

The Boundaries of Social Transformation through Litigation

Women's and Gay Rights in Israel, 1970-2010

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ABSTRACT

The global expansion of judicial power and the rise of litigation as a vehicle for social transformation are two conspicuous social phenomena that are subject to intensive research by social scientists and lawyers alike. One of the most hotly debated questions in this regard relates to the potential value of law in general, and litigation in particular, as a strategy for social change. This article examines the question by comparing the struggle for equality by two groups - women's rights activists and gay rights activists - in Israel during the 1990's. The struggles of women and gay people for equality have many shared characteristics, since both challenge the traditional conservative patriarchal social model. In Israeli society, moreover, both gay rights' activists and women's equality activists faced the same political rival: the powerful macho-type socio-political mentality, rooted in the central status of the military in Israeli society and the strong hold of Jewish ultra-orthodox parties in the political system. The strategies that the two groups adopted to overcome these obstacles, however, were markedly different. While women's groups adopted an elitist strategy of struggle that concentrated on legal measures, gay rights' groups adopted a variety of strategies that emphasized grassroots political tactics. The article examines the success of each group in achieving its political objectives, and argues that the comparison between them indicates the relative weaknesses of legal and litigation-centered strategies as vehicles for social transformation.

The Boundaries of Social Transformation through Litigation

Women's and Gay Rights in Israel, 1970-2010

The global expansion of judicial power and the rise of litigation as a vehicle for social transformation are two conspicuous social phenomena that social scientists study intensively. One of the most hotly debated questions in this regard relates to the potential value of law in general, and litigation in particular, as a strategy for social change. Some scholars view litigation as an effective vehicle for social reform in the hands of disadvantaged groups or, at the very least, as a source for self-empowerment in the hands of such groups¹ or as a vehicle for re-conceptualizing their claims and agendas.² Many others, however, tend to doubt the social benefits that groups are able to obtain by adopting litigation as a key strategy for social transformation.³ These scholars point to the severe institutional limitations of courts when faced with complicated questions of social policy.⁴ They suggest that, in most cases, there are significant gaps between court victories, celebrated through the elevated rhetoric of judges, and social realities outside the courtroom.⁵ They argue that, at the very least,

¹E.g. Ronen Shamir, *Litigation as a Consummatory Action: The Instrumental Paradigm Reconsidered*, 11 STUD. L. POL. & SOC'Y 41 (1991); MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION (Chicago Univ. Press 1994).

²Anna-Maria Marshall, *Injustice Frames, Legality and the Everyday Construction of Sexual Harassment*, 28 LAW & SOC. INQUIRY 659 (2003); Nicholas Pedriana, *Help Wanted NOW: Legal Resources, the Women's Movement and the Battle over Sex-Segregated Job Advertisements*, 51 SOC. PROBS. 182 (2004); Nicholas Pedriana, *From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women's Movement in the 1960s*, 111 AM. J. SOC. 1718, 1720 (2006). Litigation can sometimes carry some other benefits for movements for social change. It can provide groups with more media coverage and thus generate power at grassroots levels (e.g. MCCANN, *supra* note 1, at 58). Litigation may also help social movements to reconstitute and shape their claims and the organizing principles for their actions, thus serving as a process of 'framing' and 're-framing' the conceptual tools and perspectives of such movements (see references in this note); This may be the case even if the litigation ended in the social movement's defeat (Douglas Nejaime, *Winning through Losing*, 96 IOWA L. REV. 941 (2011), but c.f. Catherine Albiston, *The Dark Side of Litigation as a Social Movement Strategy*, 96 IOWA L. REV. BULL. 61 (2011)).

³Michael W. McCann & Helena Silverstein, *Rethinking Law's Allurements: A Relational Analysis of Social Movement Lawyers in the United States*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 261 (Austin Sarat & Stuart A. Scheingold eds., Oxford Univ. Press 1998)

⁴Lon L. Fuller, *Law as an Instrument of Social Control, and Law as a Facilitation of Human Interaction*, 1975 BYU. L. REV. 89; DONALD L. HOROWITZ, THE COURTS AND SOCIAL POLICY (Brookings Institution Press 1977).

⁵STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE (Yale Univ. Press 1974); Ronen Shamir, *'Landmark Cases' and the*

the use of litigation diverts a movement's energies away from more effective options for social transformation. Further, they argue that resorting to litigation may have the adverse effect of reinforcing the social status quo, rather than effectively challenging it.⁶

In the present paper I seek to join this line of skepticism by indicating the limitations of litigation as a vehicle for social change, and its potentially harmful implications for groups that focus on litigation as a key strategy for social reform. I do so by comparing the struggle for social equality in Israel waged by two groups: women and gays.⁷

The struggle of both women and gays for social equality has been the subject of substantial research by social scientists. Central questions such as abortion rights, equal pay for women, and gay marriage have been intensively researched with respect to the social role of law and litigation.⁸ Central arguments with respect to the efficacy of law and litigation as vehicles for social change have been structured through research, with respect to these two groups. Women's and gay rights are interrelated in the sense that societies which acknowledge women's equality are often more tolerant and receptive to gay rights' issues.⁹ The linkage between the statuses of these groups is relevant to Israel no less than any other state, since the social forces that oppose

Reproduction of Legitimacy: The Case of Israel's High Court of Justice, 24 LAW & SOC'Y REV. 781 (1990); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (Chicago Univ. Press 1991); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?(Chicago Univ. Press 2nd ed. 2008).

⁶ SCHEINGOLD, *supra* note 5; McCann & Silverstein, *supra* note 3.

⁷ Women's and gays groups overlap with regard to lesbian women. In the current research I refer to lesbian women as part of the gay group movement since analytically, the struggle of lesbians *qua* lesbians to promote their right to equality should be regarded as part of the gay-rights movement, and empirically the struggle of lesbians for social equality in Israel was intertwined with the gay-rights movement. This of course does not imply that some lesbian women were not involved as individuals in the struggle to promote women's equality.

⁸ E.g. ROSENBERG, *supra* note 5; MCCANN, *supra* note 1; CHARLES R. EPP, THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE (Chicago Univ. Press 1998); JONATHAN GOLDBERG-HILLER, THE LIMITS TO UNION: SAME-SEX MARRIAGE AND THE POLITICS OF CIVIL RIGHTS (Michigan Univ. Press 2002). MARK STRASSER, ON SAME-SEX MARRIAGE, CIVIL UNIONS, AND THE RULE OF LAW (Greenwood Publishing Group 2002); WILLIAM N. ESKRIDGE JR. & DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE?: WHAT WE'VE LEARNED FROM THE EVIDENCE (Oxford Univ. Press 2006); DANIEL R. PINELLO, AMERICA'S STRUGGLE FOR SAME-SEX MARRIAGE (Cambridge Univ. Press 2006); EVAN GERSTMANN, SAME-SEX MARRIAGE AND THE CONSTITUTION (Cambridge Univ. Press 2nd ed. 2008).

⁹ LIOR BEN DAVID, CTR. FOR RESEARCH & INFO. OF THE KNESSET, THE RIGHTS OF SAME-SEX PARTNERS IN ISRAEL (2004), available at <http://www.knesset.gov.il/mmm/data/pdf/m01045.pdf>.

women's equality (in particular, the militarist macho-type culture in Israel and the ultra-orthodox religious establishment) are also highly hostile towards the idea of gay rights.¹⁰ While the interests of these two groups seem closely related, and the conditions under which each group conducted its struggle were quite similar, the strategies for social transformation that each one adopted over the past three decades have been quite different. Women's advocacy groups concentrated on legislation and transformative high-court litigation as their principal strategy of social action. Gay rights groups, on the other hand, invested in a much wider array of strategies, in which litigation (mostly, though not exclusively, in *lower* courts, and other legal-oriented activity) served as only one, and not necessarily the central, vehicle for social transformation. The outcome, I argue, is that there is a notable difference between the success of each group in its struggle for equality and social empowerment. Despite various reforms in *the formal legal status* of women in Israel during the research period, Israeli women have largely failed to achieve many of the central goals of their struggle for equality. In the absence of an effective political mechanism and grassroots social movement, many of the celebrated court victories and successful legislative initiatives in the field of women's rights remain no more than dead letters of the law. The gay rights movement in Israel, on the other hand, has succeeded in bringing about a dramatic, even revolutionary, change in the social status of gay people in Israel within the short period from 1990 to 2000. This success, I argue, results primarily from the fact that the gay rights movement did not focus their efforts solely on legal channels. Rather, it prudently used litigation as an effective tool within its wider political struggle that focused on grassroots organizations, demonstrations, market-oriented strategies, and various other political tactics.

Studying the social impact of litigation is a messy task. How can one measure the exact impact of certain court victories on the social status of a given group? More particularly, it is extremely difficult to isolate the impact of litigation from various

¹⁰ Dan Horowitz & Baruch Kimmerling, *Some Social Implications of Military Service and Reserve System in Israel*, 15 EUR. J. SOC. 262 (1974); Yoav Dotan, *The Spillover Effect of Bills of Rights: A Comparative Assessment of the Impact of Bills of Rights in Canada and Israel*, 53 AM. J. COMP. L. 293 (2005); Amit Kama, *From Terra Incognita to Terra Firma: The Logbook of the Voyage of Gay Men's Community into the Israeli Public Sphere*, 38(4) J. HOMOSEXUALITY 133 (2000).

In 2001, a comprehensive report was issued by *The Political Council for Gays Rights in Israel*, see THE POLITICAL COUNCIL FOR GAYS RIGHTS IN ISRAEL, THE ANNUAL REPORT (2001) [hereinafter Gay Report 2001], available at <http://glbt.org.il/he/aguda/articles.php?articleID=1208> (Copy with the author).

other factors and events that influence the struggle of groups for social reforms. In the present study, this task is particularly demanding since I aim to make a comparison between changes in the social status of two different groups: women and gays. Arguably, despite the apparent similarities between these two groups, it is very difficult to make a reliable comparison between processes related to them, since the points of origin in each group's status are very different, as so are our expectations, and our criteria for evaluating their "success." I seek to overcome these difficulties by using various longitudinal and cross-country comparative measurements¹¹

The order of the argument is as follows. In *Part I*, I provide a background for the rise of judicial activism in Israel and also describe the use of legislation and litigation by women's and gay groups. In *Part II*, I review the non-legal activities of these two groups in the course of their social struggle. In *Part III*, I evaluate the relative success of each group in its social struggle for equality. And in *Part IV*, I provide an analysis aimed at examining the relationship between the tactics that each group adopted, and their success in their social struggle. I conclude with some general observations regarding the pros and cons of litigation as a strategy for social change.

Part I: Litigation for Women's and Gay Rights in Israel

a. Judicial Review in Israel - Background

Israel has no formal constitution, and the only basis for judicial review over legislation are some Basic Laws enacted by the Knesset (the Israeli parliament) on which the Supreme Court conferred a constitutional status.¹² The most important basic law is *Basic Law: Human Dignity and Liberty*, adopted in 1992. This Law, however, comprises only a partial bill of rights and does not contain any equality provisions (let alone any reference to women's or gay rights).¹³ Accordingly, Israeli public law is almost entirely judge-made law, created and shaped by decisions of the Supreme Court. The principal forum for judicial review is the Supreme Court itself, sitting as the High Court of Justice (HCJ).¹⁴

¹¹ See Part III-a *infra*.

¹² CA 6821/93 Bank Hamizrachi Hameuchad (United Mizrahi Bank) v. Migdal 49(4) PD 221 [1995] (Isr.).

¹³ Dotan, *supra* note 10.

¹⁴ The High Court of Justice (HCJ) is one of the functions of the Supreme Court of Israel. When a civil or criminal dispute arises in Israel, it normally makes its way into a County

During the 1960's and 1970's, the HCJ tended to impose strict limitations on litigants' ability to raise political issues in court. To meet the requirement of *standing*, the petitioner had to show direct and genuine personal interest in the state action at stake. Moreover, the petitioner's standing was likely to be jeopardized if the same action caused similar harm to a large group of people, or to an entire sector of which it formed a part. This narrow concept allowed the court to refrain from interfering in sensitive issues such as law-enforcement with respect to high-ranking political figures¹⁵ and controversies related to religion and state.¹⁶

Another concept with similar effects on the accessibility of courts to interest groups was *justiciability*. Until the late 1970's, the Supreme Court adopted a narrow conception of justiciability. Under this concept, the court decided that petitions involving issues of foreign policy, military actions, or other questions concerning sensitive political issues were "unsuitable" for judicial determination and therefore non-justiciable.¹⁷ The court also adhered to a narrow concept of judicial review.

The 1980's saw a major shift in almost all the aspects of judicial review mentioned above. There was a dramatic change in the principles concerning access to

Court and then – on appeal – to a District Court. Only a handful of such cases reach the Supreme Court as a third instance of *cassation*. The Supreme Court also sits as an appellate court for cases involving serious criminal offenses or civil disputes, where the value of the claim is very high. Such cases are referred directly to a District Court and then, on appeal, to the Supreme Court. Most cases involving public agencies exercising their legal powers are brought directly before the Supreme Court, and are resolved by this Court with no possibility of appeal. Therefore, the Supreme Court in Israel serves in fact in three different functions: as a court of *cassation*, as a court of appeal, and as a court of first (and last) instance for judicial review cases (HCJ). In 2000, a reform was conducted in the structure of public law litigation, and various categories of litigation were placed under the jurisdiction of the district courts (Administrative Affairs Courts Law, 5760-2000 (2000) (Isr.)). The HCJ still serves as the principal court for judicial review in Israel.

¹⁵ HCJ 26/76 Bar-Shalom v. Zore'a 31(1) PD 796 [1977] (Isr.).

¹⁶ HCJ 287/69 Meiron v. Minister of Labor 24(1) PD 337 [1970] (Isr.); HCJ 11/79 Mirkin v. Minister of Interior 33(1) PD 502 [1979] (Isr.). Cf. in the U.S. where the doctrine of standing is still kept within similar boundaries (e.g. Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992); Anthony C. Arend & Catherine B. Lotrionte, *Congress Goes to Court: The Past, Present, and Future of Legislator Standing*, 25 HARV. J.L. & PUB. POL'Y 209, 213-18 (2002)).

¹⁷ HCJ 186/65 Reiner v. The Prime Minister of Israel 19(2) PD 485 [1965] (Isr.); HCJ 561/75 Ashkenazi v. Minister of Defense 30(3) PD 309 [1976] (Isr.); Menachem Mautner, *LAW & THE CULTURE OF ISRAEL* 56 (Oxford Univ. Press 2011). The doctrine of justiciability was applied by Israeli courts in a way that was roughly equivalent to the use of the doctrine of *Equitable Discretion* in regard to congressional suits in some federal cases in the U.S., see, e.g., Riegel v. Federal Open Market Committee, 656 F.2d 873, 882 (D.C. Cir. 1981); Arend & Lotrionte, *supra* note 16, at 236 and n. 149.

the courts. In its landmark decision in *Ressler v. Minister of Defense*,¹⁸ the court revised its standing doctrine to allow *any* person to petition the court in cases involving major constitutional questions, or gross violations of the rule of law. Accordingly, the court ruled that the political sensitivity of a given case does not negate the court's duty to deal with the legal questions involved, thus effectively disposing of the previously accepted doctrine of justiciability.

The reform of the rules concerning access to court was followed by a similar revision of the rules of judicial review. During the 1980's and 1990's, the courts showed a growing tendency to broaden the scope of judicial review. They developed new tools for judicial review, and imposed new requirements on administrative authorities, such as the duties of reasonableness,¹⁹ rationality of the decision-making process,²⁰ and proportionality.²¹ The courts also displayed willingness to review actions of institutions that were previously held to be partly or wholly immune from judicial supervision, such as the military and the security services.²²

The result of all these developments was that Israeli courts became quite a tempting option for all kinds of political and social groups, trying to further their agenda through litigation, as well as for other players in the public arena, such as public interest groups.²³ As we shall see, both women's action groups and gay rights' groups (among many other groups representing a diversity of interests) were quick to pick up on the court's willingness to become a key player in Israel's public arena.

¹⁸ HCJ 910/86 *Ressler v. Minister of Defense* 42(2) PD 441 [1988] (Isr.).

¹⁹ HCJ 389/80 *Dapei Zahav v. Broadcasting Authority* 35(1) PD 421 [1980] (Isr.).

²⁰ HCJ 297/82 *Berger v. Minister of Interior* 37(3) PD 29 [1983] (Isr.).

²¹ HCJ 5510/92 *Turkeman v. Minister of Defense* 48(1) PD 217 [1993] (Isr.); Itzhak Zamir, *Unreasonableness, Balance of Interests and Proportionality*, in *PUBLIC LAW IN ISRAEL* (Itzhak Zamir & Allen Zysblat eds., Clarendon Press 1996).

²² HCJ 680/88 *Schnitzer v. Chief Military Censor* 42(4) PD 617 [1989] (Isr.); HCJ 428/86 *Barzilai v. the Government of Israel* 40(3) PD 505 [1986] (Isr.); Yoav Dotan & Menachem Hofnung, *Legal Defeats – Political Wins: Why Do Elected Representatives Go to Court?*, 38 *COMP. POL. STUD.* 75 (2005) [hereinafter Dotan & Hofnung, 2005].

²³ Since 1980 there was a dramatic rise in the number of petitions issued by interest groups. In 1980 only 1.5% of the petitions to the HCJ were filed by interest groups; their share of the HCJ docket climbed to 5.9% in 1989, and 12.4% in 1995 (see Yoav Dotan & Menachem Hofnung, *Interest Groups in the Israeli High Court of Justice: Measuring Success in Litigation and in Out-of-Court Settlements*, 23 *LAW & POL'Y* 1, 16 (2001) [hereinafter Dotan & Hofnung, 2001]).

b. Litigation by Women's Groups

The founding of Israel appeared to carry great promise for Israeli women. The dominance of the socialist ideology espoused by the main political forces of the time, combined with the European background of some prominent elite groups, seemed to create a polity that would favor equal rights for women.²⁴ Indeed, Israel's Declaration of Independence specifically denounces gender-based discrimination and, shortly after statehood, the Knesset passed the Women's Equal Rights Law, 1951, that provides for "one law for men and women." Prohibitions against gender-based discrimination were also included in many pieces of legislation referring to labor issues.²⁵

Nevertheless, despite the seemingly egalitarian aspirations of the founders, two strong social forces constantly worked against equality for women in Israeli society. First, there were security pressures that made military service a central part of Israeli society, culture and politics. Officially, military service was open to both sexes.²⁶ In practice, however, all combat positions were closed to women.²⁷ This had wide-ranging effects on career options available for women within and outside the military, and on their social status in general.²⁸ The second force that worked against equality for women was the Jewish religious establishment. Under Israeli law (as shaped during the Fifties), matrimonial issues are subject to the ultimate jurisdiction

²⁴ While the current analysis focuses on women's rights after the formation of the State of Israel, it is worth mentioning that women in the pre-state period also struggled for gender equality. For a description of women's efforts to enter the legal profession in Mandatory Palestine, see Eyal Katvan, *No More Parsley to the Salad: The Entrance of Women to the Bench and the Legal Profession in Mandatory Palestine and in Israel*, 32 IJINEI MISHPAT 69 (2010); Eyal Katvan & Ruth Halperin-Kaddari, *'The Feminist Proposal is Really Ridiculous': The Struggle for Women's Right to Enter the Legal Profession in Mandatory Palestine*, 25 MECHKAREI MISHPAT 237 (2009).

²⁵ Under the Employment Service Law 5719-1959 (1959) (Isr.), employers are prohibited from discriminating on the basis of sex (as well as on other grounds such as race, nationality and sexual orientation) in respect of hiring workers, their salaries, working conditions, promotion and so forth. See also the Male and Female Workers Equal Pay Law 5756-1996 (1996) (Isr.).

²⁶ Daphne Barak-Erez, *The Feminist Battle for Citizenship: Between Combat Duties and Conscientious Objection*, 13 CARDOZO J. L. & GENDER 531 (2007).

²⁷ Dafna N. Izraeli, *Gendering Military Service in the Israel Defense Forces*, 12 ISR. SOC. SCI. RESEARCH 129 (1997); Yael Yishai, *BETWEEN THE FLAG AND THE BANNER: WOMEN IN ISRAELI POLITICS* (SUNY Press 1997); Ruth Halperin-Kaddari, *WOMEN IN ISRAEL: A STATE OF THEIR OWN* 153 (Pennsylvania Univ. Press 2004); Noya Rimalt, *Equality with a Vengeance: Female Conscientious Objectors in Pursuit of a Voice and Substantive Gender Equality*, 16 COLUM. J. GENDER & L. 97(2007).

²⁸ Izraeli, *id.*; Rimalt, *id.*

of religious tribunals. Since the legal codes under which the Rabbinical (as well as the Moslem) tribunals function are ancient, the idea of gender-based equality is wholly absent from them. As a result, Israeli family law reflected gross discriminations against women. The application of religious law to matrimonial issues was also exempt from any influence of egalitarian legislation (such as the above-mentioned Women's Equal Rights Law) by specific order of the legislature.²⁹ Moreover, the strong foothold of the religious parties in Israeli politics precluded any possibility of a significant reform in the fields of family law and matrimonial status.³⁰

Since the early days of the state, the Israeli judiciary reflected a tendency to minimize – to the extent possible under statutory limitations – the non-egalitarian impact of the religious establishment on family law. During the Sixties and Seventies, the Supreme Court delivered some prominent decisions aimed at narrowing the jurisdiction of religious tribunals. These decisions were intended to enable some groups to evade religious prohibitions against various kinds of marriage that would otherwise have been strictly enforced by the religious tribunals.³¹ The Supreme Court also developed a doctrine of strict scrutiny of the practices of religious tribunals in order to assure their compliance with fundamental principles of procedural justice.³²

The rise of judicial activism that began in the early 1980's marked, however, a new era for litigation on women's rights. There were several organizations advocating women's rights, including the Association for Civil Rights in Israel (ACRI) and the Women's Lobby (*Shdulat Ha'nashim* – hereinafter WL). The latter organization was founded in 1987 and soon after adopted litigation as a central strategy for achieving social reforms. Both ACRI and the WL brought in the Supreme Court several women's rights and women's equality cases. Most of them were decided in favor of women's rights. In this manner, the court ordered the government to ensure reasonably sufficient representation for women on boards of government corporations

²⁹ See e.g. Section 5 of the Women's Equal Rights Law 5711-1951 (Isr.) providing that the Act does not affect matrimonial issues. For a critical discussion of the impact of Jewish rabbinical law on the endeavors of the founders to establish gender equality see e.g. Zvi H. Triger, *The Gendered Racial Formation: Foreign Man, 'Our' Women and the Law*, 30 WOMEN'S RTS. L. REP. 479, 496 *et seq.* (2009).

³⁰ Frances Raday, *Religion, Multiculturalism and Equality: The Israeli Case*, 25 Y.B. HUM. RTS. 193 (1996); Ruth Halperin-Kaddari, *Women, Religion and Multiculturalism in Israel*, 5 U.C.L.A. J. INT'L L. & FOREIGN AFF. 339 (2001).

³¹ HCJ 143/62 Funk-Schlesinger v. Minister of Interior 17 PD 225 [1963] (Isr.); AMNON RUBINSTEIN & BARAK MEDINA, *THE CONSTITUTIONAL LAW OF ISRAEL* (6th ed. 2006).

³² HCJ 202/57 Sides v. Great Rabbinical Court 12 PD 1528 [1958] (Isr.); HCJ 10/59 Levi v. The District Rabbinical Court 13 PD 1182 [1959] (Isr.).

and other public institutions.³³ Similarly, the Court struck down retirement practices that were held to be flawed by gender-based discrimination.³⁴

No less impressive, however, was the record of the Supreme Court in interfering and striking down gender-based discriminatory practices based upon or related to religious institutions or religious practices. In 1988 the Supreme Court interfered twice to strike down practices that banned women's representation in religious-municipal councils.³⁵ In a 1994 landmark decision, the court ruled that the right of women to an equal share in property applies to any matrimonial litigation, regardless of the forum in which it took place. This meant that religious tribunals were thereafter subject to a secular norm of equality that overruled any contradicting religious norm. The court went on to proclaim that – in general – religious tribunals should abide by constitutional and legal principles, either statutory or precedential, of the state. By so ruling, the court confined to a minimum the implications of the autonomy of religious tribunals provided by the relevant legislation.³⁶ Later on, the court ordered the religious authorities in charge of the Jewish holy places in Jerusalem to allow a group of women (Women of the Wall) to conduct prayers within the main prayer location near the Western Wall, which had been restricted to men only.³⁷

Another important aspect of judicial intervention with regard to women's equality is the one referring to the status of women in the Israeli Army (IDF). In a

³³ H CJ 453/94 Women's Lobby v. Government of Israel 48(5) PD 501 [1994] (Isr.); H CJ 2671/98 Women's Lobby v. Minister of Labor 52(3) PD 630 [1998] (Isr.); H CJ 2754/02 Women's Lobby v. The Government of Israel (Nov. 13, 2002), Nevo Legal Database (Isr.).

³⁴ H CJ 104/87 Nevo v. National Labor Tribunal 44(4) PD 74 [1990] (Isr.).

³⁵ H CJ 953/87 Poraz v. Mayor of Tel-Aviv - Jaffa 42 (2) PD 309 [1988] (Isr.); H CJ 153/87 Shakdiel v. Minister for Religious Affairs 42(2) PD 221 [1988] (Isr.).

³⁶ H CJ 1000/92 Bavli v. Great Rabbinical Court 48(2) PD 221 [1994] (Isr.). In this manner, the Supreme Court ruled that a woman's right to equal share in property (after a divorce) is based upon the woman's right to equality in marital life, and the fact that there are "non-economic" ways in which a woman can contribute to marital life (such as childcare etc.) that are no less important than "economic" ones (such as labor etc.). Therefore, the woman's right to equal share in property is not dependent on a matrimonial agreement (whether explicit or implicit) or the "economic" contribution that she makes to the marriage (C.A. 1880/95 Drahm v. Drahm 50(4) PD 865 [1997] (Isr.)). The Supreme Court also ruled that the above-mentioned rationales render the woman's right to equal share in property applicable not only to property acquired during the marriage, but (in some cases) also to property acquired before the marriage (by the husband) (C.A. 4151/99 Bril v. Bril 55(4) PD 709 [2001] (Isr.)).

³⁷ The decision in H CJ 3358/95 Hoffman v. Director General of the Prime-Minister's Office 54(2) PD 345 [2000] (Isr.) was somewhat qualified in a later decision of the Court in this case (FH CJ 4128/00 Director General of the Prime Minister's Office v. Hoffman 57(3) PD 289 [2003] (Isr.)), in which the Court decided to designate a location adjacent to the Wall for women's prayers.

landmark decision in 1995, the court quashed the Israeli Air Force's practice that barred women from admission to the IAF's Flight School and becoming combat pilots.³⁸ Its decision thus put an end to male monopoly in one of the most prestigious fields of military activity, and opened the gate for women's access to most military posts and security careers.³⁹

c. Gay Rights Litigation in Israel

Unlike the case of women, at the time of the state of Israel's founding the legal and social status of gays was very low. Homosexuality in Israel's early days was criminally outlawed and socially condemned.⁴⁰ During the 1990's, however, Israeli society underwent a significant, even revolutionary, social change. This revolution took place in various social spheres (see below), but for now we shall concentrate on its impact in the legal field.

In 1988 the Knesset repealed the criminal prohibition on homosexual sexual relationships, and twelve years later in 2000 the Knesset equalized the minimum age of consent for homosexual relationships to the general age of consent in criminal

³⁸ HCJ 4541/94 Miller v. Minister of Defense 49(4) PD 94 [1995] (Isr.).

³⁹ Nevo v. National Labor Tribunal, *supra* note 34; Women's Lobby v. Government of Israel, *supra* note 33; Women's Lobby v. Minister of Labor, *supra* note 33; Lauren Feldinger Gelfond, *Skirting History*, JERUSALEM POST, Sep. 18, 2008, available at <http://www.jpost.com/Home/Article.aspx?id=114834> ' Noya Rimalt, *Women in the Sphere of Masculinity: The Double-Edged Sword of Women's Integration in the Military*, 14 DUKE J. GENDER L. & POL'Y 1097 (2007); Dotan, *supra* note 10. The decision also brought about the amendment of the law regarding women's service in the IDF; see Women's Equal Rights Law (Amendment No. 2) 2000 SH No. 167 (Isr.). This amendment later became Section 16(a) of the Defense Service Law (Consolidated Version) 5746-1986 (1986) (Isr.). See Defense Service Law (Amendment No. 11) (Women in Combat Units) 5760-2000 SH No. 64 (Isr.) § 6(d). For a feminist critique on the implications of the legal reforms in this field, see Rimalt, *supra* note 27, at 117-18; Orna Sasson-Levi, *Feminism and Military Gender Practices: Israeli Women in "Masculine" Roles*, 73 SOC. INQUIRY 440 (2003).

⁴⁰ Crim A 224/63 Ben-Ami v. The Attorney-General 18(3) PD 225 [1964] (Isr.); Yuval Yonay, *The Law Regarding Homosexuality – Between History and Sociology*, 4 MISHPAT UMIMSHAL: LAW AND GOVERNMENT IN ISRAEL 531 (1998); Kama, *supra* note 10; Amit Kama, *Parading Proudly into the Mainstream: Gay & Lesbian Immersion in the Civil Core*, in THE CONTRADICTIONS OF ISRAELI CITIZENSHIP: LAND, RELIGION AND STATE (Brian S. Turner & Guy Ben-Porat eds., Taylor & Francis 2011). The Attorneys-General of Israel issued in 1953 and 1972 instructions not to prosecute for consensual homosexual relationships. Therefore, in practice, the criminal prohibition was seldom enforced (Alon Harel, *Overview & Commentary: Bagatz 721/94 El Al v. Danilowitz and the Future of Sexual Minority Rights in Israel*, 1 NAT'L J. SEXUAL ORIENTATION L. 302, 303 (1995), available at <http://www.ibiblio.org/gaylaw/issue2/harel.html>).

law.⁴¹ In 1992 the Employment (Equal Opportunities) Law was amended to prohibit any discrimination against workers in hiring, promotion, and other aspects of labor relations on the basis of the worker's sexual orientation.

In its struggle for equality, the gay community made ample use of high-court litigation. The landmark case in this field was HCJ 721/94 *El Al v. Danilovitz* (1994) in which the Supreme Court ordered that homosexual partners are entitled to all the benefits that spouses of aircrew in El Al Airlines enjoy under their collective employment agreement.⁴² While the *Danilovitz* decision could have been subject to a narrow reading, as based on interpretation of the specific employment agreement, it in fact paved the way to the recognition of various other spousal rights of homosexual partners - such as for government benefits, pensions, and inheritance law.⁴³

The judicial reform of the legal status of gays in Israel has continued throughout the past decade via a series of decisions that bestowed on same-sex partnership the status of "common-law marriage." In 2001, lower courts acknowledged the legal validity of cohabitation agreements by same-sex partners.⁴⁴ In 2006 the HCJ acknowledged the status of same-sex marriages performed abroad as legally valid for the purpose of registration in the Official Registry.⁴⁵ This ruling provides homosexual partners with most of the rights and benefits accruing to married people under Israeli law.⁴⁶ A year before, the Court interpreted the Adoption of Children Law of 1981 broadly, in order to acknowledge the right of lesbian partners

⁴¹ Kama, *supra* note 10.

⁴² HCJ 721/94 *El Al v. Danilovitz* 48(5) PD 749 [1994] (Isr.).

⁴³ HCJ 5398/96 *Steiner v. Minister of Defense* (Feb. 27, 1997), Nevo Legal Database (Isr.); Tzili Mor, *Law as a Tool for Sexual Revolution: Israel's Revolution of Sexual Harassment Law*, 7 MICH. J. GENDER & L. 291 (2001); BEN DAVID, *supra* note 9.

⁴⁴ See *id.*

⁴⁵ HCJ 3045/05 *Ben-Ari v. Director of Civil Registry* 61(3) PD 537 [2006] (Isr.).

⁴⁶ The bundle of rights that this ruling grants to same-sex partners is roughly equivalent to the rights provided by a "Registered Partnership" (Robert Wintemute, *The Massachusetts Same-Sex Marriage Case: Could Decisions from Canada, Europe and South Africa Help the SJC?*, 38 NEW ENG. L. REV. 505(2003)). On the surface of things, being registered as a married couple in the Official Registry does not grant the couple any material rights, for it functions merely as a *statistical* tool (*Funk-Schlesinger v. Minister of Interior*, *supra* note 31). Nevertheless, as a practical matter, registration in the Official Registry means a great deal, especially with regard to day-to-day contacts with the bureaucracy. For example, in order for a same-sex couple to receive a mortgage (which is subsidized by the government) as a married couple, they must present evidence to the bank that they are registered as such (even though their marriage is not recognized under Israeli material law). See Arnon Ben-Yair, *Marriage in the Version of Barak*, HAARETZ, May 29, 2007, available at <http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=864446> /

to adopt each other's child under the Adoption of Children Law,⁴⁷ and in 2008 the Attorney General rendered his approval for the adoption of non-biological children by homosexuals.⁴⁸ The *Yeros-Hakak* decision was followed by the decision of a lower court in 2010 that affirmed the petition of a homosexual partner to adopt the son of his spouse, who had been born to a surrogate mother.⁴⁹ In 2006 a civil court also acknowledged the validity of a divorce matrimonial agreement made by a lesbian couple,⁵⁰ and similar recognition was granted to rights of gay couples for inheritance purposes.⁵¹

All these rulings by the courts were given despite the fact that, under the law, marriage and divorce of Jews in Israel are subject to the jurisdiction of religious tribunals that adjudicate disputes according to the Jewish Halacha (under which homosexuality is a serious sin and same-sex marriage has no legal status).

Similarly, several statutes enacted during the last decade as well as court decisions entrenched the ban on discrimination on the basis of sexual orientation in various fields, including consumer rights, state contracts, and state subsidies.⁵²

⁴⁷ CA 10280/01 Yeros-Hakak v. The Attorney-General 59(5) PD 64 [2005] (Isr.).

⁴⁸ Yuval Yoaz, *Mazuz: Gay and Lesbian Parents would be able to Adopt Children*, HAARETZ, Feb. 10, 2008, available at <http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=953076&contrassID=2&subContrassID=1&sbSubContrassID=0> ; Kama, *supra* note 40.

⁴⁹ Aviad Glickman, *Court Precedent: A Child to Be Adopted by His Father's Male Spouse*, YNET, Dec. 16, 2010, available at <http://www.ynet.co.il/articles/0,7340,L-4000371,00.html>; Dana Weiler-Polak, *Ministry of Welfare: 20% of Adoptions – by Same-sex Couples*, HAARETZ, Sep. 19, 2010, available at <http://www.haaretz.co.il/hasite/spages/1190077.html> ([hereinafter Weiler-Polak, 2010b]).

⁵⁰ Fam C (TA) 47720/06 M. & N. (Dec. 20, 2006) Nevo Legal Database (Isr.).

⁵¹ Kama, *supra* note 40; see also Fam C (TA) 11264-09-12 Ploni v. Ministry of Interior (Nov. 21, 2012) Nevo Legal Database (Isr.), in which the court ordered the Ministry of Interior to acknowledge the annulment of marriage of a gay couple, based on the HCJ ruling in Ben-Ari v. Director of Civil Registry, *supra* note 45. In another recent decision, a family court ruled that a lesbian woman, who donated her ovum in an artificial insemination procedure with her partner, should be acknowledged as a second mother in a direct manner, and not by adoption procedure (subject to a professional opinion on the child's best interest) (FamC (TA) 60320/07 T.Z v. The Attorney General (Mar. 4, 2012) Nevo Legal Database (Isr.)).

Furthermore, a magistrates court ordered the owners of an events hall to compensate a lesbian couple due to their refusal to allow the couple to hold their wedding there, according to the Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law 2000 (CC (Jer) 5901/09 Ya'acovich v. Yad Ha'shmona Festivities Hall (Sep. 3, 2012) Nevo Legal Database (Isr.)).

⁵² *E.g.* Admin A 343/09 Ha'Bait Ha'Patuach (Open House for Pride and Tolerance) v. Municipality of Jerusalem (Sep. 14, 2010) Nevo Legal Database (Isr.); Dana Weiler-Polak, *Same-Sex Couples Entitled to Subsidies for Day Care*, HAARETZ, Feb. 8, 2010, available at <http://www.haaretz.co.il/hasite/spages/1148348.html> [hereinafter Weiler-Polak, 2010a].

Part II: Non-Litigative Activities and the Place of Litigation – Women’s and Gay Groups

a. Women’s Groups

As we have seen, during the past three decades both women’s groups and gay-rights’ activists used litigation extensively to promote their interests, rights, and social status. There seem to be, however, some notable differences between these two groups with regard to the role of law in general, and high court litigation in particular, within the overall array of their activities. The first and perhaps the most conspicuous difference refers to the *centrality* of litigation for each group.

The principal women’s groups in Israel (and most notably the WL and Na’amat – a women’s organization affiliated to Israel’s main labor union) regarded legal tactics and litigation as their paramount mode of social activity and largely stayed away from grassroots political activities. The centrality of the legal strategy is particularly evident when one looks at what women groups in Israel *did not do* (or at the very least did not do intensively) during the research period – that is, if one looks at the overall picture of their political activities. Although females constitute over 50% of the population, Israel has no women’s parties either at the national level or the municipal level, nor was there any significant grass-roots organization that aimed to mobilize women voters in politics during the research period.⁵³ The lack of effective political organization is also reflected in the relative scarcity of grassroots political activities. Hardly any significant events during the research period spring to mind – such as demonstrations, parades, or even picketing organized by women’s groups or activists regarding *major issues* on the agenda of women's equality rights, such as equal pay, political representation for women, equality within the family, or violence against women. All these are major issues that address significant disadvantages of women in Israeli society, and yet, unlike many other countries, women’s groups in Israel have failed to use them for mobilizing meaningful grassroots activity.

It should be clarified at the outset that I do *not* suggest that women stayed *completely* uninvolved in politics during the research period. To the contrary: one can point to various social and political activities by women's groups and organizations.

⁵³ In 1977 a Women’s Party was established in Israel and participated in the elections. Nevertheless, it did not cross the election threshold, and thus did not receive any parliament seats. See Ruth Reznik, *Patriarchal Society, Chauvinism and Violence Against Women*, 10 WHAT ABOUT – A JOURNAL FOR WOMEN RIGHTS (2001), available at <http://lib.cet.ac.il/Pages/item.asp?item=8542>.

Most of these activities, however, were political activities either largely unrelated to women's rights or such that focused on women's issues in specific communities or with regard to issues that were peripheral to the main agenda of women's equality. Thus, for example, women's groups (such as 'Women in Black' and 'Checkpoint Watch') conducted picketing, demonstrations and other grassroots activities with regard to Palestinian rights, while other organizations were active against discriminatory practices in the Orthodox Jewish community (e.g. '*Kolech*' (*Your Voice*) and *Women of the Wall*),⁵⁴ or with regard to women's rights in the Jewish Mizrahi (oriental) population (e.g. '*Achoti*' (*My Sister*)).⁵⁵ Most of these activities, however, were not directed toward the main issues of the women's rights movement agenda (i.e. equality in political representation, equal pay for women, and combating violence against women). Thus, in this respect, the magnitude and nature of women's political activities stand in sharp contrast to those of the gay rights movement during the research period (see below).⁵⁶

⁵⁴ Efrat Weiss, *Police arrest woman praying at Western Wall*, YNET, Nov. 18, 2009, available at <http://www.ynetnews.com/articles/0,7340,L-3807090,00.html>. Recently, as a result both of political pressure by American Jewish organizations and several mass prayer sessions by women at the beginning of the Hebrew month in the Western Wall, Prime Minister Benjamin Netanyahu asked the chairman of the Jewish Agency, Nathan Sharansky, to work on a solution for the situation, and present recommendations after the elections (See Kobi Nahshoni, *Netanyahu Initiates Lighter Limitations on Women and Reforms in the Western Wall*, YNET, Dec. 27, 2012, available at <http://www.ynet.co.il/articles/0,7340,L-4325208,00.html>). On the 'Kolech' organization's activities, see its website at: <http://www.kolech.com/english/>. The 'Kolech' organization has also filed a class action against 'Kol Ba'Rama', a radio station that continues to bar women from broadcasting in its programs, even though the Second Authority of Television and Radio issued special orders in the matter (See CA (Jer) 23955-08-12 'Kolech' v. 'Kol Ba'Rama' Nevo Legal Database (Isr.)).

⁵⁵ See e.g. Henriette Dahan-Kalev, *Feminism Between Mizrahi and Ashkenazi*, in SEX GENDER POLITICS 217 (Daphne Israeli et al. eds., 1999). For further information about the Achoti organization's activities, see its website http://www.achoti.org.il/?page_id=408. C.f. Jayanth Kumar Krishnan, *Public Interest Litigation in a Comparative Context*, 20 BUFF. PUB. INTEREST L.J. 19, 49 (2001). Krishnan found that 57% of the women's rights groups studied in his research reported that they used demonstrations and protest as part of their tactics. Krishnan doesn't list, however, the groups that he classifies as women's rights groups for this quantitative analysis, nor does he provide clear criteria for such classification. Some groups referred to in his study as women's rights groups focus on issues that seem peripheral to the women's rights movement principal claim (e.g. 'New Family' (*id.*, at 62) – an organization that focuses on rights of alternative forms of family partnerships (including common-law marriage, gay families and so forth). It is unclear from these findings how intensive or frequent was the groups' use of demonstrations, and the study does not list or even cite actual cases of demonstrations or picketing that women's groups conducted. The study also found that women's rights groups are among the "heavy" users of litigation (*id.*, at 72).

⁵⁶ This state of affairs seems to be changing, at least to some extent, towards the end of the research period. Thus, in 2007 there was one notable case of mass demonstrations against the

The centrality of legal and litigative strategies in the agenda of Israel's main women's rights organizations can be demonstrated by looking at reports provided by the organizations themselves. In a booklet published by the WL in 2004, the organization reviewed its main activities during the twenty years between 1985 and 2004. The document refers to 34 major events and initiatives of the WL since its foundation. Of those, almost two-thirds (21) were related to legal activities: 10 events of litigation (of which 8 were petitions to the Supreme Court) and another 11 legal activities (most of which were legislative initiatives). Only 13 events mentioned in the report were non-legal activities, and most of them had to do with education (such as classes given to high-school students to develop female leadership) or polls related to women's issues. Only two of the 34 events mentioned were demonstrations or public picketing (of which one was related to high-court litigation) (see Figure 1).

FIGURE 1: Activities of WL: 1975-2004– IN HERE

b. Gays' Activities

The above description of the Women's Lobby activities stands in sharp contrast to the nature of activities by gays in Israel. The gay rights movement in Israel is composed of a large network of different organizations that collaborate effectively

Attorney-General's decision not to pursue criminal charges of rape against the President of the State, Moshe Katzav, in July 2007. The President was accused in the press of being involved in various cases of sexual harassment and other sexual offences against women employed by him, but after a long investigation the Attorney-General announced that he agreed to a plea bargain without a sentence of imprisonment. The decision set off a huge public outcry which included a massive demonstration in Tel-Aviv. It should be noted, however, that these demonstrations seem to reflect a general sentiment of resentment by the Israeli public against political corruption, more than a reaction to organized efforts by women's organization to mobilize for fundamental social changes. Ultimately, Katzav decided to reject the plea-bargain option. He was indicted for charges of rape and other sex offences, and convicted in December 2010. Similarly, in February 2010 the press reported a demonstration in the Arab city of Nazareth, in protest against domestic violence (Jacky Huri, *The War of the Druze Sheikh against Murder of Arab Women*, HAARETZ, Feb. 7, 2010, available at <http://www.haaretz.co.il/hasite/spages/1147976.html>). Also, in recent years there have been a number of political demonstrations and picketing in 2011 against practices of gender separation in public transportation and in other public venues espoused in ultra-Orthodox communities in Jerusalem and elsewhere (see Dan Izenberg & Jonah Mandel, *Court Scraps 'Mehadrin' Buses*, JERUSALEM POST, Jan. 6, 2011, available at <http://www.jpost.com/NationalNews/Article.aspx?id=202456>). The issue also reached the High Court: see H CJ 746/07 Ragen v. Ministry of Transportation (Jan. 5, 2011), Nevo Legal Database (Isr.).

with each other.⁵⁷ Over the past two decades, these organizations have proved extremely successful in combining political lobby and grassroots activities with litigation to bring about social mobilization. Unlike the case of women, gay grassroots political activity is commonplace in Israeli politics. These activities are composed of every known aspect of politics, including a political lobby in the Knesset and at the level of local municipalities, party organization, and voter mobilization, grassroots protest (by press articles, letters to politicians etc.), mass parades and demonstrations, as well as small-scale (but effective) picketing. I now review some of these activities in more detail.

Although gays are a relatively tiny fraction of the general population (this is certainly true with regard to those members of the community who are willing to profess their sexual orientation in public),⁵⁸ the gay community has organized successfully and is effective at the party level. The community has managed to do this by concentrating its activities in those few political constituencies where gays have greater numerical significance, mainly in the Tel-Aviv branches of the leftist parties of Meretz and Shinui.⁵⁹ This stronghold of the community in key branches of these parties has allowed them good access and influence at the national level (as well as in the Knesset), where they effectively applied political lobbying.⁶⁰ No less impressive is the gay movement's ability to mobilize grassroots activities in the streets. The annual

⁵⁷ These organizations include The Gays, Lesbian and Trans-Genders Association; Lesbian Feminist Community (KLAF); Open House (Jerusalem); Gay & Lesbian Task Force; Bisexuals In Israel; The Association for Fighting against AIDS and various other organizations: see <http://www.gogay.co.il/index/Sites.asp?id=1>. The relationships between these organizations are typified by collaboration and work-division, with each one dealing with different aspects of gay interests and activities.

⁵⁸ The relative numbers of gays and lesbians within the general population is an issue that sparks debates among researchers. The numbers that are cited in this respect range from 10% to 3-4% (William B. Rubenstein, *Do Gay Rights Laws Matter? An Empirical Assessment*, 75 S. CAL. L. REV. 65, 83-87 and references *id.* (2001)). For the purpose of this study, it is sufficient to say that the relative size of the gay and lesbian population within the general population is certainly far lower than the relative size of the female population. Therefore, presumably, to the extent that the size of the social group has an influence on their relative power within the democratic system, women are expected to have far more influence on the political system than gay persons.

⁵⁹ Gay Report 2001, *supra* note 10, at 68.

⁶⁰ *Id.* at 57; Kama, *supra* note 10. For a description of lobbying activities by the gay movement in the Knesset, see *e.g.* Amir Shoan, *Everyone has Gone but I'm not Despaired*, TEL AVIV MAGAZINE, July 14, 2006 (copy with the author). In 2002, a report that reviewed the Knesset's activity in the field of gay rights over the previous years was issued by *The Political Council for Gays Rights in Israel*, see PINK REPORT: THE FIRST REPORT TO THE KNESSET ON LGBT RIGHTS IN ISRAEL 2000-2001, THE POL. COUNCIL FOR GAY RTS. IN ISR. (Shabi Gatenio, Amit Sha'anani & Yoki Lavi eds., 2002).

Gay Pride Parade in Tel-Aviv is not only a large colorful cultural event, but also a significant demonstration of political power. The success of this event in the social mobilization of gays' interests is reflected in the fact that (in addition to public financing) major utility companies and other national corporations sponsor the event (for significant sums of money for advertisement, which presumably creates economic leverage for the movement).⁶¹ The movement's presence on the street level, however, does not end with this yearly event. Gay activists have proved to be determined to picket any public figure in Israel (whether a politician, an intellectual, or an artist) who publicly indulges in homophobic speech.⁶² Gay activists are quick to insistently react to and condemn any infringement on gays' rights or social status by letters to the press and other media channels, by picketing as well as by threats of litigation.⁶³ The movement is very active in negotiating issues of gay rights with the authorities (such as with the prison managements regarding prisoners' rights, and with the health authorities regarding Aids).⁶⁴ It also systematically detects and responds to violations of gay rights on the ground. Thus, for example, the movement acts to educate and train police officers to deal with assaults on homosexual youth in a park that serves the community for social interaction.⁶⁵

A good illustration of the movement's activities can be extracted from a 2001 comprehensive report issued by *The Political Council for Gay Rights in Israel*.⁶⁶ The report, containing over a hundred pages, is divided into 14 chapters, only one of which is titled "The Legal Chapter," though some other chapters focus on legal issues (such as a chapter addressing civil marriage, and one that relates to the rabbinical courts).⁶⁷ All in all however, this comprehensive report deals with the activities of the

⁶¹ Ari Gilhar, *Parade without Sponsors: Due to Haredi Boycott?*, CHANNEL 7, June 25, 2007, available at <http://www.inn.co.il/News/News.aspx/164038>; Kama, *supra* note 10; Kama, *supra* note 40. Gay parades in Jerusalem in recent years have generated a wave of resentment within religious circles in the city and brought about pressures against commercial sponsors of the gay parades: see Shlomit Zur, *First Time: Tempo Boycott the Gay Parade*, 2007 (copy with the author); Idan Yosef, *Tempo Boycott the Gay Parade*, NEWS1, May 7, 2007, available at <http://www.news1.co.il/Archive/001-D-130319-00.html>. Attempts to ban the parade through the courts failed - see HCJ 8988/06 Meshi-Zahav v. Commander of Jerusalem Region (Dec. 27, 2006), Nevo Legal Database (Isr.); HCJ 5277/07 Marzel v. Commander of Jerusalem Region (June 20, 2007), Nevo Legal Database (Isr.); Kama, *supra* note 40).

⁶² Gatenio et al., *supra* note 59; Kama, *supra* note 10.

⁶³ Gay Report 2001, *supra* note 10; Kama, *supra* note 10.

⁶⁴ Gay Report 2001, *supra* note 10, at 17, 104 (the Health Chap. and the Prisoners Chap.).

⁶⁵ *Id.* at 99 (the Police Chap.).

⁶⁶ Gay Report 2001, *supra* note 10.

⁶⁷ *Id.* at 74, 46.

gay rights movement in various fields, including health, education, politics, army service, prisoner rights, and even gay tourism.⁶⁸ It is clear from this report that the gay movement in Israel regards litigation as just *one strategy among many others* for achieving its political goals, and that the legal strategy is intertwined with other aspects of the movement's activities.

The differences between the gay movement and the women's movement are discernible not only with regard to the relative centrality of litigation as a tool for social mobilization, but also in terms of the *nature and tactics* of litigation that each movement adopted. The WL, as well as other women activists, concentrated on *High Court* litigation (mainly before the HCJ).⁶⁹ Gay organizations, on the other hand, while using petitions to the HCJ in some high-profile cases, provided effective legal aid to members of their communities in numerous "regular" cases in lower courts on various legal issues: recognition of family rights and rights of same-sex partners, discrimination against homosexuals by property owners, and other issues that require litigation.⁷⁰ The fact that the gay movement regarded high-court litigation as just one aspect, and not necessarily the most central one, of their political activities is also reflected by the *mechanism* the movement used for such litigation. Almost all high-court litigation on women issues was conducted by the women's organizations *themselves* (most commonly by the WL or Na'amat) and occasionally in conjunction with ACRI).⁷¹ Gay organizations, on the other hand, seldom petitioned the HCJ themselves. In almost all high-profile cases, they relied on the well-organized and professional mechanism of the Association of Civil Rights in Israel (ACRI) to represent them in court. This fact indicates several points: first, gay organizations, while certainly aware of the importance of high court litigation, did not seek to invest too much of their organizational and financial resources in conducting litigation, since they knew that another organization (i.e. ACRI), specializing in high-court litigation,

⁶⁸ *Id.* at 17, 6, 57, 86, 104 and 51; Aron Heller, *Tel Aviv Emerges as Top Gay Tourist Destination*, HUFFINGTON POST, Jan. 24, 2012, available at http://www.huffingtonpost.com/2012/01/24/tel-aviv-gay-travel-destinations_n_1227888.html.

⁶⁹ One notable exception with this regard is Na'amat (a women's organization affiliated to Israel's major labor union) which has legal offices providing some assistance to women in labor cases, and sometimes in family matters in lower courts).

⁷⁰ Gay Report 2001, *supra* note 10, at 25.

⁷¹ For a discussion of success rates of women in litigation in Israeli high courts, see Dotan, *supra* note 10.

could do the job for them.⁷² Second, presumably the one real benefit that gay organizations lost when allowing a general civil rights organization to litigate for them is the *prestige* related to being the “leader” in this litigation. It seems, however, that unlike the WL which placed the credentials derived from conducting high-profile cases high on their agenda,⁷³ for the gay rights’ organizations, this seems to have been a small price to pay.

* * *

To sum up this section, one can say that the important difference between the women’s movement and the gay movement does not rest on the question of which movement used high court litigation to promote its goals. Both movements frequently engaged in such litigation, and both benefited from victories in the HCJ. The real difference between these movements is related to the question *what else did the movement do, apart from high court litigation?* In this respect, the previous section demonstrates significant differences. For the women’s rights movement in Israel, legal activity - particularly high-court litigation - has been its most prominent and almost exclusive strategy for social mobilization. For the gay rights movement, the use of law in general and high court litigation in particular, was only one tool within the versatile array of political measures that the movement used to promote its social platform. The “gay voyage into the heart of the public sphere” was based on legal tactics combined with a wide array of grassroots and political activities.⁷⁴

Part III: The Social Impact of the Struggle by Women and Gay Groups for Equality

a. Methodology

In the previous sections I reviewed the activities of women’s and gay groups in Israel, through litigation and other means, in the course of their struggle for equality and social mobilization. What was the social impact of these activities? To what extent were those activities successful in promoting each community’s interests and goals? I

⁷² ACRI has a very close relationship with gays organizations and collaborates with them on many levels: see Gay Report 2001, *supra* note 10, at 110 (Chap. 15 dedicated to the activities of ACRI for gay rights). See also the New Israel Fund News (NIF), *available at* <http://www.nif.org/media-center/nif-in-the-news/>. For the exceptional record of ACRI in high court litigation in Israel, see Dotan & Hofnung, 2001, *supra* note 23.

⁷³ WOMEN’S LOBBY IN ISR., WOMEN IN ISRAEL: INFORMATION AND DATA – 2004 (Agate Krauss ed., Ramat Gan 2004).

⁷⁴ Kama, *supra* note 10, at 21.

have already remarked that measuring the social impact of litigation (or any other legal means) is a demanding task that raises several methodological and empirical difficulties. Besides the general difficulties entailed in identifying and measuring the impact of litigation and the need to substantiate causal link, in the present study I wish to compare the social achievements of two different groups. Despite some common characteristics (mentioned above), women and gays differ in many respects: their social and political status, the objects of their struggle for equality, the strategies that are relevant for that struggle and so forth. How then is it possible to make a meaningful comparison as to the social impact of litigation for two such distinct groups? It may be no more than a futile effort to compare “apples and oranges.”

I seek to overcome these difficulties by using *comparative, cross-country* longitude measurements for the social achievement of these two groups. Rather than asking “how did women in Israel succeed, in comparison to gays?” I ask two questions: first, “how did women in Israel succeed in improving their social status *in comparison to women in other countries?*” and then “How did gays in Israel succeed *in comparison to gays in other countries?*” Assuming that, in general, there is a link between the social status of each group, one would expect that this should also be the case for Israel. To use the above metaphor, I am not comparing how apples and oranges grow in Israel. Rather, I seek to study how apples grow in Israel, as compared to how they grow in other countries, and how oranges grow in Israel in that respect. Assuming that where apples normally grow well, so do oranges (and vice versa), one would expect that this should also be the case for Israel. And if it is not, then it will enable us to offer some tentative explanations for such an aberration.⁷⁵

It should be noted that this methodology seems appropriate for settling possible objections as to the differences between Israeli women and Israeli gays. For example, one may argue that women as a group are far larger in numbers and much less cohesive than gays, and so it is much more difficult for them to get organized for effective political action. One may likewise argue that considerable differences exist between Israeli women and gays with regard to their political causes, and the starting-

⁷⁵ The choice of the research period 1970-2010 was based on a number of considerations. First, this is a significant time-span that presumably enables systematic comparison between the achievements of the two groups. Secondly, it is extremely difficult to gather data (let alone on a wide comparative basis, as done here) on earlier period. These difficulties are particularly significant with regard to the LGBT movement which started (in Israel) in the early 1970s.

point of their struggle for equality. Thus, the argument goes, it is impossible to compare the struggle of the two groups. The methodology used here, however, accounts for such possible objections, since I do not compare the relative status of Israeli women *vis-à-vis* gays in Israel, but *vis-à-vis* women in other countries. Thus, assuming that it is more difficult for Israeli women to get politically organized, this should also account for women in Germany, Italy and all other countries included in my comparative analysis, and the same goes for the case of Israeli gays, whose social status is compared to gays in those countries, but not directly to Israeli women.

Accordingly, the following quantitative analysis refers to the comparative assessment of the social achievements of Israeli women and of gays. For each group, the quantitative analysis is supplemented by a qualitative assessment.

b. Women in Israel

1. Qualitative Analysis

A review of the struggle of women's groups in Israel for gender equality during the research period suggests that their struggle resulted in very limited achievements. This is not to say that interest group litigation completely failed to mobilize women's interests. Some court cases did indeed bring about significant changes in women's status within the relevant social field. The most prominent example of this is the litigation concerning the right of women to serve in IDF combat units. The (above mentioned) Supreme Court decision in the *Miller* case⁷⁶ seems to have had a profound impact on the practices of women's service in the IDF. Until the decision, almost all combat professions in the IDF were completely closed to women. Shortly after the decision, the IDF reformed its practices and began to admit women not only as combat pilots but also to most other combat military professions, and the reform had an impact on women's service across the board. Female service after the *Miller* decision is completely different from its situation beforehand.⁷⁷ Litigation on

⁷⁶ *Miller v. Minister of Defense*, *supra* note 38. See also text after note 37.

⁷⁷ Guy I. Seidman & Eyal A. Nun, *Women, the Military and the Court: Israel at 2001*, 11 S. CAL. REV. L. & WOMEN'S STUD. 91, 125-127 (2001); WOMEN'S LOBBY IN ISRAEL, 20 YEARS OF THE WOMEN'S LOBBY IN ISRAEL 10 (Ramat Gan 2004); Rimalt *supra* note 39; Still, arguably, there were other factors that contributed to the change of policy regarding women's service in the IDF at the time the decision was rendered. In particular, the incoming Chief of Staff at that time, General Shaul Mofaz, was known for his strong support for gender equality in the IDF. See Israeli Manpower Directorate (2005), available at <http://www.aka.idf.il/yohalan/main/main.asp?catID=56988>.

behalf of women's groups has also had an impact on other issues. Thus, for example, one of the main targets of the WL's litigation during the 1990's was to increase women's representation on the boards of government corporations.⁷⁸ These efforts seem fruitful: shortly after the HCJ decision in the first major case in this field,⁷⁹ the presence of women on boards jumped from 7.4% (in 1993) to 28% (in 1997) and continued to rise to 37% in 2004 (see Table 1).⁸⁰

Table 1: Representation of women on the boards of governmental corporations in Israel – In Here

2. Quantitative Comparative Analysis

These achievements notwithstanding, an evaluation of the overall success of Israeli women in their struggle to achieve social equality elicits a rather gloomy picture. Such an assessment can be done by using some of the major accepted indicators for the status of women in society, such as *political representation* and *relative pay*. These indicators suggest that the quest for gender equality in Israel is far from being fulfilled. Political representation of women in Israel is still much lower than in most western (and, in fact, also many non-western) countries. For example, in 1987 Israel was ranked 63 of 135 states in a comparative study on the relative representation of women in national parliaments. In 2001 Israel was ranked 57 out of 170 states⁸¹ and Israel fares no better in the global ranking of representation of women in cabinets.⁸² In the 2009 elections for the Knesset, the number of women elected scored a record high of 21 representatives (17.5% of all seats), which still leaves Israel far behind most western democracies (63 out of 134 countries ranked for

⁷⁸ See text after note 29 above. Governmental corporations are corporations that are controlled by the government and regulated by the Governmental Corporation Act of 1975. The statute includes a specific section (18a) providing for gender equality on the boards of governmental corporations.

⁷⁹ *Women's Lobby v. Government of Israel*, *supra* note 32.

⁸⁰ The rise in the percentage of women in managerial jobs in general during the same period has been far less steep - from 15% in 1986 to 26% in 2000 (*WOMEN'S LOBBY*, *supra* note 73, at 91). See also data on the representation of women on the boards of private companies (*id.* at 102).

⁸¹ *WOMEN'S LOBBY*, *supra* note 73, at 144-145.

⁸² Seidman & Nun, *supra* note 77, at 93.

political representation, in a major cross-national indicator).⁸³ This low score for female representation is particularly troubling because many parties have special provisions in their constitutions that guarantee quotas for women on their candidate lists.⁸⁴

Similarly the struggle for gender equality had little impact on the gaps in salaries between males and females, which remained very substantial (around 60% in terms of salaries and 20% in terms of payment per hour of work)⁸⁵ and despite a law passed by the Knesset in 1996.⁸⁶ The gap between men and women persists, even for state employees who are presumably subject to a strict regulative regime of gender equality.⁸⁷

For an overall quantitative picture of the relative social status of Israeli women, one may look to the international indicators published by the United Nation Development Program. These indicators, published annually since 1990, provide comparative examinations of the human development status of various nations worldwide. One such indicator, *The Gender-related Development Index* (GDI) tests the status of the *gender gap* in various countries and ranks them accordingly. The ranking is based on indicators such as life expectancy, literacy rate, education, and income, and it tests the gap between men and women in each country, for each indicator. We examined the ranking for the years 1995, 1998, 2002 and 2005 (see Tables 2-1, 2-2, 2-3 and 2-4 accordingly).⁸⁸ According to these indicators, for the past two decades

⁸³ RICARDO HAUSMANN, LAURA D. TYSON & ZAHIDI SAADIA, WORLD ECON. FORUM, THE GLOBAL GENDER GAP REPORT 9 (2010), available at http://www3.weforum.org/docs/WEF_GenderGap_Report_2010.pdf; OFER KENIG, THE ISR. DEMOCRACY INST., WOMEN IN KEY POSITIONS: ISRAEL IN COMPARATIVE PERSPECTIVE (2010), available at <http://www.idi.org.il/BreakingNews/Pages/289.aspx>. During the Knesset term, two more women substituted for retired MKs. In the recent elections of 2013, 27 women were elected (i.e. 22.5% of all seats). See also ORLY ALMAGOR-LOTAN & HODAYA KAIN, CTR. FOR RESEARCH & INFO. OF THE KNESSET, WOMEN IN POLITICS, available at <http://www.knesset.gov.il/mmm/data/pdf/m02446.pdf>.

⁸⁴ THE ISR. DEMOCRACY INST., WOMEN QUOTA: IS REVERSE DISCRIMINATION GOOD FOR WOMEN? (2007), available at http://www.idi.org.il/Parliament/2002/Pages/2002_35/A_35/Parliament_Issue_35_A.aspx.

⁸⁵ WOMEN'S LOBBY, *supra* note 73, at 70.

⁸⁶ RUTH BEN-ISRAEL, EQUAL OPPORTUNITIES AND THE PROHIBITION OF DISCRIMINATION IN EMPLOYMENT 751 (The Open Univ. 1998).

⁸⁷ According to a recent official report, the gap between men and women is around 25% and very little change has occurred during the last decade, See THE STATE SALARY COMMISSIONER REPORT 48 (2009), available at <http://hsgs.mof.gov.il/Documents/2009-3.pdf>.

⁸⁸ See THE UNITED NATION DEV. PROGRAM (1990-2010), HUMAN DEVELOPMENT REPORTS, available at <http://hdr.undp.org/en/humandev/>. While the UN has published its HDI Indicator for every year since 1990, the Gender-related Development Index varies with respect to the

Israel has been constantly ranked 22-23, behind most western democracies and without any apparent change in the social status of women compared to women in other countries.⁸⁹

TABLES 2-1, 2-2, 2-3 and 2-4: GDI Rank in 1995, 1998, 2002 and 2005 – IN HERE

c. Gay Rights in Israel

1. Qualitative Analysis

Turning now to the evaluation of the success of the gay rights' movement in Israel in creating social mobilization, it seems that the picture is completely different. In fact, the Pink Revolution of the Nineties in Israeli society is arguably the most successful of all group struggles for social equality in Israel, and perhaps one of the most prominent examples across the world of a successful social struggle for equality.⁹⁰ Although the homosexual community comprises a small fraction of the population, with an extremely low social and legal status until 1980's, despite the military-macho nature of Israeli society, and even though the gay community had and still has powerful political enemies within the Israeli religious establishment, the gay rights' movement succeeded in forming comprehensive reforms in the status of gay people in Israeli society, in almost every field and at all levels. I have already mentioned above the major legal reforms that repealed the criminal prohibitions on homosexuality and the court decisions that opened the gate for the de facto recognition of homosexual partnerships as "common-law marriage" for most legal and administrative purposes.⁹¹ Yet the Pink Revolution's achievements go well beyond the legal field. They are reflected by numerous indicators: the popularity (and size) of gay pride parades (see above); a dramatic change in the way gay life and gay

indicators it measures. I refer to those years in which data appear referring to income levels of men and women.

⁸⁹ Note that in the GDI for 2010, Israel is ranked fifteenth, but this ranking does not include data regarding the relative income of male and women (see THE UNITED NATION DEV. PROGRAM (1990-2010), HUMAN DEVELOPMENT REPORT 2007/2008 98, *available at* http://hdr.undp.org/en/media/HDR_20072008_EN_Indicator_tables.pdf. Israel's ranking in a recent report by The World Global Gender Gap Report is even lower than in the GDI Reports (49 of 134 countries for economic participation and opportunity); see Hausmann et al., *supra* note 83, at 10.

⁹⁰ Kama, *supra* note 10.

⁹¹ See text near note 46 above.

people are covered by the media;⁹² and the proliferation of “pride” sections in mainstream newspapers (and major internet portals). Significant changes were also effected in the field of education and in the education system’s attitude towards gay students and the gay way of life in general.⁹³ The change in the social status of gays and lesbians in Israel is reflected in the popular media. Until the late Eighties, the media dealt with homosexuality only in a criminal context, and interviews with gays or programs referring to homosexual relationships were often banned by media managements.⁹⁴ In the late Eighties and particularly after homosexuality was decriminalized in 1988, this began to change. During the Nineties, the media started to cover gay political activities, and a dramatic change in the depiction of gays in popular culture occurred.⁹⁵

To this one may add the reform in the policies of the IDF and the Israeli Police. Until 1973 homosexuality was defined as a mental illness in IDF regulations, but even after these regulations were repealed, the general practice to send all gay soldiers for a psychiatric examination persisted until 1993. Homosexuals were discriminated against on the ground that their sexual orientation constituted a “security risk.” In 1998, however, the IDF repealed all limitations on the draft and service of gay soldiers.⁹⁶

To demonstrate the magnitude of the gay right movement’s achievement, one can refer to the fact that in 2010 the Israeli Ministry of Tourism launched a campaign to promote gay tourism to Israel. The campaign which included a special governmental website, a Twitter account, and a smartphone application, presented Tel Aviv as one of the most gay-friendly cities in the world. While this campaign was criticized by some as an attempt to “pinkwash” Israel’s violations of human rights in other areas (particularly towards Palestinians in the Territories),⁹⁷ this official attempt

⁹² Meirav Gerenstein, *The Impact of Supreme Court Decisions on the Recognition of Gay Rights in Israel* (1999) (Unpublished student paper, Hebrew University) (on file with author); Kama, *supra* note 10; Kama, *supra* note 40.

⁹³ Gay Report 2001, *supra* note 10, at 6.

⁹⁴ Kama, *supra* note 10.

⁹⁵ *Id.*

⁹⁶ Gay Report 2001, *supra* note 10, at 86; Aeyal Gross, *Sexuality, Masculinity, Military and Citizenship: The Service of Homosexuals and Lesbians in the I.D.F. from a Comparative Perspective*, in *MILITARY, SOCIETY AND LAW* 95 (Daphne Barak-Erez, ed., Ramot 2002); Kama, *supra* note 40.

⁹⁷ Aeyal Gross, *Israeli LGBT Politics between Queerness and Homonationalism*, BULLY BLOGGERS, July 3, 2010, available at <http://bullybloggers.wordpress.com/2010/07/03/israeli->

to "brand" Israel as a gay-friendly state⁹⁸ seems to reflect the long way that the gay rights movement in Israel has come during the last decades.⁹⁹

2. Quantitative Analysis

Conducting a quantitative comparative analysis of gays' social achievements in Israel proved to be more difficult than performing the same task for women. This is because we are not aware of any formal international comparative ranking of the social status of gays (similar to the GDI indicators published by the UN). An international comparison of the status of gay rights does appear in the *Wikipedia* entry for *LGBT Rights by Country or Territory* (2011). This entry examines the social status of gay rights in several countries with reference to the following seven indicators: 1. Gay relationship under *criminal law*; 2. Recognition of same-sex relationship; 3. *Marital status*; 4. *Family rights* (the right to adopt children); 5. Gay status in the *military*; 6. Anti-discrimination laws (in the labor field, consumer rights etc.); and 7. Laws concerning *gay expression* and *identity*. Using these measurements, I developed a comparative index of gay rights status in 40 countries that are ranked at the top of the GDI ranking (mentioned above for women's equality rights).¹⁰⁰ For each country, gay status in 1970, 1990 and 2010 (See Tables 3-1, 3-2 and 3-3 respectively) was examined.

TABLES 3-1, 3-2 and 3-3: LGBT rights 1970, 1990 and 2010 – IN HERE

[glbt-politics-between-queerness-and-homonationalism/](#); Katherine Franke, *Dating the State: The Moral Hazard of Winning Gay Rights*, 44 COLUM. HUM. RIGHTS L. REV. 1 (2012).

⁹⁸ *Id.*

⁹⁹ The proliferation of gay activities in Israel over the last decade was accompanied by some cases of extreme violence against gay persons and institutions. In 2005 an ultra-Orthodox man stabbed and wounded three participants in the Jerusalem Gay Pride parade (Greg Myre, *Israel: 3 Stabbed At Jerusalem Gay Parade*, N.Y. TIMES, July 1, 2005, A9). In 2009 a masked man open fire on the home of the National LGBT Association of Israel, killing two youngsters and wounding several others (Franke, *supra* note 96, at 1

¹⁰⁰ For this purpose, we used the GDI ranking for 2005.

As Table 3-1 demonstrates, in 1970 the status of gays in Israel was very low both in absolute terms and in comparison to many western democracies. While this hardly changed until 1990 (Table 3-2), by 2010 Israel's ranking had improved significantly. Israel today is ranked higher than many western democracies including the U.S.A., Germany, France and various other countries that are constantly ranked higher than Israel in the UN major indicators for gender equality (Table 3-3). These measurements seem to corroborate my claim that the social status of gays and lesbians in Israel sharply improved during the past two decades, not only in absolute terms (that is, in comparison to their status before 1990) but also in comparison to the social status of gays in other western democracies (see Figure 2).

FIGURE 2: The status of gays in Israel in comparison to other nations 1970-2010 – IN HERE

These achievements of Israel's gay community seem particularly impressive since, according to comparative public opinion polls, the general Israeli public still seems less supportive of gay rights, in comparison with the citizens of most Western European countries.¹⁰¹ The relative progress of gays' social status in Israel in comparison to that of women, as reflected in international comparative rankings, is summarized in Figure 3.

FIGURE 3: Gays' and women's rights status in Israel, in a comparative perspective – IN HERE

¹⁰¹ One nation-wide poll regarding gay issues found that only 38% of the Israeli public think that homosexuals "should be accepted" while 50% think they should be "rejected." This puts Israel behind most Western democracies including the U.S. (49% to 41% respectively), see PEW RESEARCH CTR., WORLD PUBLICS WELCOME GLOBAL TRADE – BUT NOT IMMIGRATION: 47-NATION PEW GLOBAL ATTITUDES SURVEY 35 (2007), available at <http://pewglobal.org/files/pdf/258.pdf>. Other public opinion polls, however, suggest that the Israeli public is supportive of gay service in the military (77%), gay rights for civil union (61%) and for adopting children (60%) - see Dialogue Poll, published in Haaretz on 8 August 2009. The Israeli public is also less receptive to the idea of full equality for women in leadership positions than are other Western Europeans (32% agree with the statement that "Men are better in leadership positions than women," compared to 27% in the U.S., 20% in the U.K. and Germany and 15% in Norway), see ASHER ARIAN ET AL., ISRAELI DEMOCRACY INST., ISRAELI DEMOCRACY INDICATOR: DEMOCRATIC VALUES IN ISRAEL, Vol. 2, 75 (2010), available at http://www.idi.org.il/events1/Events_The_President's_Conference/2010/Pages/2010_main.aspx.

Part IV: Analysis and Conclusion

The present study serves as a good illustration of the many dangers entailed in social movements' over-reliance on litigation. Our findings suggest that women's rights groups relied heavily on litigation (and legal advocacy) while neglecting other avenues for political and social mobilization. As critics suggested, adopting such a strategy may well bring the movement to frame its vision and goals in legalistic terms and concentrate on elite-group strategies, while neglecting the opportunity to develop a genuine grassroots base.¹⁰² It may also encourage the movement's leaders to invest all their resources in litigation, and to embrace the false belief that court victories are easily turned into genuine social reforms.¹⁰³ In the case of the struggle of women in Israel for social equality, all these dangers seem to have materialized. Despite a substantial body of legislation and high court decisions, the struggle for true gender equality in Israeli society seems as far from a true victory in 2010 as it was 40 years ago. And in international comparative terms, the relative social status of Israeli women seems (if anything) to have deteriorated, rather than improved, during the past decade.

The failure of the women's equality movement to significantly change the political and economic status of women in Israel is unsurprising. Bringing about such comprehensive changes requires major social reforms that can hardly be achieved through litigation, or even by legislation that is not supported by a strong political apparatus which ensures its acceptance and enforcement.¹⁰⁴ The victories of women's organizations in court, even when effectively enforced, could not significantly influence such fundamental issues. Thus, one may conclude by arguing that the failure of the women's equality movement to achieve its major goals was not the result of their failure to win the battles they chose to fight - in court - but because they failed to choose the right arenas for fighting the battles that were truly important for the success of their overall mission.

¹⁰² SCHEINGOLD, *supra* note 5; ROSENBERG, 1991, *supra* note 5; ROSENBERG, 2008, *supra* note 5.

¹⁰³ McCann & Silverstein, *supra* note 3.

¹⁰⁴ EPP, *supra* note 8.

The case of the gay and lesbian rights' movement in Israel, on the other hand, suggests that litigation can certainly serve as an effective means for social mobilization - provided that it is *combined and coordinated* with other political strategies - and that the leaders of the movement are aware of the advantages and limitations of litigation as a political tool.¹⁰⁵

In fact, over-reliance on litigation had some additional consequences which seem particularly harmful for the case of women's struggle for equality. Among the typical stereotypes that women's groups combat in their struggle for gender equality is the view of women as weak and dependent individuals, who always need *external* forces (stronger than themselves) to promote their causes. Paradoxically, over-reliance on litigation not only fails to refute these stereotypes, but in fact works to *bolster* such chauvinist beliefs. In litigation (and to some extent in legal advocacy) it is usually the weak and dependent party that seeks the help of an authoritative third-party intervener to solve his or her difficulties *vis-à-vis* the opponents. Even a victory in court is the victory of the weak. In a political struggle, on the other hand, the opposing parties are required to *exert power*. Political victories are thus a manifestation of social power. Sadly, it seems that even in those cases where women's groups won in court, their victories to some extent acted to reinforce their image as weak and dependent. This, particularly in cases where the group's only victories were in litigation.

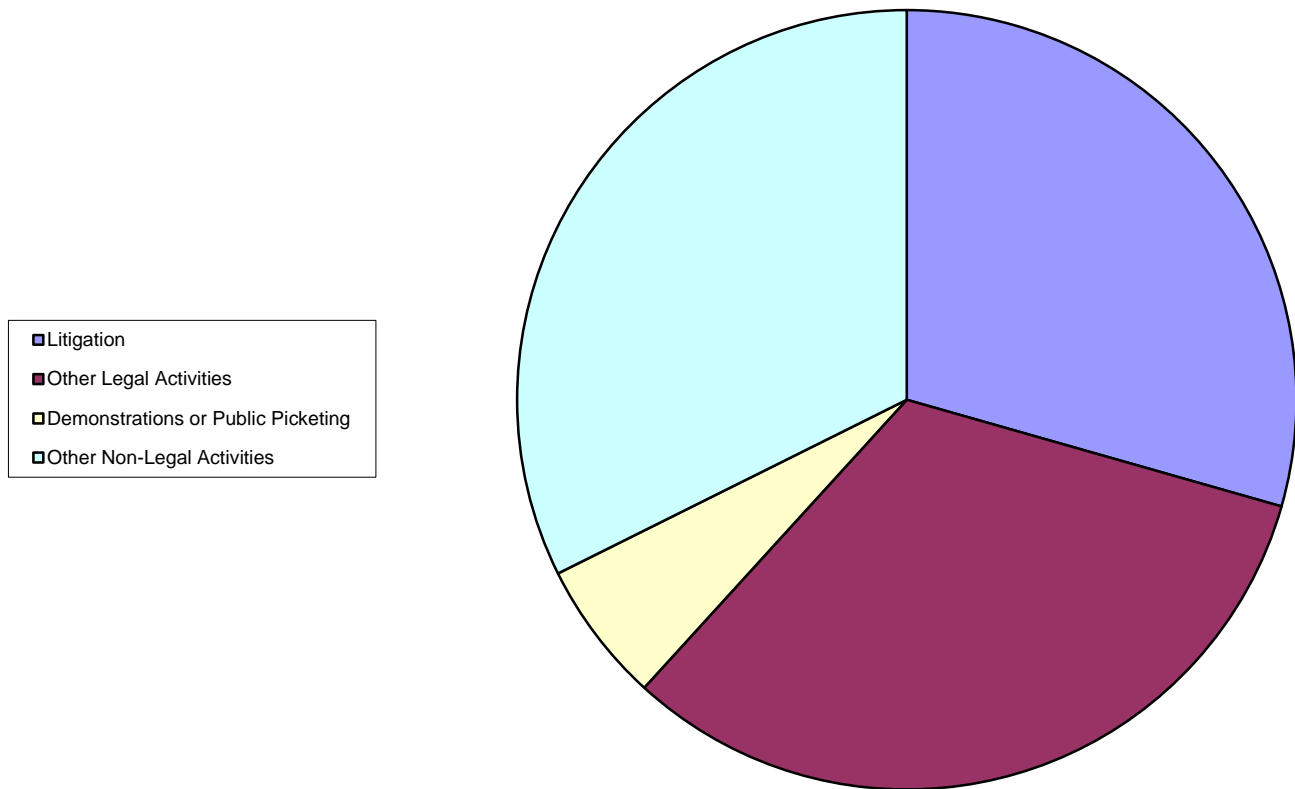
The most striking point raised by the comparison between women's and gay groups in Israel is that there is nothing *inherent* to the structure of these two groups or to the substance of their causes that can explain the difference in their chosen strategies. Admittedly, women form a much larger social group than gays and lesbians, and are therefore far less cohesive in their social organization and harder to mobilize politically. But this difference can hardly explain the incredibly low profile of grassroots activity by Israeli women. In any case, if one aims to put forward such an explanation for the above difference between Israeli women and gays, one is also obliged to explain why such constraints on political activity *did not* apply to women's groups in other western democracies which served as the basis for our comparative analysis.

¹⁰⁵ McCann & Silverstein, *supra* note 3; EPP, *supra* note 8.

The differences between the patterns of social struggle for equality of women and gays seem to have been purely the result of *choices* made by the leaders of these groups. If anything, one might have expected that the choices would be the other way around. Gays are smaller in numbers than women. Resistance and hostility toward their causes in the general public (particularly in conservative and religious circles) go much deeper than in the case of the claim for gender equality. Litigation is commonly regarded as the weapon of the weak and socially alienated.¹⁰⁶ One might well have anticipated that gays would rely on litigation to a far greater degree than women. As this study demonstrates, the reality has been quite different. The leaders of the gay movement in Israel seem to have been much more skeptical (or realistic) about the prospect of social mobilization through law, than their female leader counterparts. It has proved a very healthy choice on their part. As our study suggests, even a “discrete and insular” minority (*U.S. v. Carolene Prods.*; Ely 1980,162) (such as – one would argue – was the case of homosexuals in Israel in 1970) must make every effort *not* to be swayed by the “myth of rights” and try to include litigation in its tactics of political mobilization. Arguably, if this has proved to work in the case of Israel’s gay movement, it should have worked in the case of some other groups, women among them.

¹⁰⁶ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* (Yale Univ. Press 1962); JOHN H. ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (Harvard Univ. Press 1980).

Figure 1– Activities of WL: 1975-2004¹⁰⁷



¹⁰⁷ Note that one may argue that this single report provided by one women's organization (albeit the major one) does not necessarily cover the whole range of the activities of the WL, let alone the activities of all women's rights organizations during the research period. The fact I stress here, however, is that, while the above reservation may be valid, still, the above publication well reflects those activities which the WL *itself* regarded as its most important and central activities - worth being highlighted in its twenty-year review.

Figure 2: The status of gays in Israel in comparison to other nations, from 1970 to 2010

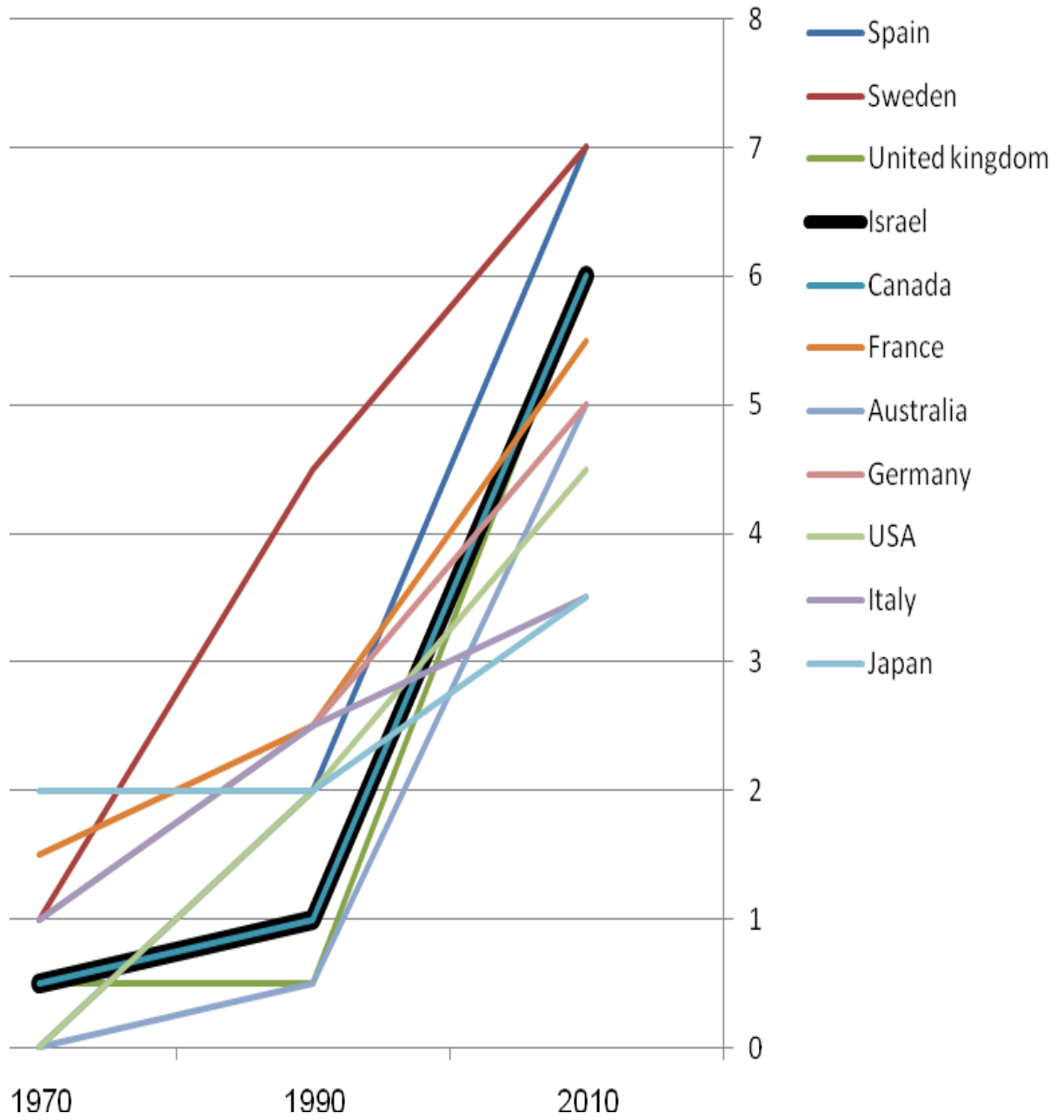


Figure 3 – Gays’ and Women’s Rights Status in Israel, in a Comparative Perspective

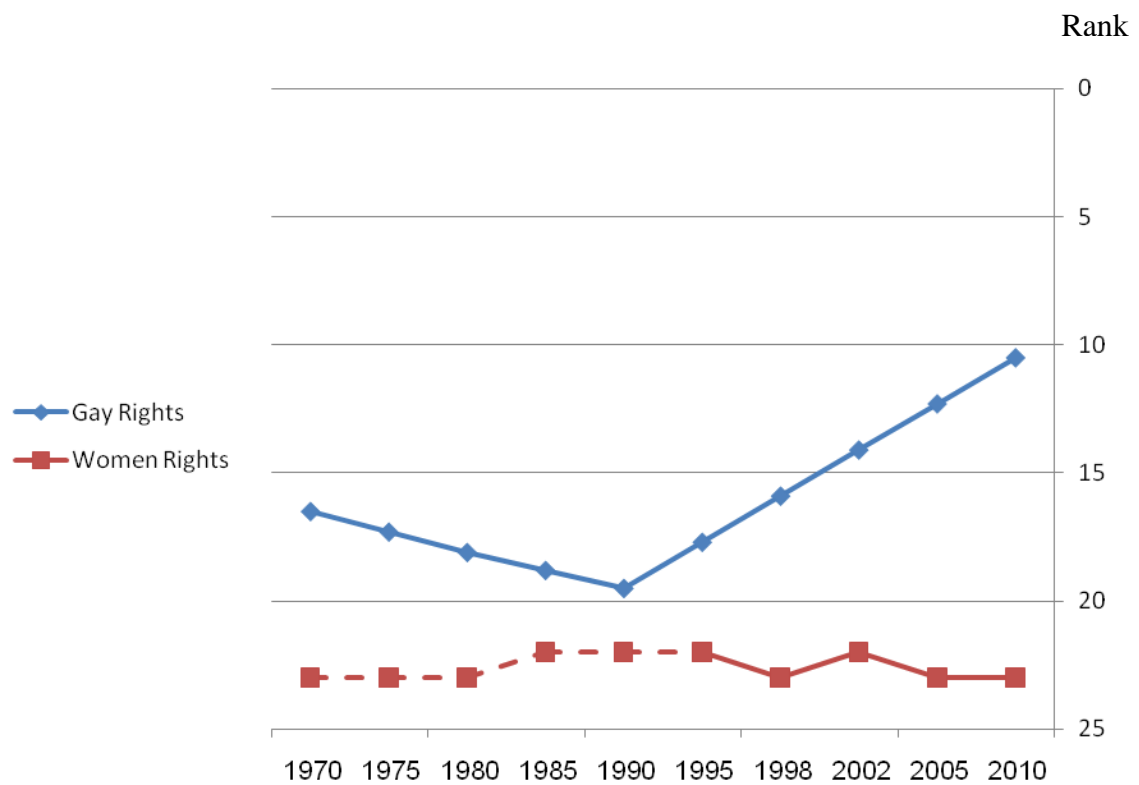


Table 1: Representation of Women on the Boards of Governmental Corporations in Israel

Year	Number of Directors	Number of Women Directors	Percentage
1993	800	59	7.4
1997	699	196	28.04
2000	584	221	37.8
2002	624	209	33.5
2003	566	197	34.81
2004	543	202	37.2

Source: Women's Lobby 2004b, 100.

Table 2-1: GDI Rank in 1995

3 Gender empowerment measure

HDI rank	Gender empowerment measure (GEM) rank	Seats in parliament held by women (%) ^a	Female administrators and managers (%) ^b	Female professional and technical workers (%) ^c	Women's share of earned income (%) ^{b,c}	GEM value
High human development	--	14.1	--	--	35	--
1 Canada	7	21.2	42.2	56.1	38 ^d	0.720
2 France	31	9.0	9.4 ^e	41.4 ^e	39	0.489
3 Norway	2	36.4	31.5 ^f	61.9 ^f	42	0.790
4 USA	11	11.2	42.7	52.6	40	0.675
5 Iceland	6	25.4	27.7 ^f	53.5 ^f	42	0.723
6 Finland	5	33.5	25.3	62.5	42	0.725
7 Netherlands	9	28.4	20.3 ^f	44.0 ^f	34 ^d	0.689
8 Japan	38	7.7	8.9	43.3	34	0.472
9 New Zealand	4	29.2	34.0	49.1	39	0.725
10 Sweden	1	40.4	38.9	64.2	45	0.790
11 Spain	16	19.9	31.9 ^f	43.0 ^f	30 ^d	0.617
12 Belgium	19	15.8	18.8	50.5	34	0.600
13 Austria	10	24.7	23.9 ^f	46.1 ^f	34 ^d	0.686
14 United Kingdom	20	11.6	32.9 ^f	44.2 ^f	38	0.593
15 Australia	12	20.5	43.3	25.5	40	0.664
16 Switzerland	13	20.3	28.3	24.9	32	0.654
17 Ireland	21	13.7	22.6 ^f	45.0 ^f	27	0.554
18 Denmark	3	33.0	19.2	46.8	42	0.739
19 Germany	8	25.5	25.8 ^f	49.0 ^f	35	0.694
20 Greece	51	6.3	22.0 ^f	44.2 ^f	32	0.438
21 Italy	26	10.0	53.8	17.8	31 ^d	0.521
22 Israel	32	7.5	19.5 ^f	54.0 ^f	33 ^d	0.484
23 Cyprus	66	5.4	10.2 ^e	40.8 ^e	28	0.379
24 Barbados	18	18.4	38.7	51.2	40 ^d	0.607
25 Hong Kong, China	--	--	--	--	--	--
26 Luxembourg	14	20.0	8.6 ^e	37.7 ^e	29	0.649
27 Malta	--	--	--	--	--	--
28 Singapore	42	4.8	15.4 ^f	36.5 ^f	32	0.467
29 Antigua and Barbuda	--	--	--	--	--	--
30 Korea, Rep. of	83	3.0	4.4 ^f	31.9 ^f	29	0.292
31 Chile	61	7.2	20.1	53.9	22 ^a	0.416
32 Bahamas	15	19.6	34.7 ^f	51.4 ^f	40 ^d	0.649
33 Portugal	22	13.0	31.0 ^f	51.5 ^f	34	0.547
34 Costa Rica	28	15.8	23.4	45.4	27	0.503
35 Brunei Darussalam	--	--	--	--	--	--
36 Argentina	--	--	--	--	--	--
37 Slovenia	36	7.8	28.2	52.9	39 ^d	0.475
38 Uruguay	59	6.9	28.2	63.7	34 ^a	0.422
39 Czech Rep.	24	13.9	26.7 ^f	55.4 ^f	39	0.527
40 Trinidad and Tobago	17	19.4	39.7 ^f	51.7 ^f	27 ^d	0.608
41 Dominica	--	--	--	--	--	--
42 Slovakia	27	14.7	27.4 ^f	57.5 ^f	41 ^d	0.516
43 Bahrain	--	--	--	--	--	--
44 Fiji	78	5.8	9.6	44.7	22 ^d	0.332
45 Panama	44	9.7	27.6	49.2	28 ^d	0.460
46 Venezuela	62	6.3	22.9	57.1	27 ^d	0.414
47 Hungary	30	11.4	33.8 ^f	59.8 ^f	39	0.491
48 United Arab Emirates	92	0	1.6 ^e	25.1 ^e	10 ^d	0.247
49 Mexico	37	14.2 ^h	19.8	45.2	26 ^d	0.474
50 Saint Kitts and Nevis	--	--	--	--	--	--
51 Grenada	--	--	--	--	--	--
52 Poland	29	12.7	34.7 ^f	62.5 ^f	39 ^d	0.494
53 Colombia	41	9.8	31.0	44.0	33 ^a	0.470
54 Kuwait	75	0	5.2 ^e	36.8 ^e	25 ^d	0.345
55 Saint Vincent	--	--	--	--	--	--
56 Seychelles	--	--	--	--	--	--
57 Qatar	--	--	--	--	--	--
58 Saint Lucia	--	--	--	--	--	--
59 Thailand	60	6.6	21.8	52.4	37	0.421
60 Malaysia	45	10.3	18.8	43.6	30	0.458
61 Mauritius	49	7.6	22.6 ^f	38.4 ^f	26 ^d	0.451
62 Brazil	68	6.7	17.3	62.6	29	0.374
63 Belize	40	10.8	36.6	38.8	18 ^d	0.471
64 Libyan Arab Jamahiriya	--	--	--	--	--	--

SOURCE: UN Development Program (1998) "Human Development Report 1998," http://hdr.undp.org/en/media/hdr_1998_en_indicators1.pdf (accessed 4 April 2011).

Table 2-2: GDI Rank in 1998

2 Gender-related development index

HDI rank	Gender-related development index (GDI) 1998		Life expectancy at birth (years) 1998		Adult literacy rate (% age 15 and above) 1998		Combined primary, secondary and tertiary gross enrolment ratio (%) 1997		GDP per capita (PPP US\$) 1998 ^a		HDI rank minus GDI rank ^b	
	Rank	Value	Female	Male	Female	Male	Female	Male	Female	Male		
High human development												
1	Canada	1	0.932	81.9	76.2	99.0 ^c	99.0 ^c	101 ^d	98	17,980 ^e	29,294 ^e	0
2	Norway	2	0.932	81.3	75.4	99.0 ^c	99.0 ^c	98	93	22,400 ^f	30,356 ^f	0
3	United States	4	0.927	80.2	73.5	99.0 ^c	99.0 ^c	97	91	22,565 ^e	36,849 ^e	-1
4	Australia	3	0.927	81.2	75.6	99.0 ^c	99.0 ^c	114 ^d	111 ^d	17,974	26,990	1
5	Iceland	5	0.925	81.4	76.9	99.0 ^c	99.0 ^c	89	86	22,062	28,127	0
6	Sweden	6	0.923	81.0	76.4	99.0 ^c	99.0 ^c	108 ^d	95	18,605 ^f	22,751 ^f	0
7	Belgium	7	0.921	80.7	74.0	99.0 ^c	99.0 ^c	107 ^d	104 ^d	15,951	30,801	0
8	Netherlands	8	0.919	80.8	75.1	99.0 ^c	99.0 ^c	96	99	14,902	29,600	0
9	Japan	9	0.916	83.0	76.9	99.0 ^c	99.0 ^c	83	86	14,091	32,794	0
10	United Kingdom	10	0.914	80.0	74.7	99.0 ^c	99.0 ^c	109 ^d	99	15,290	25,575	0
11	Finland	12	0.913	80.8	73.2	99.0 ^c	99.0 ^c	104 ^d	95	17,063 ^f	24,827 ^f	-1
12	France	11	0.914	82.1	74.4	99.0 ^c	99.0 ^c	94	91	16,437	26,156	1
13	Switzerland	13	0.910	81.9	75.5	99.0 ^c	99.0 ^c	76	83	16,802	34,425	0
14	Germany	15	0.905	80.3	74.1	99.0 ^c	99.0 ^c	88	90	15,189 ^f	29,476 ^f	-1
15	Denmark	14	0.909	78.4	73.1	99.0 ^c	99.0 ^c	95	90	19,965	28,569	1
16	Austria	16	0.901	80.3	73.8	99.0 ^c	99.0 ^c	85	86	14,432 ^f	32,190 ^f	0
17	Luxembourg	20	0.895	80.1	73.5	99.0 ^c	99.0 ^c	70	68	18,967	48,628 ^g	-3
18	Ireland	18	0.896	79.4	73.8	99.0 ^c	99.0 ^c	92	87	11,847 ^f	31,260 ^f	0
19	Italy	19	0.895	81.3	75.2	97.9	98.8	83	80	12,665 ^e	28,982 ^e	0
20	New Zealand	17	0.900	79.9	74.3	99.0 ^c	99.0 ^c	99	92	13,646	21,040	3
21	Spain	21	0.891	81.6	74.7	96.5	98.4	96	90	9,636 ^e	23,078 ^e	0
22	Cyprus	23	0.877	80.1	75.6	94.7	98.6	81	79	9,981	25,009	-1
23	Israel	22	0.877	79.9	75.8	93.7	97.7	81	79	11,660 ^e	23,034 ^e	1
24	Singapore	24	0.876	79.5	75.1	87.6	96.0	71	74	15,966	32,334	0
25	Greece	25	0.869	80.8	75.7	95.5	98.4	80	80	8,963 ^f	19,079 ^f	0
26	Hong Kong, China (SAR)	26	0.864	81.5	76.0	89.1	96.3	67	64	10,768	29,775	0
27	Malta	29	0.848	79.5	75.1	92.0	90.9	77	78	7,066 ^e	26,006 ^e	-2
28	Portugal	27	0.858	78.9	72.0	89.0	94.2	94	88	10,215	19,538	1
29	Slovenia	28	0.857	78.3	70.7	99.6 ^h	99.7 ^h	82	77	10,941 ^e	17,841 ^e	1
30	Barbados	..	..	78.8	73.8	..	..	81	80	..	..	..
31	Korea, Rep. of	30	0.847	76.2	69.0	95.9	99.0 ^h	84	94	8,342	18,529	0
32	Brunei Darussalam	31	0.843	78.3	73.6	86.7	94.1	73	71	10,135 ^e	22,790 ^e	0
33	Bahamas	32	0.842	77.3	70.7	96.2	94.8	77	71	11,577 ^e	17,755 ^e	0
34	Czech Republic	33	0.841	77.7	70.6	99.0 ^c	99.0 ^c	74	73	9,713 ^e	15,153 ^e	0
35	Argentina	35	0.824	76.9	69.8	96.6	96.7	82	77	5,553 ⁱ	18,724 ⁱ	-1
36	Kuwait	34	0.827	78.4	74.3	78.5	83.2	59	56	13,347 ^{e,j}	36,466 ^{e,j}	1
37	Antigua and Barbuda	..	..	..	..	..	..	..	..	..	..	..
38	Chile	39	0.812	78.4	72.4	95.2	95.6	76	78	4,011 ⁱ	13,660 ⁱ	-3
39	Uruguay	37	0.821	78.2	70.7	98.0	97.2	81	74	5,791 ⁱ	11,630 ⁱ	0
40	Slovakia	36	0.822	76.9	69.4	99.0 ^c	99.0 ^c	75	73	7,701 ^e	11,800 ^e	2
41	Bahrain	42	0.803	75.5	71.3	81.2	90.2	82	78	4,799 ^e	19,355 ^e	-3
42	Qatar	41	0.807	75.6	70.2	81.7	79.8	75	72	6,624 ^{e,j}	28,508 ^{e,j}	-1
43	Hungary	38	0.813	75.1	67.1	99.1 ^h	99.4 ^h	75	73	7,452	13,267	3
44	Poland	40	0.811	77.1	68.4	99.7 ^h	99.7 ^h	79	78	5,821 ^e	9,519 ^e	2
45	United Arab Emirates	44	0.793	76.7	74.1	77.1	73.4	72	66	5,398 ^e	24,758 ^e	-1
46	Estonia	43	0.798	74.7	63.4	99.0 ^c	99.0 ^c	87	82	6,076 ^e	9,492 ^e	1
Medium human development												
47	Saint Kitts and Nevis	..	..	..	..	..	..	..	..	..	..	..
48	Costa Rica	46	0.789	79.1	74.4	95.4	95.3	65	66	3,126	8,768	-1
49	Croatia	45	0.790	76.7	69.0	96.9	99.3 ^h	69	68	4,835 ^e	8,795 ^e	1
50	Trinidad and Tobago	48	0.784	76.4	71.7	91.5	95.3	66	67	4,131 ^e	10,868 ^e	-1

SOURCE: UN Development Program (2000) "Human Development Report 2000," http://hdr.undp.org/en/media/HDR_2000_EN.pdf.

Table 2-3: GDI Rank in 2002

24 Gender-related development index

... AND ACHIEVING EQUALITY FOR ALL WOMEN AND MEN

HDI rank	Gender-related development index (GDI)		Life expectancy at birth (years) 2002		Adult literacy rate (% ages 15 and above) 2002 ^a		Combined gross enrolment ratio for primary, secondary and tertiary level schools (%) 2001/02 ^b		Estimated earned income (PPP US\$) 2002 ^c		HDI rank minus GDI rank ^d
	Rank	Value	Female	Male	Female	Male	Female	Male	Female	Male	
High human development											
1 Norway	1	0.955	81.8	75.9	.. ^e	.. ^e	102 ^g	94 ^g	31,356	42,340	0
2 Sweden	2	0.946	82.5	77.5	.. ^e	.. ^e	124 ^h	104 ^h	23,781	28,700	0
3 Australia	3	0.945	82.0	76.4	.. ^e	.. ^e	114 ^h	111 ^h	23,643	33,259	0
4 Canada	4	0.941	81.9	76.6	.. ^e	.. ^e	96 ^g	93 ^g	22,964	36,299	0
5 Netherlands	5	0.938	81.0	75.6	.. ^e	.. ^e	99 ^g	100 ^g	20,358	38,266	0
6 Belgium	7	0.938	81.8	75.6	.. ^e	.. ^e	115 ^g	107 ^g	18,528	37,180	-1
7 Iceland	6	0.938	81.9	77.6	.. ^e	.. ^e	95 ^g	86 ^g	22,716	36,043	1
8 United States	8	0.936	79.8	74.2	.. ^e	.. ^e	96 ^h	89 ^h	27,338	43,797	0
9 Japan	12	0.932	85.0	77.8	.. ^e	.. ^e	83 ^h	85 ^h	16,977	37,208	-3
10 Ireland	14	0.929	79.5	74.3	.. ^e	.. ^e	94 ^g	87 ^g	21,056	52,008	-4
11 Switzerland	11	0.932	82.3	75.9	.. ^e	.. ^e	86 ^g	90 ^g	20,459	40,769	0
12 United Kingdom	9	0.934	80.6	75.6	.. ^e	.. ^e	119 ^g	107 ^g	19,807	32,984	3
13 Finland	10	0.933	81.4	74.3	.. ^e	.. ^e	111 ^g	102 ^g	21,645	30,970	3
14 Austria	17	0.924	81.4	75.3	.. ^e	.. ^e	92 ^g	91 ^g	15,410	43,169	-3
15 Luxembourg	16	0.926	81.3	75.0	.. ^e	.. ^e	75 ^{g,i}	74 ^{g,i}	33,517	88,803 ⁱ	-1
16 France	15	0.929	82.7	75.1	.. ^e	.. ^e	93 ^g	90 ^g	19,923	33,950	1
17 Denmark	13	0.931	79.0	74.1	.. ^e	.. ^e	99 ^k	92 ^k	26,074	36,161	4
18 New Zealand	18	0.924	80.7	75.7	.. ^e	.. ^e	107 ^h	96 ^h	18,168	26,481	0
19 Germany	19	0.921	81.1	75.1	.. ^e	.. ^e	88 ^h	89 ^h	18,763	35,885	0
20 Spain	20	0.916	82.7	75.8	96.9 ^e	98.7 ^e	95 ^h	89 ^h	13,209	29,971	0
21 Italy	21	0.914	81.9	75.5	98.1 ^e	98.9 ^e	84 ^g	81 ^g	16,702	36,959	0
22 Israel	22	0.906	80.9	77.0	93.4 ⁱ	97.3 ⁱ	94 ^g	89 ^g	14,201	26,636	0
23 Hong Kong, China (SAR)	23	0.898	82.7	77.2	89.6 ^j	96.9 ^j	70 ^g	73 ^g	18,805	33,776	0
24 Greece	25	0.894	80.9	75.7	96.1 ^e	98.6 ^e	88 ^g	84 ^g	10,892	25,601	-1
25 Singapore	28	0.884	80.2	75.8	88.6 ^m	96.6 ^m	75 ^{k,n}	76 ^{k,n}	15,822	31,927	-3
26 Portugal	24	0.894	79.5	72.5	90.3 ^e	95.2 ^e	97 ^g	90 ^g	13,084	24,373	2
27 Slovenia	26	0.892	79.7	72.5	99.6 ^e	99.7 ^e	94 ^g	86 ^g	14,084	22,832	1
28 Korea, Rep. of	29	0.882	79.2	71.7	96.6 ^{n,i}	99.2 ^{n,i}	85 ^h	98 ^h	10,747	23,226	-1
29 Barbados	27	0.884	79.4	74.4	99.7 ^e	99.7 ^e	93 ^g	84 ^g	11,634	19,116	2
30 Cyprus	30	0.875	80.5	75.9	95.1 ^m	98.6 ^m	75 ^g	74 ^g	11,223 ^o	23,916 ^o	0
31 Malta	31	0.866	80.6	75.8	93.4 ⁱ	91.8 ⁱ	77 ^g	77 ^g	9,654	26,160	0
32 Czech Republic	32	0.865	78.6	72.0	.. ^e	.. ^e	79 ^h	78 ^h	11,322	20,370	0
33 Brunei Darussalam	..	..	78.8	74.1	91.4 ^m	96.3 ^m	75 ^g	72 ^g	..	..	..
34 Argentina	36	0.841	77.6	70.5	97.0 ⁱ	97.0 ⁱ	98 ^h	90 ^h	5,662	15,431	-3
35 Seychelles	..	..	..	..	92.3 ^m	91.4 ^m	86 ^g	85 ^g	..	..	..
36 Estonia	33	0.852	76.7	66.3	99.8 ^{n,m}	99.8 ^{n,m}	101 ^g	92 ^g	9,777	15,571	1
37 Poland	34	0.848	77.9	69.7	99.7 ^{n,i}	99.8 ^{n,i}	93 ^h	87 ^h	8,120	13,149	1
38 Hungary	35	0.847	75.9	67.6	99.2 ^e	99.5 ^e	89 ^h	84 ^h	10,307	17,465	1
39 Saint Kitts and Nevis	..	..	..	..	..	..	111 ^g	85 ^g	..	..	..
40 Bahrain	39	0.832	75.8	72.4	84.2 ⁱ	91.5 ⁱ	82 ^g	77 ^g	7,961	23,505	-2
41 Lithuania	37	0.841	77.5	67.4	99.6 ^{n,m}	99.6 ^{n,m}	93 ^g	87 ^g	8,419	12,518	1
42 Slovakia	38	0.840	77.5	69.6	99.7 ^{n,m}	99.7 ^{n,m}	75 ^h	73 ^h	10,127	15,617	1
43 Chile	40	0.830	78.9	72.9	95.6 ^m	95.8 ^m	79 ^g	80 ^g	5,442	14,256	0
44 Kuwait	42	0.827	78.9	74.8	81.0 ⁱ	84.7 ⁱ	81 ^k	71 ^k	7,116	20,979	-1
45 Costa Rica	44	0.823	80.5	75.7	95.9 ⁱ	95.7 ⁱ	70 ^g	69 ^g	4,698	12,197	-2
46 Uruguay	41	0.829	78.8	71.5	98.1 ⁱ	97.3 ⁱ	90 ^h	81 ^h	5,367	10,304	2
47 Qatar	..	..	75.3	70.4	82.3 ^{n,p}	84.9 ^{n,p}	84 ^g	79 ^g	..	..	..
48 Croatia	43	0.827	78.0	70.2	97.1 ^m	99.3 ^{n,m}	74 ^g	72 ^g	7,453	13,374	1
49 United Arab Emirates	..	..	77.3	73.2	80.7 ⁱ	75.6 ⁱ	72 ^g	65 ^g	..	..	..
50 Latvia	45	0.823	76.1	65.4	99.7 ^{n,m}	99.8 ^{n,m}	92 ^g	83 ^g	7,685	11,085	0

SOURCE: UN Development Program (2004) "Human Development Report 2004," http://hdr.undp.org/en/media/hdr04_complete.pdf (accessed 4 April 2011).

Table 2-4: GDI Rank in 2005

TABLE 28 . . . and achieving equality for all women and men
Gender-related development index

HDI rank	Gender-related development index (GDI)		Life expectancy at birth (years) 2005		Adult literacy rate ^a (% aged 15 and older) 1995–2005		Combined gross enrolment ratio for primary, secondary and tertiary education ^b (%) 2005		Estimated earned income ^c (PPP US\$) 2005		HDI rank minus GDI rank ^d
	Rank	Value	Female	Male	Female	Male	Female	Male	Female	Male	
HIGH HUMAN DEVELOPMENT											
1 Iceland	1	0.962	83.1	79.9	.. ^e	.. ^e	101 ^f	90 ^f	28,637 ^f	40,000 ^f	0
2 Norway	3	0.957	82.2	77.3	.. ^e	.. ^e	103 ^f	95 ^f	30,749 ^f	40,000 ^f	-1
3 Australia	2	0.960	83.3	78.5	.. ^e	.. ^e	114 ^f	112 ^f	26,311	37,414	1
4 Canada	4	0.956	82.6	77.9	.. ^e	.. ^e	101 ^{f,g}	98 ^{f,g}	25,448 ^{h,i}	40,000 ^{h,i}	0
5 Ireland	15	0.940	80.9	76.0	.. ^e	.. ^e	102 ^f	98 ^f	21,076 ^f	40,000 ^f	-10
6 Sweden	5	0.955	82.7	78.3	.. ^e	.. ^e	100 ^f	91 ^f	29,044	36,059	1
7 Switzerland	9	0.946	83.7	78.5	.. ^e	.. ^e	83	88	25,056 ^f	40,000 ^f	-2
8 Japan	13	0.942	85.7	78.7	.. ^e	.. ^e	85	87	17,802 ^f	40,000 ^f	-5
9 Netherlands	6	0.951	81.4	76.9	.. ^e	.. ^e	98	99	25,625	39,845	3
10 France	7	0.950	83.7	76.6	.. ^e	.. ^e	99	94	23,945	37,169	3
11 Finland	8	0.947	82.0	75.6	.. ^e	.. ^e	105 ^f	98 ^f	26,795	37,739	3
12 United States	16	0.937	80.4	75.2	.. ^e	.. ^e	98	89	25,005 ^{h,i}	40,000 ^{h,i}	-4
13 Spain	12	0.944	83.8	77.2	.. ^e	.. ^e	101 ^f	95 ^f	18,335 ^h	36,324 ^h	1
14 Denmark	11	0.944	80.1	75.5	.. ^e	.. ^e	107 ^f	99 ^f	28,766	39,288	3
15 Austria	19	0.934	82.2	76.5	.. ^e	.. ^e	93	91	18,397 ^f	40,000 ^f	-4
16 United Kingdom	10	0.944	81.2	76.7	.. ^e	.. ^e	96	90	26,242 ^f	40,000 ^f	6
17 Belgium	14	0.940	81.8	75.8	.. ^e	.. ^e	97	94	22,182 ^f	40,000 ^f	3
18 Luxembourg	23	0.924	81.4	75.4	.. ^e	.. ^e	85 ⁱ	84 ⁱ	20,446 ^f	40,000 ^f	-5
19 New Zealand	18	0.935	81.8	77.7	.. ^e	.. ^e	115 ^f	102 ^f	20,666	29,479	1
20 Italy	17	0.936	83.2	77.2	98.0	98.8	93	88	18,501 ^h	39,163 ^h	3
21 Hong Kong, China (SAR)	22	0.926	84.9	79.1	97.3 ^j	97.3 ^j	73	79	22,433 ^f	40,000 ^f	-1
22 Germany	20	0.931	81.8	76.2	.. ^e	.. ^e	87	88	21,823	37,461	2
23 Israel	21	0.927	82.3	78.1	97.7 ^j	97.7 ^j	92	87	20,497 ^h	31,345 ^h	2
24 Greece	24	0.922	80.9	76.7	94.2	97.8	101 ^f	97 ^f	16,738	30,184	0
25 Singapore	..	..	81.4	77.5	88.6	96.6	..	..	20,044	39,150	..
26 Korea (Republic of)	26	0.910	81.5	74.3	.. ^e	.. ^e	89 ^f	102 ^f	12,531	31,476	-1
27 Slovenia	25	0.914	81.1	73.6	99.6 ^{l,k}	99.7 ^{l,k}	99	90	17,022 ^h	27,779 ^h	1
28 Cyprus	27	0.899	81.5	76.6	95.1	98.6	78	77	16,805 ⁱ	27,808 ⁱ	0
29 Portugal	28	0.895	80.9	74.5	92.0 ^k	95.8 ^k	93	87	15,294	25,881	0
30 Brunei Darussalam	31	0.886	79.3	74.6	90.2	95.2	79	76	15,658 ^{h,m}	37,506 ^{h,m}	-2
31 Barbados	30	0.887	79.3	73.6	99.7 ^{l,j}	99.7 ^{l,j}	94 ^g	84 ^g	12,868 ^{h,m}	20,309 ^{h,m}	0
32 Czech Republic	29	0.887	79.1	72.7	.. ^e	.. ^e	84	82	13,992	27,440	2
33 Kuwait	32	0.884	79.6	75.7	91.0	94.4	79	71	12,623 ^h	36,403 ^h	0
34 Malta	33	0.873	81.1	76.8	89.2	86.4	81	81	12,834	25,623	0
35 Qatar	37	0.863	75.8	74.6	88.6	89.1	85	71	9,211 ^{h,m}	37,774 ^{h,m}	-3
36 Hungary	34	0.872	77.0	68.8	.. ^e	.. ^e	93	86	14,058	22,098	1
37 Poland	35	0.867	79.4	71.0	.. ^e	.. ^e	91	84	10,414 ^h	17,493 ^h	1
38 Argentina	36	0.865	78.6	71.1	97.2	97.2	94 ^g	86 ^g	10,063 ^h	18,686 ^h	1
39 United Arab Emirates	43	0.855	81.0	76.8	87.8 ^k	89.0 ^k	68 ^g	54 ^g	8,329 ^h	33,555 ^h	-5
40 Chile	40	0.859	81.3	75.3	95.6	95.8	82	84	6,871 ^h	17,293 ^h	-1
41 Bahrain	42	0.857	77.0	73.9	83.6	88.6	90	82	10,496	29,796	-2
42 Slovakia	39	0.860	78.2	70.3	.. ^e	.. ^e	80	77	11,777 ^h	20,218 ^h	2
43 Lithuania	38	0.861	78.0	66.9	99.6 ^f	99.6 ^f	97	87	12,000	17,349	4
44 Estonia	41	0.858	76.8	65.5	99.8 ^f	99.8 ^f	99	86	12,112 ^h	19,430 ^h	2
45 Latvia	44	0.853	77.3	66.5	99.7 ^f	99.8 ^f	97	83	10,951	16,842	0
46 Uruguay	45	0.849	79.4	72.2	97.3	96.2	95 ^g	83 ^g	7,203 ^h	12,890 ^h	0
47 Croatia	46	0.848	78.8	71.8	97.1 ^f	99.3 ^f	75 ^g	72 ^g	10,587	15,687	0
48 Costa Rica	47	0.842	80.9	76.2	95.1	94.7	74	72	6,983	13,271	0
49 Bahamas	48	0.841	75.0	69.6	95.0 ^j	95.0 ^j	71	71	14,656 ^{h,j}	20,803 ^{h,j}	0
50 Seychelles	..	..	..	..	92.3	91.4	84	81	.. ^h	.. ^h	..
51 Cuba	49	0.839	79.8	75.8	99.8 ^f	99.8 ^f	92	83	4,268 ^{h,m}	9,489 ^{h,m}	0
52 Mexico	51	0.820	78.0	73.1	90.2	93.2	76	75	6,039	15,680	-1
53 Bulgaria	50	0.823	76.4	69.2	97.7	98.7	81	82	7,176	11,010	1

SOURCE: UN Development Program (2008) "Human Development Report 2007/2008," http://hdr.undp.org/en/media/HDR_20072008_EN_Indicator_tables.pdf (accessed 4 April 2011).

Table 3-1: LGBT rights – 1970

Rank	State	Same-sex sexual activity ¹	Recognition of same-sex relationships	Same-sex marriage	Same-sex adoption ²	Allows gays to serve openly in military ³	Anti-discrimination laws (sexual orientation) ⁴	Laws concerning gender identity/ expression ⁵	Total
1	Japan	1	0	0	0	1 ⁶	0	0	2
2-5	Switzerland	0.5**	0	0	0*	1	0	0*	1.5
	Czech Republic	0.5**	0	0	0*	1	0	0*	1.5
	Belgium	0.5**	0	0	0	1	0	0	1.5
	France	0.5**	0	0	0*	1	0	0*	1.5
6-13	Uruguay	1	0	0	0	0	0	0	1
	South Korea	1 ⁷	0	0	0	0	0	0	1
	Italy	1	0	0	0	0 ⁸	0	0	1
	Argentina	1	0	0	0	0	0	0	1
	Germany	0.5**	0	0	0	0.5 ⁹	0	0	1
	Denmark	0.5**	0	0	0	0.5 ¹⁰	0	0	1
	Sweden	0.5**	0	0	0.5 ¹¹	0	0	0	1
	Bahamas	0	0	0	0*	1	0	0*	1
14-21	Netherlands	0.5**	0	0	0	0	0	0	0.5
	Iceland	0.5**	0	0	0	No army	0	0*	0.5
	New Zealand	0.5 ¹²	0	0	0*	0	0	0	0.5
	Israel	0	0	0	0	0.5 ¹³	0	0*	0.5
	Greece	0.5**	0	0	0	0	0	0*	0.5
	United Kingdom	0.5** ¹⁴	0	0	0	0	0	0	0.5
	Canada ¹⁵	0.5**	0	0	0	0	0	0*	0.5
	Luxembourg	0.5**	0	0	0*	0	0	0*	0.5
22-40	Australia	0	0	0	0	0	0	0*	0
	Finland	0	0	0	0	0	0	0	0
	Ireland	0	0	0	0*	0	0	0	0
	USA	0	0	0	0	0	0	0*	0
	Slovenia	0	0	0	0	0	0	0*	0
	Austria	0	0	0	0	0	0	0*	0
	Malta	0	0	0	0	0	0	0*	0
	Costa Rica	0	0	0	0	0	0	0*	0
	Portugal	0	0	0	0*	0	0	0	0
	Norway	0	0	0	0	0	0	0	0
	Cyprus	0	0	0	0	0	0	0*	0
	Spain	0	0	0	0	0	0	0	0
	Chile	0	0	0	0	0	0	0	0
	Hong Kong	0	0	0	0	0	0	0	0
	Singapore	0	0	0	0	0	0	0	0
	Barbados	0	0	0	0	0	0	0	0
	Antigua and Barbuda	0	0	0	0	0	0	0	0
	Brunei	0	0	0	0	0	0	0	0
	Trinidad and Tobago	0	0	0	0	0	0	0	0

***No Data.** When no positive provisions regarding the rights of LGBT people were found, I assumed that those rights were not yet recognized.

** Unequal age of consent.

Table 3-2: LGBT rights – 1990

Rank	State	Same-sex sexual activity	Recognition of same-sex relationships	Same-sex marriage	Same-sex adoption	Allows gays to serve openly in military	Anti-discrimination laws (sexual orientation)	Laws concerning gender identity/ expression	Total
1	Sweden	1	0	0	0.5 ¹⁶	1	1	1	4.5
2	Denmark	1	1	0	0	1	0.5 ¹⁷	0*	3.5
3	Netherlands	1	0	0	0	1	0	1	3
4-7	Norway	1	0	0	0	1	0.5 ¹⁸	0	2.5
	France	1	0	0	0*	1	0.5 ¹⁹	0	2.5
	Italy	1	0	0	0	0.5 ²⁰	0	1	2.5
	Germany	1	0	0	0	0.5 ²¹	0	1	2.5
8-12	Czech Republic	1	0	0	0*	1	0	0*	2
	Japan	1	0	0	0	1 ²²	0	0	2
	Belgium	1	0	0	0	1	0	0	2
	Spain	1	0	0	0	1	0	0	2
	USA	0.5 ²³	0.5 ²⁴	0	0.5 ²⁵	0	0.5 ²⁶	0*	2
13-15	Finland	0.5**	0	0	0	1	0	0	1.5
	Switzerland	0.5**	0	0	0*	1	0	0*	1.5
	Slovenia	1	0	0	0*	0.5 ²⁷	0	0*	1.5
16-24	Argentina	1	0	0	0	0	0	0	1
	South Korea	1	0	0	0	0	0	0	1
	Uruguay	1	0	0	0	0	0	0	1
	Israel	0.5**	0	0	0	0.5²⁸	0	0*	1
	Canada ²⁹	0.5**	0	0	0	0	0.5 ³⁰	0*	1
	Malta	1	0	0	0	0	0	0*	1
	Singapore	0	0	0	0	0 ³¹	0	1 ³²	1
	New Zealand	1	0	0	0*	0	0	0	1
	Bahamas	0	0	0	0*	1	0	0*	1
25-33	Ireland	0	0	0	0*	0	0.5 ³³	0	0.5
	Portugal	0.5**	0	0	0*	0	0	0	0.5
	United Kingdom	0.5**	0	0	0	0	0	0	0.5
	Australia	0.5 ³⁴	0	0	0	0	0	0*	0.5
	Austria	0.5**	0	0	0	0*	0	0*	0.5
	Costa Rica	0.5	0	0	0	No army	0	0*	0.5
	Iceland	0.5**	0	0	0	No army	0	0*	0.5
	Greece	0.5**	0	0	0	0	0	0*	0.5
	Luxembourg	0.5**	0	0	0*	0	0	0*	0.5
34-40	Chile	0	0	0	0	0	0	0	0
	Hong Kong	0	0	0	0	0	0	0	0
	Cyprus	0	0	0	0	0	0	0*	0
	Barbados	0	0	0	0	0	0	0	0
	Antigua and Barbuda	0	0	0	0	0	0	0	0
	Brunei	0	0	0	0	0	0	0	0
	Trinidad and Tobago	0	0	0	0	0	0	0	0

***No Data.** When no positive provisions regarding the rights of LGBT people were found, I assumed that those rights were not yet recognized.

** Unequal age of consent.

Table 3-3: LGBT rights – 2010

Rank	State	Same-sex sexual activity	Recognition of same-sex relationships	Same-sex marriage	Same-sex adoption	Allows gays to serve openly in military	Anti-discrimination laws (sexual orientation)	Laws concerning gender identity/ expression	Total
1-6	Netherlands	1	1	1	1	1	1	1	7
	Belgium	1	1	1	1	1	1	1 ³⁵	7
	Spain	1	1	1	1	1	1	1	7
	Sweden	1	1	1	1	1	1	1 ³⁶	7
	Iceland	1	1	1	1	1 ³⁷	1	1	7
	Norway	1	1	1	1	1	1	1	7
7	Portugal	1	1	1	0.5 ³⁸	1	1	1	6.5
8-13	United Kingdom	1	1 ³⁹	0	1 ⁴⁰	1	1	1	6
	Denmark	1	1 ⁴¹	0	1	1	1	1 ⁴²	6
	Israel	1	1⁴³	0.5⁴⁴	1	1	0.5⁴⁵	1	6
	Canada ⁴⁶	0.5 ⁴⁷	1	1	0.5 ⁴⁸	1	1	1	6
	Argentina	1	1	1	1	1	0.5 ⁴⁹	0.5 ⁵⁰	6
	Uruguay	1	1 ⁵¹	0	1	1	1	1	6
14-16	France	1	1 ⁵²	0	0.5 ⁵³	1	1	1	5.5
	New Zealand	1	1 ⁵⁴	0	0.5 ⁵⁵	1	1	1	5.5
	Czech Republic	1	1 ⁵⁶	0	0.5 ⁵⁷	1	1	1 ⁵⁸	5.5
17-19	Australia	0.5 ⁵⁹	1 ⁶⁰	0	0.5 ⁶¹	1	1 ⁶²	1	5
	Finland	1	1 ⁶³	0	0.5 ⁶⁴	1	0.5 ⁶⁵	1	5
	Germany	1	1 ⁶⁶	0	0.5 ⁶⁷	1	0.5 ⁶⁸	1	5
20-24	Austria	1	1 ⁶⁹	0	0	1	0.5 ⁷⁰	1 ⁷¹	4.5
	Luxembourg	1	1 ⁷²	0	0.5 ⁷³	1	0.5 ⁷⁴	0.5 ⁷⁵	4.5
	Switzerland	1	1 ⁷⁶	0	0.5 ⁷⁷	1	0.5 ⁷⁸	0.5 ⁷⁹	4.5
	Ireland	1	1 ⁸⁰	0	0.5 ⁸¹	1	1	0	4.5
	USA	1 ⁸²	0.5 ⁸³	0.5 ⁸⁴	0.5 ⁸⁵	1	0.5 ⁸⁶	0.5 ⁸⁷	4.5
25	Slovenia	1	1 ⁸⁸	0	0	0.5 ⁸⁹	0.5 ⁹⁰	1	4
26-29	Japan	1	0	0	0	1 ⁹¹	0.5 ⁹²	1 ⁹³	3.5
	Malta	1	0	0	0	1	0.5 ⁹⁴	1	3.5
	Costa Rica	1	0	0	0.5 ⁹⁵	1 ⁹⁶	0.5 ⁹⁷	0.5 ⁹⁸	3.5
	Italy	1	0	0	0	1	0.5 ⁹⁹	1	3.5
30	Greece	0.5 ¹⁰⁰	0	0	0	0.5 ¹⁰¹	0.5 ¹⁰²	1	2.5
31-34	Cyprus	1	0	0	0	0	0.5 ¹⁰³	0.5 ¹⁰⁴	2
	South Korea	1	0	0	0	0	0	1	2
	Chile	0.5 ¹⁰⁵	0	0	0	0.5 ¹⁰⁶	0	1	2
	Bahamas	0.5 ¹⁰⁷	0	0	0	1	0	0.5 ¹⁰⁸	2
35-36	Hong Kong	1	0.5 ¹⁰⁹	0	0	0	0.5 ¹¹⁰	0	2
	Singapore	0.5 ¹¹¹	0	0	0	0.5 ¹¹²	0	1 ¹¹³	2
37	Brunei	0.5 ¹¹⁴	0	0	0	0	0	0	0.5
38-40	Barbados	0 ¹¹⁵	0	0	0	0	0	0	0
	Antigua and Barbuda	0	0	0	0	0	0	0	0
	Trinidad and Tobago	0 ¹¹⁶	0	0	0	0	0	0	0

Notes for the Tables

¹ Key: 1 – same-sex activity is legal; 0.5 – same-sex activity is legal, but the age of consent differs from that for heterosexual activity. 0 – same-sex activity is illegal.

² Key: 1 – LGBT couples may jointly adopt; 0.5 – LGBT couples allowed to adopt only their partner's biological child, or as singles; 0 – LGBT people are not allowed to adopt at all.

³Key: 1 – LGBT people are allowed to serve openly in the army; 0.5 – while there is no formal ban on LGBT people's service, there are some practical limitations; 0 – LGBT people's service is explicitly prohibited by law.

⁴Key: 1 – discrimination against the backdrop of sexual orientation is prohibited in every field of life, while hate speech against LGBT people is considered a criminal offence; 0.5 – there is only partial protection against discrimination against the backdrop of sexual orientation; 0 – no protection at all.

⁵ Key: 1 – people are allowed to change their gender, and the change is fully recognized by law; 0.5 – the right for “gender identity” is not fully recognized; 0 – gender change is not recognized by law.

⁶ There is no formal ban against service by LGBT people (see PALM CTR.: BLUEPRINTS FOR SOUND PUB. POL’Y, ASIA’S SILENCE ON GAYS IN MILITARY BROKEN BY TAIWAN (2002), (*available at* http://www.palmcenter.org/press/dadt/releases/asias_silence_on_gays_in_military_broken_by_taiwan))

⁷ Apparently there has never been formal prohibition – except in the army.

⁸ Homosexuality was a basis for exemption from conscription (OUT IN FORCE 119 (Gregory M. Herek, Jared B. Jobe & Ralph M. Carney eds., Chicago Univ. Press 1996)).

⁹ Homosexuals banned from becoming officers – though not officially. *Id.* at 121; see also http://en.wikipedia.org/wiki/Sexual_orientation_and_military_service#Germany.

¹⁰ LGBT people were restricted to the Home Guard (<http://www.gaylawnet.com/laws/dk.htm#military>).

¹¹ LGBT people could adopt only as individuals (<http://www.gaylawnet.com/laws/se.htm#parenting>).

¹² Sexual activity between males was prohibited.

¹³ Homosexuals were prohibited from occupying “sensitive positions” (Herek et al., *supra* note 8, at 124).

¹⁴ Only in England and Wales.

¹⁵ CAN. LIBRARY OF PARLIAMENT: PARLIAMENTARY INFO. & RESEARCH SERV., SEXUAL ORIENTATION AND LEGAL RIGHTS(2007), *available at* <http://www2.parl.gc.ca/content/lop/researchpublications/921-e.htm>.

¹⁶ LGBT people could adopt only as individuals (<http://www.gaylawnet.com/laws/se.htm#parenting>).

¹⁷ Incitement to hatred based on sexual orientation was prohibited in 1987.

¹⁸ Incitement to hatred based on sexual orientation was prohibited in 1981.

¹⁹ Criminal law didn't recognize hate speech against LGBT people as a criminal offence.

²⁰ Since 1985, homosexuality is no longer a categorical reason for exclusion (Herek et al., *supra* note 8).

²¹ Homosexuals banned from becoming officers – though not officially (http://en.wikipedia.org/wiki/Sexual_orientation_and_military_service#Germany).

²² There is no formal ban against the service of LGBT people (see PALM CTR., *supra* note 6).

²³ Varies between the states.

²⁴ YUVAL MERIN, EQUALITY FOR SAME-SEX COUPLES: THE LEGAL RECOGNITION OF GAY PARTNERSHIPS IN EUROPE AND THE UNITED STATES 191 (Chicago Univ. Press 2002).

²⁵ Some states recognized LGBT people's right to adopt (Nancy D. Polikoff, *Recognizing Partners but Not Parents/Recognizing Parents but Not Partners: Gay and Lesbian Family Law in Europe and the United States*, 17 N.Y.L. SCH. J. HUM. RTS. 711(2000)).

²⁶ Wisconsin and D.C. prohibited discrimination based on sexual orientation in the field of employment.

²⁷ Although LGBT people are not banned from the army, they aren't “well accepted” by their co-workers (http://en.wikipedia.org/wiki/LGBT_rights_in_Slovenia).

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- ²⁸ Homosexuals were prohibited from occupying “sensitive positions” (Herek et al., *supra* note 8, at 124).
- ²⁹ CAN. LIBRARY OF PARLIAMENT, *supra* note 15.
- ³⁰ Some provinces prohibited discrimination based on sexual orientation
http://en.wikipedia.org/wiki/LGBT_rights_in_Canada#1970s.
- ³¹ http://en.wikipedia.org/wiki/Sexual_orientation_and_military_service#Countries_that_disallow_homosexuals_from_serving_in_the_military.
- ³² http://en.wikipedia.org/wiki/Transgender_people_in_Singapore#Legal_reform.
- ³³ Incitement to hatred based on sexual orientation was prohibited in 1989.
- ³⁴ Legality, as well as the age of consent, varies between the states.
- ³⁵ Official recognition of a new gender is possible only following a medically supervised process of gender reassignment.
- ³⁶ Only unmarried, sterilized people who have lived for at least two years as the opposite gender are allowed to change their gender.
- ³⁷ Iceland has no armed forces.
- ³⁸ LGBT people can adopt only as individuals.
- ³⁹ Civil partnership
- ⁴⁰ The situation in Northern Ireland is unclear.
- ⁴¹ Registered partnership
- ⁴² Gender reassignment operations are approved only after sterilization and castration.
- ⁴³ Unregistered cohabitation.
- ⁴⁴ Same-sex marriage can’t be performed inside Israel, but the country recognizes foreign marriage.
- ⁴⁵ Criminal law doesn’t recognize hate speech against LGBT people as a criminal offence.
- ⁴⁶ CAN. LIBRARY OF PARLIAMENT, *supra* note 15.
- ⁴⁷ Unequal age of consent for anal sex.
- ⁴⁸ Some provinces allow joint adoption by same-sex couples, while others only allow adoption of the partner’s biological child.
- ⁴⁹ Only in the cities of Buenos Aires and Rosario are LGBT people protected against discrimination.
- ⁵⁰ The right to change gender was acknowledged by the court, but in some areas transgender people are exposed to discrimination and harassment.
- ⁵¹ Civil union.
- ⁵² Civil pact of solidarity.
- ⁵³ Same-sex couples don’t possess the right for joint adoption.
- ⁵⁴ Civil union.
- ⁵⁵ LGBT people may adopt only as individuals.
- ⁵⁶ Registered partnership
- ⁵⁷ LGBT people may adopt only as individuals.
- ⁵⁸ Gender reassignment operations must be approved by a special commission.
- ⁵⁹ Unequal age of consent in the state of Queensland.
- ⁶⁰ Recognition varies from civil partnership at AST to ‘de-facto partnership’ (unregistered cohabitation) in some other Australian states.
- ⁶¹ While some states award LGBT people full adoption rights, in others same-sex couples can’t adopt at all.
- ⁶² Australia does not outlaw discrimination based on sexual orientation at the federal level. Nevertheless, all states and territories in Australia have enacted legislation that renders discrimination related to sexual orientation unlawful.
- ⁶³ Registered partnership
- ⁶⁴ Same-sex couples don’t possess the right for joint adoption.
- ⁶⁵ Criminal law doesn’t recognize hate speech against LGBT people as a criminal offence.
- ⁶⁶ Registered partnership.
- ⁶⁷ Same-sex couples don’t possess the right for joint adoption.
- ⁶⁸ Germany’s Criminal Law doesn’t recognize hate speech against LGBT people as a criminal offence.
- ⁶⁹ Registered partnership.
- ⁷⁰ Protection against discrimination is limited to the field of employment. In addition, Austria’s criminal law doesn’t recognize hate speech against LGBT people as a criminal offence.
- ⁷¹ EUR. UNION AGENCY FOR FUNDAMENTAL RTS., ANNUAL REPORT 2010, available at http://www.fra.europa.eu/fraWebsite/attachments/AR_2010-conf-edition_en.pdf.
- ⁷² Legal partnership.
- ⁷³ LGBT people may adopt only as individuals.

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- ⁷⁴ Luxembourg's Criminal Law doesn't recognize hate speech against LGBT people as a criminal offence.
- ⁷⁵ Only partial data are available regarding the process and consequences of gender change in Luxembourg.
- ⁷⁶ Registered partnership.
- ⁷⁷ LGBT people may adopt only as individuals.
- ⁷⁸ Criminal law doesn't recognize hate speech against LGBT people as a criminal offence.
- ⁷⁹ No data.
- ⁸⁰ Civil partnership since 2011 (the bill was passed in 2010).
- ⁸¹ LGBT people may adopt only as individuals.
- ⁸² Although in Nevada the age of consent is unequal in seduction cases.
- ⁸³ Not recognized by the federal government - varies between the states.
- ⁸⁴ Not recognized by the federal government - varies between the states.
- ⁸⁵ Different provisions enacted by the states.
- ⁸⁶ Federal law recognizes hate speech against LGBT people as a criminal offence. In any event, protection against discrimination varies between the states.
- ⁸⁷ Recognition of sex reassignment is limited and varies between the states.
- ⁸⁸ Registered partnership.
- ⁸⁹ LGBT people are not banned from the army, but they aren't "accepted well" by their surroundings.
- ⁹⁰ Criminal law doesn't recognize hate speech against LGBT people as a criminal offence.
- ⁹¹ There is no formal ban against the service of LGBT people (see PALM CTR., *supra* note 6).
- ⁹² Some cities in Japan prohibited discrimination in some fields, but there is no federal law.
- ⁹³ Only people who have undergone sex-reassignment surgery are allowed to change their gender.
- ⁹⁴ Protection against discrimination is limited to the field of employment. Malta's Criminal Law doesn't recognize hate speech against LGBT people as a criminal offence.
- ⁹⁵ LGBT people may adopt only as individuals.
- ⁹⁶ No army, but LGBT people are allowed to serve in the police
(http://en.wikipedia.org/wiki/LGBT_rights_by_country_or_territory#Central_America).
- ⁹⁷ Protection against discrimination is limited to the field of employment.
- ⁹⁸ No data.
- ⁹⁹ Protection against discrimination is limited to the field of employment. Italy's Criminal Law doesn't recognize hate speech against LGBT people as a criminal offence.
- ¹⁰⁰ Unequal age of consent
- ¹⁰¹ Homosexuals are allowed to serve in the Greek army, though transvestism could lead to exemption
(http://en.wikipedia.org/wiki/LGBT_rights_in_Greece#Legal_status).
- ¹⁰² Protection against discrimination is limited to the field of employment.
- ¹⁰³ Protection against discrimination is limited to the field of employment. Cyprus's Criminal Law doesn't recognize hate speech against LGBT people as a criminal offence.
- ¹⁰⁴ No data.
- ¹⁰⁵ Unequal age of consent.
- ¹⁰⁶ There is no formal ban of LGBT people, but they could be discharged from the service because of "offences to the values and morals" of the army.
- ¹⁰⁷ Unequal age of consent.
- ¹⁰⁸ No data.
- ¹⁰⁹ In June 2009, the Hong Kong Government extended limited recognition and protection to cohabitating same-sex couples, in its Domestic Violence Ordinance.
- ¹¹⁰ Protection against discrimination is limited to government sponsored actions only.
- ¹¹¹ Illegal between males.
- ¹¹² Homosexual men are subject to conscription, but are not allowed to undergo command school or serve in sensitive units.
- ¹¹³ http://en.wikipedia.org/wiki/Transgender_people_in_Singapore#Legal_reform.
- ¹¹⁴ There are no prohibitions on female homosexuality.
- ¹¹⁵ Rarely enforced.
- ¹¹⁶ Rarely enforced