



LGBTQIA+ MOVEMENT AND CHALLENGES TO THE LEGITIMACY OF HUMAN RIGHTS: A CRITICAL ANALYSIS

Dibyendu Ganguli 

RESEARCH ARTICLE



Author Details:

Assistant Professor, Department of Sociology, Bijoy Krishna Girls' College, Howrah, West Bengal, India

Corresponding Author:

Dibyendu Ganguli

DOI:

<https://doi.org/10.70096/tssr.260403035>

Abstract

This paper examines the LGBTQIA+ rights movement with special reference to India, focusing on the tension between universal human rights claims and local communitarian identities. Through content analysis, it argues that local LGBTQIA+ activists have successfully used the discourse of equality under the law, incorporating global standards into local contexts and navigating multiple identities. The paper concludes that effective LGBTQIA+ rights struggles combine universal human rights protection with community-level socio-political engagement, allowing activists to seamlessly navigate local and global discourses.

Keywords: *LGBTQIA+, Activism, Movement, Homophobia, Human Rights*

Introduction

The LGBTQIA+ rights movement, commonly referred to as "Rainbow activism," is a global human rights movement that seeks to eradicate discrimination and socio-sexual inequality. This movement is a socio-political and socio-legal phenomenon that strives for equal opportunities, rights, and benefits, as well as the freedom to choose one's partner. The rainbow serves as a symbol of gender and sexual equality, as well as unity (Wolowic, et al., 2017). Over the past three decades, the global politics of lesbian, gay, bisexual, transgender, queer, intersex, asexual and more (LGBTQIA+) rights have witnessed the emergence of transnational activist and support networks. Although sexuality has long been a subject of intense ethical and moral debate, sexual politics has only recently gained prominence on domestic and international political agendas. The acceptance of the human rights framework as a primary vehicle for political demands has facilitated the mainstreaming of LGBTQIA+ rights (Wilson, 2009). This shift represents a significant transformation in the political interests of social movements involved in LGBTQIA+ politics. Notably, the intensification of international struggles by LGBTQIA+ movements has led to the development and endorsement of key documents, including the Declaration of Montreal (International Conference on LGBT Human Rights, 2006) and the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Gender Identity and Sexual Orientation (Kollman & Waites, 2009). Recently, the United Nations Human Rights Council (UNHRC) adopted a resolution on Human Rights, Sexual Orientation, and Gender Identity, expressing "grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity" (UNRC, 2014). The LGBTQIA+ movement has achieved significant gains in civil rights and social policies globally. Emerging from the 1960s feminist and civil rights movements, it evolved from separate lesbian and gay movements to a unified LGBTQIA+ movement. Key events like the HIV/AIDS epidemic and court openings shifted the movement's focus to using law for equal rights, potentially establishing "assimilationism" or "homonormativity." This paper explores the movement's history, current scenarios, and future directions, including its legal strategy and counter-mobilization forces (Rosenberg, 2008).

LGBTQIA+ Movement in a Global Context

The globalization of human rights has led to the universalization of same-sex sexual orientation as a culture, with the Anglo-American "Stonewall" model being exported worldwide. However, non-Western activists navigate between this global model and local, culturally-specific understandings of sexuality. The universal language of human rights has facilitated the globalization of sexual identity, with international human rights experts and law contributing to the emergence of rainbow activism as a global movement, highlighting dignity breaches and supporting activists worldwide (Armstrong, 2006).

Returning to the core issue with human rights as political claims—the conflict between the discourse's constitutively universalising nature (despite being inherently socially constructed and historically relevant reality) and the veracity of assertions regarding cultural diversity and community specificity—the EU's self-image as a civilising non-rights respecting "others"—is what has people thinking about this issue right now. Additionally, the vocabulary of rights can also be used to describe these assertions of difference, underscoring the political ambiguity of the rhetoric surrounding rights in general. This can be seen with the "rights of member states" in the face of EU law, and terminology like "margin of appreciation" and "subsidiarity" emphasise the concern for the right of national identities to be unique (Cowen et al., 2001).

In various cultural contexts, the specific rights of nations often utilize the language of rights creatively. By portraying their identity and people as victims of an undeserved privileged class, homophobic states perpetuate an anti-LGBTQ rights narrative. The foundation of such rights is rooted in the perceived contributions of heterosexuals through family and procreation, emphasizing collective good within a heterosexist framework. The narratives reflect the struggle against urban elites, liberals, and neo-colonial influences, positioning heterosexual families as defenders of traditional lifestyles against forces that threaten their existence. This anti-gay rhetoric, prevalent in many regions, underscores resistance to the invocation of LGBTQIA+ rights. The discourse surrounding sexual orientation rights challenges both anti-LGBTQ collectivism and overarching claims to universal sexuality rights, highlighting the accessibility of rights discourse shaped by a transnational consumerist culture, limited only by the creativity of its advocates (Douzinas, 2000).

The Global Pursuit of LGBTQIA+ Equality

The understanding of same-sex sexuality and its social acceptance is shaped by social constructs. Historical examples demonstrate that premodern societies had diverse meanings associated with homosexuality, as noted by Greenberg (1988), who highlights that practices such as ritualized sodomy were common in various tribal and ancient cultures without implying a cohesive homosexual identity as understood today. The modern conceptualization of homosexuality as encompassing sexual behavior and identity emerged in Western societies during the late nineteenth and early twentieth centuries, partly influenced by views of homosexuality as a "disorder." Recently, a global cultural acceptance of LGBTQIA+ identities has developed, evidenced by legal reforms, the proliferation of LGBTQIA+ organizations, and changing perspectives among international experts, despite ongoing debates surrounding the issue (Ghaziani, 2017). Despite global advances in LGBTQIA+ rights, significant opposition persists, particularly in the Muslim World, sub-Saharan Africa, and former Soviet and Eastern bloc countries. LGBTQIA+ individuals frequently face severe discrimination, including abuse, torture, and even state-sponsored execution. Many countries maintain laws that impose harsh penalties for same-sex conduct, with at least 40 nations criminalizing it for both genders. Countries like Saudi Arabia and Iran enforce death penalties for homosexuality. Furthermore, systemic police misconduct against LGBTQIA+ individuals is prevalent, notably in nations such as Nepal, Honduras, and Uganda. Legal inequalities manifest in various forms, including the denial of spousal benefits for same-sex couples in the United States and inadequate protection against discrimination and hate crimes based on sexual orientation. Transgender individuals are often afforded even less legal protection. Overall, while international norms advocate for LGBTQIA+ rights, numerous countries continue to enforce laws and practices that violate these principles, demonstrating a profound gap between legality and societal acceptance (Menyawi, 2015).

Legal marriage confers significant benefits and protections to couples, yet recognition of LGBTQIA+ marriage remains limited, with only a few countries, such as Canada, Belgium, and the Netherlands, having established such rights. India has acknowledged consensual same-sex rights but continues to oppose marriage equality. In Brazil, same-sex couples enjoy inheritance rights despite broader legal restrictions. Across several European nations, the advantages afforded to same-sex couples often do not match those of heterosexual couples. The exploration of LGBTQIA+ rights serves as a critical lens through which to understand the political dynamics of social advocacy, as organizations strive to dismantle laws against same-sex relations while highlighting the influence of established human rights perceptions on the efficacy of their efforts (Murdie & David, 2012).

The Legal Frontier of LGBTQIA+ Movement and Justice

The LGBTQIA+ movement in the latter half of the 20th century can be understood through two primary frameworks: assimilationism and radicalism. Assimilationism focused on achieving mainstream acceptance of LGBTQIA+ rights through equality and non-discrimination, primarily leveraging litigation and identity politics. In contrast, radicalism embraced a variety of non-heterosexual lifestyles and aimed to redefine normative ideals of sexual orientation and gender identity through "culture as politics". The movement faced significant counter-mobilization challenges from religious right groups, nationalist factions, propaganda laws, and postcolonial homophobia, resulting in varying degrees of cultural marginalization for non-heterosexual populations. Assimilationists prioritized the use of the legal system to advance social change, asserting rights such as marriage equality and protection from workplace discrimination through human rights law. This reliance on litigation often narrowed political disputes to singular legal issues, positioning the state as the primary adversary. Consequently, while the pursuit of equal rights fostered some inter-factional camaraderie within the LGBTQIA+ community and connections with the public, it also restricted the potential for broader alterations of existing normative frameworks. Overall, cross-country analyses suggest that LGBTQIA+ activism facilitated improved unity among different factions and enhanced public engagement, despite the limitations imposed by an assimilationist legal strategy (Faderman, 2015). (1) The goals of the LGBTQIA+ movements have varied depending on how accepting the local political climate has been, from social acceptance of queer lifestyles, (2) negotiating for equality and non-discrimination laws, (3) campaigning alongside other organisations.

Depending on the political environment, a paradigm of LGBTQIA+ politics has developed. A type of "morality politics" develops in an atmosphere where the general public has a negative view of LGBTQIA+ interest organisations, using aggressive protest and public demonstrations as their organisational method, with little room for institutional change. In terms of using the law as a tool to advance LGBTQIA+ rights, there have primarily been two strands. (a) The first is to engage with transnational actors and the global human rights discourse when the local movement is in its infancy or dispersed. When the neighbourhood movement is sufficiently organised to pursue legal action, (b) the second option is to use constitutionalism and judicial interpretation (Holzhacker, 2012).

Legitimizing LGBTQIA+ Rights as Human Rights

The recognition of LGBTQIA+ rights as minority rights is grounded in the principles of contemporary citizenship characterized by reflexivity, self-control, and active participation in social and political domains. Instances of homophobic violence are often classified as hate crimes, reflecting a broader context of misogyny and discrimination against minority groups, thus extending the legal protections of existing LGBTQIA+ laws. An example of this advocacy is seen in Brazil, where LGBTQIA+ activists have successfully lobbied for the recognition of rights historically reserved for heterosexual couples (Rao, 2017). Their demands encompass child adoption, access to health insurance, legal recognition of romantic partnerships, and changes in legal identity documentation. In India, the struggles of the homosexual and transgender communities have followed distinct trajectories. Before 2018, proponents of same-sex rights sought the repeal of Section IPC 377, which criminalized same-sex acts, leveraging the legal system to redefine such actions in light of personal identity. The Supreme Court's landmark ruling emphasized constitutional morality, framing sexual orientation as integral to the rights of privacy, equality, dignity, and non-discrimination. Conversely, transgender activism has emerged in response to social exclusion, marked by marginalization from family, healthcare, employment, and political spheres. While the same-sex movement has predominantly employed legal avenues, transgender individuals face significant stigmatization, detrimentally impacting their health and societal participation. Traditional transgender people are often subjected to societal norms regarding acceptable behaviour, experiencing additional stigmatization within LGBTQIA+ circles, primarily due to the assimilationist tendencies of lesbian and gay members during events like Rainbow Pride Walks (Bajpai, 2022).

The LGBTQIA+ rights movement faces counter-mobilization through various narratives that challenge its arguments. One narrative revolves around cultural nationalism, which perceives non-heterosexuality as incompatible with national identity, effectively excluding individuals from citizenship. Another perspective involves postcolonial homophobia, marked by political bias and misinformation (Chakrapani, 2017). A notable issue arises from the clash between secular and religious discourses, where historical anti-homosexual narratives, as explored by Chowaniec, et al. (2021), illustrate the ongoing power struggle between the state and the church in Poland. Secular rhetoric employs medical and legal terminology against homosexuality, while religious discourse utilizes moralistic penalties. Additionally, Poland's labor code exemplified this intersection through a morality clause that tied employment eligibility to adherence to traditional and religious values. Consequently, both cultural nationalism and the legacy of punitive measures have emerged as significant barriers to LGBTQIA+ rights.

The Protracted Fight against Socio-political Homophobia

Political homophobia emerges as a mechanism of antagonism against both homosexual individuals and political adversaries, a reaction to faltering masculinist nationalist ideologies. In places like Namibia and Zimbabwe, scholars have linked this rhetoric to insufficient democratization efforts. Meanwhile, LGBTQIA+ activists have engaged in political entrepreneurship, seeking institutional change through strategies such as issue linking, lobbying supportive elites, and emphasizing human rights, which enhance their agenda-setting capabilities (Swiebel, 2009). However, an assimilationist approach has limited the movement's potential to challenge normative institutions like family and everyday life. The visibility of transgressive sexualities presents a form of creative unrest, critiquing citizenship and neoliberalism by queering urban and economic spaces. One consequence of the legalist strategy has been a shift from a LGBTQIA+ agenda focused on equality to one cantered on freedom and alternative lifestyles. Counter-mobilization has limited the movement's choices, leading to new opportunities disconnected from its initial objectives. So far, the LGBTQIA+ movement has faced three principal responses from counter-mobilization (Fetner, 2005). The first is "instrumental" opposition, which manipulates morality politics to further political aims. The second, "reactive" resistance, seeks to undermine the political and social advancements of LGBTQIA+ individuals, often through voter initiatives rather than judicial or legislative means. Lastly, the third form, "proactive" resistance, encompasses strategic efforts to enact legislation that disadvantages the LGBTQIA+ community, restrict funding for supportive policies, and prevent state endorsement of LGBTQIA+ initiatives (Andersen, 2009).

The grassroots revival of the LGBTQIA+ movement reveals a promising avenue for progress by adopting public-facing symbols and rhetoric distinct from traditional legal battles. Recognizing the institutional mechanisms that marginalize LGBTQIA+ identities underscores the structural barriers inhibiting advocacy efforts, echoing critical race theories that prioritize systemic analysis over individual actors. This perspective highlights the importance of contextualizing LGBTQIA+ issues within broader institutional frameworks (Keck, 2009). The current focus on litigation in the LGBTQIA+ movement has overshadowed alternative strategies, thereby limiting the potential for comprehensive social change and prioritizing legal challenges. This litigation-centric narrative has received more media attention compared to social protests, resulting in a portrayal of conflict that often overlooks the diversity of concerns within the LGBTQIA+ community. While legal action may amplify the voices of marginalized groups, it risks reinforcing essentialist identities, perpetuating existing power dynamics (Stone, 2012). Thus,

reframing human rights discourse to encompass intersectional perspectives requires a political strategy that goes beyond legal remedies, pointing to a necessary evolution in future advocacy efforts.

Conclusion

Judicial decisions have triggered counter-mobilization efforts, manifesting as political homophobia and radical cultural nationalism, which seek to undermine the rights and legitimacy gained through assimilation. To counter this, it is essential to prevent counter-mobilization forces from dominating the agenda and reducing the diverse spectrum of claims to isolated conflicts. Forming alliances with other civil rights organizations, such as labour unions and feminist groups, can help broaden the priorities at intersectional points. Reframing the issue within institutional frameworks, particularly those of the legal and medical systems, is crucial. The existing legal framework is used to articulate the incorporation of the LGBTQIA+ community within the discourse of human rights. While this approach has advantages, new frameworks may be necessary to express intersectionality in legal language. Unlike issues of corporal integrity rights, lobbying efforts for sexual minority rights do not yield a uniform force for legislative change. Instead, diverse factions within civil society may drive opposing directions on the same legislative subject, particularly when it involves moral issues. As noted, disagreements persist at national and international levels, indicating that this moral issue has not yet become a universal norm. The actions of opposing forces within civil society may lead to conflicting policy outcomes. Nevertheless, activism has been successful in advancing LGBTQIA+ rights, even in the narrow context of decriminalizing sodomy. States appear to make strategic concessions to satisfy domestic and international advocacy efforts.

Acknowledgment: No

Author's Contribution: *Dibyendu Ganguli:* Data Collection, Literature Review, Methodology, Analysis, Drafting, Referencing;

Funding: No

Declaration: The author has given consent for the publication.

Competing Interest: No

References

1. Altman, D. (2002). *Global Sex*. University of Chicago Press.
2. Andersen, E. (2009). *Out of the closets and into the courts: Legal opportunity structure and gay rights litigation*. University of Michigan Press.
3. Bajpai, R., Verma, V., & Singh, G. P. (2022). Methodological issues in the designing and reporting of frequentist and Bayesian meta-analysis to assess COVID-19 outcomes among PLHIV with various comorbidities. *Journal of International AIDS Society*, 25(6), 1-2.
4. Beyrer, C. (2012). LGBT Africa: A social justice movement Emerges in the era of HIV. *Journal of Social Aspects of HIV/AIDS*, 9(3), 177–179.
5. Chakrapani, V., Newman, P., Shunmugam, M., Logie, C., & Samuel, M. (2017). Syndemics of depression, alcohol use, and victimisation, and their association with HIV-related sexual risk among men who have sex with men and transgender women in India. *Global Public Health*, 12(2), 250–265.
6. Chowanec, U., Mazierska, E., & Mole, R. (2021). Queer(in)g Poland in the 21st century: How was it at the beginning of the millennium? Introduction to this special issue on queer culture and the LGBTQ+ movement in Poland. *Central Europe*, 19(1), 1-13.
7. Cowen, J. K., Dembour, M., & Wilson, R. A. (Eds.). (2001). *Culture and rights: Anthropological perspectives*. Cambridge University Press.
8. Douzinas, C. (2000). *The end of human rights: Critical legal thought at the turn of the century*. Hart Publishing.
9. El Menyawi, H. (2015). *The great reversal: how nations in the Muslim world went from tolerating same-sex practices to repressing LGB people*. (Unpublished Dissertation): University of Chicago.
10. Faderman, L. (2015). *The gay revolution: The story of the struggle*. Simon and Schuster.
11. Fetner, T. (2005). Ex-gay rhetoric and the politics of sexuality: The Christian antigay/pro-family movement's 'truth in love' ad campaign. *Journal of Homosexuality*, 50(1), 71–95.
12. Ghaziani, A. (2017). *Sex cultures*. Polity Press.
13. Holzhacker, R. (2012). National and transnational strategies of LGBT civil society organizations in different political environments: Modes of interaction in Western and Eastern Europe for equality. *Comparative European Politics*, 10(1), 23–47.
14. Keck, T. M. (2009). Beyond backlash: Assessing the impact of judicial decisions on LGBT rights. *Law and Society Review*, 43(1), 151–186.
15. Kollman, K. & Waites, M. (2009). The global politics of lesbian, gay, bisexual and transgender human rights: An introduction. *Contemporary Politics*, 15(1), 1-17.
16. Murdie, A., & David, R. D. (2012). Shaming and blaming: using events data to assess the impact of human rights INGOs. *International Studies*, 56(1), 1- 16.
17. Rao, R. (2017). *Criminal love: Queer theory, culture and politics in India*. Sage Publications.
18. Rosenberg, G. N. (2008): *The hollow hope: Can courts bring about social change?*. Chicago University Press.
19. Stone, A. L. (2012). *Gay rights at the ballot box*. University of Minnesota
20. Swiebel, J. (2009). Lesbian, gay, bisexual and transgender human rights: The search for an international strategy. *Contemporary Politics*. 15 (1), 19–35.

21. United Nations Human Rights Council. (2014, September 26). Human rights council adopts resolution on sexual orientation and gender identity and concludes twenty-seventh session. Retrieved from <https://www.ohchr.org/en/press-releases/2014/09/human-rights-council-adopts-resolution-sexual-orientation-and-gender>
22. Wilson, A. R. (2009). The 'neat concept' of sexual citizenship: A cautionary tale for human rights discourse. *Contemporary Politics*, 15, 73-85.
23. Wolowic, J. M., Heston, L. V., Saewyc, E. M., Porta, C., & Eisenberg, M. E. (2017). Chasing the rainbow: Lesbian, gay, bisexual, transgender and queer youth and pride semiotics. *Culture, Health and Sexuality*, 19(5), 557-571.

Publisher's Note

The Social Science Review A Multidisciplinary Journal remains neutral with regard to jurisdictional claims in published data, map and institutional affiliations.

©The Author(s) 2026. Open Access.

This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>