

Full Length Research Paper

Conservative Hindu reactions to non-heterosexual rights in India

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India, often celebrated as the largest democracy in the world and, despite observable 'modernist' trends and secularizing trajectories, remains a deeply religious culture displaying entrenched attitudes towards traditional family life and sexual conduct. In 2009, homosexuality was legalised by the High Court of the nation's capital, Delhi. Although the repeal of the law prohibiting homosexual behaviour, instigated in 1860 during the British colonial period, only applied throughout the territory of the nation's capital city, the reversal compelled India's government to either appeal the verdict to the Supreme Court or nullify it. The ruling landmark brought to a head conflicting views of the legality and legitimacy of non-heterosexuality and, more broadly, symbolized the ongoing contestation between 'progressive' and 'traditionalist' elements in Indian society. This paper explores conservative Hindu responses in particular to non-heterosexual rights. It attempt to show that the current reaction by such constituencies displays inherently problematic posturing and even contradictions which are expressed through both religious and political discourse.

Key words: AIDS/HIV, Hinduism, India, lesbian, gay, bi-sexual and transgendered (LGBT) sexualities, modernization, nationalism.

INTRODUCTION

The growth of non-heterosexual rights in Western liberal democracies has been extensive and speedy over the last decade or so. While legislation regarding the legitimacy of homosexuality in particular has been enshrined in civil law for some time, many of the recent enactments are related to outlawing discrimination against citizens on the grounds of their sexuality. Many such countries now permit civil unions between same sex couples and make provisions for their adoption of children and parental rights. Extension of these rights however has not always proved to enjoy a straightforward passage. Particular issues have found significant political opposition in some Western nations including the lowering of the age of consent (Waites, 1997), the desirability or otherwise of civil unions (Graupner, 2005; Madhill, 2008); thorny debates related to adoption and fostering (Rayside and Bowler, 1988); privacy in sexual relationships (Hickey, 2002), and the teaching of non-heterosexual orientations in schools (Rienzo et al., 2006).

While non-heterosexual rights are increasingly supported by many general publics of Western nations

(Tucker and Potocky-Tripodi, 2006), they seemingly enjoy less support than gender and ethnicity rights (Heinze, 2009) and by older age cohorts compared to younger cohorts (Anderson, 2008). Evidence suggests that opposition to these rights are also more pronounced among right-wing and conservative-minded individuals, including those of a religious faith objecting on moral grounds (Hancock, 2008). Indeed, evidence suggests that those living in countries where more individuals say religion is important in their everyday lives are inclined to indicate resistance than those where fewer say religion is important (Pelham, 2009). There is nonetheless no straightforward correlation between religious conviction and opposition to non-heterosexuals rights and the pertinent issues profoundly divide many religious communities (Crockett and Voas, 2003). Even so, while religion is often seen as an important predictor of attitudes, especially regarding homosexuality, these attitudes are sometimes ambiguous (Hodge, 2005).

The proliferation of non-heterosexual rights has impacted numerous faith communities across the world

as they are pulled into the political arena. Typically many display a profound objection to the legalisation of the homosexual act and the rights of non-heterosexuals, claiming the right to freedom of conscience and speech in order to oppose them. Debates within these communities have often led to contestation regarding the nature of non-heterosexuality: whether it is a 'natural' disposition, a lifestyle choice or even pathology. To some extent contestations have tended to become polarised along the lines of traditionalist-modernist conflicts and have partially been generated by lesbian, gay, bi-sexual and transgendered (LGBT) caucuses within religious communities that, to a great extent, remain marginalized and sometimes persecuted minorities. The case of Hindu India exemplifies such developments, although the very nature of religion and its location in the nation's culture complicates many of the key debates and issues.

METHODOLOGY

Cross-national evidence suggests that the role religion has in explaining diverse views regarding non-heterosexuality may depend on several factors including a wider cultural nexus (Admczyk, 2009). India is thus selected for discussion in this paper because the challenge of LGBT rights has not only been highly publicised but provides a primary example of how debates in the country are infused with historical divergent views of non-heterosexuality which have proved to be extraordinarily complex and often ambiguous. Moreover, India provides a foremost instance of how the pertinent issues have become increasingly polarised and caught up in cultural divisions related to the desired future of India, its 'modernization' - including the desirability of adopting Westernising influences as part of that modernization - in the largest democracy in the world. Indeed, it is clear that key controversies related to non-heterosexuality both amplify the core debates and have themselves become a rallying point for opposing liberal and conservative forces in the country in support or opposition to non-heterosexual rights advanced by India's political parties and social movements in the form of 'cause' or pressure groups.

As an exemplary case India displays the close relationship between conservative cultural forces and the power of religion in contesting perceived objectionable elements of modernization. Debates surrounding LGBT sexualities and changes in legislation would seem to be integral to the 'modernization' of India and accompanying new cultural directions that more than hint at processes of Westernization. Opposing forces of tradition have rallied around Hindu motives and contemporary Hinduism, in parallel with many of the other so-called 'world religions', is discovering non-heterosexuality, particularly homosexuality, is a troublesome and sometimes acrimonious topic. However, historical developments within the faith have proved to be more multifarious than other major faiths, leading to greater contestations of what its view of non-heterosexuality actually is and whether its legitimacy should be framed in terms of civil rights.

Besides engaging with the relevant academic literature, this paper will utilise both historical and sociological methods to overview and analyse the case of India. A measure of historical method will be adopted in tracing recent developments around the key debates, exploring the significant reasons as to why non-heterosexual rights have become such a contested domain. Historical methodology is also extended to take a wider sweep of the cultural link between Hinduism and non-heterosexuality and how some of its core beliefs related to the subject have become

mobilized around the core contentions. In terms of a sociological methodology the paper will deconstruct literature and web-site sources advanced by conservative Hindu constituencies in advancing their arguments against the extension of non-heterosexual rights, thus contextualizing the major debates. By using both historical and sociological methodology this paper will problematize the inherently posturing and even contradictions which are expressed through both religious and political discourse

FINDINGS

Reform of Section 337

The law prohibiting homosexual behaviour in India was instigated in 1860 during the British colonial period. Section 377 of the Indian Penal Code, commonly known as the 'Anti-sodomy Law'¹, deemed illegal same-sexual behaviour irrespective of age and consent. The Law Commission of India had long favoured the retention of the provision. Nevertheless, in its 172nd report, issued in 2000, the LCI recommended repeal. On July 2nd, 2009, the High Court of Delhi issued the controversial ruling that homosexual intercourse between consenting adult males was no longer a criminal offence hitherto punishable by up to a 10-year prison sentence. Although the repeal only applied throughout the territory of the nation's capital city there were important implications. Above all, it forced India's government to either appeal the decision to the Supreme Court, or nullify the legislation which seemed unlikely given the underlying pressures discussed. To some extent, however, the law had already become redundant. While convictions were historically relatively rare², there were no prosecutions whatsoever for homosexual intercourse in the two decades prior to 2009.

The ruling in many ways brought to a climax contending views of the legitimacy and legality of non-heterosexuality and, and as already observed, apparently symbolized the ongoing contestation between 'progressive' and 'traditionalist' constituencies in India including conservative religious elements. To a great extent the engagement with the subject in India and Indian diasporic communities has arisen from the extension of non-heterosexual rights globally and the confirmation of those rights in various international conventions. Their affirmation is largely derived from the Western liberal democratic influence which, in turn, is driven by underlying state policies of social inclusion under the sway of the petitioning of vociferous lesbian, gay, bi-sexual and transgender (LGBT) lobbies.

In India there is a shifting cultural dimension to be observed and probably some merit to the view that the

¹The ambit of Section 377 even covered consensual heterosexual acts such as fellatio and digital penetration. The law initially carried the potential for a life sentence. While the law did not distinguish sodomy between males, and between male and female, most of the recorded cases targeted more males than females.

²Between 1860 and 1992, only 30 cases were officially registered in India's provincial High Courts and Supreme Court.

LGBT rights 'revolution' has largely been restricted to middle-class Indian city dwellers and has little influence on less affluent rural communities. On June 30th, 2008, the Indian labour minister Oscar Fernandes supported entreaties for decriminalisation of consensual gay sex, while the Prime Minister Manmohan Singh called for greater tolerance towards homosexuals.³ This appeal followed immediately after gay pride parades in Delhi, Bangalore, Kolkata and Puducherry – metropolitan cities emerging as hubs of Indian gay culture. On July 4th, 2008, the Delhi High Court declared that there was nothing unusual in holding a gay rally elsewhere in the world.⁴ On July 23th Bombay High Court Judge Bilal Nazki advocated that India's 'unnatural sex' law should be reviewed.

In India the repeal of Section 377, potentially opening the door to further LGBT rights such as civil unions, was opposed and continues to be opposed by many influential conservative Hindu cadres and rightist political parties claiming to represent the views of the dominant religious majority (over 80% of the population is Hindu) and already alarmed by liberalizing tendencies around non-heterosexual issues. This paper suggests that aspects of 'traditional' Hindu religion have been utilised by both conservative Hindus and right-wing parties as a 'resource' in their non-heterosexual rights stance which might be alternatively described as homophobic. It will be evident that the use of religious motives is largely selective, furnished with a certain degree of interpretation and adorned with cultural trappings, real or imaged, in order to advance the cause of reversing non-heterosexual rights. Firstly, however, the paper briefly overviews how and why gay rights have been extended in India and why they have become so controversial and politicized. This brief overview will thus contextualize the mobilization of conservative constituencies against non-heterosexuality generally and sexual rights in particular. Repeal of Section 377 came in the face of extreme pressure placed upon the Indian government from human rights groups which had long argued that the law was discriminatory and an infringement of fundamental rights. In this regard the Delhi High Court declared that the article, which defined homosexual acts as 'carnal intercourse against the order of nature', ran counter to the Indian constitution in respect of the right to equality of the individual before the law (Article 14); freedom from discrimination and to life (Article 15); and personal liberty (Article 21).⁵ Organizations such as the National Human

Rights Commission and the Planning Commission of India had earlier explicitly or implicitly advocated decriminalising homosexuality, alongside calling for greater tolerance. In 2003 the People's Union for Civil Liberties published two reports of rights violations experienced by Indian sexual minorities⁶, in particular, transsexuals (*hijras* and *kothis*).⁷

The eventual annulment of the law also reflected the fact that the plight of non-heterosexual people had increasingly come into public focus. In September 2006, Nobel Laureate Amartya Sen and renowned writer Vikram Seth worked with numerous other prominent Indians to advance the cause for the change in the legal circumstances of non-heterosexual people. Their open letter advocated that 'In the name of humanity and of our Constitution, this cruel and discriminatory law should be struck down'.⁸ Moreover, in recent years some same-sex married couples occasionally appeared on television and this included the renowned celebrity designer Wendell Rodricks and his French partner Jerome Marrel (married under French law in Goa). In 2005, Prince Manvendra Singh Gohil, who originated in Gujarat state, publicly 'came out'. He was represented by the Indian and world media as the first openly gay royal, appearing on global television programmes.⁹

The matter of non-heterosexuality was earlier highlighted in 1987 when the national press carried the story of two policewomen who married each other by Hindu rites in central India.¹⁰ There then followed many reports of the dilemmas felt by those in same-sex marriages, mostly between lower middle-class young females in small towns and rural areas throughout the country and who had no connection with any LGBT pressure group. These marriages met with the reaction of disapproving families, community recrimination, violent persecution and even police harassment.¹¹ Persecution led to well-publicised cases of numerous elopements and occasionally joint suicides by same-sex couples, mostly

deeply ingrained in Indian society, nurtured over several generations', Naz Foundation v. NCT of Delhi, Delhi High Court. <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf> (accessed 22.7.10).

⁶ <http://www.altlawforum.org/PUBLICATIONS/PUCL%20REport%201> (accessed 28.7.10).

⁷ <http://www.altlawforum.org/PUBLICATIONS/PUCL%20REPORT%202003> (accessed 28.7.10).

⁸ Ramesh, Randeep (18 September, 2006), The Guardian, 'India's Literary Elite Call for Anti-Gay Law to be Scrapped', London. <http://www.guardian.co.uk/india/story/0,,1874833,00.html> (accessed 3.8.10).

⁹ There were less positive developments however. In 2008, Zoltan Parag, a competitor at the Mr. Gay International contest claimed that he was 'scared' to return to India in fear of discrimination. See 'I'm scared to return to India', Hindustan Times, 1 February 2008, <http://www.shaadi.com/popbehind/index.php?a=1&sr=3&theme=18> (accessed 12.7.10).

¹⁰ Sudhir Kakar (2009) 'Homosexuality And The Indian', <http://www.littleindia.com/news/145/ARTICLE/1835/2007-08-17.html> (accessed 13.7.10).

¹¹ In her volume, Love's Rite, Ruth Vanita (2005) explores how it is not uncommon for gay men and women to marry heterosexuals and have families, while engaging in clandestine gay relationships.

³ Reverse swing: It may be an open affair for gays, lesbians' - ET Cetera-News By Industry-News- The Economic Times, http://economictimes.indiatimes.com/News/News_By_Industry/Reverse_swing_It_may_be_an_open_affair_forgays_lesbians/articleshow/3186187.cms (accessed 4.7.10).

⁴ 'High Court dismisses case against gay rally', Hindustan Times, <http://www.shaadi.com/popbehind/index.php?a=1&sr=3&theme=18> (accessed 17.7.10).

⁵ The two-judge bench declared: '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

female.¹² The reports of harassment of homosexual individuals and rallies by the police nonetheless apparently declined in the early years of twenty-first century, while Indian courts increasingly upheld the right of gay and lesbians to live together as consenting adults. From the 1990s onward, gay and lesbian Hindu organizations surfaced in India's major cities.¹³ Inspired by rights and equality legislation enacted in Western democracies, particularly those related to same-sex marriage, they aided in bringing the matter of non-heterosexual rights to the fore. Despite fears of a conservative backlash, there were other, more positive signs for the non-heterosexual cause. The renowned 'Bollywood' film industry, which had previously emphasized traditional family and sexual values (Brosius and Yazgi, 2007; Uberoi, 1998), began to portray a number of gay and transsexual characters. Although they were frequently figures of scorn and insult, more affirmative depictions began to surface most notably through in India's fringe cinema industry and these included *My Brother Nikhil*, *Honeymoon Travels Pvt Ltd*, *Dostana*, *Fashion*, *Men Not Allowed* and, most controversially of all, the movie *Fire* (Gopinath, 2000). Proving to have a more hidden effect however was the proliferation of numerous Internet blogs which highlighted stories and issues specific to the marginalized non-heterosexual community. The Internet also generated a prolific Indian gay cyber culture with dating web-sites providing an alternative means of meeting same-sex people.¹⁴ With India becoming more open to the legitimacy of homosexuality, several business ventures in the country began promoting India as a destination for gay tourists from around the globe,¹⁵ a development predictably lamented by more conservative-minded Indians.

Endorsing non-heterosexual rights

As would be anticipated, the repeal of Section 377 was positively affirmed not only by LGBT communities throughout India but within their enclaves in the Hindu diaspora. This was so with the Indian gay community in

the USA, although the repeal was merely seen as part of the continuing momentum for achieving full equality for non-heterosexual people.¹⁶ Several broader Hindu representative organizations were also affirmative. The international Hindu reform group, the Michigan-based Navya Shastra, supported the Delhi High Court ruling through a press release and criticised reactionary religious elements in opposing it by stating 'Navya Shastra urges the Government of India not to challenge the ruling or to be swayed by religious chauvinists of any persuasion who would deny equality to all citizens based on ancient interpretations of religious texts'.¹⁷

Diasporic Indian communities have proved to be less predictable in their outlook regarding non-heterosexuality and accompanying rights issues. While a degree of evidence suggests that these communities stressing traditional family and sexual values by way of expressing conservative attitudes, tending to reinforce boundaries with other communities by clinging to their cultural origins, those in Western cultural settings may develop more liberal views. It is not surprising then that there are mixed responses among such enclaves to recent developments regarding same-sex marriages generally and particularly the 2009 ruling over homosexuality in India.

The significance of a religious references in supporting developments is however clear. For instance, in Britain the Hindu Council UK welcomed the Delhi High Court's judgement and stated that Hinduism does not condemn gay people. Anil Bhanot, General Secretary of the HC stated that 'It is indeed good news that people are not discriminated against because of God's laws of nature' and continued by arguing that Hindu scripts describe the homosexual condition to be a biological one and, although several give guidance to parents on how to avoid procreating a homosexual child, it does not condemn the child as unnatural.¹⁸ This thus tilted against

¹² Vanita and Kidwai (2001) consider numerous such marriages and cases of suicides which have taken place over the last three decades, detailing their legal, religious, and historical dimensions. They maintain that many of these marriages can arguably be deemed legally valid since, under the Hindu Marriage Act (1955) any marriage between two Hindus performed according to the customs prevalent in the community of one of the two partners is legally founded. Most heterosexual Hindu marriages in India are still performed by religious rites alone, without a marriage license, and are never officially registered with the state.

¹³ It has only been the last two decades that LGBT support groups such as Sangama became visible and not until April 16, 2009, that India's first gay magazine Bombay Dost was re-launched in Mumbai.

¹⁴ 'Gay Dating Trend In India', <http://lifestyle.iloveindia.com/lounge/gay-dating-trend-in-india-528.html> (accessed 3.7.10).

¹⁵ 'Travel goes gay', The Telegraph, Calcutta, June 28, 2009, http://www.telegraphindia.com/1090628/jsp/7days/story_11168630.jsp (accessed 28.7.10.).

¹⁶ Ashfaque Swapan, 'Indian American Gays Hail Ruling Decriminalizing Homosexual Sex in India, India West', News Report, July 10, 2009, http://news.ncmonline.com/news/view_article.html?article_id=448d250cd5ec17f930a0f731ae2dc999 (accessed 8.8.10).

¹⁷ *ibid.*

¹⁸ 'Hinduism does not condemn gay people: UK Hindu Council', *Indian Express*, Com, <http://www.indianexpress.com/news/hinduism-does-not-condemn-gay-people-uk-hindu-council/484563/> (accessed 27.7.10). The reference to the homosexual child being 'natural' flows from one of 16 ceremonies to mark each major stage in the Hinduism life-cycle. The 'insemination' ceremony (*Garbhadan Sanskaar*) refers to homosexuality. The ancient prophets (*Rishis*) taught that there are two elements, fire (*agni* for sun) and water (*soma* for moon), which determine the sex of a child. If insemination takes place in the night of an even number from six to 16, a male child will be conceived, while on an odd number of fifth, seventh, ninth and 15th night a female child will be produced. The scripture further prohibits insemination on the 11th or the 13th night of the cessation of the menstruation cycle where the fire element equals the water element, because a homosexual child is probable. Another notion, derived from the Manu Smriti, also mentions the biological source of a third gender: 'A male child is produced by a greater quantity of male seed, a female child by the prevalence of the female; if both are equal, a third-sex child (*napumsaka*) or boy and girl twins are produced' (MS 3.49). Despite the negative facet of homosexuality implied, its 'naturalness' is emphasized by LGBT Hindu groups in advancing their cause. Also stressed is

Section 377 and its insistence that homosexuality was 'against the order of nature'. The 'natural' origin of homosexuality in a Hindu religio-philosophical sense was similarly espoused by the director of *Fire*, Deepa Mehta, in defence of his film:

*"Traditional Hindu morality rests on the fulfilment of one's Dharma, among other things. The mention of homosexual sex in the Kama Sutra is the proof that homosexuality is one of the countless variations of Dharma, as the Kama Sutra is a sacred book....Homosexuality is part of the 'Third Nature', the neuter gender which does not engage in procreation and that corresponds to Brahma. Therefore a person born homosexual that does not fulfil his/her 'third sex' function sins against his/her Dharma."*¹⁹

As a general observation it is clear that in advancing the non-heterosexual cause in India advocates have not only endorsed the discourse of secular human and civil rights, but refer to Hindu literature, mythology and philosophy alongside aspects of cultural heritage, although, the allusions have been often been void of context or conventional interpretation. In sum, the eclectic nature of Hindu historical attitudes toward non-heterosexuality – where context and interpretation are vital components – provide rich resources for contemporary support for non-heterosexuality possibly more so than any other major religious faith. However, as explored below, this cuts both ways since religious motives also provide a resource for the contrary stance and there is ample evidence that this is the case.

Conservative reaction to non-heterosexual rights

In 2009 Swami 'Baba' Ramdev, renowned for his international yoga camps attended and viewed on television by some 85 million people globally, making him one of the most venerated Indian figures, criticised the high court ruling over Section 377. Ramdev who launched an independent political party, Bharat Swabhimani, aimed at purify the Indian political system of some of its 'immoral' aspects, compared homosexuals to 'other anti-social groups' and advocated that the change in legalisation would have a 'negative effect' on the younger generation, while increasing the prevalence of HIV/AIDS.²⁰ Ramdev advanced the view that:

the Rigveda, one of the four canonical sacred texts of Hinduism, which states that *Vikrutii Evam Prakritii* (perversity/diversity) is to be discerned in the essence of nature, so that what seems unnatural is also natural, thus proving the cyclical consistency of homosexual/transsexual components of human life.

¹⁹homosexuality in hinduism part 2

Category: Religion and Philosophy, <http://blogs.myspace.com/index.cfm?fuseaction=blog.view&friendId=512619946&blogId=524669179> (accessed 3.7.10).

²⁰ Quoted by Ray Baskerville, 'Swami "Baba" Ramdev Claims Homosexuality Can Be "cured" By Yoga', July 20, 2009,

*"These are unnatural (homosexual) acts not designed for human beings. The decision of the High Court, if allowed to sustain will have catastrophic effects on the moral fabric of society and will jeopardise the institution of marriage itself. This offends the structure of Indian value system, Indian culture and traditions, as derived from religious scriptures....The verdict will encourage criminality and sick mentality. This kind of thing is shameful and insulting. We are blindly following the West in everything. This is breaking the family system in India. Homosexuals are sick people, they should be sent to hospitals for treatment."*²¹

Elsewhere a Tamil priest who conducted South Africa's first known same sex wedding by Hindu rites in May, 2009, was obliged to retire into hiding in fear of the repercussions of community leaders' condemnation of the elaborate wedding of two young men. Claiming to be 'staunch Hindus' they dispatched invitations decked with Hindu symbolism, while the ceremonial garments were traditionally Hindu (one of the men placed a necklace with the pendant of the god Ganesha on his partner). In response South African's Hindu Mahasabha president Ashwin Trikamjee insisted that 'The Hindu wedding ceremony is between a male and a female – that is what the scripture says'. South African Tamil Federation president Mickey Chetty affirmed such sentiments by insisting that 'We do not sanction such a union or the actions of the priest who sanctified it'.²²

This statement highlights a vital aspect of debates regarding homosexuality in contemporary Hinduism: the Ashrama's age-based system which constitutes a highly structured traditional life-cycle. Not until reaching the 'householder' stage (*Grihastya*) are Hindus ideally permitted to seek sexual pleasure in the strict context of heterosexual marriage that is viewed as conventionally fulfilling three vital requisites: *dharma* (responsibility), *rati* (companionship as friends and mutual heterosexual pleasure) and *prajaa* – the production of progeny for perpetuation of the ancestral line. These functions are outlined in the *Dharma Shastras* (Sacred Law) which relate to systems of conduct, civil and criminal law, and retribution and penitence but are not however considered to be religiously binding within Hinduism. As supporters of non-heterosexual rights are eager to suggest, the dilemmas presented by homosexuality in the Dharma

<https://owa.uwe.ac.uk/CookieAuth.dll?GetLogon?reason=0&formdir=9&curl=Z2FOWAZ2F> (accessed 9.8.10).

²¹ Quoted by Ray Baskerville, 'Swami "Baba" Ramdev Claims Homosexuality Can Be "cured" By Yoga', July 20, 2009, <https://owa.uwe.ac.uk/CookieAuth.dll?GetLogon?reason=0&formdir=9&curl=Z2FOWAZ2F> (accessed 9.8.10).

²² Fakir Hassen, 'Religion and homosexuality: South African priest upsets Hindu community after gay wedding rites', *Religioscope*, May 20, http://religion.info/english/articles/article_420.shtml (accessed 12.8.10). Several Hindu priests have performed same-sex marriage in India, arguing that love is the result of attachments from previous births and that marriage, as a union of spirit, is transcendental to gender, <http://news.bbc.co.uk/1/hi/world/south> (accessed 6.7.10).

Shastras are not substantially founded upon moral judgment or religious proscriptions but primarily enforce cultural and legal rulings concerned with offspring and the inheritance of ancestral property.²³

The view that homosexuality is against the traditional Hindu life-cycle is a core subject matter of present global web-site blogs engaging in the debate and not infrequently supplemented by the assertion that it is not natural but has an environmental and/or psychological origin, typically:

*"According to all scriptural evidence, homosexuality is condemned as being a sinful activity. There is no argument to defy that point. If you are really serious about giving gays a solution in spiritual life, then why not take a look at the factors that lead to homosexuality?...More and more evidence is showing that homosexuality is not something that is a genealogical defect. Rather, it is something that develops in early childhood...In effect you would have to, by your endorsement, give them asrama facilities independent of other asramas and any other requirement they may need."*²⁴

Also much quoted by those who oppose non-heterosexual rights is the *Manava-Dharmasastra* (the Laws of Manu) which constitutes one of the earliest examples of Hindu textual doctrine and the basis of almost all Hindu codes of law (*Dharma*).²⁵ The sources describe how if a married woman is found to be a lesbian, she should have her head shaved and two of her fingers cut off and be made to ride (through her town) on a donkey (M.S 8: 370). As supporters of non-heterosexual rights are keen to point out these provisions, quoted out of context, seem homophobic, but in fact they are concerned not with the gender of the partners but with the loss of virginity that rendered a young woman unworthy of marriage (Vanita and Kidwai 2001, 25). Lesbian relations between also non-virgin women incurs a very small fine according to the same source, while homosexual intercourse between men is censured by a prescription of a bath fully dressed, and atonement by 'eating the five products of the cow and keeping a one-night fast' – the penance being a replacement of the traditional concept of homosexual intercourse resulting in a loss of caste (applicable to the top three castes) (MS 11: 74). There are other texts whose interpretation is contended. For example, within the *Srimad Bhagavatam*, one of the most important Hindu classics, there is a

description of Brahma's creation of a group of male demons that became obsessed with sex and demanded sex from him, but he then became frightened and fled.²⁶

Given the traditional scriptural evidence or certain interpretations of them, it might be anticipated that the response of Hindu leaders in India, especially when confirming the views of the more rural Hindu populous around traditional kinship, would be to endorse a highly disapproving view in respect of the reform of Section 377 and the broader tide in favour of non-heterosexuality. However, the picture remains complex. The views of Hindu leaders are not particularly relevant in the context of the Indian media or the wider Hindu community which lacks a single religious authority and certainly when compared to the voices of Islamic leaders in India. This was perhaps reflected in the fact that almost every major newspaper in India at the time of repeal sported an editorial in support of overturning the law. The pronouncements of Hindu leaders (including the Kanchi Acharya, Puttaparthi Sai Baba, Sri Sri Ravi Shankar, Baba Ramdev, Sundara Chaitanyananda and Mata Amritanandamayi) clearly sustain authority for the Hindus populous but many are regarded as politically neutral and most prefer to take such a stance. In a 2004 survey conducted by Rajiv Malik of a number of swamis there was evidence of a kaleidoscope of views related to their views of homosexuality, ranging from positive to negative. The majority stated that they opposed the concept of a Hindu-sanctified gay marriage. Nonetheless, they felt free to differ with each other. As Mahant Ram Puri of the Juna Akhara sect is reported as saying, 'We do not have a rule book in Hinduism. We have a hundred million authorities'.²⁷ Given the largely neutral stance taken by most Hindu religious leaders, the door has thus been open for conservative parties to attempt to capture the 'religious' ground and they have attempted to do so in earnest.

Non-heterosexuality and the political rightist parties

In the mid-1990s Hindu nationalist groupings had rallied around a highly visual non-heterosexual issue. Deepa Mehta's film *Fire* was released in 1997 and shown to crowded cinema audiences throughout India. The movie depicted two Hindu sisters-in-law who, unhappy in their arranged marriages, turned to each other for love in a romantic lesbian relationship. It enhanced debate, if not controversy around the topic of non-heterosexuality. The

²³ Unnamed author, Homosexuality and Hinduism, <http://www.srimatham.com/storage/docs/homosexuality-and-hinduism.pdf>, (accessed 17.7.10).

²⁴ You're Looking for an Easy Fix http://www.dipika.org/2004/12/31/21_looking_for_an_easy_fix/index.html From Joshua Hawley (accessed 3.7.10).

²⁵ The date of the text is disputed but frequently believed to have been formulated somewhere between 200-100 before the CE.

²⁶ Proponents however argue that the demons were the children of Brahma, and that this story teaches that incest is the focus of the myth. (2.8.359). Hindu scriptures contain many examples of diversity in both sex and gender. Many are explored by Vanita and Kidwai in their edited work (2001) which includes extracts numerous Hindu texts. This includes the Medieval writings that narrate how the God Ayyappa was born of intercourse between the God Shiva and Vishnu when the latter temporarily took a female form.

²⁷ 'Discussions on Dharma', *Hinduism Today*, October/November/December 2004. <http://www.outlookindia.com/article.aspx?229354> (accessed 3.7.10).

film was informally banned for alleged 'religious insensitivity' after Hindu nationalists attacked cinemas where it was being screened on the basis that it denigrated Indian culture by vindicating homosexuality. However, The Bharatiya Janata Party (Hindu Nationalist Party) which was in political power in India at the time, refused to censor it. Similar protests occurred in 2004 against the lesbian-themed film *Girlfriend* even though the portrayal of lesbianism was distinctly unsympathetic.

The grouping (including many women) most involved in the violence against *Fire* was, according to International News in December, 1998, the Hindu Shiv Sena party.²⁸ Shiv Sena, a far-right political party, was founded in 1966 and built a strong base amongst the Marathi community with its platform that Maharashtra belonged to the Marathi community and it should be given preference over migrants from other Indian states. Although the party's primary support remains in Maharashtra, it has attempted to expand to a pan-Indian appeal, becoming a coalition partner in the National Democratic Alliance cabinet that governed the country between 1998 and 2004. Shiv Sena protests over various issues have been known to include violence in the name of protecting what it perceives as traditional Hinduism from what it deems as corrupting Western influences (Banerjee, 2000). The party raged against *Fire* on the grounds that such films violated the Hindu ethos and were immoral for Hindus to watch. International News quotes one female activist as stating: 'Women seeking satisfaction from other women is alien to Indian culture,...The film poisons our women. It makes them curious about something immoral'.²⁹

There were more direct attacks on the repeal of Section 377 which were overtly politically motivated. On July 5th, 2009, a group of Hindu and Sikh activists orchestrated a demonstration in Delhi as a response. Members of National Akali Dal (a confederation of Sikh political parties mainly based in Punjab), along with members of the Hindu organization Santan Dharam Sabha, staged the protest and demanded government authorities intervene in the passing of the law. Such developments largely reflected the reaction of conservative cadres to 'progressive' tendencies in Indian society that have now become highly politicized.³⁰

Certainly, anti-homosexuality and anti-gay rights responses tend to be the preserve of conservative forces in India including nationalist constituencies opposed to legalising homosexuality (often claiming that it was unknown to ancient Hinduism) while others choose to remain silent. The reform group Navya Shastra has been particularly critical of the Vishwa Hindu Parishad (World Hindu Council) (VHP) and the Bharatiya Janata Party (BJP) which came out against the repeal of Section 377. Both organizations claim to speak for Hindus in India and,

in the case of the VHP, Hindus internationally. Navin Sinha, an official of the BJP was quoted in 2008 as stating '(The gay rights movement) is an abysmal, absurd thing....For 1,000 years, these two things – I don't want to even say the words (homosexuality and lesbianism) – have simply not been here'.³¹

The VHP was founded in India in 1964 and advances its own brand of cultural nationalism. Its strap-line '*Dharmo rakṣati rakṣitah*' ('Dharma protects when protected') exemplifies a unique stance in Hindu politics without having representation in any particular political party. The movement's stated aims and objectives include: to consolidate and strengthen Hindu society; to protect, promote and propagate Hindu values of life, the ethical and the spiritual in the context of modern times; and to keep in touch with all the Hindus living abroad, protecting their Hindu identity (*Hindutva*)³². Its policies embrace the conviction that there shall be no discrimination on the grounds of religion, sex, caste, race or colour, a right clearly not extended to non-heterosexuals. Partially, this seems to be on the grounds that gay sex causes bodily injury.³³ A spokesperson for the reform group Navya Shastra also discerned other reasons for the VHP's stance:

*"Unable to find any strong theological basis in Hinduism for opposing homosexuality, the VHP relied on the old canard that the family structure would somehow be threatened by the decision. This is an unscientific understanding of homosexuality, which is not a lifestyle choice but rather an inherent human condition...."*³⁴

The tendency of the VHP and other conservative political parties in India has been to play down the dangers presented by HIV and, as much as HIV was acknowledge, its spread is blamed on marginalized and stigmatized social groups, especially homosexuals and drug users, while the alleged dangers of both was frequently attributed to undesirable Western influences. Typically, Sanjay Nirupam a leading figure of the Shiv Sena party allegedly stated that 'One always hears about AIDS and how it is this big problem - I think it is just hype'.³⁵

³¹ *New International*, October 1, 2008, <http://www.newint.org/features/special/2008/10/01/queer-india/> (accessed 9.7.10).

³² <http://vhp.org/> (accessed 13.8.10).

³³ <http://jai-adivasi.jharkhandi.org/2009/07/homosexuality-hinduism-and-section-377.html> (accessed 14.7.10).

³⁴ *ibid.*

³⁵ Reported by Sanjoy Majumder, 'Fighting India's Aids apathy, BCC News on-line July 14, 2004, http://news.bbc.co.uk/2/hi/south_asia/3886883.stm (accessed 2.7.10). Such view of HIV and its link to homosexuality exemplify how this major social and medical problem facing India has become a symbolic issue related to non-heterosexual rights. In 2006 UNAIDS approximated that some 5.6 million people in India were inflicted, more than any other country in the world (UNAIDS 'Report on the global AIDS epidemic', <http://www.unaids.org/en/KnowledgeCentre/HIVData/GlobalReport/2008/default.asp> [accessed 3.8.10]). Initially high risk groups were identified including a growing body of sex workers, gay men, and those injecting drug. Before long

²⁸ *International News* # 242, December 14, 1998.

²⁹ *ibid.*

³⁰ None of the major political parties have endorsed LGBT causes in their official party manifestoes.

Historical revisionism

So far this paper has attempted to show how conservative Hindu elements in Hindu society, most notably the stance of Hindu parties such as the BJP, towards non-heterosexual rights has come to signify the perceived endangered purity of the Indian nation by conservative Hindu constituencies. Critics of conservative forces might argue that there are contradictory elements to be observed here and that nationalism is itself a Western concept. However, this paper has attempted to indicate that Hindu political parties are tapping deep cultural attitudes towards non-heterosexuality.

Scholarship has tended to see prohibitions against homosexuality as a rather recent development in India's long history. Das Wilhelm (2010), for instance, has endeavoured to demonstrate how ancient expressions of Hinduism accommodated homosexual and transgender persons much more positively than contemporary India: that historical literary evidence indicates that homosexuality has been prevalent across the Indian subcontinent throughout history, and that homosexuals were not necessarily considered inferior in anyway. He points out however that in recent times men who are too effeminate or transgendered to marry women are often rejected by their families and forced to join third-gender groups such as the *hijra*. Das Wilhelm further states that while Ancient Vedic texts mildly discourage homosexual behaviour for *brahmanas* or priests, they do not criminalize it for the common citizen. On the contrary, Vedic texts describe homosexual citizens serving as dancers, artisans, barbers, house attendants and prostitutes as an integral part of community life.

Daniélou (1994) similarly denies that homophobia in India has deep historical roots. Rather, discrimination and prohibition is largely derived from the influence of British Puritanism besmirched traditional Hindu attitudes to sexuality: that Hinduism, in some of its variants, is not the same as it was a millennium ago and where the invasions of both the Muslims and the British with their hatred of

however HIV had spread to the general population, impacting 'low-risk' sectors including more affluent people and housewives. The United Nations had for some time urged the Indian government to decriminalize homosexuality, pointing out that it would strengthen health strategies through combating HIV/AIDS. There were further pressures from the National AIDS Control Organization (the Indian Government's agency for HIV surveillance) and the Union Health Ministry. Specifically regarding rights issues the organization Human Rights Watch identified the law of 1860 as a means for harassing HIV/AIDS prevention activists, gay men and other non-heterosexuals, as well as sex workers (India: Repeal Colonial-Era Sodomy Law, report from Human Rights Watch, January 11, 2006). On these grounds Anbumani Ramadoss, then Health Minister, advised the overturning of Section 377 for several years prior to 2009. The Naz Foundation (India), an AIDS support group located in New Delhi was also at the vanguard of the campaign to legalise homosexuality. In December, 2002, Naz filed a Public Interest Litigation in the Delhi High Court, *Naz Foundation vs National Capital Territory of Delhi*, to challenge Section 377 ('Advocacy, Section 377', <http://www.nazindia.org/advocacy.htm> [accessed 2.7.10]). From October, 2006, further petitions were advanced by the organization and were considered by the Court. The case was heard in May, 2008, and the door was subsequently open to repeal.

homosexuality left their influence on the religion. Agoramoorthy and Hsu (2007) argue in similar vein: that the enactment was originally based on the Western-Christian fallacy that sodomy is equivalent to homosexuality.

According to Daniélou, the blossoming of sexuality and all its variants had never formerly been persecuted in India. It was only commenced with the new penal code promulgated by Nehru's socialist government and that, for the first time, Section 377 punished 'sexual relations against nature with a man, woman or animal, whether the intercourse is anal or oral' (Daniélou, 1994: 10). Also known as 'Macaulay's Law', it was first framed by British administrator Thomas Babington Macaulay (later a prominent politician and historian). This view has been endorsed by the leading gay activist Ashok Row Kavi who has commented that:

"Our laws on homosexuality were bequeathed to us by the British, who had a Christian view of things....Hinduism, on the other hand, defines sex as one of the three ways of attaining salvation. Hinduism does not run away from sexuality and does not pass judgement on people who have different preferences....Lesbian relationships are part of the Indian heritage and the film (Fire) brings into the public domain the hypocrisy and tyranny of the patriarchal family, the issue of women's sexuality, and makes a strong statement about women-women relationships".³⁶

It has further been pointed out that, paradoxically, opponents of LGBT rights are also working with Western constructions of non-heterosexuality. In that sense conservative constituencies would appear to be guilty of 'having their cake and eating it'. One commentator has observed that the media in India has amplified this tendency during the controversy over the showing of the film *Fire*:

"By the morning of December 8 it has all happened....The word 'lesbian' was on the front pages of every newspaper I picked up in Delhi. LESBIAN. It looked and out-of-place.'. Indeed, it looks 'out-of-place' as the noun 'svairini' could have been employed, the same way 'napumsaka' could be used instead of 'gay'."³⁷

In the same article the commentator observed that:

"The initial impulse of the Shiv Sena party against the lesbianism portrayed in the 'controversial' film Fire may be adharma, but what if the lesbianism portrayed in that

³⁶ 'Activists slam attacks on lesbian film, Hindus vow to widen protest', <http://www.sawnet.org/news/fire.html> (accessed 29.7.10). However in 2009 the party's leader Bal Thackeray was moved to call for an improvement in HIV/AIDS counselling and awareness.

³⁷ People of a third gender (*tritiya-prakriti*), not fully men nor women, are mentioned in the Rigved and throughout Hindu texts such as the Puranas but are not specifically defined. In general they are portrayed as effeminate men, often cowardly, and with no desire for women rather than the modern categories of lesbian, gay, bisexual and transgender sexual identities.

movie is Western-inspired, 'democratic' and secular?".....(and that) "The Hindu fundamentalists seem to have espoused nationalism, sometimes in its fascist manifestations and both nationalism and fascism are originally Western concepts."

The controversy over *Fire* clearly brought into relief a particular form of Hindu nationalism that also displays patriarchal tendencies and this was evident when the Bharatiya Janata Party took power and advanced the traditional subservient role of women in family life. It seemed contradictory then, when the party also attempted to ensure that women comprised at least a third of elected officials at all levels of representation. Nonetheless, this allowed the projected image of being a modern and relevant political Hindu movement despite its view of non-heterosexuality.

DISCUSSION

The grass-roots support for the rightist parties in India remains formidable. This suggests that in most areas of Indian society, especially amongst the poorer classes, anything relating to gay sexuality remains a strict taboo. The truth remains that, despite references to same-sex religion in classic Hindu sagas such as the *Ramayana* and the *Mahabharata* and a legitimate if reluctant place for transgenders (*hijras*) in Hindu culture, religious conservatism ensured homosexual expression remained mostly silenced throughout Indian history. The reality, as Sudhir Kakar points out, is that Hindu India has a long tradition of 'benign neglect' of alternate sexualities that were always reduced to the margins of society, acknowledged but not approved of.³⁸ Kakar argues that homosexuals always belonged to a 'deficient' class of men called *kliba* in Sanskrit, deficient because they were unable to produce male offspring. *Kliba* (which has traditionally been translated as eunuch, but almost certainly did not mean eunuch) was a catch-all term to include someone who was sterile, impotent, castrated, a transvestite, a man who had oral sex with other men, who had anal sex as a recipient, a man with mutilated or deficient sexual organs, a man who produced only female children, or, finally, a hermaphrodite. In short, *kliba* is a term traditional Hindus coined to describe a man who is in their terms sexually dysfunctional.³⁹

³⁸ <http://www.littleindia.com/news/145/ARTICLE/1835/2007-08-17.html> (accessed 23.7.10).

³⁹ The Narada Smriti, written around 400 CE, forbids the marriage of homosexual men (*mukhebhaga* – men who perform oral sex on other men) to women: 'These four [*irsyaka*, *sevyaka*, *vataretas*, and *mukhebhaga*] are to be completely rejected as unqualified for marriage, even for a woman who has been raped' (NS 1.12.15). The text also lists fourteen different types of *panda* or men who are impotent with women. 'Non-reproductive' members of society are restricted from inheriting or from participating in certain ceremonies but are entitled along with other 'disabled' individuals to life-long maintenance and support (*Gautama CCVIII*: 43).

To be sure, the conservative Indian groupings have taken recourse to certain 'imagined' cultural traditions rather than adopt the discourse of rights taken up by minority religious groups opposing non-heterosexuality in more secularized societies. Clearly, same-sex relations and gender variance have been represented within Hinduism from Vedic times through to the present day, in rituals, law books, religious and mythical narratives, commentaries, paintings, and sculpture. The extent to which these representations embrace or reject homosexuality has been long been disputed within the religion as well as outside of it. They have now become the site of heated contestations around contemporary rights issues. However, as far as conservative constituencies are concerned, religious or political or both, it appears that they are tapping a reservoir of homophobia that has deep roots in Indian history but suitably repackaged for modern Indian politics.

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