Section 377 of the Indian Penal Code
"Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life...
Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

- Is Homosexuality a crime in India?
  No. It is not a crime in India.

- Then what is Section 377 of the Indian Penal Code (IPC)?
  Section 377 IPC only punishes sexual acts like anal and oral sex and not any sexual orientation.

- And when sex is consensual and between adults?
  Consent is irrelevant in 377. It applies equally to heterosexuals, bis, homosexuals, young or adult.

- If the police finds out that I am a homosexual, can they arrest me under Section 377?
  No they can't. Because being homosexual is not a crime. You can only be arrested if you are caught in the act of anal and/or oral sex.

- Is it a just law?
  Section 377 goes against the right to life (Art.19) and privacy (Art.21) guaranteed in the constitution. For the law to be declared invalid, a Court judgement to the effect is needed. This is yet to happen.

Lawyers Collective HIV/AIDS Unit

The main objective of the HIV/AIDS Unit is to protect and promote the fundamental rights of people affected by HIV/AIDS. This includes areas such as health care, housing, education, insurance, employment, terminal dues such as burial, pension, information and other services, rights to privacy and confidentiality, marital rights relating to maintenance, custody etc.

The unit undertakes Public Interest Litigation in areas related to
- Public Health issues like access to treatment
- HIV/AIDS education and awareness issues
- Gender issues
- Decriminalization of homosexuality
- Issues related to sexual minorities
- Testing, informational privacy, consent etc.
- Safe blood supply
- Access to services
- Protection of sex workers

People affected by the HIV/AIDS seeking legal aid, advice and support including organizations, individuals, members of the legal community, NGOs in need of informational support and other services related to their work with HIV/AIDS are encouraged to contact us at:

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7/10 Botawalla Building, 2nd Floor, Horniman Circle, Fort
Mumbai - 400 023
Tel: 022 267 6213/9 Fax: 270 2563
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Our Fundamental Rights under the Constitution of India

Article 13
(Laws inconsistent with or in derogation of the fundamental rights)
All laws in force in the territory of India immediately before the commencement of this Constitution, so far as they are inconsistent with the provisions of the fundamental rights shall, to the extent of such inconsistency, be void

Article 14
The state shall not deny to any person equality before the law and the equal protection of the laws within the territory of India

Article 19 (1*)
All citizens have the right
(a) to freedom of speech and expression
(b) to assemble peacefully and without arms
(c) to form associations or unions
(d) to move freely throughout the territory of India
(e) to reside and settle in any part of the territory of India

Article 20 (1)
No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the offence

Article 21
No person shall be deprived of his life or personal liberty except according to procedure established by law

Article 22
(Protection against arrest and detention in certain cases)
No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice
Rights related to HIV/AIDS

Right to informed consent
- "Consent" means two people agreeing to the same thing in the same sense
- In the context of HIV/AIDS, consent is necessary for testing and treatment
- Consent has to be free. This means that it is not valid if it is obtained through coercion, misrepresentation, mistake, fraud or undue influence
- Consent has to be informed. This means that you have to understand the implications of giving consent for it to be valid
- Consent in the context of testing for HIV/AIDS has to be specific. This means that your consent for a general check-up is not sufficient and it must be specifically given for the HIV test
- If you are tested or treated without your consent you can seek a remedy in court

Right to Confidentiality
- Confidentiality means keeping information about oneself, like a secret
- Confidentiality arises when there is a relationship of trust between two people
- A doctor's primary duty is to maintain confidentiality of information imparted by you. If this duty is breached you can sue
- A person need not be afraid of his/her HIV status becoming public knowledge on going to court. You can avail of legal remedies without revealing your identity

Right against Discrimination
- The right to equality is available against the state. State-run institutions and government hospitals etc. cannot discriminate on the basis of sex, religion, caste, descent, place of birth etc.
- The right to health is also a fundamental right. HIV+ve persons cannot be denied medical treatment and admission to government hospitals.
- Similarly, there cannot be discrimination in employment. An HIV+ve person who is fit for work cannot be terminated from service.
- If you are discriminated against you have remedies available in law

Civil Law Provisions

Can I get married to my partner of the same sex?
- The law in India does not recognize marriages between people of the same sex
- There is nothing illegal about having a non-marital understanding or agreement to stay together
- You can create rights for each other and through each other by using other laws. For example, in most circumstances, you can will your property to each other

Criminal Law Provisions

What are my rights if the police arrest me?
- To be informed of reasons for arrest
- To inform at least one friend or relative or other person known to you that you have been arrested and where you are being detained
- To consult a lawyer and be represented by him/her in Court
- If you cannot afford a lawyer, you have the right to ask for Free Legal Aid. The Magistrate who is hearing your case will provide you with a lawyer to help you in your case
- You cannot be handcuffed, but all means necessary to arrest you can be used if you resist
- To be produced before a Magistrate within 24 hours of being arrested
- To be released from police custody on bail if you have been charged with a bailable offence
- To apply for bail in the Magistrate's Court if you have been charged with a non-bailable offence
- To be examined at the time of your arrest. Any injuries on your body must be recorded
- To have a medical examination by a trained doctor every 48 hours during your detention
- To meet your lawyer during interrogation

Can I adopt a child?
- Whether you can legally adopt a child depends on your marital status, your sex and religion
- If you are a Hindu, Jain, Sikh or Buddhist the following rules apply to you:
  - You have to be an adult
  - If you are a single male or female, adoption is permissible, but it is not encouraged
  - If you are a married male, you can adopt a child with the permission of your wife
  - If you are a married female, you cannot adopt except in certain circumstances such as the death of your husband
  - If the child you are adopting is of the opposite sex, there has to be an age difference of at least 21 years
- If you are a Muslim, Christian, Parsi, or Jew:
  - There is no law that governs your right to adopt except if a custom exists in your community
  - You can, however, become the legal guardian of a child

Rights provided specifically for women
- Women and children cannot be arrested after sunset and before sunrise
- Only a woman police officer can search a woman being arrested
- Any medical examination will have to be conducted by a woman medical practitioner, or under her supervision
- Women have a special right to free legal aid
- Women cannot be detained in a cell where there are male accused

What are the provisions of Criminal Law that can protect me from harassment/violence?
- Almost all physical violence is punishable by law. The Indian Penal Code provides that the following are punishable:
  - Assault, which includes a threat of physical violence.
  - Wrongful restraint
  - Wrongful confinement
  - Voluntary causing hurt
  - Causing hurt in order to extort money or even a confession

What action can I take if I face harassment/violence?
- A non-cognizable offence is one in which the permission of the Magistrate is necessary before the police can investigate or make an arrest
- A cognisable offence is one in which such permission is not needed
- If the offence is cognizable, you can make a criminal complaint at the police station and make sure that a First Information Report is registered
- If the offence is non-cognizable, the SISHA will register an "NC" and refer you to the Magistrate
- You also have the option of making a complaint to the Magistrate. This may be a better idea where you have faced violence of harassment at the hands of a police person
- You can ask or instruct the Magistrate to make the violent person execute a bond for keeping the peace. He/She can be punished if this bond is broken
- If the person harassing you is a police person, you can make a complaint and ask for a departmental inquiry against him/her

The police have no right to harass you
- Police persons are bound to act within the law
- Harassment and extortion amount to misconduct
- Police persons may be suspended and action taken against them for misconduct under the Bombay Police Act
- If a public servant disobeys any law, knowing that such a disobedience will cause injury to some one, he/she can be punished under the IPC