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Sexual Rights and Social Movements In India

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CREATING RESOURCES FOR EMPOWERMENT IN ACTION (CREA)

is a non-profit organisation based in New Delhi, India. CREA empowers women to articulate, demand and access their human rights by enhancing women's leadership and focusing on issues of sexuality, sexual and reproductive rights, violence against women and women's rights.

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**SEXUAL RIGHTS AND
SOCIAL MOVEMENTS IN INDIA**

CONTENTS

INTRODUCTION	1
PART ONE: The Process	3
The Conceptual Terrain	3
Understanding the “Rights Approach”	3
Bringing Sexuality into Rights	5
Understanding Sexuality	5
Sexual Rights: What Are the Existing Articulations?	6
Sexual Rights vs. Human Rights: What Is the Relationship?	9
Sexuality and Identity: Who Will Claim Rights?	10
PART TWO: The Indian Context	12
Sexual Rights, the State, and the Law	12
Sexual Rights and Health	14
Sexual Rights and the Women’s Movement	16
Sexual Rights and LGBT Movements	18
Sexual Rights and Funding	20
Sexual Rights and Sex Work	22
Constraints to the Fuller Use of Sexual Rights	23
PART THREE: Thematic Lessons and Ways to Move Forward	25
Addressing the Knowledge Gap	25
Ideas, Not Ideology	25
Seeking Tangible Roots	26
The Need for Broader Alliances	26
Grappling with Larger Structures	26
APPENDIX	28

Introduction

How do you fight with empty hands?

Hijra Activist, Chennai

Rare are the circumstances anywhere in the world today where we are able to understand and feel safe within our bodies, to name, seek, and express our desires, and to articulate dynamic and comprehensive understandings of our sexualities. Rarer still are understandings of sexuality that reach beyond sex, violence, disease on the one hand, and reproduction, marriage, and silence on the other. For all of us, however we identify or understand our sexualities, dominant discourses of truth – medicine, law, religion, culture, nation – determine how we are able to experience and understand sexuality. Globally and locally, our faith, our science, our identities, and our cultures deny us space for articulation and exploration, refuse us inclusive and interconnected definitions of sexuality that speak of power and politics as much as the act of sex, or simply take from us languages and spaces of protest.

In India, sexuality has long been a silent battleground. Each decade has taught us more about the ways in which it underlies almost every aspect of our lives, making the socially enforced silence that envelops issues of gender and sexuality seem increasingly more deafening. The women's movement in the 1980s taught us that we could not understand gender-based inequity without understanding how patriarchy relied upon controlling women's bodies through marriage, ensuring they changed their names at marriage so that property could be passed onto the son. In the 1990s, just as global development circles acknowledged that men and women experienced and responded to poverty differently, Dalit women reminded us that even within the "community" of women, the use of Dalit's women's bodies as sexual and physical labour made it impossible to understand their lived realities without looking at caste, labour, sexuality, and power together. The HIV/AIDS epidemic showed us that what we assumed to be every human being's fundamental right to health care was actually contingent on the social and moral acceptability of the mode of disease transmission. In the last decade, the queer movement in India began to vocally organise around the rights of hijras and same-sex desiring people not just to live free from violence, but also to access rights as simple and complex as the ability to provide medical histories to their doctors without shame or fear of criminal action, to hold a passport, and to be free of discrimination in workplaces, schools, hospitals, and within their homes.¹ In Kolkata, the Durbar Mahila Samanwaya Committee (DMSC) showed that its own understanding of sexuality and the right to sex work was a necessary pre-requisite to running one of the most successful sex worker unions in the world that lowered police abuse, brought higher wages and improved livelihoods, and managed a successful HIV/AIDS intervention.

¹ For a summary of these concerns see INDIA CENTRE FOR HUMAN RIGHTS AND LAW. 1999. *Humjinsi — A Resource Book on Lesbian, Gay and Bisexual Rights in India*. Mumbai: India Centre for Human Rights and Law; PEOPLE'S UNION FOR CIVIL LIBERTIES (PUCL)- Karnataka. 2003. *Human Rights Violations against the Transgender Community Bangalore*. Karnataka: PUCL; VOICES AGAINST 377. 2004. *Rights for All*. New Delhi: Voices against 377; BHAN, G. and NARRAIN, A. (eds.). 2005. *Because I Have a Voice: Queer Politics in India*. New Delhi: Yoda Press; and MISRA, G., and CHANDIRAMANI, R. (eds.). 2005. *Sexuality, Gender and Rights: Exploring Theory and Practice in South and Southeast Asia*. New Delhi: Sage.

Sexuality is, at the very least, about health, pleasure, bodies, violence, rights, identity, and employment. It is about families and domestic spaces, intimate relations and public engagements, access to economic resources and the right to go safely to a conducive work environment. In its various spaces, languages, and forms, it is no longer willing to quietly function as a lesser politics, but instead is one that is demanding to be heard and have its connections with other politics acknowledged.

Parallel to the histories of exclusion and violence in India are vibrant histories of movements and protest. From songs of celebration and protest to public marches and protracted political and legal battles, social movements in India have long used both formal and informal mechanisms and languages to move towards justice and challenge seemingly immovable social structures and norms, particularly those around the contentious issues of gender and sexuality. The diversity of contexts and issues in the country has, however, often made it difficult to speak in one voice across caste, class, region, language, religion, and gender. Social movements have thus strategised, adapted, contextualised and innovated with new spaces and forms of protest, often working side by side, but at times also falling prey to internal divides that cannot be overcome even in the name of shared ends.

In such circumstances – given the exhaustive and amorphous nature of any inclusive definition of sexuality, and the sheer diversity of the Indian social and political landscape – how do we find a language in which to speak of sexuality that is both operationally and conceptually feasible? A language that can comfort as well as protest, affirm as well as protect?

This paper is located in the search for a new language for the politics of sexuality. In three parts, it looks at the emerging discourse of sexual rights and tries to assess whether such an articulation is able to meet some of the challenges outlined above. The first part – entitled the Conceptual Terrain – lays out a brief history of the rights approach, paying particular attention to contemporary institutions, conventions, and uses of rights in various fora in India. It then explores the idea of sexual rights: what do these rights look like, and what do they ask for? How do we understand and apply the concepts of sexual rights as opposed to more familiar principles of human rights or sexual and reproductive rights? Part Two – the Indian Context – locates these conceptual debates on rights and sexuality within the context of contemporary understandings of gender and sexuality in India, and attempts to map out the various debates that surround the use and perception of sexual rights in the country. The final part – Sexuality and Movements – documents how various movements and activists in India understand and use the idea of sexual rights – directly or indirectly – in their work and in their various movements.

The aim of this paper is not to produce a bullet-pointed list of conclusions about sexual rights. Its aim, rather, is to take a snapshot of conversations around the use of sexual rights in India, with the hope that doubts, confusions, and beliefs we encounter along the way will emerge as sources of learning for all of us. And that these conversations will guide us in finding pathways of social change that will make the circumstances with which this paper began something we can expect, rather than simply imagine.

Part One

The Process

This paper is based on a review of emerging literature on the politics of sex, sexuality, and sexual rights. A comprehensive survey was done to map the history of previous and concurrent attempts by others to create varied formal and informal articulations of sexual rights, using journal, database and internet searches, a review of institutional and official publications, relevant bibliographies, and personal communication with activists and scholars in the field. The author carried out semi-structured interviews with members of each of the movements discussed in the paper over a period of two months from July-August 2005, research which included trips to groups working in Bombay, Delhi, Bangalore, Chennai and Kolkata (see Appendix). Interviewees were selected based on their or their organisation's work on issues of gender and sexuality. Efforts were made to balance the list of interviewees both thematically – drawing them equally from the various movements that are discussed in the paper – as well as geographically across the country. Interviews were conducted in English, Hindi, and, in certain cases, in the presence of a translator, in Tamil and Bengali.

The Conceptual Terrain

Understanding the "Rights Approach"

It is worth pausing at this point, before we delve into sexual rights, to consider what it means to use the "rights approach" or "rights language." Defining the scope of rights, Miller speaks of "formal and informal rights" that "share and complement each other" to "mobilise and transform political demands for justice" into "specific tools for action."² Miller's definition neatly captures the many aspects of rights language with which anyone using the concept must contend – its simultaneous formal and informal articulations, its commitment to an effort to create and ensure justice, and its dual location both as a tool for action, as well as a conceptual space for understanding notions of justice and equity.

What does it mean for someone to use the "rights approach?" Do we consider someone a rights-based activist only if he or she cites the Universal Declaration of Human Rights (UDHR), or is aware of the finer points of the Convention for Elimination of all forms of Discrimination Against Women (CEDAW) or the Convention Against Torture (CAT), just to name two of dozens of such covenants? This paper argues against such a literal reading of the rights approach, and therefore includes interviews from all those who described their work or their politics as rights-based. Almost all those interviewed spoke of working with "rights" in some form, and the diversity of their understandings of what such an admission implies is part of the picture of using rights in the Indian context that this paper seeks to understand and map.

All those interviewed felt that the idea of rights had deep resonance in their own lives and within the spaces in which they worked. For a hijra activist based in Tamil Nadu, rights meant a "passport, a ration card, and the right to vote." Though she confessed to not knowing what was written in the UDHR, she said she had just

²MILLER, A. 2001. 'Sexual Rights: Conceptual Advances and Tensions in Debate'. Paper presented at the Sexual, Reproductive and Human Rights Seminar, Lima, Peru, November 2001. p. 1. Available at: http://www.choike.org/documentos/alice_miller.pdf.

learnt about Articles 14 and 15 of the Indian Constitution, and believed that “everyone was equal before the law,” and wanted “the same for her hijra sisters.” For a mental health activist based in Kolkata, the rights approach included an exact knowledge of several international conventions that she frequently used in her day-to-day work with mental health practitioners. On the other end, a trainer with a Kolkata-based HIV/AIDS outreach organisation, rarely cites a convention, but says that whenever he uses the word *manavadhikar* (human rights), there is an instant recognition of the concept of people’s fundamental rights, regardless of whether people know of declarations and covenants behind the concept. For the head of a Delhi-based organisation that works on sexuality, rights were not about articulations or covenants, but about an internal and personal sense of entitlement to justice that gave people the aspiration and agency to seek it, regardless of the language they used to express this sense of entitlement and whether they ever used the word “rights.” For activists in the Dalit, legal reform, and women’s movements, rights language had reached a point where, as one interviewee ironically remarked, “it seems to be the one word that everyone understands in any language. It’s the one thing you don’t have to translate!”

In different ways and to different degrees, all of those interviewed agreed that rights have helped many marginal communities to speak out publicly and to find a language that enables them to articulate their demands in a way that has a resonance outside the limited space of their communities. In an increasingly globally and intra-locally connected world, this resonance across boundaries and borders has acquired an even greater significance as different communities and movements have been able to speak and join across political, national, rural-urban, language, and other divides. While Lesbian, Gay, Bisexual, Transgender (LGBT) activists spoke about how rights language was the first space that gave them a language to break the silence around same-sex desiring lives, a mental health practitioner talked about how using the language of rights allowed her to break through the resistance of many in her profession to at least begin talking about issues such as sexuality within mental health. An HIV/AIDS activist in Kolkata said that rights language had helped him work closely within the state HIV/AIDS prevention programs and departments, spaces within which no other shared language existed to talk about issues of sexuality.

Some clear themes – discussed in detail at later stages in this paper – are worth noting. Many respondents remarked that formal rights remained a language that they inevitably fell back upon in policy circles, or in interactions with state officials, especially around issues of sexuality. It was clear that they gained a sense of legitimacy within these spaces due to their awareness of formal, convention-based and even the commonly articulated concept of fundamental and human rights. For those not engaging with formal rights language per se, the idea of human rights still emerged as a popular terminology used to mobilise people and stake claims to justice for all without discrimination. The sense of being entitled to rights was identified by all as an important starting point for the beginning of political awakening and often was the default first step in any new movement.

As is the case with any language of social change, the critiques are quick to follow the achievements. Interviewees spoke of the deep class and language divides that are still pervasive in determining who does and does not use the rights approach. Many accuse a select few of using rights language, only as a gesture that had almost come to be expected in progressive circles. Though each critique will be discussed as it plays out later in the paper, it is also worth mentioning here that many interviewees felt that target groups had no

ownership of rights language and used it without any sense of its deeper significance. Even those who defended rights language lamented the lack of information about the various kinds of rights, and the true extent of tools available to activists who are desirous of using the rights approach.

In popular culture, in street protests, in formal lobbying within legal-political circles, in smaller, more intimate spaces, rights language has clearly found space in the context of Indian political and social movements, though the understandings of rights and their uses remain deeply contextual and varied across movements, regions, individuals, ideologies, and spaces. This is not just a semantic point – it forms the backbone of the premise of this paper, giving us reason to believe that the questions that follow – namely, that of the relevance of sexual rights – are worth asking and have resonance in the Indian context. It also allows the paper to then engage both with critiques of the rights approach in general, and its particularities and nuances in the Indian context, instead of simply speaking of sexual rights in a vacuum. The remainder of the paper, therefore, will assume the relevance of engaging with the rights approach, and then approach the idea of sexual rights both from the perspective of sexuality, and that of rights more broadly.

Bringing Sexuality into Rights

This paper began by discussing the many ways in which sexuality enters and shapes all our lives, regardless of our location. Yet how do we understand sexuality? How is sexuality different from sex, or sexual identity? How do we capture sexuality into rights? How do we bring rights into sexuality? To understand how progressive movements in India have dealt with sexuality, we must first examine how activists perceive the spaces of sexuality and sexual rights in and of themselves.

Understanding Sexuality

An LGBT activist said that the attraction of sexual rights for her was that it allowed for sexuality to be seen as being about more than just same-sex or heterosexual desire, the identity labels different people attached to themselves, or literal understandings of sex and the body. For her, sexuality was connected to and rooted in, “many different politics.” Sexuality “cannot be understood without its intersections with class, caste, religion, or race. It is about so much more than sex, or sexual identities,” she argued. A chorus of voices in the office of a lesbian and bisexual women’s support space in Kolkata resoundingly agreed – “sexuality cannot ever be separate from our rights and from the entirety of ourselves.”

How do we understand sexuality? Associating words with the idea of sexuality, interviewees came up with: health, violence, pleasure, marriage, silence, oppression, diversity, freedom, gender, exploration, fluidity, same-sex desire, sex work, social norms, patriarchy, choice, information, services, access, discrimination, state, family, and desire. Interviewees made clear that sexuality had to be understood in the context of power and social relationships, not just as health or disease prevention, or in the context of violence. Sexuality was described as “beginning with the basic idea of freedom from violence and from disease, but then moving onto more positive articulations of choice, pleasure, and dignity, as well as diverse understandings of the body, desires, and sexual preferences.” Sexuality was “different from just speaking of sex,” said another, and was not just “located on the body,” but “about both personal decisions, and about the legal, social, and cultural conditions in which these choices played out.”

Further, sexuality has to be linked with livelihood and development. Interviewees spoke of gender-differentiated access to economic resources and opportunities within and outside the family, the existence of gender-biased property laws and social restrictions that prevented women from reaching economic self-sufficiency, the control of women's mobility in the name of chastity and sexual violence, and the denial of sex work as legitimate work, among many other examples of how gender and sexuality shape access to and the experience of economic activity, livelihoods, and survival.

It is this inclusive, intersectional idea of sexuality – as a politics rather than an identity – that is rooted in spheres as diverse as violence, pleasure, desire, reproduction, health, employment, livelihoods, family, education, and freedom of mobility which forms the working definition of sexuality for this paper, and it is against this definition that the application and conception of sexual rights will be measured.

Sexual Rights: What are the Existing Articulations?

Sexual rights articulations have entered mainstream human rights discourse since the early 1990s. Largely, this has occurred in three ways: broadening the understanding of traditional human rights covenants to include sexuality-related issues; conceptualising sexual and reproductive health and rights; and articulating sexual autonomy and the right to pleasure. While these three paths are not mutually exclusive, and indeed, are perhaps inseparably linked, the remainder of this section will elucidate the considerable difficulties that activists have encountered in struggling to reach a strategic and political agreement among them.

Of the three, health and reproductive rights based articulations of sexuality are easily the most widespread and institutionalised. At the International Conference on Population and Development (ICPD) in 1994, the first articulation on a broad set of reproductive health rights was agreed upon.³ It is important to note here Correa and Carriega's recollection of the internal dynamics of this hesitant first step that arguably typify concerns around notions of sexual rights even today:

*[We must recall that the] notion of sexual health was legitimised in the Cairo Program of Action and that, most principally, in the midst of harsh negotiations and many brackets the term "sexual rights" was written, for the first time, in a United Nations inter-governmental document, even if the term was not retained in the final text. The relevance of the sexuality debate in Cairo itself was so evident that, at that certain stage of negotiations, two male African official delegates strolled in the corridors and one said to the other, "there is too much sex in this document."*⁴

Too much sex seems to have been a common early refrain. At the 1995 Beijing Conference, the term sexual rights was again rejected, but the articulations of sexual health and the fundamental notions of the existence of rights around sexuality that emerged from the ICPD were accepted. It was agreed that a woman's right to control her own sexuality – the fundamental basis of sexual rights for women – was an indelible part of her human rights, thereby laying the foundation for the merging of sexuality and rights.

³ICPD, 1994. 'Program of Action'. Available at: http://www.unfpa.org/icpd/icpd_poa.htm#ch7.

⁴CORRÊA, S. AND CAREAGA, G. Undated. 'Is Sexuality a Non-Negotiable Component of the Cairo Agenda?' Unpublished paper. p. 4. Available at: <http://www.dawnnet.org/publications/docs/non-negotiable-2520sexuality-2520aug04.doc>.

Since then, perhaps the best-known articulations of sexual health and reproductive rights come from the charter of the International Planned Parenthood Federation. A similar charter has also been taken on by the Women's Health Project in South Africa.⁵ The goals of health-based approaches to sexuality and sexual health are access to reproductive and health services, information, and freedom from violence. Not as concerned with pleasure (though not directly opposed to pleasure-centric articulations),⁶ sexual rights claims from within health discourses, therefore, focus on an understanding of sexuality that is corporeal and linked to disease prevention, freedom from discrimination, and access-oriented, all moving to a larger goal of equitable and accessible sexual and reproductive health services. Correa argues this wonderfully when she writes:

A first challenge I want to emphasise is the need to go beyond a conceptualisation of "sexual rights" that is still fundamentally framed in terms of reproduction, health and violence, which is what prevails in UN documents and their interpretation. Sexual rights were first proposed in a population conference... However, the health connection does not exactly provide for sexual rights as an end in themselves. Rather, this concept of sexual rights tends to be transformed to a means to achieve better health or to resolve health-related crises.⁷

What do non-health centred understandings of sexuality and rights look like? Within legal and other human rights frameworks, discourse about sexual rights generally uses the language of non-discrimination and equality. Here, sexuality is seen to be as much a personal and social identity as a health-related issue, and the framing of legal anti-discrimination clauses often relies upon a call to rights and/or constitutional guarantees. In overruling the country's anti-sodomy statutes, for example, the Australian High Court referred not only to the constitution of the country, but to the fact that the sodomy laws violated the country's obligations under Articles 2 and 17 of the International Covenant on Civil and Political Rights. In May 1999, the Inter-American Commission on Human Rights admitted its first case of human rights violations on the basis of sexual orientation, where a Columbian citizen sued the government for denying her lesbian partner the right to conjugal visits in prison.⁸ In legal and rights-based jurisprudence, therefore, community or individual claims are precursors to larger changes in guidelines, policies, or laws that create enabling conditions for social and sexual freedom.

This paper approaches sexual rights as the rights of all:

- to make choices based on consent on who their partners are, what kind of sex they want to engage in, and every other issue regarding their sexuality
- to have or not have sex in all contexts including marriage and paid sex
- to have sex with one or more people simultaneously if all involved consent to it
- to marry or not to marry
- to play, discover, have fun with one's sexuality

⁵WOMEN'S HEALTH PROJECT. Undated. 'South Africa's Sexual Rights Charter'. Johannesburg: University of Witwatersrand. Available at: <http://www.wits.ac.za/whp/sexual-rights-charter.doc> Accessed 12 February 2007.

⁶CORRÉA, S. 2002. 'Accentuate the Positive: Sexual Rights Should Be about Freedom and Pleasure as Well as Public Health'. Department of Social Sciences: Public Health School, Columbia University/Siyanda. Available at: <http://www.eldis.org/static/DOC19699.htm>.

⁷Ibid.

⁸INTERNATIONAL LESBIAN AND GAY ASSOCIATION. 1999. 'Discrimination against Same-Sex Love: First Ever Petition before the Inter - American Commission on Human Rights'. Available at: http://www.ilga.info/Information/Legal_survey/americas/supporting%20files/discrimination_against_same.htm. See also INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. 1999. REPORT N° 71/99. Available at: <http://www.cidh.oas.org/annualrep/99eng/Admissible/Colombia11656.htm>.

- to sell and buy sex
- to differ on the issue of sex
- to obtain information
- to advertise sexual services
- to produce, use and advertise sex objects, and sexually explicit materials
- to claim gender and sexual identities irrespective of one's biological status
- to express oneself without discrimination because one is different
- to live a life free of coercion, violation, discrimination based on sexual identity and practices
- to experience the unfettered practice of one's sexuality in all spheres of activity except sexual abuse
- to enjoy a positive and affirmative sexuality

The primary research undertaken for this paper also identified several key issues/spaces that emerged as crucial to understandings of sexuality and to intervention for the implementation of sexual rights. Briefly, these include:

- Bodily Integrity and Freedom from Sexual Violence – both tangible and intangible
- Sexual Health and Reproductive Rights
- Access to Services and Information
- HIV/AIDS
- Identities and Identity Politics
- Law/State
- Gender and Women's Sexualities
- Non-heterosexualities
- Sex Work
- Sexual Pleasure
- Marriage and Patriarchy⁹

What are Sexual Rights?

During the XV World Congress of Sexology, the General Assembly of the World Association for Sexology approved amendments to the Declaration of Sexual Rights, establishing that "...Sexual rights are universal human rights based on the inherent freedom, dignity and equality of all human beings. Since health is a fundamental human right, so must sexual health be a basic human right." They further pointed to: "recognise, promote, respect and defend the rights to sexual freedom and sexual autonomy." This includes: the right to sexual integrity and safety of the sexual body; the rights to sexual privacy and sexual equity; the rights to sexual pleasure and emotional sexual expression; the rights to sexually associate freely and to make free and responsible reproductive choices; the rights to sexual information based upon scientific inquiry, to comprehensive sexual education and to sexual health care.

Source: World Association of Sexology. 1999. Declaration of Sexual Rights. Available at www.worldsexology.org.

⁹CREA, SANGAMA, TARSHI. 2005. *A Conversation on Sexual Rights*. pp. 5-6. New Delhi: CREA.

This breadth of the issues included in understandings of sexuality was seen both as a strength and a weakness. While sexual health and reproductive rights, freedom from violence, or HIV/AIDS seemed to be tangible areas around which to articulate rights, many aspects of sexuality seemed amorphous to many interviewees. "If sexuality is so diverse," asked one interviewee, "then how are we going to find one language to talk of sexual rights? It would include everything!" A Kolkata-based activist remarked, "when it comes to sexuality, you can't talk at all in India – how will you talk about rights when the first conversations around sexuality haven't yet happened for so many?" A long-time member of the women's movement said that there were "no roots" to sexuality rights and supported a more "health-centred" articulation to sexual rights, so as to make them "seem more real." A senior HIV/AIDS activist agreed, and went so far as to say that sexual rights should be entirely captured within "the right to health," though he qualified that this idea of health included "physical, as well as social conceptions of health."

So what are some of the issues that a conception of sexual rights throws up in the minds of the activists that must use this articulation in their day-to-day work? Faced with a diverse list of spaces in which to raise sexuality, what are the kinds of structural and fundamental concerns that activists raised around sexual rights?

Sexual Rights versus Human Rights: What is the Relationship?

At the 61st session of the UN Commission on Human Rights,¹⁰ for the first time, "sexual orientation" was included in the draft resolution on Violence against Women. Echoing the debates that prevented the acceptance of the words "sexual rights" at Beijing exactly ten years earlier, however, the Commission removed "sexual orientation" from the final declaration on violence against women "in the face of concerns about whether inclusion might jeopardise consensus on the resolution."¹¹ In examining the relationship(s) between sexual rights and human rights, it will serve us well to keep in mind the evidence of the strategic difficulty in bringing rights together institutionally, and how rights are often made to play against each other in imagined hierarchies of importance. Though this does not by any means prevent the union of sexual and human rights in practice and in our everyday lives outside the UN Human Rights Council, it does frame many of the interviewees' responses to the place of sexual rights vis-à-vis the human rights framework.

The interviewees cited in this paper were divided on whether sexual rights were a set of rights on their own or a part of the larger human rights framework. While a senior HIV/AIDS activist felt that sexuality should simply be "on the list of non-discrimination like all other identities under basic human rights," others argued that "given that most human rights activists in India would and do forget sexuality all the time, you need a specific articulation of sexuality rights outside the standard rights framework." Many felt that sexual rights could challenge the existing articulations of human rights to be more inclusive, but not seek to be "yet another charter of rights on their own." A Chennai-based hijra activist felt that simply articulating and talking about sexuality within human rights language, and ensuring that the latter explicitly acknowledged sexuality within its purview was enough. "We don't need more rights," she said, "we need the idea of human rights to include us fully." A senior grant-making officer at a multinational donor agency felt that the division made between

¹⁰On 15 March 2006, the UN General Assembly adopted resolution A/RES/60/251 to establish the Human Rights Council in place of the Commission on Human Rights. The Commission on Human Rights concluded its 62nd and final session on 27 March 2006. Available at: <http://www.ohchr.org/english/bodies/chr/index.htm>.

¹¹ARC INTERNATIONAL. 2005. 'Out at the UN: Advancing Human Rights Based on Sexual Orientation and Gender Identity at the 61st Session of the UN Commission on Human Rights'. Available at: <http://www.arc-international.net/chrreport.pdf>.

sexual and human rights was partly created: “the human rights perspective can and must underlie sexuality-related work. What you call it is less important than ensuring the essence of the rights approach underlies your work.”

Another interviewee felt that the particular context of sexuality as an axis of marginalisation had to be taken into account: “Within circles where sexuality can be openly talked about, to speak of human rights is fine, but in spaces where there is deeply rooted silence, you need a notion of sexual rights in itself to shake things up!” Others agreed that sexuality represented a unique context in many ways. Several pointed out that there remained a lack of “meaningful choices” for those on the margins of gender and sexuality, but, unlike those marginalised on the basis of caste, gender, or religion, they suffered the “added ignominy of having even their oppression not recognised for what it is.” Additionally, the consequences of claiming rights in the name of sexuality had to be considered. If the act of claiming rights itself endangered people who were “already exposed to violence – hijras, People Living with HIV/AIDS (PLWHAs), homosexual men, lesbians, sex workers – who will take responsibility for the backlash?” asked one interviewee, arguing that strategy and careful consideration of context was needed before using the nomenclature of “sexual rights” in the often violent context of Indian hetero-patriarchy. Meena Seshu, a member of Sampada Grameen Mahila Sanstha (SANGRAM), has argued, “a sex worker can access [rights discourse] as a victim, but never assert her right to sex work within it.”¹²

Clearly, there is no simple answer to the question of whether sexual rights ought to be subsumed within or separate from human rights. Yet what emerges clearly from the respondent interviews is a larger question: how do we use rights to break the silence “assertively and on our own terms” while recognising a certain “fatigue with a new covenant coming up every ten years like it’s fashion” and also the real consequences of claiming a sexuality-related identity as claimants to sexual rights must do?

Sexuality and Identity: Who will Claim Rights?

It was also argued that sexuality’s distinction from the limits of identity politics would be lost should it be codified within rights. Rights needed “someone to claim them,” argued a mental health activist, stating further that, “identity, and individual identity at that, is the unspoken assumption of rights language – you have to claim rights as someone or some community. First that community has to exist, or be created, often in a very un-democratic way.” Others agreed – “who will claim sexual rights? Won’t the process of claiming rights simply reify identities and labels? Do we need more of those?” Some activists felt that sexual rights are predicated upon a certain internal understanding of oneself and one’s sexuality at “a personal level,” which they felt may not be available to many individuals, especially women in strongly patriarchal contexts. Who would then speak of their rights?

The fear that the interviewees strongly expressed was that rights would necessitate the formation of concrete and air-tight identity compartments, whereby individuals would have to become “mothers,” “homosexual men,” “Men who have Sex with Men (MSM)”, “sex workers,” for example, and claim protection and rights on the basis of those identities. In this scenario, as one Delhi-based queer activist argued, “you can’t hold onto any belief in the fluidity of sexuality, or the intersections of sexuality and power. It all becomes about the category

¹²CREA, SANGAMA AND TARSHI, op. cit. p. 9.

you fit into, and we re-create another set of differences and hierarchies." These fears were particularly felt by those in the HIV/AIDS sector, the women's movement, and in LGBT circles. For those working as sex workers, there was a "wider sense of ownership of the term and its strong and conscious links of labour and dignity," and hence less fear of finding such an identity restrictive. An HIV/AIDS activist described how the right to HIV/AIDS information and treatment had led to many identifying themselves as MSM as a self-defining identity. The only context in which they could claim rights, he argued, was "as MSM who, by definition, had to be vulnerable to HIV/AIDS." No one, he argued, then "cared for any of the other circumstances of their lives, because their rights had been demanded as MSM only, not as people who were also economically or otherwise deprived." Representatives of the women's movement, still learning from the lessons of being trapped under a decade of population control policies that saw women's bodies simply as baby-producing machines, echoed the fear of rights and the "agendas and power politics that drive them," creating more categories that often reified hetero-patriarchal constructs and had to be, for their own efficacy, narrowly defined and inherently exclusionary.

Identity politics, however, also had its defenders. Recalling how being able to "understand and say that I was gay at the age of 14 probably saved my sanity," a gay activist argued that "identities are not always exclusionary even if they are autonomous." Rights also work at the level of "principles" that are "applicable at a more fundamental level and seek to protect particularities of one identity over another, but the right to be free to act with consent, with information, and without fear of recrimination." Others agreed, and argued that rights had to be understood "more broadly than the way many people do. It is possible to use them very superficially, but this does not, in and of itself, make them bad tools!" However, as we shall see later in this paper, working on the level of principles led to critiques of distance and a-contextuality, once again reminding us how difficult it is to walk the fine line between asserting claims to rights, and falling into a vicious cycle of re-creating, at best, discrete, and, at worst, hierarchical forms of understanding gender and sexuality.

Part Two

The Indian Context

The specificity of the Indian context was raised by many of those interviewed. Notions of privacy are strongly enforced – both due to social norms and economic necessity – and marriage remains the only space within which sexuality is presumed to exist. Notions of natural/unnatural, normal/abnormal sexuality abound, and are mapped onto the bodies of all those that fall outside the hetero-normative standard: same-sex desiring people, single mothers, non-normative kinship structures, sex workers, and widows, just to name a few. There is only one form of acceptable desire – heterosexual, within marriage, and male. It is not this paper's intention to imply that that non-normative expressions and spaces do not exist, but simply to point out that the heterosexual, patriarchal family, based on the subordination of women within marital homes, and the bounds of appropriate, private gender and sexual expression remain the norm against which all people in India must contend and measure themselves. This norm is reinforced in our many faiths, our laws, our science, and our culture.

Sexual Rights, the State, and the Law

One of the most frequent criticisms of the rights approach lies in the question of its justiciability. Who enforces rights? If all human beings are entitled to a certain set of basic rights, who ensures that this protection is extended to all people? Who, conversely, punishes or dispenses justice in the event of a violation of rights? In short, are rights like systems of law? If so, then how do we understand where rights, the state, and law come together, and where they separate? These questions, in many ways, struck at the heart of many of the respondents' concerns about any articulation of sexual rights. Two main themes underlie this discomfort: (a) in the context of the rights of sex workers, or of same-sex desiring people, or any other context where sexual acts, or sexuality-related activities were considered criminal and punishable offences,¹³ did it make sense to talk of rights? and (b) given the experiences of many progressive activists engaging with a hetero-patriarchal Indian state, could sexual rights emerge unscathed from within such a system, or would those rights, like so many attempts at legislation on women's rights, be leached of their ideological and political power?

Speaking of his trainings on sexuality with police cadets in Kolkata, one of the interviewees candidly admitted that the "only thing [the police] care about is the criminal procedure code. If I spoke of the rights of hijras, kothis, and sex workers that they arrested, they simply wanted to know where those rights were in their handbook." Many other activists echo this sentiment. A veteran member of the women's movement asserted that "rights stop at law, and will always be trumped by law." The legitimacy that people give to the law "just doesn't exist with rights, especially in the context of sexuality, which people don't even consider an issue that should be spoken about." Speaking of her experience organising women in the southern Indian state of Karnataka, she said that although the women felt "comforted and strengthened with the idea of rights," they clearly and repeatedly located any source of empowerment with "the letter of the law itself." For rights to

¹³For example, see Section 377 of the Indian Penal Code. Section 377 criminalises sodomy and prescribes sanctions against "whoever has voluntary carnal intercourse against the order of nature." While it is not technically specific to homosexual couples, it acts effectively as an anti-sodomy law.

“have teeth,” went the common refrain, “you have to go to the state – unless you do, all you have is rhetoric, not rights!”

The gap between rights and law is heightened, many felt, in the context of sexuality’s strong link to privacy in the Indian context, and the law’s history as a space that has only acknowledged sexuality in terms of violation and moral policing. In her recent work on sexuality and the law, Menon questioned whether the impulse of feminism and the law pulled in fundamentally different directions – the former seeking to be inclusive and expansive in its understandings of the body, the latter seeking to codify, define, and clearly demarcate lines of rights and wrong that resist such inclusivity.¹⁴ Many activists echo this fear – can an inclusive articulation of sexuality exist within the law, and what role does rights language have in shaping this engagement?

Many activists argued that the language of sexual rights allows for the law to be challenged and subverted. They disagreed with what one called the “unfair pitting of rights and law against each other.” “It isn’t about how closely rights match the letter of the law, but also about how the idea of awareness of rights impacts how the law is implemented or what people consider just,” argued a lawyer working on queer rights and the rights of sex workers in Bangalore. Another interviewee argued that law is “broader than just its codes, it can be influenced by social norms, and rights. Sexuality rights is a way to talk about sexuality in an affirmative way. A way that doesn’t just break silence, but does it with a certain sense of assertion.” A member of the women’s movement stated “we fought battles against dowry and bride-burning not just through law, but by talking about rights in society, and challenging silences around issues of power. It was only then that the change in law made an impact. What difference does it make what the law says if we don’t change the way society thinks?”

An activist working with male sex workers concurred: “sexual rights helps these communities think of themselves as being entitled to some legal status and protection. Until we came and talked to them about rights, most of them just accepted that people had the right to look down upon them, and that the police could beat them. First, you have to get people themselves to feel entitled. The law can’t do that – you have to fight that battle at the grass roots and make people demand justice.”

However, to make people demand justice vis-à-vis sexuality doesn’t always need the concept of rights that are focused on the state or the law. One interviewee raised the distinction between individual-centric and state-centric rights. “Why must all rights be articulated vis-à-vis the state and the law?” she asked. Giving the example of the “right to fantasise,” she argued that it was a conceptualisation that worked purely on a societal and individual level – “I’ll never go to a court to protect my right to fantasise” – but it served the same purpose: to allow individuals to express and imagine their fantasies as an integral part of their sexual person, a freedom that the interviewee saw as intimately connected with their larger sense of freedom from guilt and violence, and entitlement to sexual freedom. “Why isn’t this seen as being part of the rights approach? Just because it is not within a covenant or cannot be raised in a court?”

LGBT activists, in particular, felt that there was a need to speak unambiguously and clearly about sexual rights, since sexuality was so often silenced “even in progressive and politically correct spaces.” Sexual rights

¹⁴MENON, N. 2005. *Recovering Subversion*. pp. 17-20. New Delhi: Permanent Black.

make it absolutely clear that one isn't "talking just about an abstract notion of legal equality, but about sex, sexuality, power, and bodies, in the language of rights" and doing it "on one's own terms." Echoing each other, hijra, lesbian, and gay activists, all stated that the process of speaking about sexuality openly and especially with the tag of rights often was a way of challenging social norms, which were, in many ways, "just like laws," and, in fact, "regulations that governed the lives of marginalised communities far more than what's in the Indian Penal Code." The head of a hijra group in Chennai dismissed the distinction between the law and society, saying simply, "it is not as if people need a law to feel like they can beat us, or curse us." Yet even these activists admitted that within police stations, it was only "by teaching ourselves the legal codes that we could protect ourselves." The question she is left with seems to capture the tenuous nature of rights in spaces of state and legal authority: "if the police man doesn't want to recognise our rights, what can we do to stop him?"

The engagement between rights and systems of legal and state authority seem to be working at two distinct levels. While many activists use the language of sexual rights to challenge larger constructions of power and social norms, on a day-to-day basis, many felt the need to link rights more tangibly with concrete experiences of discrimination. Otherwise, rights seem to work only as a "trickle-down effect," where it was assumed that the benefit of using rights to question larger understandings of gender and sexuality would, at some point, trickle down to the everyday experiences of people. Strategies were needed, many felt, to balance the tangible with the process of larger questioning – to, as one interviewee put it succinctly, "change the local criminal code just as you worked to change conceptions of justice."

A lack of knowledge both about local legal codes and about rights was identified as one of the biggest barriers to a symbiotic relationship between rights and laws. Often, rights activists stressed the universality of rights and "ignored local laws as if they didn't matter vis-à-vis the larger global brotherhood of rights." On the other hand, many people simply protested "case after case of discrimination," but never thought to stop and talk about why these cases keep occurring. The need of the hour was a way to understand rights using particular examples of local laws while bearing in mind that the implementation of laws were bound strongly by people's perceptions of their entitlements and rights.

Sexual Rights and Health

Sexual health and reproductive rights, especially the issue of HIV/AIDS, emerged both as a central focus for many interviewees but also left many feeling deeply divided. While some felt that sexual health should be the main focus of understandings of sexuality and sexual rights, others were vehemently opposed to an idea of sexuality that "focused on disease prevention," especially in the context of how strongly related perceptions of sexuality-related illnesses were to understandings of gender and sexuality in Indian society. While broadly agreeing that access to services is critical to any sexual rights framework, many interviewees felt that it was simultaneously necessary to break the automatic and inevitable conflation of sex with reproduction, especially given most women's lack of freedom to make decisions about their own bodies.

A Kolkata-based activist argued that sexual rights should be located entirely in "an understanding of health rights." He was careful to explain that he saw this as a tactical move that would give sexual rights a legitimate

and tangible location, as well as “broaden the idea of what we mean by health.” This was a theme that many respondents identified with – sexual rights was a language that had allowed them to broaden the idea of health to move beyond the limitations of a medical-physical understanding, and expand the understanding of health to include the individual and structural conditions that allowed for a state of physical, mental, and social well-being. A mental health activist said that rights language had allowed her “to get a foot into the door of other practitioners” who felt “compelled to respond” when she spoke of rights, and had to “at least talk about sexuality” in a way that they had not before. Sexual health activists felt the same way – there was a space to speak of sexual rights, of access to sexual health services, and reproductive rights, in a way that, even ten years ago, was difficult to imagine.

Health emerges then as the space in which sexual rights have the most legitimacy, and perhaps the most history. Its use in such important documents and discourses as the ICPD declaration, IPPF’s charter of sexual and reproductive rights, the language of sexual and reproductive health emerging out of the Indian government and from donor agencies has created numerous spaces where these rights have willing audiences, and structural and financial support. Yet, as one activist reminded us, “health is what works, and, in some way, what ensures that nothing else can work.”

Sexual health and reproductive rights, argue the dissenting communities of activists, “has left us with one understanding of sexuality.” The inclusive nature of sexual choice, of pleasure, of affirmative desire has been “forgotten somewhere along the line.” HIV/AIDS makes its inevitable entry into the debate at this point. Many activists point out that sexual health champions the rights of people to be free of disease, but at times, said a queer activist angrily, “it doesn’t seem to care about their rights in any other part of their lives should they not be HIV+.” Yet the staggering international and local financial and structural power behind the HIV/AIDS discourse gives it the authority to shape the discourse of sexuality language, creating communities like MSM, whose entire purpose, argued one queer activist was not “to be human beings with sexual desires that need to be contextualised and understood, but as target recipients of condom distribution programs.”

The fear amidst activists is that the rubric of sexual health creates and shapes its target communities as much as it responds to their needs. Women’s sexual health becomes limited once more to reproduction. Else, women are seen only as the “wives of MSM, or the sex workers that have no sexual choice.” In this framework, activists argue, there is “no challenging of the stereotypes of gender and sexuality that pervade mainstream society. Sex workers have to be rescued; women have to be given safe spaces to become mothers, which is the only path for them; and gay people have to be publicly placated but only in terms of their usefulness in combating HIV/AIDS.” Rights, as Miller has argued, at times, reify stereotypes.

Do sexual rights fall prey to this trap? Some argued that a discourse of sexual rights has the capacity not to, but lacks the operational depth to live up to this potential. As an idea, one HIV/AIDS activist argued, “it seems to have all the ingredients to broaden sexual health into sexuality, but the systems for HIV/AIDS work are so tangible and omnipresent that it’s hard to imagine how you’ll find a way in to change systemic thinking.” One women’s movement activist agreed, and said that it was impossible to fight the agenda of “reproductive rights, and the jargon that came with it.” To bring in expansive understandings of positive and affirmative sexuality

and pleasure seemed almost “nonsensical in the context of health,” and few donors would “support the kind of engagement that you need to work with a more inclusive understanding of sexuality. They want results, and for results, you need simplified labels and data systems. Where is the space for nuance in this system?”

A Delhi-based activist working with an organisation specifically mandated to work on sexuality implicitly answered this question by suggesting that the space for nuance exists where we create it. Looking at “health” as a monolithic undifferentiated concept that is necessarily body and disease-centric, she argued, is obviously limiting. But, “health can also be looked at as well-being, that includes issues of pleasure, privacy, right to choice and expression.” Using “their own language, you can still challenge and change concepts over time, not just through subversion at the margins,” she said.

She further argued for a conceptual rather than an instrumental approach to rights – one that did not limit itself to institutional articulations but adapted itself in various settings (i.e. no matter what the mainstream understanding of “health” was) to continue to reflect a deeper and more dynamic conceptual understanding of justice and entitlement. This approach could avoid the concerns about a lack of space. “Yes, many of our choices in the way we talk about rights are strategic, and some articulations are more acceptable and effective than others,” she said, “but there is space for every kind of articulation – even if your audience doesn’t want to hear them.”

Sexual Rights and the Women’s Movement

It is worth keeping the distinction made above between instrumental and conceptual approaches to rights in mind as we address the highly contentious spaces of sexuality and the women’s movements. The women’s movements emerged as the space where many of the debates around sexual rights come to a head. It is beyond the scope of this paper to delve into each of these in detail, but this section will briefly look at a few typifying debates that strike at the heart of how sexuality, sexual rights, and the many strands of the women’s movement in India come together. The main underlying concerns, expressed in many ways during the interviews, centre around: (a) a fear that sexual rights – like many earlier rights-based and legal efforts at feminist and social change around sexuality – will end up inadvertently reinforcing essentialist identity categories or understandings of women’s bodies and sexualities, and (b) a fear that rights language lacks the ability to embody a deeper understanding of women’s sexualities and the contexts in which they make sexuality-related decisions.

This concern is well addressed in earlier writing on sexual rights. Miller has argued that rights run the danger of reifying social stereotypes.¹⁵ Menon has argued elsewhere that the space of the law, the state, and rights often cases women as eternal victims turning to a protective and patriarchal state for protection.¹⁶ In India, the biggest challenge around women’s sexuality, argued one interviewee, was “to balance the reality of the lack of meaningful choice in women’s lives with the need not to let this lack define women’s relationships to their sexuality.” Citing the history of debates on law within the Indian women’s movement as spaces for feminist justice, the interviewee was referring to the movement’s effort to recognise and name the violence that is

¹⁵MILLER, A. op cit.

¹⁶MENON, N. op. cit.

pervasive in the lives of women in Indian society while making parallel efforts to make sure that violence does not remain the inevitable and only space within which to speak of women's desires and sexualities. The attempt to find a balance between recognising and preventing violence on the one hand, while speaking of pleasure and desire on the other, quite literally maps itself on the battlegrounds of marriage, state, health, and non-heterosexualities in Indian society.

Will sexual rights function as a language where this balance is possible? This question drew mixed responses. A lesbian-identified activist argued that sexual rights had the potential to speak "for the first time outside rape laws and assault laws or fertility control policies," to talk about "women's sexuality." She argued that this was the only language in which people talked about rights to "sexuality, not just freedom from violence." For women, she argued, "this was an incredible step forward." Was this potential being realised? Interestingly, the dissenting view came from a heterosexually-identified women's activist who argued, "sexual rights is not owned by women as a language to talk about their sexuality." She said that it was only amidst women and men whose "sexuality was in some way a primary identity, where it was immediately at stake," that sexual rights felt like an intuitive stance. For "most women," she argued, "sexual rights doesn't seem to me to be a comfortable space at a point when so few can articulate a sense of having thought about sexuality as part of who they are at all."

Surprisingly, the divide between those for whom sexuality "was at stake" – lesbian/bisexual women, and sex workers chief amongst them – and those for whom this was not a life and death issue emerged in many respondent interviews. One women's activist believed that "most women don't consider sexuality to be a priority, and to them, something that names sexuality so openly as sexual rights is not something that they will self-identify with." The unsaid argument being made clearly posits sexual rights as an advocacy tool that a small group of women could use to make a larger and more strategic point about sexuality, but not as a language in which most women would feel comfortable talking about their own sexuality.

One respondent tried to bring the two strands of thought together, arguing that, while she agreed in her experience that most women "don't use rights language in intimate spaces, or to talk about sexuality," they still appreciated it as a "means to get to spaces where more in-depth conversations were possible." She further argued for sexual rights as a strategic tool, though she agreed that "rights language felt too distanced [sic] to be a space for exploration of sexuality," especially in patriarchal contexts where spaces to speak freely about sexuality were already so limited.

A consensus seemed to emerge that saw rights not as the language that women used to think about sexuality within themselves, but as a tool that could help ensure that spaces for reflection could emerge. Many activists felt, though, that most people did not use rights in this manner, arguing instead that "most progressive activists used rights to avoid seeing their own locations in larger interconnected systems of oppression and power." Rights, according to them, allowed people to "stop questioning larger structures, and instead focus on tangible violations and public articulations," ignoring both the structural and the private.

A further manifestation of the division between those who did and did not see their sexuality being "at stake" came in their perspective of what sexual rights entailed. For LBT identified women, sex workers groups, and

others, sexuality was intimately and strongly the foundation of sexual rights, and connected with all other parts of their lives. Yet for others, sexual rights was more instinctively still connected with notions of sexual and reproductive rights. "For most women," argued one women's rights activist, "sexual rights has not been able to stress its affirming pleasure-related part as much as its sexual and reproductive health component." She went on to argue that the reason that so many women did not own the language of sexual rights was that the idea of "intersections between sexuality and other identities" was still "missing and undeveloped" within larger political language and within sexual rights itself. For many women, she believed, sexual rights was still a question of sexual health, and not about sexuality, and the stereotypes surrounding women's sexual lives were still intact. As she passionately argued, "are sexual rights still just about health, reproduction, birth control, and contraception? Absolutely. Do these codes still see women as either mothers or wives before they see them as people? Absolutely. So what's changed?"

Here, Miller's and Menon's arguments come back compellingly. Sexual rights has the potential, according to many, to be rooted in a more inclusive understanding of women's sexuality, yet for just as many, it fails to reach this potential because it is seen too narrowly to be concerned only with women's reproductive and sexual health, and their right to be free of sexuality-related disease. While no respondent claimed the latter as unimportant, they pointed out that while the language of sexual rights remained trapped in the larger history of how health and reproductive health policies position women – a history that has often done little, if anything, to challenge patriarchal constructs of women's sexual options and choices.

Sexuality, Rights and LGBT Movements

Living under the shadow of a draconian and archaic anti-sodomy law, and the weight of social norms of natural/unnatural, public/private, moral/immoral sex, same-sex desiring communities in India have only recently emerged as self-defined and clearly demarcated entities that name themselves as gay, lesbian, bisexual, kothi, hijra, etc. While there is undeniable cause for celebration in this new visibility, it has also made many gay activists pause to consider the implications of the politics of identity and community-formation that has accompanied these new found spaces. In thinking about sexual rights, these implications intensify.

Many of the interviewees – both those who identified as heterosexual or as homosexual – strongly associated sexual rights with the rights of "alternative sexualities," or "sexuality minorities." Indeed, this association is itself the cause of much of the debate around sexual rights. For non-homosexually identified activists, the association created a distance from the concept, not necessarily rooted in homophobia, but through the creation of a certain disconnect with the idea of sexual rights. As one interviewee put it: "it just becomes something you think of supporting from the outside – it's hard to think of it as your issue, or have ownership over it, though you agree with its premises." Members of the LGBT movement recognised the association as well, and many expressed a sense of frustration. For one, the idea that sexuality was seen to be only the issue of "gay people" was linked to an understanding of all "minority/majority" issues within progressive spaces. "We always make it about "us" and "them," refusing to see the interconnections between different politics." Rights, she went on to argue, "allows people to do that. It allows a superficial support without any deeper engagement on the issue."

The association of sexual rights only with marginalised groups also ends up, as "doing to heterosexuality

what heterosexuality has done to us,” as stated by a participant at ‘A Conversation on Sexual Rights,’ a meeting organised collaboratively by CREA, Sangama, and Talking about Reproductive and Sexual Health Issues (TARSHI) at Manesar in January 2004.¹⁷ Interviewees felt that identities, on both sides, end up creating homogenous and essentialised communities that prevent any nuanced or fluid understandings of sexuality.

Many LGBT activists had a mixed relationship to the idea of sexual rights. While many welcomed the ideas behind sexual rights in principle, they simultaneously questioned the impact that rights language would have on understandings of same-sex desire in Indian society – a topic that only now had slowly begun to enter the consciousness of the nation.

“There is no doubt that rights language has helped us visibilise and mobilise in ways that we wouldn’t even have thought possible,” said one activist, “but we have to also wonder at how we are expressing ourselves now that we have the right to speak.” Rights are so trapped in the language of non-discrimination and violence that one of the interviewees felt that it brought its own baggage to any inclusive and more interconnected idea of sexuality. Sexuality, he argued, “was about race, class, gender, and religion as much as it was about sex and sexual preference. Where is the space in rights to speak of the links between politics?” Another activist agreed, and said that as the struggle of the LGBT movement changed with time, it was perhaps time to change the way we used rights language.

Others however, saw sexual rights precisely as a space that could fill the lacunae in the traditional rights approach. A lesbian-identified activist based in Kolkata argued that “sexual rights ensured that human rights could not forget about us. There is tremendous silencing around sexuality in mainstream rights – sexual rights can break that paradigm.” Others concurred, with a Delhi-based queer activist talking about the rise of queer politics as an example of how new languages of protest can be created, suggesting that “sexual rights could broaden and make rights language more engaging and inclusive, just as the idea of queer politics had done to LGBT.”

It is critical for LGBT activists that sexual rights go beyond the framework of disease and violence prevention. “We have fought so hard to get beyond the initial stages of the movement where people only saw us as HIV/AIDS cases or victims of violence,” argued the head of a gay support group in Bangalore. “We need to be careful not to slip back into that mode.” When asked whether sexual rights had the potential of reaching past these barriers, LGBT-identified activists felt mostly optimistic, arguing that a new language could only be helpful, even if it did not reach the point of becoming an entire new politics. For an example, members of a mixed group of lesbian and heterosexual women in Kolkata spoke at length about how the idea of rights and sexuality had given them a “common language” rooted in “respect and mutual recognition” of each other’s sexualities and diverse experiences, where they could speak in terms of “differences that were not hierarchies.”

Sexual rights, and rights language in particular, has also helped raise the issue of sexuality in a way that is tactically more feasible in progressive circles that are not exposed to the issues of gender and sexuality. “It helps to use something familiar like rights, then add something new like sexuality, so people don’t feel like they’re totally out of their depth,” argued a gay activist from Chennai. Also, interviewees felt that, when seeking

¹⁷CREA, SANGAMA AND TARSHI, op. cit., p. 11.

new allies outside LGBT spaces, rights language was a “great foot in the door,” though many warned that, when used alone, it lacked “ the ability to delve into issues in depth, even as it had the power to compel people to come to the table and talk.”

Sexual Rights and Funding

The importance of donor agendas in determining the importance, impact, and sustainability of various political languages was stressed by almost all the interviewees. There is no simple characterisation of the relationship that donors share with activists and movements. The diversity of donor ideologies and praxis, as well as the different claims made upon them by organisations and movements, were acknowledged by all, as were the often complex impact that the presence of donors had on movement spaces. LGBT activists, for example, pointed to how strong the influence of HIV/AIDS funding had been on the first discussions on non-heterosexual sexualities in both a negative constraint – “it’s as if we can’t speak if we aren’t dying of AIDS!”— and positive opportunity – “it was HIV/AIDS that gave us a foot in the door to talk about sexuality without fear; there is now time and space to move the dialogue away from the disease to dialogue.” Members of the women’s movement similarly spoke about how sexual health and reproductive rights had both opened up new spaces to talk about women’s issues as well as narrowed the way in these issues were discussed.

Much of the contention about the politics of donor relations was a frustration on the part of groups that donor agencies were only willing to fund a “certain kind of work” that used a “certain kind of language.” As a Delhi-based member of the women’s and queer movements said, “there isn’t space to be openly politically challenging. If it’s sexuality, it becomes sexual health. If it’s gay rights, it becomes human rights. There are couching terms for so many things, in the end, it’s hard to find the politics.” An activist working with HIV/AIDS funded groups disagreed, saying that “there are spaces within donor agencies and ways to be subversive. Yes, it’s true that some broad buzz words do pre-dominate, but that’s true for all sectors, and all kinds of work – even subversion has its buzz words!” Many activists across the country, however, agreed that sexuality was often on the border line for many donor agencies – little could be talked about openly when it wasn’t couched in what one activist called the “holy trinity” of “health, violence, and heterosexual marriage that leads to reproduction.” The impact of this restriction on their work was tremendous, because “it changes the way you structure your program and the terms of accountability you have to fulfil. On a broader level, a women’s movement member from Bangalore felt, “it also impacts the very kind of projects people come up with – no one wants to think of programs that don’t have a chance to be funded.”

One example of this is the predominance of service delivery programs that, she argued, often had only the “most basic understanding of sexuality beyond health and HIV.” The perceived difference between funding for service delivery versus other, more advocacy-centred work emerged as a popular concern. There is a lot of money if you are able to produce “the relevant figures of condoms distributed and women sterilised, but women you have spent months talking to in order to get them to see their sexuality in a different way don’t make very good statistics.” A senior member of a funded NGO that works on sexuality, when being informed of this opinion, disagreed, arguing “that spaces exist, and donors exist, that allow such work to continue. There is a need for service delivery work as well, and it’s unfair to see it as simply being non-political. How is giving condoms to men in public cruising areas not political?”

A senior grant-maker in a multi-national donor agency acknowledged that some donors are hesitant to take on a non-rights and health centred approach to sexuality, but also argued against a monolithic understanding of donors as well as the divide being drawn between rights and politics. "Rights are a tool," she argued, "and there is no reason why larger understandings of gender and sexuality including pleasure, equality and the like cannot be talked about using the rights approach." The problem, she stressed, "is that people don't often understand how the rights perspective can be used," resulting in a very "superficial engagement" that then appears not to have any political teeth.

She also argued that institutions like hers were looking to fund projects that worked on a larger understanding of gender and sexuality, but regretted that she didn't receive applications from any of them. While activists complained at having to couch their intentions in terms of "rights," she countered their claim by saying that she refused numerous proposals that claimed to do "rights-based work" without having any clarity on what it meant to use rights. The frustration with jargon, it seems, is felt by people on both sides in different ways.

Members of the sex workers movement, however, argued strongly that donor organisations were linked in a dependency relationship with the politics of donor countries, and often did not have the agency to fund certain politics even if they wanted to do so. For example, the United States Agency for International Development (USAID) issued a policy directive for funding of HIV/AIDS programmes, including the United States President's Emergency Plan for AIDS Relief (PEPFAR) to "(ii) prohibit the funds provided under the agreement to be used to promote the legalization or practice of prostitution or sex trafficking; and (iii) require the recipients to agree that they oppose prostitution and sex trafficking."¹⁸ In addition, 20% of the funding given under PEPFAR must be given to abstinence-until-marriage programs, while condom distribution is permitted only to members of high risk groups, like sex workers. Further, no needle or syringe exchange programs are to be funded.

These guidelines have led many – including most famously the Government of Brazil – to refuse money under PEPFAR. Yet, as a leading member of the sex workers movement in India argued, the effects of PEPFAR on donor thinking and agendas is unmistakable. Even if "India is not one of the PEPFAR countries yet, and even as the UN and other international agencies insist that this is not applicable to them," she argued, "recently our sex workers organisation was taken off the civil society consultation list of the United Nations General Assembly Special Session (UNGASS) on HIV/AIDS." She argued that the ripple effect of legislations like PEPFAR undoubtedly affected donor agendas and spaces, and there was a need to see donors as linked to international political trends – not simply agencies with the freedom to fund at will.

Where do sexual rights fit into this relationship? For activists, the idea of sexual rights within donor circles gets reduced to sexual health and/or service delivery even as they acknowledge that they themselves don't submit proposals rooted in a deeper understanding of sexuality because they don't think donors will be receptive. For donors, coherent proposals that go beyond rights and service delivery are hard to come by, and a neat catch-22 is completed.

¹⁸USAID. 2004. 'Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking, AAPD 04-04.' Available at: http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd04_04_original.pdf. For additional information about this issue, see Center for Health and Gender Equity's (CHANGE) website: <http://www.genderhealth.org/loyaltyoath.php>.

Sexual Rights and Sex Work

Members of the sex workers movement had one of the most interesting perspectives on rights. Several themes emerge from interviews with sex workers and activists within the sex workers movement. One activist argued that, living on the margins both of the law and of social norms, female sex workers “are the only women I know in India who actually feel fully entitled to rights claims once they have the information and language of rights to use.” Speaking to points raised by other interviewees about the inability of many women to be claimants to the right to pleasure or non-marital sexual relationships, or even reproductive rights, the Bangalore-based activist argued that many sex workers have fought and won an “innate sense of entitlement that the rights approach gives perfect vent to.”

She took the example of reproductive rights. Being cast out of traditional patriarchal marital situations, she argued, has left sex workers with a clear understanding that their “womb and the decision when to have children, if at all, and by whom – the essence behind the reproductive rights framework – is entirely their own.” In some sense, sex workers have been able to overcome patriarchal constraints that stop many women from claiming rights.

The main concern in sex workers’ circles, however, is that they fall outside the ambit of the law, leaving them open to discrimination and violence. Here, the human rights framework has been a strong source of legitimacy in starting dialogue with those that condemn sex work as well as those in power that use force against it. Even against PEPFAR, for example, or in “countries where sex work is illegal,” the interviewee argued, “you can always speak of people’s human rights to give them basic dignity.” Sex workers, she said, “cannot navigate the nuances of the conventions, but they understand dignity like few others can.”

Where do sexual rights come in? Human rights frameworks, it is argued, can be used in many ways. Sex worker movements have had to contend with members of society at large and the anti-trafficking lobby that is using human rights arguments against sex work, equating the very existence of sex workers as an example of a human rights violation. In this context, sexual rights is an important and critical articulation for sex workers, because it positions them within the rights framework where they want to be, but also allows them to clearly articulate a position that uses rights language to support them, rather than be used against them.

Sexual rights, argue sex work activists, goes beyond human rights in a critical way: they clearly state their support of a women’s right to engage in consensual sexual activity for money. For sex workers who already live outside the law, this is a critical step. Further, there is a realisation within the movement, argued the interviewee, that “[sex workers] cannot go it alone in this movement. After PEPFAR, we have realised our vulnerabilities, and the need to make alliances with other groups.” On what terms will these alliances with other progressive groups be made? Sexual rights, she argues, “offers a common language with groups that are not working directly with sex work, but can engage with their issues on a common platform and with a recognisable language.”

Within sex work movements, therefore, there remain strong links to both the idea of rights, and to a specific articulation of sexual rights beyond the human rights framework. A distinction must be made at this point

between the more organised parts of the female sex workers movement and the relative anonymity of male sex work. An activist who works with male sex workers argued that male sex workers don't "see sex work as an identity or profession in the same way as the more organised women's spaces." Given this, "on what basis would they claim rights if they don't even want to let people know that they are sex workers?" Once again, the question of rights requiring a claimed identity space from which to assert them from emerges.

Constraints to the Fuller Use of Sexual Rights

Beyond the conceptual dilemmas, several tangible constraints limit the use of sexual rights on an operational level. It is worth listing these briefly at this point to remind us that many of the issues that have arisen in the context of this paper are related not to inherent flaws in the rights approach, or in the idea of sexual rights in itself, but to operational issues that prevent the realisation of the true potential of these approaches.

Where does one speak of Sexuality? In terms of sexual rights, the knowledge gap works at many levels. There is a knowledge gap with regard to the language or space within which to talk about sexuality of any kind, created both due to the risk of creating such spaces in the context of criminalisation and also due to restrictive social norms that restrict or silence conversations on sexuality. There is also the resistance even within progressive spaces to take on issues of gender and sexuality, or, at the very least, a lack of ownership of sexuality as an issue outside LGBT spaces. Interestingly, one of the potential attractions of sexual rights is its ability to create such intersectional and open spaces for conversations, showing the possibility of a positive feedback loop where the articulation of a defined sexual rights perspective could help create spaces wherein this perspective could then be at its most effective.

Missing Tools In addition, the silence around sexuality becomes compounded by a general lack of knowledge of the extent to which sexuality already exists in the rights approach, and the different ways and tools in which rights can be used to address issues that are directly and indirectly impacted by sexuality. Activists confessed to not knowing "many of the covenants beyond a cursory knowledge," and being unaware of how "different covenants could be used beyond their obvious use as conceptual tools." Rights as lobbying tools as well tended to be used at a more general level, except in the case of HIV/AIDS, where knowledge of conventions, forms, and processes (e.g. of patients' rights and informed consent procedures) is relatively high. This lack of knowledge becomes particularly problematic when it comes to seeking funding. As discussed earlier, while activists feel the need to use rights and/or health languages to approach donors, even the donors that are willing to look at an understanding of sexual rights beyond a superficial engagement are faced with a shortage of projects and conceptual approaches that are able to use rights as part of a larger questioning and attempt to impact broader structures of gender and sexuality.

The Absence of a Larger Ideological Context Activists feel that rights lack "a philosophy, or an ideological backing." Rights are often seen in "cut-up pieces" with little idea of how they go together, or what a coherent rights approach might look like. This prompted many activists to say that rights were only capable of "superficially engaging" with critical issues, and were tools, but could not be "seen as an approach, because it was unclear what common perspective held these many ideas and covenants together." This meant, as one Delhi-based women's rights and queer activist put it, "I feel like anyone could use rights for whatever they

wanted, and though I don't instinctively believe that, I also can't articulate what ideology they're rooted in that would make me understand how to use them conceptually and more than just as text for slogans."

Levels of Disconnect Many people repeatedly pointed out that rights talk was often disconnected from the very people it sought to empower. "It still feels like rhetoric – English-speaking, elite, urban rhetoric," said one interviewee. "I feel like it only makes sense to talk about particular rights. Frankly, the appeal of another set of rights at this point makes little sense to me."

Rights as Distancing Within progressive movements, some activists felt that rights language has created a politically correct culture that actually "prevented introspection." The jargon of "rights has taken away space for dialogue," felt one interviewee, and actual intersections between politics were being lost in terminology. This was a familiar theme in many of the interviews, where people felt that rights had also become a convenient way to not "engage more deeply with larger constructions or ideologies," but "appear to be affirmative about the rights of others, while never looking within ourselves."

Part Three

Thematic Lessons and Ways to Move Forward

Amidst the confusion and the diversity of reactions called forth in response to the idea of sexual rights, the one lesson that was clear is that most of those interviewed still believed in the power of the conceptual and the literal use of rights language and ideas, and welcomed the need for an articulation of rights around sexuality. Sexual rights might not yet be at a place where their articulation finds universal approval, but the contemporary moment is certainly one that is ready for this debate. In each of the responses, critiques and praise alike are rooted in a belief that the time has come to publicly advocate a more inclusive and affirmative rights approach that is located in larger political endeavours, rather than just being a tool for the prevention of tangible violence and discrimination.

Addressing the Knowledge Gap

Real constraints exist in realising this vision of rights. It was clear that many of the critiques of the rights framework expressed not a deep or philosophical disagreement with the approach, but rather a lack of knowledge about what the ethos of rights actually entailed, and the different expressions that this ethos could take. A systemic lack of information and engagement on a self-described superficial level have prevented many activists from realising the potential of a concept like sexual rights, and also from seeing that the fact that these rights are being debated is a sign of the evolution of the rights approach, and its dynamic possibilities. This is not just a semantic point – it represents a concrete site of needed intervention that will ensure that should sexual rights not succeed, it would not be because its potential was not fully understood or attempted.

Ideas, not Ideology

Ideology has been termed the death of ideas, the point where thinking becomes static in order to become structure. There is a need to ensure that any articulation of sexual rights does not become a static picture of identities, communities, or issues. Articulations of sexual health and reproductive rights are especially prone to this criticism. The balance between needing to identify claimants for sexual rights so as to give them teeth, but also to ensure that the act of claim-making does not create and essentialise communities – such as MSM – is one that is difficult to achieve and continues to be a battleground for rights language in India. At the same time, ideology can be seen as the development of a framework. Interviewees suggested several approaches to broadening the notions of rights in ways that answered one another's concerns: asserting rights beyond covenants and the law; distinguishing between individual-centric and state-centric articulations, as well as between instrumental and conceptual usage of rights. These are diverse ideological frameworks that could significantly aid the use of human and sexual rights by all actors by broadening the rather narrow view of the rights approach that seems to exist in practice. Clearly, the divide between the theoretical literature on rights – which articulates a multi-spatial, diverse mosaic of approaches and adaptations – has not translated in the spaces of application.

Seeking Tangible Roots

For the ideology of sexual rights to be owned by the communities for whom it is intended, it is necessary to translate its principles into the particularities of local contexts. While this cannot be done for every imaginable locale, there exists a need for training and tools that allow communities to engage with the conceptual terrain of sexual rights and find its contextually specific applications. These tools, lamented many of the respondents in this study, are sorely lacking. A broad and inclusive understanding of sexuality has been unable to find tangible roots in the lives of many of those upon whom it seeks to confer rights, resulting in a feeling of distance from both rights language and its underlying inclusive and affirmative understandings of sexuality.

There is a need for activists to take on the challenge of finding contextual and issue-based articulations of sexual rights. New words, such as pleasure, affirmation, the right to fantasise, right to livelihood and development, have to be brought into the rights discourse and not seen as somehow “lesser” than formal and jurisprudence-centric articulations of rights. Examples of cases where this has been successfully done could greatly aid in encouraging activists to take on the task of broadening rights language themselves.

The Need for Broader Alliances

There is a telling need for broader alliances around issues of sexuality that bring together representatives of different movements who, as is clear from many respondent views, still do not see their interests aligning with those of other claimants to sexual rights. The intersections of sexuality as a politics with other politics and progressive movements remains an articulation in its infancy, and the lack of more spaces like Voices against 377¹⁹ in Delhi, ensures that different communities see sexual rights only through the interests of their own locations and movements, rather than seeing them holistically with a sense of ownership. Alliances that bring together sex workers, LGBT-identified communities, health activists, and women’s activists will be able to break down the compartmentalisation of gender and sexuality issues that seems to have taken root within progressive movements, and allow sexual rights to more organically enter the work of these activists in progressive movements.

Grappling with Larger Structures

Sexual rights remain open to the larger criticisms of the rights approach in their ambiguous relationship with formal structures of law. Given the continuing criminalisation of so many gender and sexuality related behaviours, many respondents were unable to see sexual rights as being effective tools, as well as being rightly fearful of the consequences of using these rights, given the existence of laws such as Section 377. In the Indian context, many sexual rights efforts remain silenced due to the presence of such laws, and strategies need to be devised that can create spaces where activists are able to safely and effectively use sexual rights, just as lobbying against the legislation needs to be accorded priority in our efforts as activists.

Chandiramani and Misra remind us, “debates over sexual rights then are still in a state of flux. Their overlaps with a range of rights, especially rights to equality, privacy, health, non-discrimination and freedom from violence, among others, are being explored. The discourse on sexual rights has gained momentum in the last

¹⁹Voices against 377 is a coalition of groups in Delhi that includes groups working on child rights, queer rights, women’s rights, and human rights violations. This is one of the few groups in the country that includes both LGBT-identified and non-identified people working together for queer rights.

decade, through the international space opened up by the UN world conferences as well as the work of activists across the world, but it has also faced resistance from traditionalist forces, including religious bodies as well as governments.”²⁰

Among the activists interviewed, there remains a deep sense of belief in the potential of sexual rights to be an effective and inclusive language of change. If there is one definitive truth that emerges from this paper, it is that sexual rights are worth investing in and fighting for, even as their very content and definition continue to be debated, for how we use this language will determine, more than anything else, how effective it can be.

²⁰ MISRA, G., and CHANDIRAMANI, R., op. cit., p. 20.

APPENDIX

List of People Interviewed

Bangalore

Vinay Chandran: Executive Director, Swabhava Trust

Arvind Narrain: Founding member, Alternative Law Forum, www.altlawforum.org

Sandhya Rao: Activist

Cath Slugget: Activist

Baroda

Maya Sharma: Member, Parma

Chennai

Priya Babu: Treasurer, Sudar Foundation

Vasanthi: Sudar Foundation

Kolkata

Pawan Dhall: Country Director (India), SAATHI, www.saathi.org

Anupam Hazra: Training Coordinator, SAATHI

Agniva Lahiri: Activist

Members of Sappho For Equality

Ratnabali: Managing Trustee, Anjali

Anees Rai Choudhury: Amitie

Lucknow

Saleem Kidwai: Historian

Mumbai

Vivek Divan: Project Coordinator, Lawyer's Collective, www.lawyerscollective.org

New Delhi

Ponni Arasu: Nigah Media Collective

Aditya Bandhopadhyay: Legal Advisor, Naz Foundation International, www.nfi.net

Dr. Lester F. Coutinho: Country Program Advisor, Packard Foundation, India, www.packard.org

Radhika Chandiramani: Executive Director, TARSHI, www.tarshi.org

Mario D'Penha: Nigah Media Collective

Lesley Esteves: PRISM

Anjali Gopalan: Executive Director, Naz Foundation, www.nazfoundation.org

Roshmi Goswami: Program Officer, Ford Foundation (India), www.fordfound.org

Pramada Menon: Director Programs, CREA, www.creaworld.org

Kalyani Menon-Sen: Coordinator, Jagori, www.jagori.org

Jaya Sharma: PRISM

Sangli

Meena Seshu: Sampada Grameen Mahila Sanstha (SANGRAM)



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