
LGBTQ+ RIGHTS VS. STATE REGULATION: A CRITICAL STUDY OF GENDER IDENTITY UNDER THE 2026 AMENDMENT

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ABSTRACT

The development of LGBTQ+ rights in India is one of the most notable constitutional and human rights in contemporary Indian Jurisprudence. The notion of gender identity, sexual orientation, dignity, privacy and personal autonomy has seen a significant change in interpretation through the barriers it has broken through in constitutional and legislative frameworks in both private and public discourse. But struggles have also arisen between assertions of self-determination and government intervention over the rights of transgender people have also been caused by their increasing rights. The rise of State's capacity in deciding their legal recognition and certification, as well as in administration of the welfare and regulatory it has been an important debate dealing with the right to self-definition, constitutionality of morality and institutional control. This conflict between recognition and regulatory governance is a theme in the Transgender Persons (Protection of Rights) framework, and in the ongoing amendment discourse in the language of 2026.

This paper critically analyses the gender identity and evolution of the relationship of the rights of the LGBTQ+ community with State regulation in India particularly in the context of the current amendment framework of 2026. The paper examines the conceptual definition of gender identity, constitutional provisions with Articles 14, 15, 19 and 21 and the key judgments made by the courts and legislation concerning the rights of transgender. It also discusses current issues related to administrative certification, health insurance needs, privacy rights, documentation and employment discrimination of state involvement in identity. International perspectives are also considered, and compared, to evaluate alternative regulatory models.

Keywords: LGBTQ+ Rights, Gender Identity, State Regulation, Transgender Rights, Constitutional Morality, Self-Identification, Privacy, Equality, 2026 Amendment.

1. INTRODUCTION

Rights of the LGBTQ+ community is one of the most important constitutional advances in modern-day India. Numerous legislative issues regarding sexuality, gender identity, dignity and privacy have taken on new meanings and now become a part of the rule of law as well as democratic citizenship. Social identity is no longer seen only as a personal concern, rather as a constitutional one, related to equality and liberty.¹

Historically, criminalization and stigma and institutional exclusion are a problem in the lives of LGBTQ+ communities. The existing legal system stereotypes and deigns the sexual minorities, as discrimination against non-heteronormative identities was strengthened under colonialism. But these exclusionary laws began to be undermined through judicial decisions and queer activism.

Indian constitutional law was then shifted from a tolerant approach to reasoning to a recognizing approach to protection. Issues of transgender identity, privacy and sexual orientation shifted the legal paradigm of autonomy, dignity and equal citizenship.²

With this advancement, key struggles have still not been resolved. The current processes of governance related to identity documentation, certification and institutional oversight to gender identity, lead to inquiries into the allowable functions of the State in gender identity governance. This paper explores these tensions in light of current Indian contemporary law, analyzing them critically.

2. REVIEW OF LITERATURE

2.1 Existing Studies on LGBTQ+ Rights in India

LGBTQ+ rights is a very wide academic scholarship that spans a variety of disciplines. Narrain and Bhan discuss queer politics, queer identity and queer social exclusion in India. Their work shows that comprehensive institutional and cultural change are essential to achieving

¹ Alok Gupta, "Section 377 and the Dignity of Indian Homosexuals", 41(46) Economic and Political Weekly 4815 (2006), available at: <https://www.epw.in/journal/2006/46/special-articles/section-377-and-dignity-indian-homosexuals.html>.

² National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

substantive inclusion if the law is not.³

Tellis and Bala cover queer identity, with both a global and post-colonial perspective. The emphasis of their scholarship lies in an understanding of sexuality and gender beyond a solely Western understanding of sexuality and gender discussion, via local historical and political perspectives.⁴

Indian law has in recent years begun to consider issues of transgender rights, health care, anti-discrimination norms, and documentation of identity. The studies show that despite constitutional progress, the institutions maintaining status quo are still in place.

2.2 Research on Gender Identity and Constitutional Protection

The focus of gender identity scholarship is on dignity, liberty and equal citizenship. Martha Nussbaum argued that constitutional democracies for their past practice of excluding people based on prejudice and noted that sexuality and identity are vital and important aspects of every person's human personality that ought to be included within the constitutional protections.⁵

Indian constitutional research after NALSA and Puttaswamy highlights that autonomy, privacy and identity is taken very seriously in Article 14, Article 19 and Article 21 of the Constitution. In modern times, the issue of gender recognition is not just an administrative matter and becomes, indeed, a constitutional issue.

2.3 Research on State Regulation and Self-Identification

There has been a growing interest in the literature on the issues of self-identification and state regulation recently. The prevailing view of debates around gender governance in the present day is centered on administrative certification, legal documents, and bureaucracy.⁶

Comparative scholarship on how institutional governance in the United Kingdom and other jurisdictions has developed indicates that the challenge of balancing institutional governance

³ Arvind Narrain & Gautam Bhan (eds.), *Because I Have a Voice: Queer Politics in India* (Yoda Press, 2005) ISBN No. 9788190227223.

⁴ Ashley Tellis & Sruti Bala (eds.), *The Global Trajectories of Queerness: Re-thinking Same-Sex Politics in the Global South* (Brill/Rodopi, 2015) ISBN No. 9789004309333.

⁵ Martha C. Nussbaum, *From Disgust to Humanity: Sexual Orientation and Constitutional Law* (Oxford University Press, 2010) ISBN No. 9780195305319.

⁶ Sarthak Gupta, "State Bodies: The New Trans Rights Law and the State as Gatekeeper of Gender Identity", *Verfassungsblog* (2026), DOI: <https://doi.org/10.59704/33fff816952aa87f>.

and identity autonomy remains equal.⁷

2.4 Research Gap relating to the 2026 Amendment

While there is significant literature on the rights of LGBT individuals and transgender protections, there is limited research on how current developments in regulation under the 2026 constitution affect these rights. Literature dealing with the mandatory citizenship criteria or the legislation is mainly devoted to judicial recognition and/or the initial legislation.

The current research attempts to fill the lacuna of interaction between constitutional liberty, gender identity governance & state regulation in contemporary India, by examining the same in a critical manner.

3. CONCEPTUAL KNOWLEDGE OF LGBTQ+ RIGHTS AND GENDER IDENTIFICATION.

3.1 Meaning and Scope of LGBTQ+ Rights

The term "LGBTQ+ rights" in general is used to denote LGBTQ+ mediated constitutional, legal and human rights. Equality, privacy, access to healthcare, anti-discrimination safeguards and freedom of expression are among these protections.⁸

Decriminalization isn't what LGBTQ+ rights are all about. Today the language of the constitution is renewed with the almost universal acceptance of identity protection as a core condition of equal substantive citizenship and democracy.

The constitutional changes in India are a sign of an increasing awareness of autonomy and dignity. However, social stigma, structural obstacles and laws are still being felt with respect to the benefit of such rights.

3.2 Concept of Gender Identity and Gender Expression

Gender identity is the way that a person expresses the gender that he/she has identified with

⁷ Dipshreeya Das & Neetu Banduni, "Transgender Rights in the UK in the Backdrop of the 2025 Supreme Court Judgment: A Critical Reflection with Reference to India", 3 Discover Global Society 122 (2025), DOI: <https://doi.org/10.1007/s44282-025-00262-w>.

⁸ Arvind Narrain & Gautam Bhan (eds.), *Because I Have a Voice: Queer Politics in India* (Yoda Press, 2005) ISBN No. 9788190227223.

internally, as expressed through appearance, behavior, language and social presentation. In modern notions of human rights, the identity separate from sex at birth is recognized.⁹

In the case of “National Legal Services Authority v. Union of India,” the Supreme Court defined self-identified gender as a fundamental part of personality and dignity that is protected under the constitution. This was a fundamental change in Indian law relating to gender recognition.¹⁰

Similar ideas of autonomy, dignity and non-discrimination are found in international principles on sexual orientation and gender identity.

3.3 Difference between Sex, Gender and Sexual Orientation

The concept of sex, gender and sexual orientation are distinct. Sex is related to classification, gender is a matter of identity and social awareness, and sexual orientation to emotional or sexual orientation.¹¹

If these categories are not differentiated, then it can create a legal or policy dilemma. Conceptual clarity is required for constitutional protection as identity can't be limited to biological classification.

Table 1: Distinction between Sex, Gender and Sexual Orientation

Concept	Meaning
Sex	Biological classification
Gender Identity	Internal understanding of gender
Gender Expression	External manifestation of identity
Sexual Orientation	Emotional/sexual attraction

⁹ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007).

¹⁰ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

¹¹ Martha C. Nussbaum, From Disgust to Humanity: Sexual Orientation and Constitutional Law (Oxford University Press, 2010) ISBN No. 9780195305319.

3.4 Evolution of LGBTQ+ Rights in India

The development of the rights of LGBT in India is a journey from criminalization to constitutional recognition. Collectively, these elements - the practice of social activism, legal scholarship and constitutional litigation - contributed to this transition.¹²

Judicial developments in privacy, gender recognition and sexual orientation greatly increased the rights of the LGBTQ+ communities. The legislative and administrative developments also raised new debates regarding issues of certification, documentation and institutional governance, however.

4. CONSTITUTIONAL AND JUDICIAL FRAMEWORK GOVERNING GENDER IDENTITY

4.1 Article 14 and Equality before Law

The equal protection of laws and the equality before law are ensured by Article 14. In the context of LGBTQ+ jurisprudence, this provision is a constitutional remedy against discrimination based on identity, sexuality and/or gender expression. The concept of equality pursuant to the Constitution is applicable to everyone regardless of their gender identity.¹³

A constitutional bench of the Supreme Court in the case of *National Legal Services Authority v. Union of India* ruled that transsexuals and transgenders have a right to equality in the Constitution. The choice of words avoids binary gender approaches that marginalized transgender people, and this stance was reflected in the case's decision.¹⁴

Substantive equality requires more than formal legal recognition. Means of inclusion for equal citizenship are meaningful participation and integration in education, employment, healthcare and public institutions. Institutional inclusion is vital to the meaningfulness of constitutional equality.

¹² Alok Gupta, "Section 377 and the Dignity of Indian Homosexuals", 41(46) *Economic and Political Weekly* 4815 (2006), available at: <https://www.epw.in/journal/2006/46/special-articles/section-377-and-dignity-indian-homosexuals.html>.

¹³ The Constitution of India, arts. 14, 15, 19 and 21.

¹⁴ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

4.2 Article 19 and Freedom of Expression

According to Article 19, freedom of speech and expression is protected. This guarantee is related to gender identity and gender expression as people express their gender with their behaviour, language, their looks and the way they present themselves.

Restrictions on identity expression can thus have repercussions on constitutional liberty. Too much policing of appearance, documentation, or selected identity poses a threat to the principle of freedom.

Transgendered populations are especially reliant on the protection afforded by the Constitution to the right to expression, as "sincere affirmation of identity" is frequently linked to having the right to express one's chosen gender in public without fear of being excluded or punished.

4.3 Article 21: Privacy, Dignity and Personal Autonomy

Article 21 has become a powerful constitutional argument to support the rights and recognition of the LGBTQ+ community in India. Now privacy, dignity, autonomy and identity are considered to be part of the right to personal liberty through judicial interpretation.¹⁵

In Justice K.S. Puttaswamy v. Union of India, the Supreme Court had ruled that privacy also is a constitutional right as it protects the right to bodily integrity, the right to decisions and personal identity. The holding is quite an advance for constitutional protection of gender identity and sexual orientation.

The legal domain of privacy has consequences for gender governance. Workflow around certification, medical disclosure needs, etymologies, identity documentation often include information on personal knowledge and consent. Therefore, the government's intrusion into privacy may exceed the constitutional privacy protections.

4.4 National Legal Services Authority v. Union of India

NALSA v. Union of India is the cornerstone of the transgender rights case which has shaped Indian law. The Court acknowledged transgender persons as constitutionally protected persons

¹⁵ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

who have the right to dignity, equality and legal recognition.¹⁶

One of the main tenets of the judgment was the recognition of "an individual's right to self-identify in the sense of his or her gender expression. The Court did not accept the narrow biological perspective, and instead viewed gender identity as an integral aspect of one's personality and constitutional rights.

This determination changed the emphasis on the constitutional debate on gender by shifting its focus from administration categorization to self-determination and autonomy.

4.5 Navtej Singh Johar v. Union of India

Decriminalization of consensual same-sex relations was an important turning point in the Indian constitutional jurisprudence in *Navtej Singh Johar v. Union of India*. The Supreme Court claimed the values of dignity, constitutional morality, privacy and equal citizenship.¹⁷

The Court denied any constitutionally protected notions of prejudice and majoritarian morality. Sexual orientation was elevated to a fundamental part of identity and freedom and had to be protected by the constitution.

The judgment stated more than decriminalization, it confirmed that LGBTQ+ people should be included, equal, and democratic citizens.

4.6 Supriyo @ Supriya Chakraborty v. Union of India and Contemporary Developments

Supriyo @ Supriya Chakraborty v. Union of India, raises questions around marriage equality and recognition of same sex relationships. The Court provided no judicial recognition for the rights of people who love each other but it did confirm the constitutional protection of their dignity and identity.¹⁸

This ruling comes amid ongoing debate and division over constitutional recognition, and institutional restraint. There is recognition of the legal status but a lack of full inclusion in family law.

¹⁶ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

¹⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

¹⁸ *Supriyo @ Supriya Chakraborty v. Union of India*, 2023 SCC OnLine SC 1348.

The 2026 amendment issue added to the worry about how people identify themselves and about how identity is recognized by the state and in certification.¹⁹

5. STATUTORY FRAMEWORK AND THE 2026 AMENDMENT

5.1 Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019 is the main legislation framed for transgender rights. This legislation prohibits discrimination in education, employment, health care, housing, and in relation to access to public services.²⁰

The Act was implemented by adding guarantees against discrimination and welfare obligations. Other issues such as identity certification and administrative supervision were criticized by scholars and activists.

The statute reflects the ongoing tension between two approaches on the nature of "recognition" and toward constitutional governance.

5.2 Transgender Persons (Protection of Rights) Rules, 2020

The 2020 Rules set out procedures regarding changes in identity and legal recognition. These Rules put into effect the statutory requirements established by the 2019 legislation.²¹

Supporters viewed the Rules as to further administrative clarity and consistency. Critics think the system of approvals and does not adequately instill a sense of constitutional identity.

It is thus hardly surprising that the Rules play a central role in debates relating to self-identification and governmental regulation.

5.3 Gender Identity Regulation under the 2026 Amendment

The debate over governmental authority in the area of gender recognition became more heated during the contemporary amendment debate in 2026. Proposed modifications, and policy

¹⁹ "The Transgender Persons (Protection of Rights) Amendment Bill, 2026", PRS Legislative Research.

²⁰ The Transgender Persons (Protection of Rights) Act, 2019, Act No. 40 of 2019.

²¹ The Transgender Persons (Protection of Rights) Rules, 2020.

debates, resulted in gatekeeping and certification and administrative oversight issues.²²

Supporters of stronger regulation argue that structuring verification systems in welfare administration, documentation systems and institutional governance is needed. From this angle, there can be administrative uncertainty when there is no restriction on the right of recognition.

It is suggested that wider regulation breaches the principle of autonomy which is accepted by constitutional law. “Non-governmentally recognized identity,” from this perspective, should be based mainly on one’s own recognition of their identity, rather than government based recognition.²³

Table 2: Development of Gender Identity Governance in India

Period	Legal Position	Dominant Feature
Pre-Judicial Recognition	Limited legal visibility	Social exclusion
Post-NALSA	Constitutional recognition	Self-identification
2019 Framework	Statutory regulation	Protection + certification
2026 Debate	Governance controversy	State oversight concerns

5.4 Administrative Certification and Legal Recognition

Administrative certification is one of the thorniest questions regarding transgender law. Documents of identity affect education, employment, access to healthcare, to welfare services and to public life.

²² “The Transgender Persons (Protection of Rights) Amendment Bill, 2026”, PRS Legislative Research.

²³ Sarthak Gupta, “State Bodies: The New Trans Rights Law and the State as Gatekeeper of Gender Identity”, *Verfassungsblog* (2026), DOI: <https://doi.org/10.59704/33fff816952aa87f>.

Supporters argued that consuming documentation helps to ensure administrative uniformity and institutional discipline. Critics argue that the need for governmental validation is in violation of dignity, privacy and decisional autonomy.

What becomes an issue with the constitution is whether gender identity is predominantly to be understood as personal announcement or bureaucratic approval.

6. LGBTQ+ RIGHTS VERSUS STATE REGULATION: CRITICAL ISSUES

6.1 Self-Identification versus State Certification

The clash between self-determination and state registration is a central issue in understanding the law of gender identity. The focus and underpinning of recognition are as part of constitutional development are so strong as to support recognition based on dignity, autonomy and personal choice. “Self-identified gender recognition” is important to the conversation of the Indian Constitution.²⁴

However, regulatory requirements often rely on documentation requirements, administrative examination and approval. Government systems of this kind put the government institutions in a position where they decide who is who.

The central debate is which one has the final say on gender recognition – the individual or the State? This is an issue that has taken more prominence within the debates of the amendments going on now.

6.2 Privacy, Surveillance are Documentation Requirements

Gender governance is acquiring a new and expanding dimension of privacy and surveillance issues. In the implementation of certification procedures and documentation procedures, personal data pertaining to identity, medical or social history are commonly required to be disclosed.

Action taken by the government, regarding personal identity, needs to meet the test of legality, necessity and proportionality for the constitutional right to privacy. Too much of such bureaucratic interference in the development of personal identity *de facto* runs counter to

²⁴ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

constitutional guarantees with respect to dignity and autonomy.²⁵

Digital governance systems further exacerbate these worries due to the risks associated with electronic documentation and identity databases with regards to confidentiality, surveillance, and misuse of personal data.

6.3 Healthcare Rights and Gender-Affirming Care

One key substantive equality for the LGBTQ+ community is having access to healthcare. Protection of dignity and body autonomy is crucial for gender affirming care, psychological support, services that are inclusive to people's gender identity and non-discriminatory treatment.²⁶

Though many transgender individuals still face challenges at health care providers and facilities because they lack adequate awareness and social stigma/administrative hurdles. Medical inclusion is also hampered as there is not enough access to trained professionals.

Current scholarship has also helped to focus on issues of medical gate-keeping and institutional control of access to treatment. These debates have constitutional implications on issues of informed consent and the integrity of the body.

6.4 Employment, Education & Anti-Discrimination Challenges

Although there has been progress towards equal treatment within the Constitution, the LGBTQ+ community still suffers from unequal treatment in employment and education. Discrimination impacts on recruitment, promotion, the admission of educational programs, participation in the workplace and institutionalization.

Discrimination is not tolerated within the legal system but there is some variance in on-the-ground practice. Guarantees against discrimination are limited in their effectiveness due to weak accountability mechanisms and limited institutional accountability.²⁷

Improved compliance, sensitization programmes and institutional protection must be put in

²⁵ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

²⁶ Sofia Weiss Goitiandia et al., "Beyond the Bench: LGBTQ+ Health Equity after India's 'No Same-Sex Marriage' Verdict", 30 *The Lancet Regional Health – Southeast Asia* 100494 (2024), DOI: <https://doi.org/10.1016/j.lansea.2024.100494>.

²⁷ The Transgender Persons (Protection of Rights) Act, 2019, Act No. 40 of 2019.

place to achieve meaningful inclusion.

6.5 Family rights, Marriage and Adoption Concerns

Issues of the rights of family are still one of the most controversial in the field of LGBTQ+ legal discourse. Topics related to marriage, guardianship and inheritance remain subject to the ongoing debate of the constitution and politics.

Supriyo @ Supriya Chakraborty continued to show signs of judiciary reluctance on the issue of recognizing same sex family structures. Family law inclusion was not realized in Dignity and identity was recognized.²⁸

Lack of comprehensive recognition leads to practical issues around inheritance, healthcare, guardianship/shaping and social legitimacy. So it is not enough to recognize identities to ensure substantive equality.

Table 3: Major Regulatory Challenges Affecting LGBTQ+ Rights

Area	Principal Issue	Constitutional Concern
Healthcare	Limited access	Dignity & autonomy
Documentation	Certification barriers	Privacy & identity
Employment	Workplace discrimination	Equality
Education	Institutional exclusion	Equal opportunity
Family Rights	Limited recognition	Liberty & dignity

7. COMPARATIVE PERSPECTIVE

7.1 Gender Identity Laws in Argentina and Malta

Self-identification based gender governance is highlighted in several case studies including those in Argentina and Malta. These jurisdictions allows legal transgender recognition takes place with a minimal amount of medical and bureaucratic requirements, mostly by merely

²⁸ Supriyo @ Supriya Chakraborty v. Union of India, 2023 SCC OnLine SC 1348.

providing a personal declaration.

These focus on self-determination, independence and respect. They make strides to show that an administrative governance can operate peacefully without being intrusive in relation to who people are or what they mean to be.²⁹

Comparative experience can therefore offer valuable insights, in relation to governments trying to reconcile rights and institutional governance.

7.2 United Kingdom and United States Regulatory Models

There are more contentious approaches in the United Kingdom and United States. Modern discussions hinges on matters of law, medical surveillance, entrance to sport as well as conditions for documenting.

In light of recent comparative research into law-enforcement practices in the United Kingdom provides useful lessons regarding the relationship between identity autonomy and institutional oversight.³⁰

These jurisdictions help show that it will be difficult for the Court to reconcile anti-discrimination provisions with the need to govern.

7.3 Comparative Lessons for India

Evidence from comparison indicates that good governance doesn't always involve too much bureaucracy. Rights-based approaches based on dignity, simplicity of process and self-determination are often more effective at giving good institutional protection.

India can thus benefit from adopting governance mechanisms which focus on granting autonomy, safeguarding privacy and ensuring strong anti-discrimination measures.

A comparative analysis of lessons suggests that improving administrative efficiency and

²⁹ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007).

³⁰ Dipshreeya Das & Neetu Banduni, "Transgender Rights in the UK in the Backdrop of the 2025 Supreme Court Judgment: A Critical Reflection with Reference to India", 3 Discover Global Society 122 (2025), DOI: <https://doi.org/10.1007/s44282-025-00262-w>.

progressive constitutional inclusion do not have to cancel each other out.

8. CRITICAL ANALYSIS AND CONTEMPORARY CHALLENGES

8.1 National Constitutional Concerns under the 2026 Amendment

The current debate for amendment in 2026 is very controversial from a constitutional standpoint in terms of equality, privacy, dignity and autonomy. An important one has to do with the growing government control over identity recognition, using a procedure or a certificate.³¹

More stringent state regulation has been found to get in the way of the autonomy approach to the concept of gender identity, as understood by the constitutional law. Over-regulation of the institutional level is dangerous as it may turn constitutional identity into a manageable type of identity.

A further issue of proportionality comes into play. Any limitations upon identity and autonomy needs to be constitutionally legitimized in a democratic legal order.

8.2 Balancing Individual Rights and State Regulation

The questions of the relationship between personal liberty and governmental regulation is always a main and a controversial issue in constitutional governance. Governments have a good interest in welfare administration, legal record, institutional controls.

But the educative of governing with dignity, equality and privacy must be matched with the governing for the sake of the constitution. The obligation of regulation is to make it easier to both access and be protected, not to put up red tape in its way.³²

The challenge to the constitution is to strike the right balance between functionality and meaningful self-determination of the administration.

8.3 Bureaucratic and Institutional Challenges

Realizing transgender rights is often hampered by implementation challenges. Presence of

³¹ “The Transgender Persons (Protection of Rights) Amendment Bill, 2026”, PRS Legislative Research.

³² The Constitution of India, arts. 14, 15, 19 and 21.

bureaucratic delay, complicated procedures and lack of training and enforcement persists to impact on good institutional functioning.

Some administrative authorities have limited awareness on inclusion of LGBTQ+ people. Discrimination thus may persist regardless of the constitution and laws that are in place.³³

Institutional reform will thus demand a legislative reform along with the creation of sensitization, capacity building measures and more effective institutions' accountability mechanisms.

8.4 Need for Rights Based and Inclusive Governance

Substantive inclusion is increasingly recognized as a requirement that formal equality must be supplemented by in order to guarantee inclusive and congruent constitutional governance. Accessible institutions and meaningful safeguards and practical protection of identity are necessary for a rights-based governance.

Self-determination, protection of privacy, measures of anti-discrimination and inclusive welfare delivery in a governance model which is based on such principles is more aligned with constitutional morality and international human rights.³⁴

It remains to be seen, whether in India, the discussion on the question of governance of gender identity will give greater weightage to constitutional inclusion, or greater administrative control.

9. FINDINGS AND SUGGESTIONS

9.1 Strengthening Self-Identification Rights

As demonstrated in the present analysis, in the realm of constitutional protection of Gender identity, self-identification has been the focal point. Judicial decisions on dignity, autonomy and privacy overwhelmingly further the recognition based upon personal choice rather than

³³ “Legal Framework for Protecting Third Gender Rights in India: Issues and Challenges”, Chanakya National Law University Journal (2025).

³⁴ Yogyakarta Principles +10: Additional Principles and State Obligations on Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (2017).

institutional allocation.³⁵

Logical future law changes should thus maintain and reinforce the provisions for autonomous identification. There should be as minimal as possible unnecessary burden of documentation and a non-obtrusive procedural barrier in recognition systems.

The subject of identity determination should be fundamental rights of individual constitutional liberty with maintaining reasonable administrative safeguards.

9.2 Reforming Administrative and Certification Mechanisms

Existing administrative processes need to be improved to minimize the administrative harms affecting transgender communities. In cases where certification systems are in place, they should continue to be transparent, accessible and rights-based.

There are effective grievance procedures and confidentiality protection measures that can enhance the accessibility of institutions. The administration of governance must be a facilitating arm of operation and not a system of control and exclusion.³⁶

Reforms of the procedures must also not adversely affect privacy and dignity or use of public services on an equal basis in a regulatory way.

9.3 Inclusive Welfare and Anti-Discrimination Framework

More concrete initiatives are needed in welfare and against discrimination in view of substantive equality. More focus should be given to employment inclusion, access to education, equality in health care and in housing.

An accountability framework informed by dedicated anti-discrimination enforcement mechanisms can be strengthened. Making a workplace more inclusive, and educating, sensitizing and reforming health and other services are central to fulfilling the guarantees in the Constitution.³⁷

³⁵ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

³⁶ The Transgender Persons (Protection of Rights) Rules, 2020.

³⁷ The Transgender Persons (Protection of Rights) Act, 2019, Act No. 40 of 2019.

Formal recognition, if not accompanied by meaningful structural change, can be just symbolic.

9.4 Legislative and Policy Recommendations

The findings of the present study lead to the following policy recommendations. First, legislation should be to take statutory systems in line with constitutional concepts of dignity, equality, and autonomy.

Secondly, privacy and accessibility, and the simplicity of having the process, should be of primary concern in the procedures for identity recognition. Third, institutional awareness of the issue of LGBTQ+ inclusion should be increased. Fourth, best practices of the other countries may provide guidance to policy reforms in the future.³⁸

Last, and most notably, policy should include citizen involvement in governance processes to ensure the policy stays responsive, inclusive and focused on the rights of citizens.

Table 4: Major Findings and Recommended Reforms

Issue	Problem Identified	Suggested Reform
Certification	Bureaucratic barriers	Simplified self-identification
Privacy	Documentation concerns	Strong confidentiality safeguards
Healthcare	Limited inclusive access	Gender-affirming services
Employment	Structural discrimination	Stronger enforcement systems
Governance	Regulatory imbalance	Rights-based framework

³⁸ Dipsahreya Das & Neetu Banduni, “Transgender Rights in the UK in the Backdrop of the 2025 Supreme Court Judgment: A Critical Reflection with Reference to India”, 3 Discover Global Society 122 (2025), DOI: <https://doi.org/10.1007/s44282-025-00262-w>.

10. CONCLUSION

The struggle for rights of the LGBTQ+ community in India is one of the significant constitutional changes in the modern history of the law in India. Collectively by the judicial, legislative and public process, it expanded the understanding of the constitution and the dignity, privacy, autonomy and equality of citizens.³⁹

Indian constitutional jurisprudence made a tremendous contribution to gender identity rights in articulating rights to autonomy, privacy, substantive equality. Recognition and rights to sexual orientation and constitutional liberty laid an important ground for rights based governance.

Yet, debates about identity regulation in the current moment show ongoing conflict between recognition of identity and a control by government. Administrative certification, and documentation necessary and institutional supervision raise important issues of legitimate uses of the state's involvement in personal identity.

The contemporary discourse of '2026' amendment exemplifies this interrelationship between self and regulator. Permission of governments to act in a way regarding administration and institutional form, for which there is also a legitimate interest, does not exhaust the scope of constitutional democracy, within which this same regulation is possible as a constitutional protection in compliance with dignity, privacy and autonomy.⁴⁰

Rights-oriented governance, easy accessibility of institutional systems, and adequate legal protection for gender identity should thus be a key focus in the future process of legal development in India. The ground of sustainable inclusion rests on a delicate balance between desirable administrative goals and meaningful respect for human dignity and a constitutionally guaranteed freedom.

³⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

⁴⁰ "The Transgender Persons (Protection of Rights) Amendment Bill, 2026", PRS Legislative Research.

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