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From Dignity to Dispossession: The Constitutional Backlash Against Queer Self-Determination in India

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ABSTRACT

The journey towards the constitutional recognition of LGBTQIA+ rights in India has been shaped by judicial interpretations focused on dignity, equality, privacy and personal autonomy, but recent constitutional developments have left some doubt about the realisation of queer self-determination. The purpose of this study is to analyse critically the constitutional reaction to queer self-determination in India and its repercussions for marriage equality, family recognition and substantive equality. The study focuses in particular on the constitutional basis of queer self-determination and on the implications of the recent rulings for the protection of LGBTQIA+ rights. A qualitative doctrinal research method is used, with analytical and interpretative analysis of constitutional provisions, judicial precedents, statutes and current legal literature, principally published between 2015 and 2026. The results show that, while the Indian Constitution has made a strong case for dignity and equal citizenship for queer citizens, judicial restraint and legislative apathy continue to hamper the attainment of substantive equality and family rights. The study finds a need for holistic legislative restructuring and for radical fundamental constitutional change in order to realise meaningful queer self-determination and constitutional justice in India.

Keywords: *Queer Self-Determination, Constitutional Backlash, LGBTQIA+ Rights, Constitutional Morality, Substantive Equality*

I. INTRODUCTION

In India, the rights of lesbian, gay, bisexual, transgender, queer, intersex, asexual and other gender and sexual minorities (LGBTQIA+) have come a long way in the last decade. The debate on non-heteronormative identities has evolved from a focus on criminality and social deviance to the recognition of those identities as constitutionally protected expressions of human dignity, equality, liberty and personal autonomy. This change has been the result of several progressive judicial decisions which have treated the Indian Constitution as a living document capable of

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adapting to changing conceptions of identity and human rights. Agarwal (2023)¹ notes that, once the Supreme Court had decriminalised homosexuality in 2018 and recognised the equal constitutional citizenship of LGBT+ Indians, claims for marriage equality and for the recognition of diverse families moved to the centre of the debate. Similarly, Bhatia (2021)² states that transformative constitutionalism in India aims to break the cycle of exclusion in India's history by reading the meaning of the constitutional guarantees in the light of contemporary democratic values.

Judicial recognition of the rights to privacy, dignity, choice and decision-making as part of the right to life and personal liberty had a significant impact on the constitutional basis of queer rights. Constitutional law increasingly recognised the importance of individual identity, intimate relationships and personal decisions as part of the "protected sphere" of fundamental rights. Gupta (2025)³ notes that, although the Constitution refers to dignity only three times, the concept has been developed substantively through case law, and argues that courts should state the conception of dignity on which they rely and apply it consistently across similar cases. In a similar vein, it may be argued that constitutional morality should ensure that the rights of minorities are safeguarded even where those minorities are not socially approved or popular.⁴

Decriminalisation of consensual same-sex relations marked a major constitutional development in India. In *Navtej Singh Johar v. Union of India*,⁵ the Supreme Court held that Section 377 of the Indian Penal Code⁶ could not constitutionally criminalise consensual sexual relations between adults of the same sex, thereby reinforcing the constitutional protection of dignity, privacy, equality and sexual autonomy. The judgment built upon the Court's recognition in *National Legal Services Authority v. Union of India*⁷ of gender identity as an integral component of personality and self-determination, and upon the recognition of privacy and decisional autonomy in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.⁸ In recent years, however, a growing body of legal scholarship has argued that decriminalisation is only the beginning of

¹ Akshat Agarwal, *LGBT+ Rights Claims for Marriage Equality and the Possibilities of Transforming Indian Family Law*, 21(4) INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW 1116–1139 (2023), <https://doi.org/10.1093/icon/moad096>.

² GAUTAM BHATIA, *THE TRANSFORMATIVE CONSTITUTION: A RADICAL BIOGRAPHY IN NINE ACTS* (HarperCollins India 2021).

³ Aishani Gupta, *Finding Method to Madness: The Indian Supreme Court's Dignity Jurisprudence*, 36(1) NATIONAL LAW SCHOOL OF INDIA REVIEW, Article 4 (2025), <https://doi.org/10.55496/OWQB7709>.

⁴ See generally *BECAUSE I HAVE A VOICE: QUEER POLITICS IN INDIA* (Arvind Narrain & Gautam Bhan eds., Yoda Press 2005).

⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

⁶ The Indian Penal Code, No. 45 of 1860, INDIA CODE (1860), § 377.

⁷ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (India).

⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

substantive constitutional equality. Kapur (2018)⁹ cautions that, while the recognition of rights can secure greater legal protection for sexual minorities, it also produces greater self-regulation among those it protects, so that the pursuit of recognition through rights does not by itself deliver meaningful freedom. Similarly, Thoreson (2024)¹⁰ points out that, while the judiciary has recognised the equal dignity of LGBTQ+ people, the failure to secure constitutional recognition of marriage equality illustrates the limits of judicial recognition without enforceable rights.

Recent constitutional developments have consequently sparked scholarly debate about the concept of “constitutional backlash”, whereby constitutional gains are restricted, weakened or even institutionally eroded although the earlier decisions have not been formally overruled. Constitutional backlash, in this sense, occurs when progressive constitutional interpretations run into barriers of judicial restraint, legislative inaction, administrative obstacles or political opposition. According to Abeyratne (2025),¹¹ the Supreme Court of India has continued to affirm the rights of LGBTQ+ persons in its reasoning while becoming more cautious in its orders, so that in *Supriyo* a wide gap opened between the justices’ rhetoric and the relief they granted on marriage and family recognition. Constitutional recognition does not by itself guarantee the practical realisation of rights where institutional arrangements, legislative choices or social structures continue to limit their effective enjoyment. The subsequent jurisprudence on queer rights therefore requires attention not only to formal recognition but also to the institutional mechanisms through which constitutional rights are implemented.

Queer self-determination is at the heart of this constitutional contest, and it involves more than simply recognising an individual’s sexual orientation or gender identity; it concerns the right, grounded in privacy, to build personal relationships, make familial decisions, choose how to live and define one’s identity without unwarranted intrusion by the State. Self-determination is entrenched in the constitutional values of autonomy, dignity, liberty and privacy. While Agarwal (2023)¹² argues that legal recognition of marriage equality may generate arguments for extending legal recognition to diverse families, Bhatia (2021)¹³ adds that the transformative character of constitutional democracy becomes nominal where personal autonomy receives no

⁹ RATNA KAPUR, GENDER, ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL (Edward Elgar Publishing 2018).

¹⁰ Ryan Thoreson, *Dignity Deferred: Supriyo v. Union of India and LGBTQ Rights*, 15 JOURNAL OF INDIAN LAW AND SOCIETY 1 (2024), https://scholarship.law.uc.edu/fac_pubs/488/.

¹¹ REHAN ABEYRATNE, COURTS AND LGBTQ+ RIGHTS IN AN AGE OF JUDICIAL RETRENCHMENT 99–170 (Oxford University Press 2025), <https://doi.org/10.1093/9780191995040.001.0001>.

¹² Agarwal, *supra* note 1.

¹³ Bhatia, *supra* note 2.

legal recognition. Since queer partnerships are not legally recognised, the denial of legal recognition undermines not only symbolic equality but also the ability to enjoy the many rights and benefits linked to “family life”, property, inheritance, medical care, taxation and social security.

The implications of a lack of queer self-determination go beyond constitutional theory and have a profound impact on the lives of LGBTQ+ people. Lack of legal recognition perpetuates structural discrimination, economic insecurity, psychological distress and institutional exclusion across several aspects of life. Weiss Goitiandia et al. (2024)¹⁴ state that the continuing legal marginalisation that followed the Supreme Court’s refusal to recognise same-sex marriage under the existing constitutional and statutory framework has implications for LGBTQ+ individuals’ access to health care, their social inclusion and other aspects of equality.

A second aspect of the constitutional backlash is the relationship between constitutional morality and democratic majoritarianism. Constitutional morality demands that constitutions remain devoted to equality and liberty without regard to popular opinion. In recent years, however, constitutional adjudication has shown greater deference to legislative policymaking in the areas of marriage, child adoption and the regulation of the family. Sarker and Biswas (2024)¹⁵ identify a related tension in family law: the Supreme Court has treated individual autonomy under Article 21 as essential to personal liberty, yet it has upheld the validity of restitution of conjugal rights, a remedy that operates against a spouse’s will. Constitutional adjudication performs an important rights-protective function where individual autonomy and equality come into conflict with majoritarian preferences. In the Indian context, this function is reflected in the Supreme Court’s jurisprudence protecting privacy, dignity, gender identity and sexual orientation under Part III of the Constitution.

The Indian constitutional experience also illuminates the global debate on the changing dynamics of constitutional rights, democracy and claims of identity. In multiple constitutional democracies, the scope of legal recognition of LGBTQ+ rights has steadily grown from decriminalisation to marriage, anti-discrimination, parenting and gender diversity. Comparative constitutional literature suggests, however, that constitutional change is often met with political resistance, institutional inertia and divergent views of constitutional values.¹⁶ The Indian

¹⁴ 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), <https://doi.org/10.1016/j.lansear.2024.100494>.

¹⁵ Shuvro Prosun Sarker & Mitu Biswas, *Restitution of Conjugal Rights v. Individual Autonomy: Looking Through the Constitutional Lens in India*, 52(1) INTERNATIONAL JOURNAL OF LEGAL INFORMATION 23–38 (2024), <https://doi.org/10.1017/jli.2024.25>.

¹⁶ See generally Abeyratne, *supra* note 11.

experience similarly demonstrates that formal constitutional recognition does not necessarily resolve questions concerning the legal recognition of relationships, family life and associated rights. The Supreme Court's decision in *Supriyo @ Supriya Chakraborty v. Union of India*¹⁷ illustrates this distinction: the Court affirmed that queer persons are entitled to choose their partners and to cohabit free from violence and coercion, while declining to recognise a fundamental right to marry for same-sex couples under the existing constitutional and statutory framework.

II. LITERATURE REVIEW

Mishra (2025)¹⁸ explored the concept of dignity in the Indian legal system with a focus on the disparity between the law and lived reality. The goal was to assess the effectiveness of dignity as a constitutional principle, while the objective was to analyse its use in judicial practice, specifically in the context of marginalised communities. The study relied on qualitative doctrinal legal research using primary sources such as case law and constitutional provisions, together with comparative legal research, and it argued that the protection of dignity was weak and undercut by exceptional security laws, systemic inequalities and institutional failures. The study concluded that dignity must be upheld as a justiciable right, with more robust legal and institutional accountability and constitutional morality to support inclusive and equitable justice.

Regal (2025)¹⁹ explored the universalist–relativist question in constitutional and human rights law from an anthropological approach. It was based on the historical background of changing constitutional interpretations of human rights, cultural diversity and indigenous rights. The goal was to consider a pluriversal approach to human rights, and the objective was to evaluate the use of anthropological knowledge in judicial decision-making across various jurisdictions. Using a qualitative doctrinal and comparative case study methodology, the research analysed five landmark human rights cases involving anthropological evidence. The research revealed that, although there has been some progress in recognising dynamic cultural identities, courts often misapplied anthropological knowledge, supporting essentialist assumptions. It was found that pluralistic constitutional systems and intercultural communication play a critical role in enhancing inclusive, context-sensitive and equitable human rights protection.

¹⁷ *Supriyo @ Supriya Chakraborty v. Union of India*, 2023 INSC 920 (India).

¹⁸ Tushar Mishra, *In Defence of Dignity: Constitutional Promises, Everyday Betrayals* (2025) (SSRN working paper), <https://doi.org/10.2139/ssrn.5566819>.

¹⁹ Tanmay Regal, *Towards a Grand Plurifying Theory of Human Rights Law: Overcoming the Universalist–Relativist Impasse through Critical Legal Anthropology* (2025) (thesis, McGill University), <https://doi.org/10.82308/16293>.

Spitzer (2024)²⁰ explored the increasing conflicts between Indigenous self-determination and settler rights claims in Anglo-settler states. The research was set against the backdrop of the rights revolution in the United States, Canada, Australia and New Zealand, in which Indigenous peoples were demanding constitutional recognition and self-determination. The goal was to examine the development of settler rights challenges, and the objective was to assess the liberal principles invoked in opposition to Indigenous rights. The study combined a scoping study of settler-rights challenges with an analysis grounded in liberal political theory, and concluded that settlers have challenged Indigenous sovereignty, differentiated citizenship and territorial authority through appeals to universalism, individualism and egalitarianism. The research identified a need to understand these normative contradictions in order to create a more balanced constitutional approach that will support Indigenous rights and equitable public policies.

van Schilfgaarde (2024)²¹ explored the connection between reproductive health and Indigenous self-determination in Indigenous communities. The study was informed by settler colonialism, historical discrimination and federal treaty and statutory responsibilities for Indigenous health care. The purpose of the study was to assess the extent to which self-determination can positively affect Native reproductive health; its goal was to examine the challenges of current health care policies and laws. The study adopted a qualitative doctrinal and socio-legal research methodology with historical and policy analysis, and found that chronic under-funding, paternalistic governance and lack of recognition of Indigenous reproductive rights had contributed to inequitable health outcomes for Indigenous peoples. Strengthening Indigenous reproductive self-determination through rights-based legal and policy reform was a key element in making health equity and meaningful self-governance a reality.

Gupta (2022)²² explored the changing legal and policy landscape of LGBTQI rights in India after major constitutional and legislative developments. The purpose was to assess the evolving policy of the Indian State on the rights of LGBTQI people, and the goal was to highlight the ongoing problems in securing effective legal protection. The study was conducted through a qualitative doctrinal and analytical research approach, and argued that, although there had been some progressive reforms, heteronormative assumptions remained pervasive, affecting meaningful inclusion and protection. The study concluded that the specific needs of the

²⁰ Aaron John Spitzer, *The Settler-Rights Backlash: Understanding Liberal Challenges to Indigenous Self-Determination*, 12(5) TERRITORY, POLITICS, GOVERNANCE 573–590 (2024), <https://doi.org/10.1080/21622671.2022.2060301>.

²¹ Lauren van Schilfgaarde, *Native Reproductive Self-Determination*, 71 UCLA LAW REVIEW 1844 (2024), <https://www.uclalawreview.org/native-reproductive-self-determination/>.

²² Nikhil Kumar Gupta, “A Riddled Restitution” – *The Indian Journey from the Recognition of the Third Gender Towards the Queer*, 5(1) SEXUALITY, GENDER & POLICY 87–99 (2022), <https://doi.org/10.1002/sgp2.12042>.

LGBTQI community could be met only with more inclusive and context-sensitive legal frameworks, in turn contributing to substantive equality and justice.

Sinha (2022)²³ explored the regulation of queer kinship networks in the light of recent changes in Indian law and the wider legal landscape. The goal was to consider how far these laws advanced queer relationships, and the aim was to consider the consequences for queer communities. The study employed a qualitative doctrinal legal approach and argued that, although constitutional developments had taken place, legislative measures remained in place that continued to reinforce heteropatriarchal norms and to subject queer persons to State surveillance, so that existing queer kinship networks were insufficiently safeguarded. The study concluded that symbolic legal recognition was not enough, and called for substantive legal and social protections to recognise and strengthen queer kinship.

Katri (2021)²⁴ explored the law's development of gender self-determination and its consequences for autonomy and gender identity in constitutional and international law. The study was set against the backdrop of global sex reclassification policies and the acceptance of self-attested gender identity. The objective was to analyse the capacity of current legal frameworks to tackle structural discrimination, the goal being to assess the effectiveness of gender self-determination in safeguarding transgender rights. The study, which employed a qualitative doctrinal, comparative and socio-legal research methodology, revealed that, while individuals increasingly self-attest their gender identity, the law maintained binary sex classification and its attendant exclusions, especially in family law. The study found that a renegotiation of the legal concepts of gender identity and sex classification was needed to achieve substantive equality and inclusive recognition of transgender individuals.

III. RESEARCH GAP

While there is a significant body of literature on constitutional dignity, human rights, Indigenous and gender self-determination, and the changing nature of legal recognition of queer rights in India, there has been little work on the constitutional backlash against queer self-determination in India since the recent judicial rulings on marriage equality and family recognition. Mishra (2025) highlighted the gap between constitutional dignity and its actual application, while Regal (2025) and Spitzer (2024) explored theoretical and comparative constitutional questions in general and not the queer constitutional framework in India specifically. Likewise, van

²³ Katyayani Sinha, *The Regulation, Reclamation, and Resistance of Queer Kinship in Contemporary India*, 30(3) FEMINIST LEGAL STUDIES 281–307 (2022), <https://doi.org/10.1007/s10691-022-09489-3>.

²⁴ Ido Katri, *Gender Self-Determination Troubles* (2021) (S.J.D. dissertation, University of Toronto), <http://hdl.handle.net/1807/106469>.

Schilfgaarde (2024) approached self-determination through Indigenous reproductive rights, which is less directly relevant to queer constitutional rights in India. While Gupta (2022) and Sinha (2022) pointed to the continued existence of heteronormative legal frameworks and to the insufficiency of merely symbolic recognition of queer relationships, these analyses preceded the recent constitutional discussions generated by judicial hesitation over marriage equality and family rights. Moreover, Katri (2021) directed most of the analysis to gender self-determination and transgender identity, and did not go so far as to consider fully the larger constitutional aspects of queer autonomy, substantive equality and judicial constitutional interpretation. Against this background, the need becomes apparent for a contemporary constitutional analysis of the ways in which recent judgments have transformed the constitutional promise of dignity, equality and self-determination for queer persons, examining the conflict between constitutional morality and judicial restraint in India.

IV. RESEARCH METHODOLOGY

This study adopts a qualitative doctrinal legal research approach to analyse critically the constitutional dimensions of queer self-determination in India. The research primarily examines constitutional provisions, Supreme Court judgments, relevant High Court decisions, statutes and other official legal materials, supplemented by peer-reviewed journal articles, books, law reviews and scholarly publications. Particular attention is given to the constitutional jurisprudence concerning gender identity, privacy, dignity, sexual orientation, autonomy and marriage equality, including *National Legal Services Authority v. Union of India*, *Justice K.S. Puttaswamy (Retd.) v. Union of India*, *Navtej Singh Johar v. Union of India* and *Supriyo @ Supriya Chakraborty v. Union of India*. Secondary literature, principally published between 2015 and 2026, is used to contextualise and critically interpret these primary authorities. The analysis employs doctrinal case-law analysis and critical constitutional interpretation to examine the development of the constitutional principles of dignity, equality, privacy, autonomy and constitutional morality, and in particular the more recent constitutional developments concerning marriage equality and family recognition. Comparative constitutional materials, drawn from international constitutional jurisprudence and human rights principles, are used only where they contribute directly to the analysis of the Indian constitutional framework.

V. RESULTS AND DISCUSSION

Objective 1: To analyse the concept of queer self-determination within the framework of the Constitution of India and contemporary constitutional theory.

H1: Queer self-determination is an integral component of the constitutional principles of dignity, equality, privacy, liberty and personal autonomy embodied in the Constitution of India and supported by contemporary constitutional theory.

Queer self-determination is the constitutional right of people to enjoy an equal opportunity to determine, express and live in accordance with their own sexual orientation and gender identity without the pressures, violence or unwarranted interference of the State or society. Under the Indian Constitution, this idea can be given its normative content by analysing its interdependence with Articles 14, 15, 19 and 21, which guarantee equality before the law, prohibit discrimination, protect freedom of expression and secure life and personal liberty.²⁵ Modern constitutional theory increasingly defines constitutional citizenship in terms of autonomy together with identity, neither being separable from the other; it calls for the recognition of various forms of personhood by the State. The constitutional foundation of queer self-determination can be understood through the interrelationship of equality, dignity, privacy, liberty and identity. In *National Legal Services Authority v. Union of India*,²⁶ the Supreme Court recognised gender identity as an essential aspect of personality and affirmed that transgender persons are entitled to the full range of constitutional rights. The Court's recognition of privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India*²⁷ further established that decisional autonomy and personal choices fall within the constitutional protection of privacy. Subsequently, *Navtej Singh Johar v. Union of India*²⁸ connected dignity, privacy, equality and sexual orientation by holding that consensual same-sex relations between adults could not constitutionally be criminalised. Taken together, these decisions provide a doctrinal foundation for understanding queer self-determination as a constitutional principle derived from the combined guarantees of Articles 14, 15, 19 and 21, rather than as an entirely separate or freestanding fundamental right.

In queer theory today, queer self-determination is not simply the recognition of sexual orientation or gender identity, but also the right to form relationships, create families, use public institutions and be included on an equal basis in social, economic and political life. This understanding reflects the general goal of “transformative constitutionalism”, which aims at the overthrow of entrenched forms of exclusion through purposive constitutional reading. These theoretical developments support the thesis that queer self-determination is neither a freestanding right nor a novel one, but rather a logical corollary of the constitutional ideas of

²⁵ INDIA CONST. arts. 14, 15, 19, 21.

²⁶ *National Legal Services Authority*, *supra* note 7.

²⁷ *Puttaswamy*, *supra* note 8.

²⁸ *Navtej Singh Johar*, *supra* note 5.

dignity, equality, privacy, liberty and personal autonomy. Queer self-determination as a constitutional principle thus marks the progress of Indian constitutionalism towards a more expansive definition of citizenship based on equal protection that is not only an absence of discrimination but a realisation of individual freedom, identity and human dignity.

Objective 2: To evaluate critically the constitutional implications of recent judicial decisions on queer rights, particularly concerning marriage equality, family recognition and substantive equality.

H2: Recent judicial decisions on queer rights have significantly influenced the constitutional recognition of marriage equality, family rights and substantive equality, while simultaneously revealing limitations in the realisation of queer self-determination under the Indian Constitution.

In recent years, constitutional adjudication in India has had a profound impact on the debate on queer rights, and this case history has led both to the expansion of constitutional protection for sexual and gender minorities and to the revealing of the limits of judicial action in guaranteeing substantive equality. The constitutional concepts of dignity, equality, privacy and autonomy have been increasingly applied to the protection of LGBTQIA+ individuals, but it is not clear how they apply to family rights and the question of marriage equality. In *Supriyo @ Supriya Chakraborty v. Union of India*,²⁹ the Supreme Court considered whether the Constitution requires legal recognition of marriage between same-sex couples. The Court did not recognise a fundamental right to marry for queer persons and declined to read same-sex marriage judicially into the existing statutory framework. At the same time, the judgment reaffirmed the constitutional protection available to queer persons against violence, coercion and interference with their choice to cohabit. Thoreson (2024)³⁰ observes that the opinions in *Supriyo* repeatedly affirmed the dignity of LGBTQ persons but found that their exclusion from civil marriage did not offend constitutional guarantees. The decision therefore suggests a tension between constitutional morality and judicial restraint, in that constitutional values were affirmed while the question of marriage equality was left to the legislature. The judgment therefore illustrates a distinction between the constitutional recognition of queer persons and the availability of specific institutional forms of legal recognition, particularly in relation to marriage and family law. Recent constitutional jurisprudence has thus expanded protection for sexual orientation, gender identity, privacy, dignity and personal choice, while leaving important questions concerning marriage and associated family-law rights to the existing statutory and legislative framework.

²⁹ *Supriyo*, *supra* note 17.

³⁰ Thoreson, *supra* note 10.

The constitutional implications of these judicial developments apply not only to marriage equality but also to broader questions about the meaning of equality for LGBTQIA+ communities. Contemporary constitutional theory holds that equal citizenship cannot be attained simply by acknowledging that queer people are worthy of dignity, if laws and structures keep them from securing family rights and social entitlements. Fredman (2016)³¹ argues that substantive equality cannot be reduced to a single formula such as dignity, and that the right should aim to redress disadvantage, to address stigma, stereotyping, prejudice and violence, to enhance voice and participation, and to accommodate difference and achieve structural change. Weiss Goitiandia et al. (2024)³² show what the absence of family recognition means in practice: same-sex couples who cannot formalise their unions risk being denied health insurance cover as co-dependents and lose protections ordinarily attached to marriage, such as tax benefits, power of attorney and rights relating to adoption and inheritance, and the authors call for same-sex partners to be recognised as surrogate decision-makers in medical care. Weiss Goitiandia et al. also point out that, because the Court treated marriage equality as a matter for the legislature, it now falls to policymakers at the national level either to extend marriage equality to same-sex couples or to consider frameworks such as domestic partnerships that would give them legal recognition, and to enact laws expressly prohibiting discrimination.³³ Taken together, *NALSA*, *Puttaswamy*, *Navtej* and *Supriyo* mark an important development in Indian constitutional jurisprudence. The first three decisions expanded the constitutional recognition of gender identity, privacy, dignity and sexual orientation, while *Supriyo* placed limits on the judicial recognition of same-sex marriage under the existing legal framework. The dismissal of the review petitions on 9 January 2025 left that position undisturbed.³⁴ The resulting constitutional landscape therefore contains both significant recognition of queer autonomy and continuing legal questions concerning marriage, family recognition and the institutional consequences of intimate relationships. These developments are central to understanding the relationship between constitutional dignity and the substantive realisation of queer self-determination in India.

³¹ Sandra Fredman, *Substantive Equality Revisited*, 14(3) INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW 712–738 (2016), <https://doi.org/10.1093/icon/mow043>.

³² Weiss Goitiandia et al., *supra* note 14.

³³ Weiss Goitiandia et al., *supra* note 14.

³⁴ *Supriyo*, *supra* note 17; *Supriyo @ Supriya Chakraborty v. Union of India*, Review Petition (C) Nos. 1864–1866 of 2023 & connected matters (India) (order dated Jan. 9, 2025).

VI. CONCLUSION

The study concludes that the constitutional path of queer rights in India is a complex one, marking a shift from the progressive recognition of dignity, equality, privacy and autonomy to a more restrained judicial approach to the realisation of substantive rights. Although it is well established that LGBTQIA+ individuals are entitled to equal constitutional protection, a number of recent decisions suggest that constitutional protection for marriage equality, family recognition and other incidents of equal citizenship is far from settled. Those gaps indicate that the concept of constitutional dignity is important but not sufficient without enforceable rights and institutional recognition. The results confirm the hypothesis that queer self-determination is a fundamental constitutional value derivable from the principles of liberty, equality and personal autonomy, but one that still faces legal and institutional obstacles to its effective realisation. The constitutional obligation of transformative equality can therefore be realised only through an integrated approach that combines progressive constitutional interpretation, thorough reform of the law, and policy measures that acknowledge diverse family forms and safeguard the rights of LGBTQIA+ individuals in line with constitutional morality and international human rights norms.

VII. IMPLICATIONS, LIMITATIONS AND FUTURE RESEARCH DIRECTIONS

This study is of value to constitutional law, public policy and human rights work in cautioning that constitutional protection for queer self-determination must be strengthened beyond the symbolic level. It highlights the need for legislative reform on marriage, civil unions, adoption and inheritance, anti-discrimination measures and other matters related to family rights that would guarantee substantive equality for the LGBTQIA+ community. The results may also assist constitutional scholars, policymakers, lawyers and human rights groups by providing a rights-based framework that brings constitutional guarantees into line with lived experience. The study is, however, constrained by its doctrinal approach, as empirical evidence from LGBTQIA+ individuals, practitioners or policymakers is not included. Future research should employ interdisciplinary and empirical methods such as qualitative interviews, socio-legal field studies, comparative constitutional studies and mixed methods in order to explore how constitutional rights are actually implemented, the socio-legal effects of judicial rulings, and the changing relationship between constitutional morality, legislative activity and queer citizenship in India.
