

Violence Against Women on the Basis of Sexual Orientation: Issues for the Beijing plus ten process

There has been a growing understanding within the Indian 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, including lesbian and bisexual women, in such a context are both threats and gravely threatened.

(Note: We recognize here that women who desire women express their desires/relationships in different ways, and that some do not label them at all. The consequences of same-sex desire, however, are similar for women who identify as lesbian/bisexual and those who do not.)

In this paper we seek to underline the violations faced by women who desire women in the Indian context. The paper is structured along sites of violations – the 'self', the family, social institutions and the State. (Abrupt)

The Self

One of the ways in which the oppression of women works is to prevent women from acknowledging their desires. And when these desires are for another woman, processes of socialization seek to ensure that women do not even entertain the possibility that these desires could be realized or even entertained. The silence can be deafening.

Desires being what they are, it is often not possible to suppress them. While struggling to find space to express one's sexuality, there are the battles with guilt, shame, the feeling that one might be abnormal/perverted. The task of making women succumb to the pressure of marriage becomes easier with such

internalization of misogyny and homophobia. The processes of censorship work in powerful ways.

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.

The family

The family is usually the first site in which a women who desire women, and others who fall outside of the heterosexual norm will be faced with pervasive (even if unspoken) homophobia. Becoming aware of antipathy towards homosexuality and same-sex desiring people, or knowing from an early age that heterosexual marriage is compulsory for them, are some of the primary factors underlying the psychological stress of marginality and invisibility. This psychological stress is compounded by other players in society, most of whom assume and reinforce heterosexuality as being the only acceptable way of being. Fulfillment of the right to well being, calls for transforming wider social mores regarding sexuality in order to create the space in which individuals can define and express their sexuality free from stress and fear.

Most women who may not acknowledge, or be open about their sexuality, live within the parental home in the fear of the reality being discovered. The fear is not unfounded because in repercussions of being 'found out' about are severe. Some of the more overt manifestations of violence against lesbian women within the home include verbal and physical abuse, in-house imprisonment and coercion.

In the survey, the maximum incidence of emotional violence in the family was in acts of denial/silent hostility. The damage caused by silence is personal (internal conflicts, loss of self-esteem, and loss of relationships) and therefore invisible.

There is often no resolution to the violence...

It is rare for a cycle that begins in violence to end in acceptance. None of the narratives indicated this, and only 3 of the 39 women in the survey who experienced abusive reactions indicated that their abuse stopped because their orientation was accepted.

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.

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.

Lesbian Suicides

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. With the exception of a fact finding report by ABVA (AIDS Bhedhav Virodhi Andolan) on the suicides of Mamta and Monalisa in Orissa, the only other source of information available is newspaper reports. Although newspaper reports do not capture the extent of lesbian suicides across the country, the examples that they do provide are important for understanding this deeply disturbing phenomenon.

In the months of October and November, 2002 newspapers reported three lesbian couples who attempted suicide. These included two young women who were found dead in Satyamangalam forest in Tamil Nadu. They had taken poison. In their suicide notes they begged their parents to at least not separate them in death. Two women threw themselves in front of a train in Bhuj, Gujarat. Their suicide notes said that they were ending their lives because their families had arranged their marriages. Two young women consumed poison at a coffee plantation near their homes in Kerala. On this day, one of them was to get engaged. The other was to be married in January. They died on the way to the hospital.

The maximum number of reported lesbian suicides are from Kerala. Between 1995 and 2002, 22 cases of lesbian couples committing suicide together were reported in the Kerala press. Out of the 12 couples about whom some details are available, a majority of the young women were from marginalized communities (Dalit, Adivasi, OBC, and Muslim women) and/or women working in low-income occupations— such as factory work, tailoring, or daily wage agricultural labour. This begs the question – are same-sex desires between women and heterosexism not issues that cross-cut class and other social divisions.

... why there is this overrepresentation of women from marginalized groups in the suicide reports? We know that, in contrast, the women who contact us (sahayatrika) through letters, email or telephone are coming from all backgrounds, urban and rural, well-off and poor. One possibility is that women-loving-women from middle-class backgrounds have more resources and choices available, and may be committing suicide less. We can see the role that class and other differences play in our crisis interventions as well: women with financial assets, education or employable skills have a better chance of leaving the family system and living independently, and women who can speak languages other than Malayalam have more of an option to leave Kerala. But we also need to recognize that middle and upper class communities have more power to invisibilize the suicides of their daughters, and to protect from media scandals, as well. As one doctor we spoke to noted, girls from well-to-do families who attempt suicide are often taken to private hospitals, so outside people don't know.

At the extreme, women wrote of suicide attempts, self-harm, desire for sex-change operation or the desire to change their orientation. A 23 year old wrote to us that, in the past two years, she has understood that she has the "disease" known as homosexuality. She has always felt close to women and while studying, was painfully attached to female friends. After a sexual relationship with a female schoolmate who later rejected her, "Reshme" tried to commit suicide twice but still can't forget her friend. Now she struggles with the knowledge that her father is trying to arrange her marriage, and asks to meet other women like her.

Another young woman from northern Kerala expresses similar feelings of depression and isolation. "Ayesha" says she understood her "nature" from the age of 7; "in the beginning I thought that everyone was like me, but afterwards I believed I was the only person like this." Her parents, having great expectations for their daughter, tried unsuccessfully to "cure" her by sending her to a psychiatrist. She reports that she's spent the past three years barely eating, in the hope that "a hungry stomach might numb my desires." "Today I am a constant pain for everybody," she writes, adding that she lives every moment hating herself.

Another 19 year old writes desparately about her desire to change her sexual orientation, in order to conform to the social norms. "Sheena" says that she understood that she was a lesbian from 10th standard and started collecting information about it. She had always felt physical attraction to girls, and had enjoyed it in her dreams; but in life, she tried to restrict her "character" when such situations arose. She's also observed the sorts of social censure other same-sex couples in her hostel and classroom have received from school authorities and families, which she says has influenced her a lot.

Sheena writes that within five years her marriage will take place, and she knows she cannot get out of it; moreover she fears the disrespect of her friends and the loss of her family reputation if others come to know of her situation. She is physically and mentally suffering due to this tension, complains of sleeplessness, pain, disinterest in food, and loss of all energy. The young woman writes that she "just wants to be an ordinary girl"

and asks if a psychiatrist will be able to change her orientation. "Is there no other remedy for this?" she asks.

Implications of same-sex marriage

For women who have chosen to get married to women, the implications have included social ostracism, being driven underground, harassment by the media, loss of employment, threats by the police and being taken to court.

There is also the issue of women who feel that the only way in which they can have a relationship with another woman, is to undergo sex-reassignment surgery. In the absence of exposure to the possibility of relating to same-sex desire as normal, or to women who are able to lead their lives as lesbian women, they feel that they have no option but to give up their identity as women. (This is not to say that all women who want to undergo sex-reassignment are doing for the above stated reason, but the experience of help-line counselors and support groups, as well as individuals women's accounts suggest that a majority do.)

Spousal abuse after forced marriage

Physical violence by a husband on discovering that his wife is attracted to women has been used in a bid to control her sexuality. Also, having to engage in sexual relations with someone of a sex you cannot feel attracted to, can well be argued as amounting to marital rape. If a lesbian woman wants a divorce, she obviously cannot reveal the reason for wanting to do so, in the fear of facing dire social and familial consequences. In an urban context, support can be found, at best, in a friend or two. Custody of children is greatly complicated by the possibility of her sexual orientation being revealed.

The majority of our letters from women have come from a younger generation, in their early twenties or late teens, who often express an awareness that they would be pressured to marry in upcoming years. These women struggle with issues of depression and isolation. One 24 year old who writes "one of greatest tragedies in life is to be married," says that her parents are forcing her. She is afraid of the male species, and furthermore in love with a girl. Another computer science student writes that she thinks she's homosexual and dislikes sex with men; but all her friends are straight so she can't disclose her desires to them. She finds it "difficult to endure a single day," and can't concentrate on her studies.

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 schools, 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.

SOCIAL INSTITUTIONS

Schools

One common experience seems to be the expulsion of women-loving-women from educational institutions like schools or student hostels, to protect other students from the infection of lesbianism. In a famous case in 1992, several school girls were evicted from a Trivandrum secondary school for forming the "Martina Navratilova" club, a lesbian group; and in 2002 two female students were kicked out of their school for playing a Hindu marriage and exchanging talis. We've also received word of mouth information about student hostels where plans were being made to expel students for their lesbian tendencies. There seems to be no concept that students with different sexual orientations might have rights as individuals and deserve the opportunity to be able to continue their education. Also, in a factfinding we did about a student suicide, we discovered that the student's surviving companion was forced to drop out of university due to the resulting trauma. It seems that Kerala universities and other institutions of learning are a long ways away from providing support to students in such traumatic situations, which might allow them to continue their studies.

health care

We also need to take into account how the stress of keeping important aspects of one's life a secret is an obstacle to accessing proper health care. Taking the example of a lesbian woman who fears she has an STI, even if there is a sensitive health care professional in the community, the sense of embarrassment or shame about her sexuality might still prevent her from communicating to a doctor important details impacting her health. Clearly, simple access to health care is not adequate for the realization of her right to health. In a homophobic social environment, in which secrecy about sexuality is the norm, proper and full attention to health needs are rendered impossible. Ensuring a right to health therefore entails entering into a process of educating health care professionals about issues related to homosexuality.

Mental Health Professionals

As we noted above, facing familial and social pressures regarding one's sexuality can and does lead to an absence of full mental and emotional well-being. Ideally, help would be sought, and received, from mental health professionals. But mental health professionals are not free from the same homophobic biases and assumptions that underlie a same-sex desiring person's lack of well-being. Faced with pervasive homophobia at all levels, realizing one's right to information regarding sexual choices is an unrealistic proposition. Whether we are speaking

of someone wanting to explore sex reassignment surgery or of a lesbian woman convinced by family that her desires are "abnormal," the lack of reliable and accurate information available, and the difficulties of obtaining it, only exacerbate the obstacles to well-being. Part of that information, for example, should be to communicate the legitimacy of same-sex sexualities, as well as the existence of groups and communities who support same-sex desiring people.

Even when a mental health professional *is* able and willing to provide a client with support and information, homophobia can still have serious consequences in a counselor-client relationship. Again, similar to the situation with general health practitioners, a client's impulse to silence around her or his sexuality translates into (perhaps unwillingly) concealing aspects of her or his reality, even from a potentially sensitive therapist. We must be sure to ask, how can a mental health professional help a client to realize well-being in the absence of information about a client's situation?

Experiences on helplines and in support spaces—as well as fact-finding reports on lesbian suicides, for example—show the range of mental health concerns for same-sex desiring people, to include depression, suicidal feelings, and substance abuse. As several participants noted in a seminar of mental health professionals held by the lesbian and bisexual women's group, Sahayatrika (Trivandrum, November 2002), one of the pervasive points of ignorance in professional counseling is the idea that the lack of mental well-being of same-sex desiring people is directly linked to the "sickness" of that orientation itself. But as several mental health professionals noted that day, it is homophobia that needs to be "fixed" in order to realize well-being, and not the orientations themselves.

A disturbing example of how mental health related problems faced by same-sex desiring people can be used against them is provided in a paper by Prof. S.D. Sharma, Emeritus Professor, Institute of Human Behaviour and Allied Sciences, Delhi. Prof. Sharma's listing of problems associated with homosexuality is as follows: 'increased suicidality, increased rate of alcohol or substance abuse, increase rate of HIV, increased problems with sexuality and sexual dysfunction, increased physical health problems and increased abnormal behavior.' His conclusion? That recognizing the rights of homosexual people may result in "considerable harm." Dr. Sharma's discussion was not intended to show how the stress of marginality leads to a denial of the right to health for same-sex desiring people, but rather that homosexuality itself is a social ill, and homosexuals themselves, a liability to society. This assumption of sexual "sickness" thus stands as justification to socially, legally and medically control homosexual people. Dr. Sharma most succinctly challenged the universality of human rights in saying, in the ostensible interests of society, that 'privacy cannot extend to all aspects of human life.'

Dr. Sharma's paper was presented at a workshop organized by Prayas, a well-placed NGO working with street children in Delhi. Dr. Sharma's arguments provided Prayas the perfect context in which to state that homosexuals are 'freaks or perverts', homosexuality is 'assuredly a moral and social depravity' and the decriminalization of homosexual behavior 'is likely to open the floodgates and make children and juveniles still more vulnerable.' They also fear that 'homosexuality attacks the very foundation of human civilization'. (Quotations from the concept note written by Prayas for the discussion 'Legalizing Homosexuality', February 1, 2003.)

Through the preceding example, we have discussed how the mis-association of same-sex sexuality with disease and "depravity" has been used to exclude same-sex desiring people from the ambit of human rights. A further example of this denial of rights is provided by the use of what are known as "reparative therapies" by mental health professionals to "treat" same-sex desiring people. Reparative therapies aim to change the sexual orientation of a patient through the administration of nausea inducing drugs, shock therapy and/or behavioral therapy. The treatment can include strong medication and aversion therapy, which involves the administering of electric shocks. Only 4 of the 22 MHPs interviewed recognized that a homophobic social environment can produce emotional distress. Most MHPs felt that if a client is uncomfortable with their homosexuality, therapy can be a "cure".

The law

Section 377

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 family invoked police assistance to control three women who were interviewed. In each instance, the police attempted to separate the woman from her partner by subjecting them to public ridicule, threats, taunts, and even by fabricating a case under Section 377.

377 is a British colonial law passed in the early 1860s to criminalize all non-procreative sexual behavior (whether homosexual or heterosexual). Under this law, all 'unnatural' acts ranging from consensual same sex sexual activity between adults, or even oral sex between a married heterosexual couple, are offences, though the pervasive homophobia in our society ensures that only the first is ever prosecuted.

Section 377 metes out 10 years of imprisonment for anyone who has 'carnal intercourse against the order of nature' (this could range from sodomy to oral

sex between a man and woman!). In the context of same sex behavior, Section 377 strengthens the police in its widespread practice of extortion and blackmail of men who have sex with men (MSM). The special vulnerability to police harassment faced by MSM profoundly restricts education about, and the practicing of, potentially life-saving safer sex methods. Even in more private spheres, Section 377 is also used by families to pressurize and threaten women in same sex relationships.

It legitimises notions of what is 'natural' and 'normal', it allows for punishment to be meted out to same sex desiring people whose human rights are repeatedly violated. Experience shows that the existence of the law continues to be a something used by friends, families, not to accept. Those who are committed to reaching out to marginalized people and communities through outreach, education and advocacy work have faced the danger of being found legally culpable. Further, the existence of section 377 and its use to prosecute cases of csa has frustrated many child rights activists, who argue that section 377 was meant to be a law on csa and is therefore woefully inadequate in understanding any of the complexities or needs of csa cases. As long as this law remains on the books, they fear, no comprehensive law on csa will be formulated.

The Delhi high court, on 2nd September 2004, dismissed a PIL that had challenged the constitutional validity of Section 377

The Delhi High Court order states that since the law (Section 377) has not been used against the petitioner (Naz Foundation [India] Trust) the petitioner was not aggrieved by the law and therefore, did not have any reason to seek redressal before the court. It relied on a previous judgment of the Delhi High Court (1972) to pronounce its views.

However, we believe that this is an error by the court, a view that is bolstered by several subsequent judgments by the Supreme Court. Courts have held that even the apprehension of violation of one's rights is sufficient to challenge a legal provision. Also, the Delhi High Court has failed to consider that this present case was filed in the public interest and therefore the petitioner does not have to be personally aggrieved.

Moreover, it is important to note that the court has not held any view on the merits of the case. Therefore, no views have been expressed on Section 377 and its constitutional validity or otherwise. The constitutional validity of Section 377 is thus an open issue.

The dismissal of the petition on grounds other than that of merit warrants attention. That the court expects aggrieved people to come forward to file a petition shows a lack of recognition of the realities of same sex desiring people whereby accessing institutions of justice is made virtually impossible given social attitudes and oppressive laws. It was precisely for this reason a PIL was filed.

The very existence of section 377 therefore militates against the state's obligation to respect, protect and fulfill human rights with regard to human dignity, freedom of association, assembly and movement, privacy, non-discrimination, equality and the prohibition against torture—all of which are integral to the realization of rights for all citizens.

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

Impact of section 377 on organizations working for the rights of same sex desiring people

On July 7th 2001, the Uttar Pradesh police raided the offices and arrested members of Bharosa Trust and Naz Foundation international in Lucknow, both NGOs working on HIV AIDs intervention with men who have sex with men.

like other organisations in India doing queer activism, Sahayatrika has worked with the fear of being charged under IPC 377 for promoting "unnatural sexual acts," and the knowledge that in recent years all over India, organisations doing HIV prevention work with sexuality minorities and sex workers' movements have been arrested.

Another issue which has appeared with some frequency in the media is that of two women appearing before the local courts and fighting for the right to live together. Typically the women have been brought before the court on a missing persons charge, and if the pair are both over 18 years of age, the court sets them at liberty to live as they please. Decisions were made to this effect by a Paravur Magistrate in October 2000, and a Trissur Magistrate in November 2002. However, the apparently legal right of two adult women to cohabit may be subverted by popular prejudices and misunderstandings at various levels of society, from the judiciary to police to family and community. Thus in similar case that was reported in newspapers in February 2001, two women from Kilamanoor who had run away together were brought before the local court, but forced to separate against their wishes and sent home with their respective families. Or in a case that we were involved with in July 2003, two women were granted the liberty to live together, but only after the public prosecutor

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.)

unsuccessfully tried to argue that they were having an unnatural relationship under IPC 377. Women trying to live autonomously as a couple may also face institutional and civil violence before ever reaching the courts; thus in the recently publicized case, the police tried to force a 24 year old woman to return to her family in spite of her stated wish to stay with her companion. And in another recent incident we have been involved with, local people and family members of two women who had been cohabitating for several years burned down their place of residence, forcing the women to leave the locality.

A petition was filed in the Delhi High Court regarding Article 377 of Indian Penal Code by the Naz Foundation India Trust. The petition calls for a reading down of the Article 377 – i.e. the change that it proposes is that instead of criminalizing all sexual acts deemed to be ‘unnatural’ (as per the wording of the article) only non-consensual acts should be penalized and private consensual sexual acts between adults be decriminalized. In its response, the erstwhile NDA government argued that ‘‘Indian society, by and large, disapproves of homosexuality, and disapproval was strong enough to justify it being treated as a criminal offence even where the adults indulge in it in private.’’ Further it said that the proposed changes in law, ‘‘can well open the flood gates of delinquent behaviour and be construed as providing unbridled license for the same’’.defended the need for a section 377 to prosecute cases of csa and to safeguard society from ‘moral degradation.’

Such an argument implicitly places the government’s right to judge and enforce a vision of ‘public morality’ over the rights, freedom and dignity of homosexual people. It hypothetically, the majority in this country decided to ban intercaste marriage because it was ‘unnatural’, should the law be then amended to reflect this opinion? The constitution of India and the laws that follow from it, are meant to, first and foremost, guarantee and protect the fundamental rights to freedom, life and liberty to all. On what grounds are these rights being denied to homosexual people? The law must be a space that enshrines and protects the ideals that we stand for, it cannot follow society, but instead it must lead it. Had the law simply to reflect what it perceived to be public opinion, then anti sati and anti dowry laws would never have been passed.

Conclusion

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.

References:

Voicing the Invisible: violence faced by lesbian women in India
