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Transgressing Heterosexual Norms

Some Observations on Recent Events in India and Nepal

Purna Sen

Introduction

In 2009 widespread celebrations greeted a historic Indian High Court judgement that ruled that the criminalization of homosexual acts contravened fundamental rights including the right to equality as enshrined in the Constitution. 2008–9 saw the advancement of Lesbian, Gay, Bisexual and Transgender (LGBT) rights in Nepal too, a development acknowledged and greeted with hope in and beyond the country. There was a sense of optimism that conservative attitudes to sexuality were loosening their grip on the lives of Indians and Nepalis.

In contrast, in 2010 the media reported case after case of ‘honour killings’ in northern India, mostly related to young people choosing marital partners and often perpetrated by the family of the woman concerned. These two threads, apparently contradictory, speak to the nature of change and resistance in the arena of sexual choice and sexuality. Conclusions may yet be premature but there are some interesting indications about the spaces in which sexual straightjackets will continue to be challenged.

Sexual rules and power dynamics enable or constrain individual lives, impacting on health and indicating the state of individual rights, freedoms, and opportunities. The HIV epidemic has enabled, or perhaps forced, attention onto the nature of, and the negotiation around, hetero-, homosexual and MSM¹ activity. Gender and development discourse has also tackled this taboo, asking us to look into the institutions of marriage and the household which shape ‘normal’ sexual relations. A recent interest in violence against women has further pushed us to problematize the construction of female sexuality and efforts to control it, and has promoted the links between these concerns and development agendas.

This chapter considers two aspects of sexuality considered ‘unauthorized’ or non-standard: the first in the context of husband-wife heterosexual partnerships; the second, homosexual relationships. I look at events in

India and Nepal, neighbouring countries where there appear to have been important shifts in the community policing of heterosexual relations (in India) and steps towards acceptance of homosexuality (in both India and Nepal). At first these dynamics seem to be at odds with each other – one moving in a progressive direction and the other conservative. But I conclude that they do not constitute a single site of struggle over sexuality. Rather, the control of male sexual access to women takes a course that is different and possibly distinct from the struggles for respect and legitimacy for gay, lesbian and trans lives.

This chapter does not attempt to give a comprehensive overview of these two arenas but draws attention to some contemporary dynamics in the battles over sexuality in the two countries concerned.

The problematic of marriage

Arranged marriage has a long history in India and it continues to thrive as a widely practiced means through which coupledness serves the interests of a group. Arrangements tie families together through the bodies of two people who are committed by others to spending their lives together, and having sex and children together. For many Indians the pairing is devoid of privacy, and sexual intimacy is furtive and not necessarily pleasurable; crowded living conditions result in the ‘promiscuity of touch’ (Kakar, 1990, p. 33) yet there may well be an absence of sensual or enjoyable intimacy (Kakar, 1990; Sen, 1998). A series of predictable phases that may never result in companionship or affection are captured succinctly by Singh as ‘physical acquaintance, discovery of each others’ minds and personalities, and possibly bonds of companionship’. But ‘in most cases, [the spouses] suffer each other till the end of their days’ (Singh, 1992, p. 47).

The institution of marriage is formidable in India. Divorce rates are low though they appear to have started to rise in recent years (e.g. *Telegraph*, 2005). The notion of the couple as indissoluble is strong and for some this makes death/suicide the only exit route (Kakar, 1990, p. 84).

The possibility of both spouses agreeing to their marriage appears not have found much purchase in South Asia. One indicator of this is the acceptance or otherwise, of international standards on marriage – in particular the Convention on Consent to Marriage (1964). This instrument has only three substantive articles requiring: the free and full consent of both parties, the identification of a minimum age for marriage and the official registration of all marriages. That marriage remains a deeply difficult institution to address is indicated by the fact that the Convention has been ratified by a mere fifty-five states including only two states in South Asia. Bangladesh ratified the Convention in 1998

though with reservations against articles 1 and 2. Sri Lanka has signed the Convention but has not yet ratified it. Neither India nor Nepal has ratified.

There are many reasons why some states have yet to accept such international norms: it may be that they are moving towards ratification of a long list of treaties; it may be that they feel their own provisions are strong enough and need no interference from outside; it may be that the State is not in agreement with the content of the proposed standard or it may be that the provisions of the treaty are too difficult or sensitive to implement. In terms of marriage in South Asia the political commitment to enforce the three not-unreasonable articles of the Convention has not yet been demonstrated. The issue of choice in marriage remains violently contested and possibly increasingly so. Caste and religious boundaries still constrain marriage alliances and it may be too costly a political price to pay for those who rely on such loyalties. Perhaps those with influence share popular notions as to where rightful control of access to women's sexuality should reside.

That the institutional arrangements of marriage can militate against pleasure or intimacy does not mean either that it always does so or that Indians, especially Indian women, somehow prefer to live without them. I have spoken in the course of research (Sen, 1998) and at other times to many women about their sexual lives and heard their frustrations either at the nature of their marital sexual relations, their distress at forced sex, nightly copulation or the use of condoms; some women find sex-less marriages deeply upsetting and long for something more personal or meaningful in their lives. Marriage rights, and the individual's control of their own sexuality, remain to be realized in South Asia.

Men and women both struggle with not being able to choose their marriage partners. Determining one's own spouse transgresses the control that families seek to exert over these decisions, yet the challenge to heterosexuality *per se* both in India and Nepal is also transgressive – to heterosex in totality.

Contesting the shape of heterosexuality

The working of classical patriarchy (Kandiyoti, 1988) in South Asia involves structures of male control, bolstered by hierarchies between women such that they have an investment in mechanisms which exert control over younger and lower status women. In terms of sex, the normative framework that defines appropriate heterosexual behaviour is upheld by men with the support of (senior) women. Family and community reputation and acceptability are significantly framed by appropriate behaviour of the girls and women of that group, especially their sexual behaviour. Unmarried parenthood and pre-marital pregnancy are both rare and unaccepted. Policing of girls, segregation,

controlled entry into marriage, sexual relations being contained within marriage and female sexual fidelity are the basic elements of that framework. This is not a denial of the sexuality of women but a definition of legitimate consumption of that sexuality: women's sexuality is available to some men (husbands) but not to others and women themselves are not in control of these decisions.

There are of course 'right' and 'wrong' husbands. The usual considerations may apply such as employment prospects, shared cultural background – but in India social stratification and religious affiliation also matter. Not any man can be the right husband: class, caste and sub-caste, village and other background are taken into account and the calculation as to suitability is made by a family group in which the prospective spouses may have little or no say. The central problem facing the girl's family lies in ensuring that she preserves her virginity for her husband, that she reserves any sexual desire and exploration until marriage and that she accepts fully the determination of spouse by her elders and seniors. The role of the girl in this is to accept and conform: to marry as and when told, to wed the man chosen for her, accept intimacy with a stranger and be sexually at his demand for the entirety of her married life, including bearing him (preferably male) children. Indeed, the law recognizes sexual access as a right (conjugal rights as recognized in the Hindu Marriage Act) and failure to have sex as grounds for divorce.

Women's sexuality is a social headache, needing to be appropriated, controlled and channelled according to strict rules. Dress codes, separation of the sexes, veils, walls, *purdah* – are all ways of keeping men and women apart and therefore controlled: mixing with the opposite sex is potentially dangerous and romantic love is *ultra vires*. The family, primarily the older men of the family, shape, authorize or reject relationships within a framework of heterosexual marriage. Collective honour prevails over individual well-being and non-conformity is a transgression that must be managed and corrected. This version of normative heterosexuality supports the condemnation of sexually-active women, the ideology of male as protector and defender of female sexuality, of presumed male sexual rights of access to women's bodies and of women's status as fallen (i.e. sexually available) if beyond the ownership of one man.

A spike in reported 'honour' killings suggests that the management of non-compliance with marriage norms has become increasingly violent and transgressions by women seem to be particularly unacceptable. Control of women's sexuality and of the marital process remains in the hands of the collective; investment in its successful reproduction pays off for that group and the costs of non-conformity are also borne by the collective. Honour or shame can be won or lost in this domain as individual behaviour upholds or punctures honour and the collective gains or loses from (non-) conformity. There can be a strong incentive to correct or reclaim the loss of honour, and

redress the shame, brought by non-conformity, which can lead to acts that involve force, violence or even death. It is a question of honour.

Honour

Recent international concern and horror regarding crimes committed in the name of honour have focused on Islamic contexts with scant attention paid to other environments. No doubt this has been influenced by the focus emerging at a time when the USA-led 'war on terror' and the aftermath of the Clash of Civilizations thesis has problematized Islam and the Muslim world. Yet there is no doubt that similar cultural patterns exist elsewhere and include frameworks of honour, collective efforts to control women's sexuality with the active participation of women and the ability to reclaim lost honour, that characterize 'honour' crimes (Sen, 2005); India being one.

The UN has noted honour killings in Egypt, Jordan, Lebanon, Morocco, Pakistan, Syria, Turkey, Yemen, the Mediterranean and Gulf countries and within migrant communities in France, Germany and the United Kingdom (Coomaraswamy, 2002). Western concerns about the treatment of women in Islamic contexts have been keen, yet men are not exempt from 'honour' crimes: those who stray outside the bounds of accepted or required behaviours can be made to pay a high price, including their lives. *Karo kari* killings in Pakistan are the oft-quoted example where men are killed along with errant women, to preserve collective honour.

Honour is pivotal in the maintenance of social credibility in India. Marriage rules exist across the country and in some parts of the country failure to abide by such rules offends collective honour (Chakravorty, 2005). Women are assumed to be unable or unfit to exercise choice in marriage (Chakravorty, 2005) and courts have supported parents who claim that their daughters have been kidnapped where a 'love marriage' is suspected.

Honour killings find little if any formal support from the State and the Indian judiciary has not invoked notions of honour in their decisions on such cases. Instead, they are accused of using technical arguments such as those concerning capacity to make decisions, to make judgements in order to define consent as meaning or at least including the consent of the parents of the girl (Chakravorty, 2005, pp. 326–7). Through such practices there is alleged to be widespread collusion by agents of the State (the police and the judiciary) with the denial of an individual's right to choice in matters of marriage and for the upholding of caste hierarchies and religious separation for the sake of collective honour.

There are some indications that it is predominantly the families of women that instigate or carry out the killings, though further data on this would

be helpful. It appears to be women's transgressive behaviour that causes most offence: where a couple has transgressed it is often the woman's family that leads the efforts to correct the transgression. As the guardian of their female's sexuality, it is her family that has failed in its duty; the woman's family honour is thus stained. And after all, it is women who tempt men – women who must be covered, veiled, kept at home so as to ensure that men do not lose control.

More systematic research is needed to reach conclusions yet this pattern of control and the dispensability of women's lives is in line with other knowledge and evidence we have about gender in India, such as dowry deaths, acid throwing, widow burning, female infanticide, and sex-selective abortions. The latest census data (2011) show the persistence of worrying adverse sex ratios even though they have improved in a few states. If families cannot control 'their' women's sexual availability and confine its consumption to a man chosen by them, it seems that, in northern India at least, the uncontrolled woman can be eliminated; this option is for some preferable to supporting her choice or autonomy.

'Honour' killings in India: cases and context

Estimates of the scale of honour-related killings in India vary widely. A study commissioned by the National Commission for Women found 326 cases in one year, with 72 per cent involving inter-caste marriages and 90 per cent of perpetrators being from the girl's family (*Times of India*, 11 July 2010). Media reported an honour killing every four days in north India, based on a total of nineteen killings between 9 April and 30 June (*Times of India*, 1 July 2010), with three killings in the capital in a fortnight in 2010. Figures compiled by the India Democratic Women's Association record that, over one year, Haryana, Punjab and Uttar Pradesh account for about 900 honour killings and the rest of the country host another 100–300 (*Times of India*, 4 July 2010). Another estimate (Malhotra, 2010) has suggested over 1000 killings in a year in India among Muslims, Hindus and Sikhs, with Haryana, Punjab and western Uttar Pradesh accounting for 900 and marriage featuring as a dominant area of dispute.

The government of India earlier rejected reports of honour killings in the country saying these were inadequately researched or cognizant of the Indian situation (*Indian Express*, 12 October 2002). However, government responses have changed more recently, perhaps in light of the rash of media reports of 'honour' killings in 2009–10, which include the following:

- Haryana: A 22-year-old pregnant Brahmin journalist who had reportedly become engaged to a lower caste journalist was killed (death by asphyxiation/smothering); she was allegedly murdered by her family

members, including her mother, for reasons of family pride (Times Online, 4 May 2010).

- Bihar: A low caste 15-year-old boy who had allegedly written love letters to a higher caste girl was beaten, had his hair shaved, was paraded through the street and then thrown under a train; fifteen members of a girl's family were arrested on suspicion of killing eight members of a boy's family, whose beheaded bodies were found floating in the river – the couple had married against prevailing marriage rules (Times Online, 11 February 2009).
- Delhi, June 2010: A couple who married against the wishes of their family was killed, allegedly by the woman's brother² (*Indian Express*, 18 January 2011).
- Punjab: A non-resident Indian was accused of bringing his step-daughter to India from Belgium, poisoning and hastily cremating her after she formed an attraction to a lower-caste young man in Belgium (*Times of India*, 30 June 2010).
- Bihar 2011: A Hindu-Muslim marriage disapproved of by parents resulted in the girl's father, brother and local council member allegedly forcing the husband to consume pesticide, eventually causing his death (*Times of India*, 17 Jan 2011).
- Delhi: A cross-caste relationship that parents feared would lead to elopement resulted in the couple, both aged 19, being killed, allegedly by being beaten by the girl's family with iron rods and then electrocuted by being 'forced to sit on iron trunks to which live wires were attached' (BBC, June 2010).

With up to seven honour killings reported each month in Haryana (Times Online, August 2009) and police reporting 'hundreds' of cases brought to them of couples being attacked by their relatives for marrying outside accepted social boundaries, the state has been labelled the 'honour killing capital' of India. The state announced the commencement of a pilot project intended to offer protection to couples considered to be at risk by offering a safe house, supported by outreach work with village councils intended to stem such violence (Times Online, August 2009).

Haryana has also witnessed a remarkable increase in the educational participation of girls, including at tertiary level: between 1980 and 1981 and 2006 and 2007 there was a fourfold increase in the number of girls attending college and a fivefold increase in girls studying to class 12 (compared to a less than twofold increase to that level for boys) (*Outlook India*, 12 July 2010). Are educated girls appearing to be growing in confidence and asserting their right to make choices, including in marriage? It has been argued that this might translate into assertion over inheritance of family property, a fear that may lie

behind the search for the maintenance of family control over marriage partners (*Outlook India*, 12 July 2010). Inter-generational conflict may well be one factor behind 'honour' killings, with younger people wanting new ways of behaving and their parents seeking to uphold old norms (Ravi Kant in Sify News, 21 Jan 2011).

Panic over control of women spreads beyond Haryana. Local village councils have acted to restrict increasing choice exercised by women and girls, for example by banning the wearing of jeans (*Times of India*, 17 Jan 2011) and have even ordered honour based killings (*Outlook India*, 12 July 2010; BBC March 2010). Yet, justifications and excuses for honour killings can portray the killer as a victim, who has no choice but to act to protect (usually) his honour against a wayward child (often a girl): a Delhi *panchayat* member complained '[i]t is a social compulsion that a father is under, because his daughter has short-changed him by marrying against his will' (see for example *Times of India*, 1 July 2010). In 2010, comments by Haryana's Chief Minister expressing reservations about sub-caste marriages was considered by some to offer support to village councils that were complicit in or that explicitly ordered honour crimes (*Outlook India*, June 2010). Caste loyalties matter in Indian politics such that the cost of betraying or undermining caste structures can result in the loss of votes (*Times of India*, 1 July 2010). Yet the political pressure for formal political and judicial structures not to support such killings has prompted local councils in Punjab, considered to be among the worst affected of states, to condemn 'honour' killings (*Times of India*, 31 March 2011).

A Public Interest Litigation filed before the Supreme Court on killings related to the exercise of choice in marriage resulted in the Centre and eight governments being directed to report on steps taken to prevent such cases (Sify News, 2011). It calls for government to review the Indian Penal Code to introduce a definition of the crime. The Home Minister proposed all-women police stations as a solution but stated that he was not in favour of a special legal provision, preferring instead that such killings be treated as murder (Times Online, May 2009). A year later the Home Minister announced that he would introduce a Bill on honour killings that would propose a definition of crimes of honour (including stripping women and parading them in public as well as killings) and set out the punishment for these offences (Times of India, Aug 2010; Times of India, Jan 2011). In May 2011 the Supreme Court acknowledged what it saw as an increase in 'honour' killings and called for the death penalty to be applied in such cases (India Today, 10 May 2011).

The co-existence of progress for women and of attempts to exert increasing patriarchal control do not necessarily surprise but they do clash, with tragic consequences, on the issue of 'love marriages' in northern India. The impacts are felt by both women and men, with many lives lost. Forced marriage,

controls on mobility, curtailment of education or employment and other means of enforcing compliance have long been known in India yet it seems now that 'honour' killings may be becoming an increasingly popular tool in the Hindu heartland.

The gradual opening of choice and love or romance in India may bring a host of new issues into social dynamics (e.g. household formation, divorce) yet the momentum is already underway. The extended family household is changing, there is increasing participation in education by girls; many pressures are bringing social change. Yet old structures and power holders do not easily relinquish their grip. Caste relationships, boundaries and arranged marriages, fundamental elements of Indian social structure that constrain accessibility to women's sexuality to acceptable men, seem to be increasingly challenged by a younger generation and violently defended by an older one. This has become a vicious battleground for a valuable prize: rightful ownership and control of women's sexual and reproductive lives.

Challenging heteronormativity

In the same period that northern India has seen violent responses to transgressive heterosexual relationships there has been progress towards the acceptance of homosexuality both legally and socially.

The mass of literature on gender issues in South Asia has as dominant themes: women's status, education, labour force participation and income generation, health and equality. Homosexuality has had relatively little attention (Thadani, 1996). If women seeking to choose their heterosexual partners is challenging to social conservatives then women choosing sexual intimacy that excludes men is no doubt especially troubling. The moral panic and social outrage that erupted over Deepa Mehta's film *Fire*, that explored unsatisfactory marriage and intimate, including sexual, relationships between women, illustrates the profoundness of the challenge posed by acknowledgement of lesbianism. It also showed the threat felt among social and religious conservatives by public discourse on women's sexual choices.

For men, the existence of the colonial law that outlaws homosexual activities ('against the order of nature', see Box 5.1) has been an outrage that has denied privacy and choice in intimate relationships. Indian nationalism somehow was not offended by this particular legacy of colonialism. Though the law had not actively been used in many years for prosecutions, it meant that gay men could not enjoy police protection and were liable to harassment or blackmail without redress. The law also compromised HIV work and realization of the right to health.

Yet, Indian history and social organization has long accommodated gender identity beyond a male/female binary, with the existence and importance of the

Box 5.1: Indian Penal Code, Section 377 (b)

Unnatural offences: 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 term which may extend to ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section.

*bijra*³ who have specific roles at key social occasions. And sexually segregated social life means that same-sex friendships and spaces enjoy greater approval than cross-sex friendships and mixed gender spaces (Vanita and Kidwai, 2001). The possibilities for same sex relationships are thus created and indeed preferred.

Literature and debates on homosexuality and transgender have grown over the last two decades in India (e.g. Jaising, 1992; Joseph, 1996; Thadani, 1996; Campaign for Lesbian Rights, 1999; Srivastava, 2004) and the idea that homophobia has a long history in the country has been challenged (Vanita and Kidwai, 2001). The health/HIV discourse has ushered into development concerns a (still limited) willingness to consider life beyond heterosexuality and marriage.

Section 377 of the Penal Code prohibits sexual acts ‘against the order of nature’ and captures any sexual behaviour other than penile-vaginal penetration. It has meant that anyone who is gay cannot turn to the State for protection against harassment or abuse and it has enabled blackmail. Criminalization of homosexual acts has had a detrimental impact on HIV work and the right to health, with health initiatives being compromised by the inability of men to acknowledge their behaviour to others.

The legal challenge to Section 377 came largely from organizations and activists in the HIV and health sectors. The criminalization of same sex sexual activity meant that those who the law made criminals were severely compromised and at risk when seeking health care in relation to HIV. A collection of groups led by the Naz Foundation and women’s and human rights groups in the ‘Voices against 377’ coalition challenged this provision through a Public Interest Litigation in 2001. Eight years later, it resulted in the Delhi High Court bench of Justices Shah and Muralidhar declaring in July 2009 that Section 377 was at odds with provisions in the Indian constitution that guarantee equality before the law and the principles of non-discrimination and inclusiveness. The judgement showed a willingness to reconsider criminalisation.

Though sometimes misrepresented as India de-criminalising homosexuality (it has yet to come to the Supreme Court, where a determination will be made for the country as a whole) the decision is of huge significance and meaning. The case laid open fissures in government, with the Ministry of Health seeking decriminalization in order that health initiatives could proceed and the Home Ministry opposing decriminalization. Additional Solicitor General Malhotra in 2008 argued in the High Court that homosexuality is a social vice, a danger to peace and a cause of moral degradation (*Times of India*, September 2008) but in 2009 the new Law Minister, Moily, suggested it was time to repeal the provision. The government has signalled that it will not oppose the case when it comes before the Supreme Court, though many other parties will be doing so, including major religious groupings (Shah, 2010 and 2011; Muralidhar 2011).

The Delhi High Court decision should not be read in isolation to conclude that all is well for gay life in India. It remains difficult to be 'out' in India (PUCL, 2001) and experiences of harassment or acceptance vary, including by class (Merchant, 2010). Pressures to conform to heteronormativity have meant that in India, as in other countries, those who are gay have often had to mask their own preferences and behaviours through devices such as marriage. In the wake of the Section 377 decision, women who were brides of convenience began to file for divorce where their marriages had not been consummated or where they had knowledge of their husband's gay relationship (Sinlung, 2010).

Attempts to hold gay marriages, however informal, are strongly contested with one in Manipur in 2010 being broken up by the police at the behest of the families, two days after the ceremony (Sinlung, 2010). Yet, beyond the Delhi High Court decision there have been several developments that signal a loosening of the heterosexual stranglehold on Indian social life. Cultural discourse on homosexuality and gender identity has developed. The film *Fire* has already been mentioned – it was made and had a limited showing, even if opposed. Books such as that by Merchant (2010) illustrate the range of literature that addresses gay life, gay pride events take place in India, there are gay bookshops and film festivals (see Table 5.1). Lesbian organizations have been formed, such as LABIA, Symphony in Pink (both in Mumbai), Campaign for Lesbian Rights, Sanghini and Humrahi in Delhi, Olava in Pune and Prerana in Bangalore.

These legal and social changes suggest a direction of travel towards acknowledgement and even acceptance of homosexuality in India as existed in pre-colonial India. Homosexuality has not yet found acceptability across India but male homosexual behaviour has been reclaimed from its colonial illegality. The Section 377 decision was widely celebrated across LGBT communities and by many others yet much more remains to be done, especially for women who are seen to be rejecting men: the ideology of normative heterosexuality is

Table 5.1 Selection of developments on LGBT rights in India and Nepal

India	Nepal
2005 <ul style="list-style-type: none"> Category E (for eunuch) introduced in categorization of sex, on online passport application forms 	
2007	<ul style="list-style-type: none"> Recognition of third gender in the definition of citizenship Decriminalization of homosexuality
2008	<ul style="list-style-type: none"> Supreme Court gives consent to same sex marriage and instruction to the government to formulate a law; confirms rights to own property and right to employment
2009	
2010 <ul style="list-style-type: none"> Election Commission – O (other) category on voting forms for eunuchs S377 Delhi high court judgement 	<ul style="list-style-type: none"> Delhi Municipal Corporation makes pensions available to eunuchs India's first mainstream gay film festival: the 'Kashish' Mumbai international queer film festival First online gay bookstore opened First gay condom First gay pride event in Delhi since Section 377 decision, 2000 people attended (estimate)
2011	<ul style="list-style-type: none"> First gay pride parade Pink Mountain travel agency launched to enable gay weddings First gay wedding
	<ul style="list-style-type: none"> Pink Mountain Travel Agency has bookings for weddings, most from women

especially powerfully policed for women. Sexually active women continue to suffer condemnation, the ideology of male as protector and defender of female sexuality remains in place, presumed male sexual rights of access to women's bodies prevail and the labelling continues of women as fallen or sexually available if beyond the ownership of one man.

Nepal

Developments in neighbouring Nepal over the past few years suggest a potential re-casting of sexual constraints and options. The journey appears to be smoother than in India and with less contestation, despite Nepal's reputation as a socially conservative nation.

Gender norms in Nepal share a great deal with the rest of South Asia, especially northern India, where premarital sex is strongly taboo, gender discrimination is deep and heterosexuality is the norm. Nepal is a major source country for the trafficking of girls across the region, fed in large part by the interaction of gender inequality and poverty. Nepal suffered a decade of armed Maoist struggle that eventually toppled the monarchy and saw the establishment of a constituent assembly in 2008. In the period immediately following the 'people's revolution' a remarkable series of events saw the increasing acceptance of homosexuality in law and politics with fundamental changes to the legal and social framework. Changes in the legal and social status of homosexuality and gender identity in Nepal owe a large debt to Sunil Pant MP and the Blue Diamond Society (BDS).

Unable to establish a gay rights NGO in 2001, Pant instead started a general human rights and health NGO, the Blue Diamond Society. Between 2001 and 2006 Pant's local support came primarily from women's NGOs in Nepal, INGOs and Western activists at a time when the country was suffering political violence and insecurity due to the armed insurgency. Pant became involved in the defence of transgender and gay people who were arrested, raped or harassed (Pant, 2011).

The Blue Diamond Society undertook HIV training, prevention work, condom distribution and extensive documentation of harassment faced by LGBT individuals. Pant also advocated changed behaviour among the police and military, lobbied for gay rights among the political parties and Maoists. Benefits seem to have been realized in the latter part of the decade.

As political space opened up at the end of the insurgency the BDS pressed for political commitment for action on LGBT rights and Pant took a case to court for equal rights. The Supreme Court gave broad and progressive decisions including the recognition of homosexuals and third gender people as natural persons with equal rights. The Court required the government to make

citizenship identity available to those of a third gender, to end discriminatory legislation and policies, form a same-sex marriage committee and recognize homosexual and transgender rights in the new constitution. The court does not seem to have been hindered by the prevailing social conservatism in Hindu Nepal. With the end of the armed conflict and the move to electoral politics in 2008, Pant capitalized on the need among political parties to maximize their votes, asking them all to include lesbian and gay rights in their manifestos. The BDS was asked by the Communist Party of Nepal (Unified) (CPN(U)) to field a candidate in the elections; this is when Pant launched a successful electoral campaign and became Nepal's first openly gay MP. He accounts for his success by referring to the votes of closet gays and lesbians, especially among women in the security forces (Pant, 2011).

It was to take another set of discussions before membership was opened in 2010 to those whose votes were previously courted through manifesto changes; the Unified Marxist-Leninists (UML), Maoists and Nepali Congress all accepted LGBT members.

The draft constitution is strong on the language of equality, non-discrimination and social justice and names many groups who should enjoy rights, protections and special provisions (from Centre of Constitutional Dialogue website). This includes for example commitment on the preferential right to employment for single women, to ensure lives of dignity. There are repeated references through the text to equal treatment, special provisions and protections for specific groups including sexual minorities:

- The State shall not discriminate against any citizen in the application of general laws on grounds of religion, colour, caste, tribe, *gender, sexual orientation*, biological condition, disability, health condition, pregnancy, economic condition, origin, language or region, ideological conviction or other similar grounds.
- Special provisions can be made for 'the protection, empowerment or advancement of women, *dalits*, indigenous ethnic tribes (*adiwasis janjatis*), Madhesis or farmers, workers, oppressed regions, Muslims, backward class, minority, marginalized and endangered communities or destitute people, youths, children, senior citizens, *gender or sexual minorities*, the disabled or those who are physically or mentally incapacitated and helpless people, who are economically, socially or culturally backward.
- The State shall not discriminate among citizens on grounds of religion, colour, race, caste, tribe, *gender, sexual orientation*, biological condition, disability, health condition, marital condition, pregnancy, economic condition, origin, language or region, ideological conviction or other similar grounds.

There are repeated references to the rights of women and gender/sexual minorities and need for inclusiveness in the treatment of all. Two lawmakers out of 601 expressed concerns about the provisions yet their position may since have changed in the course of party debates (Pant, 2011). Difficulties in resolving debates on the new Constitution have led to the deadline being repeatedly extended through 2011.

Conclusion

Patriarchy and heteronormativity dominate and infuse social structures and dynamics in South Asia and lie at the core of honour codes. Heterosexuality and collective (predominantly male) choice of spouse need to be enforced for honour codes to be upheld. These norms are being contested, reinforced and broken in South Asia. This chapter briefly considers two areas of contestation: the exercising of choice in selection of sexual/marital partners within heterosexual relationships and the establishment of homosexuality as legitimate and legal.

Rigid sexual norms remain constraints on men and women in South Asia. Caste boundaries for acceptable marriages remain strong, family control over selection of spouses continues and asserts its presence in the face of contestation, homosexuality remains criminalized in all but one state (Nepal) and one capital city (Delhi).

Nepal decriminalized homosexuality at the birth of a new epoch, along with the overthrow of the monarchy and during the period of drafting a new constitution. The dawning of a new era provided a similar impetus elsewhere – Soviet Russia, the new South Africa and Kosovo, for example. Nepal decriminalized a year before the Delhi High Court and remains the only state in the South Asia region to have done so on a national scale. Yet the change is not yet secure – the new constitution is yet to be adopted and decisions can change (Russia decriminalized in 1922 and re-criminalized in 1934).

India is undergoing rapid economic transformation and social developments that see increasing education among girls, with higher numbers of young women entering the labour force. Heterosexual marriage norms are being both challenged and asserted where women dare to transgress long-held marriage rules, with the loss of community (male) honour being re-established often through killings. The wider world thus opening up to women has a massive impact on the aspirations and confidence of young women, some of whom are beginning to contest the myriad forms of control over them that have traditionally been exercised by men and senior women. It is also the case that some young men are accompanying women on the journey towards increased individual choice, and both are paying with their lives for contesting heterosexual norms.

Transgressive heterosexuality appears to be being met with increasing violence in northern India yet the steps forward in terms of transgressive homosexuality appear to be being met with less venom, both in India and Nepal.

It might be expected that homosexuality, transgressions against heterosexuality, would be more unacceptable than resistance within the frame of heterosexuality. While this paper cannot give a comprehensive analysis, and abuse of LGBT communities certainly continues, a reading of recent events presented here suggests that transgressive heterosexuality *may* be costing more lives; transgressive heterosexuality may be the more disruptive to the social control of sexual relations.

How these dynamics will play out, whether there is increasing or decreasing tolerance, remains to be seen. It does not minimize the disrespect, rejection or abuse known by LGBT people to note that there is a qualitative difference in responses to the two strands of transgression discussed here.

Control of women's sexuality still remains at the heart of what it means to be a good family and an honourable community. Male sexuality does not carry the same import or meaning. In the public imagination it seems to me that homosexuality is more commonly understood to be about men and sodomy, and this is captured in the Section 377 debates. Lesbianism remains cloaked in lack of recognition if not silence. Do hot-blooded heterosexual men consider it inconceivable that women might have sexual lives and satisfaction without them? It may be so and if so, lesbian lives will not pose a threat until they are acknowledged to be real. And it is likely that until and unless it is perceived as a threat, women's choice of sexual lives without men will perhaps not be worth taking seriously. In Nepal, the Pink Mountain Travel agency capitalizes on Nepal's tourism industry and status as the first *South Asian* country to decriminalize homosexuality, to offer gay weddings to tourists. It currently has more bookings from women for weddings than from men (Pant, 2011). While these will be foreign women it may be part of larger picture in which women's sexual lives as free from men becomes increasingly recognized. It is not clear how this dynamic will move forward in India.

The State in both India and Nepal appears to be moving towards acceptance of the legitimacy, or at least tolerance, of homosexuality. At a time of political upheaval the creation of a new State dynamic and direction has enabled a positive space for the promotion of equality and non-discrimination in Nepal. Yet, the fact that Nepal is the only state in South Asia that has fully decriminalized homosexuality and has sought to enshrine this in a new Constitution offers a great beacon of hope in the region. It is as yet early days and this space remains to be watched, in both countries.

Similarly, State action on the policing of rigid social relations played out through control of male sexual access to women has also to take clearer shape. These will tell us a great deal about the future of sexual choice and autonomy in India and Nepal and how the battle for control of women's sexuality is played out.

Notes

- 1 Men who have sex with men.
- 2 The male victim's brother was later allegedly threatened by a policeman against testifying in court.
- 3 This is not to say that all are equally treated or respected, simply that their existence is an established part of social life.

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