
TRANSGENDER RIGHTS IN INDIA AND THE UNITED STATES: A COMPARATIVE LEGAL STUDY

Shreya Atri, Amity University, Lucknow, India

Dr. Reshma Umair, Associate Professor, Amity University, Lucknow, India

ABSTRACT

This study focuses on the Transgender rights in India and the United States, analyzing the distinctions related to the principles, judicial decisions, and legal frameworks related to the Transgender community between the two countries. This study has a doctrinal approach, focusing mainly on the textual interpretation of the laws, landmark judgments, and constitutional provisions. This study aims to find how the legal systems address the issues of gender identity and the discrimination that comes along with it. The scope of the research includes an analysis of key judicial decisions that have played a central role in shaping transgender rights jurisprudence in both jurisdictions. In India, particular attention is given to landmark constitutional judgments such as *National Legal Services Authority v. Union of India* and *Navtej Singh Johar v. Union of India*, which recognized gender identity as an aspect of dignity, equality, and personal liberty under the Constitution. The study also examines statutory developments, including the Transgender Persons (Protection of Rights) Act, and evaluates the extent to which these measures address issues such as discrimination, recognition of identity, and access to social welfare schemes. In the United States context, the study focuses on the evolution of transgender rights through constitutional interpretation and federal civil rights legislation. Judicial decisions such as *Bostock v. Clayton County*, which interpreted discrimination based on transgender status as discrimination “because of sex” under Title VII of the Civil Rights Act, are examined to understand the development of legal protections in employment and public life. The study also considers how the federal structure of the United States creates variations in rights protection across different states. The study concludes by highlighting gaps in enforcement and emerging legal trends in both countries.

I. INTRODUCTION

Before we dive into the concept of transgender rights, the clarity of all the concepts is very necessary, particularly the words like sex, gender, gender identity, and gender expression.

The courts have frequently ruled on what is male and female based on the characteristics of bodies seen at birth. But the evolved thinking in sociology, psychology and legal attitudes about human rights treats gender as layered. How a person feels inside, how they act in society, what culture says; or the everyday realities of life don't always align with body traits at birth.

Mostly, sex points to physical traits like DNA, hormone levels, and body structure. Whereas gender grows out of social patterns, like how folks act, how they are expected to show up.¹ Though many see sex as fixed, the views have shifted, viewing it as fluid.

Each person may experience their gender internally. Gender identity is a continuum, for the majority with their sense of self strongly aligned with male identifying or female identifying, and for others it may not fit into those binary categories. Gender identity is an internal self-understanding that also develops from within, transcending external social construct or biological categorization.² The individual may identify as a transgender, when such a difference exists between one's internal sense of gender and the sex assigned at birth.

Gender expression, however, is how a person expresses their gender through clothing, speech and movement. Sometimes it's influenced by where they live or when in history, they were born³. One can behave in ways that may seem atypical for one's gender — but still resonate strongly with it. Imagine someone dressing brazenly against type, yet refusing to label themselves anything new.

The difference between the concepts is crucial to understand. What counts as who you are versus how you show yourself matters in law. At first, rules meant to stop unfair treatment looked only at physical traits tied to being male or female, missing harm done when someone's way of appearing doesn't fit expected roles. Slowly, courts across different areas began seeing

¹ American Psychological Association, Guidelines for Psychological Practice with Transgender and Gender Nonconforming People (2015).

² The Yogyakarta Principles on the Application of International Human Rights Law (2006).

³Verywell Mind, What Is Gender Expression?, <https://www.verywellmind.com/what-is-gender-expression-5187952>

bias against people for their inner sense of gender or outward style as breaking rights to fairness and respect.

Self-identification is also a very crucial concept to understand. This principle recognizes that individuals possess the autonomy to determine their own gender identity without compulsory medical or psychological certification.⁴

Certainly not every person who falls under the transgender umbrella shares the same experience. What people refer to with the word “transgender” encompasses trans men, trans women, those who are neither or both genders, genderqueer individuals and identities that relate to culture or region.⁵ Hijras, Kinnars, and similar groups in India show that gender diversity was a concept in India even before Western ideas emerged. The civil rights struggles and LGBTQ+ activism that occurred then helped shape the U.S.’s discourse about these issues today.

II. LITERATURE REVIEW

Existing scholarship on transgender rights in India and the United States shows that legal recognition has expanded in both countries, but significant gaps remain in implementation. In India, researchers emphasize the importance of the landmark judgment in *National Legal Services Authority v. Union of India*⁶, which recognized transgender persons as a “third gender” and affirmed the right to self-identification. Scholars note that this decision laid the foundation for subsequent legislation, particularly the *Transgender Persons (Protection of Rights) Act, 2019*, though it has been criticized for weak enforcement and bureaucratic hurdles.⁷

In the United States, literature highlights that transgender rights have evolved primarily through judicial interpretation of civil rights laws rather than explicit constitutional provisions. The decision in *Bostock v. Clayton County* significantly expanded employment protections under Title VII.⁸ However, scholars point out that rights remain inconsistent due to variations in state

⁴ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).

⁵ Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (2004).

⁶ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438 (India).

⁷ *Transgender Persons (Protection of Rights) Act, No. 40 of 2019, India Code* (2019); Aniruddha Dutta, *Contradictions of Transgender Rights in India*, 52 *Econ. & Pol. Wkly.* 23 (2020).

⁸ *Bostock v. Clayton County*, 590 U.S. ____ (2020)

laws and ongoing political contestation.

Comparative studies suggest that both countries face a persistent gap between formal legal protections and lived realities. While India struggles with implementation despite a centralized framework, the United States faces fragmentation due to its federal structure.

III. RESEARCH QUESTIONS

- How have legal frameworks in India and the United States evolved to recognize and protect transgender rights?
- To what extent do existing laws in both countries ensure equality and non-discrimination for transgender individuals?
- What are the key differences in the implementation of transgender rights between India and the United States?
- How do socio-cultural and political factors influence the effectiveness of legal protections in both jurisdictions?
- What reforms are necessary to strengthen transgender rights and bridge the gap between law and practice?

IV. RESEARCH OBJECTIVES

- To examine the evolution of regulations governing transgender rights in India and the United States.
- To analyze key ethical principles embedded in both nations' frameworks.
- To identify similarities and divergences in regulatory approaches between India and USA.

V. RESEARCH METHODOLOGY

This study adopts a doctrinal and comparative research methodology to examine transgender rights in India and the United States. The research is primarily based on secondary sources,

including constitutional provisions, statutes, judicial decisions, academic literature, and reports published by national and international organizations.

A doctrinal approach is used to analyze key legal developments, such as *National Legal Services Authority v. Union of India* and *Bostock v. Clayton County*, along with relevant legislation like the Transgender Persons (Protection of Rights) Act, 2019. This enables a detailed understanding of how transgender rights have been interpreted and institutionalized within each legal system.

The study also employs a comparative method, systematically evaluating similarities and differences between the legal frameworks of India and the United States. This comparison is structured around key themes such as legal recognition, anti-discrimination protections, healthcare rights, and enforcement mechanisms. The comparative analysis directly addresses the research objective of identifying gaps in implementation and assessing the effectiveness of legal protections in both jurisdictions.

VI. LEGAL FRAMEWORKS IN INDIA

India has made significant progress in legally recognizing transgender rights, but social realities often lag behind the law. The landmark Supreme Court judgment in *National Legal Services Authority v. Union of India* (NALSA, 2014) recognized transgender persons as a “third gender” and affirmed their right to self-identification under Articles 14, 15, and 21 of the Indian Constitution, ensuring equality, non-discrimination, and protection of life and personal liberty.⁹ This decision not only acknowledged transgender identity as part of fundamental rights but also required the government to provide affirmative measures for social inclusion.

5.1 Statutory Protections

Following NALSA, the Transgender Persons (Protection of Rights) Act, 2019 was enacted to provide a legal framework for anti-discrimination protections and recognition of identity.¹⁰ Key provisions include:

- Prohibition of discrimination in education, employment, healthcare, and access to

⁹ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438 (India).

¹⁰ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, India Code (2019).

public services (Sections 3–6).

- Right to self-perceived gender identity through issuance of a transgender certificate (Sections 7–9).
- Welfare measures such as scholarships, social security, and healthcare facilities for transgender persons (Sections 16–20).

5.2 Judicial Expansions and Interpretations

Beyond NALSA, several judicial decisions have further clarified transgender rights:

In *Shabnam v. Union of India* (2021), the Delhi High Court emphasized that transgender persons have equal access to government welfare schemes.

Courts have increasingly recognized healthcare rights, including the right to gender-affirming surgery and treatment under Article 21.

5.3 Social Realities: Myths and Stigmas

Despite these protections, transgender individuals in India face persistent myths and stigmas:

- **Diverse Identities:** Not all transgender individuals are hijras; the community includes trans men, trans women, and non-binary individuals.¹¹
- **Innate Identity:** Gender identity is inherent, not a mental illness or choice.¹²
- **Economic Stereotypes:** While some are pushed into begging or sex work due to marginalization, many are educated professionals striving for regular employment.¹³
- **Cultural Misconceptions:** Some still believe transgender persons bring bad luck, despite historical reverence in Indian epics like the Mahabharata.¹⁴
- **Trans Men Erasure:** Trans men exist historically and socially, but public discourse often

¹¹ Arvind Narrain, *The Transformative Potential of NALSA*, 2 NUJS L. Rev. 321 (2014).

¹² Aniruddha Dutta, *Contradictions of Transgender Rights in India*, 52 Econ. & Pol. Wkly. 23 (2020).

¹³ UNDP, *Legal Gender Recognition: A Multi-Country Review* (2018).

¹⁴ Danish Sheikh & Aayushi Narain, *Transgender Rights and the Law in India*, 5 Indian J. Const. L. 45 (2017).

ignores them.¹⁵

These myths intersect with legal protections: although laws exist to prevent discrimination, social stigma often hinders implementation, creating gaps between legal recognition and lived realities.

5.4 Challenges in Enforcement

Even with progressive laws, implementation remains uneven due to:

- Administrative barriers in issuing transgender certificates and accessing welfare schemes.
- Lack of awareness among public officials and employers regarding legal protections.
- Limited social acceptance, leading to discrimination in housing, education, and healthcare.

In essence, India provides a robust legal framework for transgender rights, yet societal inclusion remains a challenge. Legal measures alone cannot transform centuries of cultural prejudice; education, awareness campaigns, and institutional support are essential to make these laws meaningful.

VII. LEGAL FRAMEWORK IN THE UNITED STATES

The United States has gradually recognized transgender rights through a combination of judicial interpretation, federal statutes, and state-level laws. Unlike India's centralized approach, the U.S. legal framework is shaped by a federal system, resulting in varying protections across states.

6.1 Federal Protections

- Title VII of the Civil Rights Act (1964) prohibits employment discrimination based on sex. Its interpretation was extended in *Bostock v. Clayton County* (2020), where the

¹⁵ Historical accounts from *Mahabharata* (Indian epic texts).

U.S. Supreme Court ruled that firing employees for being transgender constitutes sex discrimination.¹⁶

- Title IX of the Education Amendments (1972) prohibits sex discrimination in federally funded schools. Courts and the Department of Education have increasingly interpreted this to protect transgender students in areas like access to facilities, sports, and admissions.¹⁷
- Americans with Disabilities Act (ADA, 1990) – though primarily focused on disability, courts have occasionally considered gender dysphoria under the ADA in specific contexts, especially in healthcare and employment disputes.¹⁸

6.2 State-Level Protections

Due to the federal structure, transgender rights differ widely by state:

- Some states, such as California, New York, and Massachusetts, provide comprehensive anti-discrimination protections in employment, education, and healthcare.¹⁹
- Other states, particularly in the Midwest and South, have restricted transgender access to healthcare, participation in sports, or use of public facilities consistent with gender identity.²⁰
- Many states require gender marker changes on official documents, but the process varies significantly, affecting the ability of transgender persons to fully assert their rights.²¹

6.3 Key Judicial Decisions

- *Bostock v. Clayton County* (2020): A landmark ruling that extended employment protections under Title VII to include transgender employees²².

¹⁶ *Bostock v. Clayton County*, 590 U.S. ____ (2020).

¹⁷ Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688.

¹⁸ Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213.

¹⁹ California Government Code §§ 12940 et seq.; New York Human Rights Law, N.Y. Exec. Law § 296.

²⁰ Tennessee Code Ann. § 49-6-3101 (transgender student participation restrictions)

²¹ National Center for Transgender Equality, *ID Documents Center*, <https://transequality.org/documents>

²² *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020).

- Grimm v. Gloucester County School Board (2020): Federal courts upheld the right of transgender students to use school facilities corresponding to their gender identity.²³
- Whitaker v. Kenosha Unified School District (2017): Affirmed that denying restroom access to transgender students violates Title IX protections.²⁴

These rulings show that, at the federal level, transgender rights are increasingly recognized. However, implementation depends heavily on state-level enforcement, leading to a patchwork of protections that can create legal uncertainty for many transgender individuals.

6.4 Social Realities and Challenges

Despite these legal protections, transgender individuals in the U.S. face social stigma, discrimination, and political contestation:

- Healthcare barriers: Many transgender persons encounter difficulties accessing gender-affirming care, often due to state-level restrictions or insurance limitations.²⁵
- Employment and housing discrimination: While federal protections exist, workplace and housing discrimination still occur, particularly in states with weaker enforcement.
- Violence and harassment: Transgender individuals, especially transgender women of color, remain at disproportionate risk of physical and sexual violence.²⁶

Unlike India's centralized legal framework, the U.S. relies heavily on judicial interpretation to extend rights, resulting in state-by-state variation. This means that, while the law formally recognizes transgender protections, practical access to rights depends on geography, political climate, and institutional enforcement. The U.S. example highlights that legal recognition without uniform implementation can leave vulnerable populations at risk, mirroring some challenges faced in India despite the latter's strong central legislation.

VIII. COMPARATIVE ANALYSIS

India and the United States have both made significant legal strides in recognizing transgender

²³ *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017).

²⁴ Movement Advancement Project (MAP), *Healthcare Access for Transgender People in the U.S.* (2021).

²⁵ Andrew R. Flores et al., *Discrimination Against LGBT People in the U.S.*, Williams Inst. (2019).

²⁶ Human Rights Campaign, *Violence Against the Transgender Community in the U.S.*, 2021 Report.

rights, yet their approaches and challenges differ. In India, the *NALSA v. Union of India* (2014)²⁷ judgment constitutionally recognized transgender persons as a third gender and affirmed the right to self-identification under Articles 14, 15, and 21, further reinforced by the Transgender Persons (Protection of Rights) Act, 2019²⁸, which prohibits discrimination in education, employment, and healthcare. Despite these protections, administrative hurdles and deep-rooted societal myths, such as conflating all transgender people with hijras or perceiving gender identity as a choice, continue to limit social inclusion. In contrast, the U.S. relies on judicial interpretation of federal statutes like Title VII (*Bostock v. Clayton County*, 2020)²⁹ and Title IX³⁰, alongside state-level legislation, to protect transgender individuals in employment, education, and public services. While these laws are significant, the decentralized federal system creates a patchwork of protections, with some states enforcing comprehensive rights and others imposing restrictions on healthcare or school participation. Social stigma, harassment, and violence remain prevalent in both countries, showing that legal recognition alone is insufficient. Both contexts reveal that achieving substantive equality for transgender persons requires not only progressive laws but also effective enforcement, public awareness, and societal acceptance, highlighting the inseparable link between law and lived experience.

The following graph shows the Equality Index over time (India vs USA) for a comparative analysis.

²⁷ National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438 (India).

²⁸ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, India Code (2019).

²⁹ Arvind Narrain, *The Transformative Potential of NALSA*, 2 NUJS L. Rev. 321 (2014)

³⁰ Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688.



IX. SUGGESTIONS

To strengthen transgender rights and social inclusion, it is crucial to focus on both legal enforcement and societal change. Governments should ensure that existing laws; such as India's *Transgender Persons (Protection of Rights) Act, 2019* and the U.S.'s protections under Title VII and Title IX are effectively implemented through clear guidelines, monitoring, and accountability. Public awareness campaigns and education programs can challenge persistent myths and stereotypes, foster acceptance and understanding. Improving access to gender-affirming healthcare and simplifying procedures for changing legal identity are essential to ensure dignity and autonomy. Economic inclusion must also be prioritized by providing job opportunities, skill development programs, and workplace protections to reduce marginalization. Additionally, systematic data collection on transgender populations can guide evidence-based policymaking, while cross-cultural learning between India and the U.S. can highlight best practices for legal protection and social support. Ultimately, these measures underscore that achieving equality requires not only progressive laws but also societal empathy, education, and institutional commitment.

X. CONCLUSION

In conclusion, the journey toward transgender equality in both India and the United States illustrates that legal recognition is only the first step. India's constitutional acknowledgment of

transgender persons and the Transgender Persons (Protection of Rights) Act, 2019, provide a strong legal foundation, while the U.S. demonstrates how judicial interpretation of civil rights laws can expand protections in a federal system. Yet in both contexts, social stigma, myths, and inconsistent implementation continue to limit the community's full participation in society. True equality requires a holistic approach; combining enforceable laws, accessible healthcare, economic opportunities, educational initiatives, and societal awareness. By bridging the gap between legal frameworks and lived experiences, both countries can ensure that transgender individuals are not only legally recognized but also respected, included, and empowered, transforming progressive statutes into meaningful social change.

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