'LIVING THE WAY WE WANT': SAME-SEX MARRIAGE IN INDIA

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I remember my feeling of startled recognition one sultry day in July 1980, when I opened the newspaper in my college hostel room at Miranda House and read about two young women, Lalithambika and Mallika, who had attempted suicide together in Kerala because they could not bear separation. It was the first incontrovertible evidence I came across that there were other Indian women who loved each other in a primary, committed way in the context of a sexual and romantic relationship. In December 1980, two other women, Jyotsna and Jayshree, committed suicide by jumping in front of a train in Gujarat.[1] They left behind a note stating that they could not bear to live apart after their marriages (to men) a few months earlier. Over the years, a series of reports about such suicides and also of same-sex weddings have appeared in the press. It was as if the attempted suicide of Lalithambika and Mallika and the wedding of policewomen Leela and Urmila in 1987 alerted the press to phenomena they had earlier not noticed.

In almost all these cases (of suicide and of marriage), the partners were women. The couples were lower middle class or working class. Most lived in small towns; a few in rural areas or big cities. They had some education and several were employed, but they were not primarily English speaking. Several of the unions were cross-caste but some were within the same caste. Most of the individuals were Hindus but there were a couple of Muslims and Christians. The couples who entered into these unions in the 1980s and 1990s were not connected with any LGBT movement. In the last few years, human rights and LGBT organizations have begun to come to the assistance of such couples.

As opposed to the majority of homoerotically or bisexually inclined people in India today, who engage in same-sex liaisons while married to an opposite-sex partner, these couples, through their weddings or suicides, made their love visible in widely understood cultural terms. Sometimes a wedding-like event was followed by suicide; in other cases, the wedded couple was accepted by the family of one partner and proceeded to live in a joint family set-up.

Over the decades, as I collected these reports, as the LGBT movement matured in India and abroad, and as I researched the history of same-sex relationships in India, my questions expanded. Why did these women choose these particular actions, gestures and words, and how were their choices heard and understood by their families and communities, by state and religious authorities and by the media? I present here an outline of my explorations, which are documented more fully in my book, *Love's Rite: Same-Sex Marriage and its Antecedents in India* (2005).[2]

THE LANGUAGE OF LOVE

Mallika and Lalithambika used a cultural (and cross-cultural) language of love. Without using any term referring to sexual identity or behaviour, they inscribed their love for one another in terms immediately understandable by anyone, literate or illiterate. The press reporters understood this message and relayed it. At one level, the message is that of all star-crossed lovers from Romeo and Juliet or Heer and Ranjha to the doomed lovers of Hindi movies. Lalitha's words in her note, 'I cannot part with Mallika. . . . Bury us together,' are conventional—their unconventionality arises from the gender of the lovers.

Mallika's letter is defiant: 'Lili, after all everybody knows about our love. So here are a thousand kisses for you in public.' Paradoxically, this love is private yet 'everybody' knows about it, which drives the lovers to consummate it in that most private of acts—suicide. Yet, at the same time, the suicide is as public as a wedding—through their embrace in death and the notes they leave behind, they kiss in public (which even married couples rarely do in India). Through the joint burial they request, they aspire to marriage in and beyond death.

Reporter Victor Lenous, noticing that the diary and book the girls left behind had both their names written in them, remarks, 'The few personal belongings recovered also reveal their desire to share everything.'[3] That sentence gets to the heart of the matter—the girls desire each others' kisses, embraces and bodies but they also desire 'to share everything'. This is a desire for a particular type of relationship with each other, a relationship of complete sharing often called marriage.

HAS MARRIAGE ALWAYS BEEN HETEROSEXUAL?

Opponents of same-sex marriage in the US glibly refer to '3000' and even '5000' years of history and 'civilization' as evidence for marriage having 'always' been between a man and a woman. Given that the US legal precedents they refer to, in fact, have a history of about two centuries, it might help to take a longer view.

Same-sex committed unions are attested in most societies that have left written texts. These include ancient and medieval India, ancient Greece, Rome, Egypt, China, medieval Japan, Western Europe, Persia and several Native American and African tribal cultures.[4] Historian Greg Reed has written about the ancient Egyptian tomb of two men, manicurists to the king, which uses conjugal iconography to represent them in an eternal embrace.[5] John Boswell has uncovered evidence from Eastern and Western Europe of same-sex unions performed by medieval churches and ancient Graeco-Roman same-sex pairings.[6] Weddings between men took place in the Roman Empire. In ancient Greece, male lovers swore fidelity at the tomb of Heracles (Hercules) and his beloved Iolaus.

Historians have written about conjugal relations between people of the same sex in later societies too. Striking examples include Eleanor Butler and Sarah Ponsonby, Irishwomen who eloped and lived together for over 50 years (1778–1829) in Llangollen, Wales, where their home is still a tourist attraction, and late 19th-century British poets, Katherine Harris and Edith Bradley, who lived and wrote together under the joint pen-name 'Michael Field'. These couples used marital language to express their feelings for each other.[7] Eleanor and Sarah, who came to be known as 'the Ladies of Llangollen', refer to one another in their diaries as 'My Beloved' and 'My Love', and friends called each the other's 'better half'. Katherine and Edith wrote love poems and letters, describing exchanges of vows, garlands and rings, Katherine addressing Edith as 'my Bride'. Katherine nursed Edith till her death of cancer, and died nine months later of the same ailment. Anne Lister (1791–1840), a British heiress whose diaries show that she had sexual liaisons with many women, exchanged rings with her beloved, Ann Walker, in 1834, in a union solemnized at the parish church.[8]

Marriage-like same-sex relationships appear in many pre-modern Indian texts. In one long-term male-male relationship in medieval India, poet Maulvi Mukarram Baksh's companion Mukarram inherited his property. Mukarram observed *iddat* for the Maulvi—the period of sexual abstinence and mourning a widow observes for her husband.[9]

PRESCRIPTION VERSUS EMPATHY

Homophobia derives its impetus from focusing on sexual acts labelled disgusting. This over-emphasis arises from centuries of negative obsession with sexual acts in the Christian West. A catch-all term for these acts was the over-determined 'sodomy', which includes oral and anal sex, regardless of the gender or species of the participants.[10]

This inappropriate focus on sex results in reducing relationships to sexual acts, a reduction that occurs primarily in medical and religious texts, as opposed to literary texts and biographies which generally depict people as more complex wholes. The international debate on same-sex marriage today has refocused attention on committed same-sex relationships—in which people have sex but also provide each other with affection and companionship, rent or buy homes and furniture, shop, cook and keep house, nurse each other in sickness and raise children together.

With some exceptions, those pre-modern texts in Euro-America that represent same-sex relationships tend to be narratives and lyrics that appeal to the reader's emotions, imagination and empathy, while those texts that document sexual acts alone tend to be prescriptive, such as legal and medical texts. These texts, prohibiting certain *sexual acts*, tend to obscure in the public imagination over 2,000 years of European writing about *love* between men and between women.

A similar, though less powerful, opposition between prescriptive and narrative texts is found in the Indian corpus. I first became aware of it through some 14th-century devotional texts in Sanskrit and in Bengali that describe the miraculous birth of a heroic child, Bhagiratha, to two women. The two women are co-widows. After their husband, the king's, death, they make love together with divine blessing, and one of them becomes pregnant and gives birth. In some versions of the story, the child is born boneless but cured by a sage. In one version, he is born healthy, because Kama, God of Love, and Brahma, Creator God, inspire his mothers to make love. This story appears unique but is not entirely so. It derives the idea of a female-female sex act leading to conception from an ancient Sanskrit medical text, the *Sushruta Samhita* (circa 1st century BC to 1st century AD), which states that if two women have sex and one becomes pregnant, the child will be born without bones.[11]

The medical text makes this type of conception appear somewhat monstrous because it does not prescribe a cure for it. The devotional texts transform the monstrous into the miraculous by placing the sex act in a positive emotional context. The medical texts are not concerned with emotion. They focus on the abstract question of a sexual act between any two women anywhere.

But the devotional narratives are imbued with emotions evoked by specific characters in a specific context. Negative emotions of distaste and anxiety are not entirely absent from these narratives' representation of the two women's love-making. The narratives resolve these negative emotions by framing them in the larger context of love, human and divine. The reader is

encouraged to wonder at the miracles worked by the gods, especially God of Love, Kama, who inspires the two women's relationship.

An emotional response, such as anxiety and disgust, can be fully countered only by another emotional response such as appreciation of love or justice. It cannot, in my view, be entirely countered by logic or a rational argument alone, important though these are.[12] When the US state of Vermont was debating same-sex marriage in the late 1990s, many senators who had initially opposed the measure changed their minds after listening to the testimony of couples who had lived together for years, and voted in favour of same-sex civil unions which became legal in Vermont in 2000. In 2004, following the Massachusetts Supreme Court decision legalizing same-sex marriage, San Francisco Mayor, Gary Newsom, himself a heterosexual Catholic, instructed city officials to perform same-sex weddings. The first of 4,037 weddings that took place was that of Phyllis Lyon, 79, and Del Martin, 83, who had lived together for 51 years. Even though the California Supreme Court later voided these weddings on technical grounds (the legal issue remains to be decided in court), they were seen on television nationally and internationally and had a lasting impact. After watching them, Cambodian King Norodom Sihanouk, aged 81, father of 14 children, argued on his website that as a democracy, Cambodia should legalize gay marriage; he remarked that 'God loves a diversity of tastes and colours in all species, humans, animals, vegetables.'[13]

The same-sex weddings and joint suicides reported by newspapers in India may have a similar effect on observers and readers. For example, when policewomen Leela and Urmila were suspended from the police force after their wedding in Madhya Pradesh in 1987, they went to live with Urmila's family in her village, Mandi Bhamora. Their neighbours, the Bhawasars, a husband and wife who are both village schoolteachers, thought the women had been unjustly treated. Sushila Bhawasar told a journalist, 'After all, what is marriage? It is a wedding of two souls. Where in the scriptures is it said that it has to be between a man and a woman?'[14]

A scholarly Hindu priest who married two women in Seattle in 2002, expressed a similar empathy when I talked to him after the wedding. He said that though he realized that other priests in his lineage might disagree with him, he had concluded, on the basis of Hindu scriptures, that, 'Marriage is a union of spirits, and the spirit is not male or female.'

MODERN HOMOPHOBIA

The extreme homophobia we witness today, manifested in beatings and murders of gay people in the West, state-sponsored torture and public

executions in the Middle East and calls to persecute homosexuals in countries such as India and Nepal is a product not of the ancient or medieval past but, rather, of modernity. Even though medieval European churchmen condemned certain same-sex sexual acts, these were rarely punished as crimes. Rather, they were treated as sins to be expiated by religious penance. Furthermore, celebration of romantic same-sex relationships, especially between men, is documented in medieval literatures in Europe, West Asia and South Asia, despite Christian and Islamic and occasional Hindu condemnations of certain sexual acts.

This changed with the Renaissance which inaugurates modernity in the West. From the 14th century onwards in Europe, homosexual acts were redefined as crimes rather than sins, the business of the state rather than the church alone, and historians have documented a dramatic increase in state persecution of homosexually inclined people as also of other deviants such as those perceived to be witches.[15]

With the development of the nation-state and Euro-American ascendancy in the modern world, the drive to impose uniformity in sexual matters acquired a new force and urgency. The modern nation-state is more efficient in imposing uniformity because of developments in transport, communications, information gathering and policing. New types of censorship and self-censorship also appear in the modern era.

South Asia has no extended pre-modern history of persecuting people for same-sex relations; in our research for *Same-Sex Love in India* (2000), Kidwai and I did not find a single documented instance of execution for such relations. Under colonial rule, what was a minor strain of homophobia in pre-modern Indian traditions became the dominant ideology. Modern homophobia is deeply intertwined with modern nationalism. Most Indian nationalists who fought for Indian independence from British rule, including M. K. Gandhi, accepted the British rulers' view of homosexuality as a vice. Indian nationalists today, both right-wing and left-wing, are often virulently homophobic, viewing homosexuality as a foreign disease or capitalist perversion from which the nation's purity must be preserved.[16] Several Indian politicians and opinion-makers defend Section 377 as 'Indian' and call for even stronger measures against homosexuality which they now, ignoring all historical evidence, declare an import from the West.[17]

This is one dimension of a general anti-sex attitude Indians inherited from British Victorians. Several historians have discussed how 19th-century Indian social reformers and nationalists excised the erotic in their translations and publications of pre-modern literature, or interpreted non-

judgmental portrayals as denunciations.[18] Kidwai and I examined the specific effects of this on homoerotic literature, especially the censorship of female homoeroticism in Urdu Rekhti poetry, the heterosexualization of the Urdu ghazal and modern translators' misinterpretation of the Sanskrit *Kamasutra* as a warning tract.[19]

However, modernity also produces new opportunities and aspirations. Increased urbanization allows individuals greater anonymity and membership in more than one community. Many people, especially women, acquire greater economic and social autonomy and mobility and new aspirations to individual equality and freedom.

Modern democracies are in theory committed to individual liberty and equality of all citizens before the law even though, in practice, governments constantly try to infringe on these rights. This theoretical commitment enables members of traditionally reviled groups to demand and sometimes achieve equality with other citizens. For example, in 1967, the US Supreme Court, in the case of *Loving vs Virginia*, overturned laws banning interracial marriage, ruling that the marriage of Mildred Jeter, a black woman, and Richard Loving, a white man, would be legal everywhere in the country, even though this type of marriage was traditionally outlawed, banned in certain states and led to social violence. The Court declared that the right to marry is 'one of the basic civil rights'.

Similarly, Sree Nandu, a young woman in Kerala, recently asserted her right to live with her partner Sheela, in the face of family and police hostility: 'We made it clear to the police that we are majors, and the Constitution of India has given us the right to live life the way we want.'[20]

CHANGING FACE OF MARRIAGE

Marriage varies widely over time and space. Formerly important components, such as the prescription to marry within one's own ethnic and religious group, have now been eliminated in democracies. Monogamy is now required both in Hindu and Judaeo-Christian law but was not required in ancient Hindu and Biblical traditions. Divorce used to be hard to obtain in orthodox Christian and Hindu communities. It is now legal in both. Nor do all spouses vow to spend their lives together. Muslim Shia law, in several countries including India, recognizes a type of marriage called Mutaa which exists for a period of time specified in the marriage contract, which may range from one day to several years.[21]

The requirement that marriage lead to procreation was closely linked to the early age of marriage in pre-modern societies. Juliet was married at 14; traditional Hindu law required a girl to be married before puberty. These laws have now changed—now only adults can legally marry and,

since contraception is widely available, this means they can choose whether or not to have children. More important, laws now allow people past the reproductive age and infertile people to marry. So marriage is no longer inseparably linked to procreation.

Even the prohibition on incest is not consistent worldwide. Apart from a prohibition on marrying within the immediate family, there is no agreement on what 'incest' is. Upto the 19th century, cousin marriage in Europe and the US was not only acceptable but even desirable—a fact unknown to most Americans today who react with horror to the idea. Marriage between cousins and between maternal uncle and niece is acceptable in several communities in India but unacceptable in others. Definitions of incest differ from country to country in Europe and from state to state in the US and in India. The Indian government defines incest for purposes of marriage according to whatever definition is customary in the community of either partner.

Each time a legal change was made in the modern era (legalizing divorce, property rights for wives, inter-religious and inter-racial marriage in the West; and legalizing widow remarriage, inter-caste marriage, women's property rights and banning child marriage in India), politicians, the media and religious sects claimed that these changes would destroy marriage, the family and civilization.[22] A similar panic is being created now in Western democracies, vis-à-vis the demand for same-sex marriage.

MARRIAGE LAW: COMMUNITY AND STATE

On 27 April 2001, Jaya Varma, 25, and Tanuja Chouhan, 32, both nurses, got married in a Hindu ceremony at Mahamaya Mandir in Ambikapur, Bihar. 'The couple took the traditional vows as a priest chanted the *mantras*. They went seven times round the sacred fire to solemnize their marriage.'[23]

At the same ceremony, Jaya's sister was also married, to a man. Although Jaya's sister's marriage is validated by the Indian state and Jaya's is not, Jaya's family and community and the Hindu priest validated both equally. About 100 people were present at the reception. Jaya's entire family was present.

Indian marriage laws recognize as valid any marriage performed according to the rites customary in one partner's community. Such a marriage is valid whether or not a marriage license is obtained or the marriage registered. Yet the Registrar of Marriages refused to register Jaya and Tanuja's marriage. In my book, I show how a legal argument could be made to assert that those same-sex marriages, like Jaya and Tanuja's, performed according to customary rites and approved by a local community, are legally valid marriages.

All laws originate in custom, that is, in the social practice of local communities. Customs change gradually so the change is not startling to people. But when laws are written down, the written law freezes while customs continue to change. It takes time for the written law to catch up with custom. When the written law changes, people panic because they think written law changes practice whereas, in fact, changes in practice precede changes in written law, for example, incompatible spouses, both Hindu and Christian, used to separate and remarry long before divorce and remarriage became legal in Hindu and Christian written law. Same-sex marriages occurred in the West long before the state took cognizance of them and same-sex marriages are occurring in India now, approved by some families and communities.

Despite the interventionist and authoritarian character of the modern Indian state, it still has not acquired the extensive control over people's lives that states in the West have. This is evident in the Indian state's recognition of community custom in marriage law which some reformers, both on the left and the right, today wish to eliminate.

But even in the West, where obtaining a marriage license from the government is essential for a legal marriage, community consensus continues to be important. This is clear in the categories of common-law marriage and domestic partnership that have evolved in some Western democracies. A man and woman who have lived together for some time, and whom the community recognizes as married, even though no ceremony has taken place and no marriage has been registered, acquire some of the legal rights and responsibilities of marriage. This is, in fact, the earliest type of marriage in any society—it depends on the mutual consent of the couple and on recognition by witnesses. It is also found among some tribal communities in India where a man and woman are considered married if they set up house together.

Both in India and in the West, many communities treat same-sex couples as if they are living in a common-law marriage. Partners live together and share a financial and social life; they entertain together and are invited out together. In 1999, a story appeared about one such couple, Santosh, 32, and Manju, 33, living in Patel Nagar, New Delhi. They met as nursing students in 1984, fell in love and started living together 'as man and wife and the people of Patel Nagar have taken it in their stride . . . the residents have accepted the 15-year-old "marriage."'[24] There was, however, no wedding ceremony: '"We did not marry in the conventional sense, it was more of an emotional one where we accepted each other as life partners," said Santosh.' Historically, it is from this type

of conjugal relationship that the concepts of common-law marriage and domestic partnership evolved.

Although the modern state has largely taken over control of marriage from communities and individuals, the take-over is not complete. Democratic states are compelled to recognize that communities have some say in defining marriage. The state's de facto recognition of customary marriage may be used to demand state recognition of a same-sex marriage performed by customary rites. This happened in a path-breaking case in Toronto. Under the Ontario Marriage Act, any couple may be granted a marriage license if a church, following ancient tradition, reads the marriage banns for three consecutive Sundays prior to the wedding. In 2001, the Metropolitan Community Church in Toronto read the banns and married two men, Kevin Bourassa and Joe Varnell, and two women, the Vautours. The couples then filed a case, asking the state to register their marriages. The Court of Appeal ordered the province to register the marriages. Ontario began issuing marriage licenses to same-sex couples in June 2003, three other Canadian states did the same and the government of Canada has promised to legalize same-sex marriage.[25]

If one's family and community recognize one's marriage, why seek state recognition and the right to civil marriage? This is because the modern state confers many privileges and benefits on couples it recognizes as married and withholds them from long-term couples it does not recognize as married. Among these are: the right to be defined as next-of-kin for purposes of visiting and making medical decisions when a partner is hospitalized; to inherit property without paying inheritance taxes; to make decisions regarding a partner's funerary ceremonies; to claim custody of a co-parented child after divorce or a partner's death; to sponsor a partner for immigration; to share a partner's health insurance policy and other benefits provided by an employer; to share and inherit social security and welfare payments; to claim alimony, maintenance and a share in property after divorce; to file joint income tax returns; to take leave from work for a partner's illness or death; to refuse to testify in court against a spouse. Same-sex marriage is now legal in the Netherlands and Belgium, and will soon be legal in Canada, which means that couples there acquire all these rights.

In the US it is estimated that married couples acquire 1,049 such rights, some of which may be crucial to their ability to live together and protect their resources. The US state of Massachusetts legalized same-sex marriage in 2004, but the federal government's refusal to do so means that same-sex couples married in Massachusetts acquire only a few of the rights that heterosexual spouses have.

The Indian government, because it does not dispense welfare and social security benefits, gives fewer privileges to heterosexual married couples but there are some significant privileges, and many more if one partner has a government job. Indian employers, social welfare and charitable organizations and institutions like life insurance companies also give many benefits to married couples but not to unmarried ones.

One female couple in Kerala tried to take advantage of such a privilege. Mini, 29, and Sisha, 19, worked together in an industrial unit for unmarried women. The employer gives Rs 20,000 to any employee in this unit who gets married. In 2000, Mini agreed to a matrimonial alliance arranged by her parents, and took the money. Then she cut her hair short, put on male attire and eloped with Sisha to Coimbatore, where she changed her name to Babu and took a job as a man in a textile factory. The families filed a police complaint so the women had to return four months later. But the court ruled that they could live wherever they wanted to and they are determined to live together.[26]

Even so, in India, family and community still confer more of the benefits of marriage than does the state so their approval is sought and valued more than government approval. This partly explains why several of the female-female weddings that have occurred recently have had family support and have been accepted by the local community without recourse to the state. The importance of the family as a provider of resources also explains why couples facing family hostility sometimes feel desperate enough to commit suicide.

WHY MORE WOMEN?

Most of the same-sex couples who have married or committed suicide in India over the last two decades have been women. One reason for this may be that entering a cross-sex marriage while having same-sex encounters or liaisons on the side is a relatively easier option for a man than for a woman. Most married men have greater mobility, leisure, freedom of social interaction, access to public spaces and control over money and less accountability to their spouses than women. They also carry far less of the burden of housework and childcare than do women.

It is in the urban upper middle class that one is most likely to find married women leading double lives. In poorer families, women's lives are open to greater scrutiny than men's. Living alone is more difficult for women from low-income families since hoodlums in slums see single women as easy prey. But if two women living together are accepted as a family unit by the neighbours, they may be safer. In the professional middle classes where people have more choices, many more women than men

choose to remain single. Women lose more freedom when they marry than men do.

Many of the women who elope are from poor families and their struggles are that much more difficult, calling for amazing determination and courage. Such are Kajal, 24, and Nisha, 19, whose parents are construction labourers in Bhopal. The two families live in a slum and the girls were friends for years. Kajal was working as a peon in a school and Nisha was unemployed. In April 2004, Nisha's parents took her to Gondia, Maharashtra, to marry her to a man. Kajal followed, and the two fled to New Delhi. Nisha's family brought her back and forcibly married her to the man in May. Two weeks later, Kajal returned to Gondia and the two women disappeared again. When they reappeared in August, their families took them to the police who advised them to see counsellors. The women are reported to have told the police, 'We will live together no matter what attempt is made to separate us,' and did not turn up for their appointment with the counsellors.[27] Had Nisha and Kajal been men or highly educated professional women, it is unlikely that the police would have intervened at all. As poor uneducated women, they have few resources or support structures outside the family.

Taking into account these gender and income inequalities, it still remains true that suicides and weddings reported in the papers are the tip of the iceberg and not representative of all same-sex relationships or all homosexual and bisexual lives. I have anecdotal evidence of individual suicides by several middle-class gay men in India, shortly before or after their forced arranged marriages to women. A family can more easily cover up an individual's than a couple's suicide, since the latter proclaims a relationship and the former does not.

SIMILAR OR DIFFERENT?

The debate about same-sex marriage is largely about sameness and difference. Those opposed to same-sex marriage claim that it can never be like marriage between a man and woman while some gay activists insist that gay people should retain their differences from heterosexual people, which they are in danger of losing if they get married.

My view is that for purposes of marriage, same-sex and cross-sex couples are more alike than different.[28] Whether a long-term committed union in which partners share financial resources and are each other's primary care-givers is termed marriage or not makes little difference. A rose by any other name is still a rose. A long-term couple generally has certain irreducible needs, for example, the need for access to one another and the need to make certain joint decisions.

It is also a mistake to assume, as some gay activists do, that all heterosexual marriages are conventional while same-sex marriages are unconventional. Heterosexual marriages that appear conventional may not be so—celibate marriages, partner-swapping, non-monogamous marriages and couples living in separate residences occur more than one may realize, even in India. Conversely, many same-sex couples prefer to be conventional—monogamous, sharing all resources, even having one partner be a full-time homemaker. While cross-sex couples have a range of options, including marriage, same-sex couples do not.

Some left-wing activists argue that state-conferred privileges of marriage should be abolished—while people may marry by religious or other ceremony, the state should stay out of marriage. However, there is no campaign anywhere in the world for abolition of civil marriage, so a discussion of that possibility is purely academic and has no effect in the real world. Instead, human rights defenders are campaigning today to include same-sex couples who, though living like married couples and often married by religious ceremony, are excluded from civil marriage.

If a civil union or domestic partnership confers all the same rights and obligations that marriage does, then it is simply marriage by another name. If, however, as is in fact so far the case, civil union or domestic partnership does not give couples all the rights that married couples get, then it is simply the equivalent of a lower-status marriage. Most traditional societies distinguish between higher and lower status marriages; for example, in pre-modern India, a man's second wife generally had a lower status than his first. If cross-sex couples have access both to marriage and domestic partnership or civil union, so should same-sex couples.

FALLING IN LOVE: THE SOCIAL CONTEXT

The similarity between same-sex and cross-sex lovers is evident in accounts of their courtship. The women who married each other or committed suicide together in India in recent years met and developed their relationships in different venues—at religious functions, at school or college or at work. In this, they were no different from cross-sex couples today. Since dating is not widely approved of in India, a marriage based on love or attraction typically results from a chance encounter or series of encounters through family friendships or work relationships. Semi-clandestine dating may follow. For example, Neeru Sharma, who married Meenu Sharma by Hindu rites in a temple in Faridabad in 1993, first heard her sing at a worship session (*jagran*) and went up to praise her singing. After that, Neeru would drop by on her scooter to take Meenu out and also drop her at work.[29]

Lalithambika and Mallika met when they were Pre-Degree students at Sree Kerala Varma College (SKVC) in Trissur, Kerala. Here is a description by Reji G., male alumnus of this co-educational college, of romance at this college: 'SKVC had also its own set of romances and fun. Many students first taste love when they join the college. SKVC had its own set of Romeos and Juliets. These people roamed around the college campus, regularly visited the college canteen and would be in a world of *their* own. I underline the word *their*, since I personally haven't got a chance to fall in love. The maximum number of lovers are usually found in the Pre-Degree class rooms.'[30]

Leela and Urmila's love also grew in an atmosphere saturated with romance. They were in the 23rd Battalion of the special armed force of the Madhya Pradesh police. This is an all-women battalion with 100 members. Leela and Urmila told a reporter that often, two women in the battalion would become very close. 'Then we would say *joda bana liya* (they have become a couple). A good many of them have paired off in our company.' Two women constables had fought for the favour of a third. Policemen had made advances to Leela and policewomen to Urmila. In this context, Leela and Urmila could not understand why such a fuss was made about their marriage in particular.[31]

MARRIAGE AND MONOGAMY: ALWAYS OPPRESSIVE?

In her pioneering study of chosen kinship, sociologist Kath Weston notes, 'Change and continuity are more closely related than many people tend to think. No search is more fruitless than the one that seeks revolutionary forms of social relations which remain "uncontaminated" by existing social conditions.'[32] Several feminists and queer theorists in the West argue that marriage is a heterosexist, patriarchal institution not worth recovering because its history is fraught with the oppression of women and children.[33] This assumes that marriage has always and everywhere been only oppressive. It also assumes that all lovers, cross-sex or same-sex, who aspire to marry are deluded by what orthodox Marxists term false consciousness.

This argument does not probe deep enough. If the oppressiveness of marriage is based largely on male domination, would that domination disappear if marriage as an institution were abolished? In societies like the US, where people live together without marriage, the incidence of boyfriends beating and even killing girlfriends is as high as that of husbands abusing wives. The reduction of male oppression requires the empowerment of women and children. When that occurs, as in some Scandinavian countries, marriage becomes more egalitarian.

Abolishing marriage will not dismantle patriarchy or heterosexism but institutional empowerment of women and gay people is a move towards such dismantling. Legalizing same-sex marriage involves the institutional empowerment of gay people. It allows, for example, a person opting out of or thrown out of a same-sex union or a battered partner to claim the rights of divorce, alimony, maintenance, custody or visitation rights vis-à-vis children and social recognition of loss. As of now, a person has to deal with his or her grief without social or state support.

Advocating a boycott of marriage is unrealistic. If we are to opt out of all patriarchal institutions, we must refuse school and university education, boycott voting and public office, shun government and corporate employment and neither buy nor sell goods. Schools, universities, governments, corporate business and the market, as we know them, are all patriarchal institutions. Such a programme would lead to extreme separatism practised by some small religious sects and left-wing or right-wing communes. Since few people take these routes, the institutions concerned would be unaffected.

Third, and most important, while marriage has enabled and continues to enable a great deal of oppression, it has also embodied friendship and love. Happiness is notoriously hard to measure so, without making any grand claims with regard to happiness, it is important to remember that many married people in most societies claim to be and are seen as being happy, a fact which helps inspire young people to marry. Excluding blatantly violent and oppressive marriages, there is no evidence that most unmarried people are happier than most married ones, or that most unhappy married people would be happier if they were single.

A few theorists also argue that not just marriage but monogamous coupling itself is oppressive because it restricts sexual freedom and marginalizes single, celibate and promiscuous people. These theorists overlook at least two facts. First, not all heterosexual marriages are monogamous though they may appear to be so. Many men and women marry, and mutually agree to have other relationships on the side. There are as many if not more heterosexual promiscuous people and sex radicals (including married ones) as there are homosexual.

Second, many people prefer to restrict their sexual freedom in order to gain other freedoms and pleasures available within monogamy. This is not surprising because many humans give up certain freedoms and pleasures, such as that of uninterrupted leisure, in order to gain other pleasures, such as that of productive work.

Any democracy that protects the freedom to marry should equally protect the freedom to be single, celibate or promiscuous. So far, in known history, even in democracies that protect all of these freedoms,

most people still choose to live most of their adult lives coupled rather than single. Theorists are free to view this choice as unfortunate but that is no reason to deny gay people the right to marry.

POWER AND EQUALITY

While same-sex couples do not face the challenge of gender inequality that cross-sex couples do, this by no means removes power, inequality or hierarchy from same-sex relationships or from the families and communities gay people build. If Foucault has taught us nothing else, he should have taught us that totally eradicating power is impossible. Nor, in my view, is all hierarchy or inequality inherently negative. Inequalities or differences in ability and experience, provided they are not reified or assigned on the basis of biological category, can usefully complement one another in relationships and foster mutual learning.

Awareness of the constantly shifting power balance in any relationship along with strong filiations to others outside the relationship and equitable sharing of resources in forms that are backed up by society and state, should work to check abuses of power within relationships. The demand for state recognition of same-sex marriages has arisen in the context of movements for social, economic and political equality and freedom and of major socio-economic changes that made these movements possible.

Democracies already recognize many more types of families than they did a century ago. Single mothers are no longer social outcasts in the West as they were just a century ago. Many children have only one parent; many others have more than one parent of each gender, following their biological parents' divorce and remarriage to others. The 'family values' that have become a mantra in the US can no longer be about valuing a family consisting of one father, one mother and their biological children, because few families conform to that rigid model.

In India, single mothers are still stigmatized. Widows or divorcees with children rarely remarry, so relatively few families comprise 'my children', 'your children' and 'our children' but such families are beginning to emerge. Major changes have occurred in adoption patterns. Adoption of children from orphanages is now widespread in the Indian middle class, in contrast to the traditional practice of adopting a relative's child. I know single women and some single men who have adopted children, and also same-sex couples who have raised children together in India.

IS EROTIC LOVE SOCIALLY USEFUL?

My argument is that the debate about same-sex marriage, both in India and the West, is really a debate about the value of erotic love (unlinked to procreation). In same-sex marriage, society confronts its deepest fears

about the dangers of erotic love. Hence, the paranoid questions constantly voiced by opponents of same-sex marriage in the West: if same-sex marriage is allowed today, can incestuous, polygamous and bestial marriages be far behind? These questions betray the fear that erotic love is a force that can run amok.

To borrow philosopher Martha Nussbaum's terms from another context, erotic love tends to be viewed as socially and morally inappropriate insofar as lovers' extreme value for one another is private, not public, and no one else can participate in its excess.[34] Perhaps the strongest component of many cultures' ambivalence towards erotic pleasure is the fear that it makes individuals selfish and indifferent to the welfare of others. Marriage is supposed to redirect this selfish passion towards the care of others—not only children, but also elders, relatives and friends, guests, the poor. In Jewish wedding contracts, the spouses promise to make their home a hospitable place for guests. Hindu wedding ceremonies emphasize the couple's commitment to the welfare of family and community, and even animals. Invoking God or the gods is a way to embrace concern for community, humanity, ancestry and posterity, which are larger than the couple's desire for each other.

Even as society permits sexual activity in marriage, it also tries to constrain that activity and, since it is hard to police the conjugal bed, an insistence on procreation works as the best way to constrain sexual activity. The child is the guarantee of the unselfishness spouses are supposed to offer their families and society.

In the West, suspicion of sexual activity stems in part from the ancient Graeco-Roman view of erotic love as a socially disruptive madness, and in part from Christianity's ambivalence regarding all sexual love, including conjugal love. The ancient Greeks prayed to Aphrodite, Goddess of Erotic Love, to stay far from them. This pre-Christian ambivalence was reinforced in medieval Christendom by the idea that amorous love entices one to the sin of idolatry (preferring a human being to God), and lust (preferring fleshly to spiritual pleasures).

Christianity, like Islam, was and still is conflicted about erotic love and romantic friendship—on the one hand, they can be seen as mirroring and leading to the love and friendship of God; on the other, they can function as rivals to the love of God. They lead individuals, like Romeo and Juliet, or Laila and Majnun, to worship one another, defy family and society and become social outcasts.

This ambivalence towards erotic love still runs deep in the West despite the prevailing myth there that all marriages are or should be based

on romantic love. This myth is less than two centuries old, and it co-exists with a much older social suspicion that romantic love is indistinguishable from infatuation and is therefore not enough to base a lasting marriage on.

Such suspicion of erotic love is more visible in India today than in the West. Indians who oppose love marriages argue that love is really a cover for sexual desire; therefore, marriages based on it are unlikely to last while family arranged marriages, based on cultural compatibility, are.

Unlike most of their counterparts in the West today, Indian heterosexuals who enter into or approve of love marriages often face social opposition which can range from mild criticism to intensely violent hostility. Just like same-sex couples, many male-female couples also commit suicide together when their families oppose their marriages.

This situation allows for the possibility of an alliance between homosexuals and heterosexuals who approve of love marriage. All same-sex marriages are by definition love marriages, while most cross-sex marriages are family-arranged. To those Indians who think the best marriages are family-arranged, same-sex love, since it is based on individual choice, seems less than legitimate. On the other hand, those who think that individual choice, love and/or destiny plays a role in marriage may be more likely to concede that same-sex love and marriage are plausible. Although still in a minority, they constitute a large and growing body of educated public opinion.

IS IT A MARRIAGE: WHO DECIDES?

In the early 18th century, the British government did not recognize any marriage not performed by the Church of England. This meant that Quaker and Jewish weddings were not weddings in the eyes of the state. However, Quakers and Jews who married within their own communities considered themselves married and, looking back today, we too would say that they were. The same is true of Jewish-Christian marriages in Europe for many centuries and black-white marriages in many parts of the US before 1967.

Today, many Christian ministers, Jewish rabbis and Hindu and Buddhist priests perform same-sex marriages. These ceremonies formalize community recognition of a couple. In India, some self-identified lesbian and gay couples are also beginning to marry. One example is the well-publicized 2002 civil union of designer Wendell Rodricks and his partner Jerome Marrel in Goa.[35] Sylvester Merchant, 22, an officer of Lakshya Trust, a Baroda gay organization, also reported, 'In four years, we have facilitated at least 15 gay marriages and soon hope to introduce a gay couple club to extend emotional support . . . The marriages will

promote single-partner sex, which will help the HIV prevention campaign.'[36] While continuing to demand state recognition and equal civil rights for such couples, it is important to keep in mind the larger picture and longer history of marriage, and to remember that these are real marriages, even if the state chooses to shut its eyes to that reality.

Social hostility also compels many couples, inter-religious, inter-racial, cross-caste, cross-class and same-sex, to marry in private without witnesses; to them, these are real marriages. A legendary example is the marriage of Shakuntala and Dushyanta; ancient texts contain several examples of such *gandharva* marriages performed in private but still valid. For instance, in Bhasa's 3rd–4th century Sanskrit play, *Avimarakam*, the hero secretly enters the heroine's bedchamber, walks around the fire with her and then declares that since they have taken seven steps with the fire as witness, they are now married.[37]

Same-sex couples have long been solemnizing such marriages. A South Indian gay male friend recounted to me in an email message how he and his male partner of six years visited two temples soon after they started living together, had special pujas done and 'took vows that I consider as our "sealing" of the relationship in "matrimony." And ever since we met we have been faithful to each other.' These secrets are never entirely secret and some couples are now choosing to end the secrecy, and declare their commitment in public. As Persian mystic Jalaluddin Rumi (1207–1273) wrote, 'Love's secret is always lifting its head/Out from under the covers,/"Here I am!"'

Notes

1 *The Tribune*, 1 December 1980.

2 Ruth Vanita, *Love's Rite: Same-Sex Marriage in India and the West* (New Delhi: Penguin, 2005).

3 '"Girlfriends" in Suicide Pact', *Blitz*, 11 July 1980, p. 7.

4 See Ruth Vanita and Saleem Kidwai (eds), *Same-Sex Love in India: Readings from Literature and History* (New York: St Martin's Press, 2000/ New Delhi: Macmillan, 2002); Bret Hinsch, *Passions of the Cut Sleeve: The Male Homosexual Tradition in China* (Berkeley: University of California Press, 1990); Will Roscoe, *Changing Ones: Third and Fourth Genders in Native North America* (New York: Palgrave, 2000); Stephen O. Murray et al., *Boy-Wives and Female Husbands: Studies of African Homosexualities* (New York: St Martin's Press, 1998).

5 Greg Reeder, 'Same-Sex Desire, Conjugal Constructs, and the Tomb of Niankhkhnum and Khnumhotep', *World Archaeology*, 32(2) (October

2000). A virtual tour of the site is available at: www.Egyptology.com/reeder/

6 John Boswell, *Same-Sex Unions in Premodern Europe* (New York: Random House, 1994), especially the chapter, '"A Friend Inspired by God": Same-Sex Unions in the Greco-Roman World'.

7 For accounts of these couples' lives and work, see Ruth Vanita, *Sappho and the Virgin Mary: Same-Sex Love and the English Literary Imagination* (New York: Columbia University Press, 1996), pp. 111–35; also, Elizabeth Mavor, *A Year with the Ladies of Llangollen* (Harmondsworth: Penguin, 1984).

8 See Helena Whitbread (ed.), *'I Know My Own Heart': The Diaries of Anne Lister, 1791–1840* (New York: New York University Press, 1992) and Alan Bray, *The Friend* (Chicago: Chicago University Press, 2003).

9 Vanita and Kidwai (eds), *Same-Sex Love in India*, p. 122.

10 Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago: University of Chicago Press, 1997).

11 Contra Foucault's claim that pathologization of gender and sexuality-based categories first occurs in 19th-century Europe, this text pathologizes a number of such categories. See Michael J. Sweet and Leonard Zwilling, 'The First Medicalization: The Taxonomy and Etiology of Queers in Classical Indian Medicine', *Journal of the History of Sexuality*, 3(4) (1993): 590–607.

12 Martha Nussbaum points this out in her recent book, *Hiding Humanity: Disgust, Shame and the Law* (Princeton: Princeton University Press, 2004).

13 Cited from www.norodomsihanouk.info, in Frida Ghitnis, 'Cambodia: The king speaks out in favor of gay marriage', 14 March 2004. Available at: www.miami.com/mld/miamiherald/news/opinion/8172427.htm?template=contentModules/printstory.jsp

14 Chinu Panchal, '"Wedded" Women Cops to Challenge Sack', *Times of India*, 23 February 1988.

15 See Byrne Fone, *Homophobia: A History* (New York: Henry Holt, 2000) and Michael Rocke, *Forbidden Friendships: Homosexuality and Male Culture in Renaissance Florence* (New York: Oxford University Press, 1996).

16 See Vanita and Kidwai (eds), *Same-Sex Love in India*, pp. 205–7.

17 For a history of prosecutions under this law, see Suparna Bhaskaran, 'The Politics of Penetration', in Ruth Vanita (ed.), *Queering India: Same-Sex Love and Eroticism in Indian Culture and Society* (New York: Routledge, 2002), pp. 15–29.

18 See, for example, Romila Thapar, *Sakuntala: Texts, Readings, Histories* (New Delhi: Kali for Women, 1999), pp. 200–1, 236–42, and Tagore's reinterpretation of Kalidasa's *Sakuntala*, pp. 242–50.

19 See Vanita and Kidwai (eds), *Same-Sex Love in India*, pp. 191–7, 200–7, 236–40, 246–52.

20 *Savvy*, February 2004, p. 20.

21 See Sheikh Abrar Husain, *Marriage Customs among Muslims in India* (New Delhi: Sterling, 1976).

22 For this history in the West, see E. J. Graff, *What is Marriage For?* (Boston: Beacon Press, 1999).

23 Suchandana Gupta, 'Husband at Home, in Sari at Work', *The Telegraph*, 29 May 2001.

24 Priya Solomon, 'Women in Love', *The Week*, pp. 16–18.

25 For the legal history in Canada, see Kevin Alderson and Kathleen Lahey, *Same-Sex Marriage: The Personal and the Political* (Toronto: Insomniac Press, 2004).

26 *The Week*, 1 October 2000.

27 'Bhopal Woman Wants to Live with Her Girlfriend', *Hindustan Times*, 19 August 2004.

28 See the website of Straight Alliance for Marriage Equality: www.same-project.org

29 '*Do Ladkiyon ki Dilchasp Shadi*' (The Interesting Wedding of Two Girls), *Madhur Kathayen*, October 1993, p. 49.

30 Homepage of Reji G. available at: www.geocities.com/rejionnet/Home (accessed 26 December 2003).

31 Chinu Panchal, '"Wedded" Women Cops to Challenge Sack', *Times of India*, 23 February 1988.

32 Kath Weston, *Families We Choose: Lesbians, Gays, Kinship* (New York: Columbia University Press, 1991), p. 210.

33 Andrew Sullivan, *Same-Sex Marriage, Pro and Con* (New York: Random House, 1997), p. 67.

34 Martha Nussbaum, 'Steerforth's Arm: Love and the Moral Point of View', in *Love's Knowledge* (New York: Oxford University Press, 1990), pp. 335–64.

35 Since Marrel is French, the civil union was performed by a French official. The battle for same-sex couples to acquire the right to marriage continues in France.

36 Prathima Nandakumar, 'Gay Marriages Groom Anti-AIDS Battle', Times News Network, 28 August 2004. Available at: www.timesofindia.indiatimes.com/articleshow/830976.cms. See also Lekha Menon, 'I Am Proud, I Am Gay', Times News Network, 10 December 2001. Available at: www.timesofindia.indiatimes,com/articleshow/1249531931.cms

37 Dr K. P. A. Menon (ed.), *Complete Plays of Bhasa* (New Delhi: Nag Publishers, 1996), VOL. 3, p. 314.