

FOR INDIA'S COUNTRY REVIEW BY CEDAW
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Violence Against Women on the Basis of Sexual Orientation: Issues for the CEDAW Shadow Report

There has been a growing understanding within India's autonomous women's movement about the use of sexuality as a means to control women. Constructions of 'good' and 'bad' women have been, and continue to be, powerful tools of such control. Women's sexuality has also been an essential tool to further nationalist and religious fundamentalist violence. For example, women, in representing the honour of the community to which they belong, are made targets of the kind of large-scale sexualized violence that we have witnessed in Gujarat. And essentialized notions of the 'promiscuous' sexuality of Dalit or tribal women are further used to justify sexual exploitation in a context of ongoing oppression on the basis of caste and class.

In the context of this necessary "use" of women's sexuality to meet the needs of gender, caste, communal and class oppression, any agency or difference demonstrated by women in the expression of their sexuality is viewed as a threat. And the facts of women's sexual agency and difference means that women's sexuality cannot be so easily used and harnessed by forces of oppression. Women attracted to women in such a context are both threats and gravely threatened.

(Note: We use the term "lesbian" here for convenience, referring to women who desire or have sexual relationships with other women. Women who desire women have a range of expressions to refer to their desires/ relationships, while some do not label them at all. The consequences of same-sex desire, however, are similar for identifying and non-identifying women.)

The section on violence against women in particular would need to address the various forms of violence that women face as a result of their sexual orientation and expression. In terms of how violence is defined, there is a need to include the entire spectrum of violations. The CEDAW General Recommendation Number 19 includes within "gender-based violence" all "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty." This is a useful definition of violence as it provides the scope to include the full range of violations faced by lesbian women, from the "everyday," intangible forms to the more overt.

One of the most powerful tools deployed by patriarchy in its project of control through sexuality is that of invisibilizing and silencing. In the case of women whose sexuality falls outside of the heterosexual norm, the silence is almost deafening. The assumption that heterosexuality is the norm is at the root of the silence on same-sex desire, making it difficult for many women to even accept their sexuality themselves. In cases where there is an acknowledgment of same-

sex desire by society, it is condemned as being unnatural and perverted. The consequences for a woman struggling to accept her sexuality are feelings of shame, fear and isolation, making impossible the fulfilment of her fundamental right to a life of dignity. Some of the more overt manifestations of violence against lesbian women within the home include verbal and physical abuse, in-house imprisonment and coercion.

As General Recommendation 19, number 23 notes, "family violence is one of the most insidious forms of violence against women." We have pointed to such examples of family violence above. Another form of family violence against women is the pressure placed on women to marry against their wishes. The vast majority of Indian women do not have a choice with respect to whether or not, when and whom to marry (see Article 16, parts a and b). The pressures faced by women in inter-caste and inter-religious relationships are particularly severe. In the case of a lesbian woman who has no choice but to marry, the sexual relationship with her husband is often nothing short of what we define as marital rape.

The tremendous pressures of living in a society which either chooses to ignore or condemns same-sex desire, combined with the lack of choice in relation to marriage has led many young women to take their own lives. There is as yet insufficient documentation of lesbian suicides. What is clear from the information available is that a majority of the reported cases have involved young women who were facing pressure to marry from their families. These women have tended to belong to small towns and villages, from lower middle or working class backgrounds (challenging the myth that only urban, elite, "westernized" women who are lesbian.)

The CEDAW convention invokes the principle of due diligence under which the state has the responsibility to "prevent violations of rights or to investigate and punish acts of violence" perpetuated by private, non-state actors. The violations faced by lesbian women within the spaces of the home, the family and the community clearly fall within this ambit.

While the 'private' realm of the family is where many of the violations manifest themselves, public institutions have their role to play in the oppression of lesbian women. These institutions, be it the police or mental health professionals, are informed by the same levels of ignorance and bigotry afflicting the family and rest of society. As is the case with other forms of violations that women face, the public and private collude to strengthen their patriarchal control over women. Families send women to mental health professionals to be cured of their homosexuality. The treatment can include strong medication and aversion therapy, which involves the administering of electric shocks. Families use Section 377 of the Indian Penal Code (which criminalizes all forms of 'carnal

intercourse against the order of nature) to threaten daughters if they do not give up their same-sex relationships. The number of cases of the use of Section 377 against women are small. While Section 377 is rarely used in court against women, this fact in no way detracts from the urgency of the demand that consensual sex between same-sex adults needs to be de-criminalized. The very existence of such a law violates an assumption of equality.¹

In the Indian context, other than the efforts made by groups that have come together to raise issues relating to same-sex desire, it is the autonomous women's movement that has supported many efforts to break the silence around lesbian sexuality. This recognition has manifested itself in numerous ways – be it the increasing space given to issues relating to women's sexuality in the national conferences of women's movements in India, the stand taken by autonomous women's groups in Delhi against the exclusion of lesbian women's groups in March 8th celebrations or the resolutions passed at last year's IAWS conference in which there was a clear articulation of a recognition that 'bodily integrity and self-determination are crucial to every woman's ability to lead a life of dignity' and a commitment to 'work towards the sexual rights of all women, including lesbian, bisexual, transgendered women, and other women who love women.' The inclusion of the dimension of sexuality in the agenda of the CEDAW monitoring process would be a significant step forward in the process of seeing sexuality as an integral dimension of women's human rights.

While here we have focused on violence against lesbian women, the CEDAW shadow report would need to address the range of violations faced by women on the basis of their sexual orientation, including unequal access to health care and harassment relating to employment and housing. Addressing the full range of violations faced by women on the basis of sexual orientation would be essential as part of a process of righting a historical wrong – that of turning a blind eye to the violations of an entire section of women. An understanding and articulation of sexuality as a site of construction and control of women, and the interplay between the axes of sexuality, gender, caste, class and religion towards this, is essential for any in-depth and complete documentation of the status of women in this country.

¹ (At present Section 377 is often used in cases of child sexual abuse. The call for the deletion of section 377 has been necessarily part of the larger changes in the rape law that would be in the interest of women and children that autonomous women's groups, child rights groups and LGBT – Lesbian, Gay, Bisexual and Transgender groups have been demanding.)