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Transgender persons hold placards demanding recognition of LGBTQ+ rights at a protest. File image / PTI

Opinion

Self identification and the transgender law: An Ambedkarite view

Debates on transgender rights reveal why liberty alone cannot sustain a framework of recognition and protection, writes Sumit Baudh.

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Debates around amendments to India's transgender law have once again brought the question of self-identification to the forefront. Much of the public discourse frames gender self-determination as an aspect of individual liberty — the freedom to define oneself, coupled with a demand for legal recognition of that identity.

While this claim has strong ethical appeal, it raises a deeper constitutional question: can self-identification operate as an absolute principle within the framework of law?

An instructive way to approach this question is through BR Ambedkar's formulation of liberty, equality, and fraternity as an inseparable trinity. In his final address to the Constituent Assembly in 1949, Ambedkar cautioned that these values cannot be pursued in isolation.

Liberty without equality can produce conditions of domination; equality without liberty can become coercive; and both, without fraternity, remain fragile. This insight remains directly relevant to contemporary debates on gender identity.

From self-identification to legal structure

The demand for self-identification is, at its core, a claim to liberty. It asserts that individuals should have the autonomy to determine their gender without intrusive or bureaucratic barriers, while also seeking recognition of that determination within legal frameworks.

This position draws strength from the Supreme Court's 2014 decision in *NALSA v. Union of India*, which recognised transgender persons as a distinct category and articulated self-identification as a foundational aspect of gender identity.

However, translating this principle into a stable legal framework is not straightforward. Law, by its nature, operates through categories.

It must determine eligibility for rights and protections in ways that are administratively workable and legally coherent. This is where the relationship between liberty and equality becomes critical.

While liberty supports self-identification, equality requires that legal categories be defined with sufficient clarity to ensure consistent and non-arbitrary

application. Without such structures, the law becomes indeterminate, making adjudication and enforcement difficult, if not impossible.

A purely self-referential model of identification also raises difficult questions in practice. If gender identity is treated as wholly self-declared for all legal purposes, how should the state determine eligibility for targeted welfare measures or reservations? How should institutions such as universities, public employment systems or other state structures allocate limited benefits intended to address structural disadvantage? These are not abstract concerns, but questions that go to the heart of how law distinguishes between vulnerability and advantage in order to direct protection meaningfully.

The persistence of classification

This tension is not unique to gender identity. Indian law has long grappled with similar questions in other domains. The recognition of caste for the purposes of affirmative action and legal protection is not left to self-identification alone, but is mediated largely through paternal ancestry, documentation and state verification. While courts have, in recent years, acknowledged limited departures — such as recognising the caste status of mothers in specific circumstances — these remain exceptions. The dominant framework continues to rely on lineage, primarily on the father's side, to stabilise legal categories.

This system is not without exclusions and injustices. Yet it illustrates a structural feature of law: the need to fix categories in order to operationalise rights. A purely self-referential model of identification raises difficult questions about how law distinguishes between vulnerability and advantage within a broad spectrum of identities. Without such distinctions, the capacity of law to direct protection toward those who face structural disadvantage becomes uncertain.

Fraternity and the limits of recognition

The more elusive dimension is fraternity — the least invoked but most critical element of Ambedkar's trinity. Fraternity is not sentiment or goodwill; it refers to the social conditions that make liberty and equality meaningful. It concerns the extent to which individuals are recognised as equals within the fabric of everyday social life.

A recent decision of the Rajasthan High Court in *Ganga Kumari v. State of Rajasthan* illustrates what is at stake. The state had included transgender persons within its list of “backward classes”, effectively requiring them to compete for reservation benefits within an already existing category. A transgender petitioner challenged this move, arguing that such inclusion failed to address the specific forms of disadvantage faced by transgender persons and risked leaving them without meaningful access to the very protections intended for them.

The court agreed. It held that merely adding transgender persons into an existing backward class category did not amount to substantive compliance with constitutional guarantees. Such an approach, while formally extending equality through reservation, failed to recognise transgender persons as a distinct social category. The court therefore directed the state to move towards a framework that acknowledges this distinctiveness, including the constitution of a commission to examine appropriate measures. As an interim step, it ordered that transgender applicants be granted additional 3% weightage in selection and admissions processes.

This distinction is significant. The state’s approach satisfied liberty in form — transgender persons could identify as such — and appeared to satisfy equality by extending reservation benefits. Yet, by subsuming them within an existing category, it denied recognition of their specific social location. The failure here was not only administrative, but relational. It reflected an inability to recognise transgender persons as a distinct community within the constitutional order.

It is in this sense that fraternity becomes central. Without forms of recognition that acknowledge difference rather than absorb it, legal protections risk becoming formal or symbolic. The Constitution’s promise is not merely to include, but to recognise in ways that make equality effective.

The case points to what a constitutional “balance” might entail: self-identification as a matter of liberty, material protection as a matter of equality, and distinct recognition as a matter of fraternity.

Beyond absolute liberty

This does not diminish the importance of self-identification. Legal recognition can play a transformative role in reshaping social attitudes over time. But it does suggest that self-identification cannot operate as an absolute principle. A constitutional approach must hold together liberty, equality and fraternity, rather than privileging one at the expense of others.

The current debates on transgender law reflect the difficulty of maintaining this balance. They reveal both the risks of reducing identity to administrative control and the limits of framing it purely as an assertion of individual liberty. The challenge is to develop frameworks that protect autonomy while remaining institutionally workable and socially grounded.

Until that balance is achieved, the law will continue to oscillate between over-recognition and under-protection — affirming identity in principle while failing to secure it in practice.

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Views expressed are the author's own.