

## INTRODUCTION

Gender and sexuality have been the most contested areas of study in the recent decades. The vocabulary in which gendered identities can be expressed has grown along with the proliferation of identities. As the forged identities compete to reclaim the private and public spheres of everyday lives, it becomes essential to examine them and their intricate origins. The gender and sexuality discourse which has been heavily rooted in western scholarship may lack the tools of thought and expression which can effectively capture the changes that are being observed in third world societies and cultural discourses. Aspects of politics, culture and violence are crucial, as much as the individual is, to defining gender identities and sexual orientation.

The representation of sexuality in the academic space, the repression of particular identities and the reexamination of public space and the expressed sexuality, require greater attention as they have huge potential to confront the fixation in the conception of individual identities. As ideologies are increasingly confronted with the multiple possibilities and expressions of sexualities, there is an immense need to put forth and discuss these diverse perceptions and assertions of sexualities. Sexuality could be interrogated not just as an idea but also as a performance, an unanticipated and a flexible one, cast in modernity.

Although the gender and sexuality movement gathered steam in other cultural hemispheres gradually, there has been a significant surge in the methodological and structural framing of the gender questions. As our concerns lie in marginalisation and invisibility, there is a greater need to debate the interconnectedness of these oppressions. Deciphering multiple identities and reading them together would have influences that transcend not just the understanding of particular identities but also the range of contested spaces beyond. The lack of scholarship and the artistic expression around caste and sexuality is in significant contrast to the abundance of material on race and sexuality. A compact understanding of any form of oppression and the identity that emerges from it requires a deep study of intersection.

The conference on Gender Identities and Sexuality sought to cast these discourses again in the context of law and the legal regimes in specific. In the light

of the, then impending, Naz decision and the US Supreme Court striking down the Defense of Marriage Act and Proposition 8, it was imperative to discuss even the question of the (in)flexibility of the law to accommodate alternatives, which is seen as empowering and disengaging at the same time. The conference hoped to bring together a panel of lawyers, activists and artists who have been actively engaged in the field of gender and sexuality rights activism. We found it essential to document the nature of queer movements in contemporary India and the direction in which they are heading. In the course of this assessment, we hoped it would be easier to bring together multiple ideas and identities and revalidate their claim for political assertion and visibility in the public space. This monograph was an idea born along with the conference. It was intended to be a collection of conference proceedings, papers by the panelists and student submissions on the broad theme of the conference. This was an attempt to take the process of documentation out of academia to everyone who needs to be reached, by everyone who needs to be heard. We accomplished most of it, if not everything, given the time and resource constraint faced by the student body in editing, compiling and publishing the monograph all by ourselves. Many thanks to Prof. Sarasu who helped us at almost every stage – right from pulling off this conference to this point of publishing the long awaited monograph. The members of the Law & Society Committee, 2013-14 deserve a special mention, for without them the entire project would have been nought. Each member of the committee has contributed to the success of the conference in his/ her own way and has stood by the rest in all their ups and downs. As the Convener of the committee in 2013-14, I take this opportunity to thank my Joint Convener- Tanmay Dangi- who bore the brunt of all the work with great equanimity; also Divij, Akshat Gautam, Chirayu, Abhinav Singh, the gifted members of the committee who sailed through the event with ease although it was their first time in such a massive conference which featured stalwarts of the academia. I congratulate and thank Divij, the present Convener of the Law & Society Committee, 2014-15 for taking the monograph to its conclusion, after many months of revision and work.

**Sakshi,**  
Convener, Law and Society Committee, 2013-14

The Conference on Gender and Sexuality was organized by the Law and Society Committee at the National Law School of India University. The conference was an effort to study the many dimensions of issues of gender and sexuality and their interface with the law. Two broad themes were discussed at the conference – gender violence and the law was the theme discussed in the first session, while the second session focussed on the intersection of identities.

#### **SPEAKERS**

Ms. MARY E. JOHN discussed the issue of sexual violence in context of the women's movement. She pointed to the milestones achieved in the history of the movement in order to trace the evolution of the response of the movement to sexual violence. She argued that the 16<sup>th</sup> December Delhi gang-rape is one of the main events in contemporary times that has shaped the women's movement of today, and therefore it has assumed enormous significance. She further observed that while the significance of the event may not be very clear at present and its importance would be truly understood only once it is contextualised by future historians, the event stirred up a state of emergency and the response to it was phenomenal, with people turning out to demand justice despite the state machinery coming down heavily on such protests. Apart from being significant in the reaction it evoked, the Delhi gang-rape resulted in an overhaul of the criminal laws which dealt with violence against women.

Ms. John then discussed the case of Phulmonee, a child bride who bled to death as a result of non-consensual sexual intercourse with her husband as well as the case of Rameeza Bee, who was raped and beaten by the police. She also spoke of the landmark case of Mathura, a young tribal girl who was raped by policemen while in custody, to bring to fore issues such as the "age of consent", coercion and women's sexuality – all issues that have been raised in an open letter written to the Chief Justice in outrage over the judgement delivered in the case of Mathura. In her opinion, this case brought to the fore the troubling fact that the law relating to violence against women is woefully outdated. In fact, criminal law dealing with this issue has not been amended since the enactment of the Indian Penal Code in 1860. She then spoke of the sexual violence perpetrated by the army and the police and referred to the case of Bhanwari Devi from Rajasthan and the cases of Thangjam Manorama and Soni Sori in this context.

Ms. John was of the opinion that though the 1980s witnessed the first spate of reform of rape laws, it was the 1990s that saw a new level of awareness among women's rights activists due to the emergence of a discourse on intersectionality and sexual violence on women belonging to the lower castes. She remarked, however, that the women's movement is yet to come to terms with the fact that women can also be perpetrators of gender based violence especially in relation to communal riots and dowry deaths. She also highlighted that the women's movement had failed to generate awareness regarding sexual violence in the so-called disturbed areas of Kashmir and the North-east, and only civil rights activists in these regions had managed to bring this issue to the fore.

The 21<sup>st</sup> century has witnessed a heightened visibility of sexuality, Ms. John argued. Women are no longer seen as subjects of desire and there is recognition of the existence of rape culture in our society. Furthermore, the law has been amended to favour a broader definition of rape, rather than restricting it to the earlier peno-vaginal penetration standard. Ms. John made a forceful point about recognising intersectionality in law and argued that rape ought to be defined in a gender plural manner, and not a gender neutral manner in order to highlight that sexual violence is embedded in the structure of the society. There is an urgent need to accept and grasp the reality that the brutal violence of the Delhi gang-rape is not an aberration and instead it is the norm for many women in large parts of India. The Delhi gang-rape shocked the conscience of the nation not because it was an exception to the rule, but because it happened too close to home, and not in a run-down village in a remote corner of the country. It happened in a metropolitan city, in what Ms. John called "our space".

MR SUMIT BAUDH focused on Dalits and queer sexuality. He began with excerpts from Professor Kimberlé Crenshaw's *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory and Anti-Racist Politics*. The introduction of these excerpts served a dual purpose- these excerpts were intended to serve as a theoretical background to the remainder of the second session as well as contrast the multi-dimensionality of a black women's identity with the single axis analysis of anti-discrimination law.

Mr Baudh then proceeded to share his experience working with 'Voices Against 377'- a coalition of organisations dealing with women's rights, child rights,

queer rights and public health. A coalition consisting of such a diverse set of organizations made it possible to discuss decriminalization from multiple perspectives. This mission was carried out on three fronts- one, through public education, that is, by conducting awareness programmes, seminars, conferences and symposia; two- advocacy and campaigns through rallies, street shows and three- through litigation in the Indian courts. Mr Baudh argued that when an initiative brings together individuals situated at different cross points, such an initiative often witnesses intersectionality brought to the discourse. Though *Voices Against 377* did have the element of intersectionality in its discourse, the Dalit positioning frame was absent and there was also a clear lack of concepts and language to capture the absence of Dalit organisations.

Mr Baudh then compared the Dalit identity and the queer identity to highlight distinct similarities- namely, the politics of naming, internal hierarchy and dis-identification can be found in both the discourses. Both these identities are pan-identities- they include other identities within themselves and there also exists a distinct hierarchy amongst these separate sub-identities. By way of an example, he remarked that some Dalits look down upon other Dalits and gay men tend to look down upon hijras and cross-dressers. Due to the social stigma, a number of queer people remain closeted. So much so that gay men often marry women in order to avoid coming out of the closet. A parallel can be drawn with Dalit identity as well since it has been observed that many Dalits, especially those in well-paying jobs or positions of authority, choose not to disclose their identity. They often change surnames or convert to other religions in order to cover up their identity as a Dalit and do not identify with other Dalits.

Mr Baudh then remarked that both these discourses are off-springs of resistance. Furthermore, class plays an important role by often multiplying vulnerability. Poor Dalits and hijras have always been more vulnerable than the rest, this is especially true in the case of hijras where the physical appearance takes away the privilege, or in some cases the security, of remaining closeted. Severe human rights' violation results from this double oppression. He concluded by observing that intersectionality analysis has brought such issues to fore and keeping this in mind, it is becoming possible to mobilise legal remedies in order to protect queer Dalits from violence and discrimination.

Ms MEENA SESHU dealt with state-sponsored and societal violence against sex workers. She defined sex workers as female, male or transgender adults who have consensual exchange of sexual services for money. Dealing with the popular, moralistic approach that is often taken towards sex work, she insisted that policy decisions relating to sex work or sex workers must take into account the needs and opinions of the sex workers themselves, who see it purely as an occupation, instead of basing such decisions upon public morality and treating it as a form of exploitation that necessarily reduces sex workers to victims. Referring to the law on the subject, the Immoral Trafficking (Prevention) Act, she clarified that sex-work *per se* is not illegal. Only the act of living off the earnings of a sex-worker, pimping and solicitation are criminalised under the statute. Ms Seshu also highlighted several instances by way of example in order to drive home the point that the police often use the statute to harass sex-workers, instead of employing it against brothel owners. She also emphasised upon the brutality that was unleashed upon sex-workers in the name of rescue operations by the police, and also by several evangelical groups. The victimisation of sex –workers also is increasingly being found in the international discourse. The US anti-trafficking lobby, USAID, forced NGOs to sign an anti-prostitution loyalty oath, and the latter had to comply with the same in order to get funding. This sort of an attitude completely ignores the agency of the sex workers and creates the impression that sex work, human trafficking and HIV-AIDS are the same thing.

She also mentioned that violence is not intrinsic to sex-work, and that the main sources of violence were petty goondas, political leaders and criminal gangs. These conditions of work negatively affect the ability of sex-workers to demand safe-sex from their clients. Thus they need to be provided with a safe working environment. Any sort of criminalization of the service provider or the client is likely to push the entire industry underground, thereby further increasing the vulnerability of sex-workers by decreasing the control that they can exercise over their business transactions. Ms Seshu argued that unjust interference by the State must be stopped and that the basic rights of sex-workers, such as right to privacy, right to decide freely in matters relating to sexuality, right to health, education, non-discrimination and the right against violence must be respected. She reiterated the need to take into account the views of the sex-workers themselves, which have largely been ignored by the Women and Child Department of the State and other

policy makers. Sex-workers demand decriminalisation, safe working conditions and easy entry into and exit from the profession. The prevailing attitude leads to the stigmatisation and marginalization of sex workers and makes access to justice against violence perpetrated by the State and by other actors, an impossible dream.

Ms BRINDA BOSE discussed the subject of queer erotica. She discussed the introduction to *The Electric Feather* which talks about a Bengali gentleman who was taken to a sex store, and who then remarked about what they had done to Vrindavan, and how they had subverted the freedom. There is a romantic voiding of the power of the sex store, and the ostentation of the sex store managed to overwhelm any other idea. Danger, mystery, fear, allure and drama were what was conveyed by the store, and there was no halo of romanticism and tenderness in such activities. Ms. Bose was of the opinion that the rough, unsentimental and visceral image of erotica needed to be reclaimed and spoke about it in terms of a dildo in the field of liberal Indian knowledge and sexuality, both foreign and pleasurable. Queer erotica can easily be labelled as far worse than mere heterosexual erotica, according to Ms Bose. She brought in the idea of reclaiming the space for queer erotica- an act that upsets the normative analysis of erotica. There ought to be a desire of spectacular entertainment tempered by need for anonymity.

The *Naz* judgment was not really seen as a shift in the social position of homosexuals in Indian society. What is required is the outing of sexuality in public discourse, what is needed at the present moment is ethical documents that lay down the commitment of the members of a particular society to act in a particular manner. She questioned if the repealing of s. 377 and the talk of a 'revolution' in sexuality would be enough. Ms. Bose then talked about 'The Quilt' in *The Electric Feather*, where Parvati Sharma discusses lesbian sex and the original tale by Ismat Chughtai. She remarks that the original tale created lesbian embarrassment and degradation, The Quilt was not the closet, but was a symbol of the repression of society. It stood as a shocking defiance of societal notions as part of the moving quilt. The quilt, as a cover, stands for anonymity, a spectacle, a risk and a search for anonymity, but the bulges and movements signify the need for expression.

Ms. Bose was of the opinion that the fissures and differences in the movement for repealing of s. 377 would become apparent once s. 377 is actually repealed.

Some would want the movement to be apolitical, others would want it to move towards capitalism or even Hindu nationalism, and certain others will seek to oppose precisely that. The moment would be of rest and retribution. But it would be a moment not to become placid or complacent, instead the movement must work towards ensuring that the raw passion and visceral pleasure of queer erotica becomes a part of the public domain and of Indian English writing- with its battles of post-colonial identity and its place in a modern world; the transgression of desire even with knowledge about its bodily origins. There have been many such attempts to talk about same-sex desire in the West, such as those of Amruta Patil, but there has been no such movement in the domain of Indian literature. India, the homeland, is perceived to be constrained by needs of the family and society. Erotica, on the other hand, eliminates all such constraints and seeks to replace that with the primal and primary need for the satisfaction of desire and emphasizes upon the freedom that people have. Ms. Bose also spoke about the relevance of anonymity among homosexuals, which naturally leads to the vexing question of outing in the public sphere. Referring to instances of sexual liberation and erotic expression, she also highlighted the idea of impudent anonymity of sexual encounters, contrasting it with the intensity of the actions committed.

Ms SUMATHY MURTHY dealt with the question of what the word 'queer' meant. It was earlier called an upper class identity for gay men, which contrasted sharply with that of working class men, known as 'hijras'. It is very apparent that even homosexuality has to deal with the question of privilege. She then spoke about the suicide of Pamela, a transgender activist, who had campaigned effectively for the cause of homosexual equality, and attempted in her feminist identity, to work for the betterment of all sections of society- be they gay, transgender or hijra. Such a personal idea of betterment is missing in the monolith support groups which do not allow for differences in opinion and this has also led to the subsuming of the cause in light of the problem of HIV-AIDS. Power and heteronormativity, coupled with capitalist activity and nationalism, require the creation of two genders or sexes in order to bring about the propagation of humanity. It is important to reflect on the personal instance of a transgender person who believes in there being acceptance of only two sexes, for such a belief makes him adhere to the patriarchal notions of masculinity and accepted gender binary, going so far as to



make him disbelieve of his actual status as a transgender. The need for validation and the requirement of an identity which is commonly accepted in day to day activities forces transgender people to adhere to socially acceptable roles and behaviour. Ms. Murthy observed that it was more fruitful to talk in terms of multiplicity of gender identities, rather than going into the question of what is a man and what makes a woman, for such an approach allows for accepting a much wider variety of instances of personal choice in genders. The sexual assault of Kokila, a transgender, highlights these issues of gender and identity. Kokila was soliciting when she was arrested by a policeman, who molested her, took her to the police station, raped her, turned her upside down, tied her legs together, attacked her with sticks and questioned her about her gender and then proceeded to mock her about it. The burning issue of sexual assault and harassment needs to be addressed and the effect of heteronormativity on such an issue must be answered.

There is also variation in expressions of sexual identity in the case of transgender people and the manner in which they have identified their existence and this variance. The very idea of 'gender' and the manner in which it ties into the notion of a 'sense of feeling' makes it more of an expressive notion than an explicit identity. Norms based on social morality are claustrophobic and rigid, and as such must be dealt with privately by the individual, the State has no right or cause to interfere in that.

GOWTHAMAN RANGANATHAN spoke about legal activism and legal intervention. He highlighted examples of movements in districts, cities, states, and on a national level. He was of the opinion that the processes in courts are merely parts of a larger scheme of societal action. Moving out of the courtroom and engaging in lawyering outside requires fact-finding, which is required to bring certain issues to the fore. Such fact-finding missions and the reports they generate talk about human rights' violations of sexual minorities by the society and the State and particularly vulnerable are those who come from a low-income non-English background. Such reports also highlight specific instances such as arresting men under s.377 which later turned out to be a systemic crackdown by the State, crossing firmly embedded norms and boundaries at places like the Aligarh Muslim University.