

Brazil resolution on sexual orientation: Challenges in articulating a sexual rights framework from the viewpoint of the global south
Introduction

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In April, 2003 the Brazilian government introduced a historic resolution on ‘Human rights and sexual orientation’. The resolution itself did not go very far as it merely ‘expresses deep concern at the occurrence of violations of human rights in the world against persons on the grounds of their sexual orientation’ and ‘stresses that human rights and fundamental freedoms are the birthright of all human beings, that the universal nature of these rights and freedoms is beyond question and that the enjoyment of such rights and freedoms should not be hindered in any way on the grounds of sexual orientation’

(E/CN.4/2003/L.92.)

It is important to note that the resolution does not in any manner create any new rights, but merely affirms that the existing rights framework should apply regardless of sexual orientation. It recognizes sexual orientation as a ground of discrimination and asks existing human rights mechanisms to give due attention to the subject’.

However the resolution excited vigorous opposition, with its opponents proposing a ‘no action motion’, which basically meant that the resolution would not either be debated on or voted on. This motion was defeated by 24 votes against and 22 votes for.

In the meantime, Saudi Arabia, Pakistan, Egypt, Libya and Malaysia proposed amendments to the resolution. The crux of all the proposed amendments was to remove the word ‘sexual orientation’ from the resolution.

Then the Chair proposed that the CHR postpone consideration of the resolution to the

60th session. This proposal was voted on and passed by a margin of 24 to 17.

The series of moves which followed the introduction of the Brazilian resolution indicated a fault lines which would further develop in the 60th session of the CHR. The resolution was dropped by Brazil in the 60th session and today the resolution is a matter of historical interest which could inform politics in the future. However it might be valuable to probe some of the reasons for its failure. To do so I will examine in detail the dynamics as they developed in the 60th session.

The UN Human Rights Commission

Before addressing what were the debates around the Brazilian resolution in the 60th session, it is important to understand the geopolitics of the CHR. The CHR itself is set up by a resolution of the ECOSOC and has 53 members. The members are elected from among the various regional groups. The break up of the regional groups themselves is

African countries 15

Asian 12

Latin American 11

East European 5

WEOG (West European and Others) 10.

This regional break up is further complicated by the existence of various blocks. There is the bloc of Latin American and Caribbean countries called GRULAC. Then the EU acts as a bloc. That apart there is also the Organization of Islamic States (OIC) which comprises Islamic States from Asia and Africa which is also a pressure group.

There are also spheres of influence with the countries like India. South Africa and Brazil playing important roles in influencing countries in their regions. The role of the USA is

of course of paramount importance with its ability to influence countries and votes. The Holy See which does not have voting rights but has an Observer status plays an important role in influencing countries with a strong Catholic presence particularly in Latin America.

The Brazil Resolution at the 60th session

Due to the postponement of the resolution to the 60th session, concerted efforts were made by various international NGO's like IGLHRC, Human Rights Watch and Global Rights to ensure a strong presence of sexuality rights activists at the 60th session to lobby for the resolution.

A NGO coalition was formed with the work at the Commission being divided among the various groups. The work at the Commission could broadly be divided into the following categories:

1) Lobbying states to influence their position on the Resolution

Its interesting to note that NGO's have relatively easy access to diplomats at the UNCHR. One merely has to go up to them in the seats in which they are and ask to speak to them. Diplomats share the same space with NGO's with both using the Lounge and the Cafeteria. After a week of being in the same space one begins to recognize diplomats and they begin to recognize you and the specific concerns you bring to the UNCHR.

In the Coalition meetings, the states were split up with various people depending on region volunteering to speak to the state representatives. One must note that the Latin Americans were there in a strong presence with groups from Paraguay, Costa Rica, Argentina and Peru being represented. What was interesting to note that the discussions with the Latin American countries were often over who could co-sponsor the resolution ,

whether the term gender identity should be included or should one include a specific point saying that marriage would be exempt from the scope of the resolution.

I had a chance to speak to the representatives of Bhutan, Nepal, India, Sri Lanka and Pakistan. I will briefly not the contents of the conversation as it tells us where South Asia is on the issue of sexual orientation.

Sri Lanka:

The delegate was very friendly and open to discussion. He noted that the key problem Sri Lanka had was with the word sexual orientation as the word could also mean pedophilia, adultery etc. He also noted that Sri Lanka had signed a statement of the OIC (Organization of Islamic States) thereby ensuring that they would vote no.

Nepal:

The delegation was once again very friendly and completely surprised that we were from South Asia and talking about the issue of sexual orientation. They noted that it was a difficult issue for them as though they were clear that they did not support torture/arbitrary detention on grounds of sexual orientation, they were not supportive of a concern which was clearly western.

Bhutan:

The delegate was most surprised and was keen to talk a bit more on the issue. She said that she was awaiting instructions from the Ministry on how to vote.

India

On being asked what stand the Indian Government would take, the Indian representative

noted that there was a petition in the Delhi High Court challenging the constitutionality of Sec 377 of the Indian Penal Code, but as long as the law remained on the statute books the Indian delegation had no choice but to vote against the resolution. On being asked the reason for such a hardline stance which was similar to the OIC on a resolution which did not create any new rights, his response was just by using the phrase sexual orientation, one was creating new rights and he was not empowered to create new rights, with him receiving directions from Delhi on such a sensitive matter.

Pakistan

We approached the Pakistani delegate and told him that we wanted to understand the reason why the delegation was so strongly opposed to the resolution and whether it had any religious roots. His response was first to ascertain who we were and then to note that this resolution was sponsored by militant gays from the west and this was not a concern in their country. He noted that there were prohibitions in Islam against this form of behavior and that anyway he had no choice in the matter as some other countries in the OIC had very strong views on the matter and they had no choice but to go along with other countries. He then noted that they were not opposed to prohibiting torture and other forms of violence against all human beings, but so no reason why sexual orientation should be specifically mentioned in the resolution. She also noted that it was not a concern of south based countries but a northern concern. When asked specifically about hijras and how there was discrimination against them, she said that she did not condone any violence on grounds of sexual orientation. However she was very strong in stating that it was not a southern concern. The concerns of countries in the south were basic issues such as health, education, and socioeconomic rights which the north opposed. She

noted for example that it was at the instance of France that the resolution which looked at poverty as a violation of basic human rights became extreme poverty as a violation of basic human rights.

2) NGO Panels

The other activity which we were able to engage with in the UNHRC is the entire process of having NGO panels with sexual orientation as a human rights concern. These panels have a value in as much as one raises visibility on issues of sexual orientation and gender identity, not only among NGO's but also among state representatives who also attend these panel discussions.

At the UNCHR this year there were five panels organized with different themes rights from voices from the global south to transgender issues to sexual orientation as human rights issue. What was particularly powerful in the panels was the one testimony by an Egyptian who was one of those arrested on the Queen Boat merely because he was suspected of being homosexual. His rendering of the torture he faced at the hands of the Egyptian police, gave a face and a name to the allegations of discrimination on grounds of sexual orientation.

The fact that the issue of sexual orientation has made some headway was evidenced by the Special Rapporteur on Extra Judicial executions, Asma Jahangir making presentations on NGO panels on discrimination on grounds of sexual orientation as well as the one on transgender rights. Asma Jahangir clearly noted that there was no question of not taking the issue on board as it clearly fell within her mandate.

The panels on the whole served the admirable purpose of raising visibility and voice on the issue of sexual orientation and gender identity which has been an area of limited

debate within the UNCHR.

However the one limitation of the panels themselves was that we were unable to tackle the issue of religion and homosexuality very effectively. This emerged strongly particularly in one NGO panel which I attended titled, 'Human rights and the Muslim Woman'. The Panel itself was interestingly structured, with the panelists identifying the particular problems facing the Muslim woman who exists at the intersection of the discourses of Islamophobia, racism and sexism facing problems both within and without the community.

I intervened in the discussion by noting that the panelists had very powerfully outlined how their lives were at the intersection of the discourses of racism, sexism and Islamophobia and that their struggle was a just one and I would totally support it. However I asked them if they would consider adding another category to the oppression, namely Muslim women who were discriminated on grounds of their sexual orientation, namely lesbian women?

The response was instructive. Dr Lara Larsen noted that, 'It is not on the agenda of the Muslim community. When it comes up it comes up as a part of a modern, interest oriented discourse and Muslims are asked to come up with their view so that they can then be used as an object. However the question is interesting and should be taken up in due time when it becomes a relevant issue. We need to discuss it within Islamic tradition and civilization, but we will not accept it as a western notion of sexuality as a public issue. In the west sexuality is a public matter, money is a private matter. In Islamic societies it is the reverse. She concluded by noting that one should not mix up women's' issues with homosexuality or sexual orientation issues.

3) NGO interventions

Apart from the above two modes, NGO's also had the space to make statements under various heads right from freedom of speech and expression, to freedom from torture to violence against women. These personal and powerful testimonies of lesbians, transgender, gay and intersex people from across the world particularly from South Africa, Paraguay, Argentina, Nigeria, India and Croatia were a way of asserting that people are being tortured and denied their basic human rights even in countries in the global south.

Brazil's response

Brazil in the meantime while these activities were going on full swing, responded by releasing a Press note. The crux of the Press note was that, 'Brazil considers that the treatment of any issue in the Commission should not lend itself to exploitation of a political nature nor should it generate controversies with communities and countries with which we hold deep links of friendship.' The note went on to conclude that, 'sexual orientation presupposes the search for consensus. The objective of the initiative is to strengthen the system of protection and promotion of human rights; not to condemn anyone.' and therefore, 'the Brazilian Government has decided to keep it under consultation and to request the Commission to postpone its consideration.'

The reason why Brazil decided to postpone consideration was not clear and the reasons touted ranged from Brazil's desire to host an Arab League – Latin American Summit which Egypt was proposing to veto unless Brazil withdrew the resolution to lack of support from any other country particularly the EU.

The withdrawal itself meant that the coalition had to respond to the crisis immediately.

Among the options were lobbying the EU to sponsor the resolution, get some other GRULAC country to sponsor it to ensuring the resolution was postponed without a vote to the next year.

The various options and the responses to it indicated the diverse range of Lesbian, gay bisexual struggles. Some of the European LGBT groups were keen on a European country sponsoring the resolution. The Latin American countries were convinced that European sponsorship would be the kiss of death with sexual orientation being perceived as a European or white issue. In this context there was an interesting meeting with the German Ambassador in which he was categorical that European sponsorship of the resolution would be the kiss of death. He noted in fact that what was essential was intensive lobbying over the long term among south based countries so as to convince them that this was an issue which was relevant to their contexts as well.

Towards the end of the six weeks, the Chair finally postponed consideration of the resolution by one year and this proposal was accepted without a vote. So in effect the struggle continues next year.

Some issues for consideration

a) The North- South split

This is a serious issue which advocates for sexuality rights will continue to face. As was evident from the meetings with the delegations of Nepal to various other African countries, there was the common perception that this was not an issue in our countries. Somehow the silence and invisibility around issues of sexual orientation will have to be broken in such a way that it indicates that this is a serious human rights concern to the people of the south. What can definitely aid this process is the putting together of the

various documentation which we do have in different countries so that when the Pakistani government says its not an issue in our country we should be able to point to the documentation and say yes it is an issue because people in your country are saying so. Apart from documentation we also need a visible queer presence from the global south consistently making the point as to why sexual orientation is an issue in our communities. One of the powerful documents which was circulated at the UNCHR was the Johannesburg statement which noted that, 'We say to you: We, African lesbians, gays, bisexuals, and transgender people, do exist –despite your attempts to deny our existence. We are part of your countries and constituencies. We are watching your deliberations from our home communities which are also your home communities. We demand that our voices be heard.' (Fisher, John, Government Briefing kit, 2004)

The above is clearly one way in which we address the concern that sexual orientation is a northern concern and has nothing to do with south based countries. However to address the split one will also have to address the concerns of the south. In the south, it is difficult to see sexual orientation divorced from other human rights struggles. As the South African activist, Wendy Isaac powerfully noted, I am poor, I am black and I am lesbian. It is impossible to say which part of my identity is the all important part' The Pakistani delegate himself put his finger on a very important concern when he noted the west was opposed to core issues in the south be it poverty as a violation of basic human rights or other socio-economic rights while taking on board sexual orientation.

This of course raises the point that we as south based NGO's need to straddle the north-south divide by clearly placing ourself on the side of important southern concerns such as health and education. We also need to convince our northern colleagues that it's impossible to advocate for sexual orientation in isolation from a south based perspective.

Our concerns need of necessity to be holistic and any international coalition will have to be holistic in taking on board socio-economic rights as a core part of the concern along with sexual orientation issues. This might even call for a closer strategizing wherein, NGO's from the north who have close relationships with their governments, lobby their states to ensure support for socio-economic rights as a part of the strategy which sees human rights as 'interdependent, universal and indivisible'.

b) The role of religion

Opposition to the sexual orientation resolution has been framed in explicitly religious terms. There has been particular opposition from the OIC which has seen the issue of sexual orientation as a threat to religion. Thus for example Pakistan issued a letter on behalf of the OIC which stated that the resolution, 'directly contradicts the tenets of Islam and other religions' and that 'its adoption would be considered as a direct insult to the 1.2 billion Muslims around the world' (ibid.) In fact the entire campaign against the resolution has been put in terms of an insult to religion. Thus even when Brazil decided to withdraw the resolution, speaking about the resolution it clearly noted that, 'nor should it generate controversies with communities and countries with which we hold deep links of friendship.'

If such is indeed the strong nature of religious response how can we respond to it? One of the strongest responses at the UNCHR in terms of both countries, Special Rapporteurs as well as other NGO's was to note the universality of right and to say as indeed did the Swedish Ambassador that , 'there is no cultural excuse for violation of human rights and that one must put loyalty to the human rights mission first.'

There was another response, which was buried in the middle of an NGO Briefing Kit.

which questioned the monopoly of interpretation of Islam by a group of gay, bisexual transgendered Muslim groups called Al- Fatiha. The statement noted, 'Islam is not a monolithic religion and the Organization of Islamic Conference does not represent the voices and ideologies of a global Ummah. Muslims hold a diverse range of religious and political beliefs and our cultural heritage, racial background, gender, age, and yes sexual orientation, often determine our ideology as human beings and as believers in our faith of Islam. ...From North Africa to the Middle East, from Indonesia and Malaysia to the shores of South Asia and the coast of North America, Muslims who are sexual and gender minorities are uniting and standing together under the umbrella of Islam.' (ibid)

I am increasingly veering around to the position that the framework of religion should not be abandoned. We must use the religious framework to push forward certain viewpoints. It becomes easy to dismiss those viewpoints which are seen as outside the religious framework as the viewpoint of the non believer. However it is that much more difficult to disregard the viewpoint of those who subscribe to the fundamentals of your worldview but assert a different interpretation. In this context, though it might not have changed the viewpoint it offers a resistance to the dominant interpretation and that process of challenge and critique is important to continue.

It's interesting to note that there is not the same empathy for speaking within religion in north based groups. My sense is there is no immediacy of religion, the way we experience it in the south. This means that many northern groups advocate the issue of freedom from religion as the Canadian gay MP clearly noted. It seems clear that it is to fundamentally miss the point if we don't take on board religion seriously enough to at least enable an engagement within its terms. This of course does not mean that we should forget the other viewpoint in which the validity of the human rights framework as one

which is sensitive to culture and its varied interpretations should be abandoned. We should continue to assert the non hegemonic nature of culture and the striking synchronicity between the viewpoint of LGBT Muslims and international human rights law for example with respect to non discrimination on the grounds of sexual orientation. The other serious concern is how does one really factor in Islamophobia into this equation? Its quite clear that the global climate post 9/11 has clearly allowed for the demonization of an entire community. It is in this context that the alternative interpretations of Islam have a striking salience. They paint the progressive character of Islam and dilute the otherwise fundamentalist domination of the very interpretation of Islam.

Conclusion

The failure of the Brazil Resolution only indicates that we have a long way to go on questions of building a genuine global solidarity on questions of sexual orientation. Law can sometimes lead social change but in many cases progressive laws can only be successful, if the ground has been prepared for it. What the failure of the Brazil Resolution indicated is that in large parts of Africa and Asia we have not yet begun to raise sexual orientation as a human rights issue. Perhaps then the emergence of a global concern around issues of sexual orientation should be used as an opportunity to begin a dialogue with countries on issues of sexual orientation as they operate in their own local contexts. The objective of the global spotlight on the issue of sexual orientation should only to try and build a genuinely diverse global LGBT community.

Since the resolution stands postponed for the future, I feel that the work has to continue in building support globally for the proposition that LGBT people exist globally and that

LGBT people are subject to human rights violations in almost all national contexts. The support has to be built across cultures, communities and religions asserting the existence of sexual minorities in diverse settings. Most crucially any campaign will have to tackle the key issues of the north south divide as well as the monopoly of fundamentalist interpretations of religion. These issues will have to be tackled effectively if progress is to be made which actually impacts on LGBT communities in different contexts.