

# **Anti-phobic in Words, Phobic in Deeds: Queering India's Human Rights Politics at the United Nations**

SOHINI CHATTERJEE

## **ABSTRACT**

India's international approach towards LGBTQ rights has been largely antagonistic. It has refrained from partaking in developments initiated at and by the United Nations to fight human rights violations suffered by queer people across the globe. However, it has lent its support to advocates of cultural sovereignty who have traditionally opposed LGBTQ rights on the grounds that it violates their religio-cultural values and that attempts to universalize human rights at the international level is steered by powerful states, primarily in the Global North, that are unwilling to recognize cultural sensibilities of traditional societies in the Global South. India has allied forces with advocates of cultural sovereignty on more than one occasion to counter hegemonic queer politics practiced by influential states but has done it without an explicit anti-queer rhetoric. This paper attempts to make sense of India's political attitude towards LGBTQ rights and concerns at the United Nations and seeks to understand what it says about India's global political image in the 21<sup>st</sup> century.

## **KEYWORDS:**

Queer Politics, International Relations, International Orgnaization, LGBT Rights

## **Introduction**

Just as queer activism in India was "shaped by transnational circulations of people and agendas" (Dave 2012, 10), transnational networks are found interacting in significant ways and have greatly influenced queer and anti-queer politics at the international level. Some of these networks have been successful in articulating rights violations of LGBTQ people as a global governance concern, whereas, other webs of influence have proved to be detrimental to LGBTQ causes in the global political sphere. Allegiance to hostile networks is indicative of states' unwillingness to accommodate LGBTQ rights into their respective human rights agendas—a dismissal that makes their rights politics intelligible to a great extent. Focusing its critical attention on India, this paper takes into cognizance the state's political reticence or politics of reticence towards LGBTQ rights at the United Nations and attempts to understand India's international approach on LGBTQ rights as is revealed by the human rights politics it is involved in at the international level. In this process, this paper creates possibilities for statist claims about India's actions and inactions to be questioned and challenged. This effort is of particular importance because India's global position on LGBTQ rights and concerns

not only conveys its stance on the rights of sexual subalterns but, in 21st century's involuted global political landscape, it also reveals India's attempts to construct an image that can resist being characterized as pre-modern or insufficiently modern.

Networks, of both support and opposition, have impelled India's bearing on queer rights at the international level. However, its (in)actions suggest that it is the latter that India finds more agreeable. Its disposition has been accurately articulated in deeds than it has been in words. However, the dominant narrative India has tried to establish attempts to becloud judgment on its international actions on rights politics, especially where the terms "Sexual orientation" and GenderIdentity (SOGI) are used and matters related to them are discussed and debated. Official narrative(s) propagated by the state insist that India is not obstinately and prejudicially positioned against the LGBTQ. India has argued on many occasions—primarily through its support for groups advocating for cultural sovereignty in the global political sphere—that efforts to expand the definition of human rights to include LGBTQ rights within its ambit appear politically fraught because of who its advocates are and what they appear to be aiming to achieve in opposition to what their real but hidden agenda is. Hence, the extent of states' support or opposition to LGBTQ rights cannot be surmised perfunctorily in absolutes. Operation of states in the international political sphere being embedded in relations of power emanate from a hierarchy where each state has its own power location, and hence questions of domination and subordination cast a shadow on rights politics and their "progressive" outcomes and possibilities. India's support for certain networks over others is in tandem with its politics of skepticism, declaredly laced with misgivings about the political significations of queer politics at the UN. As a result, India has not been obsequious to norms and standards of doing human rights that it deems quintessentially Western. However, it is due to the existence of various networks of persuasion that India's rights politics can be analyzed as well as its claims contextualized and critiqued.

The discussion begins with the introduction of resolutions that, directly or indirectly, reveal India's political stance on LGBTQ issues at the UN. Given that the Indian state could not rid itself, till 2018, of the Indian Penal Code's Sec 377—a colonial inheritance read as criminalizing sexual activity between consenting same-sex adults in private—the equivocation inherent in the justification of its international anti-queer actions hold particular significance. India's apocryphal justifications before 2018 have been put forward to provide a context in which India's international behaviour can be made to appear reasonable and/or even predictable. Its approach towards rights politics at the UN remains complicated. India's political behaviour has been emphasised by state officials as predictable and benign, aiding the state in the evasion of scrutiny, also helping it escape accountability. However, upon investigation its official claims appear indefensible. Analyses offered here attempt to discredit those justifications, creating the possibility of India's attempts at normalizing (c)overtly anti-queer actions and rhetoric to be opposed and discredited. This effort is geared towards uncovering the veneer of regularity on which India bases its inactions and diffidence. This paper makes a case against perceiving India's international approach towards LGBTQ rights as those expected of a state where the rights of its LGBTQ citizens are yet to be legally

determined, which was the case before Sec 377 was read down the Supreme Court of India in 2018. (Balakrishnan 2018)

It is of significance to India's politics that it has not assumed a moralistic position to argue against queer rights like many advocates of cultural sovereignty have at the international level. However, India voted in favour of extending greater recognition to cultural sovereignty in world politics, particularly when LGBTQ issues were deemed to be in conflict with India's cultural self-imagination, thereby attempting to thwart, on occasions, recognition of LGBTQ causes at UN forums. The reason cited primarily for its in/actions was the menacing presence of Sec 377 in the Indian Penal Code which infamously criminalised voluntary "carnal intercourse against the order of nature." In its 2013 verdict the Supreme Court of India refused to declare Sec 377 of the Indian Penal Code unconstitutional (Venkatesan 2013). However, in 2016, the Supreme Court of India agreed to hear curative petitions on Sec 377 (Scroll.in 2016). And it was in 2018, after a prolonged battle, that the Supreme Court read down Sec 377. However, before 2018, India cited many other reasons, apart from the legal quagmire around Sec 377, to justify its reservations about voting in the affirmative on LGBTQ issues, as and when they were raised, at the international level. The subsequent sections will delve deeper into it, attempting to uncover the problems in India's global human rights politics.

### **Resolutions and the lack of resolve**

In this section, efforts are made to unravel nuances of India's position on sexual orientation and gender identity in connection with human rights at the UN since the beginning of the 21st century to understand India's position on LGBTQ rights and the narrative it advanced as justification for its political behavior. Several resolutions have been passed or proposed directly and indirectly addressing sexual orientation and gender identity issues at the UN; taken together these resolutions help us decode India's international behaviour on LGBTQ rights and concerns and provide an alternative discourse about its behaviour, challenging the ones constructed and legitimised by the state.

In 2003, Brazil pushed a surprise draft resolution at the 59th session of the United Nations Commission on Human Rights—which was at the time only a subsidiary body operating under the aegis of the Economic and Social Council (ECOSOC)—to recognize the human rights of people who are subjected to gratuitous violence and discrimination because of their non-normative sexual orientation (Human Rights Commission 2003). It did not go down well with members of the Organization of Islamic Cooperation (OIC), and the Vatican, among others, who claimed that the resolution threatened their religious freedom and demanded that all references to sexual orientation were promptly removed from the resolution. Pakistan, on behalf of dissenting nations, called for a no action motion. However, when a vote was taken on the matter, the call for no action was defeated by a narrow margin. India had voted in favour of the motion (United Nations Press Releases 2003). Regardless of the outcome, India's vote remains significant as it was the first and the last time that India would take an anti-LGBTQ position so fervently at the UN. Its subsequent moves would be far less overt and a

lot more cautious and come to be rationalized with an anti-phobic narrative advocated by the state.

On December 18, 2008, backed by 66 states, the representative of Argentina--on the occasion of the 60th anniversary of the Universal Declaration of Human Rights (UDHR)-- made a statement affirming that the principle of non-discrimination commands that human rights be made applicable to individuals of all sexual orientations and gender identities having progressively interpreted rights codified in the UDHR, International Covenants on Civil and Political, Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights (Human Rights Watch 2008). Expressing concerns about the brutal and rampant violations of fundamental freedoms and human rights suffered by LGBTQ people, the statement urged all states and human rights organizations to commit themselves, and take necessary measures, for the promotion and protection of human rights of people regardless of what their sexual orientation might be. As a response, the representative of the Syrian Arab Republic issued an immediate counter-declaration—being bolstered by the strength of 60 states behind it—before the United Nations General Assembly and declared that human rights on the basis of sexual orientation and gender identity have no legally validated status in any international human rights agreement (Worsnip 2008). It also asserted that the “effort to decriminalize homosexuality threatens to undermine the international framework of human rights by trying to normalize pedophilia among other acts” (Slomanson 2010, 615). The counter declaration also observed that the family must be protected “as the natural and fundamental group unit of society” as is necessitated by Art 16 of the UDHR. The statement called upon all states to expend their resources on fighting racism, racial discrimination, xenophobia and intolerance of similar kinds. (OutRight Action International 2009). The latter response was largely supported by states which would later construct an alternative discourse about its position on LGBTQ rights and thereby begin to self-identify as defenders of cultural sovereignty at the international level. In this section of the paper, an attempt will be made to understand how India, on numerous occasions, voiced many of their concerns and shared their apprehensions against the inclusion of LGBTQ rights within the framework of human rights at the UN.

At the 11th session of the UNHRC in June 2009, only a couple of months after the declaration on LGBTQ rights was signed, Russia presented a draft resolution (UNHRC 2009), first of its kind, calling for the UN High Commissioner for Human Rights to study the “views and opinions” of member states “on the issue of promoting human rights and fundamental freedoms through a better understanding of the traditional values of humankind...” (UNHRC 2009, 2). States rallied behind Russia, especially those who were unsettled by the increasing urgency with which dialogues were had to recognise the human rights of LGBTQ people. Many resolutions<sup>1</sup> on ‘Promoting human rights and fundamental freedoms through a better understanding of the traditional values of humankind’ were adopted subsequently at the United Nations. LGBTQ activists have expressed their

---

<sup>1</sup>See UN Doc. A/HRC/RES/12/21 (October 2009), UN doc., A/HRC/RES/16/3 (March 2011), UN Doc A/HRC/RES/21/3 (October 2012)

misgivings about the resolution, and observed that, “It sounds innocuous, but its implications are ominous.” (Graeme 2012) In the October 2009 resolution, the United Nations High Commissioner for Human Rights was requested to convene a workshop “for an exchange of views on how a better understanding of traditional values of humankind underpinning international human rights norms and standards can contribute to the promotion and protection of human rights and fundamental freedoms...” and it also requested the Office of the High Commissioner to present a summary of workshop discussions (UNHRC 2009, 2). India also voted in favour of this resolution, and subsequent resolutions of this kind, which were opposed by pro-LGBTQ states and networks. For example, Russia’s endeavour to secure human rights in tandem with its “traditional values” has not been viewed without suspicion.

“Homophobia”, argues Wilkinson, “...functions as a Slavophile political shorthand for national identity and traditional values” in Russia (Wilkinson 2014, 365). Wilkinson argues that “the development of “traditional values” as a concept broadly parallels the rise of homopropaganda laws” (Wilkinson 2014, 367). India has allied forces with purported defenders of cultural sovereignty, one of them being Russia, that has had a long history of opposing LGBTQ rights at the international level and at home. It was evidenced that as debates and dialogues were being had to accommodate LGBTQ rights into existing human rights frameworks, India appeared increasingly unwelcoming to these developments. Subsequent events further evince this claim.

In 2011, at its 17th session, the UNHRC’s very first resolution on “Human Rights, gender identity and sexual orientation” was adopted. However, even as sexual orientation was established within the mandate of the UNHRC, efforts to provide a context in which the importance of “traditional values” could be addressed were relentlessly pursued. On 9th October, 2012 the final resolution (UNHRC 2012) was passed which called for the better understanding and appreciation of traditional values shared by all humanity. It noted that traditional values, especially those shared by all humanity, can be applied to promote and protect human rights, can uphold human dignity, and can be employed in the process of human rights education. This was accepted by India along with states like Angola, Bangladesh, Burkina Faso, Cameroon, China, Congo, Cuba, Djibouti, Ecuador, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, and Uganda. And was opposed by Austria, Belgium, Botswana, Costa Rica, Czech Republic, Hungary, Italy, Mauritius, Mexico, Norway, Poland, Romania, Spain, Switzerland, and the United States of America. When the resolution was adopted on ‘human rights, sexual orientation and gender identity’ in 2011, majority of the states which voted against this resolution, had advocated for the inclusion of traditional values in the evolving conception of human rights at the UN. Some of these states are Angola, Bangladesh, Cameroon, Djibouti, Jordan, Malaysia, Maldives, Mauritania, Qatar, Russian Federation, Saudi Arabia, Senegal and Uganda. India sponsored the traditional values resolutions and also supported subsequent resolutions which had caused pro-LGBT networks ample consternation. Prominent among those were resolutions introduced under the title ‘Protection of the family’.

At the 26th session of the UNHRC in 2014, a resolution titled ‘Protection of the family’ was adopted for the first time which decided to convene a panel on protection of the family and to implement states’ obligations regarding the matter in accordance with international human rights law, and the High Commissioner was requested to prepare a report on the panel (UNHRC 2014). When this resolution was adopted, it came under criticism for containing an exclusionary definition of family: neither did it include single parent families; nor did it recognize families run by LGBTQ parents. It was feared that the “resulting panel and report will be used to further marginalize diverse family structures” (Miller 2014). Miller also notes that “Chile, Uruguay, Ireland and France support an amendment to the resolution designed to acknowledge family diversity but the motion was denied after Russia utilized a procedural manoeuvre that prevented discussion on the issue” (Miller 2014). Russia called for a no action motion on the inclusion of the diversity language and was backed by India among other 22 states. Many states had abstained from voting on the no action motion but India did not choose this option. A statement was released by the Permanent Mission of India at Geneva which stated that the “resolution is short and procedural and has rightly left the space for every country to interpret its own understanding of the family” (Permanent Mission of India, Geneva to the United Nations 2014). Hence, it argued that “directives” do not require to be necessarily given on the nature of the family and hence amendment L.37 which sought to include the diversity language was redundant. The statement claimed that it was the only reason that India had supported the no action motion, implying that its action was not a prejudicial move against LGBTQ families. This statement from India was not uncharacteristic of itself. India has never supported pro-LGBTQ resolutions but has either voted against or abstained from voting on them. To be able to resist an anti-phobic presentation, it often raised procedural questions or resorted to evoking mere technicalities, as in the case above. Few more events are introduced to highlight this point.

On 26th September, 2014, the United Nations Human Rights Council (UNHRC) adopted a resolution in order to combat violence and discrimination based on sexual orientation and gender identity (UNHRC 2014), India abstained from voting. On another occasion in March 2015, in the 33rd meeting of the General Assembly’s 69th session, India backed a Russian-drafted resolution (United Nations Press Releases 2015) that opposed extension of benefits to same-sex partners of UN staff, a resolution which was not passed by the Fifth Committee of the General Assembly eventually since as many as 80 states voted against the unjust denial of these rights to queer spouses of UN staff. However, characteristically, India’s decision to back this failed resolution was not publicly couched in any anti-queer rhetoric. Instead, it was justified as a righteous move made out of the want for proper democratic procedures where critical decisions regarding UN functioning is made. Indian officials reasoned that it was a difficult case complicated by the question of whether states should have the right to decide matters of importance on their own or whether it should be left to the discretion of the UN Secretary General. India asserted that its support for the resolution was caused by the fact that the then Secretary General Ban Ki-Moon reformed the system of entitlements without prior consultations with member-states. Russia drafted the resolution having made a similar claim and found the support of many including India. Moreover, Indian state officials remarked that

the issue was further complicated by Russia's troubled ties with the U.S. In its opinion, USA was trying to isolate Moscow in the international community. The Indian government, facing flak from the media for its support of Russia on the matter, clarified that its move was not "anti-gay" per se but involved more complicated issues (Haider 2015). To back this resolution, India had voted with minority of defeated nations like China, Egypt, Iran, Iraq, Jordan, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia and United Arab Emirates, to jeopardize the extension of entitlements (The Indian Express 2015) The coming together of this group of nations time and again to resist the recognition of rights and extension of benefits to LGBTQ people sketches a pattern holding critical significance which I will come to later in this paper.

In July 2015, at its 29th session the Human Rights Council adopted another seemingly innocuous resolution (UNHRC 2015) with improvements titled "Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development." It recognised that the family is a strong force for social cohesion and integration, intergenerational solidarity and social development, and that the family plays a "crucial role in the preservation of cultural identity, traditions, morals, heritage and value systems of society" (UNHRC 2015, 3). The resolution is important because of who it excludes: it does not mention same-sex couples and their right to a family. The resolution, however, recognises single-headed, child-headed and intergenerational households, which were ignored in the preceding resolution in 2014. But when an amendment was sought to be introduced in the resolution to include the phrase "various forms of the family exist", it was summarily rejected by hostile nations. Incorporation of the language of diversity was urged by South Africa and supported by Uruguay and Chile, but the proposal was defeated on a procedural vote of 22 to 21 with 3 abstentions. India sided with states like Bangladesh, China, Qatar and Saudi Arabia among others to back the no action motion on amendment L.37. Thus, despite insisting that India is not against LGBTQ rights per se, it has been found opposed to concerns shared by pro-LGBTQ states and groups, while being supportive of states who have opposed LGBT rights on several grounds and through various means.

On another occasion, on 30th June 2016, when the UNHRC adopted a resolution (UNHRC 2016) to establish the first Independent Expert on Sexual Orientation and Gender Identity to prevent discrimination against LGBTQ people, India abstained from voting on a number of issues raised. However, India voted with opposing nations to introduce six crucial amendments which ran the risk of defeating the very purpose for which the resolution, titled 'Protection against violence and discrimination based on sexual orientation and gender identity', was drafted in the first place. These amendments made strong assertions for recognising member-states' right to cultural sovereignty, respecting their religious sensitivities and ethical values in the development and universalization of international human rights standards (Mitra 2016). India, not unlike itself, lent its unequivocal support to advocates of cultural sovereignty.

Finally, India's rights politics cannot be understood without reference to its Universal Periodic Review evaluations and how the state has responded to them. In 2006, with the creation of the UNHRC, Universal Periodic Review (UPR) was set up. Its purpose is to advocate, support and promote the protection of human rights in member countries. The UPR is vested with the responsibility of evaluating states' human rights record and addresses human rights concerns and violations (United Nations Human Rights: Office of the High Commissioner). Under UPR, UN member-states face a peer review every four and a half years when states are held responsible to their national and international human rights obligations, commitments and duties. India was one of the first states to be reviewed in 2008 when the process began. At the first UPR session, only 18 recommendations were made to India, while it increased to 80 in 2012 and 250 in 2017, all of which were based on the human rights challenges that India needs to work towards mitigating (United Nations Human Rights: Office of the High Commissioner).

In the customary report submitted by the state, prior to the beginning of the first review process in 2008, a telling definition of 'human rights' was provided. This definition holds critical importance to our understanding of India's human rights politics at the UN. Stating that India is a multi-cultural, multi-ethnic and multi-lingual society, the state went on to assert that "Human rights in the country are to be viewed in the backdrop of its diverse social and cultural ethos" (United Nations Human Rights Council Working Group Report 2008, 3). India's support for advocates of cultural sovereignty at various UN forums subsequently has also evidenced the conviction behind this assertion.

However, in January 2017, when facing the Universal Periodic Review (UPR) in its third cycle, India made some startling claims regarding the status of its LGBTQ citizens. India had agreed to study the possibility of decriminalizing same-sex relationships following Argentina's recommendation in 2012. In response to the progress of the state on that count, India stated:

"In 2014, the Supreme Court recognized that sexual orientation and gender identity are integral to a person's personality and are basic aspects of self-determination, dignity and freedom. The Court stated that discrimination on the basis of sexual orientation violates India's constitutional guarantee of equality" (United Nations Human Rights Council 2017, 20).

Moreover, it also claimed that in the NALSA verdict, in 2014, the Supreme Court recognised that sexual orientation and gender identity are vital to individual personhood and constitute core aspects of self-determination, dignity and freedom. The Court in the same verdict also stated that discrimination on the basis of sexual orientation violates the guarantee of equality provided to every citizen by the Indian Constitution. NALSA verdict recognised that discrimination, violence and prejudice based upon a person's gender identity, as well as the non-recognition of transgender persons in law, violates India's constitutional commitments to equality, liberty and life with dignity (NALSA v. Union of India 2014). Citing this verdict, India tried to give the impression that since the NALSA verdict has clearly stated that



discrimination against people based on their sexual orientation violates the constitutional norm of equality, LGBTQ people are protected under the Constitution of India.

### **Making sense of India's human rights politics**

India's international actions regarding LGBTQ rights at the international level have recently caught media attention at home as a result of which the state's unwillingness to recognize LGBTQ rights as human rights at the UN is no longer under wraps. India's opposition of UN Secretary General's decision to extend entitlements to spouses of queer UN staff had made national news in 2015. It was due to wide coverage by the media that state officials issued a justification in defense of its action. It was stated that India's vote was not "anti-gay" but an assertion against the unilateral measure by the Secretary General to extend benefits without prior consultations with member-states. Ministry of External Affairs spokesperson Syed Akbaruddin stated that, "It was a complex issue of whether nationals of a state [are] governed by their laws or others' decisions. That was the basis on which the decision was taken" (Haidar 2015).

Again in 2016, when India abstained from voting to establish the Independent Expert, the year old rhetoric of the abstention not being "anti-gay" made its re-appearance. When questioned on India's decision to abstain, the Ministry of External Affairs spokesperson Vikas Swarup reasoned, "The issue of LGBT rights in India is a matter being considered by the Supreme Court under a batch of curative petitions filed by various institutions and organizations. The Supreme Court is yet to pronounce on this issue. As such, we had to take this into account in terms of our vote on the third UN resolution to institutionalize the office of an Independent Expert to prevent discrimination against LGBT persons" (Bhattacharjee 2016).

However, Swarup's clarification rings hollow in light of India's international in/actions. India joined hands with Pakistan, which, on behalf of the OIC, proposed amendments that not only made the institutionalization of an Independent Expert look like a hegemonic move by the West but also helped shift its primary focus from LGBTQ issues to more generic matters of concern related to intolerance. Out of the eleven amendments that Pakistan introduced only seven were passed. India voted in favour of six of out those seven amendments. It abstained from voting on the larger debate of whether the Independent Expert should be created but aligned forces with hostile nations to defeat the fundamental purpose of the resolution to battle rights violations and abuses suffered by LGBTQ people.

On the same issue, former Indian diplomat Mira Shankar said in a television discussion, "I think India's position has improved a little from the last UN vote which took place on the issue of giving allowances for gay spouses of UN diplomats when we had voted against" (NDTV 2016). She emphasized that India's vote was primarily dictated by the presence of Sec 377 and that the law needs to change before India can be held accountable for its actions. On the same show, Krishna Sagar Rao, the spokesperson of the current ruling party of India,

the Bharatiya Janata Party or the BJP, said that there are several reasons why India had not voted in the affirmative for the institution of the Independent Expert at the UN. “First, we are a multicultural population. We have a huge multicultural population and we need to have a larger discussion and debate on the LGBT rights and what is our exact stand and what should be and where do we stand. And we also have a heterogeneous population. We have not experienced the kind of cultural transformation like the West and the other regions where they have been exposed to LGBT issues since three to four decades and the knowledge and the awareness socially and culturally about LGBT issues and rights has happened only in about a decade’s time. So, I think India requires time. We are only seeking time. We are not being indifferent, we are not being disrespectful, we are not being Third World” (NDTV 2016).

By dissociating itself from “being Third World”, India attempts to battle allegations of pathology, from which an abject queer emerges. Kapoor argues that the West thrives in the “queering” of the Third World. The Third World is “queered” in the sense that it is made intelligible to the West only as “unnatural, abnormal, effete (read: effeminate), passive, strange, backward, underdeveloped, threatening” (Kapoor 2015, 1615-1616). In the wake of, what she terms, “homorighteousness”, the Third World is essentialized into categories of either “homo-friendly” or “homophobic”, Kapoor identifies “these Orientalist technologies of power” aimed at “estranging the Third World, belittling it, putting it in its place” (Kapoor 2015, 1617). India resists this categorisation, evidenced by the anti-phobic narratives it has espoused to mask the homophobic implications of its international in/actions. India has never taken an overtly moralistic stance against LGBTQ issues: it has not indulged in debates on whether queer relationships should be opposed on grounds of morality. Instead, it framed its anti-queer in/actions using two seemingly potent narratives. The first one seemed more dominant than the second. However, the second narrative was revealed more frequently through its international in/actions but less so in official statements. The first narrative was that since the Indian judiciary before 2018 was yet to pronounce its final verdict on the constitutional tenability of Sec 377 of the Indian Penal Code—which criminalises “carnal intercourse against the order of nature” between consenting adults in private—the Indian representatives at the UN could not unilaterally vote in the affirmative in support of LGBTQ causes. The presence of Sec 377—which the Indian government did not repeal despite being advised to do so by the Supreme Court of India in 2016 if it so deemed fit—was employed to provide a rationale for India’s unreceptive stance on LGBTQ issues of concern. The second narrative was engaged in support of many of its international in/actions that have helped communicate the message—as was done by other similarly oriented players at the UN—that human rights goals envisaged at the international level have to work favourably with states’ cultural values. This assertion was reflected in India’s support for defenders of cultural sovereignty who frequently brought forward resolutions at the UN deemed anti-queer by advocates of LGBTQ rights. India, through its in/actions, tried to assert that its political values cannot be dissociated from its cultural values. The assertion India made in the customary report before the first UPR cycle in 2008 was reinforced through several of its serious in/actions.

Saiz claims that the appeal to cultural sovereignty and traditional values has become all the more forceful in response to the onslaught of economic globalization and global cultural homogenization. While the UN consensus documents have established that culture cannot be privileged over human rights, by the very nature of UN functioning, states are given “a wide margin of discretion” to decide on matters of sexuality (Saiz 2004, 60-61). Taking advantage of the latitude afforded by the UN, culture has had the space to assert itself and have assumed an independent personality in this schism. The immutability of the cultural logic as is argued by defenders of cultural sovereignty allows its firm purchase over the contested terrain of human rights. Hence, queer people and non-normative sexual behavior often gets “incarcerated by culture” (Dave 2012, 16). India’s defense of cultural sovereignty cannot be dissociated from its opposition to LGBTQ rights at the UN which makes this defense significant. A discussion on Indian culture will be broached in the subsequent section. However, it is important to take cognizance of the fact that even as India distances itself from recognizing LGBTQ issues at the international level, it appears unwilling to do so on terms that are overtly moralistic, prejudicial and which offer faith-based reasoning against extending acceptance to queer individuals and relationships. By doing this, India distances itself from the colonial characterization of its postcolonial statehood as necessarily ‘pathological’. It also attempts to distance itself from being branded a queerphobic, ‘Third World’ state, since, from such conceptualization emerge more significant, and starker, categories of identification—and consequently discrimination—that shape and define international politics as well as strengthen and validate its norms. Cynthia Weber makes the critical distinction between ‘normal’ and ‘pathological’ states where the “‘normal states’ become those that champion gay rights as human rights and fold the LGBT into state and social institutions as a moral and legal equal, while ‘pathological states’ are those that deny human rights and state protection to the LGBT” (Weber 2016, 138). India’s great power aspirations are in direct conflict with the risk of being identified as a pathological Third World state caught in the mire of its own prejudices. Moreover, domestically the Indian state’s anti-queer posture at the international level is well-known and has been critiqued by activists, critical elite as well as critical sections of the media in the recent past. However, justifications that have been provided in favour of India’s behaviour were attempts to shield it from being branded pathological internationally while inviting further criticism from an already discontented critical queer public domestically. Queer activists and their allies have felt marginalized and wronged by the state owing to the unwillingness of the government to repeal Sec 377 of the IPC since a long time. Hence, India used its rhetorical devices strategically to defend itself against allegations of discrimination and prejudice. An overtly hostile prejudicial pronouncement against LGBTQ rights would reflect poorly on any government and could also have electoral consequences. Devesh Kapur argues, “...India’s political landscape has become more fragmented...Fierce electoral competition has meant that marginal voters matter more for electoral success. And while foreign policy issues may not enjoy issue salience with the median voter, if it matters more for the marginal voter, then public opinion on foreign policy issues could become a more potent electoral issue” (Kapur 2009, 290).

Moreover historically, Wojczewski argues, India has been regarded a responsible power that believes in peaceful co-existence with other states in the international community and can work its way through differences in the world owing to its own diverse interests and identities. (Wojczewski 2017, 7-8) Thus, while India extends its support to advocates of cultural sovereignty at the UN, India's self-proclaimed moral superiority over the West is one of the reasons why India taking an anti-queer position—that cannot be covered in the garb of principled politics—would be detrimental to its self-image. Besides being identified “pathological”, India would lose claims to moral superiority. Rahul Rao rightly points out that the “internationalization of LGBT rights” has taken on “the character of a modern day civilizing mission” with those states that have failed to recognize sexual diversity are at the risk of being characterized as “backward and uncivilized” (Rao 2011, 43). Rao has also argued that the split is pronounced at the geopolitical terrain where the ‘Third World’ stands divided into camps of the ‘rising’ and the ‘rogue’. This pits locations of hope like India, South Africa and Brazil against locations of phobia like Iran, Uganda and Jamaica. He contends that one important reason behind India's inclusion into the former category is its critical elite opinion against Sec 377. He argues that such reactions serve as confirmations of Indian modernity, helping the state dissociate itself from Orientalist imaginings of its past self as pre-modern as also underdeveloped and phobic (Rao 2014, 3). This has helped India maintain its image as the ‘location of hope’ despite the state's political efforts to resist the recognition of human rights of LGBTQ people at the international level. To further reinforce this image, India has carefully constructed and relentlessly espoused an anti-phobic narrative which however has been challenged and questioned by critical voices emanating from its civil society

However, regardless of the lack of credibility attached to such a narrative owing to the skepticism raised by critical voices, it is precisely this narrative, along with adverse reactions that it garnered, India sustained its image as the ‘location of hope’. The Indian state seems to be aiming to occupy a middle ground between queer-friendly and queer-phobic both domestically and internationally. By doing so, internationally, it tried to evade falling victim to what Jon Binnie calls ‘new racism’ in international politics which is based on tolerance and recognition of LGBTQ rights that a state can afford becoming a “measuring point of a nation's success at developing” (Binnie 2004,68). Domestically, India's non-committal stance on LGBTQ issues at the international level, laced with anti-phobic justifications that it offered, also appeared to be attempts to tread the middle path between queer-friendly and queer-phobic. Combined with the awareness of ‘new racism’ as also the hierarchization of world politics around LGBTQ issues and domestic challenges to governance India might face owing to an overtly anti-queer posturing, India's attempts at re-imagining itself in the 21st century is worthy of scholarly attention.

Torri argues, “rarely has the image of a major country changed so rapidly and completely as the image of India during the past twenty years” (Torri 2011, 29). As soon as the economy was liberalized, India came to represent an untapped but lucrative market, a profitable destination for foreign investors. This was the new India that was waiting to be explored. In sharp contrast, its older self was found to be incommensurate with this “new” India and its

aspirations. Kaur argues, “India’s potential and its realization are attributed to the new nation, whereas the old nation in opposition constitutes its limits” (Kaur 2013). Elsewhere, Kaur posits that the task of nation branding holds significance for neoliberal India which manifests a desire to be “post exotic” (Kaur 2015, 4). However, while mindful of the compulsions of the time, India also appears reluctant to abide by dominant norms and standards set by major powers in North America and Western Europe who often appear imperial in their intentions. Kelly Kollman and Matthew Waites caution that the human rights discourse authenticated by the West that accommodates LGBTQ rights is often politically motivated. The Global South views them with a fair amount of scepticism which has heavily influenced the human rights politics of postcolonial states. The likes of the USA and UK governments, have often employed the trope of human rights to derive sustained political benefits, particularly the rights of women and human rights relating to sexual orientation, especially during the Global War on Terror in the aftermath of the 9/11 attacks. This scepticism has also been reflected in India’s international in/actions.

In a revealing assertion, former foreign secretary Kapil Sibbal had remarked in 2012 that India does not “want to get co-opted into the existing international order that is controlled by the West. It must find its due place in its own right and be in a position to change the rules rather than simply adhere to existing ones” (Wojczewski 2017, 8). This is reminiscent of India’s political values during the Cold War when it had proclaimed to be non-aligned and had denied joining either camp in 20th century’s conflicted politically binarized world order. To what extent India had stayed true to its commitment is beyond the purview of this paper but it suffice to say that India carries with it the legacy of subverting dominance and contesting hegemony in the global political order since its independence in 1947 and charting alternative courses in world politics which has often served it well. However, in this arduous process, India has also gone through several transformations itself, having felt the urgency of re-imagining itself when faced with Orientalist challenges about its underdevelopment. India has had to prove its modernity time and again, particularly to evince its commitment to development.

Partha Chatterjee argues, “Ours is the modernity of the once-colonized. The same historical process that has taught us the value of modernity has also made us victims of modernity. Our attitude to modernity, therefore, cannot but deeply be ambiguous...we know that to fashion the forms of our modernity, we need to have the courage at times to reject the modernities established by others” (Chatterjee 1997: 20). India has not disavowed modernity but has professed commitment to it in its own terms without dissociating from what it understands to be its cultural values and realities. However, the Indian state’s postcolonial politics that has had an influence on the practice of its human rights politics foregrounds a particularly truncated notion of Indian culture and its cultural self-imagination. As a consequence, India is often attempted to be made through deliberate “unmakings”. This involves “selective appropriation and wilful rejection of India’s past and present histories” (Ahmed 1996 cited in Narrain 2004, 144). Parts of India’s cultural history and memory are erased to project onto it a heteronormativized cultural self-imagination which invisibilizes India’s diverse history and queer sociality. By joining forces with advocates of cultural sovereignty, India has further

reinforced this truncated notion of India's cultural past and, as a result, has been able to articulate its own definition of human rights, and practices its own brand of rights politics, where the LGBTQ has been conveniently left out of the statist conception of the 'human' and hence effectively 'dehumanized'. Mythical cultural values have been reified and have been allowed to command a formidable authority. In this bid, like other adherents of cultural sovereignty, India has often voluntarily indulged in, 'political homophobia' to construct its "national identity against a permissive 'Western Other'" (Anthony Chase 2016, 705) at the international level as is revealed through interrogation of its rights politics. However, India's national identity based on an exclusive culture premise is problematic. The next section of the paper offers a brief discussion of India's cultural past and sheds light on what this means for India's defense of cultural sovereignty at the international level.

### **Queering Indian culture**

From different conservative political quarters, a view has emerged that homosexuality has never had a place in Indian culture.<sup>2</sup> By advocating for cultural sovereignty and opposing LGBTQ issues from being promoted further at the UN, the Indian state has not been able to gauge the extent to which Indian cultural past was sexually diverse. Ruth Vanita and Saleem Kidwai suggest a general attitude of tolerance in pre-19th century India towards same-sex relationships. Nobody in India is ever known to have been persecuted for homosexuality, unlike the "West" where men found engaging in homosexual activities were often subjected to torture; they also earned vilification and faced legal execution for it. Women were also persecuted till 18th century for the same crime (Vanita and Kidwai 2000, 194-195). However, it was with the advent of the British colonial authority in the Indian sub-continent that the era of indifference towards homosexuality came to an end. British influence in the sub-continent initiated the creation of a climate of intolerance towards homosexuality by regulating sexual behavior among men in its Imperial Army.

Venereal diseases, which were sharply on the rise among men serving in the Army in colonial India, were considered a major threat. British rulers feared that the absence of wives would encourage those men in the service to become replicas of Sodom and Gomorrah. Viceroy Elgin believed that such a condition would persuade them to engage in homosexual activities, which he termed 'special Oriental vices'. Thus, in order to prevent men from becoming inflicted with these 'oriental vices' colonial authorities started running regulated brothels (Bhaskaran 2002, 17). From 17th century onwards, British colonial authorities started regulating desire based on its own Judeo-Christian morality. Colonial control of desire was further reinforced in 1861 as homosexuality was criminalised by law with the introduction of

---

<sup>2</sup>See: Indian health minister under fire for homosexuality remarks, July 5 2011, *The Guardian*, <https://www.theguardian.com/world/2011/jul/05/indian-health-minister-homosexuality-remarks>; Human Rights Watch, December 17, 2008, *This Alien Legacy: The Origins of Sodomy Laws in British Colonialism*, <[https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism#\\_ftn2](https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism#_ftn2)>

Section 377 into the Indian Penal Code. Thus, India's domestic legal norm pertaining to homosexuality was introduced by the British in India which framers of the Indian Constitution after independence retained. However, Britain decriminalised homosexuality in 1967.

If one traces the literary history of India, queer lives find their space. The Markandeya Purana has the story of Avisikta, the son of a king who was averse to marriage, as he identified as a woman. The story of Teeja and Beeja is popular in Rajasthani folklore. In a version by VijaidanDetha, Teeja and Beeja, two women, are promised to be married to one another by their fathers. Beeja is raised as a boy and subsequently married as a man to Teeja. However, after marriage, on the insistence of Teeja, Beeja starts to dress as a woman. Soon they end up earning the ire of villagers who drive the couple out. They pray to compassionate apparitions who make Beeja turn into a man. However, Beeja as a man turns out to be a bully, making Teeja run away from him. In the end, the two live together as women, in a forest outside of society (Roy 2012).

Pattanaik narrates a story from SkandaPurana in Shikhandi and Other Tales They Don't Tell You. Ratnavali, is the daughter of the king of Anarta who shares a powerful "friendship" with the daughter of the king's priest, Brahmini. They feel so strongly for each other that they refuse to be separated after marriage. They confess that they would prefer death over separation. Their relationship is not admonished but accepted. It is also accorded some respect when the king, having valued the girls' wishes to not be separated from each other, decides to marry them off in the same household. It is decided that King Brihadbala of Dashana and Ratnavali would be married and his priest would be married to Brahmini. However, as fate would have it, neither of the marriages ultimately takes place. As King Brihadbala refuses to marry Ratnavali, Brahmini rejects his priest's proposal. They leave their parents home for a forest where they perform penance. In the end, both of them are blessed by Shiva. Pattanaik pertinently asks, "Are the gods indifferent to, or indulgent of, the homoerotic nature of the relationship?" (Pattanaik 2014: 61)

Khan argues, "Indian histories are replete with evidence of homosexuality. Mughal (15th century onwards) paintings and poetry are often explicitly homoerotic. There is an abundance of Hindu temple carvings and iconography that show same-sex sexual behaviours. Konarak, Khajarah, and other sites become places of pilgrimage for the diasporic Indian lesbian or gay man." However, he also cautions against seeking validation from the past. "Our existence is our own validation, however we may label ourselves" (Khan 2001, 105). His study primarily provides insights into the invisibilization of the "rich diversity of alternate sexualities" that exist in India even though individuals may either not be in a position—or be unwilling—to identify themselves as either gay, lesbian or bisexual and instead lead knowable private lives that fit normative standards of heterosexual cohabitation, often within institutions of marriage. Such fluid sexual cultures belie India's attempt to foreground a mythical public culture that can be homogenized.

Apart from the cultural sovereignty argument, India's domestic judicial situation was also used to make a case in its defence and can be debunked.

### **Queering the Indian judiciary**

In 2009, Delhi High Court decriminalised homosexuality declaring that Section 377 violates Arts 21, 14 and 15 of the Constitution of India and is hence unconstitutional. However, the verdict was challenged by Suresh Kumar Koushal who moved the Supreme Court against the Delhi High Court judgment. He became one of the petitioners in the case with Naz Foundation. Firmly believing that it was his moral responsibility and duty to protect cultural values of the Indian society, Koushal's appeal made possible the retention of Sec 377 (Pisharoty 2013). In 2013, the Supreme Court of India, overturning the landmark Delhi High Court ruling which was regarded as having "decriminalized homosexuality" in India, had merely refused to declare Sec 377 of the IPC unconstitutional (Venkatesan 2013). However, the verdict of the Supreme Court, widely criticised by the media for not being able to deliver justice to vulnerable people of India's population, had not been essentially anti-queer.

Even though the verdict was problematic, a close reading of the Supreme Court's 98 page judgment of 2013 The Court insinuated that its intention was not to become the moral guardian of the state to condemn queer practices. Moreover, the judgment cited cases of sexual violence committed against women and children that were entertained under Sec 377.. It clearly stated in the ruling, "We are apprehensive of whether the Court would rule similarly in a case of proved consensual intercourse between adults." Sec 377 criminalized certain acts which had to be established in a trial conducted in accordance with the provisions of Code of Criminal Procedure and other status related to it. Thus, the Supreme Court claimed that the High Court was not right to declare Sec 377 ultra vires Arts 14 and 15 of the Constitution of India. The implication was that the declaration of an individual being queer was not punishable by law, neither was sexual engagement between consenting adults in private. It also asserted that Sec 377 does not criminalize people of a certain sexual orientation or identity. The section only criminalized acts which would be considered an offence, privileging cases of sexual violence over consensual sexual activity between adults. It stated:

"...Sec 377 does not criminalize a particular people or identity or orientation. It merely identifies certain acts which if committed would constitute an offence. Such a prohibition regulates sexual conduct regardless of gender identity and sexual orientation."

In the verdict, the Supreme Court of India further stated that:

"Respondent 1 attacked Sec 377 on the ground that the same has been used to perpetrate harassment, blackmail, torture on certain persons, especially those belonging to the LGBT community. In our opinion, this treatment is neither mandated by the section nor condoned by it..."



The Court also held that while it was understood that the section had been misused by police authorities, the legislature could take this into account while judging the desirability of the section in the Indian Penal Code. Moreover, the verdict declared that the Court is always guided by the presumption of constitutionality, keeping with the spirit of democracy where the virtue of the legislature has to be respected. As an elected representative body, the legislature is thought to be imbued with a strong sense of people's interests and needs and is believed to respond to the best of its ability. Like any other law, Sec 377 was also regarded as the expression of the will of the people as manifested through the Parliament in keeping with constitutional norms. Moreover, it was pointed out that, no conviction against LGBT people under Sec 377 had taken place in independent India (Semmlar 2014, 289).

India abstained on a resolution passed by the UNHRC in September 2014 that sought to battle discrimination and violence against queer people across the world. However, it was only a few months prior to the adoption of that resolution that Supreme Court of India in the landmark NALSA verdict had made a stunning declaration:

“Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom” (NALSA v. Union of India).

This argument would find pride of place in 2017 when India faced UPR for the third time, evidencing that it had not escaped the notice of Indian political elite.

The NALSA verdict generously referred to United Nations and other human rights bodies that carefully deal with sexual orientation and gender identity to make a case for legitimate inclusion of transgender people in Indian society. It acknowledged that the United Nations actively advocates for the protection and promotion of rights of sexual minorities and made references to Yogyakarta Principles which had applied issues of sexual orientation and gender identity to a wide range of existing international human rights standards. The Court brought to attention the fact that Yogyakarta Principles enjoy the endorsement of UN bodies, Regional Human Rights Bodies, National Courts, Government Commissions and the Commissions for Human Rights, Council of Europe etc. These bodies, organs of government and institutions regard Yogyakarta Principles a powerful tool for identifying State obligations to respect, protect and realize human rights of all persons. The verdict obligated the Indian state to respond to the needs of transgender people but while establishing a case for it; it urged the State to act in deference to the universal human rights standard evolved at the international level.

Primarily, the NALSA judgment asserted on behalf of transgender individuals that they have the right to determine their gender preferences independent of the sex assigned at birth. It also stated that transgender individuals have the right to be recognized as male, female or third gender regardless of any medical involvement in matters of such identification. It secured for trans people, the right to equality and equal protection under Arts 14, 15 and 16 of the Constitution of India. Discrimination on the ground of gender identity and sexual orientation

was also prohibited through this landmark verdict. However, despite the verdict India abstained on resolutions sought to protect LGBT people from violence and discrimination (UNHRC 2014). India's move ignored the verdict of the Supreme Court that prohibited discrimination against transgender persons by emphasizing on non-discrimination and the universal nature of human rights. India chose to ignore the fact that transgender people constitute an invaluable part of LGBTQ communities worldwide and their lives run the risk of being negatively impacted by conservative politics of states. There is little in judicial verdicts which urge the Indian state to stay silent or become hostile to UN adopted measures aimed at battling discrimination and violence against LGBTQ people. It is the wilful rejection of progressive aspects of judicial verdicts that lead India to not recognize the human rights of LGBTQ people.

However, when India finds it convenient to do so, it allows itself to engage critically with judicial pronouncements and echoes the queer friendly voice of the judiciary, disregarding the dominant uni-dimensional approach to verdicts it otherwise advocates to battle queer friendly measures at the international level. However, judges are entrusted with the responsibility to uphold the law of the land, its job is not to legislate. The job of making laws, taking into account the needs and interests of people, is that of the legislature which is composed of elected representatives of the State. But whenever efforts were made to introduce pro-queer legislations in the Indian Parliament before the Supreme Court's historic verdict in 2018, they were met with strong resistance from India's elected representatives in the Lok Sabha (Hindustan Times 2016). When an alternative reading of the verdict of the Supreme Court was entertained, it was revealed that the judiciary had not outlawed non-normative sexual and gender identities. Selective reading of judicial verdicts on LGBTQ issues aided India's stance on LGBTQ issues at the international level and had been used as an effective shield by India to defend itself against allegations of discriminatory political behavior against queer people. In the ultimate analysis, the political elite come across as lacking in the will to embrace or partake in pro-queer measures being adopted at the international level. The domestic legal quandary was a frequently cited reason, and hence become the most dominant one, enabling India to frame its anti-phobic narrative. However, as evidenced in this section, such an argument did not hold water since India appeared hostile to the growing assertion of pro-LGBTQ groups even as it tried to give an impression of indifference.

## **Conclusion**

India's actions and inactions evidenced that the state resisted various times attempts that were made to queer the human rights agenda at the UN, by lobbying with defenders of cultural sovereignty—However, the Indian state at the UN selectively appropriated India's cultural values in opposing LGBTQ rights, neglecting India's cultural realities before colonization which have not been found to be phobic or intolerant where sexual cultures existed heterogeneously. Homophobia was institutionalized with legal validation by India's erstwhile colonizers. Moreover, the argument that India made about its domestic judicial situation being a propeller of its international actions failed to be a convincing one. Despite trying to

foreground an anti-queerphobic narrative, India indulged in “political homophobia” at the international level. Interrogation of its in/actions on LGBTQ rights made it appear queerphobic. However, India’s attempts to construct an anti-phobic image by leveraging tactical rhetorical devices to its advantage are significant. India, caught between tradition and modernity, modernity and neoliberalism, and power struggles between the Global North and the Global South, found itself in a position where its unwillingness to recognize LGBTQ rights as human rights could only be justified with an anti-phobic narrative if it had to escape Orientalist characterization of itself as “pathological”. Hence, even as India opposed LGBTQ rights at the UN it was unwilling to be identified as a phobic nation. Political scepticism, distrust of major powers combined with India promoting a truncated notion of its culture and offering convenient readings of judicial verdicts exposed its unwillingness to support LGBTQ rights, thereby making it appear phobic despite cunning politically correct sophistry.

## References

**Balakrishnan, Pulapre, 2018, Sexual equality affirmed: on the Section 377 verdict, The Hindu, 7 September, Available at:**

<https://www.thehindu.com/opinion/op-ed/sexual-equality-affirmed/article24885395.ece>

Bhattacharjee, Kallol, 2016, India abstains at UN vote on LGBT Independent Expert, The Hindu, 1 July, Available at:<http://www.thehindu.com/news/international/India-abstains-at-UN-vote-on-LGBT-Independent-Expert/article14465779.ece>

Binnie, Jon, 2004, *The Globalization of Sexuality*, London: Sage Publications

Chase, Anthony Tirado, 2016, Human Rights contestations: sexual orientation and gender identity, *The International Journal of Human Rights*, 20(6), 703-723

Chatterjee, Partha, 1997, Our Modernity, SEPHIS-CODESRIA lecture, Issue 1, Council for the Development of Economic and Social Research in Africa.

Commission on Human Rights, 2003, E/CN.4/2003/L.92: Promotion and Protection of Human Rights. [Online]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G03/138/18/PDF/G0313818.pdf?OpenElement> [11 December, 2017]

Dave, Naisargi, 2012, *Queer Activism in India: A Story in the Anthropology of Ethics*, United States of America: Duke University Press

Davis, Rebecca, 2015, Analysis: This time South Africa held its own at the UN, Daily Maverick, 6 July [online] Available at: <https://www.dailymaverick.co.za/article/2015-07-06-analysis-this-time-south-africa-held-its-own-at-the-un/#.WY-Bg1UjHIU> [Accessed 11 2017]

Haider, Suhasini, 2015, India vote at U.N. not anti-gay, explains government, The Hindu, 26 March Available at: <http://www.thehindu.com/news/national/india-vote-at-un-not-antigay-explains-government/article7032970.ece> [Accessed 11 2017]

Human Rights Watch (HRW). 2008 UN: General Assembly Statement Affirms Rights for All. 18 December [Online] Available at: <https://www.hrw.org/news/2008/12/18/un-general-assembly-statement-affirms-rights-all> [11 December 2017]

Kapoor, Ilan, 2015, The Queer Third World, *Third World Quarterly*, 36(9), pp. 1611-1628.

Kapur, Devesh, 2009, Public Opinion and Indian Foreign Policy, *India Review*, 8(3), pp. 286-305.

Kaur, R, 2013. *New Imaginaries of Otherness in Post-reform India*. In Surinder Jodhka (ed.), *Interrogating India's Modernity: Democracy, Identity and Citizenship*, Oxford University Press.

Kaur, R, 2015. *Post-exotic India: on remixed histories and smart images*. *Identities: Global Studies in Culture and Power*.

Khan, Shivananda, 20001, Culture, Sexualities, and Identities, *Journal of Homosexuality*, 40: 3-4, pp. 99-115.

Kollman, Kelly and Matthew Waites, 2009, The global politics of lesbian, gay, bisexual and transgender human rights: an introduction, *Contemporary Politics*, 15(1), pp. 1-17.

Miller, Hayley, 2014, United Nations Adopts Resolution Excluding LGBT Families, Human Rights Campaign, 30 June [Online]. Available at: <http://www.hrc.org/blog/united-nations-adopts-resolution-excluding-lgbt-families> [Accessed 11 2017]

Mitra, Devirupa, 2016, India Backed Amendments Moved by Islamic Bloc Against LGBT Rights at UN, *The Wire*, 2 July [online]. Available at: <https://thewire.in/48062/india-backed-amendments-moved-by-islamic-bloc-on-lgbt-rights-at-un/> [Accessed 11 2017]

Narrain, Arvind, 2004, The Articulation of Rights around Sexuality and Health: Subaltern Queer Cultures in India in the Era of Hindutva, *Health and Human Rights*, vol. 7, no.2, pp. 142-164.

National Legal Services Authority (NALSA) v Union of India and Others (2014) 5SCC 438

Naz Foundation Trust v. Suresh Kumar Koushal 2016

Naz Foundation v. Government of NCT 160 DLT 227

NDTV. 2016. Should India have voted for LGBT Rights at UN? [online video] Available at: <https://www.youtube.com/watch?v=FF5BZJ6-HVs> [Accessed on 14 December 2017]

OutRight Action International, 2009, United Nations: General Assembly Statement Affirming Human Rights Protections Include Sexual Orientation and Gender Identity. August 7. [online] Available at: <https://www.outrightinternational.org/content/united-nations-general-assembly-statement-affirming-human-rights-protections-include-sexual> [Accessed on 14 December 2017]

Pattanaik, Devdutt, 2014, *Shikhandi and Other Tales They Don't Tell You*, New Delhi: Zubaan and Penguin India

Permanent Mission of India, Geneva. 2014. Explanation of Vote on the draft resolution on 'Protection of Family', 26th June, 2014. [online]. Available at: <http://www.pmindiaun.org/pages.php?id=969> [Accessed 11 2017]

Rao, Rahul, 2011, Queer in the Time of Terror, In Arvind Narrain and Alok Gupta (eds.) *Law Like Love: Queer Perspectives on Law*, New Delhi: Yoda Press.

Rao, Rahul, 2014, Queer Questions, *International Feminist Journal of Politics*, 16(2), 169-199

Reid Graeme, 2012, 'Traditional values' code for human rights abuse?. *Human Rights Watch*, 17 October [online] Available at: <https://www.hrw.org/news/2012/10/17/traditional-values-code-human-rights-abuse> [Accessed 11 December 2017]

Saiz, Ignacio, 2004, Bracketing Sexuality: Human Rights and Sexual Orientation: A Decade of Development and Denial at the UN, *Health and Human Rights*, 7(2), pp. 48-80.

Scroll.in, 2016, Supreme Court asks Constitution Bench to re-examine its Section 377 verdict, February 2 [online] Available at: <https://scroll.in/latest/802884/supreme-court-agrees-to-re-examine-its-section-377-verdict> [Accessed 14 December 2017]

Semmalar, 2014, Unpacking Solidarities of the Oppressed: Notes on Trans Struggles in India, *Women's Studies Quarterly*, vol. 32, no. 3/4, pp. 286-291.

Slomanson, William, 2010, *Fundamental Perspectives on International Law*, 6th edition, United States of America: Wadsworth Cengage Learning.

Suresh Kumar Koushal and Anr. V. Naz Foundation and Anr. (2014)

The Indian Express, 2015, India votes against gay rights for UN employees, March 26 [online] Available at: <http://indianexpress.com/article/india/india-others/india-votes-against-gay-rights-for-un-employees/> [Accessed 12 December 2017]

United Nations Human Rights Council, 2008, Universal Periodic Review: Report of the Working Group on the Universal Periodic Review-India, 1st session, UN doc., A/HRC/WG.6/1/IND/1 Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/112/43/PDF/G0811243.pdf?OpenElement> [Accessed 12 December 2017]

United Nations Human Rights Council, 2009, Draft Resolution 11/L.1: Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind. 11th session. UN doc. A/HRC/11/L.1 [Online]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G09/141/06/PDF/G0914106.pdf?OpenElement> [Accessed 11 December 2017]

United Nations Human Rights Council, 2009, Resolution 12/21: Promoting Human Rights and Fundamental Freedoms Through a Better Understanding of Traditional Values of Humankind. 12th session. UN doc. A/HRC/RES/12/21 [online]. Available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G09/167/24/PDF/G0916724.pdf?OpenElement> [Accessed 11 2017]

United Nations Human Rights Council, 2011, Resolution 17/19: Human Rights, Sexual Orientation and Gender Identity. 17th session, UN doc., A/HRC/RES/17/19 [online]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement> [Accessed 11 2017]

United Nations Human Rights Council, 2012, Resolution 21/L.2: Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind: Best Practices. 21st session. UN doc., A/HRC/21/L.2 [online]. Available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/LTD/G12/168/73/PDF/G1216873.pdf?OpenElement> [Accessed 11 2017]

United Nations Human Rights Council, 2014, Resolution 26/11: Protection of the Family. 26th session. UN doc. A/HRC/RES/26/11 [online]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/086/78/PDF/G1408678.pdf?OpenElement> [Accessed 11 2017]

United Nations Human Rights Council, 2015, Resolution 29/22: Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development. 39th session. UN doc., A/HRC/RES/29/22 [online]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/163/18/PDF/G1516318.pdf?OpenElement> [Accessed 12 December 2017]

United Nations Human Rights Council, 2016, Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity, 32nd session, UN doc., A/HRC/RES/32/2 [online]. Available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/RES/32/2](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2) [Accessed 11 December 2017]

United Nations Human Rights Council, 2017, Universal Periodic Review: Report of the Working Group on the Universal Periodic Review-India, 27th session, UN doc., A/HRC/WG.6/27/IND/2 Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/044/56/PDF/G1704456.pdf?OpenElement> [Accessed 12 December 2017]

United Nations Human Rights: Office of the High Commissioner, Basic Facts about the UPR, [online] Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> [Accessed 14 December 2017]

United Nations Human Rights: Office of the High Commissioner, Universal Periodic Review-India, [online] Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/INIndex.aspx> [Accessed 14 December 2017]

United Nations, 2003, Commission on Human Rights Approves Measures on Promotion and Protection of Human Rights, Other Issues, 24 April [online] Available at: <http://www.un.org/press/en/2003/hrcn1045.doc.htm> [11 December 2017]

United Nations. Budget Committee Rejects Draft Decision to Withdraw Current Personal Status Rules for Determining Staff Benefits and Entitlements. [press release] 24 March 2015. [Online]. Available at: <http://www.un.org/press/en/2015/gaab4150.doc.htm> [Accessed 11 2017]

Vanita, Ruth and Saleem Kidwai (eds.), 2000, *Same-Sex Love in India: Readings from Literature and History*, New York: Palgrave.

Vanita, Ruth, 2005, *Love's Rite: Same-Sex Marriage in India and the West*, New York: Palgrave Macmillan

Venkatesan J., 2013, Supreme Court sets aside Delhi HC verdict decriminalizing gay sex, *The Hindu*, December 11, Available at: <http://www.thehindu.com/news/national/supreme-court-sets-aside-delhi-hc-verdict-decriminalising-gay-sex/article5446939.ece> [Accessed 14 December 2017]

Weber, Cynthia, 2016, *Queer International Relations: Sovereignty, Sexuality and the Will to Knowledge*, New York: Oxford University Press.

Wilkinson, Cai, 2014, Putting "Traditional Values" Into Practice: The Rise and Contestation of Anti-Homopropaganda Laws in Russia, *Journal of Human Rights*, 13(3), pp. 363: 379.

Wojczewski, Thorsten, 2017, India's vision of world order: multi-alignment, exceptionalism and peaceful co-existence, *Global Affairs*, pp. 1-13.

Worsnip, Patrick, 2008, U.N. divided over gay rights declaration, *Reuters*. 19 December. [online] Available at: <http://www.reuters.com/article/us-un-homosexuality-idUSTRE4BH7EW20081219> [Accessed 11 December 2017]

### **Acknowledgements:**

I would like to thank Dr. Jayashree Vivekanandan and Dr. Soumita Basu for their invaluable comments on an earlier draft of this paper. I am also very grateful to the anonymous reviewers of this issue for helping me think through some of the critical ideas in this paper.

### **Biography**

**Sohini Chatterjee** holds an MA in International Relations from South Asian University, New Delhi and is currently an independent researcher working at the intersection of gender, sexuality and politics.

**Email:** [sohiniswapanchatterjee@gmail.com](mailto:sohiniswapanchatterjee@gmail.com)