

**IN THE SUPREME COURT OF INDIA
IN ITS CIVIL ORIGINAL JURISDICTION
AND
IN ITS JURISDICTION UNDER ARTICLE 142 OF THE
CONSTITUTION OF INDIA
CURATIVE PETITION (CIVIL) NO. _____ OF 2014
IN
REVIEW PETITION (CIVIL) NO. 41-55 of 2014
IN
CIVIL APPEAL No 10972 OF 2013
AND IN ALL CONNECTED MATTERS**

[Against the Impugned Final Judgment & Order dated 28.01.2014
passed by this Hon'ble Court in Review Petition (Civil) No. 41-55 of
2014 in Civil Appeal Nos. 10972 of 2013 and in all connected matters.]

IN THE MATTER OF:

Naz Foundation,

A Trust registered under the Indian Trusts Act,

At having its registered office

A-86, East of Kailash

New Delhi- 110065

...PETITIONER

Versus

1. Suresh Kumar Koushal

S/o Shri S.D. Koushal,

C-105, Nirman Vihar,

Delhi- 110092

Delhi

...RESPONDENT NO. 1

2. Dr. Mukesh Kumar Koshal

S/o Shri S.D. Koushal

C-105, Nirman Vihar,

Delhi – 110 092

...RESPONDENT NO. 2

3. Government of NCT Delhi,

through the Secretary

Social Welfare Delhi Secretariat

ITO, New Delhi

- Delhi ...RESPONDENT NO. 3
4. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi ...RESPONDENT NO. 4
5. Delhi State AIDS Control Society
B.S. Ambedkar Hospital
Dharamshala Block
Rohini, Sector 6
Delhi ...RESPONDENT NO. 5
6. National AIDS Control Organization,
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi ...RESPONDENT NO. 6
7. Union of India,
through Secretary
Ministry of Home,
North Block, India Gate
New Delhi ...RESPONDENT NO. 7
8. Union of India,
Through Secretary
Ministry of Health Family Welfare,
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi ...RESPONDENT NO. 8
9. Union of India,
Through Secretary
Ministry of Social Justice and Empowerment
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 9

10. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi-110 021 ...RESPONDENT NO. 10
11. Shri B.P. Singhal
Retd. DGP, Ex-MP
C-001, Stellar Kings Courts,
F-32, Sector 50
Noida – 201305 ... RESPONDENT NO. 11
12. Voices Against Section 377
A coalition of 12 organisations
Having its address at
11, Mathura Road,
First Floor, Jangpura B
New Delhi – 110013 ...RESPONDENT NO. 12

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10974 OF 2013

Naz Foundation Society,
Through Anjali Gopalan
Executive Director
A-86, East of Kailash
New Delhi- 110065 ...PETITIONER

Versus

1. Ram Murti
S/o. Sh. Dalip Rai
R/o. D-54, First Floor
Hauz Khas,
New Delhi- 110016 ...RESPONDENT NO. 1
2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat ITO,
New Delhi
Delhi ...RESPONDENT NO. 2

3. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi ...RESPONDENT NO. 3
4. Delhi State AIDS Control Society
B.S. Ambedkar Hospital
Dharamshala Block
Rohini, Sector 6
Delhi ...RESPONDENT NO. 4
5. National AIDS Control Organization,
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi ...RESPONDENT NO. 5
6. Union of India
Through Secretary
North Block, India Gate
New Delhi ...RESPONDENT NO. 6
7. Ministry of Home
through Secretary
North Block, India Gate
New Delhi ..RESPONDENT NO. 7
8. Ministry of Health
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi ...RESPONDENT NO. 8
9. Ministry of Social Justice
And Empowerment
Through Secretary
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 9

10. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi-110 021

...RESPONDENT NO. 10

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10986 OF 2013

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

Through its Chairman

...PETITIONER

Versus

1. Sanatan Dharam Pratinidhi
Sabha Delhi (Registered),
Delhi-110015
Through its Chairman
Shri Manohar Lal Kumar
(Delhi)

...RESPONDENT NO. 1

2. Shri Manohar Lal Kumar
Chairman, Sanatan Dharam
Pratinidhi Sabha
Delhi (Registered)
Delhi – 110015
Kumar House 4940-47,
Chowk Bara Tooti, Sadar Bazar,
Delhi - 110006

...RESPONDENT NO. 2

3. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO, New Delhi
Delhi

...RESPONDENT NO. 3

4. Commissioner of Police
Police Headquarters,
ITO, New Delhi

Delhi ...RESPONDENT NO. 4

5. Delhi State AIDS Control Society

11, Lances Road, Timarpur,

Delhi -110 054

Delhi,

Through Secretary

...RESPONDENT NO. 5

6. National AIDS Control Organization,

Set up by the Union of India,

Having its office

9th Floor, Chandralok Building

Opp. Imperial Hotel,

New Delhi

Delhi,

Through Secretary

...RESPONDENT NO. 6

7. Union of India

Through Secretary

Ministry of Home

through Secretary

North Block, India Gate

New Delhi

..RESPONDENT NO. 7

8. Union of India

Through Secretary

Ministry of Health

Having its office at

344, Nirman Bhavan, Maulana Azad Road,

New Delhi

...RESPONDENT NO. 8

9. Union of India

Ministry of Social Welfare

Through Secretary

Shashtri Bhavan,

New Delhi

...RESPONDENT NO. 9

10. Joint Action Council Kannur

C-38, Anand Niketan

New Delhi-

110 021

Through Chairman

..RESPONDENT NO. 10

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10981 OF 2013

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

Through its Chairman

...PETITIONER

Versus

1. Utkal Christian Council,
Rep. by its Secretary Miss. Jyotsna Rani Patro,
Aged about 69 years,
D/o. late Parom Patro
R/o. Thavittangarath Kuniyil House,
Bidanathpur PS,
Ganjam District.
Orissa
...RESPONDENT NO. 1
2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO, New Delhi
Delhi
...RESPONDENT NO. 2
3. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi
...RESPONDENT NO. 3
4. Delhi State AIDS Control Society
11, Lances Road, Timarpur,
Delhi -110 054
Delhi
...RESPONDENT NO. 4
5. National AIDS Control Organization,
Set up by the Union of India,

Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi

...RESPONDENT NO. 5

6. Union of India
Through Secretary
Ministry of Home
North Block, India Gate
New Delhi

..RESPONDENT NO. 6

7. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi

...RESPONDENT NO. 7

8. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi

...RESPONDENT NO. 8

9. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi-110 021

...RESPONDENT NO. 9

10. Shri B.P. Singhal
Retd. DGP, Ex-MP
C-001, Stellar Kings Courts,
F-32, Sector 50
Noida – 201305

...RESPONDENT NO. 10

11. Voices Against Section 377
A coalition of 12 organisations
Having its address at

11, Mathura Road,
 First Floor, Jangpura B
 New Delhi – 110013

...RESPONDENT NO. 11

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10983 OF 2013

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

Through its Chairman

...PETITIONER

Versus

1. S.K. Gupta Tijarawala
 S/o. Sh. B.K. Gupta,
 Spokesperson of Swami Ramdev Ji,
 Patanjali Yogpeeth (Trust)
 Bharat SwabhimanTrust
 R/o. 35/5, Ground Floor,
 Old Rajinder Nagar,
 New Delhi-60 ...RESPONDENT NO. 1

2. Government of NCT Delhi,
 through the Secretary
 Social Welfare Delhi Secretariat
 ITO, New Delhi
 Delhi ...RESPONDENT NO. 2

3. Commissioner of Police
 Police Headquarters,
 ITO, New Delhi
 Delhi ...RESPONDENT NO. 3

4. Delhi State AIDS Control Society,
 Through Secretary
 11, Lances Road, Timarpur,
 Delhi -110 054
 Delhi ..RESPONDENT NO. 4

5. National AIDS Control Organization,
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi ...RESPONDENT NO. 5
6. Union of India
Through Secretary
- (a) Ministry of Home
North Block, India Gate
New Delhi
- (b) Ministry of Health & Family Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi
- (c) Union of India
Ministry of Social Welfare
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 6
7. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi -110 021 ...RESPONDENT NO. 7

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10984 OF 2013

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

...PETITIONER

Versus

1. Apostolic Churches Alliance,
Rep. by its Bishop Salm T. Varghese
T.C 11/2147-1
Tilak Nagar, Nalanohira P.O.
Trivandrum, Kerala ...RESPONDENT NO. 1
2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO, New Delhi
Delhi ...RESPONDENT NO. 2
3. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi ...RESPONDENT NO. 3
4. Delhi State AIDS Control Society,
Through Secretary
11, Lances Road, Timarpur,
Delhi -110 054
Delhi ...RESPONDENT NO. 4
5. National AIDS Control Organization,
Through Secretary
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi ...RESPONDENT NO. 5
6. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi ..RESPONDENT NO. 6

7. Union of India,
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi ...RESPONDENT NO. 7
8. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 8
9. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi-
110 021 ...RESPONDENT NO. 9

AND IN THE MATTER OF:**CIVIL APPEAL NO. 10975 OF 2013**

Naz Foundation
A Society registered under the Societies Registration Act
D-45, Gulmohar Park
New Delhi- 110049 ...PETITIONER

Versus

1. Shri B.P. Singhal
Son. Of late Rai Bahadur M.S.Singhal,
R/o. C-001, Steller King Court,
F-32 Sector – 50, Noida, U.P. ...RESPONDENT NO. 1
2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO, New Delhi
Delhi ...RESPONDENT NO. 2
3. Commissioner of Police

Police Headquarters,
ITO, New Delhi
Delhi

...RESPONDENT NO. 3

4. Delhi State AIDS Control Society,
Through Secretary
11, Lances Road, Timarpur,
Delhi -110 054
Delhi

..RESPONDENT NO. 4

5. National AIDS Control Organization,
Through Secretary
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi

...RESPONDENT NO. 5

6. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi

..RESPONDENT NO. 6

7. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi

...RESPONDENT NO. 7

8. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi

...RESPONDENT NO. 8

9. Joint Action Council Kannur,
Through Secretary
C-38, Anand Niketan
New Delhi- 110021 ...RESPONDENT NO. 9
10. Voices Against Section 377,
Through Secretary
A coalition of 12 organisations
Having its address at
11, Mathura Road,
First Floor, Jangpura B
New Delhi – 110013 ..RESPONDENT NO. 10

AND IN THE MATTER OF:**CIVIL APPEAL NO. 10973 OF 2013**

Naz Foundation, through Secretary
A Society registered under the Societies Registration Act
D-45, Gulmohar Park
New Delhi- 110049 ...PETITIONER

Versus

1. Delhi Commission of Protection
of Child Rights,
Govt. of NCT of Delhi
5th Floor, ISBT Building,
Kashmere Gate, New Delhi-6
Through its Chairman ...RESPONDENT NO. 1
2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO, New Delhi
Delhi ...RESPONDENT NO. 2
3. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi ...RESPONDENT NO. 3

4. Delhi State AIDS Control Society,
Through Secretary
11, Lances Road, Timarpur,
Delhi -110 054
Delhi ..RESPONDENT NO. 4

5. National AIDS Control Organization,
Through Secretary
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi ...RESPONDENT NO. 5

6. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi ..RESPONDENT NO. 6

7. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi ...RESPONDENT NO. 7

8. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 8

9. Joint Action Council Kannur,
Through Secretary
C-38, Anand Niketan
New Delhi-110021 ...RESPONDENT NO. 9

AND IN THE MATTER OF:**CIVIL APPEAL NO. 10985 OF 2013**

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

...PETITIONER

Versus

1. Prof. Bhim Singh

Chairman,

J&K National Panthers Party

17, V.P. House, Rafi Marg,

New Delhi-110001

...RESPONDENT NO. 1

2. Government of NCT Delhi,

through the Secretary

Social Welfare Delhi Secretariat

ITO, New Delhi

Delhi

...RESPONDENT NO. 2

3. Commissioner of Police

Police Headquarters,

ITO, New Delhi

Delhi

...RESPONDENT NO. 3

4. Delhi State AIDS Control Society,

Through Secretary

11, Lances Road, Timarpur,

Delhi -110 054

Delhi

...RESPONDENT NO. 4

5. National AIDS Control Organization,

Through Secretary

Set up by the Union of India,

Having its office

9th Floor, Chandralok Building

Opp. Imperial Hotel,

New Delhi

Delhi

...RESPONDENT NO. 5

6. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi ..RESPONDENT NO. 6
7. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi ...RESPONDENT NO. 7
8. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 8
9. Joint Action Council Kannur,
Through Secretary
C-38, Anand Niketan
New Delhi-
110 021 ...RESPONDENT NO. 9

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10976 OF 2013

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

...PETITIONER

Versus

1. B.Krishna Bhat
S/o. Late B. Narayan Bhat,
Aged About 79 years.
Residing at No. 399, J.P.Road,

- I Phase, Girinagar, Bangalore-560085,
(Karnataka) ...RESPONDENT NO. 1
2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO, New Delhi
Delhi ...RESPONDENT NO. 2
3. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi ...RESPONDENT NO. 3
4. Delhi State AIDS Control Society,
Through its Chairman
11, Lances Road, Timarpur,
Delhi -110 054
Delhi ...RESPONDENT NO. 4
5. National AIDS Control Organization,
Through its Director
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi ...RESPONDENT NO. 5
6. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi ..RESPONDENT NO. 6
7. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at

344, Nirman Bhavan,
Maulana Azad Road,
New Delhi

...RESPONDENT NO. 7

8. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi

...RESPONDENT NO. 8

9. Joint Action Council Kannur,
Through its Secretary
C-38, Anand Niketan
New Delhi-
110 021

...RESPONDENT NO. 9

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10980 OF 2013

Naz Foundation,
Through Executive Ms. Anjali Gopalan,
A Society registered under the Societies Registration Act
A-86, East of Kailash
New Delhi- 110065

...PETITIONER

Versus

1. Krantikati Manuvadi Morcha Party
F-62, Sector 11,
NOIDA,
Uttar Pradesh
Through the President
Shri R.K. Bhardwaj

...RESPONDENT NO. 1

2. R. K. Bhardwaj
Son of late Shri J. C. Bhardwaj
Resident of F.62, Section 11,
Noida U.P

...RESPONDENT NO. 2

3. Government of NCT Delhi,

through the Secretary
 Social Welfare Delhi Secretariat
 ITO, New Delhi
 Delhi

...RESPONDENT NO. 3

4. Commissioner of Police
 Police Headquarters,
 ITO, New Delhi
 Delhi

...RESPONDENT NO. 4

5. Delhi State AIDS Control Society
 B.S. Ambedkar Hospital
 Dharamshala Block
 Rohini, Sector 6
 Delhi

...RESPONDENT NO. 5

6. National AIDS Control Organization,
 Set up by the Union of India,
 Having its office
 9th Floor, Chandralok Building
 Opp. Imperial Hotel,
 New Delhi
 Delhi

...RESPONDENT NO. 6

8. Union of India
 Through Secretary

(a) Ministry of Home
 North Block, India Gate
 New Delhi

(b) Ministry of Health
 Through Secretary
 Having its office at
 344, Nirman Bhavan,
 Maulana Azad Road,
 New Delhi

(c) Union of India
 Ministry of Social Justice

And Empowerment
 Shashtri Bhavan,
 New Delhi

...RESPONDENT NO. 7

7. Joint Action Council Kannur
 C-38, Anand Niketan
 New Delhi-110 021

..RESPONDENT NO. 8

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10982 OF 2013

Naz Foundation, through Director
 A Society registered under the Societies Registration Act
 D-45, Gulmohar Park
 New Delhi- 110049

...PETITIONER

Versus

1. All India Muslim Personal Law Board
 A Society registered under the
 Societies Registration Act,
 Through its Secretary
 Mr. Abdul Sattar Shaikh
 Having its officer at
 76A/1, Main Market,
 Okhla Village, Jamia Nagar,
 New Delhi-110025

...RESPONDENT NO. 1

2. Government of NCT Delhi,
 through the Secretary
 Social Welfare Delhi Secretariat
 ITO, New Delhi
 Delhi

...RESPONDENT NO. 2

3. Commissioner of Police
 Police Headquarters,
 ITO, New Delhi
 Delhi

...RESPONDENT NO. 3

4. Delhi State AIDS Control Society,
Through its Director
11, Lances Road, Timarpur,
Delhi -110 054
Delhi ...RESPONDENT NO. 4

5. National AIDS Control Organization,
Through its Director
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi ...RESPONDENT NO. 5

6. Union of India
Through Secretary
Ministry of Home
North Block, India Gate
New Delhi ..RESPONDENT NO. 6

7. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi ...RESPONDENT NO. 7

8. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 8

9. Joint Action Council Kannur,
Through its Director,
C-38, Anand Niketan

New Delhi-
110 021

...RESPONDENT NO. 9

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10977 OF 2013

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

...PETITIONER

Versus

1. Joint Action Council, Kannur
Through its General Convenor,
Having its office at
C- 38, Anand Niketan,
New Delhi-110021
...RESPONDENT NO. 1
2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO, New Delhi
Delhi
...RESPONDENT NO. 2
3. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi
...RESPONDENT NO. 3
4. Delhi State AIDS Control Society,
Through its Secretary
11, Lances Road, Timarpur,
Delhi -110 054
Delhi
...RESPONDENT NO. 4
5. National AIDS Control Organization,
Through its Secretary

Setup by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi

...RESPONDENT NO. 5

6. Union of India, through Secretary

(a) Ministry of Home
North Block, India Gate
New Delhi

(b) Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi

...RESPONDENT NO. 6

7. Shri B.P. Singhal
Retd. DGP, Ex-MP
C-003, Stellar Kings Courts,
F-32, Sector 50
Noida – 201305

... RESPONDENT NO. 7

8. Voices Against Section 377,
Through its Secretary
A coalition of 12 organisations
Having its address at
11, Mathura Road,
First Floor, Jangpura B
New Delhi – 110013

...RESPONDENT NO. 8

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10978 OF 2013

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

Through its General Secretary

...PETITIONER

Versus

1. The Tamil Nadu Muslim

Munnetra Kazhagam,

Represented by

Its General Sectary

S. Hyder Ali

S/o. Mr. Syed Mohammed

7, Vadamaricoir Street,

Mannady Chennai:-600 001

... RESPONDENT NO. 1

2. S. Hyder Ali

S/o Mr. Syed Mohammed

Mannady Chennai

600 001

... RESPONDENT NO. 2

3. Government of NCT Delhi,

through the Secretary

Social Welfare Delhi Secretariat

ITO, New Delhi

Delhi

..RESPONDENT NO. 3

4. Commissioner of Police

Police Headquarters,

ITO, New Delhi

Delhi

...RESPONDENT NO. 4

5. Delhi State AIDS Control Society,

Through its Secretary

11, Lances Road, Timarpur,

Delhi -110 054

Delhi

...RESPONDENT NO. 5

6. National AIDS Control Organization,
Through its Secretary,
Setup by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi
Delhi ...RESPONDENT NO. 6

7. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi ..RESPONDENT NO. 7

8. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi ...RESPONDENT NO. 8

9. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 9

10. Joint Action Council Kannur,
Through its Secretary
C-38, Anand Niketan
New Delhi-
110 021 ...RESPONDENT NO. 10

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10979 OF 2013

Naz Foundation

A Society registered under the Societies Registration Act

D-45, Gulmohar Park

New Delhi- 110049

...PETITIONER

Versus

1. Raza Academy
52, Dantad Street
First Floor, Khadak
Mumbai 400009
Maharashtra
(through its President
Munammad Saeed Noori) ...RESPONDENT NO. 1
2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO, New Delhi
Delhi ...RESPONDENT NO. 2
3. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi ...RESPONDENT NO. 3
4. Delhi State AIDS Control Society,
Through its Secretary
11, Lances Road, Timarpur,
Delhi -110 054
Delhi ...RESPONDENT NO. 4
5. National AIDS Control Organization,
Through its Secretary
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi

Delhi ...RESPONDENT NO. 5

6. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi ..RESPONDENT NO. 6

7. Union of India
Ministry of Health Social Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi ...RESPONDENT NO. 7

8. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi ...RESPONDENT NO. 8

9. Joint Action Council Kannur,
Through its Secretary
C-38, Anand Niketan
New Delhi- 110 021 ...RESPONDENT NO. 9

TO,
THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION
JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA, NEW
DELHI

THE HUMBLE PETITION OF THE
CURATIVE PETITIONER ABOVE-NAMED:

MOST RESPECTFULLY SHOWETH:

1. That the present curative petition arises from the impugned judgment and order dated 11.12.2013 in Civil Appeal No. 10972 of 2013 and in all connected matters and the order dated 28.01.2014 in Review Petition (Civil) No. 41-55 of 2014 (hereinafter 'the impugned judgment'), whereby this Hon'ble Court was pleased to allow the appeals filed by the Appellants against the judgment and order dated 02.07.2009 passed by the Hon'ble High Court of Delhi in *Naz Foundation (India) Trust v. The Government of NCT of Delhi & Ors.* [W.P. (C) No. 7455 of 2001]. The High Court had held that Section 377, IPC, insofar as it criminalised consensual sexual acts of adults in private, violated Articles 21, 14 and 15 of the Constitution. This petition seeks to cure the gross miscarriage of justice that has resulted from the impugned judgment, wherein this Hon'ble Court failed to notice the effect of the amendment in Section 375 of the IPC in 2013 on Section 377. Prior to the amendments, penile non-vaginal sex, including anal sex and oral sex, both between man and woman and between man and man was prohibited under Section 377. After the amendments in 2013, Section 375 has been broadened to include penile non-vaginal sexual acts, between man and woman, without consent, an offence. By implication, such sexual acts between man and woman, which are consensual, are not criminalised. Consequently, these consensual acts between man and woman have been taken out of the ambit of Section 377, otherwise the amended Section 375 would be rendered redundant. Presently, Section 377 effectively only criminalises all forms of penetrative sex, i.e., penile-anal sex and penile-oral sex, between man and

man, thereby being *ex facie* discriminatory against homosexual men and transgender persons and thus violative of Article 14. Furthermore, the impugned judgment contains a number of other patent errors on the face of the record, including non-consideration of the main contentions of the Curative Petitioner which pertain to the violation of fundamental rights, mistake of law and being rendered contrary to binding legal principles, thereby requiring immediate reconsideration by this Hon'ble Court in the exercise of its inherent powers.

2. That the Curative Petitioner was the original Petitioner in Writ Petition No. (Civil) No. 7455 of 2001 in the Delhi High Court, in which by a final order and judgment, it was held that Section 377 of the Indian Penal Code, 1860 (hereinafter 'Section 377, IPC') insofar as it criminalised consensual sexual acts of adults in private, violated Articles 21, 14 and 15 of the Constitution. It was arrayed as the Respondent No. 1 in most of the 15 Civil Appeals, which were filed challenging the judgment of the Delhi High Court.
3. That by a judgment and order dated 11.12.2013 in Civil Appeal No. 10972 of 2013 and in all connected matters, this Hon'ble Court was pleased to allow the appeals filed by the Appellants against the judgment and order dated 02.07.2009 passed by the High Court of Delhi in *Naz Foundation (India) Trust v. The Government of NCT of Delhi & Ors.* [W.P. (C) No. 7455 of 2001]. A true copy of the order dated 11.12.2013 passed by this Hon'ble Court is annexed herewith as **Annexure P-1** from **pages 68 to 165**.

BRIEF FACTS OF THE CASE

4. That the facts of the case leading to the filing of the present Curative Petition has been set out in chronological order herein after:-

- a. In December, 2001, the writ petition [W.P. (C) No. 7455 of 2001] was filed in the High Court of Delhi by the Curative Petitioner, which is a non-governmental organisation (hereinafter 'NGO') registered under the *Indian Trusts Act, 1882* working on issues concerning male sexual health and providing HIV prevention services for men having sex with men (hereinafter 'MSM').
- b. While working with the community of MSM and homosexual men, it became clear to the Curative Petitioner that Section 377, which prohibited penile-non vaginal sexual acts between consenting adults, severely impaired the fundamental rights to equality, dignity, privacy and health of homosexual men and transgender persons, by effectively criminalising their intimate sexual expression and also constituted a huge impediment to programmes aimed at HIV prevention.
- c. The Curative Petitioner challenged the constitutional validity of Section 377, to the extent it criminalised sexual acts between consenting adults in private, in High Court of Delhi on the grounds that it violated the rights to privacy, dignity and health under Article 21, equal protection of law and non-discrimination under Articles 14 and 15 and freedom of

expression and association under Article 19(1) of the Constitution.

- d. On 02.09.2004, the Writ Petition was dismissed by the Delhi High Court for lack of cause of action, as no prosecution was pending against the Curative Petitioner.
- e. On 03.11.2004, the review petition (RP 384/2004), filed by the Curative Petitioner, was dismissed by the High Court.
- f. Aggrieved by the High Court's order, the Curative Petitioner had filed a Special Leave Petition (C) No. 7217-7218 in this Hon'ble Court.
- g. On 03.02.2006, allowing the appeal in Civil Appeal No. 952 of 2006, this Hon'ble Court remanded the matter back to the High Court for consideration on merits.
- h. There was a division of opinion between the two Ministries within the Union of India in the replies filed to the Writ Petition. While the Ministry of Home Affairs opposed the petition on the grounds that Section 377 was necessary for the protection of public health and public morality, via an affidavit filed in 2003, the Ministry of Health and Family Welfare admitted that Section 377 impeded HIV prevention activities, through an affidavit filed in 2006.
- i. On 02.07.2009, while allowing the writ petition, the High Court of Delhi struck down Section 377, insofar as it criminalised consensual sexual acts between consenting

adults in private, to be violative of Articles 21, 14 and 15 of the Constitution, which is annexed hereto as **Annexure P-2** from **pages 166 to 270**,

- j. In 2009-10, 15 Special Leave Petitions were filed in this Hon'ble Court against the High Court decision, mostly on behalf of private or third parties, who were not parties in the High Court. 7 intervention applications (hereinafter 'I.A.s') were also filed; out of which, 5 I.A.s were in support of the High Court judgment while 2 I.A.s were against the decision.
- k. In 2009, Union of India did not appeal against the High Court decision and the said decision was not stayed by this Hon'ble Court.
- l. On 27.03.2012, final arguments concluded in *Suresh Kumar Koushal v. Naz Foundation and Ors.*, SLP (C) No. 15436 of 2009 and in all connected petitions and a division bench of this Hon'ble Court comprising Hon'ble Justice G.S. Singhvi and Hon'ble Justice S.J. Mukhopadhaya reserved the matter for judgment.
- m. On 09.04.2012, written submissions along with compendium of studies and documents in support of their pleadings were filed by the Curative Petitioner in this Hon'ble Court, a copy of which is annexed hereto as **Annexure P-3 from pages 271 to 378**,

- n. In June, 2012, Parliament passed the *Protection of Children against Sexual Offences Act* (hereinafter 'POCSO'), 2012 , which came into force on 20th June, 2012, that sought to protect children, *inter alia*, from penetrative sexual assault and sexual harassment, and provides a comprehensive child-centric redressal mechanism to deal with such offences.
- o. In March, 2013, Parliament enacted the *Criminal Law Amendment Act, 2013* (hereinafter 'the 2013 Amendments') that introduced certain new offences in the IPC and amended the offences on rape and sexual assault, along with necessary changes in the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. The 2013 Amendment broadened the scope of the offence of rape from non-consensual penile-vaginal sexual intercourse to include penile-non vaginal sexual acts, i.e., penile-oral sex, penile-anal sex or penetration into urethra of a woman, amongst others, which are non-consensual.
- p. On 11.12.2013, allowing the appeals, this Hon'ble Court upheld the constitutional validity of Section 377, set aside the High Court judgment and dismissed the writ petition.
- q. On 24th December, 2013, the Curative Petitioner filed the Review Petition No. 41-55 of 2014 seeking a review of the judgment and order passed by this Hon'ble Court dated 11.12.2013 in Civil Appeal No. 10972 of 2013 and in all

connected matters. A true copy of the said petition is annexed hereto as **Annexure P-4 from pages 379 to 437**,

r. On 28.01.2014, this Hon'ble Court dismissed the review petition by circulation and found no reason to interfere with the impugned order. A true copy of the said order is annexed hereto as **Annexure P-5 from pages 438 to 442**.

5. That the Curative Petitioner submits that the following grounds mentioned herein had been referred to in the review petition, except Ground A on the change in law, which was worded differently, and that the said review petition was dismissed by circulation by this Hon'ble Court.
6. That the grounds taken in the Curative Petition have already been raised in the Review Petition which was dismissed by the Hon'ble Court in chambers and no new ground has been taken in the Curative Petition.
7. That the Curative Petitioner states that it has not filed any other such or similar petition against the aforesaid impugned judgment dated 28.01.2014.
8. That the Curative Petitioner thus approaches this Hon'ble Court against the impugned judgment in Civil Appeal No. 10972 of 2013 and in all connected matters as well as in Review Petitions (C) 41-55 of 2014 on the following, amongst other grounds, which are without prejudice to each other:

GROUND

- A. The impugned judgment fails to notice the effect of the change in Section 375 of the Indian Penal Code has had on Section 377, in as much as it has rendered it patently discriminatory against homosexual men and transgender persons**

Section 377 is no longer applicable to penile non-vaginal acts between man and woman

7. For that it is an established principle of law that it is the duty of the Court to take judicial notice of the change in law, affecting pending actions and to give effect to the same [*Union Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. and Others* (2000) 7 SCC 357].
8. For that the Parliament enacted the *Criminal Law (Amendment) Act, 2013*, which, inter alia, broadened the ambit of the offence of rape in Section 375, IPC. The amended Section 375 reads as:

“375. Rape - A man is said to commit "rape" if he—

- a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
- b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
- c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or*
- d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,*

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

9. For that after the 2013 Amendments, the amended Section 375 makes it an offence if a man engages in penile-non-vaginal sexual acts with a woman, against her will, without her consent or where

she is under 18 years of age or where her consent is vitiated on specified grounds. The necessary implication is that such acts between a man and a woman, with consent, are not criminalised. Accordingly, the element of consent becomes the fundamental criteria of distinguishing sexual acts, between man and woman, which are permissible, from the sexual acts that would be considered as criminal offences.

10. For that one of the cardinal principles of the constitutional law is that the latest will of the sovereign should prevail, thereby implying that the latest amendment would guide the interpretation of a particular law (*Krishan & Others v. State of Haryana & Others*, Criminal Appeal No. 973 of 2008, Order of this Hon'ble Court dated 21.04.2014).

11. For that it is also well-settled that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed accordingly, except where that would lead to a repugnancy, inconsistency or absurdity (*Shamarao V. Parulekar v. District Magistrate, Thana, Bombay and Two Others* 1952 AIR SC 324).

12. For that the Curative Petitioner submits that though Section 377 has not been amended, the recent change in the definition of rape in Section 375 has completely altered the scope of Section 377. Prior to the amendment, Section 377 would be applicable to all penile non-vaginal sexual acts between consenting adults, whether between man and man or between man and woman. However, after

the 2013 Amendment, non-consensual penile-non-vaginal sexual acts between a man and a woman would fall within the ambit of Section 375, the necessary implication of which is that consensual penile-non-vaginal sexual acts between a man and woman are not considered an offence anymore. These consensual acts between a man and a woman would not even fall under Section 377, otherwise the amended Section 375 would be rendered redundant. Thus, Section 377, as it stands today, effectively applies only to all forms of penetrative sex between man and man, including penile-anal sex and penile-oral sex, thereby criminalising male homosexual conduct, irrespective of consent. This constitutes a patent discrimination against homosexual men and transgender persons and hence violative of Article 14.

13. For that it is submitted that after the 2013 Amendments, Section 377 has become *ex facie* blatantly vague and arbitrary, since there exists no clarity on the nature of sexual acts that are prohibited under the ambiguous rubric of '*carnal intercourse against the order of nature*'. The phrase '*carnal intercourse against the order of nature*' is of antiquated Victorian origin, based on out-moded social mores and lacking precise definition in the current times. In contrast, the revised Section 375 clearly lays down the acts that are prohibited, if engaged in by a man without the consent of the woman, including the penile non-vaginal sexual acts. Thus, the element of vagueness in Section 377 has become more pronounced, when compared to the clarity of the penal offence under Section 375, thereby making it void under Article 14.

14. For that it is pertinent to note that after the 2013 Amendments, the notion of '*against the order of nature*' or '*unnatural offence*' is only applicable to homosexual men and transgender persons, since the same sexual acts, i.e., penile-anal sex or penile-oral sex, if engaged in by a man and a woman, with consent, are not considered against the order of nature. Section 377 thus continues to cast the same sex sexuality in the archaic notion of order of nature, while not considering the similar acts between heterosexual persons as unnatural.

15. For that the enactment of a comprehensive law on child sexual abuse, i.e., the POCSO, wherein the definition of a 'child' in Section 2 (d) of the Act refers to any person below the age of eighteen years and is gender neutral in nature, i.e., includes male, female and transgender children, has made Section 377 irrelevant in the context of child sexual abuse. In effect, any penetrative sexual assault, including penile-vaginal, penile-anal or penile-oral and non-penile penetration, on any child, irrespective of gender or orientation is covered under POCSO.

16. For that the denial of equal protection of law is also blatant against homosexual men and transgender persons with respect to non-consensual sexual acts. Under POCSO, any penetrative/non-penetrative sexual assault or sexual harassment on a child, irrespective of gender, is covered, thereby protecting even male and transgender children from sexual offences. However, effectively there is no protection available to an adult male or an adult transgender person from non-penile sexual assault, while

penetrative sexual assault on a man would be covered under the vague notion of '*carnal intercourse against the order of nature*' in Section 377. In contrast, an adult woman who suffers any form of sexual assault, whether penetrative or non-penetrative, would be protected under the offence of rape under the revised Section 375. A child/adult woman is protected from all kinds of sexual assault and violence, but an adult male/transgender person is protected only from penetrative sexual assault, thereby leaving large number of non-penile sexual assaults, including penetration by an object, stripping and molestation outside the ambit of criminal sanction. This constitutes violation of Article 14.

17. For that the Curative Petitioner was not heard on these pertinent points of law and was not given an opportunity by this Hon'ble Court to address the Court on the same, which has resulted in manifest injustice.

Failure to notice the effect of change in law on Section 377 by this Hon'ble Court has resulted in grave miscarriage of justice

18. For that the effect of this change in Section 375 on Section 377 ought to have been judicially noticed by this Hon'ble Court in the impugned judgment and by failing to do so, this Hon'ble Court has committed a patent error of law. The Curative Petitioner could not have brought the change in Section 375, IPC to the notice of this Hon'ble Court, since the final arguments in the matter concluded on 27.03.2012. The Amendment Act was passed by the Parliament in March, 2013. The judgment in Civil Appeal No. 10972 of 2013 was

delivered on 11.12.2013 and the order dismissing the review petitions is dated 28.01.2014.

19. For that it is well-settled that this Hon'ble Court would take judicial notice of the law prevailing as on the date of the order or judgment and apply relevant provisions of law prevailing on that day and mould the relief on the basis of that law [*Karan Singh and Others v. Bhagwan Singh (Dead) by Lrs. And Others* (1996) 7 SCC 559].
20. For that Section 57 of the *Indian Evidence Act, 1872* states that the Court shall take judicial notice of all laws in force in the territory of India. This implies that this Hon'ble Court has to apply the laws that are prevailing on the date of the judgment to the facts of the case [*Ramjilal And Others v. Ghisa Ram and Others* (1996) 7 SCC 507].
21. For that it is pertinent to note that this Hon'ble Court has referred to the Amendment Act of 2013 in paragraph 32 of the impugned judgment but it failed to consider the effect of the change in Section 375 on Section 377. Despite noticing the amendment in law, this Hon'ble Court reproduces the unamended provisions of Sections 375 and 376, IPC in paragraph 34 of the said judgment, which had ceased to be the law of the land, thereby committing a patent mistake of law.

Misreading of the legislative intention to strengthen the presumption of the validity of Section 377

22. For that it is submitted that this Hon'ble Court misread the intention of the Parliament in not changing Section 377, during the

amendment of Sections 375 and 376, IPC, along with other offences in 2013. This Hon'ble Court, in paragraph 32 of the impugned judgment, observed that

“After the adoption of the IPC in 1950, around 30 amendments have been made to the statute, the most recent being in 2013 which specifically deals with sexual offences, a category to which Section 377 IPC belongs.... This shows that Parliament, which is undisputedly the representative body of the people of India has not thought it proper to delete the provision. Such a conclusion is further strengthened by the fact that despite the decision of the Union of India to not challenge in appeal the order of the Delhi High Court, the Parliament has not made any amendment in the law.”

23. For that it is submitted that this observation is completely erroneous. It is very clear from the parliamentary debates on the Criminal Law Amendment Bill, 2013 that when the question of unnatural offences under Section 377 was raised in Lok Sabha, the Hon'ble Speaker of the House said *“this matter is currently sub-judice. We do not need to deliberate on the same”*, as evident from the Lok Sabha debates. In effect, Parliament did not amend the Section 377, during the 2013 Amendment process, precisely because this Hon'ble Court was seized of the issue and the judgment was reserved. It is wholly erroneous that the fact of Parliament not amending the law can be termed as evidence of the legislative endorsement of the existing Section 377. Thus, there has been complete misreading of the legislative intention by this Hon'ble Court, which has resulted in manifest injustice that ought to be corrected by this Hon'ble Court in the exercise of its curative

jurisdiction. A true typed copy of the translated relevant Lok Sabha Debates on the Criminal Law Amendment Bill, 2013 is annexed hereto and marked as **Annexure P-6 from pages 443 to 458**.

24. For that at the time of the 2013 Amendments, Section 377, as read down by the judgment of Delhi High Court, was the law of the land, since the decision was not stayed by this Hon'ble Court. More pertinently, despite the decision of the High Court, Parliament did not amend the law to restore the original Section 377, which criminalised adult consensual acts. If at all this Hon'ble Court were to read legislative intent in the criminal law amendments of 2013, it should have read it as legislative acceptance of exclusion of adult consensual sex in private from the ambit of Section 377.
25. For that Parliament is not bound to repeal an unconstitutional law. As a result, the mere fact that Parliament did not repeal Section 377 during the amendment process does not strengthen the presumption of constitutionality of the section. This Hon'ble Court in *Mithu v. State of Punjab* (1983) 2 SCC 277 had struck down Section 303, IPC, which imposed a mandatory death penalty for the offence of murder committed by a life convict, as violating Articles 21 and 14 of the Constitution. Though Section 303 was held to be unconstitutional, Parliament did not expressly repeal or delete it by way of an amendment to IPC.
26. For that it is submitted that failure to notice the effect of change in law on Section 377 by this Hon'ble Court has led to gross miscarriage of justice, wherein the aggrieved parties have no

recourse to justice, as both the legislature and the judiciary are expecting each other to redress the grievances of the Curative Petitioner. The effect of this peculiar situation becomes more egregious, since the issue at hand involves the fundamental right to equality, dignity and freedom of thousands of gay and transgender citizens of India.

B. The impugned judgment requires persons to establish that they are more than a miniscule fraction of the country's population in order to enforce their fundamental rights, which is contrary to the settled jurisprudence of this Hon'ble Court on the protection and expansion of fundamental rights

27. For that it is well-settled that protection of fundamental rights is not subject to numerical calculations. Even if one person's fundamental rights are adversely affected by a law, such a law is liable to be struck down. Conversely, a single individual may be treated as a class by herself [*R.K. Dalmia v. Justice SR Tendolkar* AIR 1958 SC 538].

28. For that it is also well-settled that this Hon'ble Court is constituted as the protector and guarantor of the fundamental rights, and that it cannot refuse to entertain applications seeking protection against infringement of such rights [*Romesh Thapar v. State of Madras* (AIR 1950 SC 124)]. This principle was reiterated by this Hon'ble Court in *Ashok Kumar Thakur v. Union of India* (2008) 6 SCC 1, wherein it was held:

"If even one individual's freedom has been curtailed, this Court is duty-bound to entertain his or her claim".

29. For that this established principle of law was not followed by this Hon'ble Court, wherein it held that "*since the LGBT persons constitute a miniscule fraction of the country's population and only 200 persons have been prosecuted under Section 377 in the last 150 years, it cannot be made a sound basis to declare Section 377 ultra vires of Articles 15, 14 and 21*", vide paragraph 43 of the impugned judgment. This finding is completely erroneous and is devoid of any factual basis. Furthermore, it goes against the grain of this Hon'ble Court's jurisprudence on expansion of fundamental rights. If parties approaching this Hon'ble Court under Article 32 or a High Court under Article 226 are required show a strength of numbers in order to claim his/her fundamental rights, then it has dangerous implications on the administration of justice by putting the constitutionally guaranteed rights of every person in peril.
30. For that the fundamental rights are guaranteed to all individuals by the Constitution. Requiring parties to show that they constitute a particular proportion of the population is to render the fundamental rights meaningless for individuals and for minority communities. In fact, the Constitution contains special protections for the minority communities, in terms of religious, educational and cultural rights, on the basis that they require greater protection and greater scrutiny on encroachment of their rights and privileges on account of them being a minority. This Hon'ble Court thus remains the most important institution for the protection and preservation of fundamental rights of the minority communities, wherein the duty of the highest court in a constitutional democracy is mandated with an obligation to always

protect the fundamental rights of the all persons, especially those from the minority communities.

C. The impugned judgment reflects issue bias against the LGBT community and has resulted in manifest injustice

31. For that it is well-settled that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment or order. In *State of Punjab v. Davinder Pal Singh Bhullar And Others* [(2011) 14 SCC 770], highlighting the importance of public confidence in judiciary, this Hon'ble Court held that:

“If any act or action, even if it is a passive one, erodes or is even likely to erode the ethics of the judiciary, the matter needs a further look. In the event, there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system, technicality ought not to outweigh the course of justice- the same being the true effect of the doctrine of ex debito justitiae. It is enough if there is a ground of an appearance of bias.”

32. For that it is well-settled that in case of even mere apprehension of bias, the order/judgment would stand vitiated for want of impartiality and such order/judgment would become a nullity.

33. For that the observations of this Hon'ble Court in referring to the LGBT community in terms of *“the so-called rights of LGBT persons”* in paragraph 51 of the impugned judgment or viewing them as *“miniscule fraction of the country's population”* in paragraph 43 of the impugned judgment to whom fundamental rights do not extend to, actually reflect a bias in the decision of this Hon'ble Court, which vitiates the judgment and renders it a nullity.

D. The impugned Judgment is a nullity, as it has been rendered contrary to well established legal principles and binding decisions of this Hon'ble Court which strike at the root of the judgment

34. For that this Hon'ble Court has incorrectly applied the test of classification under Article 14. The impugned judgment first upholds the classification between carnal intercourse in the ordinary course of nature and carnal intercourse against the order of nature in paragraph 42, however, there is no consideration of the second element of the test, i.e., whether there is a rational nexus with the object of legislation. Therefore, the entire finding on Article 14 in the impugned judgment has no basis whatsoever. This renders the finding of this Hon'ble Court legally wrong, thereby rendering it a nullity.

35. For that this Hon'ble Court has erred in putting a uniform burden on the Curative Petitioner to show that Section 377 was unconstitutional under Articles 21, 14 and 15 of the Constitution. This is contrary to well-settled law that when a law is challenged under Article 21, the burden is on the State to establish the constitutional validity of the impugned law, while it is for the Petitioner to plead and prove discrimination under Article 14 [*Deena alias Deen Dayal v. Union of India* (1983) 4 SCC 645]. This constitutes a grave and manifest error, which strikes at the root of the impugned judgment, thereby rendering it as a nullity.

36. For that it is an established principle of law that when assessing the constitutional validity of a provision, the effect or impact of the said law must be looked into. The Courts may examine with some strictness the substance of the legislation and for that purpose, the Court has to look behind the form and appearance thereof to discover the true character and nature of the legislation [*Peerless General Finance Investment Co. Ltd. V. Reserve Bank of India* (1992) 2 SCC 343, *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1 and *State of Tamil Nadu and Others v. K. Shyam Sunder and Others* (2011) 8 SCC 737]. This Hon'ble Court, by holding that Section 377 prohibits certain acts and does not criminalise a particular people or identity or orientation in paragraph 38 of the impugned judgment, has not considered the effect of Section 377, which targets a particular class of persons, i.e., homosexual men and transgender persons by criminalizing their most intimate form of sexual expression and in effect, criminalizing their sexual identity. This was specifically argued before this Hon'ble Court. This constitutes a manifest error of law that has the effect of rendering the judgment a nullity and ought to be rectified by this Hon'ble Court as part of *ex debito justitiae*.

E. The Impugned Judgment suffers from patent errors apparent on the face of record, including non-consideration of the arguments of the Curative Petitioner

Non-consideration of the submissions of the Curative Petitioner

37. For that this Hon'ble Court has failed to consider the submission of the Curative Petitioner that Section 377, in as much as it prohibits all

penile-non vaginal sexual acts between consenting adults, violates the right to privacy of all persons under Article 21, irrespective of sexual orientation. Further, this Hon'ble Court did not consider the High Court's findings on Article 21 and the rejection of public health and public morality as the purported compelling State interest in retaining Section 377.

38. For that this Hon'ble Court has failed to consider the submission of the Curative Petitioner that Section 377, by criminalising certain intimate sexual conduct between consenting adults, violates the right to dignity of all, irrespective of sexual orientation. In particular, by criminalising the most intimate form of sexual expression of homosexual men and transgender/hijra persons, i.e., penetrative sex, Section 377 impairs and violates their dignity and sense of selfhood.
39. For that this Hon'ble Court has failed to consider that Section 377, by criminalising intimate sexual acts between consenting adults, does not pass the test of substantive due process under Article 21, wherein the law itself has to be substantively fair, just and reasonable.
40. For that this Hon'ble Court has failed to consider the submission of the Curative Petitioner that Section 377 violates the right to health of a man who has sex with another man, since criminalisation of same sex activity impedes access to health services of these marginalised communities who remain underground due to fear of law. This Hon'ble Court has not considered the wealth of materials shown by

the Curative Petitioner and affidavits submitted by the Ministry of Health and Family Welfare, Government of India stating that Section 377 hampered HIV prevention efforts.

41. For that this Hon'ble Court has failed to record a finding whether Section 377 is vague and arbitrary. In the submission of the Curative Petitioner, as there is no definition of "*carnal intercourse against the order of nature*" in the Indian Penal Code and no clarity exists on which sexual acts are prohibited under the law.
42. For that this Hon'ble Court has failed to consider whether Section 377 violates Article 15, as argued by the Curative Petitioner and as held by the High Court that sexual orientation is a ground analogous to sex and that discrimination on the basis of sexual orientation is not permitted by Article 15.

Mistake of law

43. For that this Hon'ble Court has erred in upholding Section 377 under Article 14, solely on the basis that the classification between carnal intercourse in the ordinary course of nature and carnal intercourse against the order of nature is valid and not arbitrary, without recording a finding on the rational nexus with the object of legislation.
44. For that contrary to settled position of law that in assessing the constitutional validity of a statute, the effect or impact of the law must be looked into, this Hon'ble Court has erred in not looking at the

effect of Section 377, which in fact targets a particular class of persons, i.e., homosexual men and transgender persons.

45. For that this Hon'ble Court has erred in not applying the test of passage of time to Section 377, wherein a law may become unreasonable and arbitrary with passage of time and in light of change of circumstances. [*John Vallamattom and Anr. v. Union of India* AIR (2003) SC 2902]
46. For that this Hon'ble Court has erred in applying the principle of presumption of constitutionality in appellate proceedings against the decision of the Delhi High Court which held Section 377 to be unconstitutional and read it down to the extent of its unconstitutionality. In fact, the said decision was not appealed by the Union of India. In these circumstances, no presumption of constitutionality existed in favour of Section 377.
47. For that this Hon'ble Court has erred in ignoring the fact that the Union of India has made a considered decision not to challenge the High Court decision, since it found 'no legal error' in the judgment and had accepted the verdict that Section 377 was unconstitutional, in so far as it criminalised adult consensual sexual acts in private.
48. For that this Hon'ble Court has erred in ignoring the fact that the High Court judgment was challenged in this Hon'ble Court by the private parties; most of whom were not even parties in the High Court.

49. For that this Hon'ble Court has erred in holding that the petition was singularly laconic and failed to furnish the particulars of the incidents of discriminatory attitude exhibited by the State agencies towards sexual minorities, vide paragraph 40 of the impugned judgment. This Hon'ble Court was not considering the challenge in its originating jurisdiction but on an appeal from a High Court decision that had struck down Section 377. Furthermore, this Hon'ble Court in paragraphs 9, 17.9 and 18.1 of the impugned judgment had itself recorded the materials and judgments that were brought before its notice by the respondents, including the Curative Petitioner, during the appeal proceedings to highlight the instances of torture and sexual abuse of the LGBT persons by the police authorities. By completely overlooking those materials, this Hon'ble Court has committed a manifest error on the face of the record.
50. For that a legally sound and well-reasoned order is the *sine qua non* of the administration of justice in India. This Hon'ble Court is the final court of appeal and the provision of reasons in its decision assumes greater significance in cases where fundamental rights have been invoked. If claims pertaining to a party's fundamental rights are determined without reasons and consideration of all grounds on merits, then it shakes the very confidence of the public in the Court. The impugned judgment was delivered by this Hon'ble Court, without consideration of the contentions raised and the materials produced by the Curative Petitioner, thereby resulting in gross miscarriage of justice.

51. For that sitting as a court of first appeal, it was the duty of this Hon'ble Court to deal with all the contentions and materials produced by the parties before recording its findings. It has failed to discharge the obligation placed on an appellate court. As noted above, key contentions raised by the Curative Petitioner, which were central to its case, were not dealt with in the impugned judgment.

52. For that it is an established principle in law that the judgment of the appellate court must reflect its conscious application of mind and record findings supported by reasons, on all issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. [*Santosh Hazari v. Purushottam Tiwari* (2001) 3 SCC 179]

F. The present case is a fit case for this Hon'ble Court to exercise curative jurisdiction to cure gross miscarriage of justice on account of the impugned judgment

54. For that as *ex debito justitiae*, the doctrine of curative jurisdiction was developed by this Hon'ble Court in *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388 (hereinafter '*Hurra*'), wherein the central question was whether an order passed by this Hon'ble Court can be corrected under its inherent powers, in order to prevent abuse of its process and to cure a gross miscarriage of justice. Holding in the affirmative, this Hon'ble Court sought to strike a balance between respecting the finality of judgment and the moral and legal imperative to do substantive justice. This Hon'ble Court held that:

“it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice.”

Highlighting the fundamental importance of the principle of justice above all, this Hon'ble Court observed:

“...we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment....., wherein declining to reconsider the judgment would be oppressive to judicial conscience and would cause perpetuation of irremediable justice.”

55. For that this Hon'ble Court in *Hurra* reiterated the well-established constitutional principle that justice is above all and not bound by rules of procedure or technicalities of law. Even the law bends before justice, since the entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness [*S. Nagaraj v. State of Karnataka* (1993) Supp (4) SCC 595].
56. For that it is well-settled that this Hon'ble Court is not powerless to correct its error which has the effect of depriving a citizen of his/her fundamental rights, or has a significant bearing on the fundamental rights of the citizens [*Sajjan Singh v. State of Rajasthan* (1965) 1 SCR 933].
57. For that it is also well-settled that no party should suffer by the mistake of the court. This was observed by this Hon'ble Court in *A.R. Antulay v. R. S. Nayak* [(1988) 2 SCC 602], wherein it was held that:

“No man should suffer because of the mistake of the court...Rules or procedures are the handmaids of justice and not the mistress of

the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied."

58. For that as noted above, this Hon'ble Court in the impugned judgment has failed to notice the change in Sections 375 and 376, IPC in 2013, whereby the definition of the offence of 'rape' has been broadened to include non consensual penile non-vaginal sexual acts between man and woman. As a result. Section 377 presently only covers penetrative sex between man and man, irrespective of age/consent, thereby being patently discriminatory. This Hon'ble Court ought to have noticed the import of the 2013 Amendments on Section 377 and heard the parties on the same, in order to do complete justice between the parties. Failure to do so has led to gross miscarriage of justice and ought to be rectified by this Hon'ble Court.
59. For that, as mentioned above, the impugned judgment contains a number of grave and manifest errors of law and wrong application of law. This impugned judgment is contrary to the well-settled legal principles under Article 21 and 14 of the Constitution, which undermines its soundness and reasoning and ought to be recalled, otherwise public confidence in administration of justice would be shaken.
60. For that in recent years, this Hon'ble Court has exercised curative jurisdiction to rectify a patent mistake of law in *National Commission for Women v. Bhaskat Lal Sharma* [Curative Petition

(Crl.) No. 24-25 of 2010, order of this Hon'ble Court dated 14.03.2014] and to take into account change in law in a death sentence case in *Navneet Kaur v. State of NCT of Delhi & Anr.* [Curative Petition (Crl) No. 88 of 2013, order dated 31.01.2014]. Both these grounds are present in the instant case. Accordingly, it remains a fit case for this Hon'ble Court to exercise its inherent powers in the form of curative jurisdiction to cure the gross miscarriage of justice resulting from the impugned judgment. This Hon'ble Court ought to recall the said judgment and the impugned order, in order to give immediate redress to thousands of homosexual men and transgender persons, who are directly affected by Section 377.

61. For that by this curative petition the Curative Petitioner invokes the inherent powers of this Hon'ble Court to cure the gross miscarriage of justice, on account of the patent errors apparent on the face of record in the impugned judgment, and to do *ex debito justitiae* for homosexual men and transgender persons in particular, the society at large, and the nation as a whole.

PRAYER

It is therefore, most respectfully prayed that your Lordships may graciously be pleased to:

- a) Allow the present Curative Petition against the judgment and order dated 11.12.2013 passed in Civil Appeal No. 10972 of 2013 and in all connected matters and the order dated

28.01.2014 in Review Petitions (Civil) No. 41-55 of 2014;
and

- b) pass such other order or further orders as your Lordships may deem fit and proper in the facts and circumstances of the instant case as well as in the interest of justice.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONER HEREIN
SHALL EVER PRAY.**

DRAFTED BY:

Ms. Amritananda Chakravorty, Advocate
Ms. Tripti Tandon, Advocate
Mr. Mihir Samson, Advocate

FILED BY

[Mr. Chanchal Kumar Ganguli]
Advocate for the Petitioner

DRAWN ON 29.03.2014

NEW DELHI
FILED ON: 31.03.2014