

Press Release



We, the undersigned, strongly protest the action of the Lucknow police who on 7 July raided the offices of The Naz Foundation International and Bharosa, organizations working on HIV prevention and sexual health in Lucknow. The police arrested four activists and five other men on charges of **nirantar** conspiring to commit offences under Section 377, of the Indian Penal Code. The indiscriminate arrests have been made on the basis of an FIR registered by a *maalishwala* against an unknown individual. Reportedly, the charges against the activists are being made under Sections 377 (unnatural offences), Section 120 B IPC (criminal conspiracy), Section 109 IPC (abetment), Section 292 IPC (sale etc. of obscene books), Sections 3 and 4 of the Indecent Representation of Women Act and Section 60 of the Copyright Act (this last is completely irrelevant to the case). Bail was denied on the grounds that the activists are a "curse to society."

Section 377 prohibits specific sexual acts, namely oral and anal sex, whether between men or between men and women. The penalisation of sexual acts between mutually consenting adults violates a range of basic fundamental rights. On the one hand it is discriminatory and violates the right to life and personal liberty of sexuality minorities. On the other, it makes the basic fundamental rights to access accurate information, necessary healthcare services impossible and pushes the HIV/AIDS epidemic underground. As such it is the cause for the enhanced vulnerability of an already marginalized but significant part of the population. This law has been repeatedly condemned by human rights organisations, women's groups and groups working with sexuality minorities. Recently, the Law Commission of India has recommended repeal of Section 377. It is reprehensible that the police is misusing this law to harass HIV activists and also ordinary citizens whose sexual preferences are non-heterosexual. It is an outrage to call HIV activists a "curse to society".

The Government of India, through the National AIDS Control Organisation has adopted a 'targeted intervention' approach in the second phase of the National AIDS Control Policy. This includes identifying groups that are more vulnerable to HIV, and outreach and peer education amongst these groups. Men who have sex with men are one such group that has been specifically identified for intervention. Organizations around the country are working on prevention and awareness about HIV-AIDS with men who have sex with men, including gay men, as per this policy. Furthermore, they have to use sexually explicit materials for educative purposes. For an uninformed police force to seize such materials as "obscene" and to seize mailing lists, thereby exposing gay people to harassment, is a blot on India's democratic polity. The use of Section 377 against NGOs working on HIV/AIDS and sexual health including those working with MSM, as has been done by the police against Bharosa and NFI in Lucknow is a set back to HIV/AIDS prevention and control efforts throughout the country.

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While the press has sensationalized the issue by mentioning "child sexual abuse," the police have nowhere made this allegation nor is there any evidence of such activity.

We demand (a) immediate release on bail of all those arrested (b) restoration of all materials seized (c) withdrawal of trumped-up charges, especially charges under Section 377. We call upon NACO and State AIDS Control Societies to intervene in the matter, and also call on the UP government and the Govt of India to persuade the police of the impropriety and absurdity of their actions.

We also take this occasion to demand the repeal of Section 377, a law framed by the British in 1860 and since repealed in Britain itself. Homosexual relations between mutually consenting adults are legal in all modern democratic societies, including South Africa where the Constitution specifically provides protection against discrimination on the basis of sexual orientation. Independent India should get rid of Section 377, which is a vestige of colonial rule and an infringement of the democratic rights of all Indian citizens.

