

# Rights through Resistance

## What Lies beyond Legalism for the LGBT Movement?

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The legalist approach taken so far with respect to the lesbian, gay, bisexual and transgender movement has marginalised more radical possibilities of resistance by rendering diverse identities and intersectionality invisible. In this context, the historical examination of the LGBT movement in comparison with the civil rights movement and local case studies gives the trajectories of “lost” possibilities a new context and significance. These possibilities are explored here.

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The lesbian, gay, bisexual and transgender (LGBT) movement has gained significant benefits in terms of formal equality and non-discrimination in employment and social policy in many parts of the world. Starting out in the nebulous aftermath of the civil rights and the feminist movements in the 1960s under the leadership of the New Left, the gay liberation movement was distinct from the preceding homophile movement<sup>1</sup> because it began to nurse ambitions of identity politics and queerer possibilities of lifestyle choices. The lesbian (L) and gay (G) parts of “LGBT” were distinct movements fighting for different rights till a combination of historical circumstances such as the outbreak of AIDS and opening of courtrooms to legal battles brought about a significant change in the course of their consolidation. The coming together of these disparate struggles had two consequences.

First, the LGBT communities in addition to other groups with gender identities and sexual preferences came under the single umbrella of “LGBT.” Second, using law as an instrument of claiming equal rights and non-discrimination became predominant over queerer possibilities of questioning heterosexual lifestyles in what some scholars call establishing assimilationism or homonormativity (Duggan 2003).<sup>2</sup> Thus, the movement was variously seen as an issue of equality claims of a minority group (Stulberg 2018), individual liberties (Yoshino 2000) or universalising approaches in which sexuality was seen as a continuum (Sedgwick 1990).

Tilsen and Nylund (2010) argue that the biggest gain of the assimilationist strand has been the integration into mainstream middle-class lifestyle. The negative outcome of the predominance

of assimilationist strategy has been the relegation of the definition of “queer” from challenging that which is perceived as normal (Rudy 2000) to fixed identity positions (Tilsen and Nylund 2010). The taming of the queer reflects the watering down of priorities that the movement set out for itself. Forces of counter-mobilisation such as the religious right and cultural nationalism have been able to narrow the agenda of the movement to questions based on equal rights in marriage and non-discrimination, forgoing other priorities that matter to the various identities and generations within the movement.

In this context, this article examines the future trajectories that the LGBT movement can reclaim from its own lost tracts of history that can revitalise the discourse of various identities and their resistance as well as expand the agenda. In the subsequent sections, the legal approach of the LGBT movement and the forces of counter-mobilisation that originated in its aftermath are examined. This is followed by a discussion of the three possibilities of expanding the priorities of the movement and limiting the forces of counter-mobilisation. The final section concludes the main arguments and reminds us why it is essential to explore queerer possibilities in the contemporary context.

### LGBT Movement and the Law

The historical examination of the LGBT movement in the second half of the 20th century brings out two strands: (i) assimilationism which emphasised mainstreaming LGBT rights through claims of equality and non-discrimination, and (ii) radicalism that imagined various types of non-heterosexual lifestyles, queering and diversifying the normative ideals of sexual orientation and gender identity (Stulberg 2018). Assimilationists focused on gaining rights through identity politics mainly using litigation as their strategy (Faderman 2015). Radicals maintained the strategy of “culture as politics,” practising diverse norms of sexual preferences and gender identities using everyday lived experience as instruments of resistance. The different forms of the LGBT movement met with four types of

forces of counter-mobilisation<sup>3</sup>—religious right groups, nationalist groups, propaganda laws and postcolonial homophobia, all of which resulted in cultural exclusion of non-heterosexual communities to various degrees. This section explores the historical evolution of the LGBT movement through its assimilationist strategy of using law and subsequent backlash emerging out of counter-mobilisation.

The assimilationist strand in the LGBT movement focused on law as the instrument of social change and litigation as its main strategy. As a result, LGBT rights under the equality and non-discrimination principles were claimed through human rights law and comparative jurisprudence. These rights included the fight for marriage equality and non-discrimination at workplace. The use of law meant that political contestation of diverse rights had to be narrowed down to single-issue conflicts involving the state as the main party against which the rights were demanded (Leachman 2014). Furthermore, litigation narrowed the scope of transformation of existing normative frameworks because equal rights with others became its prerogative.

The LGBT movement helped create a political environment that expanded the scope of using law as an instrument of social change. Cross-country comparisons of LGBT movements indicate that wherever there was LGBT activism, there was improved bonding among various factions within the community and relations with the broader public (Holzhacker 2010). Depending on the openness of the local political environment, the objectives of LGBT movements have ranged from (i) social acceptance of queer lifestyles, (ii) negotiation for equality and non-discrimination laws, and (iii) lobbying with other groups. A typology of LGBT politics has evolved based on the political climate (Holzhacker 2010).

In an environment with hostile public opinion of LGBT interest groups, a form of “morality politics” takes roots with confrontational protest and public rallies as its organisational strategy with limited scope for institutional transformation. For example, Arcigay in Italy and Campaign against Homophobia in Poland are organisations that work with “morality politics”

by covert lobbying and organising corporate diversity programmes closer to business interests. In the second scenario, where there is awareness about LGBT rights, “incremental politics” with small-scale events and discrete lobbying has been the predominant strategy. *Stonewall* in the UK and *Hatter Society* in Hungary are organisations that work with the strategy of incremental politics. Finally, in a political environment with overwhelming public support to LGBT interest groups, high-profile politics in collaboration with the public leads the movement. *Culture-en Ontspannings Centrum* (coc) in the Netherlands is such an LGBT organisation.

Within the scope of using law as an instrument for gaining LGBT rights, there have been broadly two strands. The first is using the international human rights discourse and link with transnational actors when the local movement is nascent or scattered. The second is using constitutionalism and judicial interpretation when the local movement is consolidated enough to fight in the courts.

### International Human Rights

In the case of hostile local political environment, transnational links have enabled local actors to access the human rights paradigm and social policy discourse as the main vehicles to introduce the LGBT agenda (Olzak 2006). For example, national-level LGBT organisations have used resolutions and joint statements in the United Nations (UN) to present equality rights for persons based on sexual orientation and gender identity (sogi) with mixed results. In 1995, in the Beijing Platform for Action at the Fourth Women's Conference, sexual orientation was discussed for the first time as part of women's sexual rights but was dropped from the final draft of the text. In 2003, Brazil proposed a resolution to include prohibition of discrimination based on sexual orientation which was postponed for vote at the United Nations Commission on Human Rights (UNCHR). Following this in 2006, Norway and Argentina presented independent joint statements on human rights violations based on sogi at the United Nations Human Rights Council (UNHRC; which had replaced the UNCHR in 2006) and the General Assembly, respectively,

with little success because several countries acted as opposing blocs.<sup>4</sup> In 2011, 85 countries signed the Resolution on the Struggle against Discrimination and Violence against LGBT Persons at the UNHRC.<sup>5</sup>

Outside the UN, the use of Yogyakarta Principles<sup>6</sup> in the articulation of equal rights for LGBT made a case for states to respect, protect and fulfil the rights of their LGBT citizens. These principles applied international human rights law to enumerate fundamental rights, such as freedom of expression and association, equality and equal treatment before the law, including the right to a fair trial, non-discrimination in education, health, work and social policy as well as the right to cultural and public life. Furthermore, the Declaration of Montréal (2006) spelt out the need for consensus on “essential rights” proposed as (i) protection against state and private violence, (ii) freedom of expression, assembly and association, and (iii) decriminalisation of private, consensual and adult same-sex sexual activity.

There are other transnational blocs that have used human rights principles to ascertain LGBT rights. For example, the European Union (EU) has actively utilised charters, directives and other legal instruments to enforce LGBT rights in all its member states. In the EU, LGBT rights have evolved from being an internal market issue to social policy and finally human rights through a “deliberate widening of the social policy agenda” (Greenwood 2007). In 1984, the EU required all its member countries to invalidate policies that were discriminatory against homosexuality through its resolution A-008/94. In 2010, Resolution 1728 expanded the provision and emphatically prohibited discrimination on the grounds of sogi. As a result, prominent LGBT organisations have been building coalitions with trade unions, women's organisations, racial minorities and people with disability.

### Constitutionalism

Another approach that the LGBT movement has used for gaining rights is through constitutionalism and the use of national courts and judicial interpretation. Constitutionalism is possible where the regulation of sexual politics through scientific ideas, religious beliefs, moral

values, legal principles and political positions is imagined as a part of nation-building process (Carrara 2012). The constitution of modern subjects with characteristics such as reflexivity, self-control, social and political engagement as a result of enacting citizenship is at the foundation of claiming LGBT rights as minority rights of citizens. In these contexts, homophobic violence is negotiated as hate-crimes, a form of misogynistic violence or active discrimination of minority groups to extend existing forms of legal purview over LGBT issues.

One example of this approach is how the Brazilian LGBT activists have placed demands around the Brazilian Supreme Court to grant rights previously reserved for heterosexual couples. The LGBT movement's demands include legal recognition for affective relations, right to adopt children, free expression of SOGI in public spaces, access to health policies and identity change in documents (Carrara 2012). Following the judicial pronouncement, the Brazilian Ministry of Education has also called for teachers' training in schools on issues related to SOGI and the Special Secretariat on Human Rights providing resource material on homophobic violence and discrimination. An Inter-Ministerial Technical Commission-authored National Plan for Promotion of LGBT Citizenship and Human Rights (2009) has directed ways in which ministries can coordinate work on ensuring human rights of LGBT persons.

India is an example where the battles of the gay and transgender communities within the broader LGBT group have taken distinct routes. Activists lobbying for gay rights took the judicial route to read down the colonial penal code with its Section 377 that criminalised "unnatural penetrative sex" referring to male same-sex activities (Rao 2017). The law viewed these as unnatural sexual "acts" distinct from the identity of the actors. The introduction of principles of constitutional morality and the interpretation of sexual orientation as a matter concerning "right to privacy," equality, dignity and non-discrimination through the verdict of the Supreme Court reversed this legal interpretation.<sup>7</sup> Whilst the gay movement predominantly used courtroom, gender-variant male

communities<sup>8</sup> who have been part of the Indian cultural milieu, transgender-related identities and experiences have approached their battle of rights through social exclusion, namely, exclusion from family, healthcare system, employment and political participation (UNDP 2010). Although these communities are accorded specific roles in tradition, recent studies bring out the severe stigma faced by transwomen that affect their health and social participation (Chakrapani et al 2017). Furthermore, the assimilationist strategy of the lesbian and gay subcommunities through pride march also disciplines the traditional trans-people with notions of "socially acceptable behaviour" and stigmatising them within the LGBT community (Rao 2017).

Unlike these examples, Indonesia's claim to mainstreaming LGBT rights has been through reimagining a nationalist cultural legacy that foregrounds these communities. Having a diverse ethnic legacy of fluid gender identity and cultural assimilation, the Indonesian LGBT movement began under the leadership of those groups that had socially accepted identity categories such as transgender community. Since 2004, with the involvement of transnational human rights discourse led by the UN, Indonesia recognised LGBT persons as a special group to be protected under its National Action Plan on Human Rights (Khanis 2013). To an extent, such cultural, social and national reimaginings help in better integration with law and other state-based institutions.

### Counter-mobilisation

The LGBT movement has been met with counter-mobilisation that uses distinct narratives to deny their claims (Stulberg 2018). The first narrative is that of cultural nationalism, which excludes non-heterosexuality from the purview of national culture and, therefore, citizenship. The second narrative is that of postcolonial homophobia that translates to political homophobia and propaganda. Both these strands are explored in this section.

### Cultural Nationalism

Counter-mobilisation led by the religious right and nationalist groups emphasise traditionalism and conservatism in gender

roles and the definition of family. For example, Spanish LGBT politics has faced a professed national ideology of common history, shared culture and rightful homeland of cultural nationalism that strengthened the idea of "machismo" repressing individuality and variant group identities (Martinez and Dodge 2010). Catholicism reified traditional gender roles, segregated school system based on gender, and upheld heterosexual marriage as the unit of society.<sup>9</sup> The Spanish LGBT movement existed in separatist enclaves such as *Chueca* where a "socially constructed ethno-sexual community" prevailed before equal citizenship could be claimed (Martinez and Dodge 2010).

The strict separation of what is secular and religious becomes problematic when remnants of the old system live on in the new. For example, Stanley (2006) explores the anti-homosexual discourses in Polish history to bring out the contestation of power and ideology between the church and the state. Whilst the religious discourse used sodomy to indicate queer lifestyles beyond homosexuality and ascribed punishments using "penitentiary list," the secular discourse used the language of medicine and law in anti-homosexual discourses. Similarly, in Poland, one of the factors that determined employability through the "secular" labour law was a morality clause that described "good character" of the potential employee based on traditional and religious values (Pogodzinska 2006).

In countries with inherited legal systems, there was the "transplant effect"<sup>10</sup> of an alien institution that was at variance with social views (Mršević 2013; Lešnick 2006). This transplant effect of foreign legal principles (both in cultural and temporal terms) has resulted in legal rights on paper with little normative assimilation in the society. For example, Slovenia inherited the legal system of multinational states that preceded its formation that penalised homosexuality (Lešnick 2006). Similarly, Serbia had the history of Balkan wars and fractured nationalities where the LGBT movement began as one of the new social movements in the 1980s following the women's movement and the peace movement (Mršević 2013).

Thus, both active cultural nationalism and historical inheritance of crime and punishment have acted as anti-LGBT forces in practice.

### Political Homophobia

In several countries of the African Union, the framework of postcolonial homophobia has been a useful analytical frame. Postcolonial homophobia is examined as a continuation of colonialist, apartheid and Christian discourses that work with the assumption that homosexuality has been a Western import (Eprecht 2005). The emergence of identity politics of homosexuality instigates further counter-mobilisation in the form of “political homophobia” in postcolonial societies (Stychin 2001). Political homophobia is a strategy of hostility towards both homosexual individuals and political opponents by transferring the characteristic of undesirability interchangeably to both of them as a response to failing masculinist nationalist discourses (Bhana et al 2007; Beyrer 2012). For example, scholars have explained the discourse of political homophobia in Namibia and Zimbabwe as the result of failing efforts at democratisation (Bhana et al 2007; Eprecht 2004).

In states with anti-propaganda laws such as Russia, the LGBT movement has emerged as a “network of interests” that interact both horizontally and vertically within hierarchies. Lapina (2013) argues that regional anti-propaganda laws against homosexuality in Russia have strengthened the moderate/radical binary of the LGBT movement post-Soviet collapse. Similarly, in Bulgaria, the discourse on homosexuality cannot be separated from its socialist state politics because all spheres of life, including sexuality, were politicised and open to state intervention (Taylor 2006). Bulgarian authorities sought to regulate sexual culture through pro-family campaigns, endorsement of marriage and heterosexual lifestyle. The sexual culture agenda was patriarchal because of a host of factors, including social norms, the absence of sex education, and the women’s movement.

Examining the counter-mobilisation of cultural nationalism and political homophobia brings out why envisioning

an LGBT agenda beyond assimilationism is important.

The assimilationist approach claims rights based on unchanging notions of identity. Political entrepreneurship by LGBT activists has also opened up opportunity structures to facilitate institutional change through issue linkage, lobbying friendly elites, and promoting greater resonance of human rights framework creating institutional access to agenda setting (Swiebel 2009). Nevertheless, the assimilationist approach has strenuously avoided its more radical counterpart that has the potential to queer institutions such as family and everyday living. Primarily, public displays of transgressive sexuality can be a creative disorder that queers living spaces, the urban milieu and other manifestations of capitalist economics creating a critique of citizenship and neoliberal politics (Poldervaart 2006). Second, queering also opens up dissident voices within the LGBT community. The possibility that the LGBT movement holds for the future of the community is explored in the next section by paying attention to three approaches that move away from the legalist/assimilationist approach.

### Limiting Counter-mobilisation

One of the outcomes of the legalist strategy has been how different types of counter-mobilisation narrowed the LGBT agenda from prioritising freedom (queering lifestyles) to equality (conforming to normative ideals). Counter-mobilisation constrains the choice of issue and venue of the movement, thereby creating different windows of opportunities from the original agenda (Fetner 2005). So far, counter-mobilisation has presented three stock responses to the LGBT movement (Green 2000). The first is “instrumental” opposition through which morality politics based on disruption of traditional values is played out to gain political power. An example is the Christian Right in the United States<sup>11</sup> and their “Truth in Love” campaigns that proposed to convert homosexual individuals to heterosexuals through aversion therapy (Fetner 2005). The second approach is “reactive” opposition through which legal, cultural or political gains achieved by the LGBT movement are targeted.

The reactive opposition has consistently used ballot measures over judicial or legislative measures (Andersen 2009). The third strategy is “proactive” opposition through which counter-mobilisation attempts to pass laws, reduce funding for pro-LGBT measures and prohibit support from the state for the LGBT community.

The reason why a return to LGBT movement by engaging the grassroots could be effective today is because it provides an opportunity to engage with public opinion using symbols and rhetoric that courtroom battles seldom provide. In order to go beyond counter-mobilisation, it is important to observe what it represents (and consequently does not). First, counter-mobilisation of the LGBT movement overlaps with counter-mobilisation of other causes such as anti-abortion and anti-feminist campaigns. Therefore, it makes great sense for the LGBT movement to reach out to civil rights movements across race, class, feminism and other related causes. This approach would also bring out intersectionality of LGBT subgroups and work towards greater cohesion and diversity within the community.

Second, counter-mobilisation targets not the central cause of LGBT movement, which is SOGI, but the policy actions of the LGBT movement to undermine the foundation of claim-making. In particular, they problematise homosexuality as a “condition and addiction,” truncating elements of desire, emotion and orientation,<sup>12</sup> that is, homosexuality as sexual behaviour choice with a same-sex partner as opposed to being integrated with the identity of the individual. The movement’s engagement with medicine has to be revived to make nuanced and sensitive demarcation of SOGI categories clinically. For example, modifying medical language to avoid stigmatising individuals with different gender identities and sexual preferences could be the first step (Drescher 2010). Second, separating gender identity disorders from sexual dysfunctions could potentially help individuals who require medical care whilst not stigmatising others.

Finally, opposed to the psychological and moralistic framing of the issue, the LGBT movement uses the concept of minority rights and full citizenship. The

issue of marriage as the central concern of the LGBT can be expanded to include other priorities that matter to the LGBT subcommunities.<sup>13</sup> For example, Egan and Sherill (2005) observe that in the 1990s, although protection of LGBT families, including civil partnerships and adoption rights, were a priority of the movement, it was the significant litigation results that propelled equality in marriage per se as an important objective.<sup>14</sup> In 2003, the Harris Interactive Poll for LGBT adults demonstrated age-specific priorities of the LGBT communities in four groups corresponding to 18–25, 26–44, 45–64 and 65+ years (Egan and Sherrill 2005). They show that workplace discrimination and hate-crimes remain important to all age-cohorts. Marriage and parenting are important to younger cohorts, whereas benefit programmes for partners appeal to older generation. Diversifying priorities is the only way to keep the movement alive and relevant to the various subcommunities within.

### Reframing the Legal Approach

Litigation has overtaken the other strategies of the LGBT movement sidelining the more radical alternatives. The issues taken up by litigation transform into the default movement agenda, inhibiting more expansive strategies for social change. On the other hand, queer movement that espouses sexual liberation by challenging patriarchal family structures has argued support for queer working families through welfare policies and redistribution (Stone 2012). The narrow framing of issues by litigation overshadows such broad-based agenda.

Why has litigation remained the dominant strategy for LGBT issues? One, studies prove that litigation has garnered more media attention than social protests since the 1970s (Leachman 2009). The increasing escalation of protests and the presence of multiple and often disparate issues at stake in a social movement as opposed to the “dramatisation effect” that litigation offers is cited as a reason. A single disruptive event as the centre of attention and adversarial personal drama of the litigants serve the media needs more than violent protests. Two, in the case of claims involving the most disadvantageous

groups, formal law is inclined to take the initiative before other legal institutions do (Klarman 2004; Rosenberg 2008). For those interest groups whose rights are inadequately represented by electoral representation, constitutional litigation remains the most promising route to establish claims (Keck 2009).

How can the movement gain the grounds that litigation has achieved? Reimagining legal strategy to go beyond law reform to social change can be one option (Stone 2016). The first is setting extralegal goals such as client empowerment and community need. Second, lawyers can use courtrooms to publicise the wider movement demands. Third, attorneys can challenge the traditional interpretation of law by bringing out intersectional and structural subordination.

The other strategy is to expand the scope of the human rights discourse to voice intersectionality within law. For instance, Rothschild (2000) argues that whilst men contextualise LGBT issues using mainstream human rights language, women choose to frame the issue using the more radical feminist discourse of sexual choice, autonomy in sexual matters and as part of global recognition of violence against women. Furthermore, as Swiebel (2009) observes, the definition of human rights had to critically reflect its own male-dominated heteronormative vision of the world in accommodating LGBT rights as human rights. Agenda setting to include LGBT issues as discrimination has often taken the form of the “bandwagon effect” where existing anti-discrimination policy is expanded to include sexual orientation (Bell 2002: 194). The use of legal categories might inadvertently reify the existing hierarchy of categories (homo/hetero; female/male) or coalesce them into essentialist identity rather than behavioural patterns setting off “sexual imperialism” (Wieringa 2007). Reframing the human rights discourse to allow for intersectional voices can only take place through politics, which we turn to next.

### Return to Politics and Theory

The institutional mechanism by which essentialist identities and marginalising political strategies came into prominence in the LGBT movement can be explained

through the systematic and structural factors that limit subcultures of the movement to advocate their interests (Leachman 2014). Furthermore, such an analysis points to systems (rather than individuals) at the centre of intersectionality. A historical analogy from the civil rights discourse would be the critical race theories which have explained institutional racism, bringing together a coherent theoretical analysis. Thus, there is a need to embed LGBT issues in a large macro-institutional framework.

For example, the historical context in which the modern gay identity began to be publicly expressed is closely linked with the transition from self-sufficient household production to factory production under capitalism that freed the compulsion for heterosexual reproduction as a method of maintaining decent life (D’Emilio 1983). Additionally, new spaces such as the defence forces during the war and movement to cities and workplaces during peace times provided opportunities for other sexualities to be explored and expressed (Githens 2009). As a substantive portion of identity began to be identified with work, the first set of rights that were claimed for the gay community were equal employment opportunities in alliance with trade unions and the women’s movement. However, in the present-day consumer capitalist framework, the LGBT identity has also been appropriated as a consumer segment through a form of “busno-power” that involves continuous and individualised choices and with constant threat of exploitation (D’Emilio 1983). This “busno-power” can be resisted through everyday acts (Mayo 2005) or through reimagining the framework of neo-liberal capitalism itself (Gibson-Graham 1996).

The second approach to enlivening the grassroots is by paying attention to the micropolitics of everyday life and citizenship. For example, Oliveira (2013) argues that excessive “juridification” of the LGBT movement has incidentally become the containment strategy through which alternatives are allowed to be expressed only through movements in the future. The messy and confrontational political nature of queer radicalism can constantly threaten the civil and sanitised

existence of legalists (Dutta 2012). The disorder of lower class, caste and race can upset the apparent order of the middle and higher class, Brahminical caste and white supremacy to produce new ideals of citizenship. The narrowing down of what is possible through social movement agenda filtering constitutes the “politics of containment” and “consolation citizenship” because of the complicity between monogamous same-sex marriage and neo-liberal, homonormative and homonational perspectives, that ends up reproducing problematic gender, class and even heterosexual privileges (Oliveira 2013). For example, subjects like the *kothis* and hijras may not be merely located as external to trans-national articulations of LGBT equality and rights. Rather, in the very process of contesting their exclusion, they become integral to both the critique and the reconstitution of these discourses and political forms (Dutta 2012).

Lastly, mainstream social movements have to acknowledge that the most neglected voices are that of queer formations not linked to sexual politics and sexual communities in the LGBT historiography because queer desires exceed the bound of LGBT identities. The focus on local case studies have helped bring out these voices and the relationship between politics, communities and culture. However, the limit of the present-day discourse is that it is a narrative that is linear and sequential as critical history often is, building on the story of progress and regress focusing on human agents of change. Important as this has been, queer possibilities remain unexpressed.

## Conclusion

This article examined how the assimilationist approach of demanding equality and non-discrimination has dominated the LGBT movement globally using a historical approach. This approach has used the human rights discourse as the framework and law as the chief instrument of demanding rights from the state. The assimilationist approach has created commendable achievements for the LGBT community worldwide such as decriminalising homosexuality, equality in marriage, non-discrimination in access to employment and social

policy, and, creating a tradition of comparative jurisprudence.

However, radical approaches to claiming rights through everyday acts and collective resistance remain marginalised. This has created a fractured hierarchy within the subcommunities of the LGBT movement along the lines of age and gender groups and their demands. Furthermore, judicial decisions have also provoked backlash in the form of counter-mobilisation through cultural nationalism and political homophobia, both of which attempt to erode the rights and legitimacy gained through assimilationism.

In this context, what are the ways in which the movement can be vitalised to bring out its plurality while maintaining meaningful social transformation? This article argues for three possible approaches. The first is to limit the forces of counter-mobilisation from setting the agenda and narrowing the broad range of claims to single-issue conflicts. Alliance formation with other civil rights organisations such as trade unions and feminist groups would help to widen the priorities at the points of intersectionality.

The second approach is to reframe the issue using institutional frameworks such as law and medicine. For example, medical terminology can make a clear distinction between gender disorders, sexual dysfunction and SOGI related issues which would destigmatise sexualities whilst providing medical care to those who need them. Additionally, the contemporary human rights discourse uses existing rights framework to articulate the inclusion of the LGBT community into its fold. Whilst this approach has its merits, new frameworks might be required if intersectionality is to find expression in the legal discourse.

Lastly, a return to politics and theory is the only sustainable way the movement can move forward. Active politics through organised movements and everyday resistance provides a framework to understand how the movement is embedded in macroeconomic institutions like neo-liberal capitalism. An honest introspection would also allow the LGBT movement to acknowledge that in

claiming equal citizenship within the existing framework, radical possibilities, such as queering social norms, remain unexpressed in the mainstream discourse.

## NOTES

- 1 The homophile movement was an organised movement led by gay men between 1951 and 1970 in the United States. This movement claimed equal treatment of homosexuals by stressing the common humanity of both the homosexual and heterosexual community.
- 2 Heteronormativity is defined as values and practices of heterosexuality centred on gender binary. Duggan (2003) expands the definition to homosexuality arguing that homonormativity is anchored similarly in domesticity and consumerism.
- 3 We use the term counter-mobilisation rather than counter-movement because most of the opposition groups were service organisations as opposed to social movements.
- 4 The Arab League and Organisation of Islamic Cooperation presented a joint statement in the UN General Assembly opposing the Norwegian and Brazilian efforts.
- 5 The 2011 document was updated with a follow-up report of good practices from the countries in 2015.
- 6 Yogyakarta Principles were drafted by human rights lawyers and LGBT movement leaders in 2006. Drawing from international human rights discourse, they set out 29 principles for LGBT rights. In 2017, Yogyakarta Principles were expanded with the addition of 10 more principles.
- 7 The case law that read down Article 377 is *Navtej Singh Johar v Union of India* (2017)
- 8 Gender-variant male communities such as hijras, *Aravansis*, *Kothis*, *Jogtas* and *Shiva-Shaktis* may or may not identify as transgender females.
- 9 As a result, the Vagrancy Law 1954 condemned homosexual men to special prisons called deviant galleries where they were engaged in hard labour, electric shock and aversion therapy.
- 10 The transplant effect of supplanted and inherited legal systems and their problematic assimilation has been explored in the case of economic laws by Berkowitz, Pistor and Richard (2003).
- 11 The pro-life movement of the Christian right in the United States began as a response to the decision in *Roe v Wade*, the anti-abortion campaign and the anti-feminist movement to defeat the Equal Rights Amendment which expanded to respond to the LGBT movement. Scholars like Stone (2016) argue that these groups engage in proactive agenda rather than reactive agenda in the recent past.
- 12 To buttress this claim further, they also point out the prohibition of a wide range of sexual behaviour that are social taboos such as incest, rape, adultery and conflate SOGI with such behaviour.
- 13 On the mutually constitutive relationship between LGBT advocacy and marriage, NeJaime (2014) argues that the increased participation of same-sex couples in marriage may continue to direct the meaning of marriage away from one rooted in procreative sex and gender differentiation and towards one rooted in adult romantic affiliation, parenting and mutual emotional and economic support. Further ruminating on the relationship between law and social change, he argues that the impact of and direction taken by the LGBT movement

- depends not only on the active choices by the movements' leaders, but also on the entrenched institutional structure that permits such transformation. The institution may also have an impact on the demands and priorities of those outside of the movement.
- 14 A study by Stone (2012) reflects that local campaigners of the LGBT movement find the fixation on marriage a diversion of resources from anti-violence and anti-bullying campaigns that are relevant in many parts of the world.
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