

# Gender Sexuality and crime: A Twenty-First Century Trend in India

Rahul Taneja

The topic researched in this paper is "Gender sexuality and crime" which is one of the main topics of discourse in the global circles, with the identification of rights of different genders, the debate upon this topic is only aggravated with different people from different genders and distinct backgrounds commenting their views and experiences.

The society we live in is traditionally a patriarchal society, women and the other genders have always been looked down upon, though with the advent of the 21<sup>st</sup> century and a coming of a digital society and with the help of various gender sensitization programmes this situation has been remedied to an extent, equality of all genders is still a utopian dream.

The era of industrial revolution brought drastic changes in our society both good, and bad it brought economic stability and prosperity to the lower sections of the society but at the same time it also meant worsened working conditions for the women employed in them. Sexual harassment, Payment disparity, discrimination became a regular occurrence, so much so that they were considered to be a part of work by the women working in these factories. #MeeToo movement was a movement started by sexual harassment survivor and activist Tarana Burke in 2006 on Myspace however this movement picked up pace in 2017 after sexual harassment allegations against Harvey Weinstein surfaced in early October 2017<sup>1</sup> and with the coming out of several high profile actresses with their experiences of harassment at the workplace. Tarana has more recently referred to it as an international movement for justice for marginalized people in marginalized communities.<sup>2</sup> This movement shall be looked into this project in more detail

Vishakha v State of Rajasthan<sup>3</sup> was a landmark case in India which dealt with the issue of sexual harassment at the workplace for Indian women for the first time, it was in the case that the supreme court, for the first time provided an authoritative definition of 'sexual harassment' in India and confronted with a statutory vacuum, It went creative and proposed the route of 'judicial legislation'<sup>4</sup>, this case was an essential one for improving the working conditions of women across the country and went a long way in that direction and was the inspiration behind THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT of 2013.

I have also delved into detail into the rights of the LGBTQ group in the national context, they are the group which have been historically neglected in our society just for the mere reason that they do not fit into the norms of genders set by the society. An LGBTQ person has less chances of getting selected in an interview than a man even though they have more qualifications than the man, all this while the world has walked into the 21<sup>st</sup> century. Government has also neglected the rights of the LGBT people historically and not giving them the rights accorded upon the other non-privileged genders. This shall be discussed in detail further in this project.

## Research Methodology

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<sup>1</sup> (The New Yorker, 2017)

<sup>2</sup> (Business Insider india, 2017)

<sup>3</sup> AIR 1997 SC 3011

<sup>4</sup> (Mody, 2013)

The present report is a non-doctrinal and historical study based on the critical review of both primary and secondary sources. Secondary and Electronic resources have been largely used to gather information and data about the topic. Books and other references have been primarily helpful in giving this work a firm structure. Websites and articles have also been referred. Surveys have also been conducted.

#### **Source of Data**

Secondary and Electronic resources have been largely used to gather information and data about this work.

#### **Objectives**

- To look into the status of women in the society.
- To analyse the work status of the non-privileged genders.
- To accumulate and analyse the data of crimes against women and the third gender.
- To look into the cases which have remedied the situation.
- To demystify the third gender rights and LGBTQ movement.
- To look into the problem and propose a solution.

The society we live in is historically a patriarchal society, women are looked down upon in different spheres of life, their opinions are not heeded to, they are not given top posts in companies and only a handful of women are selected for the administrative posts for example, only 61 women were selected in the 16<sup>th</sup> Lok Sabha<sup>5</sup> and in the 17<sup>th</sup> Lok Sabha, even though a bit higher, only 78 women were selected<sup>6</sup> which roughly estimates around to 14.4% which is not an ideal condition for the world's largest democracy which has a history of worshipping women as goddess figures.

With the advent of the industrial revolution, women entered a place that was uncharted territory for them before, the women that was used to managing the household chores now had to multitask between the household chores and the factory tasks assigned to them, what was worse was that they had to suffer through discrimination at their workplaces, their pay was not equal to their male counterparts and when the men realized that they had someone with equal qualifications and who was willing to work for lower pay they formed an union against the women working in the factories, this highly diminished the position of the women working in these factories.

These conditions of women in the workplace had widespread ramifications for the women all over England and they formed joined together to protest against the conditions of women working in these factories. By 1871, three movements had taken the nation by storm the Society for Promoting the Employment of Women, the Committee for Obtaining the Admission of Women to University Examinations, and the National Union for the Education of Girls of All Classes above the Elementary. All of these movements encouraged parents to educate their young daughters in order to protect them from the harms of "unskilled and cheap" factory occupations. The women who were part of this movement believed that as long as there was inequality in the workplace, women would forever be dependent on their patriarchal fathers and husbands<sup>7</sup>.

Seeing the women of England march together with such fierceness, the local politicians were bound to pay heed to the demands of these women and there demands were added in the political agenda of these parties and by the end of the 18<sup>th</sup> century, many changes were made to accommodate these women.

But the question that needs to be asked is "Have these measures been enough?" or more accurately, the measures taken even after that have been enough or not? According to a survey by the Centre for transforming India suggests that nearly 88 percent of the female workforce in Information technology as well as Business/knowledge process outsourcing companies have reported some sort of workplace sexual harassment.<sup>8</sup> What is worrying is that 47 per cent didn't know where to report this harassment, 91 per cent did not report for fear of being victimized and 77 per cent said that they were not sensitized to sexual harassment policies as part of their hiring process.

Vishaka v State of Rajasthan<sup>9</sup> case was such a case where the issue of sexual harassment of women at the workplace came up as a national issue for the first time in India, the issue in question was of a social worker in Rajasthan- Bhanwari Devi who was gangraped. She was a *saathin*, a grass-roots worker and activist, employed in the Women's Development Project (WPD) of the government of Rajasthan. In 1992, a campaign was launched by the Rajasthan Government against the practice of child marriage in the state, which has always been ubiquitous in the state of Rajasthan. Bhanwari Devi made a spirited effort to stop the marriage of a one-year-old girl, but in vain. What ensued was a complete breakdown of institutional machinery in Rajasthan. The villagers harassed, threatened and socially boycotted Bhanwari Devi.<sup>10</sup> Then, in September 1992, five villagers raped her in

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<sup>5</sup> (DownToEarth , 2014)

<sup>6</sup> (IPU Parline, 2020)

<sup>7</sup> (ukessays, 2018)

<sup>8</sup> (Dhar, 2012)

<sup>9</sup> (supra note 3 ,at p.1)

<sup>10</sup> (Sood, 2009)

the presence of her husband. She fought for her integrity and justice but faced innumerable hurdles in her way from the cold-hearted police authorities what was further depressing was that the trial court went ahead and acquitted the five accused.

This spurred a group of five NGOs under the name 'Vishaka' to file a PIL in the supreme court forcing it to act on the issue of sexual harassment at the workplace and how it can be prevented through a judicial process, and the supreme court came out with Vishaka guidelines (based on CEDAW) to protect women from sexual harassment at the workplace. "These guidelines were to be 'strictly observed' and would be binding and enforceable in law until suitable laws were made on the issue", is what the judgement says at paragraph 12.

The Supreme Court set out significant guidelines in the case of a 'statutory vacuum' on this issue which acted as a go to in the issue of sexual harassment at the workplace before that legislature came out with the THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT in 2013.

These guidelines, although a massive leap forward in the issue of sexual harassment at the workplace are still not *apropos* for dealing with this issue, also many companies have still not strictly adhered to these guidelines and many women also are till date not aware of them and who are working in these companies. This situation should be rectified through a series of gender sensitization programmes and orientations on this issue to encourage women to come forward and tell their experiences of harassment at the workplace.

#MeeToo movement was a movement started by sexual harassment survivor and activist Tarana Burke in 2006 on Myspace however this movement picked up pace in 2017 after sexual harassment allegations against Harvey Weinstein surfaced in early October 2017<sup>11</sup> and with the coming out of several high profile actresses with their experiences of harassment at the workplace, the world was in shock at the moment looking at the plight of these rich and famous actresses and equating it with a common woman going to the office and getting depressed imagining the state of this woman, soon enough women all over the world gathered courage to come out with their stories of harassment which led to multiple firings and name and shame of the big multinational corporations which had till date not taken any action on these cases. Tarana has more recently referred to it as an international movement for justice for marginalized people in marginalized communities.<sup>12</sup> This movement soon expanded beyond America and became a global phenomenon with women from all fragments of the society coming out and sharing their experiences of harassment. This was a huge blow in the face to the men who could think they could get away with doing whatever they want and face no repercussions.

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## CRIMES AGAINST WOMEN

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India is no stranger to the reports of crimes against women, we witness some incidents of such heinous crimes in our everyday life, some are read in the newspaper, some are read on digital platforms and a few are even eye witnessed by some people and

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<sup>11</sup> (The New Yorker, 2017)

<sup>12</sup> (Business Insider india, 2017)

some sinful few are the perpetrators of such crimes. Few examples and the incidence statistics of such crimes in no specific quantum of severity are –

1. Rape – Section 375 of the Indian Penal Code defines rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 18 years of age." Over 88 cases were reported daily in India daily in 2019<sup>13</sup> according to the National Crimes Bureau Report (NCRB) Crime in India, which rounds up to 32,033 cases in total. Over 11 per cent of the total victims of these crimes were Dalits, this may be because they are from the most vulnerable caste and are under tremendous social pressure and even if they dare to file an FIR, police shows their apathy for the cause of them being from the lower caste. The maximum rape cases are from Rajasthan and Uttar Pradesh numbering 6000 and 3065 respectively. According to some analysts the number of these cases are highly misleading as these cases are enormously under reported due to societal pressure, family pressure (in the cases in which the perpetrator is a member of the family) etc. What is even more sickening is the fact that in 2018, every fourth victim was a minor and ninety-four per cent of the offenders were known to the victim.<sup>14</sup>
2. Sexual Assault - Sexual assault is an act in which a person intentionally sexually touches another person without that person's consent, or coerces or physically forces a person to engage in a sexual act against their will.<sup>15</sup> In America, every 73 seconds another woman is sexually assaulted and 1 out of 6 women is a victim of attempted or completed rape in her lifetime<sup>16</sup>, what is more disheartening is that 1 in 33 American men have experienced an attempted or completed rape in their lifetime<sup>17</sup>
3. Domestic violence – Domestic violence is violence or other abuse in a domestic setting, such as in marriage or cohabitation. This has always been prevalent in our society where females are considered weak and something of an object in many Indian households. Many cases of domestic violence go unreported because of family pressure and patriarchal control over the household. Recently these cases were in rise after the covid-19 lockdown as all the men were at home and women also had no recourse to go to because of the complete shutdown in the city. 1,477 complaints of domestic violence were made by women in the months between march and may that were more than those received in a similar pattern in the last 10 months.<sup>18</sup> About 86 per cent of these domestic violence cases go unrecorded and 77% of the victims did not even tell the incident to anyone<sup>19</sup>.
4. Acid Attack - An acid attack, also called acid throwing, vitriol attack, or vitriolage, is a form of violent assault involving the act of throwing acid or a similarly corrosive substance onto the body of another "with the intention to disfigure, maim, torture, or kill". The most commonly used acids in these forms of attacks are sulfuric and nitric acid. There are no Indian statistics to find out how many women were victims, but a simple glance at the daily newspapers will give an idea of the victims. This problem is the most acute in South Asia. 750 women in Pakistan were injured in acid attacks, human rights watch reported.

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<sup>13</sup> (Rai, 2020)

<sup>14</sup> (Press Trust Of India, 2020)

<sup>15</sup> (Peter Cameron, 2011)

<sup>16</sup> (RAINN, n.d.)

<sup>17</sup> *ibid*

<sup>18</sup> (radhakrishnan, 2020)

<sup>19</sup> *ibid*

5. Sexual harassment at workplace – This includes unwanted physical touches and glances towards women at their respective workplaces. According to NCRB, in 2016 539 cases of sexual harassment were registered, and in 2018, 965 cases of harassment were reported<sup>20</sup>

While some cases of rape and other crimes against women come into limelight like the Nirbhaya case of 2012 and the Hathras gang rape incident of 2020, there are many other cases of these incidents that go unreported and some are considered not “debate worthy”. There should be a mechanism in place for bringing out these cases into the public domain for the public domain and charge sheets should be filed where ever needed and swift and strict action should be taken by the concerned authorities.

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## IDENTIFYING THE THIRD GENDER

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The LGBTQ community is an alliance among the lesbian, gay, bisexual, transgender and queer people among the world. The LGBTQ community has historically been one of the most hated communities of the world, they have been persecuted by the church, the state and the medical authorities. The individuals who deviated from the norms set by the society were publicly condemned through sensational public trials, exiles, medical warnings and language from the pulpit. These paths of persecution engrained homophobia for centuries and also alerted entire populations to the existence of difference. In cases where an individual or an organization recognized this difference and shared their identity were at risk from these persecutions, there were very few before the political and scientific revolutions of the 18<sup>th</sup> and the 19<sup>th</sup> century. Gradually the growth of a public media and awareness for ideals of human rights drew people from all spheres of life towards the promotion of this movement for the rights of the LGBT people. However, throughout 150 years of homosexual social movements (roughly from the 1870s to today), leaders and organizers struggled to address the very different concerns and identity issues of gay men, women identifying as lesbians, and others identifying as gender variant or nonbinary. White, male and Western activists whose groups and theories gained leverage against homophobia did not necessarily represent the range of racial, class and national identities complicating a broader LGBT agenda. Women were often left out altogether.

### INDIAN LAW ON HOMOSEXUAL RIGHTS

Section 377 (Three hundred and Seventy seven) was a draconian act which said that having intercourse against the order of the nature with any male, female or an animal can land anyone in jail for upto 10 years which may extend upto the punishment of death and that same person shall also be liable to be fined.

This was made from the Buggery Act of 1533. This act defined homosexual acts and sexual activities with animals as unnatural offences and it should be punished. This act defined buggery as an act against the will of god was passed by the parliament of England in the year 1533 under the leadership of King henry 7.

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<sup>20</sup> (press information bureau, 2019)

In India, Fight to decriminalize section 377 of IPC began in the year of 1994 when an NGO with the name of ABVA went on to file a petition in the court of Delhi, which was eventually dismissed in the year of 2011, also an NGO NAZ foundation filed a PIL before the same court but it's petition was dismissed on the grounds of it having no stand in the matter or the legal maxim of locus standi was applied.

Later, an appeal was heard in the apex court relating to the same case wherein the court ordered to Tiz Hazari court to reconsider to PIL as the organization (NAZ Foundation) had the grounds to file the same. The court later declared the draconian law as being violative of the constitution of the country.

An appeal was filed before the apex court in the case of Suresh Kumar Koushal v. NAZ Foundation<sup>21</sup> and ors, challenging the judgement passed by the high court in the case of section 377, the apex court after hearing all the arguments declared section 377 as constitutional and again homosexuality in India was declared illegal.

The court commented that the section 377 of the IPC doesn't suffer from the vice of unconstitutionality and the decision that 377 is unconstitutional does not stand. Therefore once again, the section 377 was held constitutional and any act performed falling under the ambit of 377 was punishable.

## **NAVTEJ SINGH JOHAR V UNION OF India**

### **Facts of the case**

Petitioner was a dancer who belongs to the LGBT community (lesbian, gay, biological and transgender) who files a writ petition under article 32 of the Constitution of India before the Hon'ble Supreme Court for the rights of the LGBT Community. According to the petitioner section 377 of IPC is against this community and LGBT community people can't enjoy their rights. According to the petitioner right to choose sex partner and right to sexual autonomy should come under the ambit of article 21 of Constitution of India. According to him the language of section 377 of IPC is vague and there is no such difference between natural and unnatural sex. What is against the order of nature is not explained anywhere clearly and there is an infringement of Right to privacy of LGBT community people which is a fundamental right guaranteed under article 21 of the Constitution of India.<sup>22</sup>

### **Main issues of contention**

1. Whether judgement in suresh kumar case<sup>23</sup> was proper or not?
2. Whether articles 14 and 15 of the constitution of India are violated by the section 377 of the IPC or not?
3. Whether Right to Privacy which is a fundamental right is violated by section 377 or not?

### **Judgement**

The 5 judge Bench of the supreme court overturned the decision held in the S.K. Koushal case and held that LGBT group has rights like the other minorities and taking them away would be a violation of the soul of the constitution.

### **Nationwide effect**

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<sup>21</sup> (2014)1 SCC 1

<sup>22</sup> (Joshi, n.d.)

<sup>23</sup> ibid

This nation had a varied and nationwide effect on people of all ages, to find out this effect I conducted a survey among 30 people and 3 generations of my family, for convenience they were divided into three groups-

- First group – They were the people above the age of 60 years, these people are mostly the age of our grandfathers and grandmothers.
- Second group – These were the people in the age group spanning 30-60 years, these were the people of our father's generation.
- Third group – These were the young people of my generation with the age span of 10-25 years

All these people were asked a set of five questions :-

1. Are you familiar with the LGBTQ community?
2. Do you have any friends who identify themselves as homosexuals?
3. If any member of your family comes out as lesbian or gay, would your reply be in the affirmative or negative?
4. Are you familiar with the SC judgement in the Navtej singh Johar case?
5. Do you support the judgement?

Here are the answers posed by different groups on these 5 questions –

#### Question 1

The first group had all answers majorly in the negative with only one out of ten people able to recognize the community and what it stands for.

The second group had varied answers with 6 people replying in the affirmative and only 4 people replying in the negative. The people who said yes had higher levels of education and overall more sensitive answers than people replying in the negative.

The third group had all replied in the affirmative with complete knowledge of the community and its purpose.

#### Question 2

The first group unanimously replied negative. Some even went to the extent of commenting that the people in this group are not to be meddled with.

The second group had the same response as the first.

The third group had somewhat encouraging responses with 2 people out of ten saying that they know at least one homosexual person. Both these people are studying abroad.

#### Question 3

The First Group unanimously commented in the negative, with three people of the group in harsh words saying these people, if came out shall cease to be a part of the family someday

The second group commented somewhat sensitively with 5 people refusing to answer the question, 2 people replying harshly in the negative and only 3 out of 10 said they would support the move, what was interesting was the fact that all three were women and held a doctorate.



The third group also expressed some reservations with 4 people out of 10 saying that although they would not try to change their mind but would not like going close to the person for their father's or mother's happiness and 6 people replying in the affirmative.

#### Question 4

7 people out of 10 replied in the affirmative in the first group.

All the people in the second group replied in the affirmative.

The third group had the same response as the second.

#### Question 5

NOTE: All the 30 people were asked this question after being told about the judgement in detail by the surveyor

The first group unanimously replied that the supreme court judgement was wrong and the order of nature was not to be meddled with

The second group had 6 people replying in the affirmative 1 refusing to answer and 3 replying in the negative

The third group followed the lines taken by it in its previous answers with the group unanimously replying in the affirmative.

#### **Conclusion**

Although the perception of the LGBT community is changing among the younger generations in the family achieving mass validation among the different age groups is still an utopian dream, also the acceptance is conditional upon the education level of the respondents, those with higher education were more accepting and vice versa. It was also seen by the trends that the female gender was more accepting and sensitive towards the homosexual people as compared to the male gender.

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