

PRESS RELEASE

RIGHTS FOR ALL: ENDING DISCRIMINATION UNDER SECTION 377

Geeta remembered how she had been subjected to a vigorous series of shock treatment to "cure" her of her perceived abnormality by a psychiatrist. The process was harrowing at best; she lost much of her hair, her cognitive processes were slowed, and she was generally in a state of duress due to the unrelenting (and unexplained) violation of her body.

From the Report of the January 9, 2002 Public Meeting organized by PRISM.

Geetanjali, a 23yr old hijra states: "They took me to Cubbon Park Police station where the police did not ask me anything but just beat me up. None of the policemen tried to listen to my account of the incident when I tried to explain it to them. Eight policemen beat me up and put me in the lock up. They were so curious to know if I had a penis that they stripped me. They hung me up horizontally with ropes and beat me black and blue".

From the PUCL (K) report on Human Rights Violations against the Transgender Community, Sept, 2003

These are some of the testimonies quoted in a new report titled 'Rights for All: Ending Discrimination under Section 377' released recently at a press conference called by **Voices Against 377**, a coalition of Delhi-based groups working on gay and lesbian rights, women's issues, child rights, health and human rights. The speakers, which included representatives of these groups, highlighted the discriminatory and extreme impact of Section 377 of the Indian Penal Code, which criminalises "voluntary carnal intercourse against the order of nature". A legacy of the British rule, this piece of Victorian legislation continues to violate the human rights of gay, lesbian, bisexual, hijras and transgendered people long after the British have repealed it in their own country. While describing and analyzing the nature of these human rights violations, the speakers also responded to the assertions made by the government in its response to the PIL filed in the Delhi High Court by Naz Foundation, India, which calls for a decriminalization of adult, consensual same-sex sexual behavior.

Aditya Bandopadhyay, a gay rights lawyer and activist, spoke of how Section 377 allows for repeated violations meted out to gay, lesbian, hijra, transgender and bisexual people at the hands of the police, the family and the medical establishment. These range from sexual assault and abuse in police custody, extortion, electro-shock treatment which seeks to 'cure' homosexuality, and wide ranging social stigma on a day-to-day basis. In light of this, Mr. Bandopadhyay strongly refuted the government's response to the assertion that Section 377 does not violate the right to equality (Article 14), right to freedom (Art 19) and right to personal liberty (Art 21). The government's claim in its affidavit that "none of these rights were infringed", is clearly a far cry from reality.

The Government of India's defence of Section 377 of the IPC constitutes a deliberate and willful violation of international human rights law, specifically India's obligations under the International Covenant on Civil and Political Rights, said Vijay Nagraj, of Amnesty International, India. He drew attention to the fact that the UN Human Rights Committee has urged states not only to repeal laws that criminalize homosexuality but also to enshrine the prohibition of discrimination based on sexual orientation into their constitutions or other fundamental laws. Mr. Nagraj also commented on the attempts by the GoI and others to portray the issue of the right to sexual identity as a 'western' concern. This position, he said, ignores the fact that in a growing number of 'southern' countries, discrimination on the grounds of sexual orientation is prohibited. These include Philippines, South Africa, Mexico and Bulgaria. Other states including Indonesia, Kazakhstan, Chile, Romania and Azerbaijan none of which criminalise adult consensual same sex relations.

Responding to the government's claim that Section 377 is necessary to punish child sexual abuse,

Enakshi Ganguly Thukral, representing the National Campaign against Child Sexual Abuse, said that Section 377 was never meant to be a law on CSA and is woefully inadequate as an understanding any of the complexities or needs of CSA cases. As long as this law remains on the books, there is a fear that no comprehensive law on CSA will be formulated. Instead of falsely pitting child rights against gay rights, what is needed is an effective law which will enable justice to be done when children are sexually abused.

Laxmi from Saheli, a women's organization, pointed out that given that "unnatural" acts ranging from consensual same-sex sexual activity between adults, or even oral sex between a married heterosexual couple, are offences, a large proportion of the adult population of the country could be behind bars and taking loans to pay fines for having "sex against the order of nature". Speaking of the larger social and cultural context, she said that we live in a society that constantly tells us that there is only one kind of acceptable desire - heterosexual, within marriage, and male. All those who dare to think outside this perfect ideal are considered threats to "morality" and to society at large. In response to this threat, the system either tries to altogether deny their existence (as in the invisibilizing of lesbian women), or dismisses them as imports from the West ("its only a handful of urban, westernized elite who are gay"). When their presence is difficult to ignore, these communities are punished in ways that deny them a life of dignity and freedom.

Voices against Sec. 377 denies the government the right to judge and enforce a vision of "public morality" over the rights, freedom and dignity of homosexual people. Law cannot follow society, but instead must lead it! Had the law simply to reflect what it perceived to be public opinion, then anti-Sati and anti-dowry laws would never have been passed. The Constitution of India, and the laws that follow from it, are meant to guarantee and protect the fundamental rights to freedom, life, and liberty to *all*.

The de-criminalisation of consensual, adult same-sex activity is the first step towards the repeal of Section 377 and also to the simultaneous drafting of a substantive new law on Child Sexual Abuse. It is only then that a country so proud of its democracy and freedom will be safe for so many that live in fear on its soil.