



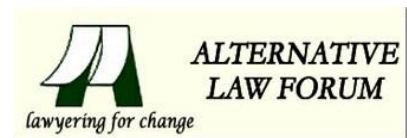
A Discussion on

“Working towards Substantive Equality”

12th August 2017 from 3 pm to 5 pm

St. Joseph's College, Bangalore

**Organized by Friedrich-Ebert-Stiftung along with Alternative Law Forum
and WomenPowerConnect**



Concept note

In 1948 the Universal Declaration of Human Rights was adopted by the UN General Assembly. Article 1 of the UDHR states “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*”

In 1946 the Commission on the Status of Women (CSW) was set up parallel to the Commission on Human Rights out of a concern by women advocates that a separate Commission was needed to address the special concerns of women. The CSW drafted several conventions and declarations, including the Declaration on the Elimination of Discrimination against Women in 1967 and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979. The fact that CEDAW was needed indicates that despite the enactment of the international declaration women do not enjoy equal rights with men.

The Indian Constitution guarantees the right of substantive equality to the backward classes of citizens. Article 14 of the Constitution guarantees equality before law, i.e., the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15 deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Sub clause 3 states that *Nothing in this Article shall prevent the State from making any special provision for women and children.* Article 16 guarantees equality of opportunity in matters of public appointment. It also allows the state to make reservations in favour of the SC, ST and Other Backward Classes. While the Constitution does not specifically mention reservation for women, the Constitutional (74th Amendment) Act, 1992, brought in provisions mandating one-third reservations for women in local governance bodies. These guarantees apply to state and public institutions. The only provision that binds both the public and the private sector is Article 17 which outlaws untouchability and forbids its practice in any form.

Despite the enactment of national and international legislation, in reality discrimination on the basis of sex and gender, religion, caste, ethnicity and other factors continue. There is no single legislation in India that takes into account the multidimensional and intersectional nature of discrimination. There is no comprehensive code on anti-discrimination that covers both the public and the private sector and provides the specifics of discrimination. Woman’s right to equality in India has primarily been interpreted through case law, resulting in differing and sometimes even unfavorable interpretations for the rights of women.

Laws like the Maternity Benefits Act, 1961, Equal Remuneration Act, 1976 and the National Rural Employment Guarantee Act, 2005 attempt to address the existent systemic discrimination towards women in employment. Based on the guarantee of equality, laws have been enacted to address violence against women under civil and criminal laws. The Protection of Domestic Violence Act, 2005 is an example of the civil law to address violence within the home. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is an example of criminal law to counter acts of violence against SC/ST women.

It has been argued that the constitutional provisions in the present context are not adequate. For instance, they do not include organizations in the private sector and private individuals and are not inclusive of discriminatory practices involving marital status, caste-affiliation, sexual orientation, disability, religion or food preferences.

An anti-discrimination law could effectively address the public-private dichotomy and address the various manifestations of discrimination in society. On 10th March 2017, Member of Parliament, Dr. Shashi Tharoor, introduced the 'Anti-Discrimination and Equality Bill, 2016' in the Lok Sabha, however, it remains to be seen whether the Bill gets translated into legislation or not as the Bill has still not received necessary support from the government.

The Genderlogue on 'Working towards Substantive Equality' will attempt to initiate a dialogue on:

- Existing anti-discrimination laws;
- Experiences of marginalized persons of direct and indirect discrimination and their challenges/successes in utilizing these laws - specifically, queer persons and sex workers;
- Why there is a need for a comprehensive anti-discrimination law in India and what it should constitute in order to be more responsive to experiences of discrimination of the marginalized;
- Measures beyond legislations.

Agenda

Time	Sessions/ Themes	Resource person
3.00 pm – 3.10 pm	Welcome and Inaugural Session	Welcome remarks : Ms. Lata Paul, Faculty member, Saint Joseph's College Ms. Gayatri Sharma, WPC
3.10pm – 3.20 pm	Goals of the Genderlogue	Ms. Jyoti Rawal, FES
3.20 pm – 3.40 pm	Presentation by Alternative Law Forum on the Anti Discrimination Law	Ms. Darshana Mitra, ALF
3.40 pm – 4.00 pm	Discrimination against LGBTIQ	Rumi Harish and Sunil Mohan
4.00 pm – 4.20 pm	Discrimination faced by sex workers	Ms. Shubha Chacko and Ms. Lata (name changed on request)
4.20 pm – 5.00 pm	Questions and Answer Session	
5.00 pm	Vote of thanks	
<i>Tea and Refreshments</i>		

About Speakers:

- **Darshana** is a lawyer at the Alternative Law Forum. She works on the areas of anti-discrimination law, gender, and child rights.
- **Lata** is a Board Member of **Navajeevana Sanghatane** a community based organisation that includes sex workers and other women from marginalised communities that is based in Bommanhalli (on the outskirts of Bangalore)
- **Shubha Chacko** is the Executive Director of Solidarity Foundation, an organisation that supports grassroots level collectives of sex workers and sexual minorities especially in small towns and villages.
- **Sunil Mohan** has worked on Oral history documentation of LGBTI people across south India with the fellowship of CCDS Open Space Pune. Sunil identifies as a gender queer person.
- **Sumathi Rumi Harish** started working with women, contract workers' union and marginalized genders and sexualities from 1999 till now. Sumathi composes music and also has done work on sociological understanding of music and gender and written a play on the Raga Kalyani called Sanchari. Sumathi identifies as a queer person.

Genderlogue Report

Ms. Latha Paul, Coordinator of Gender Sensitization Committee at St. Joseph's College, Bangalore welcomed and thanked the organizing committee of Genderlogue for facilitating a panel on 'Working towards Substantive Equality'. She remarked that in St. Joseph's College, male students are forthcoming and open to a dialogue on gender issues. She stated that it is important to have these discussions regularly.

Ms. Gayatri Sharma, Program Director, WPC stated that the article 14, 15 and 16 are regarded as 'golden triangle' of the Indian Constitution guaranteeing equality. While the Indian Constitution has these provisions, it does not ensure equality in practice. Moreover, there are certain characteristics that are still not protected by the Indian Constitution, like sexual orientation and age. Further, there are several socio-cultural, economic and political factors that lead to subtle and insidious forms of discrimination that laws are still not effectively understood and dealt with.

She stated that the Equality Act 2010 of the United Kingdom is an attempt to protect citizen from wider forms of discrimination, wherein, the characteristics that are protected are age, disability,

gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Ms. Jyoti Rawal, FES

She explained to the audience the format for Genderlogue; wherein, FES collaborates with their partners to provide an alternative platform to facilitate a dialogue on issues that are relevant for fostering peace, freedom, solidarity and social justice. This platform attempts to provide a safe space for encouraging a critical and solution oriented dialogue in an open constructed manner. She remarked that this Genderlogue focuses on how social biases, practices and experiences of discrimination undermine the constitutional rights of citizens.

Ms. Darshana

Darshana initiated her talk by emphasizing the importance of understanding discrimination. She elaborated on it with an example of the Sexual Harassment at the Workplace Act. This act addresses gender based discrimination and was needed because in public spaces and as well in private spaces, women are frequently treated as sexual object. This amounts to discrimination. She stated that when an individual accesses a public space like a college or a workplace, they do not want to be treated as sexual objects. However, this does not imply that they do not have desires, but that their consent as to how, when and with whom they would like to express themselves sexually is paramount. Further, it is imperative to understand 'felt experience' of discrimination. Special provisions are needed in order to safeguard against discrimination as that ensures substantive equality and not just formal equality.

It is also important to understand discrimination as when an individual or community is systematically discriminated or denied of their rights. Further, discrimination needs to be understood as a phenomenon and at the realm of intersectionality, as put by Kimberlé Crenshaw. Citing an example of Surakasha app recently launched by Bangalore police, she stated that it is crucial to understand and ask about who has the Smartphone in order to access this app. People who do have access to Smartphone may not necessarily represent the larger population. What sort of safety and whose safety are we talking about? Policy makers often perceive women as a monolithic category and fail to take account of diversity among women. Moreover, often than not, they are not cognizant of the fact that how an identity of a person influences their access to resources.

Under Sexual Harassment at the Workplace Act, internal committees and local committees are supposed to be established. Despite the fact that more than 80 percent of women work in informal sector, it has been found that local committees are not functional everywhere. It is necessary then to reflect as to what a law means within this context.

The Anti-Discrimination bill is needed because we do not have substantive laws to protect against discrimination in private spaces. This Bill looks mentions list of wider range of characteristics. The bill has not been passed yet.

She ended by putting forth a set of questions for audience to reflect upon. They were

- What kind of laws do we need for several forms of discrimination?
- Do we require laws for every form of discrimination? Or they could be addressed outside the framework of law?

Rumi Harish

When we talk about sexuality, there is an assumption that only queer people have it, whereas sexual preferences and sexual role of heteronormative people is taken as given or as natural.

In our society, heteronormative sexual preferences and sexual roles are portrayed and acknowledged in a particular manner, wherein violence plays an important role. For instance, in several Bollywood movies, stalking is portrayed as one of the ways with which heteronormative romance happens. Within this context, in case of an incident of sexual violence in India, the role of sexuality is taken away and only violence is focused and discussed about. For instance, in an incident when a dalit woman experiences sexual violence by upper caste men, the everyday regulation of dalit women's sexuality by caste system is not acknowledged. Further, court systems are extremely discriminatory. Often the arguments on saving the institution of family are provided to not criminalize marital rape. Women's agency within marriage to say no to sex is getting reduced. In marriage, the manner sexual roles are played leads to certain construct of gender role. How much of desire can be expressed within and outside the marriage and who decides are crucial questions to be asked.

Within our initiatives to prevent sexual violence, violence against only certain section of people generally gets addressed and larger population is left out. Women who are deemed to have a 'good moral character' are considered to be perfect victims whereas sexual violence and discrimination of sex workers, dalit women and queer largely go unheard.

Sunil Mohan

- What is gender and how we understand gender? Do we understand it as an identity or an expression?
- The existing structures and systems are binary and it would take time dismantle it.
- Who are we to deny or give rights to certain section of people? Is it that the system allows and denies the right according to its convenience?
- To be a citizen of this country does gender matter? And if not, then why a citizen is asked for a proof of his/her gender? Is it demand of patriarchal and heteronormative system?
- Are we fighting to change the system or we are trying to adjust to it?

Shubha Chacko

Shubha Chacko initiated a discussion with students by asking audience as to what is the first word they associate with the word sex worker. Forced, lack of choice, and a livelihood were responses from the audience. She elaborated that the image that is associated with a sex workers is that of a woman who wants to make an easy money; bad woman; she is 'characterless' woman unless she has been forced, so an image of passive woman.

She further stated that the sex work is called as 'flesh trade' and "selling of her body". There is need to understand that a sex worker earns money in exchange of sexual services and that she is not cutting parts of her body and selling it. She emphasized that there is a crucial need of deploying a perceptive language to understand and address sex worker and sex work. Words ranging from prostitute to cuss words used are laden with the stigma.

Choice should be contextualized in order to understand fully. Several sex workers have worked or do work in other occupations as well.

The vulnerabilities of people who get trafficked into sex work should be understood and addressed.

Sex workers are both invisible and hypo visible. Sex workers are invisible as the policy documents forget to mention sex workers as workers.

Sex workers face violence from several institutions like family and state.

There are many incidents of police atrocities against sex workers. Rescuing and rehabilitation, with an adult perspective is draconian as the state as a power to restrain women and place them in shelter homes without their consent. Sex worker face violence from their families as well. Often, sex workers spent money on the education of their children, and children often distance themselves from their mothers as they face strong social stigma for being a sex workers' child.

State criminalizes sex work. In India, the sex work per say is not a crime, however, all the activities that are associated with sex work is crime.

Sexual harassment of sex workers is under reported.

Sex workers face challenges from other social movements as people operate from a fixed perspective and are not open to have a dialogue with sex workers on their needs and demands. She put forth the demands of the sex workers as a way forward.

Way forward

- Decriminalization of sex work. All the aspects that make it difficult for women to continue her work as sex worker.
- Fair working conditions

- State intervention and social benefits for sex workers should not be on a condition that sex workers would be eligible if they give up sex work. Universal scheme of Pension
- Children of sex workers should be not discriminated against by adopting practices such as not asking father's name during enrollment and other administrative practices; social stigma against sex work and being a child should be addressed by sensitizing educators, children and school authorities.
- While HIV is an important health issue, there are a range of sexual and reproductive health needs of women that need to be addressed. Abortions should be provided without any judgmental attitude from the medical care givers. This shall benefit range of people who avail these services.
- Nigh shelters for children of sex workers which could be extended to the benefit of other women as well.
- Nutritional support is as crucial as HIV medication. HIV medication is strong and without proper nutrition to support the medication, the medication itself could kill the patient.

Lata (name changed on request)

- Society believes that we are earning easy money.
- We face violence from the police, local goons and the general public once they get to know that we are sex workers.
- Police personals often demand free sexual services.
- The level of stigma attached to the work is high.
- Even after women give up sex work, they are continued to be seen as sex workers.
- For better education and for survival.

Open House Discussion

Question: What made Lata choose sex work?

Often there are circumstances that make you choose this work. We moved from our village to a city, where it was difficult to survive.

Question: Are there any differences in experiences of male sex worker and female sex workers?

Shubha Chacko: There are certain similarities, for instance, both male and female sex workers may be subjected to violence from police as well as local goons. However, male sex workers may have more mobility than female sex worker. But at the same time they may find it more difficult to talk about their experiences.

Question: Why is it difficult to find representative governance in form of electoral governance that includes political participation of sex workers, LGBTIQ and other marginalized sections of the society?

Rumi: This question of representativeness was raised by Dr. Ambedkar. Unfortunately, his ideas and views on it are still to be taken seriously in our country.

It would be definitely a good strategy if we could get that space for marginalized section, however, it is also to ask ourselves that why can't people in general represent these sections sincerely and effectively.

Darshana: Understanding of political participation should be expanded. In a country like India, there are limitations of political participation in form of electoral governance and therefore other forms of political participation should be identified and valued. Electoral governance is not the only form of political participation. Women's Reservation Bill has been stalled for more than two decades, which reflects lack of political will to address this question of electoral governance.

Question: While, I agree with most of the demands put forth by sex workers, I do not agree with a particular demand of not asking father of the child if a sex worker (and women in general) chooses to go for abortion. The child is as much of father as it is of mother. Instead, sex workers should be encouraged to use contraceptives.

Shubha Chacko: Right starts when the birth happens and there is nothing pre birth. It is interesting that while most of the men do not want to take responsibility of the child, they however do want to impose their opinions on women. In the present context, often women do not have control over when to have sex. While the condom remains the best contraceptive, men refuse to use it and the contraceptives meant for women do lot of damage to her body.

Stigma free access to abortion is crucial for women. Also, abortion is only one of the concerns in the gambit of reproductive and sexual health concerns that need to be addressed.

Question: As most of the sex workers do not like doing sex work, more work opportunities for them should be created.

Shubha Chacko: Employment opportunities should be expanded for people in the informal sector. Like any work, some people like doing sex work, some do not. The aspects of the sex work that is bothersome to most of the sex workers is the stigma and violence they face from institutions such as family, police and the state. Most of it has nothing to do with their job per say.

Question: If they choose to legalize prostitution in India, how effective it would be to create labour laws then?

The demand is for decriminalization and not legalization of the sex work. Legalization of sex work may not necessarily lead to removal of stigma from the profession. As a sex worker may not necessarily like to identify as herself as a sex worker.

There were insurance cards issued in Bengal. The formal schemes work best where sex workers are limited geographically to a particular space like 'red-light' districts. However, sex workers may be home-based or part time working in other occupations in the informal sector. As sex work is varied, schemes should be tailor made to needs of the sex workers.

However, it is an independent question of economy as well, wherein regardless of whether you identify as a sex worker or not, the schemes and programmes should address people working in informal sector. For instance a garment worker may be considered as morally right work however, working 16 hours or more a day for negligible remittance is discriminating. So, the programs should be perceptive to the needs of the sex workers as well should be universal for instance pushing for Universal Pension Scheme in India.

Question: Why is that sex workers would not like to be identified as sex workers but would want others to treat sex work as any other profession?

Darshana: Until and unless we remove the stigma, sex workers would fear of being identified as a sex worker. There is a need of a larger social and cultural movement in order to remove the stigma. However, the general public refuses to acknowledge and recognize it. The media hardly portrays it sensitively. In many universities, students are hardly taken to field visits to the organizations that are working along with sex workers.

In this context, the risks that a sex worker carries in the public space because of her identity as a sex worker is acute. You cannot put the entire onus of the social movement on her back. Why should she alone bear risk to our political end? And it is the question of our solidarity with sex workers and other marginalized sections of our society like queer and dalits.

