

Webinar 1: What is decriminalisation?

1st May 2020

The first webinar largely focussed on the historical background of criminalisation and subsequent 'legal' reforms related to access to abortion in India and on experiences of other movements for decriminalisation such as that for decriminalisation of sex work and homosexuality.

In the first session on historical background and legal reforms, Dipika Jain¹, explained the genesis of the Medical Termination of Pregnancy Act, 1971 and the patriarchal, heteronomical and eugenic rationale on which it was based. She also highlighted the developments in last two decades - wherein the number of cases in Supreme Court recognised reproductive rights, choices and autonomy within the right to privacy and fundamental rights framework. The decriminalisation of same sex relations and adultery that helped unpack notion of decriminalisation and how these transformative case laws created a rights based framework for reproductive autonomy and decriminalisation.

Anubha Rastogi² spoke about the current legal framework, its expansion and the impact of these on conversations around decriminalisation. She talked about the increasing number of cases in Supreme Court of more than 20 weeks gestation, the criminal liability of self use and of non-compliance with stipulated exceptions. She referred to decriminalisation in terms of removal of criminal sanctions against those seeking and those providing safe abortion services. She argued that the apprehensions that this notion of decrim raised about coercion and negligence would anyway be subject to legal liability and that abortion should be treated as any other health care procedure with standards and norms for care.

In the second session on experiences of decriminalisation of other groups and movements, Tejaswi Sevekari³ elaborated on the complexity involved in decriminalisation of sex work – the absence of any space for voluntary sex work, the stigma, the rampant use of anti-trafficking law and involvement of third party persons. She talked about how despite being a movement which predated the LGBTQi movement, complexity of issues and lack of support from feminist organisations have affected the efforts to decriminalise sex work.

Based on their experience of decriminalisation of homosexuality, Arvind Narrain⁴ talked about the way struggle against legal provisions has to be framed. The need to build a campaign around stories and evidence of impact on women's lives - of social

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and sexual morality that controls, demeans and subordinates them and the choices they make. He proposed the need to frame the struggle in a broader sense to change social morality around sexuality and not just decriminalisation of section 312.

Webinar 1 also highlighted that despite legal reforms and transformative case laws, the continued existence of criminal provisions in the Act contributed to stigma and chilling effect. It is known from global evidence that legal grounds alone do not help women access safe services. Access is also impacted by a range of factors at systemic, community and individual level – factors that make women, to seek services and providers to provide them often in direct contravention of the legal stipulations.

The issues around access are further confounded in situations of crisis such as the current pandemic. This 2nd webinar therefore looks at implications for access in the pandemic and post-pandemic situation for women in general, vulnerable women in particular and against the background of public health system preparedness, existing health programmes and latest legal reform - with a view to identify domains for advocacy.