

BEYOND CRIMINALIZATION
A FEMINIST QUESTIONING OF
CRIMINAL JUSTICE INTERVENTIONS
TO ADDRESS SEXUAL AND
REPRODUCTIVE RIGHTS VIOLATIONS
EXECUTIVE SUMMARY



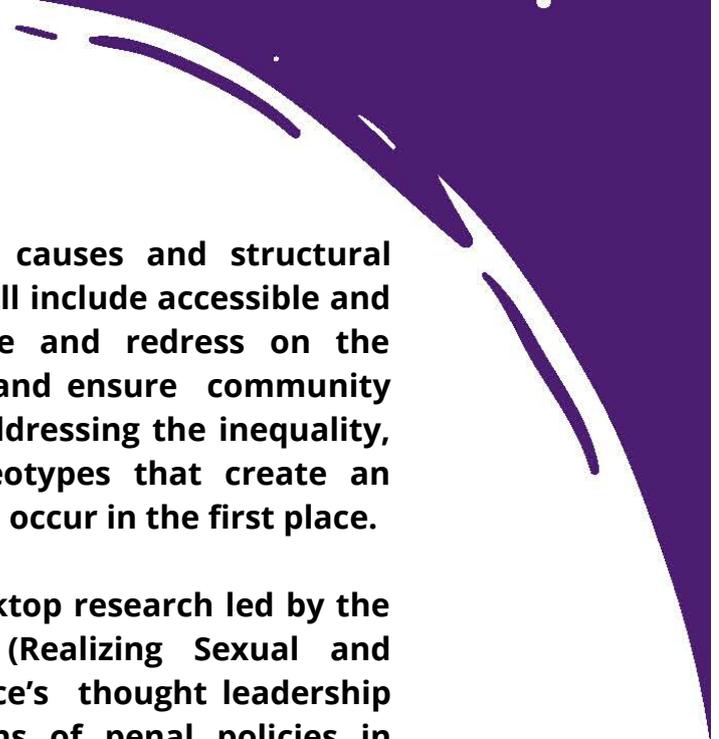
Activists, feminists, donors, and governments have - for years, examined and proposed different approaches to addressing violations of sexual and reproductive rights, (including all types of gender-based violence), that provide justice to survivors and their communities, but also prevent violations from happening again.

Addressing rights violations through the proclamation of a law is one of the more popular solutions adopted by states. By passing a law that criminalizes for example, early and child marriage, female genital mutilation, or intimate partner violence, governments are signaling to society that they refuse these acts; what is known as the “normative value of the law.” [1] This aims to, in turn, act as a deterrent, an element to prevent individuals from committing the violation out of fear of being apprehended by law enforcement officials. While this works in theory, in practice it has not proven to be effective enough - and in some cases not effective at all - to prevent and put an end to sexual and reproductive rights violations. As a result, many feminists today find themselves at a crossroads. Champions of the landmark violence against women law in Brazil, which aimed at changing both criminal and civil justice systems' responses to women's claims, are now questioning the push for more criminal laws, as they realize that practice, implementation, and resource mobilization are the more important catalysts for an effective response to violence.

Feminists from other countries and regions are also questioning the need to push for more laws and stricter punishments given that existing laws have fallen short of providing justice. This includes those in India, who fought for stricter rape punishments and the anti-dowry movement. As well as feminists and activists in Egypt, who applauded the bottom-up approach and success of their advocacy to pass a sexual harassment law, but are now finding that they are troubled by the law's penalties and that gender discrimination, norms, and stereotypes remain rampant and affect all other aspects of their lives.

A more effective response to sexual and reproductive rights violations, lies in opting for a comprehensive approach, one that does not only rely on the law to remedy and deter future violations.

[1] Legal philosophers have tried to explain the normativity of law—the fact that the law of a community is, or presents itself as a guide to the conduct of members of a community. See more in Endicott, Timothy, "Law and Language", The Stanford Encyclopedia of Philosophy (Summer 2016 Edition), Edward N. Zalta (ed.), URL:<https://plato.stanford.edu/archives/sum2016/entries/law-language/>.



Such an approach will address the root causes and structural inequalities leading to these violations. It will include accessible and available mechanisms that deliver justice and redress on the survivors' terms, that answer their needs and ensure community participation, as well as more effectively addressing the inequality, discrimination, gender equality and stereotypes that create an enabling environment for these violations to occur in the first place.

The report presents the findings of the desktop research led by the global south feminist alliance, RESURJ (Realizing Sexual and Reproductive Justice), as part of the alliance's thought leadership work on the shortcomings and limitations of penal policies in addressing sexual and reproductive rights violations. The aim of the review and this analytical report is to strengthen RESURJ's evidence base on sexual and reproductive justice and to further engage with diverse feminists and groups to reimagine alternatives to criminalized approaches, alternatives that put human rights and justice at the center. The desktop review identified research, resources, and evidence that explore approaches, responses, mechanisms, and methods that address sexual and reproductive rights (SRR) violations in an alternative manner.

Using examples and evidence from the research and resources, the desktop review report highlights some of the main findings in understanding why the criminal law is so hard to implement, and the limitations of the criminal justice system; the inherent and systematic problems within the criminal justice system such as; discrimination, stigma and accessibility; impunity and the criminal justice infrastructure; including the impacts of imprisonment vs perceived benefits such as rehabilitation and deterrence; victims' concerns; consent and privacy.

The report explores the ways that violations against sexual and reproductive rights can be prevented and addressed, allowing for a more comprehensive approach that is not heavily weighted towards or solely focused on criminal law. The report looks at preventative measures including addressing the root causes and utilizing an intersectional approach/solution; comprehensive sexuality education; community mobilization and advocacy; as well as response measures undertaken after the violations have taken place, such as restorative justice.

BASED ON THE FINDINGS OF THE DESK REVIEW, SEVERAL RECOMMENDATIONS WERE MADE:

- 1 Stop all new laws and stop increasing penalties in addressing SRR violations, especially incarceration, without first addressing the shortcomings of existing laws;**
- 2 Identify and invest in new research, in particular to address gaps in assessing the impact of criminalization of SRR violations, on sexual and reproductive rights, in particular in countries of the Global South;**
- 3 Invest in addressing root causes and look for an intersectional approach that takes into consideration economic, environmental and social dimensions;**
- 4 Introduce Comprehensive Sexuality Education programs as an important starting point to address gender inequality and stereotypes;**
- 5 Ensure community and stakeholder participation, in particular, the involvement of CSOs;**
- 6 Research restorative justice and other alternative systems that put the needs of survivors and communities at the center.**

The report concludes with the call for feminists, advocates, and donors to re-examine the call to states to criminalize sexual and reproductive rights violations and to push for more comprehensive, interlinked and sustainable strategies. As put adequately by one of the articles reviewed in the report, “The intersectional approach to violence is similar to the feminist one in certain aspects, given that it is also based on a structural view of the domination of women. But it considers the intersection of several systems of oppression, such as patriarchy, racism, and capitalism, and it also incorporates a gender perspective and the need to work with men, perpetrators of violence.”

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