

BHAROSA CASE

(5)

Charges	Facts
1. Registration of the FIR under Section 377 IPC (unnatural sexual offences)/r/w 120	<p>Section 377 IPC is a specific offence, and has to be committed by the perpetrator against a person, (voluntarily). No such case has been even averred by the Police against the activists.</p> <p>A complaint has been registered by one Rakesh, against one Suresh, who have nothing to do with the activists or the organization</p>
2. Medical evidence in support of Section 377 IPC.	<p>The medical report pertains to Rakesh who has made allegations against Suresh, and not the activists or the organizations, and as such has nothing to do with their matter.</p> <p>However, the report of the medical officer appointed by the police clearly claims that, he is, "on examination not clear cut about a case of sodomy" (sic). Thus there is neither presence of any penetration nor of a victim can be offered by the police to support their charges of sodomy.</p>
3. Perpetrating Child Sexual Abuse	<p>The ages of the two individuals apprehended by the police as per the FIR is 18 and 32 years. Neither qualifies as minor, and hence the charges of child sexual abuse are completely baseless.</p> <p>Further, no connection has been made between the two apprehended individuals, and the organization</p> <p>No allegation has been made anywhere in the FIR about any other incident of Child Sexual Abuse or any other reference to it whatsoever</p>
4. Uncovering the existence of two gay sex clubs, along with membership lists.	<p>Both Naz Foundation International and Bharosa Trust work in the field of HIV-AIDS. One of the target groups recognized by NACO (National AIDS Control Organization) as being specially vulnerable to HIV/AIDS is men who have sex with men (MSM).</p> <p>Social stigma and the fear of legal prosecution force MSM underground. Given these circumstances it is difficult for MSM to access health services specific to their needs. In order to make these services available to the MSM population, NGOs working with them provide counselling services, and encourage the</p>

	<p>formation of support groups. It is these support groups that the police has termed 'gay sex clubs'...</p> <p>Further, the membership list pertains to a group called Friends, offices of which were raided by the CO, Trans-Gomti Dr. Arvind Chaturvedi, and he met with the concerned retired army officer, who (according to the CO's press statement) said that the club had been discontinued. No arrests were made. The membership lists could have been in the possession of the concerned office for outreach purposes, and were confidential. However, the forms do not mention anything about homosexuality or sexual choices. These forms just talk about a friendship club.</p>
<p>5. Seizure of pornographic material and sex toys</p>	<p>An important component of NACO and USAIDS guidelines is in the form of their IEC campaign. This implies an extensive use of communication material/tools/strategies for spreading information about the disease, how it spreads and methods of prevention. The very nature of the disease involves the use of material that is anatomically and or sexually explicit. 'Sex toys' are also part of commonly used IEC material, which are essential parts of any information dissemination activities undertaken by groups working in the field of HIV/AIDS and or sex-education. Such material is also being widely used by Family Planning programs all over the country.</p>
<p>6. Police was acting in the interest of society, as homosexuality is inimical to "Indian Culture"</p>	<p>The Indian Government recently at the UNGASS meeting held in New York supported the inclusion of the International Gay and Lesbian Human Rights Commission (IGLHRC) at the meet.</p> <p>No arrests have been made. It is possible that support in an external fora, is seen as irrelevant to "Indian Culture", however, the police is an arm of the same government, and as such cannot go against an expressed position of its own government.</p> <p>It is unfortunate that the Indian Government shows up at International fora, garnering kudos for its work and its liberal approach, while at the same time subjecting its activists in the field of HIV/AIDS to such treatment at the National level, thereby showing its true colors.</p>

7. The groups were promoting homosexuality	One of the intervention strategies adopted by groups working on the issue of HIV/AIDS is the promotion of safe-sex strategies. Statistical figures state that 80% of MSM are in fact married men and/or have sex with women as well. This means that working with MSM must form an essential part of the response to the epidemic. Thus addressing these men is not about spreading homosexuality, but is about bringing about a change in their behavioral patterns such that it helps in arresting the spread of the disease.
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Facts and figures:

- India has the second-highest incidence of HIV infection and AIDS in the world (after South Africa)
- Section 377 IPC (carnal intercourse against the order of nature) has been used by the police as an effective weapon by the police to brutalize men who have sex with men as well as to intimidate lesbian and bisexual women. In 1994 the UNHCR affirmed its decision (Toonen vs Australia) that criminalising same sex relations between consenting adults violates Article 2 (equal protection) and 17 (right to privacy) of the International Covenant on Civil and political Rights (ICCPR). India ratified the ICCPR in 1979, and is bound by its provisions.
- India has publicly acknowledged at the United Nation's general Assembly Special Session on HIV/AIDS (UNGASS) that lesbians and gay men constitute a marginalised community vulnerable to HIV infection.