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Supreme Court verdict on Sec 377
(11 Dec 2013)

We are deeply disappointed at the decision of the Supreme Court in *Suresh Kumar Kaushal v. Naz Foundation*. The decision by overturning the historic Delhi High Court judgment which recognized that Lesbian, Gay, Bisexual, Transgender (LGBT) persons are full citizens of India, attempts to stem the tide of history. By overturning the Naz Foundation judgment, the Supreme Court has, in one fell stroke again reduced LGBT persons to the status of what the Delhi High Court memorably called 'unapprehended felons'. The judgment of the Supreme Court is a unconscionable blow to the dignity of LGBT persons who as per the Indian Constitution are entitled to equal treatment. It withdraws the protective arm of the constitution from LGBT persons and renders LGBT persons vulnerable to discrimination, violence and harassment.

It is a tragedy that this judgment forgets the vision of the founders of the Indian republic which was so eloquently captured by the Delhi High Court. By re-criminalizing LGBT persons the judgment ignores the spirit of inclusiveness which is the heart of the Indian Constitution as articulated by Jawaharlal Nehru. It equally abandons the principle of constitutional morality (ie majorities dont have a charter to discriminate against minorities purely because they are majorities) articulated by Dr. Ambedkar which is the cornerstone of a diverse and plural nation.

The judgment is thus a deep betrayal of the fundamental constitutional promise that the dignity of all citizens would be recognized and that equal treatment is a non negotiable element of the world's largest democracy. In this betrayal of constitutional faith, the Court has shredded the very principles it has sworn itself to uphold.

This decision today along with the decisions upholding the emergency and legitimizing rape marks the lowest ebb in the illustrious history of the Supreme Court. In 1975 in *ADM Jabalpur v. State of Madhya Pradesh*, the Supreme Court upheld the declaration of emergency which deprived all citizens of the right to life in India. In 1979, in *Mathuras* case, the Supreme Court in effect declared that women who were raped should be disbelieved. In 2013 the Supreme Court has held that LGBT persons are not human beings whose dignity and life is violated by a colonial law.

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Hard as this decision is and difficult as the road forward may be, we draw strength and inspiration from ordinary LGBT persons who will not allow this to affect the way they lead their lives. In the course of the last ten years or so, LGBT persons have begun to lead their lives openly and publicly proclaiming their claim to equal citizenship. The page of history has turned and no power on earth can deny LGBT persons the right to freedom, equality and dignity.

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

By

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which constitutes various NGOs and independent organizations working for sexual minorities' rights including: Alternative Law Forum, Sangama, Samara, Good As You, WHaQ!, Karnataka Sexual Minorities Forum, Karnataka Sex Workers Union, LesBiT, Swabhava, Vimochana, PUCL-Karnataka, Maraa, Payana and others.

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