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Harassment and Violence Among Men Who Have Sex with Men (MSM) and Hijras After Reinstatement of India's "Sodomy Law"

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Abstract

On December 11, 2013, the Indian Supreme Court recriminalized non-peno-vaginal sex under Sec. 377 of the Indian Penal Code (IPC), overturning a 2009 ruling that deemed IPC Sec. 377 unconstitutional. Similar "sodomy laws" in other countries have been associated with increased violence, harassment, and other discrimination against men who have sex with men (MSM) and transgender women. However, few studies have looked at the effects of such a law in an Indian context. This study examined experiences of victimization among MSM and hijra/transgender women (MSM-H) in the State of Maharashtra using a mixed-method approach. Data came from a quantitative survey and qualitative focus groups and interviews from an HIV prevention study as well as qualitative media and case reports from a local MSM-H-serving community-based organization. MSM-H in Maharashtra reported experiencing a high frequency of harassment, violence, and extortion, particularly from male sex partners met online and police. IPC Sec. 377 was implicated across qualitative sources as creating a culture of protection for harassment against MSM-H by being used directly as a tool for harassment, hindering victims of harassment from seeking legal recourse, and adversely impacting HIV and healthcare services. The reinstated IPC Sec. 377 may directly and indirectly facilitate negative health outcomes among MSM-H. Health agencies and advocates should continue to monitor the impact of IPC Sec. 377, incorporate rights-based approaches to protect MSM-H identities while addressing their health and well-being, and explore avenues to initiate discussions with the government to work toward repealing the law.

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Compliance with Ethical Standards

Ethics This study was approved by the Institutional Review Boards of The University of Texas Health Science Center at Houston, University of Minnesota, Tata Institute of Social Sciences, University of California San Francisco, and The Humsafar Trust.

Conflict of Interest The authors declare that they have no conflict of interest.

Keywords

HIV; India; Sodomy laws; Men who have sex with men; Harassment; Violence; Transgender

Introduction

Laws can have profound intended and unintended effects on the safety and health of those they address. Section 377 of the Indian Penal Code (IPC Sec. 377) criminalizes non-penovaginal sex, which has been interpreted as “gay sex” (Beyrer, 2014; Swain, 2016). Commonly referred to as India’s “Sodomy Law,” IPC Sec. 377 was read down, or given a narrow interpretation thereby limiting the law’s scope, by the Delhi High Court on July 2, 2009. The court claimed that IPC Sec. 377 violated articles 21, 14, and 15 of The Indian Constitution, which grants every citizen the “right to life” and “equal opportunity, regardless of religion, race, caste, sex, or birth” (Das, 2009). However, this landmark decision was reversed by The Supreme Court of India 4 years later on December 11, 2013, on the grounds that the law was “rarely used and did not affect the ‘miniscule,’ so-called, LGBT community’s rights” (*Naz Foundation v. Govt. of NCT of Delhi*, 2013).

The law has been used as a tool by lawmakers in India to harass and discriminate against sexual and gender minorities (Lawyers Collective, 2010). IPC Sec. 377 empowers police to arrest and courts to prosecute men who have sex with men and hijras/transgender women (MSM-H) under the pretense of preventing “unnatural” sex acts. Non-governmental organizations (NGOs) that serve MSM-H populations have also been targeted under the law and charged with the “sale of obscene material” (Gupta, 2006). Similarly, Indian MSM outreach workers have reported experiencing some level of harassment from police and members of the Indian heterosexual cisgender community (Safren, Martin, Menon, Greer, Solomon, Mimiaga & Mayer, 2006). These limited studies suggest that IPC Sec. 377 may be associated with increased violence toward Indian MSM-H, mirroring similar scenarios around the world in which criminalization laws empower authorities and community members to harass and discriminate against sexual and gender minorities (e.g., Arreola, Santos, Beck, Sundararaj, Wilson, Hebert, et al., 2014; Beyrer, 2014; Poteat, Diouf, Drame, Ndaw, Traore, Dhaliwal, et al., 2011). For example, Semugoma, Beyrer, and Baral (2012) found that anti-gay laws in Uganda were likely to increase violence against known or suspected MSM. Further examination of victimization specific to the Indian context is needed, however. Therefore, the purpose of this study was to examine experiences of victimization, harassment, and violence among MSM-H in the State of Maharashtra, especially after the reinstatement of IPC Sec. 377, using a mixed-method approach.

Methods

Quantitative Data

Design and Recruitment—Cross-sectional survey data used in this study were drawn from ISHKconnect, an HIV prevention study designed to understand sexual risk behaviors of MSM-H who use Internet and mobile applications to seek sex partners (Wilkerson et al., 2016). Participants were recruited from October 2013 to June 2014 via advertisements on

social media and dating websites for MSM-H; the advertisements directed respondents to an online survey. From 6049 clicks received, 449 respondents met the eligibility criteria—(a) aged 18 years or older, (b) resided in Maharashtra, (c) identified as MSM or hijra, (d) had regular access to the internet, and (e) had at least one male sex partner in the last 90 days—and completed the survey. IPC Sec. 377 was reinstated in December 2013 and remained in effect through the duration of the study.

Measures—Survey participants self-reported their age, monthly income, education, employment status, relationship status, HIV status, and level of disclosure about their sexual orientation to others; whether they lived in or outside the Mumbai/Thane metropolitan statistical area; and the number of male sex partners they met online and offline in the past 3 months. Four victimization items asked participants how recently a male sex partner they met online demanded money after sex; stole from them; punched, hit, or kicked them; or forced them to do sexual acts they did not want to do. Another four items asked about the same experiences with male sex partners met offline. Response options for the eight victimization items were within the last 24 hours, 7 days, 4 weeks, 6 months, 12 months, and 5 years and more than 5 years ago. An option for “never” was also included. Variables were dichotomized between being victimized within the past 12 months or before the past 12 months/never. Any victimization in the past 12 months was categorized into the yes category. Chi-square analyses were conducted using STATA-IC version 14.1 (StataCorp, 2015) with a significance threshold of $\alpha = .05$ (two-sided) to determine whether experiences with harassment and violence differed depending on whether participants met the perpetrator online or offline.

Qualitative Data

Qualitative data used in this study came from two sources: (1) focus group discussions with MSM, semi-structured interviews with hijras, and in-depth interviews with healthcare providers that serve a significant number of MSM-H patients, conducted under ISHKonnect, and (2) crisis case reports collected by The Humsafar Trust, a sexual- and gender-minority-serving community-based organization in Mumbai, during the ISHKonnect data collection period. First, participants of the ISHKonnect focus groups ($n = 24$; six per focus group) and semi-structured interviews ($n = 4$ hijra, $n = 10$ healthcare providers) were recruited through key informants and snowball sampling separately from the quantitative survey, though it is possible some participants may have overlapped. Discussion topics centered on MSM-H’s experiences using technology to meet sex partners. Following the reinstatement of IPC Sec. 377, all participants were also specifically asked about how they perceived the reinstatement of India’s sodomy law would impact the health and well-being of the MSM-H community.

Second, crisis case report data were collected from persons who contacted The Humsafar Trust independent of ISHKonnect recruitment efforts. The Humsafar Trust maintains first-person accounts of crisis cases and news reports pertaining to the MSM-H community mainly from within Mumbai. The crises documentation comprises detailed notes pertaining to the situation that occurred and further course of action decided by the impacted individual. Following the reinstatement of IPC Sec. 377, 16 case reports as well as reports in the news media of violence and harassment experienced by MSM-H between January and

June 2014 were collected and deidentified. The Indian coauthors thematically analyzed all the focus groups, semi-structured interviews, crisis reports, and news reports with vetting from other coauthors to understand the impact of the judgment on the number of crises reported and the influence of the verdict in seeking legal recourse.

ISHKconnect and subsequently the current study have received ethical clearances from the Institutional Review Boards (IRBs) of The University of Texas Health Science Center at Houston (Texas, USA); The University of Minnesota (Minnesota, USA); The University of California San Francisco (California, USA); The Tata Institute of Social Sciences (Maharashtra, India); The Humsafar Trust (Maharashtra, India); and the Indian Council of Medical Research, National AIDS Control Organization (NACO), and Health Ministry's Screening Committee (Maharashtra, India).

Results

Participant Characteristics

Table 1 lists demographic information for all participants in ISHKconnect. Survey participants were on average 29.5 years old ($SD = 8.3$), and the vast majority lived in urban areas (74.6%) and were college educated (87.1%). Less than 20% were out to most or all people they knew. Qualitative focus group MSM participants ($n = 24$) were on average 28.2 years old ($SD = 6.3$), and the vast majority were college educated (91.7%) and identified as gay or homosexual (95.8%). A third (33.3%) were out to most or all people they knew. In-depth interview hijra participants were on average 25.5 years old ($SD = 6.0$), and three were college educated. Three were out as hijra/transgender women to most or all people they knew, and the fourth was out to about half. Of the ten healthcare providers, the mean age was 33.4 ($SD = 8.4$), half were college educated, eight identified as men (the other two identified as a woman and did not identify, respectively), one identified as straight or heterosexual, and they had worked with MSM on average 5.3 years ($SD = 4.9$). Demographic data were not collected for individuals in the crisis case reports collected by The Humsafar Trust.

Several themes characterizing harassment and victimization experienced by Indian MSM-H emerged from the combined quantitative and qualitative data. Below, we first describe general experiences (e.g., frequency, perpetrators) before presenting results specifically related to IPC Sec. 377.

Frequency of Victimization

Both survey and qualitative data indicated a high frequency of harassment and violence experienced by MSM-H in Maharashtra. Over half (56.5%) of participants reported having been victimized in their lifetime; over a third (37.1%) reported having been victimized within the past 12 months. The focus groups, interviews, and collected news reports corroborated the survey results, identifying multiple cases of blackmail, theft, abuse, and vilification of MSM-H, particularly since IPC Sec. 377 was reinstated: “[Violence] has been increased after implementation of [IPC Sec. 377]. When kothi gets caught, then we have to give fees [bribes] forcefully” (hijra interview participant).

Perpetrators of Harassment

Two main groups were frequently named as perpetrators of the victimization experienced by MSM-H: male sex partners and police. In ISHKconnect, the majority of survey participants met male sex partners only online (61.3%), and another third met male sex partners both online and offline (30.4%); less than 10% of participants met partners exclusively offline. Of those who reported being asked for money after sex in the last 12 months, more incidents occurred with partners met online (14.8%) than partners met offline (9.9%), and this difference was statistically significant ($p < .001$; Table 2). The same trend was true for participants who reported being victims of theft, physical injury, and forced sex. In the qualitative data, extortion and blackmail were stronger themes than physical and sexual violence, despite nearly equal percentages of participants victimized by money demands and forced sex.

News reports following the reinstatement of IPC Sec. 377 suggested an increase in the number of organized gangs who pose as MSM-H seeking sex online. They set up dates online with MSM-H, lured them to isolated settings, and extorted them for money with threats of legal consequences. A MSM focus group participant described a common scenario:

There was one time when I was 21, 22 years of age and that time I was extorted by this guy, I didn't even go for any hook up or anything inside a public loo (toilet), I was just standing over there and there were 2, 3 people giving blows off to each other inside the loo so I just saw that and I don't know by the look of it was I looking homosexual or what. When I came out there was this one guy who came after me and he asked me about my details like where do I stay, and he told me that he has place. He dragged me to a certain place and then extorted money from me. I just had some 150 rupees or like that. And when I tried to make noise about it, he actually said that he has police connections.

Policemen were also identified as harassing MSM-H through extortion. A MSM focus group respondent stated, "I know of a cop who would have all information about the guy: know exactly where he stays, whether that person was married and still having sex or whatever the scenario is, get the person hooked up by him or whatever. Then he use to take extortions like installments on a monthly basis. Next month [if] I have not got this much should I tell your wife? And it was a clear blackmailing." Following the reinstatement of IPC Sec. 377, harassment from police seemed to increase: "After 377 has been reinstated, the police have been tough. We are lucky that we have not been caught yet, but many times it happens that somebody or other gets caught" (MSM focus group participant).

IPC Sec. 377 as a Tool for Harassment

In the 16 crisis case reports collected by The Humsafar Trust following the reinstatement of IPC Sec. 377, disclosure of the victim's sexuality and specifically IPC Sec. 377 were used as tools for blackmail. Perpetrators from MSM-H communities set up victims by luring them to isolated places for sex and then photographing them in compromising sexual acts or attacking them along with other gang members. In instances of harassment by police, most victims were accosted at cruising sites and threatened under IPC Sec. 377. In all instances,

victims denied engaging in sexual activity but asserted that they were targeted on grounds of their effeminate appearances and mannerisms. Respondents in ISHKonnect focus groups and interviews similarly implicated IPC Sec. 377 as being used by police and community members for the harassment of any individuals with alternate sexuality/gender expressions or a feminine appearance carrying condoms and loitering near cruising areas:

There were three police men who were checking us. They just wanted to see what we are carrying in our bags and all. So when they checked my bag, they found a condom and not one but they found three condoms. The police man just looked at me and asked ‘are you married?’ I said no. Then ‘do you have a girl friend?’ I said that ‘why this has to do with your investigation? Why you are checking us?’ And he said that ‘we are just checking you for drugs and all that.’ I said ‘that does not make any sense as whether I am carrying a condom or not is not making any sense at all.’ I told police men that ‘why you are interested in my sexual life. There is no meaning of you asking all these things.

No Recourse for Victims

Compounding the issue, MSM-H victims of harassment were reluctant to seek recourse. In the case reports maintained by The Humsafar Trust, only 5 of the 16 cases after the reinstatement of IPC Sec. 377 (31.3%) sought legal recourse. Most individuals in the reports explained that they feared disclosure of their sexuality, punitive action, and harassment by authorities under IPC Sec. 377. Similar stories about the lack of support for MSM-H individuals were corroborated by reports from the media as well as the focus groups and interviews. When asked about whether MSM-H feel more vulnerable after IPC Sec. 377 was reinstated, one hijra interviewee stated, “Yes to some extent because while walking also people will torture [hijras]. Mostly public will tease them. Then in family also they won’t get support. Whatever support they were getting earlier will also reduce.”

Impact on Population Health

In addition to the lack and fear of legal and societal support systems following the reinstatement of IPC Sec. 377, interviews with healthcare providers noted decreased utilization and engagement among MSM-H in services that support health as well. One provider stated, “Earlier the MSM who came to me, they were very extroverted, they told me everything in detail. But MSMs who currently come to me are very introverted. They hide many things from us. If they tell us their history, they hide many important things from me. It’s due to current act 377.”

Another provider predicted additional negative effects for the MSM-H population based on the historic oscillation from criminalization to decriminalization and now recriminalization of gay sex:

You could see the sense of liberation which was evident when the high court had taken a decision that it is no more a crime. But with the recent upturn of this decision will again revert back the scenario of the MSMs to the previous years wherein they experienced sense of inferiority complex, avoidance of seeking

treatment, affiliation with only like-minded groups, and aversion of the main stream society for them. So all these issues will again emerge after this verdict.

Discussion

Triangulating data from ISHKconnect and crisis case and media reports from The Humsafar Trust, the current study suggests that IPC Sec. 377 creates a culture of protection for harassment and violence against sexual and gender minorities. Individuals and organized gangs alike are using the law to target MSM-H, often through online spaces where MSM meet potential male sex partners. Over 90% of our sample used the Internet to find male sex partners, and they reported experiencing more harassment and violence in the past year from partners met online than those met offline. With increasing technology use in India (Telecom Regulatory Authority of India, 2015), the number of MSM-H seeking partners online will likely grow. Although these technologies allow MSM-H to more easily connect with each other and access social support while remaining closeted, they also increase their risks of being victimized. In addition to other MSM-H victimizers, police—people entrusted to protect others—are themselves perpetrators of harassment against MSM-H, using IPC Sec. 377 as justification. Furthermore, our qualitative findings suggest that IPC Sec. 377 may silence MSM-H who have been victimized out of fear of legal repercussions, and it may adversely impact the quantity and quality of healthcare MSM-H in general receive.

Our study is not without limitations. First, the quantitative survey data captured only experiences of victimization from male sex partners, thus leaving out harassment from other sources such as police. Additionally, the survey was not designed to ask specifically about IPC Sec. 377. The qualitative data from two sources help triangulate the possible effect of the law, but our design is such that we cannot attribute causality between increased harassment and IPC Sec. 377. Also, less than a fifth of our sample indicated being out to all or most people, and a quarter was not out to anyone. In comparison with a study conducted from 2003 to 2004 of MSM who access HIV services in Mumbai (Kumta, Lurie, Weitzen, Jerajani, Gogate, Row-kavi, et al., 2010), our sample was more closeted, older, and more educated. These demographic differences may reflect either or both online recruitment, which would exclude those without computer access but be more inclusive of closeted individuals, and changes in the community over the decade between 2004 and 2014. MSM with higher educational attainment, like those in our sample, have been found to have greater odds of participating in HIV prevention interventions (Thomas, Mimiaga, Mayer, Johnson, Menon, Chandrasekaran, et al., 2009a). Thus, our findings suggest IPC Sec. 377 creates additional barriers for these individuals, even those who are more educated, to come out as MSM-H and discourages them from accessing targeted public health services. Previous studies have highlighted that criminalization, coupled with issues such as violence and poor mental health, contributes to increased HIV risk among MSM-H (Stall et al., 2003; Thomas, Mimiaga, Mayer et al., 2009a; Thomas, Mimiaga, Menon, Chandrasekaran, Murugesan, Swaminathan, et al., 2009b; Thomas et al., 2011). Such an environment poses logistical challenges in direct contrast to India's National AIDS Control Programme, which calls for strengthening healthcare infrastructure and implementing targeted interventions for high-risk populations like MSM-H (NACO, 2013). Barnett-Vanes (2014) proposed that criminalizing homosexuality threatens HIV/AIDS services around the world, citing similar statements

released by UNAIDS (2011) and the European AIDS Clinical Society (Alcorn, 2013). These concerns are validated with the criminalization of homosexuality in Senegal, wherein HIV providers suspended services out of fear for the safety of the staff (Poteat et al., 2011). NACO has itself previously stated that IPC Sec. 377 had the potential to create significant barriers to HIV prevention services (Soni, 2006). Investment in HIV outreach, services, and treatments has also been shown to decrease in countries with laws criminalizing homosexuality (Arreola et al., 2014).

As suggested by this study, the reinstatement of IPC Sec. 377 may directly and indirectly facilitate negative health outcomes among MSM-H by (a) increasing their susceptibility to harassment, extortion, and violence; (b) restricting recourse for victims; and (c) creating legal and social barriers for MSM-H to access targeted HIV tools (e.g., condoms) and services (e.g., HIV testing). In this post-reinstatement era, prevention programs and health advocates should incorporate rights-based approaches to protect MSM-H identities and address HIV risks while promoting other aspects of well-being of MSM-H. Advocates need to explore avenues to initiate discussions with the legislature and judiciary to work toward repealing outdated criminalization laws such as IPC Sec. 377.

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Table 1

ISHKconnect quantitative and qualitative participant characteristics

Demographics	Survey (n = 449) n (%)^a	Focus groups (n = 24) n (%)^a	Hijra interviews (n = 4) n (%)^a	Healthcare provider interviews (n = 10) n (%)^a
Age (<i>M</i> [<i>SD</i>])	29.46 (8.28)	28.21 (6.25)	25.50 (5.97)	33.40 (8.38)
Hijra/transgender	7 (1.59)	0 (0)	4 (100)	0 (0)
Lives in Greater Mumbai/Thane				
Yes	335 (74.61)	24 (100)	4 (100)	10 (100)
No	114 (25.39)	0 (0)	0 (0)	0 (0)
Earn Rs. 25,001 or more/year				
Yes	185 (44.26)	11 (45.83)	0 (0)	4 (40)
No	233 (55.74)	10 (41.67)	1 (25)	3 (30)
Completed college				
Yes	384 (87.07)	22 (91.67)	3 (75)	5 (50)
No	57 (12.93)	2 (8.33)	1 (25)	5 (50)
Employment status				
Not employed	47 (10.66)	–	–	–
Employed full-time	267 (60.54)	–	–	–
Employed part time	31 (7.03)	–	–	–
Student—not employed	63 (14.29)	–	–	–
Student—employed full or part time	33 (7.48)	–	–	–
In a long-term relationship				
With a male	175 (39.77)	–	–	–
With a female	83 (18.99)	–	–	–
HIV				
Positive	10 (2.25)	–	–	–
Negative	336 (75.68)	–	–	–
Status unknown	98 (22.07)	–	–	–
Outness				
Not open at all	110 (24.72)	2 (8.33)	0 (0)	–
Open to a few to about half of people they know	249 (55.96)	14 (58.33)	1 (25)	–
Open to all or most people they know	86 (19.33)	8 (33.33)	3 (75)	–
Location meeting partners in past 3 months				
Online only	212 (61.27)	–	–	–
Mixed online and offline	105 (30.35)	–	–	–
Offline only	29 (8.38)	–	–	–
Victimization				
Ever	252 (56.50)	–	–	–
Within the past 12 months	165 (37.08)	–	–	–
Over 12 months ago/never	280 (62.92)	–	–	–

^aPercentages calculated with missing data removed

Table 2

Comparison of self-reported victimization within the past 12 months by male sex partners met online or offline ($N = 449$)

Victimization	Partner met online n (%)	Partner met offline n (%)	$\chi^2(1)^a$
Demanded money after sex	66 (14.80)	44 (9.87)	47.98*
Stole from you	32 (7.17)	26 (5.83)	105.79*
Punched, hit, or kicked you	18 (4.04)	17 (3.81)	62.95*
Forced you to do a sexual act you did not want	64 (14.35)	40 (8.99)	74.28*

*
 $p < .001$

^aComparison between partners met online and partners met offline

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