

IPC Section 377

Aftermath of reading down of Section 377

Report

September, 2011

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With support from:

Commonwealth Foundation

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EXECUTIVE SUMMARY

Study titled, 'IPC Section 377: Aftermath of reading down of Section 377' was conducted by The Humsafar Trust in Mumbai. This study was supported by India HIV/AIDS Alliance. The study aimed to understand the impact of the Delhi High Court judgement on the lives of the members of sexual minorities and also to assess the changes perceived and realized by the community and stake holders.

The study adopted a three staged data collection process. In the first stage, surveys were conducted with members of sexual minority community who access the internet (n=75) and with those who are on cruising sites (n=75). In the second stage interviews were conducted with those who were willing to speak on camera (n=10). Finally, in the third stage a consultation was organized with members of sexual minority community and various stake holders.

The findings from the study stated that post judgment most of those who participated felt more comfortable about their sexuality, the members of the community felt that the violence and harassment has lessened. Most people believed that there was an increase visibility in media, but more social spaces need to be claimed. It was also recognized that the issues faced by different sub population of sexual minorities are different and they need specific interventions.

INTRODUCTION

“Acts done by consenting adults in private are not the province of criminal law and that morality cannot be the basis of subjecting individuals to penal hardship.” – **Anand Grover** (Lawyer)

Homosexuals in India were crippled with the dominant hetero-normative and moralistic stands which ensured subjugation and marginalization of so called ‘deviant’ sexual behaviour. The state for long upheld this majority view and continued to decriminalize homosexuality in name of ‘unnatural’ sex acts. These further created barriers for HIV based initiatives in reaching out to ‘men who have sex with men’ which is regarded as a high risk group. In the colonial India, Macaulay, who drafted the section on Penal Code in regard to sodomy mentioned that the act is so ‘abhorrent’ that it cannot be a part of public debate. Even after Independence Section 377-anti-sodomy law continues to exist though the Law Commission (156th and 172nd) discussed Section 377, of which the latter recommended its deletion in the year 2000. This section although doesn’t criminalizes sexual orientation or homosexual identity but it makes the act of sodomy illegal thereby making homosexuals as a marginalized and stigmatized population. In 2001 Naz Foundation (India) Trust filed a PIL on behalf of the petitioners in the Delhi High Court challenging the constitutional validity of Section 377 of IPC [Writ Petition (Civil) No. 7455 of 2001]. The foundation argued that the section 377 not only violates the right to life and liberty (as outlined in the Constitution of India) but also impedes effective control of HIV/AIDS. It will be two years to the Delhi High Court verdict on the PIL filed against Section 377 on July 2nd, 2011.

It has been two years to the judgement, and still there is hardly any document or data to understand whether the judgement has brought any changes in the lives of people, or in any way strengthened the intervention programs for the community or has contributed to better mental health, feeling of validation, sense of community among sexual minority individuals. This small survey was aimed at understanding if the change in law has brought about any changes whether positive or negative and in what ways have individuals who are affected by this change benefitted from the changed law.

To get a more rounded view of the influence of law on lives of sexual minority individuals, a three pronged approach was adopted. First, in-depth qualitative interviews were conducted to understand and document actual instances of how individuals perceive and utilize the knowledge of the changed law in their lives. The interviews helped to document stories of individuals that portrayed the impact of changed law on their lives. Second, a survey was conducted with 150 community members to understand the extent of knowledge and awareness about the change in law and their perception of the influence this change has made to their lives and community. Third, a consultation was conducted with members of the community and stakeholders to arrive at a common understanding of the change in law and together examine the implications of this change. The consultation through small group exercises also attempted at initiating a dialogue between the community and the stakeholders to discuss a way forward.

METHODS

In order to have a more holistic understanding of the impact of the Delhi High Court judgment on IPC Section 377 on the sexual minority community, three staged data collection process was used. This included online and on-site surveys and on-camera interviews with members from sexual minority community. Apart from this consultation with both members from sexual minority community and stakeholders was conducted.

Survey: A survey was conducted with a total of 150 community members to understand the level of awareness among LGBT community members about the change in IPC section 377 law that read down consensual same sex behavior. The survey also aimed at capturing the various ways in which the LGBT community has been able to use the change in law for themselves. Thirdly the survey also gauged perception of community members with regards to the change it has brought about in their individual lives and decisions like coming out, as well as the effect of the changes law on the community on the whole.

A questionnaire was designed to understand the above mentioned broad objectives. The LGBT community was sampled using purposive sampling to ensure equal participation from MSM/Kothi/Panthi/gay identified individuals, lesbian identified individuals and transgendered individuals. The survey was conducted online and on- site to capture the desired representation of the LGBT community.

Interview: On-camera interviews with ten individuals from the sexual minority community were conducted capture their understanding of the judgement, changes perceived in self and environment and what does it means to individuals; and how they perceive the judgement in reference to the larger queer rights movement.

Consultation: A consultation was held with about 60 individuals which included both members from sexual minority community as well as stakeholders. Stakeholders in this context are defined as people who are important to the well-being of sexual minority community like doctors, lawyers, police, media etc.

Though the change in law has led to greater enthusiasm, still there is no understanding of the extent to which the change in law has impacted the lives of sexual minority community members. There is also no knowledge on the subject of how the stakeholders perceive the change in law, do they see a change in their role and rapport with the sexual minority community.

FINDINGS

This section is divided into three parts. Part one of this section describes the results from the community survey; Part 2 presents the analyses of the in depth interviews conducted with community members. And Part 3 will present the report of the consultation is provided as a separate report.

Part 1: From the Online and on-site surveys

The total final sample was 146 (men=62, women = 32 and transgender= 52) individuals who participated in the survey. The mean age of participants was 30 years whereas the education level varied from being 10th pass among the on-site participants to being graduates and post graduates among the online survey participants. It was not surprising that all transgender participants were open about their sexuality, where as more than half male participants (61%) were open about their sexuality as compared to less than half female participants (44%). Compared to female (19%) and transgender participants (17%), more male participants (24%) decided to come out after the Delhi high court judgment.

A majority of participants (male = 97%, female = 94%, transgender= 81%) were aware of the Delhi High Court judgment. On being asked about how did the participants hear about the reading down of IPC section 377, most lesbian identified participants heard about the judgment from TV (44%), whereas most MSM/gay/kothi identified individuals cited newspapers as their source (61%), whereas 71% transgendered individuals heard about the judgment from meetings organized by CBOs/NGOs. On enquiring further about the change in law, as compared to the male and female participants, majority of transgender participants (87%) accurately reported that the change in laws meant that two individuals cannot be penalized for having consensual same sex and were aware that the change in law was applicable all over India (60%), and were also aware that at present the Delhi high court judgment is being challenged in the Supreme court (81%). However although responses from transgender participants show that they had correct information about the change in law as compared to male and female participants, however, the responses also show that transgender participants also had comparatively more misconceptions like 77% transgender participants felt that the Delhi high court judgment made same sex relationships legal, 64% transgender felt that sexual minority individuals can now publicly

express affection and over half transgender participants (56%) felt that sexual minority individuals can now marry, compared to 0% female participants who held that marriage is still not legal. These responses indicate a need to conduct further dissemination about IPC section 377, and the change in this section within the sexual minority community itself.

Overall the male, female and transgender participants reported moderate effect of the change in law on their lives (24%, 35% and 54% respectively). About 34% female participants, 56% male participants and 75% transgender participants felt that the change in law has made the State acknowledge the presence of sexual minority community, whereas transgender participants also strongly felt that people cannot be penalized for loving someone (86%). The male and female respondents felt that since the judgment gay issues are more openly discussed (50% and 69% respectively), whereas transgender participants felt an increased sense of belonging to the community and felt that Indian cinema had begun portraying gay characters better (98% respectively), as well as reported feeling more confident going to a counselor and felt that gay issues were more openly discussed (96% respectively). At a personal level one third of female participants said that they could attend pride walk fearlessly (34%), whereas male respondents were divided on the impact in their own lives, where 27% male participants said that they could access CBOs with ease, another one fourth participants felt that they could now work for community without fear and another one fourth (25%) of male participants felt that they could attend pride walk fearlessly. Whereas the personal impact of the change in law for transgender gives a different picture, wherein all the transgender participants reported better access to community members through forums like CBOs, this was followed by 90% transgender reporting that they could talk to cheaters and police to stop harassment (90%). This variance in responses is reflective of the differences in issues faced by different sub groups within sexual minority community.

When asked about how things have changed since the change in law, both male and female participants said that other people are more open to speak about sexuality and sexual differences (44% and 58% respectively), and also reported that they see more positive portrayals of LGBT in media (58% and 40% respectively); whereas transgender participants said that they perceived other community members being more approachable (98%).

All the participants agreed that since the Delhi high court judgment, judgment their straight friends were more supportive (male 37%, female=34% and transgender =71%) and more curious/open to discuss sexuality (females=37%, male=48% and transgender = 65%). As far as reactions of stakeholders were concerned, male participants felt that they perceived friends (42%), family (39%) and police (35%) as being less discriminatory since the judgment. Whereas female participants clearly only perceived less discrimination from friend (22%), whereas in all the rest categories of stakeholders, the responses are indicative of no change in attitude/behavior of stake holders and significant others. According to the responses by transgender participants, police (86%), cheaters (54%), sexual partners/clients (56%) and friends (42%) were perceived to be less discriminatory since the judgment.

Overall the results of the survey demonstrate that the change in law has brought about moderate positive changes in the lives of the LGBT. These influences are experienced by the community at various level, at a personal level lesbians more than the other sub groups feel a greater sense of belonging and feel more affirmed to participate in pride walks, whereas for the male participants (both transgender and MSM/ Gay/ Kothi and other identified participants) the influence of the Delhi high court decision was more about ability to access and participate in activism. Similarly transgender participants report lesser discrimination from police, which perhaps is reflective of the primary concerns of safety experienced by transgender individuals. Although the high court judgment has not primarily prompted individuals to come out, but it has contributed to the LGBT community to feel a greater sense of community, assert their existence and experience a societal environment where dialogue around the taboo topics of sexuality seems to be more conducive. While the law has generated hope and energy among the LBGT, there is a need to engage with the sexual minority community to clarify the scope and limitations of the change in IPC section 377 and how can the law be used in concrete terms.

Part 2: From the on- camera interviews

On- camera interviews were conducted with ten individuals from the sexual minority community. A total of three men, three women and four transgender persons were interviewed who consented to participate for on-camera interviews and were aware of the judgement. Most of the participants interviewed had an affiliation with The Humsafar Trust. This was also because

of the fact that the organization has been working in Mumbai since a very long time and has served the community.

The participants also reported their associations with varied range of activism in field against Section 377, though a few of them were because of their absence in the city or without any organization affiliation didn't take part in active advocacy and activism.

Participant # 1 (identifies her as a transgender person) reported that when the case was in Delhi High Court, was doing her bit of advocacy by taking signatures of the supporters here in Mumbai. She has also taken parts and organized rallies against the Section 377, and has carried banners stating, '*377 ka case hatao, jeeo aur jeene do*' (Remove Section 377, live and let other's live). Participant # 10 (identifies self as a gay man) told, '*I was going on televisions... ahh... national televisions, lot of televisions, having debates but not involved to the point that I was instrumental in changing the courts perceptions of it. ... that ... I wasn't involved at that level, I was probably trying to just trying to do stuff at my own level*'

Section 377 with no doubt was affecting different sub communities of LGBT differently and also individuals association with the advocacy differs and hence people's expectation from the judgement was also different. Many of the participants reported their excitement and feeling of surprise and astonishment when the judgement. Those who were involved and those who weren't involved in the advocacy, for both it came across as a pleasant surprise. Participant # 8 mentioned (who identifies self as a bisexual woman), '*I was pleasantly surprised... I mean...till the day the judgment was supposed to be announced I was actually really scared, I was cold and ... ahh... quite a few people from these online committees who were against homosexuality initially, came and spammed my message box... they were like...like you know what –'you are going to win, so, ya...you win you win...' I was saying- 'no man the judgment is still not out.'* so ...you know...when it finally like... got through, the first thing I did was... 'haash.' and then I was like waaaa..... (laughs).so I was very happy.'

Another participant (#9) who also identifies self as a bisexual woman; told that it was her girl friend who gave her the news and she was very excited and was happy that some news channels gave it a good coverage.

The Section 377 has been more symbolic in terms of law by making any form of non-heterosexual acts as illegal, but in a manner of fact that this section has not been much used to penalize homosexual men. Participant # 7 (identifies self as a gay man) says, '*Bahut hi kam aeise*

cases hue hain jis par section 377 लागू किया गया है. (Very few cases have been registered under Section 377). Although under the garb of this section many individual gay men and transgender persons were continued to be harassed, and blackmailed by cheaters and the police. Participant # 7, also mentions that how the community people were excited about the judgement and what changes it has brought, to quote, *'bahut saare MSM log aate the aur poochte the batao ab kya hoga, hum samaj mein khule nahi hain, shaadi shuda hain, magar humari shaadi ho gayi hai, to poochte the batao.. kitne saare phone kar ke poochte the iske aage kya hoga.*

...Abhi gay party bahut zada ho rahi hain. Jo chupe hue gay hain, ya jo nayi peedhe hai who bindaas aa rahi hai. (A lot of MSM, gay and transgender persons used to come and ask what will happen next, some were hidden, married, so used to ask.. so many used to call and ask what will happen now.....Now the gay parties are organized more, and the gay men who were hidden and the new generation are openly coming out) Similarly, Participant # 5 mentioned about the pride the community take post judgement, *'Abhi to judgement aane ke baad humne dekha hai ki jo kinnar log hain, MSM log hain, who sir utha ke jee rahe hain.'* (Now after the judgement we have seen that transgender and MSM people walk with their heads head high)

Participant # 3 who identifies self as a lesbian woman, shared her excitement when she heard about the judgement and the response from her friends, *'Meri jo lesbian group hai usme aise bhaut saare log hain jinhe mein bahut saalon se jaanti hoon, kuch ko 5 saal se bhi zada se jaanti hoon par mein unse kabhi homosexuality pe discussion nahi kiya tha... par jab judgement aaya to ek dusre ke call aana shuru ho gaye, TV chaalo kar, news dekh.. woh khul ke mere saamne aa rahe the to woh mere liye bahut bada pal tha.'* (In my lesbian group there are many whom I know since many years, some even for more than five years, still I never discussed homosexuality with them. But when the judgement came, then people started calling each other saying switch on the TV, watch NEWS, they were coming out openly to me and it was a very great moment for me)

The participants though mostly held positive opinions on the judgement and applauded it; there were a few who also shared their concerns on it. Some held the view that it might be misused by the community people. There is also a sense of over doing it with the decriminalization of homosexuality. Some of the participants have also expressed that how earlier the section 377 also take care of cases under child abuse, the point of concern here becomes that many of the

participants still have not a very clear idea of the applicability of the judgement and the changes made in it. Participant # 5 (identifies as a transgender person) said, '*Rok hone chahiye, nabalik logon ke saath sexual relation nahi hona chahiye, yeh galat baat hai*' (There should be a restriction, there shouldn't be any sexual relation with a minor, that is wrong) Another most prominent view held among the participant was using the judgement to have sex with people anywhere and everywhere. To quote, Participant # 2 who also identifies self as a transgender person reported, '*Hijre log khule aam dhandha bhi karenge, kahin bhi chaalo ho jayenge unko maloom hai 377 kayda laga hai, chalo bhai ab kayda lagega to hum paise de kar bhi chutt jayenge.. yeh MSM log kahin bhi panthi log se saath chaalo ho jayenge*' (Hijra person will solicit openly, they will start anywhere as they know (the judgement on) Section 377 is applicable now. Now the section is applicable so we can even pay and get released. And these MSM people will start having sex with their panthi partners wherever they find place.) Another participant (# 7) held the view that the heterosexual community's response to the judgement can be negative. '*heterosexual log bolte hain 377 tha to chup kar karte the ab chala gaya to khul ke nanga naachenge*' (Heterosexual people say that when Section 377 was at place these people used to do things in hidden, now they will come out and dance nude)

LGBT is as diverse a group as the issues and challenges they face. The judgement hence affects the different sub sections differently. Amongst the sexual minorities there are those who get further marginalized. Not to mention, more often it is not the biological sex but the gender that puts one in a marginalized position. The women in the minority group sometime face double marginalization, firstly because of their sex they become second citizen in the male-centric world and secondly because of their sexual orientation they face harassment and outlaw. Participant # 3 who identifies self as a lesbian woman shared the experiences of living a lesbian life in India, '*abhi bhi logon mein acceptance nahi aayi hai section 377 ko leke, agar young generation ki baat karte hain to unse thoda support hai humein. Agar hum Indian culture ki baat karen to jitna boys log open up hain, woh MSM hon, gay hon, jitney woh open ho sakte hain, family accept kar sakti hai, ladkiyon ke mamle mein family accept nahi karti. Jiske wajah se woh humesha depression mein rehte hain...ek age ke baad unhe shaadi ke liye pressurize kiya jata hai.*' (Still there is not much acceptance in public regarding Section 377, if we talk about young

generation then yes there is some support from them. If we talk about Indian culture, the extent to which boys are open, the gay and MSM are open and can get acceptance from family, in case of women family do not accept women. Because of which they always stay under depression, and after an age they are pressurized to get married). On the other hand, another self identified lesbian woman (participant # 8) shared her pride on the judgement and the strength she got from it, to quote, *'377 decision has given lesbian and bisexual women that mileage. I mean women... even bisexual women... I mean I don't need to be scared to tell my boyfriend anymore that- 'you know what I've dated women in the past.' Or- 'I might just dump you for another girl.' And... ahh... I don't expect him to be fine about it but ... ahh ... ya...(laughs)'*

If we talk about the transgender community, the things have not much changed in the field. Transgender persons because of their gender expression are more open about their identity than any other sub section of the LGBT community. It is also to be noted that they not only face stigma and harassment because of their sexual orientation and gender expression, but because of the limited options they have in terms of livelihood and their class position make them go through extreme nature of marginalization. To quote Participant # 4 who identifies self as a transgender person, *'Baat karein agar LGBT community ki to gay log ke liye kaafi asaan ho gaya hai, pehle jaise cruising points the, hot spots the, wahan ja ke sex karte tha, par ab hai ki agar do ladke room le ke saath rehte hain, to reh sakte hain. Magar agar TG ki baat karein, to TG ke liye room le ke rehna abhi bhi dikkat ki baat hai, agar gay hai to unka ration card ho sakta hai, passport ho sakta hai, pancard ho sakta hai, par yeh sab TG ke liye laagu nahi hota, TG ko bahut saari dikkat hai, problem hain. Ek MSM hai, Gay hai, woh health care ki service le sakta hai ja ke, par TG ke liye problem hai.'* (If we talk about the LGBT community, life has become easier for gay men. Earlier they used to go to cruising points and hot spots to have sex, but now if two men want to stay together they can get a room and stay together. But if we talk about transgender, then it is still very difficult to get a room for a transgender person. If one is gay then he can have a ration card, passport, pan card, but these are not applicable for transgender person. Transgender has to face a lot of problem. A MSM or gay person can avail health care services, but for a transgender person that is a problem)

Another participant (#10) who identifies as a gay man, shares similar views, *'No actually, I do think that 'Hijras' have been benefited. I think even within the community, within the gay*

community itself they are the most marginalized and the most discriminated. That's because they can't help but look the way they are and they can't help but be loud and they can't help but be... .. be who they are actually... that's... I ... I know I'm repeating myself but ... it is very very... it's almost to a point where it's urgent. We have to look at it with a sense of urgency, 'Hijras need their rights..'Hijras', need their separate rights and in the whole = LGBT = T needs to stand out. T is very different. T needs very very special attention. So I am... I think 'Hijras' are at greater risk because mostly they are not socially, economically not well to do, they are not educated, they have very little means to know what is right what is not, they are into prostitution. This is a recipe for disaster.'

The participants who have been involved in advocacy and interventions did share a range of concerns, issues that they think are important to be considered for the gender and sexual minority rights movement. Participant # 7 (gay identified), shared his aspirations of gay marriage linked with the judgement, *'Who bhi to pyaar karte hain, jab 377 poori tarah se hat jaayega to who apni zimmedari dekh kar shaadi bhi karenge'* (they also love, when Section 377 will completely go, then gay men will also realize their responsibilities and get married). Participant # 3 (lesbian identified) shared her thoughts of what need to be done next, *'Society aur family ke saath kam karna shuru kar dena chahiye, agar society aur family accept karenge to woh kahin na kahin judgement ko bhi affect karenge.'* (We should start working with society and family, if we get acceptance from society and family, so somewhere it will also affect the judgement)

Another participant (#5) who identifies self as a transgender person thinks that there is still a lot that need to be done. She spoke about HIV/AIDS which still continues to be a harsh reality for many. *'Kaam nahi khatam hua hai, humare desh mein jo HIV ka keeda aaya hai hum use poori tarah se hata nahi chuke hain. Kaam bahut hain, aur humein karna hai aur hum kar ke rahenge.'* (The job has not finished, the HIV worm that has come in our country we have not succeeded in removing it completely. There is a lot of work, and we have to do it and we will do it)

Participant # 10 (gay identified) concluded by saying, *'You know ... we struggled a lot to achieve our first milestone in =Delhi= high court. Let's... let's completely ... ahh ... reach down, and for good. The 377... that part of 377 which does not take care of consensual activities and then we can talk about our issues... and that doesn't mean that right now we have to be quiet, we can start preparing for it. But the actionable thing right now is the Supreme court thing. And of*

course it is very important to talk about equal rights in marriages and adoption and everything but first become common citizens. We have to be ... common citizens first and then we can talk about such things.'

Though all the participants seemed excited about the Delhi High Court judgement and shared their side of the stories, they also expressed a sense of anxiety about the case being at the Supreme Court currently. It's an unknown road, but the members of the community have faith and hope that the judgement will come in their favour.

Part 3: From the Consultation

The consultation was held with about 60 individuals which included both members of the community as well as stakeholders with the following objective:

- To arrive at a common understanding of the reading down of the IPC section 377 judgement
- To understand the implications and limitations of the reading down of IPC section 377
- To provide a platform for the members of the community and stakeholders to share experiences in the wake of the changed law
- To consult, discuss and arrive at a consensus on building a better understanding of issues between sexual minority community members and stakeholders

The process of the consultation was initiated by stimulating a dialogue between the participants by asking them to share their understanding of what they know is the implications and limitations of reading down of IPC section 377? The dialogue in response to this question drew a lot of comments which ranged from how the section 377 was used to harass the community members, as articulated by one participant, "it was used as a threat to harass gay men, by blackmailing them"; or some pointed towards the origins of the law as " ...a hangover of the British rule, reflects values the conservative, Christian beliefs of their time..."; Whereas some participants pointed out that "has been misused rather than being used, and there has been no conviction under this section, but the section is a symbolic threat".

Getting into the deeper understanding of the law, the participants provided a nuanced understanding of the changed law, its applicability and limitations. It was rightly pointed out by

the participants that the section covers all kind of non-procreative sex, not usually used for heterosexual marriage, another participant added that it is also punishes straight couples for oral and anal sex, it is a ground for divorce under the Hindu Marriage Act, and the violation of the Section 377 is an offence which is punishable up to ten years, a cognizable, non-bailable offence. On the issue of whether the change in law has had any influence on the participants' life, the responses varied. At a personal level, community member reported feeling a sense of heightened security; some community representative reported changes in mind sets of people at work place, heightened ease to initiate conversations on sexuality with friends and colleagues. Whereas some other community members reported that they feel more affirmed about themselves, and feel greater solidarity with other members of the community, as put by one participant "...Homosexuality used to be associated with Aids and condoms, now gays have got a face. They are not seen as a mere sex object any more, but as individuals with sexuality". A few other participants pointed out the role that media has played "Major role besides the law was played by the media, media couldn't be ignored. Media is the seed for change, because of them the dialogue has begun". One of the parents attending said that the judgment helped her to connect to other parents like her and understand her daughter better.

On a broader level, grassroots representatives from CBOs working with sexual minorities said that the reading down of IPC 377 has brought about visible changes on ground, like police do not harass transgender on these grounds, it's easier for outreach workers to contact other MSM, people who work as male sex workers feel less threatened by police too. Whereas other participant reported that they had a session with the head of social security cell in Pune where they managed to convince the managed to convince the authority not to treat LGBT any differently than straight people, police do not bust gay parties anymore. Summarily it was felt by the participants that at a personal level community participants reported improved environmental factors like more acceptance at workplace, feeling of solidarity with other LGBT groups, more networking with other organizations, personally many people felt reaffirmed of their sexuality, found more courage to reveal their sexual orientation to significant others like family, colleagues and friends. Whereas at a macro level participants reported positive changes in interactions with police, better media coverage and certain policy changes like non discrimination policies at workplace, organization of bolder pride marches. Participating stakeholders in the consultation

shared a different view. Though the change in law did not affect them personally, it did so professionally. A participating health care professional observed that as a doctor, he knew that he was treating a person who had engaged in anal sex, but earlier when the Sodomy law existed, he always faced a dilemma that by not reporting anal sex whether he was abetting a crime (as anal sex before the Delhi High Court judgement was a punishable offense). The health care professional pointed out that nowhere in any medical education dilemmas that are medico-legal are address with regards to sexual minority individuals. A mental health professional attending the consultation observed that though he does not believe in conversion therapy, there are others who may still practice it. Lawyers participating in the consultation observed that though the law has been changed, it will still take a long time before lawyers get sensitized about the problems of the LGBT community and represent clients. Whereas other lawyer present in the consultation noted that there are more individuals from the LGBT community who are now actively seeking legal help, not necessarily under Section 377, but are more open to discuss their sexual orientation with lawyers in relation to issues of inheritance, workplace discrimination etc.

The way ahead: small group discussions between stakeholders and community participants

The next part of the consultation aimed at understanding taking forward the IPC Section 377 judgment and discussing ways and means of operationalizing the implications of the judgement in the lives of LGBT, understanding how stakeholders could be partners in this process and what are the needs to stakeholders to enable them to participate. For this purpose, the participants were divided into smaller groups of 8-10 and were asked to identify either an issue that the LGBT community faces like health seeking , coming out, seeking legal services, workplace issues etc.. Or had a choice of using a personal experience shared in the group and then discuss on the issue using the following guidelines:

- Who are the stakeholders identified by the group?
- What are the main issues that need to be addressed?
- How can the community and stakeholders work better together?
- What are the needs of stakeholders?

]

Group 1

Group 1 focused on civil society, media, and police as stakeholders. This group felt that to a large section of the society section 377 makes no difference, but these individuals can't be left un-sensitized as they form society. The group suggested that there is a need for more visible and identifiable openly gay people, to come out and show I have a partner. In the media more human stories are needed which highlight that being gay is normal and more than normal, anyone can be gay, like e.g.: I am a doctor and I am gay, I am an engineer and gay etc... The second group of stakeholders identified by the group 1 was the police. Thirdly, group 1 very strongly felt that younger people are an important group as they are very curious, but sex education they get focuses only on reproduction, Aids and safer sex, there is no curriculum on the social aspect of sex or homosexuality. Better attitudes towards sexual minority can be built by also forming alliances between the gay and the straight community.

The primary needs of stakeholders identified by group 1 were need for sensitization, forming alliances with LGBT.

Group 2

This group shared 3 experiences that they drew from for their presentation.

1. A lesbian was prosecuted by her partner's parents; they said that she was a prostitute. They accused their daughter for stealing jewellery from their house.
2. In the second experience a gay individual was arrested from a gay party and abducted by the police and falsely accused for possessing drugs. He was held in custody and tortured without use of section 377.
3. In the third experience, a wife blackmailed her husband because he was gay.

The group used these experiences to highlight how the LGBT community is not understood by society and how all such misconceptions lead to social stigma and discrimination. It is necessary that outreach material is designed in a sensitive way, which is easily understood by society. The group specifically identified two target groups: the police and colleges. The group suggested that in police training the curriculum needs to focus more on gender and sexuality. They also felt that involving police in LGBT community events is a way of breaking the barrier and challenging

misconceptions. The group suggested that a strategy to work with college was to liaise with counselors and sensitize and train them as most colleges have counsellors.

Group talked about social spaces and the stakeholder identified was the police. Lack of social spaces for the community to congregate was mentioned as a concern. Sensitization is needed for everyone, police or otherwise. How can we contact the police? The basic problem is the lack of awareness. Police need to know how to treat the sexual minority people, when they arrest them and in custody. There are very little advocacy groups within the community especially for lesbians. There needs to be documentation on how LGBT people are mistreated by the police. Outreach worker empowerment: A lot of outreach workers come in contact with the police, how can communicate what the outreach workers are doing to the police.

Group 3

Group talked about social spaces as the group felt that lack of social spaces for the community to congregate was a problem. The stakeholder identified was the police. The basic problem is the lack of awareness. Police need to know how to treat the sexual minority people, when they arrest them and take them in custody. There are very little advocacy groups within the community especially for lesbians. There needs to be documentation on how LGBT people are mistreated by the police. A group member who was also a member of a CBO suggested that Outreach worker need empowerment in dealing with police as a lot of outreach workers come in contact with the police, they need to be trained on how they can effectively communicate the police, so that the police cooperate them and not antagonize them.

Group 4

The group shared their experience about pride walk in Mumbai: they observed that this year many people were walking with masks, only some without masks; whereas the Pride march that a group member attended in Madhya Pradesh (Bhopal or Indore) observed that no one walked with masks, although the city is very small and not very friendly to sexual minority.

The group felt that they community needs more visibility, as the un-sensitized society is not very aware. Stakeholders and un-sensitized public have to be approached. They felt that the community has to look at their self not only as a LGBT member, but also show other aspects of

their life to be relatable like they are not only gay writer but writer who writes about gay issues. There is a need to present oneself as a human being first, who faces daily hassles of living like anyone else and only then talk of their selves as being a sexual minority.

Group 5

Issues addressed in the group were discrimination, social change, and sensitization. The group strongly felt that since the judgment they were legal, but everything about being sexual minority is only defined by the sexual act. There are other issues as well and one issue is not bigger than the other, therefore there is a need start addressing these other issues as well like e.g. adoption laws. The group also expressed that more people have to come out and speak and generate dialogue.

A member of the TG community raised the concern about the frisking of TG individuals at public places and raised the issue that police officers and security guards need to be sensitized about TG community. The group felt that IPC section 377 has begun a dialogue, but it has to have a more rounded approach. And we all have to get together to make a change.

Group 6

The group talked about social and professional workspace. They observed that although change in IPC Section 377 has not affected the general population, but has affected police. The group reported a tangible change in the attitudes of the police.

The group however raised concerns over lack of sensitive practice in the health sector. The group noted that though homosexuality is no longer classified as a disease by the APA, but still if someone approaches them, asking to be cured from homosexuality, they will try to “cure” them.

The other stakeholder that the group identified was media. The group was of the opinion that the media has dual faces: before the judgement some were very disrespectful about LGBT community, but after the judgement they now portray a very positive picture. They felt that the media changes it sails according to the winds. The group members identified strategies of media need sensitization and training of doctors, especially psychiatrist as being needed for enabling stakeholders to work better with the community.

Summarily, the group discussions highlight that the community members and stakeholders both in majority identified police, media, civil society and health care professionals as the major agents who need to be intervened with. Sensitization of stakeholders, sharing common forums, building gay-straight alliances was the common needs of stakeholders that emerged from the discussions.

The consultation was concluded with a presentation by the Lawyers' Collective. The presentation presented facts about the status of the read down IPC section 377, its limitations and implications. The presentation also threw light on the current status of the pending judgement in the Supreme Court. The presentation clarified many doubts that were raised at the beginning of the consultation. Some of these doubts were to do with whether the reading down of the IPC 377 was applicable to the rest of the country, they shared many anecdotal cases where section 377 could not help community members as the judges are still not sensitive as was the case of the 2 women who eloped and went to New Delhi, but were not granted anticipatory bail in Mumbai. The presentation focused on what next in terms of how many petitions were filed against the NAZ petition with the Supreme Court and the procedures that Supreme Court follows to hold the hearings. Though the discussion around the legal actions around IPC section 377 generated excitements among the audiences a pertinent question as to what happens if we lose in the Supreme Court did not find a definitive answer. Taking this opportunity Mr Vivek Raj Anand reiterated that judgement apart the way ahead needs to be forged and the consultation was a means of initiating such a movement and dialogue. He summarized noting that the change in the law cannot change the mindsets in a society, but a certain beginning has been made. As was repeatedly pointed out throughout the consultation, there has been a positive impact of the judgement on the community- who feel more reassured, free now. The judgement has had some impact on the mindsets of people who are significant to LGBT individuals like family members and friends- who seem to be more willing to have a discussion on issues of sexuality. The change in judgement definitely has been acknowledged by stakeholders like health care professionals, lawyers, police who have noticed and in some instances consciously changed their attitudes towards LGBT.

Conclusion

The responses in the study should be seen considering the sample framework used. The sample was self selected in case of online survey and purposive in case of on-site surveys, interviews and consultation. Also the inclusion criteria for survey were participant should have heard of Section 377 and the Delhi High Court judgement, must be above 18years of age and should be in Mumbai while the survey is been taken. With the limitations in terms of sample and representation, the results may not be generalized.

To summarize, the study has reported that the participants feel more comfortable being themselves and open about their sexuality post judgement. Violence and harassment against community members by cheaters and police has been reported to have lessened. While the sub sections of LGBT have shown solidarity in this legal batter, their issues and concerns differ and need specific interventions. It has also been reported that more work need to be done with legal system, police, colleges, media, health care professionals, counselors and there is also a need for greater visibility and claiming social spaces.