

Gays say redefine 'family'

Report focuses on gay rights

Human rights body will fight for equal constitutional rights

Woman weds 'woman'



Spurred on by the new media openness, homosexuals are increasingly coming out in the open, and the revolution is not without its share of heartache.

Homosexuals must be accepted

Gay approach political parties for their rights

IF YOU ARE GAY, DON'T MARRY

The fire controversy helped lesbianism become a household name. Thanks Thackeray, say lesbian activists.

HUMAN RIGHTS

City holds first meet on lesbian issues

Indian gay rights movement poised to acquire voice on international stage

فلم فداستی حققی روپ جلا گلاؤں میں
ہذا فلم فداستی حققی روپ جلا گلاؤں میں
ہذا فلم فداستی حققی روپ جلا گلاؤں میں

Not 'straight', not gay

Lesbian couple get respectability after 14-year struggle

A Resource Book on Lesbian, Gay and Bisexual Rights in India

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Humjinsi

A Resource Book on Lesbian, Gay and Bisexual
Rights in India

Updated and revised September 2002.

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Bina Fernandez

India Centre for Human Rights and Law

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Preface to the second edition

2008

With the transition to the new millennium, lesbian, gay and bisexual communities in India have crossed a new threshold of visibility in terms of publications as well as the number and variety of organizations formed.

Books by mainstream publishers have included Penguin India's companion volumes *Yaarana: Gay writing from India* edited by Hoshang Merchant, and *Facing the Mirror: Lesbian writing from India* edited by Ashwini Sukhtankar. Activist publications have included CALERI's document *Lesbian Emergence: A Citizen's Report*, ABVA's fact finding report *For People Like Us* on a lesbian suicide in Orissa, and PUCL (Karnataka's) fact finding report on *Human rights violations against sexuality minorities in India*. On the academic end, we have *Same-Sex Love in India: readings from literature and history* by Ruth Vanita and Saleem Kidwai, and a volume of provocative essays on a wide range of topics edited by Ruth Vanita, *Queering India: Same-Sex Love and Eroticism in Indian Culture and Society*.

The past three years has also been witness to a plethora of new groups, help lines, newsletters and other services provided in cities and towns. This included the formation of three new lesbian groups (*Sappho*, *Olava* and *Prerana*), and several groups for the *kothis*, *panthis*, *bijras*, *jogtas*, the newly articulated identities on the spectrum of sexuality minorities. Nascent and fragile attempts at coalitions across these identities and different political priorities have been initiated through efforts such as *LGBT-India* as well as other regional and national networking at conferences such as *Looking into the next millenium* (Mumbai, May 2000), the *National Conference on Human Rights, Social Movements, Globalisation & the Law* (Panchgani, December 2000), & the *National workshops on the Law Commission of India's Sexual Assault Bill* (Mumbai, June & December 2001).

The strategies, perhaps even the existence of these coalitions, are going to be put to the test, as the issue of decriminalization of homosexuality reaches the national agenda. The National Human Rights Commission in a recent report on HIV/AIDS recommended that Section 377 be repealed. The Law Commission of India, in its 172nd Report has drafted a Review of Rape Laws in which it also proposed that Section 377 be deleted from the Indian Penal Code. Whether or not the Indian Parliament will pass such an amendment, the bill itself has other potentially disturbing consequences in the context of violence against lesbian, gay, bisexual and transgender people.

As with any social movement of an oppressed group, increased visibility in the public discourse has had a concomitant effect of increase in violence, as well as improved articulation against the violence faced by lesbian, gay and bisexual communities. Therefore it became necessary to include a new chapter on Protections against violence and abuse in this revised edition of *Humjinsi*.

Other new contributions in this edition include two thought provoking papers on bisexual rights by Akshay Khanna, on medicalization of homosexuality by Arvind Narrain & Tarunabh Khaitan & a study of the trends in the application of Section 377 by Alok Gupta. Updates in other sections have been difficult to keep up with, since there has been almost a tidal wave of activity, and thanks are due to Cath Sluggett, Vinay Chandra and Shaleen Rakesh for their assistance in filling in the information gaps. Again, special thanks are due to Pawan Dhall & Alok Gupta. Responsibility for errors remain mine.

Bina Fernandez

Introduction



H*umjinst* - an Urdu word meaning “the being of the same nature or genus, or species or class”. It is also used to indicate “relationship”. More specifically, the contemporary Urdu usage is for “relationships between people of the same sex” - that is, for homosexuals. The word is gender neutral, non-pejorative - and quite significantly, does not constrict the definition of the relationship to the sexual. Visibilising the identity of those who choose partners of the same-sex requires re-discovering and sometimes even inventing words. Most of the words that exist in Indian languages for men and women who identify as homosexual are usually either pejorative or imprecise. Homosexual *behaviour* has been described and documented in various forms through the ages: ancient temple carvings depicting same-sex love and the *Kama Sutra* are perhaps the earliest documentation of same-sex love in our culture. At different times in the Indian sub-continent homosexuality has been accepted as sexual behaviour - though generally not as an *identity*. There have been other periods of history when same-sex love has been the subject of derision and condemnation. Denial of the reality of same-sex love in India was codified in Section 377 of the Indian Penal Code during British rule - a colonial hangover we have yet to get over. Despite over a century of Section 377 however, homosexual behaviour is tacitly accepted in many Indian cultures. A phenomenon that is quite possibly a result of our overwhelmingly homosocial cultures. It is the shift from same-sex *behaviour* to a politicized lesbian or gay *identity* that has occasionally provoked negative and even hostile reactions.

It is only since the early 1980s that homosexuality has become a visible, “identity issue” in India. Never before has the issue of same-sex love been debated or discussed with as much passion as in the last decade. An *identity* is being claimed, even as it is being forged. Language defines existence, and it has become necessary to re-discover, re-invent, or create new words to describe this identity, this lived reality. “Khush” (a translation of “gay”) and “Shamakami” (one who desires one’s equal) are words that are increasingly also gaining acceptance in the struggle of gays, lesbians and bisexuals for visibility.

Lesbian Gay - A Citizens Report on the Status of Homosexuality in India published in 1991 by AIDS Bhedbhav Virodhi Andolan could be considered a "milestone of visibility" for its comprehensive coverage of various aspects of the issue. Since its publication, the decade of the nineties has been one of tremendous organising efforts. Lesbians and gay men have formed groups, brought out journals and newsletters, held conferences and workshops. The mainstream media coverage too, has been largely positive - with press features, interviews, cover stories, talk shows and recently, films with lesbian, gay and transgender themes.

This resource book represents a confluence of the efforts of various groups and individuals - with a focus on the different aspects of lesbian, gay and bisexual people's legal rights. It was conceived of at a workshop on "*Strategies for furthering lesbian, gay, bisexual rights in India*", held at Mumbai, 7-9 November 1997. This workshop was co-organised by three Mumbai-based organisations - *Stree Sangam* (a lesbian and bisexual women's group), *India Centre for Human Rights & Law*, and *Forum Against Oppression of Women* (a women's group); and *Counsel Club* (a Calcutta based support forum for gay, lesbian and bisexual people). For the first time, a human rights organisation and a women's group co-organised a workshop with lesbian, gay, bisexual groups. This workshop itself was the outcome of an earlier one. In June 1996 a presentation on *Lesbian and Gay Rights in India* was made by the *Working Group* of lesbian and bisexual women at a workshop on "Gender Just Laws" held in Bombay. 200 lawyers, human rights activists, women's groups, and the press attended the workshop. The issue of legal rights for lesbians and gays - i.e., decriminalisation, anti-discrimination legislation, and domestic partnership benefits - was seriously discussed, particularly in the context of gender justice.

Advocating a legal rights strategy is but one more means of "visibilising" - particularly since it is the law that was partially responsible for invisibilising the existence of lesbians and gay men in India. Choosing a human rights platform is also a means of focussing public attention on the violations of gay and lesbian civil and political rights. Certainly we do not necessarily believe (though we can always hope) that changes in legislation will firstly, occur in the immediate future; or secondly, lead to an immediate change in social attitudes towards those men and women who choose partners of the same sex. In today's climate of religious fundamentalism, censorship, and re-inforcement of repressive gender and sexuality stereotypes, such changes seem unlikely. The fundamentalist frenzy generated over the screening of the film *Fire* are a chilling reminder of this. In this context, the challenge posed by efforts towards opening up spaces for social acceptance of same-sex relationships become even more vital.

Broadening the scope of a simple “workshop report”, the idea behind this resource book was firstly, to provide information and resources on lesbian, gay & bisexual legal rights in both the Indian and International contexts. Second, the attempt has been to document the gay, lesbian and bisexual movement in India - to provide continuity to the process of such documentation and to understand the many efforts going on all over India, as well as the South Asian Diaspora. So, we have compiled a dateline of events in the movement; as well as listings of the films, newspaper clippings, theatre and dance performances which address lesbian, gay and bisexual issues in India.

The legal rights discourse in this book focuses on three major areas - decriminalisation, anti-discrimination and domestic partnership rights. The arena of lesbian and gay rights is, of course, much larger - including issues such as child custody and adoption, asylum and immigration rights, rights to protection from hate crimes and violence, the rights of lesbians and gay men living with HIV / AIDS, and the rights of transgender people. In compiling this resource book, we recognise that we have been unable to address these issues - not because we believe they are unrelated or unimportant, but because they are complex issues, requiring further research. It is our hope that future efforts at organising and documentation will incorporate these areas.

Counsel Club, Calcutta

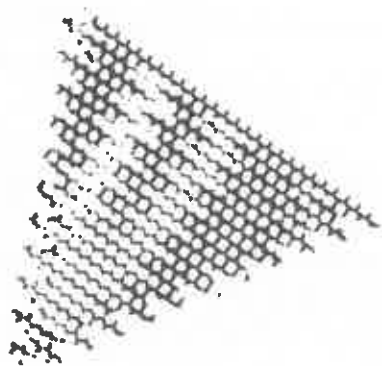
Forum against Oppression of Women, Mumbai

India Centre for Human Rights & Law, Mumbai

Stree Sangam, Mumbai

2008

Legal Rights of Lesbians, Gays and Bisexuals



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- 80 Decriminalisation
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Lesbian, Gay & Bisexual Rights in India An Overview

2008

Circulated as a background paper for the workshop "Strategies to Advance Lesbian and Gay Rights", 7-9 November 1997, Mumbai, and based on a presentation made by the Working Group for Lesbian and Gay Rights at the conference on "Gender Just Laws" 30 May - 2 June, 1996. Members of the Working Group on Lesbian and Gay Rights included Swati Manorama, Shalini, Gomathy, Chayanika, and Bina Fernandez.

When we have organised around lesbian and gay issues in different fora, we have been repeatedly asked why we consider these issues important in the face of other more urgent issues. Again, every time we have tried to ask for legal recognition of lesbian and gay relationships we have been questioned as to why we want to legalise and hence institutionalise a private matter.

Our answers have been simple. We find these issues urgent because we are talking about the lived realities of a number of people, we are talking of our lives, we are talking of our existence invisibilised by society, we are talking publicly and openly of our collective pain inflicted by a society whose norms repeatedly violate our very basic human rights. And we wish to legalise our relationships because this is one way of gaining recognition and visibility in society.

We welcome this opportunity to share our concerns about these issues with you in this paper. Positioning ourselves at the intersection of the Feminist and Human Rights perspectives, we would like to draw your attention to the reality of our lives, to an existence of silence, fear, real danger, discrimination and harassment by various forces. In doing so, we hope to initiate a dialogue with you on these issues so that women who love women, and men who love men, are included in the discourse on women's rights, human rights - justice.

The Human Rights discourse that maintains every individual's right to live freely provides a framework for individuals to choose and live a lifestyle that is centred around same sex relationships. Thus, decriminalisation of homosexuality, right to protection from human

rights abuses/ hate crimes and non-discrimination on the basis of sexual orientation *should* be on the agenda of any human rights organisation.

However, it was only in 1994, that an international human rights organisation - ***Amnesty International*** - finally publicly acknowledged that violence and abuse of lesbians and gay men because of their sexual orientation constituted an infringement of human rights.

Another ground-breaking verdict was issued by the United Nations Human Rights Committee in the case of *Nicholas Toonen v the State of Australia*¹ in which the Committee acknowledged that the criminalisation of homosexuality in the State of Tasmania, Australia was a violation of Articles 2 and 26 (right to privacy and right to equal protection under the law) of the International Covenant on Civil and Political Rights.

A decade of lesbian and gay activism and lobbying in the U.S and Europe has resulted in a few gains in terms of putting lesbian and gay rights on the human rights agenda. Human rights groups in India have not yet raised the issues of lesbian and gay rights in spite of the stark criminalisation faced by gay men and lesbian women. The only initiative undertaken was the conference on *Gender Just Laws* organised by women's groups and human rights groups in 1996 where lesbian and gay rights were discussed openly on a broad platform with people from various backgrounds.

Lesbians and bisexuals, like other sexual minorities (transgenders, hijras, prostitutes) challenge the norms of traditional families that are constructed on the premises of heterosexuality, patriarchy, monogamy, and control of women's sexuality. Inherent in this challenge, is the recognition of other kinds of families - single parent families, same-sex domestic partnerships, multiple adult related (and not just sexually) families, etc.

At one level, the accepted norm of the family needs to be questioned at its very roots. Simultaneously, the law should endeavour to broaden the legal definition of "family". We believe that the definition of the family must be looked at again and not just through the lens of hetero-patriarchy but also through various lenses that reflect lived realities.

The family is not a static institution as it appears to be, or as people discuss it. The overall function of the family is in essence the same in various societies - i.e., provision of legal heirs. In a majority of communities where social, caste and gender discrimination and hierarchical status exists, heterosexuality is the norm, and reproduction is the main function of the family. Another essential function of the family is to maintain and reproduce cultural and social values and carry them forward through generations.

¹ United Nations. *Report of the Human Rights Committee* vol. General Assembly Official Records, Communication No.488/1992, 9th Session, Supplement No.40 (A/49/40). New York: 1994. Pp.226-237.

Violence against the powerless within the heterosexual, patriarchal family is an important "hidden" norm that has social sanction. This is because family is considered to be a sacred institution, which should be maintained "at all costs" - even that of violence. Other forms and structures based on trust and faith, and without defined hierarchies in the relationships between members do not have legal and social sanction because they affect and violate the norms and values that are perpetuated by the heterosexual family structure of patriarchy.

We believe that lesbianism by its very existence raises issues that the women's movement is concerned with, and therefore feel it is important to create and articulate a space for lesbian rights within the context of the women's movement.

Within the women's movement in India, lesbian issues have been raised occasionally over the past decade. The range of responses has varied from hostility and dismissal to cautious acknowledgement. Rarely has acknowledgement led to action. We do recognise that an important reason for the lack of dialogue and action within the women's movement on this issue has been the lack of visibility of lesbian women in the movement with the exception of a few brave women - for whom there has been little or no support. This has then led to a vicious spiral where on the one hand, lesbian women do not "come out" because of lack of support or resources. On the other hand, because there are very few women who do "come out" their energies are expended in survival, leaving very little left for activism/ mobilisation or organisation within the movement.

Since it is not possible - within the scope of this paper - to discuss all the issues raised above in as great detail as we would have liked; we have focussed on the *legal rights of lesbians and gay men* and hope that our readers may find insights on other issues woven through the text.

To begin with, some excerpts from a letter that was received by the TV programme *Shakti* after it aired an episode on lesbians and gay men:

We met nearly 10 years ago. She was working as our acting hostel warden while I was training as a paramedic in a medical college hospital in Delhi... I was about 10 years her junior... I developed a liking for her and we eventually became very good friends. At her suggestion, I started to cook meals for both of us in her room. This ensured us privacy that we badly wanted... She expected me to do all the household work... that I keep things ready for her... I readily complied because we developed mutual love. She would always boss around as men do in our society... We had developed physical intimacy ... She was very possessive of me.

After I graduated and started looking for a job, we decided to get married since we could not live apart any longer. But would our family members, friends, and co-workers accept our decision? Would our

relationship get social and legal sanction? We were riddled with doubts, and I lacked the confidence and courage to take such a step. Yet we felt that we should declare to each other that we were married. One evening we went to a mandir and got the blessings of the deity. When we returned to the hostel she applied 'sindoor' to my 'mang'. It was the happiest day for us. We never informed anyone of our mutual part.

Things went on well for a year. I got a job and became economically independent. One day on my return from work, I found her in a compromising position with a young girl in her room ... From then on our relationship soured. I felt cheated, I even attempted suicide... I left my job to work in another set-up...

Every year there are at least 3-4 lesbians who can be counted in the batch of freshers at my alma mater. I have suffered a great deal but still have no answers to some crucial questions. Why can't two girls get married? Why does society not recognise, support and sanction lesbian relationships? A heterosexual relationship may also sour like ours did. But there at least society is aware of marriage and break ups. In our case the most traumatic thing is that the world is neither aware of our 'marriage' or of its end [our emphasis] I had to face the pain more or less by myself. Many other women like me may have attempted suicide and even succumbed to such attempts. How many more must undergo this trauma silently? And why?"

Existing personal laws in India - whether religious or secular - define and regulate the legal space surrounding intimate social, and personal interactions. These cover regulations pertaining to marriage, divorce, inheritance, adoption and other such rights connected to the family - both natal and marital. Inevitably, the laws assume the norms of patrilineal and patrilocal, heterosexual society and within none of these is there any explicit or implicit mention of rights for the lesbian and gay people of the country.

Yet, lesbian and gay existence in India is (and has been) an undeniable reality. We come from different backgrounds, different parts of the country, speak different languages and live different kinds of lives. Many of us want to share our lives with another person of the same sex as ours. And we assert that this desire and reality is no less important than the heterosexual one.

However, in asserting the rights of lesbians and gay men to marriage/civil contract unions /domestic partnerships we presume as a prerequisite the decriminalisation of homosexuality and the protection of lesbians and gay men from human rights abuses and discrimination. So this paper on lesbian and gay rights has the following four sections:

1. Decriminalisation of homosexuality.
2. Protection of lesbians, gay men and other sexual minorities from human rights abuses.
3. Anti-discrimination on the basis of sexual orientation.
4. Domestic partnerships for lesbians and gays.

1 Decriminalisation of homosexuality

Section 377 of the Indian Penal Code (1860) criminalises homosexual acts (for the text of the section, please refer to page 40). This statute is based on the British law - Offences Against the Person Act (1861) - which was subsequently instituted in all colonised countries, including India and Ireland. The experiences of gay men who have been threatened and violated - physically and emotionally - by this law have only been documented in the last decade. Here are some excerpts from Anuja Gupta's testimony at the International Tribunal on Human Rights Violations Against Sexual Minorities, (October 1995)²

'I would like to begin by reading the testimony of a gay man that was tape recorded earlier this year in New Delhi. This is what he said, 'I was taking a walk with a friend. We were talking when two policemen came, took me aside and asked me to give them my watch and gold chain. I was very scared. My only thought was that they can take whatever they want as long as they leave me alone. If they had taken me to the police station, they would have raped me. They kept repeating that they would beat me and sodomize me. I got really scared and gave them what I had in my pocket: Rs. 100 and my watch. Then they asked me to come back with more money.'

Though this incident is evidence of arbitrary harassment of gay men by the police, there has also been a well-planned effort by the Delhi police to arrest gay men under a "Clean up the Parks" drive. In July 1992, for almost a week, plainclothes policemen acting as decoys roamed around Central Park, one of the popular cruising spots in the heart of Delhi. They approached gay men - inviting them for a cup of coffee or a walk and other such seemingly harmless offers. When the men accepted, they were arrested and taken to a police vehicle waiting nearby. In total, 18 men were arrested within 3 days.

This time the police did not use Section 377, but Sections 92, 93 of the Delhi Police Act for public nuisance. The campaign ended with a press conference hosted by the Delhi police. At the press conference, the police provided to the press the names and work addresses of those arrested.

To protest against the campaign the AIDS Bhedbhav Virodhi Andolan (ABVA) an HIV/AIDS activist group held a demonstration outside the police quarters. This was the first public demonstration in defence of gay rights to be held in India. When the officer in charge was presented with the memorandum, he was unable to hide his amusement at what he felt was a non-issue.

... Though gay men are harassed by police in the parks, they at least have access to public space, something that is completely denied to lesbian women. The silence surrounding lesbians is in itself powerful evidence of the violation of their rights."

² International Gay and Lesbian Human Rights Commission, *The International Tribunal on Human Rights Violations against Sexual Minorities*, (New York: 1995) Pp.15-17

In the entire history of Section 377³ from 1860 to 1992, there have been only 30 cases in the High Courts or the Supreme Court. Only one conviction of these 30 was in the case of two consenting adults (post Independence). The figures on the other cases are:

- 18 were non-consensual
- 8 were unspecified
- 4 were consensual of which 3 were before 1940
- 15 out of 30 were assault on minors

The current usage of Section 377 is therefore, primarily by the police to sexually harass and blackmail gay men even though it is a criminal offence to blackmail people.

Section 377 has also been used to intimidate women - particularly those who have run away together, or those who have made their relationship known. *India Today* (April 18th, 1990) carried the story of Tarulata/ Tarunkumar who, in 1987, underwent a female to male sex change operation and married Lila Chavda in 1989. They had met five years previously, when Tarulata's sister, who was running for elections, campaigned in Dasade. Muljibhai Chavda, Lila's father has gone to the Gujarat High Court saying that it is a lesbian relationship and that the marriage should be annulled. The petition contends that, "Tarunkumar possesses neither the male organ nor any natural mechanism of cohabitation, sexual intercourse and procreation of children. Adoption of any unnatural mechanism does not create manhood and as such Tarunkumar is not a male." Muljibhai has called for criminal action under Section 377. The Gujarat High Court has accepted the petition in this case.

In another report, *Bombay Times (Times of India)*, August 8th, 1995) reported "Another tutor, student 'scandal'" in which two young women - Parul and Mehernaaz (names changed in report) ran away from their respective homes and spent 10 months roaming around the country trying to live together. Finally they returned to Bombay only to be put in custody, as Parul's father had filed a case of kidnapping against Mehernaaz.

Some comments on Section 377

1. It does not distinguish between consensual and coercive sex.
2. The act of sodomy, and not homosexuality *per se*, is a cognisable offence.
3. It has not been used in cases against lesbian women, except for intimidation, and in the exceptional case of Tarulata / Tarunkumar described earlier.
4. Heterosexual couples engaging in sodomy can be indicted under Section 377, and women often cite this as a cause for divorce.

³ Shamona Khanna, "Gay Rights" *The Lawyers*, June 1992

5. It is currently being used actively by groups working to register cases of child sexual abuse, since the existing rape laws do not cover child sexual abuse. The clause in Section 377 "against the order of nature" is used in cases of sexual abuse of children.

The Case for the Repeal of Section 377

First of all, the definition "unnatural acts" is Victorian and obsolete. Consensual sex between two adults (over 18) should be protected by an individual's constitutional right to privacy. Further, section 377 violates Article 14 of the Constitution since it discriminates against persons on the basis of sex and therefore sexual orientation. In fact, this antiquated statute has been repealed even in Britain, the country of its origin.

Along with the repeal of Section 377, there is an urgent need for the enactment of a comprehensive sexual assault law which firstly, broadens the definition of sexual assault beyond the limited scope of "penile penetration" (heterosexual or homosexual); and secondly differentiates assault on minors and adults. Such a law should also determine a common age of consent for sexual activity (lesbian, gay or heterosexual).

2. Protection from Human Rights Abuses/ Hate crimes

Men and women who are identifiably, openly lesbian and gay face violence and the persistent threat of violence. This may take the form of verbal and physical assault on the streets, death threats, and even murder. This has been justified "because he/she was gay".

It also takes the form of psychological violence on men and women who are subjected to shock therapy, aversion therapy and incarceration as "treatment" for their "problem". Many women have gone through the humiliation and trauma of having their bodies mutilated in this "normalisation" process. We want to stress that this happens even for women who are not transsexual (i.e, who do not feel that they were born into the wrong sex or in the wrong body). In a society which sees the possibility of a relationship only between men and women, women who love women are considered aberrations and the medical community thus "cures" them by these extreme steps.

In 1994, after a 17 year debate, Amnesty International finally recognised violence against lesbians and gays as a human rights abuse in its book, ***Breaking the Silence: Human Rights Violations on the Basis of Sexual Orientation***.

3. Anti-Discrimination/ Equal Opportunity Laws

We know that the law reflects the prejudices and norms of existing societies, and thus marginalises some members within the framework of society. This is the case all over the world. But it need not be so. In fact, the law should help counter the prejudices and protect the rights of marginalised sections. This would mean having clear anti-discrimination laws for the threatened communities. The enactment of such legislation would ensure that the rights of lesbians and gay men are protected particularly in the areas of housing, education, employment, insurance and health care.

Article 2 of the *Universal Declaration of Human Rights* states that, **"No person should be discriminated against on the basis of race, sex, religion, caste, colour, or any other status."** Many countries have introduced "Sexual Orientation" as a clause within this anti-discrimination framework.

Countries that have explicit Anti-discrimination laws incorporated in their legal statutes

- 1981 Norway introduced anti-discrimination legislation including lesbians and gays⁴
- 1985 France
- 1987 Denmark
- 1993 Sweden, Holland, Ireland
- 1993 New Zealand introduced The Human Rights Act which explicitly includes sexual orientation as a new ground for anti-discrimination⁵
- 1994 South Africa was the first country to explicitly safeguard the rights of lesbians and gays in the Constitution⁶
- 1996 US Supreme Court order that no state can pass legislation that discriminates against lesbians and gays. (Previously, different states had different statutes)

Despite the gains that have been made internationally on the enactment of anti-discrimination legislation, in the past two decades, new, regressive legislation has been introduced in the U.K. in 1989 where Section 28 of the Local Government Act states that it is, "Illegal for local government to

⁴Ministry of Children and Family Affairs, *The Norwegian Act on Registered Partnerships for Homosexual Couples*, (Norway: 1993), p. 5-6.

⁵Human Rights Commission - New Zealand, *The Human Rights Act* (New Zealand: 1993)

⁶*Unspoken Rules - Sexual Orientation and Women's Human Rights*, ed. Rachel Rosenbloom, (USA: International Gay and Lesbian Human Rights Commission, 1995), p.187.

‘promote homosexuality’, or teach ‘acceptability of homosexuality as a pretended family relationship’ in schools.”

In practice, this has meant discrimination against lesbians and gays in employment in educational or health services by the State.

Cases of discrimination that have come to public attention in India

1. *Leela Shrivastav and Urmila Namdeo* - In February 1988, national dailies carried the highly sensationalised story of Leela and Urmila, two women constables of the Madhya Pradesh Special Armed Force who had been discharged from service because they were reported in the press as having married each other. The ostensible grounds for discharge were “Unauthorised absence” and, “Conduct unbecoming of Public Servants”. The State is the largest employer and none of the service rules define homosexuality as an act of misconduct. Clearly, the constitutional prohibition of discrimination and guarantee of equality of opportunity in employment do not hold in the case of lesbian women.
2. In January 1992, seven school-girls from Class nine and ten were expelled from a government high school in Thiruvananthapuram, Kerala for being a “lesbian grouping.” The majority of the opinions expressed by the adults considered their behaviour as, “abnormal” or a “passing, adolescent phase.” Few, if any, asserted anything to the contrary, or protested their expulsion.

4. Domestic Partnership Rights

The marriage of Leela and Urmila in Bhopal was the first in a series of several women to women marriages that have come to public / media attention in recent years:

- May 7, 1988: *Indian Express* (Bangalore edition) carried a brief story of Asaruna Gohil (31) and Sudha Amarsingh (29), employed in a panchayat school at Vadadhali village, Naswadi taluka (Gujarat) - who wanted to continue living together. The two women signed a statement at the district court in the presence of a notary and entered into a friendship contract called “Maitri Karar” in Gujarati.
- March 21, (Year unknown): *Indian Express* reported the story of two young women - Vinodha Adkewar (18) and Rekha Choudhary (21) who approached the Registrar of Marriages in Chandrapur in order to get married. The two women were from the villages Patri and Dadgaon and had met each other during a family gathering almost 4 years previously. Their relationship grew, despite the distance between their homes, ending in their resolve to marry. Initially, Khadse, the registrar told them that he would check and

see if it was legally possible. However, later, when public attention was drawn to the case, he and the District Superintendent of Police dissuaded the women from even living together.

- **Date unknown:** *The Tribune*, Chandigarh in an article "Woman weds 'woman'" reported the story of Neeru alias Dinesh Sharma and Meenu who married and were living together in Faridabad. They were married on July 9th, in a temple in the presence of friends of both the women. They had met at a *jagrata* and started meeting regularly. "I know society will not accept this marriage, but despite all odds, we have decided to live together," said Neeru, who is aware of the marriage of Leela and Urmila in Bhopal.

Legislation in other countries

- 1988 Sweden introduced legislation limited to inheritance and common property rights
- 1989 Denmark introduced similar legislation
- 1993 Norwegian Act on Registered Partnerships for Homosexual couples was enacted.
- 1994 The Netherlands has local government acts allowing registry, but no national laws
- 1993 Several cities and states in the US (Sao Paulo, San Francisco) have Domestic Partnership legislation

These are all "small town" women, with little or no access to "Western" influences, trapped in circumstances that force them to

conform to compulsory heterosexuality - even if it means undergoing a sex change. These women have mostly limited access to the resources necessary to enable them to live independently, or even access the city-based lesbian and gay support group networks. Despite this, they have the courage to publicly assert their determination to live and love together. The economic and social vulnerability of such women makes the legal and social acceptance of their relationship vital.

Beyond social recognition is the need for the legal rights that accrue to two people in marriage. Lesbian and gay families today do not have even recognition, let alone the rights that are taken for granted in heterosexual couples. Thus we feel that any discussion of family laws should include the rights of lesbians and gays to form families of their own choosing, and to be accepted as such, with all the rights and privileges that come from such an acceptance. Some of the rights and privileges that would put lesbian and gay relationships on par with heterosexual ones include:

1. The regulation of legal and financial rights and obligations
 - * Maintenance liability in the event of termination of partnership or death
 - * Joint taxation

- * Joint insurance
 - * Social benefits - old age pension, single parent benefits
 - * Debt, mortgage loans
 - * Common property, inheritance
2. "Next of kin" privileges in the event of terminal illness / accident or death
 3. Regulation of the rights and care of children
 - * Custody and maintenance
 - * Adoption
 - * Artificial insemination
 - * Child support from the State
 4. Immigration rights for bi-national couples. This is already available in some countries such as Australia (where a non-related significant other can immigrate), Norway (both partners need to be resident, one a national), New Zealand, Canada, and the Netherlands.

In Europe, registration of domestic partnerships is viewed from an economic angle, which benefits rich couples, and not poor couples, since the former gets tax benefits, and the latter lose State benefits provided to single people, if they were to register a domestic partnership. "Marriage" as a religious institution is still sacrosanct. It is the "contract", i.e. the economic, social and legal regulation of domestic affairs, which is accepted, while adoption, child custody and artificial insemination rights are still denied to lesbian and gay couples.

In addressing the issue of rights for lesbian and gay couples, there are two possible routes to enacting the legislation. In the first, the legislation enacted is the same as that for heterosexual couples and in the second, the legislation for lesbians and gays is separate from that for heterosexual couples.

In practice, in most countries, the latter route has been adopted - and this has primarily been to assign certain economic and legal rights/ benefits of heterosexual marriage contracts to homosexual unions. However, even in the most "progressive" countries, these rights are not fully equal to those enjoyed by heterosexual couples.

Gender Justice

True gender justice means not only laws for women and men in hetero-relations but justice that recognises and gives rights to all people not within this paradigm. These include not just lesbians and gays, but also other marginalised peoples - transgenders, transsexuals, bisexuals and others. Only if people of all genders and their lived realities are reflected

and recognised within law, and their human and family rights granted, only then can we have real and effective gender justice.

Keeping this in mind, *Forum Against Oppression of Women* (a group of which each one of us in the *Working Group* is a member) has included homo-relational realities as part of a vision of gender-just laws⁷. Homo-relational families, a lived reality in the Indian context, have been recognised on par with hetero-relational families. The laws governing such contracts have, however, been kept somewhat different because as stated in the draft on gender just laws:

"According to us although the status accorded to homosexual and heterosexual contracts has to be equal, the laws governing these cannot be the same because we presume an inequality in all hetero-relational realities. The terms of settlements and the rights of each individual in these realities are hence different from those of the persons in a homo-relational reality. Since gender is not the only factor that creates the power balance between two persons, these other differences are taken care of when referring to rights of the individuals in a homo-relational reality."

In keeping with this the suggestions put forward about the rights of persons in a homo-relational partnership are as follows:

- Each partner has an equal right to the matrimonial home.
- Each person has the complete right over the property that they individually own at the time that the contract is made. Both partners have an equal share and jointly own all property that is subsequently acquired.
- Each partner is responsible for the well being of the other with greater responsibility on the one who is earning to meet the material needs of the other.
- Both partners are guardians of the children jointly adopted and are responsible for their welfare.

Similarly, at the time of dispute / breakdown of the partnership the following suggestions have been made:

- Either partner can ask for a divorce claiming irretrievable breakdown of the marriage. Such a divorce would get finalised six months after filing the petition.
- The property acquired during the relationship would be divided equally.
- Either of the partners can have a right to maintenance or residence only if destitution is proved. The right to residence is for a maximum period of one year.

⁷ Forum Against Oppression of Women. "Visions of Gender Just Realities", Bombay: December 1995

- If a child is adopted, the responsibility for providing maintenance and residence to the child is with both parents.

This vision of partnership laws and recognition to homo-relational families is being presented in the context of re-looking at the family, of questioning the dominant understanding of the family as a hetero-relational, monogamous and patrilocal unit. We believe that this is the context in which we need to place the debate of lesbian and gay partnership rights. As stated earlier, in doing so, we presume decriminalisation and anti-discrimination clauses as necessary parts of the law.

As the situation exists in India today, none of this is a reality. However, our struggle for our rights is a step towards this reality. Acceptance of families and sexualities other than heterosexual ones has been a long battle all over the world. It is the work of various individuals and groups that has helped achieve some visibility and acceptance to all these issues. We look upon this meeting as a starting point of such a collective struggle within the Indian context.

BOOK

Rights issues related to Bisexuality

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"Is bisexuality a 'third kind' of sexual identity, between or beyond homosexuality and heterosexuality? Or is it something that puts in question the very concept of sexual identity in the first place? Why, instead of hetero-, homo-, auto-, pan-, and bisexuality, do we not simply say 'sexuality'? And does bisexuality have something fundamental to teach us about the nature of human eroticism?"

Majorie Garber in *Vice Versa: Bisexuality and the Eroticism of Everyday Life*

Introduction (or, 'Why there is no concept of *Bisexual Rights*')

There is a limited amount of writing on bisexuality and experiences of bisexuals in India. Most references to bisexuality seem to be an (insignificant but politically correct) appendage in what is being called the lesbian, gay, *bisexual*, transgender (LGBT) Movement. Specific rights related issues affecting bisexuals, as bisexuals, have not been addressed or even articulated. This unfortunate reality, perhaps, owes to the fact that there is no concept of a bisexual identity in the Indian context (as yet?). Bisexuality issues do not occupy much space within either heterosexual or homosexual spaces and there is no separate bisexual space. To talk of *bisexual rights* would be to prematurely presume the existence of a bisexual identity, a bisexual community and a bisexual space. Keeping this in mind the scope of this article has been drawn out.

The present legal discourse on LGBT rights is barely a discourse on sexuality. It is constrained by the fact that same sex behaviour is criminalized. Legal debate more or less starts and stops with Section 377 of the Indian Penal Code, which criminalizes same sex behaviour and in the bargain violates the right to life, the right to privacy, the right to

equality and arguably, the right to freedom of expression. It also has the impact of making other rights, which form a part of the right to life, inaccessible. For e.g. the fear of prosecution and discrimination is a barrier in accessing essential health care related to same sex behaviour, such as treatment for anal STDs. As such, debate revolves around the rights *guaranteed* to everyone, but which are not presently available to LGBT, or which are being violated in the context of LGBT. The debate must now go beyond this and must look ahead into how we want the legal regime to change in order to make space for, and respect for different sexualities. In order to do so, there is a need to first conceptualise a *right to sexuality*, and then go on to the issue of gay rights, lesbian rights, bisexual rights etc. This article attempts to provide a basis for such a process. The article then goes on to describe the manner in which the present legal system impacts on bisexuals and bisexuality. This involves an analysis of the scope and impact of various provisions of law and the legal construction of sexuality. Interestingly, the non-recognition of different sexualities within the law has itself created some spaces, which are touched upon in this article.

The Right to Sexuality

A question that needs to be answered before discussing the right to sexuality is why there is a need for such a right in the first place. At one level, sexuality and sex are at the centre of gender relations. The regulation of sex is a significant tool in maintaining the status quo of oppressive gender and economic structures. Change in the manner in which this control is maintained would be difficult without the development of consciousness of sexuality within individuals. At another level, sexuality is so basic to the self that its denial derogates against the very idea that each person has a fundamental human right to a wholesome life.

The legal regulation of sexual activity has largely been in order to promote the interests of a patriarchal economic structure. For example, the focus of law against adultery is ensuring that a man should not have to bear the responsibility of a child who does not belong to his lineage. Therefore there is presently no concept of a legal right to sexuality. However, recognition of limited aspects of what may constitute such a right include:

- The right to a family life and marriage are considered fundamental rights, under Articles 21 and 19 of the Indian Constitution. The right to marry is also recognised as a basic human right in international human rights conventions that are applicable in India¹.

Article 16 of the Universal Declaration of Human Rights, Article 23 of the International Covenant of Civil and Political Rights, Article 10 of the International Covenant on Economic, Social and Cultural Rights. All these recognise the right of individuals to marry and form families.

- The right to privacy has been recognised in India to include the right to protect 'personal intimacies of the home, the family, marriage, motherhood, procreation and child-rearing'².
- Conjugal rights, which are provided in various matrimonial laws, are the clearest recognition of a right to have sex. They basically imply that if one person in a marriage leaves the other, a court can order her/him to return³.
- The right to non-discrimination on the basis of sexual orientation, which is available in some countries⁴. This means that where such a right has been recognised, the State cannot discriminate against sexuality minorities and all laws would have to be in consonance with this principle of non-discrimination. This also means that laws that criminalize homosexuality would be invalid.

The heterosexual bias in the first three can hardly be ignored, but they at least recognise that the right to have "legitimate" sex should be respected. The only focus of these rights related to sexuality is the protection of the heterosexual, monogamous paradigm and does not extend to anything or anyone outside its parameters. Even within these parameters, the focus is the permanence of the institution and not sexuality or its expression. Other laws that contribute to the legal construction of sexuality are also based in the heterosexual and monogamous paradigm. This includes the laws of rape⁵, offences relating to marriage⁶ and the infamous Section 377. A recent Allahabad High Court⁷ judgement is a startling exception to this overwhelming structure. The judgement has stated that there is nothing illegal about two adults (here of the opposite sex) living together without getting married. This is perhaps the first recognition of a right to sexuality outside the strict constraints of heterosexual monogamy. Though this judgement is bound to have ill-effects on women in

2 *Gobind v State of Madhya Pradesh*, (1975) 2 SCC 148.

3 An order for the restitution of conjugal rights is not practically enforceable, i.e. one cannot actually be forced to live with or to have sex with one's spouse. Implications of non-compliance with the order are that the spouse gets a ground for divorce, one's property could be attached and one's right to get maintenance may be affected.

4 The Constitution of the Republic of South Africa specifically provides a right against discrimination on the basis of sexual orientation. Although none of the international human rights documents specifically state sexual orientation as a ground of non-discrimination, most of them contain the phrase 'any other status'. Some courts have interpreted this phrase to include sexual orientation. In India, there is no parallel interpretation as yet.

5 Section 375/6 of the Indian Penal Code

6 Chapter XX of the Indian Penal Code, which includes offences such as Bigamy, adultery and 'enticing away a married woman'.

7 As yet unreported.

heterosexual marriages who often face abandonment, it is significant from the perspective of a right to sexuality.

Very clearly then, the two norms that predominantly determine the morality of sex and the legal construction of sexuality are heterosexuality and monogamy⁸ /fidelity. The movement towards a right to sexuality must contend with these in creating an environment where there is no fear or discrimination against particular types of sexuality.

The right against discrimination mentioned above can be applicable in India only when there is an interpretation of the relevant provisions of the Constitution to include a right against discrimination on the basis of sexual orientation (or identity), or if the legislature makes a law to such effect. It is perhaps only after such legal intervention in India that further debate on a right to sexuality can be effectively advocated.

From a normative perspective, the right to sexuality ought to revolve around the right to an environment where one could, without fear of discrimination or violence, explore the terrain of one's sexuality and the right to *expression* of one's sexuality. It should also entail the right to the development of lifestyles suited to the expression of various sexualities. This would imply the existence of a legal system that recognises, treats without discrimination and promotes all possible sexual orientations and gender identities. Just as the right to health implies that the state has a responsibility to ensure not just that health services are available, but also that they are accessible to all, the right to sexuality would imply that the state has a responsibility to ensure that all possible sexual orientations and gender identities have the space to be realised and to evolve. This would also imply a massive change in the dominant attitudes and stereotypes about sexuality in civil society and a responsibility on the state to take steps to promote such change.

In order to realise the right to sexuality for all sexualities, it is necessary to understand the specific issues and tension points that may come up in the contexts of different sexualities. The present paper is concerned specifically with bisexuality.

Bisexual and bisexuality – definitional problems

Who is a bisexual? Is it a person who has sex with both men and women? Does one have to be sexually active with both men and women to be considered bisexual? What if a person who in the past has been sexually attracted to men and women now identifies as

⁸ For the purpose of this article the term monogamy is used to refer to not just marriage in the legal sense but also to other two person partnerships that have the characteristic of exclusivity.

homosexual/heterosexual? Is bisexuality to be understood in the context of present behaviour, past experiences or possibilities in the future?

According to the Kinsey scale⁹, a person's sexuality may be placed on a scale of 0 to 6, where 0 implies that a person is totally heterosexual and 6 implies that a person is completely homosexual. Bisexuals are those in between, i.e. scoring between 2 and 5 on the scale. The explanation, although simplistic, clearly articulates that there are not just two types of sexual orientations. Years later, Fritz Klein came up with a grid to replace the Kinsey scale¹⁰. The grid takes into consideration the fact that sexual orientation is an ongoing dynamic process and that many people change their orientation over time. It takes into account past sexual experiences, sexual identity, fantasy, attraction, emotional and social preferences and behaviour. This is a more holistic understanding of sexuality and provides a greater scope for understanding bisexuality.

Neither of these systems, however, is suited for an understanding of sexuality in terms of the myriad factors that go into its formation. Neither considers the gender identity of the bisexual as relevant, nor do they take into consideration the impact of gender differences on the nature of the sexual interaction between people. Their focus is simply the sexual act and at best, sexual attraction. Sexuality, it is submitted, cannot be understood in two-dimensional terms such as a scale or a graph. The understanding must include gender identity, gender relations and other social factors that influence sexual activity and attraction.

'Bisexual', for the purposes of this article, thus, is a person who is sexually attracted to or capable of being attracted to persons of *more than* one gender.

Definitions based on identity and on behaviour are undesirable in the Indian context as they are particularly limiting in the context of bisexuality. The politics of identity in the context of perceived biphobia¹² in heterosexual and homosexual communities has been known to cramp self-identification.¹³ At the same time, the bisexual identity is not particularly developed in terms of a unique lifestyle or community, as are the gay and lesbian identities

⁹ Alfred Kinsey et al. *Sexual Behavior in the Human Male*. (Philadelphia: W.B. Saunders; Bloomington: Indiana U. Press, 1948/1998) pp. 636-659. [Discusses Heterosexual-Homosexual Rating Scale]

¹⁰ Fritz Klein, *The Bisexual Option* (New York: Haworth Press, 1993).

¹¹ The term bisexuality itself is based on a problematic understanding of gender, as it presumes the existence of just two genders. It does injustice to the complex interaction between gender and sexuality and to flexibility in gender identity itself. Alternatives suggested include "Pansexual" and 'Allsexual'. Since bisexuality is a better-known term, it has been retained for the purposes of this article, but its literal meaning has been changed to make it more gender sensitive.

¹² Biphobia is the expression of fear, hatred or prejudice towards bisexuals.

¹³ People's Union For Civil Liberties, *Human Rights Violations Against Sexuality Minorities in India: a PUCL-K Finding Report About Bangalore*, 2001, pg. 48.

in urban centres. Neither is the bisexual identity political in the manner that the gay and lesbian identities are. In some sense, then, the bisexual identity is less empowering than its monosexual counterparts and there are, therefore, more bisexuals than care to openly identify themselves as such. Basing a definition on identity, thus, would be inappropriate. Similarly, sexual behaviour may not have a direct correlation with one's sexual attraction to a given gender. Social and cultural factors affect the actual sexual behaviour of a person, making a definition based on behaviour incomplete.

There are different types of bisexuals. There are those who identify as heterosexual and live heterosexual lives (married with children etc.), but who are also attracted to, or sexually active with people who are not of the opposite gender/sex. There are those who choose the gay or lesbian identities and live gay and lesbian lifestyles, but who are attracted to or sexually active with those of the opposite gender/sex. There are those who alternate between heterosexual and homosexual identities over periods of time and those who have 'changed' or converted from one lifestyle to another. Finally, there are a small number of persons who identify themselves as bisexuals and who live lifestyles suited to their type of bisexuality. Very clearly, bisexuality questions the belief that *sexual orientation* is a static state of being. It opens the possibility of understanding sexuality as a dynamic and constantly evolving aspect of one's personality, affected by experiences.

A definition of bisexuality that is based on attraction and capability for attraction keeps this option open and includes all these 'types' of bisexuals. Each and every one of these people, just like heterosexually and homosexually identified people, ought to have the right to sexuality.

The right to sexuality from a bisexual context

Heterosexuality as the norm is a common adversary to be dealt with for all sexuality minorities. Displacement of heterosexuality as the norm will require societal change, which, to a large extent, falls outside the scope of the law. The law, however, may be a useful tool in aiding the process, by providing recourse against discrimination, recognising civil rights of sexuality minorities, and by recognising different lifestyles in laws that regulate inter-personal relations and between individuals and society at large. This would also imply changes in laws that affect public dialogue on sexuality, such as the provisions dealing with obscenity and the right to information.

What then makes the right to sexuality different in the context of bisexuality? Bisexual, by definition means that the sexual orientation of a person is not linear, and that it is not completely expressed in a monosexual context. For bisexuality to be expressed, there must be space for

sexual relations with people of more than one gender and thus, more than one person. The right to sexuality in the context of bisexuality then implies that the same legitimacy that is socially provided to monogamy be provided to partnerships that involve more than two people. It implies space for creation of alternative partnerships and lifestyles that are viable for bisexuals.

The value placed on 'fidelity' and monogamy is so deeply engrained that a substantial amount of energy in the dialogue between sexualities is spent on providing evidence that queers are *also* capable of monogamy, 'commitment' and long-standing relationships. The presumption that all people finally settle in monogamy seems to be common to the dominant heterosexual paradigm as well as the dominant homosexual paradigm. The issue is not whether monogamy is a good or bad lifestyle choice, but that monogamy is a norm oppressive especially to the process of realisation and expression of bisexuality¹⁴.

From a bisexual context, thus, the realisation of the right to sexuality entails not just a challenge to the imposition of heterosexuality, but also to the imposition of monogamy. The bisexual agenda would not be fulfilled in the recognition of same sex marriages or the recognition of property rights and employment benefits to same sex partners (if and when that happens). This is where the bisexual agenda departs from the dominant lesbian/gay agenda.

How law impacts on bisexuals

Whether it is criminal law or fundamental rights or rights under civil laws, the law reflects the dominant morality and supports the dominant economic structure. In doing so, it either discourages lifestyles and choices that are different from the dominant morality or actually criminalizes them.

Section 377 criminalizes same sex behaviour. The drafters of the Section were not in a position to envisage identities based on sexuality and as such, focussed purely on *sexual acts*. This implies that the criminal law is not concerned whether the people having sex identify as gay, lesbian, bisexual or otherwise. It is not concerned with whether on other occasions the 'criminal' has had sex with members of the opposite sex. In this regard, the criminal law applies to bisexuals as much as it does homosexual men and women¹⁵. Similarly, the impact of Section 377 on

¹⁴ In a heterosexist world, which unfortunately seems to be the world we live in, it must be pointed out that the norm of monogamy is beneficial in certain contexts. Women's groups have been struggling with the inefficacy of bigamy laws for years now in cases where married women have been abandoned by their husbands. These contexts will have to be kept in mind while dealing with the norm of monogamy.

¹⁵ The question of whether Section 377 applies to same sex activity between women (whether bisexual or lesbian) is one that has been much debated. Section 377 has an explanation, which states that penetration is *sufficient* to constitute the carnal intercourse addressed by the provision. Firstly, it is not clear whether an explanation to this effect implies that penetration is *necessary* for the offence to be made out. Secondly, whether penetration means only penetration involving a penis is not yet clear. Whether Section 377 applies technically or not, it has been used as a tool of harassment against lesbians in the past.

availability of safe spaces, opportunity to negotiate safer sex, access to medical services related to STDs without fear of prosecution and discrimination among other things affects bisexuals as much as it does other sexuality minorities.

Matrimonial laws¹⁶, needless to say, are all based on the heterosexist monogamous paradigm. Certain personal laws provide legitimacy to polygamy, but in a heterosexist and patriarchal manner¹⁷. Since the law does not recognise homosexual relationships as marriage, bisexuals who choose to be monogamous with members of the same sex are disadvantaged just as homosexuals who desire legal validity of their relationship and matrimonial rights. On the flip side, laws relating to bigamy do not affect bisexuals who have relationships outside marriage since homosexual partnerships are not recognised as marriages.

Bisexuality is, however, a ground for divorce i.e., most matrimonial laws provide a woman with a ground for divorce if her husband is guilty of sodomy¹⁸. This implies that if a bisexual married man is shown to have had sex with another man, the woman he is married to automatically obtains a ground for divorce. These provisions apply to Hindus¹⁹, Christians, Muslims and those married under the Special Marriage Act. In these personal laws, sodomy as a ground for divorce is available only to women and as such, if a bisexual woman is sexually active with a woman, it does not give her husband a ground for divorce. The Parsi law, however, is different from these statutes. Firstly, it provides the ground of 'unnatural offence' rather than sodomy, which would include sexual activity between women. Secondly, the ground is available to women as well as men. As such, Parsis can more easily divorce their bisexual spouses if they are involved in same sex behaviour. It must, however, be pointed out that where sodomy/unnatural offences are not specifically listed out as grounds for divorce, the term 'cruelty' may well be interpreted to include same sex behaviour by one's spouse. Cruelty is a ground for divorce in all matrimonial laws²⁰.

These laws reflect Judeo-Christian morality enshrined in English matrimonial statutes even though they are supposed to be merely the codification of religious laws.

¹⁶ In India, different matrimonial laws apply to people of different religions. Some of these religious laws have been made into statutes, i.e. laws made by parliament.

¹⁷ Muslim men in certain circumstances may get married to more than one woman, whereas no personal law permits women to marry more than one man.

¹⁸ Section 10 of the Indian Divorce Act, 1869, Section 27 of the Special Marriage Act, 1954 and Section 13 of the Hindu Marriage Act, 1955, Section 32 of the Parsi Marriage and Divorce Act, 1936.

¹⁹ The legal definition of Hindu practically includes all people of India except Christians, Muslims and Parsis. As such, Sikhs, Jains and Buddhists are also considered as Hindus for the purposes of law.

²⁰ Except in the Indian Divorce Act, which requires that for a woman to get a divorce on the grounds of cruelty, there must be the presence of another ground such as adultery or bigamy. Section 10 of the Indian Divorce Act, 1869.

Provisions relating to Adultery form a part of the chapter in the Indian Penal Code that deals with 'offences related to marriage'. Section 497²¹, which defines Adultery, is amongst the most obvious articulations of patriarchy in our law. According to this Section, whoever has 'sexual intercourse' with 'a person who is the wife of another man' and without the 'consent or connivance' of that man may be punished. The woman, in this provision is the property of the man she is married to. This is the interest that is protected by the provision. The provision is not applicable where a married man has sex with another man (married or unmarried) or a woman not presently in a marriage. The question in the context of bisexuality is whether a woman who has sex with a married woman is punishable under this provision. Although there is no legal pronouncement on the issue, it may be said that the provision would not apply for the following reasons:

'Sexual intercourse' is a requirement for the offence to be made out. The term has been interpreted in the context of rape law to require vagino-penile penetration. As such, non-penetrative sex and non-vagino-penile penetrative sex fall outside the ambit of the provision.

The law presumes that a woman is not capable of making sexual decisions and thus cannot be punished under the provision. She is considered as the 'victim' of the crime and not an abettor or participant.²² Due to this patriarchal presumption, the law is not in a position to deal with a situation where both parties to a consensual sexual act are women.

The wordings of the remaining chapter on offences relating to marriage, which will be considered when interpreting the provision, are very clearly concerned only with heterosexual sex. It is the non-recognition of minority sexualities that has exempted bisexuals from punishment in this provision.

The impact of various laws thus depends on the recognition or non-recognition of bisexuality. Some laws like Section 377 and grounds of divorce recognise same sex behaviour and attach negative implications to it. Others do not envisage same sex behaviour and thus leave certain spaces open. In the context of the overall criminalisation of same sex behaviour, however, it must be said that these spaces are presently irrelevant. Their significance may grow only when Section 377 is done away with.

²¹ Section 497 reads – "*Adultery* – whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall be punished as an abettor."

²² *Sowmitri Vishnu v Union of India*, AIR 1985 SC 1618

Conclusion

The discourse on sexual orientation presently functions on the polarisation of heterosexuality and homosexuality. Bisexuals in this polar world of words and spaces lie neither here nor there. Being the permanent outsiders bisexuals largely only have the option of identifying as homosexuals in homosexual spaces and heterosexuals in heterosexual spaces. The effect at a personal level is that a person may have a heterosexual or/and homosexual relationship, but never a 'bisexual relationship'. One may be 'this' or 'that' at different points of time but at no point in time be bisexual. There are no personal or political spaces where the sexuality of a bisexual may be expressed. Change in this situation is difficult to envisage but it is necessary to begin creating spaces where such a vision may be created. This requires the incorporation of bisexuality issues in the dominant sexuality discourse. This requires addressing biphobia in both heterosexual and homosexual spaces. Trauma, confusion and the lack of a sense of belonging to a community often lie deep within the realms of bisexuality. However people identify, they must understand that bisexuals are not 'fence sitters', or those who 'want the best of both worlds' and that bisexuals are not people who don't want to accept that they are homosexual, or heterosexuals who just want to identify as queer because it is politically correct.

Providing space for bisexuality issues implies shifting focus from identity and behaviour to the understanding of sexuality itself. It implies the deconstruction of the presumptions that operate in our understanding of human sexuality. It implies creating a less restrictive space for gender and sexuality identification and more fluidity in the meaning of gender. It further implies challenging not just the biases in heterosexism with respect to sexual orientation, but also the *structure* of heterosexism.

The law is, and may continue for a long time to be, based on presumptions of heterosexuality and monogamy. In the bargain, it leaves certain voids, which may on the one hand disadvantage queers and on the other leave spaces to be used fruitfully. Such will be the situation until there is a legal and social recognition of a comprehensive right to sexuality. The onus of sparking of such a conceptualisation perhaps lies with the movement for the rights of sexuality minorities.

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Medicalization of Homosexuality: A Human Rights Approach

5008

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(reproduced from *Combat Law*, April - May 2002).

"I approached a psychiatrist, assuming he would help me. 'Help' he did. 'It's all in the mind,' he said. My bout of depression (which I never realised arose from bottling up gay orientation), he glibly informed, was a disease called schizophrenia. 'Your gayness is the cause of delusions and hallucinations,' he said. He prescribed 'Orap' and 'Serenace,' which are powerful neuroleptic medicines. The nightmare began in earnest, lasting 15 years, ravaging body and soul... I took an overdose of Orap, hoping to die. I did not. I was rescued. As a reward I was given shock therapy, which played havoc with my memory for over two years... My moods were always bleak, my senses dull, & my thinking blurred." – Hemant

Introduction

Though there were ancient traditions of same sex love in the world, the homosexual as a person is a particularly modern invention. The emergence of the homosexual as a person is closely tied to the way the medical sciences and the law have categorised him / her..

As Michel Foucault noted, "This new persecution of the peripheral sexualities entailed an incorporation of perversions and a new specification of individuals. As defined by the ancient civil or canonical codes, sodomy was a category of forbidden acts, their perpetrator was nothing more than the juridical subject of them. The nineteenth century homosexual became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology... The sodomite was a temporary aberration; the homosexual was a species."²

What is clear from Foucault's description is that the medical sciences, such as sexology, psychiatry and psychology, have played a key role in this transition from conceptualising sodomy as a sin to which all people can fall prey, to conceptualising homosexuals as a category of people with perverse desires. There is also a shift from looking at homosexuals, as people who knowingly commit sin, to people who because of a medical condition, are prone to this kind of 'perverse' behaviour. What follows is the discovery that homosexuals are to be 'treated' and not punished for their behaviour.

However, is 'treatment' as opposed to 'punishment' any real advance in terms of respecting the dignity of the person? Or is it just another mode through which society seeks to control the homosexual? This is a question that needs to be asked. Once again Foucault envisages the new modes through which homosexuality is conceptualised as discourses which extend social controls more deeply than the previous attempts by canonical law. Psychiatry and psychology are thus seen to incorporate perverse sexualities within the system of knowledge of modern medicine, and thereby extend the system of social controls over people with same sex desires. It is time that 'treatment' is looked through the lens of human rights.

Medicalization of homosexuality

Since the historical shift from sodomy as a sin, to the homosexual as a species, how have homosexuals been treated by the medical profession? As noted earlier, the treatment of the homosexual is individualized, with each person having a case history. The theoretical premise underlying treatment was that 'individuals are much alike sexually and that it is an equally simple matter for all of them to confine their behaviour to the single pattern which the mores dictate.'³

The treatment of homosexuals formed a part of the treatment of a larger list of perversions, which included fetishism, voyeurism, kleptomania, sadism, masochism, transvestism, corphophilia, undinism, frottage, chronic satyriasis and necrophilia. The elaboration of these 'perversions'⁴ further institutionalised the normality of heterosexuality.

To understand what was normal, one needed to stigmatise these 'perverse' sexualities. As Jeffery Weeks put it, 'The negative side of this classificatory enthusiasm was a sharp reinforcement of the normal... the debates over the causes of the perversions and the eager descriptions of even the most outrageous examples inevitably worked to emphasise their pathology, their relationship to degeneracy, madness and sickness, and helped to reinforce the normality of heterosexual relationships.'⁵

The treatment model of homosexuality builds on the ambivalence in Freud's understanding of homosexuality. Freud distanced himself from the viewpoint that homosexuality was a sign of degeneracy on the grounds that this was no more than a 'judgement of value, a condemnation instead of an explanation'. In a famous letter to the mother of a young homosexual, Freud assured her that homosexuality was no vice or degradation, nor was it

an illness: it was nothing to be ashamed of. But he added: 'We consider it to be variation of the sexual function produced by a certain arrest of the sexual development.'⁶

It was the final part of Freud's statement, that it was a 'certain arrest of the sexual development,' that was picked up by his followers who advocated heterosexuality as the only non-pathological outcome of sexual orientation. Homosexuality was seen as the result of having a domineering mother / absent father and as a pathology to be cured. Another of Freud's followers, Sandor Rado, laid the foundations of reparative therapies, which are designed to change the sexual orientation of the patient.⁷

Reparative therapies are aimed at changing the sexual orientation of the patient through a variety of techniques, including the administration of nausea inducing drugs, shock therapy and behavioural therapy. Particularly in the west, reparative therapy includes even work done by faith based organisations such as Exodus, who use religion as a therapeutic tool to bring about a change in sexual orientation.

Reparative therapies: If it ain't broke, don't fix it?

There are problems with reparative therapies at many levels. They can be stated as follows: Firstly, the fundamental objection is quite neatly summarised by Halpert, by saying that if it ain't broke, don't fix it. If we see sexual orientations as an example of the incredible diversity of human desire, why should it be converted back to a heterosexual orientation? Further, in a world where heterosexuality as the only viable option is constantly drilled into us by the various agencies of social conditioning like the family, media, the law, schools and social networks, it becomes almost impossible for a person to even imagine a non-heterosexual alternative. In such a context, the role that the medical profession should play is to counter the heterosexism of mainstream society by putting forward the idea of gay / lesbian / bisexual life as a non-pathological alternative. As Halpert aptly notes, 'to attempt to cure is to reinforce bigotry.'

Secondly, the techniques used, which include behavioural therapy, nausea-inducing drugs and electric shocks, are in themselves ethically questionable. They violate the dignity of the patient at the very least, and at the most extreme, they are a form of torture. As an example we could look at what happened with one such case, which went before the National Human Rights Commission. During the counselling therapy sessions, 'the doctor explicitly told the patient that he needed to curb his homosexual fantasies, as well as start making women rather than men the objects of his desire. The doctor also administered drugs intended to change the sexual orientation of the patient, providing loose drugs from

his stock rather than disclosing the identity of the drug through formal prescription. The patient reports experiencing serious emotional and psychological trauma and damage, as well as a feeling of personal violation, due to these actions.⁸ The human right to live with dignity guaranteed by the ICCPR as well as the Constitution stands violated.

Thirdly, in a heterosexist society, treatments such as aversion therapy provide enormous scope for doctors to act to the detriment of their patients, without questioning their own biases. As an interview with a behavioural therapist in Bangalore indicates, the doctor drew a linkage between drug use and gays; and HIV / AIDS and gays, noting that both were more common in the gay community. Such negative stereotypical opinions led the doctor to prescribe medical treatment to all patients who came to him, even if he felt that the patient was distressed about his homosexuality due to social and cultural factors.⁹ Finally, there are serious doubts about the efficacy of the treatment itself. In his survey, Halpert notes, 'that there is virtually no empirical evidence supporting the efficacy of the techniques.'¹⁰ Further, it is almost impossible to say if one has, through treatment, eliminated homosexual desire or has merely coerced heterosexual activity.

Conversion therapy: the stand taken by the US

This disease model of homosexuality has been questioned on a sustained basis ever since the birth of the gay and lesbian movement. In fact, this sustained questioning has led to the American Psychiatric Association removing homosexuality as an illness from the Diagnostic and Statistical Manual of Mental Disorder (DSM-3) in 1973. This was followed up by a resolution of the American Psychiatric Association in 1998, which read, 'The American Psychiatric Association opposes any psychiatric treatment, such as reparative therapy or conversion therapy which is based upon a prior assumption that the patient should change his / her homosexual orientation.'¹¹ The American Psychological Association did not go so far as to condemn reparative therapy as unethical, but the resolution on conversion therapy requires all psychologists to disseminate accurate information about sexual orientation, provide informed consent and alternative treatment information, and practice in a non-discriminatory manner in a value-neutral environment.¹²

Conversion therapy: The Indian context

By contrast in India, the medical establishment – The Medical Council of India, the Indian Medical Association and the Indian Psychiatric Association – has adopted the WHO system of classification of mental and behavioural disorders, known as ICD -10 (1992). This system distinguishes between ego syntonic and ego dystonic homosexuality, and specifically mentions ego dystonic homosexuality, bisexuality and heterosexuality as

psychiatric disorders.

In ego dystonic homosexuality, bisexuality or heterosexuality, the gender identity or sexual preference is not in doubt, but the individual wishes it were different & seeks treatment. In such a case, treatment is warranted. In ego syntonic homosexuality by contrast, the individual is comfortable with his or her sexual preference or gender identity and treatment is not warranted. Apart from the ego syntonic-dystonic distinction, if a person faces problems in maintaining a sexual relationship due to the person's sexual preference or gender identity then ICD-10 classifies it as a sexual relationship disorder, which also warrants treatment.

As the PUCL Report makes clear, the syntonic-dystonic distinction is problematic for the following reasons. Firstly, though it is claimed that the determination of whether a person suffers from ego syntonic or dystonic homosexuality is a clinical determination, a reputed doctor at a prominent Bangalore hospital has conceded that a person's distress with his homosexuality may be due to different factors like pressure to get married or need to conform to culturally appropriate sexual practices.¹³

Secondly, many doctors assume that any patient who comes to them is suffering from ego dystonic homosexuality. There is not even the perfunctory attempt to see if the patient is syntonic.

Thus in a context of a society where there is little information about same sex desires and relationships, gays, lesbians, bisexuals, transgenders and others have been subject to a wide range of medical treatments, which include administration of drugs that induce nervous reactions, shock therapy and behavioural therapy – all aimed at coercing heterosexual behavior.¹⁴

Due to lack of adequate research, there are no statistics as to the number of people treated by aversion therapy in India. There are only occasional reports of psychiatric abuse, which elicit a column in the newspaper and are then forgotten. The first case to be taken up in an organized manner by the sexuality minority community was the case of the AIMS patient who went to the NHRC.

The NHRC case

A petition was filed in the case of a patient from the All India Institute For Medical Sciences (AIIMS), who was being treated by a doctor at the AIIMS psychiatry department for the past four years to cure him of his homosexuality. The patient himself noted that, 'Men, who are confused about their sexuality, need to be given the opportunity to go back to heterosexuality. I have never been confused but was nevertheless told that I had to be 'cured' of my homosexuality. The doctor put me on drugs which I had been taking for four years.'¹⁵ The patient went to the Naz Foundation India (an organization working on MSM issues), and the coordinator of the MSM Project, Shaleen Rakesh, filed a complaint with the National Human Rights Commission (NHRC), alleging psychiatric abuse involving a patient at the All India Institute of Medical Sciences (AIIMS). The treatment reportedly involved two components: counselling therapy and drugs. During the counselling therapy sessions, the doctor explicitly told the patient that he needed to curb his homosexual fantasies, as well as start making women rather than men the objects of his desire. The doctor also administered drugs intended to change the sexual orientation of the patient, without disclosing the identity of the drug through formal prescription. The patient reports experiencing serious emotional and psychological trauma and damage, as well as a feeling of personal violation.

The moment the petition was filed, there was a wide mobilization of the sexuality minority community and a number of letters were written to the NHRC, urging it to protect the rights of the sexuality minority community. The NHRC, admitted the complaint (No 3920, filed on May 29, 2001), but finally chose to reject it.

In its formal dismissal of the complaint, the NHRC did not offer any written or oral opinion on the issue, and merely rejected the complaint that requested the NHRC to address the psychiatric treatment of homosexuality from a human rights perspective.

Informal conversations with the Chairman of the NHRC revealed some of the reasons why the NHRC chose not to address the issue. The Chairman believed that till Section 377, Indian Penal Code¹⁶ changed, nothing could be done. Also, most of these organizations were funded by international bodies and there was no real grass roots support. According to another NHRC source, 'Homosexuality is an offence under IPC, isn't it? So, do you want us to take cognizance of something that is an offence?' (*The Pioneer*, Thursday, August 2, 2001.)

What is clear from the above comments is that there is a significant lack of understanding

of gay people as human beings whose lives encompass a complexity that goes beyond the mere fact of a certain kind of sexual act. There seems to be an easy collapsing of the category of sexual act, sexual identity and sexual orientation, with 'sexual act' defining identity and orientation. Further, there is no concept that same sex love has its histories and traditions rooted in the history of India. The existence of sexuality minority communities is a fact that will have to be taken into account by mainstream society and its institutions.

The future

What is clearly needed is a wider mobilization and campaigning around the issue of the medical treatment of homosexuality, clearly focusing on how such treatment violates the dignity and self-respect of the patients. The campaign should focus on highlighting the reality of gay, lesbian, bisexual and transgender lives, and how such 'treatments' profoundly disrespect the diversity of human sexuality.

Apart from the wider campaign, the following specific steps must be taken:

- ❖ The distinction between ego dystonic and ego syntonic homosexuality has to be done away with. This would mean a lobbying to change the ICD - 10 classification system by the WHO.
- ❖ The Medical Council of India, the Indian Medical Association and the Indian Psychiatric Association have to pass resolutions clearly specifying the circumstances under which they will treat ego dystonic patients in a homophobic world. Treatment, if at all, should only follow the transmission of value-free, non-judgmental information about homosexuality, along with the existence and contacts of gay and lesbian groups functioning in the country.
- ❖ The Medical Council of India, the Indian Medical Association and the Indian Psychiatric Association should clarify what informed consent of the patient to the treatment means. Informed consent should put the burden clearly on the doctors to inform the patient of the variety of other options before contemplating treatment.
- ❖ The Medical Council of India, the Indian Medical Association and the Indian Psychiatric Association should also undertake sensitization workshops with doctors on the issue of sexual orientation, so that doctors can be made aware of their unconscious heterosexism.
- ❖ Section 377 of the Indian Penal Code needs to be repealed, as it is a completely archaic provision of law, which legitimizes discrimination against sexuality minorities.

- 1 'Gay in the Garden City,' Bangalore Monthly, September 1998, p 82.
- 2 Michel Foucault, *The History of Sexuality vol 1*, Penguin, 1978, Harmondsworth, p 43.
- 3 Alfred Kinsey, *Sexual behaviour in the human male*, cf. Jeffery Weeks, *Sexuality*, Routledge, 1981. p76.
- 4 Weeks makes the point that why not call these deviations from the norm diverse forms of human sexuality, rather than refer to them as perversions. *Ibid*.
- 5 Jeffery Weeks, *op.cit.*, p 71.
- 6 *Ibid*.
- 7 Stephen Halpert, *If it aint broke, don't fix it: Ethical considerations regarding conversion therapies*, International Journal of Sexuality and Gender Studies, Vol 5, No. 1, 2000
- 8 See Action Alert by IGLHRC with respect to medical treatment of homosexuality in India, 2001. ..
- 9 *Human Rights Violations against Sexuality Minorities in India – A PUCL-K Fact-finding Report about Bangalore*, a Report of the Karnataka Chapter of the People's Union for Civil Liberties, 2001, p 31.
- 10 See Stephen Halpert, *op. cit.*.
- 11 *Ibid*.
- 12 *Ibid*.
- 13 See PUCL Report
- 14 *Ibid*.
- 15 Indian Express, 20.5.2001
- 16 S. 377, IPC has been used to criminalise even consensual sexual relationships between people of the same sex. It reads: 'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life...'

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Decriminalisation

8003

The first step in any move towards lesbian, gay and bisexual rights in India would, of necessity, be the repeal of Section 377 of the Indian Penal Code which criminalises homosexual acts. Aside from the fact that it is used to blackmail and intimidate lesbians and gay men, the existence of such a law precludes the possibility of other legal rights - whether it is protection from discrimination, or partnership benefits.

In the past decade, various groups and individuals in India have demanded the repeal of Section 377. The *AIDS Bhedbhav Virodhi Andolan* finally took a step towards actualising this demand through its writ petition (see following pages) filed in the Delhi High Court in 1994.

There is generally little disagreement among progressive groups on the need to decriminalise "private, consensual acts of sex between two adults". However, currently Section 377 offers the only legal recourse for victims of child sexual abuse, and coercive sodomy. Since rape laws do not recognise sexual violations other than penile - vaginal penetration, the clause "against the order of nature" in Section 377 is unclear enough to be interpreted to cover child sexual abuse and coercive sodomy. The debate among progressive groups - in particular within the women's movement - has centred around the need for sexual assault laws that explicitly prohibit child sexual abuse and coercive sodomy to be introduced, *before* Section 377 is repealed. Women's groups have long campaigned for a comprehensive sexual assault bill in which Sections 376 (covering rape) and 377 are repealed, and new laws formulated. The Law Commission of India in its 172nd Report has produced a draft bill on sexual assault in which Section 377 is proposed to be repealed. Despite this progressive move (for discussion, see section on *Protections Against Human Rights Abuses*).



Lawyers have pointed out that from their experience of the courts, judges would generally be more reluctant to completely repeal a code than to "read it down" (i.e., interpret it in a restricted manner). We could then consider the alternative petition for the interpretation of Section 377 to *exclude* all private, consensual sexual acts between adults. In December 2001, *Lawyer's Collective* and *Naz India Trust* filed a new petition in the Supreme Court asking that the statute be "read down" in such a manner.

Included in this chapter on decriminalisation are: a summary of the international legal scenario vis-à-vis decriminalisation of homosexuality, a paper presented by Advocate Shobha Aggarwal on the ABVA petition for the repeal of Section 377, an article by Shamona Khanna on Gay Rights (reproduced from *The Lawyers*), which is followed by an updated study by Alok Gupta of the cases filed under Section 377. We also include a reproducible leaflet with information to protect victims of blackmail or harassment under Section 377.

Striking Down Sodomy Statutes - The International Legal Scenario

906

Most countries in Europe have repealed sodomy statutes, with France being the first country to do so, in 1791, with the introduction of the *Code Napoleon*¹. In this century, countries that have repealed similar statutes criminalising homosexuality have generally done so on the grounds of violations of fundamental civil rights to life, liberty, privacy, freedom of speech and expression, and the right to equal protection (against discrimination) under the law. These countries have recognised that the state cannot legislate "private, consensual acts between two adults".

It is, however, also a fact that physical violence directed at gay men and lesbians occurs even in countries that have decriminalised homosexuality, or in countries that have no explicit sodomy statutes. In fact, in these latter countries, prosecution of gays is often on the general ground of "offences against morality". The point then, as always, is that "decriminalisation / legalisation" does not necessarily bring about social acceptance. It is one thing to argue that the State should have no power to legislate morality or sexuality, and quite another to broaden the social norms of morality and sexuality. Despite this, lesbians and gay men continue legal struggles throughout the world, forging change so rapidly that it is difficult to keep up to date with the information.


Ironically, it is in the former colonised countries of Asia, Latin America and Africa where laws prohibiting "crimes against the order of nature" persist as relics of the colonial past. In most cases, as in India, while actual prosecution under the law is rare, the threat of the law is used to blackmail or harass gay men and lesbians. As of date, the recent changes in formerly colonised countries have included:

In December 1998, Chile repealed the section that criminalized same-sex sexual relations between consenting adults. Under the old provision homosexual relations between consenting adults could be punished with up to 5 years imprisonment at the judge's discretion. However, inequality persists in that the age of consent for same-sex activities was set at 18 - higher than that for heterosexual activity - under the new Article 365. With the repeal of the Chilean law, the last states in Latin America that still criminalise homosexual activity are Nicaragua and Puerto Rico².

¹ Andre Krouwel. "Human Rights and Sexual Orientation or the Difficult Balance between Morality and Law - A Comparison of Western, Eastern and Central European Countries". Paper presented at the annual meeting of IGLYO, Manchester:

² IGLHRC 2001, <http://www.iglhrc.org/>

In December 2000, the United Kingdom forced the repeal of sodomy statutes in its Caribbean territories of Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands - despite the opposition from the local governments³. While Britain can compel these old colonies [the Territories] to reform, other post-colonial countries that share the old British sodomy statutes are not only recalcitrant, but regressive regarding reform. For example, in Sri Lanka and Trinidad and Tobago, law reforms repealing sodomy statutes were blocked by conservative forces in their parliaments. The ultimate revisions of the Penal Code are worse in both countries, because homosexuality is now not only “unnatural”, but is conflated with pederasty and public sex. Furthermore, in Sri Lanka, due to new gender neutral language, lesbian sex is now also within the purview of the law..



In the African continent, the most heartening example is South Africa, where, in order to actualize the constitutional protection against discrimination due to sexual orientation, in May 1998, the High Court struck down several laws that ban gay sex. This ruling was further extended in an October 1998 judgement which gave men convicted of sodomy since 1994 (the year the provisional post-apartheid constitution came into force) the right to claim monetary damages and the deletion of their criminal records. "Gay men who have been persecuted for hundreds of years in this country now have the right to (file) claims from the state," said Zackie Achmat, director of the National Coalition for Gay and Lesbian Equality, which sought the ruling.

Gay and lesbian organisations in other African countries like Zimbabwe and Namibia have to contend with repressive and extremely homophobic attitudes from both political and religious leaders⁴.

In the U.S the decriminalisation battle is being fought state-wise. Thirty-one states have repealed the sodomy statutes in the US, usually as part of a general revision of the criminal code, with the recognition that heterosexuals as well as homosexuals engage in oral and anal sex. However, there are eighteen states that still retain sodomy statutes. Of these, five state's laws apply only to same-gender activity - Arkansas, Kansas, Oklahoma, and Texas. Twelve other states have an opposite and same-gender sodomy law - Alabama, Arizona,

³<http://www.gaylawnet.com> - *Gay Law News*

⁴<http://www.gaylawnet.com> -Gay Law News

Florida, Idaho, Louisiana, Massachusetts, Minnesota, Mississippi, North Carolina, South Carolina, Utah, and Virginia. At present, trial courts in Louisiana, Michigan and Missouri have ruled sodomy statutes as unconstitutional, however the rulings have yet to be made applicable state wide. The Lambda Legal Defense is currently challenging the statutes in Arkansas and Texas⁵.

In a shocking setback in 1986, the U.S Supreme Court upheld the Georgia sodomy statute in the *Bowers v. Hardwick* judgement, declaring that state laws prohibiting homosexual sodomy are not unconstitutional. Justice Byron R. White rejected the argument that previous decisions such as the Court's rulings on abortion and contraception had created a right of privacy that extends to homosexual activity. Instead, the Court drew a sharp distinction between the previous cases, which involved "family, marriage, or procreation," and homosexual activity. Justice White observed that the former are liberties that are deeply rooted in tradition. To the argument that homosexual activity should be protected when it occurs in the privacy of a home, Justice White said, "otherwise illegal conduct is not always immunised whenever it occurs in the home. For example, the possession of drugs or stolen goods is not protected because it occurs at home." Of course, such a judgement is in the conservative tradition of circular arguments, "it is illegal/ immoral because it has been defined so". When cases challenge the legality of criminalisation, a just examination of the case should not begin with the presumption of illegality – as the judge in this case has done.

International legal institutions and international human rights conventions have been relatively slow to recognise lesbian and gay rights that are violated by sodomy statutes. A classic example is the 1981 decision of the European Court of Human Rights in the *Dudgeon case* (of the United Kingdom). In this case, the Court classified a total ban on homosexuality as a breach of Article 8 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. The judgement striking down the U.K's sodomy statute was not automatically applied to other European countries with similar or the same law provisions. Thus, citizens of Ireland (Norris; decision in 1988) and Cyprus (Modinos; 1993) had to go through the whole legal process up to the European Court in order to get the same decision delivered again⁶.

While in Ireland sodomy has been decriminalised, in Cyprus, despite the European Court of Human Rights decision in favour of decriminalisation in Cyprus in 1993, the Cypriot House of Representatives stalled the process due to militant opposition from the dominant Greek Orthodox Church. Finally, the Council of Europe - an umbrella organisation of

⁵Lambda Legal Defense, June 2000

⁶IGLHRC 1997 the Year in Review

European states, Eastern as well as Western - threatened Cyprus with expulsion if the law was not repealed by May 29, 1998. Thus pressurised, on 21 May 1998, the parliament of the Republic of Cyprus voted to change its law. However, the new law was even more repressive since it would punish "encouraging" homosexuality, as well as public manifestations of it—including placing personal ads for gay partners. Since the Council of Europe has made decriminalisation of homosexuality a condition for country membership, however, in June 2000 the parliament of Cyprus enacted complete decriminalization. Other new member countries of the Council of Europe are also undergoing a similar process: Azerbaijan has repealed its sodomy laws in September 2000, and Romania is preparing to do so⁹.

A breakthrough in international recognition of gay and lesbian rights came in 1994, with Amnesty International publishing the book *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*. Since then, international lesbian and gay rights lobbying has resulted in international institutions and human rights organisations pressurising countries to repeal existing sodomy statutes.

1994 also witnessed the landmark judgement in the case of *Nicholas Toonen v. Australia* in which the United Nations Human Rights Court directed the State of Tasmania to repeal its sodomy statute. Nicholas Toonen, a gay activist of Tasmania successfully argued that this statute violated Articles (protecting life, liberty, privacy, freedom of speech and against discrimination) of the *International Covenant on Civil and Political Rights*. After nine years of community organising to repeal Tasmania's anti-gay law, the Tasmanian legislature finalised a vote to repeal their statute criminalising same-sex relations on May 1, 1997.

Post the *Toonen* decision, the United Nations Human Rights Committee has expressed concern over statutes discriminating against homosexuals in Cyprus, Romania, the United States, Hong Kong, Zimbabwe and Austria, since these countries are signatory to the *International Covenant on Civil and Political Rights*¹⁰.

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⁹<http://www.gaylawnet.com> - *Gay Law News*, June 1998

⁹<http://www.ilga.org> - *World Legal Survey*

¹⁰<http://www.ighrc.org/news/factsheets/990430-intljuris.html> - *International Jurisprudence*

Continent and Country wise Status of Decriminalisation of Homosexuality

BOX

Several organisations and researchers have worked on compiling information on the legal status of homosexuality around the world - each list building on the previous one as information is constantly updated. The list on the following pages is based on primarily the Amnesty International and ILGA sources, to which current IGLHRC information has been added. A few cautionary notes that the compilers of these lists have used as a preface bear repeating here. Firstly, laws and their interpretations and enforcement are complex phenomena that are specific to the cultural contexts - and this cannot be reflected in a table such as the one below. Some discussions on this, as well as social attitudes to the law are in the sources cited. Secondly, the absence of a country from this list, or the fact that homosexuality is "not mentioned in law as such" does not necessarily indicate that gays and lesbians are not prosecuted in that country under "morality" or "decency" laws.

Key to Sources

I	<i>Index on Censorship, Laura Bruin 1995</i>
P	<i>The Third Pink Book (1993), Aart Hendriks et al, 1993</i>
GI	<i>ILGA (International Lesbian and Gay Association) Annual Report, 1996/7</i>
H	<i>Charles Ramana, Human Rights Guide 1989</i>
A	<i>Breaking the Silence: Human Rights Violations Based on Sexual Orientation, Amnesty International, 1997.</i>
IGLHRC	<i>International Gay and Lesbian Human Rights Commission</i>

EUROPE

Country	Source	Law (Includes date of decriminalisation, or Penal Code Article, and maximum sentence available if known)
Albania	A	Legal since 1994.
Andorra	Gl	Not mentioned in law as such.
Armenia	Gl	Illegal for men, women not mentioned.
Austria	P	Legal from age 18 since 1971.
Azerbaijan	P	Illegal for men, women not mentioned.
Belgium	I	Legal from age 16 since 1792.
Bosnia – Herzegovina	A	Illegal for men. Section 93.2 “Unnatural debauchery” - 1 year imprisonment.
Bulgaria	P	Legal from age 21 since 1968.
Croatia	Gl	Legal from age 18.
Cyprus	IGLHRC	Illegal. Although the European Court of Human Rights required decriminalisation of the sodomy statute in 1993, the parliament has yet to implement this.
Czech Republic	Gl	Legal from age 15.
Denmark	Gl	Legal since 1930.
Estonia	P	Legal since 1992.
Faroe Islands	GL	Legal.
Finland	P	Legal since 1971.
France	I	Legal since 1791.
Georgia	I	Illegal for men, women not mentioned.
Germany	I	Legal.
Greece	I	Legal.
Hungary	Gl	Legal.
Iceland	Gl	Legal.
Ireland	A	Legal since 1993.
Italy	I	Legal since 1889.
Latvia	P	Legal since 1992.
Liechtenstein	Gl	Legal.
Lithuania	I	Legal since 1993.
Luxembourg	I	Legal since 1792 from age 16.
Macedonia	I	Illegal for men. Section 101 (2) - 1 year imprisonment. Women not mentioned.
Moldova	Gl	Illegal for men, women not mentioned.

Monaco	Gl	Legal.
Montenegro	Gl	Legal from age 14 since 1977.
Netherlands	P	Legal since 1811 from age 16.
Norway	P	Legal from age 17 since 1972.
Poland	Gl	Legal since 1969.
Portugal	Gl	Legal from age 14.
Romania	A	Illegal "If causing public scandal" under Article 200 - 5 years imprisonment.
Russian Federation	A	Legal from age 15 since 1993.
San Marino	Gl	Legal.
Serbia	Gl	Legal.
Slovakia	Gl	Legal.
Slovenia	Gl	Legal.
Spain	Gl	Legal.
Sweden	Gl	Legal from age 15.
Switzerland	Gl	Legal since 1942.
Ukraine	A	Legal since 1991.
United Kingdom	Gl	Legal from age 18.
Vatican City	Gl	Legal.

ASIA - PACIFIC & MIDDLE EAST

Country	Source	Law (Includes date of decriminalisation, or Penal Code Article, and maximum sentence available if known)
Afghanistan	I	Illegal for men and women. Sharia Law applies.
Armenia	P	Illegal for men.
Australia	A, IGLHRC	Legal in all states since Tasmania repealed its sodomy statute in 1998.
Bahrain	P	Illegal for men and women. Sharia Law applies.
Bangladesh	P	Illegal for men and women – imprisonment upto 7 years.
Bhutan	I	Illegal for men.
Brunei	P	No legal information obtained.
Burma	Gl	No legal information obtained.
Cambodia	Gl	No legal information obtained.

China	Gl	Not mentioned in law as such. Some prosecution under Section 106 "Hooliganism", "Disturbance against the social order". Imprisonment upto 5 years.
Fiji	I	Illegal for men. Section 168 "Carnal knowledge against the order of nature" - 14 years imprisonment. Section 169 "Attempts" - imprisonment upto 7 years. Section 170 "Gross indecency" - 5 years imprisonment plus possible corporal punishment.
French Polynesia	I	Legal.
Guam	Gl	No legal information obtained.
Hong Kong	I	Legal since 1991.
India	I	Illegal for men Section 377 "Unnatural act against the order of nature" - imprisonment or fine.
Indonesia	I	Not mentioned in law as such.
Iran	I	Illegal for men and women. Sharia Articles 139 to 156 - punished by execution including death by stoning or cleaving in two, amputation of hands or feet, whipping.
Iraq	P	Not mentioned in law as such. Section 293 of the Penal Code punishes gay men and lesbians who commit sexual acts without the consent of the partner.
Israel	I	Legal since 1988.
Japan	Gl	Not mentioned in law as such.
Jordan	I, Gl	Illegal for men and women.
Kazakhstan	A	Legal since 1993.
Kiribati	Gl	Illegal for men. Section 153 "Buggery" - 14 years imprisonment. Section 155 "Attempted buggery" - 7 years imprisonment. Section 155 "Gross indecency private or public" - 5 years imprisonment.
Korea Republic of	Gl	Not mentioned in law as such.
Korea Democratic Republic of	Gl	Legal for men and women.
Kuwait	Gl	Illegal for men and women. Sharia Laws apply.
Kyrgyzstan	A	Illegal for men and women. Article 112.
Laos	A	No information obtained. (Arrests of homosexuals reported in 1992)
Lebanon	I	Illegal for men and women.

Macao	I	Legal.
Malaysia	GI, P, IGLHRC	Illegal for men. Section 377, 377a. Contradictory reports on whether law applies to women as well.
Maldives	GI	No information available.
Marshall Islands	GI	Not mentioned in law as such.
Micronesia	GI	Not mentioned in law as such.
Mongolia	GI	Not mentioned in law as such.
Nauru	GI	No information available.
New Zealand	P	Legal from age 16.
New Caledonia	P	Legal.
Niue	GI	Illegal for men. Section 170 "Buggery" - 10 years imprisonment. Section 171 "Indecent assaults on men" - 5 years imprisonment.
Oman	P	Illegal for men and women. Section 32 - 3 years imprisonment.
Pakistan	P	Illegal for men and woman "Carnal knowledge against the order of nature". Section 377 - life imprisonment and 100 lashes.
Papua New Guinea	P	Illegal for men.
Philippines	GI	Not mentioned in law as such.
Qatar	P	Illegal for men and women. Sharia Law applies.
Saudi Arabia	GI	Illegal for men and women. Sharia law applies.
Singapore	GI, P	Illegal for men and women. Section 377, 377a.
Solomon Islands	GI	Illegal for men.
Sri Lanka	GI	Illegal for men.
Syria	GI	Illegal for men and women. Section 52 "Carnal knowledge against the order of nature" - 3 years imprisonment.
Taiwan	GI	Legal for men and women. Offence for soldiers "Converted to homosexuality" - punishable by possible execution.
Tajikistan	GI	Illegal for men, women not mentioned.
Thailand	GI	Legal from age 16.
Tonga	GI	Illegal for men. Section 126 "Abominable crime of sodomy" - life imprisonment. Section 127 "Attempts" - 7 years imprisonment.

Turkey	Gl	Not mentioned in law as such, but prosecutions under indecency laws.
Turkmenistan	Gl	Illegal. Section 126 - 5 years imprisonment.
United Arab Emirates	P	Illegal for men and women. "Unnatural offences" – 14 years imprisonment. "Obscene acts" – fine or 2 years imprisonment.
Uzbekistan	Gl	Illegal for men. Article 100. women not mentioned.
Vanuatu	Gl	Not mentioned in law as such.
Vietnam	P	Not mentioned in law.
Western Samoa	Gl	Illegal for men and women.
Yemen	Gl	Illegal for men and women.

AFRICA

Country	Source	Law (Includes date of decriminalisation, or Penal Code Article, and maximum sentence available if known)
Algeria	I	Illegal for men and women. Section 338 - 3 years imprisonment.
Angola	P	Illegal Offence against public morality.
Benin	I	Not mentioned in the law.
Botswana	A	Illegal for men. Section 164 and Section 167 "Carnal knowledge against the order of nature" - 2 years imprisonment.
Burkina Faso	I	Legal from age 21. Section 331 applies for those under 21 years.
Burundi	A	Not in law as such, but punishable as an immoral act.
Cameroon	Gl	Not mentioned in law as such.
Cape Verde	Gl	Illegal for men & women. Section 390, Section 391, Section 405 and Section 406 "Act against nature" and "Assaults on public or personal decency".
Central African Republic	Gl	Not mentioned in law as such.
Chad	Gl	Not mentioned in law as such.
Comoros	Gl	No information obtained.
Congo	Gl	Not mentioned in law as such.
Djibouti	A	Illegal.

Egypt	P	Not mentioned in law as such.
Ethiopia	P	Illegal for men and women. Section 601 and Section 602 - 3 years imprisonment.
Gabon	I	Not mentioned in law as such.
Gambia	Gl	No information obtained.
Ghana	I	Illegal for men.
Guinea Bissau	P	No legal information available.
Ivory Coast	P	Not mentioned in law as such.
Kenya	I	Illegal for men Section 162 – 5 “Carnal knowledge against the order of nature” – 14 years imprisonment and corporal punishment.
Lesotho	I	Not mentioned in law.
Liberia	I	Not mentioned in law.
Libya	I	Illegal for men and women. Section 407 (4) - 5 years imprisonment.
Madagascar	Gl	Not mentioned in law as such.
Malawi	I	Illegal for men and women. Article 153 “Unnatural offences” Article 156 “Public decency”.
Mali	Gl	No legal information available.
Mauritania	Gl	Illegal for men and women. Sharia laws apply – execution.
Mauritius	Gl	Illegal for men and women.
Morocco	Gl	Illegal for men and women. Section 489 “Unnatural sex acts” - liable to prosecution and 3 years imprisonment with fine of 1000 dinars.
Mozambique	Gl	Illegal for men and women. Section 70 and 71 – 3 years imprisonment.
Namibia	Gl	Illegal for men. “Unnatural sex acts” liable to prosecution. Women not mentioned in law.
Niger	Gl	No legal information available.
Nigeria	Gl	Illegal for men. Article 214 “Carnal knowledge against the order of nature” – 14 years imprisonment. Women not mentioned in law.
Reunion	Gl	Legal.
Rwanda	Gl	Not mentioned in law.
Sao Tome & Principe	Gl	No legal information available.
Senegal	GL	Not mentioned in law as such.
Seychelles	Gl	Illegal for men and women.

Sierra Leone	Gl	No legal information available.
Somalia	Gl	No legal information available.
South Africa	Gl	Legal since 1998 court ruling decriminalising sodomy statute.
Sudan	Gl	Illegal for men and women.
Swaziland	Gl	Illegal for men and women – imprisonment or fine.
Tanzania	Gl	Illegal for men. Articles 154 to 157 – 14 years imprisonment.
Togo	P	Illegal for men – 3 years imprisonment.
Tunisia	Gl	Illegal for men and women. Section 230.
Uganda	Gl	Illegal for men; Section 140 “Carnal knowledge against the order of nature” – life imprisonment. Section 143 “Procurement or gross indecency” – 5 years imprisonment.
Zaire	P	Illegal for men and women. Section 168 to 172 “Crime against family life”.
Zambia	P	Illegal for men. Section 155 to 158 – 14 years imprisonment.
Zimbabwe	P	Illegal for men – fines.

NORTH, SOUTH & CENTRAL AMERICAS

Country	Source	Law (Includes date of decriminalisation, or Penal Code Article, and maximum sentence available if known)
Antigua & Barbuda	P, I, Gl, IGLHRC	Contradictory reports – possibly decriminalised.
Argentina	P	Not mentioned in law as such. “Offence against morality” - 30 days imprisonment.
Aruba	P	Legal from 16 years.
Bahamas	Gl	Illegal for men and women. Section 390 for men. Section 52g for women - 10 years imprisonment. (Law due to be repealed)
Barbados	P	Illegal for men and women.
Belize	P	Legal since 1988.
Bermuda	I	Illegal for men. Section 173 “Homosexual act” - 10 years imprisonment. “Attempted contact” - 5 years imprisonment.
Bolivia	I	Legal.
Brazil	Gl	Not mentioned in law as such.

Canada	Gl	Legal from age 18 since 1988.
Cayman Islands	Gl	Illegal for men. Article 142. Women not mentioned in the law.
Chile	Gl	Illegal for men. Article 365. Women not mentioned in the law. (Ongoing attempts to decriminalise sodomy laws)
Colombia	Gl	Not mentioned in law as such.
Costa Rica	Gl	Not mentioned in law as such.
Cuba	P	Illegal for men and women. Article 303 to 309 "Public scandal" – 1 year imprisonment.
Dominica	P	No information obtained.
Dominican Republic	P	Not mentioned in law as such, but often punished as "Offence against morality".
Ecuador	Gl	Illegal for men. Article 516 – upto 8 years imprisonment.
El Salvador	P	Not mentioned in law as such.
Falklands	Gl	Legal as in the U.K.
French Guyana	I	Legal.
Greenland	Gl	Legal.
Grenada	Gl	No information available.
Guadeloupe	Gl	Legal.
Guatemala	Gl	Not mentioned in law as such.
Guyana	I	Illegal for men. Section 353 – possible life imprisonment. Section 242 "Buggery" – 10 years imprisonment. Section 351 "Attempted buggery" – 2 years imprisonment.
Haiti	Gl	Not mentioned in law as such.
Honduras	Gl	Not mentioned in law as such.
Jamaica	Gl	Illegal for men. Section 76 - 9 – imprisonment for 10 years.
Martinique	Gl	Legal.
Mexico	Gl	Not mentioned in law as such.
Netherlands Antilles	Gl	Legal.
Nicaragua	GL	Illegal for men and women.
Panama	P	Not mentioned in law as such.
Paraguay	P	Not mentioned in law as such.
Peru	Gl	Legal.

Puerto Rico	Gl	Illegal.
Saint Kitts & Nevis	Gl	Not available.
Saint Lucia	Gl	Illegal for men and women.
Surinam	Gl	Legal.
Trinidad & Tobago	Gl	Illegal for men and women. Section 13 Sexual Offences Article "Buggery" – 10 years imprisonment. Section 16 "Serious indecency" – 2 years imprisonment.
Turks and Caicos Islands	Gl	Illegal for men, women not mentioned.
United States	Gl	Legal in 31 states, illegal in 20 states.
Uruguay	Gl	Not mentioned in law as such.
Venezuela	Gl	Legal from age 18.

ABVA Writ Petition for the Repeal of Section 377

Shobha Aggarwal, ABVA

Paper presented at workshop on "Strategies for furthering lesbian, gay & bisexual rights in India", Mumbai, 1997.

The law criminalising homosexuality was first suggested during British rule by the Indian Law Commission in 1837. Their report of that period records the absurd information that although homosexuality was "extinct" it was necessary to introduce this law without debate, since they feared debate might put ideas into people's heads about the possibilities! In 1861 this law was codified in the Indian Penal Code along with other criminal laws.

The history of the public debate on the repeal of Section 377 begins soon after the release of *Less than Gay*, when a petition was moved by AIDS Bhedbhav Virodhi Andolan (ABVA) in the Petitions Committee of Parliament. The repeal of Section 377 could be demanded on the grounds that it violates the following articles of the Indian Constitution:

1. Article 14-15 (Right to protection against discrimination)
2. Article 19 (Right to freedom of speech and expression),
3. Article 21 (Right to life and liberty - which encompasses the right to privacy)

This parliamentary petition has, however, remained dormant till date for want of a Member of Parliament to argue the petition in parliament. Meanwhile, in 1994, media attention focused on Tihar jail where Inspector General of Prisons, Kiran Bedi refused to allow distribution of condoms to the male prisoners on the grounds that there was no homosexual activity in the prisons. She argued that even if there was, the prison authorities would be encouraging a crime. ABVA used this incident to initiate a public interest litigation in the Delhi High Court for the repeal of Section 377 of the IPC. This petition uses the immediate reasons of the sexual health of prison inmates as one ground for the repeal of Section 377. A summary of the petition follows.

Summary of Civil Writ Petition 1784 of 1994 in the High Court of Delhi

AIDS Bhedbhav Virodhi Andolan (ABVA)

(AIDS Anti-Discrimination Movement)

Petitioner

versus

1. Union of India and Others
2. Delhi Administration
3. The District and Session Judge, Tis Hazari
4. Inspector General of Prisons, Tihar Jail
5. Superintendent of Jail, Tihar Jail
6. National AIDS Control Organisation (NACO)

Respondents

A writ petition under Articles 226 and 227 of the Constitution of India challenging the Constitutional validity of Section 377 of the India Penal Code 1861 and for the issuance of a writ in the nature of Mandamus, certiorari, prohibition or any writ direction or order directing the respondents to take appropriate measures in order to prevent the spread of the disease known as AIDS and the targeting / segregation of certain groups or individuals.

The petitioner urges:

1. That the ABVA is an association established in 1988 working in the field of AIDS, has brought out several reports on the status of the so-called high risk groups, including "Less than Gay", a report on the status of homosexuality in India.
2. That as reported in the Press recently *The Pioneer* 10.2.94, 21.2.94, 27.3.94 and 2.4.94 respondent No. 4 Ms. Kiran Bedi, I.G. Prisons has made statements which will lead to horrific consequences, that condoms will not be supplied in the Tihar Jail because it would a) mean encouraging homosexuality, b) admitting that homosexuality is rampant amongst prisoners and since it is a crime under Article 377 IPC, distributing condoms will mean acceptance of a crime and aiding this crime.
3. That the petitioner fears that the Government's own National AIDS program is not going to be implemented, condoms are not going to be supplied to prisoners and those suspected to be homosexual might be segregated or prosecuted under Section 377.

4. That this will lead to large-scale spread of HIV infection in India. Preventing HIV transmission in prisons not only protects prisoners, but the larger communities also since the prisoners may leave the jail infected and spread the infection.
5. That sex between prisoners is widespread all over the world, inspite of penalties. Consensual adult sexual acts cannot be clubbed with forced homosexual acts, which the petitioner is against.
6. That a plain reading of Section 377 shows that homosexuality per se is not an offence; sodomy (heterosexual or homosexual) is.
7. That Section 377 itself is obsolete and must be struck down as being unconstitutional and violative of fundamental rights of Indian citizens for following (among other) reasons:
 - a) Because the right to privacy is part and parcel of the fundamental right to life and liberty under Article 21 of the Constitution and has also been recognised by the International Convention on Human Rights 1948.
 - b) Because Section 377 is violative of Article 14 of the Constitution since it discriminates against persons purely on basis of their sexual orientation.
 - c) Because drafted in 1833, Section 377 is archaic and absurd, passed by the British in all its colonies. Campaigns in other countries have resulted in decriminalising private adult homosexual consensual acts (in England & Wales in 1967, Hong Kong 1990). India is one of the few countries to retain this law.
 - d) Because even Amnesty International has taken a positive stand on homosexuality in its report of 1987. The Kinsey report on Human Sexuality in 1948-53 surveyed that 2% of women are lesbian and 4% of men are homosexual. The American Psychiatric Association established homosexuality to be perfectly normal. The President, Indian Medical Association has also made a statement to this effect. The idea that sexual relations must take place only within a prescribed sexual format shows bias, ignorance and lack of tolerance.
8. That even if Section 377 is not held unconstitutional by the court, the court should direct the respondents to supply condoms to jail inmates without segregation, for AIDS prevention and other reasons.
 - a) Because segregation, torture, and surveillance will go against fundamental rights of prisoners and would not prevent spread of HIV. The most obvious way of AIDS prevention is to make condoms available at the jail pharmacy, which would be in keeping with public interest and health.
 - b) Because there is no nexus between distribution of condoms and increased sexual activity.

- c) Because the National AIDS Control Programme must be implemented which ensures condoms to all citizens including prisoners, failing which the Rs.200 crores been given to the Union Government from the World Bank after signing the London Declaration can be withdrawn.

Prayer

The petitioner prays the Court to:-

- a) Declare Section 377 of IPC 1908 as unconstitutional and void;
- b) Direct the implementation of Government's National AIDS programme
- c) Restrain respondents from segregating or isolating prisoners with a certain sexual orientation or those suffering from AIDS;
- d) Direct the respondents to immediately make condoms available at the dispensary in Tihar Jail, as also disposable syringes;
- e) Direct the jail authorities to regularly consult respondent 6, NACO;
- f) Direct an independent citizen's inquiry to look into health of prisoners and sanitary conditions in Tihar Jail.

We have also made it clear that the forced sodomy (between men) should be considered as rape and accordingly made punishable.

The case was admitted by the High Court on 8th February 1995 and is soon coming up for final arguments. Indian Council of Medical Research (ICMR) and All India Institute of Medical Sciences (AIIMS) have also been made respondents.

In the meanwhile, Union of India, NACO, Delhi Administration, I.G. of Tihar Jail (Kiran Bedi) had filed their rejoinders to which we replied. Union of India and NACO's rejoinders are very positive and support our petition. Kiran Bedi has stuck to her earlier response and has sworn on affidavit that:

1. There is no homosexuality in the Jail;
2. That there are no HIV positive / AIDS patients in the Jail.

Both of which are very ironical. The first statement is self contradictory, as she also states in the petition that if and when there are such incidents, these are dealt with severely.

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Gay Rights

BOOK

Shamona Khanna

(reproduced from *The Lawyers*, June 1992)

Homosexuality has for long been a tabooed subject – never spoken of, never discussed and yet practised. The social outlook towards homosexuality was codified in the law in the severely punitive Section 377 of the Indian Penal code of 1860. Today, the Section stands out as an anachronism, in sharp variance with international law, covenants to which India is a signatory and the Indian Constitution itself. Shamona Khanna outlines the changing attitudes towards homosexuality – both social and legal – and sharply focuses on the need for a change in the law on homosexuality.

Patriarchal society has for centuries attempted to control human sexual behaviour through severe social and legal sanctions against any deviations from the stereotype family – male headed, heterosexual, monogamous, child rearing, indissoluble. Sexual relations were confined to within the marriage and there too, to procreative rather than recreative purposes.

Challenge to the heterosexual family stereotype has always existed, but has gained momentum in this century with the growth of the women's movement, the sexual revolution and recently, gay liberation. In India, however, the majority of homosexuals lead secret and lonely lives, and those who do "come out" or get "caught" are often subject to severe censure, and under the Indian Penal Code, 1860, male homosexuals might even face imprisonment.

Position in UK

The King James version of the Bible in Leviticus 20:13 states: "If a man also lie with mankind as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them." (see also Leviticus 18:22).

This exhortation and the destruction of Sodom and Gomorrah is seen as the source of criminalisation of sodomy by common law countries. The English buggery statute of 1533 prescribed death for sodomy and in several instances, executions were carried out. The 1861 Offences Against the Person Act removed the death penalty for buggery, replacing

it by sentences of between ten years and life. The Indian Penal Code, 1860 still prescribes similar punishments.

In 1885, the Criminal Law Amendment Act, frequently referred to as the 'blackmailer's charter', made gross indecency, which includes all homosexual activities except 'buggery', punishable for the first time. In 1898, the laws on soliciting for "immoral purposes" were tightened and made to apply to male homosexuals. Lesbian activities were not acknowledged to exist and therefore were not proscribed. The Sexual Offences Act, 1956 consolidated all the existing law on the subject.

On the recommendation of the departmental committee on homosexual offences and prostitution under the chairmanship of Sir John Wolfenden, the Sexual Offences Act, 1967 was passed. It states: "A homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age 21 years", except with a person suffering from severe handicaps, on a UK merchant ship, and if any of the Armed Forces Acts forbids it. Punishments range from life for buggery on a boy under sixteen or a woman, to two years for gross indecency. Solicitation by men still remains an offence as defined in Section 32 of the 1956 Act.

The armed forces ban entry of homosexuals, but a parliamentary committee in May 1990, recommended dropping of the policy because it has resulted in "the loss to the services of some men and women of undoubted competence and good character" (*Time*, 19 August 1991).

Position in US

Most states in the USA had sodomy statutes of their own, and those that did not, incorporated the common law principles from the old English laws. At least half the statutes still retain sodomy statutes defining it variously. The age of consent also varies.

Foreigners/immigrants found to be homosexual are liable to be deported immediately. Homosexuals, both gay men and lesbians, are barred from the armed forces. Since 1943, when military psychiatrists redefined homosexuality as a medical disorder rather than a crime, the US armed forces have ousted between 80,000 and 100,000 gay men and lesbians (*Time*, 19 August 1991).

Position in India

In India, homosexuality has traditionally been tolerated, even celebrated, although the Manu Smriti pronounces severe punishments for male as well as female homosexuality. The Kamasutra contains an entire chapter entitled 'Auparishtaka' (oral congress) and

Vatsyayana, the author insists that the practice is permitted by the orders of the holy writ (Dharma Shastras) with just a few exceptions. One of the forms in which Shiva is worshipped is Ardhanarishwara, containing both the male and the female energies.

Alain Danielou in his book "Shiva and Dionysius" examines the tantric rite of anal penetration and goes on to state "the hermaphrodite, the homosexual and the transvestite have a symbolic value and are considered privileged beings, images of Ardhanarishwara."

The British obviously found the practice unchristian and abhorrent and in 1860, enacted the Indian Penal Code which in Section 377 states:

"Unnatural offences—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine."

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section"

The exact scope of this vague definition – "carnal intercourse against the order of nature" – has been a major subject of debate in the existing case law. It has generally been interpreted to include acts of anal sex (coitus per anum) as well as oral sex (coitus per os) between males. The possibility of this definition being extended to heterosexual acts of anal or oral sex also exists, but has not been tested. Consent of the other party is completely irrelevant for conviction, but it may be a relevant consideration while fixing the quantum of punishment.

It must be pointed out that homosexuality per se is not an offence and an "act" of unnatural intercourse has to be proved. In *Queen Empress v Khairati* [(1884) 6 All. 204], medical evidence to show that the accused was a "habitual catamite" was held to be insufficient for a conviction under Section 377, since no single incident of sodomy could be proved.

Precedents

Contrary to popular belief, a large body of case law exists on the subject, which has evolved quite independently from the English statutes on which it was initially based.

In the 30 cases (see table on following pages) under Section 377 which came before the various High Courts and the Supreme Court since 1830, the large majority of prosecutions have been for non-consensual acts of sodomy, with only 4 cases where consensual acts of sodomy have been brought to court, 3 of them prior to 1940. In addition, most of the cases, 15 out of 30, are of assaults committed on minors, only 5 out of 30 being on adults.

Many of these people had been tricked, tempted or even kidnapped and taken to lonely places and raped. Thus, though the scope of the Section covers all cases of sodomy, whether consensual or non-

Distribution of cases decided by High Courts & Supreme Court (1830-1989) between Consent, Age and Quantum of Sentences.

	No. of Cases	No. of Convictions	Consent		Age		Not Specified	Adult (18+)	Not Specified	Punishments	Max. Sentence	Average	Not Specified
			Consensual	Not Specified	Minor					Min. Sentence			
1830-1879	1	1	-	1	-1-	-	1	-	-	-	-	10 years	-
1880-1929	6	2	1	1	4	-	2	-	-	-	-	5 years RI	2
1930-1929	8	5	2	1	6	1	1	-	1	(attempted) 4 months RI	5 years RI + 20 stripes	2 years RI	-
1940-49	2	0	-	-	1	1	-	1	-	-	-	-	-
1950-59	2	1	-	2 (dead)	-	-	2	-	2	-	-	-	2

(Table Continues Overleaf)

	No. of Cases	No. of Convictions	Consent	Age	Adult (18+)	Not Specified	Punishments	Max. Sentence	Average	Not Specified
			Consensual	Minor			M in. Sentence			
1960-69	4	4	-	3	1	-	1 year RI	5 years RI	2 years RI	
1970-79	5	3	-	1	1	3	2 months RI	4 years RI + fine	2 years RI	
1980-89	2	2	1		1	1	6 mths RI	1 year RI + fine	8 mths RI	
Total	30	18	4	15	5	10	2 months RI	5 years RI + 20 stripes		

Source: Independent Research Board on Law Reports

consensual, an overview of the cases actually prosecuted reveals that they are mainly rape cases.

What purpose does this law serve except to create another group of persons vulnerable to blackmail by the police and sections of the public. The Assistant Commissioner of Police (Crime), New Delhi, Shri Virendra Singh stated in an interview that the city crime records for 1990-91 show that not even one case was registered in Delhi under Section 377. According to newspaper reports, the two cases of sodomy in Delhi in 1992, have both been non-consensual, one of an 8 year old boy, and the other where an adult man was raped by two men.

Yet, every evening, plain clothes policemen spread out over gay men's meeting places in all metropolitan cities to entrap, humiliate, extort money from, and even force sex on gay men under the threat of criminal prosecution. The extension of the Immoral Traffic (Prevention) Act, 1986 to men as well as women has only worsened the situation.

In *Emperor v Kaku Mashgul* [AIR 1944 Sind 33], while considering whether corroboration of the victim's story, a boy of eight years, that Kaku Mashgul had sodomised him, was necessary, the court applied the rule of evidence applicable to rape cases after examining the large body of statutory and case law applicable to rape. This principle has been followed ever since.

There is thus no reason why the law relating to rape of women by men [Sections 375, 376 IPC, Section 114A Indian Evidence Act] cannot be extended to cover cases of rape of men by men. Given the actual manner in which Section 377 is implemented, its existence is redundant. Its repeal becomes even more urgent, given the untold distress it causes to gay men.

Right to Privacy

In 1955, the American Law Institute Model Penal Code stated that every individual is entitled to protection "against state interference in his personal affairs when he is not harming others" and eliminated the sodomy statutes. In 1957, the Wolfenden Committee (UK) stated that "it is not the function of criminal law to intervene in the lives of citizens or to seek to enforce any particular pattern of behaviour. There must remain a realm of private morality and immorality which is in brief and crude terms, not the law's business." After examining extensive data and various arguments for and against, it recommended that private consensual sexual activity between adult males be removed from the operation of criminal law.

The Constitution of India guarantees that "No person shall be deprived of his life or personal liberty except according to procedure established by law." (Article 21). The provision has been through considerable judicial interpretation and a fledgling right to privacy has been read into the right to life and personal liberty.

In *Kharak Singh v State of U.P.* [AIR 1961 SC 1295], while considering the vires of certain police regulations which allowed surveillance, including domiciliary visits, of Subba Rao J., stated that the

right to privacy "is an essential ingredient of personal liberty" and that "nothing is more deleterious to man's physical happiness and health than a calculated interference with his privacy."

In *Govind Singh v State of M.P.* [(1975) 3 SCR 946], a right to privacy emanating from the right to personal liberty and the freedom of speech was contemplated.

The 5th and 14th Amendments to the U.S Constitution state that no person shall be deprived of his "life, liberty or property, without due process of law" and a right to privacy, or a "right to be let alone" has been interpreted into these provisions for over a century.

The concept initially evolved in response to the development of new sophisticated methods of surveillance, like wiretaps etc. akin to right to property. More recently, privacy of a human personality has also been recognised.

Griswold v Connecticut [38 US 479], in 1965, recognised the privacy of the bedroom of married couples. Following this principle, the U.S Supreme Court has held that private consensual acts of sodomy between married couples cannot be criminalised by state statutes [*Charles O. Coitner v Jerome Henry*, 393 US 847; *Buchanan v. Batchelor* 401 US 489].

In *Eisenstadt v Baird* [405 US 438] the court held the *Griswold* principle protected more than the marital relationship alone. It extended protection to persons who had a significant personal relationship and desired to choose for themselves, free from state pressures, whether or not they wanted to use contraception.

In *Roe v Wade* [410 US 113], it was held that a Texas abortion law could not prohibit voluntary abortions during the first 3 months of pregnancy, on the basis of a constitutional right to privacy. "That right includes the privilege of an individual to plan his own affairs, for outside the areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases."

In spite of the recognition of these basic principles of human behaviour, the U.S Supreme Court has displayed singular lack of understanding when it comes to statutes criminalising sodomy. The constitutionality of these statutes has been challenged several times and has largely been upheld.

Most recently, in *Bowers v Hardwick* (1986), the State of Georgia statute which criminalised sodomy was challenged after a homosexual was charged with committing sodomy on a consenting male adult in the bedroom of his house. The U.S Court of Appeals for the Eleventh Circuit upheld the challenge and put the burden on the state "to provide that it has a compelling interest in regulating such behaviour and that the statute was the most narrowly drawn means of achieving that end" [760 F 2d 1202].

The U.S Supreme Court reversed the judgement with a narrow 5:4 margin. The dissenting judges observed "the concept of privacy embodies the moral fact that a person belongs to himself and not others nor to society as a whole."

The question also came before the European Court of Human Rights in *Jeffrey Dudgeon v Northern Ireland* [European Court of Human Rights, Series A, volume 45]. Jeffrey Dudgeon, 35 years old and consciously homosexual from the age of 14, lived in Belfast, Northern Ireland. He along with some others had been conducting a campaign aimed at bringing the law in Northern Ireland in line with that in England and Wales.

On 21 January 1976, the police went to his house, and seized personal papers including diaries and correspondence. He was asked to go to police station where he was questioned for almost 4½ hours about his sexual life. With a view to institute proceedings for gross indecency, the police sent his file to the Director of Public Prosecutions. One year later, in February 1977, Mr. Dudgeon was informed that charges were not being pressed and his papers returned.

Mr. Dudgeon petitioned the European Commission of Human Rights alleging violation of Article 8 of the *European Convention on Human Rights*, corresponding to Article 12, *Universal Declaration of Human Rights*.

The European Court of Human Rights held: “the legislation complained of interferes with Dudgeon’s right to respect for his private life guaranteed by Article 8.1 (ECHR) in so far as it prohibits homosexual acts committed in private between consenting males.” On whether this breach was justified, the majority opinion was that it was not.

The fact that the authorities in Northern Ireland had refrained in the past years from prosecuting homosexual acts in private between consenting men over the age of 21 years and capable of valid consent and that no evidence was brought to show this had been injurious to the moral standards in the country was noted by the Court.

The Court accepted that in a democratic society some degree of regulation of male homosexual conduct is necessary, but that the present legislation was totally unjustified and its very existence caused anxiety, suffering and psychological distress to homosexual men.

As a result of this ruling, in October 1982, Northern Ireland issued an order-in-council bringing the law in line with that in England and Wales.

Freedom of Expression and Equality

Article 19, *Universal Declaration of Human Rights* (UDHR) and Articles 18 and 19, *International Covenant on Civil and Political Rights* (ICCPR) guarantee the freedom of thought and expression. A right to freedom of speech and expression is recognised in Article 19(1) (a) of the Indian Constitution.

Article 2 UDHR bars “distinction of any kind such as race, colour, sex, language, opinion, national or social origin, property, birth or status.” A similar right is recognised in Article 26 ICCPR, and in Articles 14 and 15 of our Constitution as interpreted by the Supreme Court.

The Siracusa Principles (UN Document E/CN.4/194/4) recognise certain limitations, which can be put in the rights in the ICCPR, but also state in the "General Interpretative Principles Relating to the Justification of Limitation":-

- "(7) No limitation on a right recognised by the Covenant shall discriminate contrary to Article 2 para 1 of UDHR.
- "(10) Whenever a limitation is required in the terms of the Covenant to be 'necessary', this term implies the limitation, -
- (a) is based on one of the grounds justifying limitation recognised by the relevant article of the covenant
 - (b) responds to a pressing public or social need,
 - (c) pursues a legitimate aim, and
 - (d) is proportionate to that aim.

Any assessment of the necessity of a limitation shall be made on objective considerations.

- "(12) The burden of justifying a limitation upon a right guaranteed by the Covenant lies with the state."

Attention must also be drawn to the fact that even in times of public emergency, the ICCPR prescribes in Article 4.1 that a derogation of the obligation is not allowed if involving "discrimination solely on the ground of race, colour, sex, language, religion or social origin." It is clear that the right ~~against~~ discrimination is not to be violated even in the most desperate times.

In the U.K., in spite of the 1967 amendment to the criminal law, serious onslaughts on the rights of gay men and lesbians continue. In 1986, the British government enacted Clause 28 banning the "promotion of homosexuality (as a) pretended family relationship."

Clause 25 of the Criminal Justice Bill, still under debate in the U.K., includes provisions for higher sentences for soliciting, procuring and indecency by gay men. The Children's Bill, 1991 seeks to ban lesbians and gay men from fostering children. Clearly, merely to decriminalise is not the end of the problem.

In India, the very existence of homosexuality is denied, and those who are 'found out' face severe ostracism and summary dismissal from their jobs. When Lila Srivastava & Urmila Namdeo decided to cement their long-standing friendship with marriage, they were dismissed from the police service without a show cause notice [See *The Lawyers*, Feb-March 1988 - reproduced in Anti-discrimination chapter of this book]. Though the authorities freely vocalised their fear for "discipline" in the ranks, on paper the reason for dismissal was "absence without leave."

Social Norms

Homosexuality has been treated in various ways by society. A sin against god, a heresy which can only be absolved by fire, a sexual deviance which must be given deterrent punishment, a mental aberration that must be treated.

However, evidence is piling up that homosexuality is neither a disease nor a crime, but is inherent to human nature. The Kinsey reports on male and female sexual behaviour (1948 and 1953) concluded that homosexual behaviour was neither unnatural, abnormal nor neurotic, but that it represented as "inherent physiologic capacity", and is found "in every age group, in every social level, in every conceivable occupation, in cities and on farms, and in the most remote areas."

To quote just one instance, a report from the Indiana Institute for Sex Research (Bell, Weinberg and Hammersmith, 1991) based on exhaustive questioning of persons of contrasting sexual orientation found that "there is no reason to think it would be any easier for homosexual men and women to reverse their sexual orientation than it would be for heterosexual (persons) to become predominantly or exclusively homosexual."

Homosexuality is as much a part of a person as is his colour, sex, race, religion, etc. This was recognised in a ruling by the US Board of Immigration Appeals in the matter of Accosta [I.D. 2986; BIA 1985, P. 31] while interpreting the phrase "membership in a particular social group" as "sharing a common immutable characteristics ... as innate ... as sex, colour or kinship ties ... It must be one that the members of the group cannot change, or should not be required to change because it is fundamental to their individual identities or conscience." In the light of this interpretation, the Texas Immigration Court ruled that the applicant in being a homosexual was a member of such a group of persons.

Conclusion

Since homosexuality is an immutable part of a person's being, the state has no right to treat his or her sexual behaviour as criminal, and under Article 2 UDHR, and Article 26 ICCPR, such a person has a right against discrimination on the ground of sexual preference. It is of no use to a person to allow him a homosexual inclination, without the right to freely express this sexuality in his conduct, without fear that such expression will lead to retributive attacks on his person, his family, or his job.

The burden of proof is on the Indian state to show why Section 377 IPC is retained inspite of the fact that it is seldom used and then largely in cases of non-consensual sex with minors, and is used by the police and some sections of the public to terrorise and blackmail.

The Indian State must show why social and legal controls on heterosexual behaviour cannot be extended to homosexuals, and they are given the respect and acceptance due to them.



Trends in the application of Section 377

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Alok Gupta

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Section 377 of the Indian Penal Code (IPC) poses a serious threat to the gay, lesbian, bisexual and transgender population of India. But, is this statute actually being used to prosecute homosexual acts between consenting adults? There is a lot of confusion surrounding the application of S.377. Some people see it as a threat, whereas many others consider it irrelevant. Here an attempt is made to look into the actual usage of S.377 by the courts in India.

This study does not intend to contradict the findings and conclusions of any previous study of this kind. It is an independent case study restricted to forty-six cases for which Indian High Courts delivered judgements. Around twenty-one more cases that were appealed in the High Courts are yet to be traced. However there are probably several judgements of lower courts, which have not gone in appeal to the High Courts and are therefore unreported.

Scope of S.377

Thomas Babbington, Lord Macaulay (1800-1859), the famous British writer, poet, politician and jurist, who was appointed as chairman of the First Law Commission for India in 1835, drafted the first version of the Indian Penal Code, which finally became law in 1860. Macaulay's draft was acclaimed for its concise legal codification and became the model for similar penal codes in many other commonwealth countries. Very similar laws can be found in Malaysia, Singapore and Pakistan. The provisions of S.377 are also similar to the anti-sodomy statutes still prevailing in some states of America.

The meaning of S. 377 has changed over the years in Indian case law. To document this I have used few key judgements to illustrate its different aspects as follows:

"Unnatural"

The meaning of the term 'Unnatural' read with what is considered 'against the order of nature' depends on the time-period under consideration and the prevailing social attitudes. The sodomy statute was introduced into the IPC in 1860 in accordance with existing

English Law. Its roots are Biblical, and based on the principle that sexual activity was for procreation only. Any sexual act not fitting that role was considered unnatural and against the order of nature. In *Khanu v. Emperor* AIR 1925 Sind 286 it was stated that “the natural object of carnal intercourse is that there should be possibility of conception of human beings”.

This definition of ‘unnatural/natural’ needs to be reconsidered today. English law has long been reformed in the Sexual Offences Acts 1967 which de-criminalised homosexual acts between consenting adults. The Indian government itself no longer supports the assumption of sex-only-for-procreation, given that it invests large amounts annually promoting measures of birth control and contraception for family planning.

Law reflects the changing perceptions of society. A good example is widow remarriage. Historically this was unacceptable in Hindu Law. Over time, with changes in society, the laws were redefined to allow widow remarriage. This principle can be easily applied to the definition of unnatural sex. Indian society is beginning to see homosexuality as a reality. While it may not yet view homosexuality as ‘normal’, to a large extent it accepts that homosexuality between consenting adults cannot be a criminal activity.

“Carnal intercourse against the order of nature”

Sodomy in common English generally means anal intercourse, which was the intended focus of the statute. However, a legal distinction exists between the crime of sodomy and the different sexual acts punishable under it. The crime of sodomy is a statutory offence (more definitive, based on legislature passed statutes) and the acts punishable under it are dictated by common law (derived from the decisions of judges and therefore more variable). Thus there are no definitive boundaries for what could constitute sodomy¹.

Different cases and interpretations have led, over-time, to a broadening of the definition of sodomy. For example, in *Government v. Bapoji Bhatt* (1884 (7) Mysore LR 280) the appellant was charged with S.377 on allegations of oral sex. The courts found that the definition of ‘carnal intercourse against the order of nature’ could not be extended to include acts of oral sex and therefore dismissed the case.

In *Khanu v. Emperor* the appellant was convicted under S.377 and sentenced to five years of rigorous imprisonment for performing oral sex with an underage boy (underage in this article is defined as anyone under the age of 18 years). Here, for the first time in Indian

jurisprudence it was held that the act of oral sex was “against the order of nature” as it did not constitute procreation. This broadened the scope of S.377 to include acts of oral sex. Further, to prove that oral sex connotes intercourse the judgement diverted from a penile-anal understanding to a more generalised definition of intercourse as: “a temporary visitation to one organism by another...to obtain euphoria by means of a detente of the nerves consequent on the sexual crisis”. It was also stated that, “there is no intercourse unless the visiting member is enveloped partially by the visited organism”.

In the case of *Lobana Vasantlal v. The State (All India Report 1968 Gujarat 252)* the petitioner was convicted under S.377 for performing oral sex with an underage boy. In this judgement, a rhetorical question was posed, speculating, “if the act of cunnilingus is not a crime” and whether the crime of sodomy “cannot be committed by woman with woman.” The judge concluded it was, using a definition of ‘sexual perversity’ adopted from *Corpus Juris Secundum* of the American Law which stated:

“Sexual perversity is the condemnation of unnatural conduct performed for the purpose of sexual satisfaction both of the active and passive partners. Any person participating in the act of copulating the mouth of one person with the sexual organ of another is guilty of the offence.”

The implication of this is that acts of oral sex, performed either between two men or two women or between a man and a woman, are all accommodated in the broadened scope of S.377. This case was also cited in *Calvin Francis v. State of Orissa (1992 (2) Crime Revision 455)* where the petitioner was convicted under S.377 for performing oral sex with a minor girl. Although, most of these judgements dealt with coercive sexual acts, no distinction made between coercive and consensual sex was made.

Abetment

Abetment also arises as part of the scope of S.377. Abetment in law means, inter alia, instigation of a crime. This could either be through direct or indirect participation. In the case of *D.P.Minwalla v. Emperor (AIR 1935 Sind 78)* the appellant was discovered while in the process of performing anal intercourse with another man (accused no.2). Here the act was actually never committed as the two parties were caught in the preparation of the act. But under S.116 IPC, abetment is independent of the actual commitment of the crime and depends on acting upon the intention to commit the crime.

¹ Corpus Juris Secundum – Vol.81 pgs 368. 369

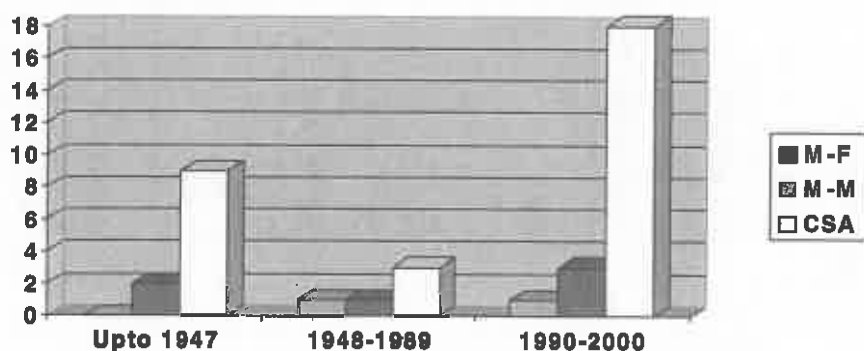
Therefore, the appellant was convicted under S.377 read with S.116, for instigating the act. The accused no. 2 was convicted under S.377 read with S. 511 IPC, for attempting to commit anal intercourse.

Safe Sex Education versus Abetment

Abetment has the potential to have wider negative applications. Various NGOs working with HIV/AIDS prevention and care among gay men or MSM (men who have sex with men) anticipate a threat of being criminalised under S.377. They disseminate information on safe anal and oral intercourse in terms of literature, seminars and distribution of condoms. Therefore, if S.377 is read with S.109 of the IPC, it may be interpreted to constitute a crime of abetting the offence by instigating and encouraging unnatural sex. These fears were actualized in July 2001 with the arrests of four activists of the Naz Project in Lucknow under precisely these sections. The activists had been engaged in the distribution of safe-sex educational material and condoms to men in a gay cruising area. However, the IPC provides for a set of General Exceptions to crimes. Under this S.81 states that an act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences, which if followed would result in irreversible damage. This could probably be applied to dissemination of safe sex information to avoid the onset of HIV/AIDS. A similar analogy is the encouragement given to the use of safe needles among drug users. Although this might make for a valid argument, its effectiveness in case law is yet to be tested.

Usage of S.377

Types of Sexual Activities charged under Section 377



Types of Sexual Activities charged under Section 377

S.NO	CATEGORIES	Upto 1947		1948-1988		1989-2000		Total
		M-F	M-M	M-F	M-M	M-F	M-M	
1 CHILDREN								
	Vaginal and Anal sex	—	—	—	—	5(3)	—	5(3)
	Anal and Oral Sex	—	—	—	1(1)	—	—	1(1)
	Anal Sex	—	7(2)	—	2(1)	3(3)	7(5)	19(11)
	Oral Sex	—	2(1)	—	—	1(1)	—	3(2)
	Oral Sex and Digital Penetration	—	—	—	—	1*(1)	—	1(1)
	Oral Sex and Masturbation	—	—	—	—	—	1(1)	1(1)
	TOTAL	—	9(3)	—	3(2)	10(8)	8(6)	30(19)
2 ADULT								
	Vaginal and Anal sex	—	—	—	—	1(1)	—	1(1)
	Anal and Oral Sex	—	—	—	—	—	—	—
	Anal Sex	—	2(1)	1	1(1)	—	3(1)	7(3)
	Oral Sex	—	—	—	—	—	—	—
	Sex with an Animal	—	1(1)	—	—	—	—	1(1)
	TOTAL	—	3(2)	1	1(1)	1(1)	3(1)	9(5)
3 AGE UNKNOWN								
	Vaginal and Anal sex	—	—	—	—	—	—	—
	Anal and Oral Sex	—	—	—	—	—	—	—
	Anal Sex	—	—	—	1(1)	—	—	1(1)
	Oral Sex	—	—	—	—	—	—	—
	Sexual activity unknown	—	1(1)	—	3(2)	—	2(1)	6(4)
	TOTAL	—	1(1)	—	4(3)	—	2(1)	7(5)
	GRAND TOTAL	—	13	1	8	11	13	46
	No. of Convictions	—	(6)	—	(6)	(9)	(8)	(29)

() Indicates the no of convictions.

* This case involved the sexual activity of 'Urinating in the mouth of the victim', which was considered against the order of nature and thus *unnatural*.

Out of the 46 cases the following were established as :

Non-Consensual sex : 38

Consensual sex M-M Adult : 1

(D.P. Minerva V. Emperor AIR 1985 Sind 78)

The table and graph *Types of sexual activities charged under Section 377* outline the frequency of different kinds of sexual activities from the forty-six cases studied. These activities are divided in categories of Male-Male, Male-Female, Adult and Child Sex abuse. The cases are also divided into three time periods, pre-independence, post-independence till the end of 1980s and lastly the 1990s, which have the highest concentration of cases under S.377.

Male-Male (Adult)

S.377 is seen as the biggest threat to the MSM population in India. Ironically, out of the total cases studied, only six prosecute Male-Male adult anal intercourse, of which only one prosecuted consenting adults. This was decided in 1935, *D.P.Minwalla v. Emperor (AIR 1935 Sind 78)*. It should be noted that three of these six cases were spread over ten decades and the other three were all in the 1990s.

From the graph, we observe a trend of an increased enforcement of S.377 in the last decade, indicating clearly that it is anything but a dead law. However, in the recent past, the law has almost never been used to prosecute consensual adult Male-Male sex. This illustrates the redundancy of criminalising consensual homosexual acts between adults through this law.

Child Sex Abuse

There are no Indian laws that specifically criminalise the sexual abuse of children. S.377 has been used to prosecute cases where anal and/or oral intercourse with children was involved. A total of thirty cases (more than 60%) deal with child sex abuse. All of these cases were non-consensual. The question of consent does not arise in cases where sex with minors is involved. Of the thirty, twenty cases involve male-male child sex abuse and ten male-female child sex abuse. Again it is interesting to note that this trend of S.377 being used for prosecuting offences of male-female child sex abuse is very new as all of the ten cases were appealed in the 1990s.

Male-Female (Adult)

Rape

Sections 375 and 376 provide the rape law of the IPC. These sections define rape strictly as an activity that involves penile-vaginal intercourse and do not consider non-consensual anal intercourse in the definition of rape. S.377 was used in two cases involving non-consensual Male-Female Adult anal and/or oral intercourse.

Divorce

In the matter of *Grace Jeyramani v. E. P. Peter* (A.I.R. 1982 Karnataka 46), the petitioner filed an application of divorce against her husband on grounds of oral and anal sex and physical assault. The Court granted her divorce on the grounds of 'sodomy' in accordance with S.10 of the Indian Divorce Act, which allows for a wife to present a petition for dissolution of marriage, inter alia, on grounds of rape, sodomy or bestiality.

Borrowing from *B. v. B.* (1882 Punjab Record 68), it was stated that; "A husband could be an offender of sodomy towards his wife, if she is not a consenting partner". In this case the issue of consent gained primary importance along with the unnatural nature of the act. Consent is otherwise irrelevant in Section 377. This suggests that sodomy can be acceptable between consenting "heterosexual" couples!

Is homosexuality illegal in India?

This has always been a tricky question for the movement of sexual minorities in India. S.377 clearly penalises certain sexual activity, but not any sexual orientation or identity. The law does not recognise the binaries of heterosexuality and homosexuality. On the other hand, in cases like Grace Jeyaramani's divorce application, an implicit bias of the law against homosexuals does seem to exist. So does S.377 actually prosecute homosexuality? From the study of case law application it seems evident that the courts have a consistently poor record in prosecuting consensual adult homosexual sex through this law. But this does not negate the clear threat the law presents to sexual minorities in India, manifesting itself in harassment, extortion and blackmail by the police and members of the public. This harassment is all the more effective because most victims have little knowledge of the law, or of their personal rights and are further crippled by the fears that come from living their homosexual lives in secret. In such cases, the fact of the law being weak in its application is irrelevant: it is strong enough in its threat.

Police Harassment

Nothing illustrates the reality of the threat posed by S.377 as well as an examination of how it has been used by the police for the purpose of harassment. It is particularly important to understand this because of the unequal nature of this harassment. Such harassment is rarely used against the educated, relatively affluent members of society who could possibly defend themselves. It is instead used against weaker sections of society

⁷ 7th June, 2001, Times of India

whose inability to withstand, or even publicise the cases, leads to an under reporting of such cases.

These are the cases, which, as I pointed out in my earlier analysis of applications of S.377, are not considered because they are not reported, but simply disappear undetected at the level of the lower courts. The only way these come to the public eye are through occasional newspaper reports, usually couched in lurid and sensational terms with headlines that hint at all sorts of depravities. Recently, for example, a national English daily ran a story titled "Paedophile Ring Busted In Punjab"² about the arrests and charging under S.377 of people believed to have been involved in a gay sex circuit (the headline was misleading since there was no suggestion of the involvement of minors). The police officer in this case specifically stated that they had little option in dealing with the matter as long as the section against sodomy remained in force.

S.377 is a cognisable offence, a classification that measures the intensity of the offence as very high, since it means that no warrant (court permission) is required for arrests made under this section. This increases the threat of the section, since it gives the police the power to put alleged perpetrators in jail prior to their cases coming up in court. Given the slow pace of the Indian judicial system, this can result in people spending long periods in jail even if they are ultimately set free. Most of these arrests in fact are never pursued up to the Courts. The people arrested are either just harassed by the police or let off in exchange for a bribe. (There is also a lot of anecdotal evidence of the police sexually abusing the victims, leading to the grim irony of the police committing the very crime which they have made the arrests under).

S.377 is hence a very handy tool for the police to control gay activity. For further effect it is usually invoked by the police along with other more general laws relating to loitering, soliciting, indecency and so on, powered by the Public Nuisance Act and S.268 of the Indian Penal Code, to expand their scope beyond the difficult task of proving sodomy. There are several reports of police raids of gay parties and events around the country where these laws have been invoked, and even more reports of cases where the police used the threat of these laws to extort money from the organizers of these events. A process of documenting these cases has, very belatedly, begun³ and it is proposed to replicate this in other parts of the country with documentation cells being envisaged for human rights violations against sexual minorities. To sum up, it is clear that S.377 exists

³ *Public Union of Civil Liberties – (Karnataka), A Fact Finding Report on Human Rights Violations against Sexual Minorities in India*, 2001.

solely to criminalise and terrorise a certain section of society, especially people who are already marginalised.

Conclusion

S. 377 has been useful in penalising child sex abuse and compensating for the lacunae of the rape law. However, this does not negate the clear threat the law presents to the sexual minorities of India, manifesting itself in ways of harassment, extortion and blackmail by the police, with no legal protection. The law reform of S.377 requires a collective campaign demanding reform of all laws of the IPC relating to sexual assault. These laws need to be gender-neutral with broader definitions of sexual penetration. Child sex abuse should be included as an independent category of a sexual offence. Concurrently, it is important that sexual activities between consenting adults be de-criminalised, and ought to be protected under the right to life, privacy and equality guaranteed by the Constitution of India.

END

Are you being blackmailed, harassed or threatened with violence because you are lesbian or gay?

BE INFORMED, PROTECT YOURSELF

Section 377

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years and shall also be liable for a term which may extend to 10 years and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

Under this section

1. The act of sodomy, and not homosexuality per se is a cognisable offence. That is, evidence of anal penetration has to be proved.
2. There is no distinction between coercive sex and consensual sex.
3. Cases against lesbian women under Section 377 have not been known to have been registered. This is probably due to the "anal penetration requirement". However, "against the order of nature" has been loosely interpreted, and Section 377 has been used by families and police for intimidation and harassment of lesbian women.

It is illegal to blackmail someone using Section 377 as a threat under the following Sections:

Extortion - Section 389

"Whoever, in order to commit extortion, puts or attempts to put any person in fear of an accusation, against that person, or to any other, of having committed or attempted to commit an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life."

Please reproduce and circulate

Protections in the Criminal Code against Wrongful Restraint, Confinement and Assault

Wrongful Restraint - Section 341

“Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both”.

Wrongful Confinement - Section 342

“Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

Assault - Section 351

“Whoever makes any gesture, or preparation intending or knowing it to be likely that such gesture, or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.” Assault is punishable by imprisonment and/ or fine.

Please reproduce and circulate

CAMPAIGN LETTER FOR THE REPEAL OF SECTION 377

Dear friends,

Enclosed please find a signature campaign sheet asking for repeal of Section 377 of the IPC and some background material on Sec. 377. As clearly discussed in the background material, this section punishes anybody who has 'carnal intercourse against the order of nature'. By considering only penile vaginal penetration as 'natural', it criminalises all other penetrative sexual acts. This section is based on an archaic understanding of sexuality and sexual behaviour. While it attempts to control consensual adult behaviour, it also successfully perpetuates the understanding that the only sexual interaction is that heterosexual contact which involves penetration of the vagina by the penis. All other sexual interaction is not only ignored, it is criminalised.

Today this act has been used widely in two totally different contexts. One, it has been used to fight cases of sexual assault on women and children because the existing rape law also subscribes to the same understanding of sexual interaction and defines rape as penile vaginal penetration only. In the absence of any other clause under which to seek redress, this law, which does not distinguish between consensual and non-consensual acts, is the only way out and is used accordingly. So in a sense it gives some kind of weapon to bring to book persons guilty of assault.

The other use of the law, which is more widespread, however, is against a whole group of people who are homosexual. While homosexuality has been accepted in many Indian cultures, the criminalisation of homosexuality through this section enacted by the British in 1862 has been an import from the West. In present times the State and other patriarchal institutions of this society have used this section repeatedly to harass gay men and lesbian women and the section has been interpreted to mean as a law criminalising homosexuality.

In this atmosphere of negation and criminalisation of people's sexual orientation, many women and men have suffered and have had to give up their right of being able to choose who to love and share their life with. Let alone other rights, this law threatens gay men and lesbian's basic right to exist. In our struggle for justice and equality, it is important that we fight against all violations of human rights and hence it is important that we also start looking at rights and lives of lesbians and gays.

We felt that to begin any talk of rights we had to first begin with asking for decriminalisation of homosexuality starting with repeal of Section 377. This signature campaign is a step in that direction.

The history of the public debate on the repeal of Section 377 begins soon after the release of *Less than Gay*, when a petition was moved by AIDS Bhedbhav Virodhi Andolan in the Petitions Committee of Parliament. This has, however, remained dormant till date for want of a Member of Parliament to argue the petition in parliament. Meanwhile, in 1994, media attention focused on Tihar jail where Inspector General of Prisons, Kiran Bedi, refused to allow distribution of condoms to the male prisoners on the grounds that there was no homosexual activity in the prisons, and even if there was, the prison authorities would be encouraging a crime. ABVA used this incident to initiate a public interest litigation in the Delhi High Court for the repeal of Section 377 of the IPC. The case has been pending for hearing.

This signature campaign is intended as a means of initiating debates within as many groups and sections of society as possible thereby creating an atmosphere of support not only for the petition but also for lesbian, bisexual, and gay rights as such. Since the issue is new and not discussed much amongst all of us, if you have any queries and questions please feel free to write to us and discuss them.

Our request to you is to collect signatures from individuals in your group and other friends around and send the sheets to us as soon as possible. While collecting signatures please take care that all signatures are on the signature campaign sheet itself, as an attached sheet of paper holds no legal validity. Do make copies of the signature campaign sheet, if necessary. If any organisation supports the demands in the petition please type the matter on the organisation's letterhead and send that too to us.

Hoping for your support and solidarity in this struggle for justice and equality.

Forum Against Oppression of Women

India Centre for Human Rights and Law

Stree Sangam.



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Signature Campaign for the Repeal of Section 377 the Indian Penal Code

Section 377 of the Penal Code:

- ◆ Violates a person's liberty and privacy guaranteed by Article 21 of the Indian Constitution.
- ◆ Is arbitrary and oppressive and is therefore violative of Article 14 of the Constitution.
- ◆ Criminalises sexual practices between two consenting adults.
- ◆ Is currently being used to blackmail, harass and intimidate same-sex adult partners.
- ◆ Is also being used to deny prisoners access to condoms which is necessary for the prevention of HIV/AIDS, which consequently has serious implications for public health.
- ◆ Is an archaic law passed under the colonial government. It was repealed in England in 1967 and most countries have repealed similar statutes.

Hence we demand its immediate repeal. We also ask for enactment of laws for addressing all cases of sexual assault and non-consensual sexual acts.

No.	Name	Individual / Organisation	Address

सेक्शन 377 के बारे में कुछ तथ्य

सेक्शन 377 क्या है ?

१८६० में ब्रिटिशों ने इस कानून को लागू किया था। इस कानून के अनुसार :

“जो व्यक्ति अपनी इच्छा से किसी आदमी, औरत या जानवर के साथ अनैसर्गिक शारीरिक संबंध रखता है तो उसे आजीवन कारावास की सज़ा होगी या दस साल की कैद और दंड भी हो सकता है।” इसके साथ यह भी जोड़ा गया है कि लिंग के अंदर घुसानेकी प्रक्रिया शारीरिक संबंध साबित करने के लिये काफी है।

यह कानून उस समय की इसाई धर्म और संस्कृति की सोच पर आधारित है और इसे अंग्रेजों की सभी कोलोनि में लागू किया गया था। इस कानून के पीछे समझ यह है कि दो व्यक्तियों के बीच शारीरिक संबंध सिर्फ प्रजनन के लिये ही होने चाहिये। इसके अलावा किया गया हर संबंध गलत और गैरकानूनी माना गया है। इस कानून का मतलब है कि योनि के अलावा कहीं भी लिंग का घुसाना गैरकानूनी है। चूंकि इंसानों के शारीरिक संबंध आम तौर पर इतने संकीर्ण नज़रिये से विवृत नहीं होते हैं, अगर इस कानून को तकनीकी रूप से लागू किया तो लगभग सभी लोग इसकी चपेट में आ सकते हैं। परंतु ऐसा होता नहीं क्योंकि इस कानून का एक मतलब ही आज अपनाया जाता है।

दो आदमियों के बीच होने वाले शारीरिक संबंध तो इस धारणा में ज़रूर गैरकानूनी साबित होते हैं और इसी के कारण आज इस कानून का मतलब यह निकाला जाता है कि यह समलैंगिकता के खिलाफ कानून है और इसीके चलते इसका इस्तेमाल समलैंगिक रिश्ते रखने वाले आदमियों और औरतों के खिलाफ किया जाता है। तकनीकी रूप से तो औरतों के साथ संबंध रखने वाली औरतें इसके तहत नहीं आतीं, पर उन्हें भी डराने धमकाने के लिये इस कानून का इस्तेमाल होता है। और समलैंगिकता के खिलाफ कानून के रूप में ही यह आज पहचाना जाता है।

इसके एक उदाहरण के तौर पर हम एक आपबीती का जिक्र करना चाहेंगे। दिल्ली में रहने वाले एक शख्स की यह जबानी है।

“मैं अपने दोस्त के साथ घूम रहा था। हम बात कर रहे थे इतने में दो पुलिसवाले हमारे पास आये। वे मुझे अलग ले गये और उन्होंने मुझसे मेरी घड़ी और सोने की चेन मांगी। मैं बहुत डर गया। मेरे दिमाग में एक ही ख्याल था कि वे जो चाहें सो ले लें पर मुझे अकेला छोड़ दें। मुझे पता था कि अगर वे मुझे अपने साथ पुलिस थाने ले जाते तो वहां मुझ पर बलात्कार करते। वे बार बार मुझे मारने की और मुझ पर बलात्कार करने की धमकी दिये जा रहे थे। मैं बहुत डर गया और जो भी मेरे पास था एक घड़ी और सौ रुपये वह उन्हें दे दिये। फिर उन्होंने, मुझे और पैसे लेकर वापस आने को कहा।”

ऐसे न जाने कितने किस्से हर रोज छोटे बड़े शहरों में होते रहते हैं । इक्का दुक्का घटनाओं के साथ कई बार सभी सार्वजनिक जगहों से समलैंगिक आदमीयों को निकालने की मोहिम भी की गई है । डरा धमका कर पैसे बनाने का यह एक धंधा ही हो गया है । इसमें डराये और सताये जाते हैं वे सारे लोग जो ऐसे भी समाज में प्रताड़ित हैं, जिन्हें कोई स्थान नहीं है । औरतों के साथ बाहर वालों से ज़्यादा घरवाले ही इस कानून के ज़रिये समसंबंधी संबंध रखने वाली औरतों को डराते हैं ।

यह कानून गे लोगों को डराने धमकाने के लिये ही इस्तेमाल होता है इसका सबूत इस बात से मिलता है कि आज तक पिछले लगभग एक सौ तीस साल के इतिहास में उच्च न्यायालयों में कुल तीस मुकदमे ही दायर किये गये हैं । इसमें से

- ☛ १८ मामले ज़बरदस्ती के थे ।
- ☛ ८ के बारे में कुछ सुनिश्चित नहीं है ।
- ☛ ४ मामले ऐसे थे जिनमें दोनों व्यक्तियों की मंजूरी थी और इसमें से तीन १९४० के पहले दर्ज किये गये थे ।
- ☛ तीस में से १५ बच्चों पर की गई ज़बरदस्ती के थे ।

इस सारी परिस्थिति को देखते हुए यह महसूस होता है कि यह कानून ना सिर्फ़ बिनजरूरी है, बल्कि इंसानी हकों के सरासर खिलाफ़ है । दो वयस्क लोग अगर अपनी मर्जी से संबंध रखना चाहें तो सरकार को इसमें हस्तक्षेप करने का कोई हक़ नहीं हो सकता । हमारा संविधान भी हर व्यक्ति की निजी जिंदगी की हिफाज़त करने का अधिकार उन व्यक्तियों को देता है ।

इस कानून की सोच और समझ बहुत पुरानी है । इंग्लैंड जैसे देश में भी यह कानून आज रद्द कर दिया गया है । आज यह ज़रूरी है कि हमारे देश में भी इस कानून को रद्द करके कुछ लोगों को तंग करने के इस हथियार को ही खतम किया जाये ।

इसके साथ ही यौनिक और लैंगिक हिंसा के सभी मुद्दों पर एक नये कानून की ज़रूरत है जो इस हिंसा की धारणा को ही ज़्यादा व्यापक नज़रिये से देखें । लिंग के प्रवेश के अलावा इस हिंसा में जो भी आता है वह भी उतना ही घिनौना और विभत्स है यह मान्य करना ज़रूरी है । इसके अलावा बच्चों के साथ होने वाली हिंसा को भी अलग से समझने और उस अनुसार उस पर कदम उठाने की भी सख्त ज़रूरत है । शारीरिक संबंधों के लिये हमी भरने की उम्र भी इस कानून द्वारा तय की जानी चाहिये, फिर चाहे वे संबंध समसंबंधी हों या विषमसंबंधी ।

सेक्शन 377 को रद्द करने के लिये जापन

सेक्शन 377

- भारतीय संविधान के अनुच्छेद (आर्टिकल) २१ के तहत हर व्यक्ति को दिये गये निजी स्वतंत्रता और जिंदगी संबंध हकों का उल्लंघन करता है।
- कुछ लोगों के प्रति दमनकारी है और इसीलिये अनुच्छेद १४ के खिलाफ है।
- दो रज़ामंद व्यक्तियों के बीच रखे गये शारीरिक संबंधों को गुनाह करार करता है।
- आज समलैंगिक और समयौनिक संबंध रखने वाली व्यक्तियों को डराने, धमकाने और परेशान करने के लिये इस्तेमाल किया जाता है।
- जेल जैसी जगहों में कैदियों को कन्डोम न मिले इसके लिये उपयोगी मे लाया जाता है। कैदियों में HIV/AIDS का फैलाव रोकने के लिये कन्डोम मिलना बहुत आवश्यक है।
- देढ़ सो साल पुनाना ब्रिटिश द्वारा लागू किया गया पुरातनवादी कानून है। ब्रिटेन सहित कई देशों में इसे रद्द कर दिया गया है।

उन सब कारणों की वजह से हमारी यह मांग है कि इसे जल्द से जल्द रद्द किया जाए। इसके साथ ही हमारी यह भी मांग है कि हर किस्म की यौन हिंसा और जबरदस्ती से रखे गये सभी शारीरिक संबंधों के खिलाफ कानून बनाए जाएं।

क्र	नाम	व्यक्ति/संस्था	पत्ता

Anti-Discrimination

XXXX

Even if homosexuality is decriminalised, there is a wide range of civil laws that discriminate against lesbians and gay men. Discrimination can occur when an individual known to be (or presumed to be) lesbian, bisexual or gay is denied equal opportunity in the areas of employment, education, housing, medical benefits, access to goods and services, etc. Discrimination also occurs when same-sex couples are denied the benefits that heterosexually married couple automatically obtain (these benefits are discussed in greater detail in the next chapter). Many countries have amended their constitutions to include "sexual orientation" as an explicit clause prohibiting discrimination. Australia, for example, has amended its Constitution in such a way. The new Constitution of the Republic of South Africa is remarkable in that it includes a proviso protecting gays and lesbians from discrimination.

In countries, where the State provides no such protection, it is possible for institutions to develop policies that explicitly prohibit discrimination against individuals on the basis of sexual orientation. In the U.S, many employers, hospitals, schools and colleges have such policies.

The Indian Constitution under Article 14 declares that all Indians are to be treated equally before the law. Articles 15 and 16 of the Constitution further prohibit discrimination on several grounds - including sex. However, there is no clause prohibiting discrimination on grounds of sexual orientation.

The only known institution in India that has explicitly included sexual orientation as a ground for non-discrimination is the Tata Institute of Social Sciences (TISS) Social Work Educators Forum in its 1997 *Declaration of Ethics for Professional Social Workers*¹.

In this chapter, there are two papers - the first, reproduced from *The Lawyers* is an article written by Indira Jaising discussing the discriminatory aspects of the case of Leela and Urmila - two police women who were dismissed when it was discovered that they were lesbian. In fact, it is probably the only article that focussed on discrimination, in the wave of media coverage after the marriage of Leela and Urmila in 1988. The next paper by Mihir Desai goes further by outlining and explaining some of the civil laws in India that discriminate against lesbians and gay men. As in each section, there is also a summary of the international status of laws against discrimination.

¹ *Declaration of Ethics for Professional Social Workers*, Indian Journal of Social Work, Vol.58, Issue 2, April 1997, pp.337.

“.. Or other status” - The International Legal Scenario

SOCs

It is the *complete absence* of reference to sexual orientation as a ground for non-discrimination in international human rights covenants, that has proved a set back for advocates of lesbian and gay rights. Even as important a document as the *Universal Declaration of Human Rights* fails to specify sexual orientation in Article 2 that states:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*”. (our emphasis)

It is therefore left to the interpretative usage of the phrase “*other status*” that offers any hope of extending these “guaranteed” human rights to lesbians and gay men. This pattern of non-inclusion of sexual orientation is followed in all of the other major international covenants - the *International Covenant on Civil and Political Rights*, the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, and the *International Covenant on Economic, Social and Cultural Rights* - among others.

Even the *Convention for the Elimination of all forms of Discrimination against Women* does not explicitly recognise the rights of lesbian and bisexual women. Not surprisingly then, at the Fourth World Conference on Women at Beijing in 1995, lesbian existence and rights were “bracketed” in the *Platform for Action* by countries that disputed these claims to equal rights. Despite the high level of visibility that lesbian activists achieved at the conference, sexual orientation language was not included in the final document. However, the document does include recognition that women and men must be able to decide freely on all matters relating to their sexuality free from coercion, discrimination and violence. Israel, South Africa and the United States have indicated that they interpret language in the *Platform for Action* to advocate human rights protections for all women, regardless of their sexual orientation².

The most significant and heartening advance occurred in Europe in September 2000, when the Parliamentary Assembly of the Council of Europe voted overwhelmingly in favour of a sweeping series of recommendations in support of lesbian and gay rights. The Assembly, which is made up of a representative selection of Members of Parliament from some 41 European countries embracing a population of 800 million people, called upon the governments of Europe:

² <http://www.ighrc.org/news/factsheets/990430-intljuris.html> - *International Jurisprudence*.

- to include sexual orientation among the prohibited grounds for discrimination in their national legislation;
- to revoke all legislative provisions rendering homosexual acts between consenting adults liable to criminal prosecution;
- to release with immediate effect anyone imprisoned for sexual acts between consenting adults;
- to apply the same minimum age of consent for homosexual and heterosexual acts;
- to take positive measures to combat homophobic attitudes, particularly in schools, the medical profession, the armed forces and the police, by means of training;
- to co-ordinate efforts with a view to simultaneously launching a vast public information campaign in as many member states as possible;
- to ensure equal treatment for homosexuals with regard to employment;
- to adopt legislation that provides for registered partnerships.

Almost immediately following this resolution, in October 2000, the Council of Ministers of the European Economic Union passed a directive for the inclusion of sexual orientation as an anti-discrimination clause in Article 13 of the Treaty of Amsterdam. The new directive will apply to the fifteen member states, but will also affect the thirteen countries currently applying for membership of the Union, including Romania³.

These advances have been the result of years of lobbying by lesbian and gay rights advocates in Europe. They follow the *European Commission on Human Rights* ruling on October 7, 1997 determining that the United Kingdom's unequal age of consent (18 for gay men and 16 for heterosexuals and lesbians) is discriminatory against gay men. The Commission ruled that "there is no objective and reasonable justification for the maintenance of a higher minimum age of consent for male homosexual, than for heterosexual, acts

and that the application discloses discriminatory treatment in the exercise of the applicant's right to respect for private life under Article 8 of the [European] Convention." The U.K. parliament has yet to effect the change, since the House of Commons has passed the motion, but the House of Lords stalled it in July 1998. With the new injunction by the Council of Europe however, several other countries have introduced such legislation and it is only a matter of time before the anti-discrimination provisions are enacted by all the member states of the Council of Europe. A recent example is Ireland's *Equal Status Act*

³<http://www.gaylawnet.com> -Gay Law News

enacted in November 2000, which bans unfair treatment based sexual orientation (as well as other categories).

South Africa is the first (followed by Ecuador and Fiji) country in the world to include “sexual orientation” as an specific anti-discrimination clause in its Constitution. On May 8, 1998, South Africa struck down the common law crimes of sodomy and unnatural sexual offences as unconstitutional under the new South African Constitution since it undermines equal protection under the law for South Africa’s homosexual citizens. Delivering his judgement, Judge Jonathan Heher of the Johannesburg High Court stated that “constitutionally [the people of South Africa have] reached a stage of maturity in which recognition of the dignity and innate worth of every member of society is not a matter of reluctant concession but is one of easy acceptance.”

Other countries that have enacted amendments or anti-discrimination legislation include, the Tokyo Metropolitan Government which has finally included sexual orientation as a category protected from discrimination within its new human rights guidelines. With this decision Tokyo sets a significant precedent as the first city or country within Asia to provide anti-discrimination protection on the basis of sexual orientation, and other cities in Japan are set to follow.. The Tokyo government guidelines reaffirmed earlier judgements in 1997 and 1994 by the High Court and District Court respectively prohibiting discrimination against lesbians and gay men. Reaffirming the judgement of the District Court, the High Court had ruled that the Tokyo Board of Education discriminated against the Japan Association for the Lesbian and Gay Movement (OCCUR) in 1990 by refusing to allow its members in a city-run youth hostel⁴.

The Phillipines too, has recently introduced a Bill that would make it a crime to discriminate against homosexuals. The *Anti-Discrimination Act* proposes a penalty of up to 100,000 pesos (about 2,500 dollars) or a month’s imprisonment for those found guilty of discrimination.

A landmark anti-discrimination judgement in the U.S was the case of *Romer v. Evans*. In November 1992, under pressure from the conservative lobby, Colorado took the unprecedented step of amending the state Constitution to prohibit state and local governments from enacting any law, regulation, or policy that would protect the civil rights of gays, lesbians, and bisexuals. The amendment, known as Amendment 2, did not go into effect, as a lawsuit was filed challenging the constitutionality of the new provision.

Romer v. Evans (U.S., 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996)) reached the U.S. Supreme Court and in a significant decision, the Supreme Court struck down the amendment as unconstitutional. Justice Anthony M. Kennedy declared that the Colorado provision violated the Equal Protection Clause of the Fourteenth Amendment. The Court found that the amendment did more than repeal state and

⁴ <http://www.gaylawnet.com> -Gay Law News

⁵ ICLHRC Fact Sheet: Nation-wide Legal Protection from Discrimination Based on Sexual Orientation, March 1997.

municipal gay rights laws. The amendment prohibited “all legislative, executive or judicial action at any level of state or local government designed to protect . . . gays and lesbians.” Under this provision, the only way gay men and lesbians could secure their civil rights was through amendment of the state Constitution. Judge Kennedy concluded: “[i]t is not within our constitutional tradition to enact laws of this sort.” According to the Judge, the Colorado amendment classified gay men and lesbians “not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do.” The Romer decision was a major advance for gay and lesbian rights in the U.S. The Supreme Court ruled that states cannot limit civil rights: gay men and lesbians cannot be prevented from using the political and legal tools available to all citizens.

Discrimination against lesbians and gay men in the armed forces is another long battle that has been fought in the U.S, with several lawsuits filed that sought to overturn military regulations that mandated discharge for disclosing a homosexual orientation. In *Meinhold v. United States* (Department of Defence 34 F.3d 1469, 9th Cir. 1994), a three-judge panel ruled that Petty Officer Keith Meinhold, of the U.S. Navy, could not be discharged for stating on a national television broadcast that he was gay.

President Bill Clinton’s policy (dubbed “don’t ask, don’t tell”), in the initial years, compromised on his pre-election commitment to the lesbian and gay electorate. With this policy, gay men and lesbians were directed to keep their sexuality hidden if they intended to pursue a military career. However, in May 1998, President Clinton signed an Executive Order prohibiting discrimination based on sexual orientation in the federal civilian workforce. The Executive Order, ensures that all federal agencies ban employment discrimination based on sexual orientation. Many, but not all, U.S federal agencies currently have some form of policy prohibiting sexual orientation discrimination. This Executive Order adds sexual orientation to the list of categories (race, colour, religion, sex, national origin, handicap, and age) for which discrimination is prohibited.

The U.S now joins the following list of countries: Australia, Austria, Belgium, Canada, Denmark, Finland, Israel, Ireland, the Netherlands, New Zealand, Norway, Spain, Sweden, and Switzerland - that do not discriminate against lesbians and gay men in the Armed Forces.

Country-wise Summary of Anti-Discrimination Protections

There are 14 countries which have explicit provisions prohibiting discrimination on the grounds of sexual orientation in their national legislation (details in the following table). Several other countries - like the U.S, Australia, and the U.K have state, county or city specific anti-discrimination legislation. For example, more than 80 Brazilian cities and 2 states have anti-discriminatory legislation that explicitly includes sexual orientation, and some of which provide specific penalties for those who engage in discrimination. There are also other institutions like companies, schools / colleges, hospitals etc. which may include anti-discrimination protections.

Protections Against Discrimination on the basis of Sexual Orientation

Country	Year & Legislation	Features of Anti-discrimination legislation
Norway	1981 Amendment of Penal Code	<ul style="list-style-type: none"> • Prohibition of discrimination in provision of goods and services • No discrimination in access to public gatherings • Prohibition of hate speech directed at sexual minorities • Private labour market not covered by these protections
France	1985 Amendment of Penal code 1986 & 1990 Amendment of Code of Labour Law	<ul style="list-style-type: none"> • Prohibition of discrimination based on sexual orientation - in the workplace (including civil services and armed forces)
Sweden	1987	<ul style="list-style-type: none"> • Prohibition of discrimination by commercial organisations • Prohibition of hate speech • Private labour market not covered by these protections
Denmark	1987 Amendment of Penal Code and Anti-discrimination Act	<ul style="list-style-type: none"> • Prohibition of discrimination in the workplace (public and private labour market)
Ireland	1989 Prohibition of Incitement to Hatred Act 1991 Employment Discrimination Law	<ul style="list-style-type: none"> • Prohibition of hate speech • Prohibition of discrimination in the workplace
The Netherlands	1991 Amendment of Penal Code	Prohibition of discrimination in <ul style="list-style-type: none"> • the workplace • provision of goods and services • education
Israel	1992 Anti-discrimination law 1994 Supreme Court judgement in favour of equal employment benefits for same sex partners	Prohibition of discrimination in the workplace

Country	Year & Legislation	Features of Anti-discrimination legislation
New Zealand	1994 Amendment to the Human Rights Act includes sexual orientation as a protected category	Prohibition of discrimination in <ul style="list-style-type: none"> • Employment • Access to public places • Housing and accommodation • Provision of goods and services • Education
Finland	1995 Amendment of penal code to include sexual orientation as a protected category	Prohibition of discrimination in <ul style="list-style-type: none"> • Employment • Provision of public or commercial goods and services The law also bans agitation against protected groups
Slovenia	1995 Amendment of penal code to include sexual orientation as a protected category	
Spain	1995 New Penal Code	Bans discrimination in <ul style="list-style-type: none"> • Housing • Employment • Public services • Professional activities The law also criminalises hatred and violence directed at homosexual persons and organisations
Canada	1996 Amendment of Canadian Human Rights Act to include sexual orientation as a protected category	Bans discrimination in federally regulated <ul style="list-style-type: none"> • Housing • Employment • Public services • Professional activities
Iceland	1996 Amendment to the penal code	Prohibits <ul style="list-style-type: none"> • Defamation • Discrimination in access to goods and services
South Africa	1996 Section Nine of the new Constitution's Bill of Rights includes sexual orientation as a protected category	Prohibits discrimination by the government and by private sector.

Gay Rights

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Indira Jaising

(reproduced from The Lawyers, February-March 1988)

The rights of gay people, is a subject little mentioned, leave alone discussed in this country. In fact, until the marriage of Urmila and Leela, two women constables from the M.P. Police Force was announced, the subject of homosexuality was hardly mentioned in the media much less has it come up for decision before our courts. Indira Jaising discusses the law on this 'taboo'.

The victimisation of Leela and Urmila (for that is what their discharge from the police force amounts to) should prove the occasion to discuss the rights of gays. On record, Leela and Urmila have been discharged from the police force for unauthorised absence from duty. However, it seems clear that the real reason for their removal from service is the fact that they were lesbians and announced that they married each other. What is the legal position regarding this question?

Apart from Section 377 of the India Penal Code, which criminalises deviant sexual behaviour, there is no other law in India that deals specifically with homosexuality. Section 377 however does make it an offence to have voluntary carnal intercourse against the order of nature with any man, woman or animal.

Law in U.S.

Not all countries have criminalised homosexuality. For example, in the United States, in several states there is nothing unlawful or criminal about being a homosexual. However, the law in the United States is not uniform. While in several states there is nothing unlawful about homosexuality, in certain other states, specific sexual acts between persons of the same sex are considered unlawful. These acts, (e.g. rape) would however also be considered unlawful between persons of the opposite sex. Other states have gone to the extent of enacting legislation to ensure that there is no discrimination against homosexuals in matters of employment, housing accommodation, property rights, education and health. Unfortunately there is no corresponding legislation in India. On the contrary, discrimination, both covert and overt is regularly practised.

Law in India

The marriage of Urmila and Leela raised the question whether in India women can be discriminated against in public employment on grounds of being lesbian.

To begin with, it must be noted that although most marriage laws do not specifically state that a valid marriage is one between members of the opposite sex, yet it is obvious that they contemplate marriage between members of the opposite sex only. Hence no valid marriage of two persons belonging to the same sex can be registered under the Hindu Marriages Act or under the Special Marriages Act. The status of the marriage between Urmila and Leela, therefore cannot be considered to be a legal one. The status of the union is therefore not considered to not make their union unlawful. So far as the law is concerned, they will be considered to be two people living together, just as any other two people of the opposite sexes living together would be. For Urmila and Leela, the legal validity of their marriage would be of very little relevance. It could be argued that Leela and Urmila have a guaranteed fundamental right under the Constitution to live with each other and there is nothing in Indian law that would criminalise such a marriage.



Gay Marriages

In the United States, gay couples have often applied for a marriage licence, which has been refused. The United States Supreme Court has yet to rule on this question viz. whether a licence can be refused for marriage between gays. They have challenged the refusal to grant a marriage licence on several grounds viz. that refusal amounts to violation of their important right to freedom of association and that it is an invasion of their privacy. Decisions such as whether to use contraceptives or not, whether to have an abortion or not have also been protected by the right to privacy. Gays argue that their decision to choose with whom they have sexual relations must also be protected from needless government interference.

The gay family is not an unknown phenomenon in other countries. Lesbian mothers have had to fight protracted battles, often in court to gain custody of their children. Sometimes they have succeeded, as the fact of being a lesbian does not disentitle them to the care and custody of their children. Sometimes however they have been unsuccessful. Some courts have taken the view that a lesbian mother is not unfit to have custody of her child simply because she is gay. The Supreme Court of the United States had held that there is no conclusive presumption that an unwed father is not entitled to the custody of his child and it is impermissible to presume as a matter of law, that all unwed fathers are incompetent

parents. The decision must also be applicable to unwed mothers. It must also follow that it is impermissible to presume that all lesbian mother or gay fathers are unfit parents.

Public Employment

Public employment in India constitutes a major source of employment. The Constitution of India while guaranteeing equality before law, explicitly guarantees equality of opportunity in matters of employment and prohibits discrimination on grounds of sex. The discharge of Urmila and Leela from the M.P. police force raises the legitimate question as to whether they have been discriminated against in the matter of public employment by the State. None of the numerous rules and regulations of service in the State Governments or the Central Government define homosexuality as an act of misconduct. Thus, the Madhya Pradesh Government can justify the dismissal of Urmila and Leela only by accusing them of violating the notorious, catch-all clause of being guilty of “conduct unbecoming of public servants”.

There has been much litigation in the US on discrimination against gays and denial of employment opportunities on the ground of their homosexuality. However, to dismiss or discharge or deny employment to homosexuals on the mere ground that he or she is gay would be a clear denial of equality before law and would call for the protection of law in the matter of public employment. It could be successfully argued that there is no nexus between the fact of being gay and the employment in question. If an employee's conduct does not interfere with the effective performance of his or her job, the discharge or dismissal would be a clear act of victimisation.

The struggle for gay rights has been long and continuous. There is no doubt that Urmila and Leela will also face societal prejudices both outside and inside court. However, the struggle against the discharge from public employment of Urmila and Leela will at least provide the starting point of a long legal battle for the rights of gays. The case, if and when it goes to court, will be a major trendsetter not only on the rights of gays but also on discrimination in public employment.

END

Civil Laws Affecting Gay Men and Lesbians

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*Paper presented at workshop on "Strategies for furthering lesbian, gay
& bisexual rights in India", Mumbai, 1997.*

The major debates and discussions concerning the law affecting gay men and lesbians in India centres around Section 377 of the Indian Penal Code which criminalises male homosexuality. However, the present paper seeks to explore other laws that discriminate against gay men and lesbians. Apart from Section 377 of the Indian Penal Code (and the Armed Forces Acts), no other laws directly deal with homosexuals. It is as if homosexuality does not exist in India at all. Because of this ostrich like attitude there is no overt discrimination against gay men and lesbians. The covert discrimination against homosexuals, however, runs throughout the gamut of laws. This operates at two levels. First, the family law regime is based entirely on heterosexual premises. Under all systems of personal laws, marriages can only be between persons of opposite sex. Succession and property rights are based either on blood relations or relations by marriage. Secondly, all laws (outside the confines of family laws) concerning entitlement to assets upon death of a person are also based exclusively upon heterosexual premises confined to relations by marriage and blood. Thirdly, because of the moral stigma attached to homosexuality per se, gay men and lesbians are affected by a number of laws that criminalise actions and other objects considered as immoral or scandalous according to the governing ethics of society.



Criminal Laws: other adverse effects of Section 377 of the Indian Penal Code

Criminalisation of male homosexuality under Section 377 of the Indian Penal Code has the potential of leading to many adverse spin-off effects beyond prosecution under the section itself.

- a) Even though lesbianism is not explicitly criminalised, it is very easy to treat it as something immoral or depraved or indecent; and this can have major impact on lesbians.
- b) **Section 292 of the Indian Penal Code** punishes obscenity and makes it a criminal offence. The current definition of obscenity can lead to its misuse against gay and lesbian writings.

Section 292 (1), which defines obscenity states:

“(1) For the purposes of sub-S. (2) a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect or, (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.”

The arbiters of social decency and morality are lurking in unsuspected corners of the law. In October 1997, the Customs department of Calcutta confiscated a consignment of copies of **Trikone** magazine on grounds that it attracted the provisions of the Customs Act, 1962. (**Trikone** is a magazine for lesbians, gays and bisexuals from South Asia published in the U.S and distributed in India through Counsel Club in Calcutta and the Humsafar Trust in Bombay). The allegation of the Customs department was that the magazine is “derogatory to the morality and social system of our nation”. Section 11 of the **Customs Act, 1962** allows the Central Government to ban the import of any goods to India which affect the “standards of decency or morality”.

As male homosexuality is a criminal offence, the presumption is that it is something depraved and can corrupt minds and bodies of persons. Any writing or painting on gay issues can be banned by branding them as obscene. Thus, even without criminalising it is very easy to treat homosexuality as something immoral or depraved or indecent; and this can have major impact on gay men and lesbians and issues related to them. It is therefore not enough to decriminalise homosexuality. This by itself will not put an end to the legal woes of gay men and lesbians. Simultaneously it is necessary to fight for legal and moral recognition of gay and lesbian relations.

- c) **The Dramatic Performances Act, 1876** empowers the State to ban any play which — according to it — is scandalous or is likely to deprave the spectators. A gay or lesbian play can easily be banned under this provision. Similar is the case with books and periodicals.

- d) Under the **Indecent Representation of Women Act, 1986**, indecent representation of women is defined as depiction of the figure of a woman or her body which is likely to deprave or corrupt public morality or morals. Any book, photograph or picture, which contains such indecent representation in any form, can be banned.
- e) The **Juvenile Justice Act, 1980**, deals with neglected juveniles and juvenile delinquents. The State has the power to take away a 'neglected juvenile' from the care of parents and put the child in a childcare home. What is of crucial importance is the definition of neglected juvenile. The law defines a neglected juvenile as one whose parent or parents are 'unfit' or associate with a person who leads an immoral or depraved life. This definition is potentially dangerous for gay and lesbian couples who may be bringing up one or the other's child. By using the argument of Section 377 or even independent of it, it can be claimed that a gay or lesbian parent is unfit as he or she is depraved, and leading an immoral life.

We shall now have a look at some of the non-criminal laws that affect gay men and lesbians.

Labour Laws

Under all labour and service laws, being convicted of an offence involving moral turpitude is treated as a major misconduct punishable with dismissal from service. Under certain laws it is not even necessary for a person to be convicted for moral turpitude but a mere opinion of the employer that an employee is guilty of moral turpitude is enough reason for the employee to lose his or her job. Moral turpitude is defined as anything that is shocking by the present moral standards of society; and in many cases adultery has already been held to be an offence involving moral turpitude. Employers can easily consider homosexuality to be an offence involving moral turpitude and this would be a constantly hanging sword over employees and would also prevent them from openly declaring or discussing their sexual orientation.

Various benefits are available under the Labour laws to heirs and legal representatives at the time of death of the employee. Due to the scheme of these Acts, a relationship that is not based on blood or marriage is not recognised for entitlement to these benefits. Some of the provisions of the relevant labour laws are listed below:

1. Employees' Provident Fund Scheme, 1952

Under this Act and Scheme an employee is entitled to claim a Provident Fund upon retirement/ resignation/ termination. The employee can nominate a person who will receive the Provident Fund in case of his/ her death.

Regulation 61, which deals with nomination, reads:

“(3) If a member has a family at the time of making a nomination, the nomination shall be in favour of one or more persons belonging to his family. Any nomination made by such member in favour of a person not belonging to his family shall be invalid.”

Regulation 2(g) defines family.

“Family means,

In the case of male member, his wife, his children, whether married or unmarried, his dependent parents and his deceased son's widow and children....

In the case of a female member, her husband, her children, whether married or unmarried, her dependent parents, her husband's dependent parents and her deceased son's widow and children ...”

Thus, a gay or lesbian couple cannot nominate his or her companion for receiving the Provident Fund. Besides, under the Provident Fund Act, if no nomination is made, the Provident Fund will go to heirs as per the personal laws. As a result, even here, a gay or lesbian couple loses out.

Similarly, under the Employees' Family Pension Scheme, pension is payable only to 'family' members as defined through blood and marriage relationships.

2. Payment Of Gratuity Act, 1972

The situation is similar under the Gratuity Act, which deals with payment of gratuity to an employee at the time of his or her retirement/ termination/ death.

Nomination can be made by the employee and the nominee is to receive the gratuity if the employee dies.

Section 6 deals with nomination and reads:

“(3) If an employee has a family at the time of making a nomination, the nomination shall be in favour of one or more persons belonging to his family. Any nomination made by such employee in favour of a person not belonging to his family shall be invalid.”

Here again, “family” is defined by blood and heterosexual marriage:

S. 2(h) defines 'family'.

‘family’ in relation to an employee, shall be deemed to consist of

- in the case of a male employee, himself, his wife, his children, whether married or unmarried; his dependent parents and the dependent parents of his wife and widow and the children of his predeceased son, if any,
- in case of a female employee, herself, her husband, her children whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any ...”

3. Workmen’s Compensation Act, 1923

This Act provides that in case of death caused by injury at the work place, dependants of an employee are entitled to receive compensation from the employer. At a superficial level this appears to be a major departure from other laws, in that, the entitlement to compensation is based on dependency. However, the bias of the law is exposed in its definition of ‘dependants’

“Dependent’ means any of the following relatives of a deceased workman, namely:

“a widow, a minor legitimate son, an unmarried daughter, or a widowed mother; and, if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm ...”

4. Employees’ State Insurance Act, 1948

This Act deals with medical aid and benefits to employees. Not just the employee but even his/ her family members are entitled to receive subsidised medical treatment from ESI doctors and hospitals. As in other labour laws, ‘family’ is defined in a very restricted manner to include only relationships by blood or marriage.

Under this Act, if death is caused due to employment injury, the dependants of the employee are entitled to compensation. Here again, ‘dependants’ are defined in a very narrow manner to only include relations by blood or marriage.

Insurance Laws

1. Insurance Act, 1938

This is the Central law dealing with insurance policies including life insurance policies. While purchasing a policy the insured person is required to give the name of his/ her nominee. Under Section 39 of the Act, the insured person can nominate any person irrespective of whether he or she is a legal representative. This clause is a very pleasant departure from other laws dealing with nominees since it allows any one to be nominated for the policy amount. However, owing to judicial interpretation, any potential use of this law by gay men and lesbians has been nullified. Various High Courts as well as the Supreme Court have repeatedly held that a nominee only acts as an agent for the legal heirs of the deceased person. Thus, the nominee is only meant for collecting the insurance money but the money actually belongs to the heirs and has to be paid over to the heirs.

2. Public Liability Insurance Act, 1991

This Act provides for compensation for the public at large (non-workers) regarding accidents arising out of handling hazardous products. However, in the case of the death of a person only his/ her legal representatives are entitled to claim the insurance amount.

Housing Laws

Laws concerning housing are State laws and vary from one State to another. Merely by way of example we have dealt with the housing law in Maharashtra. Houses can either be owned or be rented. Most of the houses in urban agglomerations, which are owned are in housing co-operative societies. These are governed by the Maharashtra Co-operative Societies Act, 1960. Any person can buy a flat in a society and become a member. It is similarly possible for two persons (whether related or not) to jointly buy a flat in a society and become the member and associate member. In such a case both persons have equal rights to the flat. Thus, it is possible for a gay or lesbian couple to jointly purchase a flat in a co-operative society.

If a flat in a society stands singly in the name of a person, under Section 30, she/he can make nomination in favour of any person of his/her choice. Nomination is with a view to ensure smooth transition after the death of the flat owner. However, here again, nomination is merely for the purposes of facilitation and does not create any rights in favour of the nominee as she/he acts only as the agent for the heirs. Similarly, under the Bombay Rent Act, 1947 on the death of a tenant, the tenancy passes to the tenant's heirs. A gay or lesbian tenant cannot even will away the tenancy to his or her companion.

Conclusion

We have only given a representative sample of the status of gay men and lesbian under the Indian laws. The same bias runs through the gamut of the entire legal structure.

What stops homosexual couples even today from entering into a contract which protects their rights?

First, the central civil law problem facing gay men and lesbians today is that they do not fall within the definition of 'family' and are not considered 'heirs' under law. Any individual's status as a member of a family or as a legal heir or dependent does not depend on contract but on law. Contract cannot change this status.

Second, under Section 23 of the Indian Contract Act any contract or agreement for an object forbidden by law or considered immoral or opposed to public policy is considered an unlawful and void agreement, giving no legal rights.

It is quite clear that, in terms of laws, the following need to be done and fought for simultaneously:

- Homosexuality must be decriminalised.
- Gay and Lesbian relations should be treated as 'moral' relations and not something that is depraving, corrupting or scandalising.
- It is equally important to fight for legal acceptance of gay and lesbian companionships as constituting families. This can only be done by either amending the existing family laws or by providing a separate law legitimising contracts amongst gay men and lesbians which gives the couples quasi-marital rights. It is also important to have a law which cuts across all the existing laws and redefines the phrases 'family', heirs and 'legal representatives' to include gay and lesbian companions.



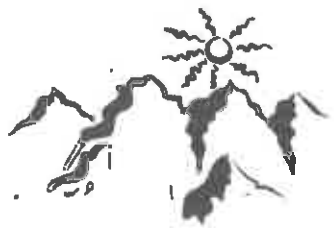
Protection from Violence

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Violence is a complex phenomenon, and consequently the demarcation of its intersections with the legal terrain is highly contested. Although it would not be possible to address all of these complexities, in this section some of the key issues relevant to lesbian, gay and bisexual communities in India are identified.

If one accepts the premise that violence is a means of social control exercised by dominant groups, violence against lesbians, gays, bisexual and transgender people is justifiable and conceptualized as a manifestation of the homophobia of dominant heterosexual society.¹ In societies where homosexuality is defined as immoral, illegal or abnormal, these ideological formulations become the epistemic justification for the overt manifestation violence. The law itself codifies this violence through sodomy statutes, religious proscriptions against homosexuality, and the psychological classification of homosexuality as “abnormal”.

Even in countries where “decriminalization” has occurred, because of the persistence of the ideology of homosexuality as immoral and abnormal, social violence continues in the form of hate crimes and the exclusion of sexual minorities from civil rights to equal protection under the law. The limited legal protection in the form of anti-discrimination and anti-hate crime legislation are merely attempts to contain the violence, and do not recognize the structural power differential that produces such violence in the first place.



Emergent sexual rights analyses probe a deeper understanding of the inter-sections of violence against women, sexual minorities (lesbian, gay, bisexual and transgender people) and sex workers, and view violence as an exertion of hetero-patriarchal control over expression of gender non-conformity². That is, violence is not a consequence of the “identity” or “sexual behaviour” of the person per se, but a consequence of their transgression of the hetero-patriarchally defined gender roles. For instance, in many societies, as long as people fulfil their gender role obligations of “marriage and family”, their sexual behaviour is “allowed”.

¹See Steven Onken, *Conceptualizing Violence against Gay, Lesbian, Bisexual, Intersexual and Transgendered People in Violence and Social Injustice Against Lesbian, Gay and Bisexual People* (Eds.) Lacey M. Sloan and Nora Gustavsson. (NY: Haworth Press Inc. 1998)

²See James D. Wilets, *Conceptualizing private violence against sexual minorities as gendered violence: an international and comparative law perspective*, 60 Albany Law Review 989: 1997 <http://www.law-lib.utoronto.ca/Diana/fulltext/wile.htm>

Indian groups working on the issues of sexual minorities have recently begun to not only document violence against these communities through fact-finding reports and research studies (rather than simply rely on newspaper reports), but also to strategically use the information in legal initiative; and to educate the public. The following sections discuss typology of violence experienced by sexual minorities in the Indian context.

Physical Violence

Public Violence

Though the police routinely engage in blackmail, extortion, physical and sexual harassment of gay men, periodically there are official (though not necessarily stated) "social cleansing" drives initiated by the police in gay cruising areas of cities. In the early 1990s, such a drive in Delhi was the catalyst for one of the first public rally and protest by lesbian and gay activists³. The recent drive initiated by the Bangalore police prompted the *Peoples Union of Civil Liberties - Karnataka* to initiate a fact-finding report documenting the extent of the human rights violations.

The vandalism of the Shiv Sena hordes that destroyed property and tore down posters at theatres screening Deepa Mehta's film *Fire* is also an example of public violence. Although the legal battle to re-open the show was "won", the impunity of the offenders, as well as the fact that the producer "voluntarily" removed the names of the lesbian characters in the film puts in question the nature of the victory.

Perhaps more insidious, is the fact that much of the counter-protest was rooted in the right to protection of freedom of expression, rather than an articulation of lesbian rights. Here too, one comes up against the knotty question of whether (and the extent to which) the right to freedom of speech can include hate speech.

Private Violence

Within the private sphere, lesbians and gay men can be (and frequently are) subjected to physical and sexual assault from family, strangers or partners. Like all victims of torture, beatings, and rape however, reporting of the incidents is low. This is due not only to the victim's sense of shame and guilt about being a victim of violence, but also to their very valid fear that disclosure of their sexual orientation will cause further ill-treatment (by police, medical or other social institutions). There is one documented case of murder (see *The Story of NP*), however, given the constraints on reporting, it is quite possibly the tip of the iceberg.

Also within the private sphere is the issue of same-sex assault. The debate on legal interventions in cases of same-sex sexual assault has recently been initiated in India with the Law Commission of India's 172nd Report (LCI-172) *Review of Rape Laws*, in which Section 377 is proposed to be

³ See "Police Harasses and Hounds Delhi Gays" *The Pioneer*, Jul 15 1992, and "Not Really a Gay Experience" *The Pioneer*, Aug 16 1992

deleted, and the provisions of the amendments to the laws on sexual assault made gender neutral¹. The intent of the bill was to include the sexual abuse of boy children within the ambit of sexual assault legislation (previously such cases were inadequately prosecuted under Section 377). However, whether intended or not, the LCI-172 now includes the potential recognition of same-sex assault. In the absence of *positive* legal and social recognition of lesbian and gay existence in India, LGBT organisations are concerned that, given the societal power imbalances, these provisions may be used against them. This chapter includes a paper representing some aspects of this debate.

Medical and psychiatric abuse

In 1973, the American Psychiatric Association (APA) formally removed the classification of homosexuality as a psychiatric disorder in the Diagnostic and Statistical Manual (DSM). The other widely used diagnostic classification is the International Classification of Diseases (ICD) of the World Health Organization (WHO), which classified *homosexuality* as a mental disorder until 1993. The ICD-10 still contains the code F66.1 for *ego-dystonic sexual orientation*. This code is for individuals who are certain about their sexual preference and who seek treatment because of associated psychological and behavioral disorders associated with it. Note, the ICD-10 uses the term *sexual orientation* in conjunction with ego-dystonic, as opposed to *homosexuality*. This is a neutral term, which can be interpreted to mean ego-dystonic *heterosexuality* as well. That is, technically a heterosexual person could say they were experiencing distress, and they wanted to become homosexual or even asexual. The critical question is whether mental health professionals would notice these subtleties of language. In India, mental health professionals generally follow the ICD-10, and in practice, it is probable that many of those who follow ICD-10 would justify “conversion therapy”, even if they do not consider homosexuality an abnormality².

A related, and equally pernicious issue is the classification of “gender identity disorder” (GID). Both the DSM-4 and the ICD-10 have classifications for GID which include criteria to determine when an individual’s strong and persistent identification with the opposite gender would justify sex re-assignment surgery. These classifications are also being contested, a debate which cannot be entered into here. What is pertinent in the Indian context is, even if one accepts the classification, the disturbing questions that merit further attention are: first, the knowledge and attitudes of mental health professionals in dealing with the issue of GID. Second, the question of how many ostensibly GID clients are actually men and women who are homosexual, but who feel they cannot live as homosexual given the rigid gender role prescriptions in our society.

In India, the emergent lesbian and gay movement has begun to take up the issue of the psychiatric labelling of homosexuality as a disorder and the practice of conversion therapy. In May 2001, the Milan Project, a program of the Naz Foundation India Trust in Delhi, filed a

¹ Full text of the Report available at <http://www.nic.in/lawcom/rapelaws.htm>

² Bina Fernandez and Gomathy N.B. *Study on Violence against lesbians*. Tata Institute of Social Sciences (forthcoming)

formal complaint with the National Human Rights Commission of India (NHRC)⁶. Complaint diary 3920 concerns a case of reported psychiatric abuse involving a patient at the All India Institute of Medical Sciences (AIIMS), Delhi, who received almost four years of treatment aimed at the conversion of his homosexuality. The treatment reportedly involved two components: counselling therapy and drugs. During counselling therapy sessions, the doctor explicitly told the patient that he needed to curb his homosexual fantasies, as well as start making women rather than men the objects of his desire. The doctor also administered drugs intended to change the sexual orientation of the patient, providing loose drugs from his stock rather than disclosing the identity of the drug through formal prescription. The patient reports experiencing serious emotional and psychological trauma and damage, as well as a feeling of personal violation, due to these actions.

The complaint filed with the National Human Rights Commission had two objectives. One was to get it to formally recommend to all relevant Indian psychiatric bodies, the issuance of an official statement that homosexuality is not a disease that requires a cure. The other was to recommend to the National Commission to Review the Working of the Constitution (NCRWC) that a clause providing protection from discrimination on the basis of sexual orientation be included in the Indian Constitution. However, this case was dismissed at the threshold by the NHRC without going into merits, and the oral view expressed by the judges was that till such time as long as Section 377 existed, nothing could be done.

Emotional abuse

This category of violence falls almost entirely in the domain of family relationships. In India, not only heterosexuality, but marriage is compulsory, and parents pressurize their children to conform to these roles and obligations, even if they know about their children's sexual orientation. Resistance is met by emotional blackmail, verbal abuse, often to the point where the offspring are compelled to cut off relationships with their family and leave the home. Inevitably, in a patriarchal society, this pressure is more concentrated for women. This is an arena where legal redress gets foreclosed by the conception of "privacy" of the family. Even when the abuse by family escalates into physical abuse or (beatings or incarceration) redress is often rendered difficult by these notions of privacy.

Internalization of violence

Perhaps the most damaging form of violence is when it is internalized. This is manifested in emotions of guilt, shame and depression about sexual orientation. There is little if any documentation in India of the extent of suicides due to internalization of social non-acceptance of homosexuality. Studies in other societies however do show significant co-relations. In India, what we have begun to document is the increasing trend of lesbian joint suicides⁶.

BOOKS

⁶ Email action alert from Shaleen Rakesh of the *Milan Project*

⁷ See *Too too many* in this section.

Where Saving Lives is a Crime - The Lucknow Story

Aditya Bondopadhyay

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I received a phone call on the morning of July 8, 2001, informing me that a series of raids had been carried out by the police in various parts of Lucknow city on the previous day. About 11 people had been arrested. The raided sites included the offices of the Naz Foundation International (NFI) and the Bharosa Trust. The arrested included two staff members of the NFI and two persons from Bharosa. These people have since then become famous as the Lucknow four. I reached Lucknow on the morning of July 9 and thereafter stayed on till the release on bail of the Lucknow four.

The NFI is a technical support agency based in London and registered in the UK. In South Asia it provides skills training in the development of 'men who have sex with men' (MSM). It conducts sexual health projects addressing the fight against HIV / AIDS. It has technical assistance partnerships with 13 ongoing projects in South Asia, across India, Pakistan and Bangladesh. It was allowed by the Reserve Bank of India (RBI) to open its regional Liaison Office in Lucknow, which started functioning from the month of March 2001. In all its activities in India, it has been closely associated with the National AIDS Control Organization (NACO) and the various State AIDS Control Societies including the Uttar Pradesh State AIDS Control Society (UPSACS).

Bharosa is a local NGO in Lucknow that does HIV/AIDS intervention work with MSM in Lucknow and receives technical support from the NFI. It also collaborates with the UPSACS in all its activities, and in fact, at the time of the arrest, there were ongoing negotiations between Bharosa and the UPSACS on funding the MSM project for Lucknow. The principal agencies, both central and state, responsible for the fight against HIV/AIDS were fully aware of the activities of both Bharosa and the NFI.

The world has come round to the view that in the absence of a cure, the best way to combat the spread of HIV / AIDS is by promoting and protecting the human rights of the most vulnerable so that they can be empowered to protect themselves. This integrationist policy is an attempt to integrate the vulnerable into the mainstream of society. In keeping

with this doctrine, the NACO, while making the national policy on the prevention of HIV, identified various vulnerable groups, one of which is the MSM. The policy is very clear that MSM must be specifically targeted with intervention. The Behaviour Change Communication (BCC) materials are used the world over for intervention, and the NACO recognizes this. It also recognizes that support structures in the nature of support groups, have to be formed, so that a captive audience is found for disseminating information on the prevention of HIV. Outreach work forms a vital part of any intervention, and the NACO is well aware of this. These were exactly the activities that Bharosa was engaged in. The NFI trained groups to effectively take on these activities. The activities of both Bharosa and the NFI fell squarely within the purview of government policies. The Indian Government is on record in various international forums for espousing integrationist policies, and more specifically, for supporting the rights of MSM in accessing HIV intervention. India voted in support of the inclusion of the International Gay and Lesbian Human Rights Commission in the satellites sessions of the United Nations Special Session on HIV / AIDS in June this year.

So what led to the arrests of the Lucknow four and the raids? The events that I have been able to reconstruct from the police statements given to the media, the media reports, as also talking to my clients are given below. But it may be noted that the final version that the police have now doled out in the charge sheet is much in variance to this sequence.

On July 6, 2001, late at night, two people were caught and arrested near one of the public parks of Lucknow frequented by MSM. These two people were not associated with either the NFI or Bharosa. On arresting them, the police learned that the park was frequented by MSM. Based on this they raided the park and arrested some more people. One of those arrested was an outreach worker from Bharosa who was on outreach duty.

On being arrested, the outreach worker mentioned that he worked with Bharosa and that he was on outreach duty. The police learned of Bharosa at that point. They raided and sealed the office of Bharosa on July 7. At Bharosa, the police heard of the NFI, whose offices were raided thereafter. The Project Manager at Bharosa was arrested. The Director of the Liaison Office and one office assistant were arrested at Naz, and the office was sealed. While the raid was in progress, the police called up local media people and told them that they were busting a 'gay club,' a 'sex-racket' and a 'call-boy racket.'

The arrest was front-page news in most newspapers and there was a lot of preening before the cameras by the Lucknow Senior Superintendent of Police (SSP), Braj Bhusan Baksi and the SP (East) Lucknow, Rajesh Pandey. They took credit for busting a sex racket. They claimed that these NGOs were allegedly promoting homosexuality, which they said was against Indian culture and morals. In effect, the position of the SSP and the SP was that the police could act as extra-constitutional moral hooligans to enforce the

code of conduct that they found appropriate. They made it clear that the police were to act as moral guardians of the public – no matter if they actually violated the basic human, fundamental and health rights of the arrested and thousands of MSM in the process. It did not matter that their actions were impeding the work of the national policy to prevent HIV.

And what was the basis of such claims as made by the police? In the raid the police found and took away all the condoms and lubricants that were kept for distribution. They seized BCC materials that were there in the office. The BCC materials were termed ‘pornography.’ As mentioned, both condoms and the BCC materials are safer-option tools recognized by the NACO policy on HIV / AIDS intervention. They seized a dildo that was used for safer sex demonstration (proper condom use) and called it a sex toy. But they conveniently ignored the NACO policy that was shown to them by Naz staff during the raid, which clearly stated that MSM were a high-risk group and NGOs should intervene with them to reduce their risk of contracting HIV / AIDS. They also deliberately ignored all the other reports and documents shown to them to establish the nature of work and NFI’s collaboration with state agencies. The police spread misinformation in the media and pressurized them to prevent attempts by the author, by agents of Bharosa, the NFI, and other Human Rights groups to publish the true picture of the organizations. The police directed all its efforts towards justifying the arrests and taking credit on false pretenses, by hook or by crook. In fact, they were candid enough to admit in the media that they wanted to stop the ‘vice of homosexuality.’ To this end, they were charging the arrested under Section 377 IPC (Unnatural Intercourse), as by their own admission, they found the law to be otherwise insufficient.

The Lucknow four were kept in lock up for a day and severely beaten. The police asked them to state in writing that they were running a gay sex racket, which they refused to do. They were booked under Section 377 of the IPC, read with 120B (Conspiracy) and 107 (Abetment). They were also booked under Section 292 of IPC (Obscenity). For some reason that in spite of all my legal education, I can not comprehend, they were also booked under Section 60 of the Copyrights Act and Sections 3 and 4 of the Indecent Representation of Women (Prohibition) Act. We moved bail on the July 8, but it was finally heard on July 11. The magistrate rejected the bail. The reasoning was that he found the activities of the accused, to use his own words in the order, like ‘a curse on society.’ There was no mention as to what was the foundation of such a belief – given the fact that by then the court had been informed of the relevant policy documents of the NACO, and the context in which the arrested people worked.

The Lucknow four were in jail for a total of 47 days. Ultimately when the matter came up before the High Court, where Indira Jaising and Anand Grover appeared on behalf of the arrested, the Senior Government Prosecutor conceded that a case of 377, the only

non-bailable offence with which the Lucknow four were charged, was not made out against them. One wonders what prevented the state from disclosing this fact to the lower courts. The High Court granted bail. But by then the suffering of the four could not be reversed.

In jail, the four were beaten up in the first few days. They were forced to drink water from a drain, as proper drinking water was not made available to them in the heat of summer. One of the four, Mohammad Shahid, had his eyeglasses broken and had to spend the time without being able to see. They were taunted incessantly for the work they did. When the Director of the NFI, Arif Jafar, fell sick due to the dirty water he was forced to consume, he was not given any medical care. They were food that was stale and inedible. In the meanwhile, those trying to help them were also hounded by the Lucknow police. I was constantly followed by the police for one whole month. I received anonymous calls on my cellular phone, threatening me with dire consequences for taking up the case. One of the technical advisors to the NFI, Lok Prakash, who organized the campaign efforts for the release of the four from Delhi, was threatened with arrest by the office of the SSP, Lucknow. We had to arrange anticipatory bail for him in Delhi. The family of Arif Jafar received threatening calls. The Internet cafe that I usually use to access my mails was raided by the SSP with a company of some 30-odd policemen. Luckily I had just left the cafe, and witnessed the raid from the outside. When the SSP did not find me inside, he stated that he had gone in to surf for examination results.

But more than the police, it is the role of the state, especially the UPSACS and the NACO, which were found to be gravely lacking. Officials of the NACO did call up the UPSACS while trying to help. But the UPSACS never responded to their request. Moreover, they never called those that mattered. I shall depart from my clients on this and state that I personally feel that the NACO has not done enough. Health is very much within the purview of the NACO's jurisdiction where HIV is concerned. NACO has a duty to protect those that work under its policy. But NACO chose silence, and in the process, pushed back the HIV intervention efforts with MSM by a good measure. All that was asked of the NACO was a public statement that the work being done by the Lucknow four was within the purview of their policy.

It is interesting to note that the government has such double standards where homosexuality is concerned. On the one hand, it recognizes that work with MSM is important to prevent HIV. On the other hand, it chooses to carry on with a law like Section 377, IPC, which though purportedly equally applicable to heterosexual situations, is used exclusively to target MSM. And Section 377, IPC is the biggest impediment to intervention efforts, because anyone who works with MSM can be charged with either conspiring or abetting the crime of Section 377. Lucknow is an example of this. Another example is of the Tihar Jail authorities refusing to distribute condoms within the jail. According to them, distributing condoms in an all-male jail would be tantamount to the authorities abetting the

crime of 377, which they could not do. The law, together with a refusal of the authorities to admit to all that is actually happening around them, results in the continued vulnerability of the jail inmates.

Today, MSM face many problems. There are social problems of non-acceptance, lack of self-esteem, poverty enforced by refusal of employment, psychological problems, etc. The biggest threat for the MSM today is of course HIV. Intervention efforts to reduce this risk are greatly hampered by the existing laws like Section 377, IPC. Other laws related to Obscenity, the abetment laws, the Public nuisance laws, etc., are also disproportionately and falsely used to target MSM and impede intervention. Positive laws are needed to protect the rights of MSM from such abuse.

Attempts to do away with 377 have so far not been successful. The Indian Law Commission has recommended the repeal of 377 as part of the suggested reforms of the rape laws. But when that will be acted upon is anybody's guess. In the proposed changes in rape laws, the fact of gender neutrality effectively brings in the issue of sexuality inter se females for the first time in a very negative light. This is problematic and needs to be dealt with before the law is enacted. Litigation is being considered to have the law declared unconstitutional. Perhaps the Judiciary will act where the Legislature and the Executive have failed.

Unless the state wakes up to the needs of protecting and promoting the rights of MSM, there is a potential genocide of 50 million men at their most productive age looming. Since we are lucky enough to be living in a democracy, it is our duty to compel the State to act before it is too late.

□□□

Outlawing Violence - the International Legal Scenario

SOCI

Systematic documentation of violence against sexual minorities has begun recently, with international reports by IGLHRC¹ and Amnesty International² as well as country specific reports from Brazil, Argentina and India³.

In countries where sodomy statutes persist, violence against sexual minorities is state sanctioned, and is often perpetrated by the police or other government authorities. At the extreme end, in countries where *Shari'a law* is in force, those convicted under sodomy statutes are subjected to torture (public whipping in Saudi Arabia and Pakistan) or the death penalty (in Iran and Afghanistan).

In a pattern typical to many countries (documentation exists for Romania, Peru, Costa Rica, Cuba and Mexico), police will often engage in blackmail, extortion, and "social cleansing" campaigns in the cruising areas of sexual minorities. For this, the police do not need to have "evidence" of sodomy; they often take recourse to the general laws "protecting public order/morality/decentcy". Invariably the threat of exposure, as well as the fear of arrest, is intimidating enough. Sexual minorities also suffer systematic torture, police abuse and arbitrary arrest. For example, in Australia, the government-funded Australian Institute of Criminology found that "11 percent of lesbians and 20 percent of gay men had been assaulted. Of those, 12 percent of [the] gay women and 18 percent of [the] gay men had been assaulted by the police."⁴

Even in countries where homosexuality has been decriminalized and there are explicit anti-discrimination provisions in the law, the homophobia in society can run deep. Severe physical abuse and torture, and too often, murder is a consequence of this hatred. For example, there were nearly 2000 murders of gay men, lesbians, bisexuals, and transgender people between 1980-2000 in Brazil, many of which were abetted by the police⁵.

Hate crimes against lesbians, gays and other sexual minorities are on the increase in the U.S, Australia and Europe, with the rise of right-wing groups. The horrifying, brutal

¹ IGLHRC. *Sexual Minorities And The Work Of The United Nations Special Rapporteur On Torture: A paper submitted by the International Gay and Lesbian Human Rights Commission to Sir Nigel Rodley, Special Rapporteur* June 5, 2001

² Amnesty International. *Crimes of hate, Conspiracy of Silence: torture and ill-treatment based on sexual identity*. London:2001

³ See Luiz Mott, *Epidemic of Hate: Violations of the Human Rights of Gay Men, Lesbians, and Transvestites in Brazil* (IGLHRC, 1996); *The Rights Of Transvestites In Argentina* Lohana Berkins, ALITT, and Alejandra Sarda and Scott Long, (IGLHRC April 2001); People's Union For Civil Liberties-K. *Human Rights Violations Against Sexuality Minorities in India*. Bangalore: 2000

⁴ Cited in James D. Wilets, *Conceptualizing private violence against sexual minorities as gendered violence: an international and comparative law perspective*, 60 Albany Law Review 989.

⁵ IGLHRC, *ibid*.

murder of Mathew Shepard, a young gay student in Wyoming in October 1998 was a wake-up call in the U.S., for the first time mobilizing a tremendous public outcry against such atrocities, and a call for implementing tougher federal hate crime legislation. Forty states in the U.S. have passed hate-crime laws, but only eleven specifically cover anti-gay hate crimes. The Republicans stalled the federal Hate Crime Bill in October 2000, with an attempt to exclude sexual orientation from the ambit of the proposed legislation.

Hate crimes based on sexual orientation have continued to rise in the U.S., and reported incidents have more than tripled since the FBI began collecting such statistics in 1991. Such crimes make up the third-highest category after race and religion comprising 16.7 percent of all hate crimes reported in 1999. Experts agree that reported figures strongly understate the problem, particularly since many victims are afraid to "expose" their orientation by reporting the crimes.⁶

In 1994 the European Parliament passed a resolution calling for the end of discrimination based on sexual orientation, and for measures to combat hate crimes. However, the compliance of member countries in Europe is very much in question. For instance, the British definition of Hate Crime only focuses on racially biased crime, and therefore anti-gay attacks are not captured either by the official police statistics or by the periodic victimisation survey (British Crime Survey). On the other hand, the British definition has the advantage of defining a hate crime by specific reference to the perception of the victim(s), even if this perception is at odds with the view of the investigating officer. International law has been slow to recognise violence against sexual minorities, and as James Wilets observes:

Thus, in order to obtain recognition of even their most basic human right to equal protection from violence under national and international law, sexual minorities are faced with the multiple tasks of establishing their very existence, and establishing the recognition of their right, on the most basic normative level, to bodily integrity and equal protection. To do this, it is incumbent upon sexual minorities to demonstrate, through cross-cultural documentation, that sexual minorities are a global phenomenon, of relevance to all cultures and societies, and thus an appropriate object of regulation by international law. The accomplishment of this task is necessary to rebut cultural relativist arguments against providing protection for sexual minorities under international law.

Establishing the universal existence of sexual minorities is an empirical task. Establishing that the fundamental human rights of sexual minorities, and those of women, should not be abridged is both normative and legal and involves establishing that sexual minorities should be entitled to international law's "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world."

END

⁶ <http://www.hrc.org/newsreleases/2001/010213fbireport.asp>

The NP Story

XXXX

Foreword

The following is an excerpt from the translation of a letter in Bengali received by *Counsel Clin* after its postal address came out in the article "Chhai Chapa Fire" in "Anandabazaar Patrika" on April 3, 1999. The letter was not dated and no sender's address was given. The post mark on the envelope was too obscure to be legible. A woman named NP had signed the letter. (All the names in the letter have been changed or replaced by initials to maintain confidentiality). It is sincerely hoped that NP would not mind this letter (translated by a member of *Sappho*) being published. Unfortunately, the Calcutta based LGBT organizations have been unsuccessful in their discrete efforts to contact NP. However, her words draw stark attention to the chilling extremes of violence, and the urgent need to redouble our efforts against it.

The letter

Pawan

Why didn't you come to light and bring to focus such an issue some days ago? We are already late. Our lives are beyond anybody's touch, help and sympathy...

Four years ago, Moumita alias Mou came into my life. She was employed as a governess for my youngest daughter C. Her father had died long back. Perhaps the responsibility of looking after her mother and a paralytic brother drove this fresh graduate, 21-year old girl to take up this kind of a job. Her job was to nourish and to teach an obstinate, ill-tempered two-year old spoilt brat of rich parents. Her salary was Rs.2000/- per month. She benefited immensely by getting this job. She had to put in a lot of labour for this job, but it seemed to me that nothing could stop her.

Mou, 13 years younger to me, stretched out her hands towards me for friendship. She rescued me gradually over the four years, whenever she got a break during her duty hours. Her company, her strength established my own separate self-identity. She ignited the "self-esteem" which had been latent in me for many many years. She turned my monotonous, gloomy life to a vivacious, colourful, genial and sprightly active life. I am ever indebted to Mou how much I can't state in words. Today I am not hesitant to acknowledge that Mou awakened me, not only mentally but physically also.

The contentment which I never enjoyed in the sexual intercourses with my husband, night after night for 12 years of my married life, that contentment was bestowed upon me in abundance by Mou. Yet, I could never admit this truth. I did not even want to make her understand all this.

Mou helped me to step into the most joyous moments of my life. Pawan, do you observe one thing that all the words about Mou are in the past tense? Because Moumita alias Mou, my Mou, is no more in this world. Just a month back Mou was stabbed to death by some miscreants hired by my husband. He had come to know everything. He could not cause any harm to me because of fear of public scandal. Once, I contemplated disclosing everything to the police, but thoughts of my children resisted me from taking that step. Besides this, I could not do anything they closed everybody's lips by providing large amounts of money.

The fateful night that Mou was killed . . . my husband raped me. Yes, I address it as "rape". Even if there is anything worse than that, it was that. At the time of putting force on me for sexual intercourse, my husband depicted to me how Mou was killed. Perhaps my husband thought that I would break into tears, but not a single drop of tear was shed by me. Now they always keep an eye on me. bloody fools.

Pawan, Mou told me a plan for fleeing. She was very much motivated by seeing the movie "Fire". I never agreed to her plan. I made her understand that it was an utopian scheme which was hardly possible in reality. Till then I did not know about you, about Sappho. If it is possible, let me convey my greetings and happy wishes to them. Let them be happy. May god bless them. If you can, tell them we also wanted to make a home.

That day I failed to flee but today I have to bid farewell to my family and society. After bidding farewell to my family and life, I will go to my Mou...

Before departing from this world, I make one request to you. I do believe lots of people are in the same state as us. If you can save someone like us in distress, our insatiable souls will be gratified.

God bless you.

NP

BOOKS

Joint Suicides: two too many

BOOKS

The last few years have witnessed an extremely disturbing increase in the number of lesbian joint suicides. Almost all of the stories reported are of young women from small towns and villages, and have invariably been sensationalized by local press reports. All of the women expressed their commitment to each other, but their despair at the possibility of being able to love and live together. A majority of the stories have been reported from Kerala, and one could speculate whether this reflects better reporting from an active local media, or a "suicide trend" in the state.

1980 Nov-Dec *Gay Scene*. Mallika (20) and Lalitambika (20), both students of pre-degree course of Keralavarma College (Cochin) were in love with each other. When one of them failed their college examination and separation seemed inevitable, they wrote suicide notes and attempted to drown themselves. They were rescued, and their families are reported to have separated them.

Also report of another incident at Gandhigram, Ahmedabad where Jayashree and Jyotsna two childhood friends committed suicide because they could not endure the separation caused by their marriages.

1988 Oct 15 *India Today*. Gita Darji and Kishori Shah of Meghraj, Gujarat, two nurses in the local hospital ended their lives in the hospital quarters because they could not bear the separation which was to be enforced by Gita's brother after her marriage.

1993 May 27 *News Today*. "Gay couple stab each other" – report about 18 year old boy and his friend got married in 1991 and were living as "husband and wife" in Thrissur. They committed suicide because of the non-recognition of their marriage by society.

1995 Jan 14 *Matrubhoomi* (Daily newspaper in Malayalam) Gita (22) and Saija (16) decided to elope and later committed suicide.

1998 Jun 28 - *Sameeksha* (Malayalam fortnightly). "Same-Sex (female) lovers commit suicide" by K. C. Sebastian. The feature reports 4 incidents between 1995 -1997, listed below. They were from Alleppy and had eloped together. The reporter claims that he had spoken to the relatives and neighbours of the dead girls and has got enough evidence to conclude

that all incidents were lesbian suicides, prompted mostly by the enforced marriage of one of the lovers.

- 1996 Aug 6 Two girls from peasant families committed suicide hanging on the island of Vypeen near Cochin
- 1996 Oct 29 Two college students killed themselves by jumping in front of a running train near Calicut
- 1996 Dec 31 Girl committed suicide by consuming insecticide after attempting to murder her girl friend by slitting her throat. The girl friend survived. The dead girl was a daily wage labourer in a rubber plantation near Kottayam
- 1997 Apr 1 Three girls committed suicide by consuming poison, at Pandalam. Two of them were sisters and both of them were in love with the third, who was a distant relative. All of them were from a lower middle class background
- 1998 Sep *Urdu Times* reported the joint suicide of two young college girls Madhuri Patel and Varsha Jadhav whose parents were opposed to their relationship. Students at Nanavati College, the girls lived in Andheri and Malad respectively. Their bodies were found on the roof of a building in Virar, with two empty bottles of Baygon and their letters to each other, including a note that said that since the world would not let them live together, they were dying together to become one.
- 1998 Oct 25-31 *Samaya* (Oriya magazine). "Peculiar Marriage, Heinous Revenge". Report of the marriage of Mamata (19) and Monalisa (24) in Hulipur village of Orissa. Letter from a local activist to ABVA in Delhi results in a fact-finding team and a report *For People Like Us* documenting the details of the case. Mamata and Monalisa had been in a relationship for five years. When Monalisa's father got transfer orders, they decided to make a Deed of Agreement for Partnership as well as to Remain Life Partner. This was notarized, legal document affirming their commitment to each other. Barely four days later, however, in despair, they consumed poison. Monalisa died, but Mamata survived. The police made out a case of murder against Mamata, however, the ABVA team found that the case was being squashed due to the political clout of Mamata's brother. The team was not allowed to meet Mamata.
- 1999 Mar 27 *Matrubhoomi* [Malayalam daily, Trichur Edition] "Young Women Run Over by Train" - the bodies of two young women, Suja (20) and Sindhu (20), described as intimate friends", discovered on a railway track near

- Manjadi Kalithipadi, near Tiruvalla, along with an empty liquor bottle, a large and half empty bottle of Coca Cola, two steel glasses and a shawl. The girls had worked together in a shrimp factory in Gujarat, and returned to Kerala 8 months earlier when the factory closed down. Earlier in the week, Suja had left her home for Sindhu's family's house in Kottayam. The pair were supposed to be returning to Suja's house, at the insistence of her relatives.
- 1999 Jun 1-15 *Sameeksha* (Malayalam fortnightly). "Lesbian Suicides Continue..." by K. C. Sebastian. In March 1999, Bindu (21) and Gita (22) of Cheruvayoor killed themselves by consuming poison. The former was a tailoring teacher and the latter, her student. Another joint suicide (by consuming poison) was of Sudha (20) and Savitha (19) of Malappuram. They were students of a tailoring and beautician course respectively. The article also adds details provided by relatives and neighbours indicating women were lesbian pairs.
- 1999 Jul 8 *Matrubhumi* (Malayalam, Trichur edition). "Friends Committed Suicide Together" - The bodies of Suresh (19) and Krishnakumar (17), were recovered in Shoranur from a deserted housing plot and an adjacent railway track respectively. Suresh had been working in a tailoring shop and Krishnakumar in a workshop. Described as "neighbours and inseparable friends since childhood". An empty bottle, which had contained some poisonous material, was recovered from the housing plot with Suresh's body. Police believe the friends consumed poison together and later Krishnakumar had rushed on to the railway track.
- 1999 Nov 18 *Sameeksha* (Malayalam fortnightly). The body of Mini, a postgraduate student in Trichur, was found floating in the reservoir of the Mangalam dam near her house, with suicide note. She had disappeared five days earlier with another girl from her hostel, with whom she'd been accused of having a lesbian relationship. They reappeared on November 17 at a friend's house in Trichur, apparently having returned from Chennai. Both girls were subsequently returned to their family houses. With two complaints lodged with the police, Mini was supposed to appear at police station the next day. After Mini's body was discovered, the girl friend was described as recovering from the trauma. A Dalit students group took up the case, initiated steps to constitute an action committee, demanding a judicial inquiry about the circumstances that lead to Mini's death. However, the committee sought to refute the accusation Mini

was a lesbian, instead demanding legal action against the student's college principal for making a baseless accusation against a Dalit girl eventually forcing her to commit suicide.

2000 Jan 1-15

Sameeksha (Malayalam fortnightly). Bindu (21) and Rajni (22), two lower middle class undergraduate students from Cheranellur near Ernakulam, committed suicide by jumping into a granite quarry. Their bodies were tied together with a dupatta. A few days before the incident the two girls had tried eloping together. Before killing themselves, both had written to their relatives that they were taking their lives after realizing the impossibility of ever being able to live together.

2000 Nov

Lokmat (Marathi daily, Nagpur edition). Two young women in Gadchiroli district commit joint suicide by jumping into a well together.

2001 Feb

Lokmat (Marathi daily, Nagpur edition). Two young college students of Nagpur commit joint suicide by jumping in front of a train at Gondia.

2001 Aug 26

Matrubhumi (Malayalam daily) "Girls, who longed to live together, end their lives". Two tribal girls, who also happened to be relatives, ended their lives because of the trauma of not being allowed to live together. The deceased are Ragini (15), daughter Gopalan Cheradimulluvellil of Moolamattom East, and Manju (22), daughter of Gopalan's uncle Kolumban. Their bodies were seen side by side on a rock near an irrigation canal close to Ragini's house on Saturday morning. Manju's body was in a sitting posture while Ragini was lying on the rock. The two had been living together for some time. They had even asked their relatives to get them married to each other. When the relatives objected, they had even approached the local police station with the same request. Police had sent them back after some counselling. Subsequently both had been undergoing psychiatric treatment of Dr. Sudarshan at Bishop Vayalin Hospital, Moolamattom. Locals report that the girls were seen under suspicious circumstances near the Canal on Friday evening. The girls ran away when people spotted them. The police have registered a case. After postmortem at the Taluk Hospital, Thodupuzha, the bodies were handed over to the relatives.

2003

“Sexual Assault” and the Law Commission of India: 172nd Report

Maharukh Adenwali

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Freddy Peats subjected twenty-seven young boys to perverse sexual activity in his orphanage at Goa. Peats used to have oral and anal sex with these boys. The boys were also sent with foreigners for the purpose of sex. Under the prevailing Indian law, Peats had not committed ‘rape’. Peats is presently undergoing life-imprisonment only because of Section 377 of the Indian Penal Code. Sodomy has been interpreted by the courts to mean ‘carnal intercourse against the order of nature’. It is under this provision of law that sexual abusers of a boy child are punished.

The definition of ‘rape’ under the Indian Penal Code is very narrow; it envisages the survivor as female and the perpetrator as male. Sexual abuse of a boy child is not covered by Section 376, which deals with rape. Sexual abuse of a boy child is an offence only under Section 377.

Unfortunately, Section 377 mainly targets persons who are enjoying a healthy consensual same sex relationship. There has been a concerted demand from the LGBT groups for repeal of Section 377 as it discriminates against their community. Lesbians and gays live under the constant fear that disclosure could result in arrest and imprisonment. Parents unhappy with their child’s sexual preferences take recourse under this section in an attempt to break the relationship.

Section 377 whilst being the only provision of law protecting the boy child against sexual abuse is also at the same time being used to discriminate against lesbians and gays, thus being a bone of contention between child rights and LGBT groups. The Law Commission of India [LCI] in its 172nd Report has tried to resolve this conflict by inclusion of the term “sexual assault” in place and stead of “rape”, and the subsequent deletion of Section 377.

The Supreme Court in *Sakshi v Union of India & Ors.* [(1996) 6 SCC 591] was petitioned with regards to the inadequacy of the prevailing law to deal with child sexual abuse:

“1. The attention of the Court was drawn to existing Sections 375/376 of the Indian Penal Code and various other sections and it was pointed out that the interpretation being placed by the Courts on those sections cannot be said to be in tune with the state of affairs existing in the society, particularly in the matter of sexual abuse of children.”

The matter was referred to LCI to consider and recommend changes in the existing law to effectively deal with the issue of child sexual abuse.

"The issues are important and concern sexual abuse of the child. Keeping in view the rise in crime and the growing menace of sexual abuse of the child, we consider it appropriate to once again request the Law Commission to examine the issues submitted by the petitioners and examine the feasibility of making recommendations for amendment of the Indian Penal Code or deal with the same in any other manner so as to plug the loopholes."



LCI has complied with the directions of the Supreme Court, and "LCI : 172nd Report" has been prepared in consultation with Sakshi and other organisations. It is necessary to add at this stage that the recommendations of LCI has its failings; many suggestions made by organisations have not been incorporated in the Report. This article mainly examines the recommendations to protect the boy child whilst promoting the rights of lesbians and gays.

LCI has completely altered Section 375 of IPC which deals with "rape". The term "rape" has been removed from the statute and has been replaced with the term "sexual assault".

"375. Sexual Assault: Sexual assault means -

- (a) *penetrating the vagina (which term shall include the labia majora), the anus or urethra of any person with - (i) any part of the body of another person or*
(ii) an object manipulated by another person except where such penetration is carried out for proper hygienic or medical purposes;
- (b) *manipulating any part of the body of another person so as to cause penetration of the vagina (which term shall include the labia majora), the anus or the urethra of the offender by any part of the other person's body;*
- (c) *introducing any part of the penis of a person into the mouth of another person;*
- (d) *engaging in cunnilingus or fellatio; or*
- (e) *continuing sexual assault as defined in clauses (a) to (d) above in circumstances falling under any of the six following descriptions :*

First - Against the other person's will.

Secondly - Without the other person's consent.

Thirdly - With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or hurt.

Fourthly - Where the other person is a female, with her consent, when the man knows that he is not the husband of such other person and that her consent is given because she believes that the offender is another man to whom she is or believes herself to be lawfully married.

Fifthly - With the consent of the other person, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that to which such other person gives consent.

Sixthly - With or without the other person's consent, when such other person is under sixteen years of age.

Explanation: Penetration to any extent is penetration for the purposes of this section.

Exception: Sexual intercourse by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault."

These recommendations have ensured that sexual abuse of a boy child is covered under the definition of "sexual assault" by resorting to gender neutrality and widening the concept of penetration. By these recommendations, both a male or female could be the survivor or the perpetrator of the offence, and penetration could be vaginal, anal or oral penetration. It also includes finger and object penetration. The circumstances which result in an act being termed as "sexual assault" are the same as those contained in section 375 of IPC.

The explanation and exception to Section 375 of IPC have been altered. Penetration has been clarified to mean penetration to any extent, and the age of the wife has been increased to 16 years.

The term "penetration" has been dealt with by the Supreme Court in *State of Uttar Pradesh v Babul Nath* [1994 SCC (Cr.) 1585].

"To constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of sperm and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the vagina would be quite enough for the purpose of Section 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains."

It is heartening to know that LCI has in pursuance of judgments of the apex court clarified the position with regards to penetration. Section 375 as it stands today can be interpreted to mean complete penetration, and child sexual abusers would not be punished as in most cases of child sexual abuse, penetration is not complete.

Under Section 375, the age of statutory rape is 16 years, but the explanation to the section stated that sexual intercourse by a man with his wife would amount to rape only if she were under 15 years of age. This inconsistency in Section 375 has also been conclusively dealt with

by LCI the age of the wife has been increased by one year to bring it in conformity with the age of statutory rape.

Groups working with women are not happy with the changes proposed to Section 375 as these modifications have resulted in gender neutrality, and have not dealt with the issue of marital rape. Rape between husband and wife is not recognised under the Indian law – a husband is entitled to have sexual intercourse with his wife against her will and without her consent. Women's groups have been campaigning for inclusion of marital rape, but this demand has not been considered by LCI. Sakshi and other organisations did suggest that forced sexual intercourse by a husband with his wife be equally treated as an offence, just as any physical violence by a husband against his wife is an offence. It was also suggested that the exception to section 375 be deleted. Unfortunately, LCI has not paid any heed to these demands. It is necessary that marital rape be included under the definition of "sexual assault", as otherwise forced sex and sexual violence between a married couple is unpunished.

"Gender neutrality" has always been looked upon with suspicion by women's groups. A patriarchal society could misuse gender neutral laws to the detriment of women. A man could wrongfully accuse a woman of sexual assault or a woman could be forced to commit sexual assault upon a person under threat of hurt or death, no safeguards have been proposed by LCI to protect such woman. The Child Marriage Restraint Act 1956 and the Pre-Natal Diagnostic Techniques [Regulation and Prevention of Misuse] Act 1994 recognise that a woman is often used as a tool to implement the desires of patriarchy. A woman cannot be imprisoned for having committed an offence under the Act, and there is a presumption under the second Act that a pregnant woman is generally compelled by her husband / relative to undergo a sex-determination test.

Sakshi and others had suggested that it is imperative to define "consent" as unequivocal voluntary agreement, but LCI was of the opinion that the same was not necessary due to judicial pronouncements on this issue. Section 375 of IPC does give instances when consent is not said to have been given, viz. when consent is given by threatening the woman or any person in whom she is interested with fear of death or hurt, when the woman believes the man to be her husband, when the woman is in such condition that she unable to understand the nature and consequences of that to which she gives consent.

Section 376 of IPC which deals with punishment for rape has been recasted. The terms of punishment for sexual assault is the same as that of rape, but enhanced punishment has proposed in case of sexual assault by a person in position of trust or a near relative.

"If the sexual assault is committed by a person in a position of trust or authority towards the person assaulted or by a near relative of the person assaulted, he/she shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life imprisonment and shall also be liable to fine."

Further, the term of imprisonment in case of sexual intercourse with a wife under 16 has been increased to 3 years. Section 376 punishes more severely a man who commits rape on a girl under 12 years of age - LCI has recommended 12 years to be increased to 16 years.

Unlawful sexual contact has been added as an offence by LCI. This provision punishes sexual contact which does not amount to sexual assault as there is no penetration. Sexual fondling of a child would be covered under this provision of law. It is important to distinguish between attempt to commit sexual assault and unlawful sexual contact; a man who removes his and the victim's underpants, and makes the victim sit on his lap should be charged with attempt to commit sexual assault and not unlawful sexual contact.

LCI has deleted Section 377 by stating,

"In the light of the change effected by us in Section 375, we are of the opinion that Section 377 deserves to be deleted... , the only content left in Section 377 is having voluntary carnal intercourse with any animal. We may leave such persons to their just deserts."

LCI has nowhere in its case for deletion of Section 377 recognised same sex preferences / relationships. In fact no justification has been offered for the deletion of Section 377. A discriminatory provision of law has been repealed, but there has been no proper reasoning for such deletion. LGBT groups are left unsatisfied and unrecognised by the LCI recommendations.

The recommendations made by LCI : 172nd Report are peripheral, the depths have not been explored. An attempt has been made to provide some cosmetic relief to sexually assaulted persons, but no comprehensive or fundamental change has been proposed. Even with regards to child sexual abuse, the LCI has not recommended any alterations to the procedural law. A sexually abused child will still be required to face the trauma of repeated questioning by police, lawyers, doctors, psychologists, etc. A sexually abused child will still be required to give evidence before the trial court and face cross-examination at the hands of the advocate for the accused in the presence of the accused. A sexually abused child will still be required to give evidence "in-camera", i.e. in the absence of supportive family members/social-workers but in a courtroom filled with strange advocates in no manner concerned with the case. LCI : 172nd Report must be looked upon as-the starting of a debate between interested — parties, and not an end in itself. Child right activists, LGBT and women's groups must conduct joint deliberations, and a joint campaign must be initiated with regards to these recommendations. It is essential to ensure that the rights of all concerned are protected and promoted. Child rights activists should also consider whether change in the prevailing law can bring adequate relief to sexually abused children, or whether a separate law is necessary.



Domestic Partnerships

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In interesting contrast to other countries, in India, the demand for same-sex marriages has come most forcefully from women. All the cases of same-sex marriages reported in the media have been those of women seeking to find a means to validate their relationships. In 1988, it was Leela and Urmila in Bhopal; in 1998, it was Sweta and Simmi in Patna¹. This is even more remarkable when one considers how compulsory heterosexual marriage is for women in India. The “legality” of the contract these couples have attempted to forge varies - from the customary exchange of garlands in a temple, to undertaking *maitri karar* (a quasi-legal friendship contract), to filing a signed and witnessed affidavit (stating they are married) with the court, or even, attempting to get the registrar of marriages to issue a license. Besides the women who have had the courage to declare their love publicly in order to live together, several other pairs of women in the intervening decade have been reported as running away together, undergoing sex change operations in order to be together - or, sometimes, tragically making suicide pacts together rather than be separated.



Further, it has been a women's group - *Forum Against Oppression of Women (FAOW)* that has taken the initiative in broadening the definition of family and articulating a framework for same-sex marriages within the context of family laws in India. In challenging the patriarchal, heterosexual definitions of the family, *FAOW* is one of the few women's groups to actually draft an alternative vision of marriage, and the only group to explicitly include lesbian and gay relationships as valid companionship contracts.

¹ *Girls tie the knot to turn man and wife* - Sanjay Jha, 20th April, 1998: Times of India, (Patna edition)

It has been argued - both in India and elsewhere - that as long as lesbian and gay relationships are not criminalised, there is no need to go to the extent of providing for same-sex marriage contracts. The reasons why it is perceived as unnecessary vary depending on the context, and the political perspective. For instance, in India, many groups and individuals believe that the existence of strong homo-social spaces and the relative tolerance of homosexuality in our societies, precludes the need for same-sex marriages.

In countries like the U.S where proposals for same-sex marriage are being publicly debated there is the expected opposition from conservative and religious groups. There are also lesbians and gays who are not in favour of same-sex marriages and there has been much debate on the issue.² Ultimately though, the critical question is whether an individual has *the choice* of entering a same-sex marriage in society. He or she may individually choose not to - but for those who wish to, does the choice exist, and does it offer rights and benefits equal to heterosexual marriage?

In the absence of equal marriage rights, lesbian and gay couples are excluded from the automatic rights, privileges and benefits society attaches to a marriage contract - no joint custody and adoption rights; no health insurance coverage, or other employment benefits usually extended to spouses; no joint tax returns; no survivor benefits; no rights to immigrate as a lesbian or gay partner; no guardianship rights - as Karen Thompson of Minnesota, U.S.A, found out most painfully, when a 7-year court battle did not grant her guardianship of her partner Sharon Kowalski who had become quadriplegic in an accident.

Legalization of Registered partnerships in some countries and cities go part of the way toward covering this huge gap in rights. In June 2000, Iceland and Spain³ were the first country to give same-sex marriage fully equal legal status to civil marriage between heterosexuals (including the rights to adoption, which had been excluded from the earlier registered partnership act).

FAOW's paper is included in this chapter, along with the *Dutch Same-Sex Marriage Act* as prototypes of marriage contracts for same-sex couples. Before that, however, here is a brief run-down of the international status on domestic partnerships.



² Refer *Same Sex Marriage: Pro and Con - A reader*, ed. Andrew Sullivan, Vintage Books, New York: 1997. Also refer to Select Bibliography (legal issues section) in this volume for more titles on the debate.

³ <http://www.gaylawnet.com> - GayLawNews June 2000.

Rights to Marriage - the International Legal Scenario



Denmark was the first country to introduce domestic partnership legislation for same-sex couples with the introduction of the *Danish Partnership Act* in 1989. The other Scandinavian countries followed the Danish example almost immediately. By 1995, these countries recognised each other's Acts.

The limitations of domestic partnerships as defined so far in the Scandinavian countries is that first, of course, they indicate *legal* and not *religious* sanction. Second, and more importantly, they are not the legal equivalent of heterosexual marriage, since they impose restrictions on immigration and on adoption. Adoption of a child is possible only in heterosexual marriage. Although an individual can adopt, i.e. legally be a single parent, the same-sex partner cannot become co-guardian.

This restriction was removed in June 2000 in Iceland and Spain, and in April 2001 in the Netherlands, and indications are that the other Scandinavian countries will introduce similar legislation.

In a pioneering effort in Brazil, gay and lesbian rights advocates initiated a bill in Parliament for a Partnership law in August 1997. The bill ensures rights to inheritance, succession, welfare benefits, joint income declaration, right to nationality in case of a foreign partner and joint income in order to buy a house. If approved, the law will possibly serve as an important precedent for the whole region, stimulating similar changes in other Latin American and Caribbean countries.

The first legally married gay couple in the world under the Danish Partnership Act were Axel and Eigil Axlil, who married together with 10 other couples in Copenhagen, 1 October, 1989. It was a worldwide media event. At the time of the marriage, the Axlils had been together for nearly 40 years, 32 of which were lived under a common name. Axel and Eigil had in 1957 combined their first names into the family name Axlil when they were in prison for gay rights activism.

The history of attempts in the U.S. to register same-sex marriages in court begins in the early 1970's. In the first major decision dealing with the issue, *Baker v Nelson*, two men filed a suit after a courthouse clerk declined to issue them a marriage license because they were of the same sex. The Minnesota Supreme

Court first held that the language of the state marriage statute precluded same-sex marriage because marriage, by definition, involves a man and a woman. This circular argument "marriage by definition involves a man and woman because that's how we've defined it" has been used - along with biblical quotations - quite frequently in the subsequent years in different states where gay men and lesbians have filed for marriage licenses. Ironically now lesbians and gay men can marry only in religious ceremonies performed by clergy who do not find such unions of love sinful.

In another noteworthy example, a complaint to the Illinois Department of Human Rights by two men who said they wanted to get married was dismissed because "sexual preference is not a protected class" under the Illinois Human Rights Act. Journalist Rex Wockner and activist Paul Varnell filed the test-case complaint, after the Cook County Clerk and the State Attorney General's office told them they could not have a marriage license. They appealed the decision, with the new argument - possibly for the first time ever - that the discrimination they encountered was not on the basis of sexual orientation, but rather on the basis of sex, since homosexuals are permitted to marry each other in Illinois as long as one of them is a male homosexual and the other a female homosexual.

Although the *Wockner* case was unsuccessful, the argument of discrimination on the grounds of sex was used again in Hawaii, when the issue of same-sex marriage exploded into mainstream public attention - both in the U.S. and internationally. The Hawaii Supreme Court in *Baehr v Lewin* (74 Haw. 530, 852 P.2d 44 (1993)) ruled that the state must show a compelling interest in order to ban same-sex marriages, since the prohibition of such marriages violated the state constitutional ban on gender discrimination. Though the court did not make a final ruling on the issue, it sent the case back to the lower court with instructions to apply the highest level of constitutional scrutiny to Hawaii's marriage law. The trial court found in *Baehr v Miike*, (1996 WL 694235 (Cir. Ct. Haw. No. 91-1394, Dec 3, 1996)) that the state had failed to establish such a compelling state interest. In effect, this meant same sex marriages were legal in Hawaii.

The backlash to this judgement from the right wing, conservative forces in the U.S has been enormous. Congress responded in 1996 with the introduction of the *Defence of Marriage Act* (H.R. 3396, 104th Cong., 2d Sess.) - or *DoMA*. The bill denies certain federal benefits and entitlements to same-sex marriage partners by defining marriage as a union between a man and a woman. It also allows states to ban same-sex marriages within their borders, and to not recognise such marriages performed in other states. Critics of the bill argued that Republicans were pushing it for political purposes. Yet on September 10, 1996, the Senate passed *DoMA* by a vote of 85/14, and on September 21, 1996, Democratic President Clinton signed the act into law.

A state by state battle was begun in the U.S., where, according to a report issued by *Lambda Legal Defence and Education Fund*, as of September 4, 1996, 15 states have passed anti-marriage bills. Intense lobbying by the lesbian and gay community has prevented anti-marriage bills from advancing in the other states.

The challenges to the anti-gay-marriage laws continue. In February 1998, echoing the Hawaiian judgement, an Alaskan Superior Court judge ruled against Alaska's ban on same-sex marriages, ordering the state to show why it should be able to regulate who people marry. An Anchorage gay couple of almost 20 years, Jay Brause and Gene Dugan, filed a suit against the ban passed by the Alaskan legislature in 1996. The ruling does not legalise same-sex unions in Alaska, but forces the state to prove a compelling reason why such unions should be illegal. Superior Court Judge Peter Michalski said "*choosing a partner is a fundamental right and the State Constitution protects both the traditional choice and the non-traditional choice.*"

Finally the breakthrough came in July 2000, with the State of Vermont's *Civil Union Act*, which gave lesbian and gay couples all the rights (and over 300 legal benefits) enjoyed by heterosexual married couples. Lesbian and gay couples not resident in Vermont can also avail of the provision for Civil Unions, and a majority of the unions registered have been of out-of-state couples. However, the battle continues, as those who would defend the civil marriage (for heterosexual couples) are lobbying for the repeal or amendment of this law.

VETNAM, Hanoi - Vietnamese officials have extracted a written promise from two women who married each other that they will never again live together.

Cao Tien Duyen, 23, and Hong Kim Huong, 30, got married on 7 March in a large public ceremony in the Mekong Delta city of Vinh Long. Vietnamese law does not ban same-sex marriage.

The relationship reportedly ended on 23 May after a Justice Ministry-

ordered meeting at their home with 20 officials from Communist Party groups. Local newspapers did not say what kind of persuasion was used or what will happen if they violate the agreement. A spokesperson for the provincial justice department told reporters the women "would have had no trouble with their relationship if they had not chosen to have a public wedding."

Melbourne Star Observer, 05 June 1998 page 3 (cited on GayLawNet - GayLawNews - June 1998)

Cities in the U.S. that have conferred limited domestic partnership rights to lesbian and gay couples include New York City, Madison in Wisconsin, Takoma Park in Maryland; Berkeley, San Francisco, Palo Alto in California and Santa Cruz, West Hollywood. Each of these cities has variations in the extent of benefits available under such legislation. In general, however, the benefits of probate and tax law are denied to same-sex couples. For example, if a partner in a same-sex relationship dies, under law, the surviving partner is not entitled to any of the deceased's property, unless the deceased provided for such an entitlement in a will.

Several companies and other institutions in the U.S. have also formulated policies that recognise domestic partners when they issue employment benefit policies, housing, health insurance, etc. Some examples of state agency recognition of same-sex relationships include some of the following. New York's state housing authority extended the definition of "family members" to include gay couples in matters concerning rent regulated apartments (1993). In another more recent example, the city of Sacramento introduced legislation in 1998 to allow domestic partners to qualify for California's Family Care and Medical Leave Act.

A growing number of private employers are also offering a wide range of domestic partnership benefits. In 1982, the *Village Voice* in New York was the first to do so. Today, 23% of companies employing more than 5000 workers provide health benefits to non-traditional partners. Some of the big names include IBM, Microsoft, Prudential Insurance, Time Warner, Lotus Development Corporation, Xerox, Home Box Office, etc.

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The Dutch Same-Sex Marriage Act (*Summary*)⁴

2003

Civil marriage registered partnership, cohabitation agreement

From 1 April 2001, couples wanting to formalise a relationship can choose from three options: civil marriage registered partnership or a cohabitation agreement.

Registered partnership is in many ways equal to marriage. A cohabitation agreement is very different, since it only covers items that the parties themselves want it to cover. With marriage and registered partnership, most of the rights and obligations are laid down by law. Maintenance is a good example. Married couples and the parties to a registered partnership are obliged to support each other. This obligation only applies to the parties to a cohabitation agreement if they have included a provision to this effect.

Another important difference has to do with legal consequences. Marriage and registered partnership have legal consequences for the partners themselves and their relationship with others. A cohabitation agreement only has legal consequences for the parties who have signed it. The differences between marriage and registered partnership are dealt with under the heading 'Marriage and registered partnership'.

Marriage between two men or two women

There are many similarities to marriage of couples of different sexes. The rules for entering into, concluding and dissolving marriage are the same, as are partners' obligations to each other. These subjects will be dealt with first.

But there are some very important differences. The first has to do with the relationship with children, the second with acceptance abroad. We will examine both differences.

We will also compare marriage and registered partnership. We will look at the possibility of converting the latter into a marriage, ways of ending the two, and similarities and differences.

Conditions

Marriage is subject to certain rules and conditions. We will look at the main ones.

One partner at a time No one in the Netherlands may be married to more than one person at the same time.

⁴ Ministry of Justice, the Netherlands. *Same Sex Marriage*. April 2001.

No other marriage or registered partnership Anyone wanting to marry may not be married already or party to a registered partnership with a person other than the future spouse.

Of age Anyone wanting to marry must be 18 years of age or older. Exceptions are possible and it is up to the Minister of Justice to decide. Minors wanting to get married can only do so with their parents' or guardian's permission. If this is not possible, the minor may apply to the sub-district court ('kantonrechter') for permission.

Guardianship Anyone who has been put under the supervision of a guardian because of alcohol abuse or their inability to manage their finances cannot marry without the guardian's permission. If the guardian refuses to give permission, the sub-district court ('kantonrechter') may do so.

Anyone who has been put under the supervision of a guardian because of a mental disorder always has to have the permission of the sub-district court.

Consanguinity Marriage is not allowed between parents and children, grandparents and grandchildren or brothers and sisters. Brothers and sisters who are related through adoption may apply to the Minister of Justice for exemption from this rule.

Foreign partner(s) or partner(s) living abroad The following rules apply to non-Dutch nationals or residents:

- If neither partner is a Dutch national, and both live abroad, they may not marry in the Netherlands.
- If neither partner is a Dutch national, they may marry in the Netherlands provided at least one of them is resident there.
- If both partners live outside the Netherlands, they may marry in the Netherlands provided one of them is a Dutch national.
- Partners who both live in the Netherlands may marry even if neither of them is a Dutch national.

If at least one of the partners is either a Dutch national or habitually resident in the Netherlands, the question as to whether they may marry will be dealt with under Dutch law. Partners then enter into a marriage if they are allowed to do so under Dutch regulations. Whether the law of the country of which the non-Dutch partner is a national permits same-sex marriage is irrelevant.

Couples need to take account of possible problems they may encounter abroad with the recognition of their marriage. See the section on recognition of marriage abroad for further details.

Rights of residence - To prevent marriages of convenience, certain rules are applicable when couples plan to marry. They apply equally to same-sex couples and couples of different sexes. Non-Dutch partners with no permanent residence permit have to submit a statement issued by the Aliens Police on their status under the Aliens Act.

Getting married

Two people who want to marry first have to give notice of their intention to the civil registrar, usually in the municipality in which one of them is resident. They also have to provide documents showing that they are eligible to marry. The nature of these documents will depend on the situation. In addition to a copy of their birth certificates, they may have to submit evidence that previous marriage has been dissolved or their registered partnership terminated or a document giving them permission to marry.

The registrar then enters a record confirming that notice has been given of the intention to marry. The marriage cannot in principle be solemnised until two weeks after the date on which this record is entered.

Witnesses - For a marriage to be legally valid, it has to be witnessed by no fewer than two and no more than four persons of 18 years of age or over. Their names and addresses have to be submitted to the registrar when notice is given of the intention to marry.

Marriage vows - The couple solemnise their marriage before the law by taking their marriage vows before the civil registrar.

Marriage certificate A record is entered of the marriage. After the couple have taken their vows, this record is signed by the newly-weds, their witnesses and the registrar.

Costs - There are costs attached to a civil marriage ceremony. However, every municipality reserves certain times at which couples can marry free of charge. The cost of converting a registered partnership into a marriage will be discussed elsewhere in this booklet.

Church ceremony - Marriages may only be blessed in church after the civil ceremony has taken place. This is not the case for registered partnerships. It is up to the church communities themselves to decide whether to bless or solemnise the marriage. They are not obliged to do so.

Consequences

The consequences of marriage between two men or two women are much the same as those of marriage between a man and a woman. There are, however, some major differences relating to children and acceptance abroad. Before we look at the differences, we will list the rights and obligations that correspond.

Surname - Under Dutch law, spouses may use each other's surname, in combination with c instead of their own. This does not apply to official documents, in which their own nam always has to be used.

Maintenance - Married couples are obliged to do what is within their means to support each other. In principle, they each have to contribute to the costs of running the household.

General community of property - Under Dutch law, within marriage all assets and debts are in principle shared. Couples who want to make alternative arrangements have to do so in a prenuptial agreement, which has to be drawn up by a notary.

Pensions - Anyone who contributes to a pension scheme builds up entitlements to a retirement or surviving dependants' pension. The entitlements built up to a retirement pension during marriage have to be divided between the partners in the event of a divorce. Here too, married couples can make their own arrangements. The surviving dependants' pension accrues to the surviving partner on the death of his/her spouse.

Legal transactions - In certain cases, married couples must have each other's permission before they can enter into obligations or take decisions. Examples include the sale of the matrimonial home and the conclusion of a hire purchase agreement.

Inheritance - The law of succession applies equally to same-sex married couples and married couples of different sexes. However, couples may make alternative arrangements. To do so, they need to arrange for a notary to draw up a will.

Relationship by marriage - Through marriage, couples enter into a relationship with the members of their spouse's family. These "in-laws" have specific rights. For example, in certain court cases, they are not obliged to act as witnesses against their relative's spouse.

No consequences for the relationship with children

A husband and wife are by law the parents of any children born of their marriage. The woman who bears the child is the mother, and the law regards her husband as its father. Marriage creates the family-law ties that bind a married couple to their child, with all the rights and obligations they entail.

However, these rights and obligations do not automatically apply when two women marry. If a child is born during the marriage, the woman that bears it is the mother. But the law only regards her spouse as the other parent if she adopts the child. Marriage as such therefore has no consequences for the relationship between this woman and the child.

The same applies to two men bringing up a child of whom one is the father. Marriage has no consequences for the relationship between the other man and the child.

Maintenance - Nonetheless, though he or she is not the biological parent, the spouse in the examples given above is the step-parent of all the children who form part of the family. As such he or she is obliged to support them throughout the marriage.

Father rights and obligations apply, they are not the consequence of marriage, but of adoption or exercising joint parental responsibility.

Adoption - With the introduction of the Same-Sex Marriage Act, the laws applicable to the adoption of a child who is habitually resident in the Netherlands will also be amended. It is already possible for two men or two women to adopt a child, regardless of their marital status. However, this rarely occurs, since few children are ever put up for adoption in the Netherlands.

In most cases, the child will be adopted by its step-parent, i.e. by the partner or new partner of the child's mother or father. Anyone adopting a child becomes its legal parent and all family-law ties with the birth parent are severed. This is a radical step that can only be taken under strict conditions.

The interests of the child come first. An important new condition is that the child has nothing more to expect from its birth parent or parents in their capacity as parent. The couple wanting to adopt must be able to prove that they have lived together for at least three years and have cared for the child for at least a year. Likewise, step-parents wanting to adopt their partners' children need to have lived with the partner for at least three years, and cared for the child for at least a year.

Joint parental responsibility - There is another option that is less radical and sometimes proves more practical. Where there is a close relationship between one spouse and the other spouse's child, an application for joint responsibility can be submitted to the court. In that case, each has the same rights and obligations arising from parental responsibility, and has equal responsibility for its care and upbringing. The court can also be requested to change the child's surname to that of the parent or his/her spouse.

Divorce

For a marriage to be dissolved, the court must pronounce the couple divorced. This applies equally to same-sex marriage and marriage between people of different sexes.

Rights and obligations after divorce

After their marriage has been dissolved, former spouses have rights and obligations towards each other and their children.

Maintenance - The financially better off spouse is obliged to support the other spouse.

Pensions - The division of pension rights proceeds according to the Pension Rights (Divorce) Act.

Children - Divorce in itself has no legal consequences for the relationship with children. If the parents or spouses exercise parental responsibility, they continue to do so. However, if one parent is given responsibility he or she is obliged to support the children until they reach the age of 21. This does not mean that the former spouse no longer has any obligations. He or she is obliged to support the children for a period equal to the period of joint responsibility. If this was five years, for example, the former spouse is obliged to support the children for another five years.

However, if the spouse did not have parental responsibility for the children, any obligation to support them ceases on divorce.

Marriage and registered partnership

Can couples who have entered into a registered partnership get married? And exactly what difference does it make?

Conversion - A registered partnership can be converted into marriage. The civil registrar draws up a record of conversion, which is entered in the register of marriages. Conversion has the effect of terminating the partnership and commencing the marriage.

Vice versa, a marriage can also be converted into a registered partnership. The record of conversion is entered in the register of registered partnerships. Conversion can only take place in the municipality in which one of the partners is resident.

Costs - The costs of conversion differ from municipality to municipality and depend on the documents the partners need to submit, and whether they want to mark the occasion with a ceremony.

Consequences of conversion - In principle, conversion has no effect on the existing situation. Take the following situation. Two men have entered into a registered partnership. They are bringing up a child, for whom they have joint parental responsibility. If they have their partnership converted into a marriage, nothing changes. If, in addition, they have entered into their partnership under general community of property, nothing changes here either.

Non-Dutch partners or partners resident abroad - For foreign nationals or Dutch nationals resident abroad, roughly the same rules apply when converting a registered partnership into a marriage (and vice versa) as apply when getting married. They are listed in the section on conditions. A marriage or registered partnership entered into abroad can also be converted,

nder the rules and conditions listed in the paragraphs above, provided it is recognised in the Netherlands.

Conversion may not be recognised abroad, and may give rise to the same problems as marriage between same-sex couples. It is advisable to get expert legal advice on the matter (see the section on recognition of the marriage abroad for further details).

Property regime - If one of the two partners does not have Dutch nationality or does not live in the Netherlands, conversion can affect the property regime. In fact conversion may bring about a change in the law applicable to the property regime, i.e. the partners' relationship as regards property, both mutual and vis-a-vis third parties. As a result, the partners may find that there is a general community of property while their assets were separate before, or vice versa.

This is why it is important to consult a notary before deciding whether to convert a partnership into a marriage or vice versa. The notary will advise on the need to conclude a prenuptial or pre-partnership agreement, and which country's law can be chosen to apply to the matrimonial property.

Similarities and differences between marriage and registered partnership

The main points are summarised below.

The conditions for entering into a registered partnership and getting married are the same.

There are a few small differences in the form the ceremony takes. The marriage vows cannot be changed, but a couple entering into a registered partnership may decide for themselves what vows they wish to take. A marriage can only be blessed in church after the civil ceremony has taken place. This is not the case for registered partnerships.

A marriage can only be dissolved by the court. A registered partnership can be terminated by the partners themselves. Legal separation only applies to marriage, not to registered partnership.

The rights and obligations partners have towards each other are the same in both cases.

There are major differences in the relationship with children. In law, a child born of the marriage between a man and a woman has both spouses as its parents. This is not the case where two women or two men are married, or the couple (either same sex or of different sexes) has entered into a registered partnership.



Visions of Gender Just Realities

(Excerpts)



Forum Against Oppression of Women

Paper presented at workshop on "Strategies for furthering lesbian, gay & bisexual rights in India", Mumbai, 1997

As part of the women's movement we have always tried to work out laws, amendments to laws as part of our campaign strategy. This is so in spite of the fact that as women we have stayed away from the legal machinery as much as possible. Law today is something that a common person shies away from using or continues to abide by out of the sheer fear and need to be away from the law and order implementing machinery. As women being marginalised, this experience is even more common.

In case of family laws the situation is worse because of the limitation of the law itself which is not based on any concepts of gender justice. To this is added the monetary cost as well as the price paid by the individual woman because of the humiliation and isolation that she undergoes. Most of the time, even if we know we are right and our demand for justice is fair, justice does not come without pain and anguish. We as women, have been divided in many categories, and such fights and struggles with people with whom we share our lives and intimacies make us more isolated. As a result the battle remains, to varying degrees, a lone battle.

In this process we are forced to take shelter and security of our near and dear ones, our kin and religious or caste communities. Some of us also take resort in the almighty for justice while some of us find that such faith is unwarranted. We cannot express this loss of faith because the security and shelter offered by the kin and communities is also outcome of that faith. It is a tightrope walk and also an unnerving experience. We undergo it as individuals and also as groups of women coming from particular communities.

The questions then that come to mind are: What kind of law will give us justice? Can there be any law in this world that can give a fair deal to women? Can there be a law that while reflecting our reality also shows the path ahead? Is it at all possible to dream beyond what exists and plan for the future where we would not only have more legal rights but also where the machinery would be more approachable? Is it possible to mitigate the trauma by at least having a better deal in terms of the law?

These are the questions that have been bothering us in Forum for the last few years. As an outcome of discussions for a long time amongst ourselves and also with others we have come to some understanding about these questions. We put forth here our vision, which is based on real life situations and also the struggles undergone by various individuals and groups of people, especially with respect to issues related with our personal lives.

This vision or thought processes is being presented as a basis for the beginning of a dialogue. It needs to be enriched and extended in its line of thinking. We put it forward hoping to initiate a dialogue amongst us on issues like personal lives and family that have been very crucial to our individual and collective struggle against patriarchy. The basis on which we are putting forward our suggestions for the contents of the laws governing the family are as follows:

The laws governing personal lives should help in defining a coherent and equitable system, a society within which intimate social interactions take place. In actuality, it is defining the accepted norms of these interactions. In this process, some social practices are given a legal sanction, while at the same time some others are deemed illegal and thus invalidated. Since social interactions are dynamic and concepts of accepted and unaccepted are continuously changing, obviously these laws have to change, have to be reformed and updated from time to time. So we put forward the basis of the laws is what we have to say in today's reality. It will change with time.



The thumb rule guiding the reforms has to be ensuring the rights of the marginalised sections. First and foremost, neither have traditions always been beneficial to all those who adhere to them. What are considered 'normal' practices in society are not necessarily just to all people. Hence, to see that the rights of the marginalised are not infringed upon, safeguards have to be provided in the law.

In this role then, the law has to provide more rights and equality than society itself. We also re-very clear that formulating and implementing a law does not change social attitudes but we do believe that the existence of the law facilitates a process of social change. It is thus obvious that, not only has the law to be changed from time to time to take into account the changes in a dynamic society, but the law also has to be forward-looking and progressive.

Broadening the concept of the family

As far as the laws themselves go, society's understanding of the family presumes patrilineality and patrilocality. Both these concepts need to be challenged in every possible way. We feel that the meaning of family has to be recognised in the wider sense in which it is lived.

There are many groupings of people living together outside of marriage. There are instances of consenting homosexual and heterosexual adults staying together and working out close relationship. Such mutual contracts and partnerships need to be recognised, and the rights and social security granted to individuals in a marriage extended to these partnerships too. In our suggestions for the law we include such contracts too.

These contracts should be looked at as future directions of the norms of relationships in society. These new kinds of arrangements would help in liberating marriage as an institution that is today controlled by conservative norms of society that do not have any concept of equality within it.

According to us, although the status accorded to homosexual and heterosexual contracts has to be equal, the laws governing these cannot be the same, because we presume an inequality in all hetero-relational realities. The terms of settlements and the rights of each individual in these realities are hence different from those of persons in a homo-relational reality. Since gender is not the only factor that creates a power balance between two persons, these other differences should be taken care of when referring to rights of the individuals in a homo-relational reality.

Marriage

In today's context, marriage is reduced to sexual interaction for giving birth to a male child. It is a sexual contract but without other commitments, especially for a man. Man is a taker, and also looked upon as provider till the time of dispute arises. Our vision has attempted to dwell on looking at marriage differently. Is it a sacrament, or is it a relationship based on trust, faith and companionship? We wish to explore this question. We also want to look at the relationship within marriage, not as a social institution alone, but most importantly, as a space which allows one to grow, demands commitment, and provides security - particularly to women.

We are trying to formulate the law to make marriage into a contract for companionship and commitment. Procreation and transfer of property along the prescribed familial lines is not the only reason for marriage, and so its basic nature itself changes.

We define marriage as a registered companionship contract between two consenting adults of any sex above the age of 21 years without any prohibitory degrees. (a. the marriage contract is not only for procreation. b. We also do not want prohibitory degrees for eugenic purposes.) At the time of registration each individual should provide the following to the registering authority and the concerned partner:

1. Date of Birth Certificate
2. Declaration of non-existence of any valid marriage contract.
3. Medical Certificate giving health status especially regarding STDs and HIV.

Declaration of immovable and movable assets.

Declaration of annual income.

Any two cohabiting persons may enter this registered contract at any point.

Cohabiting partners have the same rights as married partners, as long as cohabitation can be proved for at least six months.

Two persons, whether married or cohabiting, can enter into self-defined contract, where they agree upon their respective rights and obligations within the contract and/or upon the dissolution or separation of the contract. These can be:

1. Ownership or division of the property.

2. Maintenance.

3. The right to decide on the education and training of the children, but not the right to the custody of or access to their children, and

4. Any other matter in the settlement of their affairs.

Any provision in such contracts which seeks to limit the rights of a partner in respect of matrimonial home or property is void.

Particular conditions for Homo-relational Reality

Since hetero-relational and homo-relational contracts are to be considered on par with each other, the partners in such contracts have similar rights. The difference is in the latter, we are considering it to be a contract between two persons from the same sex, and so there is no clear-cut power relation as in the case of a man and a woman.

i. Each partner has an equal right to the matrimonial home.

ii. Each person has the complete right over the property that they individually own at the time that the contract is made. Both partners have an equal share and jointly own all property that is subsequently acquired.

iii. Each partner is responsible for the well-being of the other with greater responsibility on the one who is earning to meet the material needs of the other.

iv. Both partners are guardians of the children jointly adopted, and are responsible for their welfare.

Breakdown of contract

Since marriage or cohabitation is strictly between consenting adults, we do not feel that the breakdown of such contracts requires legal proof or reasons. The two adults are in a position to determine the breakdown of the marriage. The legal machinery should help a fair settlement rather than opine and judge on the validity of the breakdown.

If any one of the partners in the marriage believes that the marriage has broken down beyond reconciliation, then it has to be accepted her/his consent to the contract does not exist. In such a situation the person should not be forced to continue with the marriage. Hence, we believe that there has to be a provision for either partner to go in for irrevocable breakdown of marriage.

Our recommendations in a situation of breakdown of marriage are as follows:

- Divorce proceedings can be initiated only after a minimum period of six months after signing of the marriage contract.
- No fault divorce has to be the norm.
- Mutual consent divorce would be available. A six-month period of separation after the filing of application for divorce (as exists today) should be there.

Irrevocable breakdown of marriage is a clause available for both the partners.

- i. Either partner can ask for a divorce claiming irrevocable breakdown of the marriage. Such a divorce would get finalised six months after filing of the petition.
- ii. The property acquired during the relationship would be divided equally.
- iii. Either of the partners can have a right to maintenance or residence only if destitution is proved. The right to residence is for a maximum period of one year.
- iv. If the child is adopted the responsibility for providing maintenance and residence to the child is with both parents.

Responses of women's groups (in different fora) to FAOW's draft

There were several questions raised. One was: why were we trying to institutionalise relationships into structures like marriage and family? It was felt that these institutions are oppressive and so we should not force relationships that are presently outside their purview into them. New norms of rights and responsibilities within such relationships would emerge if we do not straitjacket them into the contract of marriage.

This was countered with various arguments. One was that anyway entering a contract was optional and only those who wanted to do so would opt for it. Secondly this was a need felt by women themselves as was evident from the instances of women actually getting married or asking for a marriage to be conducted.

Besides this, there was a need to establish a mechanism to ensure, that for any two persons in such a relationship, the rights vis-à-vis each other and the State be established and ensured. Further, if we really felt that marriage was such an oppressive institution, then why don't we actively campaign against it? Why do we not dissuade women from getting into hetero-relational marriages? Why were we raising the issue only in the context of a demand for acceptance of homo-relational contracts?

another opinion expressed was that the family laws were for hetero-relational families, and same-sex relationships were not included in it. To get the rights for people in these relationships, maybe we should have a separate law. There seemed to be a divided opinion about whether we should consider both these relations on par, and hence raise the relevant issues together.

The other objection to including the issue of homo-relational realities as part of changes in family laws, was that it would “discredit” and jeopardise the broad based support for family law reforms. Then would it be strategic for us to raise the whole issue of homo-relationality?

The reply to this question was that there is never a situation when the time is right. Every time a new issue is raised there is a fear that it would not be acceptable to everybody, and so there would be a backlash to the already ongoing movements. Besides, in this case, one of the aims of this whole exercise was to initiate dialogues on various aspects of the family. Therefore, our accepting different kinds of families that exist, and asking for their recognition by society and State, is necessary.

In a way, the opinion on the issue was quite divided. While there were these objections from some people, there were others who found inclusion of homo-relational realities as one of the most positive aspects of the draft. There were others who also expressed that legal recognition for these relationships would help in looking upon them as an alternative way of living.



In reflection later within the *FAOW*, there was a feeling that the discussion had to be broadened. Some of us felt that by not talking about it at all, somewhere the issue of homo-relational realities was being invisibilised. We also felt that due to the fact that we were not all open for the discussions, the tone was in some sense of ‘us’ and ‘them’ which was very disturbing. We do feel in *FAOW* that we are in a position to raise the issue and we should not shy away from doing so. Some people had also expressed that they themselves could not raise these issues today but would find it easier to put it forth as a demand by some other groups with which they were in agreement. Even if this could happen, or more importantly, if we were at least able to openly dialogue and face the dilemmas and hesitation that we ourselves are facing in talking about homo-relationships, it would be a step forward.



Strategising for the Future



*Proceedings of the workshop on
"Strategies for furthering lesbian, gay, bisexual
rights in India", Mumbai, 7-9 November, 1997*

Positions and Perspectives 
Discussions 

Positions, Perspectives & Strategies

2008

Proceedings of the workshop "Strategies for furthering Lesbian, Gay and Bisexual Rights in India", 7 - 9 November, 1997, Mumbai.

This workshop was planned as a joint effort of four organisations - *Stree Sangam* (a lesbian and bisexual women's group in Mumbai), *Human Rights Law Network*, Mumbai (a group of activist lawyers), *Counsel Club*, Calcutta (a group for lesbians, bisexuals and gays), and *Forum Against Oppression of Women*, Mumbai (an autonomous women's group). The workshop was a much delayed follow-up to a 1996 workshop on lesbian, gay and bisexual rights.

The workshop was essentially comprised of organisational positions, and personal narratives. The second part focussed on legal information and strategies. The discussions in the first part included experiences and bisexual rights, ways of organising, doubts, dilemmas, questions, future plans, perspectives on networking and alliances with diverse groups. In this record of the proceedings we include the perspective/ position papers presented during the first part and the essence of the discussions and debates of the workshop. The legal papers on various aspects of the rights of lesbians, gay men and bisexuals that were presented at the workshop have been included in earlier chapters in this resource book.



A Decade of Lesbian Hulla Gulla

2008

Arati Reg

T|| the beginning of the eighties, no one really had heard about lesbians. There would be some stray, oblique references in conversations, writings, film -- but it was all very hazy. The lesbians must have existed and did exist then, but we did not know them as yet. We did not know ourselves. There was very little sexual awareness, no scope for exposure and exploration. The rigid heterosexual conditioning prevented women from realising their own sexual desires. Secondly, tremendous social pressures, coercion to conform to the patriarchal feminine ideal, along with total lack of options such as education jobs, accommodation and mobility forced lesbian women into unwanted marriages.

The initial silence in the women's movement as well as other progressive and democratic movements did not help matters. Finally, the law of the land prohibits same-sex relationship through Section 377 of the IPC. However, the phallogentric and penetration orientec definitions have saved women from being sentenced to ten years of rigorous imprisonment.

Nevertheless, there was sexual segregation and there was the tolerance if not approval of intimate same sex friendships including co-habitation. These factors allowed women who loved women to deal with otherwise hostile situations and lead their lives as lesbians.

For many, this was a short lived dream. There was a steady stream of news snippets about suicide pacts, about eloped couples tracked down to be forcibly separated, restored to their families, to be married off or killed (which is the same thing anyway). There were reports of a woman in a relationship undergoing sex-change operations. Later, we were also to meet women who had immigrated during this period to lead their lives, to follow lovers or to find lovers. There were the brave ones right in this country who looked for ways to survive as lesbians. A couple from Gujarat who took advantage of Maitri Karar—a quasi-legal solution worked out for wealthy married men to have relationships with women who wouldn't do "it" without a veneer of security and legality. There was the couple, Leela and Urmila, policewomen from Madhya Pradesh who tied the knot when they found a priest who believed that marriage is a union of two souls and has nothing to do with the gender of the betrothed.

The beginning of the eighties witnessed the formation of women's organisations in all major cities. These organisations were not mahila mandals, not women's fronts of political organisations, but independent, autonomous groups with a feminist ideology. This

development perplexed, hurt and angered their former political comrades, brothers and husbands. They thought women were abandoning the earlier agenda. The women knew they were taking their own route to the same destination. These groups networked nationally and with international women's groups. Exchange of books and ideas brought exposure to the lesbian community abroad, their lives and their struggles. An occasional NRI lesbian visitor amid predominantly white ones made some local restless hearts flutter. Who am I? What are my desires? What are my feelings towards the woman I consider my best friend though I differ with her on the issues of Mandal and Post-modernism?

Once the veil of silence was pierced, normality certified by the American Psychologists Association, and finally (for the hard core leftist) — legalisation in Soviet Union, the Kinsey's regulation quota of 5% began to be fulfilled.

It was not all hunky dory but not all gloom and doom either. The mother organisations tacitly agreed to tacitly extend tacit support as long as the lesbians did not appear in meetings with "Dykes to Watch Out For" buttons and did not indulge in dykespeak. There was tacit opposition to "blatant" declaration of relationships, tender expression of love. Women's organisations took consistent efforts over a longish period of time to get over the "taciturn" phase.

By this time it was already 1990. The achievements were a lone ranger in Delhi—Giti Ghadani—networking and researching to trace the existence of lesbians in our own country, to prove that it is not the influence of western decadence through her research of our ancient scriptures and sculptures. There were three women in Bombay braving women's meetings and gay men's parties with equal equanimity. And of course the countless, unnamed (except Leela and Urmila) women who brazened out without any support, braving all kinds and degrees of brutality.

1990 was an eventful year. The first issue of "Bombay Dost" was launched with much sympathetic media coverage. The first conference of the Asian Lesbian Network (ALN) was organised in Bangkok that was attended by seven Indian women. At the fag end of the year, the Fourth National Conference of Women's Movements was held at Calicut in which a special session titled "Single Women" was organised. It was a very meaningful event for all single women who attended it, but it holds special significance for lesbian women. It marked the end of the "tacit" era—it was the last time lesbian women took organisational refuge under the umbrella of "single women".

Bombay Dost gave a writing platform and their male readers obliged by introducing their lesbian friends and sisters to us through the magazine. There was a flood of letters—friendly, desperate, romantic, lustful. Letters from teenagers, middle aged married women, women in love, lonely women; letters coming from Ludhiana, Meerut, Gauhati, and predominantly from Hyderabad (the reason has not been discovered yet). They were all isolated in their milieu and trying to reach out to seek support. In the absence of local

support organisations, the connection broke after three—four rounds of letters. The flood of letters continues, and now there is a better infrastructure to take care of it.

The Bangkok Conference of the Asian Lesbian Network (ALN) brought the Indian delegates face to face with their other Asian counterparts. It was like looking in a mirror. With a few regional variations, the situation was the same. The experience of partying with 200 other lesbians the first evening, and sharing our lives with fifty of them (the delegates) for the next 3 days, helped us feel nurtured and less isolated. It resulted in more focused activities back home, and some participation in Bombay Dost, and continued interaction with Delhi sisters (whom we met in Bangkok for the first time).

The issue of sexuality and lesbianism was placed firmly on the agenda of the women's movement in India at the Tirupati conference. By now there were younger, braver, articulate members in the lesbian community and the consistent efforts at visibility by the old guard were paying dividends. At the Sexuality Theme workshop in Tirupati, there were four sessions for 2 days attended by 150 women. There was open discussion of our bodies, sexual fantasies, masturbation, incest and abuse. When the discussion of lesbian relationships began, awe, wonder, disbelief, disgust, and open hostility were expressed. The lesbians were badgered with queries and accusations. The women who indulged in queries became sympathetic by the end of the sessions and the women who hurled accusations remained confused and unconvinced, till they were forced to apologise to us by their leaders. Their thought processes were sacrificed at the altar of overt political correctness of their leaders. Notwithstanding the pig-headed hostility of hardcore leftists, the issue was lanced, the silence broken and the bug of sexual diversity was planted firmly in brains that believed sex was only missionary coupling between a man and a woman.

The situation was changing rapidly, more and more women came into the group. Soon a clique of three lesbians became a crowd of thirty. Earlier we would hope to meet a new woman only in the women's group. This was a new crowd that worked in different non-conventional professions—fashion photographer, social worker, journalist, scuba diver, professor, air hostess—you name it and we have it. Women going to pubs and discos, college socials and sports meets, conferences and seminars. Many have more opportunities to meet and connect with others.

The group with its identity has begun to take shape, first a picnic with lot of fun and some intense and serious discussion. The group has a name—"Stree Sangam". Not everybody likes the name, but they like the group, hence tolerate it. There are problems that dog all organisations—like hierarchy, discipline, and

accountability. In addition there are problems which dog broad based groups diverse in class, caste, education and age. Despite all this, the Stree Sangam women made a meaningful effort to come together for a retreat of 3 days last year. There was the mandatory (and always the most successful) session on sharing of experiences, session on sex (hard core), organisational perspectives and strategies, poetry reading and writing sessions, and the hulla gulla pure and simple on the saturday.

suppose this is not much of a scholastic paper worthy of being presented at such a gathering of activists, social workers and professionals. But this is a spontaneous and heartfelt out-pouring of a person who was around from the beginning of this *jhamela* here in India. So that is that!

2008

Women Coming Together

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*Stree Sangar*

**S**tree Sangam—a confluence, a coming together of women. Some 20 of us (lesbian and bisexual women) had come together at Gorai beach, Mumbai — a little more than two years ago. Many of us had met each other for the first time and never before as a group. In a euphoric state we had come up with 36 names for our group (most of them totally junk) and had after two weeks of decision making ended on *Stree Sangar*.

That two day picnic in Gorai was the first step towards the formation of a group identity. A group of lesbian and bisexual women in Bombay with a desire to connect with other women like us all over India and outside.

But this was not the beginning of lesbian women's struggle and articulation in Bombay. Some women had been networking with other women and groups and had been actively participating in campaigns, activities, etc., for many years before this—a flavour of which we got from Arati's presentation.

The network of women in Bombay had grown slowly over the years—one, two, three ... for a long time ... and then another ... and another ... and separately too, till in early 1995 some of us like minded women who felt very strongly about having a group of our own and wanted to put our energies into the group, found each other, got together, and organised the picnic.

What kind of group were we then or are now? New women have joined; some old friends have left—yet we largely remain an urban, middle-class, upper middle class group of well-educated, independent women. Most of us identify as lesbian or bisexual to each other but few are out to their families. Many of us have never married and some of us have been or still are in marriages. Most of us earn our living and have some measure of control over our lives. We all live under various pressures. In a society where the restrictions on women are manifold, where marriage is compulsory, and avenues for achieving economic independence few, it is difficult for a woman to be self-reliant. At the same time independence and autonomy or some apparent control over our lives seems to

a pre-requisite for any woman who wishes to take the bold and courageous step of coming out to even herself. In that lesbian existence itself is a political act. Ultimately what we share with each other is the fact that we all love women.

Another important parameter is the nature of a group formed around the sexual preference of a largely invisible, silent people. To learn to understand oneself and one's sexuality is a process made very difficult in the world today. Within that women's sexuality is almost non-existent and lesbian sexuality invisible. Yet sexuality is such an intricate part of our lives and our lives that when we meet another one to whom we can say "You too? I thought I was the only one," the needs, expectations and desires are immense.

Each one of us has been through this, and part of why we form groups, want to reach out to other lonely people, take this issue of rights forward, is that we know the loneliness, the silence, the hurt, the anger, the confusions, the guilt, the unspeakable joy...and want to make the roads for others less difficult and ours easier.

The same feeling does not make it easy for the group to function. Especially given the time, energy and resource constraints that all of us work within. A group like ours is not one based on a shared ideology, but a shared desire. And desire is so complex, so varied. So for us to arrive at an understanding of each other's positions on various issues has been as important as understanding the way we choose (or have to) to lead our lives. These shared tensions reflect in our work in many ways. Some of us are connected to women's groups and have felt the strong need for political action, for active campaigns and discussions on issues like personal laws, harassment. Others have wanted this group to be a more social space.

So we have survived by reconciling, not easily though, these differences. Many projects have fallen by the wayside but we have in these past two years made inroads into networking and organising the first national retreat. As a group we have spent many hours sharing our lives and experiences on coming out, sex, relationships, girlfriends, parents, friends, plans, etc. Perhaps this sharing is what only a group like this can provide. In Bombay, we are in touch with some 45 - 50 women, some more regularly than others, with women in various parts of India and with groups and women abroad. We also have collected some books and periodicals and have placed some books from our collection in *Ikshara*—a women's library and resource centre to reach out to more and more women.

Besides sustaining a group and its energies the most difficult thing has been getting in touch with new women. Finally we have a P.O. Box number, which makes it easier for us to hand out the address. Still, without any significant mode of reaching to women, it has been very difficult to be able to reach the many women around the country.

There has been some openness to talk on homosexuality today but we need to tread the arena of public debate carefully as much media exposure is of the vicarious, scandalous variety. Even when the talks come to a point that "They can lead their lives as they want, it is still very repressive and even punitive when it comes closer home. The home too though often defined as a women's space, is hardly one where lesbian sexuality can be expressed. Some acts of such love survive, but only so far as they remain invisible and silent. Not right and not rightful. Section 377 has most often been used by women's families to harass and control their choices. Women rarely face public harassment by the police because of this section.

Further, since lesbians do not have the social option of public sexual spaces (as gay men do—however restricted—in parks, toilets, etc.); the option of organising or mobilising around these spaces, or connected issues is equally non-existent. Many groups have organised on AIDS (and within this outreach to gay men, particularly in public places). Lesbians are a low priority and invisible here too.

Given the absence of control over space, language, and discourse, whether public or private, we look at the legal space with more hope. Campaigning around the law provides us a platform to raise the issue, to bring some recognition and visibility to it. Legal rights could also be that helping hand to any woman who might be strong enough to stand up for her rights with no other support structures.

Any woman who speaks openly of her desire for women, at whatever level, is more vulnerable to harassment and discrimination not only in her family but also at her workplace and in her other interactions. Decriminalisation and an anti-discrimination clause are both necessary for some measure of protection against this.

All the cases of same sex marriage in India that have been talked about in the media have been those of women. Women from all over the country, especially small towns, have wanted to get married, to formalise (solemnise) their union and have wanted to claim the legally and socially accepted institution of marriage for their love. It is these women and their brave acts that raise the issue of domestic partnerships and rights within them with urgency. We also believe that relationships and the rights of partners within relationships should be recognised. For all these reasons, and because we believe that in a democracy all should have rights, we are here today.

It is not as if either the road we have travelled to this place, or the positions we hold today are easy or simple. The first time the FAOW's suggestions on domestic partnerships were read in a Stree Sangam meeting, the reactions ranged from acceptance to disinterest to downright rejection. Part of the rejection came from a fear of recognition—what if I am known as a lesbian in my family, my friends, my workplace....

Today as a group we are, however, at a place where some whole-heartedly, and some with reservations, agree (a few disagree too) that we need a change in the legal discourse—an open recognition and acceptance of the rights of women who love women.

In our multiple struggles for lesbian rights and existence, we see the linkages with various other groups. We see ourselves as part of the women's movement and the commonality of the challenges our lives and articulations of them pose to patriarchy and its institutions. We know that so far women who love women do not have much open space within the women's movement. Yet there have been consistent efforts at creating this space. We need to work towards forging these links more strongly.

We also see that along with our specificities there is a common ground between gay groups and our struggles. We need to understand both our differences and this common ground to work as allies.

To strengthen our struggles and to realise our visions we also believe that we need to ally with all groups who believe in the basic norms of justice and equality for all.

What these alliances can be and how we can work through them towards a common understanding and action is something we hope to talk about in this meeting along with issues already mentioned.



## Perspectives On Gay And Lesbian Rights

8008

### *Human Rights Law Network*

The Human Rights Law Network (HRLN) started in 1989 at an all India conference on human rights held at Bombay. Since then, it has been working on the areas of human rights and law. During this period, the Network has organised and co-organised national level conferences on communalism and law in Delhi, 1992, environment and law in Bangalore in 1994 and on gender just laws in Bombay in 1996. Its core consists of a group of about 15 lawyers and legal activists working from Bombay. One of its major activities is to fight public interest litigation on issues concerning human rights violations. It also runs the Indian Peoples' Tribunal (IPT) which has, in the last three years, done six major fact-finding reports. These include reports on Narmada oustees, the situation of tribals in Rajaji National Park, the condition of women and children in Kashmir, the slum situation in Bombay, the plight of earthquake victims in Latur, etc. It has also recently started India Centre for Human Rights and Law (ICHRL): a library and documentation centre specialising in documentation of human rights violations and training of activists in dealing with human rights violations. Besides, we also regularly come out with publications such as 'Environmental Activists Handbook', 'Handbook on Prisoners' Rights', etc.

As is obvious from our activities, we define human rights in the broadest possible sense, including women's rights, rights of minorities, rights concerning environment, housing, health, prisoners, workers, etc. Individual as well as community rights need to be defended so long as they do not trample upon similar rights of other individuals inside or outside the community. Individual freedom and privacy need complete protection, and we do not recognise the State as the moral big brother. Any law that tramples on this freedom is a violation of human rights. It is in this context that we understand and respect rights of gay men and lesbians. We believe that it should be an important task of human rights organisations to help preserve these rights, and to fight against any curtailment of these rights. Each individual's sexual orientation and preference concerning companionship is entirely the choice of the individual concerned, and the State should act in a manner to give much more free space for these expressions. At the same time we should not be misunderstood as trying to justify gay, lesbian, and bisexual rights out of a principle of

toleration of all kinds of individual behaviour. Such would be the case if we believed that homosexuality is unnatural but is to be tolerated as an individual freedom. This is possibly the position of some of the human rights organisations throughout the country. We do not believe that there is anything deviant or unnatural about being homosexual but it is as much 'straight' as heterosexuality. It is in this context that we talk not of liberties and concessions to homosexuals, but of rights of homosexuals.

Our organisation's link with the gay, lesbian, and bisexual rights movement is fairly recent, and started with co-organisation of the Gender Just Laws workshop held in Bombay in 1996 that had a separate session on gay, lesbian, and bisexual rights. The individuals who started our organisation in 1989 have always been sympathetic to the movement; partly because of the left tradition they come from, and partly because of old associations and friendship with gay men and lesbians. In India, however, the human rights' movement as a whole has failed to address the question of gay men and lesbians in any significant or serious way. We attribute it to four reasons:

Many of the human rights groups have historical linkages with traditional left and Maoist parties. Some of them are direct fronts of these parties while others, even though not organisationally linked, still have leading individuals who are members of these parties or are strongly influenced by their ideology. They consider a discussion of sexuality—to be more particular even heterosexuality—as a frivolous, petit bourgeois deviation. They, like their parent organisations, view homosexuality as a capitalist aberration, arising out of imperialistic influence.

Those human right groups that do not come from these backgrounds still tacitly accept the sexual mores of the liberal tradition that condemns homosexuality as unnatural and deviant.

Some of the human rights organisations have stopped openly condemning homosexuality; but even their toleration of homosexuality is based on a patronising attitude of looking at gay men and lesbians as frustrated individuals who have undergone a traumatic childhood. Besides, they have no idea of the extent of prevalence of homosexuality and believe that it is either something that happens in urban high class societies or within the four walls of Bihar jail.

Lastly, human rights organisations of all kinds are influenced by the movements around them. It was only the pressure of the women's movement that has forced human rights organisations to now take up women's issues. Similar is the case with environmental issues, etc. In the absence of at least a somewhat strong gay, lesbian, and bisexual movement it is difficult to imagine human rights organisations giving the issue any notable prominence.

The Indian State—as is the case in most countries—deals with homosexuality in two ways. At a sexual level it makes homosexuality a crime and a punishable offence. At the level of companionship, it sweeps these relationships under the carpet and completely ignores the existence of any companionship not dependent on heterosexuality (and even within heterosexual relationships confined only to marital relationships), thereby denying crucial rights to homosexual couples. It therefore becomes necessary to battle at both the levels with a two-fold approach:

- (I) By decriminalising homosexuality; and
- (II) By getting legal status for homosexual relationships that is otherwise granted only to heterosexual relationships.

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2008

## A Self-Help Story

2008

*Counsel Club, Calcutta*

Counsel Club is a support forum for gay people, by all people. Started in August 1993, it aims to reach out and connect with all those interested in dealing with the issue of homosexuality, either at a personal level or at the social level. The sky is the limit in our struggle to fight the prejudices and discrimination faced by gay people (lesbians, gay men and bisexuals).

Calcutta—the city of teeming millions, of Howrah bridge, of tram cars from a Jurassic age—has always been home to some underground movement or the other: the independence movement, the Naxalite movement and even the Metro Railway! And since the last six to seven years, the gay movement as well. This is one movement that is already showing signs of coming above ground.

Before we describe Counsel Club's experience, let us take a look at what was happening in Calcutta and Bengal before Counsel Club came to be. Quite a lot was, by the standard of those days. Bengali literature had not shied away from dealing with homosexuality. Bankim Chandra Chattopadhyay, Sarat Chandra Chattopadhyay and Sunil Gangopadhyay among others had all dealt with the subject in a direct or not-so-direct manner in their writings. The trend (if one can call it so) seems to be continuing.

In the 60s and 70s, Calcutta had a thriving social network of gay people, as recounted by some contemporaries and even written about by writers such as Allen Ginsberg. Then again, gay action in the modern sense of the term, emerged in Calcutta possibly sooner than in any other place in India. In 1990, "Shakti Khabar"—published from London by SHAKTI—reported having in its collection a few issues of "Gay Scene", a journal brought out by some individuals in Calcutta in the late 70s/ early 80s. The journal did not last long, and unfortunately nothing is known about the whereabouts of those individuals.

Much later, in the late 80s and early 90s, attempts were made at organising gay people, albeit for creating a social set-up, rather than political action. One of these, Fun Club (December 1990- December 1992), was reasonably successful in attracting the attention of Calcutta's gay network, but closed down because of financial and other reasons before it could really venture into areas other than providing space for socialising and "fun".



The closure of Fun Club, however, spawned the birth of a gay journal "Pravartak". A couple of members of Fun Club felt some gay action or the other should continue from Calcutta, and so started "Pravartak". The typed, photocopied and stapled journal lasted a of three issues from December 1991 to March 1992. One should say that the journal went off into "hibernation" rather than a "close down", for it had sown the seeds for further action. Sure enough, it was revived in August 1993, this time as the house journal of Counsel Club. The five member team that started Counsel Club decided to make it a "friendship group". This soon started to grow as a support group, with "Pravartak" as its chief activity initially. A conscious decision was also taken to involve gay positive, non-gay people, since the idea was to network as widely as possible and so promote a greater understanding of the situation faced by gay people. As a support group, Counsel Club has now evolved into a form of "shelter" for gay people. As the logo shows, it is a forum where a gay person can express his or her innermost fears and desires in a friendly atmosphere, and where he or she can strengthen himself or herself to face the big bad world of discrimination. Discrimination that is sometimes "silent" and "invisible", sometimes "violent" and "blatant". Discrimination experienced many times at home or within the extended family; and sometimes within the friends' circle or even at the workplace.

Counsel Club's philosophy: All roses are roses, but all roses are not red. That is, all humans are humans, but they are all diverse in so many ways—sexual orientation being one of them. This diversity need not make any section of humanity marginalised. All humans have an equal space under the sun, and should assert their right to the same. The same holds for gay people. First they must overcome their fears and gain self esteem. The bottom line clearly is self-acceptance. Then they can demand (not beg) acceptance from larger society as well. Success may or may not come, but at least the sense of self-worth that comes from self-acceptance will remain intact! Towards this goal of self-acceptance, Counsel Club's prime task has been to bring people out of their isolation. To help them clear the cobwebs in their minds about their sexual selves. To show them there's much more to being gay than cruising in parks and hurried sex in public urinals.

"Pravartak", as mentioned earlier has been the main vehicle for Counsel Club's agenda. In its new typeset, printed and bound avatar, it sold many more copies, though seriously limited by the lack of finance, distribution outlets and a non-registered status. (Both Counsel Club and "Pravartak" are non-registered entities till date, though registering the group under the Societies Act is an immediate plan). On the positive side, the success achieved in distributing the journal through private circulation is something to celebrate. It means that the gay network really works!

When there was a general demand from the readers that the journal be made less cumbersome to carry and put away from prying eyes, its size was reduced to the present

format. A profile of the issues covered in "Pravartak": Reports (of conferences like this one), First Person stories, Nos Amis, Comics on gay issues, Counselling Help, etc. Apart from fiction, Poetry and Reviews, a very popular section of the journal is the Networking (pen pals) column. There is reason for the journal to be proud of this column, for it has helped start at least a few gay relationships! One of the gay couples was later interviewed by "Pravartak" for the sixth issue.

Safe sex and sexual health are also covered as this is an important area where gay people need to educate themselves. The state machinery is still largely asleep to the risks involved in same sex behaviour vis-à-vis STDs / HIV / AIDS: this shows through in its communication on HIV / AIDS awareness. These issues are dealt with outside the pages of "Pravartak" as well—through condom promotion and group discussions among the group's members and friends—though not so regularly yet. However, Counsel Club members have quite regularly participated in the workshops organised by the West Bengal Sexual Health Project since its inception in May 1994. The project, funded by the Department for International Development of the U.K. is one instance where a government body seems to have (tacitly?) acknowledged the existence of gay people and same sex behaviour in Indian society. The training provided by the project's workshops has of course been extremely valuable.

"Pravartak" is always on the look out for references to homosexuality in Bengali literature and has published extracts from quite a few such writings. Notable among them are extracts from Bankim Chandra's "Indira" and Sunil Ganopadhyay's "Sei Samay"

It has been quite an experience publishing eight issues of "Pravartak" (11 if you count the three issues of the first avatar). The group members had to fight their inhibitions before any work could be done. Fortunately the typesetters and printers (Netware Computer Services, Exact Reprographics and Reliable Screen Printers) were only too eager to discuss the issue themselves!

In March 1995, "Pravartak" had a lucky break when Classic Books (a favourite among Calcuttans fond of alternative books) offered to stock a few copies of the journal. Thanks to this, the group and the journal could reach out to a large number of people. Later People Tree in New Delhi also became an outlet for "Pravartak".

Apart from publishing "Pravartak", networking with other gay groups and individuals and NGOs has been an important activity for Counsel Club right from the start. This has yielded a network of Counsel Club's members and friends India-wide and world wide.

The group members have also spoken to the print media a number of times. Both the local and national publications (including Bengali newspapers) have interviewed Counsel

Club members. The group has also “come out” on BBC and Doordarshan. Besides, its members have participated in discussions on homosexuality and AIDS awareness on *A India Ration*, Calcutta. Of course all this media coverage has resulted in both positive and negative reactions. Interestingly, most of the negative reactions resulted from coverage in the Bengali press. In fact, a front page anchor report in “*Ananda Bazar Patrika*” resulted in some very acrimonious letters from the newspaper’s readers. One of these letters was instrumental in the prefix “Naya” being added to “*Pravartak*” from the fifth issue onward (Refer to Annexure 1: “So much has happened...” *Naya Pravartak* issue #5, May-December 1995, Pg. 6, 13)

On the positive side, the media coverage has helped several isolated gay people to discover that an organisation such as Counsel Club exists, and that too in eastern India.

The group’s postal address was published twice in “*The Statesman*”, Calcutta. Each time there was a wave of letters requesting information about the group. The writers were from all age groups, but male writers heavily outnumbered the female ones. Many of them were looking for friends and even romantic partners. Others were brutally frank about being interested only in the phone numbers and addresses of prospective sexual partners! The most touching letters came from those who were not clear about their sexual orientation, who felt something was “wrong” with them and who asked questions such as “Is same sex attraction normal?” Some of them even expressed problems such as lack of concentration and confidence at work or studies because they could not help worrying about their “abnormal attraction” or because they were always worried about “being found out”. Many of these “problem writers” were married men. In direct contrast to such letters were those that came from people well adjusted with themselves, but still largely isolated. Most of them gave detailed accounts about their lives and family situations, the experiences that arose from self-realisation, falling in love, sexual encounters, broken or successful relationships, etc. The dozen odd files of letters Counsel Club has, all point to one thing. There are countless people out there, submerged in the masses, yearning to express their feelings about their sexual attraction freely without guilt or fear. Thus, correspondence and “friendly counselling” over letters takes up much of the group’s time.

Another regular activity of the group is the first Sunday monthly meeting. These meetings have been a major success, and have been held without a break since September 1994. Till the middle of this year, these meetings were usually held at Counsel Club chairman Hem Chandra Huiyil’s place (his living room, to be precise). Sadly the group had to give up this “heritage venue” when Hem’s landlord objected to “anti-social activities” going on under his roof! Now the venue alternates between another member’s place and a hired hall. The agenda for the first Sunday meetings consists of discussions, taking stock of the past month’s happenings and planning for the coming month. At one time, the agenda also consisted of general gup-shup, playing games such as *anatakshari*

and even quizzing. The attendance at the meetings grew (from barely a dozen or so for the first one year to around 20 during 1995-6 and to more than 30 mid 1996 onwards). This meant that both the space and the time available for the meetings started proving inadequate to accommodate such a wide agenda as well as the diverse interests of the people attending the meetings. Thus in September 1996 it was decided to split the monthly meetings into worker's meetings (which would continue on the first Sundays) and social meetings (which would happen on any of the following Saturdays or Sundays). This formula has worked quite well so far, in spite of the irregularity of the social meetings.

Another favourite spot for many of the group's smaller meetings and discussions has been an eatery on Middleton Street in central Calcutta, on the same premises as Classic looks. Many of the meetings with newcomers to the group have also been held here. Counsel Club's birthday parties are becoming increasingly popular if the fun and camaraderie at the third and fourth birthday parties is any yardstick.

"Friendly counselling" through letters was mentioned earlier as an important activity of the group. Perhaps more significant is the "friendly counselling" the group's peer members have been providing in person—to both newcomers as well as those who are already members of the group. Such counselling on a number of occasions has been followed by a referral to the professional counsellors or lawyers who work with Counsel Club. Normally, a referral is made when the problem concerned needs expert handling such as testing and treatment of STDs, advice regarding HIV testing, or when accurate legal advice is needed. Counselling through yet another medium—over phone—has also become part of the group's agenda. This happened only recently (May - June this year) and is based on a collaboration worked out with Lifeline Foundation, one of the few help lines Calcutta has.

Among the other activities of the group are its archival services. These have grown over the last four years to include books, journals, reports, research papers, brochures, video cassettes, the audio cassettes and transcripts of Counsel Club's oral history project (which is yet to take off properly).

One of the most recent services started by the group is its Employment Scheme. The idea behind the service is to help the group's members move towards financial independence and thereby gain greater control over their lives. In the group's experience, many gay people would like to be open and assertive about their sexual orientation to their families only when they have become financially secure. This scheme was started in January 1997 and has had moderate success so far. It helps locate openings for jobs, if possible within the gay network. "Jobs available" ads have made an appearance in "Pravartak". The scheme also assists group members in starting venture projects such as making greeting cards, other stationery, painted T-shirts, etc. Assistance may be financial

(in a limited way) or in the form of marketing the product through Counsel Club's network. A major feature of the scheme has been the setting up of a salary pool through donation from some of the group's members. The money in the pool is used to pay a nominal monthly salary to the group's first paid worker who is supposed to look after the administrative and development work of the group. The worker has the right to delegate work to other members. He or she must be a member of the group.

January 1997 also saw the group have its first Network East conference. The aim was to bring together the group's members and friends living in eastern India, and strengthen the gay network in that part of the country. The meeting was quite a success, and there is every chance that it will become an annual feature. The conference, planned carefully over a period of nearly a year, included group discussions, a sexual health workshop and role playing sessions among other things. Nineteen people participated from West Bengal, Assam, Bihar, Orissa and Andhra Pradesh. A few copies of the Network East report are available with the group.

The group has had experiences on the cultural front as well. In June 1996, three of its members organised a ballet in collaboration with Sapphire Creation Dance Workshop (a Calcutta based modern dance troupe). The ballet, titled "The Alien Flower" was based on poems written by a group member. The poems talked about the experiences of a gay person as he passes through the different phases of life.

Though the group has not had very many direct confrontations with the law, this issue merits a separate discussion. What can be mentioned here is that some of the group's members have had personal experience of being harassed by the police in the parks of Calcutta. They also know of several other cases where friends were threatened by the keepers of the law to pay a fine (a minimum of Rs.51) or spend a night in lock-up. In many of these cases, the person so threatened had not done anything to attract the provisions of any of the public nuisance laws, or even Section 377, India Penal Code. Occasionally, the police and the guards are reported to resort to even violence and sexual abuse of their "victims". It is not uncommon for the "victim" to be asked to provide "sexual satisfaction" if he is not able to pay cash.

Counsel Club has roughly mapped the sexual network of Calcutta and Howrah. Many of these cruising sites are also operating grounds for men who sell sex. Most of them are reputed to have "contracts" with the police whereby they are "allowed" to indulge in activities such as snatching valuables and money from their customers. In return, they must provide *hafta* of the sexual kind. If somebody were to file a report against them for theft, it would not be a surprise for the police to stonewall the complainant instead!

he group has very recently had problems with the Customs Department as well. A consignment of copies of *Trikone* magazine was confiscated by the Customs department on grounds that it attracted the provisions of the Customs Act, 1962. (Counsel Club was one of the distributors of the magazine in India, the other being The Humsafar Trust in Bombay.) While the commercial violations cited by the department in confiscating the parcel may be tenable, its allegations that literature dealing with lesbian, gay and bisexual issues is "derogatory to the morality and social system of our nation" is definitely debatable.

To end with, it would be pertinent to say that though Counsel Club has had some success in its work, it has a long way to go. Its membership has risen from 5 at the start to more than 100 today — not just in Calcutta, but all over India and even abroad. So has the number and variety of issues it has had to deal with. Issues which are of universal importance to humankind, and not confined to any one section or the other.

8008

## Another Challenge to Patriarchy

2008

### *Forum Against Oppression of Women*

The very existence of lesbians is a challenge to patriarchy in society. The primary struggle of women's groups has also been against patriarchy, and within it more dominantly against the power structures within the family. The women's movement is a space for the struggles of all women. Looked at in this way, lesbian rights and lives of lesbian women should have been an important part of the women's movements' agenda. Yet that has not been the case for various reasons. However, in the last few years some attempts have been made in this direction.

As an autonomous women's group that has been, for the past few years, consciously raising the issue of lesbian, gay and bisexual rights, we in FAOW feel it important to share the process we have been through. In the last 17 years of our existence, we have made a journey and arrived at an understanding today. While talking about how we look at this issue today and how we wish to work on it, we would also like to trace the path we have travelled. In the process we might also share some of the journeys of the women's movements.

### Introduction to Forum

Forum like many other groups in this phase of the women's movements was formed in 1979 as a response to the Mathura rape case. Initially started as Forum Against Rape, soon expanded to other areas of violence, as many women with different problems started approaching us for help. Instead of focusing on a single issue, we started taking up other issues like domestic violence, wife murders and sexual harassment. Besides violence against women, we have also been involved in health campaigns, personal laws, and in activities against communalism.

FAOW started as a platform for many women who represented groups from different ideological streams like Socialist, Gandhian, Left, etc. Today we are a group of women who participate on a consistent basis, with a broad based common understanding, although we continue to have differences over our ideologies.

its organisational functioning, FAOW has consciously taken a decision to remain a non-registered and non-funded group functioning with purely voluntary inputs from its members. Our meetings are primarily in members' residences. We meet once a week and divide responsibilities. We believe in, and try to work in, a non-hierarchical, non-institutional method of functioning.

FAOW, of course, has both positive and negative aspects. It affects our ways of functioning, the kind of issues we take up, and the manner in which we take them forward. We are able to raise issues that other groups are unable to do for various reasons. It helps us to remain open to new ideas and allows for space for debates and discussions. The limitation of all this is, that although said to be open, we are mainly a group of urban, middle class, very dependent, autonomous women. The openness allows for discussion, but we can have a very limited translation into action. Our reach is limited and any sustained activity is difficult and dependent on individual initiative and interests.

FAOW is primarily a campaign group and has used multi-pronged strategies in its work. Consciousness raising through writing, plays, discussions, meetings has been one important strategy. Networking and trying to work on common platforms with other women's groups and with progressive groups on different issues has been another strategy.

One of the most used strategies for campaigning has been that of legal reforms. We have tried to use the public space provided by law to women, to raise contentious issues and initiate debates among various sections of our democratic society. We also look at regressive law as a tool in the hands of the few brave women who struggle against all odds for survival and independence.

Through the years the common understanding we have arrived at is that women's oppression is not the result of biology or social customs but is systematically perpetuated by patriarchy both at the material and ideological levels which controls women's labour, sexuality, fertility, and mobility. We further believe that women's oppression can change through collective action and struggles at various levels.

We believe that as women each of us has multiple identities, which affect the way in which we experience the patriarchal structures in society. Hence, we believe that the women's movements must provide autonomous spaces for women from specific groups to organise under the larger umbrella of the women's movement. These spaces are very important for all women to be able to identify the paths and ways in which their specific struggles can move ahead, while also having some shared vision of the society as a whole.

Further, we believe that the women's movements with other people's movements like disabled, tribals, workers, and other minorities can create a society in which there will be



equality between different classes, castes, religious communities and also across gender and sexual orientation.

It is with this background that we would like to look at the issue of lesbian, gay, and bisexual rights and our involvement in them since the very beginning.

## Lesbian, gay and bisexual rights

Although theoretically most women in Forum accepted homosexuality, there was no open dialogue about it within the group or even at a personal level till quite late. In the early years of the women's movement, part of the reason for this was ignorance, part of it was the heritage of the left movement that most of us carried, in which sexuality itself was not talked about openly. A large part was also fear that this could jeopardise the newly emerging acceptance of women's issues and struggles, that the group and the women's movement would be labelled lesbian and hence unacceptable.

It was primarily the persistent effort and struggle by the few lesbian women in the group and the women's movements that led to any kind of change in this position. The changed external environment has also affected the agenda.

In the mid 80s, FAOW meetings were held in a lesbian household, if that can be taken as a positive assertive action. It was definitely not a conscious choice on our part. It also did not mean that we were willing to recognise the specificity of lesbian lives and their issues as of as much importance to the group.

It was the marriage of Leela and Urmila, two police constables from Bhopal in 1987, and their subsequent dismissal from service that forced Forum to take a public stand. We tried to take the matter up with other groups and had many debates within FAOW. The presence of lesbians within the group and this external event of discrimination created the space within FAOW for the first time to have intensive internal debates on the issue. Although we could do very little in terms of action at that time, since then, lesbian rights have been on FAOW's agenda.

In 1989, Forum took up the task of formulating personal laws for women, in the wake of a highly politicised debate around Uniform Civil Code and the atmosphere of communal tensions. It was felt that specifying what is meant by gender just laws for women was one of the ways to distinguish the FAOW's position from the Hindutva one. It was also felt that within the women's movements we needed to raise the debate about the nature of law that we find pro-women.

In the process of formulating the laws, within FAOW there were many debates around the issue of family, the compulsory nature of marriage, alternative families, the control over

women's sexuality, and in general, the nature of women's oppression. Lesbian families and relationships were discussed at great length. We did believe in legal and social recognition of lesbian partners and families. The number of cases that had appeared in the media, like Leela and Urmila's marriage in 1987, of women wanting legal recognition for their relationships, left no doubt in our minds about asking for legal rights.

But, in the final draft, we did not spell out clearly that we considered same sex partnerships to be on par with heterosexual partnerships. We felt that we would leave the definition of marriage as a contract between two consenting adults (without saying anything about their gender). Since this is anyway the case with the Special Marriages Act, we thought that some women could probably use it to get their marriages registered. We feared that talking openly might take away this space that women might have to gain recognition for their relationships.

Although we did not specify very clearly, we did raise the issue openly in every discussion in the draft and found the response not very positive. Most women's groups and other groups felt that lesbians have hidden, traditional, "safe" spaces, which we would be sacrificing if we raised the debate on a public platform. Besides this kind of a 'strategic' opposition, many groups also felt that homosexuality was abnormal, that it was an issue that has come with the influences from the West, that there is no need to talk of these issues and sacrifice the rights of all other women and the recognition of their struggles.

Since 1989, Forum has been consciously trying to talk about these issues in as many forums as possible. The National Conferences of the Women's Movements have been a platform that has been used to debate and discuss this issue with women's groups from the different parts of the country. The presence of more vocal and out lesbians within the group and the movement has helped this process. Besides there has been a change in the external environment. Internationally and nationally there is more importance given to this issue.

With all these influences, FAOW's understanding also evolved. Today we believe that no hidden, invisible space can be a 'safe' space, since by their very nature such spaces repress and silence women's claims to own these spaces. They force women who love women to live an unnamed and unaccepted life, in shame and guilt. We hence believe that there is a necessity for open debate and acceptance. Without creating an open environment for this, a backdoor entry in law for two women or men to claim marriage does not mean anything.

It is with this understanding that in 1995 when we reworked on the draft for gender just laws, we openly talked of lesbian and gay rights, families and partnerships. Raising the question of homo-relational reality in the context of demanding an equal law for heterosexual and homosexual persons was also bringing the agenda in the mainstream discourse on the rights of citizens in personal relationships.

Besides articulating our position in the context of gender just personal laws, we have also tried to raise the issue in other contexts. Including discussions on sexuality a major theme of the Conference of the Women's Movements has been one such space. Within these conferences now there are spaces for discussions on homosexuality and also a space for 'women who love women' to meet in a safe space. These efforts, in spite of the hostility and indifference of some, gave us a feeling of warmth and energy to continue to claim spaces within the network of women's groups and the movement for lesbian and bisexual women.

Since the 1990s, there have been radical and sweeping changes brought about by economic and cultural globalisation. Sexuality has been a marketable commodity for the media. On the other hand conservative and rightist forces and values are glorifying the traditional family and traditional roles for women. There has also been along with this, a weakening of the traditional left and also a fragmenting of various progressive movements. In this scenario we are aware that we have to be more creative and use different strategies and methods to take up these issues. Keeping our platform as broad as possible to include different concerned organisations and individuals is essential today.

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 2003

### **AIDS Bhedbhav Virodhi Andolan (ABVA), New Delhi**

ABVA was started in 1988 by a mixed group of professionals from the fields of education, health, law, etc. The group's first intervention was to block the forcible HIV testing of commercial sex workers in Delhi. Some of the reports published by ABVA include:

1. *Women and AIDS*
2. *Less Than Gay—A Citizen's Report on the Status of Homosexuality in India*
3. *This Sugar is Bitter*
4. *Needle of Suspicion*

ABVA campaigned successfully for the withdrawal of the draconian AIDS bills that have been proposed. In 1992, the first open Gay demonstration was held in front of the Police Headquarters by ABVA and other organisations to protest against the Delhi Police harassment of homosexuals in Delhi Central Park.

In 1994, media attention focused on Tihar jail where the then Inspector General of Prisons—Kiran Bedi refused to allow distribution of condoms to the male prisoners on the grounds that there was no homosexual activity in the prisons, and even if there was the prison authorities would be encouraging a crime. ABVA used this incident to initiate public interest litigation for the repeal of Section 377 of the IPC.

## DARE - Documentation. Archive. Research, Education, New Delhi

### Resource Centre for Lesbians, Gays and Bisexuals

DARE is the first of its kind in India—a resource centre to generate, document and make available information on same-sex love in a friendly and safe environment to all those interested in the subject. This includes lesbians, gay men, bisexuals and anyone who is concerned and wants to be better informed.

DARE is a group of people who care and who hope to:

- Generate awareness on lesbian, gay, and bisexual history in the subcontinent
- Counter negative stereotyping, especially the impression that homosexuality is a western import
- Provide information on legal, health and psychological issues
- Encourage academic research in various fields by providing bibliographies, source materials and guidelines to scholars
- Build an archive to preserve and visibilise our history

## People's Union of Civil Liberties (PUCL), Bangalore

PUCL is an organisation which, like Citizens for Democracy (CFD) was started by J.P.Narayan primarily with the intent of promoting participatory democracy. The main work of the organisation is on the social and economic issues of the rural poor, the working class and minorities. We focus on women's representation in Panchayats and combating the rise in communalism in Bangalore.

While so far, lesbian, gay and bisexual rights have not been on the agenda of PUCL, Mr. Kamdas, a representative of the organisation at this workshop felt that since it was a question of violation of human rights, it was within the purview of PUCL's mandate.



## **Writ Petition Challenging the Constitutional Validity of Section 377 IP filed by Lawyers Collective HIV / AIDS Unit for petitioners Naz Foundation (India) Trust- December 2001**

Section 377 of the Indian Penal Code 1860, an anti-sodomy law and a vestige of British rule criminalises acts of oral and anal sex committed either between a man and a man or a man and a woman or a man and an animal. Substantively the act applies equally to homosexuals and heterosexuals and does not differentiate between consensual and coercive sexual activities. Although Section 377 does not criminalise homosexuality, it is mostly used as a tool to harass and abuse sexual minorities.

The Naz Foundation (India) Trust, an NGO working on issues of HIV/AIDS with the community of men who have sex with men (MSM) in New Delhi for the last 8 years file a writ petition, challenging the constitutional validity of Section 377, in the Delhi High Court on December 7th, 2001 on grounds, inter alia, that:

1. Section 377 is a major impediment to carry out HIV/AIDS intervention work with the MSM community as it drives high risk behaviour in terms of unprotected anal and oral intercourse underground and beyond the reach of safe sex interventions. The provision therefore, has a deleterious impact on the right to health of MSM, which is part of the fundamental right to life under Article 21 of the Indian Constitution.
2. It is violative of the fundamental rights to privacy and equality of sexual minorities inherent and guaranteed to every citizen of India under the Constitution i.e. Article 21 (the right to life and liberty which includes the right to privacy) and Article 14 (the right to equality).

The respondents to the petition are the Government of Delhi and the Union of India through the Ministry of Home, Health and Social Welfare; the Commissioner of Police, Delhi; the Delhi State AIDS Control Society and the National AIDS Control Organisation.

Lawyers Collective HIV/AIDS Unit drafted the petition and is arguing the case on behalf of Naz Foundation (India) Trust. The petition seeks a reading down of Section 377 to cover only non-consensual sexual activities (thus excluding consensual sexual activities between adults). In order to ensure the cessation of further misuse of Section 377 by the law enforcement machinery against sexual minorities, the petition also seeks interim relief pending final hearing in terms of a stay against further use of the provision being issued. The case has come up for admission and hearing before the Delhi High Court on a few occasions. The respondents are still to file their replies to the petition, which has presently been adjourned to 27 November 2002.

— 2008 —

## National Conference on Human Rights, Social Movements, Globalisation & the Law, Panchgani - December 2000

Over 1,500 Judges, Lawyers, para legal professionals including activists from the North East, Kashmir, Punjab and remote tribal areas came together for during the last week of December to attend the National Conference on Human Rights, Social Movements, Globalisation & the Law organised by the India Centre for Human Rights and Law (CHRL), Centre for Social Justice, Human Rights Law Network, Drishti Media Collective and several other organisations around the country. The objective being to share experiences of the various groups on the Judicial System, evaluate the role law has played in protecting human rights of poor people & how it has been misused, to build organisational links, exchange information & co-operate in campaigns & investigations into human rights violations.

Over 40 workshops were organised on various issues concerning human rights one of them was the workshop on the 'Rights of Sexual Minorities.' The workshop on the Rights of Sexual Minorities discussed the laws or rather the lack of legal spaces for sexual minorities. The need for partnership laws, inheritance laws & laws to protect sexual minorities were discussed. Strategies on the repeal of section 377 of the Indian Penal Law were discussed. The session on LGBT rights drew many more people than expected. Over 150 people attended the session including retired & sitting judges. The possibilities of forming a coalition of all the groups working on the rights of sexual minorities was explored.

To quote Surina Khan, Director of IGLHRC, who spoke at the plenary session of the conference: "Decades of work by activists have resulted in more and more countries decriminalizing same sex acts. There's a movement toward recognition that these issues are a matter of personal choice and should be protected under privacy because homosexuality is not unnatural. Let me repeat, homosexuality is *not* unnatural. Indeed here in India there is a strong and vibrant movement to replace Section 377 of the Indian Penal Code, the antiquated code criminalizing sodomy left over from colonial British rule. It's crucial that LGBT movements and sexual minorities utilize a human rights framework as well as grassroots organizing. It's also crucial that the human rights movement makes space for and supports the human rights of all sexual minorities.

The left, progressives, liberals, and indeed the human rights movement has much work to do in recognizing, including, and advancing the human rights of sexual minorities. And this conference has taken a big step forward in including a broad agenda that includes the human rights of all people. Because all our rights are integrally linked". The detailed minutes of the Conference are available at India Centre for Human Rights and Law)

## Discussions

2008

### I. Discussion on Positions and Perspectives

Subsequent to the perspective/ position paper presentations, there was a discussion on the fact that many women's groups believe that there are "spaces for lesbian women". Their argument is that gender segregation in our society, creates opportunities for same-sex bonding, especially between women. The lesbian and bisexual women at the workshop contended that this space is there by default, and further, that it is a space controlled by patriarchy which can be taken away at any time.

Within the women's movement too, the "space" allowed to lesbian women has been (til recently) almost non-existent. responded when Vimla homosexuality is due to our country. Many feminists' claimed visibility in the claiming this space would not only lesbians but also for



Only a few women's groups have. Farooqui in Delhi stated that decadent Western influences is reactions when lesbians have movement have been that endanger the space available for other women.

Women participants also spoke differences in the women's they were associated with. Whether to come out? To How to resolve these seemingly and as lesbian? What would be an authentic language that did not simply import the language of lesbian, gay and bisexual movements in the West? What could / should be the relation of lesbians to the women's movement?

The conflict of interest within gay, lesbian, and bisexual groups was a common dilemma presented by the participants: the differences between those members who want to meet socially and the activists who want to "get things done". This was the case with Khush Club, Stree Sangam in Bombay and Counsel Club in Calcutta. The latter two organisations have evolved a

format where a core group of activists meets regularly every month and social events like picnics and parties are organised every other month. Then, even among the politically informed, there are the inevitable differences in ideology and strategies for action.

The point was also made that we need to examine the specificities of spaces available to and claimed by lesbians and gay men separately. For lesbians, there is the need to claim the space to form partnerships; while for gay men, there is the need to claim public spaces free from harassment under threat of Section 377. Claims to these spaces are not necessarily mutually exclusive, though the priority needs would be different.

In the discussion, a distinction was made between men who are "Gay" - that is, men who are political about their homosexual identity; and men who have sex with men (MSM). Marriage being compulsory in India, many MSM and even some gay men find themselves in marriages. The point made in discussion was that the wives - the women in these unhappy marriages - often bear the brunt of the domestic burden, restrictions on their sexual freedom, and the risk of STDs / HIV.

One of the participants commented that the social environment has also changed dramatically in the past few years - with several talk shows, TV programmes and films on lesbians, gay men, transgendered and transvestite people.

Four of the participants who had also attended the Seminar on Gay and Lesbian Rights organised by the National Law School (NLS) students in Bangalore reported on the proceedings of that seminar.

## **I. Discussion on Legal Rights**

### ***Discussion on Decriminalisation***

A few of the participants raised the concern that in calling for the repeal of Section 377, the victims of child sexual abuse, and coercive sodomy would be left without any legal protection. Explaining further, one of the participants noted that currently there is no law that treats child sexual abuse as a separate offence. The inadequacies of the rape laws ensure that only penile penetration constitutes "rape". Thus child sexual abusers can be, and are, booked under Section 377.

The need for a law that explicitly dealt with perpetrators of child sexual abuse was acknowledged. However, some of the participants challenged the power of the law to decide what is or is not "against the order of nature" - particularly between two consenting adults - and called for a total repeal of Section 377.



Information was then shared about a comprehensive sexual assault bill that has been drafted by *Sakshi* (a Delhi based women's group working to prevent sexual violence). One person suggested that while we support the repeal of Section 377, we could also actively support the passing of this bill that is currently before the National Commission for Women.

One of the questions posed was whether it would be more productive to support the parliamentary petition route or the high court petition route for the repeal. Only the former route would result in the enactment of an anti-discrimination law. The latter would merely result in the amendment or striking down of existing law.



In the opinion of the lawyers present, the parliamentary route was more uncertain, since one could not predict if the issue would be taken up in parliament - let alone when. Whereas, once a petition is admitted in a High court, a judgement has to be passed. Further, if the judgement is negative, one could always appeal to the Supreme Court.

Another question raised was whether a positive judgement in the Delhi High court would be applicable in the other High courts. The answer, to the surprise of most participants, was - that it was not binding on other High courts. Which then prompted the suggestion that there was a need for simultaneous cases in all the high courts to be filed for the repeal of Section 377. Further, even if ABVA lost the case in the Delhi high court, the other cases would still have a chance. Again, the Supreme Court could take the decision to hear all the cases at the same time to ensure that there would be a uniform judgement applicable to the whole country.

A brief discussion was also entered into on the possibility of challenging the constitutional validity of Section 377 in an United Nations Human Rights Court. This had been done in the case of the state of Tasmania in Australia. Unlike Australia, although the Indian Government has signed and ratified the Covenant, it has not signed the Optional Protocol that makes it binding on the country to implement the Articles of the Covenant. It also makes more strategic sense to actively challenge the statute in our courts first. Since the case for the repeal of Section 377 is due for final hearing within the next few months, all participants agreed that a concerted effort to revive a positive public debate in support of the repeal of Section 377 is essential. Concretely, the strategies for decriminalisation that emerged from the workshop included:

- Initiation of a signature campaign to support ABVA's petition for the repeal of Section 377

- Explore the possibilities of initiating petitions for the repeal of Section 377.

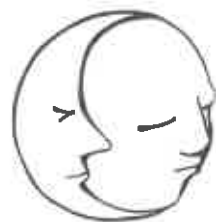
## Discussion on Anti-Discrimination

Following the paper presented by Mihir Desai on the *Civil Laws Affecting Gays and Lesbians* (see chapter on *Anti-Discrimination* for full details), the discussion focussed on the forms of contract other than marriage that could be used to benefit gay and lesbian partnerships. This was particularly of interest, since marriage is currently defined as a heterosexual union. As a participant lawyer pointed out, the benefits of all civil law provisions accrue to family members defined as those related by "blood or marriage". This criterion effectively excludes gay and lesbian partnerships. A question was raised about the legal standing of *Maitri Karar*". There was no clarity on whether the legality of this contract between two individuals had been challenged in court. Many participants were also curious about the possibility of registering a partnership under the Indian Partnership Act. However, this is not possible, since this act is for profit making businesses where sales tax, auditing, income tax and other legalities are involved.

One of the lawyers present clarified that the extent to which an individual can will away self-acquired property to persons not related by blood or marriage is not limited by the law. However, only 25% of ancestral property can be willed away to "non-heirs".

Ultimately, the fact is that gay and lesbian relationships cannot be legally recognised as a contract, and can easily be nullified by the courts. This is because homosexuality is seen as "unlawful, immoral and opposed to public policy". Therefore, only if homosexuality is considered legal and moral, can gay and lesbian companionships (and the attendant benefits) be legalised.

As a first step, however, protection could come through explicit constitutional decree against discrimination on the grounds of sexual orientation - such as the clause incorporated in the new South African constitution.



## Discussion on Domestic Partnerships

In the last section on legal rights, FAOW made a presentation on its Visions of Gender Just Realities that includes homo-relational realities (see chapter on *Domestic Partnership* for full details). Questions were raised regarding the compulsory HIV status declaration at the time of entering into marriage on two grounds: first, the invasion of an individual's right to privacy; and second, the fact that HIV testing is unreliable and expensive. In response, others stated that it was important that the two persons involved know each other's HIV status; and it was not necessary for the Registrar, or the public to know.

A small debate on what would constitute the "age of consent" was engaged in—with some supporting the age of 21, since by then the individual could generally be considered economically independent and mature. One person suggested that the age limit be imposed only for one partner; another suggested that no age limit be imposed at all. Those who supported 18 as the age of consent did so because this was the legal voting age, and 18 year olds can be considered mature, not to mention sexually active. It was further argued that all over the world, the age of marriage is being reduced to 18.

The most heated debate was on the issue of monogamy and polygamy, and whether to expand the ambit of relationships to include multiple relationships. Although initially there were some who found the concept far-fetched and impractical, several persons in the group wished to be/ had been/ or were currently in multiple relationships, and wanted to discuss the implications of this lived reality. They argued that in pressing for the "companionship contracts" for a "couple" we were re-inforcing the institutions of marriage and monogamy—both of which are restrictive.

As one participant put it, "we are conditioned to think in terms of serial monogamy .... and so, if A and B are in a relationship and C comes into the picture, the only option we allow ourselves to consider is that A has to break with B to enter into a relationship with C. But, maybe if there was not this conditioning, A, B, and C could have formed an alliance, a multiple relationship on their own terms. Let us move out of the "couple" image and make new structures".

In her personal introduction, one woman expressed her apprehension at sharing her reflections on some complex issues. She had written some of her thoughts down before the workshop - reproduced below.

...As we gather today to consolidate a world view that questions and critiques the power-based-heterosexual mode of relating, I wonder how we should go about creating a vision of human relatedness that attempts to free itself from the defining characteristics of monogamy. I am referring to the possessiveness and exclusivity that the heterosexual mode upholds as its ideal. I believe if our ideas are to lead to a newer way of life and relationships, it is imperative that we engage ourselves in generating the emotional strength that will lead to questioning power, exclusivity and possessiveness in our personal and ideological spaces.

Second, as most of you, I too have been thinking about the meaning of relational commitment. Heterosexuality gave us a notion of commitment that defined itself through sex exclusively. Within that mode of relation, as you all would agree with me, sexual exclusivity relegates to a marginal space the emotional and intellectual aspects of a relationship. (Though emotionality was acknowledged, it was seen as legitimate when it culminated itself in sexuality. I want us jointly to ponder over "our" understanding of commitment. Do we need to retain the former hierarchical pattern or would we like to regard relationships to be significant and committed which have the security of sharing lives, whether they have or not the sexual sphere within their domain?

I look at monogamy as patriarchal, and do not see it being questioned even in lesbian relationships. My sisters and I have a strong bond and commitment without a sexual relation—what name to give this?

one person pointed out the danger of supporting multiple relationships exclusively in the context of homo-relations; while continuing to support heterosexual monogamy. Already stigmatised relationships would get even more censure. If we are to support multiple relationships, they have to be both heterosexual and homosexual. Of course, complications emerge when the relationship unit is mixed - with men and women relating both heterosexually and homosexually. How does the unit negotiate the patriarchal and heterosexist bias/ discriminations?

Further, one of the dilemmas of legally supporting polygamy/ multiple relationships is that this would be like giving a clean chit to the exploitative behaviour of many men (and women) who are involved in multiple relationships. There are many men and women who carry on more than one relationship, and their partners (wives/ husbands/ lovers - male & female) often have no choice but to accept the situation. Thus if polygamy / multiple relationships are supported, it would be like sealing the fate of the partners completely. That is, if certain pre-conditions are not included along with the support to multiple relationships. One of the pre-conditions could be that there should be mutual consent of all the persons (presumably all adults) involved to it being a multi-partner relationship right from the start, or to it becoming so some time in the future. No one partner should be able to unilaterally change the status of the relationship from monogamous to polygamous, without the possibility of inviting legal action from the other partners. This way we can decriminalise polygamy, yet not allow it to become another tool for exploitation.

IAOW members also shared that the question of several individuals who shared domestic arrangements - though not necessarily sexual relationships had also been discussed in IAOW as an area for further reflection.

A need for information about the immigration / emigration rights of bi-national lesbian and gay couples was also expressed in this session.

### **III. Discussion on Strategies**

The last day of the workshop was spent working out potential strategies (both legal and general) for action, and the logistics of implementing them. A brief comment on the extent to which these action points have been fulfilled has also been noted, since it is almost a year after the workshop.

1. **Press Conference** - was suggested as a means of dialogue with the makers of public opinion. In fact, the co-organisers had already scheduled a press conference for 11 November. A team was formed to draft the press release, and individual members from each of the 4 co-organising groups volunteered as representatives. It was agreed that the press release would also be translated into Marathi. The press conference was held as scheduled, with a good turn out of reporters from

over 20 papers of both the regional language and English press. The coverage to was quite positive, barring a few factual errors.

2. **Resource book**- rather than limit the report of this workshop to just a record of the proceedings, a resource book was planned. This would include organisational addresses, a bibliography, a dateline, select newspaper clippings, etc. We visualise this book you are reading now as something of an update on the Lesbian, Gay and Bisexual scene and issues in India since *Less Than Gay* was published in 1991. On a lighter note, a name suggested for this resource book was "More than *Less Than Gay*"!
3. **Reprinting *Less Than Gay***- there was a huge demand from all the participants that ABVA undertake the reprinting. If it was unable to do so, it was suggested that ABVA give the copyright to some other group which would be willing to reprint. At present, xeroxes of xerox copies are floating about, and "the little pink book" is quite smudgy grey. An appeal letter to ABVA was drafted on the spot (with individual advance orders included as well) to be sent with Ms. Shobha Aggarwal. The suggestion was also made that if reprinted, firstly, a better font and text layout be considered to make it reader friendly; and second, translation into regional languages be considered in the cost. The update is that ABVA has committed to reprinting *Less Than Gay*, and is currently in the process of generating the funds to do so.
4. **Expand the platform of organisations and individuals** - participating in these issues by the next workshop. Counsel Club, Calcutta has taken the initiative to try to host the next workshop, by when it is expected that all the groups involved in this workshop will have mobilised more supporters.
5. **Compile a Directory**- of lesbian, gay and bisexual organisations, and other supporting organisations, health professionals, lawyers, media persons, etc. Counsel Club Calcutta undertook to co-ordinate the publishing of this directory. The first step planned was to draft an information sheet that would be mailed to all groups and individuals to identify if they wanted to be included in the directory.
6. **Initiate signature campaign** - in support of ABVA petition to repeal Section 377. Organisations (lesbian and gay, women's groups, human rights, and other progressive groups) and individuals will be mobilised in support.
7. **Documentation of the Lesbian, Gay and Bisexual movement in India**. All agreed that the momentum of gay, lesbian, and bisexual events and organising in the past decade has really picked up, particularly these past few years. Even two years ago it was quite difficult to conceive of different groups coming together on a common platform. Video documentation, oral histories, collection of archival

material, a slide documentary, publishing a book on the contemporary history of the movement - all of these were suggestions made. While some of this documentation is already taking place in an ad hoc fashion, it would require concerted commitments of time and financial resources to produce something professional and effective. It was suggested and agreed upon that a dateline of events and activities be incorporated in the report of this workshop (See chapter Dateline).

8. **Strengthen the existing lesbian, gay and bisexual networks** - with a particular focus on outreach to lesbians. Also, the need was expressed for continuation of the dialogue initiated between lesbians and gay men in this workshop. E-mail addresses were shared as a means of staying in touch; and connecting with international e-mail fora like Khushnet.
9. **Production of material to create awareness** - many NGOs and community based groups - would appreciate material in regional languages that address the "myths and realities" of gay, lesbian, and bisexual existence in India. This is particularly needed in rural areas, where there is a total silence on these issues, and the availability of such material could be used as a trigger to initiate discussions. These materials could be in the form of pamphlets or posters. The idea of posters with photos or visual images was strongly recommended since it would be useful across language and literacy barriers. Human Rights Law Network volunteered to undertake the printing of such material if the matter was prepared.
10. **Identify a "day" and create a word/ symbol** - as rallying points for those involved in lesbian, gay and bisexual issues in India.

#### **IV. Feedback**

- ☺ Upbeat and optimistic - was the general tone of the response on the workshop. Most participants felt they had learnt something new, got some action going which they felt hopeful about, made new friends, and had a good time.
- ☺ Although the relaxed, conflict free atmosphere was appreciated by all, there were several people who felt that stricter adherence to the time frame would have ensured that all points on the agenda received adequate attention. Morning exercises were suggested as a means of energizing and focusing everybody!
- ☺ Many felt that what we had achieved was a significant historic first. They were enthusiastic about the action planned, the networking established and the potential formation of a national, umbrella organisation for lesbian, gay and bisexual issues.

- ☹ There were others though, who had higher expectations - both in terms of participation and work accomplished. Among them, some felt that the group had not articulated concrete legal strategies beyond repeal of Section 377. Another lacuna expressed the absence of any presentation and analysis of the history and ideological basis of lesbian, gay and bisexual movements in other countries.
- ☹ There was the complaint that there was not enough time/space for experiential sharing. One participant had the idea of a "Cope Kit" on various issues like: *how to come out to family, friends, employer, etc.*; *how to deal with relationships and break ups*, etc. Such "kits" could be developed from shared experiences.
- ☹ The crucial importance of creating and sustaining support systems for lesbians and men was highlighted by a long-time lesbian activist who today feels burnt out because she struggled for visibility without such support.
- ☹ For many of the lesbian, gay and bisexual participants it was a "first" extended interaction which helped dismantle personal stereotypes and prejudices about what "the other" is like.
- ☹ Women - lesbian and straight - remarked on the fact that this was one of the few meetings where they did not feel the "patriarchal male presence" and "space taken". This was not, they said, just because men were in fewer numbers at this meeting - there have been other fora where just one or two men have attempted to dominate the sharing.
- ☹ Straight people - men and women - being in a minority at this workshop were applauded for their courage in sticking their necks out and risking the stigma of being labelled "gay".
- ☹ Language constraints were expressed by both those who did not speak Hindi, and those who primarily spoke Hindi. As the workshop was conducted mostly in Hindi - or English with Hindi translations, individuals who were not fluent in both languages had occasional difficulties in understanding and communicating. These language constraints could have a significant bearing on the future of the lesbian, gay and bisexual movement in India. Those of us involved in the movement should evolve ways of addressing such barriers or constraints. One way would be greater use of regional languages in conducting debates and discussions on issues related to the movement.

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## Participants at the workshop

| Name                                                                  | Organization                                                                                                         | Address                                                                                                                                                                                       |
|-----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shobha Aggarwal                                                       | AIDS Bhedbhav Virodhi Andolan (ABVA)                                                                                 | Post Box No. 5308<br>New Delhi 110053                                                                                                                                                         |
| Representing both ABVA & DARE)                                        | DARE - Documentation. Archive. Research. Education (New Delhi)<br>A Resource Centre for Lesbians, Gays and Bisexuals | Post Box No.7180<br>Indraprastha HPO<br>New Delhi 110002                                                                                                                                      |
| Ianohar, Arunesh                                                      | Sabrang                                                                                                              | Post Box 7625<br>Bangalore 5670070<br>Email: <a href="mailto:sabrang@mailcity.com">sabrang@mailcity.com</a>                                                                                   |
| Awan Dhall, Ranjan                                                    | Counsel Club                                                                                                         | c/o Ranjan<br>Post Box. 794<br>Calcutta 700 017                                                                                                                                               |
| Arundas                                                               | People's Union of Civil Liberties, Bangalore                                                                         |                                                                                                                                                                                               |
| Teeta Kumana, Malini Mahajan, Jayanika Shah, Bina Fernandez, Gomathy. | Stree Sangam/ Women Coming Together Collective                                                                       | Post Box No. 16613<br>Matunga<br>Mumbai 400 019                                                                                                                                               |
| Uthir Desai                                                           | Human Rights Law Network                                                                                             | Engineer House, 4th floor<br>86, Mumbai Samachar Marg<br>Mumbai 400 023<br>Ph: 2677385, 2676680<br>Fax: 2632718                                                                               |
| Arnavani Bali, Reeti Verma, Jasina Khan                               | India Centre for Human Rights & Law                                                                                  | 4th Floor, CVOD Jain High School,<br>84, Samuel Steet, Dongri,<br>Mumbai - 400 009<br>Tel: 3759657 / 3716690<br>Fax: 3790699<br>Email: <a href="mailto:huright@vsnl.com">huright@vsnl.com</a> |
| Jaya Sharma                                                           | Delhi Group                                                                                                          |                                                                                                                                                                                               |
| Arundhya Gokhale, Vidula, Nandita Mah. Sanskruti,                     | Forum Against Oppression of Women                                                                                    | e/o 29, Bhatia Bhavan<br>Babrekar Marg<br>Off Gokhale Road<br>Dadar (West)<br>Mumbai 400 028                                                                                                  |
| Anand, Nitin, Mita Radhakrishnan, Tapas, Dimple, Naseem, and Razia    |                                                                                                                      |                                                                                                                                                                                               |



## Dateline

2008

It is, of course, problematic to reconstruct any history, especially a very recent history such as the history of the lesbian, gay and bisexual peoples' movement in India. Particularly since most of the individuals who are part of this movement are still around. Each may have differing perspectives on the events, and would point to gaps and inconsistencies. There have been so many efforts - some successful, some not - at reaching out, supporting each other, making our lives visible to ourselves and the world at large. Along with these efforts, there have been so many shifts in perspectives, in ideological alliances and strategies as our contexts change.

There are also the countless individual stories. Each one of us has an effect in our lives touching all the people we are in contact with - family, friends, lovers, colleagues, neighbours. Each story is a part of our collective history. All of these stories need to be told, as heard, in full. We hope that someone will take up this challenging task. For now, what we have attempted in this dateline is a brief reconstruction of events. Our sources have been mostly primary, from those who participated in the events. As part of generating this "collective history" we contacted several individuals and organisations who have been involved in lesbian and gay activism. We also used information from various lesbian and gay publications, including *Down the Years: A Datebook of the South Asian Lesbian & Gay Movement* (Trikone, Tenth Anniversary Special Issue, Jan 1996, Vol.11. No.1, pp.14-15). There will inevitably be gaps in the dateline, but we hope that these will be filled in when a more comprehensive history is compiled.

We recognize that there are limitations to the form of a "dateline". First, because many of the ongoing support and networking activities cannot be boxed into date or time specific. There was the mutual counselling, the letters written to lesbians and gays isolated in small towns and the social spaces created in the homes of some individuals. There were also the international conferences and seminars attended by Indian gay men and lesbians to raise awareness about the situation in India, the support from gay and lesbian visitors from abroad. All of these activities are almost impossible to document in the form of a dateline.

The next critical question was: when to start from? References to same-sex love in all parts of India have been found right from ancient times - in literature, anecdotal stories, art and temple sculpture. We chose the Urdu writer Ismat Chughtai's story *Libhaaf* (*The Qui-*

our starting point. The story itself is not politically conscious - it is the story of a lesbian relationship as seen through the eyes of a young girl. However, the public debate generated when the author was charged for obscenity by the Lahore government brought the issue of same-sex love into political consciousness, probably for the first time in India in this story.

It has also been difficult choosing events in the larger history of the South Asian lesbian and gay movement (particularly in the U.S and U.K) to include in this dateline, since the varied levels of inter-connections are deeply symbiotic. We felt it important to recognise in this dateline the importance of some of the events in the U.K and U.S because of their ripple effects in India.

Setting the problematics of datelines aside though, we have much to be proud of. Just putting together all the pieces to form the whole (even with its limitations) has been exciting. Our hope is that this dateline conveys a glimpse of the struggles of different individuals and groups to visibilise our existence in the past few decades.



| Year                       | Event                                                                                                                                                                                                                                                                                                                                               |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1941                       | Ismat Chughtai's short story "Lihaaf" is published. The obscenity charge levied against the author by the Lahore government is overturned in court by the judge who ruled that the story could only be understood by someone who already had some knowledge about same-sex relations (and therefore could not be said to "corrupt" innocent minds). |
| 1981 Aug 15                | <i>Mitrachi Gosht</i> - a lesbian theme play in Marathi written by eminent playwright Vijay Tendulkar opens in Mumbai and Thane. The play portrays the inner conflict of a woman who realises she is lesbian. It was well received, and ran for 26 shows.                                                                                           |
| 1978                       | Shakuntala Devi's book <i>The World of Homosexuals</i> is published. This is noteworthy as the first Indian book that has attempted a serious, unbiased discourse on the issue of homosexuality in general as well as in the Indian context.                                                                                                        |
| Late 1970s/<br>early 1980s | <i>Gay Scene</i> - a journal is brought out by some individual in Calcutta in the late 70s / early 80s. The journal did not last long, and unfortunately nothing is known about the whereabouts of those individuals now. <sup>1</sup>                                                                                                              |
| 1985 May                   | <i>Anamika</i> - the first South-Asian lesbian newsletter brought out in New York City by two women from India who had gone to the U.S to study. Copies are circulated among women in India too.                                                                                                                                                    |
| 1985                       | Nairobi Women's Conference <i>Workshop on Lesbianism</i> is attended by some Indian women.                                                                                                                                                                                                                                                          |
| 1985                       | <i>My Beautiful Laundrette</i> - London based Hanief Kureishi's film with a South Asian gay character is released. There is limited private circulation in India.                                                                                                                                                                                   |
| 1986 Feb                   | <i>Savvy</i> magazine publishes Ashok Row Kavi's coming out interview - a first for the Indian media.                                                                                                                                                                                                                                               |
| 1986 Jan                   | <i>Trikone</i> - first issue of a newsletter brought out by two gay men in San Francisco. TriKone starts to get letters from gay men all over India.                                                                                                                                                                                                |

<sup>1</sup> Reported by "*Shakti Khabar*" - published by SHAKTI, London - in 1990 which has a few issues of the journal in its archival collection.

- 86 Apr There is a Hijra conference in Bhopal, India.
- 87 Dec A series of press reports cover the marriage of Leela and Urmila two policewomen in Bhopal who were discharged from service for "conduct unbecoming public servants". This sparks dialogues in women's groups on lesbianism. Women's groups conduct a signature campaign demanding the re-instatement of the women.
- 87 **Sneha Sangam** - a gay group forms in Bangalore which organises their first major gay party in 1992. The group later disbands.
- 88 **Shakti** and its publication *Shakti Khabar* begins in London.
- 89 **Delhi Group** - a group of lesbian feminists start to meet, both socially and formally.
- 90-1992 **Red Rose** meetings start in Delhi at the initiative of two gay men and two lesbian women. A red rose placed on the table at Madras Coffee House in Connaught Place (later at Lodi Gardens) acts as an identifier for gay and lesbian people who wanted to meet. Over the year, the numbers attending these meetings increased to about thirty - primarily of men.
- 90 Apr 18 *India Today* reports the story of Tarulata and Lila Chavda (in Gujarat) who had been in a relationship since 1985. Tarulata in 1987 underwent a female to male sex change operation, became Tarunkumar and married Lila Chavda in 1989. Lila's father, Muljibhai filed a criminal case under Section 377. The case subsequently disappeared from public notice.
- 1990 *Asian Lesbian Network Conference* - in Bangkok is attended by Indian lesbians from Mumbai and Delhi who meet each other for the first time.
- 1990 Jun *Bombay Dost* - India's first gay and lesbian magazine makes its debut in Mumbai.
- 1990 Jul About 50 gay men and lesbians meet in Delhi to protest the infiltration of a private group by a journalist posing as homosexual.
- 1990 Sep *Freedom* - newsletter from Gulbarga starts. Closes down after a few issues, is revived after a while in a new incarnation from Bangalore, only to fold up again.

- 1990 Dec Single women fight for their own space within the Vth National Women Conference at Calicut. Many lesbians are part of this workshop.
- 1990 Dec-1991 Dec **Fun Club** starts in Calcutta. Pioneers the concept of large social gatherings for gay men in Calcutta. It organises two such occasions in Oct & Nov 1991, but closes down soon after, in Dec 1991.
- 1991 May *Khush* - Pratibha Parmar's film on the South Asian lesbian and gay experience is released. There is limited private circulation in India.
- 1991 Jul **Sakhi** - a Lesbian Resource Centre forms in Delhi as the first open lesbian group involved in networking, research and documentation of lesbian images and history in South Asia. Letters from lesbians all over India (particularly small towns) start coming in.
- 1991 Three lesbian women join the board of *Bombay Dost*. They too network with lesbian women writing in from other parts of the country, and abroad.
- 1991 Nov *Less than Gay - A Citizens' Report on the Status of Homosexuality in India* published by **AIDS Bhedbhav Virodhi Andolan (ABVA)**, New Delhi.
- 1991 Dec *Pravartak* - the first issue of the journal brought out from Calcutta. A long gap follows the third issue in Mar 1992; and the journal is revived in 1993.
- 1991 *Jamali-Kamali* garden meetings. Some gays and lesbians start to claim as a meeting space the garden in Delhi where Jamali, a gay Mughal poet was buried next to his lover Kamali. Along the same lines of claiming public spaces, Pragati Maidan's circular hall is hired for a gay party.
- 1992 A group of lesbians meet in Delhi to discuss amending *Less than Gay* to make it more representative of lesbians.
- 1992 Petition for the Repeal of Section 377 is moved by ABVA in the Petition Committee of Parliament.
- 1992 "Martina Club" - high school girls are expelled for forming a lesbian group in Kerala. A joint statement is signed by several women's group and feminist activists condemning the expulsion.
- 1992 Jul *Friends India* journal is published in Lucknow by the group of the same name. The journal's new avatar is *Sacred Love*.

- 92 Aug 11 There is a demonstration in front of Delhi Police headquarters to protest the police's harassment and arrest of suspected homosexual persons under Section 72/73 of the Delhi Police Act.
- 92 Nov 200 gay men, lesbians and supporters walk out of the International AIDS Conference in protest of homophobia and discrimination against gay men. They regroup and hold a parallel conference at Nehru Gardens, New Delhi.
- 92 Sakhi calls for inclusion of its name in the address list of women's organisations published in the Jagori and Kali for Women annual diaries.
- 93 Jan Friends of Siddhartha Gautam organise screening of films with lesbian and gay themes to commemorate the life of Siddhartha Gautam. Siddhartha as one of the first few openly gay activists and the moving force behind *Less than Gay*. He died of Hodgkin's disease in 1992. The film shows are now an annual event in Delhi: in 1997, around 400 people attended.
- 93 Mar Khush Club - a group forms in Mumbai of gay men, which dissolves after a couple of of years.
- 93 Mar Udaan - a group of working class gay men forms in Bombay whose members prefer to be known as "panchis" (birds).
- 93 Apr Sexuality session at the Northern Regional Women's conference at Kanpur where the issues of lesbian women are discussed.
- 93 Aug Counsel Club forms in Calcutta as a les-bi-gay support group. Decides to revive the defunct *Pravartak* as part of its larger agenda.
- 93 Aug *Kiss of the Spiderwoman* - a Hindi adaptation of the novel by Manuel Puig is directed by Rustom Bharucha in Delhi.
- 93 Sep Pride Publications (Pvt.) Ltd. forms in Mumbai for the production of Bombay Dost.
- 93 Sep *Arambh* magazine debuts in Delhi.
- 93 Dec Samraksha - an AIDS awareness organisation forms in Bangalore.
- 93 Dec *History of Alternate Sexualities in South Asia* - a seminar is organised in Delhi by Sakhi and the NAZ Project, London.

- 1993 Dec *Varun* - a gay play written by members of **Arambh** and directed by Barry John is staged in **Max Mueller Bhavan**, Delhi.
- 1994 Jan There is an impromptu *Lesbian Meeting* at the Fifth National Conference of Women's Movements in Tirupati. Sexuality is a main theme for the first time at the Conference, with lesbian sexuality as a sub-theme.
- 1994 Feb **G.A.Y** (Good As You) - group forms in Bangalore for lesbians, gays and bisexuals.
- 1994 Apr **Humsafar Trust** - India's first gay NGO is registered.
- 1994 Jun **ABVA** files public interest litigation for the repeal of Section 377 in the Delhi High Court.
- 1994 Jul Lesbian study circle meets privately in Delhi.
- 1994 Women's groups and gay groups protest against **Vimla Farooqui** (of the National Federation of Indian Women) who wrote to the President of India asking him to withdraw permission for the upcoming gay men's conference. Signature campaign is initiated by **Jagori** in Delhi.
- 1994 Nov India allows hijras to choose gender while voting.
- 1994 Dec *Humsafar-NAZ Conference for Gay men and men who have sex with men* in Mumbai co-ordinated by **Humsafar Trust** and **NAZ Project**. About 60 delegates from India, South & South-East Asia, as well as the South Asian diaspora attend the five day event. The conference is widely - and mostly positively - covered in the national / international media.
- 1995 **Saathi** - a gay support group forms with chapters in New Delhi (Noida), Hyderabad / Secunderabad and Cuttack. Its birth coincides with the closure of the Secunderabad based **Gay Information Centre**.
- 1995 Mar **Classic Books**, Calcutta invites **Counsel Club** and **Humsafar Trust** to stock copies of their journals at their outlet. **People Tree** in New Delhi was already doing so at that time.
- 1994 Sep **Aniketan** - an AIDS awareness group forms in Mumbai. They organise an "Open Discussion on Sexuality" (*Maanavi Lyngikatha - Vividh Pahaloo*) for social activists. More than 80 people attend. The second day focusses on discussion of gay, lesbian and bisexual issues.

- 994 **Khush Manch** forms in Mumbai as a gay and lesbian, anti-sexist, anti-communal forum. Closed within six months of its inception.
- 995 Oct Activist Anuja Gupta represents India as a testifier at a tribunal on human rights violations against sexual minorities organised by the International Gay and Lesbian Human Rights Commission at New York.
- 995 Oct *Naz ki Pukar* - newsletter is begun by the Naz Project.
- 995 Dec Counsel Club decides to add prefix "Naya" to its house journal *Pravartak's* name, after another voluntary group with a registered Bengali monthly of the same name protested the use of the name for something as "disgusting" as homosexuality.
- 995 - 1997 *BomGay, Fire, Kamasutra, Out in Bombay, Trying to Grow, Dayra, Tamanna*, - there is an explosion of films and documentaries that explore the themes of lesbian, gay and transgendered sexualities in India.
- 995 "Homo-relational realities" - the right of lesbians and gay men to marriage and the attendant legal benefits are articulated by Mumbai based women's group - Forum Against Oppression of Women (FAOW) in its paper *Visions of Gender Just Realities*.
- 995 Mar **Samraksha, Bangalore** - organises a conference on "Legal issues in the prevention and care of AIDs" at which a paper is presented by Manohar Elavarthi on "Homosexuality - Law and police in India" which demands the repeal of Section 377.
- 995 Mar 8 There is a lesbian and bisexual women's party for International Women's Day in Delhi.
- 995 Apr **Stree Sangam** forms at first picnic for lesbian and bisexual women in Mumbai.
- 1995 Apr 22 "The Legal Struggle for Repeal of Section 377 IPC" - a meeting is convened in Delhi by ABVA which is attended by 34 participants working in the areas of gay and lesbian rights, human rights, gender, health, law and HIV/AIDS.
- 1995 Oct **Humsafar Centre** is inaugurated in Mumbai.
- 1996 May 30 *Lesbian and Gay Rights in India* - a presentation is made at the conference on Gender Just Laws by the Working Group. The conference is attended



- by women's groups, human rights groups, lawyers and activists; and the paper receives an overall positive response.
- 1996 Jun Stree Sangam organises the *First National Gathering of Women who love Women* in Mumbai. Thirty women attend - primarily from Delhi, Bangalore, Pune and Mumbai.
- 1996 Jun *The Alien Flower* - a dance drama based on poems about a gay man's life is performed in Calcutta by Sapphire Creations Dance Workshop
- 1996 Aug-Sep Four Counsel Club members participate in "Sandhikhan" - a discussion on homosexuality on All India Radio, Calcutta.
- 1996 Sep Humsafar Trust organises a workshop on Section 377 with a lawyer as resource person.
- 1996 *Sakhiyani: Lesbian Desire in Ancient and Modern India* - by Giti Thadani, published. It is the first book on lesbian history in India.
- 1996 Helplines run by the Naz Foundation (India) Trust are started. Sangin for women and Hamraz for men.
- 1997 *Darpan* - a bi-monthly newsletter for gay men in Delhi is started by the group Humrahi.
- 1997 *Timeshare* - a journal for gay men is started by the gay men's group Aasr in Patna.
- 1997 Jan *Network East* - a conference is organised by Counsel Club for its members and friends in eastern India. Participants were from West Bengal, Bihar, Assam and Orissa.
- 1997 Mar Counsel Club participates in a seminar on "Human rights of marginalised communities" organised by a group of civil rights activists, and presents a paper on the rights violations faced by gay people.
- 1997 Aug Copies of *Trikone* are seized by the Customs department from Counsel Club member under the Customs Act, 1962, for commercial violation and on the grounds that the import of such literature is "derogatory to the morality and social system of our nation".
- 1997 Sep *Sabrang* - a group of a mixed group of people forms in Bangalore to address the spectrum of gender and sexuality issues.

- 1997 Sep *National Seminar on Gay Rights* is organised by students of the National Law School, Bangalore. Receives positive media coverage.
- 1997 Nov *Strategies for furthering Lesbian, Gay and Bisexual Rights in India*-a workshop is organised in Mumbai by Stree Sangam, Counsel Club, Forum Against Oppression of Women & Human Rights Law Network. Two of the strategies agreed upon are the launch of a nation wide campaign for the repeal of Section 377 and this resource book (I). Media coverage at the press conference after the workshop is also quite positive.
- 1997 Dec West Bengal Sexual Health Project Annual Conference has 3 presentations on same sex issues. Support is generated for a campaign to repeal Section 377.
- 1997 Dec Population Services International is dragged to court under section 377 for "promoting homosexuality" on radio programme "Balance Barabar".
- 1997 Dec The first edition of the *Gender Just Laws Bulletin* produced by India Centre for Human Rights and Law, Mumbai - focuses on gay, lesbian and bisexual rights.
- 1997 Dec *Meeting for women who love women*- is officially part of the programme of the VIth National Conference of Women's Movements at Ranchi. The meeting is convened by Stree Sangam, and attended by 30 women. Stree Sangam also conducts a separate workshop for straight women who are supporters of lesbian issues. The signature campaign for the repeal of Section 377 is also conducted here.
- 1997 **Tata Institute of Social Sciences Social Work Educator's Forum** becomes the first organisation in India to include in its mission statement a clause preventing discrimination on the grounds of sexual orientation.
- 1997 Humsafar Trust - organises a series of workshops for members on "How to fight goondas", "How to stand-up to police harassment" and "Syndromic medico-legal problems".
- 1998 Feb The first issue of *Sangha Mitra* - Les-bi-gay newsletter in Kannada and English is published in Bangalore. CED Bangalore agrees to stock copies.
- 1998 Feb Seagull Bookstore, Calcutta agrees to stock copies of *Naya Pravartak* and *Bombay Dost* on an experimental basis. The arrangement with Classic Books was wound up in late 1997 because the new management felt the journals were creating a "limited" (read negative) image for the bookshop.

- 1998 Apr Counsel Club participates in a 3-day Development book fair organised by *Sahay*, Calcutta. Distributes copies of *Naya Pravartak* and *Bombay Di* and uses the forum to conduct the signature campaign for the repeal Section 377.
- 1998 Apr **Sarani** - a Calcutta-based experimental performing arts troupe stages *Coming Out with Music* - possibly the first music and dance performance entirely on gay themes in India.
- 1998 May *Second National Gathering of Women who love Women* organised by Stree Sangam in Mumbai.
- 1998 Aug Over 100 people attend *Emerging Gay Spaces in Bangalore* - a public lecture by Chandra Balachandran that is organised by Sabrang.
- 1998 Nov *Fire* - a film by Deepa Mehta about a lesbian relationship in a middle-class Delhi house-hold is finally cleared by the Censor Board of Film Certification and released in India - uncensored.
- 1998 Dec 2 & 3 After two weeks of house full shows, members of the Shiv Sena vandalise the theatre and violently disrupt screenings of the film *Fire* in Mumbai, Pune, Surat and New Delhi theatres. Maharashtra Chief Minister Manohar Joshi praises the Shiv Sainiks for their actions. Theatres are forced to stop further screenings of the film.
- 1998 Dec 4 Mahesh Bhatt, Dilip Kumar, Javed Akhtar, Yash Chopra, Atul Setalvala and Justice Suresh (retd.) file a petition urging the Supreme Court to seek an explanation from the Maharashtra government for its failure to protect the screening of *Fire* from vandalism.
- 1998 Dec 5 Centre decides to refer *Fire* back to the Censor Board for re-evaluation.
- 1998 Dec 7 Dilip Kumar, Mahesh Bhatt, Javed Akhtar, Yash Chopra, Atul Setalvala, Hosbet Suresh and Teesta Setalvala file a Writ Petition in the Supreme Court urging Chief Justice A.S. Anand to seek an explanation from the Maharashtra government for its failure to provide protection to the screening of *Fire*.
- 1998 Dec 7, 10, 12 Peaceful demonstrations protesting Shiv Sena vandalism in Mumbai and Delhi. Massive poster campaign organised by activists in Mumbai faces severe repression from the police.

- 998 Dec 15 Supreme Court issues notices to the Union and Maharashtra governments seeking a police investigation into violent protests over screening of *Fire*. The court clarifies that it has nothing to do with either Censor Board or content of *Fire*, but the larger issue of settling grievances by resorting to violence.
- 998 Dec 15 Mumbaikars protest on Chowpatty against Shiv Sena vandalism
- 999 Feb 12 The Central Board of Film Censors clears *Fire* for public viewing again without a single cut
- 999 Feb 26 *Fire's* producers make a "slight change" at the demand of the Shiv Sena and drop the names of the women protagonists
- 999 Jun 5 "The White Party, a gay party in Bombay was heavily raided by the Police.
- 001 Sep 28 Demonstration and candle-light vigil on the Rights of Sexual Minorities organized by a coalition of Mumbai based organizations. The aim was to increase public awareness about the violation of the rights of sexual minorities. A hundred activists reached out to thousands of commuters through leaflets and song.
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- 999 Jul "Friendship Walk" organized in Calcutta by Counsel Club and Integration on behalf of LGBT-India to mark the Stonewall Riots Day. Pouring rain does not dampen the spirits of the small band of marchers.

- 1999 Sep **LGBT-India** conducts Operation Sparsh, an initiative to approach political parties to include sexual minority rights in their manifestos ahead of the 1999 Lok Sabha Elections. Most major parties hear out what LGBT-India has to say, but express inability to include sexual minority issues in their agenda as the manifestos had already been framed.
- 2000 Feb 27 **Gay Bombay** (an informal support group for gay and bisexual men in Mumbai) had its first meeting with parents and other family members of gay men. Subsequently Gay Bombay has held four such meetings with parents of both gays and lesbians. The archives of the minutes are available at [www.gaybombay.cc/events/reports.html](http://www.gaybombay.cc/events/reports.html).
- 2000 Mar 172<sup>nd</sup> Law Commission Report of the Law Commission of India that recommended reforms on laws relating to sexual assault recommends deletion of S.377 of the IPC.
- 2000 Apr Sexual minority support agencies and human rights bodies in Bangalore conduct an anti-Section 377 campaign in protest against the sharp increase in police harassment of gay, bisexual and transgender men in public parks, and meet senior police officials to apprise them of the human rights violations being perpetrated by policemen.
- 2000 May **Humsafar Trust** organizes "Looking into the Next Millennium" conference in Mumbai, focussing on sexual health, human rights and community building issues. Conference is well attended by groups and individuals from all over India, and manages to have representation from all constituent sections of the LGBT community. Becomes perhaps only the third occasion since national level conferences in Delhi in 1993 and Mumbai in 1997 to have both male and female participation.
- 2000 Jun **Trikone** group organizes DesiQ2000 Conference in USA, which is attended by several activists from India.
- 2000 Jun Seminar on lesbian rights organised by the British Council and **Sappho** in Calcutta.
- 2000 Nov **Olava**, Pune organises an event open to NGOs and supporters to celebrate their first anniversary.
- 2000 Nov National Human Rights Commission (NHRC) in India, in a recently published report of the National Conference on Human Rights and HIV/AIDS which was co-organised by NHRC, recommended the revision

and reformulation of S.377 of the IPC in 'legalising any sexual activity undertaken with consent between adults, and in connection with his adopt a clearly defined age of consent'.

2000 Dec National Conference on Human rights organized by the **India Centre for Human Rights and Law**, Human Rights Law Network and others in Panchgani includes workshop on sexual minority rights in its agenda.

2001 May **Milan Project** (of Naz India Trust) files a case with the National Human Rights Commission against the psychiatric abuse of an homosexual patient at the All-India Institute of Medical Sciences, who had been subjected to aversive therapy without consent. The complaint was subsequently reject without any satisfactory explanation.

2001 Jun National conference on Law Commission of India's (LCI's) 172<sup>nd</sup> Report. Dialogue between women's rights, child rights and LGBT groups on the issue of sexual assault as it affected their constituencies. .

2001 Jul Four activists of the **Naz Project** in Lucknow were arrested and harassed by the police under Section 377, along with five other men. The police raided the organisation office, and confiscated safe-sex educational material despite the activists' protests that they were doing HIV prevention education by distributing condoms in a gay cruising area. Local media sensationalized the incident as a "gay pornographic racket busted", and it was only after sustained national protest from LGBT groups that the activists were released, though the case is still pending.

2001 Aug Demonstrations in Bangalore (9th Aug) and Delhi (13th Aug) against the arrest of activists in Lucknow were well attended by gays, lesbians and supporters. Protestors demanded an explanation for the government's schizophrenic AIDS policy (which recognizes the need for condom distribution to men who have sex with men) and the continued existence and abuse of Section 377.

2001 Sep 28 Demonstration and candle-light vigil on the Rights of Sexual Minorities organized by a coalition of Mumbai based organizations. The aim was to increase public awareness about the violation of the rights of sexual minorities. A hundred activists reached out to thousands of commuters through leaflets and song.

2001 Dec National Law School of India University in its recommendations to the National Commission for the Review of the Constitution suggested the

inclusion of 'sexual orientation' as a protected ground for non-discrimination under Art. 15 of the Indian Constitution. [http://www.nls.ac.in/ncrwc/ncrcw\\_index.htm](http://www.nls.ac.in/ncrwc/ncrcw_index.htm)

- 2001 Dec 7 The Naz Foundation (India) Trust is an NGO working on issues of HIV/ AIDS with the Men who have Sex with Men (MSM) community in Delhi, filed a petition at the Delhi High Court seeking that section 377 be read down to cover only child-sexual assault (and should exclude consensual sexual activities between adults), the petition also asked for interim relief till the petition is settled that Section 377 not be misused by the Police against sexual minorities.
- 2002 Jan 8 Lawyers Collective HIV/AIDS Unit, Mumbai organises a meeting with LGBT groups with Justice Edwin Cameron of the Supreme Court of South Africa and Justice Michael Kirby of the High Court of Australia. Both the judges are openly gay.
- 2002 The prospectus of the National Law School of India University for year 2002-2003, for the first time includes sexual orientation along with sex, caste, religion, as a ground for non-discrimination, making it the second university after TISS to have made the same policy decision.
- 2002 Aug 24 Hijra Habba 'Hijras of Bangalore along with SANGAMA organised a festival for Hijras. The festival consisted of games and other cultural events like dances and a beauty contest.
- 2002 Aug 31 A gay party in Delhi gets raided by the Police.
- 2002 Sept 28 Dead bodies of two young women, Geethalakshmi (27 yrs) and Suma (26 yrs) were found in the Satyamangalam forest area, Erode district, Tamil Nadu. These young women confessed of their love for each other in a heart breaking suicide note to their parents. As per their wish, the bodies were burnt together on the same pyre in the Satyamangalam burial ground. A joint fact finding team of human rights / feminists / queer activists was also being put together.



# **Outings in the Media**



- ☞ Highlights of Newsclippings
- ☞ Films
- ☞ Theatre and Dance



## Outings In The Media



The media in India - particularly the press - has been largely positive in its cover of lesbian, gay and bisexual issues. This has helped the movement not only building greater social support, but also, more directly in that each time articles were written or T.V. talkshows were conducted, letters would come in from isolated men and women all over the country. People who thought they were "the only one" could now link up to the growing gay, lesbian and bisexual networks in the country. As this list grew, we decided to restrict it to newspaper references to Indian (including the South Asian Diaspora) events, since most newspapers regularly feature articles on gay, lesbian and bisexual events in other countries.

### Highlights of News Clippings

- Mid 1984 A journalist in New Delhi and a counsellor in Bombay team up to write a small yet serious article on homosexuality in *Sunday Mid-day*, Bombay. The article talked about homophobia in Indian society and the consequent invisibility and isolation faced by gay people in India. Quite possibly the first article of its kind in the Indian media, it carried a Delhi contact address for gay people in distress to write to.
- 1986 Feb *Savvy* magazine publishes Ashok Row Kavi's coming out interview - a first for the Indian media.
- 1986 Feb 16-22 *The Week*. "Gays not so Gay - Indian homosexuals too have been alarmed" - cover story with a focus on AIDS among homosexual men.
- 1987 Jan *Society* magazine article by Arthur Pais about *Trikone* the gay, lesbian and bisexual South Asian publication based in San Francisco.

- 38 Feb 27 *Indian Express*. "Married Policewomen may be Reinstated" - reports of Leela and Urmila in Bhopal.
- 38 Mar 19 *Eve's Weekly*. "Love between two women" - Sandhya Srinivasan finds out what the average Indian thinks of a homosexual relationship in the wake of Leela and Urmila's dismissal.
- 38 Mar 20 *The Illustrated Weekly of India*. "Two's Company" - investigative report of Leela and Urmila in Bhopal.
- 38 Mar 20-26 *The Week*. "The Daring and the Damned" - report of Leela and Urmila.
- 38 May 7 *Indian Express*. (Bangalore edition) - Asaruna Gohil and Sudha Amarsingh entered into "Maitri Karar" in Gujarat.
- 38 Jul 31 *Sunday*. "The love that dare not speak its name" - cover story by Mukund Padmanabhan et al.
- 38 Sep *Illustrated Weekly of India* - article about *Trikona*, *Khusband* and Urvashi Vaid
- 39 Feb *India Today*. "Out of the Closet: Sense of liberation sweeps Indian gays in the U.S." - a report profiling *Trikona* by C.S Nagarkatti.
- 90 Mar 25 *Sunday Mail* "Gay Shakti" - a profile of the emerging south Asian gay movement in the U.K, with a focus on the London based group *Shakti*, by Ashok Row Kavi.
- 90 Mar 25 *Sunday Mail* "The Two Who Got Away" - the story of two girls from Bombay, Namrata Desai and Mallika Sharma - who ran away to Australia where Mallika was to undergo a sex change operation, and then marry Namrata. Author: Mohan Deep.
- 90 Apr 18 *India Today*. Tarulata in 1987 underwent a female to male sex change operation and married Lila Chavda in 1989 in Gujrat. Lila's father, Muljibhai has called for criminal action under Section 377.
- 90 May 20 *Sunday Mid-day*. "Bombay se aaya mera Dost" - on the launching of Bombay Dost.
- 90 May 15 *The Daily*. "The Not so Happy Gay Lucky" - on the launching of Bombay Dost.
- 90 June 3-9 *Sunday*. "Happy to be this way" - on the launching of Bombay Dost.

- 1990 Aug 5 *Indian Express*. "With Gay Abandon" - on the launching of Bombay Dost
- 1990 Jul 29 *Sunday Observer*. "A Quiet Assertiveness", "Lesbianism as a Political Act" "Ardhanarishwara, Kabir and AIDS: a Continuum" - articles by Sudheen Kulkarni and Prabha Jagganathan.
- 1990 Nov *Society*. "All the Gay News that's Fit to Print" - a report on *Bombay Dost* Ashok Row Kavi.
- 1991 Mar 3 *The Economic Times*, Calcutta. "Painting the Peripheral." - a profile of painter Bhupen Khakkar and his paintings with homosexual themes.
- 1991 Jul 28 *Sunday Mid-day*. "Pop goes the Myth" - the Bombay Dost board meets the media.
- 1991 Jul 17 *Indian Express*. "11 Million Invisible Men in the Decade of AIDS" - by C Gopinath.
- 1991 Aug 23 *Femina*. "Rewriting Sexual Norms" - Shanta Gokhale writes of the world lesbian women.
- 1991 Oct *Debonair*. "MYTH: Homosexuality is a Western phenomenon" - survey of sex and sexuality by Mira Savara and Sridhar.
- 1991 Nov 23 *The Telegraph*. "Plea to Legalise Gay Marriages"
- 1992 Jan 29 *Indian Express*, Madurai. "Lesbian Group in Kerala School" - report of seven school girls in Thiruvananthapuram who were expelled for forming the "Martina club"
- 1992 Feb 9 *The Pioneer on Sunday*. "Far from Gay" - about efforts of Gays in Delhi to organise by Sabita Tekkeveetil
- 1992 Feb 12 *The Pioneer*. "Peeping into the Closet" - a review of Arvind Kala's book by Kajal Basu.
- 1992 Mar 16 *Business India*. "Bombay Dost: Gay Voice," by Mira Savara and Madhav Reddy.
- 1992 June 21 *The Week*. "Queer Dilemma - Gays Want Sodomy Law Repealed" - by Arvind Kala.

- 92 Jul 15 *The Pioneer*. "Police Harasses and Hounds Delhi Gays" - Dr. Sahni of ABVA interviewed about the police campaign to "clean up the parks in Central Delhi".
- 92 Aug 16-22 *Sunday*. "Glad to be Gay: Indian homosexuals Start to Come out of the Closet" - cover story by Punam Thakur et al.
- 92 Aug 16-22 *Sunday*. "Homosexual or Heterosexual? AIDS in India - a Gay Problem or a Straight One?" - by Punam Thakur.
- 92 Aug 16 *The Pioneer*. "Not Really a Gay Experience" - Amit Prakash writes of the homophobic reactions among the urban liberal elite to an article covering the CP park police attacks on gays.
- 92 Aug 26 *The Pioneer*. "Challenging the Conventional View of Female sexuality" - the Delhi Group of lesbian women makes a lesbian feminist statement.
- 92 Sep 8 *Femina*. "Gay is a Sad word: should Indian women come out of the closet?"
- 92 Oct 3 *The Telegraph Weekend*, Calcutta. "Breaking barriers", by Anjali.
- 92 Oct *Indian Express* profiles gay painter Bhupen Khakkar
- 92 Nov *The Pioneer on Sunday*. "Asian Homosexuals no Longer in the Closet".
- 92 Nov 13 *The Pioneer*. "Gays Lose Cool at AIDS meet" - gay activists and HIV/AIDS activists protest over homophobia at the 2<sup>nd</sup> International Conference on AIDS in Asia and the Pacific.
- 93 Jan *Network*. "I'm a Lesbian - So What?" - Sangeeta Jain interviews three women who love women from Sakhi, Delhi.
- 93 Jan 10 *Miscellany, The Sunday Statesman Review*. "The Angry Young Men and Women" 200 gay men, lesbians and supporters walked out of the International AIDS Conference in protest of homophobia and discrimination against gay men. They regrouped and held parallel conference at Nehru Gardens.
- 93 Apr 18 *Miscellany, The Sunday Statesman Review*, Calcutta. "Sad to be gay" - a report on the gay scenario in Calcutta by Soumitra Das.
- 93 May 27 *News Today*. "Gay Couple Stab Each Other" - an 18 year old boy and his friend got married in 1991 and were living as "husband and wife" in Thrissur. They committed suicide because of the non-recognition of their marriage by society.

- 1993 June 16-29 *Business World*. "Not Gay Times Yet" - Nonita Kabra finds no discrimination in the corporate world at the highest levels if homosexuals are "discreet".
- 1993 Jul 9 *The Tribune*, Chandigarh in an article "Woman weds 'Woman'" reported story of Neeru alias Dinesh Sharma and Meenu who married and were living together in Faridabad.
- 1993 Jul 21 *The Pioneer*. "Meeru and Meenu's story" - two women who met, married & are living together in Faridabad.
- 1993 Jul 28 *The Telegraph*, Calcutta. "Jumping out of the Closet into the Fire" - a look at the situation of lesbians in India by Sheela Reddy.
- 1993 Sept 13 *Indian Express*. "I'm Goutam's wife, swore Ahmed - Homosexuals Proliferate in Ahmedabad".
- 1993 Nov 13 *Mid-day*. "Bombay Dost Gets Company" - about the formation of Pride Publications Inc.
- 1993 Nov 28 *Sunday*. "Indian Gays out of the Closet" - magazine cover story by Stanley Thomas.
- 1994 Jan 15 *India Today*. "Invoking History in Support - Gays Advocate Non-penetrative Sex to Combat AIDS" - report on the Conference on the History of Alternative Sexualities in India held in Delhi.
- 1994 Jan 18 *Amrita Bazar Patrika*, Calcutta. "Out of the closet" - an interview with some members of Counsel Club by Purnima Dutta.
- Feb 21, Mar 27, & Apr 2  
1994 Feb 10, *The Pioneer*. - coverage of statements made by Ms. Kiran Bedi, I.G. Prisons opposing condoms for prisoners in Tihar jail and claiming "Homosexuality is not rampant in prisons".
- 1994 Apr 28 *Mid-day*. "A Centre in Aid of Gays" - about the opening of the Humsaf Trust.
- 1994 Jun 15 *The Telegraph*, Calcutta. "How can the State Decree Bed-fellows?" - article Soumitra Das focusing on the Kiran Bedi - Tihar Jail controversy and ABVA's petition for the repeal of Section 377, IPC.
- 1994 July 3 *Miscellany, The Sunday Statesman Review*. "Emerging from the Shadows" by Parvez Sharma - on the emergent lesbian and gay movement.

- 94 Nov 1 *The Pioneer*. "PM Asked to Stop Gay Men's Meet" - Vimla Farooqui of the National Federation of Indian Women claims homosexuality in India is a result of decadent western influences.
- 94 Nov 15, 18 *The Pioneer*. - letters to the editor from Samir Seth, and *Sakhi* protesting Vimla Farooqui's statement.
- 94 Nov 20 *The Pioneer on Sunday*. "Recognise us, say Lesbians" and "Old Myths still Persist" - Rachna Subramanian reports on *Sakhi* and the Delhi lesbian scene.
- 94 Dec 25 *The Asian Age*. "International Meet on Gays from December 27" - a preview of the Humsafar-Naz Conference in Bombay by Mini Pant Zachariah.
- 95 Jan 1 *Sunday Mid-day*, Bombay. "A Time to Heal" by Manjula Narayan.
- 95 Jan 2 *The Times of India*, Bombay. "Plea to Decriminalize Homosexuality".
- 95 Jan 8 -14 *Sunday Observer*, Bombay. "Gay Conference seeks Legal Sanction for Homosexuality" by Suchananda Gupta.
- 95 Jun *Savvy*. "Gay Sarah" - a profile of Sarah, an Anglo-Indian lesbian.
- 95 Jun 21 *The Asian Age*, Calcutta. "A Story of Two Teenaged Girls Whose Love for Each Other Made Them Disappear" - a lesbian couple in Delhi elopes. By Suparna Sharma.
- 95 Jul 2 *Sunday Mid-day*, Bombay, also *The Telegraph*, Calcutta. - a report on the love affair of Raju and Jitendra, a young male couple running a vegetable shop in Jamshedpur. The story talks about the tribulations they went through when their relationship came to light. When Jitendra was driven out by his parents, Raju also left home to join him. Author: Shrikant Rao.
- 95 Jul 22 *The Asian Age*, Calcutta. "Pravartak, first City Gay Magazine, Hits Stands" by Parnab Mukherjee.
- 95 Aug 8 *The Bombay Times (Times of India)*. "Another Tutor, Student 'Scandal'" - Parul and Mehernaaz ran away from their respective homes and spent 10 months roaming around the country. A case of kidnapping was filed against Mehernaaz by Parul's father.
- 95 Aug 20 *Times of India*. "Women who Love Women" - Bachi Karkaria's column features an interview with three women from Stree Sangam.

- 1995 Aug 20 *Indian Express*. "U.S Indian Body Refuses to March with Homosexuals" the Federation of Indian Associations prohibits South Asian Lesbian and Gay Association (SALGA) from marching in its India Day parade in Washington D.C.
- 1995 Aug 28 *Anandabazar Patrika*, (Bengali daily) Calcutta. "Shamakamider patrika ekh prokashey bikri kora hochchey" (A Gay Magazine is now being sold in t open) by Supratim Sarkar.
- 1995 Oct 25 *Outlook* "Alternate Leanings" - a profile of Giti Thadani of Sakhi, New Delhi, and the struggle for lesbian visibility in India.
- 1995 Dec 24 *The Statesman - Impressions*, Calcutta. "Coming Out of Purdah" - a profile Counsel Club and Pravartak by J.P Yadav.
- 1996 Jan 28 *The Telegraph*, Calcutta. "Bold, Brilliant and Proud to be Gay" - Seema Sirc profiles Urvashi Vaid, U.S based Indian lesbian activist.
- 1996 Feb 2 *Bombay Times, Times of India*. "When I'm in Drag" - cross-dressers Dolly Daruwalla and others talk to Rajiv Masand about their lives and experienci
- 1996 Feb 15, Mar 7, Mar 28 & Apr 18 *The Statesman - Voices*, Calcutta. - features an interactive sex-education column for young people produced by Thoughtshop Foundation, with Counsel Club as a resource group for questions related to homosexuality.
- 1996 Mar 17 *Times of India*. "Centre Helps Gays Tackle Health Problems"
- 1996 Mar 22 *Hindusthan Times* (New Delhi). "Elephantine Problems of the Invisible - Humsafar Trust reaches out to Mumbai gays through voice mail".
- 1996 Apr 3 *The Asian Age*, Calcutta. "Vote for Ghagra: Kali courts Patna with a song" - report by Naved Zahir on Kali, who becomes the first eunuch to stand for elections in Bihar as a candidate of the Judicial Reforms Party.
- 1996 Apr 17 *Outlook*. "Room With a View - the gay Community wins Official Acceptance and a Space" - Humsafar Trust obtains a centre in BMC quarters.
- 1996 May 15 *India Today*. "Gay in the East" - a profile of Naya Pravartak by Ruben Bannerjee.
- 1996 Dec 11 *Outlook*. "Soliciting a Killer Disease" - Soma Wadhwa highlights the situation faced by males who sell sex, and how NGOs are working with them on sexual health issues.

- 96 Dec 31 *Bombay Times, Times of India*. "God Spare the Queen" - Rajiv Masand covers the drag queen beauty contest and festivities at the gay community New Years Eve party in Andheri, Mumbai.
- 97 Sep 14 *Times of India* (Bangalore) "City hosts Unique Meet on Gay Rights" - reports of the Seminar on Gay Rights organised by the students of the National Law School, Bangalore.
- 97 Sep 14 *Deccan Herald* (Bangalore) "Homosexuality Should not be Closeted" - reports of the National Law School seminar.
- 97 Sep 18 *Deccan Herald* (Bangalore) editorial - "Need for Openness" - report of the National Law School seminar.
- 97 Oct 6 *Outlook*. "Out of the Shadows" - Soutik Biswas reports on how male sex workers are organising themselves, joining hands with female sex workers in bodies such as the Durbar Mahila Samanvaya Committee, etc.
- 98 Jan 10 *The Sunday Times of India*, Patna. "Unfriendly Law" - Frank Krishner profiles Section 377, IPC and the signature campaign initiated for its repeal.
- 98 Mar 23 *India Today*. "Out of the Shadows - Eunuch Councillors Fight Mindsets to Forge New Identity and Gain Social Acceptance" - report by Ramesh Vinayak about eunuch municipal councillors elected in Punjab, Haryana and Rajasthan.
- 98 Apr 20 *Times of India*. "Girls Tie the Knot to Turn Man and Wife" - Sanjay Jha reports that Simmi and Sweta, classmates and good friends aged 22, filed a petition with the notary of the Patna civil court claiming they were wedded. Three witnesses signed the legal affidavit in support of the duo.
- 98 May 12 *The Telegraph*, Calcutta. "Straight is the Gait" - Rimi Chatterjee reviews *Coming Out with Music*, a music and dance performance entirely on gay themes.
- 98 May 17-23 *Sunday*. "Women in Love: Indian Lesbians Talk About Themselves." - Chitralekha Dhamjia does a cover story on lesbians.
- 98 Jun 24 *The Telegraph*, Calcutta. "Veering From the Straight and Narrow" - Sherry Joseph outlines the recent campaign to repeal Section 377.
- 98 Nov 26 *Times of India* Liberalism: Can we handle it? A full page discussion on 'homosexuality' with pieces from Ashok Row Kavi, Ashwini Sukthankar



along with contrary views from K.R. Malkani warning people of the calamity dangers of unnatural and perverted sex.

1998 Dec 13 *The Telegraph* (Calcutta). "We Didn't Start the Fire" – Rupali Ghosh reports the impact of Shiv Sena's call to ban "Fire" on the emerging lesbian community in India

1999 Jan 3 *The Times of India* (Mumbai). "The Invisible Women become Less So" – Ashwini Sukhtankar writes opposing the allegation that lesbians "hijacked" the protests against the banning of *Fire*.

1999 Jan 23 *Anandabazar Patrika* (Calcutta). "Hostel Thekey Samakamita Choratey Pare (Homosexuality Can Spread from Hostels) – Prominent psychologist Nilanjan Sanyal gives a controversial interview to Sanjukta Basu which led to a furor among Calcutta's LGBT groups, other human rights groups and mental health professionals, many of whom sent letters of protest to the editor. The newspaper published a number of these letters, almost all critical of Nilanjan Sanyal's comments.

1999 Feb 15 *Asian Age* In an April fool special this news paper carried a piece titled BS (Bharatiya Samakami (gays) Manch rally for legalising gay marriages, lowering consent age to 16. A satiric but optimistic window into the future.

1999 May 2 *The Times of India* (Mumbai). "Between Covers, Gay Activism pushes at State Thumbprint" – Shabnam Minwalla reports on the publication of *Humjinsi*.

1999 Mar 6 *The Times of India* (Mumbai). "Bi, bi love" – by Kiran Manal on bisexuality: an emerging trend.

1999 Mar 14 *The Times of India* (Calcutta). "The 'Fire' Within" – Chitra Das writes about the gradual coming out of lesbians in Calcutta

1999 Mar 16 *The Telegraph* (Calcutta). "A Boy Meets Boy Story" – Soumitra Das writes about five years of Counsel Club's work and the formation of Palm Avenue Integration Society (Integration for short) as a sister organization of Counsel Club

1999 Mar 17-31 *Sunday*. "It's a Woman's World" – excerpts from Ashwini Sukhtankar's *Facing the Mirror*.

1999 Mar 31 *The Telegraph* (Calcutta). "The Right to Choose One's Lover" – Malini Sen probes the archaic attitude of law makers with regard to homosexuality

- 99 Mar *Manorama (Bengali)* (Calcutta). "Samaprem : Nari O Purusher Samkamita Ki Shradhar Chokhey Dekha Uchit Noi?" (Same Sex Love : Shouldn't Female and Male Homosexuality be Given Due Respect?) – Santanu Majumdar analyzes the issue. This was the first time Counsel Club's postal address appeared in any Bengali publication
- 99 Apr 3 *Anandabazar Patrika* (Calcutta). "Chhai Chapa Fire" (Embers under the Ash) – Sanjukta Basu profiles the work of Counsel Club and newly formed Integration. This was the first time a Bengali daily included Counsel Club's postal address, leading to a flood of more than 1,000 letters from all over eastern India within months of the publication of the article.
- 99 Jun 27 *Sunday Observer* (New Delhi). "Breaking Barriers: Lesbian couple get respectability after 14 year struggle" – Narendra Kaushik profiles a lesbian couple Santosh Chawla and Manju who live together despite opposition from family and neighbours. They have a house in New Patel Nagar, New Delhi, and Santosh runs an STD booth and a placement bureau for nurses.
- 99 Jul 1 *Indian Express* (Mumbai). "Different and No Longer in the Closet" – Amrita Shah writes about the changing acceptance of alternate sexualities.
- 99 Jul 2 *The Times of India* (Patna). "Not Gay, Just 'Having Fun' in Bihar" – Frank Krishner writes about the LGBT scenario in Bihar and the sexuality and sexual health work being done by AASRA in the state.
- 99 Jul 3 *The Times of India* (Calcutta). "Gays Stage Friendship March" – Chitra Das reports on the Friendship Walk organized in Calcutta on July 2, 1999, by Counsel Club and Integration on behalf of LGBT-India to mark the Stonewall Riots Day on June 29
- 99 Jul 3, 17 *The Asian Age* (Calcutta). "We Are Here, You Cannot Wish Us Away : 15 Friends Walk with Gay Abandon"; *Indian Express* "Gays Come Out of the Closet" by Abhijit Dasgupta; *Sambad Pratidin, Calcutta*. "Natin Bhabna" (New Thinking) – more reports on the Friendship Walk, Calcutta, July 2, 1999
- 99 Jul 16 *The Times of India* (Mumbai). "Times may have changed but law remains in Victorian age" – Sanjay Kaur writes about the obsolescence of Section 377.
- 99 Jul 31 *The Times of India* (Mumbai). "Rising number of Gays worries Doctors" – Mohit Dubey profiles Lucknow as the new gay hotspot.
- 99 Aug 6 *The Times of India* (Mumbai). "Humsafar Trust reaches out to Homosexuals"

- 1999 Aug 7 *Business Standard* (Calcutta). "The Alternate Fraternity" – Maitreyee Handi on gay and lesbian helplines, groups and spaces.
- 1999 Aug 12 *The Telegraph* (Calcutta). "Natural Predilection Confined" – Shoma A. Chatterjee writes about the coming out of the LGBT communities in South Asia and China
- 1999 Aug 15 *The Times of India* (Mumbai). "Hounded to Death" – Nina Martyris talks to Stree Sangam members about the increasing incidents of lesbian joint-suicide in the country.
- 1999 Aug 29 *The Asian Age* (Mumbai). "Telling Her Softly, With his Film" – Meenaks Kumar interviews Nishit Saran about his film *Summer in My Veins*.
- 1999 Sep 3 *The Statesman* (Calcutta). "What's Queer Got to Do with It?" – Gautam Mukherjee reports on a cultural programme organized by Counsel Club to mark its sixth birthday (on August 15, 1999)
- 1999 Sep 3 *The Asian Age* (Calcutta). "Nothing Less Than ... Gay" – Priyanka Dasgupta and Amrita Mukherjee profile the LGBT community of Calcutta. A number of prominent personalities of Calcutta come out as supportive of LGBT issues in the article
- 1999 Sep 11 *The Times of India* (Calcutta). "Gays Take Rights Issue to Political Parties Operation Sparsh Knocks at 10 Janpath Only to be Told, It's Too Late" – Chitra Siddhartha reports on LGBT-India's initiative to approach political parties to include sexual minority rights in their manifestos ahead of the 1999 Lok Sabha Elections
- 1999 Sep 19 *The Sunday Telegraph* (Calcutta). "Dead Man Walking" – Bishaka De Sarkar writes about Nishit Saran's film *Summer in My Veins*.
- 1999 Oct 24 *The Times of India* (Mumbai). "In Search of a Rightful Place in Society" – Shabeena Francis writes about the formation of the Dai Welfare Society, an organisation of and for hijras.
- 1999 Nov 2 *The Times of India* (Mumbai). "Eunuchs in the Spotlight" – Runima Tandon talks to film-maker Deepa Krishnan about her film *Paper Flowers* on the hijra community in Mumbai.
- 1999 Nov 28 *The Times of India* (Calcutta). "Condoms Gifted to Winners of AIDS Quiz" – a report on an event organized by Integration on November 27, 1999 to mark World AIDS Day on December 1

- 99 Dec 19 *Asian Age* 'Why is this man not a woman?' by Rajesh Talwar explores the hidden world of eunuchs and transsexuals and debunks mis-conceptions.
- 99 Dec 26 *Sambad Pratidin* (Calcutta). "Shahor Chariye Jelateyo Samakamider Shakha" (Homosexuals Form Groups beyond the City in the Districts) – a report on the Network East '99 event organized by Counsel Club, Sappho and Integration
- 00 Feb *Around Town*. Delhi-based magazine starts a regular column on gay issues by Shaleen Rakesh.
- 00 Feb 8 *Indian Express*. "My Sexuality Is Your Business" – Nishit Saran on the impact of Section 377 on private, consensual homosexuality.
- 00 Feb 26 *Indian Express*. "Voting in a Gender Bender", Feb 28 *Outlook*. "Reign of the Middle Order" by Neeraj Mishra; Mar 5 *Sunday* (New Delhi). "The Revenge of the People" by Rajesh Ramachandran; Mar 7, *Indian Express*. "My assignment is God's wish"; Mar 12 *Mid-Day* (Mumbai). "Eunuch Event" – all articles on Shabnam Mausi's electoral victory as the first eunuch MLA from Sahapur
- 00 Feb 15 *Asian Age* 'VHP now targets Britain's gays' by Abhik Sen 'The Vishwa Hindu Parishad had launched a protest against the British government's plan to repeal Section 28, which prohibits lessons on homosexuality in sex education classes in schools.
- 00 Mar 24, 26 *The Statesman* (Calcutta). "Freedom Cry" by Rina Chunder; *The Economic Times* (Calcutta). "Doing it Right" by Ranjita Biswa - reports on the LGBT component of the Human Rights Film and Cartoon Festival organized by British Council Division in Calcutta from March 13-17, 2000
- 00 Apr 1 *The Times of India* (Mumbai). "Lesbian Marriage Shocks Nepalese" – two young students Indira Rai (17) and Maya Tamag (18) who married in Biratnagar were arrested and returned to families. There was a similar marriage reported previously from Pokhara.
- 00 Apr 8 *The Telegraph* (Calcutta). "Sena Jitters at Shabnam Show" – on Shabnam Mausi's campaign in support of eunuch candidates in Aurangabad.
- 00 Apr 16 *The Times of India* (Mumbai). "S/He Who is Trapped" – Harsh Kabra writes on the new help-line for transsexuals in Pune co-ordinated by Nirmal Gadgil.

- 2000 Apr 17 *Outlook*. "Action Stations"—Anna M. Veticad writes about the human rights and health related work being done by Indian LGBT groups and the formation of new groups in smaller cities and towns
- 2000 Apr 28 *The Times of India* (Mumbai). "Over 1000 delegates will attend conference of gays and eunuchs"
- 2000 May 3, 10,15 *The Times of India* (Mumbai). "Sexual minorities meet in city suburb to discuss relevant issues that haunt them" by Abhijit Majumdar; "India Network up to fight atrocities against homosexuals"; *Indian Express* (Mumbai). "For an Equal Space under the Sun" by Ashok Row Kavi. — reports of the three day conference *Looking into the Next Millennium* organised by the Humsaf Trust.
- 2000 May 23 *The Telegraph* (Calcutta). "Of Sickly Boys and Healthy Men"—Rupali Ghosh writes about the problems faced by lesbians and gays in coming out to their parents and the impact when coming out does happen
- 2000 Jun 20 *The Asian Age* (Mumbai). "Support or Deny: We Exist"—Sriya Ray Chaudhary writes about the seminar on lesbian rights organised by the British Council and Sappho in Calcutta.
- 2000 Jul 2 *The Times of India* (Mumbai). "Gender Benders"—Malvika Kaul explores the transgender world of sex change operations.
- 2000 Jul 10 *The Telegraph* (Calcutta). "The Other Dimension"—Madhumita Bhattacharya profiles the work of groups working on male gender and sexuality issues in Calcutta
- 2000 Oct 23 *Outlook*. Article on Transgender issues
- 2000 Oct 9 *The Times of India* (New Delhi). "Gays of the World unite, it's party time"
- 2000 Oct 1 *The Statesman* (New Delhi). "Eunuchs no more out of site"—on the launch of [www.kinnar.com](http://www.kinnar.com), the first official site of eunuchs by the Chief Minister of Madhya Pradesh, Digvijay Singh and eunuch MLA Shabnam Mausi.
- 2000 Nov 22 *Indian Express* (Mumbai). "Pune meet helps lesbians out of the closet and into their own." A report on the first anniversary of OLAVA (Organized Lesbian Alliance for Visibility and Acceptance) in Pune.
- 2000 Dec 3 *Outlook*. "Hard, soft and real good: Eunuchs in power corridors are a story in contrast." A report on the different political styles of Shabnam Mausi,

Kamla Jaan, Meena Bai, Heera Bai and Gulshan -eunuchs who have been elected to office in various civic bodies.

- 01 Jan 5 *The Times of India* (Mumbai). "Lesbians cry for space amounts to denial of Rights" – Saikat Datta reports on the Lesbian and Gay Rights workshop at the National Conference on Human Rights; Social Movements and the Law held at Panchgani, Maharashtra.
- 01 Jan 7 *Asian Age* 'Paedophile Ring busted in Punjab' A lurid account of arrests of two homosexual men in Ludhiana on charges of S.377 IPC, where no evidence of coercive or underage boys was available.
- 01 Jan 8 *The Times of India* (Mumbai). "Paedophile ring busted in Punjab" – Asit Jolly reports on a wide-spread gay network in Punjab.
- 01 Feb 16 *The Asian Age* (Calcutta). "Matter of Choice" – Ravik Bhattacharya writes about the sexual minorities in West Bengal, with special focus on transgendered people
- 01 Mar 4 *The Asian Age*. "The Third Gender" – Ashok Row Kavi on the hijras, and their creation of community.
- 01 Mar 18 *The Times of India* (Mumbai). "Even my parents have not accepted my transexual identity" – a profile of Somenath Bannerjee, a Bengali professor in Jhargram, Midnapore who has started a magazine for transexuals in Bengali called "Aba-Manab".
- 01 Apr 27 *The Statesman* (Calcutta). "The Need to Break Free". Soma Mallick and Tapan K. Mohanta report on a dance and theatre programme focussing on the emotional and sexual health needs of males who have sex with males organized by Counsel Club and Integration on April 13, 2001
- 01 May 14 *India Today* 'Seeking Freedom' by Sheela Raval on increasing numbers of lesbians coming out of the closet in India.
- 01 May 20 *The Week*. "Woman and Wife: same-sex marriage in Ambikapur, Chattisgarh. Dipak Tiwari reports on the marriage of Tanuja Chauhan and Jaya Verma in a Hindu ceremony.
- 01 Sep 8 *Health and Nutrition* 'Coming out of the Closet' by Geeta Kumana



# Films

2008

*Beautiful Launderette*. Dir. Hanif Kureishi, (United Kingdom, 1985). A feature film showing the complex relationship between two young men in the U.K., one of whom is of Pakistani origin.

*Hijras*. Dir. Kalliat, Prem. (New York: Third World Newsreel, 1990). 25-minute documentary exploring the life of a hijra and her community in South India.

*Sh and Paper*. Dir. Pratibha Parmar. (New York: Women Make Movies, 1990). A 26-minute profile of lesbian poet Suniti Namjoshi.

*With Refugees*. Dir. Nidhi Singh. (San Francisco: NAATA, 1991). A 32-minute video recording about an immigrants assimilating to San Francisco's gay community.

*Eunuchs: India's Third Gender*. Dir. Michael Yorke. (BBC, 1991). A 40-minute documentary on the hijras.

*With*. Dir. Pratibha Parmar. (New York: Women Make Movies, 1991). A 24-minute video about South Asian gay men and lesbians living in the West and in India.

*At Balu!* Produced by Ian Rashid and Gita Saxena. 1991. 30 minute video on AIDS in the South Asian Community in the U.S.

*Destiny, Desire, Devotion*. Dir. Zahid Darr (United Kingdom, 1994). 10 minute film on being Gay and South Asian in the U.K.

*Mr. D.* Dir. Riyad Vinci Wadia, Bombay, 1996. 11-minute series of 6 short films based on the poetry of R.Raja Rao.

*Mermaid called AIDA*. Dir. Riyad Vinci Wadia, Bombay, 1996. 50 min.

*Manna*. Dir. Paresh Rawal, Bombay, 1997.

*Love*. Dir. Deepa Mehta, 1997. A feature film depicting a lesbian relationship in a middle class Delhi family.

*Yash*. Dir. Amol Palekar, 1997.

*Armiyan*. Dir. Kalpana Lajmi, 1997.

*Adrian*. 1999. An audio-visual slide documentary on Counsel Club, Sappho and Palm Avenue Integration Society's emergence and work.

*Summer In My Veins*. Dir. Nishit Saran, 1999.

*Four Flowers*. Dir. Deepa Krishnan, 1999. Film about hijras in Mumbai.

*Mumbai Eunuchs*. Alexandra Shiva, Sean MacDonald, Michelle Gucovsky, 2000 USA. 71 min. so about the hijras in Bombay.

*Straights Only*. Dir. Vismata Gupta-Smith, 2001. Documentary on South Asian LGBT people who have come out to their families.



## Theatre & Dance



*Partner.* Dr. Anand Nadkarni late 70s early 80s.

A one-act play about two gay lovers, also inmates in the hostel, and the complications when one of them gets married.

*Begum Barve.* Satish Alekar, Theatre Academy, New Delhi, 1979

*Mitrachi Gosht.* Vijay Tendulkar, 1981. Marathi play about an obsessive lesbian relations!

*Kiss of the Spiderwoman.* (Hindi adaptation from the novel of the same name by Man Puig) Dir. Rustam Bharucha, New Delhi, 1993

*Varun.* Play written by members of Arambh. Dir. Barry John, Delhi 1993.

*O Come Bulky Stomach.* Shantanu Nagpal, Dir. Barry John, Theatre Action Group, N Delhi, 1994.

*Happy Birthday* (Marathi). Dir. Satish Pulekar, Script Suni Khanolkar, 1994.

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*The Alien Flower.* Sapphire Creations Dance Workshop, Calcutta, 1996.

*Behind the Scenes.* Sarani, Calcutta, 1998.

*On A Muggy Night in Mumbai.* Mahesh Dattani, 1998. Play about gay relationships.

*Ek MadhavBang* Written and Directed by Chetan Datar, 2000. A mother comes to terms with her son's homosexuality.

*para*. Palm Avenue Integration Society, Calcutta, 2000 (A *sbruti natak* – play based on dialogues only – focussing on a romantic relationship between two men, also touches on the human rights aspects of same sex romantic relationships. Being developed into a full-fledged play also)

*Ki Alma*. Palm Avenue Integration Society, Calcutta, 2001. A skit in Bengali on self-esteem and sexual health issues targeted at males who have sex with males.

*Heading Towards the New Millenium*. Sapphire Creations Dance Workshop, Calcutta, 2000.



## **Information Resources**

- ✎ **Select Bibliography**
- ✎ **Journals and Magazines**
- ✎ **Websites**

## Select Bibliography

2008

At the turn of the century, the literature (both popular and serious) on gay, lesbian and bisexual issues is quite vast, and diverse. Although there are gay, lesbian and bisexual documentation centres, archives, and bookshops; we have not come across authoritative, comprehensive bibliography in print. This select bibliography certainly does not aim to fill that gap. Rather, the aim is firstly, to document the articles, booklets and books (in English) in the Indian/ South Asian context. The magazines *Trikone* and *Bombay Dost* are also good sources for some quality reading in this context. The second aim of this bibliography has been to provide references to documents and books on legal issues, as well as history, theory and politics - to give a glimpse into the range of offerings available in the larger context.

### Indian/ South Asian

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# Journals & Publications

2003

(LBG) - Lesbian, Bisexual & Gay (G) - Gay only (L) - Lesbian only (S) Support

## Asia/Pacific Bridges (LGBT)

IGLHRC

1360 Mission Street

Suite 200

San Francisco

CA 94103, USA

E-mail : [daniel@iglhrc.org](mailto:daniel@iglhrc.org)

## Bombay Dost (LG)

105, Veena Beena Shopping Ctr.

Bandra(West)

Mumbai, Maharashtra

India

## Breakout (LB)

CLIC (Can't Live in the Closet)

P.O. Box 2356, Central Post Office

QC 1102, Philippines

Email: [cllc@phil.gn.apc.org](mailto:cllc@phil.gn.apc.org)

## Darpan (LBG)

P.O. Box 3910, Andrews Gunj

New Delhi 110 049

India

## Gaya Nusantara (LBG)

Jalan Mulyosar Timur 46

Surabaya 60112, East Java

Indonesia

## Khush Khayal (LG)

P.O. Box 6172

Station A, Toronto, Ontario

Canada M5W 1P6

## Naya Pravartak (LGBT)

Counsel Club

C/o Ranjan, Post Bag No. 794

Calcutta 700 017

E-mail : [wrongzone@hotmail.com](mailto:wrongzone@hotmail.com)

## Pratay (GBT)

*Pratay Magazine* (English), *Pratay Arshi* (Bengali)

P.O. Box No. 13003

Calcutta 700 053

E-mail : [pratay@hotmail.com](mailto:pratay@hotmail.com)

## Sacred Love (G)

Post Box MP/366, G.P.O.

Lucknow 226 001

India

## Sami Yoni (L)

P.O.Box 891, Station "P"

Toronto, Ontario

Canada M5Z2S2

## Sangha-Mitra (LBG)

Post Box 7625

Bangalore 560 076

India

## Sangini Mirch Masala

C/o Naz, D 45 Gulmohar Park, New

Delhi 110049

## Scripts (LB)

P.O. Box 16613

Matunga, Mumbai 400 019

India

**ni Awaaz (LG)**

Box 93  
Seymour Place  
Don, W1H 5WJ

**mekumdi (L)**

Box 1006, Jamaica Plain  
02130,

ail: Kbhjwani@aol.com

**ieshare (GLB)**

AASRA  
Box 68, Patna 800 001  
91 612 27 1598

ail: pmasra@sancharnet.in

age, monthly news and advocacy bulletin; Rs  
er copy; annual subscription Rs 250.

**Ki Pukar (LBG)**

Box 3910, Andrews Gunj  
Delhi 110 049

**Network (LGBT)**

Avenue Integration Society  
Pawan, Post Bag No. 10237  
uma 700 019  
ail: pawan30@yahoo.com

**zone Magazine (LBG)**

Box 21354  
Jose, California  
A 95151-1354

**International Publications**

**Emergency Response Network (LG)**

(Publication of International Gay & Lesbian  
Human Rights Commission)  
1360 Mission Street, Suite 200  
San Francisco, California  
USA. 94103

**GLPCI - Network (S)**

(Publication of Gay & Lesbian Parents Coalition  
International)  
P.O. Box 34337,  
San Diego, CA - 92163  
USA.

**Paz y Liberacion**

P.O. Box 66450, Houston, Texas  
USA. 77266

**Girlfriends (LB)**

P.O. Box 713, Half Moon Bay, California  
USA. 94019

**Lesbians on the Loose (LB)**

P.O. Box 798, New Town,  
Australia 2042

**Perversions (LG)**

The International Journal of Gay and Lesbian  
Studies  
BM Perversions, London WCIN3XX  
UK.

**Bad Attitude (L)**

121, Railton Road  
London  
UK. SE24 0LR



## Websites

**SOCs**

Since the information technology revolution of the past two decades, gay, lesbian, bisexual and transgender users of the Internet are quite possibly the largest constituency in cyber world. Of course, as with the Net in general, the majority of the users are in the U.S. and Europe - though we have a few cyber surprises from South Asia too, so read on.

To tempt you with just a hint of the variety - sites range from the **Official k.d. lang Club** (<http://www.kdlang.com>), to sites for gay cyber Christians like *Whosoever: A Journal for Gay and Lesbian Christians* (<http://www.whosoever.org>) and sports sites like **and Lesbian Windsurfers** (<http://www.geocities.com/Yosemite/Rapids/1569/wind.htm>). There are even exclusive "gay cyber communities" such as *Geocities' West Hollywood* (<http://www.geocities.com/WestHollywood/>) - where many lesbians, gays, bisexuals and transgendered people have availed of *Geocities'* free web page facility.

A handy reference guide and start-up for the uninitiated is the book *Out's Gay and Lesbian Guide to the Web* by J. Harrison Fitch<sup>1</sup> (the book comes with a CD). Indeed, many of the Websites cited here were referenced based on this guide. It is important to remember things though, before you get online - first, that changes occur very rapidly in cyber world. Second, not all sites are regularly updated.

### Search Engines

While it is possible to use common search engines like *Google* (<http://www.google.com>), *Altavista* (<http://www.altavista.com>), and *Lycos* (<http://www.lycos.com>) - there are also search engines which have the obvious advantage of more gay-friendly classification systems plus a lot of links to gay, lesbian, bisexual and transgender sites. For the more sophisticated net user, all the major gay search tools on one page can be found at *Lesbigay Resources on the Internet* (<http://bitheway.org/Search/>), or at *Amazon Online* (<http://amazon.org/links.htm>); both of which list the following search engines:

#### *Rainbow Query*

<http://www.rainbowquery.com>

With 200 subject categories and powerful search capabilities, this claims to be the largest most complete "gay-only" index on the Internet.

**GayScape**  
<http://www.gayscape.com/gayscape/gs.html>  
 Search engine that claims to have indexed 68,000 sites.

**Links**  
<http://www.pridelinks.com/index.html>  
 Right new search tool with 8,000 links to resources.

**Homorama**  
<http://www.homorama.com/homorama/index.html>

**Pride Directory**  
<http://pridedirectory.com>

**Gay Zoo**  
<http://gayzoo.com/>

## Meta Sites and Hyper links

These are sites that either host other smaller sites, or provide links to them. There are the institutions like *PlanetOut* and the *Queer Resources Directory* – but there are also innumerable individuals who have made homepages with links to useful (and their favourite) sites. A listing of such meta-sites is included here.

**PlanetOut**  
<http://www.planetout.com>  
 Tacky, image laden site that houses *PopcornQ* (gay and lesbian film and video), chat rooms, bulletin boards, gay radio, and much, much more to explore by way of links.

**Queer Resources Directory**  
<http://www.qrd.org>  
 Large electronic library of information on lesbian, gay, bisexual and transgender issues ranging from coming out, family, media, business, legal and workplace issues. Of interest is section on *Queer Legal Resources* at [www.qrd/world/legal/](http://www.qrd/world/legal/)

**Lesbian Organisation**  
<http://www.lesbian.org/>  
 Excellent, and the oldest collection of lesbian specific information and links to lesbian history (Sapphic Ink), Matrices newsletter, politics and activism, June Mazer lesbian lives, and the Sappho project.

*Rainbow Links*

<http://www.rainbow.links.com/>

U.S specific site, with some global information.

*Queer Ring*

[home6.inet.tele.dk/zennaro/queerring.html](http://home6.inet.tele.dk/zennaro/queerring.html)

This is a "cyber ring" concept in which a chain of lesbian, gay, bisexual and transgender sites are linked to each other; interconnecting the on-line queer community. Good timepass browsing.

*Bi The Way*

<http://www.bitheway.org>

Mega resources for bisexuals - chat, articles, message boards and lots of links.

*Lesbian.com*

<http://lesbian.com>

U.S based site for activism, dating, gardening, shopping and a great page of links further exploration.

*Technodyke*

<http://www.technodyke.com>

Savvy site for lesbians.

*Press For Change*

<http://www.pfc.org.uk>

An exhaustive web resource on transgender rights.

*Yahoo! (Society and Culture: Lesbians Gays and Bisexuals)*

[http://dir.yahoo.com/Society\\_and\\_Culture/Cultures\\_and\\_Groups/Lesbians\\_Gays\\_and\\_Bisexuals/](http://dir.yahoo.com/Society_and_Culture/Cultures_and_Groups/Lesbians_Gays_and_Bisexuals/)

Yahoo! has several hundred links with updated coverage.

**South-Asian Sites***Humrahi: Forum for Gays at New Delhi*

<http://www.geocities.com/WestHollywood/Heights/7258>

Home site of the Humrahi project in Delhi, carries the publication *Darpan*.

*Khuli Zaban*

<http://www.geocities.com/WestHollywood/9993/index.html>

Chicago based lesbian and bisexual women's group found a cyber home at Geocities. Site still under construction.

#### Web D.C.

<http://www.geocities.com/WestHollywood/4786/>

#### Web - Toronto

<http://www.interlog.com/~khush/contents.html>

Queer South Asian group. Contains Great People Web link.

#### Web - gat

<http://members.aol.com/youngal/sangat.html>

Chicago based group's site with good links to other South /Asian lesbian and gay sites.

#### Web - talinga

<http://www.geocities.com/WestHollywood/5838/>

Site contains select postings from the Khush list.

#### Web - trikon

<http://www.trikone.org>

Highlights from the magazine *Trikone*, information about the organisation and its activities, community resources and the *Khush* mailing list.

#### Web - Delhi

<http://gaydelhi.tripod.com/>

Working and events for gay men in Delhi.

#### Web - Tejas (Texas)

<http://www.main.org/trikonetejas/>

Asian site maintained by students at University of Texas

#### Web - Net

<http://www.khushnet.com/>

Online, networking, and events for gay men.

#### Web - sabbavana

<http://www.samabhavana.org/index.htm>

Bangalore based organisation working with sexuality minorities and HIV.

#### Web - pho

<http://sappho.shoe.org/home/>

Web pages of Calcutta based lesbian group.

*Stree Sangam*

<http://in.geocities.com/keyaindia/splash.htm>

Web page of Mumbai based lesbian and bisexual women's collective.

*Amalg*

<http://my.123india.com/amalg/>

A dating service with a difference for men and women under pressure to get married.

*Bombay Dost*

<http://www.bombay-dost.com/>

Back issues of the magazine, events and recipes.

*Samalinga*

<http://www.geocities.com/WestHollywood/5838/links.html>

Home pages with South Asian lesbigay resources and links

*India Gay Resource*

<http://www.geocities.com/WestHollywood/Castro/9668/index.htm>

GayGuru's city wise listing of resources, cruising areas, mostly for gay men.

*Gay Bombay*

<http://www.gaybombay.cc>

Networking and events in the city, primarily for gay men. Of interest are city and regional postings.

*Kinnar*

<http://www.kinnar.com/gateway.htm>

India's first website for hijras launched in Madhya Pradesh by the eunuch MLA Shabri Mausi. Contains history, myths and facts, festivals and rituals, achievers etc.

## **Legal Information Sites**

*Sodomy Laws*

<http://www.sodomylaws.org>

A very legal useful resource on sodomy laws worldwide.

*GayLawNet*

<http://www.gaylawnet.com>

An award winning site with very comprehensive, up-to-date coverage of global newsclippings on legal rights, contacts for lawyers, etc.

## archives

### *Khush List*

<http://www.groups.yahoo.com/group/khush-list>

the oldest web based discussion forum for the the South Asian queer community.

### *Lgbt Gay, Bisexual and Transgender India (Lgbt-India)*

<http://www.groups.yahoo.com/group/lgbt-india>

discussion forum on queer activism in India.

### *HCA Carpenter Archives*

<http://www.adpa.mdx.ac.uk/services/ilrs/hca/hca.htm>

an excellent source for the study of gay activism in Britain since the 1960s.

### *Mazer Lesbian Collection*

<http://www.lesbian.org/mazer/index.html>

the site containing material by and about lesbians of all classes, races, ethnicities and experiences in the U.S.

### *Homodok*

<http://www.homodok-laa.nl/>

an lesbian and gay library in Amsterdam with exhaustive references.

### *Lesbian Herstory Archives*

<http://www.datalounge.net/network/pages/lha>

the original project initiated by Joan Nestle has a cyber home.

### *New York Public Library Gay and Lesbian Studies*

<http://www.nypu.org/research/chss/grd/resguides/gay.html>

the site contains a collection of materials on gay and lesbian lives since 1911, including an index to the collection.

### *ONE Institute International Gay and Lesbian Archives (ONE/IGLA)*

<http://www.oneinstitute.org>

aims to be largest research library on gay, lesbian, bisexual and transgender concerns.

*International Gay and Lesbian Review* is a journal providing abstracts and reviews of queer studies books.

### ***Right to Marry***

The *Baehr v. Lewin* case in Hawaii prompted intensive Internet mobilisation in campaign for the right to same-sex marriages in the U.S. Many sites were created at this time carrying news, articles, debates, educational material, legal texts, etc. Organisations such as Lam Legal Defence and Education Project, the National Gay and Lesbian Task Force, Human Rights Campaign (USA), NOW (National Organisation for Women), among others also included Marriage Rights pages in their web sites.

#### ***Equal Marriage rights Home Page***

<http://nether.net/~rod/html/sub/marriage.html>

#### ***Forum on the Right to Marriage***

<http://www.calico-company.com/formboston/>

#### ***Freedom to marry***

<http://www/ftm.org/>

#### ***Hawaii Equal Rights Marriage Project***

<http://www.xq.com/hermp/>

#### ***Partners Task Force for Gay and Lesbian Couples***

<http://www.buddybuddy.com/toc.html>

### **Asian Sites**

#### ***Fridae***

<http://www.fridae.com>

A current even and lifestyle website for the asian queer community.

#### ***Gay Asian Literature***

<http://www.geocities.com/West Hollywood/3821/>

Primarily contains a listing of books.

#### ***Utopia: Southeast Asia Gay and Lesbian Resources***

<http://www.utopia-asia.com/>

#### ***Queer Jihad***

<http://www.stormpages.com/newreligion/index.htm>

Site for Queer Muslims, with articles on faith and homosexuality, and some links.

## Archives

### *Khush List*

<http://www.groups.yahoo.com/group/khush-list>

= oldest web based discussion forum for the the South Asian queer community.

### *Lgbt, Gay, Bisexual and Transgender India (Lgbt-India)*

<http://www.groups.yahoo.com/group/lgbt-india>

= discussion forum on queer activism in India.

### *U Carpenter Archives*

<http://www.adpa.mdx.ac.uk/services/ilrs/hca/hca.htm>

= excellent source for the study of gay activism in Britain since the 1960s.

### *Mazer Lesbian Collection*

<http://www.lesbian.org/mazer/index.html>

= site containing material by and about lesbians of all classes, races, ethnicities and experiences in the U.S.

### *Homodok*

<http://www.homodok-laa.nl/>

= lesbian and gay library in Amsterdam with exhaustive references.

### *Lesbian Herstory Archives*

<http://www.dataounge.net/network/pages/lha>

= original project initiated by Joan Nestle has a cyber home.

### *New York Public Library Gay and Lesbian Studies*

<http://www.nysl.org/research/chss/grd/resguides/gay.html>

= this site contains a collection of materials on gay and lesbian lives since 1911, including index to the collection.

### *ONE Institute International Gay and Lesbian Archives (ONE/IGLA)*

<http://www.oneinstitute.org>

= this is to be largest research library on gay, lesbian, bisexual and transgender concerns.

= *International Gay and Lesbian Review* is a journal providing abstracts and reviews of queer studies books.



## Bookstores

Many bookstores have now gone on-line and it is possible to browse through "b shelves" and even order new and second-hand books at the following sites. Some of sites also have chat rooms, videos and CDs, and art work.

### *A Different Light Bookstore*

<http://www.adlbooks.com/>

### *Glad Day Bookshop*

<http://www.gladdaybookshop.com/>

### *Amazon Co-op*

<http://www.amazonfembks.com/> oldest, co

op feminist bookstore

The "real" Amazons - a feminist, co-operatively owned bookstore.

### *Out in Print*

<http://www.outinprint.com/>

Shopping online for gay and lesbian books

### *Out Books*

<http://www.outbooks.com/>

Canadian, gay-owned book shop

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BOOKS

# **Networking Directory**



**Gay, Lesbian, Bisexual & Transgender  
Organisations in India –  
South Asian Gay, Lesbian & Bisexual  
Organisations –  
International Gay & Lesbian Organisations –  
Support Organisations –**

# Directory

2008

## GAY, LESBIAN & BISEXUAL ORGANIZATIONS IN INDIA

(LGBT) = Lesbian, Gay, Bisexual Transgender (MSM) = Men who have sex with men  
(LB) = Lesbian and Bisexual women only (GB) = Gay and Bisexual men only (NI) = N  
information

### Bangalore:

#### Coalition for Sexual Minority Rights (LGBT)

A coalition of Bangalore based human rights groups, sexuality minority groups and others working for the rights of sexuality minorities  
email list: csmr@yahooogroups.com

#### Good As You (LGBT)

Operates: Meets every Thursday between 7.00pm and 9.00pm.  
Email: goodasyoubangalore@yahoo.com  
www.geocities.com/goodasyoubangalore/

#### Jagruthi (MSM)

C-3, 2nd floor, Jyothi Complex, 134/1  
Infantry Road, Bangalore 560001  
Tel: (080) 2860346

#### Prerana (LB)

A support group for lesbians and bisexual women.

First and Third Sundays

Contact: Sahaya Help Line (as below)

Email to: sahayabangalore@hotmail.com

#### Sahaya Help Line (LGBT)

Operates: Only on Tuesdays and Friday between 7.00p.m. and 9.00p.m.

Contact: 080-223 0959

Email to: sahayabangalore@hotmail.co

#### Sangama (LGBT)

Resource and Documentation Centre  
Flat 13, III Floor,  
Royal Park Apartments  
(Adjacent to back entrance of Hotel Harsha, Shivajinagar)  
34 Park Road, Tasker Town  
Bangalore 560051  
Tel: (080) 2868680/2868121  
email: sangama@sangamaonline.org  
http://www.sangamaonline.org

#### Swabhava (LGBT)

Home of Good As You, Sahaya and Prerana.

http://www.swabhava.org

oda

**shya Trust (MSM)**

Address: 203 / Second floor, Shruti Flats  
and Kalpvruksh Complex  
near T. B. Hospital, Gotri Road  
oda.  
Email: lakshya123@rediffmail.com

**ennai (Madras)**

**ahodaran (GB/MSM)**

Floor, 127 Sterling Road  
ennai, Tamil Nadu 600034  
(044) 8252869  
Email: sahodara@md3.vsnl.net.in  
Website: sahodaran.faithweb.com

**Men's Welfare Association for Men  
(WAM) (G/B/MSM)**

5, Natarajan Street,  
Perkhanpet, Balakrishnanagar  
ennai - 600083

**South India AIDS Action Programme  
(SIAP) (MSM)**

National Health agency for sex workers and  
M.  
1st Street, Kamraj Avenue  
Chennai 600020  
Email: siaap@satyam.net.in  
Track

**athi (GB)**

Track Chapter  
Box 512  
Chennai Chowk, HPO  
Track, Orissa 753002

**Hyderabad**

**Expression (GB/MSM)**

Gay support group in Secunderabad  
expressionhyd@hotmail.com

**Mithrudu (MSM)**

5-8-595 /B/16, Nasr Chambers  
Mubarak Bazaar Lane, Abids Road  
Hyderabad- 500 001  
Ph: 6666587  
E-mail: mithrudu@yahoo.com

**Saathi (GB)**

2nd Floor, Sana Apartments,  
Red Hills, Lakdi Ka Pool,  
Hyderabad 500004  
Tel: (040) 6571225/ 3375401  
Email: saathi99@yahoo.com

**Sampark (GB)**

Helpline address: as for Saathi (above)  
Tel: 6571225/ 3375401 (Telugu),  
3395398 (office)

**Kolkata (Calcutta)**

**Counsel Club (LGBT)**

Address : C/o Ranjan, Post Bag No. 794  
Calcutta 700 017  
Phone : (033) 359 8130 (C/o Integration)  
E-mail : wrongzone@hotmail.com  
counselclub93@hotmail.com  
Meets 1st and 3rd Sundays of the month,  
5-8 pm.

**Counsel Club - Barasat (LGBT)**

Address : C/o Rup Chowdhury Post Box  
No. 12 Barrackpore H.O. Dist. 24

Parganas (N)

Phone : (033) 359 8130 (C/o Integration)

E-mail : counselclub93@hotmail.com

Meets last Sundays of the month, 5-7 pm.

Email: diksha\_kolkata@yahoo.co.in

**Palm Avenue Integration Society**

A health awareness initiative for the youth  
and sexual minorities

Address : C/o Pawan Post Bag No.  
10237 Calcutta 700 019

Phone : (033) 359 8130 (functions as  
helpline SAHAYAK on Mondays,  
Wednesdays and Fridays, 3-6 pm).

E-mail : integration99@rediffmail.com

Library service : Tuesdays, Thursdays and  
Saturdays, 3-6 pm

**Parichay (GB)**

P.O.Box 13003

Calcutta 700 053

**Praajak Developement Society (MSM,  
Kotis, hijras and transgender)**

468 A Block K

New Alipur

Calcutta 700 053

Tel: (033) 4000455

email: praajak@yahoo.co.in

**Pratyay (Kothis and MSM)**

Address c/o Praajak (above)

E-mail: pratyay@hotmail.com

**Sappho (LB)**

C/o A.N, PO Box No. EC-35,  
Calcutta 700010

E-mail: malvi99@hotmail.com

Website: <http://sappho.shoe.org>

**Sarani**

Experimental performing arts troupe  
focussing on development issues like  
sexual minority rights and sexual health

84 Jhowtalla Road, Suite No.2

Calcutta - 700017

email: wrongzone@hotmail.com

**Lucknow****Bharosa (GB/MSM)**

Phone: 0522 - 208689

Fax: 0522 - 205267

Email: bharosatrust@yahoo.co.in

**Friends India (GB/MSM)**

Post Box No. 59, Mahanagar

Lucknow - 226 006

Phone No. - 0522 - 342478

Email: friendsindiagroup@yahoo.co.in

**Naz Foundation International (GB/  
MSM)**

9 Gulzar Colony, New Berry Lane

Lucknow - 226 001

Phone: 0522 - 205781, 205782

Fax : 0522 - 205783

Email: nazfoundint@yahoo.com

**Mumbai (Bombay)**

**Aanchal Helpline (LB)**

deo A/C Market Bldg Copoerative  
city Ltd., 3rd Floor, Room No. 28,  
deo, Mumbai 400 024  
one: 496 8686, 496 8787  
mail: aanchal69@hotmail.com

**Arawanis Social Welfare Society**

**inuchas/Hijras)**

ail: arawanis@rediffmail.com  
x://www.geocities.com/  
wanis\_society/arawanis\_society.html

**Bombay Dost (magazine) (GB)**

A Veena Beena Shopping Center  
posite Bandra Station, Bandra (W)  
mbay 400 050  
x://www.bombaydost.com

**Charch Chowghi (Kothis)**

mail: sakchicharchowghi@rediffmail.com

**Gay Bombay group (GB)**

x://www.gaybombay.com

**Humjinsi Helpline (LB)**

o India Centre for Human Rights & Law  
'OD Jain High School, 4th Floor,  
Samuel Street, Dongri,  
mbai - 400 009  
:(91-22) 370 4709  
x:(22) 379 0699  
ipline Timings: Tue, Wed & Fri 3-6 pm  
ets 2nd Saturday 3-5 pm.  
ail: humjinsi@hotmail.com

**Humsafar Trust (GB/L/MSM)**

P.B. No. 6913, Santa Cruz (W)  
Bombay 400 054  
Tel: (91-22) 6187476/ 6136227  
Voice mail: (22) 972-6913  
Meets Fri 6-9 pm.  
Email: humsafar@vsnl.com

**Samabhavana (LGBT)**

Email: samabhavana@vsnl.com  
http://www..samabhavana.org

**Streets Sangam (LB)**

P.O. Box 16613, Matunga  
Mumbai 400019  
E-mail: streetsangam@yahoo.com  
http://in.geocities.com/keyaindia/  
splash.htm

**Udaan (Kothis)**

E-mail: udaanpanchis@yahoo.com

**New Delhi**

**Campaign For Lesbian Rights  
(CALERI)**

PO Box 3526, Lajpat Nagar P.O.  
New Delhi - 110024  
Email: caleri@hotmail.com

**Humrahi (GB)**

Meets Saturday 6.00 p.m. to 8.00 p.m.  
Helpline Mondays and Thursdays  
C/o Naz Foundation India Trust (see  
below)  
Ph: (011) 6851993/ 6567049

**Milan Project (GB/MSM)**

C/o Naz Foundation India Trust

P.O. Box 3910, Andrews Gunj,

New Delhi-110049

Ph: 6567049/3929

E-mail: milanproject@hotmail.com

**Naz India Trust (MSM HIV/AIDS)**

D45 Gulmohur Park,

New Delhi 110049

Tel: (011) 6567049/3929

Email: nazindia@bol.net.in

**PRISM - People for Rights of Indian  
Sexuality Minorities (LGBT)**

Email: prism\_delhi@yahoo.co.in

**Sampoorna (Transgender Support  
Group)**

For Female to Male inquiries contact:

Akhil: akhil\_insharima@yahoo.co.in

For Male to Female inquiries contact:

Anamika: designgal\_anu@yahoo.com

**Sangini (LB)**

C/o The Naz Foundation .

Helpline: Tuesday & Friday 6 - 8 p.m.

Tel: (011) 6851970/71

Meets Saturday 3 - 5.30 p.m.

Email: sangini97@hotmail.com

<http://www.sangini.org>

**Orissa****AAKASH (Advocacy for AIDS,  
Knowledge and Sensible  
Health) (GBT)**

Block Colony, Raj-Khariar,

Dist. Nuapada, Pin 766 107 (Orissa)

Tel.: 06671 32131

**Pondicherry****Thozhan (MSM)**

106/2, Rue Francois Martin,

Kourousoukouppam

Pondicherry - 605012

Email: thozhen\_2000@yahoo.com

**Pune****Olava (LB)**

P.O. Box 2108, Model Colony Post

Office, Pune 411016

Email: olava\_2000@yahoo.com

**Samapathik (GB)**

Email: samapathik@hotmail.com

**Sampoorna (Transgender Support  
Group)**

Email: ekdoorbeen@yahoo.co.in

**Transpal (Transgender Support  
Group)**

Sentinel Communications, P.O.No: 101

Khadki,

Pune-411003

Email: transpal@hotmail.com

hy

**gyitham (NI)**

**il:** [snegyitham@yahoo.co.in](mailto:snegyitham@yahoo.co.in)

**andrum**

**Sahayatrika Project (LB)**

**26/ 1666, Convent Road,**

**thiyoot, Trivandrum 35**

**phone: 0471-575810**

**rsdays 3:30 p.m. to 7:30 p.m.**

**il:** [sahayatrika@rediffmail.com](mailto:sahayatrika@rediffmail.com).

**Vijayawada**

**Jyothi Welfare Trust (MSM)**

**Email:** [jyothiwelfare49@hotmail.com](mailto:jyothiwelfare49@hotmail.com)

**Saathi (Vijayawada Chapter) (GB/  
MSM)**

**11-1-231/2, BRP Road**

**One Town, Vijayawada - 520001**

**Andhra Pradesh**

**Tel: (0866) 635241**

**Vishakhapatnam**

**Snehithudu (NI)**

**Email:** [poo4urs@yahoo.com](mailto:poo4urs@yahoo.com)





## South Asian Gay & Lesbian Organizations

BOX

(LBGT) = Lesbian, Gay, Bisexual Transgender MSM = Men who have sex with men  
(L) = Lesbian only (G) = Gay only (NI) = No information

### **SRI LANKA**

#### **Companions on a Journey**

40/16, Park Road

Colombo 5, Sri Lanka

Phone: 94-1-500570

Email: [coj@sri.lanka.net](mailto:coj@sri.lanka.net)

Group for gay men and lesbians

#### **Women's Support Group**

40/16, Park Road

Colombo 5, Sri Lanka

Phone: 9475331988

Group for lesbian women

#### **Friendship Sri Lanka (LB)**

# 1049 Pannipitiya Road

Battaramulla 10120, Sri Lanka

### **PAKISTAN**

#### **Vision**

140-8 Model Town

Lahore, Pakistan

Email: [vision@nexlinx.net.Rk](mailto:vision@nexlinx.net.Rk)

Phone: 92-42-630-4681/853-740

Fax: 92-42-630-528, -9257

Sexual Health agency for MSM

### **BANGLADESH**

#### **Bandhu Social We/fare Society**

106/2 Kakarail

Dhaka, Bangladesh

Email: [bandhu@bdmail.net](mailto:bandhu@bdmail.net)

Phone: 880-2-933-9898 Fax: 880-2-831-52

Sexual Health agency for MSM

### **SINGAPORE**

#### **Mohini's Daughters**

Email: [kalamman@hotmail.com](mailto:kalamman@hotmail.com)

Tamil speaking lesbians or lesbians of Tan origin in Singapore

### **USA**

#### **Boston Masala**

Website: <http://www.egroups.com/group/bostonmasala>

Email: Contact Nikhil Aziz at

[shikhandi90@hotmail.com](mailto:shikhandi90@hotmail.com)

Voicemail: (617) 499-9669,

Phone: Shovon at 781-643-6262 or Nikhil 617-661-3878 or Priyanka or Susan at 617-1491

Massachusetts area South Asian Lambda association.

**one**

Box 21354

Jose, CA 95151-1354

A.

ne: 415-789-7322

408-274-2733

il: trikone-web@trikone.org

site: <http://www.trikone.org>**one-Atlanta**

Box 18638, Atlanta, GA 31126-0638.

ne: 404-869-8618

site: <http://www.egroups.com/group/neatlanta>**one Chicago**site: <http://members.tripod.com/nechicago>

il: trikonechicago@email.com

h Asian queer group

**one-Los Angeles**

Rockford Rd, Los Angeles, CA 90039

ne: Atul Gupta or Naveed Merchant at

730 3730,

626 229 9718

site: [www.trikonela.org](http://www.trikonela.org)

il: contact@trikonela.org

**one-Tejas (Texas)**

Box 4589

in, TX 78765

site: [www.geocities.com/Hollywood/3259](http://www.geocities.com/Hollywood/3259)

il: trikonectejas@geocities.com

iversity of Texas at Austin campus

mon of queer and straight Asians

**Khuli Zaban**

Phone: 312-409-2753

For south asian lesbians and bisexual women in Chicago

**SALGA New York**

P.O.Box 1491, Old Chelsea Station

New York, NY 10113

Phone: 212-358-5132

Email: [salganyc@hotmail.com](mailto:salganyc@hotmail.com)

South Asian Lesbian and Gay Association

**SALGA Philadelphia**Email: [salgapha@critpath.org](mailto:salgapha@critpath.org)

Phone: 215 981-3311

For gay, lesbian, bisexual and transgender South AsiansSangat

P.O.Box 268463, Chicago IL 60626

Phone: Viru, Ifiti 773-506-8810, Fax 773-271-4024

Website: <http://members.aol.com/youngal/sangat.html>Email: [sangat@juno.com](mailto:sangat@juno.com), [youngal@aol.com](mailto:youngal@aol.com)

Gay men and lesbians

**Shamakami**

P.O.Box 1006, Jamaica Plain, MA 02130

Email: [Kbhojwani@aol.com](mailto:Kbhojwani@aol.com)

International network/journal for south asians lesbians and bisexual women

**Sadhna Brothers**

C/o Ed Brophy, 4211 B 23rd St. San

Francisco

CA 94114

Phone: 415-647-4388

For gay men interested in Hindu spirituality

**Al-Fatiha**

Email: [aquarius@well.com](mailto:aquarius@well.com)

Phone: 510-663-6390

Queer Muslims and friends in the San Francisco Bay Area. Meets first Sat 10 am.

**Khush D.C**

Email: [khushdc@hotmail.com](mailto:khushdc@hotmail.com)

Phone: Joel at 202-387-5322

LGBT South Asians in the Washington DC area

**CANADA****Khush Khayal (NI)**

P.O. Box 6172, Station A

Toronto, Ontario

Canada M5W 1P6

**Sami Yoni (L)**

P.O.Box 891, Station "P"

Toronto, Ontario

Canada M5S2Z2

**Of Colour (NI)**

c/o Gay Lines Calgary

201-223 12th avenue SW

Calgary, Alberta

Canada T2R0G9

**Saathi (Montreal)**

Phone: Salman (514) 279-2031

South Asian queer group

**AUSTRALIA & NEW ZEALAND****Anbar**

Email: [anbarmelb@mailcity.com](mailto:anbarmelb@mailcity.com)

Phone: 61 3 9481 1424

A group for Lesbian/Bisexual/Gay/Trans people of South Asian descent in Melbourne.

**Saathi**

Email: [uks2000@hotmail.com](mailto:uks2000@hotmail.com)

Phone: "Dyke Didi" at (0404)256 919

Desi/Pardesi Dykes/South Asian Queer Women's support and friendship network Sydney

**Indradhanush**

Email: [dkhuller@hotmail.com](mailto:dkhuller@hotmail.com)

Phone: Deepak (02) 9519-0495, (0412) 050-0948

South Asian queer network

**Hindustani Yaar (NI)**

P.B. 1603, Potts Point

New South Wales 2011

Australia

**Mastana**

c/o CDO

Auckland University Students Association

PB 92019, Taamaki Makau Rau

Auckland 100, Aotearoa

New Zealand

**Asians & Friends (G)**

P.O. Box No. 238

Darlinghurst

New South Wales 2010

Australia

## International Gay & Lesbian Organizations

2008

### ETH / EAST ASIAN

#### an Lesbian Network (L)

Box 7-760,

ci

ran 106

#### men Supporting Women Committee

)

DPRO

3UP Shopping centre

man, Quezon City

lipines

#### IC (Can't Live in the Closet) (LB)

Box 2356

tral Post Office

1102, Phillipines

ail: cnci@phil.gn.apc.org

#### ra Nusantara (LBG)

n Mulyosar Timur 46

ibaya 60112

t Java, Indonesia

#### k Triangle

. Box 11859, 50760

da Lumpur

aysia

nseling, AIDS prevention.

### INTERNATIONAL

#### International Gay & Lesbian Human Rights Commission

1360 Mission Street, Suite 200

San Francisco, California

USA 94103

#### International Lesbian Information Service

Nieuwezijds Voorburgwal 68-70

NL 1012 SE Amsterdam

The Netherlands

Ph: 31(0) 206231192

Fax: 31(0) 206267795

Email: [ilis@antenna.nl](mailto:ilis@antenna.nl)

#### International Lesbian & Gay Association

c/o Administrative office

81, Rue Marche-au-Charbon

B-1000, Brussels

Belgium

#### International Lesbian & Gay Youth Organisation

P.O. Box 542, NL-1000, AM

Amsterdam

The Netherlands

#### Lesbian & Gay Immigration Rights Task Force

P O Box 7741

NEW YORK NY USA

212 802 7264

[info@lgirtf.org](mailto:info@lgirtf.org)

<http://www.lgirtf.org>

## Support Organizations in India

**BOCA**

### **AASRA (Advocacy for Alternatives, Sexuality, Reproductive Health & AIDS) (GB)**

GPO Box 68,

Patna 800 001

Ph. 91 612 27 1598

E-mail: [ptzaasra@sanchamnet.in](mailto:ptzaasra@sanchamnet.in)

Support group working on issues including child sexual abuse, equality for sexuality minorities (including transgender people), and rights of HIV+ people.

### **AIDS Bhedbhav Virodhi Andolan**

Post Box 5308

New Delhi 110 053

Activist collective working on issues of HIV+ people, gay and lesbian rights, blood donors, drug users, law, health and education.

### **Alternative Law Forum**

Phone: 080-286 5757

Email: [alforum@mahiti.org](mailto:alforum@mahiti.org)

Bangalore based group, provides legal assistance to LGBT people.

### **DARE - Documentation. Archive. Research. Education**

Post Box No. 7180

Indraprastha HPO

New Delhi 110002

A Resource Centre for Lesbians, Gays and Bisexuals

### **Forum Against Oppression of Women**

c/o 29, Bhatia Bhavan

Babrekar Marg Off Gokhale Road,

Dadar (West), Mumbai

Feminist activist collective addressing lesbian & gay rights issues.

### **Human Rights Law Network**

Engineer House, 4th Floor

86, Mumbai Samachar Marg

Mumbai 400 023

Tel: 2677385, 2676680

Fax: 2632718

Email: [hrln@vsnl.com](mailto:hrln@vsnl.com)

### **India Centre for Human Rights & Law**

4th Floor, CVOD Jain High School

84 Samuel Street, Dongri

Mumbai 4000 009

Tel: 3716690 / 3759657

Fax: 379 0699

Email: [huright@vsnl.com](mailto:huright@vsnl.com)

### **Lawyer's Collective HIV/AIDS Unit**

for legal support

7/10 Botawalla Building

2nd, Floor, Horniman Circle

Fort, Mumbai 400023

Tel: 2676213/9

Email: [aidslaw@vsnl.com](mailto:aidslaw@vsnl.com)

Website: [www.hri.ca/partners/lc](http://www.hri.ca/partners/lc)

**yer's Collective (Delhi)**

2, Masjid Road

pura, New Delhi - 110 014

91-11-4321102

91-11-4321101

ail: aidsaw1@ndb.vsnl.net.in

site: www.hri.ca/partners/lc

**Foundation (India) Trust**

Box 3910, Andrews Gunj

Delhi 110 049

91 11 685 9113

**ajak Development Society**

A, Block K, New Alipore

Box 13003

utta 700 053

ne: 033 400 455

dealing with masculinity issues and

/ AIDS

**rang**

loor, No.7

lain, 3<sup>rd</sup> Phase

nbur Second Stage

galore 560071

ne: 080-6639414, 080-5309591

ail: sabrang@lycos.com

**ani**

howtalla Road, Suite No.2

utta 700 017

forming Arts troupe addressing issues of

al minorities

**Siddhartha Gautam Trust for Sexual Minorities and Survivors of Sexual Abuse**

85/207 Safdarjung Enclave

New Delhi 110 029

**South India AIDS Action Program (SIAAP)**

65, 1st Street, Kamraj Avenue

Adyar, Chennai - 600020

Email: siaap@satyam.net.in.

Sexual Health Agency for Sex Workers & MSM

**Swabhava**

P. O. Box No. 27069, Wilson Garden,

Bangalore - 560 02

Tel: 080-223 0959.

Email: swabhavatrust@hotmail.com

Website: <http://www.swabhava.org>

*Sabaya Help Line* Tuesday and Friday between

7.00pm and 9.00pm.

NGO offering sexual health services and outreach to sexuality minorities.

**TARSHI (Talk About Reproductive and Sexual Health Issues)**

Tel: 4622221/4624441

Helpline (Monday to Friday) for information, counseling and referrals on sexuality issues

web: [www.tarshi.org](http://www.tarshi.org)

**The Dharani Trust**

*Spaces and Sexualities Division*

Website: [www.crosswinds.net/~dharanitrust](http://www.crosswinds.net/~dharanitrust)

Email: dharanitrust@crosswinds.net

Tel: 080-571 7350

Division conducts research on, & collaborates on providing specific resources & services to sexuality-minority communities.



## **Publications List**

### **The Environmental Activists Handbook – Vol. II**

Ritwick Dutta

2002 / English / 1084 pages

*Suggested Contribution: Rs. 750/-*

### **The Environmental Activists Handbook – Vol. I**

Ritwick Dutta, Sunita Dubey, Colin Gonsalves & Aparna Bhat

2000 / English / 881 pages

*Suggested Contribution: Rs. 750/-*

### **Tribal Affairs in India**

B.D. Sharma

2000 / English / 514 pages

*Suggested Contribution: Rs. 500/-*

### **Child Sexual Abuse & the Law**

Maharukh Adenwala

2000 / English / 266 pages

*Suggested Contribution: Rs. 250/-*

### **Women & the Law - Vol. II**

Christine Chorine, Mihir Desai & Colin Gonsalves

2000 / English / 912 pages

*Suggested Contribution: Rs. 700/-*

### **Women & the Law – Vol. I**

Christine Chorine, Mihir Desai & Colin Gonsalves

1999 / English / 1050 pages

*Suggested Contribution: Rs. 700/-*

## **Posters**

Right to Food Poster - English

Sexual Harassment at Workplace – English / Hindi

Know your Rights – English

Disability Rights – English / Hindi

*All the above posters are for Rs. 25/- each*

# Humjinsi

Humjinsi, an Urdu word meaning "being of the same nature or sharing a similar sexuality".

Humjinsi's mission is to reach out to any woman who is a lesbian, bisexual or questioning her sexuality. The helpline manned by professional women trained in phone counseling helps women to deal with their sexual orientation.

Our Helpline: 022-3704709 Tue, Wed & Fri - 3-6 p.m

Email: [humjinsi@hotmail.com](mailto:humjinsi@hotmail.com)

Women Callers Only