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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



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THE RIGHT TO HEALTH FOR TRANSGENDER AND INTERSEX COMMUNITIES IN INDIA: LEGAL PROTECTIONS AND PRACTICAL BARRIERS

AUTHOR – SHRUTI VERMA, STUDENT AT GUJRAT NATIONAL LAW UNIVERSITY

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ABSTRACT

The paper examines the legal frameworks of healthcare access of transgender and intersex individuals in India and how they affect their ability to access non-discriminatory medical care. It provides a case study on gender-affirming medical care, mental health services, access to routine medical care, and protection against forced medical treatment within the present legal context. At the focal point of this discussion are constitutional rights as guaranteed by Article 21 (right to life and liberty), 14 (equality before the law), and 15 (prohibition of discrimination), which form the basis of healthcare rights of transgender and intersex individuals. In addition to these widely understood rights, there are international human rights principles, specifically the Yogyakarta Principles, that protect gender identity and gender expression and claim the promotion of the right to be free of involuntary medical treatment. The historic NALSA ruling by the Supreme Court (2014) recognized transgender people as a third gender and established their basic rights, including the right to self-determine their gender without any medical requirements. This decision provided a decisive ground in the rights to healthcare and the rights of the government. Although the next act (Transgender Persons (Protection of Rights)) of 2019 aims to bring these rights to a reality, it has been received with a lot of criticism due to its requirement of bureaucratic certification and medical operation as preconditions to recognition under the law, which is perceived as inconsistent with the NALSA decision. The other significant point of the paper is the topicality of the recent depathologization of transgender identities advanced by the World Health Organization and the request of healthcare founded on informed consent, but not excessive medicalization. This ubiquitous discrimination of transgender and intersex patients is characterized by the denial of care, a lack of sensitivity from providers, and a deficiency in training for gender-affirming healthcare. These obstacles go beyond gender-based practices to standard medical practices. In addition, economic factors and the lack of extensive insurance coverage are setbacks to equal access to healthcare. Lack of national guidelines on gender-affirming care and insufficient inclusion of transgender health concerns in medical education. Social issues of stigma and exclusion, mental illness, and the peculiar and disturbing experience of intersex individuals undergoing non-consensual surgical procedures to alter their bodies in an effort to be considered normal are the factors.

India has been noted to take significant steps in understanding the rights of transgender and intersex individuals, and some significant judgments and laws have seen a positive change. I, however, feel that there is more to be done in order to refine these laws and make them more practical on the ground. Having laws on paper is one thing; seeing them put into practice, where individuals are discriminated against and blocked on a daily basis, is another. In addition to the legal reforms, I believe it is essential to raise awareness among people. The society in general should be more enlightened and open to the plight of transgender and intersex groups. It is only when the general public, at every level, including that of ordinary citizens, becomes alert, compassionate, and active

that we will be able to achieve the real spirit of equality, dignity, and inclusion that our Constitution has made the main focus. The paper recommends legislative and policy changes that meet constitutional vows and global standards of human rights, with the focus on access to dignified and community-informed medical services and care that take into account the bodily autonomy of both transgender and intersex populations.

KEYWORDS- Intersex rights, Transgender Rights, Gender affirming care.

INTRODUCTION

Healthcare is not only a service; it is a fundamental human right that cannot be separated from a person's survival and dignity. But even in India, transgender and intersex individuals are experiencing institutional barriers, bias, and degradation in attempting to access fundamental medical treatment. The discrepancy between the rights promised on paper and the realities these disenfranchised individuals face continues to widen despite progressive stipulations in the constitution and major court decisions. This difference raises a significant question: Does it require a major change not only in societal perceptions but also in policy to achieve genuine equality, or can legal acceptance be a dignified solution for obtaining healthcare?

Articles 14, 15, and 21 of the Indian Constitution guarantee all citizens equality, freedom from discrimination, and the right to a dignified existence. In the historic *NALSA vs. Union of India*²²⁰⁰ Judgment in 2014, it played a major role in recognizing transgender rights, and supported the freedom of individual choice of gender identity regardless of medical needs. However, the subsequent act, The Transgender Persons (Protection of Rights) Act, 2019,²²⁰¹ created such bureaucratic hurdles and certification requirements that undermine every principle established in the *NALSA* judgment. It is even more dangerous with intersex individuals because the non-consent medical interventions are still unregulated, and the legal protection is practically non-existent.

The healthcare challenges faced by

transgender and intersex communities extend far beyond gender-affirming medical procedures. Common medical attention, emergency, mental health, and reproductive health are usually unavailable because of discrimination by providers, lack of sensitization, and provision of non-inclusive medical procedures. These barriers are also exacerbated by economic constraints because gender-affirming treatments are still costly and not covered by insurance. In the meantime, both patients and providers are in an uncertain landscape because of the lack of national guidelines on transgender and intersex healthcare.

The article discusses the legal provisions in the access of healthcare to transgender and intersex people in India, exploring the constitutional provisions, legal provisions, and international human rights provisions that are expected to safeguard the communities. It explores the practical impediments that remain in spite of legal protections, systemic discrimination, insensitivity on the part of providers, economic barriers, and the special vulnerabilities of intersex individuals who undergo forced medical treatment. It is in this analysis that the article aims to fill the gap between the constitutional promises and the realities on the ground as it seeks to recommend concrete reforms to the legislature, as well as policy intervention and social transformation required to make the right to health a lived reality for all, irrespective of gender identity and gender expression.

TRANSGENER AND INTERSEX DEFINED

According to Transgender Protection Act 2019, "transgender person" means a person whose

²²⁰⁰ *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438, 452 (India).

²²⁰¹ Transgender Persons (Protection of Rights) Act, No. 40, 2019 (India).

gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer, and person having such socio-cultural identities as kinner, hijra, aravani, and jogta.²²⁰²

It is necessary to realize that transgender and intersex are different concepts that cannot be mixed. Intersex can be defined as those people who are born with biological features, such as chromosomes, hormones, or physical structure, that do not obviously fit within either male or female categories. This is usually found during the period of birth or adolescence. On the contrary, the transgender condition is connected with one's strong sense of his or her gender identity that might not correspond to the sex at birth.

CONSTITUTIONAL GUARANTEE AND PROMISE OF EQUALITY

The Indian Constitution forms a powerful basis for healthcare rights, but with the transgender and intersex groups, its application has necessitated a large part of judicial interpretation. Article 14²²⁰³ ensures equality before the law and equal protection of the law for everyone. The Supreme Court has unanimously held that this clause does not entail only formal equality; it also entails substantive equality, which requires the State to take proactive action to address systemic inequalities against disadvantaged groups. In the case of transgender and intersex individuals, this implies that the government cannot sit back and watch as medical institutions discriminate against these individuals or neglect their special medical demands.

Article 15²²⁰⁴ forbids discrimination based on factors such as sex, which has been broadly applied to refer to gender identity and sexual orientation. The NALSA judgment provided constitutional support to this interpretation and made it clear that refusing to provide medical treatment or giving someone substandard treatment because of his or her transgender or intersex status was unconstitutional and violated the basic constitutional protections. This principle is, however, not always the case in the medical facilities, as there are cases of transgender and intersex individuals being denied access to hospitals or being treated in a humiliating manner.

The right to life and personal liberty in Article 21²²⁰⁵ has become the most important in healthcare rights. The Supreme Court has construed into it the right to health, the right to dignity, and most importantly, the right to bodily autonomy. In the case of transgender people, it will include access to gender-affirming treatment involving hormone therapy and surgery. In the case of intersex people, it basically encompasses safety against non-consensual medical interventions, especially unnecessary surgical operations on intersex children to align their bodies to binary gender expectations. Despite constitutional rights, the problem persists, and there remains a significant gap between these rights and their implementation.

The NALSA judgement brought all these constitutional provisions together in a very meaningful way; in this case, the court not only recognized the third gender, but it went much deeper. The court held that the right to self-identification is inherent in personal autonomy and dignity, meaning they don't need medical certification to claim their gender identity. The court specifically held that transgender persons have the right to medical care without discrimination, and the government should take steps to provide comprehensive healthcare,

²²⁰² Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 2(k) (India).

²²⁰³ India Const. art. 14, cl. 1.

²²⁰⁴ India Const. art. 15.

²²⁰⁵ India Const. art. 21.

including sex reassignment surgery.

THE TRANSGENDER PROTECTION ACT 2019

- **Section 3²²⁰⁶ The Transgender Protection Act** – section 3. This section talks about the prohibition against discrimination, and it states that no person or establishment can discriminate against transgender people on certain grounds, one of which is also denial or unfair treatment in healthcare services.
- **Section 7²²⁰⁷ The Transgender Protection Act** – Section 7 of the Transgender Persons (Protection of Rights) Act, 2019, governs the process for changing gender after initial recognition. It allows a transgender person who has received a certificate under Section 6 to apply for a revised certificate if they undergo surgery to change their gender to male or female, supported by certification from the Medical Superintendent or Chief Medical Officer
- **Section 8²²⁰⁸ The Transgender Protection Act** – In Section 8 of the Transgender Persons (Protection of Rights) Act, 2019, the government is required to act in the interest of transgender welfare and pay appropriate attention to the healthcare services and access.
- **Section 15²²⁰⁹ The Transgender Protection Act** – Section 15 mandates governments to offer amenities such as the HIV Sero-surveillance centers, sex reassignment surgery, hormonal therapy, counseling, and coverage of gender-affirming operations. This is supplemented by section 8, punishing the refusal to provide healthcare services or to treat in a way that damages health, similarly to the right to life and dignity in Article 21 of the Indian Constitution.

The act was to be a progressive law for transgender people and remove the difficulties they face, but the scenario is totally different. Under the Act, transgender persons must receive a certificate of identity from a District Magistrate. In order to acquire this certificate, you should appear before a District Screening Committee. This is totally against NALSA, which claimed that self-identification is a fundamental right. What is even more deplorable is the makeup of the Screening Committee, which consists of medical officers and psychiatrists. This leads us to the ancient paradigm of pathologizing transgender identities - and making transgenerness a medical or mental illness that must be diagnosed. The World Health Organization (WHO) no longer took this approach several years ago. The reason why they did not classify gender identity disorder as a mental disorder is that it is not a disorder of being transgender. It is simply a natural difference in human identity. But the memo appears not to have been received by our 2019 Act. The medical requirement becomes even more troubling when you look at what happens if someone wants to change their gender on their certificate from "transgender" to "male" or "female." Section 6²²¹⁰ says they need to undergo surgery and provide proof of it. So basically, if you're a transgender woman and you want to be legally recognized as female rather than transgender, you have to have sex reassignment surgery first. This is hugely problematic for several reasons.

THE YOGYAKARTA PRINCIPLE: AN INTERNATIONAL HUMAN RIGHTS FRAMEWORK

International human rights standards have been very critical in explaining the rights of transgender and intersex individuals, even though domestic laws form the foundation of legal protections. A document that has gone a step further in covering the human rights abuse on the basis of sexual orientation and gender identity is the Yogyakarta Principles, which was

²²⁰⁶ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 3.

²²⁰⁷ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 7.

²²⁰⁸ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 8.

²²⁰⁹ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 15.

²²¹⁰ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 6.

drafted in 2006 by teams of international human rights experts in Indonesia. In 2017, these principles were extended as the Yogyakarta Principles Plus 10, which included matters of gender expression and sex characteristics and became directly applicable to intersex individuals as well.²²¹¹

The fact that the Yogyakarta Principles explicitly acknowledge that human dignity and autonomy depend on gender identity is what makes them so important. The right to recognition before the law, as set out in principle 3, aims to establish that all self-identified gender is part of an individual's personality and a fundamental feature of self-determination and freedom. Most importantly, it says that they should not be compelled to go through medical surgery or sterilization as a precondition to legal acknowledgement of their gender. This principle goes directly against the problematic provisions of the Indian Transgender Persons Act 2019, in which Section 6 of the law establishes that a transgender person must undergo surgery to obtain a revised certificate to be recognised by the law as either male or female instead of in the transgender category.

Principle 17, titled "The Right to the Highest Attainable Standard of Health," explicitly states that everyone has this right without discrimination on the basis of sexual orientation or gender identity, recognising that sexual and reproductive health is a fundamental aspect of this right."²²¹²

According to the principle, states should make sure that healthcare institutions, products, and services are built in a way that better health conditions and address the needs of all individuals without discrimination, considering their sexual orientation and gender identity. It particularly demands access to the provision of competent non-discriminatory treatment to

those who seek to have body changes that are associated with gender reassignments, and that health service providers treat their clients without any discrimination.

Principle 18 talks about protection from medical abuse, which is critical for both transgender and intersex communities. It says that no person can be forced to undergo any form of medical or psychological treatment, procedure, testing, or confinement to a medical facility based on their sexual orientation or gender identity. Above all, it asserts that the sexual orientation and gender identity of an individual is not, and neither should it be, a medical condition to be treated, cured, or suppressed. In the case of intersex children, Principle 18 specifically states are required to see to it that no body of a child can be permanently modified through medical interventions in an effort to commit them to a certain gender without full, free, and informed consent of the child, with the best interests of the child being the main consideration.²²¹³

In reference to the NALSA judgment of the Indian Supreme Court, the judge relied on the Yogyakarta Principles, which are not a treaty but are considered authoritative in international discourse on human rights norms. The Court decided that the principles were to be observed to the level that they corresponded with the constitutional fundamental rights in India. The judicial approval gave the Yogyakarta Principle legal effect in Indian law. Nonetheless, the distance between the acknowledgment and the actual practice of judicial recognition remains significant, underscoring that international frameworks do not seem able to change ground realities without policy action and social change.

CURRENT HEALTHCARE SITUATION FOR TRANSGENDER AND INTERSEX PEOPLE IN INDIA –

This discrepancy between the promises made by policies and the realities on the ground stands out clearly when one analyses how the Ayushman Bharat scheme addresses

²²¹¹ Int'l Comm'n of Jurists & Int'l Serv. for Hum. Rts., *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007), https://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf.

²²¹² *Yogyakarta Principles*, princ. 17.

²²¹³ *Yogyakarta Principles*, princ. 18.

transgender healthcare. In August 2022, the government stated that the Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana would include transgender people and allow access to gender-affirming surgery and hormone therapy by a special TG Plus card. Nevertheless, more than two and a half years later, this card is yet to be implemented, and gender-affirmative care has not been added to the health benefit package. These obstacles are institutional and complex. Identification of beneficiaries under the scheme is done at the family level using the Socio-Economic Caste Census; however, the study shows that only seventeen percent of transgender individuals live with their biological families. Such a structural design in effect excludes most of the community in the first place. Also, one needs a Transgender Certificate and Identity Card to access any welfare scheme, but by April 2025, approximately 26,000 such IDs had been issued, which is under 5% of the number of transgender individuals reported. The bureaucracies are characterized by delays in application, intrusive checks, and technical hiccups that make the applications discouraging. Economic limitations that have caused this policy measure are not addressed. The operation of sex reassignment in the private hospital costs around two to eight lakh rupees, which most people cannot afford. The hospitals where these procedures are offered are of low quality and have long waiting times. Budgetary provisions also indicate the government's lack of concern: the 2025-26 budget provision for transgender welfare pledges an annual 1575 per person, with only 11% of the provision used during 2021-2024. This generates a contradiction between constitutional rights and statutory requirements, and results in total practical inaccessibility, making it a perfect example of how legal provisions cannot give people access to healthcare without an actual implementation system, sufficient funding, and structural change.²²¹⁴

The Indian national healthcare system still does not serve queer and trans people, even as the 1990s HIV/AIDS movement made some breakthroughs. The National AIDS Control Program was the first to recognize men who have sex with men (MSM) and then transgender populations and direct funds to the NGOs to target them through outreach, employment, and advocacy of their rights, such as forcing condoms into Tihar Jail against their will. This publicity increased civil pressures but idealized identities, and popularized stereotyped behaviors as risk of disease, and marginalized women or women who have their way with one another, continuing to stigmatize. Interactions that were obsessed with antiretrovirals, hormones, and surgeries, not focusing on mental health, immune care, and trans-friendly personnel, elite NGOs that used the grassroots and poorly paid workers to reinforce caste divisions. Coercion based on the number of individuals with diminished capacity to information, which contributes to discrimination. Currently, access is exacerbated by the Foreign Contribution (Regulation) Act (FCRA) restrictions, 2017 bans on condom ads, and COVID-related privatization, and gender-affirming care is stigmatized, delayed, and lacks between Transgender Persons Act, 2019.²²¹⁵

BARRIERS TO HEALTHCARE FOR TRANSGENDER AND INTERSEX PEOPLE IN INDIA –

Transgender and intersex individuals in India have experienced obstacles, including direct discrimination in hospitals and systemic obstacles such as the unavailability of primary-level services, the affordability of gender affirming treatment, and the consistency of protection enforcement. In the case of intersex people in particular, medically unnecessary normalising surgeries on infants and children before meaningful consent have been taken are a significant issue of rights and health, with only partial state-wide protection.

²²¹⁴ Shania Ali, *Ayushman Bharat's Broken Promise to India's Transgender Community*, IndiaSpend (Apr. 18, 2025), <https://www.indiaspend.com/health/ayushman-bharats-broken-promise-to-indias-transgender-community-949733>.

²²¹⁵S. Datta, *India's Healthcare System Is Still Failing Queer-Trans People. A Public Health Movement Can Change That*, The Swaddle, <https://www.theswaddle.com/indias-healthcare-system-is-still-failing-queer-trans-people-a-public-health-movement-can-change-that> (last visited Jan. 22, 2026).

Barriers for Transgender people -

1. Discrimination and misgendering by medical personnel (not offering care, embarrassing questions) discourages prompt care-seeking and follow-ups.
2. Knowledge gaps in the providers (most clinicians do not receive training on trans-competent care, such as the use of hormones and respectful treatment).
3. Poor access at the primary-care level requires that people travel to a small number of urban centers, resulting in a rise in travel costs and drop-outs of care.
4. Paperwork and red tape (ID/document mismatch and delays may be an obstacle to accessing schemes and routine services).
5. Exorbitant out-of-pocket costs of gender-affirming care (Hormone Replacement Therapy, surgeries, labs) in the event of the lack or inconsistency of public services.
6. Connection between mental-health burden attributed to exclusion and violence, and limited trans-affirmative mental-health services.

Barriers for intersex people-

Unconsented and medically unnecessary surgeries on infants/children are under pressure due to stigma, poor counselling, and informed consent. Poor and inconsistent regulation: Tamil Nadu has an executive decree prohibiting all unnecessary intersex surgeries (except in life-threatening circumstances), but similar protections have not consistently applied throughout the country.²²¹⁶

Other barriers include High emphasis on HIV / STIs framing, as opposed to an evidence-based, comprehensive, lifelong care (NCDs, ageing, pain care, mental health, reproductive/sexual health needs). Socio-economic exclusion

(housing/work insecurity), which lowers paying capacity, travelling, and staying in lifelong treatment.

RECOMMENDATIONS AND SUGGESTIONS

- Policymakers need to focus on community-based reforms to improve access to healthcare among the trans and intersex in India to make the policy consistent with legal requirements and realities in the field.
- Implement and extend Ayushman Bharat TG Plus to every state, covering gender-affirming care (HRT, SRS, counseling) 100 percent, at primary health centers, not only urban centers - in addition to this, every employee of the public hospital is required to undergo trans-competency training to reduce stigma and rejections. Examples from Jharkhand and Tamil Nadu should be emulated: special OPDs with connections to endocrinology/psychiatry, and Gender Guidance Clinics with free, decentralized services.
- Move to non-HIV-centered services mental health through queer-affirming counselors, NCD (National Program for Prevention and Control of Non-Communicable Diseases) screening, pain management, and reproductive health; educate 100% of the public staff through NMC (National Medical Commission Act) curricula.
- In the case of intersex rights, pass a national law outlawing non-consensual normalizing surgeries on children, following the example of the Tamil Nadu executive order of 2019- create multi-stakeholder committees with intersex representation to establish evidence-based limits of consent. Introduce non-HIV lifelong care: mental health services through queer affirmative counselors, screening of NCDs, and managing post-

²²¹⁶Indian State Bans Unnecessary Surgery on Intersex Children, Hum. Rts.(Aug. 29, 2019), <https://www.hrw.org/news/2019/08/29/indian-state-bans-unnecessary-surgery-intersex-children>.

surgery pain.

- Connect health care with employment/housing schemes to counter upstream barriers, which translates Article 21 of the right to health to the dignity of all.

CONCLUSION

The movement toward securing the right to health of transgender and intersex people in India presents a terrain of dramatic contradictions: the progressive constitutional provisions and the historic court interventions are juxtaposed with the systemic obstacles and any form of discrimination and selective interpretation of the policies. The NALSA decision (2014) was a breaking point as it recognized self-determination of gender identity, opposed medical conditions to be recognized, and ensured access to healthcare, with gender-affirming care, without discrimination. These notions are based on Articles 14, 15, and 21 of the Constitution of India that emphasize the inseparability of equality, dignity, bodily autonomy, and the right to health.

The Yogyakarta Principles strengthen these safeguards internationally by banning forced medical treatments, pathologizing gender identity, and discriminating against healthcare provision: protections that the Indian judiciary has been relying on, but which the national law has been adopting in part. Yet the Transgender Persons (Protection of Rights) Act 2019 has created certain difficulties for transgender and intersex people in India, due to which they have to face discrimination, ill-treatment, and insensitivity towards them. Intersex people even face more vulnerabilities.

Though the recent development has both progress and shortfalls, schemes like Ayushman Bharat TG plus promise a dedicated health coverage under the smile framework but yet the implementation remains uneven with a delay in card issuance incomplete integration into benefit packages, and structural exclusions affecting the majority who live outside

biological families. Judicial momentum continues, recent rulings (2024–2025 High Court decisions and the 2025 Jane Kaushik case) have reinforced self-identification without mandatory surgery and expanded reservations but the Supreme Court's December 2025 referral of a PIL on intersex rights to a three-judge bench signals the urgent need for clearer national regulation of non-consensual surgeries and distinct recognition of intersex identities separate from transgender frameworks.

In *Jane Kaushik vs. Union of India* (2025)²²¹⁷, Jane Kaushik, the transgender woman and qualified teacher, was unserved by two private schools in Delhi. Eight days later, the first school made her resign after students came to know about her gender identity. Her employment offer was canceled by the second school when they learned about her being transgender and refused to accept her, even before she could come. The question was now whether the Union and the States have affirmative duties to bar discrimination against transgender persons in the private establishments; whether the lack of grievance redressal systems is a violation of the TG Act, 2019. The Supreme Court stated that Kaushik was compensated for discrimination and that the Union and State governments failed to operationalize the TG Act, 2019. The Court acknowledged that ommissive discrimination, which is the inaction of governments, is discrimination.

In the end, India has made real progress, strong court rulings like NALSA, recent judgments such as Jane Kaushik's powerful win in October 2025, and schemes meant to help—but the right to proper healthcare for trans and intersex people still feels more like a distant dream than an everyday reality for most.

Closing the gap isn't just about writing better laws; it means scrapping unnecessary red tape for IDs, finally banning non-consensual surgeries on intersex kids across the country, rolling out Ayushman Bharat TG Plus properly everywhere with trained, sensitive staff, adding

²²¹⁷ *Jane Kaushik vs. Union of India*, (2025).

real lifelong care that goes way beyond HIV programs, and linking health support to jobs, homes, and fighting stigma head-on.

Equality only becomes real when no one has to face fear, shame, force, or impossible costs just to get basic medical help. It takes all—policymakers, judges, doctors, activists, and communities—working together to turn those big constitutional promises of justice, dignity, and fairness into something people actually live every day.

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