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REAFFIRMING THE RIGHT TO SEXUALITY

Sexuality is an intensely personal, dynamic, and individual experience, which is also a central and defining aspect of being human. The WHO working definition of sexual rights states that all persons should have the right to the highest standard of health in relation to sexuality which includes access to SRH services; to seek, receive and impart information in relation to sexuality; sexuality education; respect for bodily integrity; choice of partner; to decide to be sexually active or not; consensual sexual relations; consensual marriage; to decide whether or not and when to have children; and to pursue a satisfying, safe and pleasurable sexual life.¹ However, the right to sexuality also remains one of the most hotly contested topics globally because sexuality is shaped, realised, and moulded by the socio-cultural and economic environments.

This discourse around sexuality, which goes beyond an individual's felt bodily desire, began in the mid-20th century primarily through the feminist movements and LGBTQIA+ struggles in different parts of the world and their new articulations around the social construction of gender and sexuality. In more recent years, experiences of trans persons and of people with disabilities have opened a more complex and nuanced understanding of both social construction and bodily experience.

Sexuality is about individual choices as well as about the social milieu in which this individual right can be imagined, realised, and lived. Since the imagination of the normative of sexuality is varied across the world, one way to discuss it would be to map the trends of how rights for all people are being achieved and

in what manner. One indicator that has been chosen globally is of the rights of those who are excluded from most discourses. Women, young people and adolescents, and LGBTIQ+ people are seen as the outliers in different ways in most countries.

Usually any assertion of the right of sexuality for any individual from their location is immediately confronted with debates of culture and tradition and even religion.

In this editorial, instead of doing an overview of access to the right of sexuality across the globe, I shall endeavour to critically look at this paradigm of evaluating the right to sexuality. I argue that while speaking of access to sexuality is important, the critique needs to go beyond this. Inclusions of different realities ought to change and modify existing frameworks and meanings of gender and sexuality. I argue that true inclusion and access demand that systems change from within to help realise a broader vision of the right to sexuality.

Sexuality Rights and

Homonationalism. As the human rights discourse developed across the globe, the violation of choices was seen as a basic violation of human dignity and the existence of the person. The initial understanding of denial of the right to sexuality came more from the context of the violation of rights of those that seem to find no space in the normative discourse, usually women, younger people, and the LGBTQIA+ people.

editorial

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Work done over the years has helped understand the ways in which lives of the marginalised have been controlled and their liberties and rights violated differently across cultures and times and people. This in turn indicates how the normative is constructed, though this is clearly not the same across different parts of the world. The predominant normative, however, is of a binary gendered heterosexually oriented system maintained through cultural, social, religious, legal, and economic practices that are a product of a complex, hierarchical structure.

Usually any assertion of the right of sexuality for any individual from their location is immediately confronted with debates of culture and tradition and even religion. These debates happen everywhere, from the intimate space of the family to the modern international platforms like the United Nations that attempt to create a global discourse on human rights of individuals and groups of people. When it is the international fora, the cultures and religions of nations are invoked, and if the debate is at the national level, local communities and their practices are mentioned. In homes and familial contexts while the debate is about tradition and culture, it is couched in the language of familial honour and dignity.

Globally, this discussion has moved in ways that condone the hegemony of the market and global capital. Societies that apparently seem to abide by a certain discourse of freedom for individual personal choices are seen as "liberal" and hence liberating, while others that seemingly subsume the individual within the narrative of the collective are seen as controlling and assumed to be non-liberal

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and regressive. The reality of the right to sexuality is, however, more complex than these simplified binaries. This easy generalisation does not do justice to the complexity of societies and their practices. Yet this has today become the way in which sexuality and the right to it or around it is understood.

This is what Jasbir Puar calls homonationalism, “an analytic category deployed to understand and historicise how and why a nation’s status as “gay-friendly” has become desirable in the first place.”² She goes on to say that we may resist and resignify homonationalism as we did modernity, but it is an analytic which operates in today’s time. In Puar’s words, “(Homonationalism is) a facet of modernity and a historical shift marked by the entrance of (some) homosexual bodies as worthy of protection by nation-states, a constitutive and fundamental reorientation of the relationship between the state, capitalism, and sexuality.”

Within this dominant framework the right to sexuality gets consigned to the domain of the personal, allowing the public to remain as normative as they could possibly be, not only in matters of gender and sexuality, but in matters of other social dominances like caste, race, religion, disability, region and nation as well. This is also reflected in another shift that is perceptible in the global market economy pervading the world. National governments are moving towards right wing ideologies in different democratic nations across the world. This means a rise of cultural nationalisms and loss of space for democratic and human rights for many marginalised populations. This trend has been noticed in almost all recent democratic elections in Asia, South America, and Europe.

When other rights are compromised, it is obvious that the conditions that enable the assertion and realisation of a comprehensive right to sexuality also

come under attack. Long struggles for access to safe abortions, for recognition of marital rape, against early and child marriages, for the right to choose one’s partner – are not moving forward. These basic demands around the right to sexuality of women and girls are not being addressed. In fact through the diktats of informal law making bodies like the caste panchayat and the jamaat, the communities are introducing more mechanisms to control women’s sexuality by going against the laws of democracies.

At the same time, international politics are being played on the right to sexuality. Countries like the USA try to establish their understanding of liberal politics of the right to sexual choice for women in other countries, while continuously denying women’s right to abortion, which is but a first step towards making any real choice without the fear of unwanted pregnancies within their own. It is also ironic that while the USA labels itself as liberal because of assimilation of some gay people by granting them a few rights through marriage, there is a simultaneous increase in violence against Black and Latin trans citizens and actual rollback of rights for transgender people under the present regime.³

A liberal assimilative inclusion of LGBTIQ+ people is seen as the most progressive step towards realising the right to sexuality. However, that is hardly a ‘real’ access to rights around sexuality.

In a country like India, the impact of the last democratically elected government, led by a conservative nationalist party, has meant a curtailment of various freedoms of expression. This is seen through India’s falling global rank in journalistic freedom. At the same time there is increased surveillance on social media and incarceration of human rights defenders.⁴

It is ironic that when all democratic rights of freedom of expression have seen a regression, judicial pronouncements on trans persons rights and against anti-sodomy legislation seem to be the only positive achievements around gender and sexuality.⁵ These pronouncements, at a time when the country has moved many steps backward in many other freedoms, make one wonder how these laws will ever get implemented.

In this scenario can countries like India and USA be considered progressive in terms of the right to sexuality? The problem is that the discourse is shifting. A liberal assimilative inclusion of LGBTIQ+ people is seen as the most progressive step towards realising the right to sexuality. However, that is hardly a ‘real’ access to rights around sexuality.

Assimilative Inclusion is not enough. The right to sexuality is also about creating an environment in which various other rights are protected so that this right is guaranteed. The understanding of the right itself has to be more expansive. Without questioning the social structure which maintains the myth of the normative, all that can happen is an inclusion of the margins into the mainstream structure. This inclusion is in a way that their lives and choices are tailored to suit the larger fabric. This further curbs the ways in which sexuality itself is understood in society and undermines the possibilities of human expression itself. In fact, voices of those from the margins show and visibilise much that has been ignored or suppressed. Every margin shows newer ways in which the centre gets constructed and is maintained. It shows the complicity of the individuals, the systems, and the structures in normalising, and thereby naturalising the man-made societal structure. An attempt to include these perspectives enriches the imagination of the right to sexuality and also helps revision other human rights as well.

Sex workers rights organisations in different parts of the globe exposed the misogynistic, exploitative world order in which by naming sexual labour as exploitation, the very exploitation of such labour could never be addressed. They highlighted the place of women's labour in the labour market and the sexualised and gendered nature of this engagement. They also connected the similar constraints in sex work and the other kinds of labour, including domestic labour. The most stark and crucial lessons are around sex itself. Sex workers experiences indicate that all sex is finally a transaction often couched in the name of love, caring, and duty, but sometimes also done in exchange for status, material comforts, and money. Sex workers show how negotiation is done across power lines as they navigate their lives in sexual transactions that they choose, but which are under the surveillance of the law, the police, and the thugs.

The right to sexuality can be interpreted as the right of sex workers to determine their work conditions in a society supportive in actualising these, under the rubric of individual choice. The right to sexuality for all people will, however, be enriched if the understanding of transactional sex and gendered labour that emerges from their work is extended to our notions of family, to our understanding of domestic, affective, care, reproductive, and sexual labour traditionally done by women and made central to our imagination of labour itself. This would lead to a re-imagination of society and an expansion of the right to sexuality.

Another way to expand the notion of the right to sexuality and its meaning for society at large, is to look at other rights that intertwine with it from the points of view of those who apparently belong to the normative system: the rights to choice of partner; to free, full, and informed consent; to engage in

consensual sex regardless of marital status; to freedom from violence, including that of coerced sex; to privacy; to self-identification; to life; and to information and access to sexual reproductive health and rights services. The right to self-determination is invoked only in the context of the non-normative. It marks them as different, possibly uncommon, abnormal, unnatural. Instead, self-determination should be encouraged for everybody without assuming that they are actively exercising their choice.

The creation of any normative, however, especially in the domain of the personal around sexuality, will result in curbing the rich, diverse, and extremely personal and dynamic experience of the individual.

Where marriage is critical to be able to have any kind of space for expression of sexuality, it is difficult to determine that those who enter the institution of marriage do so with free, full, and informed consent. Since the institution privileges the man, the rights of the woman in this heterosexual marriage are matters of concern. However, unless the men also think of a responsible and respectful sexual relationship even within marriage, can there be any other envisioning of masculinity?

In Conclusion. The right to sexuality essentially challenges many established social and economic structures of diverse societies. Ways of living sexual and intimate lives are different and diverse across the globe. And yet in any local context there are norms around living of personal lives which get linked to sexual norms. These norms are explained as essential to a sense of order in the community. The creation of any normative, however, especially in the domain of the personal around sexuality,

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will result in curbing the rich, diverse, and extremely personal and dynamic experience of the individual.

It is pertinent to ask how the social order should be structured so that the richness of experience of all individuals is retained. The answer seems to be same as for any human right—individual realisation of rights is possible only if there is a constitutional ethics of relating with others. Continuous collective efforts towards structural equity and justice are required for this ethics to prevail and societal structures have to be malleable to accommodate epistemes of the margins for real inclusion.

Notes & References

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2. Puar, Jasbir (2013). *Rethinking Homonationalism*. Int. J. Middle East Stud. 45 (336-9).
3. "Into mid-June of 2019, 10 murders of trans Americans have been reported, all women of color." as quoted in the website <https://www.advocate.com/transgender/2019/5/22/these-are-trans-people-killed-2019#media-gallery-media-0>. Besides this direct violence, many policies for transgender students like use of toilets of choice for students, no discrimination in providing medical health care have been revoked by the present administration. "Trump Administration Proposes Rollback of Transgender Protections" published on May 24th, 2019 in the New York Times. <https://www.nytimes.com/2019/05/24/us/politics/donald-trump-transgender-protections.html> (All accessed on 21st June 2019).
4. There are many press reports on incidents of violence in the last five years of rule by the right wing majoritarian government but am referencing here two internationally recognised reports. The first is the 180 countries annual analysis released by Reporters without borders. India's rank in the world press freedom index has dropped from 105 to 140 in the last decade as can be seen from the https://en.wikipedia.org/wiki/Press_Freedom_Index#cite_note-13. The other is the annual International Religious Freedom Report released by the US state department. Its recently released 2019 report says that religious freedom is under attack in recent years. <https://countercurrents.org/2019/06/attacks-against-minorities-by-hindu-extremist-groups-continue-in-india-us-report>.
5. I refer here to the two landmark judgements of the Supreme Court of India. On April 15, 2014 in *National Legal Services Authority v. Union of India* the court guaranteed all persons the right to self identify their gender and full access to citizenship rights in their gender. The full judgement can be accessed at <http://supremecourtindia.nic.in/outtoday/wc40012.pdf>. On 6 September 2018, the Supreme Court of India ruled that criminalising consensual homosexual sex between adults was unconstitutional, "irrational, indefensible and manifestly arbitrary" and thereby ended a long legal battle against Section 377, the anti sodomy colonial law. https://www.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf.

INTERSECTIONALITY, IDENTITIES, AND INSTITUTIONS

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The decision on how people choose to assert their sexuality, be it romantically, sexually, or socially, should be every single individual's choice free from stigma and discrimination, coercion, and violence. The right to sexuality is a core human right and without the right to control their own bodies and their sexuality, LGBTIQ+ individuals are not able to fully realise their own bodily autonomy, integrity, self-determination, nor can they control other aspects of their lives.

In the Asia Pacific region, conversations around SOGIESC (Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics)¹ are extremely varied. Many Global South countries' discriminatory LGBT laws can be traced back to the implementation of Section 377 of the Penal Code² which was introduced through British colonial law and which criminalises all sexual acts which are "against the order of nature" including anal sex between men and other homosexual acts.³ Through colonialism, an ideal model of 'being' was put into place. This 'being' is represented as a heterosexual citizen, who incorporates an able body, able to help produce offspring and thereby continue the nation-building process. The lasting effects of the implementation of Section 377 are still felt today across the region: in Afghanistan, homosexuality is punishable by death; in Malaysia, the punishments include whipping and imprisonment for up to 20 years; in Myanmar, LGBTIQ+ people face up to ten years of imprisonment and a fine.⁴ Interestingly, laws surrounding gender identity in the Global South are incredibly progressive in comparison to laws surrounding sexual orientation.

Interestingly, laws surrounding gender identity in the Global South are incredibly progressive in comparison to laws surrounding sexual orientation. For example, Pakistan passed the Transgender Persons (Protection of Rights) Act in 2018, which established broad protections for transgender people in the country, but still lists all "homosexual acts" as illegal.

For example, Pakistan passed the Transgender Persons (Protection of Rights) Act⁵ in 2018, which established broad protections for transgender people in the country, but still lists all "homosexual acts" as illegal.

However, these groups are not homogenous. In today's ever-changing and growing landscape of SOGIESC, much of the mainstream discourse, positioned from a Western framework, revolves around the pressure to "come out" and for people to live their "most authentic selves openly and without fear." Though this is an ideal that should be striven towards, it tends to focus on a certain section of the population – particularly those who have the privilege, power, and means to be able to be open about their sexuality without the threat of discriminatory religious, nationalistic, cultural and ethnic norms, not to mention the overarching threat of patriarchy which works to define gender within the binary. In the Global South, much of this discourse around "coming out" cannot be resonated with when the lack of basic

human rights for LGBTIQ+ people is barely provided for in the first place, not to mention the sheer number of familial, cultural, and social barriers in a region where family and collectivism is more valued than individualism.

This is why the issue of intersectionality is a crucial part of today's discourse and should be more widely applied in the dialogue and activism around LGBTIQ+ rights. In 1989, Kimberlé Crenshaw coined the term 'intersectionality'⁶ in response to the systemic levels of oppression faced by Black women in America. It was a critique of the erasure of multiple axes of identity that goes against the 'add and stir' narrative and instead says that the systematic oppression of individuals and groups can and do overlap over various social identities at once, such as race, gender, and sexuality. From the beginning, feminist discourse has (and arguably still does to this day) centred around able-bodied Western cis white women and as a result, has limited the scope and insights into the groups who are multiply burdened. It is important to understand the three main forms of intersectionality in identity politics: structural, political, and representational.⁷ Structural intersectionality refers to the ways in which the social systems and structures we live in oppress us, for example education, economics, migration, etc. Political intersectionality looks at who is able to speak, who is spoken about, and who is silenced within movements and when expressing their views. Finally, representational intersectionality refers to the multiple axes of stereotyping that occurs within the media.⁸

Our identities are not fixed, they are shaped by the social influences around us and therefore affect the way we experience our lives and how our lives can be restricted or determined for us. It is not enough for us to merely list our various identities; we need to look at how these intersecting identities are impacted by the societal forces around us. In short, we cannot think of race, gender, and sexuality as separate and mutually exclusive categories, as doing so erases the experience and voices of the people who experience both, or all at the same time.

That is to say, what does it mean to be queer and an ethnic minority? What does it mean to be queer and a woman? What does it mean to be a queer woman of an ethnic and/or religious minority? When we broaden this and add issues such as class, caste, disability, cultural and social norms, mental health, etc. into the fold, the levels of discrimination increase even further. These are all aspects in which we see the way that SOGIESC discourse in the Asia Pacific region is heavily impacted and why it needs to be examined from a different approach.

It is crucial to note that the different categories of how people are marginalised should not be the final point of discourse, it is about how these different categories then go on to be affected politically and socially. Due to the lack of protection from the law, combined with the continuous backlash against what has been termed in several countries as the “Gay Agenda” or “Western Influences” from legal, cultural, social, and religious institutions in the Global South, LGBTIQ+ communities face a multitude of discriminations in all aspects of their lives, be it personal relationships, employment, familial ties, etc. The added pressure of needing to “come out” or “affirm” their sexual orientation publicly then becomes an even more dangerous burden to those

individuals in these contexts. Culture and religion are particularly heavily relied on to further anti-rights sentiments under the pretext of protecting youth from the “immorality of homosexuality.” This then leads to barriers being created against any opportunities of starting discussions about sexuality and LGBTIQ+ rights. Comprehensive sexuality education, which is already extremely difficult to implement in the region, makes little to no mention of LGBTIQ+ information. This lack of information traps people within a heteronormative cage, where they see the heterosexual nuclear family as the only ‘correct’ way of moving forward in life.

We cannot think of race, gender, and sexuality as separate and mutually exclusive categories, as doing so erases the experience and voices of the people who experience both, or all at the same time.

Intersectionality is a form of politics of identity, a way in which we need to acknowledge how people can be multiply burdened and oppressed due to inhabiting more than one form of marginalised identity. However, that is not where the importance and analysis of this concept should end. The knowledge of what intersectionality is then needs to be used to reconstruct institutions of power and change the ways in which we produce knowledge and take the construction of knowledge for granted in order for our activism to be truly effective and inclusive.

We cannot advocate for LGBTIQ+ rights without looking at those who are furthest back, without taking everyone into account. Today, many international human rights bodies such as the UN Commission on Human Rights (UNCHR) and the UN Beijing Platform for Action

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(2000) recognise the importance of examining the ‘intersection of multiple forms of discrimination’⁹ but we need to make sure that these laws are implemented in a way that will actually work within each country’s legal system. It is not enough to just say that these laws exist if there are no concrete steps being taken to make sure they are being implemented correctly.

Notes & References

1. As defined in Yogyakarta+10, gender expression is ‘external manifestations of gender, expressed through one’s name, pronouns, clothing, haircut, behavior, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture.’ ‘Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms’; Sex characteristics ‘include primary sex characteristics (eg, inner and outer genitalia and/or the chromosomal and hormonal structure) and secondary sex characteristics (eg, muscle mass, hair distribution and stature)’; sexual orientation is understood ‘to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.’
2. In July 2019, India’s Supreme Court overthrew section 377 of the Penal Code in a big step forward to LGBTIQ+ rights in the country.
3. Thomas, Maria, and Isabella Steger. “In over 40 Countries, Laws against Homosexuality Are a Lasting Legacy of British Rule.” *Quartz India*. Quartz. <https://qz.com/india/1380947/section-377-the-former-british-colonies-with-laws-against-gay-people/>.
4. *ibid*.
5. The full text of the Act can be found at this link: http://www.na.gov.pk/uploads/documents/1526547582_234.pdf.
6. Crenshaw, K. (1989) “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics” University of Chicago Legal Forum.
7. Crenshaw, K. (1989) “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics” University of Chicago Legal Forum.
8. A peak example of representational intersectionality can be seen in countries such as Malaysia, where news related to the LGBTIQ+ community is only aired (and sensationalised) when there are political scandals involved. This only furthers the idea in the public eye that the LGBTIQ+ community is immoral and deviant as the general population is given little to no other information on LGBTIQ+ issues in mainstream media.
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LOST IN WORDS: Navigating the Terminology of LGBT

Development of Words. The evolution of terminology has gradually shifted from LGBT (Lesbian, Gay, Bisexual, Transgender) to LGBTI (Lesbian, Gay, Bisexual, Transgender, Intersex) to LGBTIA2++ (Lesbian, Gay, Bisexual, Transgender, Intersex, Asexual) and a growing number of recommendations on particular issues including the development of SOGI (Sexual Orientation and Gender Identity), SOGIE (Sexual Orientation, Gender Identity and Expression), SOGIE-B(Body), and SOGIE-SC (Sex Characteristic) acronyms, in a hope to enlighten the understanding of the various experiences of human sexuality.

In the study of communication, dominated by US-Europe based scholars, the discourse on LGBT only happened after James W. Chesebro edited his first ground-breaking essay titled 'Gayspeak: Gay Male and Lesbian Communication' in 1981¹. He was probably the first US communication scholar to explicitly conceptualise the same-sex orientation, or the construction of homosexuality, as a communication problem.²

Driven by queer theory, changing generational communication practices, and localised resistance to homogenising Western values, some are questioning the political benefit and social-cultural relevance of labeling one's identity based on one's sexual behavior.

These terminologies are helping people define themselves or in some cases, become perplexed on how their self-discovery needs to fit and be articulated into certain categories. On the other hand, without diminishing the identity that we've been fighting for in terms of visibility, recognition, and equality, we need to realise that the media has constantly bombarded us with these keywords and catchphrases, feeding into the depiction of the First World white-centric language of LGBT, the new fuel to 'rainbow capitalism': a new currency of a loyal rainbow market.

Bettina Heinz added that sexual orientation emerged as a key issue in the communication discipline in the 1970s, brought forth primarily by activist scholars.³ The term 'sexual orientation' is typically used to describe the directionality of a person's physical and/or psychological attraction, concerning the desired partner's sex.⁴

Sexual orientation is generally conceptualised to exist on a continuum, acknowledging that individuals may express differently or reconceptualise their sexual orientation over their life span.⁵ However, Laurent explained that this idea of fluid orientation derived from the narration of the White "freedom" agenda.⁶ Less commonly defined as a 'sexual preference' because of that term's implicit notion of choice, 'sexual orientation' has come to function as a gender or sexual identity category, particularly in North American and European cultures. However, in other cultural contexts, same-sex attraction or same-sex sexual behavior is often experienced separate from gender or sexual identity categories. Driven by

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queer theory, changing generational communication practices, and localised resistance to homogenising Western values, some are questioning the political benefit and social-cultural relevance of labeling one's identity based on one's sexual behavior. Therefore it raises a critical question: Do we have to 'justify' that a personal and cultural experience fits into the mainstream definitions of 'LGBT'?

The Development Of Language In The Global South. While communication studies in the Global North introduced the term 'LGBT' in early 1970, the development of LGBT words started only in 2000.⁷

The Global North is still stuttering discussing the term 'LGBT' outside the frames of individualism and freedom of expression. However, in the Global South, in a place where collectivism is the breath of life, culture is the skin, and living is a chain, we cannot discuss these terms in the same way.

Even the usage of the word 'trans', which reflects the T in LGBT, is not without concerns when looking at how it is derived from the foreign world, and is almost irrelevant to the movement in some parts of the Global South. In Southeast Asia in the 1960s, the narrative existence of global trans women in Indonesia was already being recognised with the word *Wadam* (Female Adam) by DKI Jakarta to replace the word *banci* or *bencong* which was considered insulting.⁷

The Makassarese of South Sulawesi have a tradition of *bissu*: men who dress like women, or women like men, and who have sexual relations only with persons of the same gender. All rituals at the Court have to be presided by a *bissu* (*waria*).

Thailand is generally tolerant of both transgenderism and homosexuality. Traditionally, Thai discourse does not distinguish between gender and sex, using the sole term *phet* to refer to biological sex, gender, and sexuality. The category *kathoey*, traditionally referring to hermaphrodites, transvestites, transsexuals, homosexual men, is now restricted to cross-dressing men and male-to-female transsexuals. But in the 1960s, the emergent need of the word 'gay', which was borrowed from the West as an identifier, arose. Distinctions were made in local terms to cover the notion of sexual versatility, which happened mainly through a cultural movement and was not really supported by gay-orientated political movements or activist networks carried out by most Western countries.⁹

It is time to move on from studies focusing on the communication experience of LGBTQ people as a minority group and should instead focus on how all individuals' sexual and gender identities shift and vary and are intertwined with issues of race, class, and culture.

Laurent added that homosexuality is legal in Vietnam.¹⁰ Ancient legal codes, from the 15th century, took into account heterosexual rape, adultery, and incest, but left homosexuality unmentioned. In the Philippines, before Spanish colonisation, each "tribe" had a powerful shaman-like figure, the

bayaguin, bayoguín, bayog, baylan (indigenous words for "priestess"), or *asog* (in the southern islands). *Bakla*, female-identified men or cross-dressing effeminate men, as well as tomboy, male-identified females, have long been a recognised part of cultural and even family life in the Philippines. The terms gay and lesbian came into use in the 1970s, and are now part of Taglish, a mixture of Tagalog and English.

Critiques on the Global North and Global English. Since the early 2000s, scholars documented, examined, supported, and critiqued the emergence of global English as the global gay rights language.¹¹ In 2003, Yep, Karen E. Lovaas and John P. Elia's volume titled 'Queer Theory and Communication: From Disciplining Queers to Queering the Discipline(s)', framed their text in the understanding that it is time to move on from studies focusing on the communication experience of LGBTQ people as a minority group and should instead focus on how all individuals' sexual and gender identities shift and vary and are intertwined with issues of race, class, and culture.¹²

Laurent emphasised on blind gaps to fulfill the narration of "Western patterns," particularly the narration of freedom and 'being out', reclaiming the mere voice of an identity, a sexual one.¹³ In this, Laurent questions where family and social harmony fit as a signifier in the aspects of being Asian and experiences related to their sexuality.

This feeling of detachment from the term 'LGBT' is mainly derived from the history of colonialism which affected the Global South. Certain terminology and narration does not resonate with the Global South cultures. These colonialist narrations of LGBT emphasise the debates of mental illness and cure, as well as words such as sinner, contagious, unnatural - strange terms used when the Global South

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was celebrating diverse sexualities in their cultures. This was reflected in our findings where several trans women admitted that they are still afraid to use 'LGBT' to identify themselves. They prefer to be called "*Waria*" as most Indonesians still think that "*Waria*" is not part of LGBT.

As Bakar said: 'For queer folks in all these post-colonial countries, our governments have to have a sense that these are not our laws, these were never our cultures.'

Just this year, Menaka Guruswamy and Arundhati Katju successfully challenged Section 377 of the Indian Penal Code which punishes LGBTQ+ relations. The Supreme Court lawyers opposed the draconian laws which were introduced during the British rule of India. Menaka argued against the laws, saying they should have never been added during colonial times. As she said: 'For queer folks in all these post-colonial countries, our governments have to have a sense that these are not our laws, these were never our cultures'.¹⁴

Moving Forward For Advocacy: Lessons Learned From The Disability Movement.

Law, especially from the international human rights regime, is a direct reference on which minority groups rely when it comes to 'non-discrimination'.¹⁵ For example, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) is an international legal agreement which exists to protect and promote the human rights of disabled people. It was adopted by the United Nations General Assembly on December 13, 2006, and opened to signature on March 30, 2007. As for the LGBT movement, The United Nations through its Human Rights Council, had several resolutions on Sexual Orientation and Gender Identity in 2011, 2014, and 2016.

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The goal of advocacy is to create change and to build public support for a particular cause or policy. We can learn from the progress of the disability movement and how this may be relevant to the LGBT Movement. The UNCRPD is a complex and comprehensive treaty, reflecting a major global shift away from the individualised “medical model” of approaching persons with disabilities to a more “right-based” and “Social-justice” oriented approach.¹⁶

In Indonesia, the disability movement has tried to advocate the Government to ratify the UN Convention on the Rights of People with Disabilities in 2011. Disability People Organization (DPO) leads the discussion on the term to translate the People with Disabilities convention into the Indonesian language. Maulani, chair of HWDI (Personal communication, 2019) one of the disability leaders who advocates for UNCRPD ratification in Indonesia said that it took two national seminars and one FGD until it was agreed upon to use “*Penyandang Disabilitas*” (roughly translated from ‘People With Disabilities’) instead of “*Penyandang Cacat*” (Deformed).

The terminology nudges a shift on a paradigm to address social problems on accessibility rather than a personal barrier and therefore address state responsibility. As an evolving concept, the term of “*Penyandang Disabilitas*” also creates opportunities as an umbrella term for all kind of identities to be included.

The discourse on the use of LGBT as an advocacy language could be difficult for several reasons in Asian countries. First, Po-Han Lee (2016) argued that anti-cultural imperialists, cultural relativism, and legal passivism are prevalent at the moment against internationalism and the universality of human rights, whenever issues are brought by the ‘West’ such as gender and sexuality, the death penalty, sex work, and drug intervention.¹⁷

Second, the questions remains if the word ‘LGBT’ is inclusive enough to address the diversity of sexual orientation, gender identity, and expression of all people. Yulius explained that there is a paradoxical nature in the identity-based rights itself.¹⁸ Those “universal” rights also hinge on the particularity of individuals’ characteristics. In other words, a person should belong to a specific identity or group, so that they can have “the right to have those rights.”

In order to make it more inclusive, strategic, and consistent, the LGBT movement could use ‘Sexual Orientation and Gender Diversity’ as an umbrella term to address that there are still structural and cultural barriers for sexual rights itself to be recognised and fulfilled in the Global South.

Third, one thing that cannot be denied is that the addition of letters in LGBT terminology is important as it is also a struggle for identity. It can also be difficult for people outside of the LGBT movement to understand the meaning of each alphabet and it will prevent them from supporting the LGBT movement because they might not understand the cause.

Fourth, up until now, there is no international declaration, resolution or convention mentioning the term ‘LGBT’ in a title of the declaration. Instead, the term being used is ‘Sexual Orientation and Gender Identity.’

Therefore, in order to make it more inclusive, strategic, and consistent, the LGBT movement could use ‘Sexual Orientation and Gender Diversity’ as an

umbrella term to address that there are still structural and cultural barriers for sexual rights itself to be recognised and fulfilled in the Global South. Maulani (Personal Communication, 2019) also suggested that it is important to have an evolving and inclusive concept which addresses the structural challenges so that the movement can be more inclusive and easy to be understood. In the end, it is up to the community to decide and strategise on how to use the words which reflect their experience, in order to reach their goals.

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CRIMINALISING CHOICE: Case Studies from Gujarat

Aarti Nayak, a 16-year-old Adivasi girl from rural Dahod, was staying in a residential high school where she was a star athlete when she was suddenly summoned home to her family. Upon reaching home, she learnt that she was to be immediately engaged to a 24-year-old Patel boy from the village her father worked in as migrant labour.

Shaken by this decision, knowing its effects on her life and education, and given no opportunity to protest it, she called the boy she liked—Chetan—and they eloped. They were on the run for nearly 15 days, at the end of which they were caught by the police against a First Information Report (FIR) lodged by her father.

The complaint? Kidnapping and abduction of a girl to compel marriage under Section 366 of the Indian Penal Code (IPC). Chetan was arrested and remains in lock-up. Aarti, though not married, was yanked out of the education system immediately.

Aarti is not an aberration, her story is a pattern. An exploratory study¹ conducted by ANANDI of 731 formal police complaints (First information Reports / FIRs) and 29 in-depth personal interviews related to abduction and kidnapping of young girls reveals that consent, choice, and agency of young women and girls, especially in the context of sexuality – remains deeply criminalised by both law and society.

Nearly 87% of the total FIRs were launched under the same section of the IPC as that used by Aarti's father: Kidnapping and Abduction of a Girl to Compel Marriage. Though the complainants most often do not know

legal jargon, these sections are applied by the police officer taking the complaint based on the details provided.

This, combined with the fact that 91% of the FIRs had the address of the abductor mentioned, raise suspicion of the law being weaponised by parents wanting to track down daughters who had eloped.

The data from the in-depth interviews, though limited, is even more telling in corroborating this suspicion. In 20 out of the 24 cases where FIRs had been registered, the survivors had left home out of their own volition.

However, the FIRs mentioned these as abductions under the guidelines of the Supreme Court on missing children. Out of the five cases where the FIRs were not registered, in three cases the parents had severed all ties with the girls as they continued to live with the partners and in two cases the parents compelled the girls to leave their partners of her choice.

Since two-thirds of the FIRs studied were in reference to young girls under the age of 18, and hence technically 'minors' under the law, it becomes pertinent to mention how the law in India treats sexual consent under 18.

Protection of Children from Sexual Offence Act (POCSO), 2012 and the Supreme Court's guidelines on Special Oppressional Procedures for Missing Children focus on 'protection' from harm, and violation against the person under 18 years, thus collapsing the age of consent with the age of marriage.

This undermines the principle of 'evolving capacities' in relation to adolescent girls

spotlight

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and any explorations of agency are brought under the category of crime against them, which leaves no room to exercise their agency. This also renders sexual consent void, as all under-18 sexual acts are criminalised by law.

The non-recognition of choice and agency of the girl leads to criminalisation making her further vulnerable to different forms of violence. The girls, who are brought back from alliances chosen by them, are often married off by force to men who can pay the highest bride-price. At home, their movements are restricted and they face stigmatisation and distrust from her parents. Out of the 29 girls interviewed in the study, only two girls (6.9%) could continue with their education after they were brought back home.

A study of the data also reveals a perceptible time lag between the discovery of the 'missing' girl and the registration of the FIR - only 20% of the cases were registered within two days of the kidnapping, with a majority being filed between 3-5 days.

Interviews with the survivors as well as community leaders reveals that this is often the time used for negotiations of customary penalty, known as *davo*, wherein the parents of the girl demand a pre-fixed penalty from the boy with whom she eloped. Without paying *davo* the young couple does not get social sanction for their union. Until the time *davo* is paid up, the girl is ostracised by her natal family.

The custom of *davo*, the amount of which can range from Rs. 10,000 to Rs. 200,000, is perceived in many regions as a measure that deters youngsters from exercising their choice in marital alliances. Irrespective of whether *davo* is honoured or not, the young girl involved in the relationship ends up bearing the social, emotional, and economic burden that enhances her vulnerability.

Families have to borrow heavily to pay up *davo* as well as to legally settle the cases. Though these loans are taken by the families, the social and economic burden of its repayment falls on the young couples and especially the young bride, forcing them into insecure and unsafe livelihoods, effectively ending any chance of further education in the face of crippling debt.

41% of the cases showed that the women got pregnant soon after eloping - either in a desperate bid to get society to sanctify their union or due to a lack of adequate sexual and reproductive health knowledge. This creates a whole other spiral of underage pregnancy and all its related risks, especially in the context of the couple being reluctant to access any health services for fear of being found out.

For an underage couple in love at the intersections of customary practice and the law, the options present themselves as a rock and a hard place. Why then, in the face of such deep criminalisation, do young women and girls continue to exercise their agency in matters of sexuality?

In each of the cases of agency being criminalised, there are deep links between sexuality and mobility. The urge to elope is not only prompted by an attraction to their partner, but also a need to escape the home. Among the young women and girls interviewed, 12 had left homes as they faced violence after their families

learnt about their romantic relationships or they anticipated a backlash. They had also faced violence when mobile phones they kept secretly were discovered by the parents. Across the board, the interviewees were overburdened with care and domestic work with severe restrictions on mobility, friendship, and use of mobile phones. They also had little choice when it came to decisions of education, career, marriage - and a majority of the interviewees saw elopement as a way to finally exert their choice, a breaking of the shackles that held them.

These figures create a picture of the social imprisonment that often accompanies a young woman into sexual maturity - especially in a society where honour (ijjat) is located in the sexuality of the unmarried woman and, by extension, her mobility.

Focused Group Discussions (FGDs), conducted with girls around the age of 14-16 puts some data to the restrictions on mobility. As per the data collated through the participatory mobility tool, 58.6% of girls were not allowed to visit their friends, and 31% of girls visited friends mostly in their hamlet which largely included the members of their extended family. 70% of girls had no access to sports or leisure outside their schools. 80% of the girls had never been to a theatre to watch a film. 82% could not access the markets alone. These figures create a picture of the social imprisonment that often accompanies a young woman into sexual maturity - especially in a society where honour (ijjat) is located in the sexuality of the unmarried woman and, by extension, her mobility.

Understanding the needs, desires and fears of young women and creating

ways to help them navigate the choppy intersectionalities of sexuality, mobility, and choice becomes an urgent mandate for civil society organisations and women's collectives. ANANDI, along with its partner women's collectives - Panam Mahila Sangathan (PMS), Devgad Mahila Sangathan (DMS), Maliya Mahila Shakti Sangathan (MMSS) and Mahila Swaraj Manch (MSM) - run an Alternate Dispute Resolution Forum, which has Gender Justice Committees over the last two decades.

This forum is now emerging as a key ally in support of young people who have exercised choice in selection of partners, to navigate with the different stakeholders - mainly the police, juvenile justice system, and the community leaders.

Protection to young couples and girls in particular to ensure that there is no further violence on them such as confinement, forced marriage, recording of these incidents to the police, and accompaniment and legal support to the girls have been some ways that the Gender Justice Committee prioritises in its work with young people criminalised by law and society locally.

ANANDI is also taking the research findings and recommendations² to other civil society organisations and different government departments to build a larger coalition to address the lacunae in the laws which criminalise young people's agency and choice with regards to exercising their sexuality.

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THE LGBTQI+ EXPERIENCE IN FIJI

LGBTQI+ Rights in Fiji have progressed immensely over the last two decades. In 1997, Fiji became the second country in the world after South Africa to explicitly protect against discrimination based on sexual orientation in its constitution. In 2009, this 1997 constitution was abolished. The new constitution, promulgated in September 2013, extended and broadened this provision, in protecting the rights of Fijians based on their sexual orientation including their gender identity and expression.¹ This was a significant elevation for sexually diverse Fijians after the decriminalisation of sodomy during the review of the 2009 Penal Code² (now known as the Crimes Decree 2010).

The women's rights lobbying in Fiji for all diverse women aligned itself with Fiji's ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1995, and allowed women of diverse sexual experiences, orientation, gender and expression to collectively lobby for diversity and inclusion in multi-levels of society.

With Sexual Orientation, Gender Identity and Expression (SOGIE) embedded in the supreme law of the land, the lived realities are far from the eclipsed LGBTQI+ rights based-realisation and legislations. The his-her-their-story of the Fiji LGBTQI+ movement has over the years experienced its fair deal of challenges to get to where we are today. These politics arise from internal and

external experiences, backgrounds and sadly at times, from within the human rights movement itself.

In Fiji's experience and similar to many parts of the world, the women's rights movement became an entry point for the organising, mobilising, and lobbying of LGBTQI+ specific issues. The women's rights lobbying in Fiji for all diverse women aligned itself with Fiji's ratification of the Convention on the Elimination of All Forms of Discrimination against Women in 1995,³ and allowed women of diverse sexual experiences, orientation, gender and expression to collectively lobby for diversity and inclusion in multi-levels of society.

During the early years of the LGBTQI+ movement, organisations such as the Fiji Women's Rights Movement, Men Empowerment Fiji (MEN FIJI) now known as Rainbow Pride Foundation, Drodrolagi Movement, Haus of Khameleon, and DIVA for Equality were at the forefront of LGBTQI+ Advocacy. These movements advocated for sexual and reproductive health and rights issues that addressed transgender (both trans-feminine and trans-masculine), lesbian women, queer women, bisexual women, and gender non-conforming women's needs and safety.

Issues around social, political, and economic inclusion for people of diverse sexual orientation, gender identity and expression were strongly echoed in many of the women's spaces by LGBTQI+ activists and allies. At times, there was backlash from traditional women leaders who were part of these spaces and process. However, with strategic responses, interaction, and sensitisation,

spotlight

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Without a doubt, the LGBTQI+ movement has made significant steps and progress over the years. However, the changing dynamics in which it interacts remains a challenging one. LGBTQI+ activists are now echoing the shrinking of spaces of their engagements within the human rights movement.

some of these conservative women leaders have now become champions of the LGBTQI+ movement and people.

Without a doubt, the LGBTQI+ movement has made significant steps and progress over the years. However, the changing dynamics in which it interacts remains a challenging one. LGBTQI+ activists are now echoing the shrinking of spaces of their engagements within the human rights movement. These experiences were shared by leading trans-activists in Fiji during a side event panel discussion at the 2nd Pacific Human Rights Conference:⁴

"Our space is beginning to shrink and this is dangerous; as the very people that we call our allies are now dictating the type of transwomen they allow into their engagements. In this instance, they begin to become the bottleneck of the movement, as they question the validity and authenticity of transwomen in women rights spaces. There are a lot of clashes now on such issues within the feminist space. Using an intersectionality lens and/or approach is the key to address these issues."

We have seen these homophobic and transphobic attitudes within and outside of the feminist, LGBTQI and human rights movement. These are based on their personal beliefs and values which are often shaped by misleading, exclusive, judgmental and non-affirmative teachings, religious and personal beliefs as well as traditional and cultural beliefs. It is crucial that such exclusionary practices that contribute to homophobia and transphobia within the feminist/ women and human rights movement are strongly and openly challenged, echoed and shared in forums to deter its growth within and beyond these movements.” – Sulique Waqa, Haus of Khameleon, excerpt from the “TRANS-forming lives for a Better and Stronger Pacific,” Panel Side Event - 2nd Pacific Feminist Forum.

There is greater need to create dialogue with conservative feminists and activists in the movement to generate greater understanding and acceptance. The women’s movement remains an ally of the LGBTQI+ movement in Fiji. Organising of the first National Pride March earlier this year was attended by feminists and feminist networks and organisations. This is a classical example of many other activities that showed the continuous solidarity and support offered by allies and accomplices from the women’s movement.

It is vitally important to continue to work in solidarity with the women’s movement in recognising and acknowledging the diversities of women in women’s spaces. In moving forward, the solution to addressing the issues raised above is to use a human rights-based approach that

holistically engages an intersectionality lens. This would enhance and critically emphasise on the intersectionalities of LGBTQI+ rights to women and human rights issues. Such linkages would address corresponding sexual and reproductive health and rights issues. The movement is stronger when women and feminists work collaboratively together in championing LGBTQI+ rights.

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AURAT MARCH: Honour, and the Violent Control Over Women’s Bodies

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On March 8, 2018, and again in 2019, thousands of Pakistani women took to the streets for the country’s annual Aurat March (Women’s March). Organised under the banner of ‘Hum Aurtein’ (roughly translated to ‘Us Women’), the March started in Karachi last year,¹ when feminists from various collectives and women’s rights organisations formed a horizontal, non-hierarchical planning committee, unaffiliated with any group. For a month and a half, sessions were held to rally women from different neighbourhoods and backgrounds, and expand the core team. Social media campaigns were run, posters put up, and donations raised through crowdfunding. Corporate sponsorships and government offers for money were refused.

The politics and people behind the March were different across the cities, but their demands were similar²—an end to everyday and state-backed violence against women, non-binary individuals, and religious minorities, in homes, workplaces, and public spaces; economic justice through implementation of labour laws, and recognition of women’s work at home as ‘unpaid labour’; reproductive justice for women, non-binary folks, and all sexual identities; and environmental justice, translating into better access to water and land, and an end to corporate exploitation of animals. This year, the demands included a call to end the anti-encroachment drives across the country, targeting poor and working class communities.

Attended both years by feminists and activists from various collectives and women’s rights organisations and allies, the March has become an electric, herstorical day, an uncommon sight in Pakistan’s public space: women of all ages, marching among a sea of colourful posters, chanting in celebration and protest.

Because in Pakistan, like many countries in South Asia, women are meant to be seen and not heard, and social norms dictate *how* and *if* we can be seen at all - the March scandalised its patriarchs.³ All across the nation, ‘righteous’ men and women shook their heads in disapproval. Feminists, they claimed, had finally crossed a line. Not only was the March an

attack on Pakistani culture and tradition, it was downright un-Islamic. The rightful place for Muslim women is inside the house, not out on the streets, behaving with such vulgarity.

There was nothing new about the response. The sanctimony of tradition and culture is commonly invoked to keep women under control. In the 80s, Pakistan saw this manifest legally under the reign of president-dictator General Zia-ul-Haq. In order to bring the country closer towards what Zia perceived to be true Islamic values, he introduced a series of Sharia-compliant, anti-women legislature.⁴ Among these was the draconian Zina Ordinance which conflated rape with adultery. Both were equal under the eyes of law, which meant that women could not report sexual assault without being punished for it themselves. Unless they brought forth four male witnesses to prove that rape took place, they would either be sentenced to a public flogging, or death by stoning.

Women's bodies have become the battleground for men's religious anxieties. This is evident in the appalling state of women's health and education, which is a direct result of religious clerics deeming western education and science as suspect.

While the Pakistani women's movement has succeeded in upturning some of these regressive laws and introducing greater legal security for women, the religious conservatism sown and validated by the Zia years remains deeply rooted in the Pakistani sensibility. Women's bodies have become the battleground for men's religious anxieties. This is evident in the appalling state of women's health and education,⁵ which is a direct result of religious clerics deeming western

education and science as suspect; in the practice of child marriages,⁶ defended in the name of culture; in treatment of widows and single women, whose lives amount to nothing if they cannot be the property of some man; in the victim-blaming that is hurled upon sexual assault survivors; and in the way it was this misconception which the March sought to deny in the first place, and which the critics of the Aurat March did everything in their power to loudly assert again. Women are policed and surveilled and sexualised in their everyday lives. At the heart of all of this is the singular reminder that no matter what the law dictates, our bodies do not belong to us. For three weeks after the March this year, Pakistani media was concerned with nothing else. Other pressing affairs dimmed into the background while every news anchor and morning show host wanted to pontificate on the same questions: Should the March be condemned? How far? Why weren't women talking about real issues like health and education and inheritance?

The greatest cause of affront: the posters. The posters that we carried at the March, their immodest language and inane demands. Our detractors were not contesting the purpose and intent of the March itself, they were merely concerned—no, outraged—by the vulgarity and immodesty of these posters. These were the posters keeping them troubled and awake at night:⁷

"Akeli Awaara Azaad" (which loosely translates to 'Alone, Untethered, Free')
"My body, my consent"
"How do I know where your sock is?"
"Heat up your food yourself."
"Stop sending me dick pics."
"Look, I am sitting properly now."
(accompanied with an illustration of a girl sitting with her legs wide apart, instead of neatly crossed over or tucked in as good Muslim girls are wont to do)

Women are policed and surveilled and sexualised in their everyday lives. At the heart of all of this is the singular reminder that no matter what the law dictates, our bodies do not belong to us.

It was these humorous, irreverent, witty posters which drew the greatest ire. Self-respecting Muslim women did not speak like this. Much of the criticism was couched in religious rhetoric containing buzzwords like respect and honour. Of course, while honour (or *izzat*) purportedly rests on women's shoulders, it has very little to do with women. It is more about the men—the fathers, brothers and husband—who locate their honour in the bodies of their daughters and sisters and wives, and charge them with the responsibility of maintaining it through their actions. By marching and sloganeering as we did, we had dishonoured our men and our families.

Something had to be done to remind us of our place. Clerics issued fatwas against the March, and the Khyber Paktunkhwa National Assembly passed a resolution condemning it as a destructive influence of Western values. Meanwhile, the March organisers were being invited on every mainstream news show to defend and explain their position. None of that, however, quelled the hate and vitriol channeled towards the women: social media was abuzz with harassment, and some of the March organisers were stalked, receiving threats of death and rape.

In a society where upholding men's honour is paramount, the consequence for blemishing this honour is violence. All over the world women are murdered in the name of honour, but Pakistan is one of the few countries in the world where it is legitimised through language: honour

killing - or *karo kari*⁸ - is a homicide within the family, often carried out by several family members together in order to punish a woman for bringing shame upon her community. Usually the shame is linked to sexual transgressions—running off with a lover, refusing to marry, displaying autonomy over her body. The foundation of this heinous practice is the belief that there is no recompense for such a woman, that her crime can only be compensated by deleting her from the planet.

For a long time, the perpetrators of honour killing could be pardoned easily. As these were classified as “crimes of passion,” they were not tried as homicides regularly are. Anyone related to the deceased (and therefore also the perpetrator) could forgive the killer. In October 2016, the Pakistani parliament passed the anti-honour killing law, meting out harsher punishments to perpetrators, and cancelling the loophole which allowed them to be pardoned.

In a society where upholding men’s honour is paramount, the consequence for blemishing this honour is violence. All over the world women are murdered in the name of honour, but Pakistan is one of the few countries in the world where it is legitimised through language.

Still, statistics remain alarming. In 2015, over 1,000 women⁹ were killed in the name of honour in Pakistan. The following year, shortly before the law passed, we saw the horrific murder of social media popstar Qandeel Baloch, who was drugged and strangled to death by her brother, for making “shameful”, risqué videos in which she was skimpily dressed and dancing suggestively at the camera. In the same year, a woman in Sargodha was murdered by her husband for serving cold

food.¹⁰ Last year, Khadeeja Siddique was stabbed 23 times by a man¹¹—in mid-day, in public—for refusing his overtures. Just this month, a man pushed his new bride into a canal for having “bad character.”¹²

These are only the cases that make it to the news. Everyday there are articles in the paper about women killed and maimed and murdered by the men they trust.¹³ While many of these murders are related to sexual agency, a lot of them have to do with women’s refusal to comply with the gendered expectations thrust upon them, especially within the domestic sphere.

While many of these murders are related to sexual agency, a lot of them have to do with women’s refusal to comply with the gendered expectations thrust upon them, especially within the domestic sphere. Which is precisely what the “vulgar” posters at Aurat March were addressing. The message is the same: we will not allow you to locate your honour in our bodies. Our bodies, our sexualities, our lives, belong to us.

Which is precisely what the “vulgar” posters at Aurat March were addressing. The message is the same: we will not allow you to locate your honour in our bodies. Our bodies, our sexualities, our lives, belong to us.

But saying this out loud is as good as declaring ourselves as women who do not wish to abide by the social contract, which also stipulates that those who do not abide must pay a violent cost. The irony: in rejecting the control over our bodies, we are subjected to greater control. The nature of the vitriol towards the Aurat

March posters and the threat of harm and murder, only reveals the very oppressions which the Pakistani women’s movement is seeking to dismantle. Detractors of the Aurat March might think they are articulating their values, but in their attempt to send us back into the position we desire freedom from—the position where men get to decide what happens to us and our bodies—they have exposed themselves further. Their hypocrisy has only helped us to justify and strengthen our fight: it will not be surprising if next year’s March is even bigger, with thousands more women streaming into the streets, so we can collectively remind them how their control is weakening.

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DYNAMICS AROUND THE PROVISION OF COMPREHENSIVE SEXUALITY EDUCATION (CSE): Insights from the South Asian Region

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A Profile of Adolescents' Sexuality, Health and Rights in South Asia: An Overview.

South Asia is home to nearly 282 million adolescents, which is almost half of the total population of adolescents around the world.¹ The World Health Organisation (WHO) defines adolescents as young people of ages 10-19 years. In South Asia, this age group covers over one-fifth of South Asia's population.¹ This unprecedented bulge of young people should be acknowledged as a diverse group exposed to and experiencing transforming political, cultural, and socio-economic scenarios. These transforming scenarios have great implications when it comes to adolescents' education, health and other rights such as age of marriage, employment etc. For instance, the change in political ideologies and global economic situations would influence budgetary and policy decisions regarding youth health and education. It is imperative to prioritise the significance of receiving accurate information and skills regarding Sexual and Reproductive Health and Rights (SRHR), during adolescence.

Statistics from the South Asian region indicate the pressing need to expose adolescents to a comprehensive set of skills and knowledge that can prepare them to make informed decisions about their future. For instance, despite the legal age of marriage being 20 years in Nepal, according to a survey in 2014, 48% of women aged between 20-49 years got married at the age of 18.² In Bangladesh, 52% of girls get married by the age of 18 of which 18% marry at the age of 15. Most health programmes

in Bangladesh give negligible focus on sexual health and wellbeing.³ Pakistan's reproductive health outcomes also show labored and inadequate progress with traditional indicators such as the maternal mortality ratio (140/100,000) and infant mortality (74/100,000) remaining unquestionably high. Gender development is also lagging in Pakistan as 21% of girls still get married before 18 years of age.⁴

In terms of laws and policies, there is no direct reference to the provision of comprehensive SRHR information and services for adolescents in the region. However, there are indirect provisions available which, when implemented, go through unnecessary negotiations and adjustments.

In terms of laws and policies, there is no direct reference to the provision of comprehensive SRHR information and services for adolescents in the region. However, there are indirect provisions available which, when implemented, go through unnecessary negotiations and adjustments. For instance, the Adolescent Education Programme curricula in India that was banned as a result of protests by parents and teachers when the Ministry of Human Resource Development (MHRD) introduced it in 2007, which was later re-launched in partnership with UNFPA in 2009. However, though it is the only institutionalised government intervention

addressing adolescent health in the education system, it does not cover topics such as gender identities and sexual diversity.⁵

Therefore, despite the diversity of adolescents in this region, there are common sexual and reproductive rights that have to be addressed. Unfortunately, the implementation of these rights in the region is challenging. These challenges include religious and socio-cultural traditions, predefined gender roles and practices, and political ideologies and moral norms around sexual behaviors and sexuality.⁶ It is significant to acknowledge Sexual and Reproductive Health (SRH) as a comprehensive concept that encompasses 'dimensions of physical, emotional, mental and social well-being in relation to sexuality' and is not restricted to 'absence of diseases, dysfunction or infirmity'.⁷

The vulnerability of adolescents, including LGBTQI+, around SRHR demands the immediate provision of comprehensive information and skills. Comprehensive Sexuality Education (CSE) entails a human rights approach and intends to provide evidence based and age appropriate information around topics such as gender norms, power dynamics, violence and pubertal changes.⁸ There are however, a number of elements and actors that obstruct the provision of CSE in the South Asian region. These elements are largely comprised of socio-cultural and religious ideologies shaping a narrative that oppose the provision of CSE to adolescents.

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Elements and Actors that Obstruct Adolescents' Right to CSE. Discussions around sexuality are shrouded in shame and stigma. As a result, adolescents receive limited SRHR information at home and are discouraged to speak about issues related to their bodies and sexuality. Similarly, SRHR education programmes, such as the Life Skills Based Education (LSBE) programme being implemented by provincial governments in Pakistan are often prohibited as the governments often become easily confused and label it as programmes that promote sexual behaviour.⁹ This results in silence around these issues that further drives taboos, making any provision of SRHR extremely challenging. The culture of silence and stigma around CSE is often protected and promoted by patriarchal systems prevalent in the region. Control over sexualities and bodies, early age marriages and early pregnancies are the implications of such a system. Linking girls' sexuality and related behaviors to family honor also stems from a patriarchal mentality.⁹ This form of control works against the rights based and gender responsive approaches promoted by CSE.

A significant barrier to CSE is also the idea that adolescents do not require discussion around their SRHR. In the South Asian region, information and discourse around sex and sexuality with unmarried youth is considered a taboo.⁹ This stems from the assumptions that adolescents should be sexually inactive until marriage. Moreover, sexuality is still perceived within binaries of male and female thus neglecting a whole array of identities that fall beyond the spectrum of this binary. Although the policies and legal reforms in the South Asian region seem progressive in this regard, the acceptable understanding of gender is still very binary.

Moreover, in almost all of South Asia, the influence of religion and one-sided

interpretation of religious texts largely impacts the policies and social-cultural norms of society. Religion is tightly intertwined with politics and culture in these countries. Some examples include the Hudood Ordinance 1979 of Pakistan and two decades of advocacy that followed to demarcate a clear distinction between consensual sex and rape.¹⁰ As the law was intrinsically misogynistic, it resulted in convicting women of adultery even if they reported a case of rape, 'as their report was treated as a confession.'¹¹ Such one-sided interpretations of religion and religious texts oppose the concept of a rights based approach and leave no room for the provision of CSE. The conservative interpretations of religion can have negative implications on age of marriage, rights of girls and women when they are menstruating, gender discriminatory laws, norms around marriage and marital rape, male guardianship and authority, honor killing, abortion, contraception and domestic violence.¹¹

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Significance of Adolescents Accessing CSE in South Asia – Some Examples.

To address the information gap, CSE is a means to not only equip adolescents with knowledge but also inculcate 'essential life skills and develop positive attitudes and values.'¹² There are various examples from around the region that highlight the fact that when provided with the right opportunity to access knowledge,

services and support, adolescents can be powerful agents of social change.

Amit Timilsina, who heads a youth organisation in Nepal, praises the CSE provision under the National Adolescent Sexual and Reproductive Health programme in Nepal by commenting that 'adolescents are shy about asking questions and learning about sexual and reproductive health in the classroom, and they don't always receive support at home to seek out the information and services they need.'¹³ A student of Grade 10, in one of the schools in Pakistan, acknowledged that LSBE has helped her clear up all the ambiguities and misconceptions regarding puberty. She now rejects peoples' advice of not taking baths and to avoid having some food during her periods.¹⁴ A review report on CSE in Bangladesh also highlights the significance of the provision of CSE to Bangladeshi adolescents to facilitate them in maintaining good health and overall wellbeing.¹⁵

Recommendations

There is a persistent need to address the resistance and harm endorsed on the youth of South Asia as a result of lack of the provision of CSE. Following are some of the recommendations as a way forward:

1. There is a need to develop narratives for a rights based approach and human centred interventions to curb the one-sided interpretation of religion and religious scriptures against the provision of CSE.
2. It is important to work directly with the youth and national and regional youth alliances so that they themselves put forward their SRHR needs. This will help in opening up more rights based dialogues with regards to the right wing ideologies and their restrictions on the provision of CSE.

3. As the countries in the South Asian region face similar obstacles, hence they should share best practices and set precedence to inspire each other.
4. It is significant to initiate content review exercises of the national curricula both for primary and secondary classes and demonstrate the lack of availability of CSE content to the government.
5. Strategies should be designed to put national, regional and international pressure on the government to make CSE as a compulsory subject in schools by emphasising its provision as the need of the hour.

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THE INTERNET AND OUR SEXUALITIES

In today’s media driven world, the Internet and new media is a booming source for promoting diverse voices and discourses around sexual rights, our sexualities, and our desires. In the Global South where discussions around sexuality are often curtailed and stigmatised, new media provides a space for open discussion and freedom to express oneself. This article delves into the viewpoint of three diverse people and organisations from India and the importance of creating an inclusive Internet.

The Need for an Inclusive Internet

By Bishakha Datta

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India, 2019. At a workshop in Mumbai, a college student says that her “queer bestie uses the Internet to learn and love his body more.” In the north-eastern city of Guwahati, a young woman starts browsing porn sites to learn about sex as her wedding day approaches. A visually-impaired PhD student starts a Tinder account, asking himself this: “Should I mention my disability upfront, or should I give the prospective date some time

to understand me, and then disclose the disability? As is usual for the perplexing questions of our times, I asked Google for an answer.”

We haven’t yet fully absorbed this, but the Internet has become a critical space in which sexual rights are asserted in countless ways everyday: via information provision (from gender reassignment surgery to abortion), services (menstrual and dating apps), counselling (on messenger apps), visibility (across social media), and advocacy (from queer rights to sexual harassment). Some of the biggest campaigns around sexual rights – such as #MeToo – are deeply embedded in networked technologies, producing large-scale disruptions and discomforts.

Challenging mainstream discourses around sexuality – through counter-narratives – is a key aspect of online organising. Researcher and activist Jac

Some of the biggest campaigns around sexual rights—such as #MeToo—are deeply embedded in networked technologies, producing large-scale disruptions and discomforts. But this space is increasingly under threat. Misinformation increasingly reduces the credibility of information online, including that related to sexuality.

SM Kee notes that these discourses “challenge and rupture normative ideals of sexual hierarchies...interrogate existing standards of sexual legitimacy, raise broader questions around justice, equality and non-discrimination...and enable perspectives and voices from the margins to infuse and trouble dominant discourses that anchor normative sexual hierarchies.”

But this space is increasingly under threat. Misinformation increasingly reduces the credibility of information online, including that related to sexuality. What information can you trust? Women with disabilities can't use many sites whose features aren't accessible to, for example, people with low or no vision. The dominance of English remains a huge hurdle for activists to participate in public spaces. Harassment and abuse is endemic; sex work communities are casually insulted everyday through the use of the right-wing staple, 'presstitute' (intentionally used as a slur against journalists). Private platforms still don't do enough to detoxify social media spaces, where streams of gendered sexualised abuse flows like rivers carrying a sludge of hate.

And then there are bigger and deeper questions. How do we deal with datafication—or the insidious ways in which our everyday actions and our activism are turning into Big Data for profit? How do we address dataveillance, or the use of data for surveillance by machines? How do we create a sense of belonging—so that individuals and communities crossing the digital divide can engage in these spaces on their own terms, without feeling like interlopers?

There's no magic recipe for the inclusive Internet; to build it, we must infuse networked technologies with foundational feminist principles—autonomy, agency, bodily integrity, consent, expression, privacy, rights,

and security. Let's create the container we need for our sexual rights activism: a space of comfort, belonging and pleasure.

What the Internet Means to Us

By the Kinky Collective

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The Kinky Universe (KU) is where most of us in the Kinky Collective, a group that seeks to raise awareness about kink and strengthen the community, met each other. It's where we run an online group for the community, it's where we've met friends, play partners, lovers, and even spouses, it's where we look at others photos and upload our own (not being able to show faces almost enhancing our creativity), where we post information about offline events (crucial to community and skill building too) and where we have intense discussions on a myriad of themes from the safe word to activism's benefits / harms in the kink community. The scare that the government might ban the Kinky Universe, a moniker for a kinky Facebook if you like, as part of a recent drive against porn, was mercifully unfounded. Not that KU is a porn site, but had the powers that be (wrongly) deemed it such, the implications would have been numbing.

One of the fears is that activism will “out” KU, which is the only space where we are able to express our kink related desires, feelings and views, in the safety of the anonymity that the online space enables. The fear of KU being “outed” is

linked to personal fears of being outed. The context is one in which although silence around BDSM is breaking (not least because of the otherwise dreadful Fifty Shades of Grey), it continues to be equated with weirdness at best and abuse at worst. Since the community fears KU being outed, when we as members of the Kinky Collective (15 of us in different cities in India) make presentations, hold workshops for those outside the community, speak with the media, or write as we are doing now, we don't ‘reveal’ the real name of the online site. The other ways in which we reach out to those outside the BDSM community is through a blog and website as well as various social media platforms. Even when we ‘just’ forward memes (juggling jobs and activism isn't easy), they are evidence of the existence of a community with which people want to connect.

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For us as members of the Kinky Collective too, the online space was key to finding out that we were not the only ones with desires like ours. Even before KU, it was Yahoo Groups or chat rooms. For some it was not just about finding these desires around us, but within us. Why wasn't I turned on by porn that other friends watched (perhaps right next to us as part of the good old Indian hetero boys' tradition)? Why was I being turned on by scenes on the screen which had never played out in my fantasies? Some of us have porn to thank for discovering our kinky desires but all of us have the Internet to thank—for all the reasons above and more.

Queer Muslim Movement – Building Through Stories

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In India, LGBTQI Muslims are disproportionately affected by religious and gender norms, discriminatory social attitudes, and economic inequality – often carrying the burden of a “double minority” status.

As a teenager growing up in a lower middle-class Muslim home in India’s Northeast, I remember, once, asking a friendly *Maulana* if my desire for people of the same-sex was a sin. Taking me to a corner, he advised me that I should fast, pray, and atone for my unnatural behaviour by taking cold showers each time a thought crossed my mind. With no knowledge of sexual rights or alternative Islamic interpretations around homosexuality, it was extremely difficult for me to reconcile my faith and sexuality as I grew up.

In India, LGBTQI Muslims are disproportionately affected by religious and gender norms, discriminatory social attitudes, and economic inequality – often carrying the burden of a “double minority” status. Sexuality in Muslim communities is often relegated to the private sphere leaving the space open for silence, shame and abuse. The idea that homosexuality is ‘sinful’ in Islam, and the lack of support in families, educational institutions and faith-based spaces, often drive LGBTQI Muslim

individuals to self-denial, depression, and suicide.

Queer Muslims in India face heightened threats as we navigate the intersections of rising authoritarianism; increased religious polarisation fuelled by communal and divisive rhetoric of Hindu nationalist leaders; sustained economic disparities; and patriarchal politics aimed at policing our bodies and desires, our right to access sexual and reproductive health services, enjoy legal gender recognition or opt for same-sex partnerships. Fundamentalist ideas around sexual and bodily rights coupled with Islamophobic attitudes in conventional queer spaces renders LGBTQI Muslims invisible and largely absent from existing sexualities scholarship and activism in India.

Fundamentalist ideas around sexual and bodily rights coupled with Islamophobic attitudes in conventional queer spaces renders LGBTQI Muslims invisible and largely absent from existing sexualities scholarship and activism in India.

The Queer Muslim Project has worked to centre queer Muslim voices through the use of Instagram. We have used digital advocacy to build an intersectional dialogue and highlight the diverse stories of queer Muslim individuals from around the world through a series of thematic and targeted campaigns around Ramadan, pride, self-affirmation, life goals, etc. At the heart of these campaigns lie the idea that there is no one way to be queer or Muslim, and that our movement needs to embrace the multiplicity of experiences and stories that the community has to offer. One story that particularly speaks to me is that of Sal, a Chicago-based

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transwoman of Bangladeshi origin. For our #2019QueerMuslimGoals campaign, she writes about her love for handloom Saris and how they allow her to find an articulation of her gender identity and Bengali Muslim cultural heritage in the United States.

At the heart of these campaigns lie the idea that there is no one way to be queer or Muslim, and that our movement needs to embrace the multiplicity of experiences and stories that the community has to offer.

As a young queer person growing up in a conservative village on the India-Bangladesh international border in Assam, I did not know there were other people like me. Today, our community of over 13,000 people on Instagram, mostly youngsters, know that their experiences are valid and they are not alone! I am excited about the many possibilities that a queer Muslim politics has to offer, cutting across South and South East Asia, Middle East and North Africa or the West. At its core, we must be able to imagine a world that is guided by a sense of radical compassion and where people enjoy the highest standards of dignity, freedom and justice.

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INVISIBILITY AND ERASURE WITHIN LGBTIQ COMMUNITIES: *An Interview with Rima Athar*

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In this interview, ARROW spoke with Rima Athar, coordinator of the Coalition for Sexual and Bodily Rights in Muslim Societies (CSBR). She is a researcher, trainer, analyst and strategist whose work focuses on strengthening feminist organising for human rights. Rima shared her own experiences within her many years of activism and what can be done to create more inclusive spaces.

Please tell us briefly about your activism journey. How did you start working on issues about sexuality, and sexual and gender diversity?

This journey started when I went to college for my undergraduate studies. I was lucky enough to be in a city where civic engagement and community care was really prominent, and there were many ways for people to get involved. I was initially drawn to and really enjoyed doing work around sex education. I had moved around a lot, and seen that even though I'd had snippets of education about biology and the mechanics of sex in some schools, we didn't ever have any exploration holistically around ourselves as sexual beings and what sexuality was. At this stage I was coming into my own sexuality as well, and I started volunteering with AIDS Community Care that had an Education and Prevention programme. I realised there how much we have to take on the work ourselves in our communities if we want to see the change, while we're also working towards policy level change. In that programme, we would do workshops in high schools and community centres, with modules on safer sex, safer tattoo art, risks of drug injections, and we

really focused on a harm reduction base and a sex positive and affirmative approach.

I also couldn't separate my sexuality from other aspects of my identity. Issues of racial justice, what it means to be an ethnic and religious minority or majority, migrant experiences, economic justice, access to food, access to education – these all started to come together in terms of my activism. So my organising around sexuality, and sexual and gender diversity, was always embedded within a broader approach to social justice.

“An important issue to recognise and discuss when it comes to erasure and invisibility, is language. I think the fact that we are using this terminology “LGBTIQ” and what that stands for—‘lesbian, gay, bisexual, transgender, intersex, and queer,’ and its variations—is in of itself a form of erasure.”

What are your thoughts on the erasure and invisibility of different identities and issues within the LGBTIQ+ movement and discourse?

An important issue to recognise and discuss when it comes to erasure and invisibility, is language. I think the fact that we are using this terminology “LGBTIQ” and what that stands for—‘lesbian, gay, bisexual, transgender, intersex, and queer’, and its variations—is in of itself a form of erasure. While we

use these terms, and some people very strongly identify with them, they do not necessarily work for much of the world, and they are erasing different understandings of sexualities and genders that exist, and have existed, and the indigenous, local languages people may use for them. Across human rights movements, English language primacy, a focus on European and North American terminologies, discourses and analysis, and the ways this informs global policy on all sorts of rights, can present a challenge to how we articulate the right to sexual and bodily autonomy locally. So in my own work, I'm not really interested in ‘LGBTIQ rights’ as if they exist in a vacuum; I'm interested in creating spaces for understanding around sexual integrity and bodily autonomy and what that means in terms of rights for everyone.

I think invisibility is created, all the time, and it's related to power dynamics and privilege. It's related to who has the access, capacity, space, support, and platforms to be visible, vocal and public. For a long time within LGBTIQ movements, it was really about the “G”. When I think about erasure and invisibility, I think about solidarity. What does solidarity actually mean within and across movements, and how are we really going to address this? I'm glad to see a moment now where there is finally some recognition across LGBTI movements in Asia of lesbian, bisexual and queer women's specific needs. We have a little more space to come to the forefront and discuss rights and justice from an intersectional lens, but we need much more support.

Rights and erasures also depend on where you are geographically and the current political climate. For example, in South Asia we've seen such progress being made in terms of legal gender recognition, but what we don't have space for is conversations on sexual orientation and what it means to be visible as lesbian, gay, and bisexual people—other than perhaps in India where they've finally dismantled the colonial law used to criminalise same sex relations. In general, invisibility happens because we've just lumped all of these identities together, but there is an important need to distinguish what marks our different experiences and realisation of our rights.

Another thought is, for example, how a lot of the ways we can talk about sex positivity may also be alienating for those who identify as asexual. So how do we build discourses that affirm everyone, no matter their levels of sexual activity, when we explore sexual expression?

Generally the biggest challenge I see is that with the extreme focus on SOGIESC identities, we lose sight of our broader struggles. So how are LGBTI movements organising across the bigger systems issues, including disability rights, indigenous people's rights, sexual and reproductive health, climate collapse, holding corporations to account for human rights violations, economic justice, migrant rights, and so on? For me, it's about a holistic approach. We get so locked in certain ways of advocating for our rights and thinking about what obtaining rights and justice means for certain sets of people, and I think we forget the relational level and how we need to come together at the systems level.

“The entire process of working to co-create the forum was for me a response to the longstanding erasure that I've experienced. As a feminist organiser, as a lesbian, as a person who has been doing human rights work for so long—I hadn't ever seen that space created for people at those intersections.”

Do you think this is a big issue in the Global South as it is in the West?

Because erasure and invisibility is linked to power, privilege and access, I would say that it is a universal challenge. It's not just within the LGBTI organising, but any movement. Who has access, whose stories get told, who makes the decisions? I also don't think it's necessarily different in terms of Global South vs. Global North spaces. In fact, I would say that personally for me, erasure/invisibility is more of an issue in the Global North because as a lesbian brown woman of Muslim heritage, if I am organising in Canada or Europe, I am marginalised and targeted on so many levels and find it extremely challenging to have to constantly fight for solidarity and understanding. Whereas if I am organising in Indonesia, those tensions around racial and ethnic identity are not as prominent, and do not feel as immediate. I also have other kinds of privilege to draw on there. So for me, it's not a question of North or South, East or West. In fact, I think those terms need to be exploded a little bit because I don't think they are as relevant anymore to our understanding of our global integrated world.

Over the years you have spent in activism, what do you think are some of the biggest impacts that this erasure has on certain communities?

I just came from Cape Town where we organised the first ever Global Feminist

in our own words

Lesbian, Bisexual and Queer Women's conference, which was really exciting. We had people from 111 countries there, and it felt like a historic moment in LGBTIQ organising but also feminist organising, as we've never really come together as LBQ women and non-binary people at the intersections of movements. The entire process of working to co-create the forum was for me a response to the longstanding erasure that I've experienced. As a feminist organiser, as a lesbian, as a person who has been doing human rights work for so long—I hadn't ever seen that space created for people at those intersections. So a challenge of erasure then, is that you have to imagine and build your own spaces. At a certain point you just change the scales and the narrative to address it head on, and there is a power in coming together like that.

Erasure obviously has extremely harmful effects on our organising—it leads to fragmentation, people being further marginalised, gaps in the organising and advocacy agendas, and makes access to justice impossible. So for me, it's about our responsibility—if we don't have these discussions, if we're not honestly looking at our shortcomings as organisers, and how we may perpetuate invisibility and marginalisation, then we are doing a great disservice to our own movements. By challenging erasure and invisibility, we are actually uplifting all of ourselves.

What are some of the ways you think would be best to address this and to be more inclusive in the discourse around LGBTIQ+ rights?

As a network, we recently collaborated with Qorras, a Lebanese group, to organise a convening by and for trans activists across the MENA and SSEA regions to strategise, share resources, map the landscape, and really look at what it means to strengthen trans-led organising. CSBR is not a trans-led network, so this collaboration was built

in our own words

around a praxis of solidarity work that strengthens community-led processes. Another convening we held was network building support by and for queer and trans Muslims in Asia, which was also about amplifying localised, contextual experiences, languages and strategies so that the work is rooted locally and really community-led. I think our organising needs to be grounded in intentional collaborations with values and ethics premised on solidarity. And that means some of us have to release our grips on privilege, and use it to amplify rooted work and strengthen diverse struggles.

At a certain stage, I think this language of inclusivity also needs to be conceptually interrogated. It's often starting from a premise of 'certain people are here and belong, and then we choose to let other people into the circle.' If we had a different starting point, then perhaps our approaches to inclusive organising wouldn't be premised on certain people having access and being gatekeepers.

Any other final thoughts?

How we engage with each other is really important. We need to be open

to honestly reflecting on the ways in which we have let people down in our communities, and be able to take responsibility. The times I've seen growth and transformation, is when we've conceived what it means to call people in together to move forward. There's emotional work and energy that has to go into that, but I think we have to be able to address conflict with care and accountability in order to create restorative and transformative frameworks, and to be committed to that praxis in order to actually address erasure, invisibility, and inclusion moving forward.

MAKING SPACE FOR SEXUAL RIGHTS WITHIN THE RELIGIOUS SPHERE

Religion has long been an area of contention when it comes to issues of sexual rights. This article looks at the stories and testimonials of two sexual rights and SOGIESC rights advocates who have attempted to reclaim the religious and cultural argument and examines how they have asserted their sexual rights within their own faith in a world that routinely pits religion and sexuality against one another.

Islam and Sexual Rights: Insisting that Youth Walk on the Tightrope of Ignorance

By Rozana Isa

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My first realisation that sex is real and that it is an act with serious consequences happened when I was 15 years old. During the double science period, in the laboratory, a friend was crying into the bunsen burner because she discovered she was pregnant.

As she ran out of the lab and into the toilet, another friend and I rushed out behind her much to our teacher's chagrin, and in there, we were clueless as to what to say and what to do. In the end, we told her to talk to her mother and to trust that her mother would know what to do and how to help her.

Even though this Pandora's Box of knowledge about sex and sexuality had its lid lifted slightly, there was still a denial within me to fully rip the lid off and open it simply because I didn't know who to talk to about it, honestly, openly, and confidentially. I knew enough that it wasn't something I should talk about to others because then, it meant exposing my friend, even though I wasn't particularly close to her.

Even though this Pandora's Box of knowledge about sex and sexuality had its lid lifted slightly, there was still a denial within me to fully rip the lid off and open it simply because I didn't know who to talk to about it, honestly, openly, and confidentially.

Days later, I was back in the bliss of ignorance, my friend taking part in physical education, right as rain and everything was back to square one. A brief chapter resolved and closed and never thought of again for many years.

This took place in the pre-Internet era. Today, with information available at the

tips of our fingers, I cannot be certain if the situation is necessarily better for young adults and teenagers than before.

Thirty-two years ago, child marriage was unheard of at the time. Even though the existence of the Syariah Criminal Offences Act wasn't in our awareness, there was knowledge and consciousness that pre-marital sex isn't approved in Islam and culturally as well.

So if you were doing it, you didn't talk about it openly, even with your friends. Safe abortions were accessible if you had the money. You hear about baby dumping occasionally but it didn't appear in the news every other day compared to recent years.

Teenagers and young adults ... need to have access to peers and adults whom they can trust to have these difficult conversations, with consciousness and compassion, in ways that guarantee their safety, without judgement or prejudice.

I realise now that there was a huge disconnect between what I thought I knew and what I really needed to know. All this points to the fact that we need to have comprehensive sexuality education provided regularly.

Teenagers and young adults must know that they have control over their bodies, how to claim control in relationships so that they can make decisions from choices based on factual knowledge. More importantly, they need to have access to peers and adults whom they can trust to have these difficult conversations, with consciousness and compassion, in ways that guarantee their safety, without judgement or prejudice.

We must realise the fact that putting the fear of God and the demands of religion doesn't stop people from having sex. The myth and fear that talking about sex and sexuality encourages people to have sex must be dispelled. The outcome of talking about sex and recognising diversities in sexualities is to affirm that teenagers and young adults have the power and agency to determine who they are and what they want in life. This knowledge is their first safety net towards saving lives, including their own. If there is a position to take in the name of Islam, this would be it.

Hinduism and Sexual Rights

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In a historic ruling, the Indian Supreme Court scrapped a provision of the discriminatory Section 377 of the Indian Penal Code on September 6, 2018, marking a huge victory for the LGBT community. While the ruling has decriminalised homosexuality in India, discussions about one's sexual orientation remains a taboo.

India is one of the most ancient countries in terms of culture and religion. It is a melting pot of belief systems. Although advanced in religious philosophy, disgust and contempt have been central themes of its LGBT society. With the British came shame and disapproval resulting in taboos over sexual orientation and sexual identity. The bullying and violence that ensued following the lack of understanding and acceptance has resulted in massacres and suicides.

In Hinduism, deities can take many forms, but all combine in the universal spirit of

in our own words

Brahman. Unlike Judaism, Christianity, and Islam, which focus on the actions of a single lifetime, Hindu belief centers on a continuous process of birth and rebirth that ultimately releases the true self from the limitations of body and the ego—a freeing of the spirit called moksha.

Hindu sacred texts, however, do not distinguish between heterosexual and homosexual acts. While Hindu sacred texts do not specifically use those terms (heterosexual and homosexual), they do distinguish between procreative sexual acts (within marriage) and non-procreative sexual acts such as oral, etc. The latter are explicitly discouraged not for the common man but for brahmins and priests.

I was 17 years old, the day I informed my family of my lifestyle preference. To my surprise, I got a good whipping from my grandfather before being sent off to a local priest, my father shamefully in tow. In most Hindu communities, the local priest (commonly referred to as *panditji*) holds the answer to every problem, as he is the messenger of God.

After a good confession, the pious-likened *panditji* took me into a room for "treatment". He held me in his arms, and began kissing me. To my utter horror and disbelief, he expected me to reciprocate. I succumbed to the feeling of finally being accepted for who I truly was, going on to pour my sorrows on how I deeply wanted to express myself in the same ways to my lover but was forbidden to do so for it was against the norms of society and my family.

Panditji assured me that it was not because the act of love was shunned, but because my lover was from a lower caste. He went on to say that it was perfectly alright for me to be with him instead as we were both from the same stature. I informed my father, and although he was shocked beyond belief, he took me home

in our own words

comforting me with words of courage, dignity, pride, and bravery.

It occurred to me that while we are experiencing a modern enlightenment in the way we perceive gender and sexuality, in truth, these ideas are nothing new.

The Vedas are the oldest religious text in recorded history. It dates 6,000 years before the Christ, and 5,000 years before the birth of Islam. It is full of many sensual and sexual acts; however, they are rarely performed for pleasure. More often the acts are done as a symbol or metaphor to a deeper lesson.

One of the main ways we see queer themes presented in Hinduism is through

the metamorphosis or incarnation of gods. The story of Lord Shiva merging with the goddess Parvati is one of the most well known in Hindu folklore. In the original telling, Parvati wanted to share the experiences of her Lord Shiva. So she asked God to join them together. In this bond they became known as Ardhanarishvara, which means “The Lord whose half is a woman.”

It occurred to me that while we are experiencing a modern enlightenment in the way we perceive gender and sexuality, in truth, these ideas are nothing new.

We see the blending of male and female gods repeatedly throughout Hindu teachings, as well as on certain temple walls. We see the morphing of male gods into female avatars, and often this would result in sexual encounters that didn't fit a heteronormative box.

Of course, homoerotic romance is not the only part of Hinduism that deals with queer issues. Themes of transgender and intersex people are incredibly strong in the religion's teachings. Throughout Hindu teachings, homosexuality and gender fluidity are never explicitly condoned or condemned. But yet they are depicted again and again through stories and images.

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DECRIMINALISING THE RIGHT TO LOVE: An Indian Success¹

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September 6, 2018 marked a historic victory for a vibrant and vociferous LGBT movement in India when the Supreme Court, in its decision in Navtej Singh Johar v. Union of India,² struck down the 1860 law criminalising the lives of LGBT persons. The law was a colonial leftover and versions of this law still menace the lives of LGBT persons from countries such as Singapore and Malaysia in South East Asia, to Bangladesh and Pakistan in South Asia, Ghana and Uganda in Africa, and to Jamaica and St Guyana in the Caribbean.

Since the first legal challenge was filed in India in 2001, Section 377 has been a key priority for LGBT activists. In 2018, after seventeen long years of a struggle waged in the courts as well as on the streets, activists were successful in

getting the Supreme Court to read down the law. The judgment itself paid homage to the struggle and wove a magnificent tapestry out of concepts such as apology, the right to love, dignity and privacy, and constitutional morality.

Chandrachud J. in his opinion, characterises Section 377 as a “colonial legislation” which has made it criminal for “consenting adults of the same gender to find fulfillment in love.” The effect of legislations such as Section 377 on LGBT lives led him to observe that “civilisation has been brutal.”

This extended meditation on the suffering imposed upon LGBT persons resulted in a judicial apology. Navtej Singh Johar takes responsibility for having inflicted wrongs and seeks to atone for it. This sentiment

is best captured by Malhotra J. who says, “history owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries.”

As Chandrachud J. puts it, “It is difficult to right the wrongs of history. But we can certainly set the course for the future. That we can do by saying, as I propose to say in this case, that lesbians, gays, bisexuals, and transgenders have a constitutional right to equal citizenship in all its manifestations.”

This judgment can be seen as taking four different paths to “right the wrongs of history.” Misra C.J. wrote for himself and Khanwilkar J. Justices Nariman,

Chandrachud and Indu Malhotra wrote separate concurring opinions. All justices agreed with the conclusion that *Suresh Kumar Koushal*,³ the previous two judge bench decision upholding Section 377 was overruled and that Section 377 should be struck down insofar as it criminalised consenting sex between adults.

Chandrachud J. quotes Leila Seth C.J. to make the point that “what makes life meaningful is love.” The right to love emerges as a key aspect of the judgment with Chandrachud J. recognising that, “the right to love and to find a partner, to find fulfilment in a same-sex relationship is essential to a society which believes in freedom under the constitutional order based on rights.”

The right to love has profound implications in a society in which love across lines of caste and religion are so transgressive that individuals are killed by their own families. ‘The right to love’ has the potential to disturb rigid social moralities and help us to begin questioning the structures which keep in place the unyielding hierarchies of Indian society be it on the lines of caste, religion, gender, or sex. In fact Chandrachud J. appositely called the right to love “not just a separate battle for LGBT individuals but a battle for us all.”

The idea that majority opinion should prevail over the right to dignity and liberty of the minority was explicitly rejected by the judges. As Nariman J. put it, “it is not left to majoritarian governments to prescribe what shall be orthodox in matters concerning social morality.” The judges in this context reference the idea of ‘constitutional morality’ and the idea that Indian society must transform to bring social morality into conformity with the constitutional ideals of respect for the dignity and autonomy of all its citizens.

The decision itself built upon a history of struggle carried out relentlessly over the last quarter century waged by thousands of people across the country, has succeeded in creating a space of visibility and acceptance in Indian society around the loves and lives of the LGBT community.

By explicitly setting out the Court as a guarantor of minority rights, regardless of the opinion of ‘popular or legislative majorities,’ the Court signals its determination to defend the Constitution. In a time when lynchings have become the order of the day and government remains a mute spectator, the role that the Courts have to play in safeguarding the right to life of minorities of all stripes and hues cannot be overstated.

The decision itself built upon a history of struggle carried out relentlessly over the last quarter century waged by thousands of people across the country, has succeeded in creating a space of visibility and acceptance in Indian society around the loves and lives of the LGBT community.

The impact of this judgment at a national level is to firmly signal that LGBT persons are entitled to full rights under the Indian constitution. The judgment is also based on an intersectional understanding as it communicates that the Constitution must transform and democratise relations in society be it between dominant caste and oppressed caste, man and woman as well as majorities and minorities of every stripe and hue. This judgment has strengthened the hand of civil society in the struggle to ensure full respect not just for the rights of LGBT persons, but also for all those who love across lines of social prohibition. The ‘right to love’

thus serves as a lever to pry open the oppressive structures of caste, religion and gender, creating an opportunity to take forward an intersectional politics.

However a lot of work remains to be done as the challenge of eliminating the prejudice that the law has fostered is still immense. It is this immense task of combatting the prejudicial attitudes that were encoded in Section 377 that has to continue.

At an international level the impact of the judgment in the short term has been immense and in the long term it is immeasurable. For a country in the Global South of the size and influence of India to decriminalise same sex relations sends a clear signal that anti-sodomy laws are a colonial import and to dismantle them is to honour national constitutions and is an act of belated decolonisation. In fact the judgment has already been cited by the Botswana court in its decriminalisation decision and unsuccessfully by the Kenya Court in its decision to retain the anti-sodomy law.

One hopes that the influence of Navtej will result in the progressive decriminalisation of same sex conduct and decolonisation of legal systems across the Global South.

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MIND THE GAP: Trans Rights Reform In Uruguay

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In October 2018, the Uruguayan Parliament passed law 19.684, the “Comprehensive Law for Trans People” [Ley Integral para Personas Trans], positioning itself as the country with the most progressive legal framework for trans rights in the region. On April 2019, the executive decree regulating the implementation details was adopted.¹ The law is now in force and hundreds of Uruguayans can access gender affirming health services, and change their name and or gender marker in their documents among other recognised rights. This law has been in the works for years and its adoption is the product of the hard work of organised civil society under the slogan “*Ley Trans Ya.*”² The approved text was drafted in May 2017 in permanent dialogue with the parliament, human rights organisations and religious institutions that opposed the reform.

The urgent need of a law recognising trans rights was marked by the data resulting from the first national census of the trans population. Designed to tackle the dearth of data available and therefore lack of solid evidence to design public policy, the census found 933 people identified as trans in Uruguay.³ 90% of trans Uruguayans identify as trans women and 10% as trans men. The data collected by the Ministry of Social Development and the National University (MIDES and Universidad de la República) shows that 60% of this population was discriminated by their families and 88% were discriminated within the educational system. This, in turn, results in lack of access to education and health services profoundly affecting people’s right to live a life with dignity. Consequently, for example, 25% left their family home at 18 years old and 75% of trans Uruguayans didn’t finish high school. Furthermore,

evidence showed that trans people reported “widespread discrimination” when accessing the job market.⁴ “Identifying as lesbian, gay, bisexual, transgender or intersex is not genetically or biologically hazardous,”⁵ however, according to the director of the National Health Services Administration (ASSE), the life expectancy for trans women in Uruguay is just 45 years old—which is 32 years below the average for the general population.⁶

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This law gives a response to the stark reality unveiled by the census and recognises rights to education, work, health care services and more. It provides for the incorporation of the variable “gender identity” in all the official statistical information systems, ensuring visibility and accurate collection of disaggregated data. It defines gender-affirming surgery and hormone replacement therapy as a human right, and ensures those treatments will be paid for by the Uruguayan state. No judicial or administrative authorisation is required for people over 18 years old. Although still restricted to the binary construction

of sex/gender, the process for changing name and gender marker is simplified by the law and no longer requires a judicial procedure. Moreover, scholarships and educational incentives will be provided to ensure access to education at all levels. The law also reserves 1% of jobs in the government for transgender people. Lastly, the law sets up a fund to pay economic reparations to trans people who faced persecution during the country’s dictatorship from 1973 to 1985.

This law has survived a legal challenge posed by the most conservative sector in the country. 70,000 signatures were obtained in order to hold a referendum hoping to repeal the law. The initiative was spearheaded by both religious (Evangelical and neo-Pentecostal churches) and (seemingly) secular (“Con mis hijos no te metas”) organisations. Authorities of the Catholic faith in Uruguay did not support the initiative. The campaign argued that the law gives “preferential treatment to transgender people,” denies “biological truths” and imposes “gender ideology.”⁷ This campaign was largely based on misinformation and represents the growing trend in Latin America to use the concept of “gender ideology” by right-wing conservative politicians supported by conservatives in the Catholic and Evangelical churches. As noted by Garbagnoli, the term gender ideology is “a controversial invention of the Catholic conservative circles which aims to caricature and thus to delegitimise a field study” and justify discrimination.⁸ The pre-referendum was held in August but it

fell significantly short of the percentage threshold needed to succeed. Fewer than 10% of eligible voters participated—a turnout of at least 25% was required—and the law is still in force. This pre-referendum cost the country 230,000 dollars, the equivalent of more than 34 months of the reparations provided by the law.⁹ While we celebrate the win, this pre-referendum reiterates the dangerous assumption that trans and gender-non-conforming people's rights are up for public debate and our bodies continue to be political battlegrounds.

Amidst a regional and global backlash, this law undoubtedly represents a step forward. It builds on previous laws that recognised sexual and reproductive rights, the right to marry for same-sex couples and the right to gender identity and expand these rights to the trans community tailoring the interventions to

their needs and in line with accurate data. In this sense, the Uruguayan law can serve as a blueprint for other countries in the region and to foster further developments at the national level. However, we must remain vigilant of initiatives pushing for retrogressive measures and be cognisant that while progressive legislation can pave the way for cultural change, more comprehensive strategies need to be adopted to effectively guarantee the full enjoyment of human rights.

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THE QUESTION OF GENDER AND SEXUALITY IN PAKISTAN

The right to sexuality is a part of the bundle of rights to live with dignity. It is part of the rights of a human being to be able to express desire and be desired, and to be able to turn this expression of desire into a loving relationship or many loving relationships.

This relationship could form the part of a family that could be the home to raise children. To have a deep, meaningful, loving and satisfying relationship that is recognised and respected in society, and not reviled and made illegal. Such is the condition of queer people in Pakistan and many other countries in the world as well.

However, when these rights are spoken about in the context of Pakistan, many areas of society believe that this is foreign ideology or that it is against our culture and religion, rather than accept this form of diversity.

Yet, the specter of queerness haunts the structures of heterosexuality and cis gender privilege in Pakistan. Compulsory heterosexuality and making sexuality a taboo subject of conversation only works towards harming individuals in society and creating injustice.

However, in spite of these obstacles, work has continued in the form of the feminist movement or the movement for

rights of the Khawaja Sira Community and transgender community.

The work of the Khawaja Sira community and organising that they have been able to carry out is remarkable. This is also because they are at the forefront of those who experience violence and oppression. As sexuality can be "hidden" if the person is otherwise cis presenting, the movement to accept diverse sexuality does not have the same levels of organisation and visibility.

It is more comfortable for people to remain under the umbrella of Khawaja Sira activism and do their work in a less public manner. The fluidity of gender and sexuality is a biological and social

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fact. The constructed and heavily policed boundaries of what it means to be male and female are the impediment to self-realisation of communities of people.

As in many Asian countries, the role of the family is paramount to success. For people who are gender diverse this is harder to hide and therefore they are expelled from the family at a young age. The Khawaja Sira system has developed a corrective to this situation in the Guru-Chela system, where people of diverse sexuality can (at most times) hide their sexuality if they are cis-gender presenting. This allows them to live dual lives - one for their family and the other outside.

The fluidity of gender and sexuality is a biological and social fact. The constructed and heavily policed boundaries of what it means to be male and female are the impediment to self-realisation of communities of people.

Structurally this works in some ways for men as they have patriarchal privilege. However for women, the pressures of compulsory heterosexuality and the notion that they are the property of their husband's family prevents them from having the same privilege. Marriage can lead to highly violent situations, especially for lesbians when they may be married off by force, though there are many lesbian and bisexual women who find ways to live with their partners. The picture is a complex one and people of diverse sexuality and gender have found a myriad of ways to survive.

One such way was to push for legislative change for the Khawaja Sira and transgender community. Even though Pakistan has increased its clampdown on

human rights and civil society groups and is a country that opposes recognition and protection of human rights on the basis of SOGIEC, there is an acknowledgment at the societal and governmental levels for the historically constituted Khawaja Sira community.

The law as it stands is an affirmative federal law that makes self-perception the basis of gender recognition. This is a crucial progressive improvement in the legal position of both Trans and Intersex individuals in Pakistan since it recognises the sovereignty of the person in terms of determining their own gender identity and expression and is in line with international principals.

As the international scenario shifts towards greater acceptance of diverse genders and sexualities, Pakistan is also making slow but sure strides in that direction. Albeit critically, this may be a return to rather than newly becoming a more open and accepting society, one that may have existed previously before colonisation and the imposition of British Victorian gender categories reinforced later by nationalist Islamist zeal.

Given this context, after extensive campaigning by Khawaja Sira, transgender activists, feminist groups, civil society groups, international non-governmental organisations, and certain members of parliament, a bill was presented in Parliament to protect the right of Transgender people. Through lobbying efforts by different groups and specifically an alliance between Khawaja Sira, trans and feminist activists, a more acceptable version of the bill became an

Act after being passed in both Houses of Parliament in May 2018.

However, shortly afterwards Parliament was dissolved and a new government came to power in September 2018. Consequently, the protection of Transgender Rights Act has not been on the agenda of the new government and the rules of the new Act have not yet been drafted to facilitate its implementation.

The law as it stands is an affirmative federal law that makes self-perception the basis of gender recognition. This is a crucial progressive improvement in the legal position of both Trans and Intersex individuals in Pakistan since it recognises the sovereignty of the person in terms of determining their own gender identity and expression and is in line with international principles.

Based on this provision the person has the right to have their official documents changed in line with their self-perceived gender. The act also prohibits discrimination against transgender people, imposing a responsibility on the government to take positive steps to sensitise government departments and set up facilities for transgender people. It reinforces the right to education, health, inheritance, employment, vote, assembly and the right to access to public spaces and hold public office among other important rights.

Notes & References

1. *Khawaja Sira* are a historically, socially and politically constituted community of people whose gender expression predominantly conforms to femininity. They have a long and complex history in the sub-continent and are a testament to gendered diversity in the South Asian Context.
2. A alternative family system where an older *Khawaja Sira* will take a younger *Khawaja Sira* under their wing and mentor them, provide them a space and other tangible cultural social and economic information. The responsibility of the *Chelas* or *Mentee* is to fulfill the requirement the gurus set for them. They will give the gurus a percentage of their earnings among other responsibilities.

BRUNEI: A Reflection on the Ongoing Saga

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A wave of global criticism confronted Brunei's full enforcement of the Syariah Penal Code (SPC) this year. United Nations High Commissioner for Human Rights, Michelle Bachelet, appealed to halt the law's entry into force.¹ The European Parliament adopted a resolution that expressed deep concern and noted how Brunei is moving in the opposite direction given the fact that many countries are moving towards decriminalising consensual same-sex conduct.² During its recent Universal Periodic Review, several countries recommended the decriminalisation of consensual same-sex relations and guaranteeing equal protection on the basis of SOGIE.³

ASEAN remained silent, but not its civil society. A statement signed by more than 100 organisations urged Brunei to respect the ASEAN Human Rights Declaration and warned that the country "will set a dangerous precedent for its neighbouring countries in Southeast Asia and broader Asia."⁴

The Syariah Penal Code (SPC) restricts various aspects of human rights, notably its curtailment of freedom to self-determine one's gender identity and regulation of women's bodies.

The Syariah Penal Code was adopted in 2013 and was planned to be implemented in three stages.⁵ This law has a clear purpose: criminalise and deter acts contrary to Islam, and educate its people.⁶ Responding to criticisms, the government stressed that there is no

cause for concern as the law is "full of Allah's mercy and blessings" and is not meant to inflict cruelty on others.⁷

The SPC criminalises consensual "extramarital sexual relations," including pre-marital sex and consensual same-sex relations.⁸ The law employed the term "liwat" or "sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus."⁹ Meanwhile, the law used the term "musahaqah" to denote sexual relations between women. As defined in the SPC, "musahaqah" means "physical activities between a woman and another woman which would amount to sexual acts if it is done between a man and a woman, other than penetration."¹⁰ Those convicted may be sentenced to penalties ranging from stoning to death, whipping, imprisonment, detention in rehabilitation centres and fines.

Restrictions on a person's gender identity and expression is a key problematic intention of the law. Penalties are being imposed against "[any] man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place" if this is done "without reasonable excuse" or "for immoral purposes."¹¹ In 2014, a transgender woman was arrested by law enforcers for wearing women's clothes and "improper conduct."¹²

The SPC restricts various aspects of human rights, notably its curtailment of freedom to self-determine one's gender identity and regulation of women's bodies. The law imposes the death penalty, and cruel and degrading punishment such as whipping and amputation.¹³

ASEAN remained silent, but not its civil society. A statement signed by more than 100 organisations urged Brunei to respect the ASEAN Human Rights Declaration and warned that the country "will set a dangerous precedent for its neighbouring countries in Southeast Asia and broader Asia."

Furthermore, the law imposes severe restrictions on freedom of religion, belief and expression by penalising the printing, dissemination or distribution of information that is contrary to the Syariah Law.¹⁴

During its recent Universal Periodic Review, Brunei announced that it is extending its de facto moratorium on the death penalty.¹⁵ Moreover, they clarified that the SPC does not criminalise a person based on sexual orientation or belief, and that its laws continue to protect public morality and decency while respecting the privacy of individuals. Brunei affirmed in its statement that people regardless of their sexual orientation have continued to live and pursue their activities in their private space.

Zoella Zayce, a transgender youth from Brunei, cautioned that Brunei must not be singled out; countries with similar Syariah laws must also be criticised.

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What is worrying is that the said law is indicative of a growing religious extremism in the region marked by a wave of religion-based anti-LGBTIQ sentiments fueled by political elites from neighbouring countries such as Indonesia and Malaysia.

Leveraging on Global Pressure. The global condemnation elicited nuanced reactions. Zoella Zayce, a transgender youth from Brunei who is seeking asylum in Canada, thinks that the external pressure “would give marginalised and vulnerable persons some hope that the world is on their side.” She cautioned that Brunei must not be singled out; countries with similar Syariah laws must also be criticised.

For external pressure to be effective, the domestic push must also be strong. However, domestic mechanisms to hold the government accountable are almost absent. Unlike its ASEAN neighbors, Brunei does not have fair share of a critical civil society.

The global push resulted to a temporary, albeit still an incomplete relief. The moratorium on the death penalty, including for offences applicable to LGBT persons, shows indications that Brunei listens. A shift from condemnation towards dialogue is crucial at this point.

Shahiran Shahrani, a Bruneian seeking asylum in Canada, supports the call for sanctions, as these will potentially wake up people that there is a problem. He commented that people in Brunei, including the well-educated, do not see the clear picture because of the limited or restricted information that is being given to them.

For external pressure to be effective, the domestic push must also be strong. However, domestic mechanisms to hold the government accountable are almost absent. Unlike its ASEAN neighbors, Brunei does not have fair share of a critical civil society. NGOs are present but they would not push the boundaries, deal with matters deemed as sensitive, and challenge the government. “When [the government] started banning things, people do not push the law, they pull back from law,” said Shahiran Shahrani. Some human rights defenders took the risk but were slapped with sedition charges.

What are the prospects over the long run? The global push resulted to a temporary, albeit still an incomplete relief. The moratorium on the death penalty, including for offences applicable to LGBT persons, shows indications that Brunei listens. A shift from condemnation towards dialogue is crucial at this point. Brunei still asserts that the SPC is divine; this notion must be challenged through further dialogue with progressive Syariah experts and more importantly with its own people.

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- Among the countries who issued UPR recommendations that are specific to sexual orientation and gender identity were Austria, Australia, Belgium, Canada, Chile, Costa Rica, Denmark, France, Germany, Greece, Iceland, Malta, Mexico, Netherlands, Norway, Sweden, United States of America, and Uruguay.
- “Statement of ASEAN Civil Society Organizations on the Full Enforcement of Shariah Law in Brunei Darussalam,” <https://aseansogiecaucus.org/news/external-news/132-statement-of-asean-civil-society-organizations-on-the-full-enforcement-of-sharia-law-in-brunei-darussalam>.
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- Section 213 of the 2013 Syariah Penal Code.
- The official government announcement was also made in advance of the Universal Periodic Review. See: Reuters, May 5, 2019, “Brunei says it won't enforce gay death penalty after backlash,” <https://www.reuters.com/article/us-brunei-lgbt-sultan/brunei-says-it-wont-enforce-gay-death-penalty-after-backlash-idUSKCN1SB0FS>.

RECOGNISING THE RIGHTS OF ADOLESCENTS TO SEXUAL AND REPRODUCTIVE HEALTH INFORMATION AND SERVICES

With adolescents and youth constituting a quarter of the global population—for a total of 1.8 billion people—it has never been more critical that their human rights be fully recognised and realised within global arenas and at the regional, national, and community level.

Despite increased attention to this issue over the past ten years, significant gaps remain in adolescents' knowledge about their sexual and reproductive health and rights and ability to access essential sexual and reproductive health services.

BARRIERS TO ACCESSING SEXUAL AND REPRODUCTIVE HEALTH INFORMATION AND SERVICES: THE CASES OF THE PHILIPPINES AND INDIA

Throughout the world, adolescents face a diverse range of barriers in accessing sexual and reproductive health services, significantly impacting their lives and health and hindering the realisation of their human rights. Such barriers include restrictive legal and policy frameworks, third-party authorisation requirements such as parental and/or judicial, stigma, lack of information, distance to facilities, cost, lack of confidentiality and disrespect, abuse and low quality of care.¹ In addition to facing denials of sexual and reproductive health services, adolescents are also at risk of facing undue pressure or coercion in the context of reproductive health care. This is particularly true for adolescents who are members of marginalised groups, who have historically been targeted by coercive policies surrounding sexuality

and reproduction.² All sexual and reproductive health services to adolescents must be consented to voluntarily, free from discrimination, pressure, violence or coercion. Besides, their agency and right to be heard should be central in all decisions and programmes that concern them.

Barriers to access sexual and reproductive health information and services remain prevalent in Asia.

All sexual and reproductive health services to adolescents must be consented to voluntarily, free from discrimination, pressure, violence or coercion. Besides, their agency and right to be heard should be central in all decisions and programmes that concern them.

The Philippines. For instance, in the Philippines, the adolescent pregnancy rate has been increasing,³ reflecting a low contraceptive prevalence rate—a study done in 2013 found that among all age groups of married women, adolescents have the lowest rate of use and the highest unmet need.⁴ Although the legislature mandated the development of a comprehensive sexuality education programme in the Responsible Parenthood and Reproductive Health Act (RPRHA) in December 2012, third party authorisation requirements continue

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to undermine adolescent reproductive autonomy. Under the law, any minor (below 18) must first secure parental consent to access contraceptive services and preventive sexual and reproductive care except in life-threatening cases.⁵ The RPRHA as passed would have allowed an exception for adolescents who have already experienced prior pregnancies, but in a retrogressive move the Supreme Court suspended those provisions only three months after the law was passed and then struck down this exception in 2014.⁶

India. In India, although over one third (38.7%) of women of ages 25-29 reported having had their first sexual intercourse before the age of 18, the legal framework fails to recognise adolescent capacity to consent to abortion. For example, the Medical Termination of Pregnancy Act, 1971, requires minors to obtain guardian or parental consent for abortion.⁷ Further, adolescent reproductive autonomy and capacity is also undermined under the Protection of Children from Sexual Offenses Act of 2012 (POCSO Act),⁸ which aims to address sexual violence against children by mandating reporting by health care providers, among others, of sexual assault of a minor.⁹ The issue arises because the law defines any sexual activity involving a minor as rape, without exception, leading providers to interpret it as requiring mandatory reporting of any pregnant adolescent patient, even where she is seeking an abortion.¹⁰ Coupled with the continued

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stigma on adolescent sexual activity, the criminalisation of consensual adolescent sexual relations, including between two adolescents, has intensified the chilling effect on adolescents' ability and willingness to seek sexual and reproductive health services.

INTERNATIONAL STANDARDS ON SRHR OF ADOLESCENTS

Failure to address these barriers contravenes States' obligations under international human rights law. The International Conference on Population and Development (ICPD) enabled a shift from a focus on "adolescents' needs" to rights, paving the way for normative development by international human rights mechanisms recognising adolescents' rights to agency, reproductive self-determination, and bodily autonomy.

The Committee on the Rights of the Child (CRC Committee) and the Special Rapporteur on the Right to Health, among others, affirmed the importance of adolescents' sexual and reproductive rights, urging states to take a host of specific measures to ensure the full exercise of these rights.

On third-party authorisation requirements for instance, the CRC Committee recognises that there should not be any "barriers to commodities, information and counselling on sexual and reproductive health and rights, such as requirements for third-party consent or authorisation."¹¹ The Special Rapporteur on the Right to Health further recognises parental consent and notification requirements as a barrier to health services for adolescents, as they "make adolescents reluctant to access needed services so as to avoid seeking parental consent, which may result in rejection, stigmatisation, hostility or even violence."¹² These normative developments reinforce the CEDAW

Committee's recognition that parental authorisation requirements constitute a barrier to health services.¹³

In its groundbreaking General Comment 20 on the implementation of the rights of the child during adolescence, the CRC Committee has put adolescents' agency, autonomy, and sexual and reproductive self-determination as the founding stones of its analysis, notably by calling on states to consider introducing a "legal presumption that adolescents are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services."¹⁴ This approach is also endorsed by the Special Rapporteur on Health.¹⁵ In this regard, the fact that an adolescent recognises their need for such services and takes the initiative to seek them out evidences that he or she has the requisite capacity to make decisions about and use such services appropriately.¹⁶

The CRC Committee has also recognised the harmful impact of laws that criminalise all adolescent sexual activity, specifically outlining that states "should avoid criminalising adolescents of similar ages for factually consensual and nonexploitative sexual activity."¹⁷

While barriers to access services and lack of recognition of the right to bodily autonomy and sexual and reproductive self-determination of adolescents prevails in Asia and in other regions of the world, States must adopt positive measures to address and remove these barriers in accordance with their legal obligations under international human rights law.

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- Potdar et. al., *Sex determination and safe abortion in India*, supra note 60, at 118.. See also Indian Penal Code, 1860; India's Protection of Children From Sexual Offences Act, No. 32, 2012; *The MTP Act 2014 Makes Safe Abortion Easier, It Should Be Passed*, supra note 58.
- CRC Committee, *General Comment on the Implementation of the Rights of the Child During Adolescence*, para. 60, U.N. Doc. CRC/C/GC/20 (Dec. 2016) [hereinafter CRC Committee, Gen. CommentNo. 20].
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- CRC Committee, *Gen. Comment No. 20*, supra note 4, para.39.
- SR Health, *Report on the Health of Adolescents* (2016), supra note 5, para. 60.
- See R. Cook, B.M. Dickens, *Recognizing Adolescents' 'Evolving Capacities' to Exercise Choice in Reproductive Healthcare*, 70 *International Journal of Gynecology and Obstetrics* 13, 20 (2000).
- See CRC Committee, Gen. Comment No. 20, supra note 4, para.40 and CRC, *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4 (2003), paras. 5, 7, 12(b), 22, 24, 26-29, 36-37 (articulating obligation to ensure health-care providers maintain confidentiality about medical information, which can be disclosed only with the consent of the adolescent or in the same situations that apply to the violation of an adult's confidentiality; stipulating adolescents' rights to health information, privacy, and confidentiality, and to give their independent and informed consent, particularly regarding sexual and reproductive health matters; and urging states to address cultural and other taboos surrounding adolescent sexuality).

RESOURCES FROM THE ARROW SRHR KNOWLEDGE SHARING CENTRE

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ARROW's SRHR Knowledge Sharing Centre (ASK-us) hosts a special collection of resources on gender, women's rights, and sexual and reproductive health and rights (SRHR). It aims to make critical information on these topics accessible to all. ASK-us is also available online at <http://www.srhr-ask-us.org/>. To contact ASK-us, please email: keshia@arrow.org.my.

Mir-Hosseini, Ziba and Vanja Hamzic.

Control and Sexuality: The Revival of Zina Laws in Muslim Contexts. London: Women Living Under Muslim Laws, 2010. <http://www.wluml.org/node/6869>.

This book explores the historical and present-day cultural, socio-political and legal motives and contexts that have caused the revival of zina laws and reveals how zina laws, which were once obsolete and rarely applied in Muslim contexts, have now been brought back to maintain and assert control over men and women's sexuality. It also documents civil society's resistance to the revival of zina laws, as these strategies and actions represent an invaluable legacy for all societies affected by similar challenges.

TARSHI. *Sexuality and Disability in the Indian Context.* New Delhi: TARSHI, 2010. http://www.tarshi.net/downloads/Sexuality_and_Disability_in_the_Indian_Context.pdf.

Sexuality and Disability in the Indian Context presents an overview of the current scenario in India vis a vis sexuality and disability. This working paper is a collation of information and resources based on interviews with people with disabilities and with their parents, teachers, and other care providers. It also draws upon secondary research to examine existing laws and policies relevant to sexuality and disability in India.

Hawkins, Kate, Stephen Wood, Tanya Charles, Xiaopei He, Zhen Li, Anne Lim, Iana Moutian, and Jaya Sharma. *Sexuality and Poverty Synthesis Report.* Institute of Development Studies (IDS), 2014. <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/3525/ER53.pdf>.

This report synthesises learning from a set of sexuality and poverty audits in 2012-2013 and is part of a larger project that focuses on understanding the links between sexuality, gender plurality, and poverty with the aim of improving socioeconomic policy and programming to support people marginalised because of their sexuality. The research indicated that sexuality is directly related to physical, social, and economic wellbeing, political participation, and socioeconomic inclusion and the realisation of human rights, particularly for the poor and most marginalised.

Cornwall, Andrea and Susie Jolly. "Introduction: Sexuality Matters." *IDS Bulletin* 37, no. 5 (2006): 1-11. <https://doi.org/10.1111/j.1759-5436.2006.tb00295.x>.

This IDS Bulletin addresses a theme that mainstream development has persistently neglected: sexuality. Sexuality is about policy, programming and power relations, but it is also about pleasure and danger, feelings, sensations, emotions, skin, flesh and body fluids (and hopefully orgasms too!). This publication brings together the human side of sexuality with macro-political and analytical issues.

Contributions range from explorations of new conceptual approaches to human rights, research into experiences of sexuality in a diversity of contexts and among diverse people, to personal stories of activism and initiatives that seek to transform the ways in which sex and sexuality are conceived of and experienced.

Jolly, Susie. *Poverty and Sexuality: What are the connections? – Overview and Literature Review.* Stockholm, Sweden: SIDA, 2010. <https://www.sxpolitics.org/wp-content/uploads/2011/05/sida-study-of-poverty-and-sexuality1.pdf>.

This overview and literature review illustrates the necessity for economic policies and poverty reduction efforts to become more inclusive and effective around sexuality, and for more attention to class and economic dimensions in sexual rights struggles. It is hoped that this paper will support Sida's work in the areas of gender, sexual and reproductive health and rights, LGBT, and poverty reduction, as well as struggles for sexual and economic justice more broadly.

Mai, Nicola and Russell King. "Love, Sexuality and Migration: Mapping the Issue(s)." *Mobilities* 4, no. 3 (2009): 295-307. <http://dx.doi.org/10.1080/17450100903195318>.

In this introductory paper to the special issue, we argue for both a 'sexual turn' and an 'emotional turn' in mobility studies, stressing also the

resources

intersectionality of these two dimensions. The final part of the article provides an overview of the papers that follow and the themes they explore. Taken together, the papers investigate different globalised intersections of love, sexuality and migration, and the way they inform, and are informed by, existing narratives and practices of migration and settlement.

Ng, Chirk Jenn and S. F. Kamal.

“Bridging the gap between adolescent sexuality and HIV risk: the urban Malaysian perspective.” *Singapore Medical Journal* 47, no. 6 (2006): 482. https://www.researchgate.net/profile/Chirk_Jenn_Ng/publication/7030999_Bridging_the_gap_between_adolescent_sexuality_and_HIV_risk_The_urban_Malaysian_perspective/links/0a85e535f9f992c173000000.pdf.

This study aims to qualitatively explore adolescents’ sexuality and their relation to human immunodeficiency virus (HIV) risk in Malaysia. The results indicate definite differences in gender roles in terms of how adolescents perceived sex, selection of sex partners and communication with their partners. Most participants were concerned about pregnancy rather than sexually transmitted diseases or HIV infection when they interpreted safe sex. Reasons for not practising safe sex include trust between sex partners, complacency, low perception of risk, and negative attitudes towards condom use.

Institute of Development Studies.

“Sexuality.” *BRIDGE Gender and Development in Brief* 18 (2007). <https://www.srhr-ask-us.org/themencode-pdf-viewer-sc/?file=https://www.srhr-ask-us.org/wp-content/uploads/2017/07/In-Brief-Sexuality-2007.pdf&settings=001101111&lang=en-US#page=&zoom=auto&pagemode=>

Sexuality can bring misery through sexual violence, HIV/AIDS, maternal mortality, or marginalisation of those who break

the rules, such as non-macho men, single women, sex workers, people with same-sex sexualities, and transgender people. Sexuality can also bring joy, affirmation, intimacy and well-being. How can we make possible more joy and less misery? This In Brief hopes to inspire thinking on this question—with an overview and recommendations on gender, sexuality and sexual rights, an article on Girl Power Initiative’s sexuality education programme in Nigeria, and a piece on the Travesti Museum promoting transgender rights in Peru.

Loudes, Christine and Evelyne Paradis.

Handbook on monitoring and reporting homophobic and transphobic incidents. Belgium: ILGA Europe, 2008. https://www.ilga-europe.org/sites/default/files/Attachments/handbook_monitoring_reporting_homo-transphobic_crimes.pdf.

The aim of this publication is to contribute to increased and better reporting of homophobic and transphobic incidents by providing tools and a methodology to document and report violence motivated by hatred against LGBT people in a systematic and factual manner. It is designed for LGBT and human rights organisations who intend to monitor the occurrence of homophobic or transphobic incidents and violence, in order to advocate for legislative changes to increase legal protections from violence motivated by homophobia, lesbophobia and transphobia at national, European and international levels. The methodology and tools proposed to document how states and state actors protect or fail to protect the rights of the victims of hate crime or violence are those of human rights monitoring.

United Nations Development

Programme. *Leave no one behind – Advancing social, economic, cultural and political inclusion of LGBTI people in Asia and the Pacific.* Bangkok: UNDP, 2015. <https://www.undp.org/content/>

dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-leave-no-one-behind.pdf.

The report highlights progressive social and political forces, including the increasing role of LGBTI groups in advocacy, that are propelling progress towards more widespread acceptance of LGBTI people and recognition of their needs and rights. It explores the factors that are contributing to advances in some countries in areas such as legal recognition and social protection. The report also describes the factors that contribute to the neglect of LGBTI people’s needs and rights. It describes the social drivers of oppression and social exclusion including patriarchal traditions, conservative interpretations of religion and lack of democratic governance.

Somera, Nina. “Que[e]r[y]ing the Climate Debates.” *Women in Action* 2 (2009): 79-82. http://www.isiswomen.org/phocadownload/print/isispub/wia/wia2009-2/2wia09_18features_nina.pdf.

As interest on the climate talks is picking up, more organising are done on the ground and mobilisations staged. Theories are being revisited and expanded. More and more links are also made as the climate crisis is increasingly realised as a systemic problem—the same one that has constantly spawned inequality, deprivation and violence which have left their marks on the identities, bodies and lived experience of people. One of these links is that between climate change and the lesbian, gay, bisexual and transgender (LGBT) communities.

The Joint United Nations Programme on HIV and AIDS. *UNAIDS Action*

Framework: Universal Access for Men who have Sex with Men and Transgender People. Geneva: UNAIDS, 2009. http://data.unaids.org/pub/report/2009/jc1720_action_framework_msm_en.pdf.

The goal of this framework is to enable UNAIDS to facilitate and support the achievement of universal access to appropriate HIV prevention, care, treatment and support for men who have sex with men and transgender people. The UNAIDS Secretariat and the UNAIDS Cosponsors recognise that universal access to appropriate HIV programmes for men who have sex with men and transgender people is a crucial part of achieving universal access to HIV prevention, treatment, care and support as a whole. This approach aims to reduce the incidence of HIV everywhere, while protecting the health and rights of not only these marginalised groups but also their female sexual partners and the rest of the population.

United Nations Development

Programme. *Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians.* New York: UNDP, 2017. <https://www.pgaction.org/inclusion/pdf/handbook/en.pdf>.

This handbook is jointly produced by the United Nations Development Programme (UNDP) and Parliamentarians for Global Action (PGA). It sets out relevant human rights frameworks and highlights the role of parliamentarians in implementing Agenda 2030, to ensure no one, including LGBTI people, is left behind. The handbook offers practical tips, tools and resources designed to support parliamentarians to undertake legislative, representational and oversight activities that advance the rights and inclusion of LGBTI people.

Bettcher, Talia Mae. "Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion." *Hypatia* 22, no. 3 (2007): <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1527-2001.2007.tb01090.x>.

This essay examines the stereotype that transgender people are "deceivers"

and the stereotype's role in promoting and excusing transphobic violence. The stereotype derives from a contrast between gender presentation (appearance) and sexed body (concealed reality). Because gender presentation represents genital status, Bettcher argues, people who "misalign" the two are viewed as deceivers. The author shows how this system of gender presentation as genital representation is part of larger sexist and racist systems of violence and oppression.

Asia Pacific Council of AIDS Service Organisations (APCASO). "Men Who Have Sex With Men and The 2011 Political Declaration on HIV/AIDS." *InFocus* 5 (2012): [https://www.srhr-ask-us.org/themencode-pdf-viewer-sc/?file=https://www.srhr-ask-us.org/wp-content/uploads/2017/07/InFocus-Vol-5-MSM-May12.pdf&settings=001101111&lang=en-US#page=&zoom=auto&pagemode=.](https://www.srhr-ask-us.org/themencode-pdf-viewer-sc/?file=https://www.srhr-ask-us.org/wp-content/uploads/2017/07/InFocus-Vol-5-MSM-May12.pdf&settings=001101111&lang=en-US#page=&zoom=auto&pagemode=)

This issue looks at what the 2011 Political Declaration addresses specifically for Men Who Have Sex With Men and the impact on their lives in Asia and the Pacific region. However, most statements are also applicable to transgender people who were purposefully removed from the list of key affected populations. It highlights the need for more advocacy around their recognition as a separate population from Men Who Have Sex With Men.

Bettcher, Talia Mae. "Understanding transphobia: Authenticity and sexual violence." *Trans/Forming Feminisms: Trans-Feminist Voices Speak Out* (2006): 203-10. [https://www.srhr-ask-us.org/themencode-pdf-viewer-sc/?file=https://www.srhr-ask-us.org/wp-content/uploads/2017/07/Understanding-Transphobia-Authenticity-and-Sexual-Violence-2006.pdf&settings=001101111&lang=en-US#page=&zoom=auto&pagemode=.](https://www.srhr-ask-us.org/themencode-pdf-viewer-sc/?file=https://www.srhr-ask-us.org/wp-content/uploads/2017/07/Understanding-Transphobia-Authenticity-and-Sexual-Violence-2006.pdf&settings=001101111&lang=en-US#page=&zoom=auto&pagemode=)

This particular chapter of this book provides a new way of understanding

resources

transphobia and transphobic violence. As almost any trans person will agree, transphobia and transphobic violence are realities that impact our lives significantly. How we understand this fear and hatred matters greatly because this understanding guides our opposition and resistance.

Das, Arpita and Remi Joseph-Salisbury. "Sexualities and Disabilities." *Graduate Journal of Social Science* 12, no. 1 (2016). <http://gjss.org/sites/default/files/issues/full/GJSS%20Vol%2012-1.pdf>.

The special issue on 'sexualities and disabilities' of this peer-reviewed interdisciplinary journal presents and addresses the under-represented and marginalised voices of people with disabilities and their sexuality. Papers in this special issue cover a wide range of topics including people disabled during war, mental disability, caregivers of soldiers disabled in war, representation of disability in art and culture, and juxtaposition of issues of people with disabilities with other marginalised communities such as people of diverse genders and sexualities.

Collet, Angela. Interrogating 'Sexualities' at Beijing+10. *Sexuality Policy Watch*, 2006. <http://sxpolitics.org/working-paper-n3-by-angela-collet/wp-content/uploads/2009/03/workingpaper31.pdf>.

Many challenges and barriers remain to be overcome in the realm of sexual politics. Given past and current gains and, most principally, in light of the challenges posed by the current geopolitical hostility towards sexuality, much conceptual and advocacy work needs to be developed to ground a widespread political policy legitimacy of sexual right and related policy issues. This article aims to share the difficulties and gains faced in the Beijing+10 process, as a contribution to these future conceptual reflections and advocacy strategies.

OTHER RESOURCES

United Nations Human Rights.

Homophobic and transphobic violence. https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/unfe-27-UN_Fact_Sheets_Homophobic_English.pdf.

This 2-page fact sheet by United Nations Human Rights (UNHR) outlines reports on homophobic and transphobic violence in all regions of the world, ranging from aggressive, sustained psychological bullying to physical assault, torture, kidnapping and targeted killings. Sexual violence has also been widely reported, including so-called “corrective” or “punitive” rape, in which men rape women assumed to be lesbian on the pretext of trying to “cure” their victims of homosexuality. It also outlines states’ obligations under international law to protect LGBT people’s rights to life, to security of person, and to freedom from torture and ill-treatment. Examples of violence and incidents reported to the UNHR office are highlighted.

University of Guelph – Human Rights and Equity Office. Recognizing Heterosexism, Homophobia and Transphobia: creating a queer-positive university. <https://www.uoguelph.ca/diversity-human-rights/sites/uoguelph.ca.dhr/files/public/RecognizingHeterosexism.pdf>.

Maintaining and promoting human dignity is a core value of the University of Guelph. The University is therefore committed to a campus free from discrimination. This booklet details the University’s position on discrimination and harassment based on sexual orientation and gender identity.

FILMS/DOCUMENTARIES

Out and About (2016) is a 30-minute documentary that dives into the world of family members of LGBTs, in countries where being gay is illegal, or where strong stigmas exist. It is a touching and intimate portrait of three families in Russia, Kenya and Indonesia, who face prejudice and challenges because they have gay children. More on the documentary at: <https://www.humanrightsinthepicture.org/out-about/> and <https://koensuidgeest.com/current-and-past-projects/out-about/>.

Scarlet Road (2011) is a documentary that explores the life of Australian Rachel Wotton, a prostitute who is based in New South Wales (where prostitution is decriminalised) and sells sex to clients who have disabilities. Realising that the handicapped have just as much a right to intimacy as anyone else, she founded Touching Base, an organisation devoted to educating people about the sexual needs of disabled people. *Scarlet Road* is loaded with emotional resonance, as men describe feeling alive again after finally being able to touch someone. It speaks to how sex is a function of being a human being, plain and simple. More on the film at: https://www.youtube.com/watch?v=mOpCotYp_Qg.

Word Is Out: Stories of Some of Our Lives (1977) is a documentary film featuring interviews with 26 gay men and women. The interviewees range in age from 18 to 77, in location from San Francisco to New Mexico to Boston, in type from bee-hived housewife to student to conservative businessman to sultry drag queen, and in race from Caucasian to Hispanic, African-American, and Asian. The interviewees describe their experiences of coming out; falling in and out of love; and struggling against prejudice, stereotypes, and discriminatory laws. More on the documentary at: <http://www.wordisoutmovie.com/> and https://www.youtube.com/watch?v=AHMYSuUr_f8.

[wordisoutmovie.com/](https://www.wordisoutmovie.com/) and https://www.youtube.com/watch?v=AHMYSuUr_f8.

The Celluloid Closet (1995) is an American documentary film on the history of how motion pictures, especially Hollywood films, had portrayed gay, lesbian, bisexual and transgender characters. From the sissy characters, to the censorship of the Hollywood Production Code, the coded gay characters and cruel stereotypes to the changes made in the early 1990s. More on the film at: https://en.wikipedia.org/wiki/The_Celluloid_Closet and https://www.youtube.com/watch?v=JL_vrb4-6_0.

DEFINITIONS

Gender Expression: Each person’s presentation of the person’s gender through physical appearance—including dress, hairstyles, accessories, cosmetics—and mannerisms, speech, behavioural patterns, names and personal references, and noting further that gender expression may or may not conform to a person’s gender identity.¹

Gender Identity: Understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.²

Reproductive Health: “A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive

health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.”³

Reproductive Rights: “[E]mbrace certain human rights that are already recognised in national laws, international human rights documents, and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion, and violence, as expressed in human right documents.”⁴

Sex Characteristics: Each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.⁵

Sexual Health: “A state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having

pleasurable and safe sexual experiences, free of coercion, discrimination, and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected, and fulfilled.”⁶

Sexual Orientation: Understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.⁷

Sexual Rights: “[E]mbrace human rights that are already recognised in national laws, international human rights documents, and other consensus documents. They include the rights of all persons, free of coercion, discrimination, and violence, to the highest attainable standard of health in relation to sexuality, including access to sexual and reproductive healthcare services; seek, receive, and impart information in relation to sexuality; sexuality education; respect for bodily integrity; choose their partner; decide to be sexually active or not; consensual sexual relations; consensual marriage; decide whether or not, and when, to have children; and pursue a satisfying, safe, and pleasurable sexual life.”⁸

Sexuality: “Sexual health cannot be defined, understood or made operational without a broad consideration of sexuality, which underlies important behaviours and outcomes related to sexual health. The working definition of sexuality is: ...a central aspect of being human throughout life encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles, and relationships. While sexuality can include all of these dimensions, not

definitions

all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious, and spiritual factors.”⁹

Notes & References

1. The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, 10 November 2017, available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.
2. The Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation, and Gender Identity, 9 November 2006, available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.
3. United Nations, “Programme of Action Adopted at the International Conference on Population and Development Cairo,” 5-13 September 1994, 20th Anniversary Edition (New York: UNFPA, 2014), para 7.2, http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf.
4. United Nations, “Programme of Action,” para 7.3.
5. The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, 10 November 2017, available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.
6. This is a working definition, not an official WHO position. See: WHO, “Sexual and Reproductive Health,” http://www.who.int/reproductivehealth/topics/gender_rights/sexual_health/en/.
7. The Yogyakarta Principles - Principles on the Application of International Human Rights Law in Relation to Sexual Orientation, and Gender Identity, 9 November 2006, available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.
8. WHO, “Sexual and Reproductive Health.”
9. Extracted from WHO website: http://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/.

LEGAL FRAMEWORKS AROUND THE RIGHT TO SEXUALITY

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Introduction. There are multiple and intersecting factors, including cultural, financial, logistical, institutional, legal and policy factors, that play a role in determining an individual's right to sexuality. Legal frameworks of a country, however, provide the foundation for the policy and programmatic provisions around right to sexuality in a country. The table below provides an overview of the legal framework around age of sexual consent, age requirements for marriage, legal entitlements to access sexual and reproductive health services, legal status of consensual same-sex relationships and premarital sex to assess how laws govern individuals' right to sexuality.

LEGAL FRAMEWORKS AROUND THE RIGHT TO SEXUALITY				
The Age of Consent	Age of Marriage	Third-party or Parental Authorisation for Young People to Access SRH Services	Criminalisation of Homosexuality	Criminalisation of Premarital Sex
INDIA				
The Age of Consent in India is 18 years old, according to the Protection of Children Against Sexual Offences Act, 2012. Individuals aged 17 or younger in India are not legally able to consent to sexual activity, and such activity may result in prosecution for statutory rape or the equivalent local law.	According to the Prohibition of Child Marriage Act 2006 the minimum legal age of marriage in India is 18 years with no exceptions.	The Penal Code of India establishes that no one under the age of 12 shall consent to services independently. However, in general, adolescents are eligible to use any of the available contraceptive methods and as such age does not constitute a legal reason for not providing them with services. ¹	According to the 2018 Navtej Singh Johar v. Union of India verdict of Supreme Court, consensual sex among all adults regardless of their gender and sexual orientation is legal.	Premarital sex between two consenting adults is not a legal offense in India. In 2010, A Supreme Court ruling reinforced that live-in partnerships and premarital sexual relationships between two consenting adults cannot be construed as a legal offense. ²
BANGLADESH				
According to the Penal Code, 1860, the age of consent for married adolescents is 13. The law does not stipulate age of consent for men, however, according to Nari O Shishu Nirjatan Daman Ain, 2000 (as amended 2003) [Suppression of Violence Against Women & Children Act, 2000 (as amended 2003)], the age of consent for sexual activity for girls is 16.	The minimum legal age for marriage in Bangladesh is 18 years for girls and 21 for boys. However, the Child Marriage Restraint Act 2017 includes a loophole where a court can allow child marriage in "special cases", without explicitly defining what those "special cases" might be. ³	Though the laws and policies do not prohibit young unmarried people to access SRH services, provider bias is prevalent and unmarried young people are often refused SRH services. ⁴	Homosexual activity is legally restricted. According to Section 377 of the Penal Code, 1860, sexual intercourse against the "order of nature" is legally punishable.	Customary law/religious law applies to premarital sex and it is considered sinful in Islam.

LEGAL FRAMEWORKS AROUND THE RIGHT TO SEXUALITY

The Age of Consent	Age of Marriage	Third-party or Parental Authorisation for Young People to Access SRH Services	Criminalisation of Homosexuality	Criminalisation of Premarital Sex
CHINA				
According to Article 236 of the Criminal Code, the age of consent for girls is 14 years whereas the laws doesn't stipulate the age of consent for adolescent boys. ⁵	According to the Marriage Law of the People's Republic of China, 1980, the age of marriage has been set at 22 years for men and 20 years for women.	Parental consent is not required to access contraceptives. However, provider bias exists.	While there is no law that criminalises homosexuality, there is no legal recognition of same-sex marriage.	Premarital sex is not criminalised.
INDONESIA				
According to the Indonesian Penal Code, the age of consent for men and women is 15. ⁶	The legal age for marriage as per the Marriage Law 1974 is 21 for both men and women. However, boys and girls aged 19 and 20 can get married with parental permission. As part of a recent Parliamentary decree, Indonesia has revised the Marriage Law 1974 to increase the minimum legal age requirement for marriage for girls from 16 to 19. ⁷	According to the Health Policy 2009, legal entitlement to access contraceptive services applies to married couples only. Further, contraceptives and counseling on SRH services can be provided by trained professionals only. Emergency contraceptives are available with prescription.	While there are no national or federal laws that criminalise homosexuality, local laws in some provinces (Aceh for instance) prohibit consensual homosexual acts. ⁸	While there is no national or federal law that criminalises premarital sex, local laws in Aceh have criminalised pre-marital and extramarital sexual relationships. ⁹
NEPAL				
According to the Criminal Code, 2017, the age of consent for women is 18. The law does not stipulate the age of consent for boys.	According to the Criminal Code, 2017, the minimum age requirement for marriage has been increased from 18 to 20 for girls. ¹⁰ The minimum age requirement for marriage for men is 20.	Third-party authorisation is not required for young people to access SRH services and counseling. However, provider bias constitutes a barrier for adolescents and young people to access these services.	Nepal does not have any law which criminalises homosexuality. However, same-sex marriage is not legalised yet.	Premarital sex between two consenting individuals who are legally old enough to consent to sexual activity is legal.

LEGAL FRAMEWORKS AROUND THE RIGHT TO SEXUALITY

The Age of Consent	Age of Marriage	Third-party or Parental Authorisation for Young People to Access SRH Services	Criminalisation of Homosexuality	Criminalisation of Premarital Sex
MALAYSIA				
The age of consent in Malaysia is set at 16. However, Malaysia's Age of Majority Act 1971 has declared age 18 as the legal age at which an individual has the capacity to make legal decisions, excluding decisions around marriage. ¹¹	According to the Age of Majority Act 1971, the minimum legal age requirement to make decisions which could have legal implications is 18. However, exceptions remain vis-a-vis the age of marriage. According to the Law Reform (Marriage and Divorce) Act 1971, the minimum age requirement for marriage is 18. However, it can be lowered to 16 with the permission of the state chief minister. ¹²	According to the Child Rights Act and Age of Majority Act 1971, parental authorisation is required for any medical procedure undertaken by an individual who is younger than 18. It applies to all sexual and reproductive health services including access to contraceptives.	According to the Penal Code, consensual same-sex activities are criminalised in Malaysia. ¹³	Premarital sex is not criminalised in Malaysia. However, the Shariah Law, applicable to Muslims only, prohibits any sexual activity outside of marriage (premarital and extramarital).
SRI LANKA				
According to the country's Penal Code, the minimum age of consent for girls is 16. The law does not provide age specification for boys. ¹⁴	The minimum age requirement for marriage is 18 for both girls and boys.	Married young people can access SRH services and there is no age limit set for it. Unmarried young people can also access SRHR services, though provider bias exists. Abortion is legally restricted regardless of marital status. ^{15, 16}	The Penal Code criminalises same-sex relationships. ¹⁷	Premarital sex is not criminalised under the legal framework.
PHILIPPINES				
The age of sexual consent in Philippines is set at 12 for both boys and girls. ¹⁸	According to the Family Code, 1988, the minimum age for marriage is set at 18 for both men and women. However, girls can get married at an earlier age if they have reached puberty with the permission of the court under the Muslim Law on Personal Status. ¹⁹	Under the Responsible Parenthood and Reproductive Health Act, 2012, minors (under 18) are required to have parental consent to access contraceptives. ²⁰ Abortion is legally restricted in Philippines regardless of the age. ²¹	Non-commercial private same-sex activity between consenting adults is not criminalised in the country. ²²	Premarital sex is not criminalised.

LEGAL FRAMEWORKS AROUND THE RIGHT TO SEXUALITY

The Age of Consent	Age of Marriage	Third-party or Parental Authorisation for Young People to Access SRH Services	Criminalisation of Homosexuality	Criminalisation of Premarital Sex
THAILAND				
According to the Criminal Code Amendment Act (No.19) B.E. 2550 (2007), the age of consent is set at 15 for both boys and girls.	Under the Civil and Commercial Code of Thailand 1985 the minimum age is 20 years, individuals 17 years or younger are able to marry with permission of the Court. ²³	Third-party or parental authorisation is not required by law for adolescent and young people under age 18 to access SRH services.	Same-sex activity is not criminalised.	Premarital sex is not criminalised.
MONGOLIA				
The age of sexual consent in Mongolia is set at 16 years.	Under the Family Law 1999 the minimum legal age of marriage is 18 years with no exceptions. ²⁴	Parental authorisation is not required to access SRH services.	Although Mongolia does not have any sodomy laws, same-sex marriage is not legally recognised by the local laws. ²⁵	Premarital sex is not criminalised in Mongolia. ²⁶
VIETNAM				
According to the Penal Code, the age of sexual consent is 16. Any sexual intercourse with a person under the age of 13 is considered rape against a child (Article 112(4)). Any sexual intercourse with a person aged 13, 14, or 15 is considered a criminal offence pursuant to Article 115 of the Penal Code. ²⁷	According to the Law on Marriage and Family, the minimum age requirement for girls is 18 and for boys is 20. ²⁸	Parental authorisation is not required to access contraceptives. However, parental authorisation is required for HIV testing if the individual is younger than 18.	Consensual same-sex relationships are not criminalised in Vietnam. In 2015, Vietnam decriminalised same-sex marriages.	Premarital sex is not criminalised in Vietnam. ²⁹
PAKISTAN				
According to the Penal Code, the age of sexual consent for women is set at 16. The law does not address the age of sexual consent for men.	Under the Child Marriage Restraint Act 1929 the minimum age is 16 for girls and 18 for boys. ³⁰ Sindh province has adopted the Sindh Child Marriage Restraint Act in 2014 which increased the minimum age for girls to 18. ³¹	Young people have legal access to contraceptives without parental or third-party authorisation. However, provider discretion and bias is prevalent. Parental consent is required for individuals aged under 18 to access HIV testing services. ³²	Homosexual activity is legally restricted. According to Section 377 of the Penal Code, 1860, sexual intercourse against the “order of nature” is legally punishable.	According to the Hudood Ordinance 1979, premarital and extramarital sex is criminalised. ³³

LEGAL FRAMEWORKS AROUND THE RIGHT TO SEXUALITY

The Age of Consent	Age of Marriage	Third-party or Parental Authorisation for Young People to Access SRH Services	Criminalisation of Homosexuality	Criminalisation of Premarital Sex
FIJI				
According to the Crimes Decree, 2009, the age of sexual consent for both men and women is set at 18. ³⁴	The minimum age requirement for marriage for both men and women is 21. Individuals aged 19-21 may also get married legally with parental consent, according to the Marriage Act (Amendment) Decree, 2009. ³⁵	Fiji Reproductive Health Policy stipulates that adolescents and young people should have access to SRH services and information. ³⁶ Parental consent is required for abortion services for girls under 16 and for HIV testing for individuals under 18. ³⁷	Homosexuality is not criminalised in Fiji.	Premarital sex is not criminalised in Fiji.

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