

Challenging the Anti Sodomy Law in India: Story of a Continuing Struggle

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The queer (1) struggle in India has had a complicated relationship with the law. Nothing exemplifies this complexity better than the vexed relationship with the anti-sodomy law in India, Sec 377 of the Indian Penal Code (IPC). Section 377 of the IPC came into force in 1860 as part of the criminal code which governs India even sixty years after independence. Sec 377 reads: 'Unnatural offenses: 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.' Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section.

The question that the judiciary has struggled with since 1860 is to determine what exactly 'carnal intercourse against the order of nature' meant. Initially judicial interpretation limited the meaning of the phrase to anal sex (2), by 1935 it broadened to include oral sex (3) and the judgements in contemporary India have broadened it to also include thigh sex. (4)

If we are to search for a principle which holds together these various sex acts prohibited by Sec 377, it was laid down as early as 1935. The Court in *Khanu vs Emperor* (5) laid down that, 'the natural object of sexual intercourse is that there should be the possibility of conception of human beings, which in the case of *coitus per os* [oral intercourse] is impossible'. It then went on to define sexual intercourse as 'the temporary visitation of one organism by a member of the other organism, for certain clearly defined and limited objects. The primary objective of the visiting organism is to obtain euphoria by means of a detent of the nerves consequent on the sexual crisis. But there is no intercourse unless the visiting member is enveloped at least partially by the visited organism, for intercourse connotes reciprocity. Looking at the question in this way it would seem that [the] sin of Gomorrah is no less carnal intercourse than the sin of Sodom'. (6)

In defining what constituted 'carnal intercourse against the order of nature' in *Lohana Vasantlal Devchand v. The State* (7) the Court noted that 'the act of oral sex involves enveloping of [the] penis by the mouth, thus creating an alternative socially unacceptable activity, which is against the order of nature'.

This idea of sex without the possibility of conception was used by the judiciary over the last 149 years to characterize homosexuality as a 'perversion', 'despicable specimen of humanity', 'abhorrent crime', 'result of a perverse mind' and 'abhorred by civilized society'. What judicial interpretation did was to include both acts of consensual sex as well as acts of sexual assault under its catchall category of 'carnal intercourse against the order of nature'. It is also important to note that technically speaking, Sec 377 does not prohibit homosexuality or criminalize homosexuals as a class but targets instead sexual acts. However the fact that

these sexual acts are associated solely with only homosexuals has made homosexuals the only group vulnerable to prosecution under the law.

The judicial understanding of Sec 377 has never been impacted by the Indian Constitution. Since 1860, through over fifty years of the Indian Constitution, the judiciary continues to follow the colonial justices of the *Khanu* era in defining homosexuals as 'despicable specimens of humanity'. The right to equality, the right to dignity or the right to expression have never been seen fit to apply to lesbians, gays, bisexuals, hijras or others whose sexuality does not conform to the heterosexual norm.

Prosecution under Sec 377: A Case of Uncontrolled State Power

The judicial understanding of Sec 377 only legitimizes and reinforces state power to persecute and harass those of an alternative sexual orientation or gender identity. This enormous power in the hands of the state to enforce its vision of morality finds frightening expression in the form of arbitrary and brutal state action. I would just like to highlight two cases of how Sec 377 confers uncontrolled power on the state.

On 4 Jan, 2006, four men were arrested in Lucknow on the charge of having sex in a public park. (8) A national level Fact Finding Team visiting Lucknow found out that the First Information Report (FIR - on the basis of a FIR the police commences its investigation) was an outrageous concoction and that in fact what happened was that one person's phone number was got off a gay website, he was then beaten and tortured and forced to reveal the names of his other friends, and a FIR was registered against these four as well as thirteen others whose names he was forced to reveal. What is important to note about the case is that the police were confident that since these four were on the gay website, they were guilty of the offence of Sec 377. They unleashed a media blitz in which the sexuality of the four accused was repeatedly paraded as something to be mocked and scorned. Though the fact finding revealed that the most the four could be accused of was putting their profiles online, the police went ahead and concocted a fictitious case under Sec 377. The case illustrated the arbitrary powers in the hands of the state to periodically harass queer people in the confidence that this would never be regarded as a serious human rights issue. But what was interesting that this case resulted in protests across the country: in Delhi, Bangalore and Bombay. The queer community asserted that: 'The state response is in effect a clear attempt to terrorize the sexual minority population, clamp down on the very expression of anything outside heterosexuality and is fundamentally dissonant with any tolerant pretensions the government might have. It is unacceptable that in a context where gays, lesbians, bisexuals, kothis (9), hijras (10) and other sexual minorities are being increasingly vocal and articulate about rights, the UP [Uttar Pradesh] State is attempting to push UP back to the dark ages, wherein individual autonomy was a casualty of the authoritarian State.'

In another case from Bangalore, twelve hijras and kothis were arrested under Sec 377. The police filed a case in which it was alleged that they were engaged in unnatural sexual business that would affect citizens and tourists who visit Cubbon Park, and that the behaviour was embarrassing and disgusting. It was also alleged that those arrested were loitering with the intention to engage in unprotected, unnatural sex by standing in the shade of the trees and soliciting passers-by. It was also alleged that they committed unsafe, immoral sexual acts with

138 the purpose of earning money and that these acts may have led to the spread of diseases like AIDS, causing severe harm to the general public. (11)

Where the issue of the state unpredictably descending upon you in all its fury combined with the judicial abnegation of any constitutional responsibilities is frightening by itself, it is by no means the whole story of what Sec 377 means. Who grasped this truth very acutely is one of India's best known thinkers Amartya Sen (12), who in an open letter demanding the repeal of Sec 377 noted: 'It is sometimes argued that [...] Section 377 does not do as much harm as we, the protesters, tend to think. What has to be borne in mind is that whenever any behaviour is identified as a punishable crime, it gives the police and other law enforcement officers huge power to harass and victimize some people. The harm done by an unjust law like this can, therefore, be far larger than would be indicated by cases of actual prosecution.' (13)

Some clues as to what would be this 'far greater harm than actual prosecution' emerges from human rights documentation. The Peoples Union Of Civil Liberties-Karnataka (PUCL-K) Report documents the pattern of everyday violence faced by the hijra and kothi community at the hands of the police. To a community which makes its living by both sex work and begging, (particularly in South India) police violence is an everyday reality. This fate is shared with women in sex work who face a similar pattern of brutal violence by the state. To take just one example of this form of violence: Nasir, a 27 year old kothi, states: 'The Sampangiramanagar police filed a false case against me under a wrong name (Saleem) and my father's name as Abdul, and put me in the lock-up. When I protested against this confinement, they told me we cannot do anything with you, so just be here. I was made to be there until 11 p.m. and after approximately an hour, three policemen came to me and asked me whether I have a penis or not: "let us see". When I didn't listen to them, they started hitting me in order to make me take off my clothes. One policeman put a stick into my arsehole saying you are a 'khoja' (derogatory term used for kothi/hijra). And then one policeman forcibly inserted his penis in my mouth and the other in my arse, and so did the others, one by one, till they all came out and left me.' (14)

The Social Impact of Sec 377

Apart from the immediate threat of prosecution and violence, the insidious danger of Sec 377 lies in the fact that it permeates different social settings including the medical establishment, media, family, and the state. Thus it becomes a part of ordinary conversations and ultimately a part of the very social fabric in workplaces, families, hospitals and the popular press. This helps to create an environment where violence against queer people gains a semblance of legal acceptability. Section 377 expresses the deep societal repugnance towards queer people and provides the fig leaf of legitimacy for the harassment of queer people by families, friends, the medical establishment and other official institutions. (15)

To take an example: 'Sodomy is illegal in India', said Dr S. (16) This statement by a doctor indicates how law plays a role in legitimizing the treatment of homosexuality as a medical disorder by doctors. Thus a law such as Sec 377 has to be evaluated not merely in terms of the actual prosecutions but in terms of its impact in constructing mind-sets. This in turn has an effect on actions by authorities, from the medical profession to the National Human Rights Commission. This should be seriously studied to grasp how Sec 377 functions as a

cultural signifier for the 'unacceptability' of homosexuality. (17)

The social intolerance fostered by the legal regime of Sec 377, results in the unacceptable situation wherein lesbian couple after lesbian couple feels they have no option but to commit suicide when faced with the dire reality of the Indian norm of compulsory marriage. Deepa V.N. from Sahayatrika, a lesbian support group in Kerala, has documented the cases of 23 couples in the tiny state of Kerala who committed suicide rather than be forced into marriage. (18) Of course one also needs to understand that this form of extreme intolerance is also being combatted by the emergence of queer activism, but for many women from small towns without any access to the queer community it remains a lonely struggle to keep alive the revolt against compulsory heterosexuality.

The queer struggle against Sec 377 must necessarily speak to these really diverse experiences, from the gay man being arrested under Sec 377, to the hijra being tortured and abused by the police, to the lesbian who is forced by social intolerance and legal indifference to commit suicide. Sec 377 is a visible symbol of all that is wrong with compulsory heterosexuality and it is within this context that a queer critique has to be framed.

The Legal Challenge to Sec 377

At various points in time, activists have wondered whether Sec 377 is the be-all and the end-all of our struggle, and why it monopolizes all attention when it comes to queer issues. Equally complicated has been the concern over whether we should indeed challenge Sec 377 in court. Would the process of challenge re-focus attention on the law and bring a dead law to life? Would the courts be ever capable of taking this issue on board and delivering a positive judgment? Who should be defined as affected parties? Would the inclusion of lesbians as affected parties have a negative impact on the community? And what about F to M trans-genders? Does the filing of a legal challenge narrow the very scope of our understanding of a queer struggle by implicitly recognizing only a few identities? The questions were so many, they could lead to inaction.

This process of discussion, with many confusions and little clarity as to the course of action, received a focal point with the petition challenging Sec 377 that was filed unilaterally by the Lawyers Collective on behalf of the Naz Foundation before the Delhi High Court in 2001. The petition challenged the constitutional validity of Sec 377 and made an argument for Sec 377 to exclude the criminalization of same-sex acts between consenting adults in private. The petition asks (in technical terms) for the statute to be 'read down' to exclude the criminalization of same-sex acts between consenting adults in private so as to allow for the continued use of Sec 377 in cases of child sexual abuse. Child rights groups have pointed out that the failure to enact a comprehensive law on child sexual abuse has left children who are victims of abuse dependent upon the inadequate frame provided by Sec 377. Nonetheless taking on board the legitimate fears of child rights groups of a legal vacuum if Sec 377 is repealed without another law replacing it, the challenge to Sec 377 only asks that it be read down.

Initially, when a meeting was called by Lawyers Collective to discuss the petition, there was an undercurrent of disapproval from queer groups as they felt that there had been no consultation prior to the filing of the petition. However this disapproval gradually dissolved as

Lawyers Collective productively responded to the criticism by holding consultations with the wider community. What became evident was that the process of continuous discussion at every stage of the petition was precious and valuable. It was deeply educational both to the lawyers behind the petition as well as community members.

When the petition was presented and discussed, community members articulated a strong disagreement with challenging Sec 377 on the basis of the right to privacy, arguing that while it may be a legal strategy it did not reflect the normative claims of the community. The key argument posed by community members was that privacy, when viewed as the freedom to be themselves at home, free from state control, was a class bound concept. Not many other than some privileged Lesbian, Gay, Bisexual, Transgender (LGBT) members had the luxury of having homes and enjoying the right to privacy. In fact for most kothis, hijras and lower income gays and lesbians, private space was a privilege they did not have. If the court were to go ahead and decriminalize same-sex activity between adults in private, it would make no significant difference to their lives. This critique eventually fed back into the nature of the legal intervention, with the privacy argument being distinguished into zonal privacy and decisional privacy with Voices Against 377 making the argument that privacy was not a concept of space alone (i.e. I have a right to do what I want in my home) but rather a concept about autonomy of decision-making when it came to intimate decisions such as the decision about how and with whom to forge affectionate and relational ties. (19)

What was significant was that the meetings hosted by Lawyers Collective and Naz Foundation over the period of the next seven years contributed towards Sec 377 becoming a more politicized issue in the community. The key stages of the petition included the affidavit filed by the Union of India which indicated that the Government would stand by the law, the affidavit filed by the National AIDS Control Organization (NACO) (20) which in effect said that Sec 377 impedes HIV/AIDS efforts and the impleadment (21) by JACK (an organization which denies that HIV causes AIDS) and B.P. Singhal (a former BJP Member of Parliament, representing the opinion of the Hindu right wing that homosexuality was against Indian culture) (22) into the petition. This process of discussion fed back into the community, fuelling feelings of outrage and indignation, hope and despair and anger and fear, as each stage of the petition unleashed a torrent of emotions.

The periodic meetings were thus a way in which the activist community was kept deeply involved in developments and the community continued to respond to the changing scenario. What particularly tilted the balance was the introduction of B.P. Singhal's impleadment into the petition. Suddenly the scales seemed to have tilted, with Naz appearing increasingly isolated among the cacophony of voices opposing the petition. It seemed that a range of forces was coming together to protect what the community saw as a patently unjust law. In a meeting called by Lawyers Collective to discuss this development, it was proposed that some queer groups should also implead themselves within the petition so as to support the petitioner.

It was with the birth of this idea that Voices Against 377 (A Delhi based coalition of child rights, women's rights and LGBT groups) decided to implead themselves within the petition to support the petitioner. The key emphasis of Voices was the rights of LGBT persons while Naz, because of its status as an organization working on HIV/AIDS, would continue to emphasize how Sec 377 impeded HIV/AIDS interventions and hence the right to health of LGBT persons.

There were enormous delays spanning a sum total of seven years during which the case was initially dismissed by the Delhi High Court, appealed in the Supreme Court and finally sent back to the Delhi High Court. Initially, the Delhi High Court dismissed the petition just as it was gathering steam on the ground that the petitioner, Naz Foundation, was not affected by Sec 377 and hence had no 'locus standi' to challenge it. However when the dismissal was challenged before the Supreme Court, the Supreme Court sent the case back to the Delhi High Court to be heard expeditiously. Since the petition was filed by Naz Foundation in 2001 it has gathered greater support both in terms of public opinion and increasing support even within the sphere of the courtroom. It was in September of 2008 that, after a long wait, the matter was finally posted for final arguments before a Bench comprising Chief Justice Shah (23) and Justice Muralidhar (24) of the Delhi High Court.

Final Arguments before the Delhi High Court

By the time the matter was posted for final arguments in September 2008, seven years after the petition was initially filed, the key difference was that it had become far more a part of the issues which defined contemporary India. There was a real buzz both in terms of the media coverage and eager anticipation with respect to the final hearings. During the hearings the court was attended by community members who closely followed each twist in argument and each response by the judges. The proceedings were covered extensively and widely by the media, and the community was also kept updated with daily minutes of the hearings which were posted on online forums. (25)

The petitioner's core argument centred around the right to health and how Sec 377 impeded HIV/AIDS interventions. The arguments were substantiated by case studies particularly of Lucknow 2001 (26) when Sec 377 was used to target a HIV/AIDS intervention with the Men having sex with Men (MSM) community. So Sec 377, far from being justified by a compelling state interest, was actually an impediment to achieving the right to health of a particularly vulnerable section of the population.

The core argument of Voices Against 377 was that: 'Sec 377 is a law which impinges on the dignity of an individual, not in a nebulous sense, but affecting the core of the identity of a person... Sexual orientation and gender identity are part of the core of the identity of LGBT persons. You cannot take this away.' They argued that: 'Morality is insufficient reason [to retain the law] in a case like this where you are criminalizing a category and affecting a person in all aspects of their lives, from the time the person wakes up to the time they sleep.' Shyam Divan, the Counsel for Voices Against 377, argued that if the court did not declare its relief limiting the scope of section 377, it would cast a doubt on whether LGBT persons enjoyed 'full moral citizenship' of the country. He argued that, 'a moral argument cannot snuff out the right to life and personal liberty of LGBT persons'.

Astonishingly, the core argument of the Government of India was that if Sec 377 was read down to exclude consenting sex acts between adults in private, it would affect society's right to health of society. The legal counsel representing the Union of India, was the Additional Solicitor General, Mr P.P. Malhotra. He cited various studies to show that homosexuality caused a very serious health problem. Citing one study he said: 'The sexual activity enjoyed by homosexuals results in bacterial infections, and even cancer. There are activities like golden

showers, and insertion of objects into the rectum which cause oral and anal cancer. A study of homosexual practices shows 37% enjoyed sodomitical activities and 23% enjoyed water sports.' Referring to notions of decency and morality the Additional Solicitor General noted that: 'In our country it is immoral on the face of it. Society has a fundamental right to save itself from AIDS. This right is far greater than any right of the less than one percent who are in this programme. The health of society should be considered and it is the greatest health hazard for this country. If permitted it is bound to have an enormous impact on society as young people will then say that the High Court has permitted it.'

B.P. Singhal made a strong argument that Sec 377 was against Indian morality. In the words of his counsel, homosexuality was 'a perverted kind of sex': 'In the name of thrill, enjoyment and fun the young shall walk into the trap of homosexual addiction. The tragic aspect of this is that alcohol, drug and disease are the natural concomitants of homosexual activity.' He submitted that he 'was on morality, the joint family structure' and that 'we must not import evils from the west. We have traditional values and we must go by that. It would affect the institution of marriage and if women get doubt about what their husbands are doing, there will be a flood of cases of divorce.'

JACK's counsel submitted that there was 'no scientific evidence that HIV causes AIDS', that a 'change in this provision would mean that all marriage laws would have to be changed', and that 'under Sec 269 and 277 of the Indian Penal Code anyway any intentional spreading of an infectious disease would be an offence'. JACK's counsel then asserted that Naz did not come to Court with clean hands and was part of an international network which was using HIV to push an agenda.

Judicial Empathy: Listening to LGBT Voices

The Court in the post liberalization era has not been an hospitable space or indeed the last refuge of what the Supreme Court had characterized as the 'oppressed and the bewildered'. In fact the Court has been positively hostile to a whole range of applicants, from slum dwellers to all sections of organized labour. So it was with a great deal of trepidation that queer activists awaited the hearing. How would the judges indeed understand the complex issue of sexuality and rights? How indeed would we be able to persuade them that this was an issue of rights? Should we not have learnt from the experience of Public Interest Litigation in the 90's and stayed away from the court as any guarantor of rights? These were some of the thoughts circulating like a nervous eddy through the queer community.

The judicial response has generally been subject to analysis in terms of the reasoned argument and the decided case. By contrast little attention has been paid to the gamut of responses by judges on a day to day basis in Court. As Lawrence Liang notes: 'Witnessing the courts functioning on a day to day basis also allows you to uncover another secret archive, an archive of humiliation and power. It is said that seventy percent of our communication is non verbal and this must be true of legal communication as well. The secret archive that interests me consists not of well reasoned judgments or even the unreasonable admonishment of the courts, but the various symbolic signs and gestures that accompany them. An incomplete index of the archive includes the stare, the smirk, the haughty laugh, the raised eyebrow, the indifferent yawn, the disdainful smile and the patronizing nod amongst many others.' (27)

In this secret archive of what Liang correctly characterizes as ‘humiliation and power’, what emerged almost as a complete surprise was another index of responses, which can rightly be characterized as standing in for quality of judicial empathy. What came through the questions and comments of the judges was not an intention to humiliate, but instead a strong empathy for the suffering of LGBT persons.

C.J. Shah communicated this judicial empathy in ample measure and took judicial notice of the social discourse of homophobia by saying that we all know what kind of sneers and mockery this issue raises in society. To substantiate this point, he narrated the moving instance of a boy who was subject to jibes and sneers because of his sexuality and so was unable to do his exam. It was only after a judicial intervention that he was allowed to do his exam without harassment and in C.J. Shah’s words, ‘he thankfully passed’.

If one were to abstract three important moments in the Court room arguments spanning over eleven days, the first important moment was when the Counsel for Naz, Anand Grover, read the opinion of Albie Sachs in *National Coalition For Gay and Lesbian Equality v. Minister of Justice*. (28) This decision by the South African Constitutional Court ruled that the offence of sodomy violated the right to equality and dignity and struck it down. Justice Sachs’ passionately argued concurring opinion was in particular animated by the high ideals of the South African Constitution and exceeded the staid limits of conventional judicial prose in its ability to evoke empathy. It conveyed with an intensity and powerfulness the extent of injustice perpetrated by an anti-sodomy law. As justice Sachs powerfully noted: ‘In the case of gays, history and experience teach us that the scarring comes not from poverty or powerlessness, but from invisibility. It is the tainting of desire, it is the attribution of perversity and shame to spontaneous bodily affection, it is the prohibition of the expression of love, it is the denial of full moral citizenship in society because you are what you are, that impinges on the dignity and self-worth of a group.’ (29)

The judges were visibly moved by Sachs’ opinion and conferred among themselves. C.J. Shah wished the Additional Solicitor General (ASG) was in Court to listen to justice Sachs’ opinion. Almost subtly, you could sense that the burden had shifted from the Counsel to the judges. They now had to contend with the weighty presence of justice Sachs and the burden of history when they wrote their judgment. In case there were any doubts on this point, Voices Against 377 submitted an outline of submissions which argued that: ‘This case ranks with other great constitutional challenges that liberated people condemned by their race or gender to live lives as second class citizens, such as *Mabo v. Queensland* (30) (where the High Court of Australia declared that the aboriginal peoples of Australia had title to lands prior to colonization), *Brown v. Board of Education* (31) (where the United States Supreme Court held that segregated schools in the several states are unconstitutional in violation of the 14th Amendment) and *Loving v. Virginia* (32) (where the United States Supreme Court held that laws that prohibit marriage between blacks and whites were unconstitutional).’ (33)

The second important moment was when the judges zoned in on what they saw as the core argument for retaining Sec 377, public morality. They asked counsel for Voices Against 377 how he would respond to the public morality justification for retaining Sec 377? Shyam Divan’s response on behalf of Voices Against 377 was: ‘Any law or statutory provision that denies a person’s dignity and criminalizes his or her core identity violates Article 21 of the Constitution. Section 377 operates to criminalize, stigmatize, and treat as “unapprehended felons” homosexual males. The provision targets individuals whose orientation may have

formed before they attained majority. It criminalizes individuals upon attaining majority, for no fault of the person and only because he is being himself. Article 21 absolutely proscribes any law that denies an individual the core of his identity and it is submitted that no justification, not even an argument of “compelling State interest” can sanction a statute that destroys the dignity of an estimated 25 lakh (34) individuals.’ (35)

This argument that the state cannot plead, ‘compelling state interest’ when the core value of dignity is at stake, seemed to resonate deeply with the judges, with them repeatedly asking the ASG to respond to what they characterized as ‘a very strong argument on dignity’. The empathy demonstrated by the judges in the course of the hearings, their sensitivity not only to instances of brutal violence but equally to the more subtle language of discrimination made the Court proceedings for the brief moment of the hearings a magical space. LGBT persons who were so used to the sneers and jeers of society, suddenly felt that they were not only heard but also respected. The judges, just through the art of empathetic listening, restored dignity to a section of society on whom the Government seemed intent on pouring nothing but contempt and scorn.

The third important moment were the series of exchanges between the judges and the ASG and the counsel for B.P. Singhal and JACK. By contrast to the evident empathy with which the judges heard both Naz and Voices, the ASG as well as the counsels for JACK and B.P. Singhal were subject to questions which showed judicial impatience with the nature of arguments and hinted at the deep structure of their judicial sympathies. I will just highlight three such exchanges.

At one particularly funny moment, counsel for B.P. Singhal referred to *R. v. Brown* (36) which was a decision of the House of Lords in which they ruled that consensual sadomasochistic practices between adults were not entitled to protection on grounds of privacy. Counsel for B. P. Singhal read from this judgment to make the point that: ‘Homosexuals enjoy group sex and even enjoy committing violence. This is sexual perversity and ... criminal acts warranting prosecution were committed in the course of such perversity.’ He said that ‘it was disconcerting to see tendency of homosexuals to indulge in group sex’. C.J. Shah sharply interjected to ask if it was based on personal knowledge that Mr Sharma knows that homosexuals enjoy group sex?

When C.J. Shah asked how the ASG would respond to the Art 21 argument [right to life includes the right to live with dignity and cannot be snuffed out by any law], the ASG responded that: ‘This argument is being raised because there are many people of “that kind” in society... People are indulging in it, and they should be excused because they are consenting adults?’, he asked rhetorically. ‘There is no question of being excused,’ Chief Justice Shah remarked sharply and with finality: ‘The argument is that Article 21 is being violated.’

The ASG strenuously denied that the right to health was denied to LGBT persons. ‘It is wrong to say that access to health care is impeded as if a man goes to a doctor and asks for treatment he will be provided. Where is the fear? It is incorrect to say that the statute is arbitrary because one can’t get treatment.’ In the ASG’s opinion it was mere personal sensitivity which lay behind the challenge to Sec 377.

C.J. Shah’s knowledgeable and empathetic response was that ‘on the ground if a person had a sexually transmitted disease and was a MSM, he would be fearful of going to the doctor knowing that the sexual act he had done was punishable even up to life. He knows that the behaviour is criminalized and knows that he is liable to punishment. It remains a stigma as he

cannot tell the doctor that what he indulged in was an offence. Can you brush aside NACO's affidavit by saying that person is feeling shy about going to the doctor?'

Leaving aside the question of the eventual judgment, the question which interests us is what accounted for the judicial empathy for LGBT suffering? We can essay some possible reasons.

Firstly, it has often been noted that the difference between the *Bowers* judgement which retained the sodomy law in 1986 and the *Lawrence* judgment which struck down the sodomy law in 2003 in the United States was that in the *Lawrence* Court every judge knew somebody who was gay or lesbian where in the *Bowers* Court, not a single judge knew any gay or lesbian people. Both judges in this case knew J. Cameron (37) and J. Kirby (38), two openly gay judges who have spoken in India about LGBTI rights. These personal ties with fellow judges who were gay give a face and a name to homosexuality. What appears strange and distant is made familiar, and what might have evoked dislike and misunderstanding evokes empathy and understanding. Clearly the idea of exposing judges to LGBTI issues through discussions with such eminent fellow judges has had its benefits.

Secondly, much had changed since 2001 when the petition was originally filed. In the intervening period the range of activities on queer rights has brought queer issues center stage as never before. Sec 377 had moved from merely being a provision in the Indian Penal Code to becoming a metaphor for all that is wrong with our sexual universe. The open letter signed by eminent luminaries such as Vikram Seth and Amartya Sen, the pride parades in major Indian cities, the periodic media reporting of LGBT rights violation all signalled a changing India, an India to which the judiciary could not be blind. If Indian society was changing to encompass new understandings of rights, the judiciary could not be completely immune to this current.

Finally, regardless of how much we theorize to understand the powerful societal influences that were brought to bear upon the final arguments, there still needs to remain some space for the highly subjective and deeply personal. What was it in the very being of J. Shah and J. Muralidhar that accounted for their remarkable empathy? Where did that remarkably human quality of relating to human suffering come from?

That will continue to remain a mystery and we can do no more than hope that the quality of judging continues to be imbued with the spirit which makes judges listen to the voices of human suffering.

The Judgment in Naz Foundation v. Union of India and others

After a long wait of over seven months, the Delhi High Court finally delivered its judgment in *Naz Foundation versus Union of India*. The judgment was strongly grounded in an understanding of the importance and implications of the Constitutional protections and its equal applicability to LGBT persons. It took forward the understanding of dignity, privacy, non-discrimination and equality in Indian Constitutional Law, as it applied these concepts to LGBT persons. In many moving passages the judges showed a remarkable understanding of what it meant to be an LGBT person in India. As the judges famously concluded, 'In our view, Indian Constitutional law does not permit that statutory criminal law to be held captive by the popular misconceptions of who the LGBT's are. It cannot be forgotten that discrimina-

tion is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual.'

In terms of the implications of the judgment it is important to note that *Naz Foundation* unlike *Lawrence vs. Texas* does not explicitly limit the applicability of the judgment. *Naz Foundation* opens the door to future non-discrimination actions by LGBT persons who are discriminated against in the public sphere. This might well prove to be what makes *Naz Foundation* a decision of enduring significance.

However even beyond the strictly legal implications, the judgment has had a remarkable impact in provoking tears, initiating conversations and inciting opposition. Among the LGBT community, it was the recognition that finally the Indian State had recognized 'full moral citizenship' that led to tears, among a large section of the public the judgment led to animated conversations about who the LGBT were and among a section of conservative opinion it provoked shrill protest. (39) Either ways regardless of what the Supreme Court finally says, the *Naz* judgment provoked a very public debate and took the discussions of a judicial decision way beyond the confines of law journals and lawyers. As one commentator noted, it was Indian Constitutional law's *Roe vs Wade* moment. (40)

While the judgment is an important moment in Indian LGBT history precisely for the reasons outlined above, one of the important questions which needs to be addressed is the question of the territorial applicability of the judgment. Judicial interpretation suggests that if the constitutionality of a law is adjudicated by a High Court, then that interpretation holds for the entire country. (41) It goes against logic to say that citizens of Delhi enjoy one kind of rights with the citizens of Karnataka enjoying another series of rights, particularly when all are equal citizens under one Constitution.

The battle in the Supreme Court has already been joined with over seven parties which includes Baba Ramdev (a yoga teacher), Suresh Kaushal (an astrologer), the National Apostolic Churches of India, all filing appeals against the judgment. The Union of India does not seem to be completely opposed to the *Naz* judgment which has been described by the Law Minister as 'well reasoned, well documented and well argued'. However unless the Supreme Court overrules the Delhi High Court decision, the status quo will continue to remain in favour of the LGBT community with LGBT individuals continuing to be full citizens of India.

The government of India decided on September 17, 2009 that it will not oppose the Delhi High Court verdict on Section 377 of the Penal Code, which decriminalizes homosexuality by 'reading down' the section pertaining to same-sex relations between consenting adults in private. Indian activists are praising this decision as a symbol of tacit support for decriminalization in this landmark case.

Arvind Narrain is a lawyer and founder member of the Alternative Law Forum in India, a collective of young lawyers who work on a critical practice of law. He works on issues pertaining to human rights and also with specific reference to the human rights of those who are discriminated against on the basis of gender identity and sexual orientation. He is the author of Queer: Despised sexualities, law and social change and has co-edited with Gautam Bhan an anthology on queer politics in India, titled Because I have a voice: Queer politics in India.

- (1) The word queer is used to connote a struggle against the norms of gender and sexuality. It 'encompasses a multiplicity of desires and identities, each and all of which question the naturalness, the rightness and the inevitability of heterosexuality'. G. Bhan et. al., *Because I have a voice*, Yoda Press, New Delhi, 2005, p. 3. This paper also uses the phrase LGBT to stand in for Lesbian, Gay, Bisexual and Transgender. The use of both phrases at different points in the article is also indicative of the way the wider struggle is conceptualized, i.e. queer, and the way once the Court is approached one is constrained to use language which locates the notion of queer politics in identities which one thinks the Court will be able to understand as rights bearing subjects, i.e. LGBT.
- (2) *Government vs Bapuji Bhatt*, 1884 Mys. L.R. 280.
- (3) *Khanu vs Emperor*, AIR 1925 Sind 286.
- (4) *Brother John Anthony vs State*, 1992 Cri L J 1352; *State of Kerala vs Govindan*, 1969 Cri L J 818.
- (5) AIR 1925 Sind 286.
- (6) *Idem*.
- (7) AIR 1968 Guj 252.
- (8) http://www.yawningbread.org/apdx_2006/imp-249.htm. Accessed on 17.01.09.
- (9) 'Kothi' is a term that is used across South Asia with local variations. Kothis often see themselves as having a non-English speaking, feminine homosexual identity, distinct from the 'gay/bisexual' identity which tends to be the expression of English-speaking homosexual/bisexual males. Kothis largely belong to the non-English-speaking lower middle class and feel their marginalization (due to lack of access to resources/ information/employment etc.) in terms of language, education, socio-economic status as well as sexuality. In other words, though a kothi can be described as a male homosexual who takes a feminine role in sex with other men, the kothi construct is not only a sexual/gender identity but also a socio-cultural one specific to the south Asian context. See PUCL-K, *Human Rights Violations Against the Transgender Community*, 2003.
- (10) As a community, they represent an existing Indian tradition which clearly contests heteronormativity. Hijras include men who go in for hormonal treatment, those who undergo sex-change operations and those who are born hermaphrodite. The hijra community has its own cultures and ways of living, including its own festivals and gods and goddesses. Hijras divide themselves into gharanas or houses and the strength of the hijra community lies in its close-knit relationships. See PUCL-K, *Human Rights Violations Against the Transgender Community*, 2003.
- (11) Crime No. 151/2006 filed by Ratnakar Shetty, Inspector Cubbon Park Police Station, Bangalore.
- (12) Amartya Sen is not just India's first Nobel Laureate in Economics but also plays an important role as a public intellectual in India by putting forth very important viewpoints on issues as diverse as the state of Indian democracy, public funding for education and health and the threat which the Hindu Right poses to the Indian Constitutional order.

- 148
- (13) <http://mrzine.monthlyreview.org/india160906.html>. Accessed on 17.01.09.
 - (14) Human Rights Violations Against the Transgender Community, PUCL-K, 2003 (second edition), p. 46.
 - (15) G. Bhan et. al., *Because I have a voice*, Yoda Press, New Delhi, 2005, p. 8.
 - (16) See: Vinay Chandran et. al., *It's not my job to tell you it's ok to be gay*, cf. Bhan et. al., *Because I have a voice*, Yoda Press, New Delhi, 2005, p. 59.
 - (17) Idem.
 - (18) See: Deepa V.N., *Queering Kerala*, cf. G. Bhan et. al., *Because I have a voice*, Yoda Press, New Delhi, 2005, p. 175-196.
 - (19) 'The provision under challenge, denies individuals the right to decide for themselves whether to engage in particular forms of consensual sexual activity. The fact that individuals define themselves in a significant way through their intimate sexual relationships with others suggests, in a society as diverse as ours, that there may be many "right" ways of conducting those relationships, and that much of the richness of a relationship will come from the freedom an individual has to choose the form and nature of these intensely personal bonds. Sec 377 seeks to control a personal relationship that is within the liberty of persons to choose without being punished as criminals.' Cf. Written arguments of Voices Against Sec 377 in *Naz Foundation and others v. Union of India* WP No. 7455/2001. Also See principle 6 of the Yogyakarta Principles on Sexual Orientation and Gender Identity which reads: 'The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.'
 - (20) National AIDS Control Organisation is a division of the Ministry of Health and Family Welfare that provides leadership to HIV/AIDS control programme in India through 35 HIV/AIDS Prevention and Control Societies. In 1992 India's first National AIDS Control Programme (1992-1999) was launched, and National AIDS Control Organisation (NACO) was constituted to implement the programme. See: <http://www.naonline.org/NACO>, Accessed on 19.01.09.
 - (21) Impleadment means undertaking legal action.
 - (22) The Bharatiya Janata Party (BJP) is one of the two major political parties in India today and was in government from 1998 to 2004. The party represents an opinion which can be characterized as Hindu right-wing with a strong focus and anti-minority perspective combined with a emphasis on a strong and by definition non-inclusive nation state.
 - (23) Henceforth referred to as (C.) J. Shah.
 - (24) Henceforth referred to as J. Muralidhar.
 - (25) All the subsequent quotations with respect to the proceedings from the Delhi High Court are taken from the transcript of the proceedings. The transcripts do provide a rough idea of the way the proceedings went before the Delhi High Court, however they are not a verbatim transcript of all that transpired before the Court. It is available at www.altlawforum.org
 - (26) See Human Rights Watch, *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India*, July 2002, Vol. 14, No. 5 (C), p. 19. This Report was cited by the petitioners in their written arguments.

- (27) Lawrence Liang, *Devastating Looks: Smirks, Quirks and Judicial Authority*, <http://kafila.org/2007/05/04/devastating-looks-smirks-quirks-and-judicial-authority/>, Accessed on 10.01.09.
- (28) *National Coalition For Gay and Lesbian Equality v. Minister of Justice*, [1998] {12} PCLR 1517.
- (29) *Idem* at para 127.
- (30) (1992) 175 CLR 1.
- (31) 344 U.S. 1 (1952).
- (32) 388 U.S. 1 (1967).
- (33) See Outline of Arguments on behalf of Voices Against 377 para 12.4, submitted in *Naz Foundation vs. Union of India*, Writ Petition no 7455 of 2001.
- (34) A lakh refers to a denomination of 100,000.
- (35) *Idem* at para 9.2 and 9.3.
- (36) [1993] 2 All ER 75.
- (37) J. Cameron is at present a serving judge in the South African Constitutional Court.
- (38) J. Kirby was until recently a serving judge in the High Court of Australia. J. Kirby was the first openly gay judge in any Superior Court in the world.
- (39) See Arvind Narrain et. al., *The Right that dares to speak its name*, Alternative Law Forum, Bangalore, 2009. For an account of the range of responses in the aftermath of the judgment: <http://www.altlawforum.org/news/gender-and-sexuality/the-377-campaign/The%20right%20that%20Dares%20to%20Speak%20its%20Name.pdf>
- (40) *Idem*.
- (41) *Kusum Ingots and Alloys Ltd. v. Union of India*, (2004) 6 SCC 254.

Self-portrait

Being Queer in India

Pramada Menon

I have often asked myself what it must be like growing up queer in a country like India. I did not grow up queer, I grew up heterosexual and non-conforming. That was difficult in itself and yet I survived. When I was growing up there was little or no conversation around sexuality and definitely nothing about being lesbian, gay or queer. In college, my friends and I spent an inordinate number of hours talking about our boyfriends or whether it was important to be a virgin when we got married. Marriage seemed inevitable, that seemed to be the logical route to follow.

All of that went for a toss soon enough. Feminism happened to me and I knew that I wanted to live life on my own terms and my world view included myself, my friends, my home and there was almost no space for a love interest. Men were part of my life, but as partners who came and went and had very little staying power since what I saw was not what I wanted on a permanent basis. And then I fell in love with a woman.

The world did not turn upside down, nor was I overcome with shame or guilt. I just knew that I was happy and that there was nothing wrong with what I was feeling. It was easy for me on many counts. I was financially independent and lived on my own. My parents had grown with me and were willing to concede that I would always have a way of life that would not be quite theirs and yet they were willing to let me be. Most importantly, I lived in urban India and came from a privileged background where a lot of the issues that plague women were not part of my story. I had friends who were queer and I had read enough feminist literature to know that there was nothing wrong or deviant about my desires.

Coming out was not an issue for me. I do not think that everybody has to make a public statement about their life. People have to choose when they desire to come out of the closet and to whom. It's not important that everyone knows but one should not have to hide it either. I came out at work, to my friends and to my family and all of them were supportive. I think for my mother it was important that I should be happy, she did ask me whether the change was permanent and I did not have an answer to give since I am not sure of what permanence or forever is. I still come out at trainings, at meetings, at public events - but this coming out is more of a political statement now. I think it's important that queer people get counted in everything and since I have the ability to be out and not fear anything, I go ahead and speak my mind.

Identity is personal and I feel that it is not important to have to identify as lesbian, bisexual, trans or queer. One should be allowed to have whatever identity one chooses, since all these words label one in a particular way and never really capture what you really are. How does

it help to know whether I identify as lesbian or queer other than the fact that I can then be slotted into a box where certain characteristics can be ascribed to me? At the same time though, I do feel that identity is important in some ways; especially if one wants to create a supportive community where others can see themselves reflected and can find a safe space to be in. And, it is important to identify the community in some way so that violations can be documented, especially if it is a nascent community.

What is rather sad is that there are very few social spaces that queer women occupy. Sexuality is a taboo subject and to that if one adds queerness, then the spaces immediately close. Visually there is no affirmation through films or advertisements and all that is lauded are heterosexual, monogamous relationships that lead to marriage. The women's movement in India has been rather closeted about sexuality, and about queerness it has been silent. Relationships between women are a matter of conjecture rather than reality and most often one plays a guessing game. It's only now, in my generation, that there are more and more women who are out in the movement, paving the way for others and creating spaces for queerness to flourish.

If one wants to meet other queer women and create communities, one has to search a lot. There are a number of social spaces for men but for women it is extremely limited. The reasons for this are many - women are not financially independent, there are many restrictions on women going out alone, public transport systems are not safe and therefore it is a select number of women who are able to go to the parties that are organised. These are not advertised publicly, one has to know someone who will know someone who will inform you of a party or a get together.

It is a complicated world. So many questions to be answered: should one get married to one's partner; is legalizing marriage between same sex partners an issue worth fighting for; should organizations give same sex partners benefits, does one have to constantly argue against 'the homosexuality is unnatural' position, does one have to seek religious sanction, does one have to highlight tradition to show that queer relationships existed some hundreds of years ago, does one have to read about brutal violence against the queer community...?

Will we move into answers any time? I feel positive, I grew up with little or no reference to anything other than heterosexual marriage and now there is so much more information. So many more people are willing to live their lives with dignity at great cost to their personal safety. Times have changed and it can only get better.

Pramada Menon is a queer activist from New Delhi, India. She was co-founder of CREA, a women's human rights organisation. Until early 2008 she was the Program Director of CREA. Pramada has been working nationally and internationally as a trainer on issues relating to sexuality, sexual rights, gender, and violence against women.

Bishkek, Kyrgyzstan, 8 April 2008

Police Raid of Hivos Partner Labrys

Ireen Dubel

The Kyrgyz organisation of lesbians, gays, bisexuals and transgender persons, Labrys (established in April 2004), was visited by its two Dutch partners, Hivos and the COC within one week. This was a good reason to organise a festive meal prepared by the members of Labrys in the new community centre that Labrys rents in the city of Bishkek. The centre is located in a neighbourhood with a bad reputation. In the neglected apartment building live many poor Kyrgyz who have migrated from the rural areas. There is a lot of traffic on the street as it is a zone for sex workers. But for Labrys, it is progress: there's finally a permanent, private place where members meet each other, receive training and advice. It also offers a temporary shelter for young LGBT persons who have been thrown out of their homes by their families.

Police Raid of LGBT organisation Labrys in Kyrgyzstan - © Ireen Dubel



The festive meal on the eight of April was violently interrupted. A local police officer, accompanied by two militia officers and the owner of the apartment building, arrived with a vague story about nuisance and too much in-and-out visitor traffic. The neighbours had complained. Labrys' staff reacted professionally to prevent panic amongst the visitors. The two Hivos members of staff did not even notice what was going on until some ten minutes later.

It was the fourth time that this happened to Labrys. While a few staff and board members asked the police officer for some clarification, others were busy using their mobile phones to call their lawyers, befriended media and human rights organisations to inform them about the raid. For the staff of Labrys it was important to prevent people being taken to the police station since not all had brought along their identity cards. A number of them did not possess such a document at all and would therefore run into big trouble. They were carefully guided out of the building while the rest of the staff kept the police busy until reinforcements in the form of lawyers, media and representatives of human rights organisations were present. The police officer demanded an inspection of Labrys' documents: the organisational registration, the rental agreement and bank statements. Labrys was accused of running a brothel. Supported by the lawyers, Labrys insisted they were a legitimate organisation. The police officer also called in reinforcements as five other militia officers showed up. The leader of the new group had the most authority. He knew the law and saw to it that the affair did not get out of hand.

It took two hours before the police cleared off; no violence ensued. But the incident was clear evidence of how difficult it was for Labrys to offer a safe shelter to LGBT persons under these circumstances. An internal evaluation was immediately held in the form of a group discussion about the experience of the intimidations and what each member's reaction had been. Everybody was open about the fear and anger, and the memory of earlier violence when police officers had threatened the members with rape. In spite of the good outcome, Labrys recognised the importance of training its members how to deal with police violence and intimidation. A bizarre situation: having to train yourself to deal with the police. 'Homosexuality is no longer criminal in Kyrgyzstan, but we are not yet legal!' concluded Labrys staff member Anna.

Some weeks after the police raid, Labrys decided to search for alternative accommodation for its community centre as it did not want to continue to expose its members to harassment by the police and unfriendly neighbours. It took almost a year to find a new and safer place for both the office and the shelter. And since Labrys moved in, the owner of the new place already received complaints from the neighbours about the number of visitors dropping in.

In October 2008, Human Rights Watch issued a report on the violence that lesbian and bisexual women and transgender men face in Kyrgyzstan. Based on detailed interviews, the report *These Everyday Humiliations: Violence Against Lesbians, Bisexual Women, and Transgender Men in Kyrgyzstan*, tells of beatings, forced marriages, and physical and psychological abuse. The government refuses to provide protection or to confront the atmosphere of prejudice in which the attacks take place.

Representatives from Labrys attended the 42nd session of the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) in Geneva, October/No-

154 vember 2008. In its shadow report submitted for this session, Labrys presented data from a large needs-assessment research of LBT persons living in Bishkek. More than half the respondents stated that their families try to force them to change their sexual orientation or gender identity through persuasion, psychiatric treatment, violence, house arrest or forced marriages. In its concluding observations to the Kyrgyz state, the CEDAW Committee expressed concern about discrimination and harassment of women because of their sexuality. Labrys' attendance at the CEDAW Committee session has improved its status in Kyrgyzstan itself. Labrys is increasingly being invited to different events organised for and by women's organisations in Kyrgyzstan.

For more information about Labrys see: <http://kyrgyzlabrys.wordpress.com>.
The Human Rights Watch report is available at: <http://www.hrw.org/reports/2008/kyrgyzstan1008/>

Ireen Dubel (MA) is Programme Manager for Gender, Women & Development at Hivos and was present during the raid of Labrys with her colleague, Els Rijke.

Following the Rainbow MSM, HIV and Social Justice in South Asia (I)

Shivananda Khan

In the majority of the countries in the Asia-Pacific region, discomfort pervades the government, national AIDS program leadership and others, regarding the reality of male-to-male sex (MSM) including transgenders (TG) (2). This has led to a lack of HIV interventions for MSM which strategically focus on prevention, treatment, care and support. A 2006 survey of the coverage of HIV interventions in fifteen Asia-Pacific countries estimated that targeted prevention programs reached less than eight % of MSM (3), woefully short of the eighty % coverage that is projected as necessary for effective results. (4) Highly concentrated HIV epidemics among men who have sex with men (MSM) in urban areas of some countries are already well documented (e.g., HIV prevalence in Bangkok: 30.7% (5); Phnom Penh: 8.7% (6); Mumbai: 9.6% (7); Beijing: 5.8% (8)), yet the investment on HIV programming for MSM ranges from 0-4% of the total spending for HIV programming region-wide. (9)

A Crisis Recognised

The March 2008 report of the Independent Commission on AIDS in Asia, *Redefining AIDS in Asia: Crafting an Effective Response* (10), clearly confirmed that high risk behaviours during sex between men is one of the three major driving forces of HIV in Asia-Pacific, along with risk behaviours during sex work by females and injection drug use. Without an increase in effective, comprehensive and carefully targeted HIV interventions, the highest number of new infections will soon be among MSM. That number will increase dramatically until 2020, at which time nearly fifty % of all new infections in Asia will be among men who have sex with men, as is illustrated in the AIDS Commission Report (11), which highlights the gross under-investment and HIV service coverage for MSM.

This crisis is not only symptomatic of the level of denial, ignorance and social exclusion of MSM from the health and social sectors of any given country, or the lack of acknowledgment of the significant risks and vulnerabilities that many MSM face, it is also a reflection of a lack of knowledge and understanding of male-male sexualities in the region, along with a range of misunderstandings arising from the use of western terminologies, ideologies and constructions of sexualities.

Gendering Sexualities

South Asian countries tend to be very male dominated societies, where social and public spaces are primarily male 'owned'. Sociocultural and religious values involve phallo-centrism (12), socially compulsory marriage, significant levels of social policing of females and gender segregation, adulthood defined by social and religious obligations and duties, male honour and bonding, shame cultures rather than guilt-based frameworks arising from the judeo-christian histories of the West.

As homo-social and homo-affectualist (13) societies, sexual boundaries between males can often be easily crossed in appropriate spaces and become sexualised.

In the context of male-male sexualities and practices, the primary framework in South Asia is based on a gendering of male bodies and receptivity. That is, significant numbers of males perform gendered roles as feminised males that can be accessed by those deemed 'real men', who do not perceive their receptive sexual partners as men, but as 'not-men', whilst perceiving themselves as normative penetrating men.

These male-to-male sexual behaviours do not exist within a socio-sexual context of a heterosexual/homosexual oppositional binary and as exclusive categories. Rather, there appears to be an inclusive behaviour that involves a substantial level of males operating within a wide variety of categories and/or networks. These involve at times, gendered self-identities, a perceived 'body heat' leading to a perceived urgent need for semen discharge, ready and easy accessibility to male sexual partners, and the social contexts of gender segregation, social policing of females, delayed marriage, and concepts of masculinity and femininity.

Thus identities are framed by gender and sexual roles, where feminised MSM label themselves as *kothis* (India and Bangladesh), *metis* (Nepal) and *zenana* (Pakistan), while they label their masculine partners, *panthis*, *giryas*, or *tas*, depending which part of South Asia you come from. And these *panthis*, *giryas* and *tas* do not label themselves, other than as men.

In another pattern, more common it seems in Afghanistan and the North West Frontier Province of Pakistan (but also existing in other parts of South Asia, though less visibly), linked with the gendering of male-male sexualities, is based on age structures. That is, adolescent males who are 'beardless youths' (dancing boys or *bacha bareesh* in Afghanistan) and therefore 'not men', can be sexually accessed by older men.

This gendered framework of male-to-male sex is primarily among (but not limited to) low-income populations, where anal receptivity, poverty, low levels of literacy, and economic disempowerment act as drivers to the HIV epidemic. Other dynamics include males who access other males for discharge and/or desire to be penetrated, males who desire male to male sex so do not gender themselves and usually indulge in mutual sexual activity, 'giving and taking', friends having sex with friends for mutual pleasure, and males in all male institutions. Alongside these indigenous forms of labelling, gay-identified males, primarily among English speaking, middle and upper classes also exist with their own networks, mainly in urban areas. In terms of risk and vulnerability, where receptive anal sex has the highest risk of infection, multiple partners, refusal of penetrating partners to use condoms, low health-seeking behaviours, stigma and shame, add to fuel to the fire.

These networks of differing MSM contexts may at times overlap, where individuals may shift between different networks, but usually they are mutually exclusive. In other words there are complex dynamics and diffusion in relation to male-to-male sex. As an added

complexity, the issue of female sexual health is also highly pertinent among MSM in the region. Cultural tradition makes marriage socially compulsory. Many MSM, of whatever framework or gender identification/orientation, are married or going to be married, even those who self-identified as *kothis*. Many manly sex partners from the general male population would also be married or going to be married, and may well have other females as sexual partners. This means that the sexual transmission of HIV from males to males, and then on to females may be common.

Contemporary research on sexualities and genders have clearly shown that the bipolar categories, such as 'man' or 'woman' or 'heterosexual' or 'homosexual', are not useful to describe the range of identities, desires and practices (14) existing in South Asia. The terms 'gay' or 'homosexual' are too contextualised by a specific history, geography, language, and culture to have any significant usefulness in a different culture from their source. In this we should be talking about sexualities, genders, and at the least, homosexualities and heterosexualities, and about behavioural constructions. Where UNAIDS and others speak of behaviourally homosexual, we can also talk about behaviourally heterosexual in the South Asian context.

These very broad and diffuse patterns of male-to-male sex, some visible by those who know how to look and see, and some highly invisible and almost impossible to reach, means that we will never be able to get accurate size estimations, but must look at levels of risk and vulnerability. That is, we need to design strategies for interventions to reduce the risk of HIV infection that are defined by those who are most at risk and most vulnerable. In an environment of what can only be termed as genderphobia - the fear of the feminine (if not the female) - where anal receptivity, multiple partners, disempowerment, and very high levels of stigma and discrimination focused on femininity and sexual receptivity, we need to explore different ways of mobilising than what has been used in the West.

The problem is that for many HIV and MSM services providers, government and donors, the term MSM has become synonymous with 'homosexuals', of 'gay' men, and at the least, of kothi-identified males (while their masculine partners are usually invisible and thus not recognised), often signified within the context of discussions of 'vulnerable groups', or 'target groups', or 'at risk groups'. In other words MSM is often taken to mean a specific and exclusive 'sexual identity' in opposition to 'heterosexuality', where MSM form an exclusive and bounded group/community. Too often programmatic decisions are taken within this limited view of what is essentially a behavioural term, while agencies and individuals speak of an 'MSM' community.

Across South Asia, a region of some 1.5 billion people, there are small social groups and networks, rather than a sense of community affiliation among such MSM. These are friendship networks that often affiliate around a specific site, neighbourhood, or occupation. However, while it is believed that a key strategy towards building sustainable risk reduction around same-sex behaviours and vulnerability is to mobilise so-called communities to shift patterns of normative sexual practices from high risk to reduced risk, what do you do when there are no communities as such, but rather diverse and limited networks, and where these networks are formed by the receptive, feminised self-identified MSM?

MSM, Vulnerability and Stigma (15)

It needs to be recognised that the male being anally penetrated by another male is highly stigmatised, both by the penetrator, as well as general society (and often this stigma is internalised in a phallo-centric culture leading to a range of internal psychosexual conflicts and problems that also increases risk and vulnerability), and those who are perceived to be recipients of penetration are usually treated with contempt. In such cultures, the receptive partner is seen within a gender construct, and while biological male, is seen as a 'not-man', crossing gender boundaries and breaking social taboos. This attitude leads to a whole sub-population of MSM which is socially excluded and treated abusively. For the penetrating partner, he is performing his masculine function, and easily merges into the general male population. (16)

A *giryal/panthi* or any man/male who is sexually penetrated, orally or anally, will make extensive efforts to hide his practice and/or desire, both from his friends as well as from *kothis/hijras* and others in their sexual networks to avoid such stigmatisation. However, it cannot be assumed that gendered sex roles are exclusively maintained at all times. It also needs to be recognised that a similar crossing of 'gendered' boundaries exists amongst *kothis*. It is also not unknown for some *kothi*-identified males to penetrate other males. But like the penetrated *giryal*, this behaviour would also be kept secret from other *kothis*.

Such stigmatisation around feminisation produces a range of human rights abuses, blackmail, violence, and male-on-male rape by local men, thugs and local police. Not only does poverty, class and education levels stigmatise individuals, along with the fact of HIV infection, but also the specific gendered role and identity that some MSM identify with. They are doubly stigmatised because as biological males they are sexually penetrated - and thus not perceived as men. Their feminisation, their crossing of the gender roles and barriers accepted as social norms, reinforces the stigmatisation, leading to exclusion and denial of access to services and to the social compact. This often results in such males who are living with HIV/AIDS to be stigmatised by others who are also living with HIV/AIDS but whose routes of infection are deemed 'normal'.

Power inequality dynamics arising from South Asian constructions of masculinity, social attitudes towards feminised males and their sexual practices, sexual abuse, assault and rape, stigmatisation and poverty, discrimination and disempowerment, all configure the lives of most *kothis*. As a consequence they play a significant role in the emotional, sexual, physical and economic exploitation of feminised males, and give rise to a range of physical, psychological, and emotional problems, which further increase vulnerability and disempowerment. This disempowerment creates significant levels of suicidal impulses and self-damage, an expression of self-hatred and despair. And this of course leads to significant increases to risks of STI/HIV as well as impeding successful implementation of risk reduction strategies.

Many *kothis* not only face harassment, sexual violence and rape from law enforcement agents, but also from those whom they have called friends in schools and colleges, from those in positions of trust such as relatives, neighbourhood elders, elder friends, and teachers. Gang rape is not uncommon. And of course such forced sex is always unsafe and often results in serious physical injury such as a ruptured rectum, internal haemorrhage and so on.

One of the central issues that have arisen from Naz Foundation International (NFI) research and understanding is that often it is effeminacy and not the factual knowledge of male-to-

male sexual behaviour that leads to harassment and violence. That harassment and sexual violence results from the fact that many *kothis* do not live up to the expected normative standards of masculine behaviour. It is this belief that leads to the notion that those who are feminised can be exploited and abused, and that being feminised somehow weakens the person, a notion often harboured by the *kothis* themselves.

Accepted notions around effeminacy are therefore one of the major factors that lead to disempowerment and opens *zenanas/kothis/metis* to abuse and assault and to a refusal of service provision. The fact that *zenanas/kothis/metis* themselves have internalized these notions so strongly means that specific tools will need to be developed for *zenanas/kothis/metis* in order to empower them to start valuing their lives and enhancing their self-respect.

'I don't mind if my 'husband' beats me up. It only shows how manly and powerful he is.'

'When my parik beats me, I feel as helpless as a woman. Since I want to be a woman, it actually makes me feel good.'

In a study conducted in 2002 by NFI consultant Aditya Bondyopadhyay with Bandhu Social Welfare Society in Bangladesh (17), significant findings included:

- 33% reported assault of a sexual nature (18), or rape at the hands of friends, i.e. those the respondent knew and trusted, which was followed by the incidence of sexual assault or rape at the hands of *mastaan* (traditional terms for hoodlums or bullies) and the police.
- 48% of the respondents reported that they had been sexually assaulted or raped by policemen, and 65% reported that they had been sexually assaulted or raped by *mastaans*.
- 64% of the total respondents reported facing harassment of one kind or the other at the hands of the police.

Rape and sexual assault also results when *kothis* or male sex workers refuse to pay the extortion demands of 'hoodlums' or police. It may be noted that all the male sex workers in this study were self-identified *kothis*.

Reported gang rape by policemen was significant, where *kothis* were rounded up and taken either to police barracks or the police post and raped by groups of policemen. Such forced sex is always unsafe and often results in serious physical injury like ruptured rectum, internal haemorrhage etc. It is also generates risks for the police officers.

Other than sexual assault, rape, and gang rape, the other harassment that respondents reported facing at the hands of police range from extortion on threat of imprisonment, prolonged blackmail, beatings, restriction of movement in public places, and disclosure of sexual practices to *mastaans* and family, amongst others.

- 71% of the total respondents stated that they had faced some or other forms of harassment from *mastaans*. Other than rape, these included extortion (38%), beatings (45%), threats and blackmail (31%).
- 87% of the respondents stated that they had been subjected to sexual assault or rape simply because they were effeminate. This is, of course, an indication of the whole issue of feminised males and gender, which is dealt with hereafter, but is also indicative of the high percentage of MSM who suffer sexual assault and rape.
- 41% of those who had faced some form of harassment at the hands of the police say that the police guessed that they were MSM from their feminised behaviours while the figure was 55% for those who had faced harassment from *mastaans*.

Cases of victimization by family members were not uncommon. Of the 25 respondents whose near relatives were aware of their sexual behaviour, nineteen said that they had not accepted it. Their families had reacted negatively with beatings, forced marriage, disinheritance, throwing the person out of the house, taking them to doctors for curing them of homosexuality and so on.

- 48% of the respondents stated that fellow students or teachers had harassed them in school or college because they were effeminate. 55 out of the sixty respondents who said that they faced harassment by teachers or fellow students, also said their studies suffered due to this, and that they could have progressed more if such harassment had not taken place.

Such regular experiences along with the fact that these feminised males live in culture which constantly validates normative masculinity, creates internalized pain, shame and trauma along with deep sense of failure as men. This usually leads to self-blame, a lack of hope, and self-destructive behaviour.

- 33% of the respondents reported that they either thought of or tried to commit suicide at some point in their lives.

It is clear that legal, judicial, political and social advocacy is urgently needed, not only concerning those living with HIV, but also social justice and human rights for MSM. Advocacy will need to include challenges to the accepted notions of masculinity and femininity so that discrimination and stigmatization, social exclusion and marginalisation can be effectively challenged as they confront the daily lives of *zenanas/kothis/metis*.

A range of international and national agencies working in the field of HIV have recognized that, for effective and sustainable strategies to prevent the spread of HIV and to control emergent epidemics in a range of localities, countries and regions, MSM should be seen as a vulnerable 'group' or 'population', and their sexual health concerns need to be addressed in ways that enable 'community-based' responses. Papers, documents, and policies have all been written about empowerment, creating an enabling environment, community-based strategies that may lead to risk reduction, along with the tools to produce such a change. However, without addressing the day-to-day violations that confront so many MSM, vulnerability to HIV will remain high.

A paper prepared by Miriam Maluwa, Law and Human Rights Advisor to UNAIDS (19) argued that current international human rights treaties and conventions, along with those dealing with HIV/AIDS, created 'the human rights framework which gives access to existing procedural, institutional and other accountability and monitoring mechanisms which can be used to monitor and advance a rights based approach to HIV programs, including those addressing men who have sex with men'. However this author believes that there is an inherent weakness in this, in that the discourse is being taken to mean sexual orientation. While this of course is extremely important, it is inadequate in addressing many of the concerns highlighted above. Ignored, these are the human rights and sexual health concerns for the range of gender variant males amongst MSM that reflect stigma, discrimination and social exclusion, and the abuses that arise based on non-conformity to normative masculinity.

Community Development, Mobilising, and Emancipation

It is clear that a central way forward to address HIV risks and vulnerabilities of MSM is more than just handing out leaflets and condoms and telling people about HIV and their risks of infection. Globally, it has been seen that the most effective response to the threat of HIV is for communities to lead the response, through self-help actualising through empowered at-risk populations taking the responsibility of their own lives and well-being. But with the experience of most MSM in the region being bound with relatively small social and peer networks and friendship groups, organising peer-led responses requires substantive investment in building communities as an effective response to the impact on their lives needs a broader strategy.

So what makes a Community?

Being a part of a larger community means being affiliated to a shared consensus, of developing a sense of solidarity with others who share similar problems, hopes and aspirations, providing mutual aid and support mechanisms, strengthening and extending friendship networks, and increasing the range of socialising activities beyond the small group or network. It is a sharing of needs, ceremonies and rituals, being a part of something that brings people together. It is empowering internal leadership and skills development. It is encouraging self-help organising. It is creating a sense of self-worth and self-esteem, not only as an individual, but also as an emergent community.

Building a sense of community amongst the variety of MSM utilising existing gendered structures, around which community building and mobilising can develop, is critical if we are ever to have an effective strategy to reduce risk and vulnerability, to mobilise MSM to change their risky practices and develop new community sexual norms, and to use peer pressure as an effective tool to achieve this. That means identifying networks, mobilising these networks, building networks of networks, developing consensus, and using a range of developmental tools towards a shared vision of need and hope.

Naz Foundation International promotes a range of community building, development, and mobilising activities as a part of its mentoring and technical assistance programmes across the region. This includes developing an emergent community-based organisation (and usually these don't exist, but require external input and support initially), extensive networking, providing a range of services (beyond just addressing HIV and other sexually transmitted infections) that is wanted by a range of MSM in need.

At the same time, it is also critical to normalise same-sex behaviours and gender variance as expressed in South Asia (and elsewhere). That means addressing socio-cultural constructions of masculinity that disempowers femininity as a gender based experience. This also means mainstreaming the issues of same-sex behaviours and desires as a part of the larger human experience, of sex itself as including both reproductive necessity as well as recreational pleasure. Along with this, there is a need to be building social inclusion for MSM (and other so-called sexual minorities), rather than social exclusion. The debate on whether the

most effective approach to this is through the battle of identity rights or through sexual rights, while often acrimonious, points to a range of discourses that need to be reviewed and perhaps new arguments evolved, in the light of different histories, cultures and beliefs. This also includes how we fight for decriminalisation of sexual behaviours and practices that are based on consensuality.

This is an enormous challenge, one that not only impacts on South Asia, but has global implications. It requires a drastic revisioning of what makes us human, what pleasure means, what desire means, what sexuality(ies), masculinity (ies) and femininity(ies) mean. It is a part of that larger struggle than human beings are confronted with, planetary change, global warming, economic dislocations, the right be recognised as a human being.

The work of Naz Foundation International over the years in providing technical and institutional assistance to emergent MSM groups and networks to form their own organisations, should be seen as much as community development, as much as a response to the HIV epidemic. But as an outcome of this work amongst the MSM networks that we engage with, has been the development of new identities, re-imagining of old identities, a re-configuring of who we are, what we are, and how we define ourselves. It is a recognition of the polymorphous sexualities that are a part of the human experience, a recognition of the fluidity of personal identities themselves.

Along with this, has been the emerging work of building alliances amongst a diversity of agendas that share similar hopes and aspirations for a better life, a more meaningful life, a life of well-being. Beyond just the challenge of AIDS, natural allies such as the LGBT movement, the gender rights movement, a range of minorities' movements and social justice and equity movements, we can also include allies from those who fight for economic justice, for ecological freedom, for a healthy planet. All these elements form a larger picture of the evolution of a diverse human culture that is respectful of difference and that evaluates people not by who they are, but by what they do.

This is the larger emancipation we need to be engaged in - the liberation of human dignity and social justice, as much as the more localised one of ensuring that MSM are empowered to lead healthy, meaningful and significant lives.

Shivananda Khan OBE is the founder and chief executive of Naz Foundation International, an international development agency focused on HIV and sexual health needs of low-income males who have sex with males in Asia. Its primary mission is to provide technical, institutional, and wherever possible financial support to MSM groups, networks and organisations to assist them in developing their own self-help HIV prevention, care and support services. See: www.nfi.net

Notes

- (1) South Asia is made up of the countries of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.
- (2) 'Men who have sex with men' (or MSM) is an inclusive public health term used to define the sexual behaviours of males having sex with other males, and does not refer to an identifiable community or gender identification. Within this context it is under-

stood that the word ‘man’/‘men’ is socially constructed; as well, within the framework of male-to-male sex, there are a range of masculinities along with diverse sexual, gender and transgender identities, communities and networks.

- (3) *Men who have sex with men: the missing piece in national responses to AIDS in Asia and the Pacific*, Geneva, UNAIDS, 2007.
- (4) Executive Summary - *Redefining AIDS in Asia: Crafting an Effective Response*, Commission on AIDS in Asia. Oxford University Press, New Delhi, India, 2008, p. 4.
- (5) Pliplat, T., Kladsawas, K., Van Griensven, Wimonsate, W., *Results of the HIV surveillance among men who have sex with men (MSM) in Bangkok, Chiangmai and Phuket*, Proceeding for the Department of Disease Control Annual Conference, Ministry of Public Health, 11-13 February 2008, Bi-Tech Convention Centre (in Thai).
- (6) Neal, J.J., Morineau, G., Phalkun, M. et al., *HIV, sexually transmitted infections and related risk behaviour among Cambodian men who have sex with men*, Abstract presented at the 8th International Congress on AIDS in Asia and the Pacific, Colombo, Sri Lanka, August 19-23, 2007 [#1469].
- (7) Palwade, P., Jerajani, H., Ashok, R. K., Shinde, S., Vivek, A., International Conference on AIDS (15th : 2004 : Bangkok, Thailand). Int Conf AIDS. 2004 Jul 11-16;15: abstract no. C10822.
- (8) Ma X, Zhang Q, He X, et al., *Trends in prevalence of HIV, Syphilis, Hepatitis C, Hepatitis B and sexual risk behaviour among men who have sex with men: Results of 3 consecutive respondent-driven sampling surveys in Beijing, 2004 through 2006*. J Acquir Immune Defic Syndr 2007; 45, p. 581-587.
- (9) HIV expenditure on MSM programming in the Asia Pacific region. Constella Futures/ USAID (2006), available at www.healthpolicyinitiative.com.
- (10) *Redefining AIDS in Asia: Crafting an Effective Response*, the Independent Commission on AIDS in Asia, Oxford University Press, New Delhi, India, 2008.
- (11) Figure 2.16 in *Redefining AIDS in Asia: Crafting an Effective Response*, the Commission on AIDS in Asia, Oxford University Press, New Delhi, India, 2008, p. 57.
- (12) In Islam, Allah is male defined, while a key religious symbol in Hinduism is the *shiva lingam*.
- (13) In South Asian countries, gender segregation of social spaces is a strong form of social policing of gender relationships. Primary relations are between the same gender (homosexual). Homoaffectionalism in the sense that the term is used in this text means social acceptance of the public display of male-to-male or female-to-female affection. For example, it is common in Bangladesh to see two males holding hands or arms wrapped around each other as they walk. Often male friends will also share beds when sleeping, wrapping themselves around each other. See: *Hardman, Paul D., Homoaffectionalism*, GLB Publishers, 1993; also Khan: 1996, where he points out that the boundary between homoaffectionalism and homosexual behaviours is very ‘thin’ particularly in shared spaces and ‘under the blanket’.
- (14) Personal discussion with Dr. Carol Jenkins, Care Bangladesh, 1999.
- (15) See also NFI Briefing Paper No. 7: *Social Justice, human rights and MSM*, available on the NFI website (www.nfi.net)
- (16) This pattern of gender construction of male-male sexualities is not unique to South Asia. In fact this was the pattern in the West prior to the 1950s. See: *Chauncey, George, Gay New York - gender, urban culture and the making of the gay world, 1890-1940*, Basic Books, 1994.

- 164
- (17) See study report *Against the Odds, 2002, 2004*, http://www.nfi.net/downloads/knowledge_centre/NFI%20publications/Reports/2004_AgainsttheOdds.pdf
 - (18) The cultural understanding of rape involves the act of penetration. The law on rape in Bangladesh as it stands in the Bangladesh Penal Code also reinforces this belief. However many times a person is sexually assaulted in a way where he may receive grave psychological and/or physical injury, but it may not involve anal penetration. This fact was explained to the outreach staff in the workshops, and they were asked to include all grave assault of a sexual nature (as opposed to minor harassment of a sexual nature) that may not have resulted in actual penetration in the response to the questions on sexual assault.
 - (19) Presented at the special UNAIDS convened Inter-Agency meeting on Working with Men who have sex with men for HIV/AIDS Prevention and Care, first of November 2002.

Self-portrait

Struggling for Equality and Fairness for LGBTIQ People in Indonesia

Dédé Oetomo

As far back as I can remember I've always been attracted to other boys and young men. Until I reached puberty, I had thought it was nothing unusual. What sometimes bothered me, because of comments from my peers and older people, was the fact that I did not like sports or other physical activities, cried more than other boys, and often played with girls. At puberty I came across an article about homosexuality in a magazine my non-religious, petty bourgeois family subscribed to, and realized that my attraction had a name, homosexuality, and that it was not sanctioned the way attraction to the opposite gender was.

'My two daddy's' - Picture at the photo exhibition 'Spirit of the Rainbow: Love and the Family' by GAYa NUSANTARA, Surabaya, March 2008 - © Rr. Agustine



I kept this to myself until it became so disturbing that at twenty I came out to a close female friend in the teacher's training college we attended. By then I was already reading books on (male) sexuality, partly in search of an answer to my different sexuality. My friend introduced me to a psychologist she knew, and he sent me to be tested for possible anatomical and hormonal problems. The hormonal test had to be done in Jakarta, the capital city, about 800 km away from Surabaya, where I was living and studying. Since my savings was not sufficient, I decided to tell my parents and ask them for financial support. Their reaction was rational: they saw it as a problem that needed to be solved, and so I had the tests done, accompanied by my father. In Jakarta my psychologist also referred me to his professor of psychiatry, who - I learned later - told my father that there was nothing to be done, that I just had to learn to adjust to living in society as a homosexual.

My therapy sessions with the psychologist were more like an independent study course. He lent me books on sexuality, and even borrowed mine as well. From these books I gathered that homosexuality was just a sexual variation and nothing to be ashamed of. I went to see the psychologist less often and finally stopped. In the meantime I also learned about the gay movement and gay communities in the West, and during a five-year sojourn in the USA pursuing doctoral studies in linguistics at Cornell University, I came out to everyone I knew and joined the gay organisation on campus. I was also writing pieces about homosexuality in the Indonesian media and communicating with other gay men in Indonesia, culminating in the founding of Lambda Indonesia in March 1982, which lasted for four years. Since then I've been a sort of spokesperson for Indonesia's gay community, by which I've been able to facilitate the founding of other organisations, including my current one, GAYa NUSANTARA, in August 1987.

In addition to getting to know other gay men through the media, I was also introduced to various communities in the Archipelago by *waria* (male-to-female transgenders) and the gay men I corresponded with. After the proliferation of the Internet, it turned out to be a very good venue to meet new gay men, lesbians, transgenders, intersexed and other queer people. Being an activist, I'm also approached by people for counselling, introductions, and other activities.

As a novice activist, though by then I stopped practising religion, I realized I had to face resistance from culture and religion. I was helped by more senior, though less out, gay scholars who reminded me of indigenous forms of homosexuality in Indonesian cultures. In Indonesian society, which has a tendency of glorifying tradition, these prove to be a quite powerful argument for gay emancipation. I also read profusely, including about religion, to prepare myself for the increasingly frequent public debates I had to participate in as I became more known in the media.

Living as an out gay man in Indonesia is possible, as I've done for the past twenty-five years or so. Public display of affection between people of the same-sex is not uncommon in our society. I lived openly with my first partner for nineteen years, and again with another partner for two and a half years. At the moment I have a long-distance partner, Purba, with whom I may also live together in the future. While we cannot register our relationship legally in Indonesia, we also do not see the need for it now, although we also know that there's always Canada if we really need to get married.

If anything, I feel less safe in gay neighbourhoods in the West, since I know that queer bashing

is a fact of life. In Indonesia itself I did receive a death threat once in September 1999, when we were about to hold a national LGBT networking meeting in Solo, Central Java, and word got to the conservative islamist groups who did not want their city 'to be made a second Sodom'. While we had to cancel the meeting, we received expressions of support from many pro-democracy groups.

Theoretically, at least, LGBTIQ people, though not explicitly, are protected by the Constitution and other human rights legislation in Indonesia. The 2004-2009 National Human Rights Action Plan specifically mentions LGBT people as 'a special group whose rights are to be protected'. But implementation is very slow, and the daily fact is of course different, just as other human rights are still often violated by the State. *Waria*, together with female sex workers, are often rounded up by police from streets and parks, detained, forced to pay to be released and sometimes raped. Some lesbians and gay men still face discrimination on the job and in the neighbourhood when people find out or suspect their sexual orientation. The toughest challenge for LGBTIQ people in Indonesia comes from the family, which acts very much as a guardian of culture and (in most cases) religion. Hence work in this area in Indonesia should tackle both the human rights and legal issues and the cultural and religious issues, the latter through education.

'A happy family' - Picture at the photo exhibition *'Spirit of the Rainbow: Love and the Family'* by GAYa NUSANTARA, Surabaya, March 2008 - © Rr. Agustine



The International Lesbian and Gay Association (ILGA) provides the following information in a May 2008 report on state-sponsored homophobia in Indonesia: Same-sex relations are not prohibited according to the national Penal Code. The only provision to deal with such relations is article 292 which prohibits sexual acts between persons of the same sex, if committed with a person under the legal age.

Reuters states in a 26 August 2007 article that homosexuality in Indonesia is not a legal offence 'but remains taboo in a country where 85 percent of the 220 million people are muslim'. Several sources note that local governments have introduced sharia-inspired legislation that affects GLBT people. Some provinces in Indonesia have adopted traditional sharia law, which explicitly condemns homosexuals. Throughout 2006 and 2007 to the present there has been growing evidence that there is a sharp increase in support for sharia law and its expansion throughout the greater Indonesian archipelago, leaving gays in Indonesia extremely vulnerable to persecution justified by religious proscription of that identity. Such individuals are unable to seek protection for fear of their sexual orientation being revealed or exposed. The passage of this proposed law would effectively consign every gay to extortion and blackmail in addition to other forms of persecution.

After completing his Ph.D. in linguistics at Cornell University in the USA, dr. Dédé Oetomo returned to establish Indonesia's first gay outreach organisation, Lambda Indonesia in Surabaya, East Java, in 1982; and later the GAYa NUSANTARA Foundation in 1987 which is supported by Hivos. He is today the most publicly visible activist for gay/lesbian rights in Indonesia, being one of the first to openly discuss homosexuality and HIV/AIDS issues in the mass media. In 1999 and 2004, Oetomo ran for the national parliament, providing further opportunities to argue that gay and lesbian persons deserve full inclusion in Indonesian society. He received the annual Felipa de Souza Award from the International Gay and Lesbian Human Rights Commission in 1998 for his contribution to LGBT human rights in Indonesia. See: <http://www.gayanusantara.or.id>.

Saying the ‘L’ Word

Maggie Tiojakin

Lesbians seldom garner more than a passing mention in patriarchal, conformist Indonesian society. I find that some women are gradually coming out of the closet to acknowledge their sexuality.

It is almost 11 p.m. on Saturday night, and the massive, murky arena of a Central Jakarta discotheque is beginning to fill up with nameless faces. They spill in from the lighter and brighter outside world, where everyone belongs to a place, a job and an identity which does not always match their desires. Loud music blares in every direction, drowning out conversations and human connections. ‘Riva’, a 34-year-old entrepreneur, sits at a corner table. Her eyes search the crowd for the familiar figure of one of the club regulars. She came out as a lesbian at the age of 21 to a stunned reaction from her family. Dealing with men is exhausting, she says, ‘especially when they’re trying to get into your pants’.

Riva is unusual in Indonesia in openly acknowledging her sexuality. While there are known lesbian hangouts of discos and clubs in Jakarta and other major cities, and the Internet has allowed lesbians to develop their own discrete cyber community, traditional views of sexuality, the conformist nature of society and the shame associated with homosexuality still prevail. Gay men and transgenders get attention, even if it is often as the mincing laughing-stock, but lesbians still float under the sexual radar. There are several famous single women in the entertainment world who are rumoured to be lesbian but, just like their male counterparts, their marital status is conveniently explained away as their failure to find the right partner. Unacknowledged and often forced into a life of hiding, many lesbians have no choice but to subject themselves to society’s demands to marry and have a family.

‘The strong patriarchal culture that we live in has always had a tight grasp on women,’ writes RR. Augustine, the head of Ardhanary Institute, an organisation dedicated to the battle for equality for LBT (lesbians, bisexuals and transgenders), on Ardhanary’s website. ‘This kind of control makes women in our country feel helpless over their roles and positions in society, not to mention their sexuality.’ It has not been easy to include lesbian issues on the gender equal rights agenda, which has focussed on rights in the workplace, family and society. ‘Women who strive for equal rights between the sexes do not automatically embrace open-minded thinking,’ says Riva. ‘It’s not a package. Sexual orientation is a finicky topic. People are thrown off by it because they don’t understand what it entails.’ Indonesian society in general still considers homosexuality a deviant choice, one that contravenes societal and religious norms. Gay rights advocates counter that traditional views of sexuality are no justification for discrimination.

‘Sexual orientation is a god-given right for each person to define his or her sexuality,’ writes Augustine. ‘Whether they’re heterosexual, bisexual, homosexual or transgender - they should never be discriminated against because of their own choices.’ Many gay people balk at the use of the words ‘choice’ or ‘preference’, as if their sexuality was something they selected,

like a favourite colour or food. They say it is who they intrinsically are. 'Fanny', a student at a leading university in Bandung, says her attraction to women started when she was in junior high school. She realized that her feelings were 'not normal', but couldn't help them. 'How did I become this person who is so desperate for a girl's attention?' She pauses. 'Who knows?' She admits she isn't open about her sexuality for fear of the reaction from her family and friends. 'If there was a choice, I would choose to be "normal". I would fall in love with a guy, be a dutiful wife to him and raise his children - the whole works.' Every other weekend, Fanny drives to Jakarta and pays a visit to a regular club where she is able to take off her heterosexual mask and 'be a big lez'.

Riva explains that many closeted lesbians who fear rejection and stigmatisation from society often live in their own imaginary cocoon waiting for something or someone to rescue them. Is this how their lives are played out, as a form of hide and seek? 'Well, we don't really have that much to bargain with,' says Riva. 'At least, for now, people aren't going to change the way they feel about homosexuality. And, until that has changed, this is how it's going to continue to be played.' Although the disco is known as a lesbian hangout, they are few in number compared to the other patrons, gay men, transsexuals, sleazy men on the make and the female prostitutes they are in search of. So where are they? 'Where do you think?' Riva replies. 'At home, downloading lesbian sex videos to get off.' She smiles. 'I'm kidding. That's what I'd do.' What about relationships? 'We're here, but we're not,' Fanny says. 'It's like a secret society, but you have to know the secret doors to get in.' Living with secrets can no doubt be intoxicating. But a healthy, real relationship is not one to keep behind closed doors. Ardhanary Institute was established on that exact principle. According to Augustine, it does not matter if a relationship is between a man and a woman, two men or two women. She and others are committed to fighting for those who feel they are being persecuted or are subject to unjust treatment because of their sexual orientation. By establishing the institute, they hope to 'create a bridge between lesbian women and society at large'.

Although many lesbians remain closeted, there are also many others who feel empowered by their decision to come out. It is often a gradual, selective process, starting with telling trusted friends. 'Vina', who is in her mid-20s, says the issue of homosexuality is 'not a big deal' for many members of Indonesia's younger generation. 'I try to judge how open-minded they are, and tell those who I think will be OK with it,' says the interior designer of opening up to friends. Although she is not ready to tell her family - and does not know if she ever will be - she would not change who she is if given the chance. 'What is the point of lying to yourself. I just happen to like girls,' she says bluntly.

'Cecil' has been living on her own for the past two years after she came out to her husband (he now refuses to speak to her). Although the process has been difficult, she believes she has become a wiser, happier woman because of it. 'I know this is going to sound crazy,' she says, 'but if I hadn't been married, hadn't known the struggle it took to come to terms with who I am, I would be a regular lesbian with no insight into the ugliness imposed upon my life - excuse me, our lives.' Cecil says the issue she and other women face is not about who is the breadwinner in the family or who gets to wear the pants, but about 'understanding who you want to share your life with'.

Is it possible that Indonesia one day will give its consent to same-sex marriages? 'First, they have to know we exist,' replies Cecil. 'Signing papers is easy, getting the papers to bear our names is the difficult part.' 'And the stupid part is that we're fighting for something that

clearly is our right to claim,' says Riva. 'So we sleep with women - does that make us lesser compared to other women who sleep with men?' She grabs her beer bottle. 'I wish I could split people's heads open so I could see what's inside them. They keep thinking being a lesbian or a gay person is something that can be "cured", like malaria or something. All it takes is one shot into the bloodstream.'

It's now 2:45 a.m. - the room reeks of sweat, liquor and cigarette smoke. But the women still have a few hours left to swap stories. To be together. When daylight arrives, out in the real world, the same faces will put back on their masks. They will keep covered until they find their own way to show who they really are.

Maggie Tiojakin is a freelance writer who writes for The Jakarta Post Weekender, Sommerville News, Boston Globe, and a few other publications both local and foreign. Her short story collection, Homecoming and Other Stories, was published in 2006 by Mathe Publications. She is currently finishing her novel My America, My Dementia which will be published in 2009.

The Struggle of the Tongzhi Homosexuality in China and the Position of Chinese ‘Comrades’

Ties van de Werff

There are roughly forty million homosexuals in China today. In the past, they were regarded with relative tolerance. It was not until the twentieth century that same-sex relationships were considered taboo and condemned. With the advent of communism, homosexuality was made a criminal act, and gays and lesbians were actively prosecuted. Since the economic and political liberalization of the 80s and 90s, there is more room for cultural, social and artistic diversity in China. The Internet has brought a homosexual subculture with its own identity and advocates in China. In June 2009, the first Shanghai Gay Pride Festival took place. Although the event was described by China’s state-run newspaper as ‘a good showcase of the country’s social progress’, the festival still suffered from bureaucratic badgering by the local government. Despite the adversarial relationship of the Chinese authorities with these minority groups, and the numerous problems that homosexuals still experience on a daily basis, the position of the *Tongzhi* in China has indeed slowly improved. How has the liberation process developed over the past ten years? With what problems are Chinese homosexuals confronted? This article offers a short survey of the social position of gays and lesbians in China and their hopeful fight for liberation in the most populated country on earth. (1)

Homosexuality and the Emperor’s Clothes

Sociologists and historians who occupy themselves with homosexuality in China often emphasize its rich gay-erotic history, which dates back to the old Chinese dynasties. Well known is the story of Emperor Ai of the Han Dynasty and his friend Dong Xian. Emperor Ai, born in 27 BC as Liu Xin, ascended to the throne at the age of twenty. He quickly got involved in an intimate relationship with an attractive nineteen-year-old lad from the court, Dong Xian. Dong Xian was immediately promoted and the emperor even had a palace built for him. Emperor Ai became especially famous because of the following quotation from the biography of Xian from *The History of the Han Dynasty*: ‘Emperor Ai was sleeping in the daytime with Dong Xian stretched out across his sleeve. When the emperor wanted to get up, Dong Xian was still asleep. Because he did not want to disturb him, the emperor cut off his own sleeve and got up. His love and thoughtfulness went this far!’ (Hinsch, 1990, p. 53)

As a result of Ai’s act of affection, in old China, up until the time when China became a republic, homosexuality was often euphemistically described as the *passion of the cut sleeve* (Hinsch, 1990). (2) Emperor Ai is not the only Chinese emperor that had engaged in homosexual relationships. It is known that numerous emperors in the Shang Dynasty (sixteenth to eleventh

century BC) regularly engaged in sexual contact with members of the same sex. Historian Bret Hinsch has described the history of homosexuality in old China in his renowned work, *Passions of the Cut Sleeve* (1990). From the historical texts of the *Book of Documents* it appears that homosexuality was observed and tolerated, though it always concerned men. Much less is known about lesbian relationships. (3) The cultural tolerance towards this aspect of homosexuality is striking. Many studies (Chou, 2000; Hinsch, 1990, amongst others) emphasize that homosexuality in old China was not described as an identity or gender-specific difference, but rather as a *behaviour* or act. Men who had sex with men did not have deviant personalities, they simply shared a passion; the *passion of the cut sleeve*. Homosexuality was not considered unnatural or something that undermined heterosexuality, as in the West. In the cultural tradition of old China, sexuality is an integrated part of life itself (Chou, 2000). Extra-marital sexual relations, whether or not with people from the same sex, were quite common.

Cultural tolerance has a lot to do with Confucianism, the dominant philosophic tradition in China. Despite the fact that Confucianism is no longer very important in China these days - save for some countryside regions - as a cultural value, the old philosophic tradition has left its mark on the China of today. Confucian society maintained strict hierarchal roles. Respect for elders and the family are very important. The child, the son in particular, has the moral obligation to his parents to continue the bloodline. This means: get sons. Any sexual contacts that take place outside of the marriage were not that relevant as long as the social standard of getting married and having children was complied with (Cristini, 2007). Getting married and continuing the bloodline out of reverence for ancestors form the most important traditional values in China and, or so it seems, also plays an important role for Chinese gays today.

When sales travellers and missionaries visited China some centuries ago, they were shocked by the pervasive sodomy. Many men, particularly those from the higher social classes, had extra-marital relationships and it was no rare occurrence that young men prostituted themselves in order to climb the social ladder. After his visit to Beijing, the Jesuit Matteo Ricci stated: 'There are public streets full of boys got up like prostitutes. And there are people who buy these boys and teach them to play music, sing and dance. And then, gallantly dressed and made up with rouge like women these miserable men are initiated into this terrible vice.' (Hinsch, 1990, p. 2)

Commencing in the middle of the nineteenth century, Chinese intellectuals increasingly took over the ideas of visiting westerners, which resulted in the decrease of cultural tolerance towards homosexuality (Chou, 2000). At the beginning of the twentieth century, same-sex sex was considered unnatural in China as well.

In the decades that followed, homosexuality was increasingly viewed as socially aberrant, medicated and criminalized. In 1911, the last emperor retired and China was declared a republic. It was the onset of a period of great social turmoil during which warlords, the central government, Japanese occupying forces and the communists consecutively fought for power. In the end the republican government was overthrown by the communist party, and in 1949 Mao Zedong founded the People's Republic of China (PRC). During the communist period, deviating ideas and people, including homosexuals, were actively persecuted. In particular, during the Cultural Revolution between 1966 and 1976, men who met each other in parks were seized and accused of 'hooliganism', a label the communist party often used to punish various forms of 'deviation' and thus undesirable behaviour. Homosexuality was

considered an influence from the West and a relic from feudal times that needed resistance (Chou, 2000). Everything was in the service of the revolution, including sexuality: sex was just a means to produce new revolutionaries, and sex without a function was considered 'reactionary' (Cristini, 2007). So, during the Cultural Revolution, sexuality that deviated from this credo was largely taboo.

After the death of Mao Zedong in 1976, China's direction changed. Successor Deng Xiaoping abandoned the Cultural Revolution and started the Open Door Policy in 1979, after which the political, economic and social situation in China slowly started to improve. As a result of the 1980 Marriage Act, which allowed divorce if there was no longer any mutual affection, and mediation had failed, and the one-child-policy that prevented parents from having more than one child, the Chinese attitude towards relationships and sex changed (Yuankai, 2006). (4) Sexual freedom and 'recreational' sex increased. Because China had opened up towards the West, where since the sixties a gay subculture had come into existence, in the late eighties in a number of cities along the coast, western homosexual discourse was taken over, in particular in Taiwan and Hong Kong (Chou, 2000). (5) The further economic and political liberation of China in the nineties enabled more social and cultural diversity (Chou, 2000; Wei, 2007). Slowly, a homosexual subculture arose on the Chinese mainland.

The Internet and the Emergence of the *Tongzhi*

Li Yinhe, sociologist at the Chinese Academy of Social Science in Beijing, has been publishing studies and books about the gay and lesbian subculture in China on a regular basis since the nineties. Li Yinhe is one of the most well-known advocates for the rights of LGBT people. It was in her first study, *Their World*, which appeared in 1992, that the perception of Chinese gays and lesbians, their 'mental sufferings and gloomy meeting places', was for the first time exposed in a rather painful manner (Christini, 2007). Many gays met in parks, public toilets and bathhouses where they were constantly at risk of getting caught and seized by the police. Lesbians hardly had any opportunities to meet in public places. (6) Pressured by their family, many gays and lesbians above thirty indicated they were married: the Confucianism values were still pursued, in spite of all revolutions. In addition, communism has clearly left its mark on ethics: extra-marital sexual relationships, let alone homosexual relationships, were not tolerated as easily as they were during the time before the PRC (Cristini, 2007). The homosexuals in Li Yinhe's study did not talk to friends and family about their sexuality. Many did not know what to do with themselves; often, they had no notion of the existence of like-minded individuals. The Internet changed this.

In 1994, China was connected to the Internet. In 1998, the first websites were launched that addressed gays and lesbians, such as gztz.org and gaychinese.net (Jiang, 2005). Discussion forums and chat rooms became very popular. They enabled gays and lesbians to contact each other anonymously from an Internet café or the safe environment of home. For many homosexuals, a new world opened up. In view of the isolated position many were in, it is not at all surprising that the online gay community grew rapidly. Now there are hundreds of gay websites, varying from informative sites to dating sites (Jiang, 2005). The number of Chinese on the Internet has grown to 298 million, which makes them the largest population of netizens. (7) It was not just the online gay community that grew; the gay community in the offline

world grew as well as a result of meetings organized through the Internet. Gays and lesbians meet at agreed places (such as karaoke bars and discotheques) and in cities such as Beijing and Shanghai the first gay bars arose (Jiang, 2005; Wei, 2007). Through the Internet, gays and lesbians could share their concerns and problems, which gave them a shared background in the homosexual community. Soon, a new name arose for the new identity: the *tongzhi*.

'Tongzhi' is the Chinese translation of the Soviet-communist word 'comrade'. Literally, the Chinese word means 'people with the same intent' (or 'spiritual goal') (Chou, 2000). The term 'tongzhi' was used for the first time by a gay activist at the first Lesbian and Gay Film Festival in Hong Kong in 1989. On the Internet, so-called 'tongzhi-literature' had been circulating since the mid-nineties: a genre that describes the problems and experiences of Chinese gays (Cristini, 2005). In addition to increasing self-awareness of many gays, the tongzhi literature has contributed to the emergence of the term 'tongzhi'. Nowadays, most homosexuals on the mainland of China call themselves 'tongzhi', regardless of social status, education level or marital status (Wei, 2007). The word has lost all of its communist connotations. Chou explains why it has been adopted so rapidly: 'The re-appropriation is widely accepted by the community for its positive cultural references, gender neutrality, de-sexualisation of the stigma of homosexuality, politics beyond the homo-hetero duality and use as an indigenous cultural identity for integrating the sexual into the social.' (Chou, 2000, p. 2) So Tongzhi is a modern Chinese, non-western name for those who focus on the *passions of the cut sleeve*.

In addition to tongzhi, lesbians in China are often called lala. But China is large and in other regions gays use other terms to indicate their identity. (8) In the province of Chengdu, for example, they often sarcastically call themselves *piao piao* (Wei, 2007). This term, which literally means 'wandering men', emphasizes the problematic public position of the Chinese gay. Not only does it refer to cruising gays in parks, it also implies a lack of roots or anchor: *piao piao* can never settle and wander around as 'rootless leaves' (Wei, 2007). Unlike tongzhi, *piao piao* does refer to the heterosexual status-quo: the heterosexual family in which the *piao piao* does not fit. In practice, the term tongzhi is the most commonly used collective term for homosexuals throughout China, although the use of the term 'gay' is also increasing. Wei (2007) indicates that by using these different identity labels an 'identity policy' is practised as well: one navigates between the labels in order to get maximum use out of their cultural and political implications. Furthermore, there are also others in China who prefer the same sex but who do not want to be confined by the label 'tongzhi', in their essential 'fixed nature'. They are inspired by the queer movement (*ku'er*), powered by philosophers like Michel Foucault and Judith Butler, as counterpart of the tongzhi discourse, a counter movement that is present in Taiwan in particular.

It has to be noted here that the current gay subculture in China is mostly an urban middle-class culture for people who can afford Internet, bar visits and their own apartment. Questions about current homosexual practices amongst migrants, labourers, farmers etc in China remain unanswered.

The Chinese Government and Public Awareness

The emergence of the term tongzhi indicates a shift from homosexuality as behaviour to homosexuality as identity. Simultaneously, with the emergence of an identity and a cautious

local subculture, there have also been some improvements in the social position of gays and lesbians. After a 1995 government study of AIDS and HIV, carried out amongst seven hundred gays, concluded that the gap between homosexuals and society should be bridged; the Chinese government could no longer ignore the position of gays and lesbians. In 1997, the controversial act that criminalized 'offensive behaviour' ('hooliganism'), which was used by the police to persecute gays in parks, was abolished. In 2001, homosexuality was removed as a mental disease from the Chinese *Classification and Diagnostic Criteria of Mental Disorders*, the charter of Chinese psychiatry. In addition to the sociologist Li Yinhe, other researchers also became interested in the tongzhi and various studies concerning sexuality and homosexuality were published. In spite of the decriminalization and medical de-classification of homosexuality, which can be considered milestones for the Chinese gay movement, the relationship between the Chinese government and homosexuality remains problematic.

China has a growing number of NGO's, organisations and websites that address the liberation and rights of LGBT people. Most of these focus on HIV/AIDS, because the government does take that problem seriously and sometimes finances information activities since gays form a growing group of HIV-infected people. Other organisations (such as Tongyu Lala) specifically fight for homosexual rights and promote 'gay marriage'. Although in recent years the government has given these organisations more room to develop activities, lower government clerks frequently frustrate or obstruct such activities, especially when events draw media attention. Human rights advocates, journalists or lawyers who are too critical risk being persecuted and abused. Chinese human rights organisations are also often bureaucratically badgered and pestered (Amnesty International, 2008). Although newspapers increasingly report on the tongzhi, cranking up a broad social debate is often not appreciated. (9) There are also no laws that condemn discrimination, so employees can be laid off if their employer suspects they are gay, which occurs quite frequently. The general rule is that everything that is controversial is controlled.

China has a policy of very strict censorship. Not only is there an army of 30,000 clerks constantly monitoring Chinese activities on the Internet, but the mainstream media is also strictly controlled. (10) Specifically, gay magazines, books and movies are often prohibited or strictly censored: images of men making love do not appear in books as a result of this strict censorship. Authors, film producers or organisers must register their activities beforehand with special registration and assessment committees. Nevertheless, China has a lively underground film culture, and since the nineties many films have appeared with the homosexuality theme, although these are often only shown in underground video stores and cinemas. (11) China's first Gay and Lesbian Film festival, which was organised in 2001 by a student organisation from Beijing was a success, in spite of the fact that the festival was cancelled after three days by the Chinese government because of widespread media attention. A second, larger film festival, organized in 2005 by the first self-declared gay film maker and film professor Cui Zi'en, was also prohibited at the last moment, the reason being that the festival did not meet security requirements (Rui, 2005). Although Chinese film makers receive prizes all over the world for their films, such as Ang Lee for his 2005 movie *Brokeback Mountain*, in China itself the films may not be shown publicly.

In a country as large as China, the social acceptance of gays differs per region and province. It is known that provinces such as Chengdu and Sichuan and large prosperous cities such as Beijing, Shanghai and Guangzhou are more tolerant than smaller towns in the country-

side. But in general, people who are sexually attracted to members of the same sex are heavily stigmatized, discriminated against and treated with violence. Blackmail by employers and government clerks also occurs. Open display of homosexuality in the streets is not recommended, including in Beijing and Shanghai. (12) There is a lot of hidden pain; many homosexuals do not dare to come out for fear of the reactions of their family, colleagues, fellow-students or neighbours. The social pressure to marry is also great. A study conducted by professor Zhang Beichuan, who teaches gay and lesbian studies, shows that ninety percent of homosexuals cave in to the pressure of parents and society to get married, a problem that since Li Yinhe's first publication in 1992, still persists today (Juan, 2007). According to Li Yinhe, an increasing number of Chinese do accept homosexuality, but at the same time they hope that homosexuals 'can change' or 'become normal' (*China Daily*, 2006). So many Chinese do not know exactly what homosexuality is, a reminder of the taboo on sexuality during the strict communist era. Because of economic growth and the accompanying consumerism, sex is widely present in the media nowadays. Although pre-marital sex has not been accepted by everyone, some even speak of a sexual revolution (Yuankai, 2007). Li Yinhe hopes that within twenty years China will be just as open about sex as western countries (Qiwen, 2005).

Ten Year Tongzhi: Hope on the Horizon

Karen, a 22-year old volunteer of Common Language (Tongyu Lala) in Beijing, said the following about her life in 2008: 'Most of my good friends know that I am lesbian, understand me and care about how I am doing with my girlfriend. [...] It's not that hard for young people I think. Age does matter, since the social background where we grew up in differs so greatly with the older generations.' (13)

In a society where the single individual did not really matter, the new consumerism leads to more diversity in daily life. Karen's generation, born in the eighties, is significantly more individualistic than the previous generations and experiments with 'lifestyles' just as youths in the West do. On university campuses there is a relatively tolerant culture and new initiatives are undertaken to increase knowledge about the tongzhi. In 2006, the first explicit homosexual student association 'The Rainbow Group' was founded at the Zhongshan University (public university) in the south of China. A year prior to that, the prestigious Fudan University in Shanghai started an elective gay studies course. The college room bulged with interested students.

The tolerance of the younger generation is very promising. Still, the biggest problem for the Chinese homosexual remains the traditional view of marriage and family. For many homosexuals, men in particular, this hinders their 'coming out' to the parents. As the 24-year old Will, volunteer at the online-organisation Aibai, says: 'I really want to tell my parents, because I want them to know the real me. It's very hard. I will let them know when I am financially solid and knowledgeable enough. They love me, so I am sure they will accept the true me but it will take some time. [...] I am learning with my work for Aibai to be more open about my sexuality and to be more visible.' (14)

An increasing number of sociologists and psychologists in China recognize this problem and the harm it can do to (young) gays. (15) Li Yinhe has been fighting for years for 'gay-marriage' in a government advisory committee. It is not surprising that this proposal has already been

denied three times; the traditional Chinese views concerning family cannot be changed easily. NGOs have arranged hotlines where gays and *lalas* can call with their problems. And a number of gays and lesbians bypass the marriage problem by marrying each other. (16)

Ten years after homosexuality was removed from criminal law, a lot has happened in China. Through the Internet, gay have found each other, which has resulted in more self-awareness and a growing gay movement. In large cities such as Shanghai and Beijing, a gay culture has come into existence and there are many organisations that actively fight for the rights of gays and lesbians. That is necessary: it is clear that the position of homosexuals in China is still problematic and that equal justice, the second step in the liberation fight, certainly has not yet been realized. Many rights enshrined in the Yogyakarta Principles are ignored in China and social acceptance is often not in order at all. Still, the rapid liberation process that took place in just ten years generates hope for the future. Youths such as Will and Karen, from organisations like Aibai and Tongyu Lala, seem to take the lead in this process of social change by fighting with fresh courage for more knowledge, acceptance and equality. They still have a long road ahead. As the father of the modern China, Sun Yat-sen, once wrote: 'Revolution has not yet prevailed. Tongzhi, keep up the good work!' (17)

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Notes

- (1) Since most Chinese texts are not available in English, I am compelled to limit myself to a few English summaries, keynotes, newspaper articles and English websites. Additionally, this article is based on several interviews I had through the Internet with some Chinese gays and lesbians that work for NGOs and gay organisations.
- (2) Another term that is often used is 'the bitten peach', which refers to the concubine Mizi Xia of emperor Ling (534 - 493 BC.), who gave a delicious peach to his master after he had taken a bite of it himself. In itself this was an offensive act, if it was not for the fact that the emperor considered the gesture extremely romantic (Hinsch, 1990).
- (3) For further information on this subject see Saskia Wieringa's article in: 'Lesbian Identity and Sexual Rights in the South; an exploration', which describes the Chinese Orchid communities of women that turned against marriage.
- (4) The one-child-policy has resulted in a large surplus of men in China. In 2020 there will be an estimated 300 million more men than women, according to demographic forecasts. So from a practical point of view it would not be such a bad idea for the Chinese government to promote homosexuality.
- (5) Both 'provinces' have a separate status and are relatively freer than the Chinese mainland: Taiwan is viewed as a renegade province by China and Hong Kong is a modern metropolis as a result of its past as a British colony.
- (6) The specific position of lesbians is not addressed too much in present (English) literature; it focuses mostly on gay men.
- (7) For comparison: 394 million Internet users come from Europe, and 251 million from the US; the total number of people on the Internet is roughly 1.6 billion. (Source: www.internetworldstats.com, retrieved June 2009).
- (8) These terms are used by homosexuals themselves to indicate their identity. Other terms that are used are: 'male trend' (*Nan feng*), 'allied brothers' (*Xianghuo xiongdi*), and the more formal 'homosexual' (*tongxinglian*). Chou (2000) and Wei (2007) give terms that are mostly used regionally and in which homosexuals do not always recognize themselves. In Beijing gays are also called 'rabbit' (*tuzi*), in Shanghai 'addicted' (*bjing*), and in Wuhan 'pie' or 'button' (*kouzi*), while 'glass' (*boli*) and 'people in the circle' (*quan li ren*) occur throughout all of China.
- (9) In July 2006 Radio Television Hong Kong (RTHK) broadcasted the program 'Hong Kong Connection - Gay Lovers'. The program addressed the position and the problems of Chinese gays. According to the Chinese Broadcasting Authority, the program was 'biased' and 'unilateral': the 'other' (heterosexual) side of the story had not been addressed enough. In May 2008 the Chinese Supreme Court decided that the Broadcasting Authority had to withdraw its decision (*China Daily Hong Kong Edition*, May 2008).

- 180
- (10) China blocks numerous websites: political sites, porn sites, sites from human rights organizations, and also critical weblogs and Wikipedia. The so-called *Great Firewall of China* is made possible by providers and by western companies such as Google and Yahoo. Recently, it became public that Chinese authorities have instructed Chinese computer manufacturers that all PC's sold in the country soon must come with specific pre-installed software to 'protect Chinese from harmful content' (July 2009).
 - (11) Such as the well-known *Dong Gong Xi Gong (East Palace, West Palace)* (1996) from Zhang Yuan, *Happy Together* (1997) from the Hong Kong director Wong Kar-wai, *Men and Woman* (1999) from Liu Bingjian, Kwan Kam-Pang's *Lan Yu* (2001), *Enter the Clowns* (2001) from Cui Zi'en, and Li Yu's *Fish and Elephant* (2001).
 - (12) As appears from the tourist information for homosexuals about Beijing on the popular online gay portal www.fridae.com.
 - (13) Karen works for Tongyu Lala (Common Language), a NGO that organizes all kinds of activities (e.g. on campuses) to provide information. Tongyu Lala promotes the rights of lala's and 'gay marriage'. See: www.tongyulala.org.
 - (14) Will works for Aibai, an online-organization that focuses on Chinese speaking homosexuals worldwide. See: www.aibai.com.
 - (15) A study conducted by Professor Zhang Beichuan proved that more than half of the 2,500 gays interviewed were victims of discrimination and suffered mental trauma after coming out about their sexual nature (Juan, 2007).
 - (16) The website 'Marriage for Asexuals' (www.wx920.com) for people who do not want to have sex or are unable to, receives heavy traffic from gays and lesbians. They look for a tongzhi of the other sex so they can get married and live up to the pressure of parents (*China Daily*, July 25th 2007).
 - (17) Sun Yat-sen (1866 - 1925), the founder of the Republic of China, was the first president after the last emperor retired in 1911. Although he referred to communist comrades in the cited phrase, his statement has become a popular reference to homosexual activists (Chou, 2000).

The Voice of a Lesbian from Hong Kong

Franco Yuen Ki LAI

Hong Kong is a metropolis with a population of seven million. After 100 years of British colonial government, it was handed over to China in 1997. It is now a special administrative region of China, managed under the slogan 'One Country Two Systems'. Since Britain and China signed the United Nations (UN) Treaty on Human Rights, human rights conditions in Hong Kong are monitored by the UN. The Hong Kong government was urged by the UN to prohibit discrimination based on sexual orientation in 1996, 2001 and 2005. (1) However, Hong Kong still does not have any law to this effect.

I was born in 1978. My working-class parents devoted themselves to building up a stable and warm family for my older sister and me. I hated dresses and long hair since I was young. My tomboy character seemed natural and was consistent with my athletic activities. However when I was not a child anymore, my masculine attributes (short hair above my ears, wearing men's tees and jeans) began to bother my parents, especially during gatherings with our relatives. My aunts and uncles always teased me, 'Oh, you're just like a boy! You should keep long hair'. I just responded, 'It's easier to keep short hair tidy since I play basketball'. Every time I cut my hair short, my parents always said, 'Why do you cut it so short? Keep it longer, please'. They still have the same comment even though I am now thirty years old.

The conventional wisdom of the gender binary interprets masculinity as superior to femininity; hence my masculine female body is sometimes interpreted positively as strong, active and easy-going. However, most of the time, my masculine appearance is perceived as deviant, since I am a woman. I fail the gender test in the women's bathroom most of the time. I still remember a very nasty woman grabbing my breasts in the women's bathroom of a karaoke lounge. She accused me of using the wrong bathroom. We did not stop quarrelling until the manager came. I was so angry and did not realize that I should report to the police that that nasty woman had touched my breasts.

Queer Students in Universities

I met a group of gays and lesbians at my university (the Chinese University of Hong Kong) when I was a freshman in 1997. A year later, I led the group and registered as the 'Tongzhi Culture Society' in the university. It was the first gay and lesbian student group recognized by a university in Hong Kong. *Tongzhi* is a Chinese term which literally means 'comrade'.

The registration process looked simple, but it was extremely difficult for us. Before registration, my group published a series of newsletters. We paid the printing costs and distributed the newsletters outside student cafeterias. One newsletter talked about anal sex and casual sex between gay men. At that time, I never thought that it would become an issue for registration.

After handling all registration documents, I was asked to attend a meeting held by student representatives. Before my turn, there was a discussion about the registration of a student group from the Accounting department. The president, who is also a student, asked members if there were any questions. There was silence. The president then asked members to vote 'yes' or 'no'. All agreed. The whole process just took sixty seconds. It was simple and fast, and I thought I could manage it even though it was only me attending the meeting. However, my turn was a disaster.

After the president asked members if there were any questions, many hands raised. They banned my registration and criticized the newsletter I published, calling it immoral. They claimed they really worried about what I would do if my group was to register. There were twenty student representatives, and they kept asking me moral questions. After the sixty-minute debate (not exactly a debate, just questions and critique), the president asked members to vote. Most members voted 'no'. I thought it was really unusual to decline a registration. The president then announced there would be a second round of discussion and voting. Finally, my group got slightly over half of the vote, and registered. Comparing the sixty-seconds of the Accounting student group and the sixty-minutes of my group, I could not deny that students at my university were very conservative.

After registration, we continued to publish the newsletter. One day, a committee member found a pile of handbills on the table where we usually put the newsletter. The handbill stated that they had destroyed twenty copies of the newsletter published by the Tongzhi Culture group, and they claimed they did it for the sake of the moral standard of the university. My group was astonished. We launched a series of activities to fight back, including a public forum at the university to which many journalists came.

Since many journalists reported the issue, my name appeared in newspapers. An old friend called me, 'Why'd you do that? Though you look masculine, you don't need to be with girls...' I explained, but she was still disappointed and disagreed with what I had done. She never called again.

In 1997, the Hong Kong government set up three discrimination ordinances: against sex discrimination, family status discrimination, and disability discrimination. Gay and lesbian support groups requested a sexual orientation discrimination ordinance, but they were rejected. In the same year, Hong Kong was handed over to China.

Conservative Pressure

In 2000, I had a relationship with a female policewoman. She had already come out to her family. I usually stayed overnight at her house on weekends. On New Year's Eve we went out to celebrate. Since the street was so crowded, we held hands tightly. Suddenly, she took her hand and ran away. I was confused. 'What happened?' I caught up to her, and she explained she had just seen her colleague on duty. She did not want her colleagues to know about her sexual orientation. She said most of them were very homophobic and sexist. She knew one of her colleagues, who was a masculine lesbian, was teased by male colleagues.

I had never thought that I would not be able to hold hands with my girlfriend. I used to think I was living in a liberal city though I could not get married to my lover. I had a relationship with this girlfriend. Suddenly, I recognized that I was back in the closet again.

After I graduated from the university, I had to find a job, but it was not easy. My masculine appearance became an obstacle in job interviews. A woman employer asked me directly why I kept a masculine appearance. A male employer said he would like to employ me, but I had to promise that I would wear women's clothes in the office.

The conservative pressure was not just taking place on a personal level. When the government launched a poll to study public attitudes towards non-heterosexual people in 2005, many Christian groups were nervous, afraid that the government was going to set up a sexual orientation discrimination ordinance. They launched a series of newspaper advertisements to propagate ideas about sexual promiscuity and a high AIDS infection rate among homosexuals. They also lobbied politicians, arguing that many social problems would be created if the sexual orientation discrimination ordinance was set up.

In 2006, Radio Television Hong Kong (RTHK), a government-owned radio and television broadcasting institute, broadcasted the 'Gay Lovers' program which interviewed a lesbian couple and a gay man. After the show, twenty complaints blaming the program for promoting homosexuality and same-sex marriage were lodged with the government. Later, the Broadcasting Authority (2) announced a decision that the program 'Gay Lovers' was biased towards homosexuality. The interviewed gay man then pursued a Judicial Review of the Broadcasting Authority's decision. Fortunately, the High Court judge ruled that the Broadcasting Authority's censure of an RTHK program on homosexuality was a restriction of freedom of speech. (3)

Though the case was won, it revealed the conservative atmosphere in Hong Kong. Gays and lesbians had to spend thousands of dollars and tons of energy to protect their voices and visibility. LGBT groups worried that this incident might lower the motivation of other broadcasting institutes to produce similar LGBT-related programs.

Despite conservative pressure, the LGBT community did not remain silent and instead comes out to celebrate gender and sexual diversity. In recent years, local gay and lesbian groups began to collaborate with regional and international LGBT groups. In 2005, the first march for the International Day Against Homophobia in Hong Kong (IDAHOHK) was proudly held by LGBT groups. It has become an annual event on the most crowded street in Hong Kong, involving over 500 participants.

Last, but not least, I do have a wish - I wish the sexual orientation discrimination ordinance would be set up in Hong Kong very soon. It is the basic legal protection we need in education, the workplace, and social life.

Franco Yuen Ki LAI is a lesbian from Hong Kong, China. She believes that sexuality is not just something private in bed but an important matter that reveals the power dynamics and cultures of our societies. It is also important for all of us to think about. She obtained her Master of Philosophy degree, majoring in Gender Studies/Anthropology at the Chinese University of Hong Kong in 2004. She is now studying Anthropology at Purdue University, USA.

Notes

- (1) Sources from the Amnesty International report: *The Human Rights of LGBT people* (March 2005).
- (2) The Broadcasting Authority is an independent statutory body established under the Broadcasting Authority Ordinance (Cap. 391) in 1987 for the regulation of the broadcasting industry in Hong Kong.
- (3) Source from *Ming Pao* (a Hong Kong Chinese newspaper), 9th May 2008, and *South China Morning Post* (a Hong Kong English newspaper), 10th May 2008.

Saving Gays from Iran: The Iranian Queer Railroad (IRQR) (I)

André Hielkema

Homosexuality is a capital crime in Iran. Recently the Iranian Queer Railroad (IRQR) was set up in response to this. It is a new organisation designed specifically to help the growing number of LGBT Iranians forced to leave their country because of the violently homophobic policies of the ayatollahs' theocracy. Gay activist, Arsham Parsi, founded this body dedicated exclusively to helping sexual dissidents flee persecution. He chose to call his agency the Iranian Queer Railroad (IRQR) after the Underground Railroad in the nineteenth century which was an informal network of routes and safe houses helping black slaves in America to escape to freedom in Canada. IRQR works together with other human rights organisations, consulates and offices of the UN High Commissioner for Refugees in transit countries like Turkey, Pakistan and India.

Iran's Culture of Homophobia

Few will forget Iranian President Mahmoud Ahmadinejad's response during an appearance at Columbia University on September 24, 2007, when asked about the persecution of homosexuals: 'In Iran, we don't have homosexuals like in your country. We don't have that in our country. In Iran, we do not have this phenomenon. I don't know who's told you that we have it.' Although Ahmadinejad skirted the question, in the Islamic Republic of Iran, homosexuality is punishable by death. Since the 1979 Islamic revolution, many executions have been reported, as well as countless cases of torture and abuse.

However, according to Arsham Parsi, this persecution goes beyond the government: 'It's not all about government, it's mostly about society and culture. Families will not accept homosexuals. The government may have the death penalty, but society is not educated about diversity, not about religion, or cultures. The government does not create a safe space for queers, and there can be honour killings.'

He provides a specific example to illustrate this point: 'In the city of Rasht in November 2005, an eighteen-year-old boy was set on fire by his father when he found out his son was gay. Outraged and saddened with the news of his son's homosexuality, the father first poured gasoline on his son and then on himself in order to save his family's honour. The boy died from severe burns. The father survived with burns on his hands and face. A father burned his son to death! It's killing just to save the family's honour, and the Ministry of Justice won't do anything.' Not only by the government, but also in the family, gay and lesbian rights in Iran are systematically violated. The state, society and family are often united in creating an atmosphere of uncertainty, fear and danger for Iranian queers.

Within the Middle East, Iran is distinguished by the overt severity of the penalties it imposes

on consensual, adult homosexual conduct. 'Sodomy' or *lavat* - consummated sexual activity between males, whether penetrative or not - is punishable by execution, regardless of whether the partner is passive or active. Article 111 of Iran's Penal Code states that, '*Lavat* is punishable by death so long as both the active and passive partners are mature, of sound mind, and have acted of free will'. According to Articles 121 and 122 of the Penal Code, *Tafkhiz* (the rubbing together of thighs or buttocks, or other forms of non-penetrative 'foreplay' between men) is punishable by one hundred lashes for each partner. Recidivism is punishable by death on the fourth conviction. Article 123 of the Penal Code further provides that, 'if two men who are not related by blood lie naked under the same cover without any necessity', each will receive 99 lashes. Iranian lesbians are not allowed to have an existence either. Many are forced by society and/or family to live a lie and marry a man. Women convicted of lesbian sex face flogging or, after conviction for a fourth time, the death penalty. When arrested, they are raped, whipped and tortured to death. If they are raped by strangers or acquaintances, they and their family members are often reluctant to file a formal complaint because being raped is itself a matter of shame and disgrace.

According to Iran's Penal Code, which is consistent with Islamic law, an accused person can be convicted of sodomy if he repeats a confession to the act four times. The practice of torture is prevalent in Iran, torturing prisoners to extract confessions is common. Forced confessions are openly accepted as evidence in criminal trials.

The death penalty for *lavat* is not merely a paper punishment in Iran: it is enforced.

Trials on moral charges in Iran are held in camera, and international outrage over the frequency of executions has led the government to exercise tight controls over press reporting of the death penalty. For these reasons, confirming the frequency of executions for *lavat* is effectively impossible.

Arsham Parsi (2)

Arsham Parsi was born in Shiraz, Iran, in 1980. As a gay Iranian, he felt alone until at the age of fifteen he discovered solace in the Internet and then he understood what it means to be gay. Parsi began volunteering for local queer (underground) gay organisations. At the age of 22, he began working for the Persian Gay and Lesbian Organisation (PGLO). In a country where being found out as gay can get you killed, homosexuals are in hiding, as are local advocacy efforts. Parsi's underground advocacy work in Iran included networking with doctors to get access to HIV testing as well as responding to emails from suicidal gay teenagers: 'We would get e-mails from people saying they were going to commit suicide because their families had found out they were gay. I would travel to their towns and speak with the families who were having problems and explain to them that we are not abnormal and I would show them articles. We get many letters about people wanting to kill themselves or being beaten and tortured.'

In 2004, Parsi was still living in Iran. The strict laws against homosexuality forced him to keep his work secret from friends and family. After four years of keeping his activist life a secret, Parsi's role as a queer advocate placed him in jeopardy: 'The police were going undercover on the Internet, pretending to be gay and arranging dates in chat rooms and then arresting the men who showed up. The people arrested said the police were after a man named

Arsham. I understood that the police was searching for me and that I would be arrested. I escaped to Turkey and one week later the police were in my home. I cannot return to Iran, even though my family is still there. Homosexuality is forbidden and if I went back I would be arrested at the airport or border and in a couple days they would kill me.'

In March 2005, he realized the police were looking for him so he fled to Turkey and registered as a refugee at the office of the United Nations High Commissioner for Refugees in Ankara, where he spent thirteen months and continued his work to publicize the plight of LGBT Iranians. He was eventually granted asylum as a sexual refugee by Canada. Many gay refugees fleeing Iran end up in countries such as Turkey, Pakistan, and India before the commissioner accepts their cases. This process can take years, and is often a traumatic experience. In 2006 Parsi moved to Toronto and changed the name of the PGLO to the Iranian Queer Organisation (IRQO). He became the executive director of the Iranian Queer Organisation (IRQO) and director of the organisation's online magazine, *Cheraq*.

In October 2008 Parsi started the Iranian Queer Railroad (IRQR) and is now working on Iranian queer asylum cases. Parsi travelled to Turkey in August 2008 to meet with Iranian LGBT refugees and plead their case with the office of the United Nations High Commissioner for Human Rights located there. The UNHCR must grant these queer exiles official refugee status before they can be accepted for asylum in gay-friendly countries. As the result of that trip, Parsi concluded that a new organisation dedicated exclusively to helping sexual dissidents flee persecution in Iran was necessary.

Parsi and his organisation are now in contact with 145 LGBT Iranian refugees currently in limbo and seeking permanent asylum - 85 in Turkey, which shares a lengthy border with Iran and where cultural and political homophobia is rampant, while the rest are scattered throughout Europe, including in the Netherlands, Sweden, Germany, Switzerland, and Norway. Some 22 are in the United Kingdom, which has been extremely reluctant to grant permanent asylum to gay Iranian refugees, and where in the last several years two Iranians have committed suicide after receiving deportation orders back to certain torture and possible death in Iran. There are many more queer refugees from Iran who haven't yet been in contact with the Iranian Queer Railroad and who also desperately need help.

One of the goals of the Iranian Queer Organisation was to increase the level of awareness about the Iranian queer situation and the horrible persecution that goes on daily in Iran, and to provide a steady stream of information about homosexuality and the transgendered via Internet into Iran. After several years of working with PGLO and IRQO, it was clear to Parsi he needed a new organisation with fresh blood and a structure dedicated solely to helping queer refugees, to help them flee Iran, to support them while they are still in transit countries like Turkey, to assist them in finding their way through the harrowing bureaucratic maze that faces them in order to gain asylum, and to help them get settled and cope with setting up a new life in gay-friendly countries.

Since being granted asylum in Canada, Parsi has been able to make a number of trips to Turkey to help gay refugees and has built a relationship with the UNHCR office there: 'I'm so happy I've been able to build a strong relationship with the UNHCR, who are now aware of the Iranian queer situation, and of our organisation, and on each of my trips I've been able to secure international refugee protection status for more and more Iranian LGBT refugees in

Turkey, which is the necessary first step to being granted asylum. After my last trip there in August 2008, we now have twenty more refugees who've been newly granted this status and are now awaiting flights to gay-friendly countries like Canada and Australia.'

Parsi was able to help a 29-year-old Iranian lesbian refugee: 'She had a terrible life in an abusive situation. Her family forced her to marry with one of their relatives, and her legal husband raped her every night, and she could do nothing about it because one of the first duties of women in the Islamic Republic of Iran is sexual delivery to their husbands. This girl went to a doctor after all the rapes, and the doctor told her, "You appear to have been raped by an animal, and you need urgent health care now". But her family ordered her to be patient and stay at her husband's home. She was severely beaten repeatedly by her husband and eventually escaped and went to a friend's house. But while she was there, her brothers came while she was out and told her friend they were going to kill her to save the family's honor because she left her husband and has suspicious connections with other women. That's when she fled Iran to Turkey, where she was put in touch with the Iranian Queer Railroad by one of our members in Iran. I told her, "Don't go back to Iran, we don't want to lose any more members of our queer family".'

Exile in Turkey and Arriving in the West (Canada)

Parsi's dedication to these refugees is fuelled by his own experience as an exile in Turkey: 'It was the hardest experience in my life. To suddenly find myself in an unexpected situation in a hostile country without money, with no personal safety or security for thirteen months wasn't easy. I cannot forget the day in Turkey when I was walking with Amir, another gay refugee who had been tortured and flogged in Iran. We were chased in the street by a homophobic crowd, who beat us hard and tried to kill us. Nobody helped. There were no police who came to our assistance and people were just standing around watching as we were beaten, simply for being gay refugees in their country. I'll never forget my refugee life in Turkey, and that's why I've decided to dedicate myself exclusively to making queer refugees' stay in Turkey as short as possible and to help them get to freedom in gay-friendly countries.'

'Two of our refugees in Turkey - one who is 28 and one who is 29 - who had rented a room together, were visited by the mother of the landlord who told them, "We just found out you are gay, and you have to leave because you are gay". Our two refugees, who didn't speak much Turkish, called the police, who instead of admonishing the landlord arrested our refugees. While in custody, one of them, who is diabetic, went into diabetic shock, but was not allowed by the police to take his insulin. The police insulted them and told them, "If you're not happy here, go back to Iran". Turkish police are very hostile to gay people in general and to gay Iranian refugees in particular. Beatings are very common. That's just another illustration of why it is so urgent to get these refugees out of Turkey to a safe country.'

'The most difficult part of living in Turkey is the waiting. Most of the refugees that come have to wait two to three years in a small apartment until they can be granted legal, international recognition of their status as refugees by UNHCR. In Turkey, India, or Pakistan, they cannot go out, because they are beaten. The police won't do anything for them. They have to stay at home, they don't know what they should do, and have no friends. It is extremely hard. Whenever they call the UNHCR or a western embassy, they tell them to wait. These places are not gay-friendly.'

Even after the wait in Turkey is over, the journey has just begun for many of these gay refugees. Inland refugee claims made at airports and border crossings are determined based on their eligibility according to an officer of Citizenship and Immigration Canada. During hearings of the Immigration and Refugee Board (IRB), an independent quasi-judicial tribunal that is responsible for applying to the Canadian federal Immigration and Refugee Protection Act and making decisions on matters related to immigration and refugees, gay refugees must prove that they are gay. Those who are unable to do so are deported back to their home countries. The one-person panel of the IRB must decide whether or not a person is homosexual. Many gay refugees, particularly those from Iran, have had to hide their sexuality for decades. Proving to someone that they are gay can pose an extreme challenge. Parsi: 'I have a case here in Toronto, where a queer man was interviewed by a judge. The judge told him, "You are muslim, and how can you be muslim and homosexual?" He denied him asylum, and wanted to deport him. To avoid being deported, he married another gay man.' With the burden of proof being laid upon gay refugees, many are unable to prove their sexual orientation and thus face deportation.

Personal Histories

Here are some statements left on the IRQO and IRQR websites from Iranian queers giving their personal histories. The stories were posted as part of their applications for assistance in finding asylum.

Ali, who is 30, escaped from Iran to Turkey in December 2007, where he is now awaiting resettlement: 'I was caught when I was having sex with a guy by his father, who was a member of the Islamic Revolutionary Guard. As a result, I lost my job and I and my family were threatened with death. I was arrested several times in Iran, the last time was in the summer of 2007 while I was on vacation in the north of Iran, and the Islamic Guard arrested me simply because I was wearing a T-shirt and jeans and had spiky hair. I don't feel safe even here in Turkey because the father of the guy I had sex with is in the Revolutionary Guard and has the ability to find me here and have me killed so he can cover up the scandal of his queer son. I didn't do anything, I'm just a gay man who was born in a country in which my existence was forbidden, just for being gay, just for having a special feeling which is not that of a majority of society. I love guys. It is my right to be free, but I have to live in exile for it. I need help.'

Hosseini, 22, escaped from Iran to Turkey in September 2006, where he has been languishing while awaiting official refugee status and the granting of asylum in a gay-friendly country: 'I am a musician and I used to perform at various celebrations, including weddings and parties. These gatherings were often raided, but usually the host would pay the authorities a bribe and that would end the matter. I am homosexual. I had my first relationship at age twelve with the son of a neighbour, it lasted two years. In September 2006 I was playing along with other musicians at a private gay party in a home. The party was raided and the police attacked us viciously. One person was beaten so badly that later I learned he had died from it. I was beaten for ten minutes and lost consciousness for about ten hours. I was later arrested while I was in hospital. Eventually my mother and a friend of mine came to the hospital, my friend was dressed in the uniform of a sergeant in the disciplinary forces, and pretended to relieve the soldier who was guarding my room. I put on a hospital worker's uniform and was able to escape. After I was smuggled into Turkey, my family's home was raided and my mother

190 and father arrested for three days on charges of helping me escape for being gay. My father was detained and tortured for a year and later died. I'm waiting to be granted refugee status by UNHCR and I need your help.'

Parsi's Iranian Queer Railroad was also involved with the case of Pegah Emambakhsh, who was granted refugee status in the UK. Emambakhsh arrived seeking protection there almost four years ago when religious authorities in Iran learned that she and her partner were lesbian. Her partner was later tortured and sentenced to death. The UK government dragged its heels in reviewing her application, doubting that Emambakhsh faced any credible danger at home, and eventually in 2007 put her on a plane to be deported back to Iran. While she was at the airport, Parsi was tipped off about the situation, and sent out a press release to the IRQR network asking people for help. Within about two hours, the British Home Office's fax machines were so inundated with messages that they changed their number, and with five minutes to go before the plane took off, she was taken off the flight.

André Hielkema (MA) is a historian and active both at the Dutch Humanist Alliance and the humanist Socrates Foundation.

Notes

- (1) This article is based on information on <http://www.arshamparsi.net/1814.html>, http://en.wikipedia.org/wiki/Arsham_Parsi and www.irqo.net.
- (2) In 2009, Parsi and the IRQO were honoured by the International Gay and Lesbian Human Rights Commission with its Felipa Award for pioneering gay activism.

What is it to be a Palestinian Lesbian?

Rauda Morcos

In 1993, I moved from Kofer Yassif (a Palestinian village inside Israel in the north of the Galilee) to Tel Aviv in order to study for the B.A. That was my first meeting with a lesbian or even the word itself; she was a Palestinian student too. The question was: who was I? How did I react and what did I think, back then? One thing was clear to me: that it was 'taboo and forbidden'! Since that moment my search began for my sexual, gender and national identity. Living in a world where your identity is known before you are even born and in most cases is given to you by the society you are raised in, this was something that challenged me and triggered the question: who am I? The answer was always inside me but the fear to accept it kept it far from me. I have never stopped thinking and dealing with the word 'lesbian' and what it means to me, and it didn't take long until I was searching for support groups for lesbians myself!

This was when I found Klaf - Feminist Lesbian Community in Israel. I called the first time in 1994 and the only question I asked was, do you know of any Arab lesbians? The answer was that I was the first Arab lesbian that reached or called them. I searched for that woman whom I met when I moved to Tel Aviv and I was told that she had left her studies and was probably forced to get married. This was how my activism started, from the personal perspective, and that was how all my identities met, and I wrote about that in my first article in Klaf's magazine in 1996, a small article called: 'What is it to be an Arab Lesbian?'

This article reached Ms. Haya Shalom - one of the co-founders of the Israeli lesbian movement - and through her it reached a group of lesbian women in Jordan. Haya and I visited the group in 1997. I am speechless when it comes to express my feelings after that meeting but one thing I wanted badly is to have such a group for Palestinian lesbians here!

But I knew I was like many women in the Palestinian society who were living our sexual identity in secret. For me it is clear that this is a result of:

1. The complexity of our status as a Palestinian minority in Israel that doesn't enjoy equal rights and faces brutal racism; and as a community lives under occupation in which the Israeli army violates the human rights and continues to build the apartheid wall that enforces the separation between Palestinians.
2. The fact that we as women carry unrecognized roles in a patriarchal society.
3. The society that rejects our right to express our sexuality.

These restrictions hinder women's expression of national, civil and gender rights and freedoms. Palestinian society like every other patriarchal society does not accept and often aggressively rejects any expression of 'otherness'. When women dare to identify themselves outside the borders of prescriptive traditional gender roles and identities, they face exclusion, or worse, violence against their property or their bodies. One strategy to reinforce

silence and subordination of women's sexuality is through sexual violence practiced against women. This is why Palestinian women have hardly ever organised themselves, did not dare to protest, or resisted the brutal oppression. The vicious cycle of oppression urged gay women to insist on creating a safe space to deal with women's sexuality, gender and lesbianism.

And this is how it all began. In 2002, the virtual forum for Palestinian gay women became the first safe space for gay women in the Palestinian community within the state of Israel and from the Palestinian Occupied Territories. In January 2003 we had our first meeting in my apartment, then in Tel Aviv, without knowing and planning what this meeting would bring to us. In August 2003 we decided to start organising our group as Aswat. From being a virtual forum, Aswat eventually became the voice and representative of Palestinian women. In September 2003, Aswat sought and was granted an organisational platform and support from Kayan - an Arab Feminist Organisation. Currently, Aswat functions as an independent project within Kayan, a registered non-profit organisation in Israel. From 2004 we started reaching out within the Palestinian Community through our education, outreach and information projects.

To understand the need for Aswat, it is important to know about the reality that created Aswat. While many of us have been active in feminist projects and others in peace and anti-occupation activities, none of us has had a 'community' that could support the anti-discrimination struggle that a 'minority within a minority within a minority' lives every day.

As Palestinian gay women living in a heterosexual and conservative society, we are taking the first steps out of the closet, firstly to ourselves. We are all taking an enormous risk. The world around us has proved to us that we still need to continue our struggle, against the growing homophobia and for recognition of our existence. Our mission is to make self-expression possible for gay Palestinian women. Through Aswat's programming, women are able to discuss gender and sexuality, define and redefine multiple forms of feminism, and address conflicts between national and gender identities, as Palestinians living inside the borders of Israel and in the Palestinian Occupied Territories. Aswat's group provides a safe space for Palestinian women who identify themselves as lesbian, bi-sexual, transsexual, transgender or intersex and queer. Through Aswat, women are able to break through their individual silence, engage in ongoing dialogues, and discuss issues that concern their daily reality. Moreover, in Aswat, we are able to educate ourselves and each other about women's rights, lesbianism and gender identity issues. Raising our awareness on such issues will enable us to raise issues in our community about the realities of lesbianism, thereby contributing to a greater understanding and tolerance in the Arab-Palestinian community.

Aswat strives to initiate social change in order to meet the needs of one of the most silenced and oppressed communities in Israel by reaching out to Palestinian and local communities in Israel and the occupied Palestinian territories. In addition, we network with other like-minded institutes, groups and individuals in order to combat the multilayered discrimination gay Palestinian women face and to promote women's rights and improve the status of all women in the Palestinian society.

Our power as women and as lesbians and as Palestinians is not in choosing one identity on

top of the other but insisting that there is a way to create a space for all. I am all of these identities - I am a lesbian and I am woman and I am a Palestinian and these three cannot be separated.

I would like to end with acknowledging each woman in Aswat because I know of all the courage that it has taken each one of them so that Aswat could be born, take a shape and begin to do its work in the world.

Finally, from identifying all the multilayered discourse between the national, sexual, gender struggles, I will keep on raising the awareness of the unbreakable connection between these three, to carry the message to the international LGBTQI community that our struggle as gays against oppression cannot be separated from our struggles for social justice and human rights for all.

It only needs courage to work for social change!

Rauda Morcos is co-founder and the former General Coordinator (2003-2008) of Aswat ('Voices'), the organisation of Palestinian Gay Women.