

LAW AND LGBTQ MOVEMENTS: PUSHING FARTHER THE LIBERAL  
CONCEPTION OF JUSTICE

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ABSTRACT

*This paper on Law and LGBTQ Movements: Pushing Farther the Liberal Conception of Justice, is a reaction to the fear palpable among many countries of the world, that existence of the Lesbian, Gay, Bisexual, Transgender, Queer, (LGBTQ) movements will bring about distortions to social cohesion. Using the qualitative method of research, the paper attempts to highlight the extent of the right claimed by the movements that could be recognized by the law. As argued in this paper, the LGBTQ movements' argument for homosexuality is the major issue generating controversy concerning legalization of the activities of the movements. Understanding that such movements can only find support from liberalism, their argument for homosexuality is assessed based on the three theses of liberalism, namely, the neutral thesis, the agnostic thesis, and the perfectionist thesis. It is noted that though the neutralist thesis with its emphasis on equal respect, may give credence to the homosexuality argument of LGBTQ movements, the other two theses portray such argument as baseless even from the point of view of the neutralist thesis. Thus, this paper argues that the basis of legalizing the movements in some countries of the world could be the need for upholding certain inalienable rights such as the rights to freedom of expression, association, and thought and conscience. It recommends other countries can still legalize the activities of the movements without giving effect to the homosexuality argument.*

**KEYWORDS: Law, LGBTQ, Liberal, Movement, Justice**

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INTRODUCTION

The concept of individual liberty continues to assume different dimensions of resent. It has evolve from a conception of the private realm, an area of the individual's life not subject to governmental intervention, to arguments for government not regulating even unnatural desires by some group of people who are all over the world today known as members of the Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) movements. Though their activities are yet to gain recognition in most parts of the world, their demands are major concerns in most countries of the world. Some countries are grappling with the issue of recognizing and legalizing the movements while others are focussing on measures to ensure that their activities do not gain root in them. Among many African Countries, the fear of LGBTQ distorting social cohesion, has orchestrated strong criticisms to any conduct with the likelihood of portraying the activities of members of the movements. Thus, even cross-dressing is seen as abhorrent in some African societies. Such marks the effort of the Nigeria legislature in passing the Same Sex Prohibition Act in 2014. However, legalization of such movements can only be from the point of view of liberalism.

In this paper, the extent to which liberalism supports LGBTQ movements is explored. This is to give insight on the basis for legalizing the movements in some countries of the world such as the United States of America, and also allay the fears of other countries in thinking that legalizing the

movements would be catastrophic to the sense of shared morality of the people. Thus, the extent to which liberalism supports the movements will determine the extent they could be recognized by the law. In addition, this paper stands to highlight to members and intending members of LGBTQ movements, the extent of the rights they can claim under law, based on the doctrine of liberal individualism. Thus, this paper can help both the government and LGBTQ movements to make informed decision on their positions regarding legalizing the activities of the movements. The work is divided into five sections with the ongoing introductory part marking section one. Section two exposes the LGBTQ movements and their activities and demands. In section three, the role of the law as regards LGBTQ movements will be discussed. Section four will consider LGBTQ movements' demands under liberalism. This will be followed by the conclusion which serves as section five.

## **LGBTQ MOVEMENTS**

LGBTQ stands for Lesbian, gay, bisexual, transgender and queer. Social movements that advocate for the rights of LGBTQ people in society are known as the LGBTQ movements. They are a recent development in the contemporary society. Traces of it existed long ago. In the 17th-century cross-dressing was common in the Shakespearean plays, since female roles in Elizabethan theatre were always performed by males, usually prepubescent boys. As David Robinson observes, Thomas Cannon wrote what may be the earliest published defense of homosexuality in English, *Ancient and Modern Pederasty Investigated and Exemplify'd* (1749). Robinsons notes that although only fragments of Cannon's work have survived, it was a humorous anthology of homosexual advocacy, written with an obvious enthusiasm for its subject. It contains the argument: "Unnatural Desire is a Contradiction in Terms; downright Nonsense. Desire is an amatory Impulse of the inmost human Parts: Are not they, however, constructed, and consequently impelling Nature?" (2006:66-72). Although there is no overarching central organization representing all LGBTQ people and their interests, numerous LGBTQ rights organizations are active worldwide. According to Clayton Whisnant, the first organization to promote LGBTQ rights was the Scientific-Humanitarian Committee, founded in 1897 in Berlin. The common goal among these movements is equal rights for LGBTQ people, which often focuses on specific goals such as ending the criminalization of homosexuality or enacting same-sex marriage. Others focus on building LGBTQ communities or worked towards liberation for the broader society from biphobia, homophobia, and transphobia. The LGBTQ movements use as their tools, a wide range of political activism and cultural activities, including lobbying, street marches, social groups media, art, and research. Examples of their activities include:

1. Marriage Equality Decision Day Rally in front of the US Supreme Court, Washington DC, 2015.
2. Russian LGBT activists protesting anti-gay law at the State Duma in Moscow were attacked, detained, 2013

Rights claimed by the LGBTQ movements could be theoretically distinguished as, claims rights and liberty rights, individual and group rights, natural right and legal rights, negative and positive rights. They also claim human rights, civil and political rights, economic, social and cultural rights. Mary Bernstein writes that:

LGBTQ activists seek both types of goals in both the civil and political spheres. For the lesbian and gay movement, then, cultural goals include (but are not limited to) challenging dominant constructions of masculinity and femininity, homophobia, and the primacy of the gendered heterosexual nuclear family (heteronormativity). Political goals include changing laws and policies to gain new rights, benefits, and protections from harm (2002:98-99).

The LGBTQ movements are not free from conflicts of interests which characterize every group within the society. There is debate over the extent that lesbian, gay, bisexual, transgender and intersex people, as well as others, share common interests and a need to work together. Collins Bull, and John Gallagher observe that leaders of the lesbian and gay movement of the 1970s, '80s and '90s often attempted to hide masculine lesbians, feminine gay men, transgender people, and bisexuals from the public eye, creating internal divisions within LGBTQ communities. Some documentaries portray LGBTQ people as experiencing micro-aggressions, bullying and anti-social behaviours from other people within the LGBTQ community. This is attributed to misconceptions and conflicting views as to what entails 'LGBT'. If, for instance, transgender people find out that other members of the community are not understanding toward their own, individual, specific needs and would instead make ignorant assumptions, this could cause health risks. It could also be observed that bisexual people always discover that lesbian or gay people are not understanding or appreciative of bisexual sexuality. In addition, Roffee James notes that even though most of the LGBTQ people would say that they stand for the same values as the majority of the community, there are still remaining inconsistencies even within the LGBTQ community (2016). LGBTQ movements often adopt a kind of identity politics that sees people within that group as a minority group or groups, and thus, they aspire to liberal political goals of freedom and equal opportunity, wishing to join the political mainstream on the same level as other groups in society. They generally oppose what they refer to as 'conversion therapy' (an attempt at to change gay, lesbian and bisexual people to heterosexuals). Their argument is that sexual orientation and gender identity are innate and cannot be consciously changed. They see such attempts as often based on religious beliefs that perceive gay, lesbian, and bisexual activity as immoral. However, from the religious perspective, there is no univocal opposition to either, homosexuality, bisexuality, or being transgender, even though sex between men and women are usually treated differently. Thus, as of today, numerous religious communities and many believers in various religions are generally accepting LGBTQ rights. This is taking place in Western countries as in the eastern part of the world, especially in the African continent there is high repulsive attitude toward such activities as transgender, homosexuality and lesbianism. In Nigeria, for instance, there is the *Same Sex Marriage Prohibition Act*. Still on the argument base on identity politics, Mark Blasius, and Shane Phelan, note that others within LGBTQ movements have criticized identity politics as limited and flawed. They observe that elements of the queer movement have argued that the categories of gay and lesbian are restrictive, and attempted to deconstruct those categories, which are seen to "reinforce rather than challenge a cultural system that will always mark the non heterosexual as inferior" (1997:34-36).

## **LAW AND LGBTQ MOVEMENTS**

The extent to which law can interfere with LGBTQ rights claims remains subject to controversy. After the French Revolution the anticlerical feeling in Catholic countries coupled

with the liberalizing effect of the Napoleonic Code made it possible to sweep away sodomy laws. However, in Protestant countries, where the church was less severe, and there was no general reaction against statutes that were religious in origin, statutes on sodomy were retained until late in the 20th century. Some countries still retain their statutes on sodomy. Human Rights Watch has it that in 2008 a case in India's High Court was judged using a 150-year-old reading that was punishing sodomy. In eighteenth- and nineteenth-century Europe, same-sex sexual behaviour and cross-dressing were widely considered to be socially unacceptable, and were serious crimes under sodomy and sumptuary laws. These moves depict the view of legal moralism. Legal moralism is the view that the law can legitimately be used to prohibit behaviours that conflict with society's collective moral judgments even when those behaviours do not result in physical or psychological harm to others. According to this view, a person's freedom can legitimately be restricted simply because it conflicts with society's collective morality; thus, legal moralism implies that it is permissible for the state to use its coercive power to enforce society's collective morality.

The most famous legal moralist is Patrick Devlin, who argues that a shared morality is essential to the existence of a society:

If men and women try to create a society in which there is no fundamental agreement about good and evil they will fail; if, having based it on common agreement, the agreement goes, the society will disintegrate. For society is not something that is kept together physically; it is held by the invisible bonds of common thought. If the bonds were too far relaxed the members would drift apart. A common morality is part of the bondage. The bondage is part of the price of society; and mankind, which needs society, must pay its price (1965:10).

Insofar as human beings cannot lead a meaningful existence outside of society, it follows, on Devlin's view, that the law can be used to preserve the shared morality as a means of preserving society itself. H.L.A. Hart points out that Devlin overstates the extent to which preservation of a shared morality is necessary to the continuing existence of a society. Devlin attempts to conclude from the necessity of a shared social morality that it is permissible for the state to legislate sexual morality (in particular, to legislate against same-sex sexual relations), but Hart argues it is implausible to think that "deviation from accepted sexual morality, even by adults in private, is something which, like treason, threatens the existence of society" (Hart 1963, p. 50). While enforcement of certain social norms protecting life, safety, and property are likely essential to the existence of a society, a society can survive a diversity of behaviour in many other areas of moral concern—as is evidenced by the controversies in the U.S. surrounding abortion and homosexuality. In modern times, Bentham's utilitarianism seems to be the earliest advocate for the decriminalization of homosexuality. Canvassing for social reformation, Bentham wrote the first known argument for homosexual law reform in England around 1785, at a time when the legal penalty for buggery was death by hanging. Bentham argues that homosexuality is a victimless crime, and therefore not deserving of social approbation or criminal charges. Hence, he regards popular negative attitudes against homosexuality as an irrational prejudice, fanned and perpetuated by religious teachings (Bentham 1978:88-89). However, fearing reprisal, Bentham never publicized his views on homosexuality as his powerful essay was not published until 1978. Hostility towards gay rights continued for a long time and laws of many countries reflected such

hostilities. In 1885, for instance, the Labouchere Amendment was included in the Criminal Law Amendment Act, of England, which criminalized 'any act of gross indecency with another male person'. This led to the conviction of playwright, Oscar Wilde in 1895 with the most severe sentence possible under the Act that is death penalty. In his poem "Two Loves" (1894), Lord Alfred ("Bosie") Douglas, Oscar Wilde's lover, declared "I [homosexuality] am the love that dare not speak its name." Thus, before the end of the 19th century there were scarcely any 'movements' for gay rights. The first person known to describe himself as a drag queen was William Dorsey Swann, born enslaved in Hancock, Maryland. According to Channing Joseph, Swann was the first American on record who pursued legal and political action to defend the LGBTQ community's right to assemble (2020:10). Swann, organized a series of drag balls in Washington, D.C. during the 1880s and 1890s, but was arrested in police raids numerous times, including in the first documented case of arrests for female impersonation in the United States, on April 12, 1888. With the founding of the Scientific-Humanitarian Committee in Berlin, homosexual and bisexual men and women were given voice in 1897. Their first activity was a petition to call for the repeal of Paragraph 175 of the German Imperial Penal Code, submitted 1898, 1922, and 1925. Their activity comprises of publishing emancipation literature, sponsoring rallies, and campaigning for legal reform throughout Germany as well as in the Netherlands and Austria. Consequently, by 1922, the Committee has developed some 25 local chapters. Though, the gay rights movements were beginning to win victories for legal reform, particularly in Western Europe, but what could be called the single defining event of gay activism occurred in the United States. Describing that event, Micheal Levy states that:

In the early morning hours of June 28, 1969, the Stonewall Inn, a gay bar in New York City's Greenwich Village, was raided by the police. Nearly 400 people joined a riot that lasted 45 minutes and resumed on succeeding nights (2004:26).

'Stonewall' came to be commemorated annually in June with Gay Pride celebrations, not only in U.S. cities but also in several other countries. Gay Pride is also held at other times of the year in some countries) (Waldron 1993:37). Gay Pride Participants usually carry a giant rainbow flag which is a Symbol of LGBTQ Pride. Today, the LGBTQ has come to stay and the question is no longer whether it finds recognition in law, but how law can best protect interests of its members just like those of other members of the society.

### **LGBTQ AND LIBERAL CONCEPTION OF JUSTICE**

The word 'liberal' features in the context of contemporary American discourse, and it is usually used to describe political or legal theories that advocate personal liberty in matters of lifestyle, but prescribe increased government action in the economic arena, including efforts to redistribute wealth more equally among citizens. Thus, liberal theories regard individual liberty as the highest, or one of the highest, political and legal values. Their arguments are encapsulated in the philosophical doctrine of liberalism. According to Joseph Raz, liberalism revolves around the importance of personal liberty (1986:17). This means that the importance of individual freedom lies close to the heart of most liberal political positions. However, it does not follow that a liberal regards either liberty or autonomy as a top-priority value that always overrides all other values. Stephen Gardbaum suggests that although autonomy is perhaps the distinctive liberal value, it is not the only essential liberal value and might sometimes be trumped by other liberal values

(1998:416-417). One of the ideological positions on justice, 'libertarianism', the view that individual liberty is the only value, or the overriding value, in politics and law, is seen as an extreme position on liberalism and as such depicts the view that government must be neutral in matters of personal morality, that it must leave people free to live as they think best so long as they do not harm others. This is the basic argument of the LGBTQ movements. Though some of the arguments for LGBTQ can only subsist under libertarianism, their arguments could be appraised with respect to a set of basic and abstract ideas about individual liberty, which are the major unifying factor for the liberals. Accordingly, their arguments are critiqued here using three positions on liberalism, namely, the neutralist thesis, the agonistic thesis, and the perfectionist thesis, which, according to Henry Mather, are the current influential versions of liberalism (2001:1052-1055). Neutralist liberals advocate for lawmaking based on reasoning that is neutral on certain moral issues. This position in its fluid form, asserts that lawmakers should be neutral on all moral issues, or at least all questions of what is good for humans. The idea is that since the judgment of what is good or bad for an individual should be based on individual choices, it should be left to the private realm, that is, the area of the individual's life which the government should not interfere with. John Rawls is one of such liberals who argue that government has no right to do what it wants to do regarding questions of morals (Rawls 1999:113). A judicial statement supporting this position was reached in the case of *People v. Onofre*, 415 N.E.2d 936, 940 n.3 (N.Y. 1980), in which it was suggesting that it is not the function of the criminal law to enforce moral values. However, Rawls qualifies this court decision by suggesting that although lawmakers should be neutral as to conceptions of the good, they may properly base their decisions on principles of justice and certain other notions of moral rightness. Thus, in his criteria for justice, including the 'original position', and the 'veil of ignorance', which though are more apt for social justice, he prescribes that lawmakers be guided by what he regards as 'political conception' that is a moral conception that includes principles of justice but is neutral as to comprehensive doctrines of the good. Also affirming qualification and restriction in the neutralist liberal argument, Ronald Dworkin maintains that government must not constrain liberty because one conception of the good life is superior to another. He argues that although liberal equality does not prevent people from campaigning for what they believe is good, it "denies them one weapon: even if they are in the majority, they must not forbid anyone to lead the life he wants, or punish him for doing so, just on the ground that they think his ethical convictions are wrong (Dworkin 1990:115). The neutrality thesis is sometimes stated in terms suggesting that state neutrality about the good is required only in enacting coercive law. Thus, neutralist liberalism can be made more palatable if it also permits government to use non-coercive means to promote certain goods. The neutrality thesis is sometimes qualified in another way, permitting lawmakers to employ a belief about the good if that belief is noncontroversial or would be accepted by all reasonable citizens. This suggests that the state must be neutral only in regarding controversial conceptions of the good life and not all values on the basis that public reason and reciprocity require reasons and values that other citizens might reasonably be expected to reasonably endorse. Such a qualification might allow lawmakers to promote human health, knowledge, and other things that virtually everyone regards as basic human goods. Thus, Dworkin argues that no one doubts that government may properly identify and protect intrinsic values such as art and the natural environment (1994:149). Others have argued that the ultimate value to be protected is life and this is not different from Dworkin's idea of the natural environment which does not restrict life to human life. In addition, the neutrality thesis is sometimes presented as requiring government neutrality as to a citizen's private conduct that does not harm or interfere with other citizens, but not requiring government neutrality as to conduct that

does harm or interfere with others. This is where the argument of LGBTQ movements finds support. Their position is that their conduct harms nobody or at least, not another person but themselves. They argue from the perspective of Brian Barry, *supra* note 114, at 87-88, 90 (arguing that justice as impartiality requires the prohibition of acts that directly cause harm to others). Thus, their position is supported by liberals who oppose coercive legislation on matters of personal morality, such as consensual sexual conduct. The view is that while liberal equality permits legal prohibition of coercive conduct, such as theft, which impairs justice, it does not allow legal prohibition of acts, such as consensual homosexual acts, that are merely believed to be bad for the lives of the agents performing them. The neutralist thesis may be supportive of the LGBTQ movements argument to the effect that lawmakers need not be neutral about the claim that sexual activity is a basic good, but should be neutral about different modes or forms of sexual activity and should not prohibit homosexual activity on the ground that it is not a good mode for realizing the basic good of sexual activity. This position will have a far reaching effect on the society as it implies that lawmakers should be precluded from prohibiting rape as a bad form of sexual activity. There is no doubt that the equal respect argument which advocates for government treating citizens with equal concern and respect, is to be given effect by the law for it to achieve its purpose of maintaining peace and justice thereby ensuring social cohesion. However, an equal respect principle should not be interpreted to require equal respect for every person's conception of the good life. 133. Even if we assume that all citizens, members of the LGBTQ movements inclusive, have an equal capacity to form intelligent conceptions of the good life, it is obvious that citizens do not equally exercise that capacity and do not form equally intelligent conceptions. That would require equal respect even for a conception that endorses violence, suffering, and humiliation as human goods. Therefore, a viable equal respect principle can only require equal respect for each person as a human worthy of our equal concern. What really matters here is that lawmakers treat citizens with equal concern, equal caring about each citizen's well-being. Even, John Stuart Mill, the advocate of individual liberty, has to concede that equal respect for each citizen's conception of the good life and choices concerning values is often incompatible with equal concern for citizens (Mill....). A legal system that respects a person's choice to become a heroin user or a prostitute seems to display less concern for that person's well-being than is shown for the well-being of other citizens. John Finnis notes that the legal system leaving a person to succumb to drug addiction denies him the active concern one would show for a friend in such a situation (Finnis, *supra* note 8, at 222). The active concern one would show for a friend in such a situation would perhaps be for his health. Such active concern may, and most importantly, also be for the health of those around him, for which the moral implication of his conduct is weighed. The question would be asked, 'is the drug addict not likely to inflict harm on others through his conduct of drug addiction?'. Members of LGBTQ movements may argue that unlike drug addiction, their conduct, does not in itself constitute a wrong and therefore, should be viewed from the point of view of possibility of harm to others. Thus, their conduct may subsist in the face of Mill's harm principle (Mill, 1960:72-73). However, the LGBTQ members' conduct cannot be shielded by Mill's principle mentioned above when we reckon with the fact that the idea of harm to others is not limited to physical harm but also include harm to values, moral and others, cherished or ought to be cherished by the society, which include the LGBTQ community and others. Physical harm to others may be subject to the requirements for practical interests in line with social corporation, however, harm to values is determined based on how a conduct impinges on the moral worth of individuals including, the moral worth of the individual whose conduct is likely to cause harm to that moral worth. There is no doubt that the members of LGBTQ movements, having opted for

such conduct as attributed to them, no longer show regard for such values, but such values are necessary for their wellbeing as persons even though they do not realize it. If government is to remain neutral such that prohibiting their conduct will not disrupt social order, it means that government fails in its duty to help citizens realize their worth as persons. Michael Sandel has questioned why the practical interest in social cooperation should always defeat competing moral or religious ideals and suggested that it is not always reasonable to set aside competing values that arise from moral and religious doctrines (1996:18-19). One of the most important facts highlighted by the Lady's Diary Case, (), is that the sense of morality of the society should also be a guide to human conduct and should also be reflected in the law's assessment of human conduct. Hence, for the LGBTQ movement's arguments, the neutrality thesis fails in so far as it only gives effect to social cooperation as an overriding interest above other values that determine the worthiness of the human person. When viewed from the perspective of the agnostic thesis, the LGBTQ movement's argument is scrutinized with the idea of value pluralism. Agnostic liberalism credited to Isaiah Berlin, holds that there is a world of objective values-ultimate ends, virtues, and moral principles that rational persons can endorse (Berlin 1991:18-19). Therefore, agnostic liberalism acknowledges the existence of rivalry of values. In his argument for law's enforcement of morals, Berlin considers what he refers to as negative freedom, which makes his position liberal. He defines negative freedom as the area within which a person is "left to do ... what he is able to do... without interference by other persons (22). Berlin distinguished negative freedom from positive freedom, which is the mastery of one's higher, rational, autonomous, true self over his lower, irrational self.' recognizing the instrumental value of negative freedom, Berlin holds that, each individual must be guaranteed a certain minimum area of negative freedom, for if this zone of freedom is violated by the state, the individual cannot develop the natural faculties needed to conceive and pursue the various ends that men hold to be good. However, Berlin did not say negative freedom implies that each individual citizen's protected zone of negative liberty should be enlarged to its maximum. Neither did he propose that aggregate negative freedom throughout society should be maximized or that each citizen's area of negative freedom should be equal to that of every other citizen. Berlin did not claim that negative freedom is the overriding value in political and legal affairs. He notes that negative liberty can lead to social evils and argues that a person's negative liberty should sometimes be reduced for the sake of other persons' liberty or for the sake of other values. In his words:

[L]iberty... may have to be curtailed in order to make room for social welfare, to feed the hungry, to clothe the naked, to shelter the homeless, to leave room for the liberty of others, to allow justice or fairness to be exercised (Berlin 43).

Thus, Berlin never suggests that lawmakers and other political officials should remain neutral as to notions of the good. When goods conflict, he notes, choices must be made; in concrete situations, not every claim has equal force, and public priorities must be established. He further argues that:

To protest against the laws governing censorship or personal morals as intolerable infringements of personal liberty presupposes a belief that the activities which such laws forbid are fundamental needs of men as men .... To defend such laws is to hold that these needs are not essential, or that they cannot be satisfied without sacrificing other values which come higher-satisfy deeper needs-than individual freedom, determined by some

standard that is not merely subjective, a standard for which some objective status... is claimed (Berlin 167-170).

Following Berlin's arguments, therefore, one can view some of the arguments of LGBTQ movements, especially, those bordering on their rights to freedom of association and freedom of conscience, as capable of defining their area of negative freedom. It could also be argued that it is based on the need to protect these rights that some countries legalized such activities as gay marriages. However, the imputation of homosexuality, for which the LGBTQ movements think the laws prohibiting it adverse to their pursuit, could be regarded as non-essential need such that satisfying it can lead to sacrificing the society's sense of moral worth which sees homosexuality as abhorrent. The LGBTQ movements' argument for homosexuality also fails when subjected to the perfectionist thesis. This thesis holds that the main purpose of government is to help people lead fulfilling lives and thus promote human well-being. The argument is perfectionist not in the sense that the legal system tries to make all individuals' lives perfect, but rather in the sense that law should promote the prospects of individuals having good lives. The perfectionist thesis advocates that the law needs to meet three requirements, namely, conceptions of the good, promotion of morality and individual freedom. Thus, Raz argued that justifying political values and resolving conflicts among them requires a comprehensive view of the good and a complete moral theory (76-77). The need for government making a choice between alternative good lives, to protect one in favour of the other is premised on the fact that even when given freedom of choice, a person can decide not to pursue the good activity that can promote wellbeing. Hence, William Gladstone argues that the granting of free choice is always a gamble (1998:239). The choice of homosexuality by members of the LGBTQ movements, cannot promote their wellbeing as such sexual conduct apart from being abhorrent to the moral sense of a person, is also likely to endanger one's health. Though they think that the choice of homosexuality is an expression of their autonomy, but as Raz's conception of autonomy depicts, autonomy involves not only freedom from coercion (negative freedom) but also an adequate range of options and mental capacities to make use of available options (121). Raz insists that autonomy has value only when used to pursue valuable (good) options that that add to one's well-being.

## **CONCLUSION**

A look at the argument presented in this paper indicates that LGBTQ movements' argument for homosexuality is not admissible to the agnostic and perfectionist thesis of the liberal conception of justice. Since the neutralism thesis fails completely to capture the reality of law's function in maintaining the wellbeing of individuals in the state, only these other two theses are prudential for considering the movements' recognition of the right to homosexual activities. However, these two liberal theses have shown that the demand for homosexuality is abhorrent to the sense of morality of the society, which is essential for human wellbeing. This paper then argues that legal paternalism is apt for checkmating the activities of members of the LGBTQ movements. Paternalistic laws which gear towards enabling individuals pursue only those goods that are for the wellbeing of a human person, will coerce members of LGBTQ movements to do something for their own good and simultaneously, do something for other persons good. This alone is a justification for punishing certain conducts of the members of LGBTQ movements, such as lesbianism and other unholy sexual conducts. Members of LGBTQ movements should understand that the negative freedom, for which they can only gain support of the neutrality thesis, is not sufficient for their exercise of autonomy as the need to demonstrate their capacity to exercise

autonomy based on how they use that freedom in choosing valuable goods the contribute not only to their own wellbeing but also to the wellbeing of others or to the wellbeing of humanity in general.

**REFERENCES**

- Bentham, Jeremy, "Offences Against One's Self" in *Journal of Homosexuality*, Vol.3, No.4. 1978. p. 38.
- Berlin, Isaiah, *The Crooked Timber Of Humanity*, Henry Hardy ed., Alfred A. Knopf trans. 1991.
- Bernstein, Mary, "Identities and Politics: Toward a Historical Understanding of the Lesbian and Gay Movement" in *Social Science History*, Vol.26, No.3, 2002.
- Bull, C., and J. Gallagher, *Perfect Enemies: The Religious Right, the Gay Movement, and the Politics of the 1990s*, New York: Crown, 1996
- Roffee, James A.; Waling, Andrea (October 10, 2016), "Rethinking Microaggressions and Anti-Social Behaviour Against LGBTIQ+ youth", in *Safer Communities*. Vol.15 No.4, 2016, pp.190–201. doi:10.1108/SC-02-2016-0004
- Blasius, Mark and Phelan, Shane (eds.), *We Are Everywhere: A Historical Sourcebook of Gay and Lesbian Politics*, New York: Routledge, 1997.
- Devlin, Patrick, *The Enforcement of Morals*, 1965
- Dworkin, Ronald, "Foundations of Liberal Equality", in *The Tanner Lectures on Human Values*, Vol.1, Grethe B. Peterson ed., 1990.
- Dworkin, Ronald, *Life's Dominion*, 1994.
- Galston, William A., "The Legal and Political Implications of Moral Pluralism", 57 MD. L. REV. 1998.
- Joseph, Channing Gerar. "The First Drag Queen Was a Former Slave", in *The Nation*. January 31, 2020.
- Levy, Michael, "Gay Rights Movement" in Encyclopaedia Britannica, eds. Troy Perry, Sylvia Rivera, Larry Kramer, José Sarria and Dan Savage , 2024.
- Mather, Henry, "Natural Law and Liberalism Natural Law and Liberalism", in *South Carolina Law Review*, Vol.1, No.52, 2001.
- Mill, John Stuart, *On Liberty*, in *Utilitarianism, Liberty and Representative Government*, 1960.
- Lady's Dictionary Case*, (1962) A. C. 74, HL.
- Finnis, John, *Natural Law and Natural Rights*, 1980
- Rawls, John. *A Theory of Justice*, London: Harvard University Press, 1972.
- Raz, Joseph. *Ethics in the Public Domain: Essays in the Morality of Law and Politics*. London: Clarendon Press, 1979.

Raz, Joseph, *The Morality of Freedom*, London: Oxford University Press, 1987.

Stephen Gardbaum, "Liberalism, Autonomy, and Moral Conflict", in *Stanford Law Review*, 1996.

Robinson, David M., *Closeted Writing and Lesbian and Gay Literature: Classical, Early Modern, Eighteenth-Century*. London: Ashgate Publishing, Ltd., 2006.

*Same Sex Marriage (Prohibition) Act*, Law of the Federation of Nigeria, 2013.

Sandel, Michael J., *Democracy's Discontent*, 1996.

Waldron, Jeremy, *Liberal Rights*, 1993.

Whisnant, Clayton J., *Queer Identities and Politics in Germany: A History, 1880–1945*. Columbia: Columbia University Press, 2016.