

A Report Release program on “Domestic and Sexual Violence; Claiming Voice, Rights and Dignity” A GENDER NON CONFORMING, TRANSGENDER AND SEXUAL MINORITIES LENS ON LOVE, LIFE AND LAWS

perspective followed by inter movement dialogue to understand, build support and solidarity with Women’s rights groups, Dalit rights groups, Sexual minorities rights groups, Human rights groups, Child rights groups and Civil society movement for a convergence

Venue: SCM House, Bangalore, Date: 21st April 2018, Organised by Ondede



Ondede
Dignity - Voice - Sexuality

Background

We have an environment of discrimination and that is when our advisors like Ms. Madhu Bhushan and Ms. Shakun suggested bringing in convergence and come together to speak on Dignity-Voice-Sexuality in context to the gender non-conforming, transgender and sexual minorities on the issues of sexual violence, domestic violence, sexuality rights and transgender rights. Why we want to speak on these issues? It is because only the person, who has undergone it, knows the pain.

Some BJP MP says that marital rape is not for India. When my husband touches me without m consent, it is rape! If anyone considers it not rape, then we live in a very bad society. Because you are a transgender, and a class and caste minority and have a religious minority background and you are on the streets because of the vulnerability and the profession of begging and sex work; because of all these reasons we have been taken advantage of.

If I am TG woman, a TG man, a gay or lesbian person and because of my gender and sexuality my parents are throwing me out of home, is it not domestic violence? Why are my friends in the domestic workers movement rejecting it? Violence is violence, does not matter who the person is.

When Kokila, a TG woman was raped, the court did not consider it rape. Her nipples and vagina were burnt with cigarettes. She was bleeding profusely. How can you not consider that rape? Anyone done to me without my consent is rape! Even today the courts are confused as to where to fit in the rapes that happen to a transgender person. If the courts are it confused, why do we need courts? How are these laws being interpreted? Because of this confusion and conflict, why should we compromise on our dignity?

So all the organizations should come together in solidarity to fight a larger battle. It cannot be done sitting in one room and discussing. Ms. Vrinda is a support for our movement because her one voice, the country shivers, especially the right wing forces. And such a voice is between us.

One of the Speakers of the day Ms. Vrinda Grover is a lawyer, researcher, and human rights and women's rights activist based in New Delhi, India. As a lawyer she has appeared in prominent human rights cases and represented women and child survivors of domestic and sexual violence; victims and survivors of communal massacre, extrajudicial killings and custodial torture; sexual minorities; trade unions; and political activists. Focused on the impunity of the state in relation to human rights violations, her research and writing inquiries into the role of law in the subordination of women; the failure of the criminal justice system during communal and targeted violence; the effect of 'security' laws on human rights; rights of undocumented workers; challenges confronting internally displaced persons; and examines impunity for enforced disappearances and torture in conflict situations



Hello to all friends, a few clarifications: I will only speak as being part of a larger movement and I think it is the challenge before us today: How do you have yourself heard? How the voice of those whose lives are being impacted does get heard? How do we get those voices heard and understood; and the necessary changes wrote in the legal, social, and political sphere to be made?

To read the report was for me was a very important learning experience. I think it happens often, even for us who are part of bigger movement, we hear things, we try to grapple and understand, we meet occasionally to understand what are the issues, what are the concerns but very often perhaps the interaction remains confined to “there is a new transgender policy, it’s terrible, what can we do, can we come together, and of course one comes together after reading and understanding, and discussing on who is agreeing to in principle and who is opposing”. Much more importantly to understand what are the issues, what are the concerns, where the movement does wants to go, what are the battles, I think it is much more necessary to have in depth conversation. And for me reading the report was like hearing to understand.

The study documents what is the nature of the violence and that it is the very existence of that person as a transgender that incites all the violence both within the home from family members or from neighbors, schools, scholars, college, teachers, co-students. It is sexual violence everytime the person is trying to create a life, do a job, live in their place. It is in the constant movement that is compelled to keep changing one’s goals, surroundings and relationships to simply trying to survive. In some of the interviews that are done the person is just trying to survive in a space where the level of violence is diminished. The issue of dignity as almost become latent in the person’s life because the violence has so overwhelmed the existence of the transgender person. I think those are very important and powerful narratives which reflect an underrepresented picture of what is happening in many people’s lives. It becomes important to understand what the nature of the issue is. It compels us to rethink the judgment of 2014. The judgement while also talking about the reservation, etc. Left the area of violence and sexuality in a sense incomplete. Where do we go from here? We

recognize that yes these people do not have recognition therefore they need to be given a distinct status and recognition.

Previously Akkai mentioned that the constitution is under attack and I think this is what we do here when we talk about those issues. It is true that today there are very serious institutional crises might it be the majority of BJP in parliament or may it be the kind of institutionalize crisis that we are witnessing from within the Supreme court or in the kind of orders and judgments coming from the Supreme court. All that leads to a lot of anxiety both within the judiciary and outside. To my understanding, there is no perfect moment in a democracy when suddenly society and democracy are going to say: "ok, now everything is fine and we can pick up certain kinds of issues". I think it is also important to recognize that it is through engagement of complexities that we will be able to find any answers because there are real people whose life are at stake here. Nor it is in my understanding in any form political to wait for any settled moment when a party is comfortable to raise these issues.

Looking at the report, it is clearly points at the issue of the gaps in the law. It provides evidence of violence; this is an irrefutable evidence both of sexual violence and of domestic violence which is not in the confines of the domestic violence act of shared household but perhaps of the domestic relationship. So there is irrefutable evidence that this kind of violence is perpetrated perhaps with greater intensity at times and with greater persistence at times on transgender persons. Which lead us to the question, which is not a new question: what kind of recourse does one have to address it? One obvious answer that everybody turns to is the law or the legal system. The issue that those who are victims of sexual or domestic violence are not necessarily and only women and girls or women and children is something that many reports confirm. This report confirms and reaffirms that truth and reality. The laws as we know recognize as victims of sexual violence children and from the age of 18 it recognize only women. As far as domestic violence is concerned, as we know the word use by law is agreed women. So it can only be a woman or a female in that sense in the domestic relationship who can turn to the law for any chance of recourse. Is this a limitation in the law? Yes. Is there a gap in the law? Yes. Is that a new understanding? I think it's an understanding that many of you have been repeatedly bringing attention to and saying there is a gap in the law. The law needs to recognize it and to reckon with it. I think many conversations start here and get derailed and we are all compelled to return to it because one can't avoid the kind of outrageous consequences it has over various people's lives.

To my mind there are reasons why historically this conversation has taken place in certain forms. The whole issue of the rape law was changed particularly in 1983 following the Mathura judgement through the effort of the feminist movement and women's movement and once again very substantially in 2013 post Nimpaya incident. I was a whole process that happened and I don't think it was something happened suddenly, or that it was in the brama community and that suddenly the government had some wisdom upon itself. It took a lot of work and understanding across the country largely in women's group relating to violence against women and children.

Similarly we know that the sexual harassment law for instance came out of an insight understanding that emerged from the diagraeb of Puridavi, a village worker at a village level in women development projects which led to petition in the supreme court, then a judgment and subsequently much later a new law on sexual harassment again of women at the workplace. Similarly would women be the only category of people who suffer from harassment or even sexual harassment at the workplace? No. Others also suffer sexual harassment and I recall the Delhi University policy actually did have a gender neutral policy of sexual harassment which did come to good use when there was a vice principal against two students who filed a complaint of sexual harassment. Of course all those policies have been undone by some new UGC regulations and nobody is allowed at least in government sector to have a gender neutral sexual harassment policy. Other workplaces, institutions in the private sector, companies, NGO those are free to have those.

Coming back to the gaps in the law, to my mind how do we address this situation when we do recognize, when we do know there is sexual violence and other forms of violence that can also describe domestic violence? I feel this kind of violence would need a description that would go above and beyond the compound of domestic violence. In such circumstances what is it that we need to address in terms of law? Knowing that section 377 still remains in the indian penal code there has been some murmuring in the Supreme Court which gives some reason to hope that sooner rather than later we will see the resurrection of the Delhi High Court Mass Judgement. In which case once decriminalization of person of different sexual orientation is removed, once that delegitimization as citizen is removed then the possibility of actually having access to laws for safety and security from other forms of violence becomes much more real and possible in the written law, in getting laws passed and in getting protection in different ways.



The way I would look at this, because it is not a new conversation because as I said it happened in bits and pieces before, i feel there is 2 way to go about it, we can see it as women are only seeking protection for themselves and are not going to permit others to get any protection. I think this way of looking at things is not a very honest way of looking at it. To begin the government of India doesn't necessarily take the feminist movement word or ideas forward. The reason why the criminalized amendment law act 2013 was passed was because there was a ground swell and the government was under huge pressure from the people to do something. I remember seating in parliament in the gallery on the day the criminal law amendment act of 2013 was passed. It was a very sad and scary experience. Many political leaders across party lines got up and said they do not agree with the law that is being passed. I remember very clearly 26.40 Malayala, srhi shada, XX? Getting up and saying to some of the BJP women ministers: "Come on, in our time, how we all romanced? If you are going to make stalking and voyeurism an offense then how will we flirt and how will we romance? That is how we romanced in our youth and that is how our sons will."

So what I'm trying to point out is that when changes in law have taken place, it's on the back of long struggles and on the back of a lot of work. It came on the fact that there were men and women marching the street not just in Delhi but many parts of the country because women's studies sells across the country in many universities and colleges where a feminist and a woman right's understanding had been formed. It is on that basis that one is then able to move ahead and asks for a certain kind of conceptual changes in the law looking at women's bodies, women's lives differently. That's why I emphasize a lot that it was not just the Sharma committee which could have brought about this change or could have compelled the government to open the room for this kind of law to find space. The Justice Sharma committee as many of you know held a 2 days national consultation, again maybe some of us today will write the backstory of that. It was done after a lot of personal negotiation, even bargaining some of us had to do with Gopal and Supreme Court Justice Members to have a national consultation. I remember telling them that we will decide who will be called, we don't know who to invite to this consultation and for those today the doors were open and some of you were there to participate in that consultation to speak forward what was your understanding. They also held private consultation with many people and many other experts and I believe a lot of emails and representation as it should be in any democracy.

What happens after even when the law is passed? As we can see many of us have gone to say where the pitfalls are, where the gaps are, where the lacking are, where there is a need to make budget reinvestment. Moreover there is some absolutely phenomenon Nepaya funds in this country that absolutely nobody can ever access. I have no idea what it's intended for and where this huge amount of money will go to, except to please the United Nation that we have allocated this money so that international criticism is muted thereafter. The whole process of getting legislative change and then getting the law to be implemented to get any semblance of justice are 2 different things. Because of course, Justice becomes another beast that one has to chase which is totally different beyond legislation and beyond the legal system really in many ways. In Delhi for instance we try to use the occasion to push for protocol or SOPs to be put in place, for how the police will function once a woman or a girl goes into the police station

with a complaint. Such a protocol and SOP does not exist at least in Delhi even till date. I don't know if some of you have been able to persuade your government in the state because police is a state subject to change. So the process of negotiation with the government is not a one off process but really an engagement that happens over a long period of time.

Many of us give our own representation as a lot of you have given to the Drama committee. I remember one discussion we did have based on the Karnataka report, one of the earliest document at least to my knowledge of the kind of violence that was inflicted on transgender people that so far as custodian aggravated situation are concerned the victim should be gender neutral because the power dynamics that operates there is very different. The government for whatever reasons did not accept that.

Where do we go from here, one of the term that was used in this report was there has to be a convergence of different movements, the women's rights movement, the human rights movement, the civil liberties movement, the transgender movement, the gay and lesbian rights movement, where do we go from here? I think one of the ways one can approach this is to recognize that different constituencies of people are facing sexual violence as well as domestic violence as well as violence at the workplace for reasons that are associated with their sexual orientation and with their gender identities. It would vary from circumstances to circumstances but the impact for those communities perhaps less recognized as having a rightful place in society, the impact on them is greater. As mentioned by Akkai when they go to the police station, their complaint will not be heard. This would be in some way similar to what a valid woman whose biggest hurdle today remains to get an FIR registered, without even getting to the issues of trial etc. Because it is near impossible to get an FRI registered for rape a valid women. The issue of consent which is very simple to the law of rape and has now become even more befuddled after some of the judgment of the Delhi High Court appealed by the Supreme Court. That issue of consent is then held against the sex work that transgender persons will do. How will we reconceptualise the law? Keeping in mind the life of transgender persons. Do we need to revisit the law in an exercise that can be done collectively but with the experience and with the understanding lay down like in this report by the transgender community. Some of us will be happy to work in solidarity and together. "This is what our experience with the legal system has been. What are the hurdles? What are the main concern and the obstacles? It continues to be my understanding and I know it is not a shared understanding but it continues to be my understanding and I don't see it as a breaking point. I see it as the beginning of a conversation that each of these groups needs to have the law carved out to their experiences if we are actually going to negotiate the labyrinth of Justice. If it is simply to put it in the status and having no seriousness about taking it forward because your experience in the police station today is not the same as a woman's experience in the police station. A transgender experience in the police station is perhaps equivalent to bastarati woman's experience making a complaint about the Security Forces but for very different reasons of power dynamics.

What is the Nexus of power that is operating? if the law will not recognise that Nexus of power you will not be able to breach it and pierce it even minimally to move forward. The recognition is important in itself and I do not for a moment refuse that. If we have to move

beyond the recognition. The Nexus of power and Prejudice because that is what comes together that Nexus of power and Prejudice must be encapsulated and conceptualized and then reflected in the law.

Let me give a different example to explain what I mean legally. In Kashmir for instance, I work with victim families of enforced disappearances. They have an organization called the association of parents of disappeared persons who for long have been demanding that enforced disappearances, which are a crime under International Law and under Humanitarian Law, should be codified as a distinct offense in Indian Penal Code. What is the response of the Government of India? There was actually a committee that was briefly formed in the law committee but it was quickly dismantled. The police and everybody said: what is the crime? It was only kidnapping or abduction, the person has gone missing and if the body is later found and the person is dead then the offence of abduction should be prequalified as the offence of murder or attempt to murder and the problem is solved. The problem is not solved at all. By putting it like that you are actually erasing the very nature of the crime. And therefore enforced disappearances need to be codified in the context in which they happen. That is why I believe that we need to look at sexual violence against transgender persons in the Nexus and context of power and prejudice that takes place to carve out much more importantly procedures and processes accordingly. Because if you're simply going to put a substantive offence and Procedure Code which is actually only looking at women which was exactly what was done in 2013. 2 girls and women with physical or mental disabilities, it was less than superficial what was provided in the law to actually access justice.

The juncture at where we are standing in today I think half an hour before this meeting began, the Government of India's cabinet has approved the death penalty for the rape of minor girls under 12. The Prime Minister has just returned from an international visit, there was a condemnation of the continuing and systemic sexual violence against women and girls. The Government of India decides to respond and what is the response? That there will be a death sentence now provided. We don't know if we're supposed to laugh or cry any longer. Your conviction rate and apex is 13%. Who are you going to give this sentence to? All studies and data will tell you that the highest rate of sexual assaults of children takes place by persons known to them. Are you going to deter the crime and the criminal? Or are you going to deter the victim from even making a complaint by even bringing in the death sentence. This is no longer just an eye wash. It is actually to ensure that the crime and the nature of this violence is not going to end. It is almost like a protection, there is a subversion of the rule of law. Political intervention gives political protection. Therefore they commit a crime with impunity. Impunity is not happening accidentally in this country. Instead of focusing on the integrity which is not entertaining or glamorous discussions on televisions or anywhere else. What is the real problem, your investigating officer has no clue how to write a statement and how to collect evidence. Nobody is interested in doing that work, that quiet work that we need to sit on the ground and do. Some of us keep on documenting and showing exactly where the case fell apart. Those are not areas of interests and we are told people are demanding, farmers also are demanding better prices, etc. We really need to call this bluff

and not allow the state to use this topic for populist agenda. It is at this juncture that we need to have this convergence in this conversation. We may disagree; we may come up with new answers we don't know because I don't know whether we have had very in depth discussions on how to take this forward. I will only end by saying this extremely important document. Please release this report in every city in the country. At a time when sexual violence and domestic violence towards the transgender community is completely made invisible. It is currently not even a minor part of any conversation regarding sexual violence which seems to have embroiled the country in. This is the time to take this conversation forward. This is the time to take this conversation to every place where this conversation is happening and put this report on the table. I can promise you some of us will definitely be there in solidarity to take this forward in whichever way we all agree on.

