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APrIGF 2017

"ENSURING AN INCLUSIVE AND SUSTAINABLE DEVELOPMENT IN ASIA
PACIFIC: A REGIONAL AGENDA FOR INTERNET GOVERNANCE"

Bangkok, Thailand

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OPEN FORUM: QUEERING THE INTERNET: GENDER, SEXUAL EXPRESSION AND
CENSORSHIP

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>> Ladies and gentlemen, the session will be starting
soon.

MS. ANKHI DAS: Good afternoon. It's a pleasure to have you
here to our query on the internet. I think that you have seen a
few, only women partner. And now we are doing the next step.
So this is only women partner.

>> How rights activities to women's right, people use the
internet was both the experience once they are on the internet,
what are their strategy, what are their concern. In this, the
two research in Nepal and Sri Lanka. While India is going to
talk about the specific piece of legislation, the section 67 of
the information act. And I will just invite to stand. I think

you have seen already, the title is very attractive. I also want to introduce my colleague in the audience and is part of the research and is helping with the presentation.

>> Okay. Since we all have very short sort of times to present, I'm just going to go right into it. The guavas and gentles is research study looking at one section of the information technology act in India, which is section 67, or the provision that regulates obscenity in the digital domain. The way we did the study was actually through numerous methodologies, not just through 99 cases. But what we did was we looked at the history of this particular provision which goes all the way back to 1860 and the Colonial period in India. We looked at its offline counterpart in the Indian penal code and found that both the offline and online are very, very similar in wording. We also looked at the term from the national crime records bureau. But the reason we have 99 cases up here is a chunk of our analysis of the way in which section 67 is currently being used comes from looking at media coverage of 99 cases in India in the last three years, 2015, 2016, 2017. These four words have been put up because these are the four defining words around obscenity in section 67. So according to the section, something is deemed obscene if it is lascivious, prurient, depraved, if it intend to deprave or corrupt. And I think you see the long arm of sort of colonization here in the use of language which Frankly none of our policeman or police women, many of whom English is not their first language, nobody can understand what these words mean, right? So it's really a Colonial leader sort of legislation stretching out to now, both in terms of concept and language. And also let's keep in mind that in 1860 when the physical version of this was framed, which has exactly the same four words, there was no internet. There was no video. Photography had barely come in. So it's

something that's really stretching out across time, and we're not sure it applies anymore. Okay. We'll just give you a few examples of how it's being used currently. This is actually a Snapchat filter that was used on our April. And this was used by a comedy group in India, and they were booked by the police for obscenity, as well as for criminal defamation. Now, I want you to leave aside the individual question of whether this constitutes objectionable material or not. That is another subjective thing. But if we think of those four words, lascivious and prurient which relates to arousing sexual interest, I think it's somewhat hot to our view that this can be called obscene. So we feel that this is just one of many cases that we've seen which shows how this application is being misapplied. The second image is actually a very different kind of case. This is from a campaign called shame the rapist which is a 2015 campaign and what we are seeing in India and many other countries, perhaps, is that nowadays when there are cases particularly of gang rapes, the person who is raped is often also filmed while being raped, which are called rape videos. And then the views are circulated. And we think of it as three violations of consent, right, the rape itself, the filming, as well as the distribution. There is actually a provision in the information technology act called section 66 E to deal with cases of rape videos which punishes the capture or transmission of private parts without consent. So cases like this can actually be filed under that, but again are being filed mainly as obscenity. And we feel again very strongly from a women's rights perspective, that this takes away a woman, like if it's a woman in this situation, it takes away her agency, her consent, et cetera it takes that into obscenity, and that's serious. The reason this visual is there, is this is actually the visual from the campaign, the person who ran the campaign actually took out

the images of the young men who were raping somebody in this particular video and circulated it online and it led to them being actually apprehended by the cops. But this is the second thing. Like consent becomes obscenity, and that's a problem. And this is again just one other example, and this again is the photograph that you see is actually of three people on a yacht. This is the chief minister of the state in which I live, and his family. They had gone on a holiday. And somebody on Twitter put out a tweet saying, hey, there's a drought in our state and our chief minister is lulling around on a yacht. Right? So again, of course it was a political comment. It was taking him to task. But again, if we apply words like lascivious and prurient, it is almost impossible to understand how this particular image qualifies as something that is obscene. So we just -- we don't have the time to really go into too many other cases, but I think do we end here? Yeah, so these are three examples of how this particular section is being misused, and then the last one and then I'll stop is actually a case of a young woman who encountered online harassment. Is there a visual? Okay, okay, I can't see it from there so I'm confused. So she encountered a lot of online harassment. One part of the online harassment related to getting essentially explicit texts, and that was the part that was booked as obscenity. But that, again, I think begs the larger question, which is what is to be done about the totality of online harassment? And once again can obscenity essentially now become sort of a whipping boy or a dust pit in which we place all sorts of actual harms ranging from violations of consent to online harassment to morphing, as well as things that are not necessarily harms at all, like political document, et cetera or how do we deal with the misuse of this kind of provision? Thank you.

>> Thanks. You see how we are well organized to make sure that some of you can have some comments addition at the end, maybe question. It's a 30 minutes run against time. So it's a very interesting new way of understanding obscenity. It's a completely new feel. And it's I think it's important to understand that the place and the space, the contest and the framework, why this is little word, obscenity, can be the magic word that can silence anything, even when there is not really any more linkage with anything that is possibly remotely sexual, which is already something that we can discuss why should be blocked. Now we move to san from women's collective to hear what we have learned there together with our partner.

>> Thank you, Valentina. Thank you for having me. Just to take you through some of the objectives of the research that we did. We are looking at how the online services are being utilized but the restrictions and the limitations faced online and the key quality reforms that could include the provisions of use and enjoyment of the online space specifically for Sri Lankans. Just to give you a bit of a background to the present situation, as we continue to live in secrecy away from the government contact and beyond reach of community and even apart from each other. This is mainly due to the penal code provisions of 365 and 365 A that criminalizes carnal intercourse against the order of nature and second acts of decency between persons. An analysis by leading organizations says that this is a target and arrest the LGBT community. The report provides a concrete example of such surveillance in Sri Lanka and how the police consider themselves authorized to arrest gender nonconforming people in the likelihood of English and such acts. On the other hand, there's also section 399 of the penal code which makes it an offense to cheat by impersonation by pretending to be some other person or knowingly substituting one

person for another. The police are said to arrest transgender people under this law. So looking at sexuality and the online space, there are many aspects which our research covered, but I took a few that I thought might be important. Before the internet, the LGBT people had few sources of information. On their own sexual orientation or gender identity. In interviews with individuals, I had a gay man record that he believed for a long time that his same-sex attraction was unique and he was the only person in the world to be going through the experience. He said the discovery of the information was the first in a process of self acceptance for him. Then most platforms on the internet cater predominantly to an English reading audience. With more sources of LGBT information being falling to Sri Lanka. The main languages in Sri Lanka are singular and SAM tammal. And there are large accessibility to these languages and something that caters to the audience. In terms of information and official sources, there are a few sources that exist and the national STD AIDS control program, the national body in Sri Lanka who is responsible in preventing prevention and control activities is the only online source that explicitly recognized LGBT issue. However, the quality of discussions and presentations on the website leaves much to be desired. In a context where LGBT are silenced and excluded from public discourses, the internet affords them the ability to interrogate on counter prevailing narratives and work to understand the public's view on gender diverse. A transwoman participate in the focus group discussion describes how she uses her Instagram account to express what being a transgender woman to herself. Noting that when people see more images of her expressing her transgender identity, it can have a normalizing impact in society. The greater impact she can have on normalizing transgender people in society. On the other hand, another gay

man participating in the discussion also used social media, especially Facebook too, publicly share LGBT content and in related conversations on LGBT rights in Sri Lanka. On social media, censorship extends to the creation and use of anonymous profiles. An important phenomenon among LGBT Sri Lankans, to navigate stigma and discrimination on social media. For an analysis of the survey data, all respondents had at least one profile with their real name and images of themselves. If any of them had problems without their real name and pages, such profiles were always in addition to a real profile. A gay man who participated in the focus grouped on Facebook, I have two profiles. One is under my given name which is where my family members and friends, but all my friends from the community associate him through a second profile, which is under the short name that everybody knows him by. So if someone from the his family adds him on his first profile, he quickly decides to add them on his second profile. A major stumbling block in the use of enjoyment of the internet is the lack of security for content stored on the internet. Another gay man recounted how he's private photos of his partner were used in political pages, attacking the sitting prime minister, captioning the photos with do you want your children to be like this. He said it went around Facebook so he removed it. He said he doesn't have a problem with it, but he didn't want it to affect his family and nieces and nephews and so he had to be careful.

He also mentioned that such violations of privacy are carried out even by the community itself and even organizations that work for LGBT rights in Sri Lanka. When talking about adverse online experience, online harassment is the most frequent form of violence, experienced or witnessed by the respondents by exposing one sexual orientation or gender identity by using pictures is a second highest response to any

three of the participants have experienced impersonating someone who has experienced violence in the physical world based on online content related to sexual orientation gender identity. 48 percent have experienced or know someone who has experienced outing without their consent, where 16 percent have experienced or personally know someone who has experienced law enforcement officials check their digital devices. LGBT Sri Lankans are able to somewhat enjoy freedom on the internet. While human rights framework in the institution guarantees freedom of information, expression and assembly, there's no right to privacy nor the right to ability specifically mentioned in the fundamental rights chapter. Article 12 guarantees equality before the law and equal protection of the law. It's generally regarded a little too broad. The constitution does not mention sexual orientation or gender identity as the category to be protected from discrimination, even though there are things such as race, religion and language. There's also a procedural law framework that should be taken into consideration. The computer crimes act provides a specific scheme of offenses such as crimes related to hacking. In fact, in computers with viruses, unauthorized interception of data, et cetera. The section two of the act specifically states that it applies only in relation to the offenses specified in the act and subsequent provisions specify a number of investigatory powers. Key examples of such powers of the ability to obtain any information, including subscribing information and traffic data in the possession of any service provider and to intercept any wire or electronic information including subscriber information and traffic data at any stage of such communication though the general rule is that an investigator may only access such information under a warrant by the magistrate, this requirement may be passed if an investigator believes that the investigation needs to be

conducted urgently or there's a need to maintain confidentiality. So any police officer in the course of an investigation can exercise powers of arrest, search or seizure of any information accessible within any premises. When interviewing two government officials, as well as a senior legal official of an ISB, they noted subscriber data may be acquired either through an order addressed directly to the ISB or through a request communicated through the telecommunication regulative commission. The approach follows or depends on the circumstances of the case, though no clear framework exists to guide the choice of approach. So based on the many levels of weaknesses that exist in these legal frameworks, for surveillance in the country, the online space is significantly vulnerable to arbitrary policing. These in fact almost all Sri Lankans, basically all Sri Lankans but section 365 and 365 A of the penal code makes LGBT Sri Lankans far more verbal.

>> I've seen interesting law inside of the use to serving justice is just used to serving the power. Can be the police. Can be the judge. And we continue in this exploration with Nepal, with the lume. Rachel is going to introduce two research, the demand research and second one, there was born by the first one of going deeper into specific subject.

>> Thank you. Hi. This is the first time we're doing such a research and it's been very exciting for us. My team member is also here with me. The whole idea of this research was to understand and explore how women's rights activists and sexual rights activists use the internet to promote and exercise sexual rights and sexual expression, but also to understand the use and perception of the internet and the third thing is the strategies that they would use to address online harassment or any kind of cyber bullying. Just to give you a bit of a data about Nepal is 17.2 percent of the 28 million population only

have access to the internet. While the Nepal telecommunication authority boards offer 51 percent, but we don't really think it's true because it's only the number of the sim card holders. And as a sim card holder, I have like 20 sim cards. So my number of users would actually go to 20. The second thing is e-commerce has grown over the years and a lot of young people are engaged in businesses around with Facebook and the government has also increased its presence on the internet that has introduced electronic services such as passport applications and other vital registration. Likes with, the majority of the internet access in Nepal is through data on mobile phones and the household internet access is only 8.9 penetration. So basically our research was guided by three important components. The first one was the use and perception of the internet. The second is understanding of sexual rights and sexual expression. And the third aspect is basically on -- sorry, I'm just so technical glitch. And the third one is basic risk and strategies. So our methodology was both quantitative and qualitative with 99 respondents on online survey and 27 key informant interviews and four focus discussions. The marriage discussions were done with activists who established young women's rights act activists who called themselves as the young explorers and definitely LGBT communities with a lot of gay men were a part of the discussions and that also made us realize that the people who were a part of the discussion were basically from elite gay groups. So they were able to express a lot of thoughts on sexual expression online. But we couldn't really go into outside government because of the limitations. Some of the key findings that we found within our research are basically within the legal context. All the countries that we had shared is obscene and harmful consent are basically regulated and it's one of the key approaches, which is employed by the government

to suppress sexuality, too. The public offense act, which is also a part of the penal code is used to limit a wide range of behavior and obscenity is one of the key term which is used by the state to restrict our freedom of expression. Nepal is a -- Nepal has a new constitution on September 2015. So the article 17 and 19 are for constitution and showed freedom of expression and opinion and right to communication as a fundamental human rights. But it also implores restrictions on anything which may be contrary to public morality and decency. Why we don't have a cyber criminal bill, we have the electronic transaction act, which was a part of banking transactions but it has elements of criminal acts, as well. But it criminalizes publication and display of any materials which may be contrary to public morality or decent behavior. And the question here is who defines -- what is moral behavior and a public behavior? Now, among the experiences of the human rights advocate LGBT activists, women's rights activists, we found out that everyone felt that internet is a very gendered space and it's entrenched in het row normative biases. So basically the whole understanding is whatever happened offline is actually manifestation online. And that was the experiences in terms of service, and in terms of monitoring is the way we have surveilled as women offline is the way we are tracked online, as well. Give the fluidity of the perpetrators online, it was very difficult to track them. The other key thing was the packet of mental health. Since I am sort of merging two research, the second research in online Valence, actually, a lot of respondents felt that while they're able to express themselves online, the offline mental violence has really sort of pushed them not to enter the online space for a very long time because they feel like there's no space for them to be safe. The offline space is similar, and you try to keep the public space,

which is the internet, the digital space, and you feel the same way. These are some of the experiences that they had shared. And 52 percent of the respondents have been subjected to some forms of online violence. Some of the young activists felt they had their own privacy settings, they had their own support group online so they could talk to each other and share their problems and find basic a basic ways to deal with it. A lot of established women's organizations were very critical of young women activists using the internet in terms of they have these things, they need to be careful, preventative, should not be using posts which might bring them trouble. So there's also a generation gap, too. Other thing we also found out, for a lot of young women's rights activists, there's no space for them to talk about sexuality, and basically catered to married women. So you want to talk about sexual health and sexuality, some of the other experiences was with the LGBT population, they feel like the activism, the exploration of sexuality has actually been online because the offline space is not -- is not very -- not safe, but it's not very conducive for them to find partners, basically dating, relationship, information is actually done through online. So yeah, that's about it. And we'll be launching our research at IGF Nepal next week. Thank you.

>> Thank you, everyone. I know it's formally 4:30, but I hope we have space if someone has an urgent thing to be said. We are happy. Otherwise, we can go down from this wonderful position of power and talk as an equal. But I think that it is important to say that the researches show that even among the discriminated that there are differences and privileged. The certain people among the discriminated community can access or have a better knowledge or better data and can better protect themselves a lot. And I think all this issue about morality,

decency, obscenity and this use of legislation, that goes against the feeling that internet is a space of freedom. So all the research proven show how people suffer different form of violence from the trolling to severe form of violence, but they still feel and think that internet is the space of freedom. And then there are all the other fight. So I think it's really important that we continue to work and talk about the intersection of sexuality and the internet and we talk about the power. Power in each and every community. There is no big differences if not in the grace between the north of the world and the south of the world, the scheme is the same. Weave every implication of Colonialism because we saw in India how those words that come from a different culture are today in the 2017 put the peoples lives at risk. Thank you and if you have a question or comment, we can have an equal discussion down the stair. Thank you.

[APPLAUSE]

(Session concluded at 4:30 p.m.)