

Social Justice and Queerness

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Executive Summary

This paper revisits the debate on recognition, redistribution and representation to explore how well social justice theorisation can grasp queerness. The “recognition turn” of the 1990s drew attention to understanding social justice as primarily a struggle for recognition, inaugurating enriching exchanges between thinkers on the place of redistribution, and later, representation, in this discourse. Locating these theories in the context of queer claims in India, this paper brings out how the lexicon provided by this discourse can enable as well as limit the understanding of social justice for queer lives. Issues related to identification, intersections of marginalisations and framing of discourses are examined as areas where justice delivery as well as conceptualisations of justice in terms of the three components can face challenges. The paper attempts to take a step towards rethinking these components of social justice, given the “unruly” facets of queerness that may not easily yield themselves to these frames.

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Social justice has an elusive nature. In recent times, humanitarian crises, uprisings against autarchies, mounting frustration with inequality, climate change and competing rights claims have pushed us to rethink what justice is and what is social about it. Notions of justice as equal distribution of resources, as fair distribution of resources and as inclusion of all have informed our basics on this concept. Meanwhile, groups on the economic and cultural right are curiously using the same basics to consolidate their hold across the world. Social justice is receiving new critical inspections at this juncture. Thinking on social justice, Nancy Fraser (2009) visualised a three-dimensional view of justice comprising recognition, redistribution and representation. These respectively correspond to the cultural, economic and political dimensions of justice and address the injustices of misrecognition, maldistribution and misrepresentation. Seen through this lens, conflict refugees, citizens standing against autarchies, protestors frustrated with inequality, victims of climate change and people demanding a whole spectrum of rights can be said to be seeking recognition of their respective statuses. They also seek an equal and fair redistribution of resources to correct the economic side of the injustice. Increasingly, they are also demanding an adequate role in decision-making processes, asserting that their voice deserves representation.

Fraser (1997a) had argued just before the turn of the millennium that increasingly, demands for recognition dominated justice claims. Gay and lesbian struggles were an example of this tendency, Fraser observed, wherein the movements perceived the injustice they faced as primarily that of denial of cultural recognition and sought justice in having gay and lesbian identities acknowledged, say through incorporation in laws on non-discrimination. This argument coincided with the 'recognition turn' of the 1990s, which saw a range of thinkers from the academic left turning their attention towards recognition as the defining form of justice in the zeitgeist. Fair distribution of resources was, then, contested as either emanating from recognition or constituting a separate realm of justice. Recent events, such as Brexit and the surrounding anti-

immigration waves, the Venezuelan turmoil and demands for reclassification as Other Backward Classes (OBCs) by certain castes in India, hint at the continuing tensions between these dimensions of justice.¹ Queer movements around the world, meanwhile, are using the language of social justice in a range of claims – from marriage and inheritance rights to affirmative action. In many of the former colonies, the struggle has been a fundamental one – for decriminalisation, a demand that gets rejected in democratic regimes as well as the others. Can the social justice discourse, then, grasp well the range of claims that are voiced by queer movements and individuals? On a larger canvas, can social justice grasp queerness?

This paper draws attention to queer claims for justice in contemporary India to examine these questions. Queer here refers to the more defined identities of lesbian, gay, bisexual, transgender and intersex *as well as* the not-so defined identities that fall in between and beyond.² Organised chiefly around the claims to decriminalise queer sex and recognise transgender identities, queer movements in India have witnessed small victories as well as big setbacks. While the recognition of transgender identity as a third gender by the Supreme Court in 2014 was seen as a step ahead, its efficacy in delivering justice was in doubt in light of the refusal of the same court to decriminalise queer sex a few months earlier. Four years down the line, queer sex still remains criminalised in the rule books; a petition to the court to reconsider its decision awaits hearing. Also current is the demand for a comprehensive law that recognises transgender and intersex persons as equal citizens, redistributes resources for welfare and provides for adequate representation in public education and employment. These appeals are being voiced in parallel with numerous other rights claims in the backdrop of rising inequality, expanding capitalism and the ascendance of the Hindu right to power. The backdrop is significant as it lets us into the frame in which certain claims get entertained and certain others do not.

In the next section of this paper, I tiptoe on the theoretical plank of the recognition-redistribution debate with a parallel effort to

make sense of recent developments in queer India. Fraser would be seen at the centre of this discussion, primarily because her thoughts touch on gay and lesbian struggles, if not all queer struggles, explicitly. As would be seen, Fraser's treatment of these struggles led to a heated debate on the nature of queer claims within the justice discourse. In reading the theories in parallel with the recent development in India, the effort is to locate theory and eschew blind importation of Western concepts. In the succeeding section, the paper deliberates key issues where these concepts slip, when located. The possible rethinking that is sought of conceptualisations of justice are indicated – to a modest extent.

Revisiting an Old Debate

Precisely because issues of recognition, redistribution and representation continue to shape social justice claims, the political theoretical debate that unabashedly brought out the underlying tensions between these three ideas merit a revisit. Given the theme of this paper, it is worthwhile to begin with Axel Honneth, a thinker associated with the school of critical theory. Engaging with Hegel's idea of struggles for recognition, Honneth (1995) identifies recognition as the core normative framework within which to understand social conflicts.³ Implicit in this conceptualisation is the understanding that human beings seek acceptance and self-realisation in social relations. This is a process that involves three forms of recognition – recognition in love, law and esteem. The first involves mutual (“intersubjective”) acceptance in personal relationships and friendships, the second in institutionalised statutes regarding dignity and autonomy, and the third in social networks. The three may not already be present and need to be fought for, resulting in struggles for recognition. Love ensures the development of self-confidence in an individual, while law ensures self-respect and the space required to exercise self-confidence. By contrast, self-esteem is the term Honneth uses to refer to that form of recognition that individuals seek for their contributions to society vis-à-vis the others. This, in turn, depends on what is socially considered as a contribution, thereby

sparking struggles for recognition of specific contributions as worthy of esteem.

The stigma attached to queerness affects queer individuals at the most personal level. Little surprise, then, that when the petition for the recriminalisation of queer sex in India was considered in the Supreme Court in the winter of 2013, four years after the Delhi High Court decriminalised it, queer voices were infused with the theme of love. Decriminalisation of queer sex was seen as criminalisation of love and questioned (see Bhatia 2013, Indian Express 2014, India Today 2014). This affective turn was in sharp contrast with the narrative of the original petition of 2009 that was couched in the language of health, foregrounding the barriers created by criminalisation to accessing healthcare, mainly HIV/AIDS care. The voices against recriminalisation of queer sex was thus seen as coterminous with the demand for the right to queer relationships of love. As the germ of self-confidence, love can be acknowledged as a crucial form of recognition. Realising this right required “intersubjective” engagement with the law as well as the larger Indian society, i.e. moving to demands for self-respect and self-esteem. As Charles Taylor (1994) had indicated in his treatise on multiculturalism, misrecognition often generated the moment that shaped identities. The engagement with the law in matters of queer rights have manifested as a formative process in the whole shaping of queer claims in the country. Both Taylor and Honneth thrust on the intersubjective aspect of realising recognition. In the case of Indian queer movements, the state, more than community seems be the other “subject” to derive recognition from. Strictly speaking, justice is being sought through the judiciary; the legislative route is largely seen as not holding hope.⁴ An indication was the recent plea to Supreme Court to reconsider its decision from 2013 to recriminalise queer sex, although the court had let the legislature take the final call in its verdict.

But is recognition enough? Fraser boldly brought back the paradigm of redistribution to this discussion and pointed out that recognition and redistribution should be seen as two analytically separate elements of social justice

(Fraser 1996). In this scheme, the 'postsocialist' condition had decentred class as the linchpin of struggles and inaugurated diverse other claims for justice. These can be classified into one of the two categories of struggles for recognition and those for redistribution (Fraser 1997a). Struggles for recognition seek the correction of the cultural injustice of misrecognition. In effect, they lead to the acceptance of specific statuses and thus cause group differentiation in the society. Struggles for redistribution, meanwhile, seek the correction of economic injustices of maldistribution. These struggles demand the revision or removal of those economic structures that hold groups captive in differentiated forms, say women in gender-based division of labour. In this sense, Fraser notes that struggles for redistribution tends towards "group de-differentiation". From these observations, Fraser concludes: "The upshot is that the politics of recognition and the politics of redistribution often appear to have mutually contradictory aims" (*ibid.*, p. 16). Examining a range of claims for justice spanning feminist, black and gay and lesbian struggles, Fraser makes the provocative observation that increasingly struggles for recognition dominate the social world. Fraser also identifies two forms that each of the two struggles can take – affirmative and transformative. Affirmative struggles seek to correct injustices without correcting the underlying structures that underpin these injustices, while transformative struggles challenge the very structures that cause injustice.

Gay and lesbian struggles were put in the category of recognition struggles by Fraser. "Gay and lesbians suffer from heterosexism: the authoritative construction of norms that naturalise heterosexuality and stigmatise homosexuality", Fraser noted in an early lecture that outlined her thoughts (Fraser 1996, p. 13). The stigmatisation then seeps into other social and legal institutions, causing discrimination, and in many cases, economic hardship. As a case of cultural misrecognition, the answer to this injustice is recognition. "Change the relations of recognition, that is, and the maldistribution will disappear", Fraser asserted (*ibid.* p. 14). There were also the affirmative and transformative

aspects of this struggle: "gay-identity politics" merely sought to raise the position of gay identity in culture, while "queer politics" attempted to question the homo-hetero binarism at the core of culture (Fraser 1997a). Interestingly, gender and race are seen in this scheme as "bivalent modes of collectivity" that have a political-economic dimension as well as a cultural dimension. Curiously, Fraser restricts her analysis of gender to women and does not explicitly mention the position of transgender people in her theory. This lack of clarity is compounded by the use of the term 'gay and lesbian' struggles, rather than LGBT or queer struggles, which again leaves the place of transgender persons unspecified.

Keeping aside the issue of transgender persons for the moment, the cultural basis of discrimination against gay men and lesbians that Fraser identifies can be easily shown to have parallels in India. Though ample references to homosexuality exist in ancient mythological compilations and medieval texts (Vanita and Kidwai 2001), homosexuality continues to be seen with disgust and stigma in the society. A former health minister's reference to homosexuality as a disease (The Guardian 2011) and the more recent suspension of a student in a college under the Benaras Hindu University for allegations of being a lesbian (The Wire 2017) are two tellings smatterings of this attitude. Quite early on, before the queer movements as we see them today took shape, the organisation Sahayatrika in Thiruvananthapuram was tracking 'lesbian suicides' and lending a helping hand to those in distress in the state of Kerala.⁵ In a touching collection of life accounts from the villages of central India, Maya Sharma (2006) records how women who love women negotiate stigma, patriarchy and space in the rural context. Often attributed to the colonial-era Section 377 in the Indian Penal Code that criminalises sexual intercourse "against the order of the nature", the continuation of stigma towards gay men and lesbians affirm the injustice meted out as one of cultural misrecognition.

Is the injustice, then, merely cultural? The question was posed by Judith Butler in a critique of Fraser's arguments on gay and lesbian struggles. What irked Butler most was the

relegation of gay men and lesbians to the cultural sphere that seemed to negate any basis for their oppression in economic injustice (Butler 1997). Taking issues with Fraser's suggestion that there was no tension between gay and lesbian people's demands and economic structures of discrimination, Butler argued that this suggestion grossly underestimated how much the economic structures needed the reproduction of heterosexual individuals. Drawing on Marx, Engels and socialist feminists, Butler connected the social reproduction – continuance of the prevailing mode of production – with family-based reproduction organised according to heteronormative principles. These principles went on to subjugate homosexual desires (Butler, too, does not touch on the status of transgender persons here). The takeaway is persuasive: as persons marginalised from the normative family structures that aid social reproduction, gay men and lesbians are at the receiving end of injustice that is as much economic as cultural. In Butler's view, the marginalisation of gay men and lesbians on the economic ("material" in Butler) front, such as property ownership and inheritance in the heteronormative legal framework, the indebtedness experienced by gay men and lesbians living with HIV/AIDS and the prevalence of poverty among lesbians were examples of the economic basis of the injustice experienced by them.

Butler's arguments can be supported with other examples as well. The heteronormative family, founded on reproduction and central to the social reproduction of the conditions required for the continuation of capitalism, pushes gay men and lesbians into the margins where they either cannot find the means of reproducing themselves or are pushed to conceal their sexual identities to earn a livelihood. The discussion, at this point, must bring in transgender persons as well since it is impossible to reduce the discrimination they face as merely one of gender, unrelated to the stigma attached with queer sex. Transgender persons face similar struggles to earn the means of reproducing themselves through fair wages admitted under an overall capitalist mode of production and could lose out in the labour market competition owing to the

status of being undesirable in the scheme of social reproduction. Even if we step out of this Marxian view, one finds close connections between injustices faced by queers and economic structures. For instance, in a survey of 50 persons assigned gender female at birth using extended interviews, the queer-feminist organisation LABIA based in Mumbai found that a significant number among them faced economic hardships. In the case of some, working class and lower caste statuses further aggravated the struggle for education and livelihood (Shah, Merchant and Mahajan 2015). More recently, in Kerala, the newly established suburban railway service provided employment to transgender women in an unprecedented state action in the country. Yet, in a few months, many of those employed were forced to quit as the wages were not sufficient to afford the cost of living, especially housing. Finding housing was also difficult because of the stigma that the larger society harboured towards transgender persons (Babu 2017, Koshy 2017). Clearly, the economic structures employing them found it convenient to exploit this source of labour that was in dire need for wages and conveniently paid lesser than required for survival. In the case of transgender persons, there has been an understanding of these economic injustices for a while as was seen in the setting up of the first transgender welfare board, a state agency, in Tamil Nadu way back in 2008 (UNDP 2012).

If queer struggles are those for recognition as well as redistribution, Fraser's arguments would need re-examination. In her reply to Butler, Fraser clarified her arguments stating that although the analytical separation between recognition and redistribution is valid, she did not subordinate one to the other (Fraser 1997b). Gay and lesbian struggles (transgenders still not considered) surely involved issues of maldistribution, but were primarily those of recognition, and in being struggles of recognition, they were as legitimate and valid as the struggles for redistribution. It was not necessary to show that such injustices had an economic basis to establish its legitimacy. Fraser further argued that it was not so much the relations of production that needed to change to deliver

justice to gays and lesbians as the relations of recognition: "Change the relations of recognition and the maldistribution would disappear" (*ibid.* 283). Regarding the mode of production and the attendant marginalisation of gay men and lesbians that Bulter pointed at, Fraser was sceptical and suggested that capitalism in the current times allowed for alternative arrangements of the family, let alone being threatened by such arrangements. By pointing at the corporations that have welcomed gay and lesbian employees, it was argued that far from being seen as challenging the economic structures, gay and lesbian employees were welcomed in such set-ups.

The suggestion seemed to be that unlike women's struggles, which were seen as inherently opposed to capitalism for its extraction of gendered labour, gay and lesbian struggles did not have anything intrinsic in them against this mode of production. Rather, they could be coopted into capitalism. Though Fraser (2013) later wondered if feminism had become "the handmaiden of capitalism" in the neoliberal period, the argument regarding gay and lesbian struggles still stands relevant. In India, despite the prevailing environment of criminalisation of queer sex, corporates have not shied away from funding queer movements (Tellis 2012, Awaaz 2016). Organisations including the Naz Foundation, the original petitioner against Section 377, have received a major fillip in their work after receiving corporate donations (DNA 2014). A leading corporate business house has set up a leadership development programme exclusively for queer people (Mingle 2017). Seeking corporate funding must be partly seen in the context of the overall funding environment for civil society organisations in India – philanthropic sources of funding are scarce; there are restrictions on receiving funding from overseas; and the few foundations that make grants are largely connected to corporate business houses. Nevertheless, the takeaway remains that the core demands of gay and lesbian struggles are directed at decriminalisation of sex and against stigma, and not towards challenging corporate structures, notwithstanding whether

the leaders personally stand against capitalist exploitation.

The debate, then, shifts to the relative degrees to which queer struggles can be characterised as one for recognition versus one for redistribution. Iris Young (1997) had, in fact, pointed out in her critique of Fraser titled "Unruly Categories" that the splitting of social justice into the binaries of recognition and redistribution was unhelpful. In her analysis, even those struggles that overtly seek recognition did so to achieve distributive justice and were therefore equally struggles for redistribution. Although constructing an analytical framework was useful in understanding the social world, it did not have to be "bifocal". Young had explicated five categories of oppression – exploitation, marginalisation, powerlessness, cultural imperialism and violence – in her earlier work (Young 1990), which was critiqued by Fraser with the observation that the five categories fit into her two-fold model (Fraser 1995). Young, in turn, called this "dichotomising", considering the multitude of injustices out there. In her reply, Fraser (1997c) insisted that the two analytical categories she proposed worked well in the real world and did not amount to dichotomising.

Partly in response to the criticisms posed, Fraser wrote the essay "Rethinking Recognition" in 2000, wherein she continued to hold on to her two-fold model of understanding social justice, although less rigid in their analytical separation (Fraser 2000). She also maintained that increasingly, struggles were becoming those for recognition, in spite of the increasing vagaries of neoliberalism. The most important revision in the essay was the rereading of identities as statuses in the context of seeking full participation in society (Fraser et al. 2004). This helped her counter the tendency of identity politics to reify identities. Misrecognition was not perpetrated through "cultural representations", but through institutionalised norms, Fraser suggested. Addressing misrecognition would then mean changing those institutional modes. For instance, restricting marriage to heterosexual couples could be changed either by recognising same-sex marriages or by decoupling the benefits associated from the institution of marriage. The

status model allowed for a looser understanding of groups compared to the identity model and hence a wider range of options in terms of justice delivery. The status model also allowed her to address redistribution – some status injustices required the redistribution of resources. Recognition and redistribution were seen as “interimbricated” in this model.

Oppositions to Fraser’s model continued to come out. Honneth, for instance, maintained his argument that recognition was the chief mode of seeking justice and that redistribution could be shown to follow from it (Honneth 2003). However, Fraser, went on to add a third dimension of justice – representation – to her model. Representation refers to the political side of justice and considers who the subject of justice is (Fraser 2009). The associated injustice is that of misrepresentation, which can operate at three levels. The first level is that of “ordinary political misrepresentation”, which deals with the inclusion of all concerned within a society in decision-making processes to ensure parity of participation. At the second level is “misframing”, which seeks to draw the boundaries of who can be considered a part of the debate in the current post-Westphalian world. For instance, reference to the poor as inhabitants of the third world excludes the poor in the first world. At the third level is the monopolisation by nation states in this framing – referred to as “meta-political misrepresentation”.

Queer movements in India are increasingly using a globalising vocabulary to frame their narratives. The word “queer” lent itself to political use, without the need for reclaiming the word from its stigmatised past as was the case in the Anglo-Saxon world. The increasing number of connections being forged between the Indian and global queer claims point towards an expanding scale of framing (Bhaskaran 2004, Dasgupta 2017). At home, representation of all different sexual identities within the movement as well as in the claims has kept the issue of parity of participation alive. As would be seen in the next section, framing queerness comes with its own testing characteristics that can pose a challenge before justice delivery and justice theorisation.

The recognition-redistribution-representation debate is far from settling down. Honneth, one of the original thinkers of the debate, has recently revisited the theme of recognition in conversation with another critical theorist Jacques Ranciere (Ranciere et al. 2016). However, this paper takes a pause in the debate here and goes on to consider the challenges posed before it by the diversity of queer claims.

Unruly Queerness

Thinking with the vocabulary of recognition, redistribution and representation helps us take stock of queer claims for social justice as was shown in the foregoing discussion. Yet, queerness is at times unwieldy, unruly that does not lend itself easily to disciplining under frames of justice theorisation or justice delivery. In this section, I elaborate on a few such challenges posed by queerness before justice theorisation as well as justice delivery, acknowledging that these do not form an exhaustive account.

Identification

The term queerness connotes certain undefinable characteristics of sexuality. No matter how we designate this group – queer or LGBTI or LGBT*, problems of identification can pose challenges before justice delivery as well as before the ideas of recognition, redistribution and representation. While identification become a necessary evil in justice delivery, especially in formulating welfare provisions, identification is implicit in the extant theorisations on recognition, redistribution and representation. These arguments are developed below.

Of concern here are instances wherein rendering oneself visible before the state, the body on which formal justice claims are made, becomes indispensable. For many queer people, gaining a grip on one’s own sexuality is a fraught issue, let alone receiving recognition before family or community. At the same time, gaining self-respect through recognition of queerness by state is explored by queer movements as a more plausible option. However, state-sponsored self-respect can be fleeting, as was seen in the case of those who made their queerness public after the Delhi High Court judgment of 2009 that

decriminalised queer sex. When the Supreme Court reversed the decision in 2013, these individuals were not only deprived of the formal self-respect, but also their achievements in gaining recognition from their communities.

At a more formal level, when policies are framed to correct injustices, identification and visibility become even more difficult issues to deal with. The *NALSA v. Union of India* case heard by the Supreme Court in April 2014 recognised the third gender category and directed the government to make a law to actualise this recognition as well as frame welfare programmes, including affirmative action (Judgments Information System 2014). The bill drafted by the government to give effect to this verdict, however, diluted key aspects of the verdict regarding identification. Most crucially, the verdict had allowed for self-identification, while the bill established a steering committee at the district level for identification, involving the service of a medical officer and a psychologist (Ministry of Law 2016). In either case, availing the benefits of the bill would require making oneself visible before the state. This misses that aspect of queerness which may not want to identify itself with any one particular label of sexual identity, or make itself visible at all (see also Boyce 2008).⁶ A clarification is needed regarding the precise nature of identification that is at issue here. The reference is to those subjectivities in the interstices of the queer spectrum that resist identification and labelling (see Boyce and Khanna 2011, Hall 2013). This could either be a matter of sheer choice or one necessitated by the current environment of criminalisation of queer sex, a matter not addressed in the bill. However, before welfare programmes, no visibility means no benefits.

The issues raised above appear to be policy-level challenges that could be fixed by appropriate amendments in the texts of the laws. However, a closer look suggests that understanding social justice through recognition, redistribution and representation assumes well-identified, well-self-identified citizens/subjects waiting to receive justice in the three forms. The three run into trouble when they attempt to address the queer identities in the interstices.

This scenario warrants a relook at the understanding of justice in terms of the three categories proposed thus far in the debate. Social justice will have to take into account the fluid, slippery, nature of queerness that seeks justice at the same time that it uses the established modes in which it is delivered.

An additional instance which recently brought to light this aspect of justice was the right to privacy judgment by the Supreme Court in August 2017 (Supreme Court 2017). Right to privacy was declared a fundamental right. The verdict had implications for a wide range of issues concerning the Indian public, including the compulsory registration of biometric details under the state programme of issuing identity numbers to each citizen of the country, and the queer discourse. In the latter case, the judgment was appreciated by the queer movements as one step towards the decriminalisation of queer sex; the argument that the state had no space in the bedroom had long dominated the queer discourse in the country and gained momentum with the verdict. Unruly queerness, meanwhile, questioned the assumption implicit in this argument that every queer person could afford privacy and that queerness was just a private-bedroom issue. Thus, a negative right like privacy also becomes a fraught topic when brought under the discipline of justice (in this case recognition).

The conjoined nature of the three facets of the social justice – the takeaway from the justice debate – would mean that this unruly character of queerness can complicate redistribution and representation as well. This is further discussed below.

Intersections

Note that Fraser's analytical separation of social justice into recognition, redistribution and representation, whether seen as categories or nodes on a spectrum, was also reflected in the examples that dominated this debate. Most notably, gay and lesbian struggles, women's struggles, and race struggles were debated as falling in one or the other aspect of justice. It is quite agreeable that many movements tend to be organised under one or the other banner. At the

same time, it is also quite arguable that queer lives do not exist as reified embodiments of queerness only; queerness intersects with various other axes of marginalisation such as caste, class and (dis)ability, among others.⁷ This poses challenges before justice delivery and justice theorisation that merit exploration.

A government note on the status of transgender persons touched upon this issue when it sought to accord the status of OBC, a category that is used to provide affirmative action for those castes and religious groups that need such support and at the same time do not fall into the category of the scheduled castes or tribes (Nair 2017). Though the verdict attempted to provide an early resolution to an issue that could become a challenge before policymaking, intersections of queerness with other axes of marginalisation are likely to lead to conflicts as the justice claims get diverse. We have yet to produce sufficient knowledge on the intersection of queerness and disability in India, in the absence of which disability may seem like a topic that can be dealt with as a standalone issue (TARSHI 2010). We have also yet to understand how the specificity of queer people's location in India's villages can be effectively brought into the justice discourse.

Further, the two verdicts – of December 2013 on recriminalisation of queer sex and of April 2014 on recognition of third gender status – when read together, present a case of the judiciary decoupling queerness from gender/trans status. Non-conforming gender expressions have become legal even as non-conforming sexuality remains illegal. The contradiction is glaring as it extricates sexuality from gender – two axes of marginalisation in which the intersections are highly conspicuous. The silence of the transgender bill on decriminalisation has allowed this contradiction to continue.

The implications for justice theorisation is at least two-fold. At one level, not paying attention to the intersections of queerness with other axes of marginalisation would mean that the structures of oppression as they operate in reality in society are not grasped well in our

understanding of recognition, redistribution and representation. The upshot is that the three modes of justice preconfigure themselves to be restricted to their respective affirmative forms contra the transformative forms. The underlying structures of society that perpetuate oppression are unequivocally intersectional and would need to be addressed in their entirety for justice to be transformative. Consider Fraser's insistence throughout her writings that "gays and lesbians suffer from heterosexism". Heterosexism is perpetuated not just by a social attitude of stigmatisation in the Indian context. Caste, which has formed the backbone of Indian social organisation, requires endogamy for its perpetuation (Ambedkar 1917), in turn necessitating heterosexual individuals ready for endogamous marriage. Caste is thus at the core of heterosexism in the country. This is seen, for instance, in the pressure that queer people at all nodes of the sexual spectrum undergo to get into heterosexual marriage – whether arranged by the family or expected of them by the society at large before the socially sanctioned marriageable age range is passed.

The implication for justice theorisation is that the intersectional character of injustices need to be brought to its core, going beyond the reduction of specific justice claims with specific injustices, say gay and lesbian claims with heterosexism, women's claims with patriarchy or poverty with unemployment or economic slowdown. Of course, this does not mean that we adopt an all-encompassing theorisation of justice as merely recognition, which would amount to a reduction as well. Perhaps critical theory would do well to look beyond movements as the representatives of justice claims and look at the individual (where, of course, Honneth starts from) to understand how lives – represented as well as unrepresented – are shaped by various axes of marginalisation. Self-confidence, self-respect, self-esteem and indeed justice are not just intersubjective, but also intersectional.

Framing

The third issue pertains to the framing of the discourse on queer claims. At the level of the individual, what in Fraser's terminology would be

“ordinary political representation”, this issue mirrors those associated with identification and the risk of excluding those who are not identifiable or those who do not want to be identified (see also Cossman 2012). In the discourse on transgender rights, the transgender bill gave a highly transphobic definition of its constituency as “partly female or male; or a combination of female and male; or neither female nor male”, exposing a blanket misrepresentation of all transpersons. Activists were quick to condemn the bill, with some calling it the “Transgender Persons Decimation and Violation of Rights Bill” (Anuvinda and Siva 2016). The parliamentary standing committee that was appointed to look into the bill rightly pointed this out, and suggested that self-determination be allowed, including the right to identify as gender-queer, or as male or female. The tension implicit in this exchange exposed the state’s limited grasp on getting right the issue of framing queer claims (see also Dave 2011).

In part, this could be seen as an issue concerning framing on a large scale. The judiciary and the government come out as out of sync with the larger debates about queerness, reflected in their naivety in defining the terms. While the queer movements in the country have drawn their vocabulary, including those of “queer” and “LGBTI” from a globalising queer movement (J. Menon 2013, Tellis and Bala 2015), the state is still seen struggling to cage queerness within the frame of reference of binary gender (Kapur 2000a, Kapur 2000b). At the same time, while the movements draw on a globalising vocabulary, they still seem to have no option but to consider the nation-state as the body on which to make the claims. This shows that the Westphalian state is still strong in many respects and is seen as the natural body to derive rights from. Consequently, at the metapolitical level of representation, the nation-state continues to be the arbiter of basic human rights of queer people, including those of life, livelihood and dignity.

The globalising nature of the queer movements was seen most vividly in the case of the HIV/AIDS debate, wherein the adoption of a homogenising vocabulary of L-G-B-T was seen as restricting the framing of the vernacular

discourse on HIV/AIDS. At the core of this debate was the objection to the use of the term Men-having-Sex-with-Men (MSM) as an overarching category to refer to all queer ‘men’ and the erasure of other local identities (Asthana and Oosvogels 2001, Boellstorff 2013). Gayatri Reddy’s ethnographic study brought out how such skewed narratives can cause competition for HIV/AIDS care at the local level between those sexual identities that have received global recognition and those that remained “vernacular” (Reddy 2005). These experiences allowed the queer movements to thoroughly question the way their narratives are framed.

A telling instance of meta-political domination of framing by the nation-state was seen in India’s abstinence from the United Nations Human Rights Council when it sought to create the position of a reporter on LGBT rights, titled “independent expert on protection against violence and discrimination based on sexual orientation and gender identity”, in June 2016. With the lame excuse that the Supreme Court of the country was yet to pronounce its verdict on the case regarding queer sex, the country sought exception from a move to ensure the protection of the basic human rights of queer people (Bhattacharjee 2016, Hindustan Times 2016). The abstention is curious as it signals how the state simply did not want to be a part of forums that try to frame the queer rights discourse beyond its national boundaries. Curiously, this allows the nation-state to secure its position as the sole arbiter of those rights, and limit the discourse within its boundaries.

While Fraser’s scales of justice mapped the levels of justice discourses from the nation-state to beyond its borders, the previous discussion on intersections reveals that the scales also have to look inward at the social stratification that produces specific queer experiences and marginalisations. The queer movements are exploding with discussions on intersections of class and caste that stratify the Indian society within its boundaries.⁸ Queer experiences from marginalised castes are being voiced to highlight how this intersection works at the ground level. Class elitism in the decision-making processes are being questioned more

vocally than ever to highlight the point of inclusion. The main bone of contention between Butler and Fraser- that of the relationship of queerness with capitalism – becomes eerily clearer here as class seems to have a correlation with the opportunity to participate in the processes of steering the movements.⁹

For justice theorisation, queerness implies attending to the political economy that drives the framing of justice at multiple levels – from sub-national to global. Representation becomes inherently problematic as there is no consensus between the movements and the nation-state on the frames that need to be adopted to talk about justice, as indeed the frames are being contested hotly within the movements (see also Rao 2014). The scales of framing were seen as requiring a reorientation – going not only from local to global, but also to the multiple layers of stratification within the local.¹⁰

Conclusion

The paper sought to revisit the debate on the concept of social justice that engages with recognition, redistribution and representation as the possible elements of understanding the concept. Whereas the vocabulary of the theoretical insights put forward by this debate was found helpful in engaging with queer claims in India, it was also shown that they slip at times. A few elementary directions in which this could help rethinking the theorisations on justice were indicated.

Queerness in the third world is at that moment where talking about it is no longer a dispensable topic. The anti-homosexuality bill in Uganda recently triggered a response that went beyond its boundaries and invited a threat of freezing aid by the donors. Taiwan has legalised same-sex marriage, and more countries are under pressure from within and from outside to decriminalise queer sex. Narratives of these movements are being closely monitored as they go on to make a variety of justice claims on the state. This moment makes it worthwhile to closely scrutinise how they articulate their claims for social justice and, in turn, how well the extant

theorisations on justice are able to grasp the claims well.

In India, the queer movements, centred on the demands for decriminalisation of queer sex, not yet won, and recognition of transgender as a third gender, recently won, highlight the extent to which injustices of misrecognition, maldistribution and misrepresentation have been dealt with by the state as well as the movements. Undoubtedly, the jury is out on whether justice is predominantly about the three Fraserian facets, or whether we need three facets at all. However, the lived realities of queer people in India indicates that all three aspects are equally important, relegating the debate over the right categorisation of justice claims as a theoretical luxury.

From the perspective of queer claims, the notions of recognition, redistribution and representation might need to look at the extent to which they can grasp the fluid, slippery characteristics of queerness that may not lend themselves to be disciplined under these categories. Identification, a necessity for justice delivery, and thereby for justice theorisation is a fraught issue that may necessitate a reorientation of these three categories. Intersections of queerness with other axes of oppression poses a challenge for the extant theorisations that understand justice claims as separate and not intersecting. In the case of queer claims, seeking self-confidence, self-respect and self-esteem – the elements of receiving recognition at the personal, political and social levels – are not just intersubjective, but also intersectional. A third and related issue is the very framing of queer claims in a globalising world, wherein the engagement of queer movements transcends nation-state boundaries, even as the state and its arms continue to be the arbiters of justice, quite out-of-sync at that with the fast-changing vocabulary. Representational justice would have to grapple with this tension. It would also have to scale down below the level of the nation-state to look at the multiple tiers of stratifications that characterise a society and its queers.

Justice has a tendency to evade queer people. With perhaps the rare exception of

Ireland's referendum on same-sex marriage, queer claims have largely been won through legislation under pressure from protracted struggles or through court verdicts. The scale of justice is slowly becoming ready and able to hold queerness on it, just as the diversity of queer claims continue to proliferate, especially in the third world. The paper's attempt was to locate theory in one such context and see what justice

theorisations look like when placed here. India has the slight advantage that it has democratic institutions in place, at least on paper, although the rise of the Hindu right has cast this in doubt.¹¹ Democracy could be a luxury in many other third world contexts in the context of queer claims. Further research may thus try to locate justice theories in such contexts, test their limits and expose the assumptions they hold.

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¹ The Patidars of the state of Gujarat and the Jats of Haryana demanded reclassification as OBCs in 2015 and 2016 respectively from the current forward caste status. The demands resulted in agitations marked by violence. The OBC status would allow access to 27% of seats reserved for this category in public offices and higher education.

² The term transgender is used to refer to the multitude of identities that can form part of it, such as transgender, transsexual and transvestite. The term movements is used in plural to indicate the plurality of claims and political anchors of the queer groups across the country. For an interrogation of the term "queer" that asks whether it is an imposition on the non-West, see Tellis and Bala (2015).

³ Hegel interpreted struggle as "a disturbance and violation of social relations of recognition" (Honneth 1995).

⁴ The state, of course, is a heterogenous institution and the casual reference to the theoretical state can obscure the underlying heterogeneity. See Abrams (1988).

⁵ On lesbian suicides, see Dore (2016).

⁶ The transgender bill was first presented as a private member's bill in the upper house of the parliament in December 2014. Despite the ruling party asking the member of parliament to retract the bill, the member went ahead and got it passed as well. However, the government decided to jettison this bill, along with many provisions of the original bill including special courts, and bring in its own bill.

⁷ Intersectionality, the term that has been used to refer to intersections of various marginalisations, is usually attributed to Kimberle Crenshaw's work (see Crenshaw 1991). The term "axes of marginalisation" was put forward by Nira Yuval-Davis (2006). Nivedita Menon, in a scathing critique, questioned the use of these terms in the Indian context, where she argues intersections of gender with other marginalisation have a long history of discourse (N. Menon 2015). Intersectionality, as used in the Western feminist discourse, has been criticised for not being able to live up to exceptions (Ahmed 2006). It has also been pointed out that despite its limitations, "one cannot not want" intersectionality (Dhawan 2016).

⁸ There may be as yet unexplored axes of marginalisation, such as mental health, affective struggles, heteronormative standards on confidence and achievement etc.

⁹ Even in Bourdieu's sense of classes as different arrangements of economic, social, cultural and symbolic capitals, it can be argued that certain classes have dominated the framing processes of the queer movements.

¹⁰ Obviously, intersections of marginalisations at the global level also deserve equal attention in the framing debate. See Arondekar (2009) for an enquiry of intersections between sexuality and race, Rahman (2010) for queerness and religion, McRuer (2006) for queerness and disability, among others.

¹¹ The unruly nature of queerness as opportunistically obsequious to the Hindu right and neoliberalism have only begun to be understood systematically. See, for example, Sircar and Jain (2012). Though the Hindu right currently stands opposed to decriminalisation, based on the grounds that homosexuality is against "Indian culture", decriminalisation might as well be a small, tokenistic concession that the right might make in pursuit of the larger goal of establishing Hinduism as the state religion.