

# *Towards Gender Inclusivity*

A STUDY ON CONTEMPORARY CONCERNS AROUND GENDER

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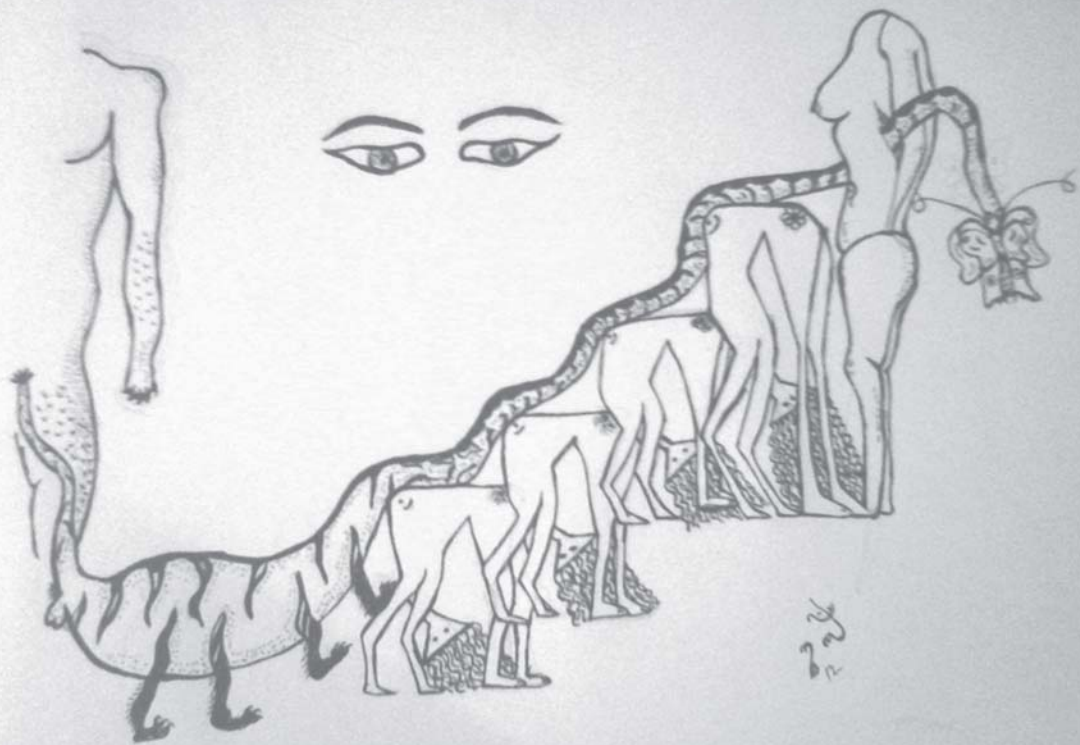
*Edited by*

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*Foreword by*

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**Published by:**

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**LesBiT:** LesBiT, founded in 2005, is a community support collective among working class, non-English speaking Lesbian and Bisexual cisgender women, transgender men (also known as F2M or Ftm female to male trans persons), intergender and sexual and gender minorities assigned a female gender at birth. People in LesBiT live in Bangalore, but many came here from other parts of Karnataka and other states mostly from South India such as Kerala, Tamil Nadu, and Andhra Pradesh, to escape severe rejection and violence from their families and society. LesBiT is an organisation run by community people, operating in a non-hierarchical manner, working for the concerns of all female-assigned sexual and gender minorities, regardless of whether they are members. LesBiT also does not believe in boxing identities and ideologies and values the diversity of gender and sexuality variation among its member.

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**Edition** : **May 2013**

**Suggested Contribution** : **Rs. 50/-**

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## *Foreword*

*Towards Gender Inclusivity* by Sunil Mohan and Sumathi Murthy is an auto-ethnographic text that foregrounds facets of the life-worlds of female born gender and sexual minorities in south India. While a self avowedly “non-academic” work, its significance lies first, in its translation of lived knowledge of a minority towards the furtherance of a more nuanced understanding of the workings of patriarchy and heteronormativity in contemporary Indian society; and second, in its purposiveness to further justice for gender and sexual minorities.

Why are violence and reproductive rights and not desire and pleasure at the centre of feminist debates on sexuality? The fact that the experience of violence for female born sexual and gender minorities is consequent on the assertion of the right to pleasure pushes the limits of feminism’s claim that the personal is the political. What are the ways in which forced heterosexual marriage ruptures our understanding of structural violence – community, caste, tribe and class intersecting with sexual orientation and gender identity?

Violence in relationships has always been difficult to articulate especially because of the troubling ways in which violence is tied to intimacy in heterosexual contexts. Where heteronormativity is the ground norm

*Kalpana Kannabiran*

and alternative imaginations of relational spaces are stifled by hegemonic heterosexuality, what kind of resolutions are actually available on the ground to relationships outside heterosexuality? Where violence occurs, what frameworks of justice are appropriate? The authors argue in favour of community justice systems in the absence of recognition in the public domain of formal justice. The anticipation of violence from agents in the criminal justice system has a firm basis, no doubt. Yet, whether community justice is the answer, is a debatable point.

The specific ways in which trans people blur and problematise the male-female binary makes a strong case for rethinking and redefining the constitutional category of “sex”.

Finally, on the question of politics: the need to push for a broad based feminist platform built on self definition and self declaration of gender can scarcely be understated. The proliferation of this inclusive platform has the potential to transform ideologies, learning, socialisation, sociality, institutions and policies (especially affirmative action) in profound, fundamental and far-reaching ways.

It is a privilege for me to write the foreword to this book.

<b>Cis Gender</b>	a word recently being used for biological sex; the gender assigned at birth based on their genitalia. When a person is comfortable with the assigned gender then it is a cis gendered person and a trans person chooses the gender of their comfort.
<b>FTM</b>	Female to Male transpersons - a person born female transitions to be a man socially, with or without surgery.
<b>Kothi</b>	A person born male and who is feminine.
<b><i>Habeus corpus</i></b>	Latin for “that you have the body”. A writ of <i>habeus corpus</i> is used to bring a detainee or prisoner before the court to determine if the person’s imprisonment or detention is lawful.
<b>Hijra</b>	Hijra is a cultural identity of male to female transpeople who get initiated into this culture and accept the traditions of the community. There is a history to this community. All male to female transpeople are not Hijras.
<b>LBT</b>	Lesbian, Bisexual women and Transmen.
<b>LGBT</b>	Lesbian, Gay, Bisexual and Transgender.
<b>MTF</b>	Male to Female transpersons - a person born male transitions to be a woman socially, with or without surgery.
<b>Person</b>	This can replace the universal pronoun ‘him/his/he’. It is an inclusive term which can be used in the law to address any human being but before we start using the term ‘person’ we need to make the necessary changes in IPC definitions about man and woman and the concept of gender. Person includes any human being of any gender expression.
<b>Satla Kothi</b>	A stage of transition in Hijra community where a Kothi lives full time in female attire (Satla).
<b>Transperson</b>	A term that we started using to be more inclusive about the idea of transition. It could be moving away from one’s sex, gender, patriarchy or heteronormativity. It does not make a distinction between various stages of transition or different identities of transition. It does not restrict one’s identity to either male to female or female to male or man or woman <sup>1</sup> .

<sup>1</sup> The usage of ‘born female’ or ‘born male’ is mainly to understand the identity in a basic sense. These definitions do not necessarily indicate that sex is determined at birth. Sex is also constructed as detailed in the study.



### *Background*

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After working with different gender and sexuality rights organisations, I realised that the kind of advocacy necessary for social change was not being addressed. The type of work that I conducted in our community consultations, with the assistance of my comrade and dear friend Sumathi Murthy, rarely engaged with larger visions of social change. This work has not yet provided us with an accurate picture of how queer communities, especially working class people, see themselves, leave alone engage seriously with the idea of social transformation.

I came to Bangalore in 2003 and started working on crisis intervention issues during 2005 with Sangama, an organisation that works for the rights of sexuality minorities. At Sangama I recognised that the only way that we have come to understand 'gender identity' is through the lens of sexual orientation. For example: lesbians are the only female born people who are assumed to potentially have the desire to transition and become a female to male transgender person (FTM). However, this understanding neglects to address how FTMs can actually be attracted to other men. Our current conceptions of gender and sexuality cannot necessarily

account for this. Does this mean that this person is ‘heterosexual’ or ‘gay?’

What became evident to me was that we need to remove our understanding of ‘gender’ from ‘sexuality’ and recognise it as a separate category that may be related to ‘sexuality,’ but is not always associated with it. The implications of this understanding are important because we open a space for a politics around gender that is not necessarily related to sexuality – a space that provides a point of contact for meaningful connections with women’s movements.

Following the advice of activist friends I applied for an Alternative Law Forum fellowship to conduct a year of intense study. Initially I proposed to conduct work on the issue of violence against female born sexual and gender minorities’ issues by collecting case studies from all over India and analysing the case intervention process. First Sumathi and I went to Kerala and collected case studies from Sahayatrika, an organisation working for the rights of female born sexual and gender minorities. After I reviewed these initial cases I felt that this should not be the approach of the study. This is because the model of ‘case studies’ does not allow me to reveal the knowledge that comes from the interactions we had with all people involved — one only gets the story of the individual persons and what happened to that person; one only gets the facts and not the process. This never moves beyond narrative accounts towards larger structural and social change processes.

I began to think about a new methodology for my research: moving away from a method of ‘interviews’ to one of ‘interactions.’ What this means is rather than having isolated case studies be the source of our data, all the interactions we had with community members became legitimate sites of knowledge. Using this model we were able to pick up on what typically gets lost in an interview format: movement strategies, theories of social change and multiple view points. Rather than relying on a binary between ‘researcher’ and ‘subject’ – we wanted to offer our own bodies, thoughts, and selves as part of this process. This meant we did not just ask questions to community members – we presented our *own* ideas for debates and discussion.

It was from our interactions with activists in Bangalore like Sharada B.N. and Aarti Mundkur that we were able to reflect on the different cases and envision a larger framework that allowed us to analyse these ideas: **violence, gender, gender identity, gender neutrality, trans reservation, anti-discrimination, crisis intervention, and female**

**to male trans community.** Initially we had also included **child custody** and **personal laws** but we did not get much insight into these issues so we dropped this from the study while writing the report. The main idea connecting thread in this report is ‘violence.’ From our interviews we noticed how people kept on speaking about their experiences with violence. We recognised that the current legal language around our community’s experience does not often allow room for these expressions of violence. We wanted to not only highlight this violence and injustice, but also think about where it originates from.

By the end of our community consultations we had interactions with activists, advocates, counsellors, parents and community people in Kolkatta, Chennai, Bangalore, Thrissur, Ernakulam, Mumbai and Delhi. We tried to have interactions with psychiatrists but could not manage to speak with anyone. We ended up completing 53 interviews in person and on the phone. After this we conducted a brief literature review and had discussions with ‘experts’ about these topics. Ponni Arasu, Chayanika Shah, Shalini Mahajan and Aarthi Mundkur constantly helped us in our entire work along with Arvind Narrain and Siddharth Narrain. People who helped us with informal discussions were Karthik, Ajay Cadambi, Mohit Kaycee, Rashmi Venkatesan.

Our deadline to finish the study was June 2011. Since we had gathered so much material, it was difficult for us to analyse it all. By October 2011 we had finished working on five chapters. However, on November 6 2011 when we were organising an event to remember and celebrate the life of Familia’s – a deceased transgender activist – we lost our laptop, digital recorder, and all of our work in an auto.

The day we lost the laptop we felt like the entire world came collapsing down heavily on us. We started crying sitting on the footpath by the road. When we lost this work we actually lost our lives because for us our work is our life. However within a week we recovered ourselves. We profusely thank Kanaka Murthy for instilling courage in us and also bringing us a new laptop to work on. We began to rework the entire document – drawing from what CDs and memories we had. We thank the many friends who helped us by talking to us on the phone once again and giving the information that they had given during the interactions earlier. Then we took three months to rewrite all the material. So by March 2012 we finally finished all the work. We decided to keep all of the names and identities of the people we spoke with confidential because many respondents expressed discomfort at their identities being disclosed.

Throughout this report we have chosen to use the term ‘female born sexual and gender minorities.’ We first heard this term while participating in community organising with lesbian, bisexual, and female to male transgender people in Bangalore. We find this to be the most useful term to shed light on the experiences of our communities. First this is useful because it shows the ways in which people who are assigned the gender ‘female’ at birth in India are very similar: they are often restricted to the private realm, they face the violence of compulsory heterosexuality and marriage, and face the brunt of patriarchy and sexism in our society. While we acknowledge that female born sexual minorities and female born gender minorities have very different experiences, we also recognise the need to build coalitions among these groups. We have seen in our own community experience in Bangalore with LesBiT, how effective such a coalition can become. Next, this term is useful because it creates a distinction of our experiences from male born sexual and gender minorities such as gay men, bisexual men, *hijras* and transgenderwomen. While the experiences of male born sexual and gender minorities vary, it is important to recognise that these people are more likely to enjoy more access to the public sphere and have cultural and historical recognition, and therefore more visibility. The term ‘marginalised genders and sexualities’ does not allow us to express the difference that patriarchy has on people who are assigned male at birth versus people who are assigned female at birth. Finally, this term is useful because it creates the space for alternative identities. We want to create a space for people to use whatever names in whatever languages they feel most comfortable in to express their identities – but we also remain committed to unifying our struggle. Female born gender and sexual minorities is an open enough term to accommodate many different identifications. Even though we use the term ‘minorities,’ to express our experience this is not to suggest that we believe that there is only a small number of members of this community. In our chapters we will show how ‘minority’ status is created by power systems like patriarchy and heteronormativity because female born people are forced into the realm of the private and therefore into the realm of the silence. Thus we use the term ‘minority’ to express the few people who have managed to become visible despite these power systems. The term also acknowledges that any female born person has the potential to be a different sexuality or gender than they might appear to be in.

While our work might seem like an ‘academic’ text, it is important to recognise that this is not the case. In conducting our project many people suggested books and theories for us to read. We found it very difficult to read these texts because both of us grew up in communities where reading was not prioritised. We learned most of our lessons from conversations and personal experiences. This is why we do not want our work to be read as just another academic text because it is actually something very different. In academic texts individual’s ideas often become lost because authors are so busy citing other peoples’ thoughts and assumptions. Our work is not inspired by theory, but is rather inspired by community knowledge. Many of the people we spoke to do not speak English fluently and did not receive English training in schools. While these people do not read academic texts, they still have many important ideas. These ideas often do not make it to the mainstream NGO sector – largely run by English speaking and English trained people – because community members may not feel comfortable using the forums, language, and academic papers that mainstream activists are used to.

We decided to invite Alok Vaid-Menon, an intern at Alternative Law Forum, to help edit our manuscript and make it more coherent and relatable to English speakers. While our work might come across as ‘academic’ due to Alok’s input, we do not wish for you to read it as such. We want to situate our work as *activist* scholarship. What this means is that we do not think it is enough for readers to think of our ideas only at the level of theory, but also at the level of implementation. If you find our ideas important, please think of ways that you can change the strategies and priorities in your organisation or advocacy to better meet the needs of marginalised genders and sexualities. This work should not be seen as a substitute for community consultation, but should rather be seen as a call for more type of this work. We have seen a significant gap between mainstream activism and the NGO sector and the actual experiences of communities this gap needs to be lessened.

This work is *not* for working class non-english speaking communities because it already represents their ideas and perspectives. This is why we do not feel the need to translate this work into regional languages and why we feel the need to create it in a version that is accessible to you, the reader. We do not see ourselves as experts on these topics – we see ourselves more as a bridge for this community based knowledge. We hope that this report will present more insight into many connecting issues of gender and sexuality for advocates, psychiatrists, counsellors,

activists, and other community members in their work to advance justice for gender and sexual minorities. Because of the delays in our project, we feel that a lot of issues that we discuss in the report have already come into public discussion. Nonetheless, we hope that our work will help inform and perhaps advance these discussions.

My effort here is to present the complexities of community existence to avoid jumping into easy answers. Along with the community perspective, the main aim of this study is to provoke discussions and debates around many issues of 'gender' and raise public consciousness on this topic. This does not mean I have answers to everything. This document is meant to lead to further discussions and debates among the public and the community, and to highlight the existence of multiple gender expressions in people.

This document uses the first person 'I' and 'we' interchangeably. This is because while I am the primary author, the document itself is the result of an intensely collaborative effort with Sumathi Murthy and the use of 'we' indicates this. This document represents the independent views of the author(s) and does not reflect the viewpoint of any specific organisation.

## *Acknowledgments*

We thank the following people to have helped us in this process –  
Alternative Law Forum for giving us this Fellowship.

All the 53 people who had interactions with us.

Kalpana Kannabiran for the foreword.

Aarti Mundkur, Ponni Arasu, Arvind Narrain, Siddharth Narrain, Sharada B.N, Chayanika Shah, Shalini Mahajan, Deepa Vasudevan Nair, Kaveri Rajaraman Indira, Mohit Kaycee, Ajay Cadambi, Rashmi Venkatesan, Kanaka Murthy, Narayana Murthy, Swathi Sheshadri, Maitreyi Krishnan and Rex (Reginald Watts) for giving us their insights for this study.

Alok Vaid-Menon, intern at Alternative Law Forum for editing our manuscript. Living smile Vidya for the line drawing for the cover page.

Organisations and collectives like LABIA (Lesbians and Bisexuals In Action, Mumbai), Sahayatrika (Kerala), Sappho (Kolkatta), LesBiT (Bangalore), Payana (Bangalore) for their extensive help.

There are many more people who have helped me along the way and I thank them all, as well.





# 1

## *Gender*

Gender is a phenomenon that we find reflected in a wide array of sectors in our society. However, the way that it often gets discussed, relies on an understanding that there are only two genders: male and female. These genders are conflated with the biological sexes of ‘man’ and ‘woman.’ As one of our interviewees who does trainings for the general public on issues of gender and sexuality remarked; “the difference between biological sex and gender is not understood by most people. Most people believe that if you have a penis you are a man and if you have a vagina then you are a woman”.

Predominantly the understanding of gender even in social movements that are sympathetic to the concerns of gender has been based on a binary concept. In fact in many people’s movements gender is not seen as a critical issue. For some people, interacting with non-binary gender politics is synonymous with interacting with sexuality politics. Due to this we often here comments like; “Is sex more important than poverty, no proper wages, communal violence etc. that you people demand such exclusivity for sexual minorities?” and “you lesbians claim such exclusivity that it destroys unity in the movement.” What becomes evident is that people

still think of the rights of gender and sexual minorities as privileged rights. What we have seen is that female born gender and sexual minorities, many of whom are born into poverty, experience both increased economic and social discrimination on the basis of their sexuality and/or gender identity. What also becomes important is the need to differentiate a politics of sexuality from a non-binary gender politics – a politics we are trying to generate with this text.

### *The Social Construction of Gender*

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What people may not recognise is that there are actually many different genders that are outside of this gender binary. The reason that we are told that there are only two sexes and therefore only two genders is due to power and heteronormative and capitalist systems of control. The State has an interest in creating new citizens because in our increasingly capitalist era having ‘more’ of something – more bodies in this case – is associated with having more *power*. In order for nationalism to flourish it requires promotion of two distinct genders – defined through a reproductive paradigm that can come together and create new citizens and be productive for the nation-state.

While we recognise all of these complex constructions of gender it is important to recognise that much of this knowledge only exists in the academic realm. A transgender person we spoke with stated firmly that no matter what academics say, society itself still only recognises two genders. Due to this he conforms only to a male gender and does not even welcome any mention of the fact that he is transgender because this marks him as different and therefore stigmatised. For this reason he assumes a patriarchal model of masculinity because it grants him validity, approval, and acceptance in society. The truth that gender activists must come to terms with, is that working class people are preoccupied with matters of every day survival. Academic concerns such as moving beyond the gender binary are not a priority. The idea in these communities is that if you want to make ends meet, why should you complicate it with the need to move beyond the gender binary which is at best an academic concern?

However transgender people, despite their socioeconomic situation, have been able to recognise the socially constructed nature of gender due to their own challenges in understanding and expressing their gender identities. Our deceased transgender woman friend Familia used to remark that she, like many other trans people, faced problems coming to terms with her gender because she at first required validation of every step she

took to confirm and present her gender. In order to be validated Famila first assumed the stereotypical gender role and image of a woman – portrayed by patriarchy. However, as Famila became more exposed to feminism, she recognised that gender is a much more complex phenomenon than she first imagined and that actually there is no one way to be a woman or a man.

Famila was right. Gender is composed of socially constructed roles, behaviours, and gestures. Gender is fluid and a social construction. It is up to an individual to define their own gender, whatever type of body they have. It is more productive to talk about *femininities*, *masculinities*, and other gender expressions than relying on the concept of ‘man’ and ‘woman.’

Making people understand that a certain kind of body and certain patterns of behaviour are not naturally connected and are rather socially constructed is one of the most important tasks ahead of us. However, as some of our participants suggest, this will be very difficult. One feminine gay activist talked about how liberating learning about not only the social construction of gender but also of biological sex was for him. Indeed sex is also a social construction. However, the challenge is in making people more aware of this when the very education system that teaches us uses a version of biology that is resistant to these ideas.

Indeed, the theories and identities based on biological sex that are taught in schools and colleges largely exclude people with intersex variation because these bodies do not fit into a reproductive paradigm. Intersex people are born with a mix of anatomical sex traits that are traditionally considered to be both ‘male’ and ‘female,’ or atypical for either. These sex traits include variations of the reproductive organs (such as the testicles, penis, vulva, clitoris, and ovaries), chromosomes, and/or hormone levels, which can result in *additional* variations in secondary sexual characteristics (such as muscle mass, hair distribution, breast development, hip: waist ratio and stature.) Intersex is not a single category – many forms of intersex exist, within each form, there may be substantial variation as well.”<sup>2</sup> The term used is ‘people with intersex variation’ so that it leaves space for them to choose their ‘gender’ and also ‘intersex’ as an identity by itself.

Based on the reproductive paradigm, a body that is composed differently is considered defective or abnormal. Clearly the perspective then becomes that intersex people should be corrected and put into male or female

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<sup>2</sup> Visit [http://oiiusa.org/what\\_is\\_intersex](http://oiiusa.org/what_is_intersex) for more information on intersex issues

boxes. In the case of people with intersex variation and transgender identity, the binary gender concepts, restrictive attitudes and norms of society do not give any choice to people or a right to their own body. While modern technology offers corrective surgeries and treatments, the fact remains that we need more accepting spaces in society. Neither can all people afford surgery nor do all people choose surgery: some people might just want a change in appearance. Also, some people cannot opt for surgery due to family pressure or societal pressure.

Most of the people in our interviews confirmed that gender is fluid and that it is an identity that we take. Some of the trans people we interviewed also responded with their desire to swing between genders. In one interview a FTM said that when he and his girlfriend lived together, there was a conflict about the roles within the new life that they lived. The conflict was about the pressure to perform a certain role as a man. The available models for him in his working class background were his father and his ex-husband, both of whom were violent. He took some time to realise and come to terms with questioning the role of women. The interesting part that he shared was how when he was questioning and breaking down patriarchy it was more empowering than performing the role of a man of the house, which he found very tormenting. Further, unlike some of the other FTMs in the community he desired certain 'female' attire and ornaments that also created a conflict for his sense of gender identity. At the same time, after gender transition he was afraid to face his own son. The conflict was would he remain mother to his son or would he insist or force his 6 year old son to call him father. This brings us back to other crucial questions. Are activities like work, style of dressing, mannerisms or behaviours inherently gendered or have we associated them in such a strong manner that it stereotypes a certain gender?

Interview participants agreed that almost all aspects of life are deeply gendered. So the question then became: considering this history, how can we envision a gender neutral life? How can we disassociate 'gender' from work, dress code, culture, behaviour, etc.? Also how can simple disassociation alone change the lived realities of gender?

This particular topic was one of the heated arguments with many interviewees. We agree there is a history of oppression based on gender specific associations. We also do not disagree or discount the generations of people's movements that have questioned these associations. What we are questioning is whether we still subscribe to the same system as

we critique it. Why do we accept the same violent gender binary structure in law and society? Why are the ‘progressive’ changes we have had still within a patriarchal framework? Take for example how rape has changed from being a question of family honour, *maan maryada* (*honour and dignity*), to a question of one’s own right over the body and sexual act. What our interviewees remarked is that this political move did not go far enough for a few reasons. First, only ‘good women’ are seen as having a right to their own bodies — only women of a particular caste and class are able to access this right to dignity. Therefore, many people may say that sex workers cannot be raped because sex is their profession. This is simply not the case: sex workers also have a right to choose which clients they have sex with and what kind of sexual services they will provide. Second, the “right to body” language does not challenge the idea that it is always ‘men’ who rape ‘women.’ The reality of the situation is that both cisgender and transgender men can be raped. Finally, in phrasing a response of “right over the body,” we do not challenge the very definition of ‘sex’ and accept sex as always about penetration by a penis. Sex and consequently sexual violence consists of many different actions that may not involve a penis or penetration, especially within our communities.

We also agree that this way of disassociation might make space for misuse in the process but isn’t misuse present now in this system? Only certain forms of misuse become hyped up and exaggerated. What if we start a certain process of thinking out of this binary gender system to arrive at something that will be more inclusive and also look into how misuse of all forms should be addressed? We should work towards understanding what should be gender specific and what should not be gender specific. We should be more thoughtful and only ascribe gender where it is politically relevant to draw attention to injustice.

### *Transgender views on gender and the politics of language*

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Transgender people, or people who are assigned a gender that does not align with their personal sense of gender identity, have the difficult task of trying to legitimise their gender in a patriarchal world that associates ‘gender’ with ‘biological sex.’ Thus politics is always involved in the ways they decide to name and express their genders.

LABIA, a group in Mumbai working for lesbians, bisexuals, and transgender people, arrived at the term PAGFB (People Assigned Gender Female at Birth) through many discussions. LABIA through this term stated that they are breaking not just gender binary; they are also breaking the binary of sex and gender. Furthermore activists from LABIA say that

“You are not assigned a sex; you are assigned gender. You can’t be sex female, but gender female because people have certain bodies. They are continuously being written by gender. So we are assigned gender at birth and not sex — for sex has many variations. We are not born female or male at birth, we are assigned male or female at birth. How we live our gender is a different story.”

Some of our interviewees spoke about how, if given a chance they would like to change society’s assumptions of who is a man and who is a woman, as it would have been easier for them to assert their gender not based on biological sex. One FTM said that when trans persons begin to present themselves as their preferred gender, they are asked to prove it with their biological organs. Society has not progressed enough to take an argument based on self-identification of gender or based on what transpeople say, not based on what transpeople look like.

This is evident even within communities of gender and sexual minorities who are well aware of transition. A hierarchy still emerges based on how much each person has transitioned physically. LesBiT, an organisation built by the community and working for LBT community rights, once coordinated an event on International Women’s Day in Bangalore in 2006. At this event a *kothi* actually argued that female to male transition does not matter unless there is a real transition in terms of biological body. That *kothi* asked: “How can you call an FTM as a man when that FTM has not even removed breasts?” At the same time she also argued that she as a *kothi*, though not transitioned biologically, has more femininity than any biological woman around. This argument brought a serious conflict in LesBiT. An argument emerged on how FTM people who identify as men cannot penetrate during sexual intercourse. Those in LesBiT who did not believe in penetration were forced into thinking about it. There is a definite need to know who plays what role when it comes to same-sex couples. If two transgender individuals have a sexual relationship, the community questions who is the man or the woman in the relationship. Moreover, to understand sexuality there is a definite need to know the biological sex of the parties involved. Though people are well aware of the complex identities that are built with intersections of sexuality and gender, the operative manner of understanding sexuality is still biological sex. This shows how patriarchal understandings of gender even circulate in our own communities.

One interviewee raised the question of intersexuality and asked why biology should play such a major role in understanding sexual orientation.

What becomes evident is that biological sex is, once again, insufficient at expressing the full spectrum of possible sexualities. For example, some *hijras* may claim bisexuality when they have relationships with FTMs. Sometimes the sexual preference of a partner, as expressed by their 'sexual orientation,' does not actually align with the self-identified sex and gender of their partner.

### *Man, Woman, Other?*

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Throughout this paper we have called for recognising the legitimacy of gender expressions outside of a female/male binary. The question then becomes how do we legally recognise these gender expressions in a patriarchal system that often denies and actively delegitimises their expression? Most of the people who gave the interview responded stating that the present government's decision of expanding gender identities as Male, Female and 'Other' was better than making many columns of gender because this will at least not box people into a definite gender identification which will develop expectations and norms in society. Take for example the *hijra* community which has its own set of rules and regulations about who is a *hijra*. If the government also boxes them as another gender identity then people who differ from these norms cannot fit into the box. The government should not be able to set certain rules on what it means to be *hijra* or any other transgender identity. Indeed, as one of our FTM participants reminds us: if rules are set to define transgenders based on surgical transition, then FTM people from working class backgrounds can never be identified as transgender because they cannot afford this surgery. Moreover it is important to remember that there are many trans people who do not wish to undergo full surgical transition. In fact some argued that no gender should be boxed whether man or woman or any trans identity. The very fact that the third category arises is because of the existence of these two gender categories and restrictions laid on these two categories.

Some of the activists also stated that the category of 'Other' is problematic. Just because appearance, re-assignment, or change in the body or psyche is different than the established categories why do a certain set of people become 'other' and why 'other'? This can lead to other forms of discrimination or violation of rights. The very process of inclusion in the form of 'other' is either for convenience or for further exclusion. Each person is different, their behaviour, styles, eating habits, walking, sitting, height, weight etc. They also have different orientations and formations like some have six fingers, some write with their left hand,

etc. They come under the umbrella of being human beings. Some differences are visible and some are not visible. Why is gender difference so salient that it requires its own 'Other' category?

After interactions with the community, the one suggestion that we have come up with is to include a process of gender identification only where it is needed and also to leave options for people to choose their gender, instead of mentioning it as 'male', 'female' and 'other' or ticking boxes. The option for gender should be left open in all the documents and people should have a choice to fill it up with their expression.

There are loopholes to this suggestion, but this is also a call for everyone to think through this process to envision the most inclusive process. For example the PAN Cards do not mention gender. They give a photo to identify the person. Once the option of gender is left for people to fill in, my understanding is that, it will extend to larger social change about the idea of choosing gender (of course this process should be backed up with larger advocacy for choice of gender in our society).

### *Toward an activism of gender expression*

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We have argued earlier that with focusing on gender we open space to build important coalitions with feminist groups and yet at the same time we have called for an elimination of gender as a significant mode of identity that defines a person's selfhood. What exists here is a strategic contradiction – it is important that we devise a new model of activism that is concerned with eliminating the gender binary. In order to do this we must begin to view 'gender' not as a fixed identity, but rather as *gender expression*.

In our initial advocacy through NGOs we saw the ways that these organisations were unable to draw a distinction between 'sexuality' and 'gender.' People who had transitioned in the organisation we worked with, would be ridiculed for sleeping with certain other people. If a transgender man slept with other trans or cisgender men, people would be very confused because they *assumed* that all trans people should be heterosexual. Furthermore many of our FTM friends were ridiculed about identifying as heterosexual because they did not have a penis and have relationships with women or women identified people. The problem emerges that we do not yet have a way to understand sexuality and gender beyond biological sex. The very ways we name and articulate our desires – bisexual, heterosexual, etc. – are over-simplified and exclusionary



because they do not account for intersex and transgender people and their expressions of gender and varied sexual orientations.

We believe that in focusing on a politics of *gender expression*, distinct from sexuality, we can begin to disassociate gender, sex, and sexuality. If we recognise that all of us have the ability to construct our own genders, we can broaden the meaning of gender and, in turn, sexuality. We have to build social movements that are committed to separating ‘gender’ and ‘sex’ from our understanding of desire. We desire in many complex ways and these ways cannot be only represented through ‘gender.’ In creating these gender differences and constructing identities based on our gender preference – both for our own bodies and our sexual/romantic partners – we limit the possibilities for new and alternative ways of doing gender and sexuality, ways that may be more inclusive, more pleasurable, and more just for all.

## *Female to Male Trans Communities*

### *Introduction to the FTM community*

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Transgender people and transsexuals transition from one's given gender and/or sex to one's taken gender and/or sex. The change or the journey is usually understood as the process of transitioning from being male to female or female to male. A transman, trans guy, or FTM is a transsexual or transgender man: a person who was assigned a female sex at birth, but who feels that this is not an accurate or complete description of themselves and consequently identifies as male. Female to male trans person means a female born person who changes to become man or male. When girl children express the gender of a man they are usually branded as “tomboy”, which is linked to lesbianism or female homosexual behavior, in the West. In India there are many names used for this behavior in different regional areas. In Karnataka people with such behavior are called “Gandu Basakka”. The assumption is that the girl will change around the puberty and grow up to be a woman, which could happen or not. The Indian family system, which is so strict about the gender system and its roles, does not even accept slight difference in the set pattern. Many FTM people realise their gender variance in their childhood, but are discouraged or punished for their gender variant expressions.

Puberty for most of the female to male trans persons has been a traumatic experience. There is severe hatred about their female puberty process and the development of breasts. Many FTM people bind their breasts to conceal them. The first changes that FTM people show is through dress and behavior. For a certain class, this process is possible in the form of style or fashion. For working class FTM trans people, this transition is not easy. Many of them do not have support systems to go against the family and live in the attire their choice, so they continue to live as 'women'. Many of them migrate from their birthplace to big cities so they can become anonymous and live the way they want. They live as 'men' in a place where they can be anonymous about their gender identities. Many of the working class FTM trans people live more years cross-dressing as they cannot afford basic minimum surgery, not even a certificate from the psychiatrist. At the same time to be able to bring change in the language like "he got his periods", can also bring in change in the attitude of people to accept gender in different sense.

Since male gender expressions start early in life for many FTM persons, many of them initially suppress their feelings for the fear of the gender restrictions in the family system. When it reaches a stage where it becomes absolutely necessary to reveal their true feelings, the family and other state agencies do not accept the transition or the masculine behavior of a female born person. Many FTM trans people have been thrown out of schools and colleges for their gender variant behavior. For example, an FTM from Bangalore was thrown out of school while studying 9<sup>th</sup> grade for his gender behavior and attraction to girls as this was seen as a serious problem by the institution.

Invariably the family starts forcing the FTM person to become more feminine. They try to cultivate the FTM person into the perfect 'woman,' and market 'her' for heterosexual marriage. Most FTM people are raised by their families for the sole intention of marriage. For the FTM person being forced to marry a man means being forced into a gay relationship. In other situations an FTM may be able to continue to express himself in the way he is comfortable, by becoming financially independent. Another scenario is when persons are strong enough and decide to uproot themselves from their place of birth and migrate to a place where they are anonymous. Some persons might not be able to express this all their lives as they are pressured by patriarchy and the heteronormative society.

Our interviews revealed many FTMs who see themselves as 'men' only. In the LesBiT support network, many FTM people have identified as

heterosexual husbands with heterosexual wives because they cannot break away from the heteropatriarchal family structures. When an FTM person identifies as a heterosexual, they are ridiculed by other sexual minorities just because they cannot easily undergo surgery. This ridicule and struggle arises because there are no other models of ethical masculinity. The only easily available model is the middle class morality dictated by a family and marriage system centered around the 'sacred' pair of husband and wife. The female partner of an FTM person is often obligated to play the role of wife/femme as their homosexual identity may out their partner's gender/biological sex. This issue has led to frictions between partners who initially understand the transition and later raise questions about the trans person's identity of masculinity. In this context if one needs to understand the sexual orientation of trans persons one needs to base sexual orientation on gender and not on biological sex. Through this there is a need to separate biological sex and gender and understand the dynamics of sexual desire, attraction, preference etc from the lens of gender.

### *The politics of language and history*

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The FTM community in India comes across as a miniscule population due to lack of space in a society where there is no traditional framework for female to male transition. This community also does not have support of culture like that of the *hijras* so it becomes very difficult for FTM persons to create a visible space in society. The politics of creating identities, some interviewees said, is heavily based on funding attitudes. The retaining of the Indian names in the male born gender minorities is a funding strategy, and it was a severe struggle to broaden gender expressions in male born gender minorities beyond bringing the term MSM in the context of HIV/AIDS funding. The fluidity and the variety of gender expressions that are represented and expressed in male born genders are far more nuanced and have Indian origins as compared to female born gender minorities who are fixed in one identity called FTM.

Thus, one cannot accurately say that the FTM trans population is less than MTF populations because this no apparent mythological background for these communities and whatever stories do exist are appropriated by dominant MTF traditions. For example the Hindu mythological character 'Shikhandi' is a 'woman' who becomes 'man', to take revenge on Bheeshma. While there are other stories, that depict Arjuna of the Mahabharatha epic changing gender in exile, this particular story of Shikhandi is appropriated by MTF trans communities or it is used as a

general term of insult for those who are confused with their gender. While there are also possible FTM historical, spiritual and cultural figures like Mallintha the 13<sup>th</sup> Theerthankarta of Janism<sup>3</sup> and communities like the Sadhins — a group of ‘women’ from Gaddi in Northwest India, who renounce marriage and sexuality and do men’s work and dress as men even if they maintain their female name<sup>4</sup> — the thought of female to male transition remains alien in the Indian cultural imagination. More work needs to be done to understand this complex and largely invisible cultural history. One of the best ways to invalidate the existence of certain communities is by not documenting them in history or recognising their existence. Today there is not much information about FTM trans community in mainstream in India, but that does not mean that there is no evidence about the experience of FTM people. Certain histories go unrecognised, especially of those who do not claim a certain space or authority.

In most of our conversation with community members we understood that there is definitely a need for Indian origin names like *kothi* or *hijra* for female born gender and sexual minorities. A few people mentioned that they identify more with the word “Tirunambi” – coined by the Tamil Nadu government to recognise transgender people in the light of facilities made for “Tirunangai” (that is Hijra/Aravani). MTF people were called Tirunangai and so FTM people became Tirunambi, which has no connotation of sexuality. We see this is a departure from existing Western frameworks. In English, different kinds of gender identities are associated with particular sexual orientations, which may or may not be correct. For example: an FTM person is assumed to be ‘homosexual,’ while this may not be the case. Tirunangai allows us to base our understanding on gender and therefore include FTM people who identify as homosexual, heterosexual, or otherwise.

However, due to the increasing dominance of NGOs serving the ‘LGBT’ community in India, many new English identities and words now circulate around India and are picked up by our communities. Therefore for female born gender and sexual minorities, the process of self-

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<sup>3</sup> Article written by Mohit Kaycee titled “A Female Tirthankara! Surprised? Based on N Shanta “Women Ascetics in the Jaina tradition”, Vasantagauravam, (Mumbai, Vakils, Freffer and Simons Ltd, 2001), pp 117-134. Nalini Balbir, “Women and Jainism in India”, Arvind Sharma (Ed.) (Women in Indian Religions, Oxford University Press, 2002) pp 70-99.

<sup>4</sup> Penrose, W. (2001). “Hidden in history: female homoeroticism and women of a ‘third nature’ in the South Asian Past” *Journal of the History of Sexuality*, 10:1, 3-39.

identification is always complicated and political because of the lack of indigenous names to articulate our presence. The moment English steps in, class is defined. Since there is no culture that defines the intersections of caste, class and religion of these names, other agencies play that role. Funding politics and NGOs play a major role in bringing the caste, class and religion based politics of understanding the names and where they belong.

Moving to the words coined by NGOs many people have opted to adopt English names more comfortably than explaining their identities in regional languages. This is because in English 'transgender' can be explained in one word, but it involves several sentences in regional languages. We remember in 2005 when community members started to hear organisations talk about the identity 'FTM.' People began asking gender variant people in our communities whether they were 'FTMs' even if they had historically used other ways to describe themselves. Increasingly, more and more people are identifying as FTM. There is a clear divide among gender and sexual minorities who have significantly interacted with an NGO (been part of an NGO's outreach, are employed by an NGO, or received services from an NGO in their 'coming out process) and those who have never interacted with an NGO. Those who have interacted with NGO's are much more likely to identify as 'FTM' and use words like 'transgender.' Those who have not, use very different languages and often do not have short terms like these to express their gender/sexuality.

However, talking to the community we recognised that the use of 'Western' terms does not necessarily indicate an acceptance of a Western model of transgender identity. Indian people who use these terms may use them for very different reasons than people do in the West. While people may use language like 'transgender' or 'FTM' to identify themselves publically, they often admit that these words do not fully articulate the complexity of their identities. Indeed one individual we spoke with said that when he was in a small town growing up he heard of the word 'lesbian,' but did not relate to it because it felt too foreign and couldn't fully capture his experience. He remarked that after he came to Bangalore he felt conflicted in calling himself a heterosexual FTM transperson. He said the closest he can get to using English words would be homosexual female to male transgender.

Many times, FTM people have selected this term – with all of its limitations – because it has become part of our activist language. For

example, activists who predominantly conduct their work in regional languages still often use words like ‘mobilisation,’ ‘collective,’ ‘discrimination,’ ‘violence,’ ‘atrocities,’ ‘empowerment,’ ‘working class,’ ‘politics,’ etc. in English because these have more immediate and broader meanings than the equivalent expressions in regional languages. Female born sexual and gender minorities have used such language to build a possibility of communicating politically with other groups and struggles. Thus the narrative that Western identities are dominating local knowledges is only partially true. Female born gender minorities still find ways to maintain their political agency in accepting these terms.

Because of the complex intersections between NGO work, class, caste, urban/rural, and other differences the flow of ‘transgender’ knowledge is very complicated in our communities. In the process of our interviews with various trans people, the concept of ‘trans,’ ‘transition,’ ‘transgender’ and ‘transsexual’ gained more meaning than the definitions we commonly associate with these terms. This reminded us of the politics behind the construction of identities. Some of the community people said that when you state ‘FTM’ (Female to Male), it is definitely their identity — that is, the very name FTM. Some said that the word FTM could not capture the expressions of various stages of transition as do terms such as *hijra*, *satla kothi*, *kothi*, etc.

Some of the community people especially FTMs, who gave the interviews, also argued that ‘transperson’ is a more inclusive word that could represent them. Transperson means a transitioned person: the transition could be of mind, of body and also of politics. This could count those who transition or move away from the established norm, the social structures and stereotypes of being man or being woman or playing roles. Others stated that they would not like to acknowledge the transition at all as they felt they were always men. Some of them insisted on the need for the acknowledgement of the transition to claim multiple gender identities in stark contrast to the rigid gender binary system which allows only two genders. The stage of gender transition for some was not just a transition of the body and mind. It was also about how during gender transition, FTMs experience a heightened vulnerability as mainstream society is not ready to accept FTMs as a socio-cultural identity like *hijras*. So a transitioned person or a transperson for them, as they argued, was more inclusive.

Nonetheless, while individuals have managed to reclaim different (English) words and identities for themselves, it is important to

acknowledge that divisions in our communities still often arise from the different names that are used – names which are often reflective of class positions. For example the word ‘butch’ as opposed to ‘female to male transgender’ is an identity that connotes a certain class that has access to resources. In the same manner one sexuality activist stated that the word ‘queer’ is an upper class connotation of the word ‘intergender’, which is from the working class.

### ***Female born gender and sexual minorities/ LBT***

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Throughout this text, we have insisted on using the term ‘female gender and sexual minorities. While sexual and gender minorities who are born female *do* have quite a bit in common – in that they both experience unique relationships with patriarchal violence – it is also important to understand the tensions between these identities/communities and the complications that arises with such a political union. While we recognise that each community’s experiences are different, we do believe that it is important to build coalitions between female born gender and sexual minorities and we have seen how effective these coalitions have been in our own organising work in Bangalore.

Women identified partners of FTMs that we spoke to identified as homosexual, heterosexual, bisexual – but rarely identified as lesbians. People generally identify as lesbian only when both partners are women identified. In our experiences the word ‘lesbian’ in India brings two distinct images to mind: a woman who has relationships with other women and a woman who is involved with political action. It is only in explicitly social or political spaces have we heard of ‘lesbians.’ For example *Stree Sangam* in Mumbai (later became Lesbians and Bisexuals in Action (LABIA) started in 1995 and conducted crisis interventions, ran helplines, and was involved with the women’s movement. In Kolkatta there is *Sappho*, which builds a supportive space for women. In Delhi *Sangini* started working for lesbian women and women who are exploring their sexuality after 1977. What is important to note is that unlike their male born gender and sexual minority counterparts, most of these groups are not funded and have remained in the form of collectives instead of NGOs. A coalition of lesbian, bisexual women, and female to male trans identities was started in Bangalore (LesBiT) and in Vadodara (Parma) works on these issues. LesBiT started because Sangama, an NGO for working class gender and sexual minorities in Bangalore, brought together these groups under one umbrella. LesBiT soon moved away from using the language of lesbian, bisexual women and female to male trans people and started



using the term ‘female born’ to include all possible gender and sexuality expressions of female born people. While there is a longer history of ‘butch’ and gender non-conforming identities in these spaces, it is only after 2000 that the words ‘transgender,’ ‘transsexual,’ and ‘trans’ became used for female born people.

As we have mentioned, while there are often natural political alliances between female born sexual minorities and female born gender minorities, it is important to recognise the differences in experiences. In some cases gender variant expression is more permitted by others than sexual ‘transgression.’ The notion of female sexuality is often imprisoned by the reproductive paradigm. For example, consider the history of family planning programs that were enforced on women in India with the sole objective of controlling women’s fertility. This was nothing other than the victimisation of female sexuality. The women’s movement largely responded by understanding sexuality only through the lens of reproductive rights. However, we did not advocate the idea that women also have a right to *sexual pleasure*, not just body autonomy. Also, a few people we spoke to from working class and/or slum backgrounds told us how they were accepted by their families for ‘cross-dressing’ as ‘men’ because their families relied on their (male) incomes to survive and couldn’t afford to have their ‘daughters’ get married and leave them without support. In these cases the family could accept their child’s preferred masculine gender presentation because they financially relied on the child.

However, in other cases, especially among different castes, female born people are granted more sexual freedom than gender freedom. This is because sexual diversity is less visible than gender non-conformity. A trans/gender non-conforming person may not be able to wear masculine clothing at home or outside, but they may be able to carry on a secret affair with another female born person – perhaps under the disguise of “just being friends.”

This all just goes to show that there is not one experience of female born gender and sexual minorities in India. These experiences are very complicated due to caste, class, geographic, and other differences. However, what *is* evident is that due to a combination of historical, social, and political factors, the FTM community undergoes gross human rights violations, mostly by the institution of family. FTM people get denied education, restricted in their mobility, punished for their expression, and subsequently thrown out of school and employment. FTMs find it very difficult to live comfortable and safe lives.

# 3

## *Violence*

In a general sense the very word violence brings about an image of the use of physical force to cause injury, damage or death. Violence is regarded as an area of concern not only for law but also for medicine, and the state – all of which make attempts to regulate it. Violence is also often associated in its most extreme form with war and genocide.

What people may not recognise is that there are forms of violence that are not as visible and as obvious as this. Every manifestation of violence cannot be registered in law — violence requires different analytical categories for the offence to be punished by the law. Dominant conceptions of violence often ignore different sections of the population and different root causes for violence including caste, race, class, ethnicity, gender, gender identity, sexual orientation, etc. These dominant definitions are often influenced by funding sources – many of which come from the West which often constructs us as always ‘victims’ of physical violence, but rarely permit the space to consider other expressions of violence. In this piece we want to highlight the types of violence that manifest themselves in more subtle and yet equally harmful ways. This type of violence may take the form of discrimination, exclusion, marginalisation, and the violation of rights of minorities. These types of

violence are usually the ones that are addressed by social justice movements.

The idea of violence is constantly changing. It is difficult to identify one definition for violence. In order to better comprehend violence, one has to observe the ways in which people ascribe the term to different situations and contexts. This model of self-identification is more encompassing than one fixed definition. Social movements must move beyond a language of only ‘legal’ injustice and denial of ‘rights,’ and should instead seek to expand notions of violence and incorporate new bodies and scenarios into mainstream understandings of violence. Our communities are defined not only by our identities and by our possession of rights, but also by our experiences with violence.

In this section we will highlight what we see as the major contributions of the women’s movement to understandings of violence. By drawing from our case studies, we will then express the challenges that the experiences of female born sexual and gender minorities present to the women’s movement and its definition of violence.

### *Violence and the women’s movement*

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We spoke with feminist and other women’s activists to better understand the history of gender and sexuality issues.

What became evident to the womens movements early on, is that violent gender inequalities could not necessarily be addressed by the law. The law, as an institution, often has to rely on fixed and rigid definitions of complex phenomena like ‘violence’ for persecution. Womens movements moved beyond the boundaries of the law and identified violence in private spaces of domesticity and questioned ‘private’ social institutions like the family and marriage. The womens movements were the first to draw attention to the politics of personal and private spaces. Landmark cases — including those of the Shah Banu case, the Mathura Rape case, the Bhanwari Devi case – present an understanding of violence related to the violation of the female body and her right to consent.

The women’s movements also expanded conceptions of violence by drawing attention to the violent exclusion that accompanies gender difference in our society. After the 1960s, the women’s movement began to become critical of the way that ‘biological sex difference’ was used as a justification for the denial of equal access and opportunity for women. Feminists showed how different social institutions in both the public and private realm actually constructed gender roles for women. Feminism

began to raise questions about social structures including the economic sector, family, marriage, divorce, child custody, housework, education, and reproduction. In doing so, feminists showed how patriarchy predetermined spaces and roles for women and in doing so created a subordinate gender for women. Feminist analysis thus expanded a definition of violence beyond the physical and drew attention to the emotional and psychological violence that occurs from being in a marginalised position in society.

Respondents indicated that while issues of gender were initially only addressed by women's movements, the dawning of the human rights movement fundamentally changed this. With the advent of human rights discourse, activists began to question both public and private spaces and how they restrict individual worth and happiness. Over time the rights of 'lesbian, gay, bisexual, and transgender' people became apparent in this human rights discourse. However, as some of the feminists we spoke to said: the use of the human rights perspective became more about funding NGOs than actually addressing injustice on the basis of gender and sexuality. The more issues became framed as human rights issues the more funds NGOs received. Human rights, as these feminists argued, has failed to really make people question their understandings of gender and sexuality.

It is important to recognise that some of the feminists we spoke to in Chennai and Bangalore were self-critical of the movement's unwillingness to interrogate a politics of desire, sexuality, and pleasure. One of them spoke about how discourse around violence is marketable and attracts sympathy from other people, but discourses around pleasure and desire do not attract similar sympathy. She conceded that the idea of the personal being political has not extended to the topic of sexuality rights. Another feminist remarked that when we think about violence the perception still remains in terms of the law and that our conceptions of violence are dictated by the politics of NGO funding – even for feminists. What became apparent is the idea of the woman's body as sexual is only a new understanding for feminists. The only time feminists spoke about sexuality was in the context of reproductive rights. Issues like abortion and family planning became prioritised over the right to orgasm.

### *Violence faced by female born sexual and gender minorities*

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While feminism has politicised the personal it has not pushed this analysis to the personal level of our bodies and their very desires. This is evident

in the limits of feminism to accommodate for the experiences of female born sexual and gender minorities – bodies which are united in their common experience with violence after they assert a right to pleasure (being with another woman, changing one’s gender).

What we discover from our interviews is that the heteropatriarchal marriage system in India leaves no choice for female born sexual minorities to realise their pleasure either in terms of having a sexual partner of their same gender or in terms of wanting to identify with a different gender than the one they were ascribed at birth, or even expressing non-stereotypical gender behaviour like cutting their hair. Indeed, one of the main attacks for both MTF (male to female transgender people) and FTM (female to male transgender people) is on the basis of hair, which is very linked to gender expression for transgender people. For MTFs cutting off the hair by force is common and sometimes it has led to even murder of the person by their family. On 8<sup>th</sup> November 2011, Kumara Velu, a MTF was killed by her family for having long hair and the case was hushed up with no proof. Similarly cutting of long hair by female to male trans people is also punished, in fact many FTMs actually cannot even cut their hair till they come out of their family. Expression of *any* self-pleasure, let alone homosexuality, has no legitimate space.

This becomes evident with the interviews we conducted with parents of female born sexual minorities. Very few parents even consider the rights of their children to experiencing pleasure.

One individual’s parent refused to speak stating that he would feel uncomfortable to speak about this issue with women! This shows how the very possibility of women having sexual desire is still seen as taboo by our culture. Another individual’s parent refused to give an interview stating that her parents accept her because in their perception the girl is ugly and cannot be married off. Moreover they exclaim that this acceptance is a ‘private’ thing and not public.

We did receive some favorable situations. Two parents responded stating that they knew about their child’s “lesbian issue” and that they felt it is the right of their ‘daughter’ to have their choice of sexual orientation. One person’s confused parent told us that ultimately, it is her daughter and her happiness matters. However, it is important to note that all these three people who gave interview were from upper middle class and middle class families.

It is difficult to think about ‘one’ experience of female born sexual and gender minorities in regard to issues of violence and pleasure because this community, as with all communities in India, is divided by caste and class. The intersections of caste and class in the context of sexuality and gender are very complex. Restrictions on gender are more common in higher castes and classes, even though sexual diversity is rejected. In the lower class and castes, the gender expressions are sometimes seen as an upward mobility in female born people and acceptance often comes from economic contributions to the family. However, lesbianism is not accepted while being transgender might be accepted.

We interviewed two FTMs from Kerala, whose crisis cases I handled during my work with Sangama. One persons’ poverty made his parents not even search for him when he ran away from Kerala. Not all FTMs experienced similar violence; some of them were able to receive tolerance from their parents by fitting into their heteronormative vision.

One FTM’s mother approved of his gender and his relationship with a woman because she viewed him as being a heterosexual husband with a wife. One of the parents who responded to the interview and said that it was her child’s right to have a choice of sexual orientation, but she did not know about transgenderism. Though the question of acceptance was not an issue the concept that a female-bodied person would want to be a male was very difficult for her to understand.

What one can see in these limited number of available responses is that there is very little space for approval and acceptance of female born sexual minorities. Sexuality and gender as a choice and sex work as a choice challenges the structure of heteropatriarchal family and marriage system, systems that rely on restricting the agency of female born persons.

From our interviews we began to recognise that the experiences of female born gender and sexual minorities present new examples of violence and assault. While sexual assault committed in the public space can be recognised by laws, this is not the case for a female born sexual and gender minorities. Forced heterosexual marriage in the private realm is violation of self. It is a type of sexual assault – an assault to dignity and pleasure — that has become normalised in our culture and happens every day.

In most cases the moment the family comes to know about the homosexual orientation, heterosexual marriage is seen as a remedy to ‘correct’ the woman of her immorality, or disease. For various reasons

the family is also not equipped to handle homosexual orientation especially within female born people. This assault, this violence, has serious effects on the mental health and stability of female born sexual minorities. Unlike male born people, female born people often receive punishment for behaving like a man or having a relationship with women. There are cases where women have been put under house arrest without any connection to the outside world for months.

Many years ago in Mumbai there was a case of suicide by a Gujarati girl. It was a case of a Sindhi girl and a Gujarati girl in a relationship. The Gujarati girl underwent a sex change operation as the Sindhi girl insisted on this surgery to pass off as a heterosexual relationship. When the Sindhi girl refused the relationship due to the pressure of her family the Gujarati girl committed suicide. The other part of the *chawl* that he stayed in, was indifferent to this suicide. Scenarios like this happen all over Southern India. In our community research, we learnt that Sahayatrika, an LBT organisation in Kerala, has recorded more than 30 cases of lesbian suicides in a span of ten years. We also estimate that between 2003 and 2009 there were six lesbian suicide cases in Tamil Nadu. Sometimes these cases do not even get recognised as suicide because of the individual's non-heterosexual orientation. One does not even know of any kind of such documentation some 30-40 years ago. What this reveals is that compulsory heterosexuality can be lethal and cost one's life.

Based on this new domain of violence we ask: can law hold accountable persons who force female born sexual minorities into heterosexual marriage in the name of social morality and family honor?

### *Structural Violence*

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Structural violence is violence based on the systemic processes in which social, political, cultural and economic structures in the society prevent people from exercising their basic rights. Institutionalised elitism, ethnocentrism, classism, racism, casteism, sexism, adultism, nationalism, ableism, heterosexism and ageism are some forms of structural violence. Many times these structures perpetuate violence which is overt like family violence, racial violence, hate crimes, terrorism, genocide, and war but there are also forms contributed by these structures which are not as overt.

Many LBT people we spoke to shared their experiences with how they were forced to reveal their sexual orientation in the family and were consequently subjected to severe emotional trauma by being forced into

heterosexual marriage, ‘treated’ for homosexuality by mental health professionals, physically abused, and sometimes even put under house arrest.

In a case in Tamil Nadu, a Muslim girl and Hindu girl had a relationship. They were classmates and when the family came to know about their relationship, immediately the Muslim girl’s mobility was restricted. The family fixed her marriage and she was kept under house arrest for four months without any connection to the outside world.

In another case in Bangalore, when the family figured out the relationship between the two girls, one girl was forcibly taken for treatment, the other girl was treated like she had a contagious disease to the extent that she was put in a different room, everything was given separately to her, including her plate for eating. One of the girl’s fathers even asked the other girl if she had a penis and if she could satisfy his daughter.

The structure of our social system is based on violence if there is any sort of non-conformity. The structural violence goes with various levels of intersectionality like that of caste, class, religion, and gender and sexuality. Moreover cultures are different in various regions and this adds to complex structural violence especially against female born/women. When an individual is located in multiple marginalised positions, they experience even more violence in their inability to question and pursue alternatives to the systems they have been forced into. Because of this female born sexual and gender minorities must make do with even the little acts of recognition they are given or granted.

A woman from Palakkad called on Sahayatrika’s helpline asking if there were any spaces at all which could accept this kind of relationship. She said that both she and her lover just could not speak about their relationship before their heterosexual marriage. Though it did not come across as forced marriage they felt like homosexual relationships could not exist and they had no choice. So this woman, when she read about Sahayatrika’s work in the media, called them secretly, as she was extremely scared that her husband would find out about her sexual orientation.

There was an Adivasi lesbian women suicide case in Kerala in May 2002 (Moolamattom case), which was portrayed as though that they were committing suicide due to poverty. Their sexual preference never came into the picture. Ignoring the fact of sexual preference in such cases is a further example of structural violence. What we are confronted with through these cases of suicides is the intersections of class, caste and



sexuality. Hate crimes occur in rural areas but do not get recognised as such.

One FTM trans person who gave an interview shared that he was ridiculed terribly by his family and people around using the word ‘aanachankali’ in Malayalam, which basically means a woman/female born person taking on the role of a ‘man’. This usage is usually in the context of husband regulating the powers of a wife and this is not a derogatory word. In fact the FTM stated saying that he actually liked being ridiculed in that name, even though it was very bad, only because the ridicule is also recognition of his male identity.

In my own experience, I played cricket so I thought I could handle my expression of gender identity in terms of my masculinity in the name of sports. But that also came under fire though my father is a sports person. He tore my shirt, snatched away my cricket uniform and burnt it in front of me because I was not behaving like a woman. My father would beat me black and blue because of my gender expression. For me the biggest question always was why did I have to receive so much physical and emotional violence? I was wondering if I could ever file a legal case against my father and family.

What becomes evident from these instances and others, is that female born sexual minorities also experience public violence but the violence in private spaces is built into the system. Private space is in the family or within relationships where you do not go public or to the police stations to lodge complaints. It is where you cannot go public in the name of family honour. It is a situation where police refuse to register the complaint in the name of ‘family honour’. While State officials may come in to ‘help,’ they are often more concerned with morally policing LGBT people and women.

Though male born sexual and gender minorities have restrictions and norms of heteromascularity, they still have access to a space, no matter how small it might be. Sometimes male born (homo)sexuality and gender expressions get cultural sanction by religion. For this community there is a history, there are mythologies. For female born sexual and gender minorities there is no such space – we are always under control of the system. Our sexuality and gender expressions are regulated according to a system that denies our existence. This system punishes female born/women at every step and also has the power to block the outside world entirely. Moreover, female born gender and sexual minorities are often not in a position to run away from an environment because they have

been conditioned to be dependent (especially economically). While male born sexual minorities might have economic mobility to escape from their families, female born persons are often discouraged from education due to the context of poverty.

We believe that the time has come to develop a legal and political agenda that addresses these instances of interpersonal and structural violence that female born sexual minorities face in India.

### *Violence in the context of a patriarchal system*

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We have shown how many forms of violence that previously did not have names, came to be identified by legal, social, and political systems due to efforts from feminist activists. The question then comes to us: once a form of violence is identified, how do we get it recognised? For example dowry was unjust toward women, yet it had a cultural sanction. It was only because of the womens movements' tireless advocacy that dowry got identified as crime. Indeed, if one looks at the legal system what gets identified as crime/violence is heavily based on male convenience and patriarchal structures.

Often the legal system also overtly refuses to identify crimes/violence based on morality (a word used to conceal patriarchal bias). For example when a lesbian girl forcibly married to a man escaped to Bangalore from Tamil Nadu, her mother and ex-husband constantly tried to get her back and ultimately their efforts worked. They sedated her and abducted her back to Tamil Nadu. The organisation Sangama had earlier helped her resist her family's pressure to succumb to her marriage and children. While she was working at the Sangama office, she was abducted from her work space. When Sangama tried to give an abduction complaint to the police, the police refused to take the complaint stating that a mother and husband cannot abduct their own girl. Even after much persistence by the Sangama lawyer, the police refused to take the complaint. Finally they agreed to take a missing complaint filed by a co-worker.

Thus female born sexual minorities find it difficult to receive support and validation from the patriarchal legal system. However, they often face similar hostilities from women's advocacy organisations as well. There is an example of a women's group in North India that helped the parents of the lesbian couple to find where they were, with disastrous consequences. In another case, a women's group in India refused shelter to lesbians out of fear. In another instance, a women's shelter home in

south India could not take a decision, and forced counselling on a lesbian woman and advised her to go back to her family and husband.

What becomes evident is that patriarchal and heteronormative ideas have become ingrained in most people. Even well-intentioned feminists may believe that female born peoples' first responsibility is being a mother. In this biased system any form of non-conformity is subjected to punishment and violence.

### *Self-inflicted gender violence*

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Female born sexual and gender minorities are *also* implicated within this system, evident by extreme amounts of self-violence found in our communities. Our interviewees were marked with many feelings of trauma, guilt and fear. These emotions sometimes lead to self-mutilation and possibly, thoughts of suicide. Patriarchy has constantly justified violence and conditioned female born people to not question violence nor recognise it as violence.

In a recent case in Tamil Nadu, a lesbian couple was exposed in the media by one of the girl's brothers. Later the couple solicited help in Bangalore. During the negotiation process, the family of one girl took her back home and said that she could not be contacted. Her partner filed a *habeas corpus* case. Initially, the girl said that she wanted to stay with her partner. Then the court ordered the girl to stay in a shelter home and take counselling and time to take a proper decision. After the given time the girl stated that she wanted to get back to her family.

Now one knows how she arrived at this decision, whether it was the counseling or the coercion of the family or blackmailing of the family. Advocate Sudha Ramalingam who was handling the case, in fact asked the judge why the court did not give more time for the girl to take counselling to decide if she really wanted to go back to her family. This shows how state agencies and the judiciary actually do not even look at family spaces as sites of violence. This also shows how even female born sexual minorities become agents of violence against themselves and their relationships due to pressure from a patriarchal system.

Most female born people do not even recognise emotional violence. There is a need for additional training to recognise different forms of violence as the formal education system justifies the structural violence or the education system is completely heteronormative and patriarchal.

## *Concluding thoughts on structural violence*

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Everything cannot just be stated as gender violence and similarly all LGBTI experience of violence cannot also be put together and be perceived as one form of violence. All these experiences cannot be addressed under one kind of law either. Violence comes into too many discussions – experiences of violence are different to various people based on the differences of caste and class. We have to undo the easy understanding of violence and also locate where sexuality plays a role and where gender plays a role and where both come together.

Male sexual and gender minority communities are more vocal about their violence in public than female born sexual and gender minority communities. We engage with a community that hardly uses the state agencies like police or court. For the state to interfere in this issue, the biggest barrier is family – the honour of the female body as constructed by middle class morals.

In our call for an analysis of new types of violence that are faced by female born sexual minorities, we do not mean to dismiss the very real and physical violence that our communities face. In fact, our status as female born gender and sexual minorities increases our vulnerability to physical violence like rape and sexual assault as highlighted by the women's movement.

FTMs are more susceptible for sexual violence in public as the gender expression of FTMs is seen as challenging the masculinity of the male born people. In a case in 2006, two FTMs were having a meal at a roadside restaurant in the evening. A male stranger came and sat at the same table. The stranger was drunk and picked up a fight with these two FTMs. When the fight got physical, a person in the restaurant screamed across the room exclaiming that both of them were not men and were actually women. The immediate response from the male stranger was to tear off the shirt of one of the FTMs. For the stranger tearing off the shirt meant exposing the female body to the public. When the FTM went to the police station to complain, the police and the stranger verbally abused the FTM. They asked him if he had a vagina? Did he have a hole in his vagina? What was the length of the hole in his vagina? Again society's focus on female born people is on their vaginas and the need to keep this area 'pure.'

In calling for attention to new forms of gender violence committed against female born sexual minorities, it is important to think critically about the violence that accompanies silence in our communities.

Some forms of structural violence are not loud. Structural violence brings in certain kind of silence, which amounts to complete non-recognition. Silencing occurs on all sides: including family and friends. Another type of silencing occurs because compulsory heterosexuality leaves no room for female born sexual minorities to express any other preference. The difficulty with challenging this violence is that most forms of it are unstated and not recognisable even by the victims themselves because they have become normalised in our culture. For example we spoke to a female born person who was forcibly married for seven years and experienced every possible type of violence in this marriage. He decided to suppress his desire for the sake of family honour and hence got married.

Many individuals might not even be aware that there are alternative ways of desiring, experiencing pleasure, and creating relationships outside of a heteronormative system. This silence can be particularly isolating for female born sexual and gender minorities. Unlike other minorities – including class, ethnic, and caste minorities – sexual and gender minorities do not receive support from their families or communities. They became a minority within their family, state, and society due to the silence around issues of gender and sexuality. In this context, the very first space where a female born person attempts to express their preferred sexuality or gender expression is hostile. They get alienated by the family – a system conventionally thought of as the basic unit of society. The silencing of their desire and their difference begins here and extends to all other aspects of their life: work, education, marriage, etc.

Therefore, unlike other struggles, female born gender and sexual minorities find it extremely challenging to experience solidarity and build community. Accordingly, we have to develop new models of activism that incorporate an analysis of the *violence* of silence. This has widespread implications. Currently we have a legal system that requires one to ‘prove’ the violence faced by a certain group of people. This may not be possible with the struggles of female born gender and sexual minorities. While suicides and other violence occur, newspapers may not accurately report this (even if they mention it). Thus there might not ever be ‘evidence’ – in the formal ways it has been defined – to legitimise our struggles beyond our words and accounts of our personal experiences. Also, acknowledging

the violence of silence means that we cannot put all of the obligation on community members to fight for change. Many community members have internalised their own oppression. We must emphasis on the need for mainstream culture as a whole to shift and create the space for the articulation and expression of difference.

### *Legal construct of violence and possible change*

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If we take the presence of this violence seriously, we must imagine new ways of creating and doing legal justice as the law itself has been the cause of violence for female born people across India. Currently the construct of violence in law is much less about social justice and respecting individual and community rights, and is much more about defining crime and punishment. The criminal law is more lenient to those who are upper class and can access the law and all of its processes. The law never focuses on the victim's situation after the offence has already been committed; law is not empathetic, not truly concerned with what happens to the victim after the crime, and is rather only invested in punishment and law enforcement. One lawyer we spoke to remarked that even though law pretends to be objective and neutral, it is often exercised in a way that is more violent towards poor and other marginalised communities. For example even when a wealthy person might commit a huge financial scam, they may receive a similar amount of punishment as a poor person who has committed a petty crime. We have also seen the ways in which the 'neutral' law is used as a tactic of violence and power against female born sexual and gender minorities. For example, many of the people we spoke with talked about how officials in the state of Kerala have repeatedly claimed that there are no lesbians there.

Even though the law has been exercised as a tactic of violence against our communities, we do not believe that we should abandon the law in a struggle for justice. However, we need to drastically change how we imagine the ways that we think of and practice law to reduce the violence faced by gender and sexual minorities. We cannot think of law as the only solution for our communities. As we have expressed, the State and the legal system are both institutions of violence and cannot be trusted, therefore, to end all of our injustice. We need to develop social movement strategies that think creatively about how to make use of the law, while simultaneously critiquing its flawed construction and prejudiced implementation. The law should be used as part of a broader strategy for social change – social change that upholds our rights, prevents crime, reduces violence, and promotes equality for all. This is why in the

remaining sections and chapters we still believe it is useful to review pertinent legislation and think of ways to re-imagine these as protecting our communities. We are hesitant to suggest *new* laws, because we are worried that this will contribute to a culture that always sees gender and sexuality as issues of the Other. We are also not interested in giving the legal domain more authority (and therefore capacity for violence) against our communities in particular.

**Gender Expression:** The Constitution guarantees this fundamental right – “Right to freedom of speech and expression, assembly, association or union, movement, residence, and right to practice any profession or occupation (these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality).” Gender expression is a form of expression and should be protected by the law. Therefore, any sexual or gender minority who is a target of violence for their gender expression should be able to pursue justice and report this violence as a violation of their fundamental rights. In reality, though, this option is not really available and social morality governs every expression of gender and regulates and punishes anyone who does not conform. This punishment is not seen as a crime by the state and goes without redress.

**Domestic Violence:** In order to address the violence perpetrated against women within marriage and family, the state introduced the ‘Protection for Women Against Domestic Violence Act’ in 2005. In this act an “aggrieved person” is any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. In this definition the usage of “has been in a domestic relationship” can be interpreted as domesticity that is shared in the parental house with family members like parents, siblings and relatives. Most female born sexual and gender minorities undergo severe violence at the hands of their families. The definition of the ‘aggrieved person’ in the Domestic Violence Act, is broad enough to include the violence suffered by female born sexual and gender minorities at the hands of their family.

Thus, while efforts to change the Domestic Violence Act was not intended to consider how to best address the unique circumstances of female born gender and sexual minorities, this legislation may actually be used to address these forms of violence. However, further legal analysis needs to be conducted to see how this law can be applied to all gender and sexual minorities. The definition of ‘woman’ in this act includes all people who

are born female – so technically female born gender and sexual minorities can fall within the definition of an aggrieved person. However, the current definitions of this law are still exclusionary. Firstly, we need to expand the definition of ‘woman’ beyond female born to include *hijras* and other ‘male’ born gender minorities who identify as women. Also, we need to realise that although they might be born ‘female,’ many FTM people identify strongly as male and, currently, would have to face the violence of being incorrectly gendered in the court as a ‘woman’ to receive justice for their violence. One suggestion that came up from our interviews was including trans people in the very definition of ‘aggrieved person,’ while not taking away the special protection for heterosexual women against violence by their birth families and families they are married into. However this strategy does not think about who will be considered in the category of ‘transgender’ and how they will be identified. We need to collectively think of ways to de-gender the ‘aggrieved’ person, but *still* simultaneously acknowledge the unique circumstance of violence faced by female born people.

If the general legislations like physical assault and cruelty can be used against the family or public in the courts then, the gender specificity of protections for women need not be taken away, as one cannot at any cost compromise on women’s rights. What one needs to look at is more about the act of crime, not the sex or gender of the person. Inclusion of transpeople should not mean making the law gender neutral as that would be dangerous in many senses. (See **Chapter Four** for a more detailed discussion on this point)

In fact the limitation of Domestic Violence Act is also that it is quasi-criminal and the Indian Penal Code is more effective to regulate crimes against transpeople. However Domestic Violence Act recognises the concept of third party intervention and makes space for the organisations working on female born gender and sexual minorities to give a complaint either in a police station and to the Magistrate directly. However, the complaint to the protection officer will not result in immediate action for a case either in a case of house arrest, or cruelty by the family.

**House Arrest:** In the situations of house arrest of female born sexual and gender minorities, framing the issue as illegal detention and asking for remedy of *habeas corpus* works better as there can be an immediate action. Most of the female born sexual and gender minorities have the experience of being under house arrest with absolutely no connections with the rest of the world. If it is a couple, one of the partners would be



put under house arrest the moment the family comes to know about the homosexual relationship. If one of them identifies as a transperson and the girl manages to escape from the family and go live with him, then there might be an abduction case foisted on the transperson, and allegation that the transperson spoiled the girl.

In such situations, advocates in India have found one legal process useful: the *habeas corpus* petition where the state has to produce the details and information and the person in front of the petitioner. The partner is usually advised by activists to file a *habeas corpus* petition at the High Court because it is a more effective remedy. It is one of the most powerful writ petitions in India and has mostly worked effectively except for certain cases where ‘social morality’ gets brought up. For example in Kerala there was a lesbian case in where the two girls, one Hindu and one Muslim girl, came out of the family and sought shelter in an NGO. When the Muslim girl was taken back by the family, the Hindu girl with the help of the NGO filed a *habeas corpus* petition. The High Court ordered that the two girls could live together because they were adults. Immediately after the judgment, when the girls came out of the court, the Muslim family, with the help of the police, kidnapped the Muslim girl and confined her in a place that was not accessible in any way. It was clear contempt of court case, but the advocate at that point could not take further steps.

While *habeas corpus* petitions are useful remedies in any house arrest situation, our interview participants suggested other laws from the Indian Penal Code, as well:

**Section 357. Assault or criminal force in attempt wrongfully to confine a person.** Whoever assault or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**Section 339. Wrongful restraint.** Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, is said wrongfully to restrain that person. Exception: - The obstruction of a private way over land or water which a person in good faith believes himself to have lawful right to obstruct, is not an offence within the meaning of this section.

**Section 346. Wrongful confinement in secret.** Whoever wrongfully confines any person in such manner as to indicate and intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

**Section 345. Wrongful confinement of person for whose liberation writ has been issued.** Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

All these sections protect every person in this country, including sexual and gender minorities. Anyone who is related to the person concerned, not necessarily blood relations, but also friends, organisations etc. can file the case. Technically, this is possible, but the judicial mechanism and the state agencies like the police operate based on social morality. Many people who gave interviews also expressed the fear that unless the state and judiciary system improve there is no point in filing a case.

What becomes evident is that there is a need for more awareness about how family and marriage as an institution are violent and pose threats to individual rights. The utopian ideas of family being the ultimate protection and marriage being the ultimate aim of life should be questioned, critiqued and this reality should be brought in front of public and the State.

### *Same Sex Partnership Violence: Imagining justice outside of the courts*

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Violence within the community should also be addressed like self-inflicted violence, violence among partners, and violence within community members. The power positions and roles held by working class people in a same sex relationship are very much based on heterosexual marriage for lack of a different model of living. However, what becomes apparent from our interviews is that queer relationships do not work in the same manner as heterosexual relationships. When they try to structure themselves like heteronormative relationships they

contribute to a substantial amount of violence beyond just partner violence. The pressure to conform to heteronormative marriage results in adapting problematic masculinity models such as drunken behavior, publicly chastening/upbraiding the wife etc.

The support that is created for people within the family, marriage and society is not extended to same sex relationships. The initial struggle is all about getting a space to live together as a couple for members of the LBT community. Once that is done, most of the people do not easily get support systems in the form of community groups. Even if there are community support groups, there is a huge struggle to not follow heteronormative and patriarchal models of support systems. It becomes difficult to reconcile being torn between the values of the heteronormative system we have grown up learning and the radical queer politics we have come to understand. At the same time we must make a commitment to envisioning radical alternatives in order to realise a violence free society.

When it comes to partnership violence in same sex relationships and relationships between FTMs and femmes, some participants told us that a community justice system should be used. The state justice system cannot be used in the present situation as the community does not have any kind of positive recognition, moreover the state justice systems also operates within the logic of heteronormative patriarchy. Participants who believed in the community justice system felt that the *hijra* community offers an important example of a community based system that functions outside of the realm of the law; however, these respondents also expressed concern with this structure because of its feudal nature. Therefore, if a community justice system was set up for female born gender and sexual minorities' efforts would have to be taken to make sure that it did not become patriarchal or violent in other ways like *Nari Adalat* courts. For example some of the interviewees shared about how in *Nari Adalats*, initially the out of court negotiations of rape cases would end up in getting the rapist married to victim.

In constructing this community justice system we must recognise how the community members have already had traumatic experiences due to discrimination on grounds of gender, sexuality, class, and caste. Community members may be eager to assume positions of authority and power; however, we have to make sure to envision new models of equality that do not allow more privileged members to take control.

## 4

### *Sexual Assault and Gender Inclusivity*

Violence that is sexual in nature and violence that is based on sexuality are usually understood as two distinct things. With more critical analysis we see how heteropatriarchy has actually only recognised certain experiences of sexual violence including rape, sexual assault, sexual abuse, sexual harassment at the workplace, and so on. Laws exist to address these issues and have been adapted over time to recognise various forms of sexual crimes. However, it is important to recognise that the laws that address these forms of violence are still derived from the framework of a patriarchal and heteronormative point of view. Take for example IPC section 354, “insulting the modesty of a woman with force or assault”, section 375 on rape, section 376 on punishment for rape, Supreme Court ruling on *Vishaka vs. State of Rajasthan*, and IPC section 509 on insulting the modesty of a woman with words, sounds, or gestures. Actually these do not capture the experience of sexual violence of any kind of ‘woman’. As previously argued, these laws and precedents actually neglect experiences of sexual violence faced by women who do not fit the traditional definition – including sex workers, women from different castes, religious, and class backgrounds, and people of diverse and non-conforming gender expressions.

When we talk of sexual violence, we usually acknowledge the role that gender plays in it. The feminist movement has rightly recognised these crimes as gendered crimes. ‘Gender’ here is often understood as a biological difference and is sometimes occasionally recognised as constructed by society. However these sexual assault laws assume that only two genders (male and female) are involved in these crimes. Another level of analysis is therefore needed to understand what sexual acts are assigned to whom and so what is understood as sexual violence and what is not. What is evident in current policy is that the definition of sexual violence is focused on penetration – penetration by a male and masculine gendered person who assumes this role. The reality of the situation is that sexual acts, especially those engaged in by queer and gender-variant people, are much more diverse and do not necessarily involve penetration. While other sexual acts are considered in sections 509 and 354, the punishment is less serious than the punishment for penetration. This shows a bias for a particular understanding of (hetero)sexuality. Considering the fluid and diverse identities and sexual practices of our communities we must ask tough questions about what is desired in consenting relationships, how power becomes negotiated among couples from different backgrounds, and how we can equalise sexual encounters and enact less violence.

### *Sexual violence against female born gender and sexual minorities*

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Many female born people undergo rape within compulsory heterosexual marriage. The FTM people we spoke with candidly shared their experiences of violence within the marriage system: this included the gender violation that occurs when they are forced to perform the role of a ‘wife’. This violation is two-pronged: violation of a body that does not consent to the sexual act and violation of a body that is not gendered as a cis woman. Marriage becomes normalised rape for transpeople: the everyday sexual favours that they are required to provide for their husbands is not consensual. One of the FTMs interviewed talked about how he was sexually tortured with sharp instruments by his husband for not co-operating and providing sexual favours.

This forced sexual interaction in marriage is not recognised as sexual violence/rape in our law. Even if this violence will be addressed by the present law (of course with changes to include marital rape or to address it as sexual violence in Domestic Violence Act) these laws enact further violence on FTM people as they have to go to court and testify as ‘women’.

FTMs not only experience sexual and gender violence from their partners, but also from the state.

Even though our Constitution is predicated on the value of individual rights, this is not reflected in our laws, particularly around sexual assault. We see the ways in which the value of individual consent gets lost by reliance on institutions like marriage. Indeed, the very meaning of marriage in Indian society means you are obligated to provide certain favours to one's husband. The individual agency, choice, pleasure, and rights of the partner of this husband are not addressed.

It is important to clarify here that when we make critiques of heteronormativity, we are not only critiquing compulsory heterosexuality, but also a particular type of heterosexual *culture*. In a heteronormative culture, issues of power and force are not discussed in relationships. Heteronormativity assumes consent, assumes equality, and assumes equitable distribution of power. Heteronormativity is a logic that not only structures the institution of marriage, but also different forms of relationships including relationships between sex workers and their clients. Heteronormativity is not just fortified by institutions like marriage, but also by individual social actors. Take for example the case when an individual goes to the police to report sexual assault and the police assume that they have a right to morally advise and 'correct' them.

It is these assumptions – the idea that 'men' and 'family' know more than 'woman' or 'wife' – among others that make heteronormativity so dangerous. What we are trying to express is that heteronormativity often assumes consent when it is not present. In our discussions with sex workers we learned that people assume that sex workers *always* consent by virtue of their profession. For example, one sex worker had a client who assumed that she would be willing to be penetrated with a sharp instrument.

When we speak about heteronormativity, we do not mean to privilege only the experiences of sexual minorities: it is important to recognise that this power system intersects with caste, class, and other layers of social difference. For example, the Indian caste system also regulates sexuality in a way that violates the integrity and rights of female born people. For example in specific castes, after having sex with the husband, the wife has to have a shower and wash her hair to acknowledge the fact of sexual intercourse. If a wife does not wash her hair and just has a shower at least three times a week it denotes that the person has not had sex. An FTM friend of us shared with us that he was being forced by his

in-laws to have sex with his husband, whenever they found out he was not washing his hair. We also heard about a lesbian couple in Kerala, from the tribal community who committed suicide. This case came up in front of the *panchayat* who decided that what they were doing was 'immoral.' They declared that this immorality was being spread by the tribal community because they did not know any civil way of living. The *panchayat*, who were mainly members from the *Namboodiri* and *Nair* castes, held pre-conceived notions about these castes. This just goes to show the way that a discourse of heteronormativity not only requires appropriate heterosexuality but also mandates appropriate class and caste based performances of sexuality.

Due to the roles and expectations ascribed to their bodies by heteronormativity, sex workers, wives, FTM partners of men, and other sexual minorities not only do not have the space to speak about sexual assault, but also do not have the legislation to protect them from such violence.

Heteronormativity not only prescribes specific roles for female born people, it also requires specific roles for male born people. Heteronormativity intersects with caste, class, religion, and other social categorisations to create an image of the ideal 'man.' This image of a man is very patriarchal. Male born people are also victims of this patriarchal system. They are required to legitimise and demonstrate their masculine power every day.

There is a form of expression of masculinity that is supported by caste, class, gender/sex, religion. This form of hegemonic gender expression of masculinity lacks diversity and plurality. It is a form of a unitary gender expression which upholds patriarchal heteronormativity. According to a lesbian sex worker ( a person who identifies as lesbian but does heterosexual sex work for a livelihood) "a body having penis, penetrating is not just a biological act. It is also a social act where the attitude is "I will put my sperms like I throw away the waste in a waste box and it is you who have to carry it. Not my head ache, and your life is spoilt". "I am male I can do anything and that's my power". And she continues "but now we have also developed it into "you throw your waste and I can throw it too". This example shows that masculine power is being broken in sex work where the woman gains a certain power in terms of giving pleasure and taking money for sex as paid service but it is not the same in the context of extra marital relationships. In another instance some women sex workers and *hijra* sex workers actually had a roaring laugh

about how men are fools that they cannot realise where they are penetrating.

### *Gender inclusivity: a transgender feminist critique*

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Recent dialogue around transgender issues and sexual assault has produced the idea that all transgender people are supportive of ‘gender neutrality.’ We are uncomfortable with the ways that queer activists have made unlikely allies of cisgender male advocates around a platform to de-gender the law. While a project of de-gendering the law is something that we generally support and believe, as gender should only be incorporated in law when it is absolutely necessary, we feel that it is nonetheless important to differentiate our position from dominant strains of NGO organising that has adopted the term and politics of gender neutrality. We are *not* gender neutral. We are bodies that deeply struggle with our own personal gender identification and the barriers that institutionalised gender systems place on our experiences and bodies. We recognise that gender is a category of oppression and violence that must be eliminated as a significant kind of difference in order for there to be liberation for our communities. However, we acknowledge a long history of oppression against female born people and the struggle of our feminist foremothers to gender the law and afford protections to female born people. While we aspire to a world of gender neutrality we acknowledge that removing gender completely from current legislation and culture would actually perpetuate patriarchy. We aspire for a world where gender is not invisible or disregarded, but also for a world in which gender difference is acknowledged and celebrated. We are skeptical of the impulse to refuse to see gender when it continues to enact so much violence on female born people. We want gender difference to be envisioned as any other kind of difference that does not result in violence: the color of our eyes, the shape of our ears, etc. To this effect, we believe that our political struggle is best represented by the term gender *inclusivity*, rather than gender neutrality. We want to envision a legal system and world that is inclusive of all gender expressions and challenges any form of gender entitlement that bestows more power on one gender at the cost of all the rest. We want to envision a feminist understanding of gender inclusivity that respects the importance of maintaining gender in the law for the time being – especially around sexual assault laws. Rather than making these laws genderless – and becoming complicit in patriarchal systems which seek to conceal the violence of gender – we want to imagine new ways to make laws *gender inclusive*.



Many of the sexual and gender minorities we spoke to, maintained that sexual assault laws should not be made gender neutral as this would violate the specificity of gender crimes against women from different backgrounds. Our respondents acknowledged that women who undergo rape not only are victims of sexual violence, but are also victims of cultural stigma by all members of the society. Indeed, in many cases of rape, the community forces the victim to get married to her rapist. Similarly, cisgender women we interviewed stated that they were well aware of the sexual torture and assault that sexual and gender minorities undergo. They suggested that a separate section under the sexual assault law should be introduced – like how a separate section for child sexual abuse is recommended to be introduced under the sexual violence/assault law.

Others we spoke with, suggested that gender neutrality should be introduced. Some argued that many female born sexual minorities assume heteronormative expressions for the sake of validity and that in the assumption of these expectations they also may assume the role of people who inflict sexual violence. Indeed, what emerged from our research were patterns of sexual violence that are not discussed or addressed by current legislation.

Some of the MTF people we spoke with, shared very painful moments of violence perpetrated by women on their bodies either in the name of curiosity or in the name of insult. Initially they said they found it difficult to frame this violence as ‘sexual’ because the dominant construct of ‘woman’ does not allow her to commit sexual violence. Later they realised that this was actually sexual violence, too. On the other hand some *hijras* admitted to violating the bodies of cisgender women in their curiosity.

Many FTM people talked about how they were raped and sexually assaulted by cisgender men to “put them back in their place.” These people did not even want to report this violence because this would mean they were not ‘men.’ Other FTMs expressed disbelief in the very potential that they could get raped because they were men and believed only women could get raped. When we discussed gender neutrality with FTM people many felt that this could possibly include their experiences, provided that they were not further violated on the basis of their gender in the name of evidence and medical examinations.

Many *hijra* friends stated that after they undergo surgery and transform into being woman, they are raped. At the same time some *hijras* confessed

to fantasising about rape because it validates their womanhood. They further noted that when a hijra is raped, she does not experience the same stigma which a woman undergoes when she is raped. The stigma is seen as desirable as that would mean that the identity of the hijra as a woman is validated. This only indicates the complexity of the experience of sexual violence for hijras and should caution us about what kind of legal framework needs to be there for protecting hijras from sexual violence.

### *Going forward*

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When we begin a discussion about changing rape laws it is important to understand the history of these changes and where the current debate resides. Ten years ago when advocates suggested changes to the rape law, the idea of gender neutrality was not accepted at all even for the victim. Ten years later there is an accepted move towards victim gender neutrality. The question of using gender neutral terms to define the perpetrator is highly controversial. While many advocates argue for complete gender neutrality in order to address multiple expressions of gender, other women's groups, queer women's groups and human rights activists argue against defining the perpetrator in gender neutral terms. However, they may accept complete gender neutrality in the situation of custodial sexual violence.

As one of the activist from Chennai argued: "To deny the very possibility of violence on the bodies of all those who are perceived to transgress gender norms, and not only those who are biologically female, would indeed be a gross disservice to feminism which, in the first place, expanded our understandings of what it means to be gendered. In other words, to apportion victimhood, when it comes to sexual assault, only to women is a regressive move that amounts to smudging the crucial distinctions between sex, gender and the sexual...such a claim only reinforces the false notion that both 'the sexual' and its assault locate themselves in (certain parts of) the female body alone."

We find this debate very important and maintain that it is important to think critically about the legal implications of any move toward gender neutrality. We think that many changes must be made to the law before gender neutrality can be effectively incorporated. First, it is important that we change basic systems in the law. We need to find ways to have complex gender expressions recognised by other laws before they become recognised by criminal laws. We need to make sure we do not only

recognise disempowered communities only in criminal law, without empowering them with appropriate positive laws.

Any legal effort for gender neutrality should recognise how Indian law does not currently have the concept of gender; it is mainly guided by the biological sex. In order to introduce 'gender neutrality' we should first introduce the concept of 'gender' in the Indian law. This itself is a big effort. To introduce gender as a concept in Indian law does not mean making use of the word 'person.' Rather it involves reworking the meaning of gender in laws: for example changing the IPC section 10 Man, Woman which says "the word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age". This has to change to "any human being whether born male or female has a right to take on any gender which will reflect their civil, political, social, economic and cultural identification without any ridicule, harassment, denial of rights and will and be accepted with dignity and respect."

It is necessary for lawyers to devise the most comprehensive and least dangerous way to define gender in the law. This might involve a process of strategic litigation. For example we believe that it is imperative to change the law IPC section 354 outraging modesty of women to include non-penetrative sexual violence.

Indeed, while gender neutrality might sound like an attractive option, we are worried that gender neutral sexual assault laws might be further used to criminalise our communities. We can imagine state officials misusing this policy to typecast *hijras* and other gender/sexual minorities as rapists.

In earlier chapters we have shared our experiences about crisis situations that female born sexual and gender minorities are forced to undergo. A crisis is a situation which occurs when a person is left with no support to exercise rights due to their sexual orientation and gender expression. Usually in this situation individuals are unable to live the gender they want to, or are not allowed to live a life of their choice with a sexual partner of their choice. Parents and extended family make all the efforts, which can go to any extent of violence, to stop the person exercising their choice. Often, the woman identified female homosexual individual is put under house arrest and subjected to severe torture and cruelty. In one case a Muslim girl in Coimbatore was subject to house arrest for four months and subjected to severe torture to the extent that she was blackmailed daily in the name of religion and was kept away from the world outside by cutting off the telephone, mobile, mail, and internet connections. An FTM friend of ours was put under house arrest and given food and water with separate plates and glasses. Sometimes parents beat their gender or sexually variant children with sticks. One of the girls' father, in fact, went on to say "what are you looking for in that girl, she does not have penis. I have one, do you want to experience real sex with penis." Some people are even killed. This of course is still not seen

as hate crime or even as honor killing. In remote villages and rural areas, female born sexual and gender minorities are even produced in the *panchayats* and insulted publicly. Working class and Dalit caste female born sexual and gender minorities are even more vulnerable to this torture and violence. Often activists and individuals who work with these crises are also subjected to violence and torture by family and the police. In a case in Kerala, the parents and relatives of the girl actually beat up activists who went to intervene.

After working in this context for years, we have developed some methods for engaging with these situations. We are not claiming that this is the only process or that there is only one way of handling such cases. Each crisis intervention process is different and has to be treated in a way that is sensitive and also sensible. Most of the arguments are about convincing parents of female born sexual and gender minorities that there is nothing wrong with homosexuality or transgenderism and that it is not immoral, abnormal and illegal. Before Naz Foundation judgment on section 377, we could not that easily win arguments with the police on the legality of homosexuality. Post the judgment, it does get recognised as legal but there are doubts cast by the police and the courts whether the judgment applies outside Delhi. That was the most difficult thing, as it was complex layers of different areas of law, medicine and society. Activists engaged in crisis intervention also face personal questions and attacks of being immoral and of 'loose' character. Most of the times only two discourses help in the arguments: the law i.e. human rights and fundamental rights and the discourse of love; "If you love your children, how can you hurt them?"

What is observed in this entire process is that if there is something that is uncommon, people are conditioned to hate it and want to correct it. In the recent times, the intolerance of parents and the extended family is growing to the extent that they are completely willing to abduct their 'daughters' from the partner. Unfortunately we as people who are legally intervening cannot even frame it as abduction as the police will not take such a complaint. The police ask, "How can parents abduct their own daughter? Parents are sometimes very creative in abducting their 'daughters'. They sometimes emotionally blackmail them, put them under house arrest, or forcefully abduct them from their workplace.

Most LBT people do not plan to leave their family house and prefer to negotiate their identities in their homes. However sometimes LBT people are forced to leave the house when parents suddenly figure out about

their daughter's sexuality and gender and threaten violence. Some of our interviewees have told us that sometimes, in a fit of anger, parents have gone to any extent, including killing the 'daughter' for the honor of the family. In another case in Madurai, both girls' marriage was fixed and the only chance that they got, they escaped and ran to the airport and booked their tickets to leave. Due to confusion in planning the intervention, they were apprehended in the airport and both of them were forcefully married to men. If there is a mistake in planning the intervention, it could result in the victim being further tortured by the family. If there is a misstep, the family will get further alerted and begin to vigilantly monitor the moves of the LBT person. We activists will not get a second chance to intervene.

What is very important here is that the family, like the state, does unimaginable custodial torture but this is legally not recognised as custodial torture. *Hijras* face it at the hands of police, family and sometimes from their own gurus. Like the state, the family gets legal and social sanction to commit custodial torture as well as other crimes. Those acts that get recognised as crime in the society when committed by state and the family are accepted as part of the ordinary course of things. Human rights laws cannot directly punish either state or the family and are never used for the purpose penalising the family.

### *Sites of crisis intervention*

**Family:** Usually it is in the family that the crisis starts: it includes house arrest by the family as well as physical, mental, emotional, verbal and sometimes sexual violence in the name of correcting LBT persons. Sometimes members of the family do help the LBT person but then, they are also subjected to violence if their role is revealed. Physical violence is high in these cases. The family not only perpetrates violence, but also takes away all the support systems and forces LBT people out of education and employment. Often LBT persons are forced into heterosexual marriages.

**Police:** In most of the LBT cases police play the role of custodians of morality. They think their responsibility is to give lectures on morality and correct people who they think are doing immoral acts. Many times cases cannot be filed and first information reports also are not taken by the police. Victims become extremely vulnerable in police stations. Their statements are not recorded. Only when the activists who are intervening insist on recording statements or filing of complaints do the police even

make a casual belated effort. The victim and the activists who support the victim are heavily ridiculed in police stations.

**Public:** It is transpeople who face utmost violence from the public: humiliation, physical violence, sexual violence, ridicule, curiosity leading to violence etc. In most of these cases, the perpetrator cannot be taken to the police as the gender of the victim would be revealed and even if the transperson was ready to reveal their gender. If the transperson will reveal their gender that itself will become a point of ridicule. Sometimes this public curiosity has led to them tearing off clothes to find out the ‘real’ gender, and there will statements like “you are trying to show us what masculinity is”. Sometimes the public uses clever strategies to sexually harass FTM people: they touch the person all over the body especially around the chest, back and the parts below in a supposedly friendly manner. When questioned they would say, “Are you not a boy?” or “Oh! I thought you were a boy; you look like my friend.” The police are not sensitive to even address this. In fact the police themselves would join the public to ridicule or harass the transperson.

**Interpersonal conflicts:** Many times couples get into conflicts with each other. This often happens when they have lost all the support systems that a family can provide and also when they cannot find a social circle immediately. They end up remaining with themselves. Ego issues, gender roles, work distribution at home, and other factors lead to severe conflicts and violence. These issues somehow occupy major space within a community group that is trying to resolve issue within the group. People experience severe emotional trauma and burn out.

**Harassment and torture in educational institutions and work spaces:** Any institutional set up is built on the principles of patriarchy and heterosexuality. Within these heteronormative regimes of control many forms of violence go unnoticed. It was only two decades ago that the Supreme Court through the *Vishaka* judgment gave directions to set up sexual harassments complaints committees. Again the focus is on sexual violence experienced by one set of people and is not inclusive. Trans persons get sexually harassed and ridiculed severely in educational institutions, which is not even documented and registered anywhere. Some *kothi* participants have shared that in their higher secondary education, they were forced to provide sexual services to male teachers in the school. It begins with severe ridiculing of gender, with statements like “you do not walk like man, talk like man, why is your hand hung like this, why are you always with girls” and so on. On the other hand,

FTM persons often discontinue their education due to increased corrective restrictions on their gender. Sometimes they undergo sexual violence at the hands of male teachers in the name of correcting their behavior. The workplace has been another area of severe violence for marginalised sexualities and genders. Forums for redressal are not equipped to handle these cases in a manner that is inclusive of gender violations. Even within the sexual and gender minority community these kinds of gender violations occur on a large scale.

**Legal cases:** Usually there are a series of legal cases that are filed by the parents against persons who belong to the LBT community. These include filing missing complaints as well as cases of kidnap and abduction. This process of getting back ‘daughters’ is not thought of as a crime in the law. On the other hand the LBT community usually depends on *habeas corpus* petitions to somehow manage to reach their partners or lovers. In fact, the use of law to help LBT persons is seen as an intrusion in their family affairs. The court tends to depend more on ‘family honor’, family issues’ and morality. In one of the cases in Tamil Nadu, when a *habeas corpus* was filed, the girl was produced in court without informing the petitioner and therefore in the petitioner’s absence. The girl then was under enormous pressure and seeing no hope of rescue, took a decision of getting back to the family.

The important thing for LBT persons is that we have to look beyond the existing legal framework as it is entirely dependent on social morality. To be able to handle cases of marginalised genders and sexualities, there is a need to understand the perspective of LBT community, their needs, their security, their dignity and their rights.

### ***Crisis Intervention: a critical perspective***

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While crisis intervention seems like an important strategy for any social movement, we have to think more critically about our motivations for engaging in this work and the sustainability of this work. First we must ask ourselves what it means to be involved in crisis intervention for members of our *own* communities. In our experiences conducting crisis work we have seen how this ‘help’ is used as a strategy to build community structures, especially for those of us female born gender and sexual minorities who do not have pre-existing communities. While there are many examples of FTM and other trans/queer people who have yearned to see people like them and felt a huge sense of relief in participating in such a community, we need to recognise that this might not be an experience shared by everyone. Activists involved in crisis intervention



might actually be contributing to violence in uprooting other trans people from their homes and familial contexts. Indeed, many times one's sense of belonging to a particular community is as important as building a completely new community, often in an alien context and a new city. The ideal situation for many transpersons would be if they are able to re-establish ties with their families as transpeople. Many times when people are 'saved' in crisis intervention situations they are expected to 'give back' and participate in future efforts. However, it is important to recognise that not everyone who comes into the community may feel like extending the same support if their focus is not activism and they are more concerned with their own survival. We need to reflect more on why we choose to participate in crisis intervention situations and make sure that we do not do so just for the sake of visibility.

Furthermore crisis intervention raises important questions about who we count as part of our 'community.' Currently it seems that only female born gender and sexual minorities are seen as having the 'expertise' to conduct crisis interventions for other female born gender and sexual minorities. While we might have more experience and empathy in these situations, it is also important to recognise that we are also struggling with our own trauma and violence. Just because we are activists does not mean that we are not struggling with our own issues. That is why it is important to expand our crisis intervention network to people who are not gender or sexual minorities. There have been many instances where human rights activists, women's rights activists, and other non-'community' members have helped out with crisis intervention of gender and sexual minorities because they shared a queer/feminist political ideology. Perhaps it is more productive if we begin to re-frame our 'community' as those who share similar transgender feminist visions and ideologies, rather than those who share sexual/gender minority identities. In the same way that we have questioned how mainstream feminism relies on a female body to generate its politics – we must question that one must be a member of a gender or sexual minority in order to be part of a transgender feminist community. What matters more is one's political commitment to a future in which all people are free to safely self-determine and express their preferred gender and sexuality regardless of their caste, class, or geographic location. In expanding the scope of our community to those who share our political vision and building meaningful coalitions with other movements and struggles, we can further ensure the sustainability of our activism and movements.

## 6

### *Transgender Recognition and Reservation*

With the energy mobilised across the country by the Naz Foundation (Decriminalisation of Homosexuality) case, we began to see NGOs participate in unprecedented conversations about the ‘future of the movement.’ Even before Section 377 was officially read down, activists were concerned with what the next steps should be. People began to make calls for ‘anti-discrimination legislation’ and ‘reservation for transgender communities.’ While these two political demands sounded important and necessary – and have international precedents – we began to think about these suggestions more seriously. We noticed that the ways in which these topics were brought up were not always sincere in ensuring community involvement. While NGOs and activists affiliated with these organisations would technically ‘consult’ the community – they would only present one side of the story: that anti-discrimination and reservation would do good for the community. Naturally sexual and gender minority communities who have been struggling economically accepted these narratives and voiced ‘support.’ Yet we question this support because these communities were not presented with critiques of these policies or other alternatives: therefore they were not presented with the whole picture. In our own research we found that when we discussed our critical thoughts on these policies, many people were receptive to our thoughts.

This just goes to show that the community consultation process for these issues was insufficient.

In this chapter we will highlight some of our concerns with government recognition of transgender identities, anti-discrimination legislation and the possibility of transgender reservation. Following a transgender feminist perspective, we will discuss issues of gender and sexuality within of a context of caste and class – central ideas that inform our thoughts.

### *Transgender recognition*

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We have noticed that even though there have been progressive developments which have ended up in the government recognising transgender people – in these instances only the most visible trans people are recognised, usually MTF people or *hijras*. The recognition that trans people have received hasn't really been the result of a well-planned campaign. These 'victories' have only resulted from listening to testimonies and random suggestions for changes. There have been no efforts by governments to ask the community what terms of inclusion they want and how these changes can rid their lives of violence.

The only support that the state has provided for transpeople arises from periodic sympathy, not from any serious engagement with the structural obstacles that transpeople – especially those born as female – face. Due to this 'welfare attitude,' rights based demands of our communities are not addressed. Because these welfare 'benefits' have preceded legal rights for our communities, our basic rights are constructed as 'benefits,' even though they are fundamental to our existence.

From our conversations with activists, advocates, trans communities, and other key stakeholders we have come to the conclusion that neither the state nor the medical establishment has the right to decide what gender a person is. While we maintain this conviction, we are aware that trans communities may require state support and certification in order to receive access to SRS and other benefits. However, we are worried that in order to have access to such services we will have to comply with government certification and regulation.

Recognising that government certification might be inevitable, we asked our research participants what the best procedure would be to minimise violence. One community member in Bangalore argued that the community members should be able to provide certification. For example neighbours are often asked for reference when one attempts to obtain a passport. However, this suggestion might only work for the *hijra*

community, who already have a pre-existing community. To address this, we could imagine a scenario in which colleagues, or other community members are asked to give an affidavit certifying that the person has been living as a transperson. This reference should accompany the self-declaring affidavit. An advocate from Kerala suggested that the law must also anticipate misuse to make sure that it is implemented effectively.

A senior advocate from Bangalore stated that equality should be maintained across genders: if trans people have to produce a government certification, then even men and women should also produce the same. He remarked: “Personally I would feel a great insult if I had to prove my gender in front of the state, and I am sure it would be the same or more humiliating experience for transpeople.” Another activist from Kerala argued that the current options given by the government of ‘male, female or other’ will only result in a new certification process for the category ‘other’. This will reinforce the state’s authority to decide gender. We can only imagine the negative ways in which the state can abuse this role.

Activists from Kolkata argued that advocates for these issues must not use human rights language, but rather address these issues as fundamental rights. They argue that human rights discourse has little impact and often just provides recommendations without actually changing the status quo. Moreover they also believe that this could become a funding scheme for many NGOs and a distraction from the real issues of trans people at play. An activist from Mumbai echoed similar concerns for working class trans people. They suggested that marginalised communities should participate in policy making so that real inclusion can happen. When the focus is on fundamental rights violations, it becomes the responsibility of the state to address the issue in a more fundamental manner of inclusion, in law, society, families, and workplaces etc.

Thinking about how to recognise transgender people within current legal frameworks in India proves to be a difficult task. The Indian Penal Code section 10 states that the word “man” denotes male human being of any age; the word “woman” denotes female human being of any age. The IPC does not define what is male and what is female in any sense. Some of the advocates we interviewed said that the law does not refer to gender at all in the IPC. Some advocates argued that the whole of IPC is “doing gender,” as V Geetha<sup>5</sup> reminds us by following the society’s definition of gender construction including discrimination and disparities. Intrinsically,

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<sup>5</sup> V Geetha, *Gender (Theorizing Feminism)*, Calcutta: Stree (2002), p.(i)

the law is gendered but the constitution is not gendered because it uses the word citizen and person. The constitution states that there should be no discrimination based on sex, race, caste, class etc. Post Naz Foundation judgment the word sex can be interpreted to be gender. Moreover the constitution uses the word 'person' rather than his or her. So it is a contradiction to see that the IPC actually does not operate with the idea of gender and that it operates based on constructed biological sex. One participant argued that the present system of vague understanding of sex and gender in the law is actually helpful to practically handle cases. The confused definitions without supportive explanations actually leaves space for arguments in courts about gender. This participant also said that defining everything would again fix boxes or categories of people and will further create exclusions. Thus we can see how the present system of vague definition helps advocates to include any expression of gender based on fundamental right of freedom of expression.

While other countries may have insisted on creating a distinction between 'gender' and 'sex' in the law – we worry that such a move would further codify categories and requirements for being a particular gender. What is more important is that, regardless of the word that is used, we are allowed to self-identify our 'sex' and/or 'gender;' these categories cannot just be determined by our bodies.

Gender is the personal experience of a person in everyday life. It is an expression that each person can choose. Gender is fluid. Gender is performative. Genders are social, political, cultural, economic roles. Gender is a complex composition of many things around us. It is a transgression; a breaking of boundaries to experience freedom of expression. It is a journey of life, a journey from body to mind. It is a personal journey, a political journey. In this journey of gender, different people express themselves differently and even break the norms to fit their needs. The norms of gender based on social morality are rigid and claustrophobic. Life offers diversity and multiplicity in all spheres and gender is one of the many modes of expression and a major part of a person's individuality. If gender is all this then why should the state get any right of determining our gender?

### ***Anti-discrimination***

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When we first started this work we did not anticipate discussing an anti-discrimination law. The 2002 Humjinsi Report (*Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India*) mentioned introducing an

anti-discrimination law to protect sexual and gender minority' rights. After reading this, we felt that there needed to be a larger discussion on first of all whether we need an anti-discrimination law for sexual and gender minorities, secondly how can we include this issue with the present laws and constitutional rights without claiming specific laws, thirdly, what do we address, just discrimination, or larger violence and atrocities experienced by the community, and finally how do working class communities across the country perceive this kind of a law and what are their needs?

What we noticed is that many NGOs and other powerful stakeholders shared the belief that an anti-discrimination law would be a way to stop discrimination against gender and sexual minorities. However, what they did not ask themselves is whether only privileged sexual and gender minorities would actually benefit from such legislation. While several of these people have compared the discrimination against gender and sexual minorities along the same lines as discrimination against caste, it is important to maintain the specificity of these struggles. The stigma associated with this issue is a totally different experience from that of caste. The oppression of the caste system was made visible because of its impact on society at large. Even if upper caste people practiced casteism they still needed lower caste people for some kind of work in the society. Discrimination against gender and sexual minorities does not occur in the same way; it does not operate in the sphere of work or need. Rather, it operates in the sphere of desire and personal choice. For example, when it comes to sex work, sex workers provide a certain sexual pleasure and therefore are judged by society's standards of morality. The core of the struggle revolves around morality.

Most of the interviewees agreed that a new anti-discrimination law would be useful seeing that until the Delhi High Court judgment homosexuals, bisexuals, and transgender people were only referred to in the context of crime. However, we expressed our skepticism of a discrimination law's ability to capture the experiences of violence shared by our communities. From our interviews we have heard first hand the atrocities, cruelty, torture, assault, and other violence perpetrated against gender and sexual minorities. We do not believe that the term 'discrimination' can account for the multiple, diverse, and severe violences that our communities must live through. Also we question how a discrimination law could address the various intersections of oppression that our community members face on the basis of their class, caste, gender, etc. Indeed, one activist from Chennai remarked that the popular notion of sexual and gender

minorities only captures the identities and experiences of male born sexual and gender minorities. This assumption is wide spread not only in the society but also within the sexual and gender minority communities. Many of the male born sexual and gender minorities do not even think about female born sexual and gender minorities or even have a vague idea about their lives and struggles. Indeed, we worry that the unique issues facing female born sexual minorities will be lost within this language of anti-discrimination.

In order to really make meaningful change for all our communities we cannot just rely on anti-discrimination legislation. An advocate from Chennai reminded us that if an FTM person from an English educated background who already had a job in a multinational corporation faced discrimination for his appearance he would be able to use a non-discrimination law to help him. However, a working class FTM person would not even be able to obtain a job due to his identity. This is just to show how non-discrimination would only be accessible by privileged people who already have access to particular types of 'work' and 'home' – spaces that many members of our community do not have access to. While we do not want to disregard the possible effectiveness of such a piece of legislation, it is important to recognise that this can only be part of a larger struggle to eliminate violence against our communities.

Some of the community members suggested that there should be a stringent law like the SC/ST atrocities act, which can address the violence and discrimination both at all levels. It should be framed in a manner that the family or the society would fear the consequences of the violence they perpetrate. Indeed, an advocate from Kerala suggested that this should be accompanied with a large fine charged for these violations of the law to encourage people to be more responsible. Two distinguished advocates – a senior activist from Mumbai and a young activist from Chennai – argued that whatever type of legislation the movement pursued, we definitely must think of a long-term strategy that incorporated two dimensions: legal recognition and advocacy to mobilise communities across the country to ensure the implementation of this law. An anti-discrimination law must also reach the public through media campaigns, public debates, and other public forms so social change can accompany legal change.

Some activists from Mumbai were not convinced of the need for additional anti-discrimination legislation and suggested that the issues of homophobia and transphobia should be addressed by the present

available laws instead of focusing on the issue as ‘discrimination’. Instead of framing it as discrimination, if one could address it as marginalisation, then this could capture the multiple oppressions and phobias that are faced by communities. The suggestion was to include transgender people under the Equal Opportunities Bill that is being proposed to address different marginalised groups and different oppression based on caste, class, and religion.

Finally, other interviewees even suggested that there should be an amendment to the fundamental right against non discrimination under Article 15 of the constitution, (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth). The interviewees suggested including gender identity and sexual orientation along with sex in the grounds mentioned in Article 15. Thanks to the foresight of Dr. B.R.Ambedkar, our constitution has been inclusive of all people. Words like ‘human beings’, ‘citizens’ and ‘persons’ capture this inclusivity. However, I feel that including sexual orientation or gender identity in Article 15 would mean that we will end up defining only available gender identities and it will become a narrow, rigid understanding of gender. It will become specific to only certain gender identities. As of now we can argue that the word sex can be read as gender to understand multiple gender expressions.

### *Contemporary laws*

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We think it is important to explore the ways that we can re-interpret pre-existing legislation to protect our communities rather than always making new laws. In making new laws for ourselves we always mark ourselves as different or ‘other’ from mainstream society without challenging the very normativity of society’s expectations.

Using present legislation, certain atrocities experienced by the sexual and gender minority community can be addressed by the laws that are available accompanied by a forward looking interpretation of the fundamental rights of Article 15. The following sections of IPC can actually help address these issues.

**Section 355.** Assault or criminal force with intent to dishonour person, otherwise than on grave provocation. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.



**Section 503.** Criminal intimidation Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Explanation - A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

**Section 509.** Word, gesture or act intended to insult the modesty of a woman. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

**Section 351.** Assault. Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit as assault. Explanation - Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

**Section 319.** Hurt. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

**Section 362.** Abduction. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

339. Wrongful restraint

340. Wrongful confinement.

341. Punishment for wrongful restraint

342. Punishment for wrongful Confinement

343. Wrongful confinement for three or more days

344. Wrongful confinement for ten or more days

345. Wrongful confinement of person for whose liberation writ has been issued

346. Wrongful confinement in secret

347. Wrongful confinement to extort property, or constrain to illegal act

348. Wrongful confinement to extort confession, or compel restoration of property

349. Force

350. Criminal force

351. Assault

For cases of atrocities against sexual and gender minorities, whether at the hands of family or public or government, the present available laws can cover, cruelty, physical assault, forcible change of gender and forced marriage. When it comes to marriage, especially of female born sexual and gender minorities, IPC Section 366 is relevant.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely she will be, forced or seduced to illicit intercourse with another person shall be punished as aforesaid] will help to stop the forced marriage.

The definition of force according to IPC is:

“A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other’s body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other’s *sense of feeling*: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.”

This is very helpful in the context of sexual orientation and gender expressions. The interpretation of the words like “sense of feeling” could cover the orientation and expression of a person’s gender and sexuality. In this context one cannot be forced either by family or anyone for that matter into marriage or to change or to get back to given gender or heterosexuality. Of course all these have to be accompanied by a thinking based on fundamental rights.

What one needs to think is how to interpret and reinterpret the IPC sections to accommodate sexual and gender minorities so that there is no need for separate laws or specific laws. Or even if specific laws are needed then till the desired laws are in place, the present laws can be used in a manner that can protect the rights of sexual and gender minorities.

Separate laws also mean that you have legally created separate people who are not supposed to be like everyone else. Creating a different law for them makes little space from within the larger society. Inclusion does not mean that we create more specific or separate laws. Inclusion means changing systems to be more inclusive without making further exclusions. That is, for certain issues like stigma, discrimination, and violence we can locate protection rights as citizens and individuals within the constitution and laws. In addition, we must find ways to incorporate changes in perception to reflect the concept of multiple sexes, genders, and sexualities.

### *Transgender Reservation*

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When we started this research the focus was mainly around violence and the crisis intervention process, so the idea was to base the study on the case studies. The socio-political developments around this time changed in many places: the information that the Tamil Nadu Aravani Welfare Board had helped out a FTM person for his surgery with a subsidised rate, in Karnataka the Backward Classes Commission released the Dwarkanath Commission report including transgenders as Other Backward Classes (whereby transgenders could avail facilities that OBCs get) and Bangalore University started giving reservation for transgenders at the postgraduate level etc.

Even with all of these progressive developments, information about the status of surgery in Chennai for FTM people was not confirmed by any source. This made us start thinking how these developments were all not in a planned manner of finding out what the transgender community

really wants. As previously stated, we were frustrated by how different agencies added different things without community consultation, planning, and proper advocacy effort. These developments became a discussion topic in our research. We decided to explore the question in a different sense: whether we need reservation and if so what that would look like.

Almost all the interviewees stated that transgender people need reservation. Many said that this is most progressive way of gaining needed legal and social recognition. Some said that there should be criteria on which areas transpeople need reservation like education, employment etc. When we spoke to advocates, most of them said reservation is needed, but it might just lead to the construction of a monolithic category which will only benefit the privileged among gender and sexual minorities. In fact some of the interviewees said that the Bangalore example of the Dwarkanath Commission is the best beginning for reservation because it covers education and employment issues through small loans.

Some people who gave the interviews insisted that identifying categories would mean addressing the specific need of certain identities. Is it possible to create a reservation for transgender people who come from a wide array of castes? While some described this as positive discrimination, we felt that this has the capacity to perhaps enhance inequality between castes/classes.

Reservation not only implies reserving seats in education, employment and political participation — it also implies occupying spaces that are reserved only for some people in the society like providing seats in buses for people like disabled, elderly etc. It is not clear if transgenders need this form of reservation: For example should the seats in buses be reserved for transgenders. Taking all these into consideration, it is an important topic that needs to be discussed at the level of community to clearly understand what is actually needed. Conversation about inclusion at the larger society level is not currently happening at the community level. This dialogue is only initiated by NGOs and rarely filters to the level of the community itself.

One thing was clear that the concept of reservation for transgender people cannot happen in only a few places. An advocate from Kerala said that each state has identified castes for reservation based on the culture of the land. Castes are not universal across India. Similarly each state has to take decisions based on culture about the gender. She said that in Kerala the culture of MTF transpeople is not at all present and that is why most

of the people who want to initiate themselves in *hijra* culture either go to Tamil Nadu or Karnataka. When it comes to FTM community across India there is no cultural base for the state to consider or even understand diversity in gender expression. Even the Karnataka Backward Classes Commission (Dwarkanath Commission) report lists male born sexual and gender minorities as *hijras*, *kothis salta kothis*, *DD*, *jogappa*, *mangalamukkhis*, and FTM transgenders. The problem that people have not thought about is that female born gender expressions are just limited to one identity compared to male to female transpersons. This eventually results in also fixing the identity of the miniscule population and this also limits the percentage of people who can access these facilities. These categories also demand a certain certification process which might involve surgery, a luxury that many FTMs cannot afford. It is not just a problem of historical exclusion — this is also about how we have also not developed identities of female born gender expressions in the contemporary context.

Moreover the identities are listed as transgenders and sexual minorities. This creates further confusion as to who can actually access these facilities or these reservations. Many questions emerge. Can gays and lesbians access this, too? Is transgender defined to include different identities who do not have the history of *hijras* or *jogappas*?

What becomes apparent in these debates is that a reservation strategy might only help privileged transgender people and might actually increase violence against more marginalised people within the community. The fact remains that making our gender identities more visible might actually result in an increase in violence. For example, consider the situation in a hospital where there are particular uniforms for men and for women. Going by the logic of reservation, separate uniforms would be made for transgender people. This would make them more visible in the workplace and perhaps more susceptible to violence. Following this, it became clear to us that reservations would only help privileged transgender people: those who are out, those who have means of formal certification.

### *Gender rights and the caste movement*

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Any effort for reservation for transpeople must acknowledge the history of the caste struggle for reservation. Indeed, most of the interviewees understood and explained reservation based on this history. The number of castes in India varies from place to place. All the castes based on historical violation of rights by the upper castes are considered and included for reservation. However, even now there are castes that are demanding to be included for reservation. Casteism, or violations based

on caste including untouchability, has seen political resistance from all the sections of the society all over India from several centuries. The guiding principle of doing justice to historical injustice of discrimination, violation of rights, atrocities etc. are addressed through reservation and the SC/ST atrocities act. The way this process was thought through by various people, struggles and activists who demanded a change in the system to remove casteism from the roots of the society, contributed to a strong vision of a casteless society.

Acknowledging the limits of the caste reservation system and the continuing struggle of lower castes to receive recognition, our argument is that the reservation system and its logic creates further exclusions. This system creates an attitude where the upper caste has been replaced by an administration which decides how much to give and to whom. Exclusion once again manifests itself in terms of who is recognised and who is not.

Moreover unlike the sexual/gender minorities movement the caste struggle in the country also has numbers to show. Leaving aside the question of numbers as present in the documents such as census figures, the caste struggle is powerfully documented not only in books, songs, films but also in the consciousness of the people. This further legitimised the movement against caste oppression and revealed the small minority of upper caste people to be less formidable. Gender and sexual minorities cannot win this number game. Even when it comes to changing the consciousness of the society it is an uphill task as far as gender and sexual minorities are concerned as we are a dispersed minority facing a deeply entrenched social morality.

Furthermore, unlike our movement, the caste issue is one of birth. While there are many in the community who share that they believe that they were born with their sexual/gender identity, there are still many of us who see our gender and sexuality as an orientation and influenced by our social context. How does a reservation allocate resources to a fluid and social construction that may not be hereditary like caste? Even though gender and sexual minorities have faced historical injustice and been denied rights and access to education, social participation, and faced extreme humiliation, the fact remains that gender and sexuality are fluid. Reservation would require fixed identities and an evidence of marginalisation based on that identity. With gender especially, one cannot fix boxes for identity. Gender is about self-identification and this process occurs at different ages and is thus even more complicated. It is not like

every trans person realises their gender and takes on the gender of their choice at a young age. Even if reservation is thought to be introduced in primary education, how would people identify themselves and even if identified at that age, how would parents and family respond? In fact gender transition behaviour is usually not taken seriously till around the puberty. When this behaviour becomes more and more serious parents and family sometimes act as though it does not exist or punish it severely. What becomes evident is that paths individuals take toward the recognition of their own gender are diverse and varied across the country. The journey of realising gender is not a community process but is rather an individual's journey. It does not necessarily involve change in the larger family. In contrast, the struggle for caste, religious, and class is a community experience.

Finally, reservation solely on the basis of gender and/or sexuality would not be able to accommodate the multiple marginalisations that members of our community face on the basis of their caste, class, and religion. Simply creating more and more categories for reservation based on one oppressed category will never lead to questioning the very legitimacy of these categories. We need to envision new models of reservation that take seriously the experiences of people who are oppressed by multiple categories.

*Toward a more inclusive Feminism*

In the previous chapters we reviewed violence faced by female born gender and sexual minorities by a patriarchal and heteronormative society. However, the violence that is enacted on the bodies of our communities, not only arises from ‘mainstream’ society, but also from progressive communities, including feminist and gay/bisexual activists.

What becomes evident is that social movements that claim to be supportive of issues faced by female born sexual and gender minorities actually enact further violence on our communities. While these activists might be well-intentioned and sincerely want to assist us with our struggles, they are often ignorant about the unique construction of our identities and political circumstances.

While we began this project thinking about what it would mean to include the experiences of female born sexual and gender minorities within feminist and gay/bisexual movements in India – we soon recognised that this would involve us incorporating our issues into already problematic pre-existing frameworks. To truly address the mandates for justice that our experiences of violence make evident, we must develop a completely new form of transgender feminism.



We do not wish for a transgender feminism in India to be an exclusionary form of politics. What this means is we do not think it is possible to say what exactly 'is' or 'is not' transgender feminism nor can we say who 'can' or 'cannot' be a transgender feminist. We want this ideology to remain elastic, open, and always evolving in response to criticism. However, we can safely say that transgender feminism, as we envision it, is not only for transgender people – rather, it has implications for all people invested in justice for sexual and gender minorities.

We will begin this chapter with our observations of and experiences with the feminist movement and the ideas of gender that it holds onto that may not address the identities and needs of our communities. We will follow this with our observations of the gay/bisexual movement and the problematic tactics and strategies it relies on, that are largely not applicable to female born gender and sexual minorities. We will conclude this chapter with further thoughts on transgender feminism and its priorities in India.

### *Transfeminist critique of women's movement*

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In its efforts to politicise private space and reveal the violence that occurs there, feminists created new capacities for politics and social movements. What emerged from our interactions is that the realm of the 'private' is actually much more complex than feminist movements have addressed. To truly embrace the 'private', would be to incorporate our most 'private' desires – including our sexual intimacies and our perceptions of our bodies – into our politics. This is a project – among others — that the women's movement has largely been unwilling to engage with.

In calling for a transgender feminism, we do not mean to dismiss the contributions and contemporary importance of contemporary women's/ feminist organising. We are incredibly indebted to the contributions of feminists and have found so much solidarity and support from feminist communities. We do not believe that the violence enacted on our communities from the feminist movement comes from a negative place – it comes more from a lack of information. We see our project as an expansion of frameworks offered by feminist models.

We acknowledge the contributions of feminist theory in creating a space for the expression of gender variant identities. Feminist theory began to complicate our very understandings of 'sex' and 'gender' and show how these categories are not inborn, fixed, or essential – but rather arise from social and cultural conditioning. However, these theories have yet to move beyond privileged academic spaces. Feminist organisations and

activists have not yet reflected these lessons in their work. In our interactions with feminists we have seen the way that these groups are all too willing to accept male born sexual minorities like MTF people. However, these communities have been largely resistant to FTM people. Feminists argue that FTM people reinforce patriarchy with their gender presentation and aspirations toward masculinity.

This exposes a limited and exclusive understanding of ‘patriarchy’ and ‘gender.’ What becomes apparent is that feminist movements have relied on the body of a ‘woman’ as the legitimate site of feminist resistance and the body of a ‘man’ as inherently patriarchal. Our trans and gender variant bodies call the very category of ‘woman’ into question and challenges the focus of the feminist movement.

Transgender feminism makes its departure from this gender normativity by arguing that instead of focusing on bodies alone, we must look at the types of lives we construct as a site of resistance: we need to look at how we politicise our relationships and imagine alternatives to patriarchal and heteronormative models of gender, kinship and family that we have been socialised into. Feminism is a project of collective unlearning: patriarchy is a logic that affects *all* minds, including those of cisgender and transgender women.

In calling for the incorporation of multiple genders into feminism this necessarily means that we must begin to think more critically about the role of ‘male’ people in feminism – a possibility often dismissed by the women’s movement. We anticipate that this gesture will be interpreted as an extension of patriarchy into ‘women’s spaces’ in the feminist movement. Here it is important to establish that transgender feminism should not ignore the specificity of violence directed against cisgender women. In its campaign to dismantle the gender binary and increase an understanding of the existence of many genders, transgender feminism must not ignore the historical and contemporary violence directed against cisgender women. Gender specific legislation and spaces for women – inclusive of transwomen – should still be welcome and encouraged. However, the exclusion of FTM people and other non-female gender bodies from feminist spaces should be discouraged.

Additionally, current feminist organising have not gone far enough to challenge the ‘private’ sphere. While feminists have effectively drawn our attention to institutions like the ‘family’ and ‘marriage,’ they have yet to analyse the ways in which individuals relate to their *own* bodies. This is evident in the way that feminists have criticised FTM people for

transitioning and changing their bodies and therefore ‘buying into patriarchy.’ These feminists may not see that in denying the possibility of one’s own self-identification of gender and reflecting this choice in one’s body, they may be continuing patriarchal violence. What transgender experiences contribute to feminism, is the importance of self-determination and a politics of desire. We argue that it *is* feminist for a female born sexual or gender minority to have the ability to modify their gender presentation or body in a way that maximises their comfort, desire, and security. All people should have the ability to self-determine their own gender and reflect this through their bodies and selves. Any efforts to restrict or condemn particular expressions of gender are rooted in a patriarchal system of control that requires a female/male gender binary as part of its system of control. Transgender people, or those who identify outside of the gender they were ascribed at birth, disrupt the dominance of this gender binary paradigm and thus dislodge patriarchy from its privileged position.

Transgender feminism is thus not only committed to a project of empowering women, but also creating a space in our society for the self-definition and self-declaration of gender. Transgender feminism calls into question what motives of power are implied by our government and society’s need to gender our bodies, behaviours, and other parts of ourselves. This necessarily means challenging institutions that create the gender binary: school curricula, religious ideology, etc. This also involves thinking about the violence of creating gender difference: once you create the gendered ‘Other’ you can also create discrimination against it.

While transgender feminism aims to de-gender our society, it also recognises that we are all bodies subjected to the violence of gender. Recognising this, transgender feminism also aspires to explore new ways of doing and articulating gender. Transgender feminism encourages cisgender women to imagine new models of femininity that empower them. Transgender feminism encourages FTM trans people to create new models of masculinity outside of heteronormative and patriarchal models provided to us from our society.

Transgender experiences reveal the way in which patriarchal systems of control restrict the desire of female born people. Expanding from feminism’s call for an introspection of the personal and private realm – we believe that it is important to generate a politics of one’s gender and one’s own sexual pleasure. In order to do this: we must have the social space to express our own bodily pleasures (the desire to transition genders,

the desire to have intimacy with particular bodies) without condemnation. We have seen the ways in which patriarchy and heteronormativity restrict female born people's capacity for pleasure. Transgender feminism encourages us to think more politically about our pleasures and how we can construct politics and social movements to access bodily pleasure.

We do not mean to celebrate FTM people as inherently feminist or resistant. We have seen the ways in which FTM people adopt heteronormative and patriarchal violence in their own relationships: perpetuating domestic violence, adopting patriarchal roles of 'wife' and 'husband.' As is evident — having the *right* to these pleasures of gender and same-sex intimacy is not enough.

We must also think critically of the ways that we exercise them. We must be self-critical of the way that FTM people are complicit and perpetuate patriarchy through their treatment of female partners. We must be self-critical of the models of patriarchal masculinity that FTM people aspire toward. We must be critical of models of womanhood and femininity that MTF people subscribe to: models that associate women with skinny bodies (only), associate women as only 'mothers' and 'wives,' and associate women with domestic roles like cooking for their husband. We need to be critical of the ways that MTF people have fantasised the pain of cisgender women that accompanies experiences like childbirth and periods. Rather than questioning the models of femininity and gender roles that have historically oppressed cisgender women, transgender women are all too keen to accept and celebrate these roles. We need to collectively challenge the understanding that the 'husband' – whatever genitalia or body he has – has the *right* to abuse, control, and exploit his 'wife' It is in these decisions and reflections that we root transgender feminism.

### *Transfeminist critique of Gay/Bisexual Movement*

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Female born sexual and gender minorities who have a history of being outcast by feminist movements and spaces are ultimately largely unable to find refuge and safety in gay/bisexual movement spaces – spaces that are predominantly led by male born sexual and gender minorities who have a fundamentally different experience and consequently understanding of politics. We do not include 'lesbian' movements and spaces along with 'gay/bisexual' movements because we believe that female born sexual minorities have had to negotiate a fundamentally different relationship to visibility in India. Unlike gay men, 'lesbians' do not have access to public space: there are no lesbian clubs, no cruising

areas in parks for lesbians. Female born sexual minorities have had to meet one another largely in secret without the use of identity to articulate their same-sex desire. We feel that lesbian advocacy groups have not been complicit in an unrealistic and dominant narrative of coming out and visibility and have better understood the experiences of patriarchal oppression faced by all female born people in India.

The first issue transgender feminism takes with gay/bisexual movements is the emphasis on coming out and visibility politics – ideas that are actually rooted in male born privilege and are not applicable to the situation of female gender and sexual minorities. We recognise that gay/bisexual organisations in India do not emphasise ‘coming out’ as much as their Western counterparts; however, we do recognise the ways in which these individuals and movements maintain a fixed understanding that links sexual desire to a particular identity. These movements encourage all those who participate in same-sex activity to identify as ‘gay’ – even if it’s only to themselves. This need for identification suggests a perpetual desire to be known or to be visible, that might be detrimental to the health and safety of female born sexual and gender minorities who often find refuge in *resisting* knowability and visibility.

As we have illustrated in preceding chapters, because they are born as ‘women’ female born gender and sexual minorities are confined to the private sphere by the patriarchal family unit. They have little or no autonomy in making decisions for themselves regarding their education, their relationships, or their identity. Many times parents only attempt to cultivate them into being good wives and eventually good mothers. When families find out about the sexuality or gender identity of our community members the violence we face increases. We may be abused physically and mentally, we may be put under house arrest, we may even be killed. In its mandate for us to ‘come out’ the gay/bisexual movement does not acknowledge that if we do ‘come out,’ and allow our families to know about our sexuality then we will face incredible harm and violence.

Also, where do we go when we come out? Unlike male born sexual minorities like *hijras* there is no history and therefore no established community for us to escape to for support. As female born gender and sexual minorities we find it extremely difficult to find basic employment and earn enough money on our own to support ourselves, let alone our partners. Thus we can see how coming out relies on privileged access to the ‘public’ sphere – a space which predominantly male born people with their privilege are better able to negotiate. In relying on this model

of coming out, the gay/bisexual movement enacts a severe violence on our communities because it presents an option of a future, of an alternative way of life, that most of us will never be able to experience. The type of visibility that the LGB movement requires is one that might, in fact, contribute to the amount of lesbian suicides. While we will never know exactly why lesbians are committing suicides and we acknowledge that each case has unique circumstances, we think it is important for the LGB movement to self-reflect on the models of visibility it normalises and how this model of visibility is implicated in this violence. We interpret lesbian suicide as a statement of *invisibilising* one's identity because one cannot or does not want to make it visible. The hyper-visibility of these suicides should be a reminder to the gay/bisexual community that it must be careful in the way that it politicises visibility.

We also think it is important to be critical of the way that when a male born sexual minority experiences harassment or violence there is much more public attention/concern for this incidence. Very few people are aware of the violence afflicting female born sexual and gender minorities. This shows the ways in which gay/bisexual activists are still a part of a patriarchal system that normalises violence against female born people. For a male-bodied person to be violated is a violation of the rules of patriarchy and a shock to the system. For a female-bodied person to experience violence is an *expectation* of the system. It is important that gay/bisexual activists work to unlearn patriarchy in their own lives and movements and highlight the plight of female born sexual and gender minorities in their advocacy.

In extending these thoughts on visibility we do not mean to dismiss the power of visibility as a strategy. However, we are concerned with the way that particular types of visibility become dominant. If a person is not 'out' in the appropriate way they are seen as 'less valued' members of the community. In the same way, if the person is not 'FTM' enough (by dominant standards of visibility) they are left outside of the community. We need to allow more plurality and space for different types of identities in our politics.

What becomes evident from this is that the burden to 'come out' is put on the individual oppressed bodies of female gender and sexual minorities, bodies that have already been victims of extreme violence. Instead of putting more emphasis on the society and challenging the structure itself, the LGBT movement encourages already victimised bodies to do all the work.

More emphasis needs to be placed in gay/bisexual advocacy on changing systemic and community attitudes. Transgender feminism makes an intervention in not just highlighting the importance of self-determination of gender, but also self-determination of *visibility*. Female born sexual and gender minorities must have the individual decision to decide how 'out' they want to be to their families and communities and should not be judged for taking the best steps for their safety.

Also the very notion of 'coming out' reveals an unstated gay/lesbian bias. What does it mean for a transgender person to 'come out?' Unlike many sexual minorities, many gender minorities negotiate a very different relationship to visibility. When we come to terms with our preferred gender identity and presentation we already are 'out' by the gender 'transgression' we commit in society. Coming out then is not just an isolated instance, but one of our perpetual existence. While sexual minorities often have the privilege to choose who they can 'come out' to (and have the option of retreating back in 'the closet') gender minorities do not have similar options.

Transgender feminism questions the language of individualism that is implied in the language of coming out. We notice that whenever someone of an oppressed caste says that they are a particular caste they are speaking for a community. When someone says that they are "gay," they are only speaking for themselves. We need to envision new models of coming out that are collective. We cannot just speak of our experiences as individual gender and sexual minorities, we have to think about the experiences facing *all* of us.

This is symbolic of a larger problem of individualism of the gay/bisexual movement – a movement that encourages us to feel part of 'one' gay/bisexual community and ignores the differences of gender, class, and caste that continue to divide us. With its framing of gender and sexuality rights as *only* this community's minority rights, the movement does not account for the experiences of female born sexual and gender minorities who are already oppressed on the basis of their birth gender, caste, or class and are subjected to multiple discriminations on the basis of their gender identity or sexuality. In accepting a minority based model of politics, the gay/bisexual movement has accepted the fact that mainstream society is 'normal' and all people with genders and sexualities that do not align with a gender/sexuality binary are somehow 'not normal' and therefore need to announce themselves and proclaim themselves as

different. Why don't heterosexual-identified people have to come out? Why don't cis gender people have to come out?

Thus, transgender feminism is critical of the ways that the gay/bisexual movement constructs itself as advocating for gender and sexual rights for a (privileged) minority of people. Transgender feminism encourages us to move beyond identity politics to a more action-based model. It tells us that instead of coming out as a particular identity and having to subscribe to all of the new social and cultural scripts and mandates that come with that new identity, we should be able self-determine the way we live our lives in accordance with our needs and desires. These do not necessarily have to be linked to our 'identities' and 'coming out.' However, we must not exercise our individual desires in ways that are detrimental to our collective well-being.

Indeed, as female born sexual and minorities we have seen how violent identities can be. Many of us were forced by our families to participate in a female gender with all of its obligations that we fundamentally disagreed with. We have seen how even within our own communities the new identities we have created – a hijra who live as a lesbian or an FTM, – come with a whole new set of dangerous assumptions and expectations – many of which are inspired by patriarchy and heteronormativity. Thus, transgender feminism must be critical of the new types of identities that are being created by our movement. Transgender feminism must reveal how these identities are exercised with the same forms of violence and power like the ones we gave up before are. Instead of creating new roles and identities that we should all subscribe to, transgender feminism encourages us to develop our *own* models of gender/sexuality – ways of navigating through the world that may or may not fit into identity categories.

### *Transgender Feminism: Concluding remarks for a movement in India*

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While there is an emerging body of scholarship and activism around transgender feminism abroad, we want to maintain that it is important to think about the relevance of transgender feminism in the Indian context. We are concerned with the desire of NGOs to emulate legal/social/political models that have been used elsewhere in India. It is important that we think seriously about models of transgender feminist organising and critique that make sense in the Indian context.

In the Indian context we must think seriously about caste and class in this effort. We have noticed that with the emphasis on NGO funding



streams, gender variant people who identify with indigenous and historical terms such as *kothi* or *hijra* are always viewed as poor/working class while those who identify with English terms like ‘gay’ or ‘bisexual’ are seen as more wealthy/urban. We have seen the ways in which ‘gays’ and ‘lesbians’ speak about *kothis*, *hijras* and other indigenous identities as ‘backward,’ ‘dirty,’ and ‘behind the times.’ To us this expresses cloaked casteism and classism.

What becomes evident is that ‘gay’ is no longer thought of as just as an identity for sexual practice, but also a particular type of upper-class culture. ‘Gay’ is synonymous with an urban and upper-class lifestyle that involves going to parties and having money to support a particular aesthetic and lifestyle. The way that ‘gay’ is exercised in our communities often creates a distinction between those who are ‘cosmopolitan’ and those who are more ‘traditional.’ What becomes apparent is that any struggle around gender and sexuality in India absolutely must consider a history of classism and casteism. Gay identity cannot be seen as a new political space of victimhood where privileged people should not be allowed escape from interrogating their own caste and class privilege. We worry that with the increasing development of gay male community, spaces, and sensibilities in India we will see classism and casteism increase. Indeed, we must remain wary of the ways that only privileged bodies are allowed in ‘gay’ spaces and ‘gay’ culture, whereas other bodies – due to their location of birth, their native language, etc.’ are seen as inherently more backward.

Transgender feminism is critical of this gay casteism and must ensure that a similar politics of class and caste is not reflected in who gets accepted by the word ‘transgender’ and its cultures. Transgender feminism calls for not only a plurality of genders and sexualities, but a plurality of caste and class based identities as well. A wealthy urban person should be able to identify as *hijra* just as a poor rural person should be able to identify as *gay*. We want to create spaces and identities that are inclusive for all.

Finally, we have shown how contemporary women’s movements still rely on a narrow understanding of womanhood – a womanhood that is largely only accessible by class privileged people in India. We have also critiqued the gay/bisexual movement for its upper-class gay male bias. A transgender feminist movement cannot repeat these class biases in the construction of our politics and priorities. The reality of the situation is that the majority of female born sexual and gender minorities we spoke with, come from the context of incredible poverty and discrimination.

For many of them their sexuality and/or gender identity only compounds the discrimination they already face as working class people and people of historically disenfranchised castes.

Therefore, transgender feminism is rooted in a commitment not only to social equality and legal recognition, but also of *economic justice*. This means fundamentally using different tactics and strategies to make sure that we tailor movement commitments to improve the lives of poor/working class people. Efforts must also be made not to repeat a pattern of gay/bisexual single-issue politics where gender and sexuality rights are constructed as ‘privileged’ rights. We must envision new models to talk about the importance of accepting diverse sexualities and genders that take class and caste seriously.



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