

PROJECT DESCRIPTION

Doctoral Dissertation Research— Governing Sexualities: Law, Biopower, and Citizenship in Postcolonial India.

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OBJECTIVES:

By examining discursive struggles around sexuality in contemporary India, I show how and when the legal status of sexuality becomes used by individuals and communities to make political claims about their relations in and to the post-colonial nation-state. The ‘modern’ legal system introduced by British colonial rule installed state regulation of homosexuality and sex work in India. I look at when and how homosexuals and sex workers challenge these regulatory discourses and practices, considering these as post-colonial contestations over the legal and cultural meanings of “tradition” and “modernity.” I ask two primary questions: First, how do the legal and political challenges of these two groups become articulated in the face of local needs and practices and in the context of globalization and transnational concern about HIV/AIDS; and second, what do these challenges reveal in general about state power over how human bodies are used (biopower) in a postcolonial context and in specific about the connections between sexuality and modernity in the law at the national-level in India? By bringing modernity, biopower, sexuality into an analytical frame focused on state regulation, this study will contribute to feminist, queer, and critical legal studies.

INTRODUCTION:

My project compares two contemporary struggles around state regulation of sexuality in India: the campaign to repeal the anti-sodomy law and the campaign to decriminalize adult prostitution. These campaigns are similar in that they are mobilizations by sexually stigmatized groups, are given energy (and sometimes funding) by global movements around HIV/AIDS and human rights, participate in transnational discourses about modernity, tradition, liberalism and law, and reflect the particulars of local needs through the lens of legal reform movements. Both struggles are not only about redefining the appropriate realm of the state in interventions in ‘private’ consensual sex and about the expansion of liberal notion of rights to include the experiences of the homosexuals and sex workers, but also about family, kinship and ‘appropriate’ sexuality as warrants for claiming citizenship in a nation-state. They are different in their specific claims, the gender composition of the movements, and their relationships to transnational discourses and organizations. By comparing the two campaigns, I will be able to show the interconnections among the legal rights claims made by subordinated social groups, the state’s formal and informal regulatory practices over sexuality and citizenship, and the transnational discourses about freedom, sexuality, rights and morality to which both refer.

In the past decade, social movements challenging India’s sodomy and prostitution laws (Kapur, 2005; Narrian and Bhan, 2005; Menon, 2007) have become increasingly visible, and in the context of the AIDS pandemic, debates over the regulation of sexuality have taken on new urgency. Because India is a nation with a large HIV-positive population and a recipient of transnational funding and resources, the AIDS crisis has led to heightened concern about and surveillance of so-called ‘at-risk populations,’ including homosexuals (mostly in the epidemiological category “Men having sex with men” or MSMs) and prostitutes (mostly in the categories of “trafficked women” and “streetwalkers”). These discourses linking AIDS and sexuality have opened up new spaces of contestation between state actors and social movements.

On the one hand, policy makers who view homosexuals and prostitutes as primary transmitters of the disease and thus as guilty of “defiling” India use the fear of AIDS to legitimate intensified state surveillance of these groups in particular, and of sexuality even more broadly, though not necessarily in the same ways for men and for women. Moreover, the post-colonial language of regulation carries assumptions about AIDS as a “Western contamination,” a disease “imported” into India through a

“promiscuous Western lifestyle.” On the other hand, the language of human rights and liberal freedom of expression is arguably as “western import” as well, and the laws suppressing homosexuality and prostitution that are being challenged are themselves regulations introduced by the British colonial authorities into India. The post-colonial challenges to colonial regulations are defined by the state and civil societal actors as a threat to “Indian values” and as an import from the modern West, the study explores these paradoxes. It also examines the tension in how the challengers participate in a global mobilization for human rights at the same time as they deploy their own locally situated Indian identities and histories to confront stigma and marginalization that is also transnational.

Since one response of the Indian nation-state to these challenges is to argue that deregulation of homosexuality and sex work would introduce Western ‘contamination’, the contradictions in using colonial laws to fight ‘Western’ ideas and diseases become unmistakable. These paradoxes and contradictions make the Indian case an excellent choice for exploring the connections among ‘local’ regulatory practices and legal reform efforts and transnational discourses and resources.

RESEARCH QUESTIONS:

- First, I ask how the **legal regulation** of sexuality was bound up in the creation of the colonial nation-state and what challenges did and did not emerge in the postcolonial context before 1990. The issue here is what constitutes a “citizen” and how normative sexuality is made part of citizenship in post-colonial India. This issue is addressed with historical analysis of official discourses, policy development and struggles over self-determination found in state and group archives.
- Second, I ask what form **contemporary resistance** takes in both movements: how do efforts to widen the legal inclusion of those who engage in non-normative sexualities as persons with rights (citizens) vary with the similarities and differences in members’ gender, group organization, consciousness of rights and exclusion from having rights, ideas about the citizenship, state, modernity and tradition in each separate movement? This aspect is addressed with ethnographic comparative study of local and national groups in New Delhi that are mobilizing for the de-criminalization of sodomy and prostitution.
- Third, I look at the **intersection of the transnational and the local**. I ask how globalization, HIV/AIDS, and human rights regimes have shaped the two parallel struggles around the legal de-regulation of homosexuality and sex work in India. What transnational resources (from governments and NGOs) support which ideas? Which of them have salience among specific actors and why? How do these transnational resources and activists reshape debates around sexuality in India? What do these local struggles say about sexuality, westernization and modernities more generally? These questions are pursued with interviews and document analyses with the local and transnational groups engaged in these two campaigns.

In some ways homosexuality and prostitution pose profoundly different challenges to the nation-state. While both these groups have a common history of stigmatization and criminalization, and have equally become targets of state public health interventions in the context of HIV, each group experiences legal regulation in distinctive ways, mobilizes different claims, and present different contradictions to the state, social movements, and the individual actors. Whereas Indian state and civil societal actors can frame homosexuality as foreign and western, the presence of socially and culturally sanctioned religious prostitution in India before the colonial period places the postcolonial state in a dilemma with regard to punishing prostitution. Both sodomy and prostitution are also differently visible in urban and rural settings and for actors who can afford to purchase more privacy. Moreover, in the context of global tourism, states have come to rely on sex tourism for revenue (Kempadoo and Doezeema, 1998; Cabezas, 2004; Davidson and Taylor, 2005). Not surprisingly, therefore, the state penalizes certain forms of prostitution and overlooks others. By bringing both issues into a comparative analysis of how states regulate and members resist the regulation of non-normative sexualities, the conflicting interests of the state in regulation become more apparent.

Additionally, both non-normative sexualities are differentially positioned in relation to “modernity.” The definition of prostitution as a social problem is tied to understanding the “women’s condition” as unjust and oppressive, and suppressing “the traffic in women” has been the focus of feminists from the British women reformers of the late 19th century British empire to the transnational feminist movements in the present (Doezema, 2001; Burton, 1999; Kapur, 2005). Since one of the promises of modernity is to elevate the condition of women, decriminalization of prostitution can imply endorsing the exploitation of women and therefore as a threat to modernity. By contrast, the repeal of the sodomy law marks a nation-state as “tolerant” and “modern.” The different ways in which the activists’ challenges to state regulation are positioned with regard to modernity then affect their access to state and transnational resources. Feminist divisions over the meaning and regulation of prostitution are still profound (Sundar Rajan, 2003; Menon, 2007), while the global discourse about homosexuality is divided more sharply between Christian and secular moral evaluations, making religious and nationalist discourses of non-Christian states such as India open to multiple interpretations and alliances. This comparative analysis will focus on how state and non-state actors negotiate these multiple dilemmas and contradictions.

THEORITICAL FRAMEWORK:

To understand the interconnections between “local” and “global” in shaping regulatory practices around sexuality, I situate my questions in a critical legal theory framework that draws on feminist postcolonial theory, queer theory, and theories of globalization.

Modernity and Legal Regulation of Sexuality:

Michel Foucault (1978, 1979) provides an important framework for understanding the relationship between law and different manifestations of power in modern societies. For Foucault the legal domain is not only a site for regulation of social behavior, but also a site where subjects and discourses are produced. The modern regulatory aspect of law, according to Foucault, should not be understood merely as conferring power to the state, but should be seen as intervening in the social construction and government of modern subjects. For Foucault, “it is a question not of imposing law on men, but of disposing things that is to say, of employing tactics to arrange things rather than laws, and even of using laws themselves as tactics to arrange things in such a way that, through a certain number of means, such and such ends may be achieved”(1991, p. 95) Therefore, the primary aim of law is no longer merely to prescribe general rules about social conduct, but govern the conduct of the people and groups so as to make them into able ‘bodies’ for proper function of the economy and the state.

Central to Foucault’s work is his notion of bio-power. Biopower is what brings life and its mechanisms into the realm of explicit calculation and makes knowledge/power an agent of transformation of human life. At stake in the management of populations is the regulation of life itself. Hence, bio-politics attends to the biological processes of the collective social body. It is concerned with regulating phenomena such as reproduction and human sexuality, the size and quality of the population, health and illness, living and working conditions, and birth and death. The goal of biopower, according to Foucault, is the optimization of the life of the population as a whole. Biopower as a term expresses how government has assigned itself the duty of administering bodies and managing collective life; thus it amounts to public politics taking charge of private life.

Nonetheless, the governmental needs of the modern state connect the ‘public’ and ‘private’ in a more organic way than acknowledged by liberal political philosophy. Since controlling populations and control of birth rates became pivotal to the function of modern states this creates a condition for ‘sex’ to become object of the state. Foucault argues that over the past few centuries sexuality assumed major symbolic importance as a target of social intervention and organization. This differentiates the state’s relation to the person in this period from those preceding it, and creates “sex” as a form of social regulation shaping the meaning of personhood, which he argues is the most powerful form of regulation in modern societies. He further argues that sex is not just condemned or tolerated, but

managed and regulated by the state for what it claims is the greater good of all. For Foucault, discourses of sexuality are discourses of power and are expressed in the attempts to define, control and regulate bodies through modern societies' production of science, policy and law.

Colonialism, Biopower and Legal Regulation of Sexuality:

As critics have noted, Foucault set up his concepts of bio-power and governmentality in the context of Western Europe. More over, the historical shift that Foucault talks about leading to new notions of political rationality in Europe did not happen apart from Europe's relationship with its colonies. Liberal notions of rights, and law were worked out in the interaction with the colonies (Stoler, 1995; Chakrabarty, 2000; Prakash, 2000; Scott, 2005). But if modernity marks a historical shift in the way in which sexual regulation is experienced, how and when does this shift take shape in contexts where modern law is implanted through violence and rupture by colonial regimes? Were Western notion of purity and pollution around sexuality simply imported into the modern legal systems installed in the colonies? How did the modern legal system affect the sexual and gender experiences of the 'colonized subjects'? These questions are especially important in the Indian context where regulatory practices and discourses around homosexuality and prostitution were explicitly reworked during the encounter with colonial modernity.

While some kind of notions of justice and rights existed in pre-colonial Indian communities, 'rights' in the modern sense were produced by the colonial transformation of indigenous judicial discourse and administrative institutions (Galanter, 1989; Nair, 1996; Menon, 2004). Colonial legal reforms triggered contestations among colonial administrators, nationalist movements, and social reformers on the degree of colonial intervention that can be allowed into the 'private' domain of the colony. Practices such as 'sati', child marriages, *devadasi* system (religious prostitution) etc. were used by the colonial state to justify its intervention through framing this as the lack of modern conceptions of 'justice', 'rights', and 'self-hood' in the colonies (Mani, 1989; Chatterjee, 1989; Sangari and Vaid, 1989)

Governmentality in British India also developed in response to the outbreak of epidemics, death, and famines. This strand represented an effort to act on the population, to nurture its health and cultivate its resources (Prakash, 2000). The Contagious Diseases Act (CDA) passed in 1868 empowered the British colonial state to institute compulsory medical examinations and restrict the mobility of individual prostitutes to protect British soldiers from contracting sexually transmitted diseases (Burton, 1992; Levine, 2000). Although the colonial state at this point did not debate whether prostitution as an institution should exist or not, it worked out an elaborate system of classification, surveillance, testing and confinement of women in Lock hospitals which were specially established for this purpose.

These earlier efforts to control epidemic by the British colonial state established a hierarchy of subjects, for example, the CDA was particularly geared to protecting British soldiers and in this process the colonial state did not hesitate to lock up women who are identified as prostitutes in Lock hospitals, and mandate compulsory testing that often violated their dignity and 'self-respect' (Levin, 2000; Burton, 1992). Thus, colonial governmentality developed in violation of the liberal conception that state is equidistant from the various sub-communities it governs. This makes it more debatable whether liberty and rights could be protected through invoking law. The debate around contagious diseases act also triggered off contestations around legal regulation of prostitution and trafficking in the 19th century.

Postcolonial scholars (Chatterjee, 1989; Mani, 1989; Sangari and Vaid, 1989; Stoler, 1995; John and Nair, 1998) argue that late Victorian notions of sexuality and sexual regulation were not simply brought from Europe and transplanted into the colonies; instead, notions of sexual purity and morality were worked out in relation to power, civilization, gender and race in specific interactions between the colony and the metropole. Within the colonial context, nationalist discourses established their own moral superiority over the "West" by constructing "home" (the private sphere)

as a sphere that is uncontaminated by the “colonial.” Nonetheless, by adopting binary constructions of public/private and Western/non-Western, nationalist discourse was shaped by these Western notions of sexuality and gender, the very discourses it resisted. Hence, nationalist discourse advanced a project of self-reform in the mirror image of the colonial power and, paradoxically, asserted its nationalism by both recuperating a “lost” native sexuality and affirming colonial sexual norms, which had attempted to civilize the natives by introducing stern notions of masculinity, gender, and the place of sexuality in the home (Nandy, 1983; Sinha, 1995; Chakrabarty, 2000).

Colonial intervention in the ‘private’ sphere has not always been uniform. Some postcolonial legal scholars (Mani, 1989; Nair, 1996) argue that colonial state was also cautious about not hurting the sentiments of native (male) reformers, and the legal reforms in the arena of sexuality and gender were contingent on gains it brought to the colonial state. When it came to non-normative sexualities the response of the Indian elite was also varied. By late 19th Century *devadasis*, and prostitutes became the focus of reform initiatives launched by colonial authorities as well as indigenous elites, who together undermined both the material as well as the ideological foundations of the *devadasi* system (Banerjee, 1998; Kannibran1999; John & Nair 1998; Menon 2007). When it came to issues where some sort of female autonomy is expressed, such as control over prostitution and the sexualities of lower caste women, male nationalist desire to protect ‘cultural difference’ becomes even more complicated. This situation according to Menon, produced a paradox: In order for the modernizing male elite-to “continue to be different and autonomous from the colonial order [he must] repudiate proper masculine roles, to be properly modern and masculine[he must] be subjugated to colonial values” (Menon 2007, p. xxii).

Globalization, Sexuality and Biopower:

Legal and social interventions over the 19th and early 20th centuries in India, intimately and explicitly tied to the values of modernity, gradually discipline a range of non-normative sexualities and family arrangements. Vanita (2002) argues that the colonialist and nationalist attempt to rewrite multivocal sexual practices into a univocal, uniform tradition has impacted how sexuality and gender are experienced in contemporary India. In a similar vein, Vanita & Kidwai (2000) argue that the 19th century was a crucial period of transition when a minor strand of pre-colonial homophobia became the dominant voice of the postcolonial mainstream. In the context of globalization, the discussions around Indian sexuality and culture are renewed with new vigor, being understood as presenting new challenges to the sovereignty of the postcolonial nation-state. These struggles themselves are also reconfiguring the ‘core’ of the postcolonial nation-state in the face of powerful forces of Westernization and globalization.

The term “globalization” generally refers to a range of cultural, economic, and political changes, such as the predominance of multinational corporations, the international flow of finance and investment, the emergence of global civil society, and the spread of cultural homogeneity (Fiss and Hirsch, 2005). But it can also be used to refer to the flow of ideas and images, including those around questions of sexuality. A growing body of literature emphasizes globalization as partially homogenizing sexual identities because of the proliferation of U.S.-style sexual politics (Altman, 1997; Champagne, 1999). For example, the emergence of lesbian and gay rights movements in some parts of the non-Western world can be viewed as imitation of the West or even as progress resulting from the influence of the modernized West on the non-modern non-West (Massad, 2002). In this framework, globalization is seen as a unidirectional flow of ideas, resources and images from the West to the non-West.

Others (Manalansan, 2003; Bhaskaran, 2004; Boellstroff, 2005) offer critiques of such discourse, arguing that globalization is a deeply historical and uneven process that does not necessarily imply homogenization or Americanization. Noting that expressions of desire are culturally situated and need to be understood contextually, they define the central problem of global interactions as the tension between cultural homogenization and cultural heterogenization. They argue that sexual identities emerging from the metropol become indigenized as they interact with local identities.

Globalization, especially in postcolonial societies, is also marked by a shift in governmental practices (Ferguson and Gupta, 2005), i.e. the social and regulatory functions of the state are taken over by a proliferation of “quasi-autonomous non-governmental” organizations. These organizations, according to Gupta and Ferguson do not reduce governmental functions and regulations, but they are creating new mechanisms that make “individuals” responsible and “empowered” also to discipline themselves. These transnational non-governmental organizations typically work as alliances forged by local activists and grassroots organizations in many voluntary organizations supported by complex networks of international and transnational funding and personnel.

Such transnational governmentality brings universal notions and discourses of human rights and health in close contact/tension with legal systems within the boundaries of the nation-state. They also cause what Appadurai (1996) calls ‘relations of disjuncture’. The paths or vectors of global flows have different speeds, points of origin and termination, and varied relationships to institutional structures in different regions, nations, or societies. Further, these disjunctions can precipitate various kinds of problems and frictions in local situations.

In this case study I use these ‘disjunctions’ or frictions between state regulation, international governmental practices, and communities to contribute to our theoretical understanding of the development of laws governing sexuality in a post-colonial context. What happens when legal regulations of homosexuality and sex work come in conflict with transnational needs of regulating the spread of the HIV epidemic? How does community mobilization for ‘safe’ sex practices intersect with nationalist discourses about purity and transnational ones about modernity? How may national governmental practices of sexual regulation (biopower) help to mobilize communities of sex workers and gays, who in turn use transnational resources to claim their membership in the nation-state? By focusing on these ‘disjunctions’, my study connects cultural conflict over sexuality and nationhood with struggles around law, governance, rights and the political constraints and resources made available to gay/lesbian and prostitutes’ organizing in the era of AIDS.

EMPIRICAL CONTEXT

Sodomy law and the contestations:

The anti-sodomy law was introduced in India in 1861 by the British colonial state. It defines “unnatural” sexual acts (i.e. carnal intercourse “against the order of nature” with any man, woman or animal) as punishable with imprisonment for life. The first visible challenge to this law arose in 1992, when a protest against police harassment of gay men was organized by a group working for HIV prevention (*AIDS Bhedbhav Virodhi Andholan*) (Narrain and Bhan, 2005). Since then activist groups have filed a number of petitions in the higher courts to overturn the law, often bringing together HIV and gay-rights activists in energetic campaigns. The arrest of four staff members from two organizations working against HIV/AIDS in 2001 in Lucknow on the pretext that they were engaged in “homosexual activities” drew international attention to this issue. And on September 16, 2006, several prominent Indian public figures wrote an open letter to the Indian government highlighting how this archaic colonial law has impeded HIV work in the community defining this as a violation of basic human rights. These contestations have increased the visibility of the law and have made it a rallying point for gay and lesbian activists in India.

Responding to these challenges in the courts, the governing conservative political party argued that homosexuality was foreign to India and the repeal of law would open “the flood gates of delinquency” (Kapur, 2005). The government thereby explicitly linked the legal regulation of sodomy to definitions of authentic Indian morality, even as the courts linked it to matters of transnational human rights. My work addresses how activists engage these arguments: Why was a law that was hardly in use becomes suddenly contentious? What connections do activists make between symbolic power (regulation of sexuality, protecting heteronormativity) and everyday invocations (informal threats by cops at cruising sites, arrests of HIV workers etc.) of the law? How do these legal struggles shape the visibility and articulations of the gay and lesbian movements in the India public sphere?

What notions of rights and freedom do these activists draw on to counter the stigma that is attached to their sexuality? How do they “indigenize” transnational discourses to fit local concerns?

ITPA and the debates around prostitution in India:

The current law that regulates prostitution, the Immoral Traffic Prevention Act (ITPA), was not introduced in India directly by the British but its origins lie in the Contagious Diseases Act (CDA) which was introduced in 1868. The CDA empowered the colonial state to institute compulsory medical examinations and restrict the mobility of individual prostitutes. The campaign against the CDA in Britain, undertaken under the leadership of Josephine Butler, resulted in repeal by 1886. But even after the repeal of the CDA, the colonial state continued to impose close surveillance of women catering to the British troops (Nair, 1996).

The underlying philosophy of the current Immoral Traffic Prevention Act (ITPA) is also a carryover from that of The Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA), originally passed as a result of the United Nations International Convention for the Suppression of Traffic in Persons and of the Exploitation of Women, New York, 1950, of which India is a signatory. The SITA – like the CDA -- tolerated prostitution, acknowledging it as a necessary social evil, but regulating it and subjecting it to state surveillance. The Act was most recently amended and renamed the ITPA in 1986. The legal approach embodied a mix of suppression of “promiscuous” sexual activity with toleration of prostitution, on the one hand, and a gendered understanding of what sexualities were threatening on the other hand. The penalties imposed on prostitutes were far greater than the penalties imposed on brothel-keepers or pimps.

Today, the state has increased surveillance of prostitution with the justification that sex workers represent a public-health threat as carriers of HIV/AIDS infection. Sex workers and groups who support them argue instead that this is a pretext used by the Indian state to further intensify regulation. While feminist activists have engaged with the issue of prostitution for a long time, sex workers themselves now also have started openly to challenge social and state regulation of their profession and lives. The Ministry of Women and Child Welfare (WCD) has proposed new amendments to ITPA in 2007 which propose to criminalize the clients who visit sex workers. These amendments have come under severe criticism and have sharpened the contestation between state agencies and sex workers. For example, around 4000 sex workers rallied at the Indian parliament in 2007 to oppose the bill, and successfully stalled its progress in the parliament. While the bill is still under debate in the National Parliament, various sex workers groups are lobbying to stop the amendments proposed to ITPA.

I use this struggle to examine how, when sex workers are either treated as victims (both in the state, feminist and transnational discourses) or as criminals (by the state), their visibility in the public sphere as social actors fighting against state regulation may be transformative. Do ‘scientific’ discourses around ‘safe sex’ help sex works to fight social and legal regulation? What articulations of gender and sexuality are made in the process of challenging these laws? What challenges do ‘women’s autonomous’ sexuality outside the family pose to the nation-state? What connections can we make about sexuality and modernities in a postcolonial context? and what do these debates reveal about the changing definitions of sexualities, the appropriate spheres for state regulations and the individual rights of sex workers?

RESEARCH DESIGN AND METHODOLOGY

In order to understand how AIDS discourse and globalization shape debates around regulation of homosexuality and sex work in India, I will use: (1) discourse analysis of policy and legal documents that deal with these issues; newspaper articles; campaign materials, brochures, flyers and other ephemera; and (2) ethnographic data drawing on participant observation of activist groups; and (3) interviews from activists in the two movements; lawyers and lawmakers; and state and NGO actors involved in HIV prevention.

My primary research site is New Delhi where I have already spent six months interviewing activists and conducting participant observation of groups involved in both the campaigns. As the national capital, New Delhi is an important site for legislative and judicial lobbying and policy-making. This location also strategically places local activists close to the national and transnational level organizations, giving them access to lobby with agencies and regulators at multiple levels. Since this study is focused on legal struggles in the context of globalization my location in New Delhi places me in a good position vis-à-vis national and transnational non-governmental organizations as well as the national government and courts.

Groundwork for field study:

I will have laid sufficient groundwork for the field study before the grant period begins through contacts that I have established with my informants, preliminary interviews I conducted with some of the key informants, and discourse analyses of legal and policy documents:

Visits to the organizations and participant observation (August – December 2007): I made connections with sex workers groups, gay and human rights groups based in New Delhi who are involved in the discursive struggles around law. I also got permission from both these activist groups to go back and do interviews and participant observation. During my stay in Delhi I also made regular visits to weekly support group activities of a prominent NGO working with MSM (men who have sex with men) on HIV prevention, attended meetings conducted by activist groups on strategizing legal change, joint meetings organized by NACO and NGOs to gather civil societal support for decriminalization. These visits helped me observe community building, strategies for community mobilization, legal lobbying, strategic networking among NGOs and social movements.

Interviews with key informants (August – December 2007): During my initial phase of research I also conducted 20 semi-structured interviews with activists, NGO representatives, and representatives of international NGO's who are working with state agencies at policy and implementation levels; representatives of Ministry of Women and Child Development; and health activists who are specifically working in the field of HIV/AIDS. These initial interviews helped me gain insights into the interconnections between various national, international, and state actors in these struggles and debates and how they make strategic alliances with each other.

Before I started my initial round of research I had hypothesized that state agencies such as NACO would be interested in HIV prevention in these non-normative communities because they perceive HIV as a danger to the nation-state, but that they would be reluctant to support their struggles for decriminalization because this would challenge the heteronormative underpinnings of the nation-state. But my observations and analyses from the initial fieldwork suggests that state agencies are divided around these issues. I saw that some agencies such as NACO and Ministry of Health have sometimes actively collaborated with NGO's and communities and used health discourses to strategically support the claims of these two groups. These observations gave me a fresh perspective for thinking about the frictions and fractions in state regulation of sexuality minorities. The impetus of transnational human rights language has not been uniform and state discourses around regulation are not always coherent. I now want the opportunity to research how different discourses interact at different forums (activist, state, and international) and the efficacy of these legal discourses in gaining recognition for these communities with different audiences. This fieldwork will also help me understand how the formal and informal networks of local activists are then strategically used by transnational NGOs and national advocates within government, how and why certain discourses become salient in certain contexts, and how activists strategically position their arguments to win support.

Legal and policy documents: I have already collected legal and policy documents pertaining to both these issues. These documents include the actual cases filed in the Delhi High Court by various NGOs and activists since 1994; the responses, claims and counter challenges by state agencies; and briefs

filed by feminists, anti-gay groups and others opposing legalization. These include the reports and deliberations of the parliamentary committee that is looking into the recent proposal by the Ministry of Women and Child Development to the prostitution laws and position papers by various sex workers, feminist and legal groups on this issue. I have also collected policy documents, materials produced for public awareness, ad campaigns, and flyers produced pertaining specifically to homosexuality and sex work. Through an open coding and close coding process, I will identify the social locations of the actors, the discourses they employ (health, human rights, sexuality rights, developmental rights, modernity, tradition, women's rights etc.), and how these frames converge and conflict in the discursive struggles around these groups (for example, health and sexuality rights frames often seem to strategically converge to legitimize the claims of sexuality minorities on the state). I treat these discourses as cultural "tool-kits" or "repertoires" (Swidler 1986; 2003) in Indian public discourse that are available for various actors to utilize in their strategic struggles around law and public policy regarding homosexuality and sex work.

Data Collection in the field during grant period: (January – June 2008)

Individual In-depth Interviews: I plan to conduct an additional 20-30 semi-structured interviews with lawyers, activists, state representatives, NGO actors. My previous interviews with the NGO actors focused more on organizational goals, and strategies used to reach out the communities they work with, while the second round of interviews will focus more on collaboration and networking with other NGOs and state agencies and the strategic choices of discourses per se. The interviews with lawyers will focus on the strategies that they use in the court rooms, the attitudes of the judges, what they think is the overall legal atmosphere around the issues, their assessment of the salience, effect, and outcomes of different discursive strategies. The interviews with the activists will focus on their framing of state regulation, i.e., why they think it is important to fight state regulation, what legal challenges they perceive as important and why, impact of globalization and HIV on these specific issues and cases, how they hear and counter claims about westernization and globalization.

The Delhi High Court is scheduled to hear the final arguments of the State, NGO actors, and NACO in September 2008. These hearings are crucial for the legal struggles around anti-sodomy law and future of LGBT rights in India. In this second phase of fieldwork, I will interview the lawyers, activists and state representatives who have appeared in the court for the final hearings, focusing particularly on discursive legal strategies used by each individual group to frame their positions and claim their rights. These interviews will substantially help me explain resistance to legal regulation as well as resistance to change in terms of the salience of biopower/surveillance, modernity and transnationalism in this post-colonial context.

My semi-structured interviews with representatives of NACO and of representatives of major NGOs involved in HIV prevention will pay specific attention to how these speakers frame homosexuals and sex workers as biomedical categories; how do they engage with the contradictions around criminalizing and yet also trying to work with these communities for public health issues; specific initiatives and examples of NACO's work in these communities that either use or forgo transnational resources; and any changes in policies around these two issues especially after members of both these communities began visibly challenging state regulation. The interviews and the documents I have ready collected will complement well, as the interviews could offer me insights into multiple ways that official policy is implemented in practice and in interaction with different settings and groups.

DATA ANALYSIS

I am already coding data collected from the public texts, media representations, participant observations, and interviews using the qualitative analysis software NVivo. I will add the additional data from this round of fieldwork to NVivo, particularly focusing on articulations around decriminalization, the 'imagination' of communities, boundary construction between 'normal' and 'abnormal' sexualities, various discourses used as grounds for citizenship and rights claims, and

when these discourses converge or conflict within interactions between various actors. Then, I will systemically compare how these discourses are utilized in a particular local setting by various actors for citizenship rights' claims through everyday interaction based on my field notes, and examine when, under what circumstances for what audience each discourse is more or less successful.

My preliminary research indicates that globalization and HIV/AIDS has significantly impacted the discursive struggles around homosexuality and sex work. By mobilizing these non-normative sexual communities to meet a public health crisis, they enabled the emergence of these issues in the public sphere and the transnational practices around HIV gave rise to divergent positions within Indian state institutions around decriminalization of homosexuality and sex work. These forces are opening strategic spaces for the community, and NGOs to lobby for legal rights and facilitating the emergence of sexuality discourses rooted in local structures and cultural contexts in legal arguments. Human rights discourses help gay activists to mobilize national and international civil society opinions on these issues but are not necessarily as effective for sex workers, where transnational views are themselves more divided between abolitionist and decriminalization positions. How health issues – central to the state's claims to biopower – reinforce or conflict with the human rights claims – central to the state's claims to modernity- provide a theoretical framework for understanding what justifications go into legal change, and I use this second phase of field research to explore in more detail how the discourses themselves are articulated and how the outcomes differ for these two groups?

SUMMARY OF CONTRIBUTION

Intellectual Merit

By using a postcolonial feminist analysis, I offer a concrete empirical study of how transnational discourses, and local legal regulatory practices around sexuality interact to produce a 'disjuncture' in state regulation of sexuality. By teasing out the tensions between state regulatory practices around sexuality, the public health crisis of HIV/AIDS and the political claims to human rights of two similar but different sexually stigmatized groups, I will extend our understanding of sexualities and modernities in a contested postcolonial legal context. I look at law from the vantage point of those who have a stake in changing it and I show how discourses of public health, human rights, and modern sexual freedom for individual self-expression are contested within the national state as well as among advocacy groups at the local, national and transnational levels. My empirical case brings the changes in the legal regulation of sexuality into dialogue with broader issues of modernity, biopower, and globalization. The comparative study will add to understandings of social constructions of sexuality and gender by showing how modern law and modernist projects are deeply implicated in the construction of a 'modern' subject whose self-hood is intertwined with their sexuality. Studying the postcolonial contestations around sexuality will add to our understanding of modernity as a deeply contested political project, which simultaneously opens up the possibilities for imagining new 'subjectivities' and also forecloses the possibility of such reiminations.

Broader Impact of the Study:

In a globalized world, the boundaries of transnational governmentality and national governmental practices constantly come into contact and produce new discourses and regulatory regimes. These contacts are not only changing economic, and political structures, they are also touching the most 'intimate sphere' of gender and sexual relationships, sharpening the connection between economy, culture and sexuality. This study will be of interest to transnational organizations that are attempting to broaden the discourses of gender and sexuality to bring in a global perspective. It will also be useful for activist groups in other parts of the postcolonial world who are facing similar struggles. At the close of this study, I will share the results with international and national NGOs who are working with both these communities in India as well as activist groups with a hope that this study will help the struggles of sexual minorities.