

India's LGBTQIA+ Community : A Peculiar Paradox.

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Abstract:

Amidst the diverse population of India lies the increasingly visible LGBTQIA+ community, driven by the collective demand for efficient policy formulation and resource allocation.

Often dismissed as a product of western narratives, this community is perceived to be a “liberal” weapon, intent on destroying the “core” cultural and religious values of the country. Yet, it is our inevitable reality that this community is a key demographic with regard to both electoral politics and political capital, legally recognised but materially deprived. This paper argues that the paradoxical life of the LGBTQIA+ community is not a coincidence but instead, a byproduct of the politics of policymaking in India, ridden with theoretical and practical fault lines. Drawing primarily on Carl J. Friedrich's Policy Analysis framework, and Nancy Fraser's Theory of Justice, this paper demonstrates the existing policy gaps as strategic political decisions rather than knowledge deficits. Employing theories of identity politics, and an intersectional lens of analysis, this paper connects the intersectionality of caste, class and gender identities to the differentiated spectrum of rights and political protection, within the LGBTQIA+ community. Against this backdrop, built on a theoretical and qualitative methodology, the

paper examines key policy domains of politics, economics, security and legality, while also creating a comparative analysis between India and the United States of America, with respect to the strategic advantage of electoral inclusion of the community, realised, and wielded in politics across both the countries. Ultimately, this paper contributes to the intersectional discipline of Gender and Politics, by reframing existing debates and focusing on the dual lens of strategic exclusion as well as, inclusion of the community in Indian politics and policy making. It reveals the Indian state's bifurcated approach of governance that allows for symbolic recognition, without strategic transformation.

Keywords: *Public Policy, LGBTQIA+ Politics, Queer Rights, Caste, Class, Gender Intersectionality, Recognition and Redistribution, Identity Politics, India.*

Introduction:

As it goes with social evolution, one observes political and perhaps even cultural shifts in society. Such has been the case with the visibility and political presence of the LGBTQIA+ community in Indian polity, society and culture. While we may cite the growing doctrine of liberal judicial activism undertaken by the apex court of the country, and a certain globalised modernity that has enveloped Indian consumption and way of life as reasons ; largely this visibility of the community has been conditional and superficial with rarely any effective bottom-up policy driven approach. Given the abstract of this paper, it is crucial to discuss in this context, the literature it evaluates to substantiate the core argumentation of the paper. The theories referred to, are as follows : Carl J Friedrich's Policy Analysis Framework, Nancy Fraser's Theory of Justice, Kimberle Crenshaw's Intersectionality Theory, Crenshaw and Mansbridge's Identity Politics and Descriptive Representation and the Marxist Conflict Theory.

Public policy in this regard, is the most crucial dimension of this paper's analysis, given the role that it plays in determining the extent of structural positioning and visibility of the LGBTQIA+ community. Policy is a direct outcome of politics, and is instrumental in the lived realities of the community at hand. When one speaks of public policy, there develops a spontaneous disparity regarding the proper analysis of its efficacy with certain implicit and explicit political narratives playing an instrumental role in determining what is objective and efficient. It is owing to these glaring inconsistencies that this paper seeks to employ the foundational economic conceptualisation of a policy as laid out by scholars like Carl Friedrich in *"Man and His Government : An Empirical Theory of Politics"* in 1963, who described a policy as a set of goals or directives that proposes a set course of action seeking to achieve a specific end or goal, for the community it was formulated for. This definition is monumental, as it not only situates public policy within the theatre of politics but also acknowledges that these policies do not arise in a vacuum but in an ecosystem of electoral incentives, judicial activism, institutional barriers, societal pressure, prejudice and political narratives. Therefore, Friedrich's view of a public policy, is a course of action constituting laws, regulations, administrative guidelines, procedures and funding criteria established by the government, generated by the collective force of the various political actors in the landscape, designed and designated for a specific community. Friedrich further notes that public policies are not mere agents of bureaucratic institutionalisation, rather they are the tangible byproducts of the ways of thinking, dogma and bias in the minds of political leaders who bring these policies to life. Thus, when we incorporate this imagination of a policy in our argumentation, we are met with the sound reminder of the fact, that the lived

realities of the community in question, are deeply influenced by the politics of the state.

The primary understanding of this paper is simple : it argues that the LGBTQIA+ community may enjoy symbolic recognition but most certainly, does not receive the structural reform that it requires to live a life of dignity. In this context, Nancy Fraser, an American philosopher, feminist scholar's seminal concept : the *Theory of Justice* that can be found across her body of work is of note. Fraser uses a three-dimensional analysis, examining redistribution, recognition and representation. The first dimension, redistribution concerns the political and economic setup of society that is rife with inequalities, structural marginalisation and deprivation. Recognition deals with cultural justice, dignity and integration of fringe communities into the cultural and social mainstream. Lastly, representation delves into political justice in terms of electoral politics, political inclusion that directly impacts the rights of all, especially those who are marginalised in society. Fraser argues that any existing feminist theory which posits the role that women play in politics, must account for both economic and cultural perspectives as related to identity politics and visibility in policy making. Simply put, Fraser refers to the structural dimensions as well as the social epochs of discrimination that one faces, in the current neo liberal capitalist global order. Here, one is not discriminated against, simply because of their gender in terms of social exclusion, but also they are disproportionately and negatively affected by state policies, governance and welfare modules which systematically discredit the specific and intersectional needs of these groups.

Using, this theory we may argue, that to attain the broader goal of political justice for the LGBTQIA+ community in policy making and representation, we require **redistribution**

that is, economic justice in the form of resource availability - creation of livelihood, ample scope of banking and financial management, housing and institutional safeguards ; **recognition** that is, cultural justice through the allocation of dignity and social inclusivity, legal protection from discrimination and effective grievance redressal platforms and, **representation** that is, effective and meaningful political representation, electoral and legislative inclusion alongside meaningful authority positions allotted to the community. When related to the subject of the paper we are confronted with the fact that while to an extent, recognition is awarded to the LGBTQIA+ community, they are not provided with the efficient political representation and institutional support which they would get through efficient policy formulation.

In the current political climate of our country one could easily juxtapose Karl Marx's influential analytical framework that conceptualises the division of the masses into two halves - on the basis of economic and capital availability and ownership. In this context, Marx identifies two classes: the bourgeoisie and the proletariat, as the only real communities present, while the rest are known as imagined communities, whom Marx refuses to grant a tangible acknowledgement. Although, this theory has its limitations when we discuss crucial stratifications of Caste in the Indian Society, one could still argue that the relationship shared, between bourgeoisie and proletariat is quite like that, between a cisgendered heterosexual Indian and a queer, non-binary Indian. The bourgeoisie who are the owners of the modes of production and politically powerful are known as the "haves" and the Proletariat, who are the wage earners or laborers are referred to, as the "have nots". The core idea of Marx's theory posits that given the limited resources in society, there is intense competition between the two classes wherein the bourgeoisie

enjoy a seat of unparalleled power while the proletariat is perpetually disadvantaged. This classification of the “Haves or the Bourgeoisie” and “Have nots or the Proletariat” can be used to assimilate Marx’s theoretical conceptualisations, with the lived realities of the average cisgendered Indian and a queer or non-binary Indian who in spite of an equal footing in the eyes of the constitution live drastically different lives, with respect to not only financial status, but also social acceptance and inclusion - left to compete over limited resources and an even more limited access to the same.

Furthermore, a core argument of my paper is that the LGBTQIA+ community in India suffers from symbolic recognition and not effective representation that comes armed with rights, substantial policy shifts and alleviation of the current shortcomings. This idea is further perpetuated by Crenshaw and Mansbridge’s contribution to the discussion of Identity Politics. Both Kimberle Crenshaw in the 1991 essay, *“Mapping the Margins”* and June Mansbridge in her 2003 article *“Rethinking Representation”* collectively agree, that voters often align on the basis of shared political beliefs and identity categories and feel adequately represented in politics by those - who come from similar backgrounds and ardently support the causes these communities support. Later, in the paper this theory finds its practical application when we deliberate on the political and electoral advantages of recognising and mobilising the LGBTQIA+ community as a key electoral demographic. Hence, the larger discourse of Identity Politics with a special emphasis on the work of Crenshaw and Mansbridge is also, referred to, in this paper.

Lastly, while this paper argues that the LGBTQIA+ community is fundamentally disadvantaged in comparison to their cisgendered heterosexual counterparts, it simultaneously takes cognisance of the notion of privilege and the role it

plays on the lived realities of the members of this community. The intersectional lens employed in this paper draws on the foundation of Kimberle Crenshaw's landmark essays "*Demarginalising the Intersection of Race and Sex*" published in 1989, and "*Mapping the Margins* :

Intersectionality, Identity Politics and Violence Against Women of Colour" published in 1991, that establishes intersectionality as an analytical framework for situating the complex relationship arising out of overlapping social identities. In India's case these complexities arise out of the graded stratifications of caste, class, economic footing, education, place of birth among others which influences the kind of discrimination queer people may experience in India, simply by virtue of the access to the financial and political resources available. Here, caste is the most formidable classification that determines the varied degree of marginalisation and discrimination that one may face by virtue of the same. Therefore, the paper also refers to Nivedita Menon's work in 2009, where she discusses functioning of caste as the epicentre of the trifold axis of social, political and economic structures that shapes access to resources and rights. In tandem with Crenshaw's work the intersectionist analysis, notes that the systems of oppression do not function independently, but interdependently whereby they mutually intersect and constitute one another, generating qualitatively varied direct experiences of marginalisation, in proportion to the degrees of privilege that one enjoys.

Legislative and Judicial Policy Implications:

The Transgender Persons Act, 2019.

Passed on 17th December, 2018 the Transgender Persons Act is considered to be a double edged sword - noted for making some due changes and improvements while, simultaneously eroding the basic rights of transgender persons in India. A

celebrated aspect of the bill prevented discrimination of transgender persons in relation to education, employment, healthcare and housing, but within the same legal framework, it also mandated a District Magistrate's certification when one wishes to declare their gender identity, which would be provided only after proof of a sex reassignment surgery is produced. To be legally recognised as their desired gender, they were expected to have the financial capacity to afford expensive medical surgeries - which displayed the classist sentimentality of policy makers, and actively eroded the need for intersectional policy making, given the significantly more difficult lived realities of Dalit and Bahujan and other lower caste trans persons, who may not be able to afford said surgery, even if a well placed upper caste, trans person in a Tier 1 city, could. In theme of the superficial pacifications that this act made, it misplaced emphasis on only transwomen and "hijras" (a derogatory term used for a traditional South Asian Third Gender community) ignoring other non-binary identities such as queer and transgender men. With no effective policy directives that can be implemented with the existing and available resources, the glaring loopholes of the act are reflective of the lack of awareness and ignorance of policy makers and the broad generalisation and concentration of the existence of this community into a few relatively well known specific identities. To wit, policy makers in India indulged in the age-old practice of catering only to the needs of those that they were aware of without any prior research, survey or analysis to thoroughly conclude the objective goals of an act such as this. This strengthens Nancy Fraser's articulation of material deprivation through a lack of institutional support that can structurally transform the lives of the transgender community of India, alongside Friedrich's admission of the fact that policy gaps are often intentional political decisions

rather than knowledge gaps, while it also violates his core conceptualisation of what a policy is, that is - something which must achieve community oriented ends, which with respect to the act under investigation, does not adequately do.

Economic and Material Deprivation:

International and Regional Reports and/or Surveys.

Fraser argues that economic impediments are crucial in understanding the living conditions of marginalised groups. At par with our methodology, the lives of the LGBTQIA+ community are also affected by the rampant absence of equitable distribution of resources and livelihood opportunities, in clear violation of both Part III and IV of the Constitution. It is indeed, the politics of India and Indian sentimentality, that policy making follows the fault lines of most top down approaches of welfare modules, without solving the grassroots issues at hand, at a more foundational level. According to a National Human Rights Commission report, 96% of trans persons are denied employment and 92% are denied participation in both the organised and unorganised, or formal and informal sector of the Indian economy owing to stigma, improper or absent inclusivity guidelines and the culture of hatred towards the LGBTQIA+ community. India being the fourth largest economy in the world, growing at an astonishingly fast pace suffers inadvertently by not including the community in its economy and loses out approximately 1.7% of its GDP every year as per a 2014 World Bank study. Another set of statistics derived from a 2022 study conducted by a Human Resource firm by the name of "Randstad India" reveals that 53% of Indian companies lack career development opportunities for people of the LGBTQIA+ community, and only 9.5% of corporate organisations made an effort to be inclusive. As per the 2011 population census, the transgender

population in India approximates to about 490,000 but only a few of them are eligible for employment, leaving them to fend for themselves and seek a livelihood by begging on the streets and even resorting to petty crime. And in the rare instance of them gaining employment, they are faced with other issues such as the acute unavailability of accommodation - something we were witness to in 2017, when Kochi Metro Rail Limited of Kerala employed 23 trans persons only for them to be forced to resign when the local landlords of the area denied them a place to live. Yet another detriment of this concerning lack of economic empowerment is its extended and perhaps both intended and unintended impact on the quality of healthcare available to the transgender community in India. In the capital city of West Bengal, a study by Chettiar (2015) reveals that the transgender and hermaphrodite ("hijras") individuals are subjected to a structural inequality in the healthcare system wherein the healthcare personnel of Kolkata denied them treatment and misallocated them in male wards where they are subjected to harassment, without any protection. The community is therefore, dependent on the labour economy that is unregulated and in dire need for reform, where they are mistreated and left underpaid which causes them to be economically marginalised further that, then pushes them into the cycle of poverty, sex work, homelessness and beggary thereby, creating a toxic cause and effect cycle of economic deprivation, in India. This too, falls in line with Fraser's redistribution component of her three dimensional theory of justice that critiques the absence of adequate economic safeguards and resources.

Social and Cultural Marginalisation:

The intersectionality of caste, class and gender identity.

Employing an intersectionalist lens to ascertain whether there is a variation in the life of an upper caste and lower

caste, LGBTQIA+ person, we find that in India the caste and achieved status dictates the social reception to one's gender identity. On one hand, one can often chance upon expensive cafes and restaurants in South Kolkata, West Bengal, and be privy to "open mic nights" and "pride brunches" hosted by these capitalist establishments inviting members of the LGBTQIA+ community to share their experience with the audience ; and on the other, impoverished and Dalit LGBTQIA+ members are forced to live a marginalised life bereft of safety and security. This is found in the brutal and inevitable reality for 26 year old Dalit transgender women Udaya, from Panakudi in Tamil Nadu's Tirunelveli district, who was brutally assaulted, sexually and verbally harassed by her partner's family for daring to fall in love with their son. The intersectionality of caste and one's gender identity or sexual orientation alongside their status is found in multiple folds of the social fabric. It is noted that those LGBTQIA+ persons belonging to the upper castes and strata of society have better access to healthcare, psychological and legal assistance and sex-reassignment surgery given their economic capabilities born out of the unfair advantages they receive by virtue of their caste status.

In recent years, a novel discourse has emerged in India discussing the potential fluidity of sexual identifications and the linking of sexuality to other forms of identities, as a politically productive stance. In this context, the term 'queer' has been adopted and popularised by activists in academia and politics, but the connotations of being queer has far surpassed the realm of sexuality and as previously mentioned, found itself in an unusual fusion with caste and class, community and religion (Gupta, 2005; Narrain and Bhan, 2005). The available literature which examines queer politics further locates the intersectionality of one's queer identity. One such

example may be found in an introspective essay written by a Dalit gay man Sumit Baudh, whose father hid his Dalit identity from society by giving him a surname of an upper caste, reflected upon the nexus of caste and class with the LGBTQIA+ community in India, writing “Thus, I remained a closeted Dalit man all through school and college” (Baudh, 2007: 33) . Another aspect of this argument is found in the conceptualisation of “gender inclusivity” in India, wherein it is presumed that the mammoth challenge of inclusion may be bested by including women, but the conceptualisation of who a “woman” is, has been confined to only, biological females. The National Policy for the Empowerment of Women in 2001 while prioritising its objective of establishing a woman’s perspective in policy formulation perceived women a gender to be synonymous with biological sex and only recognised and consequently included cisgendered heterosexual females within the ambit of deliberations. An interesting study detailing the depoliticisation and feminisation of gender inclusivity and development akin to that of the NPEW 2001, from Kerala by Devika and Thamoil, n.d, shed light on what is known as development altruism wherein, in the rare exception of the inclusion of women in politics there is firstly, a flawed conceptualisation of the gender “woman” as only biological females, leading to the exclusion of transgender women, queer women, hermaphrodites and intersex women from panchayats and higher decision making spheres ; and secondly a reduction of the already limited participation of women, to the status of the self-sacrificing and apolitical centres of the patriarchal polity where they are treated unequally owing to their identity as “development agents” rather than “politicians”. Intersectional ignorance is not the only reflection of the acute social exclusion that this community faces in India. Although the state has decisively

banned, forced conversion and therapy clinics in India, like Fraser had noted once again, structurally once again there is a huge vacuum of effective instruments to prevent the crisis of forced conversion. In June 2020, when Meenakshi Sajeesh of Angamaly, Kerala, was forcefully taken to the Malankara Orthodox Syrian Church Medical College in Kochi, for a reversion to “normalcy”, the country was reminded of the state apparatus’s distinct failure in protecting a class of people it legally recognises. Despite the availability of data proving the widespread practice of forced conversion and instances of “corrective rape” and physical, sexual and psychological violence, policy makers in the executive as well as the legislature have failed to contain and rectify the situation. This devastating policy vacuum with direct ramifications on the quality of life of this marginalised community, is the kind of nuance that is often lost when academicians focus on independent silos of feminist and dalit literature, rather than employing intersectionist approaches, as pointed out by both Crenshaw and Menon.

The Advantages of Strategic Political Inclusion:

Crenshaw, 1991 and Mansbridge, 2003 notes that voters align politically based on shared identity categories such as sexuality, gender, caste or race. This has an enormous bearing on voting behaviour, meaning that by appealing to certain causes or communities, electoral support may be gained. Therefore, supporting the idea of a strategic political inclusion of marginalised communities by effectively mobilising them into viable political demographics. In light of this, I undertake a comparative analysis of electoral politics in India and the United States of America with respect to the hypothesis this paper makes.

The United States of America with all its partisanship, may be the most significant example of what a political party can do, when it begins inclusion. The formidable opponent of the right wing, conservative Republican Party, is the Democratic Party in the USA, known for championing the cause of inclusion of America's LGBTQIA+ community. In doing so, the party has greatly benefited from its pro-LGBTQIA+ stance, with over 46% of Americans supporting the Democrats and their policies according to a survey conducted in 2021. President Joe Biden - the Democratic Presidential candidate for the 2020 elections, who had won by 51.3% of the votes cast in the 2020 elections, demonstrated the shift of the American voter population towards the liberal Democrats caused by their policies which supports equality of all citizens and calls for the end of perpetration of violence against the LGBTQIA+ community. It was during the tenure of the Obama administration that the legislation banning hate crimes against the LGBTQIA+ community was passed, leading to the increased popularity of President Barack Obama. With 2/3rd of the Democratic party supporting same-sex marriages, and a 48% approval and 44% rejection from the American population of the same, when President Obama endorsed same-sex marriage in USA, during his tenure at the White House, it set a historical precedent and led to a larger percentage of Americans favouring his administration. This political victory was made possible by the Democratic Party's historical allegiance to the LGBTQIA+ community. Yet another statistical evidence that substantiates this argument, is the increase of the African American approval of Obama's pro same-sex marriage endorsement from 21% in 2004 to 28% in 2008, to 40% in 2012, further validating the prevalence of the distinct political advantage that comes from supporting the LGBTQIA+ community, as Obama had done. Similarly,

President Biden's pro-LGBTQIA+ policies have garnered him financial support from America's largest LGBTQIA+ group - The Human Rights Campaign, in the form of a 15 million USD contribution to Biden's 2024 presidential campaign. Additionally, this group had planned on covering the states of Pennsylvania, Georgia, Michigan, Wisconsin, Arizona and Nevada to campaign for the Democrats and Biden, with the intention of locking down the swing voters who they seek to secure for the Democratic Party. In general, this organisation estimated that in the 2024 Presidential elections, there would be 75 million "equality voters" who would vote for the Democrats given their pro-LGBTQIA+ stance, a marked increase from the 62 million voters in 2020 and 52 million voters in 2016 who had also voted for the Democrats owing to their stance with regard to the community. While the Democrats lost the 2024 elections, it is important to note that the LGBTQIA+ community is still a strong vote base for the party, especially in light of the conservative policies adopted by the Republican Party. A similar trend had been detected in India, wherein in the 2024 Congress manifesto, provisions to legally recognise civil unions between LGBTQIA+ individuals in India were included, marking a historic shift in the Congress's prior stance of neutrality and silence. What is more interesting is the growing support of the historically neutral and ambiguous parties, which was witnessed as India readied itself for the 2024 General Elections. Parties such as the Communist Party of India (Marxist), National Congress Party (SP) and the Trinamool Congress championed the cause and ensured policies for the community both in public as well as the Parliament - with TMC MP Derek O'Brien calling for the legalisation of same sex marriages in India, in clear contradiction to the ground reality of the states they are in power in, insofar that the living conditions of

the LGBTQIA+ community have remained the same or worsened as discussed in the thematic section of the paper, with few exceptions. Suddenly, in stark contradiction to the Bharatiya Janata Party's Hindutva politics, the opposition had begun to reshape their political narrative to cater to the more progressive and "woke" voters of the country, notably the younger generations. In a politicised and polarised India, 53% of the adult Indian population supports the legalisation of same-sex marriages with 28% strongly in favour, 25% somewhat in favour, according to a survey conducted by the Pew Research centre in 2023. Meaning that by advocating for the rights of the LGBTQIA+ community, these parties are gaining the favour of those Indians who wish for a more equitable society and are already disgruntled by the current government's lack of constructive policies. And the fact that the aforementioned political parties have begun to utilise this issue to gain the electoral and political allegiance of the younger generations is reflective of the practical application of the same rationale used by the Democrats in the USA. Hence to answer the question, in the evolving landscape of political awareness and politics, it is indeed strategically useful to include the LGBTQIA+ community, which must come with tangible policy shifts and an effective structural transformation.

Conclusion:

In conclusion, drawing upon the theoretical frameworks discussed above, the paradox of the symbolic recognition and material deprivation of the LGBTQIA+ community becomes a glaring reality. The structural theatres of legislative measures, economic safeguards and societal reception provide us with a clear picture of the existing policy gaps, despite the presence of sufficient literature on the subject. As established before, policies are not merely bureaucratic

tools but rather, embodiments of political narratives and sentiments. In light of this analysis, we must admit that the existing discriminatory legislative measures and top down policies developed are intentional political decisions and not byproducts of knowledge gaps. Contrary to popular opinion, this crisis has been the unspoken omnipresent entity across years of policy gaps in our country, that has only now in the last five years - come into the limelight of the mainstream national awareness owing to the intentional subordination of the community in question. In a country like India, where Gender Justice as a concept is limited to a narrow definition of female representation, the LGBTQIA+ community suffers from a multidimensional institutional marginalisation in the caveats of polity, society, economy and culture. Although there exists a vast reservoir of literature pertaining to this subject matter, a significant area also remains localised within the realm of academia, often inaccessible to the larger masses. Thus, it is imperative for academicians and policy makers alike to not only conduct proper investigations into the demands and needs of this community, but also create an awareness of the same. Only through institutional and structural changes to the current paradigm can the larger goal of bridging the gap between symbolic recognition and structural inclusion can be achieved, alongside the aim of ensuring an upliftment of the political, economic, social and cultural conditions of the LGBTQIA+ Community.

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