

Rethinking Citizenship: A Queer Journey

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Citizenship, as conventionally understood, draws its definitional strength from a framework of national law increasingly supplemented by international law. There is a radical potential to the idea of citizenship as a concept that allows it to represent the rights of groups that have historically been marginalised. The recent history of the queer rights movement shows an attempt to frame queer struggles within the language of rights. While this has undoubtedly been an extremely useful strategy in terms of putting forward the radical idea of queer people as citizens of this country, it suffers from serious limitations. While mapping out the strengths of the use of rights as a framework of articulation, this article goes on to note the significant ways in which the radical critique of institutions such as the family and monogamy is muted by an appeal to the law. What the law eventually protects is a queer citizen who leaves aside his queerness and joins the mainstream as a person who is different but equal. In this context, this article addresses the role of the 'illegal citizen' who resists the demands of 'normality' and thereby struggles to articulate his/her concerns in the face of a legal system that cannot take on board the diverse ways in which his/her life threatens mainstream institutions.

I came out as being gay in 1997 and since then have been associated with what we used to call the LBG (lesbian, gay and bisexual) movement. Today we prefer to call it the queer movement. This shift from the LBG movement to the queer movement has been a challenging process during which each ideological certainty has had to be constantly rethought at the altar of practice. In essence, the shift is really from understanding oppositional sexuality in terms of fixed identities to understanding it in terms of a wide range of positions and attitudes, all of which aim to decentre the

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heterosexist norm. I will retrace some of those steps so as to map out how my understanding of citizenship has changed over a period of time. There are three moments of rethinking that are of particular significance:

1. understanding that citizenship is hierarchically structured around sexuality;
2. understanding that unequal citizenship is being legitimised by societal institutions such as marriage and family; and
3. understanding how class intersects with sexuality to produce a further degree of marginal citizenship.

Citizenship: Hierarchically Structured Sexuality

As a law school student I first encountered citizenship as an abstract category that entitles all those who are 'Indian' to rights. The classes on constitutional law with the emphasis on how public interest litigation would lead to an ever-widening circle of Indians beginning to enjoy the right to live with dignity, the right to freedom of expression, and the right to equality gives the impression that the Indian Constitution is an extraordinarily supple document, which on demand provides rights to any marginalised group. I quickly realised, however, that the abstract figure of the citizen has to have a specific character so as to be deserving of rights. In spite of the scope of the 'citizen' being expanded to include such marginal figures such as the street dweller, child labourer and prisoner, there are still certain alleyways down which Indian constitutional law did not march. One of these bylanes left untouched is the one occupied by queer sexualities. The rights that flow to this expanded category of citizen, including the right to equality, right to live with dignity, and the right to freedom of expression, was denied to the queer citizen. In the laws that define marriage, divorce and adoption, once again the absent figure is the queer person. This has implications beyond marriage and divorce as the entire edifice of civil rights is built upon the solid foundations of family and marriage. Thus, for example, under the Workmen's Compensation Act, the one who is to be compensated can only be a member of the heterosexual family or a relative by marriage. Similarly, in the definition of those who can be nominated

in insurance laws, only relations by marriage and blood relatives can be nominated. Queer relationships stand excluded from the very framework of civil rights. For all practical purposes the queer person is invisible in the entire discourse on citizenship rights.

The 'absent' figure of the queer person, however, takes on a full-blooded personality when it comes to the criminal law. Under Section 377 of the Indian Penal Code, the acts that are criminalised are those of carnal intercourse which are against the order of nature. Thus, the absent figure of the queer citizen transmutes into the category of the sexual offender who finds a prominent place as an offender against public morality in the dusty pages of the Indian Penal Code.

Being queer and being in law school, you realise that the promise of universal citizenship has certain limitations. Not everybody is a universal citizen and most definitely the image of yourself that is mirrored in the law is not of the citizen, but rather the image of the pervert or the offender. Sexuality, which might have seemed insignificant in the context of the citizenship discourse, actually has a central salience. If your sexuality happens to correspond with the prevailing normative sexuality (heterosexuality), then citizenship rights accrue without much debate. If on the other hand your sexuality happens to be at odds with the description of the 'normal' citizen, then not only are you deprived of ordinary civil rights, but your very existence comes under the shadow of the criminal law.

If you are increasingly certain that you are differently positioned from the heterosexual norm and that the rights language does no justice to you and others like you, what do you do? As a law student and a decent member of civil society as Partha Chatterjee (2002) would define it, you organise a seminar on gay rights. The law school being a good liberal institution believing in the freedom of expression, after some degree of doubt as to whether freedom of expression can actually trump morality, finally allows a seminar that outlines why the law discriminates against homosexuals. What emerges through the seminar is the clear sense that the law does treat you differently based on whether you are homosexual or heterosexual. However, what also emerges through the various narratives of pain, of families rejecting children, of young people being driven to suicide is the sense that hierarchical and graded citizenship is not just about the law alone, it involves deeper values in society.

Societal Institutions: Legitimising Unequal Citizenship

What is it in wider society that ensures that the experience of citizenship by queer people remains an experience of incompleteness? I would argue that it is the primacy of heterosexuality that has been coded into societal institutions in a way that heterosexuality appears almost natural which is the problem. This makes it difficult if not impossible to critique it. In particular, I would like to refer to two societal institutions in which heterosexuality has been coded as being natural and inevitable, that is, the family and marriage.

The family in Article 16 of the Universal Declaration of Human Rights (UDHR) has been defined as 'the natural and fundamental group unit of society and is entitled to protection by society and state'. However this understanding of 'natural' needs to be questioned from the queer perspective. The lesbian community in particular might not face any direct violence from the law, but the kind of violence they face through the family raises very fundamental questions about how we conceptualise the family itself. In Bangalore as lawyers we have had to deal with a number of cases of adult lesbians who run away with their lovers, and are pursued by their families who track them down and ensure that the local police station files a case of kidnapping against the older woman, thereby forcibly separating them and ensuring that they go back to their parental homes. As disturbing are the numerous cases of suicides of lesbian couples who want to live with each other, but the family attempts to forcibly separate them and marry them off. These examples stand testimony to the fact that if the surface of the family as a benevolent institution is scratched, and if ever the ability of the family to reproduce itself is threatened, violence becomes the face of an otherwise seemingly benign institution.

Similarly, we need to adopt a critical lens towards the institution of marriage. Marriage as an institution is based on exclusion and exclusivity both of which are antithetical to any proper concept of democracy. Marriage presumes exclusivity which as a choice is not by itself problematic. But the problem is that marriage as an institution occupies the normative field, leaving no space for non-normative, non-exclusive relationships. Of course, one need not add that exclusivity is more a requirement from the point of view

of the woman, with the man likely to be excused a bit of philandering. If by chance the woman violates the norm that she is the exclusive property of the man, then she stands the risk of running the gamut of societal sanctions. What is equally troubling about the institution of marriage is that it somehow seems to have escaped serious critique on the grounds of equality.¹ If marriage is defined as being between a man and a woman, which obviously excludes relationships between man and man, and woman and woman, is it not on the face of it exclusionary? If it is exclusionary, why does it still have enormous social sanction even in progressive circles? Put it another way, if the law on marriage prohibited marriage between a dalit boy and brahmin girl, would we still be comfortable about getting married? What does this attitude to marriage as something we must finally, after all is said and done, succumb to, say about how seriously we take the norm of equality as applied to issues of sexual orientation?

Once again I think the sharpness of critique of marriage and family has really come from the lesbian community (Forum Against Oppression of Women 1999; Mahajan 2006). In our patriarchal society it is easier for a man to escape the net of this hegemonic institution. In the case of lesbian women these institutions have already consumed many lives in terms of suicides and unhappy marriages. To deliberately put it in polemical terms, what is happening to lesbian women through the silent working of these institutions can be termed social murder, with marriage being the noose and family the hangman.

Class, Sexuality and Marginal Citizenship

The word queer communicates the underlying assumption that somehow the various communities that come within the rubric of queer, including lesbians, gays, bisexuals, *kothis* and *hijras*, are similarly placed.² However, this is far from the truth, as gay men and lesbian women, for example, occupy very different positions on the chequered board of inequality. Lesbian women have to bear the brunt of oppression both as women and as lesbians, with enormous resilience being shown by lesbian women as they navigate the treacherous waters of patriarchy and heterosexism.

If one thinks back as to how we as a part of the queer community have addressed the problem of unequal citizenship, the methods

adopted included organising conferences, discussions, negotiations, lobbying with the state and the occasional protest. In the course of this work we were told frequently that we were Western, that homosexuality did not happen in the real India, and that this concern about sexuality affected only a small section of Indians. We rebutted these accusations saying that sexuality was a concern across various social strata in India, that one cannot apply the utilitarian calculus to rights, that if we were Western so was feminism, democracy, equality and consumerism. We also responded using the example of Leela and Urmila, two young women from a small town who got married to each other because they wanted to and who had no contact with the queer community or had any acquaintance with the queer discourse. How can one explain this, we would ask, but as an expression of same-sex love, which existed even prior to the beginnings of the queer discourse in India?

In spite of these answers, at the back of my mind was the question as to what was happening in sections of the population that constituted the urban poor, tribals and rural communities? There was the niggling doubt whether the queer movement (important as the questions it was raising were) was seriously limited by its class base.

To take a short detour to explain these terms: 'civil society', according to Chatterjee (2002), is constituted by the institutions of modern associational life and is marked by modernity, while 'political society' is a domain of mediating institutions between civil society and state, and is the sphere of democracy. There is a contradiction between modernity and democracy in his terms: what characterises non-Western modernity is precisely the hiatus between the two, that is, between civil society composed of a small section of citizens, and political society composed of people. Population groups unlike citizens are not products of rational contractual association, but, rather, are the target of the policy of the legal bureaucratic apparatus of the state.

Chatterjee's description of civil society might well fit the existing lesbian, gay and bisexual community, and their forms of activism, association, etc. When we were called Western, it might perhaps have been more useful to call ourselves modern. If we accept the idea that we are constituted by modernity, then the question remains: is there a political society as well that is concerned with questions of sexuality? Has the state ever dealt with a population

group based on sexuality as a part of its policy? The peculiarity is that even the infamous Section 377 of the Indian Penal Code targets only the act of 'carnal intercourse against the order of nature', and has nothing specific to say about identity. This could, however, be construed as applying to the homosexual community. As far as the lesbian community is concerned, they have never been the targets of state policy.

This search through political society takes us straight to one community that has been historically targeted on the basis of their sexuality. The only population group that has been constituted by colonial state policy covers those whom the colonial state referred to as eunuchs and whom we today call the *hijra* community. The legislation that first targeted the eunuch was an amendment to the Criminal Tribes Act of 1897. Under this statute a eunuch was 'deemed to include all members of the male sex, who admit themselves, or who on a medical inspection clearly appear to be impotent'. The local government was expected to keep a register of the names and addresses of all the eunuchs who were reasonably suspected of kidnapping or castrating children or of committing offences under Section 377 of the Indian Penal Code. Any eunuch who 'appeared dressed or ornamented like a woman in a public street . . . or who dances or plays music or takes part in any public exhibition in a public street . . . [could] be arrested without warrant and punished with imprisonment up to two years or fine or both.... Eunuchs are prohibited from acting as guardians, drawing a will, or adopting a son' (People's Union for Civil Liberties 2003: 45).

What is clear is that, as per colonial law, being a eunuch was a criminal enterprise. Every aspect of her life was criminalised. There are no records of how the eunuch critiqued this law, disobeyed it or prevented it from being enforced. Once again these are stories of political society, which civil society has long ignored, even with the writing of the history of the queer in the Indian context.

The politics of sexuality in the Indian context is, thus, not only the story of the modern identities of the lesbian, gay and bisexual, but equally the story of the politics of the governed, that is, the *hijra* and *kothi* communities. The only inclusive label that takes on board these different critiques of heterosexuality as the norm is 'queer', which as a political project aims to bring together these various critiques. If we take the history of the last 20 years, we find that the terms civil society and political society have enormous salience. The lesbian, gay and bisexual movement began with the

founding of a lesbian group Sakhi and the founding of the gay magazine, *Bombay Dost*, in the late 1980s. A small band of men and women came together, at first uncertainly and now with increasing confidence and openness, to found community magazines, groups and helplines and to start social events. Almost 20 years later, it is likely that every major city has some sort of an LGB scene once again with greater access for gay men than lesbian women.

While this has been the report card in civil society, what has been happening in political society? The *hijra* and *kothi* communities have with the onset of the 1980s and the emergence of the HIV/AIDS pandemic found themselves the target of a public health intervention by both government and non-government organisations. The category called MSM (men having sex with men) essentially targets the subaltern group of *hijras* and *kothis* (along with female sex workers) who were seen to be spreading the epidemic. Today it is not uncommon to see *hijras* and *kothis* being organised under the rubric of HIV/AIDS prevention. In Tamil Nadu, for example, almost all districts have community spaces for *hijras* and *kothis* with many of them being involved as peer educators or as targets of peer intervention. The essential shift since the colonial period is that apart from being targeted by the criminal law, *hijras* and *kothis* are also the targets of a public health intervention.

The interesting question to pose is how has the *hijra-kothi* community responded to this new intervention by the state, which constitutes them both as vectors in spreading HIV/AIDS as well as frontline participants in the war against it. To understand how the community has responded to this new categorisation, it is first important to understand what space they occupy in relation to the Indian state. If they are seen as a part of political society and hence as a part of a population group constituted by state policy and not as members of civil society who participate in modern associational life, then it is quite obvious that they occupy a very different space in relation to rights.

As Chatterjee puts it:

Most of the inhabitants of India are only tenuously and even then ambiguously and contextually rights bearing citizens in the sense imagined by the Constitution.... As populations within the territorial jurisdiction of the state, they have to be both looked after and controlled by various government agencies. These

activities bring these populations into a certain political relationship with the state. But this relationship does not always conform to what is envisaged in the constitutional depiction of the relation between the state and members of civil society. (2004: 38)

With this tenuous relationship to rights, what is vital to understand is how the subaltern groups negotiate the imposed state policies. A question of great interest is whether they are able to expand the democratic space available to them in the way they relate to state policy. I believe that regardless of the reasons for the intervention, the *hijra* and *kothi* communities have been able to use the intervention to raise their concerns. Key to the concerns raised have been the issue of incessant violence by state and society against them. In fact narratives of brutal rape by police officers and goondas, and the need for contestation are becoming a part of the very narrative of the *hijra* and *kothi* communities across the country. In other places *hijras* and *kothis* have raised concerns as to marriage, ownership of property, opening of bank accounts, and negotiating other civil rights.

Whether these concerns are ever adequately addressed really depends upon the way the relationship between *hijras*, *kothis*, NGOs, funders and the state really works out on the ground level. In some places the community has been successful in building networks that can tackle violence in the language and idiom of political society. In Bangalore, for example, it has taken the form of *hijras* and *kothis* walking into police stations in huge numbers demanding justice, massive rallies in which issues from violence, to repealing of discriminatory laws, to the right to do sex work are raised. Mass participation, the use of illegal strategies, and even the raising of illegal demands all point to an articulation that challenges the limits of civil society activism.³

Learning from Political Society

What do we, as members of civil society, learn from the sexuality struggles in political society? For the feminist movement the sharp but troubling question posed is whether *hijras* should be given the legal status of women. This is a demand which has arisen from some sections of the *hijra* community and had been posed in the context of the reservation of seats for women in local elections

with the Madhya Pradesh High Court holding that *hijras* cannot be treated as women. While one cannot expect much from the court, the question is really posed to other more progressive audiences. What would it mean for the feminist movement to confront the possibility that not only gender but even sex is a construct, that women are not defined by birth alone but by a conscious choice as well. Would the slogan of a *hijra* protester, ‘my gender, my right’ be an acceptable formulation of who a woman is?

To the LBG community the sharp question posed is really about how one understands and accepts difference. The *hijra* and *kothi* communities are very different in terms of their lifestyle concerns, political choices, as well as modes of protest. How do members of civil society learn from a very different political culture that is really born on the streets? The resistance and defiance of the *hijra* and *kothi* community really owes much to a history of everyday confrontation on the streets—the political idiom and concerns are consequently different. Thus, it is up to the LBG community to overcome the barriers of class, and understand and support the concerns which animate the *hijra* and *kothi* communities. Perhaps the deeper question that is posed is whether sexuality can ever be a commonality that can overcome the barrier of class.

Finally, today we have a situation where the questioning of the heterosexual norm emerges from different vantage points. Civil society questionings take the form of writings, movies, formation of groups, petitions, legal cases, etc. From political society emerge rallies, protests and unique forms of threat, all of which attempt to decentre the heterosexual norm. The future of the queer political project is really about how the strengths of the two are combined to bring about another world.

Notes

1. While the patriarchal nature of marriage has been the subject of sustained feminist critique in the Indian context, the exclusively heterosexual nature of the institution has escaped critique.
2. The *hijras* are a community representing an existing Indian tradition that clearly contests heteronormativity. *Hijras* include men who go in for hormonal treatment, those who undergo sex-change operations, and those who are born hermaphrodite. The *hijra* community has its own culture and ways of living, including its own festivals and gods and goddesses. *Hijras* divide themselves

into *gharanas* or houses, and the strength of the *hijra* community lies in its close-knit relationships.

The *kothi* is a feminised male identity adopted by some people in the Indian subcontinent and is marked by gender non-conformity. A *kothi*, though biologically male, adopts feminine modes of dressing, speech and behaviour, and would look for a male partner who acts masculine in modes of behaviour, speech and dress.

The 'modern' communities that have emerged that contest the hetero-normative framework are the lesbian, gay and bisexual communities.

3. The *hijra* and *kothi* communities perhaps best exemplify the position of the 'illegal' citizen, that is, the citizen who in theory enjoys citizenship rights, but whose existence is criminalised by various laws. The mark of illegality under which the community lives leads to a political articulation, which is always on the borderline of legality and illegality.

References

- Chatterjee, Partha. 2002. 'On Civil and Political Societies in Postcolonial Democracies', in Sudipta Kaviraj and Sunil Khilnani (eds.), *Civil Society: History and Possibilities*, pp. 165–78. Cambridge: Cambridge University Press.
- . 2004. *The Politics of the Governed*. Delhi: Permanent Black.
- Forum Against Oppression of Women. 1999. 'Visions of Gender Just Realities', in Bina Fernandez (ed.), *Humjinsi*, pp. 83–88. Mumbai: India Center for Human Rights and Law.
- Mahajan, Shalini. 2006. 'Queer Politics and Women in India', in *Politics of Location: Issues and Identities in Contemporary India*. Bangalore: Hengasara Hakkina Sangha.
- People's Union for Civil Liberties. 2003. *Human Rights Violations Against the Transgender Community*. Bangalore: PUCL.