



PARTNERS FOR LAW IN DEVELOPMENT

CRITICAL REFLECTIONS

MARRIAGE, SEXUALITY AND THE LAW

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From:

**Roundtable on Exploring the Continuum
between Sexuality and Sexual Violence**

April 28, 2015

The **CRITICAL REFLECTIONS SERIES** comprises 4 volumes on the following themes, drawn from the *Roundtable on Exploring the Continuum between Sexuality and Sexual Violence*, organized by Partners for Law in Development on April 28, 2015:

VOLUME 1

MARRIAGE, SEXUALITY AND THE LAW

Has not having sufficiently challenged the appropriation of desire, love and sexuality by marriage, weakened our ability to challenge criminalization of adolescent sex, breach of promise to marry, and indeed, the partial de-criminalization of marital rape? The discussions will also explore the de jure position and de facto reality of the law.

VOLUME 2

SPEECH, SEXUALITY AND THE LAW

This session will explore issues of censorship that relies on notions of 'obscenity', 'indecent' and more recently, 'hate' speech, tracing the different laws that contribute to this; it will take stock of the relationship of women's rights activism to each of these – commenting especially on the ways in which we have been complicit with or challenging of these; and ways in which these legal concepts have contributed to de-legitimising positive sexuality and sexual expression.

VOLUME 3

CRIMINALIZATION AND SEXUALITY

The discussions will problematise over-reliance on criminal law for social change, a medium through which sexual agency and non conforming sexuality has historically been punished. In relation to rape, it will take stock of sentencing structure and lack of judicial discretion in sentencing, to discuss the implications, particularly in terms of exceptionalising sexual violence. The positions on gender specificity and neutrality in relation to laws on sexual/ gender based violence will also be interrogated.

VOLUME 4

FEMINIST PRAXIS AND DIALOGUE

What has been the impact of popular and social media on public dialogue and reason? In what way can we devise feminist ethics, taking into account the current challenges posed by the state and the media, to create space for dialogue, reflection, to evolve strategies beyond penal law, indeed law centric approaches and binaries, that are also affirming of sexuality.

MARRIAGE, SEXUALITY AND THE LAW

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INTRODUCTION TO THE SERIES

This report is part of a series of four, each covering a theme from the roundtable organized by Partners for Law in Development (PLD) on April 28, 2015, to explore the continuum linking concerns of positive sexuality with sexual violence. Conversation around these themes have become necessary in the context of a considerably changed scenario following 2012, with the State, political parties, the national media and multiple stakeholders, many antithetical to positive sexuality, adopting sexual violence against women as part of their agenda. The spotlight on high profile cases, an enhanced punitive legal regime, the calls for death penalty and reduction of age of juvenility, entrenched the exceptionalised treatment of sexual violence, with scant regard for reason, principles of natural justice, or indeed affirmative sexuality. Equally, the shrill sound bite driven discourse seemed to overwhelm women's rights activism leaving little space for critical introspection on the law; or indeed, of expanding the engagement beyond State, law and media driven change, to actively forge linkages with sexuality related concerns.

In the context of this changed landscape, the roundtable sought to explore linkages between positive sexuality and sexual violence, reflecting on the dangers of a predominant focus on sexual violence, or indeed on criminalization and censorship. That the amplification of sexual violence at the cost of affirmative sexuality, and indeed positioning concerns and work in relation to these two, as being distinct, unrelated ends of a binary, rather than a continuum with interconnections that shaped the outcomes of each other. For instance, normative sexuality, or indeed, the privileging of sex in the context of romantic love and marriage, are ways by which sexuality is regulated and transgressive desires stigmatized. A primary focus on sexual violence to the neglect of more insidious ways by which sexuality is regulated eventually strengthens protectionist narratives. A feminist discourse constructed primarily around sexual violence and the penal law, without sufficiently addressing other forms of sexual control, cannot fully challenge the culture of victim blaming and selective justice – the very trends that continue to define cases of sexual violence. These concerns cut across the themes, pointing towards the need for an expansive, critical and transformatory engagement. While this roundtable speaks to events following 2012 protests and law reform, the concerns raised are of wider relevance.

The roundtable comprised four panel discussions on the inter-related themes relating to the law, sexuality and sexual violence. The discussion on each of the themes was initiated by presentations of three panelists, followed by conversation on the theme between all participants as well as the discussants. To not lose the richness and nuance of the discussions on each of the themes, the report reproduces as them as truly as possible, with minimal editing, keeping intact the flow of the discussions on each of the themes. This however, made the report substantially long one. So, in the interest of easy access and readability, we opted for separate reports for each thematic panel, rather

than a comprehensive report of the roundtable. Broken up into thematic reports, each is short, and can be read independently, although interconnections between the themes make for a richer reading. These reports seek to take forward discussions started at the roundtable, to widen and continue the dialogue with each other and in the different spaces we are part of.

SUMMARY OF THE PRESENTATIONS

These presentations explore the different ways in which sexuality, marriage and sexual violence intersect, to ask whether it is possible to carry out work on sexual violence without being an active engagement with sexuality. It drew attention to the limitations of being focused on the criminal law, or crime statistics, without engaging with women's concerns in relation to sexuality, and indeed, considering the concerns that influence the usage of the law.

Srimati Basu outlined the need to acknowledge that different understandings of rape exist in society, as also within feminisms and the implications of these in relation to consent and desire. While many of the understandings of rape find reflection, even if inconsistently in legal discourse, the most successful prosecutions appear to be based on cultural understandings of honour. In relation to criminal law particularly, there appears to be an intrinsic connection between rape, honour and marriage in the prosecutions as well as in the use of the law. In fact, the use of rape law in the Indian context is intrinsically connected with notions of honour, sexuality and marriage – illustrated through examples of breach of promise to marry, charges of rape by parents against their daughter's intimate male partner, and compromise of rape through offer of marriage. In this context, it is useful to ask, what is the relationship between consent and bodily integrity in different contexts? With the increasing emphasis on affirmative consent in date rapes, there is a need to ask what consent would mean in the context of marriage, when marriage itself appears to be a proxy for consent in criminal as much in civil law; and indeed, what the meaning of marriage is in the law?

Using the example of the campaign on marital rape, Madhu Mehra's presentation posed questions about the transformatory potential of case work on sexual violence without accompanying community interventions on sexuality. By treating sexual violence as the more serious problem, without taking into account wider concerns of heteropatriarchy and sexuality, the campaign risks exceptionalising sexual violence. In a manner similar to patriarchy, the campaign against marital rape positions non-consensual penetrative sex as the ultimate violation inflicted on women, neglecting concerns of sexual normativity, taboos over pleasure and desire, and the range of ways by which patriarchal controls over sexuality hurts women. The predominant focus on law, specifically criminal law in respect of sexual violence is problematic for it has been at the cost of dialogue, community engagements on a broader sexuality agenda. The limitations of the campaign on marital rape are explored by taking on board a broader range of sexuality concerns of (married) women, the possibilities of legal redress available and the normative shift sought to be achieved.

Rukmini's presentation, based on an analysis of 600 registered cases of rape in 2013 in Delhi, compels a re-thinking of how rape law is understood – by contrasting its

normative understanding with its actual usage in society. The use of rape law reveals trends in sexual agency; with law being used by young women to negotiate issues of chastity, parental control and marriage. Most significantly, the findings of this study question the simplistic reading of crime data, as is routinely done, to be a proxy for public safety. Yet, she cautioned, that the trends identified in her study only throw light on the reported case, that is to say, they only reveal the public use of rape law, not the invisible unreported trends in rape within the private domain. The invisibility of reporting and data on sexual violence in the private domain is itself of significance. The presentation underscores the value of qualitatively examining crime data, to understand the ways in which the law interacts within the social context and value systems, its social meaning beyond the reading of the statute.

SRIMATI BASU

Professor of Gender and Women's Studies and Anthropology, University of Kentucky

I draw my presentation from my work, in an area you might call law and society studies or legal anthropology and gender studies. I began looking at family courts in the context of marriage and divorce, which led me to track its connections with criminal law relating to rape and domestic violence. The theme of this roundtable, and this panel asks of me to outline those connections between marriage, sexuality and sexual violence. This roundtable is exciting because it calls on many of us to talk on different themes or aspects, by way of questioning the dominant narratives, or discourse on linkages between sexuality and violence. I'll talk about some of the connections between marriage and criminal law, and related questions of what is violence and what is consent, what is the place of desire in consent and importantly, the bigger question of 'who are we speaking in the name of.' Before we talk about sexual violence in the context of marriage, let us think about what the different terms related to this subject mean. Let us begin with 'rape' – how is rape culturally understood as a violation and what is it that makes rape a crime. If we turn to feminist perspectives on rape, as with most issues there are a lot of ways of thinking about it. Without going into the different perspectives, let us go with the basic definition, that frames rape as 'violation of bodily integrity and violation of their consent to a sex act'. This basic definition is different from other perspectives. Let us look at one of the many perspectives – that of rape as a crime against property where families are compensated for abduction, on which early rape law was based. The accounts of customary law from many countries and regions within the country, involve marriage of a victim to the rapist, or and having property compensation for rape.

Another perspective, closely related to this is rape as a crime of honour, usually meaning the preservation of social capital of lineage or caste. In this logic, woman's sexuality is possessed by family of birth and then of marriage; her sexuality is equated with reproduction of legitimate children to be produced for the patrilineage. Accusations of woman's promiscuity (tantamount to woman's sexual activity outside of marriage) draw force from this idea. Solutions to this idea of violation often involve restoring woman to marriage and preferably lineage appropriate marriages. One of the ways in which we can understand the linkages between rape and marriage is by tracking the ways in which rape is often seen as a crime in term of harms to system of alliance i.e. harms to marriage system. Recent cases are telling - the Park Street rape in Calcutta, of Suzette Jordan (who wanted to be known by her name) in a car after an evening at a bar. She was badly treated by the police and politicians because to them everything about her seemed suspect - the drinking, the bars, her religion, her status as a single mother. Just one day later there was a rape of woman who got into a cab at about the same place, after visiting a sick husband in the hospital. In this case, the police

responded very differently. In that case how the person is constructed in terms of their sexuality becomes tied to this notion of honour and kinship.

A third perspective, around which there is a venerable feminist tradition, is where we think about rape as a crime of power. Catherine MacKinnon famously said 'if sexuality is central to women's definition and forced sex is central to sexuality, rape is indigenous, not exceptional, to women's social condition.' We might think of them as second wave feminists in various countries primarily the US. They talked about rape as marker of ultimate patriarchal power globally and historically, which is echoed a lot in the Indian women's movement documents. In these notably, woman's affirmative sexuality and agency are deemed to be secondary and irrelevant. No matter what you say, no matter what you think, you are constructed through these forms of violence. So, I would divide this into two kinds of perspectives (based on Ann Cahill format) – the first being rape is violence and not sex. It doesn't arise out of sexual needs but is an act of power. The second is MacKinnon's position, which says that rape is sex but essentially that all heterosex is violence and dominance. For us, one of the things most relevant from this perspective is that the norm of rape as violence, not sex, is reflected in law, through moments with the legal focus on how much bodily violence was caused, whether the person put up a good fight, what was the state of mind of the defendant etc. I think, we should ask of this framing whether it accounts for woman's bodily integrity and consent and how does it think of agency and sex. When we are thinking of rape as power and not sex, this is a place where we might consider factors such as caste, race etc and how they have been customarily used as forms of power. In contrast to this, we might think of the feminist take of rape as violation of bodily integrity, of sex against one's will, of lack of consent to a particular act in a particular time and place. But when rapes are prosecuted by the state, the previous perspectives very often dominate popular beliefs and legal discourse, for example, references to the rape victim as a '*zinda laash*', despite the fact that the protests threw up many different kinds of perspectives, and different sections of people in the street marches. Even in '*Shakti Mills case*' prosecutor had said 'the physical injuries will heal but the other injuries will not heal until she dies', underlying the notion that you are dead through rape.

I would like to hear from us on how we think about consent. What does violation of bodily integrity really mean and what is the relationship of bodily integrity with consent? In the last few years there is a lot of talk about affirmative consent in dating; since this panel also flags marital rape for discussion, I pose before us two questions - 'what is affirmative consent' and 'what is the way it lives within marriage'? Is marriage a certain kind of proxy which makes certain kind of consent implicit? This explains, why marital rape cases are likely to be successfully prosecuted only when there is a break in the relationship and a sort of implied break in consent.

Some of very interesting work on consent comes out of war time rape. Rape in war is of course treated as a grave crime but it's hard to prosecute that in terms of notions of consent and coercion, for example if you are holding someone at gunpoint, what would

consent mean then. Some alternate proposals that have come out of that work have included thinking about coercion as a criterion of consent. Whether there is coercion or not, rather than looking at just consent – this is a consent-plus model which would require an explicit token of acquiescence. I think of affirmative consent as a form of that. More recently, there has been talk of a more nuanced norm premised on sexual integrity and sexual self determination. Maybe that is what should substitute consent or bodily integrity. I won't go into these more, but I would like to flag three kinds of cases which go on under rape prosecution that we are seeing in India. These are popularly referred to as false cases in the news. Each of these are embedded in exactly some of the same kinds of logic about sexuality and honour, and it's no coincidence that they are about marriage. First, cases where men face rape charges because they refuse to turn an ongoing sexual and social relationship into marriage. There are plenty of these - I've written about a famous theatre actor in Calcutta, Rudranil Ghosh, where his long time cohabiting partner filed a rape case against him, in the context of a ten year old relationship where allegedly, he did not say no to the relationship but said no to marriage. As you know these strategies rely on a body of case laws where false promise to marry constitutes rape because it is assumed that consent is given under the belief that marriage will ensue is deemed to have been obtained by fraud. In many of these cases women say that they were duped into having sex over a period of time. I've talked to lawyers who work on this and who say women are raised to believe that they can have sex only on the condition of marriage. So when a client comes to you, that is what they want to do. But it seems to me that what you pursue as a strategy with a client might be different from how we want to think about it in terms of feminism and law.

Alongside this, we have cases where marriage is offered as compensation for rape. At times the judges and some defendants offer marriage to save the life of the victim and as well as the lives of both the families. These examples underline the understanding of rape as sex rather than violence, and moreover as a violation of property to be made whole by restoring women to the marital state she was entitled to once she had been exposed to sex. You often see in cases that a marriage proposal is offered as an alibi that erases notions of violence. In cases evidence of consent is often visual like, the judge will say 'I saw the wedding picture and the woman looks happy, so she must not have been raped'. They validate past relationships or future relationships rather than the time or context of the sexual act at issue. What you see here is that they dismantle the very notion of consent. They make woman's consent to sex tantamount to consent to marriage, so they erase any sort of articulation of woman's sexuality. I won't say much about this here but the other thing we should put in the pot here is the use of rape law to control marriage choice. With elopement and run away couples (Pratiksha Baxi has written on this) and how rape charges are not only filed against male partners but often women are also accused as accomplices under this. To wrap this up we can talk about solutions and how we to deal with this in terms of affirmative sexuality later. But I wanted to suggest to you that these kinds of interpretations of rape law that people use, show that rape is constantly represented in terms of marriage, property and honour

rather than consent to sex or violation of bodily integrity. I came to work on this through my work on family courts, when I realised the ways in which all kinds of laws are connected by the logic of marriage as the solution, with sex being invisible outside of marriage. The cultural understanding is that it is marriage that will protect women - economically, sexually and socially. So the idea is if you legitimately deploy your sexuality in the commodity market of heterosexual marriage and only in that secured and bounded market and if you do that you'll be set for life, your parents need not share any family resources with you, you need not engage the labour market, you can rely on the income of the husband, you need not worry about the matrimonial property because you will share the affinal property of the households. They rely on the pre-assigned gender roles in marriage and leave no room for men's and women's desire, sexual or otherwise, which disturbs the scheme, such that in law sex becomes a commodity that is entirely related to marriage. So it seems to me that in thinking about rape we might of course want to think of the legal measures but I am very drawn to analysis of rape which talks about the ways it is constructed as menace and thereby it controls other realms- it controls our mobility, our movement etc. We might want to talk about how to make that real; how to take that idea of power that language has in constructing it as menace and to talk about rape in those terms instead of as harm to honour property etc.

MADHU MEHRA

Executive Director, Partners for Law in Development

I will critically discuss the campaign for (full) criminalisation of marital rape to call attention to ways by which this campaign reduces a potentially transformative agenda on gender, sexuality and marriage, to one of law, crime and punishment. There is no denying that there is widespread sexual and other forms of intimate partner violence against women within marriage (including marital rape), and the absolute necessity of criminalizing such violence. Yet, the campaign for criminalising marital rape is troubling - in terms of the aspects it selectively problematises as harmful to women and aspects relating to sexuality and marriage that it is completely silent on. It is also problematic for privileging the criminal law remedies, over non-punitive interventions which require a broader engagement with concerns related to marriage and sexuality that are equally hurtful to women.

Let's first summarise the legal position on marital rape. Prior to 2013, marital rape was decriminalised except if it occurred during judicial separation. In such a case, the offence was punishable by a sentence of 2 years instead of the prescribed minimum of 7 years for rape. After the amendment in 2013, marital rape against a wife who is above 15 years is criminalised only in cases when the spouses are living separately, whether or not under a judicial order; where the wife is below 15 years of age, marital rape is criminalised even when the spouses are cohabiting. The sentence for marital rape has been increased from a maximum of 2 years in 2013, to that of 2 to 7 years. This increase in sentence is still less than the sentence for non-marital rape, which can within the range of 7 years to life term. There is a different procedure stipulated for taking cognizance of a complaint by a wife who is above 15 years - it requires a court to be satisfied that a prima facie case exists for cognizance to be taken. The campaign against marital rape seeks to remove all these differentiations in relation to marital rape, to fully criminalise marital rape and bring the sentence on par with that of non-marital rape, which is, to increase it to a term of 7 years to life. The campaign argues along two main points - first, a women's bodily integrity and sexual consent are relevant as much within marriage as outside it, so an offence cannot be legalized on account of the marital relationship of the victim with the accused or be given a lesser sentence than what it would otherwise attract in law. And the second, that there is no existing legal redress for rape within marriage. Based mainly on these grounds, the recent PIL seeks the striking down of marital rape exception.

I will speak to two concerns - first, whether criminalisation of marital rape will fulfil the normative goal of recognising bodily integrity and sexual autonomy of women within marriage; and the second, that no other legal remedy for prosecuting marital rape exists, making this the only potential legal remedy available to women. To contextualise my response to both these points, I will first present PLD's learnings from the field

about the range of concerns in respect of sexuality and marriage that must be factored into any discussion on norm setting and on redress.

My understanding of the context is drawn from conversations over the last few years in PLD's workshops and through its work with social workers, lawyers and service providers at the grassroots level. These workshops have been at the district and state level in Rajasthan, Gujarat, Jharkhand and Bihar – and at the national level with similar participants from the North East, UP, Maharashtra, Karnataka and Madhya Pradesh. The participants are drawn from state supported mechanisms, such as the Mahila Samakhya, Mahila Salah Evam Surakha Kendra, Protection Officers and service providers under the domestic violence law, as well as from non-governmental crisis support groups working with women. We initiate the dialogues on marriage and sexuality, by asking about the kinds of problems women talk about in relation to sexuality within marriage; ask about the kinds of issues women complain about; and about the kind of remedies they seek for these concerns. Through these dialogues, PLD has documented a range of problems that women from rural, semi rural areas, small towns and urban slum clusters share.

The problems in relation to sexuality and marriage that women most frequently complain of cover a wide spectrum. It ranges from various kinds sexual abuse, inability to negotiate periodicity or the frequency of sex, inability to negotiate acts of sex they like over what they don't like, to sexual discontentment. There are many complaints about the lack of sex in marriage, lack of sexual pleasure in marriage. Complaints about discomfort with oral sex and anal sex are common. Here, the complaints relate to having to perform acts that the women perceive as dirty or not normal. Having to view pornography with the husband is also reported as a problem, as is the pressure to imitate sexual acts viewed. On further questioning, we understand that the problem with the non-normative sexual acts are not articulated in terms of consent, but in terms of revulsion towards acts that are viewed as dirty and morally ambiguous. Another problem that is expressed relates to frequency of sex, or being compelled to engage in sex after a certain age, that is to say, when the wives are no longer interested in it. For instance, in cases of husbands of about 70 years, forcing themselves on their 60 something wives. Some complaints relate to disregard for privacy, and insisting on sex in presence of the family members. The acts described expressly as violence however, appear to be different. The violent acts include non-penetrative sadism and intentional infliction of pain, through biting, burning, beating, forced nudity etc. For us the important learning through such dialogues was that it is important to avoid framing questions in terms of 'marital rape' or in terms of legally defined offences. To understand how patriarchy controls sexuality within marriage, and its impact on women, it was important to broaden the question to include all kinds of problems women raise with social workers in relation to sexuality within marriage. Only through a broader dialogue, can we hope to understand ways by which heteropatriarchy shapes sexuality, desire within marriage, and which aspects of these are oppressive to women.

This broad understanding can help us explore ways to equip social workers address each of the problems women experience.

We also asked about the kinds of interventions women seek in respect of many of these problems. The responses to this are similar to those extensively documented for domestic violence. Women primarily seek an informal intervention that brings a behavioural change in the husband without disturbing their marriage. Like in cases of domestic violence, women do not want sexual relations to end, rather they want the problematic aspects to end. They want someone to explain this to their husbands, '*aap mere pati ko samjhaao*', or sometimes, just want to share their problems. In cases of intentional infliction of pain and sadism, the responses were more decisive and firm about exiting from marriage. In these cases, the women separated, even opting for divorce, without foregrounding sexual violence. We learnt that while women may share concerns related to their sexual life with the social workers, they chose not to foreground these in legal proceedings. Given the range of sexual concerns documented by PLD, the current framing of the marital rape campaign, focussed as it is on non-consensual penetrative sex within marriage, to the exclusion of all other concerns raises more questions than it answers.

Using the above examples to frame my understanding of the context, I return to the two questions set out at the start. The first relates to whether the demand to criminalise marital rape, helps establish normative standards around women's bodily integrity and sexual autonomy within marriage. Heteropatriarchal controls over wife sexuality in marriage are exercised in many ways, as the examples suggest. Through rights to the husband, this control is inscribed in deep, cross cutting ways into civil, religious and criminal laws. Women's chastity is a condition to her claiming maintenance and alimony, even after divorce. Any intimacy by a woman outside of marriage can be prosecuted under criminal law through adultery. The failure to consummate a marriage is a ground for dissolving the marriage, making sex an essential condition of marriage. In fact, denial of sex is framed in terms of cruelty within marriage. It follows then, that a campaign or initiative seeking to advance bodily integrity and sexual autonomy must go much beyond the marital rape exception and law reform. It must necessarily address issues of heteronormativity which are enforced through law (for example, section 377 and adultery). This conversation on normativity cannot be piecemeal or limited to the law – with unconnected campaigns against 377 and marital rape, while maintaining silence on issues of chastity and adultery. The campaign must embrace all aspects that control and stigmatise sexuality, without being limited to select types of sexual violence. It must treat sexual discontent, lack of sexual agency and revulsion towards non-normative sexual acts as concerns significant enough to engage with. More importantly, with sex being a necessary condition of marriage, and with women's sexuality framed primarily in relation to marriage, the law cannot be the starting point of this conversation. We must seek to prioritise sexuality in our work in relation to gender, equality and on sexual violence, exploring strategies outside of the law to dialogue, challenge, raise consciousness on these issues. Only by gradually building such an

understanding, can we hope to engage with all aspects of sexual normativity, including our own socialization related to these, and address concerns related to discontent, normal and natural - with the law being one part of such an engagement.

This brings me to the second claim on which the marital rape exception is prioritised to provide legal redress, arguing that no other remedy is available in the law. This position is factually incorrect. There are remedies for cruelty within marriage under section 498A, which by virtue of being very broadly defined, includes sexual violence; similarly, the PWDVA recognises sexual violence within the scope of domestic violence for seeking civil remedies. Therefore in cases where women need immediate legal intervention, our energies must go towards enabling them to raise these concerns, and to take on the obstacles that the concerns relating to sexuality will encounter in the legal process. The problems associated with access, procedure, evidence and delays will remain even if marital rape is fully criminalized. These barriers in the legal process are not exclusive to some remedies for women, but cut across most remedies, and will remain while prosecuting marital rape. In any case, the existing remedies will continue to be the only recourse available for non-penetrative forms of sexual cruelty reported, for which a provision on marital rape would not be an answer.

One area that needs intensive engagement is that of working with women on reasons that inhibit women from foregrounding sexual violence in legal processes. This primarily requires investment in developing capacities of agencies working communities, to enable them to help women break the silence around sexual violence. Addressing these barriers to articulating and prosecuting sexual violence within marriage is a necessary, as it shapes recourse to the law, including marital rape. This long term grassroots work, to build capacities of service providers, paralegals, counsellors and lawyers to address a wide range of sexuality concerns, to enable women voice these concerns, remains. Equally, there is a need to track legal and judicial responses to address the specific barriers as they emerge within the law.

Given our experience of rape prosecutions for the past many decades, in India and outside, we can safely assume that if marital rape exception were removed, only the most egregious cases are likely to succeed. The rest will end in acquittal. Preparatory work for law reform cannot be blind to this reality. Rather, in anticipation of these barriers, it must draw from comparative law, an understanding of how non-consent between spouses understood, the quality of evidence that enables justice dispensation in relation to marital rape, and so on, to address the implementation issues that will arise. A campaign claiming to be relief-focussed must go beyond the singular demand of 'naming' a crime, to gathering sufficient guidance from comparative experiences of using and implementing such a law.

The present campaign seems more concerned with removing the marital rape exception in the statute, as part of the larger trend of exceptionalising sexual violence to the neglect of sexual autonomy, in more ways than one. By arguing that there is no legal

redress for sexual violence, particularly marital rape in law, it seeks to treat marital rape as being distinct from not just sexual violence, but also from other forms of domestic violence within marriage. Only this can explain the demands that the punishment for marital rape be on par with non-marital rape, that is between 7 years to life (instead of 2-7 years in the law), without reference to the resulting disparity between the sentencing structures for forced penetrative sex and domestic violence/cruelty within marriage (section 498A), which carries a sentence of 3 years. This only succeeds in privileging penetrative sexual violence as a crime over all other forms of domestic violence. That is to say, treating non-consensual penetrative sex as being more grave than other life threatening violence, fractures, and routine humiliation and battery within marriage.

These questions raised are not intended to discount the seriousness or the widespread nature of sexual violence within marriage. Rather it is to call attention to the complex ways in which sexuality and sexual violence are linked, which the singular focus on sexual violence or criminalising marital rape neglects. It also seeks a fuller engagement with sexuality in the context of marriage, given the primacy placed by law and society on sex in relation to marriage. A transformatory agenda must address all the ways by which patriarchy imposes sexual norms and stifles sexual autonomy differentially for men and women. Our agenda cannot be based on law reform that exceptionalises non-consensual penetrative sex as the worst form of violence. It requires working with our own socialization as a step towards enabling those working within the community to address a wider set of sexuality concerns (beyond egregious sexual violence). In this, law can only be one part.

RUKMINI S.

National Data Editor, The Hindu

I will summarise some of the work I did on a series of stories last year to raise questions, as I am looking to understand the trends fully. Having covered both police and courts, for crimes, including for sexual offences, I have been concerned about the way in which crime statistics, sexual violence statistics and police statistics, are being used as a proxy for public safety. My understanding of the extent of contestation that happens while registering an FIR, made me uncomfortable with the way the sum total of FIRs were being used to understand sexual violence. To understand the cases better, I looked at all cases registered under section 376 IPC (on rape) in the six districts courts in Delhi for the year 2013. Although this offence pertains to adult complainants, I found some cases of sexual violence against children also registered under section 376, instead of POCSO Act (as they ought to have been). In all, there were about 600 cases for 2013, of which the complainant did not appear in 123 cases. I would have normally understood this drop out figure to be a result of the harshness or cruelty of the legal system which drives the complainants away. Yet, there is need to be circumspect about such conclusions, because there were cases where women either did not mention the word 'rape' in their complaint or did not want to pursue the case further. There is an element of female agency in not pursuing cases, which is not possible to detect by just looking at the acquittal rates or non-appearance rates. Of the 460 cases that remained, I read all of them, referring to court records on these cases, where the enough documents were not available with the police. I categorised these cases into 5 broad types, listed from in descending order from the largest to the smallest category.

1. Parental criminalisation of consenting couples (few cases involved a minor girl)
2. Rape by a person known to the complainant
3. Breach of promise to marry
4. Stranger rape
5. Trafficking

I found that numerically, parental crimination of consenting couples to be the largest category, with these being 190 out of the 460 cases. Within this category, in the majority of the cases the women consistently maintained the position that it was a consensual relationship in which she didn't want to charge the man with rape. In a smaller proportion of cases within this category, the women at some stage of the criminal process, either at the FIR stage, in front of the judicial magistrate or during cross examination, stated that it was a consensual relationship but on another occasion said that they wanted to go ahead with the prosecution. In a minority of cases, the woman maintained throughout said that it was not a consensual relationship, but due to the existence of evidence, like marriage photo etc, the legal system determined this to be a consensual relationship.

The next biggest category was of rape by persons known to the victim. The majority of these were opportunistic crimes largely within *jhuggis* and low income areas where young children being preyed upon by an uncle or rickshaw puller, all persons known to the victim and other people. The third biggest category of cases was of breach of promise to marry, followed by the category of rape by strangers, with under 10 cases. The smallest category of cases was that of trafficking, with only about 8 cases in all.

I took up this study for personal reasons in 2012, because I was new to Delhi. The crime numbers were treated as proxy for public safety, and these numbers began to dictate how I behaved in terms of restrict my mobility or leave early, or organise who will drop me home. This data however, has made me change the way I view crime statistics. It is not a proxy for public safety, and in fact reveals many different things.

In many of these cases of breach of promise to marry I was able to talk to the women. These conversations were very insightful and demand that we re-visit our assumptions about many of these types of cases. To me, these cases reflect how women negotiate social pressures on them to marry or not, to chose without parental approval, to have an inter caste or inter religion marriage, to express sexuality before marriage etc. I find it difficult to view these cases just in terms of women's sexual agency, because it is hard to reconcile this view with a situation where sex was consensual up to a certain stage possibly under deception, or an understanding that there would be a marriage in future. Another insight gained is the use of cases to control of sexuality of women, because in some instances, cases were registered at the point of discovery of relationship. Parental discovery of pre-marital heterosexual relationship, led in these cases to a complaint, as an attempt to make the couple get married. There were instances of parents or uncles dragging the girl to the police station to force them to file a complaint.

There were other learnings too. Some women who filed cases were untraceable, suggesting that some sort of pressures could've been applied. But there is a significant number of women, stated repeatedly that theirs was a consensual case, which they don't want to continue. This reveals that women do not always drop out because of pressures, but a mix of reasons determine why women do not continue with the case.

A major concern for is how do we deal with judicial cynicism towards rape, since all these cases, despite their differences are registered as rape – and these are what the cases that judges see every day. When there is media report quoting what the judges say, or what they see every day, how do we respond to it? I also discovered that complicated processes lead to the registration of an FIR. A complaint is often an attempt to resolve fights, to prove honour etc. As long as we don't have crime victimization survey in India (which is not happening yet), we have to continue to rely on police statistics, which are not useful to understand what is actually happening. We then create an environment of fear based on crime statistics. How do we contextualise the statistics?

An important finding from my study, is that there are a large number of cases of

consenting couples despite the risks they face. It requires a lot of courage to fall in love with a person of a different caste or religion in India and it is happening at a large scale today across the country. There are hundreds of cases within this data set alone. They are running to different parts of the country, being picked up by the police at bus stands and in trains. If we continue talking about this within the context of rape, without thinking of it as a distinct category then what message are we sending out?

Picking up the point about marital rape – since we don't have a crime victimisation study, we must turn to the National Family Health Survey which asks the question on sexual violence. In a household survey, of the total sexual violence reported by women in India, almost 99% of women reported sexual violence in the context of marriage. A question to ask is, if such little sexual violence happening on the streets, are we safe or free of crime? Or is the crime happening at home? If a large number of women are getting married early, they spend a large portion of their sexual years at home where they are not safe. The officially recorded sexual violence in the public sphere is low makes sense – in that while it doesn't imply public safety but it does suggest that the crime is likely to be at home.

DISCUSSION

MARY JOHN: We've had a truly remarkable panel that has brought together different ideas on marriage, sexuality and law. I just wanted to begin by remarking a little bit, not so much of disagreement, but in the title of today's deliberation, the word continuum is used and am curious is that the best term to use. Are we talking of a continuum of sexuality and violence, in your own concept note you've raised it as a binary and worry about the fact that there is too much of violence at the cost of too less of sexual affirmation. Have we reached the zero-sum kind of a situation especially in the last two years? Thinking on that, from the side of the State perhaps yes, but from the women's movement, the student protests during the December rape case, we saw placards of many kinds – some calling for 'death to the rapist' and others stating, 'don't ask me where I was last night.' We saw a kind of a refusal of a binary, so my question then is how do we then think about the role that marriage is not playing, or in other words, its role of taking over the space for affirmative sexuality in recent years, if that is the special focus of this panel.

What I found interesting in Srimati's presentation was she seems to find that law works 'better' with the older and more problematic notion of rape as crime of property or honour or more debateable and contestable notions of rape as power in distinction to rape as violation of bodily integrity. What you seem to ask us is, why the definition we are happier with seems to be working the least? Are these problematic definitions working better because they bring in larger social structure and norms which exist in the society within which the situation is then handled as distinct from the feminist mode where we view the crime as a violation of sexual autonomy and bodily integrity?

Madhu raised wonderfully the problem of isolating marital rape from the larger discussion of sexuality and marriage. Here again my question is really you relied a lot on interactions survey, we can ask questions about who were the women, how is the representation, and what would be their position on marital rape specifically. Are you suggesting that it doesn't really figure highly in their set of concerns? Therefore, what implications do we draw from experiences on the ground in our own thinking?

Rukmini you gave us this disaggregation of cases based on Delhi, and I think one of the things we can use from this data is given that fact that more than 50% of the cases are parental consent cases, why not go to town using your media access to say that Delhi is not the rape capital of India it is in fact the love capital of India! In other words, you say that in interacting with these statistics, it changed the way you thought about your own city. That to my mind is tremendous, it is a big plus, why is it that we are still stuck and our socialisation pattern and everything we do is about making Delhi a safer place. Even we know that 90% of the cases are with known people but why do we still fall back on the same old stranger rape and it is the biggest danger. There was a similar study in

Mumbai by Majlis where interestingly the biggest category there is the breach of promise to marry. Its Delhi which clearly has these enormous cases of elopement, it's a hub in North India where people come and seek a haven sorts here. So, cant we then do something we these figures to destabilise the deeply rooted socialisations that we all have about where the danger lies.

SRIMATI BASU: This conversation is not talking about doing away with rape law despite the profile of who is using it. What is of concern however is that judges and police work with these perceptions when a person comes with an assault case with a clear lack of consent case, as these perceptions shape the landscape of the law. One other thing we might talk, which I came across in my field work, is the use of section 377 for filing a sexual assault cases by straight women because they can't file it under marital rape. That another Pandora's box we must grapple with.

Nivedita Menon uses this phrase in her red book on the notion of marriage, that there are different set of desires for intimacy, conjugality, property, labour among women and a different set among men and there seems to be a clash between those values. Maybe we could think of rape laws in those terms. I also often struggle with this that when it comes to evidence and legibility in law, it is much easier to go through the honour, shame and property way. Somewhere in the heart of the rhetoric of rape laws those things and consent is illegible within how law works.

MADHU MEHRA: The reason for using the term 'continuum' in the context of sexuality and sexual violence because the work on one is incomplete without the work on the other, there are interlinkages. Our conversations about bodily integrity and sexual autonomy, seems to be strongest in the context of sexual violence – and not beyond that in relation to broader set of sexual norms, desires and sexual discontents as my presentation points out. The protests did have slogans affirming both, bodily integrity and sexual autonomy. But how do we translate that in our work, to address both concerns and interlinkages between positive sexuality and sexual violence simultaneously. This engagement cannot be limited to the law or case work, but requires intensified engagement at the community level. We have not sufficiently sat to collectively discuss how to raise facets of desire and sexual autonomy, as we have for instance, sexual violence. Do we limit ourselves to violations and remedies alone? How do we go beyond that so that we are engaging people in a broader set of interconnected concerns?

SAPTARSHI MANDAL: A few additional points to build on Madhu's presentation. We have talked much about the legal nature of marriage and how law treats the relationship of marriage. We need to ask if it is a contract or is it different from a contract, what are the constitutive elements of this relationship. I have been trying to make sense of two set of cases – one, where absence of sex becomes a ground for divorce, constructing marriage as a relationship of compulsory sexual intercourse. Another set of cases pertain to sexual abuse under the domestic violence law, which

covers cases of forced sex as well as no sex. The absence of sex has been treated as sexual abuse over the years. If both parties to the marriage, the law and the judges construct marriage as a relationship of compulsory sexual intercourse, then how do we read in consent there? We don't know much about the complexities of marriage and I am glad that this process is started. Another aspect relates to the point about norm setting. We want to criminalise marital rape to set a norm despite knowing that it might not be used by women. I think we need to problematise that further, because the role of law doesn't end with norm creation, it also has unintended consequences which we must consider. One question that I am interested in is how does criminal process and civil process interact with each other, am particularly thinking of Prabha Kotiswaran's work with respect to sex work where she shows that it is not only criminal law which is oppressing sex workers but criminal law working with tenancy law, landlord-tenant relationships and other informal economic market relations etc. If we apply the same model to the interactions between criminal law and civil law with respect to marriage in a scenario where we criminalise marital rape, then how will the low conviction rate (that already exists for rape) impact the civil claims of a woman seeking divorce. If the woman's complaint of marital rape fails because she fails to prove her case beyond reasonable doubt, how would it impact a subsequent divorce suit filed by her? How will the finding in the criminal case likely to affect her divorce case. We haven't thought much about the complex interactions that different systems of law have.

NIVIDITA MENON: There is richness of the way this discussion on sexual violence within marriage has been framed. Let me say two things here. One, if we were to periodise the way in which women's movement talked about sexual violence and sexuality, 80's being where we talked about it as violence, 90's we talked about it as desire and again in the first decade of 21st century we are talking about it as violence again. I was wondering if there is a link between the transformations of the 90's which produced a different kind of urban public space, larger presence of women, out of which a few shocking cases of stranger rape are being used to re create an older discourse on fear and violence. This thought didn't occur to me before I came for this workshop. I've often thought about it as to why we've swung back to violence, but listening to all of you together, especially Rukmini. The statistics have completely blown my mind. Looking at all this together, Madhu's and Srimati's presentation as well it seems to suggest that we are talking about rape in a vacuum. We continue to think about rape laws as if they are stranger rapes. What is very evident from these presentations is that rape laws are being continuously used to reinforce the dominant marriage norms. We need to start thinking about rape law reform starting afresh. We've always got caught in the continuous 'amendment' to the 19th century act. Somewhere, we want to talk about rape afresh, starting now.

AYESHA KIDWAI: To turn to Nivedita's point that we are at a different stage in history. I wonder whether because there was no concept of sexual rights for women, we looked through political instruments like the law to construct equality. Therefore, predominant notions of family were used to give women political rights. Then we sought to leverage

social and other rights through the law. The question that confronts us now is whether we going to go the same route? Are we going to use the law as the means to construct a political reality? A lot of us feel that what has been happening through the last 10 years, more clearly from 2012 onwards is that the people on the streets are asking for something else, yet our only answer is often the law. Madhu also made this point through her presentation that called for alternative arenas and responses. Do we keep on focussing on more laws or do we look at doing social change by other means. I don't have the answer to this because law certainly was an important part of it for 60-70 years, but its time for us to think of how else.

SRIMATI BASU: Tying up what Nivedita and Ayesha said that this is a new moment, where we also see a forceful reassertion of familial and marital norms. This seems to be in response to two different uneven registers on which men and women are individually taken. This is a problem which cannot be addressed by law alone.

MADHU MEHRA: Saptarshi's comments on marriage are very pertinent because there are two ways that law looks at marriage and sex –lack of sex in marriage is framed as cruelty, as is sexual violence. There was a recent judgement in a 498A case filed by wife alleging cruelty on the ground that the husband was in an extra marital relationship. The court held that this was not cruelty. Some of the responses on feministindia critiqued this, asserting that this should be treated as cruelty. This adds another layer of complexity and contradiction we need to untangle. If sexual autonomy is of equal importance to us, then this must inform our positions across different types of cases and situations, not be selectively invoked. We are debating marital rape, evoking violation and violence on which there is a broader consensus, but silent on the legal provisions on adultery and chastity (maintenance laws) which is more challenging because there is no violence to build easy consensus. These too vests control of woman's sexuality in her husband. We need to go beyond piecemeal rights within marriage, but speak of marriage as an institution that amongst other things, compromises autonomy. If we singularly talk about violence at the cost of the other ways in which sexuality is controlled, then that compromises the debate on sexual autonomy.

JAYA SHARMA: Taking on from what Madhu said about certain responses from the feminist community (feministindia) treating a man's relationship outside marriage as cruelty. I was thinking that it's difficult for us to prize apart the man who is exploiting male privilege on the one hand, and the critique of the institution of marriage and monogamy. It is very difficult for us to keep those two things separate and because we are agitated about the man who is abusing privilege in patriarchy, which does not allow us the space to critically think about marriage and monogamy per say. The two things get conflated, so we don't have the space. We also need to think about why in the women's movement we are talking less and less about marriage. That is at the heart of it. We need to think about what this has to do with our own personal lives as feminist activists. One way to think about it is many of us are invested in marriage, whether heterosexual marriage or coupledness or monogamy and feel we can't honestly critique

marriage and monogamy. We are so busy judging ourselves and each other because of which the space is not being created to talk about marriage and monogamy.

Also, who are we talking about in terms of marital rape? Our imagination is urban and plus 18. I wanted to throw in the fact that there is child marriage in rural India and millions of people get married before 18. What is the conversation about marital rape and law in such contexts?

SRIMATI BASU: A couple of things am hoping that we might talk about. What is the space within which we can talk about what is implied in the contract of marriage, or to use the phrase, intimate relationship in the nature of marriage? How can we explicitly talk about that?

In all countries sexual violence is prosecuted. If we are to put out new concepts, what is the process by which we can place them before the lawmakers? The thing here is, legal anthropologists are very fond of the word 'legal pluralism,' the working between criminal and civil law. Vasudha Nagraj for example, is one of many people, who convincingly says that being able to file a criminal case is a leverage that can help her get settlement or maintenance. I see the importance of it but I also feel that the provision exists for economic reasons. Similarly with the rape laws, even if we could clear away all the love capital issues, it's the cultural mess that we don't know how to address. Maybe making these doubts and fears explicit is doing something about it.

MADHU MEHRA: I feel we have invested far too much energy and attention on criminal law and conviction, for far too long. There is very little by way of victim support, very little that we've done with the civil law. This focus on the law has taken us away from community engagements that touch the victim more closely and alternatives that enable social change more broadly.

POOJA BADARINATH: The connection between civil and criminal law specifically in relation to marital rape, there are two distinct cases to be found in the monitoring reports on domestic violence law – those of no sex and those of forced sex. If we look through the majority cases, the forced sex foregrounded in these cases mostly pertains to unnatural sex. It appears that the criminal law and legal redress shapes the kind of sex women will foreground in their complaint. Without this, the judges may not view forced sex as a form of sexual violence. During judicial trainings the fact that the judges treat marital rape as an exception rather than a crime, ensures that they will not see it as a civil wrong either, for purposes of compensation. Penal offences have a bearing on the kinds of complaints women file within marriage, as it bears upon what reliefs are given.

DEEPTI MEHROTRA: I wanted to go back to 70s and 80s and say that there was an attempt by the women's movement to look at the family and different aspects of the family, and desire independent of the family. There were also talks on multiple relationships too. Somewhere, dowry and dowry death and rape were the legal debates

then. These laws emerged by the concentrated attention by the women's movement to these issues. We really need to look at these issues from other means other than the law, which was the idea that has fallen out now. None of us looked at the cases, in fact it is Rukmini who brought all this data to our attention which we should've done if we need to change the social norms. This cannot be done by law. The change has to come from education, dialogue, discussion and engagement across society.

APARNA CHANDRA: I just wanted to flag this issue that social norms overshadow legal norms and where that leads us in terms of social reforms. The presentations bring out how the rape law is used to dominate notions of marriage and sexuality to ask whether and how we need to re-think our rape laws. Here, we must also look at how other laws tend to be used, such as civil law on divorce as well as habeas corpus petitions (Pratiksha Baxi's research) filed by husband and fathers against women who express their sexuality. In the past, laws related to abduction were used that way, rape law is the new entrant. But also laws that you would think are unconnected, for example laws in Tamil Nadu there are narcotic drug cases filed to get the women who are trying to express their sexual autonomy, to bring them back in the fold. In Bhopal, there are instances of Arms Act is used in that manner.

I also wanted to point out a couple of other things. That live in relationships in recent times seem to be taking the shape and colour of marriage. Also a part of marital rape is criminalised i.e. below 15 years which we need to think about in terms of strategies. I don't know if there are any cases there. In terms of comparative work, how does marital rape work etc, is there a group of cases to look at and see whether there has been any successful prosecution there.

MIHIRA SOOD: I just wanted to come back to our reluctance to questioning the institution of marriage. I'll like to think about the role of feminism both as an ideology and as a political movement, and the demands of those two can be very different. There is temptation to play by the rules of the game rather than to challenge them in our lives. It seems to me that feminism and feminist are held to higher standards, in terms of personal life, in having to match every aspect of advocacy we are espousing. For instance, how can you question the institution of marriage when you yourself are married, which brings a reluctance. It's very easy to fall in that trap and it's an unfair standard, which needs more thought.

MONA SINGH: My comments are about the appropriation of the law that Rukmini was touching upon. How many of us have gone to the police station to file a complaint of sexual assault? One of the first question I am asked when filing such cases for my clients is *'yeh Jharkhand se hain tum Rajasthan se ho, property ka toh koi dispute nahi ha. Agar koi problem nahi hai toh woh tumhare against joothe complaint kyun karenge.'* When I say appropriation of the law I don't only mean women victimised by the sexual violence but re-victimised while filing the complaint. We should recognise that pattern. Talking about politics of FIR, cross FIRs are also very common for example landlord tenant

relationship. Those numbers might count in the statistics but actually those cases drop midway. In this scenario, some genuine cases might not be considered.

Another point I flag is that of judicial attitudes. How does a judge deal with a matter when he sees all kinds of cases - there are those rapes involving consensual sex and then there is an actual rape case? It becomes problematic because you are looking for the perfect victim. For instance when I walked in the court with a client who was wearing bright red suit, long earrings etc, I wanted to tell her that this is not going to work inside the court but the feminist inside, stops you from saying just that.

MARY JOHN: This has been a remarkable session and really productive in making marriage central to the discussion. Let us take that next step and look at the institution of marriage and nature of marriage. To ask myself the question, why should I feel a particular discomfort discussing the marriage contract as distinct from my contract of my workplace or other contracts? Is it that we have linked marriage in some privileged way to the workings of patriarchy and could we de-link it with violence? What is the role of this compulsory system of marriage in our contemporary society? These questions and discussion are necessary must continue beyond this forum.

CONCEPT NOTE FOR THE ROUNDTABLE

The past couple of years have witnessed surge of interest on issues related to sexual violence. Sweeping law reform has instated a new legal paradigm to address sexual violence. Political parties have competed in elections over who can best provide 'women's security'. Strident calls for death sentence, media attention and exemplary state action in high profile cases have come to mark the exceptionalism within which sexual violence has come to be framed. Recurring outrage and calls for censorship of sexual expression, banning books, documentaries, art and entertainment shows in the interest of honour, culture and safety of Indian women, from obscenity and indecency have continued relatively unchallenged. Sexual violence is no longer taboo subject – it has currency in elections, national media, public discourse – and is of concern to a diverse cross section of society.

Have sexuality and sexual rights been marginalized in the process of amplifying sexual violence? How do the women's rights and progressive voices continue to engage, debate and respond to events in ways that do not unintentionally strengthen and reinforce protectionist narratives, or positions that exceptionalise sexual violence, or indeed, state centric change processes. And importantly, how to does our articulation of sexual violence, not diminish or marginalize discourses that are affirming and advancing of positive/ non-normative sexuality.

Has the reliance on criminalization, law, the state, and the national media as the key vehicles of change, shrunk the spaces for dialogue, nuance, affirmative sexuality? Have our interventions/ engagement strategies, including in relation to select cases, contributed to a vocabulary where violence and victimhood dominates the conversation on sexuality. Has our discourse on sexual violence neglected the differing ways in which violence is viewed, understood and appropriated within patriarchal structures and the nation state, such that it lends itself to protectionism and censorship of sexual rights. PLD's work with counselors, crisis centres and social workers suggests that a paradigm that focuses heavily on sexual violence, does not lend itself to affirming or defending positive sexuality. Accordingly, community groups, counselors and courts grapple with multifarious cases of 'rape': somewhere consent is material to determination of rape, others where age or condition of marriage is the key determinant, prodding us go beyond simplistic binaries of consent and non-consent. While criminal redress is theoretically available (within the limitations of a fraught legal system), there is no easy articulation or ready defence of autonomy, desire and sexuality.

This roundtable seeks to discuss the many ways in which sexuality, sexual rights and sexual violence are inter-related, and explore the ways our strategies and framing of sexual violence has impacted positive sexuality in the current context. It seeks to critically reflect on how our reliance on criminal law and a sound bite driven media, have shrunk spaces for dialogue, reflection, uncertainties and mindful articulation of sexual violence. It seeks to explore ways of articulating and responding that do not compromise positive sexuality; or indeed, limit our ability to defend and affirm sexual rights.