Chapter 6
Queering India: Norms in rights and resistance

The fact that internalizing the principled ideas and norms of the powerful AIDS-regimes animated various vulnerable communities in diverse ways, the mobilization of sexually minority communities for civil and political rights remained one of the most significant landmarks in the history of AIDS epidemic in India. In this Chapter, I will therefore examine how norms led to the collectivization of sexually minority groups and their legal and political battle for claiming civic rights by denouncing a 350-year old statute that criminalizes same-sex sexual relations. Though India’s national AIDS control program only initially targeted self-identified gays, hijras, and Men Having Sex with Men (MSMs) for intervention, the state’s adoption of human rights norms led to a cascading effect of bringing together a whole spectrum of sexual minorities representing diverse sexualities, desires, and performances (queers) under one banner for rights movement. What could have been the course of queer rights movement without the landscape of AIDS though remains speculative, it would be safe to assert that AIDS remained the most important factor catalyzing the mobilization of diverse sexualities and queer communities all around the globe (Altman, 1996, 2001; Patton, 2002).

However, their mobilization did not go uncontested especially in societies that are fast transitioning from tradition to modernity. In a rapidly globalizing India, as traditional sexual mores are replaced by global/Western sexual codes, the process of replacement often accompanies fierce resistances and efforts to restore or “return to culture.” These efforts of “returns” often embody rigorous codes of moral and intellectual behavior producing varieties of fundamentalism, sometimes in violent forms (Said, 1994). Historically, sex and sexuality remained a fiercely contested terrain based on which nations have defined their boundaries, identities, and citizenship (Stychin, 1998; Bacchetta, 1999, 2002). The political struggle of sexual minorities is seen as “an import” from the West degrading India’s national culture, tradition and family-values
and blurring the differences between them (the West) and us (Indian). In this frame, the sexual minorities are therefore, anti-nationals, and “un-Indian.”

This chapter therefore examines two interrelated arguments — how norm socialization led to a cascading effect of sexual identity politics and queer rights movements by redefining traditional sexual identity categories, and performances; and how the act of performance and assertion of one’s identity, in turn, producing varieties of fundamentalism and resistances preventing adoption of human rights norms in policy and program. In the first part, I examine pre- and post-norm socialization scenarios and compare the history of sexual identity politics to assess the role of norms in queer mobilization in India. In the second part, I outline the modes of resistance against the emerging queer politics and efforts towards “returns to culture” by articulating “homophobic” discourses of heterosexist nationalism in India.

6.1. Historical background

In every culture and society, documented evidence throughout history suggests that there are people who attempted or practiced every anatomically possible form of sexual stimulation and gratification (Kishwar, 1998: n.p.). Hardly any of these practices ever became the question of sexual identity politics. The differences in patterns of sexual expression among societies derive from their history, culture, present circumstances and power relations that determine whether their actual patterns of sexual behaviors remain open or hidden. The best person to theorize this was Michael Foucault who noted that “the homosexual” became a “species” circa 1870 in an epoch

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225 The term “queer” encompasses a multiplicity of desires and diverse identities outside the homo/heterosexual matrix. Historically used as a derogatory term to refer to homosexual people in the West, “queer” was later reclaimed by theorists and activists to refer to the multitude of subject positions that question the naturalness, rightness and inevitability of heterosexuality. Queer is preferred over other terms by many activists because it does not confine sexual identities in fixed lesbian, gay, bisexual, transgender categories and allow for much space and ambiguities for diverse sexualities to be included. Thus queer is not a synonym for LGBT as it creates a space for queer heterosexuals and non-queer homosexuals. For many queer theorists, identity is seen as performative, something that we do and act out, and something that we assemble from existing discursive practices rather than something that we individually possess. Judith Butler’s Gender Trouble (1990); and Eve Kosofsky Sedgwick’s Epistemology of the Closet (1990) are two pioneering works on queer theories. In India, the term queer is not yet commonly used, instead LGBT is a popular word that is used to refer to queer people by many organizations and individuals.
of Western society that relied upon an urge to confess sexual practice as a means to uncover a “truth” in human nature (Foucault, 1998: pp. 33-37). Thus not confessing one’s sexual practice and the discursive rubric of taboo and repression prevented access to personal “truth.” Though same-sex sexual relations as a practice has been in existence in transitional societies like India (that is transitioning from tradition to modernity) since time immemorial, sexual identity has never become an agenda of political struggle in any such societies until recently. Whereas same-sex sexual behavior, the act of sodomy (not identities such as gay or lesbian) remained a “criminal offence” under Section 377 of the Indian Penal Code (IPC) until July 2, 2009, when the law was decriminalized by the Delhi High Court, historically, Indian society acknowledges and tolerates certain degree of same-sex sexual behavior between consenting adults in private. The issue became sensitive in a sexually conservative society like India with sexually minority groups challenging the public/private boundary and the authority of the State to make laws that discriminate their rights. While some researchers (see for example, Altman, 1996, 2001; Seabrook, 1999; Tellis, 2003; Woodcock, 2004), argued that with economic globalization in the developing world, a Western, hegemonic notion of lesbian, gay, bisexual, and transgender (henceforth LGBTs) identity has been exported to the traditional societies thereby destroying indigenous sexual cultures and diversities, other scholars (Binnie, 2004) do not consider globalization itself as a significant factor for queer rights mobilization and sexual identity politics. Among other factors, such as evolving democracy, minority

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226 Same-sex sexual behavior and identity are not synonymous. Many individuals in India or other traditional societies may practice same-sex sexual relations but do not identify themselves as “gay” or “lesbian.” For many men in India, having same-sex sexual relations is equal to masti or having fun, who refuse to be identified as “gay.” To avoid these difficulties, the terms MSM (men having sex with men), and later WSW (women having sex with women, but refuse to be identified as “lesbian”) were introduced by HIV/AIDS activists to differentiate between a “global gay” and a man who has sex with other man but do not consider himself a “gay.” See Seabrook (1999); Pradeep (2002), pp. 112-29; Joseph (2005), especially Chapter 5, pp. 130-59 among others.

227 Throughout this Chapter, I have used the term LGBTs to refer to the modern context of emerging sexual identity categories, and not to denote any traditional sexually minority groups/identities that predated its existence. By this conceptualization, hijras, kothis, kinnars, panthis, jogtas, dangas, alis, double-deckers, chhakkas and any other indigenous communities who identify and relate themselves by sexual practices would not be considered as LGBTs, though they are generally referred to as a unitary “LGBT-category” in most HIV/AIDS and sexuality discourses. Considering hijras, kothis, jogtas, alis etc. as LGBTs does not only take their identities away, but also impose a global hegemonic framework on our understanding of diverse sexual cultures and practices in various socio-cultural settings.
rights, political and bureaucratic change, including globalization, AIDS was the most important catalyzer that brought the diverse sexualities together on a common platform.

Central to the AIDS epidemic was the notion of “discourse” around human sexuality through which knowledge, “truth” and “power” were produced in the postmodern, postindustrial, societies of the West (see Chapter 2). Sexual and gender plurality, sexual preference, sexual identity and “coming out” thus became an important indicator of a liberal-democratic/ “developed” society and a sign of desired postmodernity. Traditional societies that could not capture these modern notions of sexual identity categories were considered “inferior,” “sexually repressed” and hence needed an intervention from outside for their (sexual) development and freedom. As Patton (2002) noted, through global AIDS-projects, new identities and “risk groups” consisting the bodies of homosexuals, drug users, sex workers, queers, were conceptualized based primarily on an Eurocentric (read American) understanding of human sexuality.

Thus whereas homosexuality at home (in America) was thought to be a result of the decadence in the upper classes’ “overcivilization,” same sex practices in the colonies were though to be “uncivilized” (p. 103). This “uncivilized” group required to be initiated to the “civilization.” Any resistance to these efforts of liberation/civilization was considered as “homophobia” and all traditional, non-modern societies thus came to be known as “homophobic societies” wherein repressed sexualities required “liberation.” As I have outlined in Chapter 3 that the norms of AIDS-regimes are dictated by powerful donors (such as Bill Gates, Global Fund, USAID, etc.), donor-

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228 Antigay critics, for example, former US Congressman William Dannemeyer complained that homophobia shifts the terms of debate away from the idea “that homosexuals are disturbed people by saying that it is those who disapprove of them who are mentally unbalanced, that they are in the grips of a phobia” (Quoted from Herek 2004, original emphasis added). Gregory Herek thus considerd homophobia as a word bearing negative connotation and there is need to advance a new vocabulary and scholarship in this area. Herek noted that homophobia has served as a model for conceptualizing a variety of negative attitudes based on sexuality and gender, and derivative terms such as lesbophobia, biphobia, transphobia etc. have emerged as labels for hostility toward sexual minorities. Though society has negative attitudes toward homosexuals, minimal data available do not support the claim that most antigay attitudes represent a true phobia. Thus, a more nuanced vocabulary is needed to understand the psychological, social, and cultural processes that underlie the oppression. Herek preferred using words such as sexual stigma, heterosexism, and sexual prejudice instead of homophobia. Since homophobia remains a contested notion, I use it in this paper within an inverted comma. See Herek (2004): pp. 6-24.
preferences and discourses on sexuality and AIDS thus affect actual norms and their socialization in recipient countries. Under the present world economic and social order, such intervention of liberating sexually repressed communities in traditional “homophobic” societies takes place through the Western institutions of international development, aid agencies, donor organizations and international NGOs.  

In this part, I therefore examine what happens when Western donor discourses and norms help the East uncover their “repressed” sexualities primarily through local subjects and NGOs working on sexuality and HIV/AIDS prevention. Following Woodcock (2004), I contend that India has had a diverse, complex and elaborate spectrum of same-sex sexual cultures in which sexual minorities have always performed their identities in a variety of ways, in a variety of social spaces, and without the political rhetoric of the West. The Western project of liberating the “sexually repressed” communities of the East attempts to contain this dynamic and diverse sexual culture by baptizing the traditional sexual minorities to evolve into a globalized, universal, and totalizing LGBT identity category. 

At this point, it is important to make clear what is not up for discussion here. I do not examine complex theoretical strands and feminist critique of “gender,” “power” and “performance” advanced by some of the important queer theorists as Judith Butler (1990) and Eve Kosofsky Sedgwick (1990). I also do not examine theoretical works on queer diasporas, postcolonial queer subjectivities, and queer representation in the media. Finally, I do not intend to do any policy recommendation or future course of action for LGBT rights movement. I deliberately maintain a narrow focus in this part of the chapter to maintain clarity in my articulation. Among various other factors

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229 With reference to international development and aid agencies, Escobar (1984, 1995) noted how “development” and “Third World” was actually a western invention and how this discovery created a field of intervention through which developed countries and their associated institutions exercised “power” over the Third World. The “Eurocentrism” or viewing and defining other cultures purely through a western lens has been a defining characteristic of almost all the international donors (Gordon and Sylvester (2004). 

230 In the Indian context, some important works touching on this theme are Reddy (2005); Bacchetta (1999, 2002); Vanita (2002, 2005); Gopinath (2005); Puar (2002); Lai (1999); Kapur (2006); Desai (2003); and Bhaskaran (2004). 

231 See for example, Fernandez (2002); ABVA (1991); HRW-Asia (2002); NAZ Project-Humsafar Trust (1995); and a host of activist and NGO literature on this subject available through internet search.
contributing to queer mobilization in India, such as capitalist modernization, discourses of universal human rights, new social movements, resistance to dominant power structures, political and bureaucratic change, and evolving democracy and minority rights (Narain, 2004a: pp. 66–68), I only examine two important factors — AIDS norm socialization, and the Western donor and local NGO discourses on sexual rights and HIV/AIDS epidemic in India. While doing so, I duly acknowledge that there are several individual efforts, informal support groups, collectives and “agency” of indigenous queer communities that operate outside the HIV/AIDS/sexuality funding-machine. However, these efforts, though commendable, are not part of my discussion.

6.2. Queerness before AIDS

The phenomena of confessing one’s sexual identity as a means to uncover personal “truth” is relatively recent in India and the “out” LGBTs were not visible in the open until mid-1990s. Though writings of romantic same-sex love stories, Urdu poetries and ghazals could be traced back in the pre-independent India, writers of such novels or stories hardly ever confessed their sexual identity publicly. For example, India’s celebrated poet Firaq Gorakhpuri (1896-1982) or a Bengali literary giant Michael Madhusudhan Dutt (1824-1873) who were known to be gay through their writings, never identified themselves as such. Pandey Bechan Sharma’s Chocolate (1927), and Ismat Chughtai’s Lihaaf (The Quilt, 1942), though based on homoerotic love stories and both these novels drew widespread public attention and protest including lawsuit, the authors never claimed sexuality as their identity.232

In later years, such as in Rajkamal Chaudhury’s Hindi novel Machhli Mari Hui (Dead Fish, 1965), same sex relationship between men and women has been represented as something imported from the West (US) and a symptom of capitalism and neo-

232 On Chocolate controversy see Vanita (2002), pp. 127-148. The women’s magazine Manushi, No. 19, (1983) carried a detailed interview with Ismat Chughtai on the issue covering Lihaaf and the case against her with charges of obscenity by Lahore Government in 1944. Chughtai said, “The obscenity law prohibited the use of four letter words. Lihaaf does not contain any such words. In those days the word lesbianism was not in use. I did not know exactly what it was. The story is a child’s description of something, which she cannot fully understand. I knew no more at that time than the child knew. My lawyer argued that the story could be understood only by those who already had some knowledge. I won the case” (cited in Kishwar, 1998: n.p.).
Kamala Das who wrote an autobiographical account *My Story* (1976), depicting her extramarital affair, her adolescent crush on a female teacher, and a brief lesbian encounter with an elder student, is still not considered as a lesbian writer. The first academic book on Indian homosexuals appeared in 1977 (*The World of Homosexuals*) written by Shakuntala Devi, the mathematics wizkid who was internationally known as the human computer. This book treated homosexuality in a positive light and reviewed socio-cultural and legal situation of homosexuality in India and contrasted that with the then gay liberation movement in USA. More recently Shobha De’s *Strange Obsession* (1993), considered as a soft-porn in the literary circle dealt with a lesbian affair where the heroin was rescued by marriage. Shobha De, the mother of six children and married to a very wealthy Mumbai businessman is not considered a lesbian writer. Even the former Chief Minister of Tamil Nadu, J. Jayalalitha was known to have a long-standing intimate relationship with her friend, Sasikala. Her private (sexual) life did not come on the way of her being deified by her party cadres who were forever falling at her feet. Despite Jayalalitha having grown into one of the most tyrannical and corrupt politicians of India, even her opponents did not make her sexual life the target of attack, either in the media or on other public platforms (Kishwar 1998, n.p.). Jayalalitha is also not known as a lesbian Chief Minister.

Quite a contrary trend is observed in late 1980s-India or more specifically in late 1990s, when authors dealing with the subject of homosexuality “came out” with their sexual identity through their writing. A large part of this “confession” took place in the preface, introduction, or acknowledgement section of their books. This revolution

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233 Vanita and Kidwai (2000) noted that while the Hindi literary circle criticized *Chocolate* and *Lihaaf* as *obscene literature*, Rajkamal Chaudhury’s novel was termed as *revolutionary*. Chaudhury, who was well aware about the emerging sexual identity politics in the West having read Simon De Beauvoir, Kinsey’s writings and *Homosexuals in America* by Ronald Webster, differentiates between a *lesbian identity* and a *lesbian act*. He went on arguing that while western women claim sexual freedom and a *lesbian identity*, Indian women practice *homosexual acts* *without knowing what they are doing*, unconsciously (cited in Vanita and Kidwai, 2000: p. 204).

234 Vanita and Kidwai (2000), p. 204; and Vanita (2002), p. 128 considered this novel as a “homophobic” fiction, though Shobha De can not be termed as a “homophobic” writer. De was the only person to write an article in 1994 criticizing the homophobia and sexism inbuilt into Indian society following a national controversy and protest of parliamentarians when a gay rights activist, Ashok Row Kavi termed Mahatma Gandhi as a “Bastard Bania” (a reference to his caste) in a Star TV talk show *Nikki Tonite*. See Shobha De (1995), *What has Nikki done that others have not done in the past*, *Times of India*, May 12, p. 3.
started with authors and film makers of Indian origin who were born and brought up in the West and had successfully established themselves in western academic and professional world. Most important among them were the works of Suniti Namjoshi (The Conversations of Cow, 1985; Because of India, 1989); Pratibha Parmar (Khush, 1991; Queer Looks, 1993); Rakesh Ratti (A Lotus of Another Color, 1993) from India; and Shyam Selvadurai (Funny Boy, 1994; Cinnamon Gardens, 1999) from Sri Lanka. Summers (1995: p. 667) noted that the relative openness of this small group of writers was perhaps largely due to their diasporic locations. They live in either the United States or Britain, countries that have well-established gay and lesbian communities with a tradition of organized resistance and therefore have greater sexual and artistic freedom and wider publishing opportunities. Further, their physical separation from family and community probably gave them relative privacy and greater freedom from culturally imposed constraints.

Since mid-1980s, hundreds of young gay and lesbian South Asians living in metropolitan centers of Europe and North America have begun to assert their presence by forming support groups, begun partly in response to the racism they encounter in predominantly white queer communities of the West (Summers, 1995). Many of the groups regularly publish newsletters, such as Shakti Khabar (London), Trikone (San Jose), Shamakami (San Francisco), and Khush Khayal (Toronto), which have subscribers in many countries of South Asia. These publications seek to link South Asian gay and lesbian individuals as well as communities scattered around the world and to help forge a global South Asian queer identity.

The “confessional” tradition set by South Asian queer diasporic communities influenced the writers from India. Some of the important recent authors include Giti Thadani (Sakhiyani: Lesbian Desire in Ancient and Modern India, 1996); Ashwini Sukthanker (Facing the Mirror, 1999); Hoshang Merchant (Yaraana: Gay writing from India, 1999); and later Salim Kidwai and Ruth Vanita (Same Sex Love, 2000; and Love’s Rite, 2005). It is therefore evident that before the advent of AIDS, the sexual minorities in India were not politically organized; no large scale movement and struggle for civil rights originated, and there were very few or none self-identified, “out” gays. After the advent of HIV/AIDS and India’s adoption of various regimes and their norms,
the process of “confession” has become more overt — from just writing to political action, protests, demonstrations, rallies, legal challenges and court proceedings to assertion of one’s own identity and demand for a queer-space. The pace at which such a development took place was indeed short — from the beginning of the launching of World Bank assisted National AIDS Control Program in 1993 to the turn of the new millennium.

6.3. Queerness after AIDS: Negotiating norms

Some unorganized initial efforts to bring forth the issues of the sexual minorities in India are traced back in 1990. In 1990, India’s first exclusive gay magazine, Bombay Dost (Bombay Friends) was published by an “out” gay journalist, Ashok Row Kavi, who later in 1994 established his own NGO, Humsafar Trust to work with LGBT groups in Mumbai. Bombay Dost was a small newsletter of gay men initially published intermittently in Hindi until 1994 through which they tried to establish local networks of gay groups and provide information to MSMs. Since late 1994, Bombay Dost became an exclusively English language magazine serving upper class, educated elites within urban India. From a review of the magazine over the last decade, it seems that enough number of Hindi readers was probably not available, and the magazine did not serve the lower class gays due to its prohibitive cost (a single copy in 1994 cost ₹40, which was equivalent to the total earning of a daily wage laborer). Moreover, much attention was paid on featuring the international gay news and issues, rights, norms and legal practices elsewhere that could possibly influence Indian gays in their struggle.

In 1991, a human rights activist group, AIDS Bhedbhav Virodhi Andolan (Anti-AIDS Discrimination Movement, henceforth ABVA) published its first report Less than gay: A citizens’ report on the status of homosexuality in India. NGOs and activist groups as ABVA and Humsafar Trust (mentioned above) are more often aware about international human rights norms, which they tend to promote and advocate when that is violated in their home country. Thus through this report (ABVA, 1991: pp. 92-93), the ABVA advocated for civil rights of LGBTs to include same sex marriage, parenting, decriminalization of homosexuality and repeal of IPC 377, amendments in Special
Marriage Act and AIDS Prevention Bill of 1989, and providing a positive homosexuality education in school. In 1994, ABVA reported that there is incidence of rampant homosexuality in Tihar jail of New Delhi and recommended the jail authorities that condoms be made available to the prison inmates for preventing HIV transmission. The Inspector General of Prisons (the then Magsaysay Award winner, Kiran Bedi) refused to agree with the plea on the ground that distributing condoms would mean that government is promoting homosexuality in prison by violating law of the land, Section 377 IPC. The law, (Section 377, Of unnatural offences) reads: “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 ten years, and shall also be liable to fine.” Hence in 1994, ABVA first challenged the constitutional validity of Section 377 IPC in Delhi High Court. Through its petition, ABVA argued for supplying of condoms to jail inmates and instructing the authorities to refrain from segregating prisoners with same-sex orientation or those suffering from HIV/AIDS. The petition argued that Section 377 should be repealed because it violates the right to privacy and discriminates against people with a particular sexual orientation. On July 2, 2009, the law was decriminalized after 15 odd years of struggle in a historic judgment by the Delhi High Court (I take up this case later in this Chapter).

The emergence of AIDS epidemic in Indian subcontinent and economic globalization of the early 1990s influenced queer mobilization and queer movement in some fundamental ways. From earlier sporadic and individual efforts of early 1990s, the struggle against law and the process of queer mobilization shifted toward a more donor driven and AIDS-induced agenda (though simultaneously, individual and collective level efforts multiplied during the same period). A large part of queer mobilization took place in response to HIV-epidemic by NGOs acting as local agents for adopting international human rights norms from their western counterparts (donors). NGOs that work with sexually minority groups implemented the norms of the AIDS regimes to mobilized wide spectrum of indigenous queer sexualities for their civil and political

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rights (Altman, 2001; Patton, 2002). The net effect was to impose a fixed “LGBT identity” on diverse indigenous queer sexualities that continued to identify themselves as hijras, kothis, or jogtas, and deepening the problem of “homophobia” that adversely affects AIDS prevention efforts in the country.

6.4. Adopting norms

It may be a mystical coincidence that the emergence of AIDS epidemic, India’s structural adjustment program (SAP), and LGBT activism originated almost at the same historical juncture (early 1990s). However, this magical coincidence has largely benefited both the LGBT rights movement, and the success of HIV prevention programs in India. India’s adoption of various AIDS-regimes was facilitated by a political economic crisis in the early 1990s (see Chapter 2 for details). In July 1991, India adopted economic liberalization program. By adopting such a historic measure, India tried to take advantage of economic globalization by promoting free trade and free market regime. On the contrary, giant players in the global economy tried to take advantage of vast unexplored Indian market. Thus with multinational and transnational corporations (such as LG, Samsung, Pepsi, and McDonalds), also came the multinational and transnational NGOs (such as MSF, FXB, Pathfinder International, Engender Health, McArthur Foundation, ICRW, HIVOS, and in recent years Bill Gates, International HIV/AIDS alliance, Packard Foundation and about a hundred others).

In the decade following economic liberalization (1994-2005), India experienced a boom in the number of multinational NGOs. In the same logic of globalization as capital moves from capital-rich to capital-scarce areas in search of higher marginal return, the NGOs moved from the West to the East to gain higher marginal return on health, poverty, illiteracy, malnutrition, and so on. The exact number of how many such NGOs entered India after 1991, is difficult to estimate. However, in real terms, foreign contribution received by registered NGOs under Foreign Contribution Regulation Act (FCRA) increased from $420 million in 1994 to over $2.5 billion in 2006\textsuperscript{236} (see Fig.

\textsuperscript{236} Calculated from FCRA Annual Report (various years)-- 2003-04 and 2008-09, Ministry of Home Affairs. New Delhi: Government of India.
6.1). The list of donor countries over the three consecutive years (since 2006) is headed by the USA followed by UK and Germany; whereas the list of donors are headed by the World Vision International, followed by Gospel for Asia, Inc. (FCRA Annual Report 2008-09, MHA, pp. 20-21).

Fig. 6.1. India: Receipt of foreign contribution by NGOs, 1994-2008 (million US$)
Source: FCRA Annual Report, various years. Ministry of Home Affairs, Govt. of India

“Exporting” norms

In 1991, with the initiative of an Indian HIV/AIDS activist in London, Shivananda Khan, the Naz Project came up to address the sexual health needs of queer South Asian communities in London. Though Khan was initially involved in organizing lesbian and gay support groups for people of South Asian origin between 1988-91, his primary work remained HIV/AIDS and sexual health firstly in the UK and then in South Asian countries of Bangladesh, India, Nepal and Pakistan. In 1994, the NAZ Project (in association with its local organizer, the Humsafar Trust, Mumbai) sponsored the first National Conference for Gay-identified Men and MSMs in South Asia. The objective of this conference was to explore “issues of sexual health, sexuality and sexual behavior amidst emerging gay-identities in South Asia” and provide sexual health prevention services for gay-identified men and MSMs (NAZ Project-Humsafar Trust, 1995: 2). In the same year (1994), Naz Project with mediation of Khan established Naz Foundation
(India) Trust in New Delhi, whose mission along the lines of Naz Project was to implement HIV/AIDS prevention programs among LGBT communities, and act as a technical and financial support providing agency for local NGOs (Personal communication with Shivananda Khan). In 1996, Naz Project evolved into two separate organizations, one continuing the work of Naz Project in London (and was thus named Naz Project London), the other, Naz Foundation International (NFI) with a specific remit to work with MSM population in South Asia.

In 2000, NFI registered its liaison office in Lucknow. Over the years, NFI played a key role in India, Pakistan, Bangladesh and Nepal to develop local MSM community-based organizations to provide HIV prevention, care and support services and develop peer-networks. NFI (2007: pp. 24-25) claims that “[s]ince 1996, NFI has developed or assisted in the development of” some important MSM/LGBT organizations in India such as Bharosa Trust (Lucknow), Gelaya Trust (Bangalore), Manas Bangla (Kolkata), Mirthrudu (Hyderabad), Mitr (New Delhi), Marup Ploi (Imphal), Pratyay Gender Trust (Kolkata), Sahodaran (Chennai), Udaan Trust (Mumbai/Pune) and others. In addition, NFI supports NIPASHA, a national network of MSM HIV-positive groups in Andhra Pradesh (Snehasudha), Goa (Naya Zindagi), Karnataka (Spandana), New Delhi (Love Life Society) and Tamil Nadu (Alaigal). The norms and practices of HIV prevention among sexual minorities in India was thus “imported” from London.

The example of Naz Foundation here is for illustrative purpose only. The basic fact remained that once the multinational NGOs entered India and set up their head offices, their primary purpose was to collaborate with indigenous organizations and act as a financial and technical support-providing agency. The international NGOs carried forward the principled ideas and norms of the AIDS-regimes and donors, which they wanted to implement through the local NGOs by providing them “technical support.” I have noted in Chapter 3, the liberal policies and human rights based approaches of HIV prevention influenced the guidelines and program design of global institutions like UNAIDS and the Global Fund. Guidelines that required universal clause of mobilizing sexual minorities, ensuring their political and civil rights, and adopting a human rights
based approach with drug users, queers, and sex workers — all were globalized through UN policies, Global Fund regimes, and norms of bilateral donors and private foundations. Altman (1999), Patton (2002), and Binnie (2004) pointed to this fact, how through global AIDS programming, certain universal understandings of sexual minorities were conceptualized, and “exported.” In societies, where sexual minorities were not politically organized it created problems, as new meanings around bodies, rights and citizenship were articulated through these struggles.

Thus, the potential availability of a huge amount of international fund catalyzed the mushrooming of NGO-business in every part of the country (See Chapter 4, pp — on detail about the nature of this NGO business). Since early 1990s till the end of 2010, international funding for HIV/AIDS in India at current prices has gone up from 19 million to over a billion dollars for implementing its HIV prevention and care programs alone (See Chapter 2 for details). India’s HIV/AIDS transmission is primarily “heterosexual” with more than 84 percent of total transmission taking place through this route, and largely remains concentrated among sex workers, their clients and injecting drug users.237 Yet prevention services among MSMs constitute an integral part of many NGO programs, especially of those working with sexual minorities. Between 1994-2006, the largest number of gay-lesbian-AIDS-NGOs was ever registered in the history of Indian subcontinent. Though no proper estimate is available, data for NGOs that got registered under Foreign Contribution Regulation Act (FCRA) between 1994-2009 reveals that every successive year about 1,600 NGOs were added on an average with 2004-05 as the single year experiencing the largest number (1,970) of NGOs registered238 (Fig. 6.2). While in 1989 their number was 12,000, by the end of 2009, their number had reached to 38,374239. Not all these NGOs were of “gay-lesbian-AIDS-type.” From the available data, there is no way to estimate how many NGOs registered under FCRA were of the above category and worse, it is more difficult to know how many of them were in response to HIV/AIDS as NGOs adopt a broader

“development” agenda than a single issue when they register. However FCRA Report reveals that the number of organizations “exclusively” working on HIV/AIDS increased from 165 in 2001 to 410 in 2004 (for some strange reason, the Ministry does not report data on this head after 2005). A comprehensive list of LGBT-NGOs established during this period and working on AIDS prevention seems to be unnecessary here. *Humjinsi* (2002) provides a list of such organizations while a more updated list may be available through internet search and in the website of Indian Network for Sexual Minorities, and Indian Men’s Sexual Health Survey.

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240 These were only those organizations registered to receive funds, and that reported after receiving funds. It is possible that NGOs may not be registered under FCRA, and yet get funds as “donations” from NRIs. It is also possible that they do not report their income to the Ministry. As such, only 40 percent of the total registered organizations (32,000) reported accepting some kind of foreign funds in 2005, which increased to 55 percent in 2009 — 20,088 reported out of 36,414 registered (*FCRA Annual Report 2008-09*, p. 38).

**Socializing norms**

In the early 1990s, the three “hot topics” among donors were HIV/AIDS prevention, promoting sexual health and sexual rights, and reproductive health, which continued through 2000s. This was because AIDS discourses largely produced India as a “sexually repressed” and “sexually tabooed” society wherein HIV spreads faster than western societies.\(^{242}\) Hence, Indians must be made comfortable to their own sexuality to discuss sex openly, without discomfort, so that new HIV infection reduces (Dube, 2000: p. 4). The focus of AIDS awareness campaigns was to talk, talk and “talk about it (sex),” *openly, in public*. For example, in 2007, India’s Ministry of Health and Family Welfare in association with USAID and other private sector partnerships entered into a media campaign in which common people were encouraged to say the word “condom” loudly in public,\(^{243}\) so that it removes the stigma and increases its popularity. Since donors preferred topics related to sex and sexuality, thus to be eligible for getting a fund, say from McArthur Foundation or Ford Foundation, one must promote sexual rights and work with marginalized communities such as queers, sex workers, and drug users. The priority of donors first catalyzed new NGOs being registered with exclusive focus on donor agenda, for example, Sangama (a Sanskrit word for *intercourse*), Social Welfare Association for Men (SWAM), Swabhava Trust, Lakshya Trust, Sangram-Vamp, Aasra Charitable Trust, Gelaya, Sahodaran and others.

In other cases, donors helped establish new NGOs that broadly carry forward and implement their mission/agenda. For example, the centrality of *talking*, about sex, was so important in donor-agenda that they helped establish NGOs that exclusively specialize on *talking*. Though examples are numerous, I only cite here examples of two NGOs like TARSHI (*Talking About Reproductive and Sexual Health Issues*), and Sangama that were conceptualized and developed by two-year individual fellowships from McArthur Foundation. The donors professionalized the grassroots AIDS-activism by instituting “best practice awards” for NGOs; awards for journalism, HIV-reporting, 

\(^{242}\) See, for example, UNESCO (2002); Mitra (2004); Lo, et.al. (2005); Solomon, et.al. (2004).

media fellowship for study abroad; fellowship for HIV medicine, treatment and care; and funding for producing documentaries and films, etc. This professiona-lization opened up new possibilities for unemployed educated youth coming out of universities, researchers and doctors to be absorbed in an ever-expanding AIDS-sector. Retired government officials, former Union Health Secretaries got absorbed as Regional Directors of UNAIDS (example, J.V.R. Prasada Rao), or as Executive Directors with international NGOs (example, A.R. Nanda). Unemployed rural youth were absorbed as peer educators, outreach workers or other low-level jobs. HIV-positive individuals got employment and their families received support both in cash and in kind.

So lucrative was the AIDS sector, that there has been a cross-sectional mobility from government jobs to the NGO sector. In India, government job remained one of the important criteria for marriage! I have personally known many individuals who left secured jobs with the Government of India from prominent medical colleges to join the FHI, Population Council, WHO, etc.; or from prominent universities and research institutions to join the international NGOs. It was because, the government jobs were too “frustrating with low salary and little possibility to fly business class and stay in a five star hotel abroad.” Though personal experience as this may not give a complete picture of the NGO sector, yet, in the absence of any data on cross sectional mobility of workers, close interaction with colleagues (as above) might help assessing overall professionalization of grassroots activism. Second, the donor-agenda changed the NGO agenda and most of the earlier established NGOs started working on sexuality and AIDS prevention, albeit their mission was to promote education or working on environment, and forestry. Such a shift is more noticeable for grassroots level NGOs that depend on donor support for their survival. However, large NGOs as Population Foundation of India (PFI), the Principal Recipient of Global Fund Round 4 ($18.2 million), and Round 6 ($7.9 million) grant also reoriented their focus with changing donor priorities. For over 30 years, PFI had been working on family planning and (later) on reproductive and child health without an HIV/AIDS component in it until 2004 (that was nearly after two decades of the epidemic in India). PFI entered into HIV-business only in late 2004 with a big bang as the principal recipient of the Global Fund Round 4 grant.
Once the agenda was clear, then followed the methods of implementation. In almost all cases, program inputs were juxtaposed from different contexts. Toolkits, handbooks, guidelines, strategic plans, resource materials, training manuals, virtually every truths and norms about programs were “imported” from donor’s home country. In the name of providing technical support and capacity building, a gospel of Western truths and norms about development was pumped into NGO programs.244 Thus queer film festivals, gay pride parades, queer chatrooms, queer advertising, queer films, queer networks, queer support groups, queer NGOs, queer education, and queer reporting, queer communication were all instituted as program strategies. My experience from project design workshops of a few NGOs reveal that many NGO professionals considered LGBT pride parades as a good program strategy for reducing stigma. Thus Calcutta (Kolkata) Gay Pride Parade has become a yearly event since 2003, which later spread in Delhi, Mumbai, Chennai, Bangalore, and other cities. In these parades, activists from all over India and abroad participate in street march, extravagant celebration, flashy display of intimate queer relationships, such as hugging and kissing in the similar model as San Francisco gay parade, followed by a weeklong program of film screening, workshops, book reading, and seminars.245

Stychin (1998) noted that parade is a microcosm for struggles around identity, because it is the spectacle for the performance of the national or group imaginary. The articulation of shared identity then give rise to conditions of group membership (p. 33). Thus once AIDS brought the issue of sexual identity in public through protest, rallies, parades, advertising, petitioning, etc., many individual efforts followed suit — some of

244 This is what was found about NGOs two decades ago both from India and Latin America. See Rahnema (1985); Escobar (1995); Dogra and Curucharan (1984). For an excellent account of how international consultants and the “culture of consultancy” imposes a self-professed version of modernity through the NGO programs, see Stirrat (2000).

them are Nigah Media Collective, Prism, Rod Rose, Anjuman and Voices Against 377. Some of the icons of gay emancipation, such as the rainbow flag and pink triangle; and gay culture, such as pink color and leather has also been adopted widely in these parades. NGO-advocacy at the policy level finally culminated in Planning Commission of India’s recommendation to the government for legalizing sex work and same sex sexual relations (Kole, 2006).

An important norm of the NGO-AIDS program was “media advocacy,” a donor-driven concept to diffuse and popularize the ideas of the ruling class to such an extent, that common people perceive and evaluate the social reality in their context (Gramsci, 1971). Hence, popular media was targeted to feature stories, articles, news, proceedings of workshops/ conferences etc. by preferential treatment (such as free media-registration for workshops, seminars) and institutionalizing “media fellowships.” Through media fellowship, journalists were selected to study in a foreign university and trained in health reporting so that when they return, they could serve a specific function for the donors.246 Every forum, workshop, seminar these NGOs organize, becomes a platform for magnifying the problem and increasing the number of LGBTs and HIV-positive individuals in India (Ramachandran, 2003). Issues related to HIV/AIDS became a common feature in the mainstream media since mid-1990s, and more so after 1998. Networks of NGOs working on the same issue were also established within and across cities to build up sites of resistances and horizontal integration of power.

Another important norm of NGO programs was “situation assessment” or “community needs assessment” (CNA) usually carried out before starting the program. For conducting CNA, NGO workers went on searching for HIV positive individuals and other vulnerable groups such as gays, eunuchs, and kothis perceiving risk on their behalf and motivating them to go for an HIV test. Such an exercise had put two interest groups at stake: first, if a threshold population of HIV-positive individuals, gays and eunuchs were not found, outreach workers lose their job! And second, if “need” is not

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246 Gramsci (1971, 1985) called them organic intellectuals that are created by the ruling class through the educational system to serve a specific function for them, and that grow organically with the dominant social groups in power. It is by using this group, the ruling class maintains its hegemony.
reflected from such an exercise, NGOs lose their potential funding. Hence “construction” of an agenda and inflation in reporting was inevitable in which more number of “target population” meant more money for program implementation. Thus India’s HIV/AIDS burden was grossly overestimated (until 2006) due to decades of unscientific reporting, and methods of estimation coupled with a general hype, hysteria and biases among NGO workers and government officials (see Chapter 1, pp. —— for details).

The death of a gay-rights activist Siddhartha Gautam in 1994, a young lawyer who was instrumental in preparing the report Less Than Gay, led to the establishment of a yearly film festival in his memory and organized by an informal group called Friends of Siddhartha.247 Films on LGBT issues and HIV/AIDS were shown in European cultural centers in Delhi attended by NGO workers, gay network members and support groups. Another film festival that was formally instituted in 2003 was *Larzish: International Film Festival of Sexuality and Gender Plurality* and funded by international donors such as Astraea Lesbian Foundation for Justice, HIVOS, Mama Cash and their local partners in India such as LABIA and Humsafar Trust.248 Since Bollywood did not produce any mainstream lesbian and gay film until 2004, most of the films that were shown in these film festivals were foreign films primarily attended by English educated elites. It is unclear what relevance these foreign films had to the issues affecting uneducated, marginalized queer communities vulnerable to HIV/AIDS in India, other than implying that anything could be picked up from different locations and juxtaposed into any social or cultural context as diverse as India and US.

The preceding account demonstrates the role norms played in the mobilization of LGBT communities that is intimately linked to HIV/AIDS regimes and funding. This is not to argue that individual and collective level efforts do not exist. There are many such efforts ongoing in different parts of the country and many of them operate without external funding, and outside the HIV/AIDS programs. Some of these initiatives are

Nigah Media Collective, Prism, Rod Rose, Anjuman and Voices Against 377. It is however important to note that due to the efforts made by LGBT organizations, the HIV-prevalence among MSMs in India remains relatively low. As National AIDS Control Organization’s (NACO) 2005 HIV/AIDS Epidemiological Surveillance and Estimation Report indicates, the prevalence of HIV infection among MSMs has gone down from 12 percent in 2003 to 8.7 percent in 2005 (p. 4).

6.5. State-homophobia and resistance

After examining the role of norms in sexual identity politics, I now turn to examine how the confrontational politics of sexual identity and act of performance have produced varieties of resistance preventing the adoption of human rights norms in policies and programs. In a rapidly globalizing India, as traditional cultures are fast being replaced by global cultural mores, these resistances helped strengthen societal homophobia and versions of heterosexist nationalism. I have noted in Chapter 2 that when the first AIDS case was detected in Chennai in 1986, the government adopted a repressive AIDS Control Policy (1989) of “contact tracing,” forcible testing, and quarantine. Consequently, MSMs, gays, hijras (along with sex workers and drug users) were forcibly tested and jailed for several months in Chennai, Mumbai and Goa. For example, in February 1989, Dominic de Souza, a World Wildlife Fund employee in Goa and a gay on whose life Bollywood film My Brother Nikhil (2005) was made was taken to a local hospital by armed guards. When he tested positive, he was held at a tuberculosis sanatorium under armed guard; no one touched him, talked to him, or even came to deliver the food, which was left at the door (Dube 2000). Through demonstrations and protests, Dominic’s family and friends pushed his plight into public realm. He was released after 64 days in the sanatorium, but WWF immediately sacked him.

After India adopted the World Bank loan to launch its’ National AIDS Control Program, targeted intervention was launched among MSM, gay, and LGBT communities, though in the legal parlance, homosexuality remained criminalized. The government adopted a double standard of morally and legally disapproving despised
sexualities, but simultaneously funding collectives of LGBTs, MSMs, and sex workers for implementing national HIV/AIDS prevention programs.

On July 7, 2001, police in the city of Lucknow, Uttar Pradesh, raided a park that was frequented by MSMs. The raid was based on a complaint filed by a person who alleged that he had been sexually assaulted while providing massage service in the park. Taking this queue, police raided the offices of Bharosa Trust and Naz Foundation International, two NGOs working with MSMs under the charges of running a “gay-club” and a “call-boy racket” in the city with the pretext of imparting HIV/AIDS awareness programs. As Bandopadhyay (2002, pp. 104-08) noted, the Project Manager of Bharosa and the Director of Naz along with four outreach workers were arrested on charges of propagating and indulging in “unnatural sex” under Section 377; Section 292 (sale of obscene books); Section 120b (criminal conspiracy); Section 109 (abetment) of the IPC; Section 60 of the Copyright Act; and Section 3 and 4 of the Indecent Representation of Women Act. The basis for such a charge by police was that during the raid in NGO-premises, they found condoms and lubricants (for aiding in “unnatural sex”); leaflets, books, pamphlets, posters and communication materials (termed as “pornography”); dildo used for condom demonstration (termed as “sex toy”); and video cassettes and photographs (termed as “obscene literature”). The offices of Naz Foundation and Bharosa Trust were sealed. During the raid, police ignored all other reports and documents shown to them to establish that the organizations were working under the purview of NACO-policy. Instead, they went on justifying the arrest and spread misinformation in popular media claiming that they wanted to stop the “vice of homosexuality.” The NACO and Uttar Pradesh State AIDS Control Society chose a policy of silence: where a public statement saying that these two organizations were working under the purview of their policy could have saved the sufferings of the four arrested, they silently watched the four ending up in jail for 47 days (ibid.).

A few days after the Lucknow incident, NGOs working in the field of HIV/AIDS came together in New Delhi to form an alliance of organizations whose primary purpose was to defeat and repeal the very section of IPC 377 under which two NGOs were arrested. Two prominent members of this alliance were Naz Foundation
India Trust and Lawyer’s Collective. The alliance took over the case of challenging the constitutional validity of Section 377 of IPC through public petition (once filed by ABVA in 1994). Towards late 2001, Naz Foundation on behalf of the petitioner filed a Public Interest Litigation (PIL) in the Delhi High Court.249 The foundation argued that the penal code provision not only violates right to life and liberty as outlined in the Indian Constitution but also impedes effective control of AIDS. In its petition, the group asserted that Section 377 is discriminatory because it criminalizes predominantly homosexual acts and imposes traditional gender stereotypes of natural sexual roles for men and women upon sexual minorities. In effect, Section 377 provides moral and legal sanction for the continued social discrimination of sexual minorities (ibid.).

Towards early January 2003, Delhi High Court ordered the Indian government to respond within a month and clarify its stand on the PIL filed by NAZ Foundation seeking an end to the law that makes homosexual relations a crime.250 The government (Ministry of Home Affairs) in its affidavit submitted to the Delhi High Court responded that, “the basic thrust in the argument of pro-gay activists is the perceived violation of fundamental liberty guaranteed in Article 19 of the Constitution of India. However, there is no violation of fundamental liberty as long as any act of homosexuality/lesbianism is practiced between two consenting adults in privacy as in the case of heterosexuality.251” The Affidavit said that in India, Section 377 has been basically used to punish sexual abuse to children and to compliment lacunae in rape laws. It has rarely been used to punish homosexual behavior.252 The provision becomes

249 In the High Court of Delhi, Extraordinary Original Writ Jurisdiction, Civil Writ Petition No. 7455 of 2001, In the matter of Naz Foundation vs. Govt. of NCT of Delhi and five others, New Delhi: Lawyers Collective HIV/AIDS Unit.


252 It is important to note that in the entire history of statute from 1860 to 2002, only 30 cases were reported under Section 377 which came before various High Courts and the Supreme Court since 1830. The large majority of prosecutions were due to non-consensual acts of sodomy, with only 4 cases where consensual acts of sodomy have been brought to court, 3 of which are prior to 1940 (pre-independence India). In addition, 50 percent of total cases consist of sexual assaults committed on minors, whereas only 5 out of 30 being on adults. Such facts indeed pose a question on the practicality and need to have such a law that has rarely been used. See Khanna (2002), p. 58.
operative “only when there was a report to the police for either sodomizing or buggering.” Such an explanation barely justified the government’s stand for retaining Section 377, as lacunae in rape laws could always be filled-in by including child sexual abuse or non-consensual sodomizing as suggested by the Law Commission of India in its 172nd Report.253

Home Ministry affidavit also said that there was no tolerance of such a practice in Indian society. Legal conception of homosexuality is not independent of society, adding that:

“Public tolerance of different activities changes over time and the legal categories get influenced by those changes… Acts, which have been glorified in the past, like dowry, child marriage, domestic violence, widow re-marriage etc. have now been brought under the preview of criminal justice. Therefore, changes in public tolerance of activities lead to campaigns to either criminalize some behavior or decriminalize others… While the Government cannot police morality, in a civil society, criminal law has to express and reflect public morality and concerns about harm to the society at large…” (High Court of Delhi, Counter Affidavit on Behalf of Respondent No. 5, Civil Writ Petition No. 7455 of 2001. New Delhi: Lawyers Collective HIV/AIDS Unit. Emphasis mine).

The government failed to recognize that the PIL was indeed a part of broader “campaign” for decriminalizing consensual adult sexual act. It also failed to provide any reference to the perceived “harms to the society.” Moreover, that State believed that public morality is upheld by penalizing “unnatural” sexual acts “with any man or woman” by imposing Section 377. The interesting point is, how the government could certify public morality on “unnatural sex” when various national level surveys indicated the opposite? For example, successive surveys conducted by India Today-AC Neilson and ORG-MARG in 2003 (covering 2,305 unmarried, married and separated women between 19-50 years across 10 cities); 2004 (covering 2,499 married and unmarried men between 18-55 years across 11 cities); 2005 (covering 2,035 single women between 18-30 across 11 cities); and 2006 (covering 2,559 men of 16-25 years across 11 cities) revealed that 37 percent single young men have had a homosexual experience.

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in 2006 compared to 31 percent in 2004 (India Today, November 13, p. 37); whereas 3-5 percent women reported having lesbian experience in 2005 (India Today, September 26, p. 47).

Similarly in 2005, 28 percent single women have tried anal sex while another 8 percent have tried bisexual sex (India Today, September 26, p. 46). Women reported experiencing anal sex in 2005 (28%) was more than double the 2003-level, which was 13 percent (India Today, September 15, p. 46); whereas men reported having tried heterosexual anal sex is as high as 32 percent and bisexual sex as 11 percent in 2006 (India Today, November 13, p. 60). As per the law, the government will jail these people for “sodomizing” their wives. Though this is not a nationwide survey with representative sampling and there could be sample bias, these figures only go on to tell that the “public morality” government is concerned about has little practical ground as people already practice “unnatural sex” criminalized under Section 377. Instead, it went on arguing, “even assuming that acts done in private with consent do not in themselves constitute a serious evil, there is a risk involved in repealing legislation which has been in force for a long time...” (ibid.). Again, no reference to the perceived “risk” is provided in the argument, other than adamantly arguing that a colonial legacy needs to be maintained since it’s been here with us for a long time!

Yet based on these misleading dispositions by the government, the Delhi High Court in its ruling on September 2, 2004 dismissed the petition on ground that the petitioner has no locus standi, meaning there was no “cause of action” in the petition since no prosecution is pending against the petitioner. The court ruled:

“[J]ust for the sake of testing the legislation, a petition cannot be filed... the court does not express opinion when nobody is really aggrieved by the action which is impugned and does not examine merely academically the impugned action of the legislature or the executive. In view of the above, we feel that an academic challenge to the constitutionality of a legislative provision cannot be entertained. Hence, the petition dismissed” (High Court of Delhi, Naz Foundation vs. Govt. of NCT of Delhi. Civil Writ Petition No. 7455 of 2001. New Delhi: Lawyers Collective HIV/AIDS Unit).
Naz Foundation then filed a Review Petition against the Court order, which was also dismissed in a ruling on November 3, 2004. A Special Leave Petition was then filed with the Supreme Court of India on the limited question of whether the Court could dismiss the petition on ground that it was purely “academic” and there was no “cause of action.” The Supreme Court in its ruling on February 3, 2006 referred the case back to the Delhi High Court contending that the Court had erred in rejecting the original petition that Naz Foundation had no locus standi\textsuperscript{254}. One of the respondents, the Union of India, submitted that the petition against Section 377 was of public importance and merited examination. The Supreme Court also allowed the petitioner to seek an expeditious hearing as the matter has been pending for a considerably long time. Even NACO on behalf of the respondents agreed in its Affidavit dated July 17, 2007 that “enforcement of section 377 can adversely contribute to pushing the infection underground, make risky sexual practices go unnoticed and unaddressed. The fear of harassment by law enforcement agencies leads to sex being hurried, leaving partners without the option to consider or negotiate safer sex practices\textsuperscript{255}.” NACO Chief, Sujatha Rao agreed in public speeches that this law as “hateful, not acceptable, anachronistic, and scrapping the law is fundamental” to the fight against AIDS.\textsuperscript{256}

On July 2, 2009, in a historic 105-page judgment, the Delhi High Court annulled the law that criminalized adult consensual same-sex sexual relations, ending an eight year old legal battle for gay rights. Pronouncing the order in \textit{Naz Foundation (India) Trust v. Government of NCT, Delhi and Others}, Writ Petition (Civil) No. 7455 of 2001, a division bench of Chief Justice A.P Shah and Justice S. Murlidhar said: \textit{“We declare that Section 377 IPC, insofar it criminalizes consensual sexual acts of adults in private,}


\textsuperscript{255} In the High Court of Delhi, \textit{Reply Affidavit on Behalf of Respondents 4 and 5}, Civil Writ Petition No. 7455 of 2001, July 17, 2006. New Delhi: Lawyers Collective HIV/AIDS Unit.

is violative of Articles 21, 14 and 15 of the [Indian] Constitution” (para 132, p. 105).

The judges argued that the Indian government’s stance of legalizing gay sex will:

“[O]pen floodgates of delinquent behavior is not founded upon any substantive material, even from such jurisdictions where sodomy laws have been abolished. Insofar as basis of this argument is concerned,… it is often no more than the expression of revulsion against… unnatural, sinful or disgusting. Moral indignation, howsoever strong, is not a valid basis for overriding individual’s fundamental rights of dignity and privacy. In our scheme of things, constitutional morality must outweigh the argument of public morality, even if it be the majoritarian view” (High Court of Delhi, Naz Foundation vs. Govt. of NCT of Delhi. Civil Writ Petition No. 7455 of 2001: Para 86, p. 72).

Elaborating the reasons behind the order, the Chief Justice ruled that:

If there is one constitutional tenet that can be said to be underlying theme of the Indian Constitution, it is that of inclusiveness. This Court believes that Indian Constitution reflects this value deeply ingrained in Indian society, nurtured over several generations. The inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognising a role in society for everyone. Those perceived by the majority as deviants or different are not on that score excluded or ostracized (ibid. para 130, p. 104, original emphasis added).

The Court further affirmed that:

“The notion of equality in the Indian Constitution flows from the Objective Resolution… Inclusiveness… was the spirit behind the Resolution of which Nehru [India’s first Prime Minister] spoke so passionately. In our view, Indian Constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions of who the LGBTs are. It cannot be forgotten that discrimination is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual (ibid. para 129, 131, p. 103-04, original emphasis added).

With this judgment, India joined the ranks of 128 nations where homosexuality was legal. The judgment was welcomed and celebrated by several quarters including the gay community, human rights activists, NGOs, civil society, India’s Ministry of Health, and international bodies. NACO Chief Sujatha Rao viewed it as a positive judgment that will help the public health system and promote safer sex among MSMs. Former Health Minister Ambumani Ramadoss said: “I welcome the judgment and it’s a way forward. Because it was criminal to be a homosexual till now, these people never came out in the open and infection rates were very high. Now health workers can fearlessly reach out to the MSM community to protect them against HIV.” The Director of Lawyers Collective, Anand Grover, who argued on behalf of the petitioner (Naz Foundation) explained:

“Section 377 can no longer be used to arrest, prosecute or harass homosexuals. Instead, its application will be limited to cases where the victim is a child or an unwilling adult. The petitioner had sought to exclude sex between consenting adults in private from criminality. The Court has affirmed, that fundamental rights of sexual minorities cannot be trumped on vague notions of culture and morality.”

Support also rang in from the international community. Australia’s longest serving and openly gay Judge Michael Kirby remarked:

“Over the years, I have traveled to India several times, discussing matters of sexuality, law and rights with the legal fraternity. I’m very pleased that the Delhi High Court has ruled against prejudice; in favor of liberty, equality and dignity of gay Indian citizens. Section 377 was an alien legacy; responsible for stigma, violence and homophobia in India. I am confident that with this verdict, gay, bisexual and transgender persons will no longer live in fear but stand confident and proud (ibid.).”

Yet, in legal interpretation, the judgment is only applicable in the state of Delhi. Until the Supreme Court upholds the verdict of the Delhi High Court, it will not be

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applicable all over the country. Thus it has left enough scope for the opponents to challenge the verdict in the Supreme Court of India. However, it has also set a legal precedent for other states, so that when one is booked under Section 377, there is a likelihood that the person will be acquitted on grounds of the Delhi High Court judgment. However, that will depend on the judge of state Courts who can refuse to accept the verdict and deliver their own judgment. There is nothing in the judgment that allowed for same-sex marriage. It only decriminalized private, consensual, adult same-sex sexual relations. Hence, per law, LGBTs still cannot legally marry, adopt and share property rights or insurance with their partners.

Scheingold (1974) noted that lawyers and litigation play an important role in altering public policy in favor of relatively disadvantaged groups. As law is real, it is also imagined (something like imagined communities in which law binds citizens to abide by within a “legal” framework). Legal mobilization is defined as the translation of a desire or want into a demand framed as an assertion of rights (McCann 1994, p. 6). Similarly Dupuis (1997) argued that law can be used as a symbolic club or sources of leverage against recalcitrant opponents. Victory in court is not even necessary for political leveraging because the indirect effect of litigation, usually resulting from rights discourse, exerts a significant pressure on the targeted party. Thus for the LGBT community in India, the Delhi High Court judgment set a historic precedent for altering public policy.

6.6. “Returns to culture?”

Following the Delhi High Court judgment, there were widespread protests from the hardliners, Hindu radicals, Islamic, Christian and Sikh religious clerics including other members of the civil society. The reaction of religious leaders was swift and bordered on shock, anger and disbelief, with some threatening mass protests if parliament legalized gay sex. Religious leaders criticized the ruling as an attempt “to impose Western culture on Indian society” and “scrapping such a law was not justified”
as homosexuality went against “the will of god”\textsuperscript{260}. An outraged Shahi Imam Bukhari of the Jama Masjid, one of the most influential Islamic clerics in India said: “This is such a dirty issue. I have decided that I will not even speak about it because if I do, it will be an insult to me and our belief. The government cannot dare to make this legal -- when they do, we will react” (\textit{ibid.}). Even the highest Sikh priest Gyani Gurbachan Singh of the \textit{Akal Takth} said: “We strongly oppose this decision. It is against the laws of the nature. We also appeal to the Sikh community to boycott this verdict…” (\textit{ibid.}). In the same breath, the judgment was denounced by Delhi Arya Samaj, Kerala Catholic Bishops Conference, All India Muslim Personal Law Board, and an NGO- Delhi Commission for Protection of Child Rights.

The strong reaction of religious clerics ensued a snowballing effect. Using arguments ranging from jeopardizing India’s defense and security to making its society dysfunctional, the number of organizations that joined the legal battle to challenge the decision of the Delhi High Court in the Supreme Court of India grew from an initial two to 14. The coalition now comprises of two Christian churches, three Muslim NGOs, two Hindu astrologers, a disciple of yoga guru Baba Ramdev, a child rights NGO in Delhi, and an environmentalist, among others. The arguments that are being brought in are diverse, ranging from \textit{scientific}, like the vagina only has the muscles required for sex, not the anus (Utkal Christian Foundation, Cuttack);\textit{ political}, like expanding constitutional right to include sexual orientation could lead to demands for job reservations (Apostolic Churches Alliance, Kerala);\textit{ nationalistic}, like the judges relied on foreign judgments and decisions and therefore impose a foreign cultural morality on India (Raza Academy, Mumbai); to \textit{sociological}, like the judgment will cause value disorientation and torment children leading to identity crisis, physical and psychological maladaptation in society\textsuperscript{261} (Delhi Commission for Protection of Child Rights, New Delhi). Till the writing of this Chapter, a coalition of 14 petitioners had challenged the

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\textsuperscript{260} Maulana Abdul Khaleeq Madrasi, pro-vice chancellor of \textit{Darul Uloom} – India’s largest Islamic seminary as told to \textit{Indo-Asian News Service}. Retrieved April 6, 2011: \url{http://health.groups.yahoo.com/group/AIDS-INDIA/message/10452}.

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Delhi High Court decision of July 2009 in the Supreme Court of India. A hearing on this matter is still pending.

The fact that such kinds of protests against gay-rights are only as new as the gay rights movement itself, historically Indian society has tolerated gender identity, gender plurality and performance in a variety of social spaces (Kishwar, 1998; Lal 1999). Hijras, kothis, jogtas, alis, and eunuchs were an integral part of the Indian social structure in which they performed important social functions in marriages, births, celebrating auspicious occasions such as buying a new home, or starting a new business (Lal, 1999; Reddy, 2005). The present history of politicized resistance (sometimes in violent forms) goes back to the early 1990s when gay rights movement also got highly politically organized. The act of performance in the same Western model, confrontational politics and coming out fuelled by international funding and donor discourses caused worries among hardliners about losing indigenous culture and identity in the face of a rapid globalization, in which gay rights movement itself was seen as a foreign-import from them, the “decadent West.”

The first instance of organized political resistance against gay rights can be traced back in 1994. The Humsafar Trust immediately after its establishment in early 1994, proposed to hold the First South Asian Gay Conference in Mumbai. Objecting this move, the Vice President of the National Federation of Indian Women, a women’s organization affiliated to the Communist Party of India, through a widely endorsed letter appealed to the Prime Minister to cancel permission to host the Gay Conference (John and Nair, 1999). Describing it as an “invasion of India by decadent western cultures and a direct fall-out of our [India’s] signing the GATT agreement,” it urged the Prime Minister “not to follow Bill Clinton’s immoral approach to sexual perversions in the US” and to immediately cancel the permission to hold the Conference (Kole, 2007). However, the Conference indeed took place with about 70 participants and received positive media attention.

In 1998, Deepa Mehta’s film Fire got nationwide release. The story of Fire revolved around lesbian relationship of two unhappily married women of the same family named after Hindu goddesses Sita and Radha worshipped all over the
subcontinent. On its opening day in India, Right wing Hindu nationalist groups destroyed movie theatres in protest against its lesbian storyline. Theatre halls in many cities such as Mumbai, Surat, Lucknow, New Delhi and Kanpur were stormed, destroyed or burnt. The movie was immediately banned in India and referred to the Censor Board for a review while it was banned for showing in Pakistan. The banning of the film raised a series of controversy in popular media both in India and abroad.

Madhu Kishwar, one of the noted Indian feminists published a comprehensive review of the film *Fire* in women’s magazine *Manushi*. Branding the film as a crude caricature of Indian culture and tradition, Kishwar, in her review argued that:

> “…by crudely pushing the Radha-Sita relationship into the lesbian mould, Ms Mehta has done a big disservice to the cause of women… In most Indian families, even when sexual overtones develop in the relationship of two women situated as are Radha and Sita, no one generally gets upset about it provided people don’t go around flaunting their sexual engagement with each other… Given that in a gender segregated society like ours, women spend a lot more time with each other than they do with men, such close bonding is fairly routine. Indians, by and large, are not horrified at witnessing physical affection between two people of the same gender. Two women friends or female relatives sleeping together in the same bed, hugging, massaging each other’s hair or bodies is seen as a normal occurrence and even encouraged in preference to similar signs of physical affection between men and women. Such physical affection between women is not ordinarily interpreted as a sure sign or proof of lesbian love… However after being exposed to this controversy, women will learn to view all such signs of affection through the prism of homosexuality. As a consequence many will feel inhibited in expressing physical fondness for other women for fear of being permanently branded as lesbians.”

Kishwar’s broader argument in her article was that India offers a favorable social climate for LGBTs by approving of many “homosocial” relations until people

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“come out” and “flaunt” their sexuality in public, which she believed is a derivative of a country’s history, culture and tradition. Kishwar had a broader point — the political rhetoric of confession and “coming out” may not have the same effect and acceptance in transitional societies as India or other South Asian countries. Kishwar’s argument is strikingly similar to what was argued elsewhere in other Asian societies. For example, a press release in 1998 Chinese *Tongzhi* Conference in Hong Kong declared that:

“[T]he lesbi-gay movement in many Western societies is largely built upon the notion of individualism, confrontational politics, and the discourse of individual rights. Certain characteristics of confrontational politics, such as coming out and mass protests and parades, may not be the best way of achieving *tongzhi* liberation in the family centered, community-oriented Chinese societies… In formulating the *tongzhi* movement strategy, we should take specific socio-economic and cultural environment of each society into consideration” (cited in Jolly, 2000: p. 82).

In 2004, when the first Bollywood lesbian film *Girlfriend* was released, Hindu Right activists forcibly stopped screening of the film, hurled stones breaking the glass-panes of the cinema halls, shouting slogans and staging protest demonstrations across various Indian cities including Mumbai, Varanasi, Indore, Bhopal and Nagpur. The ruling Bhartiya Janta Party (BJP) demanded a review of the film by the Censor Board and deletion of scenes which were “objectionable and against Indian culture.” The BJP spokesman, Mukhtar Abbas Naqvi, said, “the film should be reviewed and shots which are objectionable and against Indian culture should be removed. The film does not mirror the realities of Indian society (*ibid.*).” Homosexuality is thus seen by Hindu nationalists as un-Indian, alien, imported from the West and a vice of British colonialism. Based on several internal publications of BJP, RSS and Shiv Sena [Hindu Right political parties], Baccheta (1999) argued that one of the pillars of Hindu nationalism rests on “queerphobia,” in which queer gender and sexualities are constructed outside the Hindu nation (and hence must be exiled!) through a misogynist

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conception of gender and heterosexist notion of sexual normativity (Baccheta, 1999). Naqvi’s statements clearly corroborate Baccheta’s claim.

Stychin (1998) examined this dimension at length focusing on three important themes: national cultures, sexual identities, and discourse of rights. Stychin explored how national identities are constituted in sexual and gendered terms; how groups mobilize around sexual identities and articulate their relationship to the national culture; and how rights discourse informs and constitutes both national and sexual identities. Stychin argued that nation and nation states constitute themselves by constructing the Other who are located outside the national imaginary. Deviant sexual identity is this process of Othering (also Bacchetta, 1999). Thus those who take up identities that have been inscribed this way, seek themselves to be included within this national imaginary by constructing them as “good citizens,” “good soldiers,” “good CIA agents,” that is to say, like all other “normal” citizens. Stychin (1998) noted that one of the historically central relations of domination in the construction of national identity has been gender – gender symbols played an important role in the cultural reproduction of the nation (p. 22). The discourse of citizenship, who is to be included in the nation states is gendered in the way it constructs public and private spheres and active (male) and passive (female) citizenship. Active citizenship includes the duty of defending the nation militarily and defending women and children in the process.

Whereas LGBTs have been politically mobilized in articulating their rights, the conservative family values and discourses of nationhood have frequently been invoked to construct them as the nation’s “other.” State police have repeatedly harassed, arrested and jailed alternate sexualities, whereas in the public sphere, they have been termed as deviant. Many attempts of mobilization have been countered by both Marxists and Hindu Right invoking the arguments of natural family, culture, and tradition (something that Buss and Didi, 2003, examined with respect to Christian Right in global and American contexts). For example, even within the Marxist Left camp, sexual politics is received with strong disapproval. For example, in 1996 when Economic and Political Weekly (February 3) carried an article on Gay Rights in India by Vimal Balasubrahmanyam, there was strong opposition from a Marxist thinker, H. Srikanth.
Terming sexual identity politics as “backward and reactionary” just like Sati, polygamy and caste system, Srikanth went onto argue that gay liberation movement is imported from the western decadent bourgeoisie. He stated that:

“…[T]he justification of homosexuality as a normal behavior is based on the assumption that anything based on mutual consent and not aimed at harming others is acceptable and permissible. This assumption is based on liberal bourgeois notion that a person is free to do anything as long as he does not touch another’s nose. To interpret what is normal for individual is also normal for the society is to fall into the trap of bourgeois individualism, which reduces society to a sum total of separated and unconnected individuals. If coming out of compulsory heterosexuality is possible, I don’t see any reason why an individual can not come out of homosexual relations that too in a system where monogamous relations cease to be discriminatory and oppressive” (Srikanth, 1997: p. 2902).

Srikanth thus argued that heterosexuality is not only natural but also compulsory and coming out of homosexuality is both possible and desirable. He also failed to conceptualize that once individuals come out of homosexuality, what remains is a compulsory heterosexuality thus ignoring the “power” that operates through heteronormativity, and resistance offered by “coming out.” Contrary to Srikanth’s self-proclaimed “official” Marxist position on homosexuality, Brinda Karat, General Secretary of the Communist Party affiliated All India Democratic Women’s Association, wrote in a strongly worded letter to the then Law Minister, Arun Jaitley, that “the government does not have a locus standi to interfere in private sexual activity of two consenting adults, and hence Section 377 of IPC must be scrapped”.

About five years ago in March 2006, India’s first gay Maharajah [king], Manvendra Singh Gohil, the lone heir of the Rajppla royal family, came “out” as a gay. Widespread protests followed in his hometown — disgusted residents of Gohil’s hometown burned his pictures and effigies, and his family issued press notices disowning their only son and telling the media that he was cut-off as heir because of his

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involvement in “activities unacceptable to society.” Gohil’s mother threatened contempt proceedings against anyone who refers to him as her son.267 However, Gohil’s coming out has become beneficial for the gay communities in India, especially after he founded his own NGO, *Lakshya Trust* in 2006 to work with LGBTs and HIV-prevention. Very quickly Gohil came in the international limelight participating twice in the Oprah Winfrey show, BBC reality show, inaugurating EuroPride (Stockholm Pride in 2008), and Sao Paulo Pride, besides making other important public appearances internationally.268 Audiences all over the world saw and heard his voices. He became an ambassador of the gay community continuously championing for rights in India and abroad. The people of Rajpipla (Gohil’s hometown) accepted him after seeing his good work; and he was reunited with his family. Being a prince and a gay of international repute, Gohil has managed to get wide attention from the international donors and his NGO *Lakshya Trust* is well funded.269

The most recent incidence of state homophobia and the effort to return to culture is manifested in the case of Prof. Shrinivas Ramachandra Siras, a Marathi scholar and the Chair of modern Indian languages at the Aligarh Muslim University (AMU), India. Barely less than a year after decriminalizing homosexuality by the Delhi High Court, Siras was suspended for having consensual gay sex at his residence (provided by the university). On February 8, 2010, three persons claiming to be television reporters barged into Siras’s house without his permission and set up hidden cameras to catch him in a blatant violation of his privacy. The university was reported to have paid the TV channel to conduct a “sting operation” to exposé Siras’s homosexuality. On February 9, 2010, Siras was suspended and directed to vacate his official residence. He was also asked not to leave Aligarh until the university completes and inquiry against him. The AMU authority alleged that Siras “has committed act of misconduct in as much as he indulged himself into immoral sexual activity and in contravention of basic

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moral ethics while residing in AMU, Aligarh, thereby undermined pious image of the
teacher community and as a whole tarnished the image of the University.\textsuperscript{270}"

Siras’s suspension provoked outrage from countless citizens, teachers, and
community members across the country and abroad. Siras challenged his suspension
and eviction notice before the Allahabad High Court accusing AMU of violating his
fundamental rights to privacy, dignity and equality and subjecting him to discrimination
because of his homosexuality. On April 1, 2010, after hearing the case, the Allahabad
High Court granted an injunction to the petitioner (Siras), staying the original
suspension, order to vacate premises, and not to leave Aligarh.\textsuperscript{271} The Court ruled that
“the right of privacy is a fundamental right, needs to be protected and that unless the
conduct of a person, even if he is a teacher is going to affect and has substantial nexus
with his employment, it may not be treated as misconduct” (\textit{ibid.}). The Court also held
that Siras is entitled to his professorship and directed the AMU to complete the inquiry
expeditiously, in accordance with law. The Court further restrained the media from
publishing or commenting on the Siras’s original incident of 8 February. However,
within 2 months, on 7 April 2010, he was found dead in mysterious circumstances at his
residence. Until the writing of this Chapter, while the police was conducting an inquiry,
it was apparent that at age 64, Siras went through tremendous stigma, harassment,
mental agony, pain and social seclusion, that may have played some role in his death.

6.7. Implications for programs

The confrontational politics of queer \textit{identity}, and the act of performance in the
Western mould have acted as a double-edged sword. On the one hand it has increased
the state and societal homophobia impeding or slowing down the adoption of human
rights norms in policies and programs; while on the other, it benefited the gay
community in realizing their personal liberty, freedom, desires, and pursuing their


\textsuperscript{271} In the High Court of Allahabad, Civil Misc. Writ Petition No. 17549 of 2010. \textit{Dr. Shrinivas Ramachandra Siras & Others Vs. The Aligarh Muslim University & Others}. Court No. 29. eLegalix Allahabad High Court Judgment Information System. Retrieved April 29, 2011: http://elegalix.allahabadhighcourt.in/elegalix/StartWebSearch.do
sexual orientation, and finding support networks. Rights movement has also resulted in the legal/judicial reinterpretation of constitutional law and rights (such as in Naz Foundation and Siras’ case); adopting those rights in state practices (such as Allahabad High Court decision based on Delhi High Court precedence); and effective prevention of HIV/AIDS programs and adoption of human rights norms in AIDS-related policies and programs.

While growing Americanization of India’s cultural landscape after liberalizing the economy in 1991 may have played an important role in the drive towards “returns to culture,” queer politics, performance, and mobilization of sexually despised communities, added xenophobic impetus in the nationalist agenda of the hardliners. The paranoia about the loss of “Indian” culture adversely affected other programs related to (or dealing with) sex and sexuality. They suffered from pragmatism and were guided by ideologically driven, nationalistic agenda of the conservatives. This impeded the adoption and socialization of human rights norms in policies and programs. For example, strong resistance still exists in activist, academic, and political circles as well as public uproar on discussion about sex in popular media, schools, or public display of sexuality. In 1998, a popular radio program on All India Radio FM targeting adolescents and youth for imparting sexuality education was hotly debated in the Parliament and was banned from broadcasting on the ground that it does not fit the social and cultural context of the nation. In some other instances, HIV/AIDS outreach workers have been “shoed away,” literally, (shoeing is a grave insult in India) by the villagers in Bihar, who thought that they will corrupt the minds of their young kids with the messages of sexuality and AIDS. In 2001, the All India Democratic Women’s Association (the women’s wing of the Communist Party of India) in Kerala, alleging that a foreign-funded NGO was promoting prostitution under the guise of AIDS prevention, forced to close down an HIV prevention project with the sex workers. In 2007, when the Indian government proposed to introduce sex education in schools, a nationwide protest ensued – 14 (almost half) Indian states actively resisted and

272 Times of India, Villagers Shoe Away AIDS Workers, April 24, 2001.
debunked the idea altogether. For example, the Chief Minister of Karnataka state, H.D. Kumaraswamy made it clear that “his Government is totally against imparting sex education… [as his] State is not a foreign country, and is against aping Western culture in the school syllabus,” mentioning that “sex education does not go well with our country’s culture and traditions, and is anti-culture and anti-social.” Similarly in 2007 when Hindustan Latex Limited, one of the India’s giant condom manufacturers launched a throbbing, ribbed condom to increase the popularity of condom use and safer sex, there was a nationwide uproar for banning the condom terming it as a “sex toy” and “against Indian culture” (Srinath 2007; Times of India, June 23, 2007). Instances such as these, have adversely affected adoption and norm socialization in AIDS policies and programs.

On the other hand, the paranoia about losing culture and return to it, has caused a revival of the discourse of national culture and family values in policy making. In most recent (2006) amendment of ITPA (see Chapter 5 for details), the government has proposed to criminalize prostitution banning the purchase of sexual services. The amendment proposes to penalize clients of sex workers to protect the “natural family.” Anyone visiting brothel could get a fine of Rs. 20,000 ($500) and imprisonment up to three months for the first offence; and Rs. 50,000 ($1,200) and six months jail term for repeat offenses. On July 21, 2005, the Maharastra government passed a Bill unanimously imposing a ban on about 1,300 dance bars employing nearly 75,000 women accusing that they are polluting “Indian culture” (Agnes, 2005). Following the prohibition, many women turned to prostitution or committed suicide. When it was pointed out in the Legislative Assembly that girls are committing suicide as there is no job, the House pointed out “it was more dignified to commit suicide than dance in bars,” sending a clear message to the women in the country: “If you happen to be born in a poor family, you are better off dead” (Agnes, 2005, n.p.). When the Bar Girl’s Union filed a petition in the Mumbai High Court, paid advertisements appeared in newspapers: “whom would you choose, Savithri [an icon of ideal Indian womanhood],

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or Sweety [the *loose* women who dance in bars²⁷⁵]?” And even after two decades of aids-activism, in 2007, a District Session Judge of Rajasthan (Jaipur) issued an arrest warrant against Richard Gere (the Hollywood actor who donates money to India for HIV prevention through his Gere Foundation) for publicly kissing Shilpa Shetty (a Bollywood actress) during an AIDS awareness campaign in New Delhi. The judge in her ruling mentioned that “public kissing is obscene and against Indian law.”²⁷⁶ In these instances, bodies of women, and feminine gender have always been used as a site to articulate the discourses of nationhood, national culture and national identity primarily through a misogynist conception.

Secondly: With respect to the “liberation” of “repressed” sexualities, many LGBT-rights activists (including academics) have contended that forcible marriage and strong family bond as institutions have come on the way of people’s “coming out” process in India. The familial pressure for marriage in India and strong social disapproval do not allow individuals to “come out” as gays/lesbians.²⁷⁷ Hence, they lead a “double life” as bisexual — being married to a woman, but maintaining a parallel gay relationship (*ibid.*). Such an explanation seems to be oversimplistic, as it does not consider all the social and political implications of “coming out” in a transitional “homophobic” society. While “coming out” may be a politically empowering option, it remains unclear how the “homophobia” inherent in the family could be dealt with, or whether it’s a desirable option to take the “queer” out of the family. Much less it captures, if people are living as bisexuals within marriage, then whether promoting divorce would be a desirable program strategy for the donors to let people develop their

²⁷⁵ The ban specifically targeted the poor and vulnerable women leaving the three of more “star” category of hotels and clubs out of the purview of this law, where more titillating cabaret dance (sometimes vulgar) remained legal. Can the State impose arbitrary and varying standards of vulgarity, indecency and obscenity for different sections of society or classes of people? And yet, in the midst of all these controversies, the Deputy Chief Minister of Maharashtra went to attend a dance show titled “temptation” by Isha Kopikar, the hot selling “item girl” [a woman who is introduced in the film for showing sexually provocative and titillating gestures through dance] of Bollywood. If an “item number” of a Hindi film can be screened in public theatres, then how can a mere imitation of the same by bar dancers be termed as “vulgar?” For an excellent discussion on this, see Agnes, 2005.


²⁷⁷ See for example, Asthana and Oostvogels (2001); Vanita and Kidwai (2000); Thadani (1996); Narain (2004a); and Seabrook (1999).
sexual identity independent of the familial control. As we have seen in previous examples, that “confession,” in the same political rhetoric of the West, may create more deepening social and political problem of homophobia, cultural nationalism, and fascist resistance in Eastern societies, including loss of psycho-social and economic support structures for “out” gays. However, one may always argue that “coming out” in a globalizing world where queerness is part of the commodity culture (Cruz-Malave & Manalansan, 2002), may actually enhance the economic opportunities for an individual, especially if one happens to belong to the privileged lot of urban, educated elite.

Thirdly: As observed in other contexts such as Eastern Europe, China and Philippine (Altman, 1996; Jolly, 2000; Woodcock, 2004), donor-induced LGBT identity politics may mean globalization of categories. As Woodcock (2004) pointed out that “freeing” the pre-existing categories of sexual identities from repressed social positions, could be read as a “movement of containment.” Through defining traditional sexual practices as politicized LGBT identities, “the existing multiplicities of sexual practice and ways of performing them in society are formalized in new western categories with their specific place in an international political trajectory. In order to form these new communal identities, individuals are urged to participate in the self-perpetuating western culture of confessing” (Woodcock, 2004, n.p.), that creates a new set of organizing sexual identities damaging the existing, more subtle ones. In India, barring a few NGOs, existing multiplicities of queer sexualities such as hijras, kothis, kinnars, panthis, jogtas, dangas, alis, double-deckers, chhakkas, and dhuranis are commonly clubbed together by HIV/AIDS activists as LGBTs thereby redefining existing sexual identities/practices in a predefined Western mould of “performance.”

Fourthly: The landmark decision of the Delhi High Court on Section 377 of the Indian Penal Code should now provoke at least one more challenge in the Indian courts: Can a correct interpretation of the Indian Constitution, Articles 14, 15, 19 and 21 read

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278 Part 3, Fundamental Rights — Article 14, Equality before law; Article 15, Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; Article 19, Protection of certain rights regarding freedom of speech, etc.; and Article 21, Protection of life and personal liberty (Ministry of Law and Justice, The Constitution of India, Retrieved May 3, 2011: http://indiacode.nic.in/coiweb/welcome.html. Freedom, dignity, liberty, public vs. constitutional
together in the spirit of “Constitutional morality” make the provision of public health services judicially redressable? Since the judgment invoked the principles of Constitutional morality (as opposed to public morality), it is now relevant for the activists to ask before the court why should there be shoddy provision of basic health services in the public sector that kills thousands of people (mostly women and children) everyday from vaccine preventable diseases, malnutrition, pregnancy and childbirths? Isn’t it the Constitutional morality of the Indian State to protect the life of its individuals and ensure their freedom and dignity within its territory?

And finally, with specific reference to HIV/AIDS, donor emphasis on “sexual” (hetero/homo) routes of transmission ignored other important non-sexual routes. In an article, Gisselquist and Correa (2006) argued that “overestimating the contribution of commercial sex to India’s HIV epidemic misleads prevention programs to ignore other risks, and promotes the stigmatizing assumption that HIV infection is a sign of immoral behavior” (p. 736). With best and highest plausible evidence-based estimate, they argue that female sex workers and their clients account for 2-15 percent of total HIV infection among adults, far less than 44-68 percent reported by model-based estimates. According to them, HIV prevention focusing on “high risk groups” (consisting of sex workers, clients, MSMs and drug users) has dominated India’s programs for over two decades whereas non-sterile medical injections and other risky blood exposures in health care and cosmetic services account for an important proportion of HIV infection. The moral of the story is: sexual route (homo or hetero) has received undue attention and emphasis from donors than an important route of infection, that is not “sexy” to talk about and that does not bring much money into HIV/AIDS funding-machine. The present LGBT activism must be viewed within this context. NGOs and health activists have already expressed concerns that donors are distorting India’s health priorities by excessively focusing on HIV/AIDS (Chinai 2003; Shiffman, 2008, 2009; Sridhar & Gomez, 2010).

morality, etc., were some of the provisions invoked in the Delhi High Court judgment to outlaw Section 377, IPC, ruling that it violated these basic provisions set in the Indian Constitution.
**Summing up**

Human sexuality remained an integral (and substantial) part in the production of HIV/AIDS discourse and knowledge, primarily because more than 84 percent of total HIV infection reportedly took place through the *sexual* route (UNAIDS, 2002; NACO, 2005). Thus activism in the field of one (say, sexuality) generally supplements and strengthens the other. Experts argued, in such a society where sexuality is tabooed, HIV/AIDS spreads much faster than the Western societies (Dube, 2000; UNESCO, 2002; Barnet and Whiteside, 2002). Since sexuality is not talked and discussed about, people have little information about healthy and safer sexual practices, hold many misconceptions, and perpetuates a gender-power relation that disempowers women (and queer sexualities) in sexual relations and make them more vulnerable to HIV infection. Hence, Indians must be *made* comfortable to their sexuality (to reduce HIV infection) so that they can enjoy a Western standard of sexual pleasure, sexual rights and happiness.\(^{279}\) But since the society at large is not ready yet for a drastic transformation in sexual culture as is often reflected in various resistances, it required that sexuality itself needed to be discursively constructed, so that sexual minorities can enjoy their rights and HIV prevention efforts become successful. In turn, this discursive construction widened the field of HIV/AIDS intervention by bringing out more and more hidden sexually minority groups thereby establishing a recurring and cyclic relationship reinforcing each other.

It is noted that some of these discourses were picked up from different contexts and juxtaposed in Indian society through global programming (Also, Patton, 2002). For example, organizing queer film festivals, gay pride parades, gay conferences, sex workers networks, sex workers conference, sex workers march, legal challenge, court proceedings, lobbying with government to legalize prostitution, etc. were all agendas that post-globalized India increasingly experienced. Cruz-Malave & Manalansan (2002) argued that there has been a global visibility of queer sexualities in the spheres of

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advertising, film, performing arts, the internet and the discourses of human rights that generated multiple opportunities for queer political intervention through a globalized coalition politics. They argued that the “private” sphere is now more commodified and the body is more targeted as a site for consumption. Globalization thus has a tendency to reduce social and political significance of queer sexualities and transform them to a commodity exchangeable in the marketplace. For example, the commoditization of queer sexualities for film production in Deepa Mehta’s *Fire* 1998; Karan Rajdan’s *Girlfriend* 2004; and Onir’s *My Brother Nikhil* 2005. Whereas globalization tends to liberate and promote local sexual differences, the emergence, visibility and legitimacy of these differences depend on embracing an identity, “gay” in order to attain political consciousness, subjectivity and global modernity.

In Deepa Mehta’s film *Fire* (1998), Sita, while convincing her lesbian-lover (sister-in-law) to break away from her marital relationship and run away with her tells the following dialogue: “[T]here is no word in our language that can describe what we are or how we feel for each other…” Similarly, Ashok Row Kavi, India’s first “out” gay man, explains that India doesn’t make it easy for gay men. India doesn’t even have a translation for the term “gay.” “Gay is a Western word” said Kavi. So what do you call it? “We don’t. There’s no word here [in India]” (ibid.). It is indeed surprising that India, a country with 18 constitutionally recognized languages and nearly 2000 dialects, has no equivalent word for the “lesbian.” There could be at least two possible interpretations of the above dialogues: first, that same sex love and sexual relationships, though exist in a transitional society like India, her language, culture and tradition is incapable of expressing the modern form of sexual identity categories; and second, Sita and Kavi also implies that in the West, we would be called as “gay” or “lesbians” but the sheer absence of its equivalent word in India does not recognize the existence of gay/lesbian relationships and their rights.

John Skrentny’s (2002) formulation may be important to explain how the State comes to view certain minority groups and their rights. Though based on official

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documents and interviews with key political players in the USA, Skrentny discovered that the way political elites come to define various groups and their demands, matters enormously for whether a group is deemed deserving of minority rights. One of the most prominent attributes is whether the issue is perceived as a matter of “national security?” India has about 10 million gays, and yet, they do not deserve any minority rights because they do not pose any danger to its national security. However, a similar number of religious minorities, say 10 million Sikhs, or 10 million Parsis absolutely enjoys minority rights guaranteed by its Constitution. In this frame, religion is a greater “national security” issue than say, sexuality.

India is a highly gender segregated society. Free mixing of sexes is not allowed especially after one attains puberty. In many parts of rural north India, girls are withdrawn from school with the fear of mixing with opposite sex (Dreze and Sen, 1995). In such a society, a person spends much time with members of the same sex and having friendship or emotional attachment in such relationship is quite common. Even when sexual relationship develops within such friendships, nobody goes on displaying their sexual engagement publicly or prefer “coming out” of the family to assert their individual liberty and rights. In this social context, same sex friendship and spaces are generally more approved of by parents than opposite sex friendship and mixed gender space (Vanita, 2000: p. 198; Kishwar, 1998: p. 11). Thus many homosocial behavior such as sharing a bed, body messaging, hugging or kissing between same sex members is not interpreted as homosexual relationships.

Thus, sexual diversity, gender plurality, sexual rights and freedom must be preserved and upheld in diverse societies in their own way. This ought to be the spirit of a “rights based approach” — leaving indigenous queer sexualities perform their own way as they have done so since generations. One should not interpret this as equal to maintaining a hegemonic social structure in which sexual minorities are oppressed. Social justice is social justice and the pursuit of it must be the goal of a democratic nation-state. On the other hand, it is erroneous to argue that societies where sexual minorities are not politically organized as LGBTs, necessarily repress queer cultures. India has had a beautiful system and diverse ways of performing and integrating queer
sexualities within its social structure. Donor-induced mobilization, and baptism of traditional sexual minorities into a globalized LGBT identity category blurs sexual diversities, sexual cultures, and contain the strategic dynamism with which indigenous queer sexualities perform, relate and live in societies. LGBT identities may emerge in Eastern societies in different ways and without the political rhetoric of the West that recognizes the interrelationships of social, political, economic and cultural structures far from a linear progressive model toward Western-style queerness.

Whereas queer mobilization has created new meanings around citizenship and rights, it has simultaneously fuelled a homophobic, misogynist, and totalizing concept of culture and nation based on the idea of “natural family.” Second, whereas globalization and HIV epidemic has promoted lot of alternate sexualities come out at various local contexts to assert their identities and articulate their rights, they have simultaneously adopted a global gay identity. The marking of diverse sexualities and bodies under two categories as either gay or MSM for AIDS-programming has blurred the differences across diverse sexual spectrum. The term “queer” with its fundamental spirit of inclusiveness (the prime idea with which it was introduced by theorists and activists), has lost its significance, as it attempted to blur all the differences across diverse indigenous sexual spectrum within its own hegemonic fold.

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