

**HOMOSEXUALITY IN INDIA: AN ANALYSIS OF LITERARY,
LEGAL AND MEDICAL DISCOURSES**

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DECLARATION

I declare that the dissertation entitled "**HOMOSEXUALITY IN INDIA: AN ANALYSIS OF LITERARY, LEGAL AND MEDICAL DISCOURSES**" submitted by me for the award of the degree of **Master of Philosophy** by Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree to this university or any other university.

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GLOSSARY

Alternate Sexualities: refers to those sexual behaviours and meanings associated with ‘non-penetrative heterosexuality’.

Chapti/Dogana: terms popularly used in Rekhti poetry of 18th-19th century to refer to lesbian relationships

Coming Out: is the phenomenon/ process by which a Lesbian/Gay/Bisexual/ Transgender person acknowledges his/her sexual orientation and identity to oneself and makes it public/known to family, friends and society at large. The term has been popular in the West and is now gradually being used in India too.

Heteronormativity: is the norm that believes that human beings are divided into binaries of male/female with whose roles in life are defined by the society. It considers heterosexuality as the only acceptable and normal form of sexuality. The term was recently coined in 1991 by Michael Warner in his work ‘Fear of a Queer planet’.

Homoerotic: is closely associated with homosexuality. In my work, it has been used to refer to ‘same-sex love and emotional attachments’, which are not explicitly sexual.

Homophobia: refers to the fear of/ hatred for homosexual people and attitude of intolerance towards homosexuality.

Homosexuality: is defined as a predominant emotional or sexual preference for member’s of one’s own sex.

LGBT: an acronym for Lesbian, Gay, Bisexual, Transgender

MSM: Men who have Sex with Men, used as a term from sexual health perspective. Sexuality is not a key part of the sense of their sexual identity.

Queer: literally means ‘strange’ or at odds with the normal/dominant. It is a broad term for political resistance that questions the dominance of heteronormative structure of society.

INTRODUCTION

The title of my dissertation is 'Homosexuality in India: An analysis of Literary, Legal and Medical discourses'. There are certain reasons that prompted me to choose this topic. Most importantly, the given issue has acquired significance in the last few years due to rise in activism around 'rights of the Homosexual', but is under-researched. The issue is being widely discussed and debated at several levels, especially since the decriminalization of consensual homosexual sex between adults in private, in India by the Delhi High Court Judgment of 2nd July 2009. However, the debate seems to be fragmented and despite interventions from various corners (academic, legal etc.), there remains a lot of confusion. Moreover, during the debate on decriminalization of homosexuality in India, several issues concerning homosexuality emerged. Some of these issues were regarding the status of homosexuality in the socio-cultural, legal and medical discourse in India. The opponents of homosexuality condemned it on grounds such as, it was- *alien to Indian culture and an import, unnatural, criminal offence and pathological condition* (italics mine). While those who supported decriminalization and depathologization of homosexuality, used counter arguments to falsify these allegations.

Therefore, the purpose of my research work is to map the debate on homosexuality in India in the literary, legal, medical discourse and to explore whether the argument that homosexuals/homosexuality been discriminated by the modern literary, legal and medical discourse in India, is sustainable or not. The secondary purpose of this work is to reflect upon some of the concerns that may have emerged from the recent Queer activism/movement in India. One such concern is regarding 'HIV/AIDS and the Homosexual, especially MSM/Men having Sex with Men' in India, which would be discussed in one of the chapters in the dissertation.

The given research falls under the theme of Lesbian and Gay studies. Lesbian and Gay studies aims at understanding the lives of Lesbian/Gay people and exploring the issues concerning them, such as identity, marginalization and humiliation, struggle for social recognition etc. Though Lesbian/Gay studies cannot be defined in terms of a given,

singular theoretical position, it can be largely seen as questioning the heteronormative order that gives fixity to gender and sexual boundaries and the discrimination based on sexual-orientation. Though the present study focuses on the issues concerning homosexuality, the term Queer has been employed to get the larger picture of the movement that questions heteronormativity as the only acceptable norm. Given the fact that the Queer movement as well as Lesbian and Gay studies raises pertinent 'political questions' around the issue of identity, rights, equality etc., the present study invokes a political analyses of the discourses on Homosexuality in India.

In the area that I am concerned with, broadly, the works of Indian Scholars and Diaspora Scholars like Sherry Joseph (1996) Ruth Vanita, Saleem Kidwai (2001, 2002), Ashwini Sukhthankar (1999), Hoshang Merchant (1999), Shivananda Khan (2001), Alok Gupta (2006, 2011) and Gautam Bhan (2007), Nivedita Menon (2007), Brinda Bose and Shubhabrata Bhattacharya (2007) Arvind Narrain (2007, 2011) have been used. Besides these, the work of Michel Foucault (1978/1979), Judith Butler (1990/1999), Richard Parker and Peter Aggleton (1999) have been briefly referred to. These works have been used to understand homosexuality in the historical and contemporary context and to engage in the debate on the 'historiography of homosexuality in India' along with the issue of identity-behaviour within sexuality, criminalization and medicalization of homosexuality. I have also referred to Newspaper reports, Magazines, Fiction/ Short Stories, Internet sources, Court judgment, Reports such as UNAIDS Millennium Project, PUCL-K, available on relevant websites.

Understanding Sexuality: Locating Homosexuality in the Global Context

In the given section, I shall engage with the larger understanding of sexuality in the Global context so as to get a better understanding of Indian perspective on Sexuality. This will enable us to explore whether the discrimination of people with homosexual orientation is a product of modernity or not. The larger question is how sexuality was conceived in the European/Western understanding in the historical perspective and what are the broad theoretical perspectives used in the contemporary period.

Sexuality is a complex issue and forms the core of Queer struggle for rights and recognition. Sexuality invokes different meanings in different culture and period. Gender identities and sexual experiences are shaped differently in different socio-cultural-historical context. A number of discourses have been devoted to exploration of sexuality in the last few centuries and as Michel Foucault had argued, its very production has been a major characteristic of Bourgeoisie society (Foucault 1979). The search for a 'history of sexuality' raises interesting concerns, such as: the way sexuality is conceptualized today or the way sexual categories are understood in the West, was it the same across history and societies?

Broadly, sexuality is understood in terms of either Essentialist or Constructionist perspective. The Essentialist view of Sexuality argues that sexual orientation is not a conscious choice and it was a manifestation of some biological or Psychological inner sense. Social Constructionist view on the other gave a new understanding of human sexuality by arguing that Sexual preference is constructed. According to this perspective, the conceptual categories through which individuals interpret their sexual preference are not biologically determined but socially constructed. Thus, meaning of sexual feelings and identities is culturally relative. Different theorists gave varied definitions of sexuality. Thus for some, Sexuality is an individual capacity arising within each person and not originating from external sources. It is viewed as the individual capacity to respond to physical experiences which are capable of producing body centered genital excitation, that only subsequently becomes associated with cognitive constructs independent of ongoing physical experiences (Goettsch 1989) . While, for others sexuality not merely signifies biological genitality, but also connotes a way of addressing sexual relations (Mary John 1998). Thus, for feminists sexuality is not merely bodily experience but also sexual encounters. For, Foucault, Sexuality was a real historical formation and a cultural artefact that changes with time and he tried to uncover the 'polymorphous techniques of power' that constructed the discourse around sexuality, beginning in the 19th century (Foucault 1979). By arguing that the body was comprised of multiple pleasures and experiences and sex was not a natural feature of anatomy, he desexualized bodies. Thus, by desexualizing bodies and pleasure, he suggested that the homosexuals might be in position to create new pleasures.

In classical antiquity in Europe, sexuality was not seen as an autonomous sphere of existence. Moreover, the sexual categories of ‘homosexual’, ‘heterosexual’ and ‘bisexual’ that seems obvious in the present understanding was not known to the ancient Greeks, for instance. This is despite the fact that same-sex sexual relations existed even in Greek antiquity. The difference, however, lies in the way ‘sex’ and ‘sexuality’ was perceived. As Freud suggested in *Three Essays on the theory of sexuality*, “The most striking distinction between the erotic life of antiquity and our own no doubt lies in the fact that the ancients laid the stress upon the instinct itself, whereas we emphasize its object. The ancients glorified the instinct and were prepared on its account to honour even an inferior object; while we despise the instinctual activity in itself and find excuses for it only in the merit of the object” (Richard Parker 1999, 17). Sexual relations were seen in terms of active and passive sexual partners and the biological sex of the person did not matter much. As David Halperin in *One Hundred Years of Sexuality*, suggested about classical Greco-Roman society, “...Sexual partners came in two different kinds— not male and female but ‘active’ and ‘passive’, ‘dominant’ and ‘submissive’” (Moore 2009, 281). However, this is not to suggest that ‘same-sex’ sexual relations were not acknowledged in classical European antiquity. Terms such as, ‘Tribade’¹, ‘Sapphist’², and ‘Ganymede’³ were used in various parts of ancient and medieval Europe and Asia Minor to refer to relationships based on same-sex erotic love (Ruth Vanita 2001).

Anti-Sodomy law in other parts: Lessons for Indian Queer movement

The given section discusses anti-sodomy law in some of the European /Western and Non-Western countries. The purpose of this discussion is to seek an understanding as to how the issue criminality of homosexuality was negotiated in other parts of the world. This will provide a larger understanding of ‘Sodomy laws’ and act as a background for the

¹ In Greek Texts, the term was used to refer to ‘women who desired other women’. See Zimmerman, (ed) George Haggerty and Bonnie, *Encyclopedia of Lesbian and Gay histories and culture*. New York: Garland Publishing Inc, 2000

² Term Sapphist also denoted ‘female homosexuality’ and was derived from Greek Poet who lived in ca 600 B.C.E. on the island of Lesbos.

³ Ganymede was the beautiful Trojan prince who was lover of Zeus. The term found use in the classical Greek-Roman societies to refer to ‘male homosexuality’

detailed analysis of Section 377 of Indian Penal Code/anti-sodomy law in India in the concerned chapter of this dissertation.

Sodomy has been derived from the word 'Sodom' that finds mention in the Book of Genesis in Bible, as a wicked town destroyed by God. Sodomy in general refers to 'anal or oral intercourse between human beings, or any sexual relations between a human being and an animal'. Sodomy laws are the laws which criminalize non-reproductive, non-commercial consensual sex between adults in private (Sodomy Laws n.d.). It is a law that criminalizes 'sexual acts deemed as unnatural'. More than 80 countries around the world still criminalize consensual homosexual conduct between adult men, and at times between adult women (Gupta 2011, 115).

Firstly, let us see the striking features of the anti-sodomy laws in United Kingdom and U.S.A. The history of persecution of Sodomites can be traced to the 11th-12th century Europe as part of the persecution of those who threatened purity and had to be cast out and controlled (Gupta 2011, 119). In England and Wales, Sodomy was historically known as 'Buggery' and was a punishable offence. The 'Buggery Act' of 1533 enacted in the reign of Henry VIII made 'the detestable and abominable vice of buggery committed with mankind or beast' punishable with death by hanging (ibid). Following the recommendations of the Wolfenden Committee report of 1957, homosexuality was decriminalized between consenting adults by the 'Sexual Offences Act' of 1967.

U.S. and South Africa present the two instances of positive change in law that inspired the Queer movement in other parts of the world to demand for decriminalization of homosexuality. The South African case would be discussed in the next section. Decriminalization of Homosexuality in U.S.A. is an illustration of the larger ramifications of favorable social climate on legal reform. In 1986, The U.S. Supreme Court in 'Bowers vs. Hardwick' case decided to retain anti-sodomy law. It was in 2003 'Lawrence vs. Texas' case when the U.S. Supreme Court invalidated the anti-sodomy law and proclaimed that consensual sexual-conduct was a part of the liberty provided in the constitution. It has been argued that the change in social attitude that influenced the given legal reform in U.S.A. was due to the personal act of 'coming out' i.e. publically/ openly acknowledging one's sexual orientation (Gupta 2011, xxix).

Now, I shall discuss the lessons provided by anti-sodomy law in some non-western country. Homosexuality was decriminalized in U.K. in 1967, but many former colonies continued with the anti-sodomy law introduced by the colonial rulers in their Penal code. One such instance was of Singapore. Despite sizzling debate, Singapore Government refused to do away with its colonial law against homosexual conduct. An open letter petition to the Prime Minister in 2007 defended anti-sodomy law and called it 'a reflection of the sentiments of the majority of society...Repealing it is a vehicle to force homosexuality on a conservative population that is not ready for homosexuality' (Gupta 2011, 116).

Iran presents an extreme case of intolerance towards acts of sodomy. Islamic penal code of Iran, Article 108-134, criminally penalizes sexual intercourse between men by death and between women by lashing. The persecution of gay men, both in and outside the legal framework, occurs on a regular basis in Iran. If a foreign Gay and an Iranian man are seen by 5 Islamic witnesses sleeping together, and if so much as their heels are touching, the foreigner is killed, the Iranian given 40 lashes or death penalty if he commits it the second time (Merchant 2009, 9). Iran's religious leader Ayatollah Khomeini issued a 'fatwa' allowing sex-change operation as a cure for diagnosed transsexual people. Iranian case thus, shows that the medical technology for 'sex-change' was used as a tool to maintain the 'heteronormative' order in society.

In Zimbabwe, law against homosexuality was the result of its public condemnation by President Robert Mugabe in August 1995 during the International Book Fair. He said, "Homosexuality degrades human dignity. It's unnatural and there is no question ever of allowing these people to behave worse than dogs and pigs. If dogs and pigs do not do it, why must human beings? We have our own culture, and we must rededicate ourselves to our traditional values that make us human beings...What are we being persuaded to accept is sub-animal behaviour and we will never allow it here. If you see people parading themselves as lesbians and gays, arrest them and hand them over to the Police!" In September 1995, Zimbabwe's parliament introduced legislation banning homosexual acts. Thus homosexuality was made a criminal offence on grounds of societal sanction against it.

Malaysia and Sri Lanka present another peculiar scenario of the results of influencing change from above without a Pro-Queer movement in the context of anti-sodomy law. In Malaysia, in 1989, the women's group led by Joint Action Group on Violence against Women demanded amendment of rape provision in the penal code. However, the Legislators instead of amending the rape provision redrafted Section 377, broadening its meaning and scope. Though the new act separated bestiality, consensual and non-consensual act, it made the offence of 'gross-indecency' gender-neutral. Thus, this amendment made Malaysia the first Asian country that amended its penal code, opening possibilities for criminalization of sex between women (Gupta 2011, 145).

Similar to this was the Sri Lankan case where demands for rationalizing of rape laws resulted in criminalization of lesbian sex. In 1995, activists had demanded changes in the penal code to protect the victims of incest, marital rape, sexual harassment and the exploitation of children. The amendment that followed this demand for law reform, broadened the ambit of acts considered criminal under the law by replacing the term 'man' with 'person' and 'carnal intercourse against the order of nature' to 'gross indecency with any person' Lesbian/Gay rights group opposed this provision for criminalizing lesbian sex which was not earlier included. Thus, the Sri Lankan and Malaysian case show that a demand for a progressive law (against rape and sexual violence against women) resulted in a rather regressive law that rather than ceasing to decriminalize homosexual act, made it even more stringent by including lesbians within it.

In 1998, South Africa became the first country that constitutionally prohibited discrimination on grounds of 'sexual orientation'. In 'The South African Human rights Commission vs. the Ministry of Justice and Others' case, Judges held that the anti-sodomy provision was violative of basic human rights of equality, privacy and dignity guaranteed by the South African constitution. Justice A.Sachs, while overturning the country's anti-sodomy law remarked, "It is important to start the analysis by asking what is really being punished by the anti-sodomy laws. Is it an act or is it a person? ...In the case of male homosexuality however, the perceived deviance is punished simply because it is deviant. It is repressed for its perceived symbolism rather than because of its proven

harm...Thus it is not the act of sodomy that is denounced ...but the so called sodomite who performs it ; not any proven social damage, but the threat that same-sex passion in itself is seen as representing to heterosexual hegemony” (Gupta 2011, 146). The judgment acquires significance for the Queer movement across the globe, as it introduced the concept of ‘dignity’ of the homosexual and acknowledged the harm done to them by the punitive anti-sodomy law.

Homosexuality and Queer movement: The Indian context

The last section briefly gave a picture of the understanding of Sexuality in classical antiquity as well as in the modern period in Europe/West. It also reflected on the legal status of homosexuality in Western and Non-Western societies, so as to understand the lessons provided for the Indian Queer movement. In this section I would try to locate homosexuality in the historical and the contemporary context in India so as to facilitate the understanding of the rise in the Queer movement in the subsequent chapters.

We had seen in the last section, that certain terms were used to refer to same-sex erotic relations in Ancient and medieval Europe and Asia Minor. Similarly, within the Indian context, terms such as ‘Tritiya prakriti’ (Kamasutra), ‘Chapti’/ ‘Dogana’ (Medieval Urdu poetry), ‘Swayamvar Sakhi’ (Kathasaritasagara) were used (Ruth Vanita 2001, xxi) to refer to such non-heterosexual relations. It might suggest that the expressions of non-heteronormative sexuality, are not ‘western’ imports as alleged by anti-Queer voices in India but have much older histories. Using this argument, most of the Queer theorists have also argued that it was the colonial discourse in India that shaped the discriminatory literary, legal and medical discourse on homosexuality. This however, needs to be explored further in the concerned chapter. Queer theorists like Ruth Vnita, Saleem Kidwai, Hoshang Merchant, Arvind Narrain believe that homosexual relations/ behaviour existed in pre-modern, pre-colonial India and its presence was acknowledged by society. Some of them have thus used literary and cultural resources from pre-modern/pre-colonial period in India to trace the historical roots of Homosexuality. They argue that ancient Indian context; sexuality was not a hush- up thing. The erotic sculptures and imagery at ancient Indian temples of Khajuraho and Konark bears testimony to this fact. Kamasutra considered to be the text on erotics written as early as 2nd-4th century by

Vatsyayan, explicitly discusses the issue of pleasure and sexuality. The mystical Sufi poetry of medieval period abundantly used erotic language and imagery to define master-disciple relationship as well as divine-human love (Ruth Vanita 2001).

Interestingly, a phrase ‘homoerotically inclined’ has been used by Ruth Vanita and Saleem Kidwai to describe persons who express same-sex love but in whose case sexual behaviour is not established (Ruth Vanita 2001, xxi) They used it to figure out the homoerotic dimension of the ancient, medieval and modern texts that they examined to cull out the ‘history of same-sex relations’. Such understanding of same-sex relations however cannot be accepted unproblematically. Can strong same-sex bonding be considered as homoerotic if not homosexual? If that is the case then will it be correct to accept the relationship between Krishna-Arjuna, Krishna-Sudama, and Ramakrishna Paramhansa- Vivekananda as homoerotic? Such an understanding of same-sex bonding as homosexual/ homoerotic is questionable once the Indian theory of ‘Rasa and Bhava’ is invoked. *Bhava* refers to various the emotional states or feeling (Prasad 2007) Mainly the Bhavas refers to different instincts/emotions. For instance, Shringara bhava/Erotic stands for Sexual and Social instinct; Vatsalya refers to affectionate, motherly love; Veer/ Heroic for bravery, assertion and acquisition. A strong same-sex bonding need not invoke Erotic instinct/‘Shringara bhava’ but may be an expression of ‘Vatsalya bhava’.

These Scholars as discussed above suggest that with the arrival of Colonial modernity in India, ‘Queer sexualities’ came to be structured within a punitive framework. In this debate, one is reminded of J.Weeks who suggested the fact that Western cultures generally considered sex as a destructive, negative force and that most Christian traditions held sex as inherently sinful (Rubin 1999). Thus, homosexual act came to be penalized as an offence in the 19th century England and with the insertion of Section 377 in the Indian Penal Code of 1860; the homosexual became a ‘criminal subject’ in law in India. The medicalization of homosexuality was linked to the legal situation, following which the homosexual also became a ‘deviant species’ (Foucault 1979) and homosexuality, a pathological condition. The literary and social discourse in the 19th-20th century came to be shaped by the medico-legal discourse on homosexuality that reflected homophobic attitude.

The emergence of Queer movement and institutional activism in India began in the late 1980's with the starting of a Gay Magazine-'Bombay Dost' by Ashok Row Kavi and a lesbian collective in Delhi-'Sakhi'. The Queer movement began to centre its struggle on demands of decriminalization, depathologization of homosexuality and equal treatment as citizens. It raised issues of harassment of Queer people by authorities by invoking Section 377 of Indian Penal Code. AIDS Bhedbhav Virodhi Aandolan/ ABVA, a human rights activist group came up with a report in 1991 titled 'Less than Gay' that documented the harassment and marginalization faced by the Queer people in India (ABVA 1991) Another report entitled 'Human rights violations against Sexuality Minorities in India: A Case study of Bangalore' by People's Union for Civil Liberties/ PUCL , Karnataka, in the late 1990's talked about the violation of human rights of sexual minorities by both the State authorities and Civil society institutions (Narain 2007, 78).

Hence, demands for reading down of Section 377 of Indian Penal Code that perpetuated such violence, became the central concern of both Queer activism as well as scholarship. The demand for decriminalization of homosexuality that was initiated in 1994 by ABVA (challenging the constitutional validity of Section 377 of IPC in the courts) was carried forward by the Naz Foundation and *Voices against 377*. An open letter by noted novelist Vikram Seth and Noble laureate Amartya Sen in 2006 arguing for decriminalization of homosexuality as an expression of romantic love, worked towards building a favorable public opinion against Section 377 (Gupta 2011, xxvi-xxvii). Over 100 prominent personalities from diverse fields such as academia, law, medicine, film, theatre, journalism, bureaucracy etc signed in support of that letter, signaling the beginning of favorable climate for reading down of Section 377.

In recent years one also witnesses another mode of protest by the Queer community in the form of 'Queer Pride March'/ 'Queer Parade' beginning in Kolkata in June 2003, the same month as Stonewall Inn Riots by Gay community against police crackdown on Gay people in a bar in New York, in 1969. Since 2003, Queer Parades are taken out each year in all the metros. These parades are seen as an important assertion of one's right to live a dignified life irrespective of sexual orientation and is based on the idea of taking 'pride' in Queer identity. Eventual decriminalization of 'consensual homosexual sexual act in

private' by the Delhi High Court in July 2009 may be seen as a result of continuous courtroom based lawyering as well as activism outside courts. The judgment has been considered a watershed for the Queer movement and has generated increased debate on 'Queer issues' which were earlier considered a taboo.

Concepts and Categories

Terms can have different meaning in different contexts. So in this section I would try to clarify the basic concepts used in this work. The first concept is that of Discourse that was given by Foucault in *The order of Things* (1970) and *The Order of Discourse* (1971). Discourse includes both spoken and written languages, as well as various other communicative media (Lynch 2007). It implies a body of statement that provides a language for talking about something at a particular historical moment. Discourse constructs the topic and defines / produces the object of our knowledge (Hall 1997). In his works, Foucault talked about discursive formation to analyze the larger body of knowledge. He argued that analysis of discursive instances of production of knowledge enabled an understanding of power that acquired the authority of truth (Foucault 1979, 12). In the present work, the term has been invoked in the context of how the literary, legal and medical discourses have constructed the 'discourse on homosexuality' in India.

In the present context, 'non-heterosexual 'sexuality is referred to in varied ways such as Alternate sexuality, Queer, Homosexual, LGBT i.e., Lesbian, Gay, Bisexual, Transgender. All these terms have been derived from the western understanding of non-heteronormative sexual existence. However, it is the term *Queer* that has been used in the larger political struggle for the rights of the people with 'unconventional, non-heteronormative' orientation. Literally, Queer means strange and deviating from the normal. To begin with, the term was used in a derogatory sense to point at 'deviance from acceptable sexual norm', but the Gay movement upheld the term as a celebration of their difference and as an assertion of Gay pride. In the Indian context too, the term Queer is being accepted by Scholars and activists to refer to a 'deeply personal identity and a defiant political perspective' that rejects the assumption of compulsory heterosexuality (Arvind Narrain 2005, 3-4). The term becomes significant also from another perspective i.e., for being all encompassing and including not only those communities that name

themselves but also those who do not. Thereby, it also recognizes the space for same-sex desire and sexuality that cannot be captured in identities alone. Similarly, 'Alternate sexuality' is another term that is associated with those behaviours other than non-penetrative sexuality.

Homosexuality however refers to predominantly emotional or erotic preference for members of one's sex (Braverman 1973, April, vol.73, No.4). Interestingly, a phrase 'homoerotically inclined' has been used by Ruth Vanita and Saleem Kidwai to describe persons who express same-sex love but in whose case sexual behaviour is not established (Ruth Vanita 2001, xxi) They used it to figure out the homoerotic dimension of the ancient, medieval and modern texts that they examined to cull out the 'history of same-sex relation'. Thus, homoerotic would be used in this context.

MSM/ Men Who have sex with men is a term that has been specifically used in the context of South Asia where sexual behaviour (of men having sex with men) need not translate into a sexual identity and male-to-male sex is simply seen in terms of 'pleasure'/*masti*⁴. Sexuality is not a key part of the sense of sexual identity of MSM.

Homophobia, in simple terms is used to refer to the fear from or hatred for homosexuality/ homosexual people, resulting in their social ostracization. It results in negative attitude and intolerance towards homosexuality.

Homophobia and related debates: some striking recent instances in India

In this section, I intend to show the continuation of Homophobic attitude of colonial India in the post colonial context. Thus, the debate generated by Ugra's book, 'Chaklet' and Joseph Lelyveld's book on 'Great Soul: Mahatma Gandhi in his struggle with India' Gandhi and the discrimination faced by two Indian Academicians Ramchandra Siras and Ashley Tellis has been presented.

⁴ Masti as a term has been used in South Asian context to refer to sex for 'pleasure' and not in terms of procreative sex. 'Masti' defines sex, such as between same-sex friends as 'play' and not real. See Khan, Shivananda."Culture, Sexualities and Identities, MSM in South Asia", *Journal of homosexuality*, 1996, June.

Queer scholars and activists argue that homophobia was a product of the colonial discourse on homosexuality, as pre-colonial Indian society was not homophobic. We would see in the chapters, the exploration of homophobic attitude in the modern literary-medical-legal discourse. Infact the first debate on 'homosexuality in literature' generated in late 1920's by Pandey Bechan Sharma Ugra's work 'Chaklet'/'Chocolate', reflected intense homophobia in the literary circle. 'Chaklet' was a fictional account comprising of homosexual characters. Ugra claimed that the stories in the book were meant to condemn homosexuality; however Hindi litterateur like Premchand and Banarsidas Chaturvedi condemned the work as obscene. Ugra was condemned on charges of promoting homosexuality in the Indian society through his work. The book generated so much heat that the issue was referred to M.K.Gandhi by Banarsidas Chaturvedi. Gandhi on reading the book (Chaklet) replied to Chaturvedi that the aim of the book was pure since it generated 'revulsion against inhuman behaviour' (Ruth Vanita 2001, 251). Regarding same-sex sexual relations, he once wrote in *Young India*, (Navjivan publishing house, 1931, vol.xi, pp-212) 'unnatural though the vice is, it has come down to us from times immemorial.' (Merchant 2009, xiv). Thus interestingly, he does not deny its existence but confirms it from personal letters received from boys. However for him, sex for purposes other than procreation was problematic, i.e., even heterosexual sexual indulgence for pleasure was objectionable to him. Thus, in Gandhi's view, there was no difference in kind between heterosexual and homosexual lust because sexual activity arising out of lust was a sin.

The aforementioned debate is a background to understand the furor created over a recent book on Gandhi by Pulitzer Prize winner Joseph Lelyveld. The book titled, 'Great Soul- Mahatma Gandhi and his struggle with India' claims the possibility of strong mutual attraction between Gandhi and German bodybuilder, architect Hermann Kallenbach. Lelyveld makes the claim of 'intimate' yet 'ambiguous' relationship between Gandhi and Kallenbach based on the letters that Gandhi wrote to Kallenbach around 1908-1909. Lelyveld writes, "If not infatuated, Gandhi was clearly drawn to the architect." (Lelyveld 2011, 89). He further says that Gandhi used to call himself as 'Upper House' and Kallenbach as 'Lower House' and makes him promise "not to contract any marriage tie during his absence" nor "look lustfully upon any women", the two houses then mutually

pledge “more love, and yet more love...such love as they hope the world has not yet seen.” He also notes that only Gandhi’s letters to Kallenbach were available on the basis of which he finds Gandhi providing the playful undertone that might easily be ascribed to a lover (Ibid,p-90). Lelyveld also refers the two as soul mates and mentions that before leaving South Africa, Gandhi reassures his ‘Jewish Soul mate’: “You will always be you and you alone to me. I have told you, you will have to desert me and not I you” (Ibid, p-95-96).

The problem with such grand claims made in the book is that it draws conclusions based on letters written by Gandhi in a given time-span and context. Moreover, the book makes generalized casual statement, without specifying the source. For instance, Lelyveld writes, “One respected Gandhi scholar characterized the relationship (between Gandhi-Kallenbach) as clearly homoerotic, rather than homosexual, intending through that choice of words to describe a strong mutual attraction, nothing more” (Ibid, p-88). The author seems to write from a western understanding that insists on categorizing close love based associations into the framework of ‘homosexual’, ‘heterosexual’. The book also raises the question whether intense same-sex friendship in a given time and context be represented as ‘homosexual’ or even ‘homoerotic’ without such acknowledgment by those into that relationship. Indian mythology, for instance, presents examples of same-sex friendship between Krishna-Arjuna, Sudama-Krishna. Is it appropriate to consider such relationships as homoerotic? Such debates have been included in the First chapter of this dissertation.

However, homophobic attitude was reflected in this issue when the Gujarat Government banned the book for being perverse in nature and for hurting the sentiments of crores of people (2011, 30 March). Any mention of the ‘father of nation’ as being homoerotic was considered perverse and beyond the imagination of nation.

Another recent incidence in the Indian context with reference to homosexuality relates to Professor Ramchandra Siras of Aligarh Muslim University/AMU. Professor Siras was suspended by the vice-chancellor of the University following reports of his involvement in a homosexual relationship with a rickshaw-puller. Justifying the suspension, Public Relations Officer of the University said, “Siras was captured on camera having sex with a

rickshaw-puller. It's a scandal that no institution of repute can overlook. Therefore he was placed under suspension on February 9 by the order of the VC" (Mishra 2010, February 18). The statement reveals that despite decriminalization of consensual homosexual sex in private by Delhi High Court on 2nd July 2009, the University exhibited the attitude of the colonial era. It's difficult to understand what was scandalous in Professor Siras' act, whether 'consensual sexual act with an adult male in private' or 'sex with a rickshaw puller'. One wonders whether, AMU's action against the Professor who also happened to be a Marathi literary figure, was covertly motivated by class bias (sexual act with rickshaw puller) or by homophobic attitude of society that is yet to respond to changes in law (decriminalization of homosexuality). Though the Allahabad High Court stayed his suspension (1st April, 2010) and he got back his job, Professor Siras was found dead in his apartment few days later, having probably committed suicide. Professor Siras' death opens up important questions: whether progressive legislation alone is sufficient or should it be preceded by societal changes in the context of homosexuality. A similar instance that further substantiates these doubts was the sacking of gay rights activist and academic Ashley Tellis by IIT Hyderabad in June 2010 apparently discomfited by his sexual orientation (TNN 2010, 11 June).

In a very recent instance of homophobic attitude, the Union Health Minister of India, Ghulam Nabi Azad referred to homosexuality as unnatural and 'Men having sex with men' as a disease, at a convention on HIV/AIDS in New Delhi in July, 2011. He was quoted saying, "The topic to worry is that unfortunately this disease (homosexuality) wherein a Man has sex with another man has come into the world and into our country as well. This is completely unnatural and should not exist but it does" (Hindustan Times, 2011). Such homophobic statement comes exactly two years after the historic Delhi High Court judgment that decriminalized consensual homosexuality in private. The rhetoric of 'disease' continues to be used as a discriminating tool against the homosexuals in India. Moreover, it is ironic that the statement comes from the Minister who represents the same ministry that supported the decriminalization of homosexuality in the Delhi High Court in an affidavit filed in the Naz Foundation vs. Government of National Capital of Delhi and others (2009).

Structure of the Arguments in the Thesis

The dissertation aims at analyzing the literary/cultural, legal and medical discourse that has been central to the debates around Homosexuality. Attempt has been made to trace the debate between Pro-Queer and Anti-Queer voices involving literary, legal, medical discourse mainly in the Indian context. This work is significant in the light of growing interest in Queer studies with the rise in activism around rights of the Queer and the recent decriminalization of consensual homosexual sex by the Delhi High Court judgment in July, 2009. In this dissertation I have also tried to briefly engage in the issues around identity, behaviour and sexuality.

The dissertation is divided into three chapters, each dealing with a particular discourse with reference to Homosexuality, specifically in the Indian context.

The first chapter titled, 'Representation of Homosexuality: Exploring Literary Writings' basically traces the trajectory of 'same-sex intimate engagements in literature in India, and the attempt at 'historiography of homosexuality'. It raises significant issue of homophobia generated as a product of colonial attitude towards 'alternate sexuality'. The chapter is significant as it reflects the journey of non-heteronormative sexuality from pre-modern/pre-colonial to the modern and post-colonial period.

The second chapter titled, 'Homosexuality in India: Legal Discourse' provides an understanding of the creation of 'homosexual on law' and the shaping of legal perspective on homosexuality in India by the colonial discourse. It explores the issues around criminalization of homosexual sex as per provisions in Section 377 of IPC and Queer activism around law, for decriminalization. A detailed discussion on the landmark judgment by Delhi High Court striking down Section 377 of IPC in the chapter, attempts to understand the larger arguments given for and against homosexual relations in India.

In the third chapter, 'Discourse around Medicalization of Homosexuality and Issues of Identity/Behaviour', I have tried to engage in the complex issue of identity and behaviour within sexuality. This is followed by an understanding of medicalization of

homosexuality by Medical discourse in the west and Pathologization of homosexual behaviour. The subsequent sections also discuss the 'pathological model of homosexuality' in India and the responses of the medical practitioners and psychiatrists after depathologization of 'same-sex sexual behaviour'. An issue of overall significance for this research that is the concerns around HIV/AIDS and Queer Community , especially MSM/Men having sex with men, in India has also been raised and attempts made to understand the deeper political concerns involved in it.

The conclusion summarizes the arguments of the three chapters and assesses whether the outlined research objective has been achieved or not. I have included a Glossary of a few important terms with reference to the topic, before the Introduction of the thesis.

Chapter 1

GENEALOGY OF HOMOSEXUALITY IN INDIA: EXPLORING LITERARY WRITINGS

As we have seen in the introduction of this dissertation, one of the core concerns of this work is to map the debate on homosexuality in the literary, legal and medical discourse in modern India and to explore if these have been discriminatory towards the Homosexual, as claimed by the Queer Scholars/activists. In the process, I shall try to examine the arguments presented by Queer Scholars/activists to prove their point against marginalization, criminalization, and pathologization of homosexuality. One of the grounds on which homosexuality has been opposed in India is that it did not exist in ancient India and was 'alien' to Indian culture. Infact, the social vilification of homosexuality in India is grounded in the argument that it is a foreign import and was never a part of Indian culture. This approach denies any historical existence to homosexual relations in India. In this regard, history becomes an important resource for Queer movement claiming that homosexuality was an intrinsic part of Indian culture/tradition.

The aim of this chapter is to engage in the given debate, especially the one that uses history as a resource to claim that 'same-sex eroticism' is not alien to the Indian culture. Though all the Queer Scholars claim that homosexuality is neither abnormal nor an import, they have responded to the issue in different ways. In this chapter, firstly, I shall look into some of those responses (of the Queer Scholars) that made use of the literary and cultural resources of the past to respond to the question of historicity of Homosexuality in India. Secondly, I shall examine the arguments given for 'going back to history' for validification of homosexuality and problems with this approach if any. Thirdly, I would try to explore that if homosexuality was an intrinsic part of Indian

culture/tradition of the past, how it became unacceptable to the Indian society as an anti-cultural phenomenon.

1) Contextualizing the debate in India

Sexuality constitutes a historically and geographically fluid mesh (Menon 2007, xxvi). The uncontainable fluidity of sexuality and desire can change radically with contexts of time and place. So there is need to acknowledge that the history/ trajectory of sexuality encompasses multiple and varied experiences in different periods and cultures. It surely cannot be a homogenizing exercise. Ruth Vanita, Saleem Kidwai, Giti Thadani, Nivedita Menon, Mary John and Janaki Nair, all put forward this line of argument that the arrival of colonial modernity suppressed the space for (what we refer today as) alternate sexualities. The sexualities that seemed to challenge heteronormativity were either relegated to the margins so as to make them appear non-existent or were penalized for being unlawful and uncultured.

Queer activist and founder of Naz foundation International, Shivananda Khan believes that sexuality refers to self-identity in reference to sexual desire and gender. His view is based on his dialogic engagement with many MSM/men who had sex with men (whom he interviewed) in India who did not self-identify as gay (ibid, p-16). Thus, he suggests that a particular sexual behaviour need not translate into an identity. This position poses the question as to how significant is then, the dependence on 'historical existence' in order to claim an identity in the present. The issue of identity-behaviour however, would be elaborately discussed in the third chapter.

Interestingly, Mary John and Janaki Nair suggest that we think of sexuality not as signifying biological genitality, but as connoting 'a way of addressing sexual relation', their spheres of legitimacy and illegitimacy through the institutions and practices as well as the discourses and forms of representation, that have long been producing, framing, distributing and controlling the subject of sex (Nair 1998, 1-2). Following Foucault, they argue that sexuality is not a question of silence rather a matter of 'conspiracy of silence'. The multiple sites where sexuality has long been embedded in India (such as the sphere

of law, medicine, demography) needs to be analyzed. The forms of control and hygiene, such as laws of prohibition, technologies of surveillance and cleaning up of uncontrollable forms of sexuality etc. originated with modernity. The very term 'sexuality' is a modern construct, originating in the 19th century (D'Emilio 1990, November, Vol.27, No.4). Hence, there is need to engage with sexuality by recognizing its passage through the complex process of modernity.

2) The genealogy of Homosexuality

In this section, I shall discuss the use of textual/cultural resources available in the Indian context by the Indian Scholars to bring home the point that homosexuality has been an integral part of our social milieu in pre-colonial India and there existed 'same-sex erotic relationships' in the past too. Though, there were certain instances of treating this relationship as immoral, there was no phobia or criminality attached to it, in pre-colonial India. In this regard, works of three scholars gains significance, namely Giti Thadani, Ruth Vanita and Saleem Kidwai. In this section, I shall mainly discuss their work along with some other scholars like Kumkum Roy, Hoshand Merchant, Sibaji Bandhopadhyay etc. who too have contributed to this line of argument. Giti Thadani explores the historical roots of 'lesbian love' in the Vedic and Sanskritic texts. Ruth Vanita and Saleem Kidwai have analyzed ancient (2nd century B.C. to 8th century A.D.), medieval (8th century to 18th century A.D.) and modern texts (18th century onwards) written in various Indian Languages.

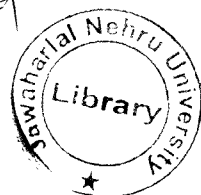
In the face of accusations about homosexuality being a foreign import, history has become a crucial site for retrieving an erased past. Gay scholar Hoshang Merchant says that Same-sex love is considered to be against Indian tradition and that one does not find technical synonyms for terms like 'homosexual', 'homoerotic', 'queer', 'gay', 'lesbian' or 'sodomy'; nor do recent constructs like 'samalinga' help us define the act and practice appropriately. A sense of historical self-representation is thus complex, and it signifies, in principle, that the movement has to offer a sense of 'existence' in historical relics and the cultural sphere (Merchant 2009). Thus, Queer movement tries to fill this gap by

addressing the ‘history’ question. Some of them like Ruth Vanita, Saleem Kidwai and Giti Thadani along with few others, do this by tracing the genealogy of queer tradition in India, which would be discussed in the following section. While, Thadani’s main aim is to trace the history of ‘lesbian desire and relations’ in the Vedic and sanskritic tradition in India; Vanita and Kidwai focus on retrieving the ‘homoerotic’ aspect in the literary resources of the pre-colonial past and also ‘homophobic’ aspect in the colonial/post-colonial literature.

2.1) Re-creation of the past-Giti Thadani’s work

Giti Thadani, India’s earliest public, intellectual, ‘out lesbian’, in her work ‘Sakhiani: lesbian desire in ancient and modern India’ (1996) counters lesbophobic nationalist discourses that considers Indian lesbian as ‘not-Indian’. She states, ‘My aim is to excavate layers of erotic memories and thus recreate historical continuums from the location of the present context of lesbian invisibility’ (Bacchetta 2007) Self-defining herself as a lesbian feminist and *khush* (gay, happy, referring to both lesbians and gay men), she revived multiple Hindi and Sanskrit terms. She laments that earlier terms denoting lesbian love lost their formal sexual meanings and were simply translated as sister/woman friend. She brings in terms like *sakhi*, *bhagini* (vaginal sisters), *jami* (twin, homosexual), and *yuvati* (italics in original) (ageless woman, in the dual form expressive of a lover relationship) (ibid, 117). She examines various historical sources like the Rig Veda and temple carvings at Khajuraho to construct a narrative of ancient “gynofocal cosmological traditions” reflecting lesbian relations. She draws a unique concept of ‘Sayoni’/’jami’ from the Rig Veda. According to this concept, the twin-goddess Ushas and Nakta were so deeply intertwined that their yonis revolved around one another. Thadani interprets this myth as portraying a symbol of erotic play between women, thereby providing a mythical evidence of acceptance of lesbian relations in Indian society. Her work also suggests two forms of lesbian iconography in temples: Anthropomorphic and Symbolic. In the former, she interprets some of the khajuraho carvings as depicting lesbian lovemaking, while in the latter, she treats the figure of two triangles and two lotuses touching as a symbol of vaginal union.

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Giti points out that these ancient traditions centered in lesbian relations were disrupted by the advent of Islam and British colonialism, and got lost as Hinduism became more and more monolithic and heterosexual. She suggests Islam as an ‘external invasion’ responsible for Hinduism’s heteropatriarchalisation through (lesbian) temple destruction (ibid, p-119). However, this argument linking the arrival of Islam in India with the loss of ancient tradition of lesbian relations does not seem justified, given the Sufi tradition within Islam that accepts same-sex erotic relations. In the following section, Giti’s work has been critically analyzed.

How does one read into such interpretations? Can one accept such grand historical account without any concrete evidence? It would thus be interesting to know the responses that narratives such as Giti Thadani’s work generated. Feminists like Mary John and Janaki Nair are not very comfortable with such grand historical narratives. In their work, ‘A Question of Silence’, they argue that such reinterpretation of a complex heritage like Khajuraho is disturbing in their appropriations of homoerotic sculptures as testimony of bygone sexualities (Nair 1998). They worry that the linking of ‘disruption of mythological tradition centred in lesbian relations’ to the advent of Islam might run the risk of being overdetermined by the agenda of Hindu right. As K.Natarajan says, it reproduces the Hindu nationalist homogenization; demonization and exile of Indian Islam (Bacchetta 2007, 119) But Mary John and Nayar also say that this does not mean relinquishing the archives of history completely.

Another important comment on the question of such historical account of lesbian relation is offered by Paola Bacchetta who suggests that though Thadani’s claim that Islam is responsible for Hinduism’s heteropatriarchalisation echoes elements of Hindu nationalist discourse, she paradoxically also challenges it. Citing illustrations from ‘Sakhiani’, Bacchetta points that for Giti, the transformation to patriarchy within Hinduism began with the militarized upper-caste Hinduism that Hindu nationalists glorify. For her, the heterocouple image of Radha-krishna rose through marginalization of Radhavallabhi sect centred on female divinity and lesbian depiction of Radha’s sakhis (erotically playing together in water). Giti also criticizes *ardhnarishwara* (italics in original) image of Shiva

as a representation of his misogyny and an undermining of female subjectivity (Bacchetta 2007, 120).

On Thadani's claim of 'actively recreating the past', Bacchetta says that revivalism privileges self-appropriation of history over historical accuracy. Thus, the process of active re-creation can be understood as a lesbian strategic revivalist move, responsive to 1980's lesbophobic exiling. It suggests a conscious reinterpretation of existing materials in a spirit of political resistance (ibid, 119). Hence, such lesbian revivalist work can be understood in its political activist significance.

Ashwini Sukhthankar also agrees that there is need to intervene in the face of irresponsible misrepresentation of gay/lesbians. In her work, 'Facing the mirror' (India's one of the first feminist anthology) she raises the issue of 'alienation' faced by gay/lesbians due to loss of a sense of history. She writes, "Living without a history of your own kind is like living without the reassurance of a reflection in the mirror. Every lesbian who claws her way into self-awareness in a society that insists upon heterosexuality has surely experienced the horror of that complete alienation from herself, the perilous feeling of being the only one" (Sukhthankar 1999, xvi). Thus, the very absence of any historical record or a past to reflect upon made her bring together and share the experiences of some lesbian women in India.

I believe that, Sukhthankar's stand also indirectly underlines the importance of 'tracing the historical roots of homosexual practices' in Indian tradition. According to this kind of argument, tracing the historical roots is important to respond to a sense of isolation and alienation faced by the homosexual. It helps build a 'collective memory' and gives a sense of meaningful existence.

Shivananda Khan, the founder of 'Naz Foundation International' (a non-profitable organization working on the issue of safe-sex and prevention of HIV/AIDS in MSM) has a different understanding of the issue. Firstly, since he considers 'sexuality' in terms of self-identity in reference to sexual desire and gender, he complicates the issue. He says that in India, western understanding of lesbian and gay identities has emerged, terming it as 'sexual neo-colonialism.' Therefore, any urge to seek out indigenous histories in this

area is a form of self-justification, which he thinks is not necessary. He writes, “As contemporary self-identified Indian lesbians or gay men (whatever those terms mean to us personally) we shouldn’t need self-validation based on a presumptive past. Our existence is our own validation” (Khan, *Culture, Sexualities, Identities: Men who have Sex with Men in India* 2001, 105). Thus, Khan does not encourage the stand point of going back to history for validation of one’s identity.

One therefore finds arguments both in support and against such grand historical accounts. Some of them like K.Natarajan points to the dangers of historical inaccuracy of such grand historical narratives and of serving the Hindutva agenda (such as in Giti’s account of arrival of Islam as external invasion). Others like Shivananda Khan simply reject the idea of ‘going back to the past’ as he believes that ‘existence in the present’ (quotes mine) it suffices to claim one’s rights. However, there are others like Paola Bacchetta and Ashwini Sukhthankar who suggests that providing historical accounts of lesbian/homosexual relations are significant for a sense of collective memory, identity and political mobilization of the Homosexual who feel at loss in the heteronormative structure of society.

This view of ‘tracing the historical roots’ of Homosexual relations in the ancient and medieval tradition in India also finds support in the work of Ruth Vanita and Saleem Kidwai. Ruth Vanita, one of the founding co-editor of journal *Manushi* (1978-1990) has a number of books on Queer issues, to her credit. She along with Saleem Kidwai attributes the popular belief of treating homosexuality as an aberration imported from modern Europe/medieval west Asia to the fact that same-sex love in South Asia has been seriously under-researched.⁵ By and large, most South Asian scholars either ignored materials on homosexuality or interpreted them as heterosexual. Thus, there is a gap that needs to be filled.

Given this context, Ruth Vanita in her edited work with Saleem Kidwai, titled ‘*same- sex love in India, Readings from literature and history*’ (2001), tries to unearth the ‘homoerotic’ aspects in the ancient and Indian medieval tradition so as to validate

homosexuality/homoeroticism in the present. They also try to locate that point in history that resulted in criminalization of homosexuality and ignored the presence of homoerotic tradition in India.

In the following section I shall consider the aforementioned issues, with main emphasis on Vanita and Kidwai's work. Meanwhile, this section will include relevant interventions by some other scholars too. Instances from a number of texts have been used from ancient and medieval period in India. Ancient texts include Mahabharata, Arthashastra, Manusmriti, Kamasutra, Peruntevanar Mahabharata, Krittivasa Ramayana. For medieval sources, works of Sufi poets and Ziauddin Barni have been used.

2.2) Queer Anthology- Some important accounts

2.2 a) Ancient texts

Ruth Vanita suggest that certain processes (accompanied by values of modernity) in the 19th century erased histories of homoeroticism that was widely recognized for centuries in Europe and South Asia (Vanita, *Homosexuality in India: Past and Present* 2002). Vanita and Saleem Kidwai in their work *same- sex love in India, Readings from literature and history* (2001) trace the origins of same-sex love and eroticism in the cultural and linguistic resources of the past, in the writings of various Indian languages from 2nd Century B.C. up to the present. They assert that the process of modernity beginning in the 19th century, erased the homoerotic voices from the mainstream society and homophobia became prevalent. Thus, in their work, they trace such literary sources from ancient, medieval to the present time that would explore same-sex love and homoeroticism as well as cull out 'homophobic' voices if any.

Interestingly, Vanita and Kidwai, prefer the term 'love' to connote emotional or/erotic relationship between individuals of the same sex. I would distinctly use the phrases used by them, namely '*homoerotically inclined*' and '*homosexual*'. The term 'Homoerotically inclined' has been used for persons who express same-sex love but in whose case sexual-behaviour is not established (Kidwai 2001, xxi). 'Homosexual' has been used to describe

same-sex interaction that is clearly sexual. They focus on the homoerotic dimension of the texts that they translate. They argue that erotic attachment to the persons of one's own sex was not only found in the pre-colonial Indian tradition but also in ancient Greek and Roman societies. They substantiate their point by referring to Plato's division of human beings (in the 5th century B.C. Athens) into men who prefer men, men and women who prefer each other, and women who prefer women, as mentioned in his work *Symposium*. Moreover, Terms like 'Ganymede', 'Sapphists', and 'Tribade' were used in parts of ancient Medieval Europe and Asia Minor to refer to relationships involving same-sex love (ibid). Tribade for instance found reference in Greek Texts to refer to 'women who desired other women' (Zimmerman 2000, 173). While, Ganymede in Greek mythology was the young, beautiful prince of Trojan who became Zeus' love interest and refers to 'men who desired other men' (Gibson n.d.).

In the following section, I would discuss Ancient Indian Literary materials from the period 2nd Century B.C to 8th Century A.D (as per the periodisation offered by Vanita and Kidwai). The textual references used are from the texts like Ved Vyasa's *Mahabharata*, Kautilya's *Arthashastra*, Manu's *Manusmriti*, Vatsyaayan's *Kamasutra* (italics mine). Apart from these, two references are taken from the texts of Sanskrit tradition falling in the medieval period i.e. 8th-18th Century A.D. These two references are from Tamil version of Mahabharata written by Peruntevanar (Aravanis) and Bengali version of Ramayana 'Krittivasa Ramayana' written by Krittivasa (Bhagiratha). I would try to critically engage with the arguments given by the Queer scholar vis-à-vis these texts.

Mahabharata

Krishna-Arjuna relation

One of the most interesting ancient texts discussed by them (in the Introduction to part I) is Mahabharata, where the intense companionship between Krishna and Arjuna is referred to in the context of same-sex love. The first book, 'Adi Parva' of Mahabharata concludes with Krishna asking Indra for the boon of eternal friendship with Arjuna. Krishna and Arjuna were referred to as the "two Krishnas" (Kidwai 2001, 3). In

‘Saupatik Parva’ of Mahabharata, Krishna declares that Arjuna is more important to him than wives, children, or kinsmen- there can be many spouses and children but there is only one Arjuna, without whom he cannot live (ibid, 5). Arjuna too is protective of Krishna-when Karna pierces Krishna with five arrows, Arjuna blazes with anger and shoots a shower of arrows. They also support their argument saying that the text ‘Gita’ reiterates what Krishna says time and again in Mahabharata that he and Arjuna are not two but one. Krishna uses all means to protect Arjuna. He values his friendship with Arjuna more than his marital relationships. The phrase ‘*Saptapadam hi mitram*’ (italics in original) used in many ancient text may suggest that seven steps taken together constitutes friendship. Vanita and Kidwai say that the seventh step taken in the wedding ceremony is said to be for the Sakhya or friendship (ibid, 7). They suggest that same-sex bonding between Krishna and Arjuna was ‘homoerotic’ and highly respected.

However, the problem with such interpretation is that no sharp line is drawn between conjugal friendship and same-sex bonding. Can strong ties of friendship be used as an illustration for ‘same-sex eroticism’? Another question that arises is that, how far can one rely on mythological tradition to prove a point? Like the previous section, this section also poses the question as how correct such interpretations can be both in terms of linguistic translation and the meanings extracted out of such ancient texts. However, given the significance of this exercise of extracting ‘traces of homoeroticism’ in history, for purposes of mobilization of Queer and formation of a collective identity, the Queer movement broadly justifies such interpretations.

Kautilya’s Arthashastra and Manu’s Manusmriti

It would be further interesting to know the response of other ancient texts on the issue of queer sexuality. Kautilya’s book on statecraft ‘Arthshastra’ prescribes fine for homosexual acts. However, women engaged in sexual act with each other have to pay a lower fine than do men who have sex with each other. Interestingly, many types of heterosexual vaginal sex were punishable much more severely, such as seduction or rape of a minor girl of same caste. This act of rape was punishable with cutting off the man’s

hand or by paying a heavy fine (Kidwai 2001, 25). Thus one observes in Arthashastra that though homosexual sex is unsanctioned, it incurs fewer penalties than a heterosexual act of sexual offence (ibid).

Sibaji Bandyopadhyay provides an interesting account on Arthashastra. He says that Arthashastra refers to 'union between women' only twice, in the context of defloration. It lays down penalties for the same. However, the punishment for forceful defloration (by a man or a woman) is more stringent than for 'non-conventional' sex (Bandyopadhyay 2007, 22) Similarly, Vanita, Kidwai as well as Bandyopadhyay argue that Manusmriti appears even less judgmental in this regard by prescribing that a man who has sex with a man should bathe with his clothes on. The original sloka in Sanskrit that is sloka no.11/175 says, "Maithunnantu samasebya pungshi jositi ba dwijwa" (ibid, 23). A man, who sheds his semen in nonhuman females or in a man, had to perform a minor penance comprising of eating the five products of the cow and keeping a one night fast. Furthermore, sex between non-virgin women incurs a very small fine.

There is also mention of the explicit sexual interaction between women in the Valmiki Ramayan. Valmiki Ramayana describes how in Ravana's palace, Hanuman sees Rakshasi women lying semi clad in each other's arms as if with male lovers (Kidwai 2001, 27). Vanita suggests that being Rakshasa women, may have allowed the author a certain freedom in depiction of their sexual behaviour, but not all Rakshasas are represented by Valmiki as evil. Moreover, she says that Hanuman feels guilty of having violated the privacy of these women (ibid). It seems that Vanita wants to show that even an ancient text 'Ramayan' considered sacred to the Hindus, also talks of 'sexual intimacy between women', even when it is described in the context of Rakshasi women, the privacy of the act is respected.

Thus they argue that ancient texts do not deny the existence of homoerotic inclinations and homosexual relations. There is relative, overall tolerance towards it, however, it was considered subordinate to heterosexual sex. The texts try to prove that homosexuality is not alien to our culture. It was considered to be less derogatory than it is considered today. Also the penalty prescribed was minor in most cases (though in certain cases, it was seen as a moral offence).

Kamasutra- text on erotics

One of the most important ancient texts on sexuality is Vatsyayan's Kamasutra. It was probably composed and compiled between 2nd-4th centuries in north India. One of the most recent English translation of Kamasutra by Alain Danielou describes about the text, "Realistic and pragmatic in its approach, the Kamasutra deals without ambiguity or hypocrisy with all aspects of sexual life-including marriage, adultery, prostitution, group sex, sadomasochism, male and female homosexuality and transvestism. The text paints a fascinating portrait of an India whose openness to sexuality gave rise to a highly developed expression of the erotic" (Danielou 1994).

Similarly, a separate chapter in Vanita and Kidwai's given work (Kidwai 2001, 46-53) is dedicated to the Kamasutra. The Kamasutra, ancient doctrine by Vatsyayana on erotics defines Kama as all types of desire. It is the mental inclination towards the pleasure of the senses. Thus, unlike other texts, it does not identify procreation as the aim of sexual activity. Vatsyayan uses the term 'tritiya prakriti' (third nature) to refer to a man who desires other men. Moreover, Kamasutra says that the external appearance (whether feminine looking or masculine) of the man concerned makes no difference for his desire for men. Verses II. 9: 35 & 36 of the text, indicate occasional as well as regular sexual behavior between men, which may or may not be exclusive. Sutra 35 states that 'yuva' / young male servants, wearing earrings and flowers, perform oral sex on men. Sutra 36 describes as '*sadharana*' a mutual act of oral sex performed by two male friends on one another. These two men who are well-wishers of each other and have deep trust in one another mutually practice the given act. Vatsyayan explicitly uses the term '*nagarika*' for these friends, denoting that they had full status of the city dweller (ibid, 52). This denotes that these individuals, despite their homoerotic preferences, enjoyed full rights of citizenship in ancient India. Moreover, for Vatsyayan, oral-sex is the primary model of same-sex sexual interaction. Thus it is different from the popular understanding that imagines penetrative sex as the primary model of intimacy between homosexual men.

Kumkum Roy provides somewhat different reading of the Kamasutra in Mary John and Janaki Nair edited, 'A question of silence' (Roy 1998). She argues that in the text, lesbian sex is defined in terms of categories of heterosexual intercourse, with one of the women

involved being classified as ‘purusavat’, literally man-like. Thus, at one level, such relations were marginalized from the discussion: while at another level, recognition was accorded by assimilating them to heterosexual roles which were legitimized within the dominant tradition.

Roy’s reading of Kamasutra provides an interesting understanding and puts forth the argument that same-sex love was made to fit into heteronormative roles. Though this reading of Kamasutra also emphasizes that homoeroticism is not a foreign import, it also suggests that heterosexuality was a part of dominant tradition. In the next section, I shall examine the two texts discussed in Vanita and Kidwai’s given work derived from the Sanskrit tradition of India falling in the medieval period and see what conclusions could be drawn from these.

Peruntevanar’s Mahabharata: Aravanis

The book, *Same-Sex Love in India- Readings from literature and history* (Kidwai 2001) refers to an ancient cultural tradition suggesting ‘homoeroticism’ in the past that continues to exist in the present. In Tamil version of Mahabharata written by Peruntevanar, Arjuna’s son Aravan offers himself as a sacrifice to ensure victory for Pandavas in the Kurushetra Battle (Vanita 2001, 60). However, he asks for the wish to be married, before he dies. Since no woman wanted to marry a man who was to die the next day, Krishna’s help was sought. Krishna turned into a woman Mohini and married Aravan. Krishna as Mohini spent a night with him and when Aravan was beheaded the next morning, mourned for him like a widow. This event is celebrated annually as a 18 day festival by the transgendered community *Aravani* (italics mine)/ modern *Hijras* (italics author) in Tamil Nadu who consider them to be wife of Aravan. The festival witnesses ceremonial marriage of Aravan to the Aravani community and male villagers (who have taken vows to Aravan). It is followed by their widowhood by ritual enactment of his sacrifice. Thus, this folklore also strongly suggests the tradition of ‘same-sex’ conjugal relationship derived from ancient India.

Krittivasa Ramayana: The Birth of Bhagiratha

Ruth Vanita and Saleem Kidwai in their book '*Same-Sex love in India-Readings from Literature and History*' provide an account of the Bengali version of Ramayana written by Krittivasa, which suggests the birth of Bhagiratha as a result of sexual intercourse between the two Queen of King Dilipa of Ayodhya who died without producing any progeny. Shankara blessed the two widows of King Dilipa with child by saying, "You two have intercourse with one another. By my blessings one of you will have a lovely child", following which the two women lived together in extreme love and enjoyed love play (Vanita 2001, 101). Finally after 10 months, a boneless child was born named Bhagiratha, who later by Ashtavakra's blessings turned into a beautiful person. Being born of union of two vulvas/ *bhagas* (italics author), he was named Bhagiratha. Vanita suggests that the birth of a 'boneless child' as a result of sexual act between two women was actually referred by ancient medical treatise Sushruta Samhita composed by Shushruta. She says, "The medieval Krittivasa Ramayana makes imaginative use of this space provided by the ancient medical treatise" (Kidwai 2001, 26).

These two episodes have been used by the given scholar as an instance to show that 'sexual intimacy between same-sexes' found sanction in the mythological Sanskrit tradition in India. According to my understanding, a relevant question arises from such interpretation. Though these two instances (Krishna in his female form Mohini marrying Aravan; and Bhagiratha's birth out of sexual union between two women) demonstrate sanction for sexual intimacy between same-sexes, they operated within the normative framework of sexuality. This is to suggest that in the first case, Krishna's marriage and sexual encounter with Arjuna's son Aravan took place after Krishna's transformation into a woman. That means that the marital union was heterosexual. In the second case of Bhagiratha's birth, though sexual intercourse was allowed between two women, the period and purpose of their sexual intimacy was defined. It was primarily done for producing an offspring in the absence of a male partner. Moreover, the account in Krittivasa Ramayana shows the birth of 'a boneless child' as a result of intercourse between two Queens of King Dilipa. This seems to suggest that the intimate love play between two women results in the birth of a 'child with a distorted body' and not a

healthy child. Therefore, I doubt how correct would it be to use these two instances to trace 'homoeroticism' in history of Sanskrit tradition.

2.2 b) Medieval sources

In this section, I would engage in responding to the given questions: What were the literary sources available from the medieval period? What aspect of medieval literature did the queer theorists look into to trace the genealogy of queer tradition in India? The cultural/ literary sources used by 'Queer theorists' in this regard was Ziauddin Barni's (1285-1357) accounts of the Mughal court and the Sufi literature during the period.

Sufism and sexuality

Jamal J.Elias views Sufism as an umbrella term for a variety of philosophical, social and literary phenomenon occurring within the Islamic world and also as the spiritual muse behind much of pre-modern verse in the Islamic world (J.Elias summer 1998, Vol.31, No.3/4). It advocated an intense concern for divine love, combined with certain physical and psychic disciplines to create states of ecstasy in its practitioners (S.J.White Summer 1965, vol.5, No.1). Early Sufi mystics preached detachment from worldly goods and denied themselves all physical comfort.

The credit for transforming Sufism into ecstatic love mysticism is given to an Iranian woman Rabiaal-Adawiyya, after whom the theme of 'God as beloved' became standard within Sufism (J.Hoffman-Ladd September 1992, Vol.18, No.3). Medieval male Sufis often used gendered imagery to describe master-disciple relationship (Murshid-Murid).For instance, as Margaret Malamud points out, the 13th century Sufi Sadr al Din Qunawi wrote, "I have drunk from the breasts of two mothers," thereby referring to his biological mother and male Sufi master respectively (Malamud Spring 1996, Vol.64, No.1, 89). Similar gendered language was used to describe Sufi ritual of initiation. The transmission of a prayer formula (dhikr) from master to disciple was described in terms of injection of seed/semen into the soil/womb of the disciple (Malamud Spring 1996,

Vol.64, No.1, 89). Jalal-ud-Din Rumi wrote love poetry about his master Shams al-Tabrij.s Some Sufi saints thus used a language of passionate love as a metaphorical tool to describe divine human encounter. They argued that human love could be an aid in reaching God. Sufi Mystic and philosopher (1165-1240) Ibn Al-Arabi drew correspondence between the original divine creative act and other forms of reproduction/ *tawalud* and procreation */tanasul* (italics in original) (ibid, 99). Sexual union provides for the possibility of true mystical insight to the Gnostic.

According to Ibn al Arabi, one of the characteristics of the Qutb (the Axis, highest in the hierarchy of saints) is 'love of beauty' in all its form, for they all express the absolute beauty of the divine (J.Hoffman-Ladd September 1992, Vol.18, No.3). Hoffman argues that this idea has led some Sufis to seek out the company of beautiful girl or handsome youth which best reflects the divine beauty. Such practice in Sufism is referred to as *nazar* (italics in original) the contemplation of a beautiful young man, considered to be a witness to the beauty of God. Ibn al Arabi justifies this by saying that a man's greatest pleasure will be in that whose form corresponds to him, just as God reserves his greatest love for man who was created in his own image. Furthermore, the benefit of keeping company with the beardless youth is that they are newer, of more recent origin in their Lord, than the older man, "and whatever is closer to its creation is a better indication, more sacred, and more abundantly the occasion of mercy than the older man" (ibid, 90) . Arabi further says that since the Gnostic looks at a beautiful youth this way, as a reminder of God, keeping their company does no harm to him. Therefore, when a Sufi looked at the face of a young boy, he saw in it only the beauty of God's face. Sufis quoted the *hadith* /sayings of the prophet (italics in original) to support such claims. One such *hadith* commonplace in Persian and Urdu poetry was, "I saw my Lord in the shape of a beautiful young man with his cap away" (Malamud Spring 1996, Vol.64, No.1, 90).

Ruth Vanita and Saleem Kidwai have used instances of poetic expression of love within Sufism as an illustration of homoerotic love. They conclude Amir Khusro's love for Sufi saint Nizammudin Aulia, through his love poems. The musician and persian poet Amir Khusro (1253-1325) developed his interest in Hindvi mystic poetry owing to his association with Chisti Saint Nizammudin Aulia. His love for Nizammudin is reflected in

most of his poems where he calls Nizam as his ‘beloved’. Following are extracts from one of his Hindi poetry (pp-128-129) translated into English (Kidwai 2001, 128).

“...Khusro has given himself to Nizam-you made me your bride when our eyes met...Khusro has given himself to Nizam-protect my honor, keep me veiled....he declared me his matchless female disciple, let the women and girls say what they like. I am sold on your beautiful face Nizam...My blossoming youth is red with passion. How can I spend this time alone? Will someone persuade Nizammudin Aulia, For the more I coax him, the more he acts coy...I have found my lover, found him in my courtyard, I have found my pir, Nizammudin Aulia...”

The quotes reveal Khusro’s intense love for Sufi Saint Nizammudin Aulia and the language used by the poet is indicative of a language of a passionate lover, longing to meet the beloved. Biographies on the Sufi mystic Shah Hassayn (born in 1539) reveal his love affair with a Hindu boy Madho. His biography is preserved in the form of Persian poem entitled Haqiqat-al-fuqura written by Shaikh Mahmud Ibn Muhammad Pir (a close attendant of Madho).The poet however, sees the love play between the two as spiritual initiation in which Hassayn passed on the spark of divine love to Madho through touch. The following excerpts from the given poem translated in English by Aditya Behl testify the loving homosexual relationship between the two (Kidwai 2001, 146)

“Madho was wondrous in his beauty and his grace; a young man refined, noble Brahmin by descent...On that same street Hassayn was reeling, in that state of ecstasy, he saw Madho’s glowing face and his heart wailed with a cry of delicious pain. My friends, he cried out, look over there-that young man has just stolen away my heart! Hassayn and Madho sat together in one room..Madho took from his hand a glass of deep-hued wine- he drank from it, and Hussayn kissed his wine-sweet lips...Each of them in each act is captivated by the other, loving each other with the kindest intimacy...”

The poetic extracts mentioned above reveal the acceptance for ‘same-sex sexual intimacy’ in Sufism. It also shows the spiritual relevance of *nazar*, i.e. contemplation of the beautiful face of a young male lover, in Sufism, as discussed in the last section.

Barni's account of Same-sex love in Mughal court

Another interesting expression on 'same-sex love' mentioned by Vanita and Kidwai is found in Ziauddin Barani's accounts in *Tarikh-e-Firuz Shahi* (S. Kidwai 2001). Barni does not condemn male attachment with men on grounds of Sharia or Zawabit, rather condemns the Sultans who ruined their rule for their blind love for male lovers. Barni gives instances from the reign of two rulers of Khalji dynasty- Alauddin Khalji (1296-1316) and his son Qutubuddin. The two rulers were in love with Malik Kafur and Hasan respectively. Alauddin appointed Malik Kafur as the deputy ruler (Malik Naib) and entrusted him the responsibility of Government. Enumerating it as one of the reasons for the downfall of Khalji dynasty, Barni says, "The third reason was that the Sultan loved the Malik Naib very much. He made him the commander of his army, a minister. The heart of this sodomite beloved of his was soon corrupted" (ibid, 132). Alauddin's son, Qutubuddin fell for a boy Hasan, gave him the title of Khusro Khan and made him a minister. Barni writes, "He was more in love with Khusro Khan than his father Alauddin had been with Malik Naib" (ibid, 133). Eventually, Khusro Khan killed Qutubuddin during one of the nights of their love making.

Barni thus concludes by saying, "The roots of the Alai state were shaken. In the way Alauddin and Kutubuddin were destroyed by Malik Naib and Khusro Khan, the wise and those looking for lessons will see the results of pampering young men and catamites" (ibid, 135).

Thus, from the discussion in this section one finds that homosexuality and homoerotic love did exist and was socially acceptable as per the given accounts in the medieval period. As per the account given by Saleem Kidwai, Barni in *Tarikh I Firuz Shahi* (italics mine) does not condemn male attachments in the Khalji dynasty on religious grounds but on political reasons. That is to say, he condemns the Sultans who lost their judgment and power in their passion for male lovers.

In case of Sufism, what emerges is that the 'love of beauty' (of a woman or a young man) was seen as a reflection of the love for God, hence an integral part of spiritual attainment. From such conclusions however, can one say that homosexuality was consciously

practiced within Sufism? It is difficult to say so because the concerns of Sufi Gnostics regarding same-sex love (as they themselves claimed) were different. They thought that beauty of a young man was the reflection of God's beauty, hence to love him was to love God. But it also suggests that by giving spiritual connotation to such relation was to undermine the 'conscious sexual element' in such relation. However, one can also argue that since, same-sex love was not looked down upon in Sufi literature; hence, it can be used to demonstrate social acceptability of the practice.

3) Internalizing Homophobia- the impact of the colonial state

In the previous section, texts from ancient and medieval period were discussed. As argued by concerned Queer scholars, these texts revealed an overall tolerant tradition in pre-colonial India. As Ruth Vanita suggests, in pre-nineteenth century India, love between women and men, even when disapproved of, was not actively persecuted (Kidwai 2001, xviii).

In this section, I would explore the attitude towards homosexuality since 19th century and the impact of Victorian morality of the British colonial rule. I shall try to see the portrayal of homosexuality in the modern literary discourse and the reaction of society and colonial state to it. I would also discuss some relevant literary works in post-colonial India to see how far the legacy of colonial rule continued. The argument for this section has been mainly drawn from Ruth Vanita and Saleem Kidwai's work *Same-Sex love in India- Readings from Literature and History* (2001).

With the suppression of the revolt of 1857, one witnesses the beginning of a regime of criminalization for homosexual behavior. The criminalization of homosexuality came in the form of 1861 law, section 377 of Indian Penal Code. It read- "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine." (This law was used constantly by the police to harass Homosexual and transgender). Moreover as Scott Kugle suggests, following the suppression of the 1857 revolt, the much celebrated tropes of male-male love were erased by Urdu litterateurs and by later nationalists (R.Vanita

2002). Thus, one needs to explore homophobic voice in the literary materials of 19th-20th century India in the next section.

3.1 a) Victorian impact in the Modern texts-

In no time, the modern educated Indians began to internalize the new homophobia. They tended to accept British stereotypes by insisting that Indian culture had much in common with Victorian values and it got corrupted during medieval period. The rhetoric of modern Indian homophobia with concepts of unnatural and sinful draws directly on a Victorian version of Judeo-Christian discourse (R.Vanita 2002, 3)

Madhvacharya's introduction to (Hindi translation, published 1911) *Kamasutra* and Pseudomedical '*Do Shiza*' edited by Hakim Muhammad Yusuf Hassan (1934) instructing parents to protect their children from masturbation and homosexuality were influenced by victorian campaign for sexual purity.

One of the texts that reflected Victorian morality of the British Colonial period was Katherine Mayo's 'Mother India' (1927) that painted a distorted picture of India. She claimed that overpopulation, poverty and disease in India have nothing to do with British colonization but are directly traceable to Hindus', especially men's 'sex-life'. She infact connects political militancy of Hindus with deviant sexuality (Kidwai 2001, 197). In response to such outrageous remarks, Indian nationalists reacted by claiming that homosexuality and masturbation were unknown in Hindu society.

A section of nationalists acknowledged that homosexuality was prevalent in India but claimed that it was originally imported from somewhere else. For instance, Shri Ramnath Lal 'Suman' (in his foreword-'Scientific Analysis of unnatural fornication') blames homosexuality on Muslims. He says that there may have been isolated cases in India before the advent of Islam, but it was Arabs and Persians who brought the practice with them (ibid, 249).

Such accusations reflect concern of the Hindu right that blames Islamic intervention in India as 'a threat to the indigenous Hindu culture'. Such ideology thus tries to portray the

arrival of Islamic rule in India as the genesis of homosexuality and equates both as external to Indian culture.

3.1 b) Rekhti Poetry

Interestingly, homosexual love between women came to be depicted more explicitly during the 19th century. This was evident in the ‘Rekhti poetry’. Rekhti is a kind of Urdu poetry written in the female voice by male poets in the late 18th and early 19th centuries (Kidwai 2001, 191). It was introduced by Sa’adat Yar Khan Rangin in appreciation of the particular idiom used by the famous courtesans of the day (ibid, 49). In Rekhti, women are clearly shown expressing their (sexual and emotional) preference for women over men. It used words like ‘Chapatbaz’ to refer to female same-sex relation. Critics like T.Graham Bailey and Ali Jawad Zaidi considered Rekhti as obscene for its depiction of lesbian sexuality (ibid, 191). T.Graham Bailey (A History of Urdu Literature, 1928) referred to Rekhti as the language of “women of no reputation” and the poetry “a debased form of lyric invented by a debased mind in a debased age (ibid). According to Ali Jawad Zaidi, it catered to those “who sought decadent pleasures. It is however useful for a study of the miserable life the womenfolk led under the feudal order, and the resultant discontent and the evil it bred (ibid). Carla Petievich however suggests that the critics drew no meaningful distinction between ‘lesbianism’ and ‘the particular emotions of women’; to them, these emotions constitute decadent pleasures and are socially taboo, rendering Rekhti illegitimate poetry (R.Vanita 2002, 51). By the 20th century, Rekhti became a marginalized body of literature. All Rekhti poetry however was not suggestive of sexuality. The ‘lesbian’ content of rekhti verses was constituted by the use of terms *dogana* and *zanakhi* (italics mine) used in the following couplet by Divan Rangin-O-Insha (1924) as mentioned in Vanita and Kidwai’s work (Kidwai 2001, 226):

“When did my Zanakhi last come to my house?
 When did I last have a bath?
 The girl has been so annoyed for a long time!
 When did she and I make up our quarrel?
 O Dogana, you have come to rob me again”

Another poetry by Shaikh Qalandar Baksh ‘ Jurat’ whom Ali Zaidi describes as “ a gay, dissolute and handsome young man” was Chaptinama, (Kidwai 2001, 223). Following verses are an extract from his given work:

“There’s no love lost between women and men these days
 New ways of being intimate are seen all around.
 Everyone knows about women who love women-
 At night these words are always to be heard:
 The way you rub me, ah! It drives my heart wild
 Stroke me a little more, my sweet *Dogana*.”

In these poems thus, we find reference to the terms ‘Dogana’ and ‘Zanakhi’ to indicate lesbian love. *Dogana* refers to doubling or twoness, while *Chapti* (italics in original) literally means sticking or rubbing together. Both terms refers to lesbian activity as well as women given to such activity (ibid, 221).

In the 20th century, Rekhti was labeled obscene and systematically eliminated from the Urdu Canon (ibid, 220). Apart from charge of obscenity, accusation of effeminacy of Indo-Muslim culture emanating from British colonial discourse also contributed to the suppression of Rekhti. Muslim poets began to shy away from making creative expressions in their writings that ran the danger of portraying them as effeminate and obscene. Thus, this was another way in which colonial discourse played a role in erasing ‘homoerotic’ voices in Indian tradition.

3.1 c) Lihaf and Chaklet and other writings- Reflecting ambivalent views

Another instance of suppression of ‘expression on lesbianism’ was of Ismat Chughtai’s short story ‘Lihaf’. It was about a lesbian relationship enacted in the Zenana of a noble household and witnessed by a young girl. The British Government charged the story with obscenity in 1924 (Kidwai 2001, 283). Unfortunately in a late interview, Chughtai went on to denounce lesbianism and repented over her writing. She infact said that she was happy to see the story’s protagonist remarried (heterosexual) some years later. These

shows how any talk on homosexuality began to be questioned and condemned upon, leaving little scope for free expression on the subject. One would be acquainted with such debates further while discussing Bechan Sharma's (Ugra) story 'Chaklet'/'Chocolate'.

Though people like Chughtai and Ugra made an explicit discussion on homosexuality through their fictional writings, on being attacked with the charge of obscenity, they retracted claiming that their writing was meant to portray homosexuality as a vice. Homophobic society did not accept any talk of (existence of) homosexuality even in fiction.

Pandey Bechan Sharma, (pen-name-Ugra) a hindi writer and journalist published a short story 'Chaklet' on homosexuality in a hindi weekly Matvala in 1924. He wrote three more short-stories on the subject and in 1927, published all eight as a collection entitled 'Chaklet'. Though the stories denounce homosexuality, it was charged with obscenity. Hindi litterateur Pandit Banarsidas Chaturvedi began a movement against such sensational and obscene literature, which he termed as *Ghasleti* literature. Hindi literary figure and nationalist like Premchand also denounced Ugra's writings. He was of the opinion that homosexuality should be combated by pamphleteering and not in literatures whose ideals should be kept pure (Kidwai 2001, 247-248). Ugra's critics began to argue that while he claimed to oppose homosexuality, the actual effect of his writings was to excite his readers and encourage homosexual desire (ibid).

Ugra was being attacked from various sides. Cartoons in Hindi papers depicted him carrying a trashcan overflowing with his writings. Ruth Vanita says that in another cartoon, he is being welcomed by a band of tribals, trying to imply that only 'savages' can appreciate his writing (ibid). Strangely, those who denounced Ugra, on one hand associated homosexuality with the west; on the other hand they themselves draw on the Western sources to legitimize their homophobia. For instance, Padma Singh Sharma was quoted in the editorial of Vishal Bharat, "This is a murderous attack on Indian culture and mores. Decent people should boycott such newspapers just as they do foreign cloth and intoxicating substances." (Vishal Bharat, vol.2, No.1, July-Aug 1985, 132). While the same journal, Vishal Bharat (vol.2, no.1, august 1929, 264) published a translation of Professor Gilbert Murray's letter to the editor of Nation and Athanaeum (March 23,

1929, 876) criticizing ‘indecent writings’ condemning R.Hall’s lesbian novel *The Well of Loneliness* (Kidwai 2001, 251).

Vanita claims that though Ugra wrote the book to denounce homosexuality, many readers received from it positive representations of male-male sexual relations. Except for one story, in rest of the stories all the protagonists (in Ugra’s book) are respectable members of society. They are familiar both with Indian and western literatures. Some of them even trace illustrious lineage for homosexual love, from Socrates to Surdas and Tulsi. For instance, in one of the stories ‘Paalat’ the protagonist Mahashay who falls in love with a boy, engages in the following dialogue with the narrator (ibid, 249)

Narrator-“Do you call this love? A man to fall in love with another man for his beauty! I think, brother, that just as “woman is not charmed by a woman’s beauty”-(quote from Tulsidas’s medieval epic Ramacharita Manas) neither should man be charmed by man’s beauty. ”

Mahashay-“But the world cannot be run by your thinking alone. Wherever beauty may be found, in a woman or a man, I am the slave of love...Search history. Raskhan fell in love with a boy and then became a devotee of Krishna. Surdas was madly in love with Krishna. Tulsi? Have you read the blazon of Rama’s beauty in Vinay Patrika? What else it is but a portrait of an extremely beautiful boy? ”

Vanita says, in the passage quoted above, the homophobic narrator quotes Tulsidas’s 15th century epic, however the bisexual Mahashay cites Tulsidas right back, thus confidently claiming a right to interpret a common literary heritage in his own way. Moreover, most of them are married, thus their desire for men cannot be explained away as due to a lack of options.

Charu Gupta argues that the three-pronged attack on Chaklet by the colonial state, the growing nationalist movement and the emerging high literary trends expressing a new ‘Hindu’ identity –despite the books anti-homosexual stance, came about because by ‘speaking the unspeakable’ it acknowledged the prevalence of such practices (Gupta 2001, 61). She further says that the attack on ‘Chaklet’ was a part of nationalist critique, for the ‘degendered Indian’ male was one stereotype of colonial domination’ which it seemed to prove, by casting doubts on the ‘stability of the heterosexual regime’. Homosexuality thus began to be seen as a threat by the colonizers as well as the nationalists who were fighting against colonization. While the mainstream nationalist

movement was opposing oppression by the colonial rule, it was contributing to a parallel oppression of the 'homosexual' voices.

Another important aspect that comes out of this 'Chaklet' episode is M.K.Gandhi's take on the issue. It was Banarsidas Chaturvedi who took the issue of Ghasleti literature to Gandhi. In 1951, Chaturvedi disclosed that Gandhi had read 'Chocolate/Chaklet' on his bidding and remarked that the aim of the book is pure since the author generates "revulsion against inhuman behavior" (Kidwai 2001, 251). Gandhi wrote in *Young India*, (Navjivan publishing house, 1931, vol.xi, 212) 'unnatural though the vice is, it has come down to us from times immemorial.'⁶ Thus interestingly, he does not deny its existence but confirms it from personal letters received from boys. But he terms it as a vice- an unnatural vice. Merchant says that Gandhi complicates the issue by advising 'not to treat sex between men as a different category from sex between men and women.' He believed that there was no difference in kind between heterosexual and homosexual lust because (non-procreative) sexual activity arising out of lust was a sin. Merchant says that Gandhi's statements clearly unwrap cultural attitudes, which make same-sex love 'deviant', a 'sin' and a 'vice' in the Indian tradition (Merchant 2009, xiv). We would see in the following discussion that Gandhi was not the only one to call it a vice.

Hakim Muhammad Yusuf Hasan too in his book (which he claimed as a medical text) 'Do Shiza' compared homosexuality with a vice, a pathology. He writes, "Since there are men who prefer to love men, there is no reason why there should not be women who dislike men and prefer other women. Therefore, there are women who to all intents and purposes are free from the qualities of women and have manly qualities...Desire and lust drips from their eyes. Simple, respectable women accept their love and friendliness as affection. Finally they seduce them towards illicit relations. The simple one turns into the unbought slave of the manly, shameless one." Hakim Yusuf even claims to have treated one such woman (Kidwai 2001, 261).

Another writer who seems to share Hakim Yusuf's view point was Rajkamal Chaudhuri who in his novel 'Machli Mari Hui' (published in 1965, reprint 1994 by Rajkamal

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Prakashan) depicts lesbianism as the result of ‘frustrated heterosexuality and as unsatisfying because the women involved are really obsessed with men’ (Kidwai 2001, 204). Finally one of the female characters, Shiri Mehta, whom the author calls neurotic is said to be cured when her husband Nirmal returns to her after having raped the other woman Priya. Priya’s father who happens to be a Doctor writes to Nirmal thanking him for curing her by forcing her into a heterosexual sex. He does not see rape as an intolerable vice rather considers homosexuality as a bigger pathological, unnatural vice (Chaudhari 1966, 114). Similar writings are to be found in the 1980’s and 1990’s. Nirmala Deshpande’s story ‘Mary had a little lamb’ in Marathi (1982) (ibid 327) and Shobha De’s novel ‘Strange-obsession’ (De 1992) portrays one of the lesbian woman as westernized, predatory, manly while the other one is rescued from lesbian affair by marriage. In De’s story one of the female protagonists ‘Amrita’ who has been shown as docile and later rescued from lesbian relationship with aggressive lady Minx, by marrying a man, calls the lesbian relationship as unnatural. She says to Minxs’ father, “Your daughter and I you probably know already, we shared an unnatural relationship. She forced me into it, blackmailed me...And then I began to enjoy it. I became dependent on her, so dependent I thought we would spend our life together till I met my husband. It was he who saved me from her clutches” (ibid, p-204).

Thus such stereotyping of homosexual characters was another trend in the literary world. Lesbian women were shown as masculine, aggressive, lustful, westernized who trapped cultured feminine women into their lust. Most of the stories ended up in the marriage (into a heterosexual relation) of one of the lesbian woman (mostly of the feminine one). This tended to prove that lesbian relations were an aberration or a temporary deviation that was cured by engaging into heterosexual intercourse (either by marriage or even by rape).

Ruth Vanita and Saleem Kidwai also hint at the possibility of existence of homosexual relationship between poets Josh Malihabadi (1896-1982) and Saghar Nizami (Kidwai 2001, 274-282). Sunil Gangopadhyay’s Bengali novel ‘Sei-Samay’(1982) was inspired by literary figure Michael Madhusudan Dutt’s (1824-1873) friendship with Gourdas Basak. Dutt in his letters to Basak calls him as his “ever beloved friend” and in one of the

letters; he says that he is writing at midnight which is the “hour of writing love letters.” Dutt had dedicated several English lyrics to Basak (Kidwai 2001, 336-337). Noted Novelist Vikram Seth and poet Suniti Namjoshi had openly talked about their sexuality in their poems and have supported decriminalization of homosexual act. One finds Seth write on Gay-love (titled *Guest* and *Dubious*) in his first collection of poems ‘Mappings’ (Calcutta, Writer’s Workshop, 1981). Vikram Chandra’s story ‘Artha’ also talks of homosexual love, between a Muslim Computer Jock and a Hindu. These works acquire significance as their openness about issues of homosexual orientation inaugurates acknowledgment of homosexuality as an acceptable form of sexuality in post-colonial writings in India.

Conclusion

In this chapter I discussed the use of the given linguistic resources of ancient and medieval period by some of the queer theorists to reveal that same-sex love and eroticism have origins dating back to history. Their central argument was that ‘same-sex love’ was recognized for centuries. However, they further suggested that certain processes in the 19th century accompanied by colonial modernity, erased history of homoeroticism. Homophobia became dominant and homosexual characters in literature began to be stereotyped negatively. As Hoshang Merchant points out that a visibly gay or lesbian category in India began to be perceived as a threat to mainstream Indian culture; any articulation of such love would destabilize the ‘dominant model of history’ and hence homoerotic love came to be constructed as ‘deviant’, ‘unnatural’, as sin, as a vice (Merchant 2009, xiv).

One of the interesting debates that emerged in this chapter was regarding the need for tracing the historical roots of ‘same-sex erotic engagement’ in the Indian tradition. Most of the queer theorists suggested that tracing the genealogy of queer tradition in India is necessary, while some of them like Shivananda Khan did not consider this strategy to be of much use to queer politics/ movement in India. Interpretation of literary/ cultural resources from the past is however quite subjective and hence its authenticity has been put to question. Queer historians justified the search for ‘existence of Queer accounts in

history' on the very fact that Queer voices were non-existent in the prevalent heteronormative historical narratives. Queer historiography not only enabled them to counter the claims of homosexuality being an import but also provided a sense of collective memory and identity.

Chapter 2

HOMOSEXUALITY IN INDIA: LEGAL DISCOURSE

In the previous chapter, attempt was made to trace the discourse around queer historiography, where I tried to engage in the debate around validification of homosexuality by certain Queer theorists who traced the genealogy of 'alternate sexuality' in literary and cultural material of the past. A number of texts from ancient to medieval period in various Indian languages were presented by the Queer Historians to build a strong case for Queer historiography. The emergence of homophobia as a result of colonial discourse in India was also discussed. In that given section, the reflection of homophobia in certain literary works of the early and mid 19th century during colonial period was included in the debate. The roots of such homophobia also need to be located within the colonial law. The present chapter can be seen as a continuation of the debate on the colonial legal discourse on homosexuality and criminalization of homosexuality in India as a legacy of this discourse influenced by Victorian morality.

Legal discourse in India has largely been a product of colonial discourse. The Indian Penal Code/ IPC drafted by the British were meant to control and administer the Indian Subjects. In Post-colonial period, many provision of IPC despite losing its significance, continued to exist without any modification, of which Section 377 was one. Law is one of the important systems of knowledge that deeply impacts our understanding of homosexuality in India. Queer activists argue that law has been used at the disadvantage of people with 'alternate sexual orientation'. The *LGBT* (Lesbian, Gay, Bisexual, and Transgender) community was framed as *deviant, abnormal, criminal* (italics mine) by the medico-legal discourse. Infact the harassment of people with non-heterosexual orientation was very much legitimized by the legal sanction against homosexual / non-heteronormative sex.

Law plays an important role in producing a regime in which sodomy laws are used to create fear psychosis among the Queer people, ultimately forcing them to police themselves. Thus the articulation of sexual rights by the *queer* community and activists has centered on countering the misconstruction/misrepresentation regarding the queer especially the homosexuals within the ambit of law and medicine. Recent past has witnessed an increase in ‘queer’ activism around law. Reading down of Section 377 IPC can be seen as a byproduct of such activism, along with other potential factors such as the fear of HIV/AIDS which would be discussed in the next chapter, on Medical discourse on Homosexuality.

The chapter to begin with, would comprise of a brief but significant analysis of the British Wolfenden Committee Report of the 1950’s (recommending decriminalization of consensual homosexual sex) and the famous Hart-Devlin debate emerging out of the recommendation of the given report would also be included, so as to have a broader International perspective on the issue. This would be followed by an exploration of Indian context of the debate around the issue of law and criminalization of the ‘homosexual sex’ with focus on the Section 377 (of the Indian Penal Code). Few significant cases of such persecution in India would be discussed to reflect the attitude of the state and the judiciary towards sexual minority in India. The last section would focus on the recent Delhi high court judgment of July 2009 that read down Section 377 of IPC to allow for ‘consensual, sex between same-sex adult partners in private’. This section would consist of exhaustive arguments given by both sides (those opposed to criminalization of homosexuality and those in its favour) in the court and the analysis of the arguments from each side. There would also be a section on the varied response generated by the July 2009 Delhi High Court judgment on different sections of the society.

This chapter is significant as it addresses one of the key concerns of the Queer Community that pitches its rights as citizens against a set of socio-cultural values claiming to oppose ‘same-sex sexual orientation’. The chapter traces both sides of the debate and envisages the understanding of Homosexuality within the legal discourse. The descriptive analysis of the Delhi High Court Judgment on decriminalization of

homosexuality (consensual and private) will provide useful insight into the changing nature of legal discourse on homosexuality.

1) Legal discourse on homosexuality in England

Section 377 of the Indian Penal Code owes its origin to the Colonial discourse during the British rule in India (Menon 2007). Thus tracing the historical context of legal discourse on homosexuality in England (from where Section 377 of Indian Penal Code originated) becomes important. Thus, this section would comprise of an analysis of Wolfenden Committee Report on decriminalization of homosexuality in England and the famous debate between H.L.A.Hart and Lord P.Devlin on the issue, post Wolfenden report.

The first recorded mention of ‘sodomy’ in English law dates back to legal treatises *Fleta* and *Britton* (italics in original) in medieval England. It was well documented that ‘Sodomites’ were hunted, punished and burnt alive (Gupta Alok 2011, 119). However, the first codified offence against homosexuals was by the ‘Buggery Act of 1533’ enacted in the reign of Henry VIII. The death penalty for buggery was abolished in England in 1861 and finally in 1967, consensual homosexual act in private was decriminalized following Wolfenden Committee recommendations, which I would discuss in the following section.

1.1) Wolfenden Committee Report and Decriminalization of Homosexuality

In this section, the purpose is to analyze the Wolfenden Committee report whose recommendations resulted in decriminalization of homosexuality in England. Wolfenden Committee was appointed by Churchill’s home-secretary Sir David Maxwell Fyfe in 1954 with John Wolfenden (the Vice Chancellor of Reading University) as the Chairperson. The committee had 15 members, 12 men and 3 women. The committee interviewed only three homosexual men who identified themselves as such. It made the following important recommendations (Gleeson 2007)

- Decriminalization of homosexual act in private

- Implementation of research into the aetiology of homosexuality and the development of rehabilitation programme other than prison sentences for homosexual offenders so that they might be ‘treated’, medically or otherwise.
- Age of consent (for homosexual sex) to be 21. This was to ensure that as many young men as possible are captured with a view to ‘treatment’.

Almost a decade after the recommendation was made, Sexual Offences Act of 1967 decriminalized homosexual sex in private between consenting adults. However, the intent and the real purpose of the Committee have been subject to scrutiny. Kate Gleeson argues that Wolfenden strategy was not concerned with freedom, rather the motivation of state was to curb the public display of homosexuality (ibid, 333). As Leslie Moran points out that in recommending decriminalization of homosexuality in private, the committee ‘hoped that homosexual acts might disappear into a space beyond the law’, with those who performed them secluded- legally and practically (ibid). The basic problem that troubled the committee was what it was about homosexual sex that should be criminal.

Homosexuality was understood by Fyfe as unnatural-an aberration that warranted an inquiry to throw light on why there has been such a large increase in this class of crime so that such behavior may be controlled by the state. Thus Gleeson argues that the Wolfenden strategy was not concerned with freedom. Then, what was the main motive of the committee? Gleeson clarifies that power was centered on the creation and solidification of the ‘sexual subject’ as an object of control (ibid, 335). This was typical of the Victorian tradition and the committee performed a part in the Victorian project of sexual classification and regulation. Constituting the ‘homosexual subject’ formed the technique of the committee. In Foucauldian understanding, once the ‘subject’ is created and ‘knowledge of the body’ is acquired, it becomes easy to control it.

Prior to 1967, Victorian law was silent on explicit mention of homosexuality and crimes of homosexuality did not exist. Crimes relating to men having sex together fell under those of ‘sodomy’, ‘Buggery’ and ‘gross indecency’. Traditionally in the British law, a sodomite was not understood as a homosexual. “Sodomy represented a desire unfettered,

appetite ruling the mind rather than ruled by it and was less about desiring men than about desiring everything” (Gleeson 2007, 335).

The British ‘Labouchere amendment’ of 1885 (Section 11 of the Criminal Law Amendment Act) made ‘gross indecency’ a criminal offence. However, the act did not define gross indecency as homosexual behavior. Poet Oscar Wilde in 1895 and Mathematician/Cryptoanalyst Alan Turing in 1952 were convicted under this act and sentenced to 2 years’ hard labour and chemical castration respectively. In 1952, Alan Turing (1912-1954) had an affair with a man named Arnold Murray, who later got involved in a burglary at Turing’s house. Turing reported the crime to the police. On acknowledging a sexual relation with Murray during investigation, the police charged both with ‘Gross Indecency under Section 11 of the Criminal Law Amendment Act of 1885’. Turing was given a choice between imprisonment and hormonal treatment designed to reduce libido. He accepted chemical castration and was injected female hormones. Moreover, he was barred from continuing his cryptographic consultancy for British Intelligence Agency ‘Government Communications Headquarters’ and even denied entry to the U.S. after conviction. All this depressed Turing who died of cyanide poisoning (allegedly having committed suicide) two years later in 1954.

The homosexual subject was not labeled in law until the Wolfenden report on decriminalization was acted on in the ‘Sexual Offences Act’ of 1967. The ‘homosexual subject’ was born out of a Victorian process of labeling and exclusion in response to ‘expert evidence’ and testimony, subsequently the publication of report signified his creation as an object of control (Gleeson 2007). The committee sought the ‘cause’ of homosexuality in the family and other agents of individual socialization. It used as evidence, the 1939 ‘Home Office Report’ of the Psychological treatment of crime’ based on an investigation at Wormwood Scrubs prison that seemed to implicate boys’ school, the church and mothers, in the making of homosexual men (ibid). The 1939 report advocated treatment of certain homosexual offenders to cure them. Use of such reports as evidence itself shows the intent of the committee.

Moreover, in the Sexual Offences Act of 1967, ‘Buggery’ appeared as a predicate of homosexuality. Section 7 says, “A man shall be treated as doing a homosexual act if and

only if he commits buggery with another man or is party to the commission by a man of such an act.” For the Wolfenden Committee, the interest laid less in Buggery per se, than in the inclination to engage in homosexual sex, for it is inclination that might be ‘treated’ (Gleeson 2007). In fact one of its recommendations was to ‘treat’ homosexual offenders medically or otherwise.

Paul Baker argues that the correlation of acts of homosexuality with the identity itself is intrinsically and irreversibly linked in common understanding, especially since Wolfenden report. Thus, the targeting of homosexual identity through ‘homosexual offences’ in precedence of a simple sex act (buggery) meant that the criminal status of ‘that act’ had been extended to anyone who was suspected to be in a homosexual relation. Such association of behavior with identity suggested ‘guilt by association’. In the case of Wolfenden Committee recommendations, it means, it is not buggery in private that is tolerated, rather it is homosexuality (only) in private that is tolerated (ibid). Thus began the production of the ‘homosexual subject’ and homosexuality as a discourse resting on acts and behavior.

One of the persons to testify for the committee on his own volition was Wildeblood. For the Committee, Wildeblood subscribed to its categorization of ‘good’ and ‘bad’ homosexual (ibid). The Committee was persuaded of the popular view that defined good homosexual as genuine and monogamous (staying out of public view) while, bad homosexual as opportunistic and promiscuous. Wildeblood’s testimony aimed to promote the case of the ‘good homosexual’ who should be left alone in private not to harm anyone. This was in sync with Government’s aim to cease the public display of sex. Thus, Wolfenden Committee was one of the ‘modern techniques’ used by the Government to control sexuality through ‘newly constructed identities.’ Gleeson argues that the report enabled the constitution of ‘homosexual’ as a sexual subject and hence to be an object of control similar to the common prostitute. The recommendation for ‘Decriminalization’ was aimed to lead to docility, silence and obedience once ‘homosexual subject in law’ was created.

1.2) Hart-Devlin Debate : Post-Wolfenden Report

The Wolfenden Committee report (1957) on decriminalization of consensual homosexual sex between men in private received mixed response and generated an interesting debate between Lord Devlin and H.L.A.Hart. The recommendation rested in part on a view that the function of criminal law was- “to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others...not to intervene in the private lives of citizens or to seek to enforce any particular pattern of behavior, further than is necessary to carry out the purposes we have outlined. Unless a deliberate attempt is made...to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is not the law’s business” (Cane January 2006, Vol.10, No.1/2, 21).

British Jurist Lord Patrick Devlin was not supportive of decriminalization of private consensual sexual activity between men. Reacting to the Wolfenden Committee report, he said in his 1959 British Academy Maccabean Lecture titled ‘The enforcement of Morals’ that criminal law was not only meant for the protection of individual but also for the protection of society-“the institutions and the community of ideas, political and moral without which people cannot live together” (ibid, 22). Thus, he favoured the enforcement of morality through law. He argued that public morality should influence law-making and even private acts should be subject to legal sanction if they were unacceptable to ‘society’s constitutive morality’. However, Devlin clarified that community morality did not imply counting heads or conducting public opinion, but it implied the views of ‘reasonable’ people (ibid, 28). Decriminalization of homosexuality according to him, posed the threat of social disintegration as it violated the public morality. English political philosopher H.L.A.Hart was opposed to such views propounded by Devlin. In his work ‘Law, Liberty and Morality’ (1963), he elaborated on the relationship between law and morality. He argued that law should not interfere in private acts of individuals that harmed none. He criticized Devlin using J.S.Mill’s ‘harm principle’, i.e. “the only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others” (Cane January 2006, Vol.10, No.1/2, 22). Peter Cane mentions the two theses that Hart used as a counter to Devlin’s

argument (ibid, 23). On the basis of 2 theses-‘moderate’ and ‘extreme’, Hart attacked Devlin’s ‘Legal moralism’. *Moderate thesis* (italics mine) implied that a society is entitled to enforce its morality in order to prevent the society from falling apart at the seams, as it were. Hart argued that Devlin could not substantiate such claims through empirical evidence, i.e., he provided no such evidence to assert that the society would be worse off without legal moralism. Hart also proved Devlin’s argument to be weak as per the *extreme thesis* (italics mine). Hart argued that Devlin justified legal enforcement of moral values, regardless of their content, thus preventing any change in social mores. Hart thus suggests that Devlin failed to make a distinction between harm and offence, proving the fragility of his argument

2) The Indian Legal discourse

In this section, I shall discuss the legal discourse on homosexuality in India, beginning with Section 377 of Indian Penal Code /IPC drafted by Lord Macaulay under British colonial rule. A sub-section is also devoted to the legal cases related to sodomy under Section 377 of IPC. This will be followed by a discussion on Queer activism around the demand for ‘striking down of Section 377’ of IPC and will comprise of arguments given for and against it. A detailed discussion of the arguments given during the proceedings of the Public Interest Litigation filed by Naz Foundation (India) in Delhi High Court, culminating into decriminalization of homosexuality, is also part of this section.

2.1) Section 377 of IPC-A brief history

Let us see the trajectory of Section 377 of Indian Penal Code (IPC) that criminalized homosexuality in India. Indian Penal Code (IPC) was drafted by Lord Thomas Macaulay and introduced in 1861 in British India. Section 377 of the IPC criminally penalizes what it describes as ‘unnatural sexual offences’. This provision can be traced to the British Anti-Sodomy law of the 16th century. Act of Sodomy was penalized by hanging under the *Buggery act of 1533* which was reenacted in 1563 by Queen Elizabeth I after which it

became the charter for subsequent criminalization of sodomy in British Colonies. Oral-genital sexual acts were later removed from the definition of Buggery in 1817. In 1861, death penalty for buggery was formally abolished in England and Wales. However, Sodomy or Buggery remained as a crime ‘not to be mentioned by Christians’.

‘*Unnatural Offences under Section 377*’ read as -

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.” Moreover, Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section (Gupta 18 November, 2006, 4816). Carnal means of the ‘body, world; sexual, sensual’. Consent was no defense to an offence under this Section and no distinction regarding age was made.

The first draft of the penal code prior to Section 377 was clause 361 which provided for severe punishment for touching another for the purpose of unnatural lust. Considering it a ‘heinous crime’, Macaulay did not want any debate or discussion on this issue (ibid, 4815). However the language of the proposed clause being too vague, gave way to Section 377. The offence was introduced into British India with a presumption of a shared Biblical morality. Historians have speculated that “there were concerns that not having wives would encourage the Imperial Army to become replicas of Sodom and Gomorrah or to pick up special oriental vices” (ibid, 4816).

Alok Gupta further points to the fact that Section 377 is different from Sodomy Statutes around the world in the following manner. It does not define a specific offence of sodomy, rather applies a ‘vague offence’ without defining what ‘carnal intercourse’ or ‘order of nature’ are to the general public at large, the only criterion being ‘penetration’(ibid). Moreover, it applies to both heterosexuals and homosexuals, but the general offence of sodomy became a specific offence of homosexual sodomy. The Indian Courts over the decades have interpreted and re-defined ‘carnal intercourse’ read along with the concept of ‘order of nature’, to include other non-procreative sexual acts.’

2.2) Cases pertaining to Sodomy

It would be interesting to know some of the cases relating to Section 377 of the IPC to understand the approach of the judiciary and the state in this regard, over the years. One of the earliest cases was the 1884 case of *Queen-Empress vs. Khairati* (A. Gupta 18 November, 2006). In this case, the appellant was charged with Section 377 on allegations of oral sex with a minor. In this case, a eunuch was kept under constant supervision by the police and arrested upon being ‘found singing dressed as a woman’. The only evidence that the police presented to incriminate him was the distortion of the orifice of the anus into the shape of a trumpet. Thus, ‘trumpet’ shaped orifice of the anus was considered to be a mark of the habitual sodomite. This case clearly shows that Section 377 was used to criminalize on the ground of ‘appearance’ as a sodomite and not based on the evidence of the ‘act’. Another case falling in the same year was *Bapoji Bhatt case* (italics mine) in which the appellant was charged with Section 377 on allegations of oral sex with a minor. Due to non-existence of separate law on child sex-abuse, the given case was tried under Section 377. Interestingly, the courts found that the definition of ‘carnal intercourse against the order of nature’ could not be extended to include acts of oral sex and therefore dismissed the case as ‘the act must be in that part where sodomy is usually committed’ (ibid, 4816-4817). So, in this case, the courts restricted the scope of Section 377 to anal intercourse.

A wider scope of Section 377 was set in the *Khanu vs Emperor* (italics mine) case of 1925. In this case, it was alleged that a minor was coerced into performing oral sex on an older man. Judge Kennedy held that section 377 IPC is not limited to ‘coitus per anum’ and can also be extended to ‘coitus per os’ (mouth contact with male genitals). Thus in the given case, the court concluded that the “sin of Gomorrah is no less carnal intercourse than the sin of the Sodom” (ibid, 4817). Thus in *Khanu vs Emperor*, the court concluded that any form of oral or anal sex is criminal as it does not lead to procreation, implying it to be ‘against the order of nature’. Similar argument was used by Courts in *D.P.Minwalla vs.Emperor case* (italics mine) 1935 (Narain 2004). In this case, the complainant had allegedly found the appellant performing passive anal intercourse with another man. Both the consenting men were convicted by the trial court and the conviction was later upheld

by the High Court. This was clearly a case of prosecution of consensual sex between adults on grounds of ‘unnaturalness of non-procreative sex.’ However, the ‘procreation’ argument used in cases relating to sodomy was too weak. This is because, the procreation argument ignores the fact that certain forms of penetrative sex such as ‘peno-vaginal sex with contraception’ too was non-procreative. So, by this logic, he wonders whether the distribution of condoms should also be an offence (Gupta Alok 2011, 136).

Interestingly, Minwalla submitted to a medical examination to convince the court that his anal orifice was not shaped like a ‘funnel’ which was considered to be a sign of a habitual sodomite (as mentioned by the courts in persecution in the case of Khairati) and Minwalla was convicted with reduced sentence. The given cases point to the fact that how the courts used the idea of bodies marked with signs and appearances to indicate the possibility of committing sodomy.

Alok Gupta suggests (Gupta 18 November, 2006, 4817) that while interpreting in a case, the courts used two essential parameters under Section 377-

- Existence of penetrative intercourse with an orifice
- Impossibility of conception, thus against the order of nature

To determine whether there could have been penetration, the judges defined intercourse as, “a temporary visitation to one organism by another ...the primary object of the visiting organization is to obtain euphoria by means of a detent of the nerves consequent on the sexual crisis” (ibid)Such interpretation clearly depicts that the courts took a narrow view of sexual engagement. The only justified mode was procreative heterosexual sex.

A very important case that considered ‘sex for procreation’ as an outdated theory was ‘*Lohana Vasantlal Devchand vs. the State*, 1968 (italics mine). The case involved an appeal against a conviction for performing oral sex with an underage boy. The issue here was whether oral sex amounted to an offence under Section 377 IPC. The Gujarat High court devised the ‘imitative test’ of sexual intercourse arguing that oral sex was imitative of anal sex in terms of penetration, orifice, enclosure and sexual pleasure therefore similar to anal sex, worthy of criminalization. The court further held that the “orifice of the mouth is not, according to nature, meant for sexual or carnal intercourse” hence, oral

sex being an inappropriate act, was a criminal offence (Naz Foundation vs. Government of NCT of Delhi and others 2009 5). Borrowing from American law, the court cited a definition for “sexual perversity” as an “unnatural conduct performed for the purpose of sexual satisfaction both of the active and passive partners” (Gupta 18 November, 2006, 4817). Such anachronistic understanding of ‘sexual engagement’ was further upheld by the judiciary in *Fazal Rab Choudhary vs. State of Bihar, 1983* (italics mine). The appellant was given 3 years of Rigorous imprisonment by the magistrate for having committed an ‘unnatural offence’ on a young boy who has come to his house to take a syringe. In this case, the Supreme Court of India while dealing with the application for mitigation of sentence for the given conviction held that an offence under Section 377 implies “sexual perversity” (ibid). Moreover, the ‘imitative test’ put to use in the Lohana case was further applied in *State of Kerala vs. K Govindan, 1969* (italics mine). In this, thigh sex was also included in the category of ‘unnatural sexual offence’ as inserting the male organ between the thighs constituted ‘penetration’ (ibid, 4817). Thus the courts did not decide the cases based on ‘whether there was coercive element in the sexual activity’ but whether the act fell against the ‘order of nature.’

In cases dealing with prison conditions in India, the judges mentioned the possibility of homosexual sex as an aggravating factor for miserable prison condition. In one such case, *Lingala Vijaykumar vs. Public prosecutor, Andhra Pradesh (1978)*, justice Krishna Iyer stated, “these adolescents, when ushered into jail with sex-starved ‘Lepers’ sprinkled about, become homosexual offerings with nocturnal dog-fights” (ibid). Such statement clearly depicts the negative perception of the Indian judiciary towards homosexuals. The statement seems to generalize the ‘homosexuals’ as predators and as coercive sexual partners. The courts not only condemned non-consensual sex but also made private consensual homosexual sex punishable, as in the case of *Mihir vs. State of Orissa, 1992*. It was held that the act covered under Section 377 IPC was related to sexual perversity and deprivation of mind. Justice Pasayat stated that since “unnatural carnal intercourse is abhorred by civilized society”, ‘consent of the victim is immaterial’ in Section 377 (ibid, 4818). Justice Pasayat as per his judgment in this case equates consensual homosexuality with rape.

The case of *Mihir vs. State of Orissa* can be set in contrast against ‘*Brother John Antony vs State*’ case falling in the same year. In this case, a teacher was alleged to have forced the children of a boarding school to perform oral sex on him (A. Gupta 18 November, 2006). Here also the judge gave prime importance to the “unnaturalness” of the act rather than to the fact that assault has taken place. The paradox is that the case of *Mihir vs State of Orissa* involved a ‘consensual sexual act’ while ‘*Brother John Antony vs. State*’ was a matter of child sexual abuse and assault. But in both the judgments, court simply used the notion of ‘unnaturalness of same-sex sexual act’ and ignored the fact whether it was consensual or non-consensual. Therefore, in the aforementioned cases, the judiciary put both *consensual private homosexual sex* and *non-consensual sex* (italics mine) at par, as an offence.

However, the issue of ‘consensual/non-consensual’ sex was used to give justice in a case involving ‘heterosexual partners.’ In *Grace Jeyaramani vs. E P Peter (1982)*, the woman filed an application for divorce on principal ground that her husband forced her to have “sexual intercourse in an unnatural way” against her wish (Gupta 18 November, 2006, 4818). Giving prime importance to the concept of ‘consent’, the judge held that the “husband could be guilty of sodomy if the wife was not a consenting party.” Thus, it was the first time when ‘consent’ became a relevant factor within the meaning of sodomy, even though it was not a case under Section 377. Suparna Bhaskaran criticizes such dual standards of the court by arguing that “...wife’s lack of consent serves to release her from a marriage but an adult male’s consent lands him in prison” (Bhaskaran 2002, 25). This case proves that though Section 377 applies to both heterosexuals and homosexuals, by allowing for consensual sex between heterosexual married couples, it focuses the application of Section 377 to homosexuality even when it involves consensual sex. Illustrating the given cases, Alok Gupta argues that the conception of sodomy in Indian law in practice actually proscribes sexual activities between men, even when consensual. Thus, he concludes that Section 377 is inter alia meant to prevent ‘consensual homosexuality’ (Gupta 18 November, 2006, 4818).

In a recent case in 2001, *Pooran Ram vs. State of Rajasthan*, the Indian court reiterated its previous prejudices regarding homosexuality. In this case, the court held that

“perversity” that leads to sexual offences may result either in “homosexuality or in the commission of rape.” This reflects the negative perception of the judge in equating homosexuality with perversity and rape.

Another issue that the courts raised while dealing with cases relating to sodomy was that of public morality. In the case of *Anil Kumar Sheel vs the Principal, Madan Mohan Malvia Engg College*, 1991, the judge referred to the Hart-Devlin debate. He stated that, “...Lord Devlin...maintained that the law should continue to support a minimum morality...However in my opinion, the problem would always be as to how far laws should uphold morality and it depends upon the facts and circumstances of the case. A judge is to keep his finger on the pulse of the society...The law cannot undertake not to interfere” (A. Gupta 18 November, 2006). Thus the court indicated its disapproval for decriminalizing homosexual consensual sex by citing public morality. The Hart-Devlin debate would be briefly discussed in this chapter in the next section.

An analysis of these cases over the years shows that the courts used various parameters for attracting penal provision (in cases relating to Section 377), ranging from non-procreation to imitative test and sexual perversity to public morality. The Indian courts in post-colonial period continued to rely on the colonial state’s pejorative understanding of homosexuality. The Colonial state that originally framed this penal code itself got rid of it in its home country in the 1960’s. This is in reference to the British Wolfenden Committee recommendation that followed the decriminalization of homosexual act between consenting adults in 1967.

3) Homophobia and Voices against Section 377 of IPC - Argument and Counter-argument

Late 1990’s onwards queer activism began around law and demand for decriminalization of consensual homosexual act in private were made. Human rights activist group, ABVA (AIDS Bhedbhav Vidrohi Andolan) and Non-Profit Organization working with MSM (Men having sex with men), Naz Foundation raised their voices against Section 377 of

IPC. One of the incidents that galvanized the movement for decriminalization was the 'Lucknow Case' of July 2001.

Lucknow Case

On July 7, 2001, Police raided a park frequented by MSM (Men having Sex with Men) community in Lucknow, Uttar Pradesh. The raid was based on an FIR lodged by a person who alleged to have been sexually assaulted while providing massage service in the park. Police also raided the offices of two NGO, Bharosa Trust and Naz Foundation International working on safer-sex issues with MSM community. The Police arrested the Project Manager of Bharosa and the Director of Naz along with four outreach workers and booked them under Section 377 (unnatural sexual offence), Section 120 B (Criminal Conspiracy) and Section 292 (sale of obscene material) of IPC. Even the offices of these two NGO's were sealed. The police charged that these two organizations were running 'Gay clubs' in India. In the words of Lucknow S.S.P. B.B.Baxi," The two organizations were running Gay clubs in contrast to Indian culture and ethics under the garb of educating the masses about AIDS and HIV" (Narain, *Queer Struggles around the Law: the contemporary context* 2007, 56). The Magistrate who heard the case upheld the view of learned DGC who denied bail to the activists on the ground that "they...are polluting the entire society by encouraging the young persons and abetting them for committing to the offences of sodomy" (ibid). Thus the magistrate too denied bail owing to his prejudices regarding homosexuality rather than on the basis of relevant statutory provision for not granting bail. The NACO and U.P. State AIDS control Society also remained silent on the issue and did not give any statement claiming that the two organizations were working to promote safe-sex practices under the purview of NACO. The Media too sensationalized the news and spread misinformation. Media publicized the incident with news headlines such as 'Gay club Supplied Boys to Politicians', 'Call Boy Racket sends shock waves in Lucknow' (Times Of India, July 9, 2001), 'Gay Culture started in U.P. in 1998 itself' (Times of India, July 10, 2001), 'Lucknow Police raid Gay Clubs' (Hindustan Times, July 8, 2001). The response of the state and media jeopardized the future of all the accused and distorted their public image. After 47 days in jail, an appeal to the High Court provided relief and the accused were released on bail.

Prior to Lucknow incident, in 1994 ABVA (human rights activist group) filed a petition/PIL challenging the constitutional validity of Section 377 of the IPC. It also advocated the distribution of condoms in jail to ensure safe-sex between jail inmates, with a plea to restrain the authorities from segregating or isolating prisoners with homosexual orientations or those suffering from HIV/AIDS. However, the petitioner group became defunct soon afterwards and the petition did not come up for hearing. The petition was actually filed following the report of a medical team that visited Tihar Jail in Delhi and reported a high incidence of sodomy in the male wards. The team recommended distribution of condoms in the Jail wards as per WHO guidelines to prevent the risk of HIV transmission. However the Jail authorities rejected such recommendation because they felt that it would (Narrain, *Queer Struggles around the Law: the contemporary context* 2007, 58-59)

- i. Encourage male homosexual behavior in prisons, amounting to an offence under Section 377 of IPC and
- ii. Mean a covert admission that homosexual behavior exists in prisons.

At the backdrop of all these, (especially as a result of the Lucknow Case) towards late 2001, the Naz Foundation filed a petition/PIL in the Delhi High Court. This petition however was different from the previous one as it argued for 'reading down of Section 377' to exclude acts of consensual private sex between adults, as opposed to asking for Section 377 to be struck down as a whole. Arvind Narrain says that the reason for this strategy was linked to the fact that Section 377 was also used by Child rights groups to prosecute child sexual abuse (ibid, 59). This was due to the fact that there was no separate law to deal with cases of child sexual abuse. Narrain suggests that such strategy indicated that the concerns of other constituencies like the 'child rights movement' was also being taken care of in articulating concerns of the 'queer community' (Narrain, *Queer Struggles around the Law: the contemporary context* 2007, 59).

The Naz Foundation in its petition argued that Section 377 of IPC violates Article 21 (right to life and liberty) and provides legal sanction for social discrimination of Sexual minorities. Moreover, it also argued that criminalization of homosexual sex also impairs effective AIDS control. The Delhi High Court in January 2003 asked the Indian

Government to respond to the given Public Interest Litigation. The Government (Ministry of Home Affairs) in its affidavit questioned the locus standi of the petitioner asserting that, 'Section 377 applied to cases of assault, where bodily harm is intended or caused and deletion of the said section can well open flood gates of delinquent behavior and can be misconstrued as providing unbridled license to the same' (Narain, *Queer Struggles around the law: The contemporary Context* 2007, 60). It further said that in India Section 377 has been basically used to punish sexual abuse to children and to compliment lacunae in rape laws, thus it fulfilled the constitutional mandate to protect women and children. The affidavit also denied that Section 377 was violative of 'right to life and liberty'. The affidavit went on to say that 'objectively speaking there is no such tolerance to practice of homosexuality/lesbianism in the Indian Society' and that, 'while the Government cannot police morality, in a civil society criminal law has to express and reflect public morality and concerns about harm to the society at large'. Based on the affidavit of the Government, the Delhi High Court in its ruling on September 2004 dismissed the petition on ground that the petitioner has no locus standi (cause of action) in the petition since no prosecution is pending against the petitioner.

Interestingly, the issue of role of law in public morality raised in Government affidavit reminds of Lord Devlin's stand on the given issue. As discussed in the previous section, Devlin too believed that law should reflect 'society's constitutive morality' and that decriminalization of homosexuality went against public morality, hence posed the threat of social disintegration. Thus Government's stand too could be critiqued on the same grounds as the criticism of Devlin's argument. Moreover, another set of argument is provided by Subir Kole. Kole uses national level survey data to show that Government concern about public morality has little ground as people in India are already having 'unnatural sex' criminalized under Section 377 (Kole July, 2007). He cites survey conducted by India Today-AC Nielson and ORG-MARG in 4 successive years from 2003 to 2006 conducted across 10 to 11 cities. The survey covered around 2300 to 2600 married/ unmarried men and women and revealed that 37 percent single young men had a homosexual experience in 2006 as compared to 31 percent in 2004 (India Today, November 13, p-37); whereas in 2005, 28 percent women reported having tried anal sex. Kole argues that this was not a nationwide sampling and that there could be possibility of

sample bias. However the point that he wants to make is that the practice of ‘homosexual act’ very much exists in the Indian society despite penal provisions against it and hence the claim that it is not a part of Indian society is false.

I would partially agree with Kole’s argument that if homosexual acts are practiced in Indian society, then it is inaccurate for the Government to claim ignorance about it. But, I believe that it would not be very accurate to rely on such survey as these are based on unrepresentative sampling. Another argument that weighs down Government’s claim that reading down of Section 377 would open the flood gates of delinquent behavior is the fact that if Indian society was intolerant about it then how could there be ‘flood gates of such delinquent behaviour’. As Nivedita Menon argues that if heterosexuality was so ‘normal’ and ‘natural’ then why would it require such a set of controls from religion to law to the state to keep it in place? She says that Section 377 is about the painful creation of Mr. and Mrs. Normal; it is one of the nails holding in place the elaborate fiction that ‘normality’ springs from nature (Menon 2007, 37-38).

Gautam Bhan argues that Section 377 is not the cause of homophobia, but merely its tool and derives its legitimacy from assumed definition of Indian culture and a larger hetero-patriarchal system (Bhan 2005, 42). Agreeing with Menon, he argues that the Government response (on Section 377) draws upon the hierarchy of normal/abnormal desire. Narrain’s view on the Indian State’s approach to hierarchies of normal and abnormal can be equated with Gayle Rubin’s view about modern western societies. She points out, that the modern societies in the west appraise sex acts according to a hierarchical system of sexual value, wherein Marital, reproductive heterosexuals are at the top erotic pyramid (Rubin 1999, 151). Non-heterosexual sexualities occupy the bottom position in this hierarchy. Then Queer movement faces the larger political challenge of questioning this hierarchy while dealing with the legal challenge.

3.1) 172nd Report of Law Commission of India

Law Commission of India chaired by (retd.) Justice Jeevan Reddy in its 172nd Report, recommended the deletion of Section 377 of IPC in the context of a redefined law on

sexual assault to replace the existing law on rape. The new definition of sexual assault has a wider scope and includes oral, anal, vaginal and other forms of penetrative intercourse, including insertion of objects without consent between men & men, women & women and men and women, within the ambit of the criminal law. The proposed law also reflected the concerns of child rights movement by calling child sexual abuse as an offence for the first time. However, one of the provisions in the report that became controversial was that sexual assault was made into a ‘gender-neutral’ offence, which meant that even women could be prosecuted under it. Women’s rights groups and Child rights group objected to the ‘gender-neutral’ definition of rape as it might end up harming women and girl children. Infact, Arvind Narrain says that even the Queer community felt that gender-neutral rape law might actually empower the state to harass them (Narrain, *Queer Struggles around the Law: the contemporary context* 2007, 63). Moreover, it was felt that Queer concerns regarding custodial ‘torture and sexual assault’ of Queer people by the police did not figure at all in the Report. Hence, recommendation for deletion of Section 377 was merely on technical grounds and the proposed reform was without any concern for the rights of the Queer.

3.2) Reading Down of Section 377 of IPC

After Delhi High Court dismissed the petition in its September 2004 judgment, Naz Foundation filed a Review petition against the Court Order. However, that too was dismissed in a ruling on November 3, 2004. Then, a Special Leave Petition was filed with the Supreme Court of India on the limited question of whether the Court could dismiss the petition on ground that it was purely “academic” and there was no ‘cause of action’. The Supreme Court in its ruling on February 3, 2006 decided in favour of Naz Foundation and referred the case back to Delhi High Court. It contended that the Delhi High Court was wrong in rejecting the original petition filed by Naz Foundation on grounds of not having locus standi in the case. The Supreme Court also allowed the petitioner to seek an expeditious hearing because the matter has been pending for long.

In the following section, I would try to summarize the various arguments given by both sides (Pro-Queer and Anti-Queer) during the court proceedings in the Public Interest Litigation by Naz Foundation for reading down of Section 377 of IPC.⁷

Arguments of the Petitioner: For decriminalization of homosexuality

In the PIL, petitioner argued that Section 377 IPC infringes the fundamental rights under Article 14, 15 (Equality), Article 19 (right to freedom) and Article 21 (life and liberty).

The petitioner very innovatively interpreted Article 15 (right to equality) of the fundamental right. It says that the expression 'sex' in Article 15 should be read as including 'sexual orientation' also. Therefore criminalization of even 'consensual homosexual activity' under Section 377 IPC should be seen as violative of Article 15, as it discriminates on grounds of 'sexual orientation'. The right to privacy implicit in the right to life and liberty too afforded protection within the ambit of Article 21. Hence to ensure a dignified right to private (consensual) sexual life, decriminalization was justified.

According to the petitioner, Section 377 is based upon traditional Judeo-Christian moral and ethical standards that conceives of sex in purely functional terms, i.e., for procreation only. Any non-procreative sexual activity is viewed as being 'against the order of nature'. It is argued by the petitioner that such legislation is outdated, based on stereotypes and has no place in modern society.

The petitioner also claimed to have been impelled to bring this litigation in public interest on the ground that HIV/AIDS prevention efforts were found to be severely impaired by discriminatory attitudes exhibited by state agencies towards gay community, MSM and Trans-gendered individuals, under the cover of enforcement of Section 377 IPC. It perpetuates negative beliefs towards same-sex relations and sexual minorities which drive the activity of MSM and Gay men underground, thereby further crippling HIV/AIDS

⁷ For the given section, see Naz Foundation vs. Government of New Capital Territory of Delhi and others 2009, WP(C), No.-7455/2001,p-1-105.

prevention efforts As a result of which fundamental human rights of such individuals/groups stood denied.

The petitioner also put forth the argument that Section 377 creates a class of vulnerable people who are being subjected to abuse, harassment, and assault from public and private authorities. Criminalization of consensual same-sex conduct under Section 377 serves as the weapon for police abuse of the LGBT community in the form of detaining and questioning, extortion, harassment, forced sex and payment of hush money.

Based on the aforementioned reasoning, the petitioner (Naz Foundation) submitted that the case for 'consensual sexual relation between two willing adults of same-sex in private' to be excluded from the penal provision in Section 377 IPC. In short, it asked for reading down of that section of Section 377 IPC that criminalized consensual same-sex sexual acts in private between adults.

Apart from the Petitioner Naz Foundation, other respondent in the case favoring the petition was a coalition of 12 organizations under the name of 'Voices against 377'. These organizations were working in diverse fields such as child rights, women's rights, human rights, health concerns and rights of same-sex desiring people including those who identify as LGBT, Hijra and Kotis. In the course of their work, these organizations repeatedly came across gross violation of basic human rights of LGBT persons, both as a direct and indirect consequence of the enforcement of Section 377 of IPC. Thus 'voices against 377' as respondent no.8 in the given PIL, supports the cause of the petitioner and says that Section 377 is an unconstitutional and arbitrary law based on archaic moral and religious notions of sex only for procreation. Respondent no.8 argues that criminalization of adult consensual sex under 377 does not serve any beneficial public purpose. On the contrary, criminalization of consensual same-sex sexual act has created an association of criminality towards people with same-sex desires and leads to their extreme social ostracism. The group placed on record material in the form of affidavits, FIRs, judgments and orders with objectively documented instances of exploitation, torture suffered by LGBT persons. They even gave reference to the 'Lucknow Incident of 2002'. Moreover, reference to 'Bangalore Incident, 2004' involving custodial torture of a hijra, was also made. He was subjected to rape by hooligans. Instead of punishing the culprits; the police

took him to the police station where he was stripped naked and grossly tortured merely because of his sexual identity. An affidavit of a gay person was also filed on record. The person was picked up from a bus stand by the police accusing him of being a homosexual. He was subjected to torture and rape by four police men. (Ironically, the police men themselves committed the offence under Section 377 on which they had booked that man). Thus, according to the Respondent no.8, all these materials on record established that the continuance of Section 377 IPC on statute book operates to brutalize a vulnerable segment of the citizenry for no fault on its part.

Affidavit filed by the Government Ministries (Health and Home Affairs)

The Government also filed its affidavit in the court; however the two ministries of Government of India, Ministry of Home Affairs and the Health and Family Welfare Ministry filed contradictory affidavits in this case. The Ministry of Home Affairs sought to justify the retention of Section 377 IPC, while the Ministry of Health and Family Welfare argued that Section 377 of IPC hampered HIV/AIDS prevention efforts. The Ministry of Home Affairs reiterated its previous stand that Section 377 was generally invoked in cases of child sexual abuse and to complement lacunae in rape laws and not merely to homosexuality. Moreover, it said that such acts cannot be rendered legitimate only because the person whose detriment they are committed has given consent to it. Interference by public authorities in the interest of public safety and protection of health as well as morals is equally permissible. It further stated that law cannot run separately from the society, since it reflects societal perceptions. It stated that even the reforms in the nature of Sexual Offences Act, 1967 in Britain had its share of criticism on the ground that the legislation had negated the right of the state to suppress 'social vices'. The Ministry of Home Affairs claimed that the Indian society is yet to demonstrate readiness or willingness to show greater tolerance to practices of homosexuality. Thus, Union of India represented by the Ministry of Home Affairs argued that Section 377 IPC should be retained as it served the purpose of protection of public morality, public health and healthy environment.

Interestingly, the affidavit filed by NACO affirmed by/under the Ministry of Health and Family Welfare, gave logic for the reading down of Section 377. It stated that the homosexual community such as MSM is particularly susceptible to attracting HIV/AIDS and the NACO took a number of steps to ensure that preventive efforts were made available for the said section of the society by protecting their rights. According to submission of NACO, those in High Risk groups for HIV infection includes MSM, female sex workers and injecting drug users. Those in the High Risk group are mostly reluctant to reveal same-sex behaviour due to fear of law enforcement agencies. Thus a large section remains invisible and unreachable, thereby pushing the cases of infection underground. This makes it very difficult for the public health workers to even access them. NACO illustrates this using data of the 'National Baseline Behaviour Surveillance Survey' of 2002 which indicated that while 68% MSM were aware about safe-sex practices, only 36% of them actually used condoms. The fear of harassment by law agencies leads to sex being hurried and as they lack 'safe place', they utilize public places for their indulgence and do not have the option to negotiate safer-sex practices. The much hidden nature of such groups does not provide scope for intervention under NACO programme aimed at prevention of HIV/AIDS. Thus NACO affirms that there is need to have an enabling environment where these people involved in risky sexual behaviour are encouraged not to conceal information so that access to preventive efforts (for HIV/AIDS) is possible.

Argument given by the Legal Advisors of both sides

The advocate appearing for the petitioner was Anand Grover and for respondent number 8 was Shyam Diwan. They submitted that Section 377 violates the constitutional protections embodied in Articles 14, 19, 21 of Fundamental Rights. It suffers from the vice of unreasonable classification and is arbitrary in the way that it unfairly targets the homosexual community. It infringes upon their right to privacy and to live with dignity. It conveys the message that homosexual people are of less value than other people.

Moreover, they challenge Government support for retaining Section 377 on grounds of upholding public morality. They argue that morality by itself cannot be the ground for restricting the rights under Article 14 and Article 21. Public disapproval of a certain class

of persons can in no way uphold the constitutionality of a statute. It is submitted by the two advocates that courts in other jurisdictions have struck down similar laws that criminalize same-sex sexual conduct on the grounds of violation of right to privacy or dignity or equality or all of them.

Counter argument by the Legal person of the Union Government

The ASG (Additional Solicitor General) and advocates against the petition gave the following arguments-

Firstly, they claimed that there is no such fundamental right to engage in same-sex activity. In our country, homosexuality is abhorrent and can be criminalized by imposing proportional limits on the citizen's right to privacy and equality. It is contrary to the cultural norms of our society.

Moreover, right to privacy is not absolute and can be restricted for compelling state interest. Article 19(2) of Fundamental Rights expressly permits imposition of restrictions in the interest of decency and morality. Section 377 IPC does not also impact upon the freedom under Article 19(1) as what is criminalized is only a sexual act. It does not curtail freedom of speech or expression. People are free to canvass their opinion including the opinion that homosexuality must be decriminalized.

They also suggested that social and sexual mores in foreign countries cannot justify decriminalization of homosexuality in India as in the Western societies the morality standards are not as high as in India. This point was the most unreasonable and shows narrow understanding of morality. Another point of justification for Section 377 of IPC was that the given Section is not discriminatory as it is gender neutral. Furthermore, if Section 377 is struck down, there will be no way the State can prosecute any crime of non-carnal intercourse against the order of nature or gross male indecency. Yet another striking argument given by the ASG was that the spread of AIDS was in fact curtailed by Section 377 IPC as it discouraged rampant homosexuality, and that the decriminalization of same-sex acts between adults would cause a decline in public health across society, since it would foster the spread of HIV/AIDS. They claimed that Petitioner's argument

with respect to the spread of HIV/AIDS is thus, based on propaganda and is factually incorrect.

3.3) Arguments and the judgment given by the Delhi High Court (Reading Down of Section 377 IPC)

In India, though the constitution does not contain a specific provision as to privacy but the right to privacy has been spelt out by the Supreme Court from the provisions of Article 19(1) (a) dealing with freedom of speech and expression, Article 19(1) (d) dealing with freedom of movement and from Article 21 (right to life and liberty). One example of such cases was *Kharak Singh vs. the State of U.P.*, 1964 in which Justice Subbarao held that the regulations permitting surveillance violated the fundamental right to privacy.

On the question of whether 'sexual-orientation' is a ground analogous to 'sex' used in Article 15 under Fundamental rights, the Court held that Article 15 prohibits discrimination on several ground including 'sex'. The purpose underlying the fundamental right against sex-discrimination is to prevent behaviour that treats people differently for reason of not being in conformity with prescribed/'normal' gender roles. Discrimination on the basis of sexual orientation is stereotypical judgments about the conduct of either sex. Article 15's prohibition of sex-discrimination implies the right to autonomy and self-determination, which places emphasis on individual choice. Therefore any measure that disadvantages a vulnerable group (LGBT in this case) defined on the basis of a characteristics relating to personal autonomy must be subject to scrutiny. The impugned provision disproportionately impacts the 'sexual minority' negatively on the basis of their sexual orientation which is analogous to sex. Thus, the Court stated that a provision of law that brands one section of people as criminal based wholly on the state's moral disapproval of that class goes counter to the equality guaranteed under Article 14 and Article 15. The Court very sharply stated that discrimination is antithesis of equality and the recognition of equality itself can foster dignity of every individual. It argued that 'inclusiveness' was the underlying theme of the Indian Constitution and reflected the value deeply ingrained in Indian Society. Thus, Indian Constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions about the LGBT people. The Delhi High Court thus, in its July 2009 Judgment declared that,

‘Section 377 IPC, insofar it criminalizes consensual sexual acts of adults in private, is violative of Articles 14, 15 and 21 of the constitution. It held that constitutional morality is prior to public morality. However, it held that the provisions of Section 377 IPC will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors.

3.4) Responses to Reading down of Section 377 of IPC

The given judgment by Delhi High Court attracted different response from different segments of society. While, Queer activists celebrated it as a victory of rights of the Queer people, those opposed to homosexuality gave pejorative connotation to the judgment. Pro-Queer activists Arvind Narrain and Alok Gupta defined the moment of judgment as the moment of Queer people becoming citizens and negation of institutional homophobia (Gupta Alok 2011). The positive recognition of Queer people by the law is also being seen as their broader acceptance in public culture. Thus, Narrain and Gupta view the change in the law being fed by and into a culture of tolerance and inclusiveness as equal citizens. Talking about the emancipatory potential of the judgment, Pratap Bhanu Mehta wrote, “this judgment is not about a minority, not about valorizing a lifestyle, it is about the values that made us who we are as a nation.” (Mehta 2009). Thus, those in favour of decriminalization of consensual homosexual relationship, viewed reading down of section 377 of Indian Penal Code as upholding the constitutional values of equality and dignity to all.

However, there were another set of voices opposing the judgment, each on a different ground. Firstly, Cultural and Religious Groups who oppose the judgment because they consider Queer people as diseased, unnatural and against Indian culture. Religious leaders across different faith vehemently opposed the Delhi Court judgment. From Yoga Guru Baba Ramdev to Churches in Mizoram, to Sikh and Muslim religious leaders, all began to question the judgment as setting negative precedence for the society. Baba Ramdev even offered to ‘cure’ homosexuality through Yoga. Paramjit Singh Sarna, President, Delhi Sikh Gurudwara Management Committee was quoted saying, ‘ India is a

country of many religious beliefs and none of the religions are in favour of homosexual relationships' while another newspaper report said, 'Akal Takht says won't tolerate gay relations' (Bhardwaj 2009). The Vice President of All India Muslim Personal Law Board, Dr. Kalbe Sadiq went a step ahead by drawing parallel with animal sex. He was reported saying, 'Imagine tomorrow they may want to seek permission to have sex with animals...I think all dharma gurus should be united and do a rally in Ramlila grounds in Delhi and announce that whichever party agrees on this amendment, we won't vote for it in the future' (Verma 2009). Paradoxically, Dr. Sadiq uses one set of right (voting rights) available to all the citizens, to challenge another set of right (equality, dignity and privacy) for the Queer community. He gives preference to 'rights of heterosexual' as citizens over the 'claim of homosexuals for equal rights' as citizens.

Second line of criticism came from the Conservative critics who pointed fingers at the elitism of gay rights, as a battle for sexual pleasure and eternal fun with complete disregard to social priorities. Erstwhile Minister of Overseas Affairs, V. Ravi fell within this category of critics. He asserted, 'This is a non-issue. This is a country of poor people and this issue is being raked up by elite.' (Indian Express 2009)

Another section accepted that decriminalization might be necessary but added that it must not be coupled with unnecessary positive rights. Swapan Dasgupta expressed his concerns that the given High Court judgment has opened the floodgates of aggressive Gay Evangelism. He said, 'the gesture of decriminalizing homosexuality- which is different from endorsing it- has to be accompanied by a robust assertion of the state and society's commitment to family values' (Dasgupta 2009).

The fourth and the most important one was, Scholarly criticisms that contests the associated right to 'privacy' as dignity as a basis for adjudicative action. Professor Mahendra P. Singh criticized the High Court decision as *unconstitutional*, because it either expansively reads or transgressively misreads the Supreme Court of India's enunciation of a right to privacy. He concludes that the High Court erred in reading down Section 377 of IPC and suggests that the Court should have exercised a 'weak form' of review 'by asking the Parliament to re-examine Section 377 in the light of new

developments in law as already suggested by the Law Commission’, and that too without making any observation concerning the potential ‘unconstitutionality’ of that Section.

Responding to such criticisms, Upendra Baxi says that scholarly critics of the judgment fail to appreciate the distinction between the ‘everyday’ and the ‘exceptional’ adjudicative moment. He says that the Delhi High Court decision was an exceptional moment at one level because the Supreme Court of India directed (2006) the High Court to examine all the petitions and issues raised but not fully heard by it, on the grounds of standing: thus it was a kind of delegated judicial decision. Baxi appreciates the decision as exceptional because, with it, adjudicative leadership begins ways of subjecting the century old Indian Penal Code to the rigors of a new history of constitutional interpretation. Moreover, he adds that the right to privacy as an aspect of dignity is a judicially invented constitutional right (Baxi 2011).

The common thread of all these responses that opposed decriminalization was that they objected to the idea of giving positive rights to ‘sexual minorities’. The anti-Queer groups seem to reduce the Queer people as ‘second class citizens’, thereby objecting to their claims for legitimate rights available to the ‘heterosexual’/ ‘non-deviant’ population.

3.5) Section 377 and Constitutive theory of Law

Sodomy laws including Section 377 of Indian Penal Code are considered to be violative of basic rights of life and dignity. The opponents of Section 377 of IPC argued that it violates the very personhood of the homosexual subject. As argued by the petitioner in the ‘Naz Foundation case’,

“ Private sexual relations including preference and orientation, are deeply held matters and are a core part of an individual identity...One of the effects of criminal sanctions against homosexual acts is to reinforce the misapprehension and general prejudice of the public and increase the anxiety and guilt feelings of homosexuals leading, on occasions, to depression and the serious consequences which can follow...” (Naz Foundation v. Government of the National Capital Territory of Delhi & Others 2009)

Thus as argued, Sodomy laws violated those basic rights of life, dignity, equality that formed the core of the homosexual self. In this regard, it becomes important to analyze the effect of law from the perspective of Constitutive theory of law. Constitutive theory of law gives certain omnipresence to law and considers law as constitutive of principal categories of social life. To analyze and further elaborate this theory one needs to understand the concept of 'Interpellation' as used by Louis Althusser. This would be followed by Judith Butler's response to Althusser and Foucault to get a critical perspective on the issue.

The concept of Interpellation was first used by Althusser in 1970 in 'Essays on Ideology' to describe the process by which Ideology addresses the pre-ideological individual thus effectively producing him/her as a 'subject' (Althusser 1970). It is the process of 'hailing' or 'addressing'. This is best explained by the example he gives of a policeman on the street calling out, 'Hey, you there!' and the individual looks back responding to that call (of law), thereby accepting the term by which he/she is being addressed/hailed. Thus, the 'subject' is initiated and constituted by responding to the call of the State authority.

Judith Butler however challenges the 'interpellative power' of law. In her analysis of hate speech, she uses Austin's idea of locutionary acts- perlocutionary and illocutionary (Suresh 2011, 471-472). Illocutionary acts are those in which in saying something, one is also doing something, for instance a judge while sentencing someone would be performing illocutionary act. Illocutionary acts produce effect without any lapse of time. While perlocutionary acts are utterances that initiate a set of consequences i.e., saying something will produce certain consequences. Butler argues that the advocates of regulation of hate speech by saying that hate speech leads to certain effect as well as enacts hatred, tend to conflate the perlocutionary with illocutionary. In one of her work 'Excitable Speech: A politics of the performative' (1997), she writes, "the assertion that some speech not only communicates hate, but constitutes an injurious act presumes not only the language acts, but that it acts upon its addressee in an injurious way...I may well utter a speech act, indeed, one that is illocutionary...when I say 'I condemn you' but if I am not in a position to have my words considered as binding then I may as well have

uttered a speech act, but the act is, in Austin's sense, unhappy or infelicitous: you escape unscathed" (Suresh 2011, 472).

Thus, the crux of Butler's suggestion is that Interpellation can be challenged by denying the authority's power to name or by refusing to pay any heed to such call of authority. Calling of an unpleasant/ injurious name need not result in interpellation. One can easily ignore the hailing by a Policeman by either just choosing to walk on unaffected or by claiming that his/her name is something else.

Constitutive theory of law considers law as all pervasive, having the capacity of conferring a name upon a subject as well as inaugurating the psyche of the subject. The theory asserts Althusser's interpellation as well as Foucault's concept of discursive production. Both the concepts suggest that power imposes itself on the individual and the individual self internalizes it, thereby it becomes 'subject' by its submission to power. Thus, the Constitutive theory suggests at the power of law to manipulate the psyche of the individual. In this context, with reference to Section 377 of the IPC, it has been argued that the given section criminalizes the homosexual and dominates his/her psyche. However, paradoxically, by formation of the subject, law also provides a 'vocabulary' to the subject required for its continued existence. Therefore, on a different note, it can also be argued that the law by naming the 'homosexual subject' in legal narrative also provides the homosexual self with a sense of 'collective identity' which is then used to challenge interpellative effect of law itself.

Thus, an understanding of the Constitutive theory of law provided a theoretical understanding of the power of legal discourse. However, as Mayur Suresh argues, Constitutive theory overstates the power of law in constituting subjectivity (Suresh 2011, 467). He agrees with Butler over the fact that interpellation can be thwarted by not responding to the name/ address and hence, he argues that the psyche is not totally colonized by the law.

One needs to consider that the challenge to Section 377 of IPC was based on the 'injurious effect' it had on the psyche of the homosexual self. However, from the propositions suggested by Butler and seconded by Mayur Suresh in his analysis of

Constitutive theory one would conclude about the possibility of Queer Struggle to challenge the pervasiveness of law.

Conclusion

Law is an important discourse that has been used both as a tool against marginalized sections of society as well as a weapon for safeguarding their rights. Legal discourse in India has come a long way from its colonial legacy that penalized same-sex behaviour. It is evident from the sharp contrast in the judgments made in 1992 in *Mihir vs. State of Orissa* and the 2009 Delhi High Court judgment as a response to petition filed by Naz Foundation. In the former, Justice Pasayat held that ‘carnal intercourse is abhorred by civilized society’ while in the later, Justice Shah remarked, ‘Constitutional morality is prior to public morality’.

The different responses of the petitioner/ Pro-Queer groups and the Ministries of the Government of India in the given case for decriminalization reflected their respective attitude towards homosexuality. While the petitioner used the ‘language of rights’ and ‘reasonableness’ to challenge (Section 377, IPC) a law which it considered to be archaic, the Union of India gave the logic of law’s role in reflecting public morality which in this case was opposed to homosexuality. The Ministry of Home Affairs argued that being against the cultural ethos of society homosexuality, needed to be checked through law. However, another Ministry of the Government i.e., the Ministry of Health and Family Welfare through NACO (National AIDS Control Organization) affirmed the stand of the petitioner on the ground that Section 377 IPC was an impediment to effective HIV/AIDS control efforts, as it forces the homosexual people to maintain secrecy about their conduct/orientation due to fear of persecution.

Interestingly the advocates opposing the petition said that the argument with respect to HIV/AIDS was based on propaganda and that Section 377 in fact prevented the spread of HIV/AIDS by putting a check on homosexual conduct. Though such stand was itself based on a flawed understanding of the issue, it raises an important concern. Linking the ‘need for decriminalization’ with the issue of HIV/AIDS prevention further poses the danger of pathological association of homosexuality. The issue at hand should have been

mainly ‘rights discourse’ and not the ‘needs discourse’. The very fact that Section 377 of IPC violated the basic human right of dignity and autonomous choice of homosexuals itself should have been a sufficient central argument. The petition should have argued in terms of ‘right of the homosexual to access information about safe-sexual health’ and not in terms of HIV/AIDS per se. Focus on the HIV/AIDS discourse also ignores the fact that ‘sexual contact’ is not the only mode of transmission of HIV.

Moreover, there also seems to be a politics involved in the given discourse which would be discussed in the next chapter. The argument regarding ‘right to privacy’ is also interrogated by Queer activists like Gautam Bhan. He argues that arguing that ‘sexuality is a private matter’ poses the danger of ignoring violence that may occur within the ‘private sphere’. He says, “Tomorrow will we be unable to speak of domestic violence within Gay couples because we consider sexuality a private affairs” (Bhan 2005, 46), thereby cautioning us to the challenges ahead. He argues that though the power of Section 377 is mostly symbolic, yet its removal will help to remove the fear that governs Queer life, only if the challenge to it targets not pieces of legislation but the larger understanding of gender and sexuality. He argues that change in law should become part of a larger movement that challenges the way we think of sexuality in India today.

Though the Queer movement understands the symbolic importance of the reading down of Section 377, it is also aware that legal reform itself is not the end point of the struggle and that the idea of ‘hierarchies’ needs to be challenged. The symbolic importance of decriminalization of homosexuality in India can be seen from the 3rd Queer Parade in Delhi held on November 28, 2010 in which the number of people using ‘masks’ to hide their faces went down. Many people did not feel the need for hiding their faces behind a mask as being ‘homosexual’ became a legitimate identity (TOI 2010)

Chapter 3

HOMOSEXUALITY AND THE MEDICAL DISCOURSE

In the previous chapter on 'homosexuality and legal discourse in India', the trajectory of the creation of 'homosexual subject within the law' was discussed. The chapter explored the criminalization of homosexuality by the colonial and post-colonial legal discourse and the debates around criminalization/decriminalization of homosexuality. It also comprised of reflections on the Delhi High Court judgment of 2nd July, 2009 that read down Section 377 of IPC. Legal discourse was not the only discourse that framed the homosexual as a 'subject' and categorized it into a despised group. In the given context, medical Science is another relevant discourse to engage in the debate on homosexuality. The shift in the debate on homosexuality from the rhetoric of sin to the rhetoric of pathology occurred owing to the 'Medical Discourse'. Thus, the 'homosexual species' was created within Medical Science and unearthing the cause of such 'deviant behaviour' became its quest. As Foucault suggested, the persecution of peripheral sexualities in the 19th century entailed an incorporation of perversions and a new specification of individuals, wherein the homosexual became a personage, morphology and a "species" (Foucault 1978, 42-43).

The present chapter would deal with such complex issue of sexuality, identity and behaviour and trace the debate from 'pathologisation to depathologization' of homosexuality. The medicalization of sexuality and emerging focus on the issue of HIV/AIDS vis-à-vis the LGBT community would be discussed in order to analyze the politics that governs it. The recent concern within the Queer Movement regarding spread of HIV in the Queer Community makes it equally significant to understand Queer activism around HIV/AIDS prevention.

1) Identity and Behaviour: A complex issue within Sexuality

The issue around sexual behaviour and identity becomes relevant for this chapter. This is because of two reasons. Firstly, since the medical discourse ‘pathologises’ homosexual behaviour and constructs the homosexual identity around it, it becomes important to understand the issue. Secondly, homosexuals have been denied ‘dignified existence’ due to their ‘deviant’⁸ sexual behaviour/orientation and a ‘negative identity’ constructed on that basis (by the modern legal-medical discourse). The claim of Gays and Lesbians (for rights and social recognition) rests on their sexual identity, which is a sufficient basis for a movement (Joseph August 17, 1996, 2228). Hence, the issue becomes significant and needs to be analyzed.

Questions pertaining to sexual identity are complex. On one hand, sexuality is a private matter involving one’s choice and the personal space to engage with that choice. While at the same time, it is very much political and often stirs serious public debates. The claims of Gays/Lesbians movement for their ‘rights’ rests on their sexual identity. In this regard, homosexuality has been looked at from two perspectives- *Essentialist* and *Social Constructionist* (italics mine).

For the *Essentialists*, the category homosexual is universal and trans-historical. One of the arguments within it is based on ‘genetic determinism’, believing that some people are ‘born as homosexuals’ (ibid). While other argument simply insists that homosexuals have existed always and everywhere. This perspective views homosexuality as a fixed aspect of identity. *Social Constructionists* on the other hand, argue that individuals interpret their personal experiences through the framework provided by the social world. According to them, Identity is a construct reflecting the conceptual structure of the surrounding social world. It focuses on the power relations that inform structure and discipline society. It views sexuality as the subject of power-mediated social norms and cultural definitions. Unlike, Essentialism that stresses on sameness of ‘same-sex loving’ people throughout history, Social Constructionist emphasize on the differences (ibid).

⁸ The term ‘deviant’ in general usages refers to sexualities with ‘non-heterosexual’ orientation

The core concern of the Queer movement has been to question the fixity of gender identities. In this regard, Anna Carline locates Queer theory within the post-modern as it problematises identity categories and develops the notion of the subject as fluid, unstable and constructed (Carline 2006, 309). The work of Judith Butler becomes significant in understanding social constructionism. She talks of the ‘tenuousness of gender reality’ in order to counter the performance of gender norms (Butler 1999, 2nd Edition, xxiv). She says that identity is produced through the ‘performance’ of ‘gendered scripts’, therefore individual subjectivity is constituted by repetitive ‘gender performativity’ (Carline 2006, 309). Moreover, gender performativity is not voluntary but compelled due to the regulatory regime of compulsory heterosexuality, which constructs as culturally intelligent those genders, which support the perceived ideal path of sex, gender, sexual practice and desire. Genders confirming to this ideal path are female/femininity, male/masculinity, and heterosexuality. Thus, in this regard, genders that deviate from this path are constructed as ‘unintelligible’ and therefore can’t socially exist (ibid). This position thus helps us make sense of the marginalization of ‘homosexuality’ as despised sexuality for being considered culturally unintelligible. In this context, Pramod K. Nayar’s position seems valid. He places ‘Gayness’ as more of a social phenomenon whose parameters, functions, definitions are components of and constituted by social contexts and are essentially about society’s power relations (K. Nayar 2007, 119).

Authors like Sherry Joseph believe that though same-sex behaviour has been existent in our cultures for centuries, the framework to understand and interpret these experiences as Gay and Lesbian identities developed only later in ‘White societies’ (Joseph August 17, 1996). Thus, to her, ‘Gay identity’ or the condition of being a homosexual is distinct from the phenomenon of same-sex behaviour. The term homosexual was coined in 1869 by a German Doctor K.M. Kertbeny who opposed Sodomy laws. But the term was not popularized until the 1880’s and was adopted by those who wanted to make sense of their own experiences which were wrongly explained by labeling them as ‘unnatural’ or ‘immoral’. The rise of medicine and Psychology as arbiters of morality defined the ‘deviant’ and ‘diseased’ behaviours, leading to condemnation of many non-traditional sexual practices such as homosexuality (ibid). Thus both homosexual behaviour and corresponding identity was framed in a pejorative sense.

New discourses of sexuality started emerging around variety of experiences and desires. Politics of Sexuality started to be seen based on 'notions of 'normative' and 'alternative'. While normative refers to the ideal standards set by the society, which in the case of sexuality is 'heterosexuality', 'alternative' is used to indicate 'non-heterosexual', 'non-penetrative' sexuality such as that of Lesbians, Gay, Bisexual, Transgender. The effort at making them fall in line with the normative is often made by the religious-legal-medical discourse. Objecting to the use of term 'alternate sexuality' Nivedita Menon argues that "To consider homosexuality as an 'alternative' lifestyle is to leave unquestioned heterosexuality as a norm". Here she tries to problematise the understanding of 'heterosexuality' as natural and says that such an approach (of accepting heteronorm as natural) does not leave any scope for questioning the problems within it.

In another interesting debate regarding the question of 'naming' and historicity of 'homoeroticism', Menon agrees with Ruth Vanita and Saleem Kidwai. Vanita and Kidwai in their work, *Same-Sex Love in India* (New York, St. Martin's Press, 2000) argue that the entire debate over using the terms homosexual or Gay while writing about the past is misplaced. They say that Same-Sex love and eroticism dating back to history are to be identified by specific historical names that are not derivatives of modern-self consciousness. Infact the quest for evidence of homosexuality in a historical perspective was galvanized by the search for an 'identity' base on sexuality.

The debate on issues of identity, behaviour and naming in the contemporary context has been raised by Paola Bacchetta, Shivananda Khan, Arvind Narrain, Pramod Nayyar etc. Paola Bacchetta in her study of Delhi in the 1980's makes a distinction between '*lesbians*' (within quotation marks)-women who love women and/but do not identify with the term; and *lesbians*- those who do (Bacchetta 2007, 103). Thus the question of '*self-identification*' becomes significant. A given behavioural pattern need not translate into a sense of sexual identity. One may be practicing same-sex behaviour but may not associate oneself as a Homosexual either out of ignorance of the term or as a matter of choice arising out of multiple factors.

Similarly, another distinction in the context of Homosexual identity and behaviour was introduced as a result of emerging discourse on HIV/AIDS. The term 'Men having Sex

with Men'/MSM came to be used in the context of South-Asia. Shivananda Khan, the founder of NAZ Foundation International (based in London) clarifies the distinction between 'male-sexualities' and 'male-to-male sexual behaviour'. Talking in the context of South-Asia, he argues that male-to-male sex as behaviour does not equate with behaviourally or socially being homosexual or desiring men in a non-sexual context (Khan, Culture, Sexualities, Identities:Men who have Sex with Men in India 2001).

Khan seems to be sharing concerns with Vanita and Kidwai regarding the issue of misplaced use of terminologies outside cultural context. He says that western terms on sexuality are bandied about without any clarity and significance to the local cultural context. Calling this as a form of Sexual neo-colonialism, he argues that the Sexuality in the context of South Asia needs to be understood within its cultural specificity. Using evidence from the interviews he conducted in South Asia, he says that many 'men who had sex with men' did not identify themselves as 'Gay'. Moreover, many feel interested simply in the act/'discharge' of sex and not the gender of the person they have sex with. Thus, they merely have sex with men, simply because they enjoy sex as a whole. Many such men consider this as simply having fun/ *masti*. He says that none of these frameworks can be understood within the Western Lesbian /Gay constructions. Asserting disjuncture between sexual identity and behaviour in South- Asia, he says, "What they (MSM, for instance) do, does not necessarily have significance to who they are." Khan raises objections to the contemporary debate in South Asia that defines homosexuality as 'not being a man' / as being sexually penetrated. Furthermore, it is often ignored that much of same-sex sexual activity is around non-penetrative varieties, mutually indulged in frameworks of friendship and sexual play whilst in other situations, urgent sexual-discharge is the significant factor (ibid).

One of the factors for such disjuncture between identity-behaviour in same-sex engagements could be the fact that in South Asia, 'procreative heterosexuality' is seen as a social compulsion and family duty. Thus, in order to sustain other identities of community, religion, region, caste, status etc., they prefer to keep their non-heteronormative 'sexual identities' unknown. Menon however raises a doubt over Khan's proposition. She argues that Khan works with essentialist notions of 'West' and

‘indigenous’ and treats MSM as some sort of factual objective category actually existing ‘out there’, as opposed to ‘Gay’ and thereby close off the possibilities of dynamic forms of self-identification (Menon 2007, 19). I would like to raise another pertinent question to Shivananda Khan. I suggest that sexual identity even if product of Western discourse on Sexuality provides a ‘sense of belonging to a shared notion/belief’ and provides a tool to assert the rights of homosexual. Queer Writer and activists, Arvind Narrain and Gautam Bhan also suggest that ‘identity’ apart from being an important performative statement with the potential to disrupt straight culture, also seems to answer a deep personal need (Bhan 2005, 14).

Menon suggests that the use of a broader term Queer for instance, enables a questioning of the supposed naturalness of the ‘heterosexual’ identity. Arvind Narrain and Gautam Bhan also consider the term ‘Queer’ as liberating. They believe, “the term ‘Queer’ is a deeply personal identity and a defiant political perspective. It embodies within itself a rejection of compulsory heterosexuality” (ibid, 3-4). Moreover, it speaks of communities that name themselves (as Gay, Lesbians, for example) , as well as of those who do not, thereby recognizing the spaces for same-sex desire and sexuality that cannot be captured in identities alone. Arguing that our understanding of sexuality in itself is ever-changing, they say that the realm of same-sex desire and love in our country extends far beyond those that embrace a certain identity. Therefore, they claim that same-sex desire/love in India cannot be solely understood in terms of a certain identity, which seems to be true.

Similarly, criticizing the construction of ‘Lesbian-Gay’ identity mediated by power-relations, Hoshang Merchant says that the identity of the Gay or Lesbian is identifiable neither with the normative heterosexual nor with the ‘third-sex’ but in an in-between space, to be constructed with a great deal of trauma and victimization (Merchant 1999, xii). Whether one relies on the Essentialist or Social Constructionist perspective on homosexuality, Identity becomes an important marker for providing a ‘sense of belongingness’ as well as ‘distinctness’. Queer movement tries to reach out to ‘Identity’ for both the reasons. Let me now bring the discussion to the core concern of this chapter, i.e., the medical discourse on homosexuality, beginning with the Western discourse.

2) Homosexual in Western Medical Discourse

Science of sexuality emerging in the west in the 19th century made sexuality the crux of people's identities. Psychiatry and Medicine competed with religion and law for jurisdiction over sexuality. Thus, one witnessed the expansion of the discourse on homosexuality from the rhetoric of sin and crime to that of pathology. The Medical discourse sought to classify and categorize sexual behaviour/instinct into normal and 'deviant' behaviour. Thus, 'deviant' sexuality was defined in terms of specific attributes of a group of 'perverts' whose subjectivities came to be defined by that 'deviant behaviour'. This led to the condemnation of non-traditional /non-heterosexual sexual practices as 'perversion', with homosexuality in the forefront. Soon 'same-sex affection' and homosexual behaviour came to be associated as 'homosexual identity' in a pejorative sense. Homosexuality came to be seen as a 'mental illness or personality disorder' which warranted treatment. Thus began a whole range of scientific research to 'discover the causative factors' influencing such behaviour so as to find the methods of restoring them back to 'normal' health. Psychiatry included homosexuality in the diagnostic manual and sanctioned interventions and treatments. In 1960's and 1970's one witnessed empirical studies /research into psychological origins of homosexuality. Factors such as parental background and style, sibling sex-ratio, sexual-abuse experiences in childhood etc. were studied to identify the 'cause of homosexuality'. However as the results of psychological studies came to be less convincing, it was taken over by the Biological approach that gave genetic and prenatal hormonal explanation.

Being identified as 'mentally ill', altered the social image of the homosexual and also provided subtle justification for violation of his/her civil / human rights. As Foucault argued, homosexual was classified into existence by medical discourse of 'new species' of individual by discovering and implanting perversions, thereby devising more subtle means of control. Foucault referred to this as the 'bio-power' of medicine that became an agent of control of the 'homosexual' subject through the 'medical gaze'⁹

⁹ The concept has been elaborated by Foucault in *The history of sexuality, Volume 1: The will to knowledge*. London: Allen Lane, 1979.

Psychoanalysis provided an important insight into the whole debate on homosexuality and perversion. Infact as Ranjita Biswas suggests, Psychoanalysis is perhaps the only moment in the history of mental health sciences that set up a dialogue with homosexuality and perversion (Biswas 2007) Both Freud (3 Essays on sexuality, 1905) and Alfred Kinsey (Sexual behaviour in the human male, 1948) promoted the idea that everyone is potentially bisexual (Gleeson 2007). Freud did not consider same-sex desire to be pathological in any way. He rejected the view of sexologists who demarcated homosexual as a 'special category' of person. He claimed that everyone is capable of making a homosexual object choice. He resisted attempts to segregate homosexuals from the rest of population on the basis of deviant character. As Jeffery Weeks writes about Freud, "Freud distanced himself from the viewpoint that homosexuality was a sign of degeneracy on the grounds that this was no more than a 'judgment of value, a condemnation instead of explanation'. In a famous letter to the mother of a young homosexual, Freud assured her that homosexuality was no vice or degradation, nor was it an illness: it was nothing to be ashamed of" (ibid).He pointed out that many great men like Plato, Michelangelo, Leonardo Da Vinci were homosexuals and cautioned that it was generally not possible to change sexual orientation with psychoanalysis. Moreover, according to his theory of Constitutional Bisexuality, both, same-sex and opposite sex sexual objects were universally experienced on an unconscious level. Freud argued that all human beings are capable of making a homosexual object choice and in fact they would have made one in their unconscious (Downey 1998, 250-251). However, the moment of dialogue that homosexuality enjoyed in a non-pathological sense because of psychoanalysis was short lived. Medical discourse soon came to be dominated by behaviouralism and psychiatry that established the link between homosexuality and mental disorder. Homosexuality as 'perverse sexuality' began to be stigmatized.

The tradition of classifying sexual diversity as sexual abnormality can be traced to Viennese Psychiatrist Richard Krafft-Ebbing who, in *Psychopathia Sexualis* (1894) viewed human sexual behaviour as a collection of loathsome diseases (Bhan 2005, 51-52). Kraft-Ebbing viewed these 'deviations' from the 'normal' pattern as 'perversions',

including Sadism, Masochism, Fetishism, Voyeurism, Exhibitionism, Necrophilia, Homosexuality. Jeffery Weeks argued in 'Sexuality' that to understand what was normal, 'perverse' sexualities needed to be stigmatized. He says, "The negative side of this classificatory enthusiasm was a sharp reinforcement of the normal. The debates over the causes of perversions and the eager descriptions of even the most outrageous examples inevitably worked to emphasise their pathology, their relationship to degeneracy, madness and sickness, and helped to reinforce the normality of heterosexual relationships (Gleeson 2007). Beiber applied Krafft-Ebbing's understanding to his study. After a study of 100 homosexuals and 100 heterosexuals, he concluded that homosexual orientation was a result of pathogenic family with a domineering mother and a detached or absent father. He went on to pathologise various aspects of homosexual existence and said, "...Because of its pathological status, the possibility of establishing a stable and intimate homosexual relationship is precluded...hence there is ceaseless, compulsive, anonymous cruising" (Bhan 2005, 51). Apart from the psychiatric accounts of excessive same-sex parent attachment as one of the causes, scientific theories tried to explain homosexual behaviour in terms of 'masculinized' uterus, feminized testes, hormonal excesses and chromosomal weaknesses. The intent of these studies was to establish 'same-sex behaviour' as a risk factor in the causation of psychiatric problems, consequently resulting in efforts to treat them.

Sandor Rado, who became the first Director of New York Psychoanalytic Institute in 1931, gave a theory of sexual orientation. His theory suggested that homosexuality was inherently pathological. Rejecting Freud's theory of Constitutional Bisexuality, Rado concluded that all people are primarily heterosexual. Those who were erotically attracted to people of the same-sex were unconsciously attracted to those of the opposite sex. Their primary heteroerotic wishes were irrationally experienced as dangerous. Unconscious fears led to repression of heterosexual wishes and to the replacement in the conscious mind of the heterosexual erotic object by one of the same sex (Downey 1998, 263).

Rado's theory that homosexuality was due to an unconscious irrational fear of heterosexuality was accepted by most American Psychoanalysts. It fostered the conviction (as opposed to Freud's view) that the sex of the consciously perceived object of desire

could usually be altered with Psychoanalysis, i.e., homosexual orientation could be treated with psychoanalysis. Thus, during 1940's and 1970's the treatment goal for most homosexual patients was conversion to heterosexuality. Friedman and Downey argue that complications of treatment undertaken to convert homosexual individuals to heterosexual were more the rule than exception during this phase of psychoanalysis. Such complications included loss of self-esteem resulting from the treatment failure and wasting of financial resources on unsuccessful treatment because the replacement of homosexual by heterosexual fantasies was never accomplished. A sense of betrayal and mistrust was experienced by many in the homosexual community towards psychoanalysis (Downey 1998).

2.1) Medical treatment of the Homosexual

Sandor Rado is said to have laid the foundations of reparative therapies, which are designed to change the sexual orientation of the patient through a variety of techniques, including administration of drugs, shock therapy and behavioural therapy. Thus, Various techniques were used across the years to 'treat' the 'pathological' condition of homosexuality depending on the causative factors that dominated research during that period. Early efforts at treatment included use of *surgical techniques*. Stienach in 1917 was the first to use a surgical technique to 'cure' homosexuality (Bhan 2005, 51). He performed a unilateral castration on a homosexual man. Later he transplanted testicular tissue from a heterosexual man into the castrated patient, in the hope that he would be cured. 'At least 11 men were operated on from 1916 to 1921. However, the experiments were not successful' (ibid). In 1962, Roeder introduced a new surgical technique. Since then 75 men who were considered to be 'sexually abnormal' were subjected to *Hypothalamotomies* (surgical removal of the hypothalamus). Most of these men had either been imprisoned or were involuntarily committed to medical institutions (ibid).

Another method employed to treat homosexuality was *hormonal treatment*. It was based on the theory that homosexual tendencies were due to hormonal imbalance that caused certain men to be inadequately masculine and the women to be overly masculine. Hence,

it was thought that injecting the right quantity of desirable hormone could 'cure' such tendencies. English Mathematician and Cryptoanalyst Alan Turing (1912-1954) charged under Section 11 of the Criminal Law Amendment Act, 1885 was made to undergo chemical castration in 1952 by injecting oestrogen hormone. This shows how the link between homosexual behaviour and hormonal malfunctioning was established by the medical discourse and how both the Legal and medical discourse worked in harmony to control the 'homosexual subject/species' it had created.

Another technique of treatment was the '*therapeutic method*' known as behavioral therapy based on the work of psychologist Pavlov (Bhan 2005, 52). He showed that repeated exposure to a certain stimuli in a certain environment could succeed in eliciting a behavioral response from a patient. The application of this technique to homosexual men took the form of 'exposing the concerned man to male nude pictures and subjecting him to a mild electric shock so that the person could link that imagery to feelings of pain. This was followed by techniques wherein one tried to increase the pleasure in heterosexuality. For that purpose, one of the methods used was orgasmic reconditioning which involved masturbation to 'deviant' imagery, with a heterosexual image substituted just before ejaculation. It was being argued that case studies demonstrated the usefulness of this technique for increasing heterosexual arousal in subjects seeking 'treatment' for homosexuality (ibid).

Arvind Narrain and Gautam Bhan point to an interesting fact that there is a gap between the diagnosis and the proposed treatment. Studies in the aetiology of homosexuality have pointed to a range of factors from the pathogenic family to lack of heterosexual contact as the cause. Homosexual orientation is seen as a product of a deep psychic process, but then the proposed treatment addresses homosexual orientation as a mere question of behaviour. It seems inexplicable as to how, if something is so deeply rooted and pathological as homosexuality was believed to be, it was still considered to be changeable/'curable' by treating it as a behavioral pattern.

2.2) Medical / Scientific Discourse: In defense of Homosexuality

Homosexuals in a bid to find legitimacy for their sexual-preference made science their ally (Biswas 2007, 268). They used scientific theories/ terminologies to counter other theories that tried to prove that homosexuality could be 'cured' and eliminated. They grounded their argument in the 'gene hypothesis' arguing that homosexuality was genetic or innate, therefore irreversible. They also gave evidence of scientific studies that proved same-sex behaviour in certain animals. Since, animals engaged in 'same-sex sexual behaviour', homosexuality can be construed as natural and therefore a possibility in human beings as well. But the opponents of homosexuality gave counter arguments questioning the gene hypothesis. They argued that even if homosexuality were found to have genetic basis, it produced negative mental/physical health consequences that needed to be addressed. Furthermore, the 'animal hypothesis' of homosexuality was countered by arguing that just because 'same-sex sexual behaviour' is found in animals also, cannot suffice to justify it as part of human nature. They argued that activities like 'killing of one's young ones or devouring of other animals' are also observable in animals, so can these be also considered to be a part of human nature. Thus, they concluded that even if homosexual instincts are found in animals, it cannot be extrapolated as natural in human beings. Moreover, it was argued that 'reading human motivations and sentiments into animal behaviour was poor science' (ibid, 269)

2.3) Demand for Depathologization of Homosexuality

After the Stonewall Inn Riots of 1969, the Gay-Lesbian movement in the west gained momentum and a rallying cry for depathologization was made. The 'pathology paradigm' put forth by psychiatry was put into serious questioning. Activists arrived at the political understanding of the 'cultural power of psychiatry'. They realized that psychiatry was no more seen simply as a science but rather as an elaborate body of knowledge which has replaced religion as the arbiter of social values. The critique of psychiatry's inclusion of homosexuality as an illness drew upon a critique of the larger process of 'medicalisation of social life'.

Furthermore, the authority of psychiatry to speak on behalf of a silent/ marginalized population was questioned. Gay activists such as Frank Kameny asserted, “We are the true authorities on homosexuality whether we are accepted as such or not” (Bhan 2005, 52-53). It was also argued that, the reported incidents of psychiatric disorder in people with ‘same-sex behaviour’ was more because of adverse social reactions/response to homosexuality than due to any pathological predisposition. The Gay/Lesbian movement in conjunction with the feminist movement also questioned the hegemonic status of the ideology of sexuality as procreation. The movement demanded delinking of ‘procreation from pleasure’.

Due to increased activism around the issue of Depathologization, there was immense pressure on Diagnostic and Statistical Manual (DSM II) to remove homosexuality from the list of ‘mental illnesses’. Finally in 1973, the Board of Trustees of the American Psychiatric Association (APA) approved the deletion of homosexuality as a mental disorder. The APA also passed a civil-liberties resolution, which clearly opposed discrimination against homosexuals and called for repeal of anti-sodomy laws. The APA noted, ‘whereas homosexuality in and of itself implies no impairment in judgment, stability, reliability, or vocational capabilities, therefore, be it resolved, that the APA deplores all public and private discrimination against homosexuals in such areas as employment, housing, public accommodation...’(ibid, 54).

However, due to opposition of this decision of APA from certain section, referendum was held. Through the democratic process of referendum, the APA by a majority vote of 58% who supported the decision of the APA versus 37% who opposed it decided that homosexuality was not a mental disorder. A political decision changed the entire scene in favour of depathologization of homosexuality. Thus Narrain and Bhan argue that in the entire controversy over the inclusion of homosexuality as a mental disorder, the scientific basis of classification was itself exposed to ridicule as it made evident that the inclusion of homosexuality (as a mental illness) was as political a position as its deletion. The medical discourse hand in hand with the religio-legal discourse had been trying to control the ‘homosexual’ behaviour which it considered to be a threat to the ‘normal / heteronormative’ set-up of society.

3.) Homosexuality: Medical discourse in India

In the last section, I discussed the medical discourse on homosexuality in the West. This section will focus on the medical discourse in India with regard to homosexuality. Homosexuality in India was not a medical category as it was in the U.S. The medical categories in India are very complex with traditional system of medicine (like Ayurveda, Homeopathy, and Yunani) running parallel to the modern system (allopath). The issue of 'treatment' is located within this complex field of competing systems of medicine. However, the most well articulated position with respect to the treatment of homosexuality remains the domain of Western medicine.

The introduction of Western Medicine in India was seen by the Indian historians as a part of the colonial project of pacification and control of the Indian subject. As part of the legacy of colonial rule, the modern medical discourse in India followed categories of classification used to define 'sexual disorder' including those related to 'homosexual behaviour'. Thus, the medical discourse on homosexuality in India is a 'derivative discourse' (Chatterjee 1993) derived from Western medicine and Psychiatry.

3.1) Ego-Dystonic and Ego-Syntonic Homosexuality

The Indian Medical establishment i.e., Indian Medical Association, Medical Council of India and the Indian Psychiatric Association, had adopted the W.H.O. system of classification of mental and behavioral disorders known as ICD-10 (International Classification of Diseases-10), 1992. This system distinguishes between Ego-Syntonic and Ego-dystonic homosexuality (Bhan 2005, 55). It specifically mentions Ego-dystonic homosexuality and bisexuality as psychiatric disorders.

In Ego-dystonic Homosexuality or bisexuality, the gender identity or sexual preference is not in doubt. However, the individual concerned wishes that it were different and seeks treatment. According to W.H.O., treatment is warranted in such cases. In Ego-Syntonic homosexuality, the individual is comfortable with his/her

sexual preference or gender identity, hence treatment is not warranted. ICD-10 mentions another disorder named as 'sexual relationship disorder' in which a person faces problem in maintaining a sexual relationship due to the person's sexual preference. This condition too, according to W.H.O. warrants treatment. The Indian medical discourse follows this category of Ego-dystonicity unquestionably as warranting treatment. It has accepted it as a 'truth' and in the Foucauldian sense, once a truth is produced by a system of knowledge; it acquires a life of its own (Bhan 2005, 56).

One of the cases in India involving 'treatment' of a homosexual person through aversion therapy was taken up by the Queer community and reported to the National Human Rights commission. The case was reported in the Indian Express dated 20th May, 2001. A petition was filed involving a patient being treated at AIIMS/ All India Institute for Medical Sciences in the Psychiatry department, to cure him of his homosexuality. The patient approached the organization NAZ foundation India through which a complaint was filed with the National Human Rights Commission alleging psychiatric abuse. The patient himself noted, 'men who are confused about their sexuality need to be given the opportunity to go back to heterosexuality. I have never been confused but nevertheless told that I had to be "cured" of my homosexuality. The Doctor put me on drugs which I had been taking for four years' (Narain 2007, 74). The treatment involved counseling therapy and drugs. Counseling therapy involved, asking the patient to curb his homosexual fantasies by making women as the object of their desire. The patient reportedly underwent serious emotional and psychological trauma, and feeling of personal violation. However, the NHRC after admitting the complaint finally rejected it. One of the sources from NHRC revealed (as reported in the Pioneer, 2nd August, 2001) the reason for such decision, 'homosexuality is an offence under IPC, isn't it? So, do you want us to take cognizance of something that is an offence?' (ibid, 75). Thus, it is evident from the above statement that the Human Rights commission too failed to bring justice to the person concerned on the pretext of non-interference in a 'criminal offence'

Arvind Narrain suggests that such comments clearly show that there is significant lack of understanding of Gay people as human beings. He raises a pertinent point, “There seems to be an easy collapsing of the category of sexual act, sexual identity and sexual orientation, with sexual acts defining identity and orientation” (Narrain 2007, 75). The central issue raised in this chapter about the complex link between identity and behaviour is reflected in this statement. It is difficult to ascertain at what stage sexual behaviour can be said to translate into sexual identity. Moreover, in case of a ‘self-identified’ or ‘out Gay/Lesbian’, all his/her acts are interpreted in terms of his/her sexuality and his other identities (such as national, regional, professional etc) are put aside.

Let me now interrogate the category of Ego-Dystonicity in the next section. The medical discourse in India on homosexuality has been obsessed with the term of ‘Dystonicity’. Arvind Narrain mentions excerpts from interviews of a section of Bangalore’s Mental Health Community to note the dominant opinion of the Medical profession on the given issue (Bhan 2005, 56). One of the Psychiatrist noted, “Ego-dystonicity is a Freudian term and is to do with the lack of coherence of the self. The dystonic patient is often deeply distressed over his/ her condition. It’s not my job to tell him that it’s okay to be gay, but rather my duty is to deal with the patient’s distress by treating him. I have to help the individual.”

Another Counsellor was of the opinion, “Homosexuality does not do any good...the homosexual himself was not the problem but his condition was due to poor parenting. People who feel they are homosexuals and want to change should come in early to cure the problem...if a homosexual is happy then there is no problem, but if they are not then I will help them” (ibid, 58).

Thus, the conclusion that ‘treatment’ of homosexuality is required flows from the very understanding that there exists a category of Ego-dystonicity. By such positivist construction of helplessness in the face of an already existing category, mental health professionals absolve themselves of any ethical responsibility. There is no questioning of such categories. Infact, the underlying assumption leaves the inherent superiority of heterosexuality unquestioned and the Medical practitioners consider ‘making the concerned person heterosexual’ in their best interest.

However, the very scientific basis of Dystonicity is problematic and comes into doubt. As another Clinical Psychologist notes, 'the problem is much more when the person is not distressed about homosexuality but about its consequences. Since you cannot separate the individual from the society, the attraction leads to a problem.' This very statement is a reflection of the fact that Dystonicity is very much the product of a discourse that negates 'homosexuality' as a genuine sexual-category apart from heterosexuality. The Clinical Psychologist in the given statement clearly says that the distress to the homosexual is often because of the (societal) consequences of being a homosexual, such as lack of family support, social ostracism etc. It has nothing to do with an inherent discomfort with one's sexuality, rather it is a fear rooted in the lack of social acceptance. Thus, Ego-dystonicity remains more as a social category than a clinical category and makes homophobia seem acceptable. Even after homosexuality has been erased from the official list of disorders, Psychiatrists in India have demonstrated ignorance about the removal of the clinical category of homosexuality.

The very production of homosexual as an object of knowledge leaves heterosexuality as a neutral position beyond the pale of study. As David Halperin suggests, 'By constituting homosexuality as an object of knowledge, heterosexuality also constitutes itself as privileged stance of subjectivity- as the very condition of knowing and thereby avoids becoming an object of knowledge itself, the target of possible critique' (Bhan 2005, 58-59). None of the Doctors/ Psychiatrist ever questioned the societal reasons for distress among 'homosexual patient'. They started with the underlying assumption that 'homosexual orientation' was the root cause of distress. Will a Medical professional ever suggest a 'heterosexual' person to become 'homosexual' if he seems to be distressed in his sexual life? Definitely, no. This is because of deep-rooted 'homophobic' beliefs of physicians/ Psychiatrists which is a product of the medical discourse and emerge in equally powerful ways from discourses such as law and religion.

3.2) Decriminalisation/Depathologization: Response of the Indian Medical Community

Another very important aspect with regard to depathologization would be to ascertain the response of the medical community in India in recent years. The President of Indian Psychiatric Society E.Mohandas, made a positive statement about decriminalization of homosexuality during his presidential address at the Annual Conference in January 2009. In his talk titled, 'Roadmap to Indian Psychiatry', he said, "The IPS should have an advocacy team to facilitate the link between the society and the officialdom in matters such as undergraduate psychiatric training, decriminalization of attempted suicide and '*homosexuality*'..." (S.Chandra 2009, October-December). However, there has also been instances of irresponsible publishing that sent ambiguous messages in the medical community. An article published in the Indian Journal of Psychiatry in 2008 (S.T.S. Rao, A.Avasthi) states, "Since 1980's, workers like Bagadia et al have shown the usefulness of non-pharmacological measures in treatment of impotency and pre-mature ejaculation. Also a manual providing algorithms for erectile dysfunction, PME and homosexuality has been made. But, there is dismal research in relation to the use of pharmacological agents for sexual dysfunction from India (ibid).

Dr. Prabha Chandra of Department of Psychiatry at NIMHANS, Bangalore, raises a pertinent question as to 'why include homosexuality in the same subject topic as sexual disorders' (ibid). Dr. Chandra believes that there is need to improve the response of mental health professionals in India to homosexuality and suggests the following measures for the same. Dr. Chandra says that there is need for discourses and publications on specific mental health needs of Lesbian, Gay, Bisexual and transgender groups just like there are discussions on women and children. She asserts that since Section 377 of IPC has been read down, Psychiatrists should focus on their real job which involves treating emotional distress among those who need it. These would include helping 'LGBT' groups in communicating with their families, building supportive networks, handling anxiety just like they would in any other person who seeks help. As has been strongly argued by many Queer activists, the root to psychological disturbance faced by the homosexuals is social ostracization. Vijay Nagaswami sharing his

experience of working with lesbians and Gay people in psychotherapy, says that the only mental health problem faced by them are the homophobic social consequence of their sexual orientation; the humiliating marginalization, social pressure to go in for straight marriages, the dearth of available resources that can respond to the their inner dictates and the fear of “coming out of the closet” (Nagaswami 2011).

3.3) HIV/AIDS Discourse within LGBT movement

In the last section, we saw the response of the Medical community in India to recent decriminalization and depathologization of homosexuality. One of the arguments given by the Queer groups for decriminalization of homosexuality in India was related to health concerns around HIV/AIDS. It was argued that due to criminalization of homosexuality, Homosexuals remained in the closet for the fear of being persecuted. This deprived them of any access to resources for HIV/AIDS prevention. Thus, decriminalization was linked to the HIV/AIDS discourse. This approach however, has been criticized by some section within and outside the Gay community on grounds that it may re-establish the stereotype of AIDS being a ‘Gay-disease’.

In the last two decades, the debate on HIV/AIDS has dominated the medical discourse in India as well as the social sector working in relation to Lesbian, Gay, Bisexual and Transgender (LGBT) community. On one hand, HIV/AIDS prevention programme of developing societies has been questioned as narrow for its heterosexual bias, by activists and scholars like Shivananda Khan, Richard Parker and Peter Aggleton. On the other hand, the recent stride in activism around HIV/AIDS within the Queer movement has been problematised differently by other scholars like Niranjan Karnik and Subir Kole. They argue that the sudden panic created around HIV/AIDS was largely driven by globalization and western discourse. They problematised the ‘western donor’ discourse that tries to help the East uncover their ‘repressed’ sexualities through NGOs working in the field of sexuality. They view the whole process as an attempt to create a totalizing, universal ‘LGBT’ identity category. These are the broad concerns to be discussed in this section.

This section is divided into two sub-sections. One raises questions on the approach of Queer activism around HIV/AIDS prevention in the Gay/Queer community and tries to see the larger politics involved in it. While the other section, supports Queer activism for HIV/AIDS prevention as it believes that there has been neglect of the Gay/Queer, especially MSM in the preventive measures taken for HIV/AIDS.

3.3. a) Queer Activism around HIV prevention: ‘western donor driven’ agenda

The first mention of AIDS in the context of India in AIDSLINE database occurred in 1985 in articles in ‘Nature’. An article “India against AIDS” dated 21st November 1985 in Nature reported that after the first case reports of AIDS in Pakistan were reported, India decided to organize a national task force to produce recommendations on how to prevent AIDS from entering India (S.Karnik summer 2001) The news reported that the aim of taskforce was to educate the public about AIDS without creating a scare and to keep tabs on vulnerable groups, including haemophiliacs, homosexuals and a large proportion of Eunuchs and prostitutes. Karnik argues that this transference of high risk grouping from West to East highlights one of the main routes for the movement of information in a Globalized world. Little attention was paid to the fact that many of the categories being transferred had little validity and social recognition in the Indian context. For instance, the term ‘homosexual’, as used in the U.S. had very little meaning for researchers in India. Moreover, the systematic reproduction of ‘high risk categories’ at the expense of broader social groupings, leads to the production of a strong narrative that stigmatizes those put under this category.

In this context, it would be interesting to know the response of World Health Organization/WHO in this regard. In its Advocacy Kit, WHO, World pacific region on World AIDS day 2002, MSM are clubbed as one of the stigmatized group (Stigma and Discrimination-Live and let live 2002). It says that in all societies around the world, MSM are believed to comprise about 5% to 10% of all sexually active males and represent a group vulnerable to HIV infection. It further says that in many developing

countries, sex between men accounts for the bulk of HIV infection. Thus, such statements by W.H.O. further the myth that AIDS is a 'gay disease'.

Subir Kole argues that the looming HIV/AIDS epidemic in India have been mediated through globalization to influence Queer identity politics in India (Kole 2007, July, 11). Following Shannon Woodcock, he contends that India has had a diverse and complex spectrum of same-sex sexual cultures in which sexual minorities have always performed their identities in a variety of social spaces and without the political rhetoric of the west. He suggests that the entire focus on 'coming out'/confession of one's sexual identity is a western phenomenon being brought into the East. The western project of liberating the 'sexually repressed' communities of the East attempts to contain the dynamic and diverse sexual culture by enticing the traditional sexual minorities to evolve into a globalised, universal 'LGBT' identity category. He sees the International funding on 'HIV/AIDS prevention' for sexual minorities (including Gays, Lesbians, Hijras, Kotis and even Prostitutes) as an attempt in this direction. Thus in India, existing multiplicities of Queer Sexualities such as Hijras, Kothis, Kinnars, Panthis, Jogtas, Dangas, Alis, Double-deckers, Chhakkas and Dhuranis are commonly clubbed together by most of the HIV/AIDS activists as 'LGBTs' thus redefining existing sexual practices in a predefined western mould of 'performance'.

Post Globalization, Liberalization, the multinational NGOs entered India setting up their head offices here with the primary purpose of collaborating with indigenous organization and acting as a financial and technical support providing agency. Kole argues that in this manner, International funding catalyzed the mushrooming of 'NGO businesses in every part of the country. Kole argues that these 'mushrooming NGOs' were driven by the agenda of its 'western donor agency', which since 1990's has focused on HIV/AIDS prevention (ibid). Since early 1990's till the end of 2005, International funding for HIV/AIDS in India at current prices has gone up from 19 million to 608 million U.S.Dollars. Of this, 313.9 million is National AIDS Control program Phase 2 funding between 1995-2005 Moreover, India's HIV/AIDS transmission is primarily heterosexual with more than 84% of total transmission taking place through this route, and largely remains concentrated among sex-workers, their clients and injecting drug users. Yet

prevention services among MSMs (Men having sex with men) constitutes a significant part of NGO program especially of those working with sexual minorities. In the period from 1994-2004, the largest number of 'Gay-Lesbian' AIDS NGO was ever registered in the history of Indian subcontinent.

The issues for which International donors put in their funds were HIV/AIDS prevention, promotion of sexual health & sexual rights and reproductive health. Kole argues that the focus on AIDS discourse was owing to the western understanding of Indian society as 'sexually repressed' and 'sexually tabooed' wherein HIV spreads faster than Western societies (Kole 2007, July, 11). Thus, promotion of sexual rights among the marginalized communities such as Queer, sex-workers or drug users formed the 'eligibility criterion' for getting funds. Some of the new NGOs being registered with exclusive focus on sexuality and HIV/AIDS prevention included Sangama, Sahodaran, Gelaya, Social Welfare Association for Men (SWAM), Swabhava Trust, Lakshya Trust, Aasra Charitable Trust.

The priority of donors/donor agenda not only catalyzed formation of new NGOs in the area of sexual health but also changed the agenda of pre-existing NGOs. Most of the earlier established NGOs working at grassroots started working on sexuality and AIDS prevention, although their mission was to promote education or environmental protection. Even large NGOs like Population Foundation of India/PFI also reoriented its focus with changing donor priorities. For 30 years, PFI has been working on family planning, reproductive and child health without an HIV/AIDS component in it until 2004. PFI included HIV/AIDS prevention in its purview only in late 2004 with its initiation as the principal recipient of the Global fund Round 4 grant. Another vital component of NGO program was 'situation assessment' or 'community needs assessment' usually carried out before starting the program. For conducting Community Needs Assessment, NGO workers had to search for HIV positive individuals and other groups considered to be vulnerable such as Gays, Kothis and Eunuchs. The NGOs perceived risk on the behalf of these groups and motivated them to go for an HIV test. Kole suggests that such an exercise put two interest groups at stake-Firstly, if the threshold populations of HIV positive individuals were not found, outreach workers lose their jobs. Secondly, if 'need'

was not reflected for such an exercise, NGOs lose their potential funding. Hence, construction of an agenda and inflation in reporting (cases of HIV positive) was inevitable as more number of target population meant more money for program implementation.

The fact that India's HIV/AIDS number is grossly overestimated is being revealed due to differences in survey conducted. More accurate population based surveys reveal the fact that HIV was treated with exaggerated panic. For instance, a population based survey in Guntur District of South India revealed that 'sentinel Surveillance' method to arrive at HIV/AIDS figures overestimates the burden by 2-3 times than population based data. Kole says that the reasons for this overestimation are due to addition of unnecessary HIV estimates from STI (Sexually Transmitted Infections) clinics, which is a common practice of referral of HIV positive and suspect patients by private practitioners to public hospitals and also preferential use of public hospitals by lower socio-economic strata used in Sentinel Surveillance Method. However, this debate does not end here and is contested by others like S.Kadiyala and T.Barnett (Kadiyala, Barnett 8May, 2004). The two of them rather argue that the survey conducted by the Government shows HIV/AIDS in underestimation. Emphasis on HIV/AIDS has encouraged the resurgence of biomedical approaches to sexuality through repeated association of sexuality with disease (Kole 2007, July, 11). The dangers posed by such an approach is that Biomedical models often tend to be unreflective about the influence of medical science in constructing categories such as 'the body' and the 'health' (Aggleton 1999, 49). It does not take into consideration the fact that the meaning of sexuality changes over time and within population. Not only this, the biomedical approach to sexuality also brings back the danger of re-pathologization of sexuality.

Another issue of concern is the specific emphasis on sexual routes of transmission of HIV/AIDS which results in ignoring focus on other non-sexual routes. Gisselquist and Correa (2006) argue that HIV prevention focusing on 'high-risk' groups consisting of sex-workers, MSMs and drug users has dominated India's Anti AIDS programme for over two decades (Kole 2007, July, 11). Whereas, non-sexual transmission through non-sterile medical injections and risky blood exposures in health care and cosmetic services

that account for an important proportion of HIV infection, are ignored. Kole suggests that Queer mobilization in the context of HIV/AIDS epidemic has strengthened homophobic discourse (Kole 2007, July, 11). Association of Queer community as a group vulnerable to HIV/AIDS has led to increased homophobia.

3.3. b) HIV/AIDS Prevention programme: Neglect of the MSM/Gay community

However, there is another school of thought led by Shivananda Khan (of NAZ Foundation), Richard Parker and Peter Aggleton that propounds a different theory altogether (Richard Parker 1998). They rather point to the fact that AIDS in developing society is being seen primarily as affecting the heterosexual population. They argue that the repeated assertion that AIDS in the developing society affects primarily the ‘general population’, rather than morally reprehensible groups such as gay and bisexual men or injecting drug users, has been used for justifying efforts aimed at prevention and control. They say that the significance of HIV transmission among Gay and Bisexual men was apparent from the beginning of the epidemic in countries such as U.S.A., U.K., France but this was not the case in many parts of the developing world, especially in Sub-Saharan Africa. In these parts, HIV/AIDS was seen to be driven exclusively through heterosexual transmission and that homosexual might play even a secondary role was either rejected or denied.

In South Asia and South-East Asia, homosexual transmission has been widely reported but in conjunction with a range of other modes of transmission, such as heterosexual contacts and injecting drug use, especially in countries such as India and Thailand. Khan et al argue that in spite of significant evidence that men who have sex with men (MSM) are an important population in Asia, who are vulnerable because of their clandestine and marginal status in society, the history of HIV/AIDS pandemic has been marked by continued denial and neglect of this evidence. This tendency has been particularly been seen in the official HIV/AIDS programme developed by Governmental and Non-Governmental Agencies (Richard Parker 1998, 333). Citing reports from National AIDS programme of over 159 developing countries, they argue that limited AIDS related health

services for MSM offers a clear indication of the lack of attention given to such population by Intergovernmental and International Agencies.

In contrast to what was being said by S.Kole and Niranjan Karnik about Western donor agenda, Khan et al suggest that the vast majority of Bilateral Donors and International NGOs justified investment in HIV/AIDS prevention activities in developing world, with its overwhelmingly heterosexual transmission and its primary impact on 'general population'. The widespread denial of the needs of MSM in developing world is a testimony to them being neglected. However, like Kole and Karnik, they too acknowledge that terms such as 'homosexual', 'bisexual' hold little meaning in developing world and hence AIDS prevention program have drawn upon a range of local vocabularies in order to spread their message. Thus, the need to create culturally appropriate context for HIV-risk reduction and safer sex, has been underlined.

Another interesting report is the 'Task Force report on HIV/AIDS' of U.N. Millennium Project, 2005, 'Combating HIV/AIDS in the developing world' that echoes similar concerns (Josh Ruxin 2005, 6-11). Urging countries to focus on vulnerable population, the report says that vulnerable population like sex-workers and MSM suffer from discriminatory laws and ill-conceived punitive approaches and policies that drive these groups to go underground and away from preventive services. The report says that such policies and laws are counterproductive and should be abandoned. It further says that even where prevalence in general population is high, prevention campaigns must focus special attention on those whose circumstances/ behaviour puts them at higher risk of contracting/transmitting HIV/AIDS.

The report further warns that in many of the hardest-hit countries, as well as those threatened by growing epidemics-India, China, Russia, AIDS still does not receive sufficient attention from the Government. Thus, it argues that the U.N. as well as the Bretton Woods Institution and donors must demand that these countries take the threat of AIDS seriously. The report is significant in the sense that it also reiterates certain section namely Sex-workers and MSM as 'vulnerable' to HIV/AIDS, thus reinforcing the stereotype that these groups are the main carriers of AIDS. Moreover, it can be suggested that the report resulted in an increase in concern of respective Governments,

such as the Ministry of Health in India to extend its support for decriminalization of homosexuality to ensure prevention and care in the context of HIV/AIDS. No wonder that the Government in India which had so far been against decriminalization suddenly had one of its ministries (Health) reflecting the concerns of the U.N. Task Force report regarding decriminalization of HIV/AIDS so as to bring the homosexuals (considered to be vulnerable to HIV/AIDS) out of the closet to seek preventive measures.

Conclusion

Like the legal discourse on homosexuality, the medical discourse on homosexuality in India too drew from the Western understanding of the homosexual as a 'criminal, pathological' category. The medical discourse on homosexuality in India, being a 'derivative discourse' (Chatterjee 1993), considered the homosexual as 'clinically abnormal', hence a subject for treatment.

The 'pathologization' of Homosexuality and consequent 'medicalization' of sexuality around concerns of spread of HIV/AIDS resulted in categorization of homosexual as the 'vulnerable other', whose sexual preference was seen as a health concern not only for him but also for the society as a whole. Though, Queer activism emerging in the last two decades resulted in depathologization of homosexuality, the effectiveness and awareness of such a measure in the practicing medical/ Psychiatric profession is debatable.

The issue raised by Queer Activists regarding neglect of Queer people in access to information and resources for 'safer-sex' practices on one hand justified intervention by the International/ National NGO's for HIV/AIDS prevention among the Queer people, on the other hand it also hinted at the dangers involved in such an approach, such as the re-pathologization and further marginalization of Gay people as 'potential carriers' of HIV.

CONCLUSION

This work is an attempt to understand and analyze the literary, legal and medical discourses on Homosexuality in India. The given research work can be said to be located within Lesbian/Gay studies and intends to contribute knowledge to this relatively less researched area in India. My interest in this topic was generated by increased debate on this topic in the context for demand for decriminalization of consensual homosexual sex in India. Reading down of Section 377 of IPC opened up the debate further, from various corners. However, due to limited work in this area in the Indian context, clarity on the issue was missing. Thus, it became important to work in this area so as to map the overall debate on homosexuality in India, with emphasis on literary, legal and medical discourse.

Thus, the aim of this work is to map the debate on homosexuality in India in the literary, legal and medical discourse and; to see whether the claim that the homosexual in the modern period is discriminated at by the given discourses, is sustainable or not and what resources/arguments did they use to counter such humiliation and marginalization at everyday basis. In the meanwhile, my purpose was also to understand certain concerns that propped up as a result of increased debate/discussion on the issue of homosexuality, especially after decriminalization of homosexuality by the 2nd July, 2009 Delhi High Court judgment.

The arguments and debates in this dissertation have been presented in the Introduction and the three chapters related to literary, legal and medical discourses respectively. In this chapter, I shall summarize the core arguments that emerged from this work and also see if the objectives of this research work were attained.

Sexuality is a complex issue and acquires different meaning in different place and time. In this regard, discussion on the Western understanding of sexuality revealed that in classical antiquity in Europe, sexual instinct was more important than the object of sexual desire. The sexual categories of 'homosexual', 'heterosexual', 'bisexual' in the modern sense of the terms did not exist in the European classical antiquity. What existed was the idea of 'active/passive' sexual partner and not the biological sex in case of sexual

encounters. However, as suggested in the introduction, this did not mean that 'same-sex' eroticism was not acknowledged in European classical antiquity. This was substantiated by the fact that terms like 'Tribade' (women who desired other women) and 'Ganymede' (men desiring men for love) were used to refer to relationships based on 'same-sex love' (Kidwai 2001, xxi).

In the Indian context, we saw that similar term such as 'Tritiya prakriti' (Kamasutra), 'chapti'/'dogana'/'zanakhi' (Medieval Urdu Poetry), 'Swayamvar Sakhi' (Kathasaritasagara) were used in ancient and medieval India to refer to 'same-sex erotic/ sexual engagements' (ibid). Therefore, it has been argued by concerned scholars like Ruth Vanita, Saleem Kidwai, Arvind Narrain, Sherry Joseph that 'non-heteronormative sexualities' existed in pre-colonial India and 'same-sex love/sexual engagement' was not an 'import'.

I discovered that certain terms/concepts are significant for this work and that Non-normative or non-heterosexual sexuality in the contemporary period has been referred to in varied terms. The terms significant for this work were, 'Alternate Sexualities', 'Queer', 'LGBT-Lesbian, Gay, Bisexual, Transgender', 'Homosexual', 'Homoerotic', 'MSM'. One of the most important terms for our purpose is 'Queer' which literally meant 'strange'. As David Halperin suggested, Queer refers to 'whatever is at odds with the normal, the legitimate and the dominant' (Narrain 2004, 164). It was initially used in a derogatory sense to refer to people with 'non-normative'/'non-heterosexual', 'deviant' sexual orientation. However, the Global Gay movement began to use this term to assert Gay pride and as a celebration of 'difference' in terms of sexual orientation. The term Alternate sexuality too signified 'non-heterosexual, non-penetrative' sexuality. However, this term has been seen as problematic by feminists like Nivedita Menon. She believes that calling 'non-heterosexuality' as 'alternative' would mean leaving normative heterosexuality unquestioned. However, terms like Lesbian/Gay and Homosexual are more relevant in popular usages to refer to sexual or/and emotional preference for persons of one's own sex. Though these days, the term Gay is used to collectively refer to both male homosexuality as well as female homosexuality.

Interestingly, the concept of ‘homoerotically inclined’ has been used in the first chapter of this work. The given concept is derived from Ruth Vanita and Saleem Kidwai’s work *Same-Sex Love in India-Readings from Literature and History* (2001), to refer to ‘persons who express same-sex love but in whose case sexual behaviour is not established (Kidwai 2001). The concept has been relevant for the first chapter in the context of tracing ‘historical roots for ‘same-sex’ love/ ‘same-sex’ sexual behaviour in India.

Keeping this term in the background, I explored Queer historians/scholars’ quest for existence of ‘homoeroticism’ in historical resources of the past. The exploration of literary-cultural resources of the pre-colonial /pre-modern period pointed to the existence of ‘homoerotic tradition’ in India, thereby also suggestive of the fact that pre-colonial India acknowledged ‘same-sex sexual/erotic relations’ and was more or less tolerant towards it. If this was so, what made ‘homosexuality’ despised in modern India? The answer to this was also suggested by the concerned Queer Scholars. It has been suggested that the British colonial rulers introduced homophobic attitude (fear of /hostile attitude to homosexuals) into education, law and medicine. Thus, the arrival of colonial modernity accompanied by Victorian morality brought with it ‘homophobia’, resulting into criminalization, pathologization and ostracization of the homosexual by the modern legal-medical-literary discourses.

Section 377 of Indian Penal Code was an immediate outcome of the homophobic colonial discourse. By penalizing ‘voluntary carnal intercourse against the order of nature’ it imposed an idea of ‘natural’ and ‘unnatural’ sexual behaviour/act codified in law. Implicitly, homosexual relations being non-procreative were presumed as ‘against the order of nature’ thereby implying criminality and abnormality.

Thus, the colonial legal discourse inaugurated an understanding of ‘natural’ and ‘normal’, followed by the medical discourse that substantiated such claims by labeling ‘homosexuality’ as a pathology. Medical discourse began to unearth the ‘causative factors’ of homosexual behaviour and Psychiatry began to investigate into the ‘psyche’ of the homosexual as an aberration. Medical terms like ‘sociopathic personality disorder’, ‘sexual deviance’, ‘Ego-dystonicity’ and ‘Ego-syntonicity’ were coined to refer to homosexuality.

The effect of homophobia was also felt in the literature (of English and various Indian languages) of the period. The most intense debate that is considered to be the first public debate on homosexuality in India was generated in the 1920's as a result of Pandey Bechan Sharma Ugra's writing (*Chaklet/Chocolate*). '*Chaklet*' was a collection of short stories with 'homosexual' characters and homosexuality as the theme running through the narratives. The work generated remarkable debate in the Literary circle (mainly Hindi) and saw intervention of litterateurs (such as Banarsidas Chaturvedi, Premchand etc) media, as well as political figure like Gandhi. The work was branded as 'obscene' and termed as 'Ghasleti'¹⁰ (inflammatory/obscene) literature. Despite Ugra's clarification that his discussion of homosexuality in his stories were meant to show homosexuality in a negative light, his work was seen by both pro and anti-homosexuals as encouraging homosexual behaviour.

The range of criticisms of '*Chaklet*' reflected homophobic attitude of the society in colonial period. Similarly, one could read homophobia into many other writings (such as Rajkamal Chaudhari's *Machli Mari Hui* and Shobha Dey's *Strange Obsessions*) of the colonial and post-colonial period. The analysis of these writings revealed that in most writings of this period, homosexual characters were branded stereotypically as 'hypersexual', 'evil' and 'psychic' and homosexuality as an aberration that could be cured by reverting back to 'heterosexuality' (either by marriage or sexual intercourse with opposite sex). Thus, these writings discriminated against the homosexuals and also helped in keeping 'heteronormativity' intact. It was only in the late 1970's and 1980's with the emergence of institutionalized Queer movement that some writings such as Shakuntala Devi's 'The world of Homosexuals' (1977), Vikram Seth and Suniti Namjoshi's poems portrayed homosexuality in a positive light.

Another very crucial debate that emerged from the discussion in the first chapter was the relevance of 'history' in tracing the genealogy of 'Homoerotic/Queer tradition' in India. Two perspectives emerged in this regard, one led by Scholars like Ruth Vanita, Saleem Kidwai, Arvind Narrain etc who favoured 'going back to the literary-cultural' resources

¹⁰ The term was coined by Pandit Banarsidas Chaturvedi to refer to obscene, sensational literature. He criticized Ugra's work for discussing 'filthy topic' like homosexuality. See- Ruth Vanita, Saleem Kidwai (ed). *Same Sex Love in India-Readings from literature and history*. Delhi: MacMillan India Ltd., 2001.

of the past and the other pronounced mainly by Shivananda Khan that did not support 'reliance on historical roots' of Queer/Homoerotic tradition.

In my understanding, the fallacy of the first perspective was regarding concerns of authenticity. The question that arises is that how authentic are the interpretations of the meanings derived from the literary resources of the pre-colonial/ pre-modern India? Second fallacy was that some of the instances given from the literary text of ancient and medieval period to illustrate 'homoerotic tradition' in fact seemed to me as wrongly used. This is to say that in case of 'Aravanis' (Peruntevanar's Mahabharata) and the 'Bhagirath episode' (Krittivasa Ramayana) that were used to illustrate 'homoeroticism in Indian tradition' in fact operated within framework of heteronormative sexuality that favours 'heterosexual marriages' and 'procreative sexuality'. However, the quest for history emerged as an important marker for Queer movement in India as Queer historiography gave a sense of 'collective memory' and 'identity' to the otherwise 'despised sexualities'.

As far as the legal and medical discourses on homosexuality in India are concerned, we found these to be a 'derivative discourse' of the West. The legal-medical discourse in the West discriminated against the homosexual and created it into 'despicable identity'. Colonial intervention in India marked by its Victorian morality, fed the notions of 'homophobia' into the legal-medical discourses in India that resulted in criminalization and pathologisation of homosexuality in India. The encoding of Section 377 in the Indian Penal code by the British rulers and the labeling of homosexuality as a 'sexual disorder/pathology' marked the beginning of the regime of 'violence' against the homosexual in India. Harassment, torture and blackmail by state authorities such as Police and psychological trauma of 'abnormality' fed by the medical discourse became the everyday reality in the life of homosexuals. Due to criminality provision of Section 377 of Indian Penal Code, homosexuals faced gross violation of their basic rights. Even their private affairs became a matter of surveillance by the state. The emergence of institutionalized Queer movement in India beginning in the 1980's with the establishment of Gay Magazine *Bombay Dost*, Lesbian Collective in Delhi *Sakhi* and reports such as 'Less than Gay' by human rights organization AIDS Bhedbhav Virodhi Andolan (ABVA) opened the arena of debates on homosexuality in India. Moreover, interventions such as

the release and ban of Deepa Mehta's Film *Fire* (1996) in India brought the protesting Lesbian/Gay groups in the streets for the first time. Gradually, the Lesbian and Gay groups began to assert their voice and became vocal in resisting the 'marginalization and discrimination' perpetuated against them by the state institutions and society. They began to counter the accusations of *Criminality, abnormality, immorality* that were used to vilify homosexuality. The Queer movement arrived at the understanding that Section 377 of Indian Penal Code was the linchpin of the discriminatory tools against the homosexual, hence began the demand for repeal of Section 377 of IPC.

The reading down of Section 377 of IPC by the Delhi High Court on 2nd July 2009 (*Naz Foundation vs. Government of NCT of Delhi and Others 2009*) was the result of long and persistent Queer activism in India. The judgment innovatively read into Articles 15 and 21 of the Indian constitution to argue for 'non-discrimination on grounds of sexual-orientation' derived from 'non-discrimination by the state on grounds of sex' and 'right to privacy' derived from 'right to life' respectively. The judgment generated mixed response in society and was celebrated by some and criticized by others. The opponents of homosexuality expressed the fear that decriminalization of homosexuality would lead to increase in homosexual behaviour and will have corrupting influence on society. While Pro-Queer groups saw it as an assertion of rights of 'non-heteronormative' sexualities and as an opportunity for visibility of Lesbians/Gays as 'dignified citizens'. However, the privacy clause stands scrutinized by Queer activist like Gautam Bhan who thinks that it might send wrong signals (Bhan 2005, 46). Suggesting 'sexual affairs in private' as a sphere of non-interference might run the risk of neglecting spheres of violence that may occur within it. However, these issues are open to debate and sharp conclusions cannot be drawn given the nascent stage of 'decriminalization' of homosexuality.

One of the core argument made by Queer groups in the course of demands for decriminalization was related to 'health concerns of Homosexual, especially MSM' in the context of HIV/AIDS prevention. It was argued that criminalization of consensual homosexual sex by Section 377 of IPC, impairs work on HIV/AIDS, driving one of the 'vectors' of the disease underground (Narain 2004, Vol.7, No.2, 151). This argument can be critiqued on two grounds. Firstly, it poses the danger of 're-pathologization' of

homosexuality by presenting MSM as the most vulnerable group to HIV/AIDS. Moreover, this approach also has resulted in hype over 'HIV/AIDS prevention in the Queer community' by proliferation of NGO's in this sphere that seems to be guided by 'obligations of western funding'. The issue has been discussed at length in the Third chapter of this work. This issue also revealed that sexual identities in India are complex and a particular sexual behaviour need not translate into respective sexual identity as was the case with MSM. The term used mainly for sexual health perspective of 'Same-sex sexual engagement' points to the fact that a person engaging in 'homosexual act' may not identify as a 'homosexual' and can see it only as an act of '*sexual discharge*' for '*masti*'¹¹.

Thus, after having mapped the debates on homosexuality in India in the literary, legal and medical discourse, I would like to conclude that the regime of violence and intolerance towards the Queer/Homosexuals in India was the result of 'homophobia' brought by the Colonial discourse on sexuality. An investigation into the historiography of Queer tradition in pre-colonial/ pre-modern India revealed relative tolerance towards homoeroticism. It was only after the arrival of British colonial rule and its codification of Section 377 of IPC criminalizing (voluntary sexual intercourse against the order of nature') that the homosexuals began to be targeted and harassed by the various institutions such as the Police, law, medicine, family and religion. The British colonial discourse incorporated homophobia into education, law, Medicine and society at large. My second quest was to know as to how did the Queer groups/movement responded to such discrimination against them. In this regard, I come to the conclusion that the Queer movement used 'those very resources' that were used against them, as a tool to counter the arguments of anti-Queer groups. The state and society discriminated against them by using the discourses of culture/ tradition, law and medicine. As we could see through the debates and discussions in the chapters, the Queer movement began to refute the

¹¹ The two terms 'discharge' and 'masti' have been used by Shivananda Khan to understand 'Male-to-male' sex in South Asia. See Khan, Shivananda. "Culture, Sexualities and Identities:MSM in South Asia." *Journal of Homosexuality*, 1996, June.

accusations made against them one by one, by taking recourse to cultural tradition, law and medicine. To falsify the claim that homosexuality was 'alien' and 'unknown to Indian culture', Queer Scholars traced the 'genealogy of homosexuality' by invoking the homoerotic tradition revealed through the ancient and medieval literary texts. Thus, historical presence of homoeroticism in cultural tradition of India was shown. In the sphere of medicine, the demand for depathologization was made to remove labeling of homosexuality as an illness/pathological condition. Infact, the Queer struggle in the West used the 'scientific/medical discourse' to prove that homosexuality was a genetic essence, hence immutable; therefore, it should not be penalized. But, let me clarify that the Queer movement in India at large did not use this Essentialist notion of sexuality and made no mention of 'genetic theory'. It rather emphasized on the Social Constructionist view of sexuality to argue that sexual identities of 'homosexual and heterosexual' are societal constructions and the hierarchies based on this categorization tend to be discriminatory towards the homosexual, hence needed to be dismantled. Considering legal sanction against homosexuality vis-a-vis Section 377 of IPC as the real culprit for propagating violence (sexual, physical, psychological) against homosexuals, the Queer movement saw courtroom based lawyering/legal activism for repeal of Section 377 IPC as a powerful tool to counter accusation of criminality.

Towards the end, I feel that despite my best efforts, the objectives of my research have been achieved only partially. Though sexuality has emerged almost as a sub-discipline in the social sciences, the research on the issue of homosexuality in India is relatively under-researched. Here my aim was to at least bring together the available discourses and to explore the nature of these discourses. I feel that much more is needed to be done in this field in order to get a comprehensive idea of the issue.

REFERENCES

- ABVA. "Less than Gay-A citizens' report on the status of Homosexuality in India." New Delhi, 1991.
- Aggleton, (ed) Richard Parker and Peter. *Culture, society and sexuality-A reader, 2nd Edition*. London, New York: Routledge, 1999.
- Arvind Narrain, Gautam Bhan (ed). *Because I have a voice, Queer Politics in India*. New Delhi: Yoda Press, 2005.
- "Azad calls Homosexuality 'unnatural and a disease'." *Hindustan Times*. July 5, 2011. <http://www.hindustantimes.com> (accessed July 10, 2011).
- Bacchetta, Paola. "Rescaling Transnational 'Queerdom': Lesbian and 'Lesbian Identitary'- Positionalities in Delhi in the 1980's." In *Sexualities-Issues in Contemporary Indian Feminism*, by (ed) Nivedita Menon. New Delhi: Women Unlimited, 2007.
- Bandyopadhyay, Sibaji. "Approaching the present, the pre-text: the fire controversy." In *The Phobic and the Erotic: The politics of sexualities in contemporary India*, by (ed) Brinda Bose and Subhabrata Bhattacharya. Calcutta: Seagull Books, 2007.
- Baxi, Upendra. "Dignity in and with Naz." In *Law Like Love- Queer Perspectives on Law*, by Alok Gupta and Arvind Narrain, 246-247. New Delhi: Yoda Press, 2011.
- Bhan, (ed) Arvind Narrain and Gautam. *Because I have a voice-Queer Politics in India*. New Delhi: Yoda Press, 2005.
- Bhardwaj, Ajay. *DNA (Chandigarh edition)*, July 10, 2009.
- Bhaskaran, Suparna. "The politics of penetration: Section 377 of the IPC." In *Queering India: Same-sex Love and Eroticism in Indian culture and society*. New Delhi: Routledge, 2002.
- Biswas, Ranjita. "The Lesbian standpoint." In *The Phobic and the Erotic-The politics of sexualities in contemporary India*, by (ed) Brinda Bose and Subhabrata Bhattacharyya. Calcutta: Seagull Books, 2007.
- Braverman, Shirley. "Homosexuality." *The American Journal Of Nursing*, 1973, April, vol.73, No.4: 652.
- Butler, Judith. *Gender Trouble-Feminism and the Subversion of Identity*. New York: Routledge, 1999 (2nd Edition).

- Cane, Peter. "Taking Law Seriously: starting point of the Hart/Devlin Debate." *The Journal of Ethics*, January 2006, Vol.10, No.1/2: 21-51.
- Carline, Anna. "Resignifications and Subversive Transformations: Judith Butler's Queer theory and women who kill." *Liverpool Law Review*, 27, 2006: 303-335.
- Chatterjee, Partha. *Nationalist Thought and the colonial world-A derivative discourse*. University of Minnesota Press, 1993.
- Chaudhari, Rajkamal. *Machli Mari Hui*. Rajkamal Paperbacks, 1966.
- Danielou, Alain. *The complete Kamasutra*. Rochester: Park Street Press, 1994.
- Dasgupta, Swapan. "Aggressive Gay Evangelism." *Sunday Pioneer*, July 5, 2009.
- De, Shobha. *Strange Obsession*. Delhi: Penguin, 1992.
- D'Emilio, Estelle B.Freedman and John. "Problems encountered in writing the history of Sexuality:Sources, Theory and Interpretation." *The Journal of Sex Research*, 1990, November, Vol.27, No.4: 481-495.
- Downey, Richard Friedman and Jennifer. "Psychoanalysis and the model of homosexuality." *The American Journal of homosexuality*, vol.58, No.3, 1998.
- Foucault, Michel. *The History of Sexuality, vol.1 (translated from French by Robert Hurley)*. New York: Pantheon Books, 1978.
- . *The history of sexuality, Volume 1:The will to knowledge*. London: Allen Lane, 1979.
- Gibson, Mia. "Ganymede." *Encyclopaedia Mythica*. <http://www.pantheon.org>.
- Gleeson, Kate. "Discipline, Punishment and the Homosexual in Law." *Liverpool Law Review*, 2007: 327-347.
- Goettsch, Stephen L. "Clarifying Basic Concepts: Conceptualising Sexuality." *The Journal of Sex Research, Volume 26, No.2*, 1989: 249-255.
- "Gujarat Govt bans Lelyveld's book on Gandhi." *Indian Express*, 2011, 30 March.
- Gupta Alok, Narrain Arvind. *Law Like Love-Queer Perspectives on Law*. New Delhi: Yoda Press, 2011.
- Gupta, Alok. "Section 377 and the dignity of Indian Homosexual." *Economic and Political Weekly*, 18 November, 2006: 4815-4823.
- Gupta, Charu. *Sexuality, Obscenity, Community-Women, Muslims and the Hindu Public in Colonial India*. New Delhi: Permanent Black, 2001.

Hall, (ed) Stuart. *Representation: Cultural representations and signifying practices*. London: Sage, 1997.

Indian Express. July 10, 2009.

J. Elias, Jamal. "Sufism." *Iranian Studies-A review of Encyclopaedia Iranica*, summer 1998, Vol.31, No.3/4: 595-613.

J. Hoffman-Ladd, Valerie. "Mysticism and sexuality in Sufi Thought and life." *Mystics Quarterly*, September 1992, Vol.18, No.3: 82-93.

Joseph, Sherry. "Gay and Lesbian Movement in India." *Economic and Political Weekly*, Vol.1, No.33, , August 17, 1996: 2228-2233.

Josh Ruxin, Paul Wilson. *Combating AIDS in the developing World*. U.N. Millenium Project, London: Earthscan, 2005.

K.Nayar, Pramod. "Queering Culture Studies." In *The phobic and the Erotic: The politics of Sexualities in contemporary India*, by (ed) Brinda Bose and Subhabrata Bhattacharyya. Calcutta: Seagull Books, 2007.

Khan, Shivananda. "Culture, Sexualities, Identities: Men who have sex with men." *Journal of Homosexuality*, Vol.-40, No.-3/4, 2001.

Kidwai, (ed) Ruth Vanita and Saleem. *same-sex love in India: Readings from literature and history*. Delhi: MACMILLAN INDIA LTD., 2001.

Kidwai, Saleem. "Ziauddin Barni: The Khaljis in Love (Persian)." In *Same-Sex Love in India- Readings from Literature and History*, by (ed) Ruth Vanita and Saleem Kidwai, 131-135. New Delhi: MACMILLAN INDIA LTD, 2001.

Kole, Subir K. "Globalizing Queer? AIDS, Homophobia and the politics of sexual identity in India." *Globalization and Health*, 2007, July, 11.

Lelyveld, Joseph. *Great Soul- Mahatma Gandhi and his struggle with India*. New Delhi: Harper Collins, 2011.

Lynch, Michael. "Discourse Analysis." In *The Sage Handbook of Social Science Methodology*, by Stephen P. Turner (ed) William Outhwaite. Sage Publications Ltd., 2007.

Malamud, Margaret. "Gender and Spiritual self-Fashioning: The master disciple relationship in Classical Sufism." *Journal of the American Academy of religion*, Spring 1996, Vol.64, No.1: 89-117.

Mary John, Janaki Nair. *A Question of Silence ? The Sexual economies of modern India*. New Delhi: Kali for Women, 1998.

- Mehta, Pratap Bhanu. "It's about all of us." *Indian Express*, July 3, 2009.
- Menon, (ed) Nivedita. *Sexualities-Issues in contemporary Indian Feminism*. New Delhi: Women Unlimited, 2007.
- Menon, Nivedita. "How Natural is normal-Feminism and Compulsory Heterosexuality." In *Because I have a voice-Queer Politics in India*, by (ed). New Delhi: Yoda Press, 2007.
- Merchant, (ed) Hoshang. *Yaarana: Gay writings from India*. New Delhi: Penguin, 1999.
- Merchant, Hoshang. *Forbidden Sex/ Texts - New India's Gay Poets*. London, New York: Routledge, 2009.
- Mishra, Manjari. "Aligarh Muslim University Professor suspended for being Gay." *Times of India*, 2010, February 18.
- Moore, Stephen. "Sex and Single Apostle." In *Readings in the theory of religion:Map, text and body*, by (ed) Scott S.Elliot and Matt Waggoner. London: Equinox, 2009.
- Nagaswami, Vijay. "A Pride Well Deserved." *The Hindu-Magazine*, June 26, 2011.
- Nair, (ed) Mary E. John and Janaki. *A Question of silence? The Sexual economies of modern India*. New Delhi: Kali for Women, 1998.
- Narrain, Arvind. In *Sexualities-Issues in contemporary Indian Feminism*, by (ed) Nivedita Menon. New Delhi: Women Unlimited, 2007.
- Narrain, Arvind. "Queer : Law and Despised Sexualities in India." *Alternative Law Forum*, 2004.
- Narrain, Arvind. "Queer Struggles around the law: The contemporary Context." In *Sexualities*, by Nivedita Menon (ed), 52-90. New Delhi: Women Unlimited, 2007.
- Narrain, Arvind. "The articulation of rights around Sexuality and health: Subaltern Queer Cultures in India in the era of Hindutva." *Health and Human Rights, Vol.7, No.2*, 2004: 142-164.
- Narrain, Arvind. "The articulation of rights around Sexuality and Health: Subaltern Queer Cultures in India in the era of Hindutva." *Health and Human rights*, 2004, Vol.7, No.2: 142-164.
- Naz Foundation vs. Government of NCT of Delhi and Others*. WP(c) 7455/2001 (Delhi High Court, July 2, 2009).
- Prasad, Gupteshwar. *I.A.Richards and Indian theory of Rasa*. New Delhi: Sarup and Sons, 2007.
- Richard Parker, Peter Aggleton. *Culture, Society and Sexuality- A reader*. London, New York: Routledge, 1999.

- Richard Parker, Shivananda Khan, Peter Aggleton. "Conspicuous by their absence ? Men who have Sex with Men (MSM) in developing countries: Implications for HIV prevention." *Critical Public Health*, volume 8, No.4, 1998: 329-346.
- Roy, Kumkum. "Unravelling the Kamasutra." In *A Question of silence ? Sexual Economies of Modern India*, by (ed) Mary John and Janaki Nair. New Delhi: Kali for Women, 1998.
- Rubin, Gayle. "Thinking Sex: Notes for a radical theory of the politics of sexuality." In *Culture, Society and Sexuality: A Reader*, by (ed) Richard Parker and Peter Aggleton. U.K.: UCL Press, 1999.
- Ruth Vanita, Saleem Kidwai (ed). *Same Sex Love in India-Readings from literature and history*. Delhi: Macmillan India Ltd, 2001.
- S.Chandra, Prabha. *Indian Journal of Medical Ethics*, volume-vi, No.4, 2009, October-December.
- S.J.White, Charles. "Sufism in Medieval Hindi Literature." *History of Religions*, Summer 1965, vol.5, No.1: 114-132.
- S.Karnik, Niranjana. "Locating HIV/AIDS in India: Cautionary notes on the Globalization of Categories." *Science, Technology and Human Values*, volume 26, No.3, summer 2001: 322-348.
- Sodomy Laws*. <http://www.sodomylaws.org/> (accessed July 12, 2011).
- Stigma and Discrimination-Live and let live*. World AIDS DAY Advocacy Kit, World Health Organisation, Western Pacific Region, 2002.
- Sukhthankar, Ashwini. *Facing the Mirror-lesbian writings from India*. New Delhi: Penguin , 1999.
- Suresh, Mayur. "Sodomy Law and the limits of Subjectivation." In *Law like Love: Queer Perspectives on Law*, by (ed) Arvind Narrain and Alok Gupta. New Delhi: Yoda Press, 2011.
- TNN. "IIT-H sacks Gay activist Ashley Tellis." *Times Of India*, 2010, 11 June.
- TOI. "Celebrating Life with Gay abandon,." *Times of India*, November 29, 2010.
- Vanita, (ed) Ruth. *Queering India: Same-sex love and Eroticism in Indian Culture and Society*. New York: Routledge, 2002.
- Vanita, Ruth. "Homosexuality in India: Past and Present." *International Institute for Asian Studies Newsletter*, November 29, 2002.
- Vanita, Ruth. "Krittivasa Ramayana: The birth of Bhagiratha (Bengali)." In *Same-Sex Love in India-Readings from Literature and History*, by (ed) Ruth Vanita and Saleem Kidwai. Delhi: MACMILLAN INDIA LTD, 2001.
- Verma, Viresh. "Combating the Closeted." *Sahara Time*, July 25, 2009.

Zimmerman, (ed) George Haggerty and Bonnie. *Encyclopaedia of Lesbian and Gay histories and culture, Vol-1*. New York: Garland Publishing Inc, 2000.

