



DIGNITY FIRST

One year of Resistance to Re-Criminalisation of LGBT lives

December 2014

Published by
**Coalition for Sex Workers and
Sexuality Minority Rights (CSMR)**

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For more information:

csmr@yahoogroups.com or contact@altlawforum.org

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(I) INTRODUCTION

On December 11, 2014, we mark the first anniversary of the judgment delivered by the Supreme Court in ***Suresh Kumar Koushal v. Naz Foundation*** (A.I.R. 2014 S.C. 563), recriminalizing the intimate lives of LGBT persons. The judgment has been described most eloquently by Vikram Seth as a ‘bad day for law and love’ and by human rights activists as a ‘black day for human rights.’

Anniversaries of great moments of injustice are occasions to pay homage to a struggle, to remember those who have sacrificed their lives and happiness to a cause and to remember ordinary people who have been victims of grave and continuing injustice.

In India, the year of 2014, on December 3rd the victims and survivors of Bhopal marked the 30th anniversary of their struggle for justice, those who believe that India should be governed by the Constitution remembered the 22nd anniversary of the destruction of the Babri Masjid and the victims of Gujarat marked the 12th anniversary of the pogrom of 2002.

As the great human rights activist, Balagopal noted in marking the second anniversary of the massacre of Dalits in a village called Karamchedu in Andhra Pradesh,

“One way of marking history is by the anniversaries of events of injustice; of suppression, of pillage and of loot. It is certainly more moral than marking history by the anniversaries of coronations; July 17 this year was the second anniversary of an event that has done much to shape political awareness in Andhra Pradesh in recent times: the Karamchedu killing of 1985.”¹

The day we seek to mark and remember is a day when a decision was

¹ Balagopal, Karamchedu: Second Anniversary, Economic and Political Weekly, August 15, 1987

delivered by the Supreme Court which has been described as one of the triumvirate of decisions which together mark the lowest ebb in the illustrious history of the Supreme Court. In 1975 in *ADM Jabalpur v. Shivakant Shukla*², the Supreme Court upheld the declaration of emergency which deprived all citizens of the right to life in India. In 1979, in *Mathura's case*³, the Supreme Court in effect declared that women who were raped should be disbelieved. In 2013 the Supreme Court has held that LGBT persons are not human beings whose dignity and life is violated by a colonial law.

Much that is wrong and terrible in the decision has been realized in the year which has elapsed since the decision was first given. This booklet will seek to shed a cold and clear eye on what has transpired in the last year which makes a compelling case as to why this law needs to be repealed. However even as we stage with redoubled vigour our campaign against the law, it is important to acknowledge the remarkable shifts in public opinion which have happened because of the emerging campaign against Section 377 of the IPC and the incredible support which the LGBT community has received from numerous movements including the feminist movement, the Dalit movement as well as groups such as the National Alliance of Peoples Movements.

Even while the legacy of this law has been broken lives, shattered promises and increased impunity of the police, there is a counter narrative of increasing resistance to the violence of the law.

This narrative begins soon after the judgement when the LGBT community instead of accepting the decision as the supreme imprimatur of one of the most powerful courts in the world, instead bravely asserted that, -

“Hard as this decision is and difficult as the road forward may be, we draw strength and inspiration from ordinary LGBT persons who will not allow this to affect the way they lead their lives. In the course of the last ten years or so we have begun to lead

2 AIR 1976 SC 1207

3 AIR 1979 SC 185

their lives openly and publicly proclaiming their claim to equal citizenship. The page of history has turned and no power on earth can deny us the right to freedom, equality and dignity.

We proclaim that inspite of the judgment of the Supreme Court, the only way the LGBT movement will go is forward and the arc of history though long will turn towards justice. We pledge to continue this struggle with redoubled vigour till such time that Section 377 is consigned to where it belongs - the dustbin of history.”

It is this story of heartbreaking loss and pain as well as unflinching courage in the face of adversity that this booklet seeks to tell.

(II) THE MANY FAILURES OF SURESH KUMAR KOUSHAL V. NAZ FOUNDATION

While much has been written about the failures of Koushal, the most eloquent critique is to be made by really reading its counterpoint—the decision of the Delhi High Court in *Naz Foundation v. NCR Delhi*⁴. It is precisely the empathy, compassion and grasp of constitutional principles exhibited by the Delhi High Court which the Supreme Court has forsaken. There are four key failures of the Court which are only underscored by the sensitive treatment of the Delhi High Court of the very same points.

2.1 Ignoring evidence of how Section 377 affects the LGBT population

The Koushal Court made much of the point that there was no ‘factual foundation’ to the case of the petitioner. In the opinion of the judges the grievances of the petitioner had no foundation and were in fact merely imaginary. However this flies in the face of the voluminous record before both the High Court and the Supreme Court which provided clear and compelling evidence of the violence suffered by the LGBT community. When the Supreme Court asserted that ‘miniscule fraction of the country’s population constitute lesbians, gays, bisexuals or transgenders’ it ignored the fact that there was in fact extensive evidence of suffering before the court in the form of affidavits, court judgments and FIRs. The Delhi High Court in fact came to its finding on the basis of what it called ‘extensive material placed on the record in the form of affidavits, authoritative reports by well known agencies and

judgments that testify to a widespread use of Section 377 IPC to brutalise MSM and gay community.’ Among the material referred to by the Delhi High Court included the rape of Kokila (a hijra in Bangalore 2004), a gang rape which results in suicide (Jayalakshmi v. State, 2007), the arrests under Section 377 in Lucknow (2002) and the threat of the use of Section 377 against a lesbian couple and the torture of a gay man.

The answer Suresh Kumar Koushal gives to these narratives of torture, rape and violations, all of which demonstrate the impact of Section 377 on the right to life of LGBT persons, is to blandly conclude that ‘harassment, blackmail and torture’ of LGBT persons is ‘neither mandated nor condoned’ by Section 377 and the mere fact of misuse is not a ‘reflection of the vires of the section’.

2.2 Lack of a reasoned judgment

At its most basic level, law is a child of reason and judgements are nothing if not reasoned decisions. When judges pronounce their verdicts, what they demonstrate is the power of reasoned argument, of how they have come to a conclusion after considering all sides to a vexed question. It is in fact the power of this form of deliberative reason, which nourishes and sustains the legitimacy of the judiciary.

It is in exercising this most fundamental tool of a deliberative democracy, which is public reasoning that the judges in Suresh Kumar Koushal fail. On the three key limbs of the case of the respondents, the judges choose not to come to a reasoned finding. The key questions before the Court was whether Section 377 violates the right to equality, the right to privacy and dignity as well the right to non discrimination.

2.2.1 Equality

The courts have laid down a two step test to determine whether a law passes the guarantee of equality under Article 14 of the Constitution. The first step asks the question: “Is there an intelligible differentia underlying the classification?” This means that when the law treats two groups differently,

there must be clear criteria that differentiate the two groups. The Court comes to the conclusion that Section 377 passes this step of the test as there are two clear categories created under the section, namely, carnal intercourse ‘in the ordinary course’ and carnal intercourse ‘against the order of nature.’ However, at the same time, the SC admits that ‘no uniform test can be culled out’ to determine what constitutes ‘carnal intercourse against the order of nature’⁵ rendering their conclusion suspect. The judges then completely abandon the second step of the test which asks: “Does this classification have a reasonable nexus to the object to be achieved by the Act?”. This requires asking what the purpose of the Act is and analysing why treating these two groups differently helps reach that purpose. This failure to address the question leads one to speculate that the reason the judges do not address the second limb of the test is because then they would be forced to publicly state that it is morality which is their reason for upholding the law. This, the judges seem unwilling to do.

2.2.2 Privacy

With respect to the question of privacy, the High Court had noted the development of the law on privacy by stating that what was protected under Article 21 was not just the right to privacy as the right to freedom in the zone of your home but equally the right to make decisions about your intimate life. As such, Section 377 violated both the zone of the home as well as unconscionably intruded into the realm of decision making about such intimate questions as who one’s partner might be. The Supreme Court did not engage with the debate on privacy initiated by the High Court and came to no reasoned finding as to whether the right to privacy (both zonal and decisional) was violated at all.

2.2.3 Dignity

The question of dignity formed the mainstay of the opinion of the Delhi High Court. As far as the High Court was concerned, Section 377, by criminalizing an intimate aspect of the human personality, in effect 'denied one the right to full personhood'. This argument of the link between privacy and dignity and how both formed an integral aspect of the right to life under Article 21 formed a key argument of the Naz court. However when it came to the Supreme Court, inspite of voluminous submissions on how Section 377 was an attack on the very selfhood of individuals, the Court did not come to any reasoned finding at all.

2.3 Failure to appreciate constitutional principles

The failure of Koushal goes beyond the failure of reasoning, to questions which get to the heart of what the Indian Constitution means. Perhaps even beyond the questions of equality, privacy and dignity, the one concept which Naz developed which has travelled far and wide is the notion of constitutional morality. In an inspired move, Justices A. P. Shah and Muralidhar went to the Constituent Assembly Debates and looked to Dr. Ambedkar's notion of constitutional morality to make the point that a notion of public morality cannot be used as a basis to deprive a minority of rights. In other words, if India was a form of democracy based upon majority rule only, then 'any legislative transient majority in tantrums against any minority' could discriminate at will against women, Muslims, Christians and persons with disability. However, what the Naz court underlined is that India was a constitutional democracy rooted in a tradition of inclusiveness which meant that the fundamental rights of all persons of whatever stripe or persuasion was nonnegotiable. What the Naz Court did was to extend this notion of constitutional morality derived from Dr. Ambedkar and the notion of inclusiveness as derived from Jawaharlal Nehru to LGBT persons. As such the ruling was based on a profound appreciation of the deepest meaning of the Indian Constitution's commitment to protect the fundamental rights of

all persons and groups however 'miniscule' they might be. It is this particular understanding of the role of the Constitutional Court that the Koushal court failed to appreciate. By arguing that it was duty bound to respect the will of Parliament which represented the 'will of the people' it abdicated the responsibility of the judiciary to protect all minorities from the vicissitudes of majority opinion. Its conclusion that a 'miniscule fraction of the country's population constitute lesbians, gays, bisexuals or transgenders' and hence it was unnecessary to adjudicate the validity of Section 377 did profound disservice to the very meaning of Indian constitutionalism.

2.4 Failing to take suffering seriously

Finally, the failure of Koushal is also a failure of the value of constitutional compassion. While reason is a key component of the law, emotion is not alien to it either. Judicial decisions at their best are not cold and unfeeling but display a profound empathy for human suffering. A court which is moved by human suffering produces judgments like the pavement dwellers judgment (*Olga Tellis v. Bombay Municipal Corporation*⁶) and bonded labourers judgment (*Bandhua Mukti Morcha v. Union of India*⁷). One can argue that by responding to human suffering, judges embody a form of humanism which should really be at the heart of the judicial function. This idea of humanism as central to the very purpose of the Constitution and finds a place in the famous 'Tryst with Destiny' speech welcoming India's independence by Jawaharlal Nehru in the Constituent Assembly. Nehru, referring to Gandhi, said that, 'the ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over.'⁸

⁶ AIR 1986 SC 180

⁷ AIR 1984 SC 802

12 ⁸ Jawaharlal Nehru, *Tryst With Destiny* speech, available at <http://www.svc.ac.in/files/TRYST%20WITH%20DESTINY.pdf> (Last accessed on 09.12.14).

Clearly constitutional functionaries like the judges of the Supreme Court are enjoined to keep in mind the idea that they have a high constitutional responsibility to redress the causes of 'tears and suffering'. In Suresh Kumar Koushal, the court turns a blind eye to human suffering. The narratives of rape, torture and harassment suffered by LGBT persons do not move the court, nor do narratives of parents of LGBT persons who state that the law induces a profound sense of fear and is destructive of the ability to peacefully enjoy family life. As such the judgment embodies a profound failure of Constitutional compassion.

**2.5 A mother and a judge speaks out on section 377
Times of India | TNN | Jan 26, 2014, 06.10 AM IST**

My name is Leila Seth. I am 83 years old. I have been in a long and happy marriage of more than sixty years with my husband Premo, and am the mother of three children. The eldest, Vikram, is a writer. The second, Shantum, is a Buddhist teacher. The third, Aradhana, is an artist and film-maker. I love them all. My husband and I have brought them up with the values we were brought up with - honesty, courage and sympathy for others. We know that they are hardworking and affectionate people, who are trying to do some good in the world.

But our eldest, Vikram, is now a criminal, an unapprehended felon. This is because, like many millions of other Indians, he is gay; and last month, two judges of the Supreme Court overturned the judgment of two judges of the Delhi High Court that, four years ago, decriminalized homosexuality. Now, once again, if Vikram falls in love with another man, he will be committing a crime punishable by imprisonment for life if he expresses his love physically. The Supreme Court judgment means that he would have to be celibate for the rest of his life - or else leave the country where he was born, to which he belongs, and which he loves more than any other.

I myself have been a judge for more than fourteen years—first, as a judge of the Delhi High Court, then as Chief Justice of the

Himachal Pradesh High Court. Later, I served as a member of the Law Commission, as well as the Justice J.S. Verma Committee, which resulted in the Criminal Law Amendment Act 2013 being passed. I have great respect for legal proprieties in general, and would not normally comment on a judgment, but I am making an exception in this case.

I read the judgment of the Delhi High Court when it came out four years ago. It was a model of learning, humanity and application of Indian Constitutional principles. It was well crafted, and its reasoning clearly set out. It decided that Section 377 of the Indian Penal Code infringed Article 14 of the Constitution, which deals with the fundamental right to equality. It infringed Article 15, which deals with the fundamental right to non-discrimination. And it infringed Article 21, which covers the fundamental right to life and liberty, including privacy and dignity. The judgment of the High Court 'read down' Section 377 in order to decriminalize private, adult, consensual sexual acts.

The government found no fault with the judgment and did not appeal. However, a number of people who had no real standing in the matter did challenge it. Two judges of the Supreme Court heard the appeal in early 2012. Then, 21 months later, and on the very morning of the retirement of one of them, the judgment was finally pronounced. The Delhi High Court judgment was set aside, Section 377 was reinstated in full, and even private, adult, consensual sexual acts other than the one considered 'natural' were criminalized again.

As the mother of my elder son, I was extremely upset. But as a lawyer and a former judge, I decided to reserve my views till I had read the judgment. When I read it, it would be true to say that I found it difficult to follow its logic.

A host of academics and lawyers have critiqued the judgment in great detail, including the non-addressal of the Article 15 argument, and have found it wanting in many respects. I do not intend to

repeat those criticisms. However, I should point out that both learning and science get rather short shrift. Instead of welcoming cogent arguments from jurisprudence outside India, which is accepted practice in cases of fundamental rights, the judgment specifically dismisses them as being irrelevant. Further, rather than following medical, biological and psychological evidence, which show that homosexuality is a completely natural condition, part of a range not only of human sexuality but of the sexuality of almost every animal species we know, the judgment continues to talk in terms of 'unnatural' acts, even as it says that it would be difficult to list them.

But what has pained me and is more harmful is the spirit of the judgment. The interpretation of law is untempered by any sympathy for the suffering of others.

The voluminous accounts of rape, torture, extortion and harassment suffered by gay and transgender people as a result of this law do not appear to have moved the court. Nor does the court appear concerned about the parents of such people, who stated before the court that the law induced in their children deep fear, profound self-doubt and the inability to peacefully enjoy family life. I know this to be true from personal experience. The judgment fails to appreciate the stigma that is attached to persons and families because of this criminalization.

The judgment claimed that the fact that a minuscule fraction of the country's population was gay or transgender could not be considered a sound basis for reading down Section 377. In fact, the numbers are not small. If only 5% of India's more than a billion people are gay, which is probably an underestimate, it would be more than 50 million people, a population as large as that of Rajasthan or Karnataka or France or England. But even if only a very few people were in fact at threat, the Supreme Court could not abdicate its responsibilities to protect their fundamental rights, or shuffle them off to Parliament. It would be like saying that the Parsi community could be legitimately imprisoned or

deported at Parliament's will because they number only a few tens of thousands. The reasoning in the judgment that justice based on fundamental rights can only be granted if a large number of people are affected is constitutionally immoral and inhumane.

The judgment has treated people with a different sexual orientation as if they are people of a lesser value.

What makes life meaningful is love. The right that makes us human is the right to love. To criminalize the expression of that right is profoundly cruel and inhumane. To acquiesce in such criminalization or, worse, to recriminalize it, is to display the very opposite of compassion. To show exaggerated deference to a majoritarian Parliament when the matter is one of fundamental rights is to display judicial pusillanimity, for there is no doubt, that in the constitutional scheme, it is the judiciary that is the ultimate interpreter.

A review petition is now up for hearing before one of the two original judges plus another, who will replace the now-retired Justice Singhvi. It will be heard in chambers. No lawyers will be present.

I began by saying that Premo and I had brought up our children to believe in certain values. I did not mention some others which we have also sought to inculcate in them: to open their hearts and minds; to admit their errors frankly, however hard this may be; to abjure cruelty; and to repair in a willing spirit any unjust damage they have done to others.

(III) DEVELOPMENTS POST THE JUDGMENT — A LEGAL TIMELINE

The judgement in Suresh Kumar Koushal was itself delivered in fairly dramatic circumstances. It was delivered one year and eight months after the hearings on the last day of the tenure of the senior judge on the bench. Justice Singhvi's last judicial act in his tenure was to pronounce the judgment on December 11, 2013.

The judgment generated a popular outrage both within the LGBT community as well as from large sections of civil society. The outrage took the shape of protests and demonstrations as well as serious critiques in the media. The sense that justice was not done to the LGBT community was also channelled before the Supreme Court in the form of review petition filed by eight parties. The eight parties included the Union of India, Naz Foundation, Voices Against 377, Minna Saran and 18 other parents, Dr. Shekar Seshadri and 13 other mental health professionals, Nivedita Menon and 15 other academics, and Shyam Benegal.

However on 28.01.14, the eight review petitions were dismissed by a Bench comprised of Justice Dattu and Justice Mukhopadhyay on the ground that

“We have gone through the Review Petitions and the connected papers. We see no reason to interfere with the order impugned. The Review Petitions are, accordingly, dismissed.”

While the decision in the review was a serious setback to the LGBT community in the quest for justice, it did not lose heart. As a press release issued by the community put it,

“Going forward, we will build on the gains of this unprecedented assertion in favour of the rights of LGBTQ persons. We will

continue to wage the legal battle against Section 377 as there is an urgent and compelling case for the law to go. We will pursue all legal options, including curative petitions, to again assert that the Court has made an egregious error in this case by denying the right to equality and dignity to a section of the population. We will mobilize as a community to ensure that there is no legal or extra-legal violence or discrimination faced by LGBTQ citizens, we will expand the networks of support spaces across the country. We will continue to protest and advocate with all institutions and persons to remove any discrimination on the basis of sexual or gender identity.

We see the dismissal by the Supreme Court as nothing but a temporary reversal. The history of struggle against anti-sodomy laws worldwide teaches us that, sooner or later, unjust laws are defeated even as the battles may be long. As the campaign started on 11.12.13 states: 'Section 377: There is No Going Back'. Regardless of the Court's ruling, we walk with pride. As the Delhi High Court judgment reminded us, our rights are inalienably ours – they Court did not confer them on us, it cannot take them away."

The final legal step available to the community in this round of litigation was the remedy of the curative petition. As the national elections approached, the curative petitions by seven parties were filed by the first week of April, 2013. Within days of filing the petition on April 22, 2014, the matter was mentioned by several senior counsels including Anand Grover, Harish Salve, Ashok Desai, Chander Udai Singh, Mukul Rothagi and Shyam Divan representing the various parties before a bench of Chief Justice P. Sathasivam, Justice Ranjan Gogoi and Justice N.V. Ramana urging the Court to consider an open court hearing in the Naz matter. The Court agreed to an open court hearing.

Since that date there has been no further developments in the matter.

(IV) ABUSE AND HARASSMENT SUFFERED SINCE THE JUDGMENT BY THE LGBT COMMUNITY

A key question that has repeatedly arisen during the 377 litigation has been the actual impact of this law on the lives of LGBT persons across the country. The Supreme Court seemed unconvinced that the law continues to impact everyday life in a serious way but rather observed that '[in the] last more than 150 years less than 200 persons have been prosecuted (as per the reported orders) for committing offence under Section 377 IPC.'

In observing thus, the Supreme Court confuses prosecution with persecution. While it is true that there are less than 200 reported cases in the AllIndia Reporters pertaining to Section 377 that does not tell the whole story. The cases reported are a fraction of those which are taken in appeal to the High Court as not all the prosecutions in the trial court make it to the High Court. Beyond the story of those cases which finally make it to court are those which never move beyond the FIR. And of course those which finally take the form of the FIR are but a fraction of those cases in which FIRs are not filed but Section 377 is used as a threat to abuse and extort, humiliate and degrade

The only way the impact of Section 377 can be understood is as a gigantic iceberg (see Fig.1). At the tip is brutal police action resulting in the filing of a case and at the base are the innumerable threats which LGBT persons encounter on a daily basis. (See Annexure I for a listing of some of the ways Section 377 has been used)

4.1 Cases filed under Section 377 against LGBT persons

Since the recriminalization of section 377, the law has been directly invoked to arrest and harass LGBT people. The following two cases are illustrative examples.

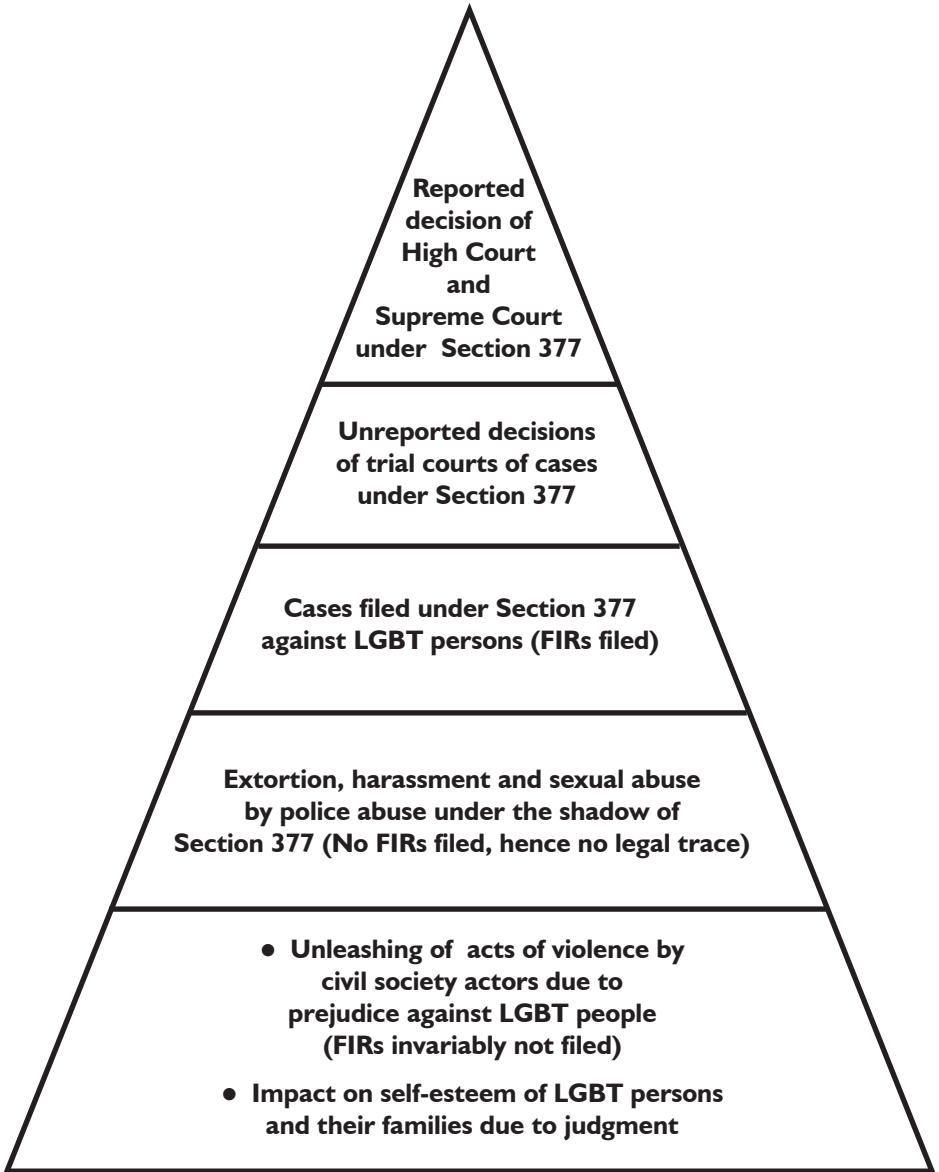


Figure 1: Impact of Section 377

4.1.1 The Hassan incident of 2014⁹

In the midnight of 3rd November 2013, the Hassan police barged into the house of X, a sexual minority person, and asked him to accompany them to the police station under the guise of asking him to provide counselling to a HIV positive person. They had found out his address from the Program Manager of Swami Vivekananda Youth Movement (SVYM), an NGO that runs the Government's HIV prevention project for sexual minorities. The Program Manager was put under tremendous pressure to identify other project staff members. Later, X was asked to provide the addresses of his colleagues.

The Arrests

The Hassan police then carried out a systematic raid within 3 hours and arrested 13 persons under Section 377 most of whom were from working class backgrounds. Fourteen persons (13 arrested persons and one more person who is presently 'absconding' according to police) were charged under three separate FIRs (First Information Reports) by the Hassan City Police. Some people were picked up from their homes and were arrested on the false charge of having 'unnatural' sex in public. Furthermore, at the time of the arrest the Delhi High Court judgement was in force and hence they were wrongly charged under Section 377 of the IPC.

The arrests and subsequent ill-treatment of the sexual minorities was undertaken at the behest of the Superintendent of Police (SP) Ravi D Channanavar, who was aided by Sub Inspectors PSI Mahesh JE and PSI Krishna SK. Very quickly the arrests became a media spectacle with the media storming the police station and televising photos of those arrested along with details of what they were allegedly doing. The accused were tortured physically,

⁹ *Police Terror on Sexual Minorities in Hassan, Karnataka, A Report.* See <http://altlawforum.org>

sexually and psychologically in the police station. They also suffered sexual harassment for 10 long days inside the jail.

Immediate Media Coverage

Some of the headlines in the next day's newspapers besides being sensational and salacious also played up stereotypical ideas around homosexuality.

'Student got HIV due to his engagement in Homosexual activities' (*Prajavani* dated 05-11-2013 page 5),

'Support for homosexuality: Including Doctor 14 Homosexuals Arrested, Homosexual sex in public places, Sexual Violence on innocents' (*Vijayavani* 05-11-2013),

'Including Doctor 13 Homosexuals were arrested. Police busted homosexuals network' (*Kannada Prabha* dated 05-11-2013, Page 1)

'Cops on Lookout for Sex Racket Accomplice' (*The New Indian Express*, Bangalore, Wednesday dated 06-11-2013).

Initial FIR

In one FIR, the complainant, a 21-year college student, alleges that in 2011 he was coerced into having sex with 6 persons. These 6 persons, according to him, blackmailed him and said that they would reveal his sexual history and his sexual preference for men to his college authorities, to other students in his college as well as to his parents if he did not cooperate. He said that he was forced into having 'unnatural' sex and hence was infected with HIV. It is only now in 2013 that he has had the courage to report on what had allegedly happened to him two years ago. Based on this complaint the police registered a case under Sections 143 (being member of an unlawful assembly), 377 (unnatural sexual intercourse), 114 (punishment for abettor), 506 (criminal intimidation), 270 (malignantly doing an act likely to spread infection or disease dangerous to life) of the Indian Penal Code.

Additional FIRs

Another two FIRs were registered around the same time, suomotuby the police against eight of the accused, under Sections 377 (unnatural sexual intercourse), 114 (punishment for abettor), 294 (doing obscene acts in public) and 34 (act done by several persons in furtherance of a common intention) of the IPC. The complaint by the police officers was that eight persons were found engaging in unnatural sexual acts in public.

This suomoto action by the police as well as the collusive fashion in which the three FIRs were registered suggests that the sole objective behind these rapid actions was to target the sexual minority community. The first FIR is supposed to be a complaint of forcible and non consensual sex. A closer analysis reveals many discrepancies and therefore raises doubts about whether this individual was used by the police and coerced into filing a complaint against the other individuals. A closer reading of the three FIRs and the time and manner in which the arrests were made, provides little proof of reliability regarding the alleged incident. The accused were released after being kept in custody for ten days. The arrest and ten days police custody has greatly affected these individuals' lives both emotionally and psychologically. They faced abuse, torture and harassment because they were considered easy targets due to their sexual preference and their class.

Violence and Sexual harassment

The police used intimidation and threats to coerce the accused into coming with them and to “cooperate” in giving details about other sexual minorities. This puts enormous pressure on the individual and the person is wracked by guilt that they betrayed their friends and colleagues.

“I was forced to sign on some papers and they took my thumb impression too.” (A, arrested in Hassan)

Every question of the accused regarding their alleged crime or clarifications on the next course of action was met with severe violence and refusal to provide explanations. They were thus in a state of constant fear, both of unknown consequences and physical, emotional and sexual violence. Many of them spoke of how they were forced to strip off their clothes, their underwear pulled down and the policemen touching their private parts with a lathi. The lathi was pushed between their legs while the policeman, PSI Mahesh made obscene comments.

“In police station I witnessed the police beating X and Y. Police humiliated and teased them in filthy language, accused them of not being proper men and wearing saree and made other derogatory remarks...none of us dared to question them after such humiliation. I requested them to allow me to inform my family but they took away my cell phone.” (Z, arrested in Hassan)

The accused were kept in a perpetual state of tension and felt highly vulnerable by public humiliation, terrorisation and threat of disclosure of their sexual preference to the media. Due to police’s disregard for the rights of X, Y and others, the other inmates at the police station too perpetuated physical and psychological violence on them.

In jail every inmate talked about us in a filthy manner. They called us Gandu, Chakka, they said “oh yours is the chakka case?” Jail inmates joked at us and said we are diwali offer for them..and that they will have good time using us. (W, arrested in Hassan)

Right to Dignity

The police publicly humiliated these sexual minorities, mocked them and sexually abused them due to their sexual preference and gender identity. Their right to dignity and privacy was violated by the police when they barged into their homes and revealed their sexual preference to the

family and neighbours. The media's presence early morning aggravated the situation and the police did nothing to protect sexual minorities' identities. The harassment was so systematic that many of the arrested were inclined to commit suicide and were begging to be released from jail as early as possible.

“My finger got swollen due to the beating. I was extremely upset when they harassed R and, molested him. It was hell as we are not able to understand anything...Police continued using abusive language. The PSI asked us who gave us the right to wear Saree?” (X, arrested in Hassan)

Since this incident revealed the sexual preferences of these individuals, they have faced many familial problems. Y said that his mother didn't talk to him for a few days after he was released from the police station, because according to her, their entire family has been humiliated by this incident. She even locks him up when she goes to work and does not want her son to even go to the office of the Sexual Minority Community Organisation. X said that even his daughter in school has not been spared, as her teachers have asked her about her father being arrested and the exact reasons for it. X is now attempting to get some stable employment somewhere outside Hassan and find another school for his daughter.

“I can't live here. I had very good reputation. Now people won't talk to me. Police have destroyed my life, my future and my right to live. We were tortured and our future is bleak...the police are responsible for this.” (Z, arrested in Hassan)

Since everyone one in the neighbourhood knows them and knows about the incident, their movement has become restricted. These sexual minorities are now afraid to move out of their homes freely. Furthermore, they had no support initially either from their employers, or the public. In fact,

SVYM (Swami Vivekananda Youth Movement), the employer of two of the accused, went so far as to distance themselves from these individuals, by informing newspapers that these people are not employees of their organisation. Since most of the individuals arrested were working class sexual minorities, they were treated in an inhuman manner.

“I was shocked that two other people, brought in for our case were let off, only because one person’s wife was in the police force and another person was a lawyer. Even their families were there and they were released immediately. In my case they did not even let me inform my people.” (X, arrested in Hassan)

4.1.2 The arrest of a victim of blackmail under Section 377

As per an FIR registered on 16.04.14, this incident involves the blackmail of a doctor by other persons with whom he had engaged in sexual intercourse. The doctor was initially intimately involved with an X who then introduced him to his friends Y, Z and A. On one occasion, Z and A filmed the doctor having sex with the other two men. The four men then used that footage to blackmail the doctor into paying them Rs 5 lacs by threatening to release the video to the police and the press. The doctor initially paid them the five lacs. Y told his brother B who then told C and D about what had happened and all seven of them approached the doctor again with a demand for 25 lakhs. The doctor promised to give them 11 lacs and finally gave them 7 lacs which they distributed among themselves. The police were somehow tipped off about the incident and proceeded to arrest all the seven youth as well as the doctor. All of them were charged under Section 377 and the seven youth were additionally charged under Section 384(extortion).

The point to be noted is the direct and invidious impact of Section 377 of the Indian Penal Code. First, the fact that the seven youth felt emboldened enough to commit the offence

of blackmail against the doctor largely stems from the fact that Section 377 makes same sex relations a criminal offence. What the law does is allow for blackmail with impunity for the simple reason that consensual sex in private is also made an offence under this law.

Secondly, the presence of Section 377 on the statute was an additional inhibiting factor as far as filing any complaint of blackmail was concerned. This was in spite of the repeated blackmail to which the doctor was subjected. Thirdly, the case illustrates the arbitrary power that Section 377 vests in the police. It should be noted that it was the decision of the police to invoke Section 377 against the doctor. In spite of the fact that there was no complainant, the police of their own accord decided to invoke Section 377 against a person who was the victim of repeated blackmail. The victim of blackmail is thus re-victimized.

4.1.3 Man booked under Sec 377 after wife secretly films him with another man

In the month of October in 2014, a woman who was suspicious about her husband engaging in extra-marital relations with other men installed a web camera in their bedroom and left home for 10 days in order to trap him. On reviewing the footage she discovered that he was indeed sleeping with other men. Rather than initiating civil action for divorce, she took this footage to the police who then registered an FIR under Section 377 (unnatural sex) and Section 420 (cheating) and arrested the husband.

This case has many complex nuances such as what is the zone of privacy within the realm of a marital relationship and what is the extent to which the state should be allowed to intervene in a marital relationship. There are also complex relationships of power including that based on male privilege and authority intersecting with marginalisation based on sexual orientation and gender identity.

What one can clearly state is the need for a society and legal framework which does not impede the development of full transparency and openness in the marital relationship. Quite obviously, if society did recognize and legitimize same sex relationships on the same pedestal as heterosexual relationships, then it would result in a decrease in the number of those who are forced by circumstances into entering into heterosexual marriages and thereby causing suffering and misery to the spouse whose legitimate marital expectations are left unfulfilled. As such the only long term and sustainable solution to such social problems is the decriminalization of homosexual relationships as well the recognition (socially, legally and culturally) of same sex relationships.

4.2 Greater impunity to police abuse due to judgment in Suresh Kumar Koushal

The Supreme Court judgment has emboldened and lent a shadow of assumed legality to police clampdowns on the very expression and dignity of LGBT persons.

On the Saturday after the release of the judgment, i.e. 14th December, 2013, two kothis were harassed and abused for spreading awareness about HIV/AIDS and safe sex. In the review petition filed by Voices Against 377, the Affidavit of Ajay R.M. a transgender HIV/AIDS field worker swears to the fact that:

“I was told that anyway our community was being talked about on all media including the TV and the newspaper. I was told that inspite of such a big publicity of the Supreme Court judgment which made it a criminal offence to be a sexual minority, I and Prem were still indulging in homosexuality. The police said that we should stop being homosexual since the judgment had now come out.

“I answered by saying that we have not come to the railway station to have sex, I and Prem had only come there to hear the community members speak about their pains and sorrow. The

police then threatened us and told us that they will file cases against us as anyway now what we were doing was illegal.”

In the review petition filed by Voices Against 377, the Affidavit of Laxman S.T. a HIV/AIDS outreach worker in Haveri, Karnataka swears to the fact that:

“On 20.11.13, I was in a meeting with sexual minority community members, when a police officer came to us and started asking us questions in an aggressive, demeaning and rude manner. They inquired about the reasons for our gathering and the reasons for the meeting. I explained the work of our organization to him and duly answered all his questions.

However, the police officer was not convinced and asked to check my bag. He emptied the contents of the bag which had condoms, gels, training material and flipchart with information on STDs. The officer asked what these disgusting photographs for. All my attempts at explaining our work to prevent sexually transmitted diseases were unheeded to.

The officer went on to say that carrying condoms is illegal and alleged that we distribute it to everyone in the name of distributing it to sexual minority community members. When I denied such allegations, the officer got very angry and exasperated and said that the societal attitudes against members of the community are correct and that we are the reason HIV is prevalent. Further, they abused us for taking up such a job and asked us to pursue other respectable jobs.

All my attempts at explaining that this is a project recognised by NACO and the kind of harassment that community members face in other job settings including being called chakka, gandu and other such derogatory terms for having female mannerisms and being effeminate was received with a severe admonishment that we never be spotted again at that place. Subsequent, yet again, a week after the judgment of the Supreme Court recriminalizing homosexuality, two

police officers harassed members of the community. We had just then received the details of the judgment at our office and I had gone to the field to check on the members of the community. To my utter shock and distress I saw two police officers beating community members. I urged the police to stop beating them and asked them why they were doing so. The officers mockingly said that I should be knowing the reason better as the news is out everywhere including the news papers, TV and everyone is talking about it. They said that they are aware of the judgment and will not tolerate seeing us in the open in spite of it.”

There were other brutal instances of violation suffered by the LGBT community in the course of the year.

- On her way to Khwaja Moinuddin Chisti, in September 2014, a trans person was in Ajmer was forced to perform sexual acts and filmed and was threatened to be booked under a narcotics case if she did not co-operate with them. They allegedly tormented and gang raped her the whole night while kept locked in the prison.¹⁰
- In June 2014, while walking on the street in the night, a man who identifies his orientation as gay was abused and assaulted by couple of police officers who after commenting on his dressing, fondled, dragged and kicked him. He posted online of his experience of this incident while constantly being scared of Section 377 being used on him.¹¹
- On November 2014, after being picked up by the police authorities and constantly harassed by them, Illiyana committed suicide.¹²

¹⁰ See <http://timesofindia.indiatimes.com/india/Transgender-raped-by-cops-fights-for-justice/articleshow/42319820.cms>.

¹¹ <http://www.newindianexpress.com/cities/chennai/Gay-Man-Alleges-Abuse-Assault-by-Cops/2014/06/14/article2279588.ece1>

¹² <http://www.gaylaxymag.com/latest-news/andhra-transgender-suicide-after-police-harassment/>

- On 26th November 2014, around 43 people from the hijra community were rounded up by the police and sent to Beggars Colony and booked under the Karnataka's Prevention of Beggary Act. The hijras were picked up while they were going about their everyday business on the streets, some were picked up from their homes and yet others who went to inquire about what was happening to their friends in police custody were themselves picked up.¹³
- On November 2014, four 17 year old boys in Pune were sent to an observation home after being charged for offences under the Protection of Children from Sexual Offences Act, the Information Technology Act and section 292 (Circulation of Obscene material) and section 34 (Common Intention) of the Indian Penal Code for privately circulating a video of themselves engaging in sexual acts. The video was made by the boys under no pressure and with full consent. The video was circulated among a group chat on Whatsapp from where it got circulated among others.¹⁴

There are, in fact, innumerable lived experiences and lived realities of people who face homophobia and transphobia but never report it because the very institution that is supposed to protect is one of the perpetrators of that phobia and harassment.

4.3 Filing of false cases by the Police to victimize LGBT persons

The other phenomenon which has been observed is the use by the police of other provisions of the IPC to victimize members of the LGBT community. These are vindictive moves to counter resistance by the community

¹³ <http://paper-bird.net/2014/11/28/buggery-and-beggary/>

¹⁴ <http://www.punemirror.in/pune/civic/Orgy-video-on-WhatsApp-lands-four-in-the-soup/articleshow/45276484.cms>

- Hassan Police arrested two transgender persons, claiming that they were suspects in a murder case, despite lacking any evidence in June 2014. The only proof of their suspicions they offered was that cell phone tower records indicated that mobile phones belonging to these two individuals had been present in the area when the murder took place. Both the cases were filed suo moto by the police. It is the suspicion of the LGBT community that these cases were filed purely with the motive of victimizing those who had been very active in demonstrating against police violence and harassment in the first set of Hassan arrests in October, 2013.
- In the second case, on 13th July, 2014, a complaint was lodged by an unknown person to the police. The arrests took place on the 2nd of August, unofficially. The Police have booked – 26 year old A (name withheld to protect confidentiality), as first accused; at the time of arrest, A belonged to Hassan who worked as a sexworker. The second accused is 28-year old B (name withheld to protect confidentiality); he is a known sexual minority rights activist in Hassan. Both of them have been picked up by the police, without any kind of intimation to their family or friends, under the pretext of possessing ‘police information’. They have been beaten up, threatened, and forced to imprint their signatures on the blank papers. This kind of treatment was also inflicted on the other four to five people who were picked up alongside them by the police. The transgenders were kept in a lodge and tortured to admit the allegations. When this became known to the Karnataka Sexual Minorities Forum (KSMF), the Forum immediately took action and made inquiries with the concerned police stations and lodged a complaint with the IGP Sri. Rama Subba Superintendent of Police, Mysore and Sri, Lalrokhuma Pachau, DGP in Karnataka. The next day, the Dist SP Ravi D Channannavar took action and released three members but continued to detain the first two accused (A + B). The police authorities informed the

news to both print and electronic media, and the media's coverage of the story has emphasised the fact that the arrested were members of the sexual minority community in a salacious and sensational manner. This has deeply traumatised the sexual minority community in Hassan, and nearby areas.

- Following this incident, the Mysore police have also slapped fabricated murder charges on 6 sexual minorities on 8th Sep., 2014, the 'murder' in question being that of a person who died of heart attack in his eatery.
- Bengaluru police slapped a fabricated murder case against a transgender person in September 2014.

4.4 Unleashing of popular prejudice due to the judgement in Suresh Kumar Koushal

An Affidavit of Mukesh Deivanayagam who identifies as a gay man attested to the fact that posters appeared in several parts of Madurai on 18.11. 2013 (one week after the judgment under review) calling for the death penalty for LGBT persons. The posters state:

Government of India:

- Forget about legalizing homosexuality in the name of personal liberty
- Change the punishment for homosexuality under Sec 377, from life in prison to death penalty

Government of Tamil Nadu:

- Arrest those people, the cultural terrorists, who support homosexuality

"If a society turns a blind eye to social evil, it will be punished by god" — Prophet Mohammad

INL Party, Madurai

The deponent goes on to state that:

“It is my belief that this form of vitriolic prejudice which should not be expressed in any civil society is now being expressed openly because of the judgment of the Supreme Court. The Supreme Court judgment has emboldened people to freely and publicly express their prejudice.

I believe that when there is a call for the death penalty to be given to homosexuals, I fear for my life. Calls for people like me to be put to death directly impacts on my ability to lead a fulfilling life and places me in constant fear of persecution. It directly impact my right to live with dignity. In effect I am being considered less than human and my life is seen to be of little consequence purely because of my sexual orientation.

This form of public expression of deep hatred towards a community, engendered by the Supreme Court’s judgment, should not be allowed as free expression as it unfairly impacts the lives of people such as myself as well as others who are homosexual. It creates a sense of fear, deepens the feeling of vulnerability and chills the public expression of LGBT persons.

These forms of public expression of hatred and disgust towards the LGBT community was unknown in Tamil Nadu. For the first time, these expressions are being made public. It is my belief that the prejudiced elements of society which were held in check, now feel free to express their opinions as the Supreme Court decision is seen as having given a public imprimatur to irrational prejudice.”

The irrational prejudice testified to by Mukesh Deivanayagam does not just take the form of a call to violence but translates into violence itself. Here are some instances which have been documented over the course of the year:

- In June 2014, after being assaulted by a man in public, Durgadevi in Madurai after receiving bodily injuries went to file a police complaint (with the knowledge of the registered motorbike number of the man who beat her) and was shown

the door by the police authorities. Dejected, she later with Srinithi staged a protest in front of district collectorate.¹⁵

- In just a span of one year, there have been around 10 deaths, 3 gang rapes and 5 acid attacks. In one of the cases, 2 trans persons were attacked by a mob of around 30 men and other cases involve several individuals being attacked by beer bottles and a rock being smashed into one trans person's head.¹⁶
- In November 2014, a transgender while walking on the street was shot by some bike-borne assailants. One person died on the spot, another was severely injured.¹⁷

4.5 Impact on self esteem of LGBT persons and their families due to judgment

Mental Health Professionals have testified as to the sharp increase in mental health breakdowns, depression and other trauma experiences by LGBT individuals post the judgment. Mr. Vinay Chandran, a trained counselor in Bangalore in an affidavit filed before the Supreme Court states:

“That there is a great sense of fear returning to LGBT people in the city and state that I live in. That the judgment of the Supreme Court was perceived as being a great betrayal of the rights of LGBT people. That many experiences narrated by my clients and members of the support groups have shown me that they are once again facing greater harassment from various people in their lives that is in turn affecting their psychological well-being.

¹⁵ <http://timesofindia.indiatimes.com/city/madurai/Transgender-beaten-up-in-public-two-stage-protest/articleshow/37418063.cms>

¹⁶ <http://www.deccanchronicle.com/141121/nation-current-affairs/article/eunuchs-face-assaults-rapes>

¹⁷ http://www.business-standard.com/article/pti-stories/transgender-shot-dead-in-meerut-114111301311_1.html

“That in one instance, C, a 29-year old Bangalore-based software engineer, who identifies as a gay man and is open about his sexual identity to his family, was visiting his family outside Bangalore, and said that when the media reports of the Supreme Court judgment first broke, his father who was watching the news, turned up the volume deliberately so that everyone could hear what was being said. He then told me that his mother was walking around the house with a smile on her face. He went on to say that his mother then told him that she wished that no woman in India should ever have a child like him. C told me that he was too depressed that his family hadn’t come to terms with his sexual identity and that this change in the law made it worse for him. Although he was to spend some days with his family on holiday, the stress became too high and he returned to Bangalore on the day after the Supreme Court judgment re-criminalising homosexuality.

“That in another instance, D, a 39-year old Bangalore-based medical transcriptionist, called on the SAHAYA helpline, which I run, on the 12th December 2013 to state a few of his worries. He revealed to me that because he was effeminate he was harassed in his office. He said that his colleagues knew that he was attracted to men and they treat him with contempt because of his sexual orientation. He also said that he was very fearful for his life. He was worried that his office colleagues could complain to the police and have him arrested. I believe that the fear that D speaks of and feels is very real and is affecting his health seriously.

“That in another instance, E, a 32-year old self-identified gay man, who works as a software analyst at an investment bank told me that after the news broke about the Supreme Court judgment, he has heard demeaning, violent and hateful statements from colleagues in his office against homosexuals suggesting that people like him should be jailed. E feels helpless in tackling this kind of prejudice in his work place, considering that the law of the land had essentially made him a criminal.

“That the support group meeting of Good As You which was held at the offices of SWABHAVA in Sampangiramangar, Bangalore, on 12th December 2013 (the day after the Supreme Court judgment) had over eighty-five members attending the meeting. A large majority of those attending the meeting were between the ages of eighteen and thirty years. The group members raised many concerns such as: whether family members could now file complaints against them or force them to get married; whether the judgment could now be used to fire LGBT employees and render existing anti-discrimination policies in MNCs as invalid. A member said that one MNC was said to have suspended the activities of the LGBT-friendly workplace support group, following the judgment, in fear of contravening the law of the land. Most were worried if this judgment could further provoke police and extortionists to continue harassing and extorting them.

“That the media attention the Supreme Court judgment received, enabled a huge section of prejudiced reactions from religious leaders, leaders of different political parties and various people from different social backgrounds and that these reactions further deepened the sense of exclusion as well as the feelings of isolation, sadness and fear felt by my clients and the members of the support groups.”

Dr. Shekhar Seshadri, Professor of Psychiatry, National Institute of Mental Health and Neuro Sciences also filed an affidavit before the Supreme Court in the review petition testifying to the fact that:

“That I was deeply shocked by the Supreme Court judgment on 11th December 2013, re-criminalising homosexual relationships. The effect of the judgment is the return of a feeling of oppressive and continuous persecution for my LGBT clients. My LGBT clients again feel a sense of isolation and helplessness which is particularly strong among those who lack support systems. It is also true that LGBT individuals from

small towns, with little social support in terms of friends and family are the ones who are most at risk psychologically.

“That it is my fear that these feelings of helplessness and isolation will once again increase numerous vulnerabilities of LGBT persons: including a variety of mental health crises; multiple discriminatory experiences that will demoralise them and affect their sense of self; severe stigmatisation of their lives and relationships that will increase depression and suicidal tendencies; various forms of violence both within families and outside that will further disempower them and affect their productive lives as citizens of a free country.”

“The lack of self esteem which is exacerbated by the law can have deeply tragic consequences. In one reported incident a seventeen year old boy after being bullied by his batchmates and constantly harassed and teased as being called as an ‘eunuch’ committed suicide by setting himself ablaze.”¹⁸

4.6 Effect of judgment in increasing prejudice and hampering acceptance in families

LGBT individuals have also experienced resurgence in repression and oppression at the hands of their families – with huge pressure to get married and ‘appear normal.’

Laxman S.T. a HIV/AIDS outreach worker in Haveri, Karnataka testifies to this fact:

“I was accepted at home by my family before the Supreme Court delivered its verdict criminalising homosexuality. My father came for family counselling to my organization and was accepting of my identity as a kothi. However, subsequent to the judgment of the Supreme Court, there is immense pressure on me to get married. A lot of my friends have stopped talking to me as they are afraid that people will think they are

¹⁸ <http://timesofindia.indiatimes.com/india/Tamil-Nadu-boy-who-set-himself-ablaze-after-being-called-eunuch-dies/articleshow/36867641.cms>

homosexual as well like me. I am facing sever ostracization from all quarters. I was so scarred by the harassment by the police that I have asked my project officer to not send me on field work anymore.”

Another gay man, Vijay Mogli,[Vijayanti] describes a similar consequence:

“...[T]he judgment of the honourable Supreme Court of India in the case Suresh Kumar Kaushal and Others Vs. Naz Foundation and others shocked me and threw me and my parents back by 15 years.

That my father now strongly feels that his negative bias against homosexuality has been endorsed by the Supreme Court and insists that I should undergo conversion or reparative therapies again. My father uses threatening language to blackmail me emotionally and to attack my character and says that I am a threat to the society because of my homosexuality. My father also calls me a pervert in these threats.

That consequent to the judgment of the apex court, the situation in my house is either tense or gloomy with my father trying to persistently pressurize me to get married immediately to a girl. He refuses to understand that this could have a deleterious effect on my mental health and is most importantly a fraudulent transaction with an innocent girl. That he now feels that the Supreme Court judgment that criminalises homosexuality thus legitimises conversion or reparative therapy as conversion or reparative therapy seeks to convert homosexuals into heterosexuals.”

Even where families are supportive, LGBT folk and their families face severe ostracism and harassment at the hands of their neighbours and extended family members, all of which has increased post the SC judgment. Vijayalakshmi Chaudhuri a former school teacher in Chandannagar, West Bengal describes the increasing harassment that she and her gay son face in an affidavit filed in the review petition by Voices Against 377:

“The decision of the court has re-induced a deep level of trauma in me as I fear once again for my son. I am more fearful than ever before that the law could be used to unfairly target my son. Now that post the wide publicity given to the judgment of the Supreme Court, more people know that my son is a criminal.

Some members of our extended family, who never supported my son’s right to be what he is and were unhappy with our decision of coming out in his support are emboldened by the 11th December judgment of the Hon’ble Supreme Court and have started expressing prejudicial opinions against me and my family members. I am also apprehensive of this form of prejudice which has now been legitimized by the verdict of the Supreme Court being used to adversely impact my family’s ability to make a living. This form of unreasonable prejudice is now being sought to be used to even deprive me and my family of our stake in the family business and even deprive us of our place of residence. This form of prejudiced action was unthinkable in the days before the Supreme Court judgment.”

Chitra Palekar, a film maker from Mumbai, whose daughter Shalmalee Palekar is a lesbian in an affidavit before the Supreme Court in the review petition filed by Voices Against 377 states:

“I am currently the co-owner along with my daughter of the flat I occupy in a housing society in Mumbai, and in the course of time my daughter will inherit this flat. However in the light of the Supreme Court judgment, I am afraid that she may face problems in being able to claim the flat. The judgment will allow hostile neighbours to claim that she is considered a criminal under the law and she can be barred from membership of the housing society. If she lives there with her partner, any homophobic neighbour can use section 377 to complain that “immoral” and ‘criminal’ activity is going on in the flat and harass her. Housing societies are notorious as places of conflict where personal issues of members are used against them.

The Supreme Court judgment provides excellent ammunition to hostile neighbours to attack the LGBT people including my daughter.”

Therefore, Section 377 does not only expose the LGBT community to brutality, blackmail and harassment, but also creates a climate of persecution, hatred and vulnerability. Even as the LGBT community has asserted the right to dignity and equality, the SC judgment has only emboldened and lent legitimacy to attitudes of hate and oppression towards those with marginalised gender and sexual identities.

(V) SUPPORT AMIDST INNUMERABLE STORMS

The protests against the Supreme Court decision, **Suresh Kumar Koushal and another v. NAZ Foundation and others**¹⁹ began almost immediately after the judgment. **The Global Day of Rage Against Section 377** took place on 15 December, 2013²⁰ across seventeen cities in India and twenty two around the world including Delhi²¹, Ahmedabad²², Chennai²³, Gorakhpur²⁴, Kolkata²⁵, Lucknow²⁶, Mangalore, Mumbai²⁷, Mysore, Sangli²⁸, Trissur²⁹, Imphal³⁰, Guwahati³¹, Hyderabad³², Pune³³.

¹⁹ A.I.R. 2014 S.C. 563

²⁰ <http://iglhrc.org/content/global-day-rage-against-indian-supreme-court-judgment-377>

²¹ <https://www.facebook.com/events/168797849996585>

²² <https://www.facebook.com/events/624070320968261/>

²³ <https://w.facebook.com/events/222855397887400/>

²⁴ <http://timesofindia.indiatimes.com/life-style/people/I-hope-the-govt-pays-attention-Anoushka/articleshow/27473736.cms>

²⁵ <https://www.facebook.com/events/445426358913296>

²⁶ <https://www.facebook.com/events/380224398789379>

²⁷ <https://www.facebook.com/events/179549795577413/>

²⁸ <https://www.facebook.com/events/264502860366577/>

²⁹ <https://www.facebook.com/events/1385702231679246/>

³⁰ <http://varta2013.blogspot.in/2013/12/happenings-dec-13-update-2-pawan-dhall.html?zx=1253c032e0ea0ef6>

³¹ <https://www.facebook.com/events/434284686672121/>

³² <https://www.facebook.com/events/564676570289566/>

³³ <http://www.hindustantimes.com/entertainment/tabloid/celebs-stage-global-rage-protests-against-sec-377/article1-1163227.aspx>

The protest was also organized in cities around the world including New York³⁴, Berlin, Boston, Cambridge, Hamburg, Houston, Ithaca, London, Los Angeles, Montreal, Philadelphia, Richmond, San Francisco, Sydney, Toronto and Vancouver³⁵. The protests were followed by pride celebrations which also stressed the importance of the struggle against Section 377 in Kochi³⁶, Delhi³⁷, Bangalore³⁸, Mumbai³⁹, Chennai⁴⁰, Kolkata⁴¹, Gujarat⁴².

These protest and demonstrations by the LGBT community have helped consolidate support in favour of the LGBT community. After the judgment, there were several responses from prominent government and non-government bodies who criticised the judgment for ignoring individual as well as group rights of the people.

5.1 Support from political parties

5.1.1 Congress (I)

Sonia Gandhi, President of the Indian National Congress

³⁴ https://docs.google.com/document/d/InACQYndi3drz_9ngcAP36hTK3kjHkiCQmiuL3P08v0w/pub

³⁵ <http://www.buzzfeed.com/tasneemnashrulla/the-world-raging-against-indias-ban-on-same-sex-intercourse>

³⁶ <http://www.youthkiawaaz.com/2014/07/5th-pride-march-heres-keralas-lgbt-community-striving/>

³⁷ <http://in.reuters.com/article/2014/11/30/india-gay-parade-idINKCN0JE0NF20141130>

³⁸ <http://www.newindianexpress.com/cities/bangalore/2014/11/24/Walking-With-Gay-Pride-on-Their-Sleeves/article2538073.ece>

³⁹ <http://queerazaadi.wordpress.com/>

⁴⁰ <http://nirmukta.com/2014/07/10/chennai-pride-march-photo-essay/>

⁴¹ <http://timesofindia.indiatimes.com/entertainment/events/kolkata/LGBT-pride-walk-in-Kolkata-sees-huge-turnout/articleshow/38548966.cms>

⁴² <http://indianexpress.com/article/cities/ahmedabad/gujarat-gears-up-lgbt-pride-march-in-vadodara-ahmedabad/>

Party, expressing her disappointment over the judgment said, “I hope the Parliament will address the issue and uphold the Constitutional guarantee of life and liberty to all citizens of India, including those directly affected by the judgment.”⁴³

Her son, Rahul Gandhi, Vice President of the Indian National Congress also criticised the judgment by saying, “I personally believe that these are matters of personal freedom. I think, I would agree more with High Court verdict. I think these matters should be left to the individuals; these are personal choices. This country is known for its freedom of expression. So let that be.”⁴⁴

P. Chidambaram the then Home Minister said, “Every LGBT person has the right to have sex the way they want to and it is not for a court to say what’s unnatural.”⁴⁵

Kapil Sibal, the former HRD minister tweeted on the day of the judgment saying, “The Govt. is considering all options to restore the High Court verdict on #377. We must decriminalise adult consensual relationships.”⁴⁶

Milind Deora, a politician from Indian National Congress said, “Decriminalizing homosexuality marks a critical point of departure in the lives of many across the nation; young and old, gay and straight, rich and poor. And while full emancipation may yet be an unfulfilled desire, it is an

⁴³ <http://www.ibtimes.co.in/section-377-supreme-court-ruling-was-a-disappointment-says-sonia-gandhi-529575>

⁴⁴ <http://indiatoday.intoday.in/story/rahul-gandhi-wants-section-377-to-go-supports-gay-rights/1/330847.html>

⁴⁵ <http://www.ndtv.com/article/india/we-have-gone-back-to-1860-p-chidambaram-on-gay-sex-verdict-457845>

⁴⁶ <http://ibnlive.in.com/news/sonia-sibal-chidambaram-come-out-against-sc-order-on-section-377/439173-37-64.html>

important first step in a legitimate struggle along that long arc of justice.”⁴⁷

5.1.2 National Conference

Omar Abdullah, the Chief Minister of Jammu & Kashmir tweeted about the judgment as well saying, “People can take whatever stand their religious/moral beliefs dictate regarding #LGBT lifestyle choices but is terming it illegal not wrong?”⁴⁸

5.1.3 Aam Aadmi Party

Aam Aadmi Party issued a statement saying, “The Aam Aadmi party is disappointed with the judgment of the SC upholding the Section 377 of the IPC and reversing the landmark judgment of the Delhi High Court on the subject. The SC judgment thus criminalizes the personal behaviour of consenting adults. All those who are born with or choose a different sexual orientation would thus be placed at the mercy of the police. This not only violates the human rights of such individuals, but goes against the liberal values of our Constitution, and the spirit of our times.”⁴⁹ AAP included opposition to criminalization under Section 377 hindering an individual’s choice to choose a partner in their Mumbai manifesto.⁵⁰

5.1.4 CPI(M)

The manifesto for the 16th Lok Sabha elections, 2014 of the CPI(M) stated under the sub-heading of Major Constitutional and Legislative Reforms,

⁴⁷ <http://timesofindia.indiatimes.com/edit-page/Top-Article-Theres-Space-For-All-At-The-Party/articleshow/4973042.cms>

⁴⁸ http://articles.economictimes.indiatimes.com/2013-12-11/news/45080601_1_sc-verdict-lifestyle-choice-omar-abdullah

⁴⁹ <http://www.aamaadmiparty.org/news/aam-aadmi-partys-statement-on-supreme-court-judgement-upholding-section-377>

⁵⁰ <http://www.mid-day.com/articles/elections-2014-aaps-mumbai-manifesto-supports-lgbt-rights/15223052>

“Amend Section 377 of the IPC so that it does not criminalize adult consensual relationships irrespective of sexual orientation.”⁵¹

5.1.5 CPI(ML)

The CPI(ML) in its appeal for the Lok Sabha Elections 2014 under the sub heading :Repeal of Draconian, Archaic and Anti People Laws and Justice for all observed that;

‘Section 377 must be revoked’ along UAPA, AFSPA and sedition law.’⁵²

5.1.6 JD(S)

Some regional parties such as the JD(S) in Karnataka have also indicated support for decriminalisation of homosexuality. In a letter to the then Prime Minister Manmohan Singh, JD(S) stated that, ‘They have been supporting the sexual minorities’ movement for equal rights and justice for a decade. We will continue to support the struggle for human rights.

The laws of the land should reflect constitutional morality and guarantee fundamental rights to all citizens irrespective of them being a minority or majority. Constitutional guarantees can’t be denied to a section of population just because they are a miniscule minority. As a secular party we believe that laws should reflect the constitutional ideals and not the narrow minded views of any section of public based on religion, culture tradition etc.’⁵³

5.2 Support from State institutions

The National Human Rights Commission issued a statement saying, “The NHRC is of the view that all people regardless of

⁵¹ <http://cpim.org/sites/default/files/updates/2014-manifesto-16LS.pdf>

⁵² <http://www.kractivist.org/cpi-ml-pro-people-manifesto-asks-repeal-of-uapa-afspa-sedition-law-and-sec377/>

⁵³ Letter on file with the Alternative Law Forum

their sexual orientation or gender identity should be able to enjoy their human rights.”⁵⁴

There have also been several pro-active measures taken by several institutions and state governments to include policies etc. to support the rights of sexual minorities. In a notification issued by Directorate of Education, for all schools situated within the National Capital Territory of Delhi, “in exercise of the powers conferred by Clause D of Section 2 of the Right of Children to Free and Compulsory Education Act 2009 (35 of 2009) (RTE Act), the Lt. Governor of Delhi is pleased to notify inclusion of a ‘transgender’ child within the meaning of ‘child belonging to disadvantaged group’ as defined in the said section of the RTE Act.”⁵⁵ The Social Justice Department of the Kerala government set up a helpline for the transgender community and carried a survey with the aim of reaching out to them and visibilizing their experiences⁵⁶. The Ministry of Social Justice and Empowerment published a detailed report by the Expert Committee on the problems faced by the transgender community to make an in-depth study of their problems⁵⁷. Other pro-active measures taken have been by Delhi University which introduced option of ‘third gender’ in its admission forms for the post-graduate programme⁵⁸. The Bihar government has also included transgenders within the category of OBC thereby entitling them to the range of benefits available to the OBC grouping.⁵⁹

⁵⁴ <http://www.mid-day.com/articles/nhrc-asks-government-to-modify-section-377/244623>

⁵⁵ <http://ibnlive.in.com/news/free-education-for-transgender-kids-in-delhi-schools/506396-3-222.html>

⁵⁶ <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/department-reaches-out-to-transgender-community/article6315137.ece>

⁵⁷ <http://socialjustice.nic.in/transgenderpersons.php>

⁵⁸ <http://www.thestatesman.net/news/71481-DU-introduces-transgender-category-for-PG-admission.html>

⁵⁹ http://www.telegraphindia.com/1140910/jsp/bihar/story_18818288.jsp#.V1f40S7F8fN

5.3 Support in media and culture

'Satyamev Jayate', a talk show hosted by Aamir Khan ran a show specially focusing on the lives of people who belong to the LGBT community discussing the problems they face living in a country where such identities are criminalized⁶⁰. Aamir Khan too, in fact, was served a legal notice alleging that he promoted homosexuality on his show 'Satyamev Jayate'. Mandeep Kaur, an advocate in her plea said that Aamir Khan was promoting Section 377 in favour of rights of homosexuals which is against the law of the land.⁶¹

5.4 Other progressive legal decisions

There have been numerous other incidents in support of the rights of sexual minorities. National Legal Services Authority v. Union of India (NALSA)⁶² delivered by Justices K.S. Radhakrishnan and A.K. Sikri relied on Article 14 of the Constitution of India and said that the right to equality needs to be read to include transgenders as a third gender. All the expressions like 'person', 'citizen', the court opined are gender neutral and "take within their sweep Hijras/Transgenders and are not as such limited to male or female gender."⁶³ The Supreme Court also read the term 'sex' as per Article 15 and Article 16 of the Constitution of India to include gender identity⁶⁴ and drew a distinction between sex and gender. The court clarified that "each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical

⁶⁰ <http://www.hindustantimes.com/entertainment/television/aamir-khan-receives-request-to-support-lgbt-rights-on-satyamev-jayate/article1-1254173.aspx>

⁶¹ <http://m.firstpost.com/bollywood/aamir-khan-issued-legal-notice-for-promoting-homosexuality-on-tv-show-1783241.html>

⁶² <http://supremecourtindia.nic.in/outtoday/wc40012.pdf>

⁶³ At ¶176

⁶⁴ <http://kafila.org/2014/04/16/en-gendering-a-rights-revolution-siddharth-narrain/>

procedures...as a requirement for legal recognition of their gender identity”⁶⁵. The court also held that “values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognize those rights.”⁶⁶ Furthermore, “self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.”⁶⁷ The Government of India has asked for a clarification on the NALSA judgment with respect to issues such as transgenders being entitled to OBC reservation as well as what the category ‘TG’ entails etc.⁶⁸ This is a cause of concern as this could be a move to dilute the safeguards and protections of the NALSA judgment, in particular the right to reservation which the judgement has pronounced.

The Madras High Court in *Jackline Mary v. The Superintendent of Police and Others*,⁶⁹ read NALSA judgment as including female to male (FTM) trans persons as well. The court said, “At this juncture, we may again have a look into sub-para (2) of Para 129 of the judgement of the Hon'ble Supreme Court in NALSA's case wherein the Hon'ble Supreme Court has declared that the transgender persons have right to decide their self-identified gender and the Governments have to grant legal recognition of their gender identity such as male or female or as third gender. The Hon'ble Supreme Court has affirmed that this right

⁶⁵ At ¶120

⁶⁶ At ¶166

⁶⁷ At ¶169

⁶⁸ http://orinam.net/content/wp-content/uploads/2014/09/NALSA_UOI.pdf

⁶⁹ http://orinam.net/content/wp-content/uploads/2014/05/Judge_Result_Dispatch.pdf

flows from Article 19(1)(a) of the Constitution of India. In my considered opinion, in the case of Females to Males (FTMs) also, such fundamental right is available to them and therefore, it is for them to choose and express their identity either as females or males or as transsexuals”.⁷⁰ What is worrying is the recent clarification petition filed by the Union of India with respect to the implementation of the NALSA judgment. The Union of India took issue with the recognition of transgenders as a OBC category and also with the definition of who a transgender is. Based upon these reservations the petition asked for a modification of the judgment. The question to be asked is whether the Government is trying to dilute the safeguards of the NALSA judgment and in particular the right to reservation.

In *Kiran kumar Rameshbhai Devmani v. State of Gujarat*⁷¹, the dispute being a challenge over the refusal of granting tax concession to a film on the ground that it was based on a controversial subject of homosexuality; one of the grounds that the Commissioner of Entertainment Tax opposed the exemption to the film was “that the storyline of the film is on a subject which is unacceptable not only in the society in Gujarat but in the entire country and the world over. Though it cannot be stated that the storyline pertains to a social evil, however, the subject of homosexual relations is a controversial subject in the Indian society. It is a subject which the society avoids even discussing in open. The film promotes and supports homosexual relations.”⁷² The High Court of Gujarat rejecting this argument, allowed the exemption saying that “a controversial subject is different from a controversial film and the film being controversial and a film being objectionable are yet two different aspects.”⁷³ The court said that the issue might embarrass certain members and individuals of the society but

⁷⁰ At ¶136

⁷¹ (2014) 71 VST 555 (Guj)

⁷² At ¶15

⁷³ At ¶153

that does not mean that it would fall under Government Policy which said ‘Gujarati multi coloured films depicting evil customs, blind faith, sati, dowry and such social evils and those which are against the national unity shall not be granted tax exemption’. The Court further said that, “endorsing one’s right of expression does not imply endorsement of his view point. In any vibrant modern democratic society, divergent viewpoints is not only inevitable but is considered as a healthy sign. Diverse and antagonistic viewpoints can coexist and survive side by side peacefully in a modern cultured society.”⁷⁴

5.5 International support

Navi Pillay, the UN Commissioner for Human Rights said that, “Criminalising private, consensual same-sex sexual conduct violates the rights to privacy and to non-discrimination enshrined in the International Covenant on Civil and Political Rights, which India has ratified.”⁷⁵ UNAIDS issued a statement asking for the government to repeal laws concerning criminalizing consensual sex among same-sex adults and urged the government to protect human rights of the LGBT people.⁷⁶

5.6 The response of the current political leadership

While there has been a broad support from a spectrum of the political class, critically the current administration has been less than positive. The current Indian government has taken a non-committal stance in international forums and a more actively negative stance in domestic forums.

Rajnath Singh, (the then BJP President and now Home Minister) issued a statement saying that the party supports the SC judgement as they believe that homosexuality is an unnatural act.⁷⁷

⁷⁴ At ¶150

⁷⁵ <http://www.boell.de/en/2014/03/03/section-377-not-yet-lost-cause>

⁷⁶ <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2013/december/20131212psindia/>

⁷⁷ <http://www.firstpost.com/politics/bjp-will-not-support-unnatural-homosexuality-rajnath-singh-1286933.html>

The response of the Government on the floor of parliament to a question by Mr. Dharamvira Gandhi, the AAP MP from Patiala in parliament is also instructive. The question asked was :

- (a) whether the Government proposes to amend or repeal Section 377 of the Indian Penal Code (IPC);
- (b) if so, the details thereof;
- (c) whether the Government proposes to give legal status to the sexual relationships outside the gender binary in a context where the Supreme Court has recognized the third gender and guaranteed them rights under OBC category including holding discrimination on the basis of sexual identity and gender orientation as unconstitutional; and
- (d) if so, the details thereof?⁷⁸

Minister of State for Home Kiren Rijiju in a response to the question said, “No. The matter is sub-judiced before the Supreme Court. A decision regarding Section 377 of IPC can be taken only after pronouncement of judgement by the Supreme Court.”⁷⁹

In international forum such as the Human Rights Council, India abstained from voting in a UN Rights Council Resolution which requests the office of the High Commissioner for Human Rights Zeid Hussein to come up with a report for best anti-discrimination practices and violence against sexual minorities.⁸⁰

⁷⁸ <http://164.100.47.132/questionslist/MyFolder/22072014.pdf>

⁷⁹ <http://www.gaylaxymag.com/latest-news/government-doesnt-plan-to-amend-sec-377-till-sc-delivers-verdict/>

⁸⁰ <http://untribune.com/un-rights-council-adopts-resolution-supporting-lgbt-rights/>

(VI) THE WAY FORWARD

As this booklet has striven to communicate, the violence faced by the LGBT community has complex social roots that find legitimacy and sanction in certain repressive laws. Countering this marginalisation requires a combination of dismantling the apparatus of state oppression as well as building up the capabilities of all LGBT people live as equal citizens with dignity in our country.

On the way forward, there seems to be an impasse in which the LGBT community finds itself in. On one hand the proceedings in the Supreme Court with respect to the Koushal case have till now been disappointing. At the same time there are numerous positive developments including the NALSA judgement as well as judgments by both the Gujarat High Court as well as Chennai High Court which have taken forward LGBT rights.

Politically, there is a broader support across the political spectrum than ever before embracing parties from the center to the left. However the ruling party has oscillated from unequivocal condemnation to statements by some ministers which could be interpreted as equivocal support.

The political landscape indicates that it might be the right moment to make a powerful demand for the repeal of the law. If this present Government claims to represent the interests of all Indians it has not option but to move a bill in parliament to repeal Section 377. No responsible government should ignore the harassment and persecuted to which the LGBT citizens have been subjected because of an outdated and archaic legal framework. It is in fact the bounden responsibility of the Government, sworn to uphold the Constitution to redress the real grievances of the LGBT community.

The Government cannot shirk its constitutional responsibility by blanding stating that the matter is pending before the Supreme Court in the form of the curative petition and hence its hands are tied.

As the Supreme Court observed in Koushal,

‘Notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting Section 377 IPC from the statute book...’

The plea taken by the current administration that the matter is before the Supreme Court does not stand legal scrutiny. The plea only indicates lack of political will at best and at worst it is a fig leaf for the resolve of the government to continue to ignore the legitimate demands of LGBT persons for full moral citizenship.

As such the following demands are placed before both the Central Government as well as the State Governments:

6.1 Demands Upon the Central Government

1. Repeal Section 377 of the Indian Penal Code, 1860.
2. Amend Section 375 (rape law) to ensure that all persons regardless of sexual orientation or gender identity are protected from sexual violence.
3. The Enactment of comprehensive civil rights legislation to offer all gender and sexuality minorities the same rights and protection now offered to others on the basis of sex, caste, religion, etc. This must include special legal protection against untouchability practised against gender and sexuality minorities, especially transgender persons. This must also include basic civil rights such as the right to get a passport, ration card, make a will, inherit property, get married and adopt children and guarantees to basic public amenities and services regardless of change in gender or sexual identity.
4. The Implementation of the NALSA judgment.
5. Repeal of the Immoral Trafficking in Persons Act, 1956 and complete decriminalisation of sex work.

6.2 Demands Upon State Governments

1. Amendment of Section 377 (to decriminalise consensual sexual intercourse between adults).
2. Withdrawal of prosecution against all persons against whom cases under Section 377 has been filed on grounds of engaging in consenting sexual intercourse.
3. Issue a circular to all Superintendents of Police and Commissioners that no case shall be registered under Section 377 in case of consenting sex between adults.
4. Repeal of Section 36A of the Karnataka Police Act, 1963.
5. Training and sensitization of police personnel, inquiry into incidents of violence and strict action against those found to have engaged in abusive and harassing behaviour towards persons because of their sexual orientation or gender identity.
6. Ensuring the implementation of all rights under Criminal Procedure law to anyone arrested under the above mentioned oppressive laws [See Annexure II for a list of rights].

ANNEXURES

ANNEXURE I: ILLUSTRATION OF HARSH AND CRUEL TREATMENT EXPERIENCED AS A DIRECT CONSEQUENCE OF SECTION 377 IPC

Sl.	Date	Description of Incident	Source
1.	2001	Healthcare workers in Lucknow arrested under 377 for distributing condoms. Remain in jail for 47 days as the courts refuse to grant bail, 377 being a non bailable offence	An epidemic of hate: Human Rights Watch ,
2.	2004	Rape of Kokila. Kokila, a Bangalore based hijra gang raped by goondas. Kokila later taken to the police station where she was stripped naked, handcuffed to the window, grossly abused and tortured	http://iglhrc.org/content/india-rape-and-police-abuse-hijra-bangalore-call-action-sangama
3.	2005	Lucknow arrests. Four persons were arrested under Section 377. Due to the arrests not only were the four forced to undergo imprisonment, but also the family is forced to undergo a trial by not only the media but also by neighbours, community and wider society all of whom are now vastly titillated by the sex spectacle produced by the police for the public consumption.	http://www.yawningbread.org/apdx_2006/imp-249.htm

Sl.	Date	Description of Incident	Source
4.	2005	Arrests of five hijras and kothis in Cubbon Park, Bangalore for allegedly having sex in a public place	FIRs registered in the case, filed in Court
5.	2006	Suicide of Pandian. Pandian, a Chennai based aravani commits suicide due to harassment and torture by police officers. Pandian was picked up by police on an allegation of theft. There was evidence indicating that during police custody he was subjected to torture by a wooden stick being inserted into his anus and some police personnel forcing him to have oral sex.	Jayalakshmi v. State of Tamil Nadu 2007 4 MLJ 849 also noted in Naz Foundation judgment.
6.	2006	A case involving two women who wanted to live together. A magistrate's court in Delhi observed that the case involved a hidden allegation of 377, thus stretching the application of the section to an adult lesbian couple while the initial case was under section 366.	Recorded in Naz Foundation v. NCR Delhi
7.	2006	Four policemen actually raped and sexually abused a gay man including forcing him to have oral and anal sex in Delhi while holding him in jail overnight. "I was picked up by two police men. They accused me of being a homosexual saying <i>tu bhi wahi hai</i>	Recorded in Naz Foundation v. NCR Delhi

Sl.	Date	Description of Incident	Source
8.	2007	<p>(you are one of those). They started assaulting me with lathis, targetting my groin and buttocks.. abuse me using sexual and degrading language.”</p> <p>Arrest of Desmond Hope (aged 32) under Section 377 on grounds of non- consensual sex with Anwar (aged 24). Justice Britto in his bail order observed that, “Basically it appears that both the parties were adults and were consenting parties to the offence under Section 377 and if so the punishment cannot be severe.”</p>	Submission in High Court
9.	2013	Arrest of 13 persons under Section 377 in Hassan	http://www.firstpost.com/living/karnataka-police-ignore-delhi-hc-ruling-arrest-men-under-377-1227481.html
10.	2014	Arrest of 8 persons under Section 377 in Bangalore: A doctor being blackmailed by 7 other individuals after they have sex with him;	FIR Registered, Trial is ongoing

ANNEXURE II: RIGHTS UNDER THE CONSTITUTION, CR.P.C , AND JUDICIAL DECISIONS

1. FIR: You are entitled to a copy of the FIR which you register free of charge.
2. Arrest: No use of handcuffs without judges permission.
3. Police arresting you must wear clear and visible name tags and uniform.
4. You must be told why you are arrested, your right to bail and a lawyer of your choice.
5. Memo of arrest is to be made with time and date of arrest and to be signed by family member/respectable member of neighbourhood.
6. The Police must inform any person interested in your welfare about your arrest and the location of the place where you are kept when under arrest.
7. An accurate list of things seized from you must be prepared and you are entitled to a copy immediately.

Legal advice

1. If poor you have the right to demand a competent counsel at state expense.
2. If your lawyer is not competent you have the right to change your lawyer.
3. You have the right to interviews, visits and confidential communications with your lawyer.
4. Get your lawyer/organization/friends to keep calling up the Police Station wherein you are detained. If such calls are made the

police know that there is somebody to support you and are less likely to mistreat you.

Search

1. Two independent witnesses (Panchas) should always be present when you or your premises are searched.
2. Call two witnesses (not from your family) to witness the search.

Bail

1. Apply to the Court for release on bail immediately.
2. Keep the following ready for production on grant of bail (Ration card, salary slip, bank pass book or other proof of identity of the person standing surety).
3. Even if you do not have sureties you may be released on the deposit of a certain sum of money in court.
4. If you are refused bail you have the right to get bail if :
 - (i) The chargesheet is not filed within 60 days of arrest , if the offence is punishable for a period of less than 10 years.
 - (ii) The chargesheet is not filed within 90 days of arrest, if the offence is punishable for a period of more than 10 years.
 - (iii) If your bail is set too high apply for a reduction.

Interrogations

1. You can consult with your lawyer when you are being interrogated whether you are arrested or not.
2. You can't be forced to make a confession before the police or magistrate.

Torture

1. Torture is illegal. No solitary confinement, hard labour , change in diet or transfer without permission of the Judge.
2. If a confession has been taken after torture , inform the judge and retract it. Complain to judge about torture beatings etc and

ask for a medical examination immediately. The state must pay compensation for illegal detention and torture.

3. File a complaint before the Magistrate against the concerned Police Officer in case of torture, beating etc.

Production in Court

1. You have the right to get legible copies of all documents filed by the prosecution against you.
2. You can demand food and other basic amenities during your custody in court.
3. You have to be produced before the Magistrate within 24 hours of arrest. If you are not so produced, complain to the Magistrate.
4. You cannot be remanded to custody in your absence.

Medical examination

1. Request immediate medical examination on arrest. The medical examiner must record all injuries on a written form. Only sign an accurately filed form.
2. Ask for a copy of the form.
3. Ask for the Magistrate to send you to the hospital before police custody is granted.
4. A medical examination every 48 hours while in custody.
5. If you are under 18 years of age and your age is recorded wrongly and there is no documentary proof of your age, insist on medical examination to determine your age.
6. Make an application for medical treatment in case of sickness/HIV /Terminal Illness. You may be entitled to premature release.

*(Based on the poster "Know Your rights"
prepared by Human Rights Law Network/ Lawyers Collective)*

Annexure III: Post Koushal Timeline

Date	Incident
3 November 2013	Fabricated case against sexual minorities in Hassan
11 December 2013	Kumar Koushal v. Naz Foundation
15 April 2014	National Legal Services Authority v. Union of India
17 April 2014	Jackuline Mary v. The Superintendent of Police and Others
June, 2014	Arrest of a blackmailed victim under Section 377
June, 2014	A 17 year old commits suicide because of constant bullying
June 2014	A trans person in Ajmer gang-raped by police officials
June, 2014	Gay man faces police assault and abuse
June 2014	Durgadevi in Madurai stages protest after police takes no action against her assaulters
September, 2014	India abstains from voting on resolution supporting LGBT rights by UN Rights Council

Date	Incident
October, 2014	Man booked under Section 377 after wife secretly films him with another man
October, 2014	After Aamir Khan screens a show on 'alternative sexualities', a lawyer issues a legal notice for promoting a criminal offence
November 2014	A transgender shot dead in Meerut
November 2014	Illiya committed suicide after constant police harassment
26 November 2014	Around 43 people from the hijra community rounded up by the police and sent to Beggars Colony
November 2014	Four 17 year old boys in Pune were sent to an observation home for being involved in an orgy video

...inspite of the judgment of the Supreme Court, the only way the LGBT movement will go is forward and the arc of history though long will turn towards justice. We pledge to continue this struggle with redoubled vigour till such time that Section 377 is consigned to where it belongs — the dustbin of history.

**NO ~~377~~ GOING
BACK!**