

LGBTQ Inclusion as a Pillar of Good Governance: Towards Equality, Dignity, and Social Justice

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Abstract: Good governance underpins principles of inclusivity; equality; accountability; and respect for human dignity. Consequently, when assessing good governance through the lens of inclusivity, particularly with respect to LGBTQ persons, it means that no person should be excluded from participating socially, economically or politically based on their sexual orientation or gender identity. The article will investigate the connection between inclusivity of LGBTQ persons and good governance and illustrate how the recognition and protection of the rights of minority populations serve as one of the markers of a mature, democratic society. An examination of constitutional principles that embody equality before the law, non-discrimination, and the right to live free will demonstrate how an inclusive legal system provides a basis for the preservation of dignity and freedom for LGBTQ persons.

Additionally, it will be shown in this article that inclusive governance is necessary for all forms of government services including health care; education; employment; and public sector services. Equitable public policy development will address the needs of all constituent members, thus reducing marginalization and discrimination and providing for more effective governance through addressing the various requirements of such a diverse constituent population. Although there are significant legal reforms that have advanced the rights of LGBTQ persons, they are still subject to many obstacles including but not limited to: social stigma; ignorance; systemic bias; and lack of enforcement of existing laws and regulations. Thus, barriers remain for many LGBTQ persons in accessing necessary services.

Keywords: Good Governance, LGBTQ Inclusion, Equality, Human Rights, Social Justice

Introduction

Good governance is the foundation of a just and equitable society. There are key components of good governance such as equity, representation, transparency, accountability, citizen involvement and the rule of law; these components provide all members of the society with equal rights to access benefits and services (UNDP, 1997). The most important component of good governance is inclusive development, which indicates that all persons should be able to fully participate in the socio-political and economic lives of their respective countries and all persons should be treated equally under the law regardless of sex or sexual orientation. Many current discussions on good governance focus on the inclusion of individuals who identify with the LGBTQ (lesbian, gay, bisexual, transgender and/or queer) community.

Due systematic oppression, exclusion from mainstream society and marginalization through legislation, LGBTQ individuals have been historically denied rights and fair opportunities to participate within society (HRW, 2020). Many societies now realise that to establish a democratic society and comply with international laws regarding the protection of human rights, it is necessary to establish protections for sexual minorities. Many nations have amended their constitutions to include protections against discrimination on the basis of sexual orientation or gender identity to ensure that all citizens have access to the same rights ensuring an equitable society.

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Conceptual Link between LGBTQ Inclusion and Good Governance

Good governance operates on the presumption that all people will have considerable opportunity to participate in the political, social and economic spheres, with no limitations based on identity or sexual orientation. It encompasses both process-oriented inclusion—who participates in decision-making—and outcome-oriented inclusion—how benefits and resources are distributed across society (Menocal, 2020). To this end, LGBTQ inclusion is inextricably associated with human rights-based approaches to governance because they are predicated upon the core principles of ensuring equality for all people, affirming the right of all individuals to participate equally as a member of society, and ensuring accountability to all persons. According to UNDP, inclusive governance includes non-discrimination and equality across the entire continuum of political, civil, social and economic systems, as they provide the foundations for human development (UNDP, 2015). Consequently, LGBTQ inclusion cannot be viewed solely as another social issue; it is a fundamental structural criterion for any governance system that is dedicated to justice and representativeness.

LGBTQ communities play an important role in democracy by pushing for equality and representation in any and all groups within democratic institutions and through continued participation in the public-policy decision-making process. Finding evidence of greater political participation and electoral participation among the LGBTQ community improves democracy and equity meaning more representatives and established new laws and policies that protect fundamental human rights while also representing the various components of diversity (UNDP, 2021). Therefore, inclusive governance creates both intrinsic value (dignity of human beings) and extrinsic value (outcomes of good governance).

Inclusion is the foundation of building social cohesion and legitimacy through participatory decision-making. It allows the voice of those who are traditionally marginalized an avenue to be heard and to make an impact in their immediate community. It creates a greater sense of togetherness as well as a greater sense of commonality among citizens. As many writers have pointed out, active involvement in the process of making decisions about the community is essential for freedom and well-being because it gives individuals the opportunity to create change within their own environment (Sen, 1999 in Menocal, 2020). If LGBTQ+ individuals are absent from political processes, the civil outcome of their absence will most likely be government actions that are inequitable and/or the loss of the government's legitimacy.

Conceptual and Legal Framework of LGBTQ Inclusion in Governance

The legal and conceptual frameworks associated with the inclusion of LGBTQ people are predicated upon constitutional morality, fundamental rights and evolving judicial interpretation to create compliant governance with the equality, dignity and non-discrimination principles. The inclusion concept is based on governance meeting the needs of all citizens, particularly those who are marginalised; and therefore, is consistent with the overarching framework of human rights that considers sexual orientation and gender identity as integral components of a person's identity and as such need to be protected by law (UNHRC, 2011). India's Constitution presents a solid normative basis for the inclusion of LGBTQ persons due to its Fundamental Rights. Fundamental Rights include: Article 14 (equality before the law) provides that all individuals shall be treated equally under the law. This equal treatment is based on the citizen's status as a citizen, and for the equal protection of all individuals under the law (Govt of India, 1950); Article 15 provides that individuals shall not be discriminated against on the basis of religion, race, caste, sex or place of birth. Although the term "sexual orientation" is not specifically referenced in the language of Article 15, the judiciary interpreted the word "sex," in 2018, to include sexual orientation and gender identity (Supreme Court of India, 2018).

The 2014 National Legal Services Authority (NALSA) v. Union of India ruling was a landmark decision for LGBTQ rights due to the Supreme Court ruling in favour of transgender people by declaring them to be a "third sex" and thus, entitled to the right to identify their gender. The Supreme Court ruled that the Union government must provide access for transgender people to all types of government services (medical, educational and social) through reservation of employment for transgender people. The Supreme Court also stated that establishing gender identity is integral to personal dignity and autonomy, thereby reflecting a constitutional obligation to define citizenship as applying to transgender individuals (Supreme Court of India 2014). The 2017 Supreme Court decision in Justice K.S. Puttaswamy v. Union of India recognized a "right to privacy" under Article 21 of the Constitution, and thus recognized that sexual orientation is an inherent component of privacy, and by extension,

the right to define your own identity (Supreme Court of India 2017). As a result of the Puttaswamy decision, decriminalization of homosexual behavior and an expansion of individual liberties were possible. While legal protections exist for LGBTQ people, there are still barriers to achieving full equality.

Key Areas of LGBTQ Inclusion in Governance

LGBTQ persons need a governing entity/organization to recognize the legal rights of LGBTQ people and provide for all aspects of their lives. There are many forms of inclusion; all require a multi-faceted approach where LGBTQ persons are included in all aspects of life (e.g., health care; education; employment; legal recognition; public services) equally without discrimination. By successfully including LGBTQ people in all aspects of life, inclusive governance will create transformative processes.

Health care for LGBTQ individuals is a key area of their lives; it has historically been discriminatory and stigmatizing. This means that there are no inclusive, accessible, or culturally competent systems of governance in place that provide for the health needs of LGBTQ people who live in Los Angeles, CA, using examples from LA to develop inclusive practices in the creation of gender-specific treatment protocols and to provide gender-affirming care and to meet the needs of the LGBTQ community in the health care system. Many transgender individuals have particular needs regarding gender-affirming services (e.g., hormone therapy; behavioral health care; etc.).

Legal recognition and family rights are two significant issues facing LGBTQ communities in India regarding LGBTQ rights in question. Decriminalising same-sex relationships was a great achievement for same-sex couples in India; however, even though the laws book do not make it a criminal act to engage in same-sex relationships, there are still many discriminatory laws that do not provide same-sex couples with legal means to register their marriages legally as well as protect their rights to adopt children and inherit. In addition, legal recognition of relationships and identity grants people benefits such as government-provided social security, property rights, and legitimacy within the family. Globally, countries that legally recognise same-sex marriages have more acceptance of individuals within the LGBTQ community than countries that do not legally recognise same-sex marriages, and also less stigma attached to LGBTQ individuals. Inclusive governance can be accomplished through decriminalising same-sex attraction, however, for inclusive governance to be effective, full legal equality for all must occur (OECD, 2020).

Challenges in Achieving LGBTQ Inclusion in Governance

Even though there have been improvements in laws and policies to give LGBTQ people better access to government systems, LGBTQ people still encounter many barriers that hinder full participation in these systems. Barriers to access can be found at different levels of society (e.g., social, institutional, legal and structural) and interact with one another to create barriers that restrict LGBTQ people's ability to fully exercise their rights and participate in society.

The single largest barrier to LGBTQ access is the presence of social stigma and cultural conservatism against the overwhelming majority of the world's people. Most of the world's people have deeply held cultural norms/traditional beliefs about gender/sexuality that result in LGBTQ individuals being rejected by their communities. Many communities view LGBTQ individuals as sinful or deviant, which often leads to high rates of discrimination, exclusion, and/or violence against them relative to the general population. This leads to larger societal issues as these beliefs affect how people in society view and treat one another and they also negatively affect how public policy is developed and implemented (e.g., when homosexuality was decriminalized in India only a few communities accept LGBTQ individuals, especially in rural and semi-urban areas).

Due to a lack of education at societal levels and thus inadequate policies that would address barriers for LGBTQ people, there are not currently comprehensive non-discrimination laws that offer protections based on sexual orientation or gender identity in many countries around the world. For example, in India, there is currently no law against discrimination based on sexual orientation in employment, housing or education. Where laws do exist,

they are seldom enforced, monitored or supported with adequate resources. Therefore, in many instances the formal rights of LGBTQ people cannot transition into the practical realm (OECD, 2020).

The institutions that could support LGBTQ individuals and provide necessary access to service (i.e., education, healthcare and employment) continue to provide inadequate support to LGBTQ populations, driving further oppression of LGBTQ people by keeping them out of the larger public realm. Many LGBTQ people report that they do not seek out necessary health care services because they are afraid of being discriminated against or are worried about the stigma; thus, many LGBTQ people are more likely to have negative health outcomes. Studies show that LGBTQ students also have higher rates of dropout than their non-LGBTQ peers.

Role of Government and Institutions in Promoting LGBTQ Inclusion

Inclusive approach to good governance requires incorporating policies that support the LGBTQ community. The courts will establish a framework to recognize the LGBTQ community, but it is up to government agencies and organizations to put into practice the principles laid down by the courts and make those principles a reality for LGBTQ individuals. The government plays two key roles in moving forward with good governance for LGBTQ communities: protecting existing rights and creating new rights and experiences for LGBTQ individuals.

Laws and policies that promote inclusion are the government's responsibility; however, the law must not only prohibit discrimination against LGBTQ individuals, but must also create a legal right for an individual to be recognized as a member of the LGBTQ community. In creating a legal right, the law must also include comprehensive anti-discrimination laws pertaining to the three largest areas of discrimination against LGBTQ individuals: education, employment; and housing. In addition, pre-existing laws must be modified to comply with the constitutional principles of dignity and equality of all individuals in this nation. To promote inclusive laws within a nation, a nation would be required to include laws creating clear and unequivocal protections in relation to all gender identities; social services; and accessibility.

Enabling all populations to participate and be represented in democratic systems is at the heart of inclusive governance. Representational participation by many different groups in the decision-making process is what makes democracy (democratic systems) legitimate. Therefore, it is essential that governments offer LGBTQ individuals the necessary structures and processes (i.e., advisory boards, public consultations, etc.) and allow them to provide input on policies that relate to their needs. Inclusion of LGBTQ individuals at all levels of government (federal, state/provincial, local) and through public commissions is crucial; LGBTQ individuals must be represented at all levels to achieve inclusion. Research has demonstrated that inclusion of groups that are commonly marginalized in decision-making processes (i.e., when groups have a stake in creating an inclusive environment) contributes to more equitable and responsive governance outcomes (OECD, 2020).

Collaborating with civil society organizations and non-governmental organizations will also enhance the organization's ability to address diversity and inclusion. Civil society and non-governmental organizations are instrumental in both advocating for LGBTQ rights and providing diverse service opportunities; they often lead the way in obtaining rights for LGBTQ individuals and providing numerous forms of support services to them. Therefore, civil society and non-governmental organizations can assist governments by providing expertise, raising public awareness, assisting with the implementation of effective policies, and providing support services to communities.

The access made available through their services must be equitable, meaning there is equal access to all citizens of Canada when it comes to providing public services of the same quality and welfare supports to everyone in the community. One way that Government can eliminate barriers to allowing people access Government services is through creating ways to provide people with accessible ways of getting qualified identification. All Canadians need to have access to health care and educational services without being discriminated against or retaliated against. Another method that Government can assist their LGBTQ citizens is through the identification and implementation of additional programs that will assist the LGBTQ community with specific needs. Examples of this would be housing support for LGBTQ individuals; job skills training; and healthcare services for transgender individuals, which will enhance the socio-economic status of all members of the LGBTQ community. As well,

Government needs to develop cooperative measures across the different levels of Government and provide support to ensure that all Government agencies fulfil their legal obligations to provide services to all Canadians.

Beyond what has been listed above; institutions must also fulfil their public agency obligation pertaining the rule of law and institutional accountability. Institutions such as human rights commissions, the courts and the Public Ombudsman have a responsibility to hold the general public and government officials accountable to each institution's statutory responsibility to provide confidence.

Global Perspective on LGBTQ Inclusion in Governance

A framework for the establishment of an internationally acknowledged human rights structure exists for every state. The basis of the international framework is the Universal Declaration of Human Rights (UDHR), which asserts that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind". The Yogyakarta Principles were adopted in 2007 and provide a comprehensive framework of international human rights law pertaining to sexual orientation and gender identity for states to enforce. Repeated endorsements from the UN Human Rights Council support the Yogyakarta Principles, creating a need for equality in tackling discrimination and violence against individuals based on their sexual orientation or gender identity as violations of fundamental human rights.

In addition to the perspective of social and human rights in relation to inclusion and/or exclusion of LGBTQ persons and communities, there are also developmental and economic perspectives. The World Bank and OECD (Organisation for Economic Co-operation & Development) represent just two of the many international or multinational organisations that have conducted studies demonstrating the measurable economic costs of excluding or denying access to LGBTQ persons. They warn that limiting access to education, employment, or health care will significantly reduce overall economic growth opportunities. Conversely, adopting LGBTQ inclusive policies will increase productivity; foster innovation; and develop a greater level of human capital (Badgett, Nezhad, Walldijk & van der Meulen, 2014). There is now a strong consensus that human rights (particular LGBTQ inclusion) are a critical development imperative. Social and transnational advocacy networks are key to promoting inclusion of LGBTQ people globally. Activists, NGOs and international coalitions have engaged in fundraising to support the LGBTQ movement; advocacy to raise awareness about the LGBTQ movement and LGBTQ issues; and lobbying for changes to public policy at a local, national and international level. Grassroots activism supporting marriage equality; anti-discrimination protections; and transgender equity has profoundly impacted society's attitudes towards LGBTQ individuals and held governments responsible for enacting socially just legislation.

Conclusion: A Way Forward

The greatest way to achieve real equality for people who identify as LGBTQ through good governance is by developing an integrated plan that contains laws (legal), policies and processes (institutional), and systems of education (social) that will support the fulfilment of rights for LGBTQ people in practice. Part of this plan is to put in place anti-discrimination laws (in all sectors of society) along with a framework for people who have been discriminated against to be able to file complaints and seek appropriate remedies to address discrimination (OECD, 2020).

In addition to these laws, there is a critical need for education and awareness about sexual orientation and gender identity to address the social stigma that is prevalent throughout many of our cultures. By developing public education campaigns, creating inclusive curricula in our schools, and implementing community engagement initiatives, communities will be able to build support and understanding for LGBTQ persons. Schools should integrate education about diversity and gender sensitivity into their teaching practices as part of their curricular offerings, which will facilitate the creation of an inclusive educational system for future generations of learners (UNESCO, 2016). Training and support will be needed to assist public officials, law enforcement, and service providers to provide equitable and respectful services.

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