

Research Article

# Trans Lives Across Borders: A Comparative Study of Transgender Rights and Realities in India and USA

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**Abstract:** More recently, there has been rising public discussion and media consideration related to Transgender community. Though, an important concern confronting the worldwide community is whether the rights of transgender people are really included within fundamental human rights. Prejudice against transgender community mainly stems from biases about sexual orientation and gender personality. Where legal protection does exist, they are always inadequate or poorly executed. It points out the urgent requirement for more strong legal system and effectual enforcement mechanisms to make sure that transgender community are allowed equal opportunities and fair treatment in society. In both India and USA, transgender people have long struggled for appreciation, equality, and safeguard, but their journey replicate varying historical, societal, and legal trajectories. The growing recognition of transgender rights in India, particularly through NALSA judgment and the Transgender Persons (Protection of Right) Act, 2019, mark an important, though unsatisfactory, move toward inclusion. On the contrary, the US presents a multifaceted landscape where progressive strides in some states are counterbalanced by preventive measures in others. The theory of equality and nondiscrimination are basic to international human rights law, and the UNHR treaty bodies have clearly identified sexual orientation and gender identities as prohibited grounds for discrimination. Therefore, it becomes very important to deal with and support the rights of transgender community. This research paper carries out a comparative study of the legal rights allowed to transgender people in India and US. This research paper encompasses major aspects like marriage rights, family associated rights, the rights to equality, and safeguard against inequity. In addition, the research article tried to examine the psychological and social effect that the rejection of these rights has on transgender community. By analyzing this problem within wider discourses of human rights and social justice, the study aims to evaluate how efficiently the requirements and privileges of transgender community are identified in India and the United States.

**Keywords:** Transgender rights, India, United States

## INTRODUCTION

The Indian legislation for transgender people is in sharp difference to International Human Rights Laws which are directed by the principles of universality, equality and nondiscrimination. The transgender people are one of those who are compelled into begging, sexual work and gathering money from families during the marriage ceremonies or on time of a newborn.

The Constitution of India has offered the fundamental rights to all citizens but still, the transgender community is deprived of their rights. They are discriminated by the community in all fields whether it is education, medical facilities or others. Stigma prevents the hijra community from access the HIV and health services they required. Everybody has the rights to live his or her life with dignity. Article 14 points out about the equality. Every person is equal in the eye of law. Because of the need of rights, they are being assaulted, raped, cruelly murdered and extorted by the people of society. Article 21 offers the rights to live and the rights to privacy but transgender people are not enjoying such rights rather they are treated inadequately.

Transgender rights in United States differ from state to

state. To date there has been only one Supreme Court case in regards to the privileges of the transgender people. The transgender group has traditionally been discriminated against in the realm of employment, marriage, healthcare, incarceration, and the armed forces, along with many other aspects of life considered normal for cisgender, or non-transgender, people. Transgender community are many times more likely to experience homelessness, unemployment, and mental sickness than their cisgender counterpart. The USA court system has provided sparse legal safeguard for transgender people and has actually, invalidated the lived experiences of almost all transgender persons who have sought recompense for unfairness.

Transgender workers are nationwide safeguarded from job discrimination following a Supreme Court judgment in 2020 held that Title VII protection against sex discrimination in job extend to transgender workers. Efforts to pass a proposed Equality Act, if ever successful, would forbid inequality on the base of gender identity in job, accommodation, education, healthcare, federally funded programs, credit, and legal aid. A particular focus is placed on the transgender people in both nations, examining their current effort for legal recognitions, dignity, and communal

acceptance.

### **Problem Statement**

In spite of rising global awareness of transgender rights, important inequalities persevere in legal identification, social recognition, healthcare access, and safeguard against discrimination for transgender people across different countries. In India and US transgender communities continue to confront general hurdles even though legal development like India's Transgender Persons (Protection of Rights) Act, 2019 and different US state wise protections. This research paper aimed to critically analyze the evolving realities and rights of transgender community in both India and US, emphasizing the gaps among legal provisions and lived experiences, and exploring how societal and cultural, political, and organizational factors affect the quality of life and human rights of transgender community across borders.

### **Research Objectives**

- ✓ To examine and compare the legislative system governing transgender rights in India and the USA.
- ✓ To study the access to healthcare, education, and job opportunities for transgender people in both India and USA.
- ✓ To evaluate the efficiency of government and non-government activities aimed at safeguarding and encouraging rights of transgender community.
- ✓ To recognize major problems and suggest policy measures to improve the social and legal position of transgender community across both countries.

### **Research Questions**

- ✓ Whether the legislative structure of USA is better in comparison to Indian legislative structure with concern to transgender persons rights?
- ✓ Whether transgender persons are able to access to healthcare, education and employment opportunities in India and USA.
- ✓ Whether government of both the countries are providing protection to the rights of transgender persons?

## **LITERATURE REVIEW**

### **Amisha R. Patel (2010)**

In a research article author tried to explore the transgender rights of India. In India, for the hijra to be identified as a hijra, they should experience the ritualistic initiation process that comprises castration. The study also points out the heightened risk of HIV/AIDS within the trans community, as many turn to sex work for survival. In spite of being acknowledged as the sexual minority in India, transgender community continue to struggle for legal acceptance and equivalent rights. To identify the identity and privileges of transgender persons, the article explores the clear connection to the debate on transgender rights and societal acceptance.

### **Bob Roehr (2015)**

Author conducted a study to investigate the increasing accessibility of transgender medical care in the USA and the increasing relieve of transgender people in embracing

their true identities. The author illustrated particular hospital that provides both routine medical care and gender affirming surgeries, guaranteeing convenience to transgender patients close to their residences. Although, this study lacks a detailed discussion on the limited availability of comprehensive transgender healthcare, on the whole the scarcity of gender affirming surgical services.

### **Angioletta Sperti (2017)**

The author in this book examines a variety of landmark mark cases, ranging from the decriminalization of same sex sexual activities to the legal recognition of same sex marriages and the parental rights of same sex couples. The author analyzes the judicial reasoning behind these judgments, emphasize major principles like human dignity, privacy, freedom, equality, and non-discrimination. She posits that courts playing an important in facilitating constitutional reforms and overcoming legislative gridlocks, in particular in the face of deeply rooted cultural and legal outlooks on marriage and family structure.

### **Jayna Kothari (2020)**

Author in her research article tried to examine the equality and rights to self-determination of gender for transgender people in India. It also discusses milestone judgments that have affirmed the fundamental rights of transgender persons, including the rights to equality. Besides, the article points out the Yogyakarta Principles, particularly Principle 3, which asserts that every person has the rights to legal identification. The ability to self-identify one's gender is recognized as a fundamental human right. Likewise, the rights to bodily integrity are safeguarded under Article 21. Whereas Indian courts have upheld the right of transgender people to determine their own gender identity, state governments continue to express skepticism. The author also tried to emphasize that the legal requirements for transgender community to experience medical surgery for gender change should be declared unconstitutional and inhumane, as it breaches their rights to equality.

### **Singh, Kaur and Mittal (2023)**

Author carried out a study to examine how societal attitudes, discrimination, and lack of understanding effecting the mental health and academic success of transgender students, although also advocating for a more sympathetic and helpful school environment that enourages equality and respect for every identity.

### **Ankita and Mohapatra (2023)**

Authors in their research paper revealed that Indian Constitution's equality system, as set up in Articles 14, 15, 16, 19, and 21, asserts that all citizens have the rights to live with dignity and access equal opportunities for development, irrespective of races, castes, religions, communities, societal position, or gender. The basic aspects of these systems are the acknowledgment and protection of a person's rights to choice and self-determination. This research article explores the key challenges faced by the transgender group, which continue to hinder their development and full inclusion in Indian community.

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### ***Bhargava et al (2024)***

Author illustrated that India has made prominent expansion in advancing transgender rights, marked by major milestones like NALSA judgment and the enactment of the Transgender Persons (Protection of Rights) Act in 2019. The NALSA ruling asserted the rights of transgender group to self-identify their gender, causing the formal identification of a 'third gender' and prompting major legal and social reforms. Before these legal identifications, transgender people confronted numerous issues, including restricted access to education, employment, and healthcare.

### ***Hypothesis Of the Study***

- ✓ India has better legal framework in comparison to USA with concern to the rights of transgender persons.
- ✓ Transgender Persons are able to access to health care facilities and employment opportunities in both the countries.

## **RESEARCH METHODOLOGY**

In this research doctrinal research method is followed throughout the research paper. The study is based on primary and secondary data. Primary data includes statutes, case laws while secondary data includes articles, blogs, websites and journals. All these data have been used to develop an understanding related to the title of research paper and to highlight the current scenario of the research topic. This paper is written from the research conducted towards doctoral work.

### ***Human Rights Principles on Protecting the Rights of Transgender Community***

The global human rights system has developed extensively and constantly throughout the past century. Its modern significance is rooted in the Charter of the United Nations (1945), which laid the foundation for the adoption of UDHR. The UDHR was envisioned as a universal benchmark for every person and nations to aim to. Its emergence coincided with the global surge of civil rights movements. In the following decades, human rights witnessed amazing advancement and extensive appreciation through various international conventions dealing with monetary, societal, civil, and political rights, as well as the rights of woman, children, minorities, and refugees.

A uniform approach by the global community, particularly among nations, in dealing with transgender rights remains absent. One vital cause for the warm responses to safeguarding and advancing the basic rights of the transgender community lies in the varied historical, social, and religious contexts of different states. These factors always interlink morality with discussions related to homosexuality and gender identity. The denial of rights for sexual minorities is intensely embedded in national legal systems, many of which effect discrimination and even criminalization of varied sexual orientations and gender identities. Notwithstanding these limitations, the relentless efforts of human rights advocates worldwide justify identification for their commitment to encouraging equality, preventing disparity, and to combat violence

against people in the transgender community.

The procedure of knowing the progression of transgender rights can be examined through important approaches such as:

- (a) Analyze the initiatives and contribution of the UN Human Rights Committee;
- (b) Considering the Yogyakarta Principles of 2007, which, although not legally binding, give an inclusive system outlining the rights of the transgender community and the corresponding responsibilities of states; and
- (c) Review the most recent resolution adopted by the UN Human Rights Councils to evaluate its stance and progress on the matter.

### ***Universal Declaration of Human Rights (UDHR)***

UDHR is a groundbreaking document that establishes the fundamental rights and freedoms to which every person is entitled. Although it doesn't explicitly speak to gender identity or the rights of transgender people, its underlying principles serve as a crucial foundation for promoting equality and opposing discrimination, including that confronted by transgender people.

Article 1 of the UDHR proclaims that "every human being is born free and equal in dignity and rights." This principle holds particular significance for the transgender community, which has long endured systemic discrimination and violence because of their gender identity. Transgender people frequently encounter obstacles in areas like education, healthcare, employment, and legal identification, always stemming from deep-seated societal biases and stigmas.

Article 12 of the UDHR safeguards the privacy rights, stating that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence." For transgender people, the freedom to express their gender identity openly and authentically is closely tied to their personal dignity and privacy rights.

Article 19 of the UDHR upholds the rights to freedom of opinion and expression, a principle that is particularly significant for transgender people. They always express their gender identity through name changes, clothing choices, and other personal expressions.

Equal access to education and healthcare is a fundamental right for every person, including transgender people. Article 26 affirms the rights to education, which should be provided without discrimination. Though, transgender students frequently encounter bullying and prejudice in academic settings, leading to increased dropout rates. Creating inclusive and supportive learning environments can improve their educational experiences and contribute to their in general development and well-being.

### ***International Covenant on Civil and Political Rights (Iccpr)***

All persons possess essential rights to life, which should be safeguarded by legal protections. No persons should be unfairly or unlawfully deprived of their life. No individual

shall be subjected to torture or any form of cruel, inhumane, or degrading treatment or punishment. In addition, no persons will be subjected to medical or scientific experimentation without their voluntary and informed consent. Article 16 affirms that every individual has the rights to be legally recognized as a person in all circumstances. In addition, no one should confront arbitrary or unlawful intrusions into their privacy, family life, home, or personal communications.

In 1992, in the case of *Toonen v. Australia*, the Human Rights Committee ruled that Tasmania's anti-sodomy law was in violation of the provisions ICCPR. The Committee determined that the law infringed upon the privacy rights as guaranteed by the ICCPR. Furthermore, it explicitly stated that the term "sex" in Articles 2(1) and 26 of the Covenant should be interpreted to include sexual orientation. This brief yet significant ruling, despite lacking further elaboration, effectively established that the principles of equality (Article 2) and non-discrimination (Article 26) under the ICCPR encompass protections based on sexual orientation.

### ***Rights Of Transgender Persons in USA***

The global movement advocating for the rights and protections of transgender individuals has achieved significant progress in recent decades, particularly in the legalization of marriage equality. Though, in numerous countries, members of the transgender community continue to endure severe oppression, including imprisonment and, in some cases, the threat of execution. Given the widespread nature of these human rights violations, dealing with legal discrimination and the political, social, and economic marginalization of transgender individuals has become a critical priority for both activists and an increasing number of governments.

The decline of the United States' global influence in advocating for human rights presents an early challenge for President Joe Biden, who is expected to take a firm stance on transgender rights. Although opposition from conservative lawmakers and judicial authorities may create obstacles, Biden has demonstrated his commitment to using executive authority to advance transgender protections. His immediate action on his first day in office - signing an executive order aimed at safeguarding transgender Americans from discrimination - signals his intent to reestablish the U.S. as a leader in the defense of these rights on the global stage.

In response to concerns about discrimination against transgender individuals, the U.S. government provided updates to this Committee on existing protections in employment, housing, and military service. Although some advancements have been made since the Committee initially outlined its concerns in 2019, widespread discrimination persists, particularly against transgender people, and in some cases, has escalated significantly. Various states have enacted laws restricting the rights of transgender people, with legislators introducing hundreds of such bills within the past year alone. As a result, transgender people, especially transgender youth, confront

systematic, state-backed discrimination in multiple aspects of their daily lives, raising significant safety concerns.

As of August 2023, 11 states have implemented restrictions on discussions of transgender topics in schools, with five of these states requiring schools to notify parents before dealing with such subjects and allowing them to opt their children out of receiving this information. In addition, 22 states have enacted bans on certain forms of gender-affirming healthcare for minors, with five of these states going so far as to classify such care as a felony offense. Furthermore, nine states have imposed restrictions preventing transgender people from using restrooms that align with their gender identity in schools and, in some cases, other public spaces. In 23 states, transgender students are barred from participating in school sports that match their gender identity.

These legislative measures represent only a fraction of the increasing discrimination against transgender people since 2019, as political opposition has increasingly targeted them. This form of discrimination does not solely impact those who explicitly identify as transgender; it also affects gender non-conforming individuals and anyone subjected to scrutiny, harassment, or violence because of their gender expression.

This report highlights severe violations of the fundamental rights of transgender people, particularly their freedoms of expression and their rights to physical and mental well-being. The primary focus is on the restrictive measures imposed on transgender rights in Florida, a state that has implemented some of the most sweeping and stringent limitations on transgender people in the United States. These infringements not only undermine the rights of transgender people but also exacerbate societal hostility toward transgender communities, leading to further instances of discrimination and abuse.

In *Obergefell v. Hodges*, The Court determined that the rights to marry cannot be restricted based on an individual's sex. Although widely recognized as a decision legalizing same-sex marriage, the ruling also affirmed that a person's gender - whether assigned at birth or acknowledged after transitioning - should not influence their eligibility to marry. Before this judgment, transgender people always confronted legal disputes regarding their rights to marry. In addition, the validity of their marriages was frequently contested post-transition, especially in cases where their gender at birth was used to argue that the union constituted a same-sex marriage.

In *Littleton v. Prange*, Christie Lee Littleton, a transgender woman who had undergone gender-affirming surgery, brought her case before the Texas 4th Court of Appeals, asserting that her marriage to her legally male, now-deceased husband was valid, thereby entitling her to his estate. Though, the court ruled against her, determining that her legal sex was dictated by her chromosomes, which remained XY, classifying her as male. As a result, the court invalidated the amendments to her birth certificate and her marriage license from Kentucky. In its ruling, the court

declared, “As a matter of law, Christie Littleton is a male. As a male, Christie cannot be married to another male. Her marriage to Jonathon was invalid, and she cannot pursue legal action as his surviving spouse.” Seeking further recourse, she appealed to the Supreme Court, but in 2000, it declined to review her case, denying certiorari.

In *Fields v. Smith*, three transgender women filed a lawsuit against the state of Wisconsin, challenging a law that prohibited inmates from receiving hormone therapy or undergoing gender-affirming surgery. The case was brought before the courts, and the appellate court ultimately ruled against the law, declaring it unconstitutional. The court's decision affirmed that transgender people have the rights to access necessary medical care although incarcerated, ensuring that they are not denied treatment based on their gender identity.

### ***The Equality Act***

The Equality Act seeks to set up clear and uniform anti-discrimination protections for transgender persons across different aspects of life, including employment, housing, credit, education, public spaces, services, federally funded programs, and jury service. By ensuring explicit protections, the Act aims to stop discrimination based on sexual orientation and gender identity in these significant areas.

### ***Employment***

The U.S. Supreme Court ruled in *Bostock v. Clayton County* Under Title VII of the Civil Rights Act of 1964, it is unlawful for employers to refuse to hire, terminate, or otherwise discriminate against individuals based on their sexual orientation or gender identity (SOGI). The Equality Act seeks to formally enshrine this interpretation within federal civil rights laws by explicitly stating that protections against sex discrimination also encompass discrimination on the grounds of SOGI.

In the case *RG & GR Harris Funeral Homes Inc v. Equal Employment Opportunity Commission*, the US Court held that Title VII - which prohibits job discriminations related to sex, races, color, belief, and national origin - also safeguards transgender people from prejudice in the place of work.

### ***Housing***

The Equality Act also modifies the Fair Housing Act (FHA) to explicitly include protections for sexual orientation and gender identity (SOGI), ensuring strong safeguards against housing discrimination for transgender individuals. This legislation would explicitly ban discriminatory practices in areas like renting, selling, pricing, evictions, access to services, shelters, homeowners' insurance, and mortgage lending. In addition, it would prohibit harassment, coercion, and retaliation against individuals exercising their fair housing rights.

## **CONSTITUTIONAL RIGHTS OF TRANSGENDER PEOPLE IN INDIA**

The preamble of the Constitution guarantees every citizen justice - social, economic, and political - as well as equality

before the law. Though, transgender people have long been denied their constitutional rights. This exclusion stemmed from past Indian state policies that only acknowledged two genders - male and female. As a result, transgender people were deprived of numerous fundamental rights, including the rights to vote, marry, own property, and obtain official identification like a passport. In addition, they faced significant barriers in accessing essential rights like education, employment, and healthcare. The fundamental rights granted to all citizens, including transgender people, under the Indian Constitution are:

Article 14 serves as a fundamental pillar of the rights to equality, ensuring that every individual is treated equally under the law and prohibiting discrimination on various grounds, including sex. This provision is particularly significant for transgender people, who have long faced systemic marginalization and exclusion. Recognizing their rights under Article 14 is essential for upholding their dignity and fostering their inclusion in society.

Similarly, Articles 15(1) and 20 prohibit discrimination based on sex, religion, race, caste, or place of birth. Discrimination on the basis of sex has historically denied the transgender community access to education, employment opportunities, and equal pay. Although the Constitution explicitly refers to "male" and "female," its interpretation is broad enough to encompass sexual orientation, reinforcing the protection of transgender rights. Article 19 of the Indian Constitution guarantees fundamental freedoms, including the rights to free speech and expression, the rights to peaceful assembly, and the rights to form associations or unions. Although it does not explicitly mention transgender people, these rights apply to all citizens, including the transgender community.

Article 21 of the Indian Constitution guarantees the rights to life and individual freedom, which also includes the privacy rights. Although the Constitution does not explicitly recognize privacy as a fundamental right, the Supreme Court has reaffirmed its significance in various rulings, establishing it as an essential aspect of fundamental rights. Consequently, the state should ensure that an individual's privacy rights remain protected.

Section 377 previously restricted these rights for the transgender community, making it necessary to decriminalize homosexuality. The repeal of this law was a crucial step in allowing transgender individuals to live with dignity and respect, ensuring their fundamental rights were upheld.

### ***Position of Transgender Persons under IPC***

Although numerous reports, committee recommendations, amendments, and judicial rulings have been discussed, Section 377 alone does not adequately address the issue of sexual violence against transgender people. This matter requires further examination. The intent behind gender neutrality in sexual offenses under the Indian Penal Code (IPC) is not to diminish the gravity of such crimes but to adopt a more comprehensive perspective that goes beyond traditional gender norms.

Section 377 of IPC defines carnal intercourse "against the order of nature" with any man, woman, or animal as a punishable offense. This provision, introduced during the colonial era, conflicted with contemporary principles of justice and equality. It also criminalized consensual same-sex relationships among adults.

In addition, certain heterosexual acts deemed "unnatural" were also considered offenses under this law. Though, in a landmark 2018 ruling, the Supreme Court declared that applying Section 377 to consensual same-sex relationships was irrational, arbitrary, and unjustified. Following this judgment, Section 377 now applies only to non-consensual sexual acts, sexual activity with minors, and bestiality, which remain criminal offenses.

Navtej Singh Johar v. Union of India Section 377 of the Indian Penal Code classified consensual same-sex relationships as "unnatural offenses" that were deemed "against the order of nature" and carried a penalty of up to 10 years in prison. This provision, a remnant of Victorian-era legislation, remained in force well into the 21st century. Notably, although approximately 123 countries worldwide have either never criminalized or have decriminalized homosexuality, 57 nations continue to enforce laws that penalize same-sex relationships.

The Naz Foundation (India) Trust challenged the constitutionality of Section 377 in the Delhi High Court, arguing that it violated fundamental rights enshrined in Articles 14, 15, 19, and 21 of the Indian Constitution. The Foundation asserted that the law was based on an outdated perception that sex was solely for procreation and had no place in a modern, progressive society. Moreover, law enforcement authorities had exploited the provision, obstructing efforts to curb the spread of HIV/AIDS. The Foundation cited a 2001 incident in Lucknow, where HIV prevention workers distributing condoms to homosexual men were arrested on the accusation of conspiring to commit an offense. In addition, it argued that the law was being misused to criminalize consensual sexual acts that did not involve peno-vaginal intercourse.

In 2013, the Supreme Court overturned the Delhi High Court's decision in the Suresh Koushal case, ruling that the decriminalization of homosexuality was a matter for Parliament to decide, not the judiciary. The Court asserted that Section 377 penalized specific sexual acts rather than targeting a particular group of people. It also downplayed the significance of the issue by noting that the transgender community comprised a small fraction of the population and that only a limited number of individuals had been prosecuted under the law.

The decriminalization of homosexuality has played a crucial role in reducing the stigma historically associated with same-sex relationships. This legal identification has provided a sense of psychological and emotional security to homosexuals and other sexual minority groups, fostering a more inclusive and accepting environment where they can live with dignity and without fear of persecution.

### ***Rights to Employment***

Article 16 of the Indian Constitution guarantees equal opportunity in public employment, prohibiting discrimination based on religion, race, caste, sex, or place of birth. This provision applies to transgender people as well, ensuring their rights to seek and participate in public sector employment without discrimination on the basis of their gender identity. Article 16, therefore, aligns with the legal protections provided by the Transgender Persons (Protection of Rights) Act, 2019, strengthening the commitment to equality and non-discrimination in the workplace for all citizens, including transgender people.

### ***Rights to Life***

No person will be deprived of their life or individual freedom except through procedures that are established by the law. The rights to determine one's own identity is a core component of the rights to live with dignity, as guaranteed by Article 21. This article protects individuals' rights to a dignified life, which the State is bound to respect and preserve. For transgender people, this right encompasses the identification of their gender identity and the ability to live with dignity. Denying identification of their gender identity violates their rights to dignity. Transgender persons are entitled to live freely, express their gender identity without fear, and their rights to reputation is also protected under this provision.

### ***Rights to Identity***

The Supreme Court ruled that identifying only two gender identities, male and female, breaches the constitutional rights. In *NALSA v. Union of India and others*, the court ruled that the rights to self-identify one's gender, including the identification of a "third gender," is an essential part of the constitutional rights to live with dignity. Furthermore, it directed the state to adopt affirmative action policies to promote equality for transgender people. The decision's manners and approach in unkind disparities to the Court's regressive decisions in *Suresh Kumar Koushal* and another v. *Naz Foundation and others* should give motivation to judiciary in the various nations which conducted to identify only the gender binary.

### ***Rights to Health Care***

The rights to healthcare is a fundamental right for every person, including transgender people. This right includes access to medical services, treatment, and support that are respectful of and tailored to their gender identity. In many regions, including India, legal systems and policies are gradually recognizing the unique healthcare needs of transgender people, like hormone therapy, gender-affirming surgeries, and mental health care.

Though, in spite of these developments, transgender people still encounter significant obstacles when accessing healthcare, like discrimination, lack of informed healthcare providers, and insufficient insurance coverage. To ensure transgender people's rights to healthcare, it is crucial to enforce anti-discrimination laws, train healthcare professionals on transgender-specific health needs, and ensure that medical services are inclusive and accessible. Dealing with these issues will help create equitable

healthcare systems and enhance the in general well-being of transgender people.

The Transgender Persons Act, 2019 lays out several initiatives for the Government to support transgender people, including:

- a) Setting up dedicated HIV sero-surveillance centers to track HIV status among transgender people, in line with guidelines from the National AIDS Control Organization.
- b) Providing medical care, like sex reassignment surgeries and hormone therapy.
- c) Offering counseling services both before and after sex reassignment surgeries and hormone treatments.
- d) Developing a Health Manual for sex reassignment surgery, based on recommendations from the World Professional Association for Transgender Health.
- e) Updating medical education and research to better address the unique healthcare needs of transgender people.
- f) Ensuring that transgender people have access to hospitals and other healthcare services

### ***Right to Change in Gender***

In India, transgender people have the legal right to alter their gender on official records after undergoing sex reassignment surgery, as per the laws established in 2019. In addition, they are constitutionally entitled to register themselves as a third gender.

### ***Rights to Residence***

A child cannot be separated from their parents or immediate family solely on the basis of being transgender, unless a competent authority issues a court order, and it is determined to be in the child's best interest. All transgender people have the following rights:

- ✓ The rights to live with their parents or immediate family members in the same household.
- ✓ The rights to not be excluded from any part of the household.
- ✓ The rights to access and use the household's facilities without discrimination.

If a parent or immediate family member is unable to provide care for a transgender individual, a competent court may issue an order to place the individual in a rehabilitation center.

### ***Right to Education***

Every child has the right to learn in a safe and welcoming environment. The rights to education for transgender people is crucial to ensuring they have equal access to learning opportunities and personal growth. Educational institutions should create a supportive and inclusive environment, free from discrimination based on gender identity. This includes providing access to facilities, treating students with respect, and offering curricula that recognize and support transgender students. Promoting equal educational opportunities requires dealing with challenges like bullying, insufficient resources, and policies that may marginalize transgender students. By cultivating an inclusive educational system, society can empower transgender people to reach their full potential and make valuable contributions to their communities.

## **COMPARATIVE STUDY OF RIGHTS OF TRANSGENDER PERSONS IN INDIA AND USA**

The study reveals both convergences and divergences in legal identification, societal acceptance, and access to fundamental services. In India, the landmark *NALSA v. Union of India* (2014) judgment by the Supreme Court affirmed the right of individuals to self-identify as transgender, leading to the enactment of the Transgender Persons (Protection of Right) Act, 2019. Though, this legislation has been criticized for its lack of clarity on self-identification and its bureaucratic hurdles in obtaining legal identification. Social stigma, discrimination in education, skill development and job, and limited admittance to healthcare services remain persistent issues despite these legal advancements. Transgender persons in India always confront exclusion from mainstream society and are subjected to violence and marginalization, particularly in rural and conservative regions.

In contrast, the United States presents a complex and decentralized legal landscape, where transgender rights vary significantly across states. Although federal protections exist in areas like employment (following the Supreme Court's 2020 ruling in *Bostock v. Clayton County*), access to gender-affirming healthcare, education rights, and identification documents can differ widely depending on state laws and policies. Some states have enacted inclusive laws and anti-discrimination measures, although others have introduced restrictive legislation, especially targeting transgender youth. Despite greater visibility and advocacy in the U.S., transgender people continue to experience high rates of mental health issues, violence, and socioeconomic disparity. This comparative study highlights how both nations, though different in governance and culture, reflect a shared struggle among legal progress and the social realities faced by their transgender populations.

## **CONCLUSION**

Rights of transgender community is basic human privileges that need legal appreciation, societal identification, and equal access to opportunities. Guaranteeing pride, protection, and inclusion for transgender people are necessary for creating a just and equitable community. The landmark ruling of Indian courts and legal reforms like the *NALSA* judgment and the Transgender Persons Act, 2019 have laid the foundation for equality. Though, this legal progress always falls short because of unclear provisions, administrative barriers, and lack of awareness at the grassroots level. Social stigma and cultural conservatism continue to marginalize transgender people, restricting their access to education, wellbeing, and dignified employments.

In US, legal identifications and protection for transgender community is more advanced in some respects, mainly because of court judgments like *Bostock v. Clayton County* and proactive advocacy at the state level. Though, the lack of uniform federal policies and the latest wave of anti-transgender legislations in numerous states reveal intensely polarized surroundings. Transgender community in the US



confront a sole paradox - greater visibility and representation, yet increased political and social reaction. Access to wellbeing, especially gender affirming treatment, remains contentious and always politicized, leaving many transgender people susceptible and underserved.

Also, the study discloses that although legal identifications are an important primary phase, it is inadequate without social inclusion, effective execution, and continuous advocacy. Both India and the United States should address systemic barriers and societal prejudices through inclusive education, sensitization programs, and strengthened institutional support. The rights based, intersectional approaches that considers the different facts within the transgender community is essential for genuine progress. The worldwide fight for transgender rights are not merely a legal problem but an extensive human rights issue that necessitates sustained commitment, compassion, and association across borders.

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