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CASE COMMENTARY: *JANE KAUSHIK V. UNION OF INDIA & ORS*

By: Lakshika Sharma

Citation: 2025 INSC 1248

Standard Citation - 2026 (1) SCC 336

Date Of Judgment : 17 October 2025

Bench: Justice J.B. Pardiwala and Justice R. Mahadevan

INTRODUCTION

Law is meant to protect all and it cannot discriminate in doing so. The recent developments in law have made it even more important to look towards the relevance of India's anti-discrimination jurisprudence and the diversity of its application. India as a society progresses and that is reflected in its laws but the process remains slow and stigmatised. The plethora of cases that await justice reflects the vigilance of the people but it also equally reflects the lack of intentional action for fair disposal.

The provisions of the constitutions have been finely curated to serve the people with fundamental rights setting the benchmark for a standard society. The difference in the accessibility and integration of the provisions, however, remains a point of contention. The recent decision as given by the Supreme Court in **Jane Kaushik v. Union of India** is a quick reminder of the importance of shift from mere provisions to their manifestations for the needs of the individuals of a diverse society.

RELEVANCE OF THE PRECEDENTS

The significance of the building of a major constitutional foundation in *National Legal Services Authority v. Union of India*¹ and *Navtej Singh Johar v. Union of India* (2018)², recognising the rights and equal status of the third gender was further catalysed in *Jane Kaushik v. Union of India*, transforming rights into obligations that must be enforced. The case emphasised the positive duty that a state as well as a private establishment has towards prevention of any kind of discrimination faced by people who identify as transgender. The expanding horizons of doctrine of reasonable accommodation, by recognising that mere formal mention and right of equality does not equalise removal of the deep rooted discrimination but requires affirmative actions and efforts for substantive equality.

The judgments passed in the previous landmark cases of *National Legal Services Authority v. Union of India* (2014) and *Navtej Singh Johar v. Union of India* (2018), proves to be of little significance when their implementation on ground still remains less relevant and ignored. The recent judgment realises this failure and reminds the nation of the importance of such precedents.

Issues As Were To Be Decided By The Court

The detailed reflection led to four primary issues to be decided upon by the Apex court. Firstly, the question of the obligation of positive constitutional and statutory duty upon the union and state governments under the provisions of the constitution and **Transgender Persons (Protection of Rights) Act, 2019**.

Second, whether the discrimination faced was the result of inaction by the concerned government authorities.

Third, whether the actions of the institutions amounted to discrimination on gender.

Lastly, the compensation in case of proved discrimination.

¹. (2014) 5 SCC 438

². AIR 2018 SC 4321

FACTS AND ARGUMENTS

Jane Kaushik, anguished by the repetitive exposure to discrimination despite having rights and provisions to provide protection, moved the Supreme Court under Article 32 of the Constitution. This transgender woman was discriminated against by private educational institutions. She contested that despite meeting the eligibility criteria and having the qualifications as needed, she was not provided with equal opportunity in terms of employment.

A lot of cases were referred during the arguments and a well researched case was presented. Right to livelihood and submissions of violation of Articles 17, 19 and 21 along with those of 14,15 and 16 were the concerns of the petitioner. The denial of any of these is also a damage to the personal autonomy of the petitioner for which the reliance was placed on *Anuj Garg v. Hotel Association of India*³, which further emphasised that the profession of one's choice contributes significantly to the autonomy of the person. A special mention was made upon the opinion of Justice D.Y. Chandrachud in *Young Lawyers Association v. State of Kerala*⁴, contesting that Article 17 reflects a broad character not limiting to preventive but including positive obligations on the part of the institutions inclusive of non-state actors.

The respondents challenged the maintainability of the writ contesting that the dispute is based on a private contract and thereby is outside the scope of Article 32. The respondent argued on a technical and constitutional validity relying upon *Sumedha Nagpal v. State of Delhi*⁵ to question the adjudication of writ proceedings based on questions of fact, further contending that involving private unaided schools do not contain the public element of law which requires constitutional intervention. The argument also involved Section 3(b) and 9 of the **Transgender Persons (Protection of Rights) Act, 2019**, arguing to limit the provision to mere prohibition rather than any need towards affirmative action on the part of private institutions with Rules imposing such obligations only upon the Government concerned.

3. (2008) 3 SCC 1

4. (2019) 11 SCC 1

5. (2000) 9 SCC 745

JUDGMENT

The Apex court responded by recognising the transgender rights under the broader outline of substantive equality as guaranteed by the constitution. The court criticised the “superficial as well as sporadic” implementation of the protection and a clear failure in performing its duties. The court emphasised that “sex” as mentioned under Article 15 and 16 is inclusive of gender identity. The court examined the **Transgender Persons (Protection of Rights) Act, 2019**, which emphasised the intention of the parliament to eliminate any social exclusion, unemployment and any such educational disadvantage. It also asked for implementation of mechanisms of the act and ensured statutory safeguards.

The court referred to its earlier precedent as in *Shanavi Ponnusamy v. Ministry of Civil Aviation*⁶, acknowledging that despite the directions given by it for the formulation of policies for employment of transgender persons, the government explicitly failed to comply. It acknowledged the societal prejudice and the ignorance and apathy of the system. The court further recognised the reasonable accommodation as a significant part of Article 14 embedding equal protection. The court provided heavily from disability rights jurisprudence, *Vikash Kumar v UPSC*⁷ and *Kabir Paharia v. National Medical Commission*⁸, emphasised and acknowledged substantive equality.

THE NEED OF RECOGNITION - AN ANALYSIS

The deprivation solely based on gender, led to consequences in her livelihood which was described as “economic death”. This term is of significance importance as it is reflective of the importance of equal opportunities and their consequences in the life of an individual who come from a marginalised place in the society struggling for acceptance of their existence, further aggrieved by the uncertainty of the employment market for individuals who struggle to prove themselves as part of the diverse society.

^{6.} 2022 SCC OnLine SC 1581

^{7.} (2021) 5 SCC 370

^{8.} 2025 SCC OnLine SC 1025

The contentions presented during arguments substantially highlights the violation of Article 14, 15, 16, 19 as well as 21 of the petitioner. True equality does not limit itself to the provisions but actions that align towards its protection and prevention of violation. The need for substantive equality was emphasised which provided for accommodation and active vigilance. The nation saw the difference between equality and substantive equality in *Lt. Col. Nitisha v. Union of India*⁹, which was relied upon by the counsel to highlight the violation that the petitioner was subjected to during the course of employment opportunity. A special mention was given to the failure of the government to discharge its duties as provided under **Transgender Persons (Protection of Rights) Act, 2019**, proved through their lack of action on formulating a grievance redress mechanism, awareness and appointment of officers for the same to guarantee the dignity, livelihood, opportunity and autonomy to this vulnerable section.

The most significant contribution of the judgment remains a turn from mere prohibition to active protection as an obligation towards inclusion. It revisited the implementation of **Transgender Persons (Protection of Rights) Act, 2019**, and realised that without requisite measures it remains a “dead letter”. Reasonable accommodation was declared to be implicitly provided in the given act. The bench clarified Article 14 to not just embody “equality before law” but also “equal protection of law” as articulated in *State of Kerala v. N.M. Thomas*¹⁰.

Constitutional jurisprudence helped the court expand beyond the literal meaning and accommodate even the private establishments for the compliance of the 2019 Act. Purposive Interpretation helped the court move beyond the passive obligation, and understood the importance of active and proper role of employers to provide equal opportunity and prevent discriminatory practices. Another point of significance is the extensive comparative analysis considering the Canadian human rights law as well as the developments related to gender dysphoria and related provisions. The hardships that are faced by this section have been recognised and an accommodative perspective has been undertaken to allow for greater protection.

⁹. (2021) 15 SCC 125

¹⁰. (1976) 2 SCC 310

CONCLUSION

As a section that has been exposed to not just discrimination but blatant cruelty followed by years of struggle to gain recognition, it should not be exposed to poor implementation leaving them hopeless and shattered. The decision realises the problem of implementation and works towards its effectiveness. It emphasises the commitment of moving from mere symbolism to enforcement mechanisms.

Its efforts towards affirmative action, reasonable accommodation and enforcement accountability. The nation awaits the affirmative actions and the changes that it will bring about in the near future.