demands a constitutionally grounded reservation scheme either a dedicated horizontal category or integration within existing backward-class classifications supported by robust implementation machinery, administrative simplification, and transformative social policy.

## I. INTRODUCTION

Few questions sit as uncomfortably at the intersection of constitutional promise and social reality as the question of what the Indian State owes its transgender citizens by way of affirmative action. The Supreme Court's recognition, in *National Legal Services Authority v. Union of India* (hereinafter *NALSA*), of

transgender persons as a distinct third gender entitled to the full suite of fundamental rights was, by any measure, a jurisprudential watershed.<sup>1</sup> Yet the decade that has followed reveals the limits of judicial pronouncement in the absence of legislative and executive follow-through. Discrimination in schools, exclusion from formal labour markets, and the near-total absence of reservation quotas persist as structural features of daily life for most transgender Indians.

The enactment of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter the 2019 Act) was anticipated as the legislative response that would translate judicial direction into enforceable entitlements.<sup>2</sup> In practice, however, the legislation prioritises anti-discrimination norms while leaving the terrain of reservation which was expressly contemplated in *NALSA* largely uncharted. The result is a statute that prohibits exclusion yet provides no clear mechanism for inclusion.

Against this backdrop, Tamil Nadu occupies a distinctive position. Historically, the state has shown greater institutional sensitivity to transgender welfare, establishing the Tamil Nadu Transgender Welfare Board and introducing several targeted schemes. These initiatives are noteworthy, but their long-term adequacy in the absence of a reservation framework remains an open question one that this article addresses.

This article proceeds in the following manner. Part II sets out the objectives, scope, and methodology of the research. Part III states the research problem, central questions, and working hypothesis. Part IV surveys the literature. Parts V through IX constitute the substantive analysis, moving from constitutional foundations through judicial development, legislative framework, Tamil Nadu's model, and reform proposals. Part X presents concluding observations and recommendations.

## II. OBJECTIVES, SCOPE, AND METHODOLOGY

### A. Objectives

This article has three interlocking objectives. First, it seeks to map the existing legal architecture governing reservation and affirmative action for transgender persons in India, identifying both its strengths and its structural omissions. Second, it evaluates the extent to which Tamil Nadu's welfare framework addresses these gaps and whether it offers a replicable model. Third, drawing upon these findings, it proposes a set of concrete legal and policy reforms directed at achieving substantive equality in education and employment.

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<sup>1</sup> National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (India).

<sup>2</sup> Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).

## **B. Scope**

The inquiry is confined to the legal and policy dimensions of reservation and affirmative action. It does not extend to healthcare, criminal law reform, or cultural recognition, important as those issues are, in order to maintain analytical focus. Empirical fieldwork and primary data collection fall outside the scope; the article relies on doctrinal and secondary sources. The geographic scope, while India-wide in its constitutional and legislative analysis, is concentrated on Tamil Nadu for its comparative welfare study.

## **C. Methodology**

A doctrinal methodology is employed. Primary sources constitutional provisions, central and state legislation, gazette notifications, and judicial decisions are subjected to close textual and contextual analysis. Secondary sources comprise government reports, publications of national and international human rights bodies, academic monographs, law review articles, and policy papers. Comparative reference is made, where appropriate, to international human rights instruments, including the Yogyakarta Principles.

# **III. RESEARCH PROBLEM, QUESTIONS, AND HYPOTHESIS**

## **A. Research Problem**

The central problem animating this article is the disjunction between legal recognition and material inclusion. India's constitutional and judicial framework acknowledges that transgender persons are entitled to equality and affirmative action; the 2019 Act reinforces anti-discrimination protections. Yet no clear, uniform, and enforceable reservation policy has been established. This gap leaves the transformative aspiration of NALSA unrealised and exposes the limits of a rights framework that recognises identity without guaranteeing opportunity.

## **B. Research Questions**

1. To what extent do constitutional provisions and the NALSA judgment provide a jurisprudential basis for reservation in favour of transgender persons in education and employment?
2. Does the 2019 Act furnish a workable framework for affirmative action, or does it leave reservation in an enforcement vacuum?
3. Why has a uniform national reservation policy for transgender persons failed to materialise, and what doctrinal or political obstacles account for this failure?

4. Should transgender persons be accommodated within existing reservation categories, or does justice require a distinct classification?
5. How effective are Tamil Nadu's institutional mechanisms in improving access to education and employment, and what lessons do they offer?
6. What legal reforms are necessary to move from formal recognition to substantive equality?

### C. Hypothesis

This article proceeds on the hypothesis that the establishment of a constitutionally permissible reservation framework whether in the form of a distinct horizontal category or through integration within existing social-backwardness classifications targeted at the specific socio-economic disadvantages of transgender persons, represents the most effective juridical instrument for advancing substantive equality in education and employment.

## IV. REVIEW OF LITERATURE

### A. Judicial and Legal Literature

Academic engagement with transgender rights in India is, by now, considerable. The largest body of existing scholarship centres on the *NALSA* judgment. Most commentators acknowledge its landmark character while simultaneously noting that its directions on reservation have gone largely unimplemented.<sup>3</sup> The judgment has been analysed from constitutional, feminist, and critical legal theory perspectives, with the emerging consensus that judicial recognition, however progressive, cannot substitute for legislative action.

### B. Legislative and Policy Scholarship

The 2019 Act has attracted a mix of cautious endorsement and pointed criticism. Scholars such as Arundhati Katju and others writing in the *National Law School of India Review* and the *Indian Law Review* have examined the Act's definitional clauses and its procedural requirements for gender recognition, finding

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<sup>3</sup> See generally Tarunabh Khaitan, *Discrimination Law: Theory and Context* (2015); Apurva Vishwanath, *Third Gender and the Law in India*, 47 *Econ. & Pol. Wkly.* 18 (2012).

them inconsistent with international best practices and the spirit of *NALSA*.<sup>4</sup> The near-complete omission of reservation provisions from the Act has been identified as its most significant legislative gap.

### C. Affirmative Action Jurisprudence

The concept of substantive equality, which underpins the case for reservation, has been extensively theorised in Indian constitutional scholarship. M.P. Jain's foundational text on Indian constitutional law, as well as the writings of Upendra Baxi on social rights, situate reservation within a broader transformative constitutionalism framework.<sup>5</sup> The *Indra Sawhney* judgment remains the cornerstone of reservation jurisprudence, establishing both the permissibility of and limits on affirmative action.<sup>6</sup> Scholarship exploring whether and how transgender persons might be accommodated within this framework either as OBCs or through a distinct category remains relatively nascent.

### D. Government Reports and Policy Studies

Institutional reports by the National Human Rights Commission and the Ministry of Social Justice and Empowerment document the scale of exclusion and the inadequacy of current welfare measures.<sup>7</sup> Tamil Nadu-specific material, including welfare board reports and state policy documents, provides ground-level data on the operation of state-level initiatives, though such documentation tends to be descriptive rather than evaluative.

### E. International Human Rights Framework

The Yogyakarta Principles of 2006 and their 2017 supplement provide the most authoritative international elaboration of the rights of transgender persons. Principles 12 and 13 address the rights to work and education respectively, affirming that states must take affirmative measures to ensure equal opportunity.<sup>8</sup> These principles, though not binding, inform judicial interpretation in India and provide a normative benchmark for evaluating domestic law.

### F. Research Gap

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<sup>4</sup> See Arundhati Katju, *The Transgender Persons (Protection of Rights) Act, 2019: A Critical Analysis*, 32 *Nat'l L. Sch. India Rev.* 214 (2020).

<sup>5</sup> M.P. Jain, *Indian Constitutional Law* 940–60 (7th ed. 2014); Upendra Baxi, *The Future of Human Rights* 78–95 (3d ed. 2008).

<sup>6</sup> *Indra Sawhney v. Union of India*, (1992) Supp. 3 SCC 217 (India) (upholding OBC reservation and laying down the fifty percent ceiling principle).

<sup>7</sup> Nat'l Human Rights Comm'n, *A Report on Human Rights of Transgender Persons in India* (2018); Ministry of Social Justice & Empowerment, Govt. of India, *Welfare Schemes for Transgender Persons*, <https://socialjustice.gov.in> (last visited Apr. 27, 2026).

<sup>8</sup> International Commission of Jurists, *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, Principles 12–13 (2006), <https://yogyakartaprinciples.org>.

The literature, taken as a whole, consistently identifies the gap between recognition and implementation but rarely examines, in a focused doctrinal manner, what a constitutionally viable reservation framework for transgender persons might look like and how it could be operationalised within India's existing reservation architecture. This article attempts to fill that gap.

## V. CONSTITUTIONAL FRAMEWORK

### A. Foundational Guarantees

The Indian Constitution provides a strong, if implicit, normative foundation for the inclusion of transgender persons. Article 14 guarantees equality before the law to all *persons* language wide enough to encompass gender minorities. Article 15 prohibits the State from discriminating on grounds including sex; the Supreme Court has interpreted this provision purposively to extend protection to gender identity and sexual orientation.<sup>9</sup> Article 16 guarantees equality of opportunity in matters of public employment. Article 21's protection of life and personal liberty has been interpreted to include the right to dignity and identity.

### B. Substantive Equality and Article 15(4)

The constitutional architecture contemplates that formal equality may be insufficient. Articles 15(4) and 16(4) explicitly authorise the State to make special provisions for the advancement of socially and educationally backward classes, as well as for Scheduled Castes and Scheduled Tribes. The Constituent Assembly debates reveal that these enabling clauses were intended as instruments of transformative justice rather than narrow exceptions to equality.<sup>10</sup> Transgender persons, who share characteristics of social and educational backwardness stemming from historic discrimination, fall squarely within the rationale of these provisions.

## VI. JUDICIAL ARCHITECTURE: NALSA AND ITS PROGENY

### A. The NALSA Judgment

The judgment in *National Legal Services Authority v. Union of India* represents the most significant judicial contribution to transgender rights in India.<sup>11</sup> A bench of two judges unanimously held that transgender

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<sup>9</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, ¶¶ 146–148 (India) (reading 'sex' in Art. 15 to include sexual orientation and gender identity).

<sup>10</sup> Constituent Assembly Debates, Vol. VII, at 702–03 (Nov. 17, 1948) (speech of Dr. B.R. Ambedkar on draft Art. 10, later renumbered Art. 15).

<sup>11</sup> National Legal Services Authority v. Union of India, (2014) 5 SCC 438, ¶¶ 20, 66, 129 (India) (Radhakrishnan, J., and Sikri, J., concurring).

persons have the right to self-identify their gender; that gender identity is protected under Articles 14, 15, 16, 19, and 21; and that the State is obligated to treat transgender persons as a socially and educationally backward class, thereby making them eligible for reservation under Article 15(4).

The Court directed the Union and state governments to take affirmative steps to include transgender persons in reservation schemes for socially and educationally backward classes. It further directed that separate HIV surveillance centres be established and that social welfare schemes be extended to the transgender community. These directions, while specific, have proven difficult to enforce in the absence of implementing legislation and a monitoring mechanism.

## B. Privacy, Dignity, and Related Jurisprudence

The nine-judge bench decision in *Justice K.S. Puttaswamy v. Union of India* reinforced these foundations by holding that the right to privacy under Article 21 encompasses the right to identity, including gender identity.<sup>12</sup> Separately, *Navtej Singh Johar v. Union of India* decriminalised consensual same-sex relations and emphasised that constitutional morality must prevail over social morality.<sup>13</sup> Together, these decisions constitute a coherent jurisprudential framework within which a reservation scheme for transgender persons can comfortably be located.

# VII. THE 2019 ACT: LEGISLATIVE FRAMEWORK AND ITS LIMITATIONS

## A. Scope and Key Provisions

The Transgender Persons (Protection of Rights) Act, 2019 represents Parliament's first comprehensive legislative engagement with transgender rights.<sup>14</sup> Section 3 prohibits discrimination in education, employment, healthcare, and access to public services. Section 4 establishes the right of self-identification. Section 8 obliges the State to formulate welfare schemes. Section 18 penalises certain offences against transgender persons.

## B. Critical Gaps

Despite its promise, the 2019 Act contains three significant structural gaps. First, it does not prescribe any reservation quantum or mechanism in education or employment. The Court's direction in NALSA to treat transgender persons as a backward class with attendant reservation entitlements finds no legislative

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<sup>12</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India) (nine-judge bench unanimously recognising privacy as a fundamental right under Art. 21).

<sup>13</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, ¶ 2 (India).

<sup>14</sup> Transgender Persons (Protection of Rights) Act, 2019 §§ 3, 4, 8, 18 (India).

expression. Second, the gender recognition procedure under the Act, which involves a District Screening Committee, has been criticised as inconsistent with the right to self-determination recognised in NALSA and incompatible with international best practices. Third, enforcement mechanisms are weak: the National Council for Transgender Persons established under Section 16 is consultative rather than adjudicatory, and no independent oversight body is tasked with monitoring reservation implementation.

Scholars have observed that these gaps were not inevitable; the Bill in its earlier form contained stronger protections that were diluted during parliamentary deliberations.<sup>15</sup> The resulting statute, while symbolically significant, has been described as an opportunity missed for operationalising substantive equality.

## VIII. TAMIL NADU AS A PROGRESSIVE WELFARE MODEL

### A. Policy Evolution

Tamil Nadu's engagement with transgender welfare is notable both for its relative earliness and for its institutional character. The state's approach evolved from ad hoc welfare measures to structured policy, driven by advocacy from transgender communities and the involvement of civil society organisations. This evolution reflects an administrative recognition that social inclusion requires active State intervention rather than passive non-discrimination.

### B. The Tamil Nadu Transgender Welfare Board

The establishment of the Tamil Nadu Transgender Welfare Board was a structurally significant development, representing one of India's first dedicated institutional mechanisms for transgender welfare.<sup>16</sup> The Board coordinates the delivery of welfare benefits, issues identity documentation, and serves as an interface between the transgender community and government departments. Its functions encompass housing assistance, healthcare access, skill development, and awareness generation.

### C. Educational and Employment Initiatives

Tamil Nadu has introduced fee concessions and scholarship schemes for transgender students in higher educational institutions. Skill development and vocational training programmes have been established to

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<sup>15</sup> See Sowmya Sivakumar, *Unfulfilled Promises: An Evaluation of the Transgender Persons (Protection of Rights) Act, 2019*, 61 *J. Indian L. Inst.* 31, 45–48 (2021).

<sup>16</sup> Govt. of Tamil Nadu, *Tamil Nadu Transgender Welfare Board: Constitution and Functions*, <https://www.tn.gov.in> (last visited Apr. 27, 2026)

improve employability. The state has also taken steps to include transgender persons in certain government employment schemes, which represent a nascent, if incomplete, form of affirmative action.

#### **D. Critical Assessment**

These achievements notwithstanding, Tamil Nadu's model has clear limitations. The welfare approach is inherently discretionary: benefits depend on administrative will and resource allocation rather than enforceable legal entitlement.<sup>17</sup> The absence of a dedicated reservation quota means that structural representation in educational institutions and the public workforce remains unaddressed. Many beneficiaries are unaware of available schemes due to inadequate outreach. Persistent social stigma within institutions further undermines the effectiveness of welfare measures. Tamil Nadu's experience thus demonstrates that welfare schemes, valuable as they are, cannot substitute for a rights-based reservation framework.

## **IX. BRIDGING THE GAP: TOWARD A RESERVATION FRAMEWORK**

### **A. Constitutional Permissibility**

The constitutional basis for transgender reservation is well-established. *NALSA* explicitly directs the treatment of transgender persons as a socially and educationally backward class, bringing them within the ambit of Articles 15(4) and 16(4). The challenge, therefore, is not constitutional permissibility but policy design and political will.

### **B. Separate Category or Horizontal Reservation?**

Two primary design options present themselves. A separate reservation category carving out a dedicated percentage of seats in educational institutions and public employment for transgender persons offers the advantage of visibility and targeted representation. It ensures that benefits are not diluted within broader categories. The practical challenge lies in defining eligibility with sufficient clarity to prevent misuse while remaining accessible to those genuinely requiring protection.

Horizontal reservation, by contrast, operates across existing vertical categories. Under this model, transgender persons would be entitled to reservation within whichever category (SC, ST, OBC) they belong to by birth. This approach leverages the existing infrastructure and avoids the complexity of creating a new

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<sup>17</sup> See Tamil Nadu Transgender Welfare Board, Annual Report 2022–23, at 12–15 (noting implementation gaps and outreach deficits).

category. Its limitation is that it may not adequately serve transgender persons who do not belong to SC, ST, or OBC groups, and may dilute already limited quota allocations.

A hybrid approach providing horizontal reservation across all categories and, where necessary, a separate minimum reservation may offer the most comprehensive solution. What is non-negotiable is that the framework be legislatively enacted, clearly defined, and uniformly applied across states.

### C. Implementation Architecture

Reservation, once legislated, requires an implementation architecture. This includes: (i) a standardised and accessible process for gender recognition that does not require medical certification; (ii) designated nodal officers in educational institutions and public employers responsible for compliance; (iii) a statutory monitoring body with powers to receive complaints, conduct audits, and recommend enforcement action; and (iv) data collection mandates to track outcomes and identify gaps.

### D. Complementary Reforms

Reservation must be accompanied by complementary measures. These include scholarship and fee-waiver schemes for transgender students; mandatory gender sensitisation training in educational institutions and workplaces; the simplification of identity document procedures; the establishment of gender-neutral facilities; and grievance redressal mechanisms that are accessible, responsive, and independent. In the private sector, incentive frameworks and voluntary inclusion commitments should be encouraged alongside any binding obligations.

## X. CONCLUSION AND POLICY RECOMMENDATIONS

### A. Conclusions

This article has demonstrated that India's legal framework for transgender rights, while constitutionally sound in aspiration, remains structurally incomplete in application. The *NALSA* judgment created a strong jurisprudential basis for reservation; the 2019 Act declined to operationalise it. The result is a normative vacuum in which the rights of transgender persons to equal participation in education and employment are affirmed in principle but routinely denied in practice.

Tamil Nadu's welfare model demonstrates that purposive state action can meaningfully improve the lives of transgender persons. It also demonstrates the limits of a welfare-centred approach: without reservation,

inclusion remains contingent rather than guaranteed, dependent on administrative discretion rather than enforceable right.

The core finding of this article is straightforward: legal recognition without structural opportunity is insufficient. Substantive equality for transgender persons requires not only the removal of discrimination but the active creation of pathways into education and employment through reservation.

## B. Policy Recommendations

The following recommendations are advanced:

1. Parliament should amend the 2019 Act to include a dedicated provision mandating reservation for transgender persons in Central educational institutions and public employment, specifying the quantum and implementation mechanism.
2. The Central Government should issue comprehensive guidelines directing states to introduce corresponding reservation provisions within their own education and employment frameworks.
3. The gender recognition procedure under the 2019 Act should be reformed to permit self-identification without mandatory medical or administrative certification, in line with international best practices and the NALSA mandate.
4. A statutory Transgender Rights Enforcement Authority should be established with powers to monitor compliance, receive complaints, and recommend enforcement action.
5. Tamil Nadu's Welfare Board model should be strengthened by increasing its budgetary allocation, expanding its outreach capacity, and integrating it with the proposed reservation framework as a certification and support body.
6. Central and state governments should invest in longitudinal data collection on educational enrolment, retention, and employment of transgender persons to enable evidence-based policy refinement.

The arc of India's constitutional jurisprudence bends toward dignity and inclusion. The task now is to ensure that its statutory expression and administrative machinery catch up so that the promise of *NALSA* is felt not only in law reports but in classrooms and workplaces across the country.<sup>18</sup>

## XI. SCHEME OF THE STUDY

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<sup>18</sup> National Legal Services Authority v. Union of India, (2014) 5 SCC 438, ¶ 129 (India) ('It is the right of every human being to choose their gender identity.').

The full research project from which this article is drawn is organised into six chapters:

Chapter I: Introduction & Conceptual Framework introduces transgender identity, historical marginalisation, the concept of reservation, and the study's methodology.

Chapter II: Legal Framework and Its Limitations examines constitutional guarantees, NALSA, and the 2019 Act.

Chapter III: Reservation Policies and Practical Challenges analyses barriers to access in education and employment and classification issues.

Chapter IV: Tamil Nadu as a Model evaluates the state's welfare architecture and its effectiveness.

Chapter V: Bridging the Legal and Policy Gap proposes reform options.

Chapter VI: Conclusion and Recommendations synthesises findings and makes specific policy proposals.