

HOMOSEXUALITY AND HOMOPHOBIA IN INDIAN POPULAR CULTURE : REFLECTIONS OF THE LAW ?

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Introduction

Some men like Jack and some like Jill; I'm glad I like them both; but still I wonder if this freewheeling really is an enlightened thing – or is its greater scope a sign of deviance from some party line? In the strict ranks of Gay and Straight, What is my status? Stray? or Great?

Vikram Seth

Homosexuality and bisexuality, as we now know from modern research, are ubiquitous throughout the world. Whether tolerated or not, they are practiced in every culture to some degree.¹ The differences among cultures is the degree of openness regarding practice.

In a democratic and pluralistic country like India, it is a shame that we have a law that abuses human rights and limits fundamental freedoms such as is enumerated in Section 377 of the Indian Penal Code, which, by prohibiting “carnal intercourse against the order of nature”² in effect punitively criminalizes private, consensual sexual acts between people of the same sex.

India is a country with vibrant popular culture. Nowhere is the collective consciousness of the nation probably better essayed than in the cinema, which is viewed with passionate fervour. Taking cinema as the mainstay of Indian popular culture, along with a few examples from literature and television, this paper seeks to understand the link between the depiction of homosexuality in Indian popular culture and the law, which as it stands now is blatantly homophobic. Different viewpoints are looked from and observed in Indian popular culture, such as the non – acceptance of homosexuality by some quarters, the crude stereotyping that is played to squeeze out a few laughs, and the slowly emerging new wave of thought that treats the subject with a compassionate eye, and gives it a humane treatment.

1 <http://www.bidstrup.com/phobiahistory.htm>, 29-1-2008

2 Section 377, Indian Penal Code

In the Closet

To a large extent, the Indian context of homosexuality seems to differ quite greatly from the Western notion, in the way that as opposed to the West where homosexuality continues to find increasing acceptance as a lifestyle choice, the concept is not even properly acknowledged in India. Gay activist Ashok Row Kavi has proclaimed that the Indian gay movement—and Indian gay consciousness on a whole—can be compared to America in the 50s and early 60s. There is no “official” construction of gay identity with a large section of people simply denying that gay men and lesbians exist. He also talks about how, in India, there is a generally blind eye kept towards sexuality of any kind, the reason being that the concept of marriage, child-bearing, and continuing caste and family lines is held onto strictly.³

This attitude is portrayed in the movie *Bend it like Beckham*, directed by Gurinder Chadha, in a scene where the lead protagonist’s male best friend comes out to her. Bewildered, she wheels around to look at him, and implores : “But you’re Indian !”

The idea of homosexuality is, then, more confined to homosexual acts, which are indulged in by those who otherwise lead lives with a heterosexual preference. In author Vikram Seth’s award winning novel, *A Suitable Boy*, two male characters who are shown to be otherwise having female love interests and leading heterosexual lives, indulge in occasional acts of homosexuality, something which one of them comments in the course of the book, made more sense when they were younger, thus implying the thought that homosexuality is merely a phase which may be grown out of.

We can thus observe how the very idea of a gay lifestyle is not shown much prominence in popular culture, an extension of the Indian atmosphere which continues to sweep homosexuality into the closet, and away from the facet of a lifestyle choice.

Enforcing Stereotypes

The most common depiction of homosexuals in Indian cinema and television tends to centre on an array of crude stereotypes, attempting to squeeze out humour from mocking exaggerated characterizations. The common Bollywood perception about homosexuals is that gay men are more effeminate than girls, and lesbian women more masculine than the men.

On Indian television, perhaps the only depiction of homosexuality was that of a comically effeminate gay fashion designer in the soap *Jassi Jaisi Koi Nahin*, a remake

3 www.globalgayz.com/g-india.html, 30-01-2008

of the Colombian telenovela *Yo Soy Betty La Fea*. The character's exaggerated effeminacy was played for laughs, and the overall portrayal was extremely negative.

A number of Indian movies have attempted depictions of gay and lesbian characters in more fleshed – out roles; however, the attempt to step beyond the trite only backfires as the same stereotype that they seek to banish is instead perpetuated. *Mango Souffle*, released in 2003, was among the first Indian movies to talk openly of gay men and feature an onscreen lip-lock between two men. However, the movie is guilty of mining many of the clichés associated with the gay community. It uses the very comfortable backdrop of the fashion world and the perceived normlessness as a foil. As *The Hindu* journalist Ziya us Salam states, the director tried to raise the issue of whether the individual should always be subservient and the society paramount. But the way he went about his task, rather than 'discovering' something new the viewers were treated to the same old public parks, floundering youngsters and the like.⁴

The year 2004 saw the release of director Karan Razdan's lesbian-themed movie *Girlfriend* to violent protests with its explicit depiction of sexuality onscreen. The film portrays an obsessive, sexually abused and murderous lesbian character who attempts to prevent her female childhood friend from pursuing a relationship with a man. Lesbianism is misrepresented in a big way, with its roots being traced to the lesbian character's sexually abused past. The movie goes on to connect the character's homosexuality to her obsessive, even psychopathic nature. In doing so, as a member of the women's organization Forum Against Oppression of Women states, "it exploits a delicate issue that is hardly given proper coverage in the country, and converts it into a gross caricature, weaving a number of negative myths associated with lesbian women, and only serves to antagonize society even further."⁵

Out of the Closet

Having seen the crude stereotypes, there is a new wave of thought that has been emerging, a more liberal representation of homosexuality in popular culture, devoid of the homophobic overtones that plague the caricatured representations.

The year 1996 saw the release of Rinci Vidi Wadia directed *Bomgay*, which earned its place in cinematic history by being India's first gay-centric film. The film features six vignettes which address what it means to be gay in contemporary India and the struggle of the gay community to establish an identity.

4 <http://www.hindu.com/fr/2004/06/18/stories/2004061801190100.htm>, 26-01-2008

5 <http://news.bbc.co.uk/2/hi/entertainment/3805905.stm>, 02-02-2008

In 2000, the Deepa Mehta directed film *Fire* was released. With its forthcoming depiction of a lesbian affair, it sparked off heated reactions in India. In the movie, two oppressed housewives almost completely sidelined by their respective husbands find in each other what their husbands refuse to give. Their relationship progresses while their uncomprehending husbands watch, the men in fact unwittingly feeding the affair by keeping the women in the domestic sphere and in each other's company. As a critic from the Bright Lights Film Journal put it, the film "combined a cutting edge critique of a patriarchal society with a refreshing view of lesbianism as a clear road out of it".⁶ In a slew of protests, it was forcibly pulled out of movie halls nationwide by right-wing protestors.⁷

Nishit Saran directed the 2001 documentary *Summer in My Veins*, which features the closeted director coming out to his relatives. The documentary addressed a number of issues like coming out, ostracization and the fear of HIV-AIDS.

My Brother Nikhil, directed by debutante Onirban, released in 2005, depicted the story of a gay man's struggle with his family and his country after contracting the HIV virus. As reported by the New York Times, while it wasn't commercially a runaway blockbuster, its impact lay in having served up a story about love and loss, which are sentimental staples of contemporary Indian cinema, with a gay man at its centre, and having done so without kicking up the slightest fuss from India's cultural conservatives.⁸ A large amount of support was garnered for the movie with a plethora of actors from the Indian film industry along with athletes promoting the movie in television spots.

In the book *Same-Sex love in India*, the authors show that same-sex relationships have been affirmed and celebrated in poetry and prose, in mythology, literature and medical treatises throughout the lengthy span of Indian history. For instance, the book explores the concept of 'swayamvara sakhi', a word found in the 11th century story cycle the Kathasaritsagara that refers to deep love between women and also refers to a self-chosen relationship.⁹

The year 2003 also saw India's first Gay and Lesbian film festival held in Mumbai. Titled "Tremors of a Revolution", it featured limited turnout with about 200 attending, but is nonetheless an important landmark in coming out process of the homosexual community as a whole.¹⁰ The Nigah Queerfest, held in the summer

6. <http://www.brightlightsfilm.com/30/fire.html>, 01-02-2008

7. http://www.iht.com/articles/2003/09/17/edsriva_ed3_php, 01-02-2008

8. <http://www.nytimes.com/2005/04/06/movies/06bomb.html>, 30-01-2008

9. Vanita, R. and Kidwai, S.(ed.), *Same-Sex Love in India: Readings from Literature and History*, (Palgrave Macmillan, 2001)

10. <http://aolhometown.planetout.com/search/splash.html?keywords=india+popular+culture&skip=1>, 4-02-2008

of 2007 in New Delhi, is another step forward in acceptance of the community with respect to popular culture. Through the media of film, art, photography and workshops it proclaimed itself as a pronounced step to take sexuality into mainstream city and arts spaces.¹¹

Section 377

In 1860, with the institution of the Indian Penal Code by Lord Macaulay, Sec. 377 criminalised homosexuality, by putting forth that “carnal intercourse against the order of nature”¹² was to be punishable by law. This archaic law stands even today, though homosexuality was decriminalized in the year 1967 by England itself. As stated in an open letter by Vikram Seth and a host of others and endorsed by Amartya Sen, the law has been used to “systematically arrest, prosecute, terrorize and blackmail sexual minorities. It has spawned public intolerance and abuse, forcing tens of millions of gay and bisexual men and women to live in fear and secrecy at tragic cost to themselves and their families.”¹³ Also, in 1994, the United Nations Human Rights Committee affirmed in its decision *Toonen v Australia* that the criminalization of same-sex sexual relations between consenting adults violates Articles 2 (equal protection) and 17 (right to privacy) of the International Covenant on Civil and Political Rights (ICCPR). India ratified the ICCPR in 1979, and is bound by its provisions.¹⁴ Article 21 of the India Constitution guarantees the Right to life and personal liberty. The right to privacy is implicit in this section and can be extended to that of sexual privacy. As observed by Justice K.K.Mathew in *Govind v. State of MP* AIR 1975 SC 1378, “Any right to privacy must encompass and protect the personal intimacies of the home.” Thus, if two adults engage in consensual intercourse within their private boundaries, Section 377 can be seen as violative of their fundamental rights.¹⁵

The presence of Sec. 377 establishes, in its way, a frontier. It tells us what to think of homosexual people, and it legitimizes a negative view of their lives. By its very nature it prevents everyone from seeing them as equals, instead pushing them into the category of the inferior “other”. By everyone, reference is being made to homosexual as well as heterosexual people, because, the law also, as said by Foucault, “teaches queer people what to think about themselves.” The law then, is essentially homophobic in nature, a fact which extends to general perceptions of homosexuality and percolates into our popular culture.

11. <http://www.thequeerfest.com/index.html>, 2-02-2008

12. Section 377, Indian Penal Code

13. <http://www.openletter377.com/>, 20-10-2007

14. <http://www.gaylawnet.com/laws/in/sodomy.htm>, 28-01-2008

15. Bhatt, P., *Fundamental Rights : A Study of their Inter-relationship*, (Kolkata: Eastern Law House Pvt. Ltd., 2004), 21

Section 377 as it stands requires proof of penetration for conviction.¹⁶ Even though this means that only a specific homosexual act is criminalized, the stigma that it projects extends to the very identity of homosexuality itself. Thus, while supporters of the criminalization of the act of sodomy may assert how the I.P.C only punishes the act, the status that is forced onto the homosexual community is that of presumptive criminals, simply based on their sexual orientation. Even though conviction rates under the section are very low, being an unenforced law it does its share of damage. As Christopher R. Leslie writes, “the primary impact is symbolic : nominally unenforced laws are used to classify groups and stigmatize common behaviour. By labeling gay men and lesbians as criminals, sodomy laws make gay individuals targets for abuse by both private individuals and public officers.”¹⁷ There being no space within the family to express a non-heterosexual alternative, and few mechanisms which can help parents to understand and cope with such disclosures, violence and hostility tend to be the majority of the responses to coming out in a society that is witness to homophobia.

Rights violation with regard to the medical establishment are observed in various cases, with a large number of doctors carrying social prejudices against sexuality minorities into treatment.¹⁸ In 2001, the National Human Rights Commission (NHRC) admitted a complaint from a patient at the All Indian Institute of Medical Sciences, alleging psychiatric abuse at the hands of the consulting doctor, having been put on a 4 year course of drugs and told he had to be “cured” of his homosexuality. The NHRC finally chose to reject the complaint, with informal conversations with chairman showing his belief that till Section 377 was read down, nothing could be done.¹⁹

The position of sexual minorities, particularly men who have sexual intercourse with men, is disproportionately affected by HIV/AIDS, due to heavy stigmatization and existence in an atmosphere of marginalization. Aside from the act of penetrative anal intercourse which results in an increased risk of HIV infection, the social stigma and discrimination that is attached enforces a silence around such sexual behaviour and proves a major hurdle in the provision of information and support.²⁰ HIV/

16. *Biren Lal v. State of Bihar* I (1996) CCR 427 Pat.)

17. Leslie, C.,” Creating Criminals : The Injuries inflicted by Unenforced Sodomy Laws”, as taken from Sociology – II Reading Material, Compiled by Prof. Kalpana Kannabiran, June 2007 edition, NALSAR University of Law, Hyderabad

18. Human Rights Violations against Sexuality Minorities in India : A PUCL – K fact-finding report about Bangalore

19. Narrain, A. and Khaitan, T., “Medicalisation of Homosexuality : A Human Rights Approach”, as taken from Fernandez, B. (ed.), *Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India* (New Delhi : India Centre for Human Rights and the Law, 2002)

20. *Legislating an Epidemic : HIV/AIDS in India*, The Lawyers Collective, (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2003)

AIDS outreach workers face a two step problem in reaching out to this group of people : firstly from the side of the police; and from the affected population due to their criminalized status, thus inhibiting them from stepping forward to claim the aid.²¹

The law criminalizing homosexuality was passed in silence, without debate or discussion, and went on to ensure just that – silence. Macaulay, in his introductory report to the draft bill stated “[...we] are unwilling to insert, either in the text or in the notes, anything which could give rise to public discussion on this revolting subject; as we are decidedly of the opinion that the injury which would be done to the morals of the community by such discussion would far more than compensate for any benefits which might be derived from legislative measures framed with the greatest precision.”²² Within the silence that has since ensued, there has been limited debate. These recent new developments and depictions of homosexuality in popular culture have stirred a healthy debate on the subject, dragging it out of the barriers of silence that it had been enclosed within. If societal views can be seen to be reflected in popular culture, then we can observe a gradual understanding of homosexuality and the beginning of a spark of acknowledgment as opposed to outright disapproval. Law must be used to bring about the change that is so required and is so essential to allowing the queer community to live with dignity.

The 172nd Law Commission report has recommended deletion of Section 377, to be replaced with a redefined law on sexual assault., which would include oral, vaginal, anal, and other forms of penetrative intercourse without consent between men and women, men and men, and women and women, within the ambit of criminal law, thus effectively decriminalizing consensual same sex relations.²³

It is currently being challenged in the Delhi High Court. In the first reply to the petition, the then NDA government said : “Indian society, by and large, disapproves of homosexuality and that this disapproval justifies it being treated as a criminal offence”.

Conclusion

We have thus seen different perceptions of homosexuality in popular culture, and how the heterosexist law comes out to be an illustration of the deviation from the

21. Epidemic of Abuse : Police Harassment of HIV/AIDS Outreach Workers in India : A Report by Human Rights Watch

22. Report of the Indian Law Commission on the Penal Code, October 14, 1837, pp. 3990-91, as taken from Gupta, A., “Section 377 and the Dignity of Indian Homosexuals”, Economic and Political Weekly, November 18, 2006.

23. <http://lawcommissionofindia.nic.in/> , 10-02-2008

norm, which in Indian popular culture is predominantly heterosexual. Any deviant from the norm tends to be criticized or punished, as seen in the crude caricatures represented in popular culture. The recent rise of voices against the essentially homophobic law is also reflected in popular culture with the new wave of thoughtful and sensitive depictions of homosexuality.

The first and most important step that must be taken is to decriminalize consensual sexual relations between members of the same sex. If such laws are widely enforced, then the wider society will be placed on the same level as the original community. Otherwise, the law will simply remain a tool for arbitrariness in the police and judicial systems, a standing threat against, and reproach to gay men and lesbian women.²⁴ While there may be a backlash, the fact remains that such human rights violations as those imposed by Section 377, which would be a cause for shame anywhere in the world, are especially so in India, which was founded on a vision of fundamental rights applying equally to all, without discrimination on any grounds.

Beyond this basic social recognition would be the need to establish a framework of laws that will provide sexuality minorities with rights on par with those enjoyed by heterosexuals. It may yet be a while before same-sex partnerships will be recognized equally before the law, but at least in the name of humanity and of our Constitution, the striking down of the cruel, discriminatory and homophobic law that is incorporated under Section 377 will herald the movement towards equality, and acceptance of the realm of homosexuality beyond the heterosexual norm.

24. Levy, J., "Sexual orientation : Exit and Refuge" , 184, from *Minorities within Minorities : Equality, Rights and Diversity* edited by Avigail Eisenberg and Jeff Spinner-Halev