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## STATEMENT & CALL FOR URGENT ACTION

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Reports have been received of Uttar Pradesh State Police raids of sexual health agencies serving gay and bisexual men and MSM (men who have sex with men but are not gay-identified) and the arrest of HIV prevention staff in Uttar Pradesh, India. The raids reportedly took place in the city of Lucknow, Uttar Pradesh state on July 7th. Arrests were made under the provisions of Article 377 of the Indian Penal Code, which prohibits "carnal intercourse against the order of nature." The Hirschfeld Centre is concerned for the physical integrity of those arrested as well as for the threat that this police action represents to all sexual minorities and HIV/AIDS prevention efforts and organizations in India. The raids may be tied to complaints recently filed by a variety of individuals and organizations with India's National Human Rights Commission requesting that body's intervention to halt the continued forced psychiatric incarceration and "treatment" of homosexual persons (for the ostensible purpose of changing their sexual orientations to that of heterosexuality).

Article 377 continues to exist on India's statute-books and to be rigorously enforced in spite of India's having signed and in 1979 ratified the International Covenant on Civil and Political Rights, a 1966 United Nations sponsored treaty that in 1994 was authoritatively interpreted to prohibit national laws criminalizing private, consensual homosexual conduct (in 1994, the United Nations Human Rights Committee affirmed in its decision in the case of *Toonen v. Australia* that the criminalization of same-sex sexual relations between consenting adults violates Articles 2 [equal protection] and 17 [right to privacy of the Covenant]). The Government of India has repeatedly been warned that its continuing to enforce the law is in violation of its international treaty obligations.

India has the second-highest incidence of HIV infection and AIDS in the world (after South Africa).

The reported raid stands in stark contrast to India's public acknowledgement at the recent United Nations General Assembly Special Session on HIV/AIDS (UNGASS) that lesbians and gay men constitute a marginalized community, vulnerable to HIV infection.

The incident occurred on July 7, when Uttar Pradesh State Police reportedly raided and closed the offices of Bharosa Trust, a local sexual health organization for men who have sex with men, and the Naz Foundation International (NFI) Liaison office in Lucknow, an international development agency providing technical support for the promotion of male sexual and reproductive health in South Asia. Police are reported to have arrested the Director of the NFI office, who also currently serves as acting Executive Director of Bharosa Trust, along with all the staff of Bharosa Trust and two additional staff of NFI, with the charge of conspiring to commit sodomy under Section 377, read with Sections 120b and 109, of the Indian Penal Code.



Section 377 of the Indian Penal Code punishes "carnal intercourse against the order of nature with any man, woman, or animal" with up to ten years imprisonment, with the explanation that penetration is necessary to constitute this offence. Section 120b provides for punishment of criminal conspiracy, the collusion of two or more people to commit a crime, while Section 109 outlines the consequences of abetment, the act of instigating another person to commit a crime.

After the seizure of HIV/AIDS prevention material—including brochures and videos stored in a resource and information library that were intended for internal training use rather than for public distribution, as well as condoms, lubricant, and a dildo—from these offices, Senior Superintendent of Police B. B. Bakshi concluded that both agencies were running "gay clubs" that cut against the grain of Indian values and ethnics, and argued that they were spreading gay culture throughout Lucknow.

On July 11, the Chief Judicial Magistrate in Lucknow reportedly refused the bail of the arrested employees of Bharosa Trust and Naz Foundation International. The arrest, charge, and bail proceedings allegedly took place without the formal presentation of a case diary. Neither evidence of physical penetration nor a victim have been offered by the police to support the charge of sodomy. Only on July 12 did police present a report to the Chief Judicial Magistrate; it stated that police sealed the offices of Naz Foundation International (but not of Bharosa Trust, so the offices of the latter have been reoccupied.).

Indian activists have described a pattern of conduct on the part of law enforcement authorities whereby Section 377 has been used as a ruse for police brutality toward men who have sex with men and gay men in public areas, as well as to intimidate lesbian and bisexual women. In the interim, the HIV/AIDS prevention work of these organizations remain suspended. Both Bharosa Trust and Naz Foundation International are recognized by and have collaborated with the Uttar Pradesh State AIDS Control Society as well as the National AIDS Control Organization (NACO), which has made the highly vulnerable population of men who have sex with men a public focus of its national project implementation plan.

#### JULY 10, 2001 UPDATE: FROM ADITYA BONDHYOPADHYAY, ESQ., LUCKNOW, INDIA

Yesterday I was at the residence of someone near the offices of Bharosa NGO. At about 11.30 I noticed that the lights were on in the office. Since the police had purportedly sealed the office I suspected something fishy and went over to enquire.

At the office I was stopped from entering at the door by a police person in Uniform. He said he would call his officials out. However, when he turned and went in I went in after him. There were 6 policemen there, all in uniform.

They were frantically removing and replacing a lot of papers all over the office. When they saw me they stopped for most probably they were not expecting any intrusion in their work. One policeman very angrily asked me who I was and what I wanted. I thereafter introduced myself and told them that I was the lawyer in the case of the organisation.

At hearing who I was the police person in an inspectors uniform, [I failed to see the name plate] said very sarcastically, "Aaiye, aaiye wakil sahab, aap hi ka intezaar tha" ["Welcome, Mr. lawyer we were only waiting for you."] He then said that he has come to know from IB that I am mailing everyone, and said I was a member of the gay club and that I was equally involved in the racket.



At that I replied that I was not aware of any racket or gay club, and that I am the lawyer of the organisation. I demanded to know what the police were doing in a supposedly sealed premises. I asked if it was another raid and if so where were the independent witnesses that is required under the law to be present. I also asked if they had the requisite permission from the court to enter the office.

At this, the same inspector abused me and said that they were the police and they could do whatever they felt like, and threatened me with arrest for taking on the case. He said that I had no business leaving Delhi and taking up the case in Lucknow and contacting people. The only reason why I was in Lucknow as per him was because I was member of the racket and the gay club. There was off course no use trying to convince him on the subtleties of the law and human rights.

I still insisted on knowing what they were doing and politely requested him to not use filthy language and make unsubstantiated allegations. At this he said no 'sharif [decent]' lawyer is out at a gay club at 11.30 at night. He said the police would only talk to me in the court. Since there was nothing that I could do I left the premises. However two policemen followed me to the residence of Arif Jafar nearby where I was going to meet his parents. They even made lewd comments at me.

So much for the sanctity of lawyer client relations. The UP police can effectively raise a lot of hallowed institutions to the ground.

I am convinced that the illegal entry at the office has been to plant false evidence. The police I feel may have by now done their homework and must have found out that BCC materials do not qualify as pornography. I am convinced that they are planting pornography to falsely implicate the arrested, for otherwise their case falls flat on its face and they make an [metaphorically speaking] ass of themselves.

Today [10.7.01] morning I had my doubts and therefore went to the office of Naz Foundation International [NFI]. There I came to know [from neighbours] that the police had come in a gypsy and had taken the same inside the premises and had spend an hour there. The office has 20 lakhs worth of office automation equipments and other furniture and properties. Plus the library has books which are quite literally priceless. I am not certain about whether the police removed any of this property. They could in the gypsy if they desired. If they do there is no one to stop them and in Lucknow apparently no accountability. The police is above the law and they can do what they want. But most importantly, I am again convinced that the main reason for their entry was to plant false evidence.

I had no option but to move the court of the Chief Judicial Majistrate today and seek remedy. The Learned Majistrate was very sympathetic and he has called upon the police to explain their conduct within 2 days. The matter would be heard next on the 12th of the month. But none the less the point remains that it is utterly shameful that the police in a society that supposedly calls itself liberal, progressive and democratic and actually indulge in such fascist tactics to harass others and illegally impose an medieval code of morality. It is shameful that the police have to take on the role of the false guardians of supposed morals and values, because they are convinced that they are dire failures in their real function of providing a safe existence to the citizenry.

The UP police is the shame that all individuals who value human rights and believe that there is some virtue in saving lives by HIV/AIDS intervention with vulnerable populations must stand



up and oppose. Otherwise as I am wont to repeat over and over again, Martin Neimoller may just stand vindicated in a liberal democratic and slightly hypocritic India.

#### SUGGESTED ACTIONS:

Contact the following representatives of the Government of India (by telephone, facsimile or e-mail where available) as well as India's ambassador in your home country to let them know of the damage the actions in Lucknow have the potential to do to both India's public health situation as well as its reputation as a nation that honors its international legal obligations:

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