

INDEX

Sl. No.	Particulars	Pages
1.	Office Report on Limitation	
2.	Listing Proforma	
3.	Synopsis and List of Dates	
4.	True copy of the final common judgment dated 11.12.2013 passed by this Hon'ble Court in judgment and order of this Hon'ble Court dated 11.12.2013 in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013	
5.	Review Petition along with affidavit	
6	Annexure P1: True copy of the Written Submissions filed by the Review Petitioner before this Court	
7.	Annexure P 2: True typed copy of the order of the Delhi High Court dated 02.09.2004 in WP (C) No. 7455/2001	
8.	Annexure P 3: True typed copy of the order of this Hon'ble Court dated 03.02.2006 in SLP (C) Nos. 7217-7218/2005	
9.	IA NO. _____ OF 2014 Application under Order XL Rule 3 of the Supreme Court Rules, 1966 for oral hearings	

10.	IA No. _____ of 2014 Application under Articles 142 and 137 of the Constitution of India read with Section 151, Code of Civil Procedure, 1908, for the stay of the final common judgment and order dated 11.12.2013	
11.	IA No. _____ of 2014 Application for exemption from filing certified copy of the common judgement and order.	
12.	IA No. _____ of 2014 Application seeking permission to file extended Synopsis and List of Dates	
13.	IA No. _____ of 2014 Application seeking permission for filing additional documents	
14.	Annexure P-4 Affidavit of Fazil A., a HIV/AIDS outreach worker in Hassan, Karnataka attesting to his arrest under a fraudulent case under Section 377 and his torture and harassment at the hands of the police and other inmates while in judicial custody	
15.	Annexure P-5 (Colly) Translated Copies of FIRs under which Mr. Fazil A. and 11 other people were arrested.	
16.	Annexure P-6 Copy of fact finding report documenting how Section 377 was used to harass LGBT people and HIV/AIDS outreach workers in Hassan	
17.	Annexure P-7 Affidavit of Ajay R.M. a transgender HIV/AIDS field worker documenting harassment by police officers in Haveri,	

	Karnataka as a direct result of the judgment under review.	
18.	Annexure P-8 Affidavit of Laxman S.T. a HIV/AIDS outreach workers documenting harassment of HIV/AIDS field workers by police officers in Haveri, Karnataka.	
19.	Annexure P-9 Affidavit of Mukesh Deivanayagam attesting to posters that appeared in Madurai on 18.11. 2013 (one week after the judgment under review) calling for the death penalty for homosexuals.	
20.	Annexure P-10 Affidavit of Dr. Shekhar Seshadri, Professor of Psychiatry, NIMHANS attesting to the deleterious impact of Section 377 on the mental health of LGBT persons	
21.	Annexure P-11 Affidavit of Vinay Chandran, a trained counsellor in Bangalore, attesting to the trauma experienced by his clients after the judgment under review was issued.	
22.	Annexure P-12 Affidavit of Pawan Dhall, an HIV/AIDS activist in Odisha, West Bengal, Manipur and other eastern states attesting to the arrest and harassment of HIV/AIDS workers as a direct result of the judgment under review.	
23.	Annexure P-13 Affidavit by Mrs. Vijayalakshmi Chaudhuri, a mother of a gay man attesting to her fear that people may use the judgment under review to file criminal cases against her son.	
24.	Annexure P-14 Affidavit by Mrs Chitra Palekar ,a mother of	

	a lesbian woman who attests to her apprehension as to how the consequence of the judgment under review is to increase prejudice against her family because her daughter is lesbian	
25.	Annexure P-15 Affidavit by Vijay Mogli , a gay man who attests to how there has been an increase in hostility within the family towards him ever since the judgment under review was pronounced.	
26.	IA No. _____ of 2014 Application under Section 151 of the Civil Procedure Code, 1908, for Exemption from filing official translations of Annexures A 2 and A 6	

SYNOPSIS & LIST OF DATES

- 1(a) This petition under Article 137 of the Constitution of India arises in an exceptional case impacting Human Rights and Dignity.
 - (b) The petitioners request this Court to review and reconsider its judgment dated 11.12.2013 in a set of civil appeals captioned *Suresh Kumar Koushal & Anr. v. Naz Foundation and Ors.*
 - (c) The petitioners ('Voices Against 377') were parties before the Delhi High Court and supported the writ petition. In this Court, the petitioners were respondents in the civil appeals disposed of on 11.12.2013.
- 2(a) Human Rights and Dignity in their myriad forms and aspects enjoy an exalted status in the Constitution of India. Indeed, nothing is placed higher. This status derives not just from the ringing language in the Preamble and Part III of the Constitution, but equally from the powerful institutional machinery in the form of Constitutional Courts established to protect these values.
 - (b) A vital aspect of an individuals' identity is his or her sexual orientation. The development of intimate relationships is a crucial facet in the enjoyment of life and to deny any individual his or her right to physical intimacy is an egregious affront to the person's Human Rights and Dignity.
 - (c) Modern science tells us that while the vast majority of humans are heterosexual, being attracted to the opposite sex, a significant and stable minority, throughout human history are homosexual or belong to a minority community of individuals attracted to the same sex. Moreover and crucially, the weight of scientific material shows that each of us has little or no control in deciding our sexual orientation which is innate or at any rate evolves before a person attains majority. Like the colour of our eyes or hair or skin or whether we are right-handed or left-handed, we as individuals have little or no control in deciding these core aspects of who we are.
 - (e) Universal Human Rights and the Constitutional obligation to protect Dignity require that this sexual minority is accorded

full protection of law and its members are not discriminated against merely for being who they are. This is the promise of the Constitution. An Indian citizen can rise to be the President or the Prime Minister or the Chief Justice of India, regardless of his or her sexual orientation. This is why the Delhi High Court correctly limited the scope of Section 377 of the India Penal Code so that it did not taint a sexual minority.

- (f) Section 377, without a suitable declaration, stigmatizes homosexuals and forces them to live a life of celibacy or condemns them to the status of 'un-apprehended felons'. Constitutionally, this cannot be. The Indian State has no business to breach the privacy of the bedroom and police acts of intimacy between consenting adults.
 - (g) It is the primary business, responsibility and obligation of this Court to recognise the violation of Human Rights by the State and the trampling upon of Human Dignity by invasive laws and to then remedy the wrong. Respectfully, this Court in *Koushal* abdicated its role as guardian of Universal Human Rights and the protector of minorities.
3. Consistent with its Constitutional obligation to protect Human Rights guaranteed under the Constitution of India, this petition lends an opportunity to this Court to undo the grave consequences flowing from *Koushal*

Why this Review.

4. Rendered 624 days (over 1 year 8 months) after the hearing concluded and the case was reserved for judgment, the *Koushal* judgment dated 11.12.2013 suffers from mistakes and errors that are apparent on the face of the record. In addition, there are other sufficient reasons that warrant review of the *Koushal* decision. While the detailed grounds for review are set out in the main petition, the following summary highlights the principal reasons why this case merits review.
- (A) Two paramount issues arose in the case and the Court failed to address both of them:

- (i) The first issue was about Identity and Dignity of the individual. LGBT (Lesbian, Gay, Bisexual and Transgender) persons who are defined by their different sexual orientation and gender identity exists across classes, in urban and rural areas and belong to different castes and religious communities. Their sexual desires are different from the majority. The great question before this Court was whether LGBT persons may be criminalised merely for being who they are. Though facially neutral, Section 377 in its interpretation, operation and working targets LGBT persons. In doing so, it offends the dignity of LGBT persons as a class, makes them second class citizens and denies them full moral citizenship. This issue has not been considered by the Court in *Koushal* although urged in oral as well as written submissions by the Petitioner.
- (ii) The second paramount issue was about this Court's Constitutional role as guardian of Fundamental Rights and the protector of minorities including a sexual minority. After the Delhi High Court judgment *decriminalised* homosexuality, and the Union government through the Attorney General informed the Court that in the government's view, the High Court judgment was correct, this Court ought not to have *recriminalized* homosexual conduct between consenting adults in private. The declaration made by the Delhi High Court was accepted as correct by the government. This is because Liberty to be oneself and develop intimate relationships as an individual is not the privilege of the majority but is an Inalienable and Universal right of each and every human being. As our knowledge grows with the advance of science, a medieval and

blinkered statutory provision must yield to interpretations by Constitutional Courts that liberate those unjustly condemned by outdated understandings of human sexuality. This Court's role is to expand Liberty not *re-criminalize* law abiding citizens.

(B) The finding by this Court that the material before the High Court was insufficient to conclude that homosexuals were being subjected to discriminatory treatment, is *ex-facie* incorrect. It is incorrect for two reasons.

(i) *First*, there was overwhelming uncontroverted material before the High Court and which found mention in the High Court judgment that clearly showed how members of the LGBT community were being targeted by the State. This evidence was specifically referred to and relied upon by the petitioner in oral arguments as well as written submissions in this Court. Indeed, the *Koushal* judgment records in paragraph 18.1:

"[Counsel] referred to the incident, which took place at Lucknow (2002 and 2006), Bangalore (2004 and 2006), Delhi (2006), Chennai (2006), Goa (2007), and Aligarh (2011) to bring home the point that LGBT persons have been targeted by the Police with impunity and the judiciary at the grass root level has been extremely slow to recognise harassment suffered by the victims."

None of this material was contradicted. To conclude that this material was insufficient to establish hostile discrimination, amounts to an error apparent on the face of the record.

(ii) *Second*, it was not permissible for this Hon'ble Court comprising two learned Judges to ignore the binding order of a four member bench of this Court passed on 3.2.2006, remitting the

case back to the High Court for a fresh decision. Earlier, when the High Court dismissed the writ petition on the basis that absent a factual foundation the challenge was “academic” in nature, the bench comprising four learned Judges reversed the Delhi High Court and remitted the case back for consideration on merits.

(C) The material on the record placed by the petitioner establishes the extreme brutality of the State apparatus in physically abusing, torturing, exploiting and targeting members of the LGBT community. It is the obligation and duty of this Court to take note of such widespread physical and mental brutality perpetrated on human beings and to respond judicially rather than leave matters to the Legislature. This Court, being a Court of Conscience committed a grave error in failing and neglecting to give due weight to:

- (i) Human Rights Watch Report dated July, 2002 documenting harassment, wrongful arrest, verbal and physical abuse of social workers and persons working in the sexual health field with MSMs (Men who have Sex with Men);
- (ii) Personal testimony of Kokila (a hijra from Bangalore) detailing how she was raped by 10 Goondas and subsequently exploited and tortured by the police on her complaint about the rape on 18.6.2004;
- (iii) Affidavit testimony of a gay man physically assaulted by two policemen on 19.9.2006 and subsequently raped and sexually abused by the Delhi Police;
- (iv) Custodial torture and sexual abuse at the hands of the police of a hijra and her subsequent suicide as noted by the Madras High Court judgment in *Jayalakshmi v. State of Tamil Nadu* (2007) 4 MLJ 849;

- (v) Affidavit of Madhumita explaining how a false case was filed against her under Section 377 at Bangalore and how she was targeted by the police;
- (vi) FIR lodged by the Delhi Police in 2006 showing how Section 377 is abused by the police to target LGBT persons including adult women in a romantic relationship;
- (vii) Records from a Bombay High Court case of 2007 showing how Goa Police targeted two men in a consensual relationship.

Moreover, in 2011 the United Nations High Commissioner for Human Rights presented a Report to the UN Human Rights Council which expressly noted that LGBT persons are subject to killings, rape, torture, discrimination and harassment across diverse jurisdictions where provisions such as Section 377 remain on the statute book. The material on the record regarding targeting of LGBT persons was overwhelming, un-contradicted and extended to locations across India as well as beyond India.

- (D) This Hon'ble Court erred fundamentally in failing to consider and follow judgments from foreign jurisdictions dealing with the issue of Human Rights in relation to LGBT persons. The foundation of the Delhi High Court judgment and the writ petitioner's case was built on Universal Human Rights. The Right to Dignity, Personal Autonomy, Privacy and the Right to Life are now recognized as inalienable to human beings. They are universal. Sexual rights and sexuality are important facets of globally recognised Human Rights and it is the duty and obligation of this Court to ensure that persons living in India, constituting nearly 1/6th of humanity are not deprived of basic Human Rights. In this regard, it is respectfully submitted that the Delhi High Court

correctly appreciated international development in the field through judgments by the Higher Courts in United States of America, South Africa, decisions of the European Court of Human Rights, Fiji and Nepal. There is an error apparent in dismissing foreign judgments despite *Koushal* recognizing that “*these judgments shed considerable light on various aspects of this right and are informative in relation to the plight of sexual minorities . . .*”.

- (E) Denying relief to the LGBT community because it constitutes “*a miniscule fraction of the country’s population*” reveals a profound misunderstanding on the part of this Hon’ble Court of the Constitutional role and obligation of the Supreme Court of India in protecting minority rights. The technical literature on the record of this Court showed that the LGBT community, across countries and cultures where efforts at estimating the population has been made, range between 5-7 % of the adult population. In the context of India with a population of over 1.2 billion people, the number of adults would work out to over 60- 84 million. This is a staggeringly large number of human beings, each of whom is entitled to enjoy all the Fundamental Rights guaranteed under the Constitution of India. Moreover, the material on the record establishes that according to the Ministry of Health and Family Welfare, the estimated number of MSMs was 25,00,000. In the circumstances the approach of the Court in *Koushal* is legally as well as factually flawed.
- (F) The duty of the Supreme Court of India is to have regard to developments in science and the state of human knowledge and to bring this recent knowledge to bear on the interpretation of old legislation. Extensive scientific and technical material was placed by the petitioners before this Court. The technical material was uncontroverted and established:

- Homosexual conduct was normal conduct. Homosexuality is simply one normal variant of sexual identity.
- Homosexuality was not a disorder.
- Heterosexual and homosexual behaviour are both normal aspects of human sexuality.
- Sexual intimacy is a core aspect of the human experience and is important to mental health, psychological well beings and for the social adjustment of homosexuals.
- Human beings develop a sexual orientation between middle childhood and early adolescence.
- Sexual orientation is innate and cannot be changed at will.

The technical material supporting this state of knowledge included

- (i) K.K. Gulia and H.N Mullick, *Homosexuality a dilemma in discourse*, Ind. J. Physiol. Pharmacol. 2010; 54(1): 5-20
- (ii) *Amicus* Brief of the American Psychological Association filed in *Lawrence v. Texas* 539 US 558 (2003)
- (iii) *The Concise Corsini Encyclopedia of Psychology and Behavioural Sciences* (3rd edn., W. Edward Craighead and Charles B. Neemroff Eds., 2004)
- (iv) *Encyclopedia of Psychology*, Alan E Kazdin Ed., OUP, 2003.
- (v) Alisson Abbot, *But is it Natural?*, Nature Vol 446, 26 October, 2006.

(G) This Hon'ble Court failed to apply the settled principle of law that legislation that may be reasonable and rational at a one point of time may become arbitrary, unreasonable and violative of Fundamental Rights due to a change of circumstances. (*Satyawati Sharma v. Union of India*, (2008) 5 SCC 287 at para 32; *John Vallamotham v. Union of India*, (2003) 6 SCC 61 at para 36).

Here the error apparent on the face of the record is with respect to Court failing to test the validity of Section 377 with reference to developments in our understandings of human sexuality.

(H) The material on record established that a number of persons belonging to the LGBT community had distinguished themselves and had attained fame in various disciplines and callings. These persons included:-

Indian and South Asia	Literature	Judges/ Lawyers / Jurists	Sports	Science and Humanities
Vikram Seth	Oscar Wilde	H.L.A Hart	Martina Navratilova	Alan Turing
Bhupen Khakkar	Virginia Woolf	Michael Kirby	Billie Jean King	John Maynard Keynes
Onir	Truman Capote	Edwin Cameron	Greg Louganis	Michel Foucault
Ismail Merchant	James Baldwin	Kenji Yoshino	Steven Davies	
Amir Khusro	C.P. Cavafy			
Sunil Babu	E.M Forster			

Pant				
Hoshan g Mercha nt				

This Court in *Koushal* committed a grave mistake when it mischaracterised the Fundamental Rights of ordinary members of the LGBT community as “so called rights of LGBT persons”. This erroneous characterisation neglects the entitlement of LGBT persons to enjoy all Fundamental Rights and fails to note the extraordinary contribution made by all persons belonging to the LGBT community. The contributions of this community are no different from the contributions made by other segments of society including minorities.

- (I) This Hon’ble Court comprising two learned Judges failed to observe the mandate of Article 145 (3) of the Constitution of India which requires that the minimum number of Judges who are to sit for the purpose of deciding a case involving a substantial question of law as to the interpretation of the Constitution shall be five.
- (J) When it comes to Human Rights and Dignity the Supreme Court of India is in the business of expanding rights not constricting freedoms. It is manifestly unjust to deprive a significant section of citizens the legal right to develop intimate relationships is the only natural manner known to them. By effacing the declaration granted by the Delhi High Court, the *Koushal* judgment takes away the protective shield provided by the declaration to LGBT persons. Now, an LGBT person is viewed by members of society as a person who engages in criminal conduct. It could not have been the intent of the Supreme Court of India to visit harm on tens of thousands of law abiding citizens. The failure on the

part of the court to gauge the immense negative psychological, physical and social impact on tens of thousands of citizens -- such that it exposes them to daily ridicule and destroys their self-esteem has caused manifest injustice. It is respectfully submitted *ex debito justitiae* this Court ought to review *Koushal*.

Why Hear the Parties

5. It is respectfully submitted that this review petition merits a hearing in Court. The case involves Human Rights and Dignity. As set out in this synopsis and in greater detail in the main review petition, a number of points advanced during the oral arguments and recorded in the written submissions have been entirely ignored. The effect and impact of *Koushal* is to demote honest and law abiding members of the LGBT community to a status of second class citizen in India. This amounts to an extraordinary regression in Human Rights jurisprudence and severely dents the record of this Court in protecting and expanding the liberty assured to all persons. The *Koushal* judgment is discordant in terms of global Human Rights jurisprudence and social developments across the world. It is respectfully submitted that the petitioners would like to explain the enormous adverse psychological, physical, social and health ramification of *Koushal* in the course of an oral hearing in open court.

Why it is necessary to Stay the Judgment dated 11.12.2013, Pending Review:

6. The Delhi High Court judgment in *Naz Foundation* was rendered on 2.7.2009. The effect of this judgment was that homosexual conduct between consenting adults in private was *decriminalized*. Consequently, Indians belonging to the LGBT community no longer suffered any legal taint in the course of their social and professional interactions and they enjoyed the status of full moral citizenship. This development in the law helped foster a better

understanding of sexual orientation and enabled members of the LGBT community to interact as equals with other citizens. At an individual level, the self-esteem of LGBT persons increased because of the legitimacy conferred by the Delhi High Court declaration. Individuals became more open about their sexual orientation and shared this aspect of their personality with family, friends, colleagues and peers. At the work place, in the wake of the *Naz* judgment, employers treated LGBT persons on a more equal basis. Prejudice and homophobia decreased. There was a perceptible decline in hostile action by police and a safe environment was created for the spread of health programmes to combat HIV/AIDS.

The impact of the Supreme Court judgment is that police harassment has increased; social prejudice has sharpened; individuals have suffered psychological trauma and reduced self-esteem; employment has been jeopardized; young members of the LGBT community find themselves shut out of public employment opportunities because of potential criminality; family bonds carefully nurtured since 2009 have been disrupted and there is increased hostility towards the LGBT persons in their family as well as social circles.

In the circumstances, it is absolutely necessary and in the interest of justice that the *Koushal* judgment dated 11.12.2013 be stayed pending review. The balance of convenience is overwhelmingly in favour of the grant of such a stay order.

2001	The Writ Petitioner Naz Foundation files WP (C) 7455/2001 before the High Court of Delhi praying that Section 377 be declared as unconstitutional and violative of Articles 14, 15, 19(1)(a) and 19(1)(d) and 21 of the Constitution insofar as it criminalises consensual sexual activity between adults.
02.09.2004	Division Bench of the High Court of

Delhi dismisses the writ petition in the following terms:

In this petition we find there is no cause of action as no prosecution is pending against the petitioner. Just for the sake of testing the legislation, a petition cannot be filed....

In consequence the court does not express opinion when nobody is really aggrieved by the action which is impugned and does not examine merely academically the impugned action of the legislature or the executive. In view of the above, we feel that an academic challenge to the constitutionality of a legislative provision cannot be entertained.

Hence, the petition dismissed.

3.11.2004

High Court passes order dismissing review petition filed against its order dismissing WP(C) 7455/2001

Thereafter the Writ Petitioner Naz Foundation files SLP(C) Nos. 7217-7218/2005 against the orders dated 02.09.2004 and 3.11.2004 before the Hon'ble Supreme Court

03.03.2006

Hon'ble Supreme Court allowed the appeal and remanded the writ petition for fresh decision by the High Court in the following terms

"The challenge in the writ petition before the High Court was to the constitutional validity of Section

377 of the Indian Penal Code, 1860. The High Court without examining the issue, dismissed the writ petition by the impugned order observing that there is no cause of action in favour of the appellant as the petition cannot be filed to test the validity of the legislation and therefore, it cannot be entertained to examine the academic challenge to the constitutionality of the provision. The learned Additional Solicitor General, if we may say so, rightly submits that the matter requires examination and is not of a nature which ought to have been dismissed on the ground afore-stated...We are, however, not examining the issue on merits but are of the view that the matter does require consideration and is not of a nature which could have dismissed on the ground afore-stated. In this view, we set aside the impugned judgment and order of the High Court and remit Writ Petition(C) No. 7455 of 2001 for its fresh decision by the High Court.

22.11.2006

The Review Petitioner, Voices Against 377, was impleaded as Respondent No. 8 before the High Court

02.07.2009

The High Court rendered its decision and gave its declaration in the following terms:

“We declare that Section 377 IPC, insofar as it criminalises consensual sexual acts of adults in private, is violative of Article 21, 14 and 15 of the Constitution. The provisions of Section 377 IPC will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors. By ‘adult’ we mean everyone who is 18 years of age and above. A person below 18 would be presumed not to be able to consent to a sexual act.”

09.07.2009

Notice is issued in the present SLP(C) 15436/2009 is by parties who were neither parties before the High Court, nor personally aggrieved by the judgment of the High Court.

The Union of India has accepted the declaration granted by the High Court and refused to file an appeal against this judgment.

13.02.2012

This Hon’ble Court begins hearing final arguments in this matter.

23.02.2012

This Hon’ble Court records that the learned Additional Solicitor General Mr. P.P. Malhotra makes submissions on behalf of the Union of India. Mr. P.P. Malhotra argued that the Union of India was opposed to the declaration granted by the High Court. As soon as Mr. P.P. Malhotra concluded his submissions, another Additional Solicitor General Mr. Mohan Jain stated

that the Union of India had not filed an appeal and had not yet taken a stand in this case.

28.2.2012

Mr. Mohan Jain, Additional Solicitor General appears on behalf of the Union of India and submits the recommendations of the Group of Ministers and the decision of the Cabinet. The recommendations of the Group of Ministers and the decision of the Cabinet was that the Delhi High Court's declaration was correct in law and ought not to be appealed by the Union of India. This Hon'ble Court was pleased to record that the

learned Additional Solicitor General appeared and read out what he termed as the recommendations made by the Group of Ministers and the decision of the Cabinet.

By the same order, the Union of India was directed to

file an affidavit of the concerned Secretary incorporating therein the recommendations made by the Group of Ministers and the decision taken by the Cabinet.

1.3.2012

Affidavit was filed on behalf of the Union of India by the Home Secretary which negated the earlier submissions made by the learned Additional Solicitor General Mr. P.P. Malhotra on behalf the Union of India. In this affidavit, filed by the Home Secretary, it was stated that

there was no legal error in the impugned judgment by the High Court.

21.3.2012 *The Learned Attorney General appeared before this Court on behalf of the Union of India and reiterated the stand of the Union of India that it finds no legal error in the judgment of the High Court accepts the same.*

22.03.2012 *The Attorney General again appears before this Court and reiterates that the Union of India finds no error in the High Court's declaration and accepts the same. He also filed written submissions before this Hon'ble Court stating that Union of India*

does not find any legal error in the judgment of the High Court and accepts the correctness of the same. This is also clear from the fact that it has not filed any appeal against the judgment of the High Court.

27.03.2012 The oral hearings in this case conclude and judgment is reserved.

19.06.2013 The Protection of Children from Sexual Offences Act is enacted and assented to by the President.

This statute criminalizes all forms of sexual assault committed on any person under the age of 18.

03.02.2013 The Criminal Law Amendment Act, 2013 comes into force amending, *inter alia*, s. 375 of the IPC.

This amendment criminalizes all forms

of non consensual penetrative acts committed by a man on a woman.

11.12.13

After 1 year and about 8 months, 1 week and 6 days (624 days) from the conclusion of oral hearings, this Court allows the Special Leave Petitions and dismisses the Writ Petition.

10.1.2014

Hence, this Review Petition.

IN THE SUPREME COURT OF INDIA

(Under Article 137 of the Constitution of India)

REVIEW PETITION (CIVIL) NO. OF 2014

IN

CIVIL APPEAL NO. 10972 OF 2013, CIVIL APPEAL NO. 10986 OF 2013, CIVIL APPEAL NO. 10986 OF 2013, CIVIL APPEAL NO. 10981 OF 2013, CIVIL APPEAL NO. 10983 OF 2013, CIVIL APPEAL NO. 10984 OF 2013, CIVIL APPEAL NO. 10975 OF 2013, CIVIL APPEAL NO. 10973 OF 2013, CIVIL APPEAL NO. 10985 OF 2013, CIVIL APPEAL NO. 10976 OF 2013, CIVIL APPEAL NO. 10980 OF 2013, CIVIL APPEAL NO. 10982 OF 2013, CIVIL APPEAL NO. 10977 OF 2013, CIVIL APPEAL NO. 10979 OF 2013

(ARISING OUT OF THE FINAL COMMON ORDER DATED 11.12.2013 PASSED BY THIS HON'BLE COURT IN CIVIL APPEAL NO. 10972 OF 2013, CIVIL APPEAL NO. 10986 OF 2013, CIVIL APPEAL NO. 10986 OF 2013, CIVIL APPEAL NO. 10981 OF 2013, CIVIL APPEAL NO. 10983 OF 2013, CIVIL APPEAL NO. 10984 OF 2013, CIVIL APPEAL NO. 10975 OF 2013, CIVIL APPEAL NO. 10973 OF 2013, CIVIL APPEAL NO. 10985 OF 2013, CIVIL APPEAL NO. 10976 OF 2013, CIVIL APPEAL NO. 10980 OF 2013, CIVIL APPEAL NO. 10982 OF 2013, CIVIL APPEAL NO. 10977 OF 2013, CIVIL APPEAL NO. 10979 OF 2013)

BETWEEN :

Position of Parties

In the High Court Before this Court

IN THE MATTER OF:

CIVIL APPEAL NO. 10972 OF 2013

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.8 Respondent No.11

Versus

1. Suresh Kumar Koushal
S/o Shri S.D. Koushal,
C-105, Nirman Vihar,
Delhi- 110092

Not party Petitioner No.1

2. Dr. Mukesh Kumar Koshal
S/o Shri S.D. Koushal
C-105, Nirman Vihar,
Delhi – 110 092 Not party Petitioner No.2

3. Naz Foundation,
A Trust registered
under the Indian Trust Act,
At having its registered office
A-86, East of Kailash
New Delhi- 110065 Petitioner Respondent No.1

4. Government of NCT Delhi,
through the Secretary
Social Welfare
Delhi Secretariat
ITO, New Delhi
Delhi Respondent No.1 Respondent No.2

5. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi Respondent No.2 Respondent No.3

6. Delhi State AIDS Control Society
B.S. Ambedkar Hospital
Dharamshala Block
Rohini, Sector 6
Delhi Respondent No.3 Respondent No.4

7. National AIDS Control Organization,
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi Respondent No.4 Respondent No.5
8. Union of India,
Through Secretary
Ministry of Home,
North Block, India Gate
New Delhi Respondent No.5(a) Respondent No.6
9. Union of India,
Through Secretary
Ministry of Health Family Welfare,
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi Respondent No.5(b) Respondent No.7
10. Union of India,
Through Secretary
Ministry of Social Welfare
Shashtri Bhavan,
New Delhi Respondent No.5(c) Respondent No.8
11. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi-110 021 Respondent No.6 Respondent No.9
12. Shyam Benegal,
802, Brahmaputra,
Dr. Bishambar Das Marg,
New Delhi Not a party Intervener
13. Trust God Missionaries,
Through its authorised

person,
Mr. Sebastian, s/o Jose
Kattukaren,
The Member Trustee, H.No.84,
Church Compound, Mehrauli,
New Delhi – 110 030 Not a party Intervener

14. Minna Saran & Others,
Residing at E-301,
Krishna Apra Residency,
Sector 61, Noida Not a party Intervener

15. Dr. Shekhar Seshadri & Others,
S/o P.Seshadri, Residing
at E-304, Adasrh Palace,
47th Cross,
5th Block, Jayanagar,
Bangalore – 560004 Not a party Intervener

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10974 OF 2013

1. 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.8 Respondent
No.11

Versus

1. Ram Murti
S/o. Sh. Dalip Rai
R/o. D-54, First Floor

Hauz Khas,
New Delhi- 110016 Not a party Petitioner

2. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi
Secretariat ITO,
New Delhi Respondent No.1 Respondent No.1
3. Commissioner of Police
Police Headquarters,
ITO, New Delhi Respondent No.2 Respondent No.2
4. Delhi State AIDS Control Society
B.S. Ambedkar Hospital
Dharamshala Block
Rohini, Sector 6
Delhi Respondent No.3 Respondent No.3
5. National AIDS Control Organization,
Set up by the Union of India,
Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi Respondent No.4 Respondent No.4
6. Union of India
Through Secretary
North Block, India Gate
New Delhi Respondent No.5 Respondent No.5
7. Ministry of Home
through Secretary
North Block, India Gate
New Delhi Respondent No.5(a) Respondent No.6
8. Ministry of Health
Through Secretary

Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi Respondent No.5(b) Respondent No.7

9. Ministry of Social Justice
And Empowerment
Through Secretary
Shashtri Bhavan,
New Delhi Respondent No.5(c) Respondent No.8

10. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi-110 021 Respondent No.6 Respondent No.9

11. Naz Foundation
Society Through Anjali Gopalan
Executive Director
A-86, East of Kailash
New Delhi- 11006 Petitioner Respondent
No.10

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10986 OF 2013

1. Voices Against Section 377
A coalition of 12 organisations
Having its address at
11, Mathura Road,
First Floor, Jangpura B
New Delhi –13 Respondent No.8 Respondent No.11

Versus

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

(Delhi) Applicant Petitioner No.1

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

Applicant

Petitioner No.2

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

Petitioner

Respondent No.1

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

ITO, New Delhi Respondent No.1

Respondent No.2

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

Delhi Respondent No.2

Respondent No.3

5. Delhi State AIDS
Control Society
11, Lances Road,
Timarpur,

Delhi -110 054 Respondent No.3

Respondent No.4

6. National AIDS Control
Organization,
Set up by the Union of India,

Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi Respondent No.4 Respondent No.5

7. Union of India
Through Secretary
Ministry of Home Affairs
North Block,
India Gate
New Delhi Respondent No.5(a) Respondent No.6

8. Union of India
Through Secretary
Ministry of Health
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi Respondent No.5(b) Respondent No.7

9. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi Respondent No.5(c) Respondent No.8

10. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi-
110 021 Respondent No.6 Respondent No.9

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10981 OF 2013

1. Voices Against Section 377
A coalition of 12 organisations
Having its address at
11, Mathura Road,
First Floor, Jangpura B

New Delhi Respondent No.4 Respondent No.5

7. Union of India

Through Secretary
Ministry of Home
North Block, India Gate

New Delhi Respondent No.5 Respondent No.6

8. Union of India

Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,

New Delhi Respondent No.5(b) Respondent No.7

9. Union of India

Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,

New Delhi Respondent No.5(c) Respondent No.8

10. Joint Action Council

Kannur
C-38, Anand Niketan

New Delhi-21 Respondent No.6 Respondent No.9

11. Shri B.P. Singhal

Retd. DGP, Ex-MP
C-001, Stellar Kings Courts,
F-32, Sector 50

Noida – 201305 Respondent No.7 Respondent No.10

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10983 OF 2013

1. 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.8 Respondent
No.11
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 Not a party Petitioner

2. Naz Foundation
A Society registered under the
Societies Registration Act,
D-45, Gulmohar Park,
New Delhi- 110049 Petitioner Respondent
No.1

3. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi
Secretariat
ITO, New Delhi Respondent No.1 Respondent No.2

4. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi Respondent No.2 Respondent No.3

5. Delhi State AIDS Control Society,
Through Secretary
11, Lances Road, Timarpur,
Delhi -110 054
Delhi Respondent No.3 Respondent No.4

6. National AIDS Control Organization,
Set up by the Union of India,

Having its office
9th Floor, Chandralok Building
Opp. Imperial Hotel,
New Delhi Respondent No.4 Respondent No.5

7. 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.5 Respondent No.6

8. Joint Action Council Kannur
C-38, Anand Niketan
New Delhi -21 Respondent No.6 Respondent No.7

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10984 OF 2013

1. Voices Against Section 377
A coalition of 12 organisations
Having its address at
11, Mathura Road,
First Floor, Jangpura B
New Delhi –13 Respondent No.8 Respondent No.11

Versus

1. Apostolic Churches Alliance,
Rep. by its Bishop Salm T. Varghese
T.C 11/2147-1
Tilak Nagar, Nalanohira P.O.
Trivandrum, Kerala Not a party Petitioner

2. Naz Foundation
A Society registered under the
Societies Registration Act
D-45, Gulmohar Park
New Delhi- 110049 Petitioner Respondent No.1

3. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi
Secretariat
ITO, New Delhi Respondent No.1 Respondent No.2

4. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi Respondent No.2 Respondent No.3

5. Delhi State AIDS Control Society,
Through Secretary
11, Lances Road,
Timarpur,
Delhi -54 Respondent No.3 Respondent No.4

6. 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 Respondent No.4 Respondent No.5

7. Union of India

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

Respondent No.5

Respondent No.6

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

Respondent No.5(b)

Respondent No.7

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

Respondent No.5(c)

Respondent No.8

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

Respondent No.6

Respondent No.9

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10985 OF 2013

1. Voices Against Section 377

A coalition of 12 organisations

Having its address at

11, Mathura Road,

First Floor, Jangpura B

New Delhi – 110013

No.11

Respondent No.8 Respondent

Versus

1. Prof. Bhim Singh

Chairman,
J&K National Panthers Party
17, V.P. House,
Rafi Marg,
New Delhi-01 Not a party Petitioner No.1

2. Naz Foundation
A Society registered
under the,
Societies Registration Act
D-45, Gulmohar Park
New Delhi- 49 Petitioner Respondent No.1

3. Government of NCT Delhi,
through the Secretary
Social Welfare
Delhi Secretariat
ITO,
New Delhi Respondent No.1 Respondent No.2

4. Commissioner of Police
Police Headquarters,
ITO, New Delhi
Delhi Respondent No.2 Respondent No.3

5. Delhi State AIDS Control Society,
Through Secretary
11, Lances Road,
Timarpur,
Delhi -110 054 Respondent No.3 Respondent No.4

6. 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 Respondent No.4 Respondent No.5

7. Union of India

Through Secretary

Ministry of Home

through Secretary

North Block,

India Gate

New Delhi Respondent No.5(a) Respondent No.6

8. Union of India

Ministry of Health Welfare

Through Secretary

Having its office at

344, Nirman Bhavan,

Maulana Azad Road,

New Delhi Respondent No.5(b) Respondent No.7

9. Union of India

Ministry of Social Welfare

Through Secretary

Shashtri Bhavan,

New Delhi Respondent No.5(c) Respondent No.8

10. Joint Action Council Kannur,

Through Secretary

C-38, Anand Niketan

New Delhi-21 Respondent No.6 Respondent No.9

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10976 OF 2013

1. Voices Against Section 377

A coalition of 12 organisations

Having its address at

11, Mathura Road,

First Floor, Jangpura B

New Delhi –13 Respondent No.8 Respondent No.11

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) Not a party Petitioner

2. Naz Foundation
A Society registered under the
Societies Registration Act
D-45, Gulmohar Park
New Delhi-49 Petitioner Respondent No.1

3. Government of NCT Delhi,
through the Secretary
Social Welfare
Delhi Secretariat
ITO,
New Delhi Respondent No.1 Respondent No.2

4. Commissioner of Police
Police Headquarters,
ITO,
New Delhi Respondent No.2 Respondent No.3

5. Delhi State AIDS Control Society,
Through its Chairman
11, Lances Road,
Timarpur,
Delhi -110 054 Respondent No.3 Respondent No.4

6. 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 Respondent No.4 Respondent No.5

7. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi Respondent No.5(a) Respondent No.6

8. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi Respondent No.5(b) Respondent No.7

9. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi Respondent No.5(c) Respondent No.8

10. Joint Action Council Kannur,
Through its Secretary
C-38, Anand Niketan
New Delhi- 21 Respondent No.6 Respondent No.9

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10980 OF 2013

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

11, Mathura Road,
First Floor, Jangpura B
New Delhi –13 Respondent No.8 Respondent No.11

Versus

1. Krantikati Manuvadi Morcha Party
F-62, Sector 11,
NOIDA,
Uttar Pradesh
Through the
President
Shri R.K. Bhardwaj Not a party Petitioner No.1

2. R. K. Bhardwaj
Son of late Shri J. C. Bhardwaj
Resident of F.62,
Section 11,
Noida U.P Not a party Petitioner No.2

3. Naz Foundation,
Through Executive
Ms. Anjali Gopalan,
A Society registered under the
Societies Registration Act
A-86,
East of Kailash
New Delhi- 65 Petitioner Respondent No.1

4. Government of NCT Delhi,
through the Secretary
Social Welfare
Delhi Secretariat
ITO, New Delhi Respondent No.1 Respondent No.2

5. Commissioner of Police
Police Headquarters,
ITO,

New Delhi Respondent No.2 Respondent No.3

6. Delhi State AIDS Control Society

B.S. Ambedkar Hospital

Dharamshala Block

Rohini,

Sector 6

Respondent No.3 Respondent No.4

7. National AIDS Control Organization,

Set up by the Union of India,

Having its office

9th Floor, Chandralok Building

Opp. Imperial Hotel,

New Delhi

Respondent No.4 Respondent No.5

9. 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

Respondents No.5

Respondents No.6

8. Joint Action Council Kannur

C-38,

Anand Niketan

New Delhi-21

Respondent No.6

Respondent No.7

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10982 OF 2013

1. Voices Against Section 377

A coalition of 12 organisations

Having its address at

11, Mathura Road,

First Floor, Jangpura B

New Delhi –13

Respondent No.8

Respondent No.11

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-25

Not a party

Petitioner

2. Naz Foundation, through Director

A Society registered under the

Societies Registration Act

D-45, Gulmohar Park

New Delhi- 49

Petitioner

Respondent No.1

3. Government of NCT Delhi,

through the Secretary

Social Welfare Delhi Secretariat

ITO,

New Delhi

Respondent No.1

Respondent No.2

4. Commissioner of Police

Police Headquarters,

10. Joint Action Council Kannur,
Through its Director,
C-38, Anand Niketan
New Delhi-21 Respondent No.6 Respondent No.9

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10977 OF 2013

1. Voices Against Section 377
A coalition of 12 organisations
Having its address at
11, Mathura Road,
First Floor, Jangpura B
New Delhi –13 Respondent No.8 Respondent No.11

Versus

1. Joint Action Council, Kannur
Through its General Convenor,
Having its office at
C- 38, Anand Niketan,
New Delhi-110021 Respondent No.6 Petitioner

2. Naz Foundation
A Society registered under the
Societies Registration Act
D-45,
Gulmohar Park
New Delhi- 49 Petitioner Respondent No.1

3. Government of NCT Delhi,
through the Secretary
Social Welfare
Delhi Secretariat
ITO,
New Delhi Respondent No.1 Respondent No.2

4. Commissioner of Police
Police Headquarters,
ITO,
New Delhi Respondent No.2 Respondent No.3
5. Delhi State AIDS Control Society,
Through its Secretary
11, Lances Road,
Timarpur,
Delhi -54 Respondent No.3 Respondent No.4
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 Respondent No.4 Respondent No.5
7. 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 Respondents No.5 Respondents No.6
8. Shri B.P. Singhal
Retd. DGP, Ex-MP

C-003, Stellar Kings Courts,
F-32, Sector 50
Noida –201305 Respondent No.6 Respondent No.7

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10978 OF 2013

1. 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.8 Respondent

No.1

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

Not party

Petitioner No.1

2. S. Hyder Ali

S/o Mr. Syed Mohammed

Mannady

Chennai 600 001

Not party

Petitioner No.2

3. Naz Foundation

A Society registered under the

Societies Registration Act

D-45, Gulmohar Park

New Delhi-49

Petitioner

Respondent No.1

4. Government of NCT Delhi,
through the Secretary
Social Welfare
Delhi Secretariat
ITO, New Delhi Respondent No.1 Respondent No.2

5. Commissioner of Police
Police Headquarters,
ITO,
New Delhi Respondent No.2 Respondent No.3

6. Delhi State AIDS Control Society,
Through its Secretary
11, Lances Road,
Timarpur,
Delhi -54 Respondent No.3 Respondent No.4

7. 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 Respondent No.4 Respondent No.5

8. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi Respondent No.5(a) Respondent No.6

9. Union of India
Ministry of Health Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,

Maulana Azad Road,
New Delhi Respondent No.5(b) Respondent No.7

10. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi Respondent No.5(c) Respondent No.8

11. Joint Action Council Kannur,
Through its Secretary
C-38, Anand Niketan
New Delhi-21 Respondent No.6 Respondent No.7

AND IN THE MATTER OF:

CIVIL APPEAL NO. 10979 OF 2013

1. 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.8 Respondent
No.1

Versus

1. Raza Academy
52, Dontad Street
First Floor, Khadak
Mumbai 400009
Maharashtra
(through its President
Munammad Saeed
Noori) Not a party Petitioner

2. Naz Foundation
A Society registered under the
Societies Registration Act
D-45, Gulmohar Park
New Delhi- 110049 Petitioner Respondent No.1

3. Government of NCT Delhi,
through the Secretary
Social Welfare Delhi Secretariat
ITO,
New Delhi Respondent No.1 Respondent No.2

4. Commissioner of Police
Police Headquarters,
ITO,
New Delhi Respondent No.2 Respondent No.3

5. Delhi State AIDS Control Society,
Through its Secretary
11, Lances Road, Timarpur,
Delhi -54 Respondent No.3 Respondent No.4

6. 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 Respondent No.4 Respondent No.5

7. Union of India
Through Secretary
Ministry of Home
through Secretary
North Block, India Gate
New Delhi Respondent No.5 Respondent No.6

8. Union of India

Ministry of Health Social Welfare
Through Secretary
Having its office at
344, Nirman Bhavan,
Maulana Azad Road,
New Delhi Respondent No.5(b) Respondent No.7

9. Union of India
Ministry of Social Welfare
Through Secretary
Shashtri Bhavan,
New Delhi Respondent No.5(c) Respondent No.8

10. Joint Action Council Kannur,
Through its Secretary
C-38, Anand Niketan
New Delhi- 21 Respondent No.6 Respondent No.9

A Petition under Article 137 of the Constitution of India

To,
The Hon'ble Chief Justice of India
and His Companion Justices of the
Supreme Court of India at New Delhi

The humble petition of the
Petitioner abovenamed

MOST RESPECTFULLY SUBMITS:

1. That by the present petition under Article 137 of the Constitution of India, the petitioners seek review of final common judgment and order of this Hon'ble Court dated 11.12.2013 in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal

No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013. By the impugned judgement, this Hon'ble Court was pleased to reverse judgment and order of the High Court of Delhi dated 02.07.2009, in WP(C) 7455/2001, declaring section 377 of the Indian Penal Code, 1860, unconstitutional insofar as it criminalised private consensual sexual activity between adults. In doing so, the Hon'ble High Court had de-criminalised millions of Lesbian, Gay, Bisexual and Transgender Indian citizens. It is most respectfully submitted that the judgment of this Hon'ble Court suffers from mistakes and errors apparent on the face of the record. In addition, there are other sufficient reasons that warrant review of the judgement of this Hon'ble Court.

2. That the petitioners, ('Voices Against 377') were parties before the Delhi High Court and supported the writ petition challenging the constitutionality of section 377 of the Indian Penal Code, 1860 ('section 377', for short). The petitioners were arrayed as respondents in special leave petitions before this Hon'ble Court that resulted in the judgement impugned in this petition.
3. That Human Rights and Dignity in their myriad forms and aspects enjoy an exalted status in the Constitution of India. Indeed, nothing is placed higher. This status derives not just from the ringing language in the Preamble and Part III of the Constitution, but equally from the powerful institutional machinery in the form of Constitutional Courts established to protect these values.
4. That a vital aspect of an individuals' identity is his or her sexual orientation. The development of intimate relationships is a crucial facet in the enjoyment of life and to deny any individual his or her right to physical intimacy is an egregious affront to the person's Human Rights and Dignity.
5. That modern science tells us that while the vast majority of humans are heterosexual, being attracted to the opposite sex, a significant and stable minority, throughout human history are homosexual or belong to a minority community of individuals attracted to the same sex. Moreover and crucially, the weight

of scientific material shows that each of us has little or no control in deciding our sexual orientation which is innate or at any rate evolves before a person attains majority. Like the colour of our eyes or hair or skin or whether we are right-handed or left-handed, we as individuals have little or no control in deciding these core aspects of who we are.

6. That Universal Human Rights and the Constitutional obligation to protect Dignity require that this sexual minority is accorded full protection of law and its members are not discriminated against merely for being who they are. This is the promise of the Constitution. An Indian citizen can rise to be the President or the Prime Minister or the Chief Justice of India, regardless of his or her sexual orientation. This is why the Delhi High Court correctly limited the scope of Section 377 of the India Penal Code so that it did not taint a sexual minority.
7. That section 377, without a suitable declaration, stigmatizes homosexuals and forces them to live a life of celibacy or condemns them to the status of 'un-apprehended felons'. Constitutionally, this cannot be. The Indian State has no business to breach the privacy of the bedroom and police acts of intimacy between consenting adults.
8. That it is the primary responsibility and obligation of this Court to recognise the violation of Human Rights by the State and the trampling upon of Human Dignity by invasive laws and to remedy the wrong. Respectfully, this Court, in the judgement impugned, abdicated its role as guardian of Universal Human Rights and the protector of minorities. Consistent with its Constitutional obligation to protect Human Rights guaranteed under the Constitution of India, this petition lends an opportunity to this Court to undo the grave consequences flowing from the judgement impugned.

9. **DECLARATION IN TERMS OF RULE 4(2) :**

The petitioner states that no other or similar petition seeking review of the order dated 11.12.2013 passed by this Hon'ble Court in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013,

Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013.

10. **DECLARATION IN TERMS OF RULE 6:**

The Petitioner submits that Annexures P1 to P3 form part of the record of this Hon'ble Court.

GROUND

That the petitioners seek review on the following, amongst other, grounds:

- A. There are errors apparent on the face of the record; this Court failed to consider facts before it; and this Hon'ble Court has misapprehended and misapplied law.

Errors apparent on the face of the record pertaining to the role of a Constitutional Court in the interpretation of Fundamental Rights:

- B. There is an error apparent on the face of the record as this Court has failed to note that the Constitution is meant to secure to *all citizens*, Justice, Liberty, and Equality and to promote Fraternity amongst them. The judgment under review is not in consonance with these basic Constitutional values.

- C. There is an error apparent on the face of the record as this Court has not appreciated a key principle – the Universality of Fundamental Rights - i.e., all citizens are entitled to Fundamental Rights. The preamble to the Universal Declaration of Human Rights, 1948 declares

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

The Universal Declaration of Human Rights then stipulates

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The universality of Human Rights is also acknowledged in the Preamble to the Indian Constitution

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation

Universality of Fundamental Rights finds specific expression in Part III of the Indian Constitution and is a foundational tenet of the Indian Constitution. Every person regardless of caste, religion, sex or sexual orientation is entitled to the protection of the Fundamental Rights Chapter regardless of the size of the social grouping to which the person belongs.

D. That the judgment under review has not taken into account the role of this Hon'ble Court as a sentinel of the Constitution and the guardian of Fundamental Rights in disregarding the principle of universality of Human Rights.

Errors apparent on the face of the record pertaining to the jurisdiction of this Court and its role in protecting the Fundamental Rights of Citizens:

E. That there is error apparent on the face of the record as this Hon'ble Court has erred in not considering whether its jurisdiction under Article 136 has been properly invoked. The Petitioners do not urge a single instance to demonstrate how they are aggrieved by the High Court's Judgment; they do not demonstrate what legal interests were affected by the High Court's judgment; and they do not show what rights were conferred on them by section 377 which were affected by the High Court's Judgment. By their own showing, the petitioners are not intended beneficiaries, or members of any affected class of persons identified by the judgment. Their legal rights are in no way directly or remotely affected by the decriminalizing of adult consensual sex in private. The High Court judgement decriminalized and de-stigmatized Lesbian, Gay, Bisexual and Transgender citizens of India ('LGBT', for short) a substantial segment of Indian citizenry. The consequence of its reversal is to re-criminalise millions of individuals. In these circumstances, this Hon'ble Court ought to have insisted on strict compliance with the requirements of *locus standi* before considering the challenge to the judgement of the Delhi High Court.

F. That there is an error apparent on the face of the record as this Court has failed to consider whether third parties have the right to defend the validity of a law on behalf of the State. It is the State alone that has the power to create criminal offences and it is the Union Executive alone (and not private parties) - made responsible to Parliament by the scheme of the Indian Constitution – that has the requisite *locus standi* to maintain an appeal against an order of a High Court declaring a provision of criminal law unconstitutional. In the High Court, the burden of defending the constitutional validity of section 377 was on the Union of India. The Union of India signaled its acceptance of the

judgment of the High Court by refusing to challenge it. In the circumstances, this Court ought not to have entertained challenge to the High Court's judgement which was clearly and patently incompetent.

G. That there is an error apparent on the face of the record in this Court's misapprehending its Fundamental Rights' jurisdiction. At para 43 of the judgment under review, this Hon'ble Court holds -

While reading down section 377 IPC, the Division Bench of the High Court overlooked that a miniscule fraction of the country's population constitute lesbians, gays, bisexuals or transgenders and in the last more than 150 years less than 200 persons have been prosecuted (as per reported orders) for committing offence under Section 377 IPC and this cannot be made sound basis for declaring that section ultra vires the provisions of Articles 14, 15 and 21 of the Constitution.

Liberty to be oneself and develop intimate relationships as an individual is not the privilege of the majority but an Inalienable and Universal right of each and every human being. With advances in science, a medieval and blinkered statutory provision embodying outdated understandings of human sexuality must yield to interpretations by Constitutional Courts that liberate those unjustly condemned. The role envisioned for this Court and for the High Court in the Constitutional scheme is to protect, defend and expand the Fundamental Rights of citizens, and to protect individual citizens and minorities – including miniscule fractions of the country's population - from the vagaries of the opinions of hostile majorities. By holding that the violation of the rights of a 'miniscule fraction' of society does not constitute a sound basis for a declaration of unconstitutionality, this Hon'ble Court goes against its Constitutional Role and against its own legacy as the defender and expander of the rights of all citizens. In so doing, it renders Fundamental Rights subject to the whims and fancies of a perceived majority of the population.

H. That there is an error apparent on the face of the record in holding that the violations of the rights of a “miniscule” minority, does not invite the protections of the constitution and of this Court. In so doing, the Supreme Court has lent credence to the idea that there is a numerical requirement to qualify for Fundamental Rights protections. This violates the mandates of law laid down by this Hon’ble Court in *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538, where this Court held that the constitutionality of a law may be judged, even though the rights of only one person are affected and *Sunil Batra v. Delhi Administration* AIR 1978 SC 1675 ; (1978) 4 SCC 494, where this Court held -

“...we cannot be oblivious to the fact that the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14.”

Material on record establishes that LGBT (Lesbian, Gay, Bisexual and Transgender) persons who are defined by their different sexual orientation and gender identity exists across classes, in urban and rural areas and belong to different castes and religious communities. Their sexual desires are different from the majority. The great question before this Court was whether LGBT persons may be criminalised merely for being who they are. Though facially neutral, Section 377 in its interpretation, operation and working targets LGBT persons. In doing so, it offends the dignity of LGBT persons as a class, makes them second class citizens and denies them full moral citizenship. This issue has not been considered by the Court in *Koushal* although urged in oral as well as written submissions by the Petitioner.

A number of persons belonging to the LGBT community had distinguished themselves with contributions to society

in various disciplines and callings, including -

Sl No.	Indian, South Asian	Literature	Judges/ Lawyers/ Jurists	Sports	Science and Humanites
1	Vikram Seth	Oscar Wilde	H.L.A Hart	Martina Navratilova	Alan Turing
2	Bhupen Khakkar	Virginia Woolf	Michael Kirby	Billie Jean King	John Maynard Keynes
3	Onir	Truman Capote	Edwin Cameron	Greg Louganis	Michel Foucault
4	Ismail Merchant	James Baldwin	Kenji Yoshino	Steven Davies	
5	Amir Khusro	C.P. Cavafy			
6	Sunil Babu Pant	E.M Forster			
7	Hoshang Merchant				

1. That there is an error apparent on the face of the record in this Court's holding that it is the province of parliament to make changes to Section 377. In so doing, this Hon'ble Court ignored precedent in *Mithu v State of Punjab*, (1083) 2 SCC 277 (5 judges), where this Hon'ble Court struck down Section 303 of the Indian Penal Code, and several other decision of this Hon'ble Court that settled the law that the adjudication of the constitutionality of statutes on the touchstone of Fundamental Rights was squarely in the domain of Constitutional Courts.

Non-consideration of arguments urged before this Court by counsel for the present Review Petitioner:

- J. That there is an error apparent on the face of the record as the following submissions of Counsel for the petitioner, recorded in the judgment under review at paragraph 18, pages 31 to 33, have not been considered or dealt with:
- a. By casting a shadow of criminality on relationships between persons of the same sex, Section 377 deprived LGBT persons of the ability to develop intimate relationships. This was not in consonance with Constitutional values.
 - b. Section 377 targeted sexual acts most closely associated with the LGBT community and violated the Fundamental Rights of LGBT persons. Counsel's oral submissions referred to numerous incidents around the country.
 - c. Section 377 targeted LGBT persons as a class and was violative of Articles 14 and 15 of the Constitution.
 - d. Sexual rights and sexuality are Human Rights guaranteed by Article 21 of the Constitution.
 - e. Section 377 violated the right to privacy and dignity of LGBT persons guaranteed by Article 21 of the Constitution.
 - f. Scholarly legal authority - articles written by Prof. Dr. Upendra Baxi and Prof. Dr. S.P Sathe, and the 172nd Report of the Law Commission - were in consonance with the High Court's judgement that, without a declaration that section 377 did not apply to sexual acts by consenting adults in private, it unconstitutionally infringed the Fundamental Rights to privacy and dignity.
 - g. Scholarly medical and scientific authority also established that consensual same sex conduct was not "against the order of nature" and that homosexuality was natural, including - "Homosexuality: a Dilemma in Discourse, Corsini Concise Encyclopedia of Psychology and Behavioural Sciences."

- h. This Court had always interpreted the Constitution so as to expand the scope and protection of Fundamental Rights and had developed a great jurisprudence of protecting the most marginalized and oppressed communities in India.

It is submitted that this Court has not considered, even though it has noted, several submissions made by Counsel for the present review petitioner.

- a. Though the judgement discusses the case law pertaining to the rights to liberty, privacy and dignity under Article 21, it records no finding in respect of arguments urged by the present review petitioner.
- b. Though the impugned judgement notes the contention that homosexuality is a natural aspect of sexuality, and in particular human sexuality, and cannot fall under the term “carnal intercourse against the order of nature” it does not consider it or deal with it, let alone record any conclusion in respect of the same.
- c. Notwithstanding the fact that this Court notes the petitioner’s contentions regarding several incidents at Lucknow (2002 and 2006), Bangalore (2004 and 2006), Delhi (2006), Chennai (2006), Goa (2007), Aligarh (2011), where Section 377 was used to target LGBT persons, at paragraph 40, the judgement reaches the conclusion that there was no factual basis laid to challenge the constitutionality of section 377. At paragraph 51, the impugned judgement brushes aside as these instances as mere misuse of the law.
- d. The judgement impugned does not so much as discuss the opinions of noted jurists such as S.P. Sathe and Upendra Baxi, with respect to the interface between sexuality and rights even though, this was relevant to the question of why Section 377 fails the test of the Indian Constitution. The opinion of these learned jurists was discussed at length

during oral hearings on 15.03.2012 in the pre-lunch session.

- e. LGBT persons are defined by their different sexual orientation and gender identities. They exist across classes, in urban and rural areas, and belong to different castes and religious communities. Their sexual desires are different from the majority. Though facially neutral, Section 377 in its interpretation, operation and working targeted LGBT persons. In doing so, it offended their dignity as a class, making them second class citizens, and denying them full moral citizenship.
- K. That there is an error apparent on the face of the record as this Court has not recorded, and consequently not considered, several arguments urged by the present review petitioner.
- a. On 14 March, 2012 in the post-lunch session, Counsel for the present review petitioner made the following submissions which were neither noted nor considered by this Hon'ble Court
 - i. Evidence that LGBT persons were targeted in the form of an affidavit of Gautam Bhan, son of Dr. M.K. Bhan, resident of Delhi speaking to the climate of fear suffered by his family and by him on account of the existence of section 377, and the judgment of the High Court of Madras in *Jayalakshmi v. State* documenting brutal torture and rape of an LGBT person.
 - ii. Scientific literature overwhelmingly suggested that sexual orientation and gender identity was determined in the early years of one's life. Sexual orientation and gender identity is an integral, unalterable part of one's personality and identity, akin to being left handed or having brown eyes.
 - iii. LGBT persons have existed in all communities and in all periods of time. The

documents filed by the NACO suggested that the total number of men who have sex with men in this country is about 25 lakhs.

b. On 15 March, 2012 in the pre-lunch session, Counsel for the present review petitioner made the following submissions which were neither noted nor considered by this Hon'ble Court -

i. Extensive, uncontroverted scientific and technical material placed by the petitioners before this Court that established that:

- Homosexual conduct was normal and Homosexuality is simply one normal variant of sexual identity.
- Homosexuality was not a disorder.
- Heterosexual and homosexual behaviour are both normal aspects of human sexuality.
- Sexual intimacy is a core aspect of the human experience and is important to mental health, psychological well being and for the social adjustment of homosexuals.
- Human beings develop a sexual orientation between middle childhood and early adolescence.
- Sexual orientation is innate and cannot be changed at will.

ii. The *amicus* brief filed by the American Psychological Association in the US Supreme Court case of *Lawrence v. Texas* was read out which reiterated the point that sexual orientation and gender identity are formed in early childhood, and individuals have little choice in the matter. It is a core part of one's human experience. The discriminatory impact of laws like section 377 lies in the fact that it furthers prejudice towards the LGBT community and heightens stress of LGBT

persons.

- iii. According to figures available in the United States, it is estimated that between 2% and 5% of a population may be lesbian, gay, bisexual or transgender. According to figures available from the UK, it is estimated that between 5%-7% of the population may be lesbian, gay, bisexual or transgender. By these estimates, (assuming that India's population is 1.2 billion people) between 2,40,00,000 and 8,40,00,000 people in India may belong to the LGBT community. Despite this, this Court records at para 43 that only "*a miniscule fraction of the country's population constitute lesbians, gays, bisexuals or transgenders...*"
 - iv. Report of the United Nations High Commissioner on Human Rights titled "Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity" dated 17th November 2011 which authoritatively documented acts of violence and discrimination against LGBT people in India as a direct and inevitable result of Section 377.
 - v. Article by Professor Ryan Goodman "Beyond the Enforcement Principle: Sodomy Laws, Social Norms, and Social Panoptics" California Law Review 2001, Vol. 89, page 569 to make the point that laws like section 377, even if they are not enforced, affect self esteem of LGBT persons and thereby their ability to live their lives to the fullest potential.
- c. On 15 March, 2012 in the post-lunch session, Counsel for the present review petitioner made the following submissions which were neither noted nor considered by this Hon'ble Court

- i. Section 377 even though facially neutral, in its working and operation directly targeted the LGBT community. The constitutionality of a provision much be judged on its impact and not on the basis of its wording alone. In this context, Justice O'Connor's opinion in *Lawrence v. Texas* was read where it was stated that when acts closely associated with group or identity are criminalised, it makes that group or identity criminal.
 - ii. The High Court rightly applied the doctrine of severability of enforcement and cited *Kedar Nath Singh v. State of Uttar Pradesh* Supp (2) SCR 769 in support of this proposition. The High Court also relied upon H.M. Seervai, Constitutional Law of India in support of this proposition.
 - iii. A note on the idea of equality in the Constituent Assembly Debates and a note on the Criminal Tribes Act, 1872 which designated "eunuchs" a 'criminal tribe'.
 - iv. Cited *Anuj Garg v. Hotel Association of India & Others* for the proposition that the state is prohibited from discriminating on the grounds mentioned in Article 15(1) and on "any other like basis." Sexual orientation may be "any other like basis" or akin to "sex" for the purpose of Article 15(1) and hence the state is prohibited from discriminating on this ground as well.
- d. On 20 March, 2012 in the pre-lunch session, Counsel for the present review petitioner made the following submissions which were neither noted nor considered by this Hon'ble Court
- i. This Court has always resolved issues in favour of Fundamental Rights and has always sought to extend the protections of Part III of the Constitution to more groups.

- ii. The jurisdiction of this Court under Article 136 was improperly invoked as the appellants lacked the *locus standi* to maintain an appeal defending the *vires* of a law. Only the Union of India could defend the constitutional validity of a central statute.

That the range of submissions pertaining to the brutal violations of the rights of privacy, dignity and equality of LGBT persons, the state of current scientific thinking with respect to homosexuality as a natural variant of human sexuality as well as the role of this Court in protecting Fundamental Rights has been filed as part of the Written Submissions of the review petitioner before this Hon'ble Court. True copy of the Written Submissions filed by the Petitioner is marked as **Annexure P1**.

Error apparent on the face of the record pertaining to the delay in rendering the judgment:

- L. That there is an error apparent on the face of the record as there has been a gap of 1 year, 8 months, 1 week and 6 days (624 days) between the date on which judgment was reserved and the date on which judgment was pronounced. This Hon'ble Court in *Anil Rai v. State of Bihar* (2001) 7 SCC 318, at page 343 observed:

40.....It is difficult to comprehend how the judges would have kept the details and the nuance of the arguments in their memory alive after the lapse of a long period.

41. Unfortunately, the judges concerned had no concern until one of them reached near the date of his superannuation. They then reminded themselves of the obligation of delivering the judgment. It was thus that the impugned judgment had come out, at last, from torpidity.

At page 344 it was observed:

42. If delay in pronouncing judgments occurred on the part of the judges of the subordinate judiciary the

whip of the High Court studded with supervisory and administrative authority could be used and it had been used quite often to chide them and sometimes to take action against the erring judicial officers. But what happens when the High Court judges do not pronounce judgments after lapse of several months, and perhaps even years since completion of arguments? The Constitution did not provide anything in that area presumably because the architects of the Constitution believed that no High Court judge would cause such long and distressing delays. Such expectation of the makers of the Constitution remained unsullied during the early period of the post Constitution years. But unfortunately, the later years have shown slackness on the part of a few judges of the superior Courts in India with the result that once arguments in a lis concluded before them the records remain consigned to hibernation. Judges themselves normally forget the details of the facts and niceties of the legal points advanced. Sometimes the interval is so long that the judges forget even the fact that such a case is pending with them expecting judicial verdict.

In *R.C. Sharma v. Union of India* (1976) 3 SCC 574 at para 12 it was observed:

“Nevertheless an unreasonable delay between hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay

between hearing of arguments and delivery of judgments.”

Errors apparent on the face of the record in this Court holding that there was no factual basis to the challenge to section 377:

- M. That there is error apparent on the face of the record in this Hon'ble Court's recording at paragraph 40 that there was insufficient factual basis for *“a finding that homosexuals, gays, etc., are being subjected to discriminatory treatment either by State or its agencies or the society.”* This finding by this Hon'ble Court is directly contradicted by paragraph 51 of the same judgement which records that Section 377 was challenged on the ground that it was used to *“perpetrate, harassment, blackmail and torture on certain persons, especially those belonging to the LGBT community. In our opinion, this treatment is neither mandated by the section nor condoned by it and the mere fact that the section is misused by police authorities and others is not a reflection of the vires of the section.”* It is submitted that the present review petitioner had placed before the Hon'ble Delhi High Court and also before this Hon'ble Court extensive material in the form of affidavits, reports by the United Nations and other international organisations, respected Human Rights organisations and judicial and police records from around the country to demonstrate that the direct and inevitable effect of Section 377 was violence, rape, torture, discrimination, and harassment of LGBT people by the agencies of the State and other members of society. The High Court recorded findings in respect of these grounds at paragraphs 21 and 22 of the impugned judgment.
- N. That there is an error apparent on the face of the record as this Hon'ble Court has erred in recording at paragraph 40 that the Writ Petition before the Hon'ble High Court was not maintainable on the grounds that it lacked factual basis.

O. This Hon'ble Court's finding that the High Court was not justified in entertaining the challenge to section 377 since factual foundation for challenge to the constitutionality of section 377, IPC had not been laid is an error of law and of fact apparent on the face of the record.

a) It is an error of law since -

i) the finding was arrived at without considering that a division of four judges of this Court had already reversed an earlier judgement of the High Court that had held that the petition lacked cause of action, and had remitted the matter to the High Court. Therefore, the question of whether factual foundation had been laid for challenging the constitutionality of section 377 had attained finality and was no longer in issue before the High Court, and was also not in issue in the SLPs before this Court. It is settled law that *res judicata* applies between two stages in the same litigation. *Satyadhan Ghosal v. Sm. Deorajin Debi*, [1960] 3 S.C.R. 590, *Arjun Singh vs Mohindra Kumar & Ors*, 1964 AIR 993, 1964 SCR (5) 946. **Annexure P 2** to this petition is a true typed copy of the order of the Delhi High Court dated 02.09.2004 in WP (C) No. 7455/2001. **Annexure P 3** to this petition is a true typed copy of the order of this Hon'ble Court dated 03.02.2006 in SLP (C) Nos. 7217-7218/2005.

ii) After the matter was remitted to the High Court, all parties supplemented pleadings and evidence. Most importantly, the petitioner - who had been impleaded as respondent number 8 by the High Court, after the matter was remanded - pleaded detailed grounds of challenge and supported the grounds of challenge with substantial evidence. Those respondents who were resisting the challenge to the constitutionality of section 377 also supplemented their pleadings and evidence after the matter was remitted to the High Court.

iii) At no point after the matter was remanded, did any of the parties challenge the petitioner before the High Court (Naz Foundation India) or the present petitioner's

pleadings for lack of factual foundation or cause of action. Petitioner therefore had no opportunity to meet the challenge of lack of factual foundation or to amend or supplement pleadings or evidence to supply factual foundation.

- iv) The judgement of the high court has no finding on the issue of lack of factual foundation since it was not in issue before it.
- v) In the petitions before this Court as well, lack of factual foundation was not urged on behalf of any of the petitioners and was urged for the first time only during oral arguments.

(b) The conclusion that the petition lacked factual foundation is also an error of fact apparent on the face of the record since -

- i) the record reveals that the present petitioner had, before the Delhi High Court filed a detailed affidavit in support of the challenge to the constitutionality of section 377 and had also filed detailed evidence in support of the grounds of challenge. The pleadings and the evidence of the present petitioner were not traversed by any of the parties before the High Court. The judgement of the High Court extensively cites the pleadings and the evidence of the present petitioner. The order in review as well, sets out some of the pleadings and evidence that was placed before this Court at oral arguments.
- ii) Naz foundation India, the petitioner before the High Court had laid detailed factual foundation in the form of pleadings and evidence in support of a challenge to the constitutionality of section 377.

P. That there is an error apparent on the face of the record as this Court has failed to appreciate the law relating to pleadings in Public Interest Litigation. At paragraphs 39 and 40, this Court discusses the precedent laid down with regard to pleadings and holds that the petitioner had *“miserably failed to furnish the particulars of the incidents of discriminatory attitude exhibited by the State agencies*

towards sexual minorities and consequential denial of basic Human Rights to them. Respondent No. 1 has also not furnished the particulars of the cases involving harassment and assault from public and public authorities to sexual minorities.” It is submitted that assuming, but not admitting, that the petition was laconic on facts, this Court has held that strict rules of pleadings need not apply in Public Interest Litigation. It has been held several times by this Court in *M.C. Mehta & Another v. Union Of India & Others* AIR 1987 SC 1086, *S.P. Gupta v. Union of India* (1981) Supp. SCC 87, *Peoples’ Union for Democratic Rights v. Union of India* AIR 1982 SC 1473, that even a letter is enough to invoke the jurisdiction of a High Court under Article 226 or to this Court under Article 32.

Errors apparent on the face of the record pertaining to the understanding and application of Constitutional provisions, and the precedent laid down by this Court:

- Q. That there is error apparent on the face of the record in this Court’s reasoning that “miniscule” numbers of certain classes of persons may be valid grounds for infringing their fundamental rights under Article 21, 14, or 15. In so doing, this Hon’ble Court has sanctioned the idea that the Fundamental Rights of a “miniscule” minority may be abridged on grounds of public animus or disgust, without redress from Constitutional courts.
- R. That there is an error apparent on the face of the record as this case involved several substantial questions of law pertaining to the interpretation of the Constitution and ought to have been referred to a bench comprising five judges of this Court in terms of Article 145(3) of the Constitution.
- S. That there is error apparent on the face of the record in this Hon’ble Court holding at paragraph 28 of its judgment that there is a presumption of constitutionality of pre-constitutional legislation. Article 372 of the Constitution, which this Hon’ble Court cites in its judgment in support of

the proposition that there is a presumption of constitutionality for pre-constitutional statutes, merely states that “all laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force...”. Article 372 does not support the proposition that pre-constitutional laws are presumed to be constitutional after the commencement of the Constitution.

T. That there is an error apparent on the face of the record as this Court has not considered that there can be no presumption of constitutionality for pre-constitutional enactments when the legislature of that time, had no knowledge of subsequent restrictions on their legislative power. This Hon'ble Court has held in *Gulabbhai Vallabbhai Desai & Others v. Union of India* AIR 1967 SC 1110, at 1117 that it cannot be presumed that the law making body knew of the limits on its authority while enacting a law, when the limits were only introduced later in time. While it may be presumed that the legislature was cognizant of the limits on its power after the commencement of the Constitution, no such knowledge can be presumed of the legislature prior to the Constitution, before the Constitutional checks on legislative power were established. Section 377 cannot be presumed to be constitutional since at the time of its enactment, the legislating power had no knowledge of Fundamental Rights or other Constitutional limitations on its power.

Further, this Hon'ble Court has held in *Anuj Garg & Another v. Hotel Association of India & Others* (2008) 3 SCC 1 at para 21:

When the original Act was enacted, the concept of equality between two sexes was unknown. The makers of the Constitution intended to apply equality amongst men and women in all spheres of life. In framing Articles 14 and 15 of the Constitution, the constitutional goal in that behalf was sought to be achieved. Although the same would not mean that under no circumstance, classification, inter alia, on the ground of sex would be wholly impermissible but

it is trite that when the validity of a legislation is tested on the anvil of equality clauses contained in Articles 14 and 15, the burden therefore would be on the State.

U. That there is an error apparent on the face of the record as this Hon'ble Court has not applied the ruling of *Kedar nath Singh v. State of Bihar* 1962 Supp (2) SCR 769 in discussing the relief granted by the High Court. This Court discusses the principle of severability at paras 30 and 31 of the judgment under review. At para 31(iv) this Hon'ble Court states

The Court can resort to reading down a law in order to save it from being rendered unconstitutional. But while doing so it cannot change the essence of the law and create a new law which in its opinion is more desirable.

It is respectfully submitted that this Hon'ble Court cites a number of decisions regarding the principles of reading down, but does not consider the previous rulings of this court regarding the principle as it pertains to criminal statutes. In *Kedar nath Singh*, this Hon'ble Court applied the principle of separability or severability of enforcement enunciated by this Court in *R.M.D. Chamarbaugwalla* AIR 1957 SC 628 to section 124A of the IPC. The ruling in this case was applied recently to criminal statutes by this Court in *IndraDass v. State of Assam*. It is submitted that the High Court did not change the essence of the law and did not create new law. It only held that section 377 was unconstitutional insofar as it criminalised consensual sexual activity between adults, tailoring enforcement of the law to exclude consensual sexual activity between adults.

V. That there is an error apparent on the face of the record as this Hon'ble Court has erred in its application of the doctrine of classification under Article 14. At para 41 of this Court's judgment, the case of in *Re: Special Courts Bill, 1978* (1979) 1 SCC 380 has been cited. Here, this Hon'ble

Court has laid down the following principles, which have been quoted at page 81 of the judgment under review:

7. ...In order to pass the test (of classification), two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

This Hon'ble Court has held in *Deepak Sibal & Another v. Punjab University* (1989) 2 SCC 145 at page 156 para 20 that:

In considering the reasonableness of classification from the point of view of Article 14 of the Constitution, the Court has also to consider the objective for such classification. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable.

Thus the test for reasonable classification under Article 14 is made of three parts

- (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others;
- (2) that differentia must have a rational relation to the object sought to be achieved by the Act.
- (3) The Act itself must have a reasonable object. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable.

At para of 42 of the judgment under review, this Hon'ble Court has held:

Those who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature constitute different classes and the people falling in the latter category cannot claim that Section 377 suffers from the vice of arbitrariness and irrational classification.

In the present case, this Hon'ble Court did not even examine whether there was intelligible differentia to distinguish carnal intercourse against the order of nature from carnal intercourse within the order of nature, merely recording the non sequitur "Those who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature constitute different classes and the people falling in the later category cannot claim that Section 377 suffers from the vice of arbitrariness and irrational classification." There was no question therefore of this Hon'ble Court considering the object of such classification or enquiring into whether the classification purportedly made by the provision had any rational nexus to its objective. In so doing, this court appears to have relied on the presumption of constitutionality, without any advertence to the fact that "the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation." *Saurabh Chaudri & Ors vs Union Of India & Ors*, 2003 (11) SCC 146.

W. That there is an error apparent on the face of the record as this Court states that Section 377 makes valid classifications, but at the same time cannot state what intelligible differentia would determine which sexual acts are covered by the section and which are not. At para 38 of its judgment at page 77, this Hon'ble Court states that "*Hence it is difficult to prepare of list of acts which would be covered by the section.*" Yet at para 42 of the judgment under review, this Court states "*Those who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature constitute different classes and the people falling in the latter category cannot claim that section 377 suffers from the vice of arbitrariness and irrational classification.*". It is submitted that it is a fundamental principle under Article 14, that any classification must be based on intelligible

differentia. Yet despite the fact that this Court holds that it cannot list the intelligible differentia that would determine those acts which fall within section 377 and those that fall outside it, it goes on to hold that the section does not suffer the vice of “irrational classification.”

X. That there is an error apparent on the face of the record as this Hon’ble Court has erred in failing to notice that the Union of India, in refusing to appeal the judgment of the Hon’ble High Court, had offered no reasonable objective for the criminalisation of consensual sexual activity between adults. As a party before this Hon’ble Court, the Union of India had refused to justify the criminalisation of consensual sexual activity and accepted the High Court’s declaration that proposition that the criminalisation of consensual sexual activity has no reasonable objective and is clearly violative of Article 14.

Y. That there is an error apparent on the face of the record in as much as this Hon’ble Court at para 38 on page 77 of the judgment under review, failed to state which sexual acts were covered by section 377 and which acts were not. It is a fundamental principle of criminal law, as this Hon’ble court acknowledges at para 44 of the judgment under review, that vagueness of a law may render it unconstitutional as its implementation would be a matter of unfettered discretion. As this Hon’ble Court observed in *A.K. Roy v. Union of India* (1982) 1 SCC 271 at para 62,

The requirement that crimes must be defined with appropriate definiteness is regarded as a fundamental concept in criminal law and must now be regarded as a pervading theme of our Constitution since the decision in Menaka Gandhi. The underlying principle is that every person is entitled to be informed as to what the State commands or forbids and that the life and liberty of a person cannot be put in peril on an ambiguity.

This Court erred in not taking note of the fact that its unequivocal finding that “no uniform test can be culled out to classify acts as “carnal intercourse against the order of nature”” and “the acts which fall within the ambit of the section can only be determined with reference to the act itself and the circumstances in which it was executed” meant that the section did not provide adequate warning of the conduct proscribed and was thereby void for vagueness.

- Z. That there is an error apparent on the face of the record in that this Hon'ble Court failed to consider that the vagueness of Section 377 conferred unfettered discretion on police officials and other agents of the state, evident from the voluminous material that the present petitioner placed on record reflecting harassment, blackmail and torture of LGBT persons that this Court refers to in passing at para 51 of the judgment under review.
- AA. This Court also fell into error in relying upon the object and form of section 377 in determining its validity and not the 'direct and inevitable' consequence of section 377. Although in form section 377 targeted 'acts', these acts are so closely identified with a class of persons that its direct and inevitable consequence is to criminalise all sexual activity on the part of this class of persons. *Rustom Cavasjee Cooper Vs. Union of India*, (1970) 1 SCC 248, *Maneka Gandhi Vs. Union of India & Anr.*, (1978) 1 SCC 248, *State of Maharashtra & Anr. Versus Indian Hotel & Restaurants Assn. & Ors.*, CIVIL APPEAL NO.2705 OF 2006, decided on July 16, 2013, *Namit Sharmav. Union of India*, (2013)1 SCC 745.
- BB. That there is an error of law apparent on the face of the record as this Court has failed to consider that the harassment, torture, rape, extortion, and blackmail of LGBT persons is a direct and inevitable consequence of Section 377. This Court brushes off the documented instances the Fundamental Rights violations of LGBT persons at para 51 by stating:

Respondent No. 1 attacked Section 377 IPC on the ground that the same has been used to perpetrate harassment, blackmail and torture on certain persons, especially those belonging to the LGBT community. In our opinion, this treatment is neither mandated by the section nor condoned by it and the mere fact that the section is misused by police authorities and others is not a reflection of the vires of the section.

It is submitted that abuse of police power, blackmail and torture are integral to the very logic of section 377 and inherent in its construction. Being so, the arbitrary actions which are executed under cover of this provision cannot be dismissed as mere 'misuse'.

CC. That there is an error apparent on the face of the record as this Hon'ble Court has confused prosecution with persecution. At para 43, of the judgment under review, this Hon'ble Court says that "*there are less than 200 persons who have been prosecuted (as per reported orders) for committing offence under Section 377.*" It is submitted that even assuming, but not admitting, that this figure is correct, this only constitutes the number of cases reported at the level of the High Court or the Supreme Court and does not include figures from the vast majority of courts in the country, i.e. the trial Courts. More importantly, the present petitioner's case has always been that the instances of harassment, torture, rape, blackmail of LGBT people is a direct and inevitable consequence of section 377. The persecution of LGBT people as a consequence of Section 377 is a far wider phenomenon and is attested to by material placed before this Hon'ble Court. Hence to dismiss the case of the petitioner based purely upon the lack of adequate number of prosecutions misapprehends the case of the petitioner which is based upon documented evidence of a history of persecution of LGBT persons under the rubric of Section 377.

DD. It is also submitted that prosecutions even if minimal as this Court observes have a serious impact upon the lives

and liberties of individual people. The review petitioners seeks to place on record details of how the liberties of an individual person is violated if prosecution is launched under Section 377. Annexure P-4 of the application for permission to file additional documents is an affidavit of a HIV/AIDS outreach worker in Hassan, Karnataka. He states how he was falsely implicated, arrested and sent to judicial custody for thirteen days on a false case under Section 377. He describes how he was subjected to severe humiliation by his fellow inmates, tortured by the police and physically and verbally abused. Annexure P-5 (Colly) of the application for permission to file additional documents is an unofficial translation of the FIR under which the deponent was arrested. Annexure P-6 of the application for permission to file additional documents is a fact-finding report about the true antecedents of this FIR and demonstrates continued harassment of LGBT people.

EE. That there is an error apparent on the face of the record as this Hon'ble Court has overlooked the fact that section 377 criminalises sexual acts most closely associated with one group of persons, namely LGBT persons. At paragraph 38, at page 77 of the judgment under review, this Hon'ble Court has held

It is relevant to mention here that Section 377 IPC does not criminalise a particular people or identity or orientation. It merely identifies certain acts which if committed would constitute an offence. Such a prohibition regulates sexual conduct regardless of gender identity and orientation.

While it is true that on a plain reading of section 377 it would cover a number of sexual acts regardless of sexual orientation or gender identity, the sexual acts it criminalises are most closely associated with LGBT persons. By criminalizing conduct most closely associated with one class of persons, the law in effect criminalizes a entire class of persons for whom the prohibited conduct is the only mode through which intimate bonds are expressed

and formed. As such Section 377 discriminates against LGBT persons as a class and is violative of Article 14.

FF. That there is an error apparent on the face of the record as this Hon'ble Court does not even consider Article 15(1) of the Constitution and instead at para 42 of the judgment under review merely states that the "*High Court was not right in declaring section 377 IPC ultra vires Articles 14 and 15 of the Constitution.*" It is submitted that the High Court at paras 99 to 104 of its judgment, after careful consideration of precedents of this Hon'ble Court held that sexual orientation and gender identity were grounds analogous to 'sex' in Article 15(1) of the constitution and that discrimination on these grounds were prohibited as well. Further, the present review petitioner made extensive submissions on the interpretation of Article 15(1) as well. However, in the judgment under review, this Hon'ble Court has neither discussed nor made any reasoned order on Article 15 (1).

GG. That there is an error apparent on the face of the record in that this Hon'ble Court makes no finding on the question of whether section 377 violates the right to life, liberty, privacy and dignity of LGBT persons. The judgement commences its discussion in this regard at para 45 and concludes it at para 50. However, while it cites the precedents of this Hon'ble Court with regard to the right to privacy and dignity, it fails to apply them to the case at hand. This Court does not even mention that section 377 criminalises consensual sexual activity between adults even within the privacy of a home.

HH. That there is an error apparent on the face of the record as this Court fails to examine whether the State has a compelling interest to violate the right to privacy of LGBT people, where such sexual activity involves adults, and harms no one. *Gobind v. State of Madhya Pradesh* (1975) 2 SCC 148 at para 22, cited at para 47 of the judgment under review holds that -

"22. There can be no doubt that privacy-dignity claims deserve to be examined with care and only

denied when an important countervailing interest is shown to be superior. If the Court does find a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling state interest test. Then the question would be whether a state interest is of such paramount importance as would justify an infringement of that right.”

It is submitted that while considering whether section 377 violated the right to privacy and dignity of LGBT persons in India, this Hon’ble Court was required to address two issues.

- 1) Whether there was a violation of the liberty, privacy and dignity of LGBT persons?
- 2) Was there a paramount state interest that would justify the gross invasion of liberty, privacy and dignity?

It is respectfully submitted that this Hon’ble Court has not considered whether there was a violation of the Right to liberty, privacy and dignity and has merely dismissed the demonstrated violations of privacy and dignity by terming it (at para 51 of the judgement), a misuse of section 377. This Court does not consider that on a plain reading, section 377 allows the police to enter even the private sanctity of the home and ask searching questions about the most intimate parts of a person’s life. Further this Hon’ble Court fails to consider the material on record which clearly and unequivocally demonstrates the invidious impact of Section 377 on LGBT persons’ rights to privacy, dignity and liberty.

- II. That there is an error apparent on the face of the record as this Hon’ble Court fails to notice the Union of India refuses to offer any compelling state interest to justify a violation of the right to liberty, privacy and dignity.
- JJ. That there is an error apparent on the face of the record as this Hon’ble Court at para 52 of the judgment under review has held that the High Court applied foreign judgments “*blindfolded for deciding the constitutionality of a law enacted by the Indian legislature.*” In the judgment under

review this Court has referred to *Jagmohan Singh v. State of UP* (1973) 1 SCC 20, wherein this court considered the legality of the death sentence. In that case, one of the arguments put forward by a party was that there were studies to show the ineffectiveness of capital punishment. In that case, this Hon'ble Court was considering the applicability of foreign "studies" not foreign law or judgments and whether foreign experiences regarding the death penalty could be transplanted in India, and was not considering the use of foreign precedents to determine the scope or content of Indian constitutional provisions. In interpreting universal notions such as the notion of 'dignity of the human person' this Hon'ble Court has never shied away from borrowing from both comparative constitutional law as well as international law, a borrowing deeply cognizant of the fact that in matters of universal Human Rights, constitutional borrowings can only enhance the understanding of the charter of liberties articulated in the Preamble to the Indian Constitution. It is submitted that this Court's willingness to cite foreign authorities in discussing the scope of Indian constitutional provisions, is also in keeping with the historical fact, that the Indian Constitution itself is a product of extensive borrowings from constitutional provisions around the world.

- KK. That there is an error apparent on the face of the record as this Court has erred in failing to notice that the Protection of Children from Sexual Offences Act, 2012 and the Criminal Law (Amendment) Act, 2013 were enacted after the conclusion of oral hearings. Before the High Court the Union of India offered several justifications for the retention of s. 377. Two of these are
- i. The protection of children from child sexual abuse
 - ii. The protection of women from penile, non-vaginal sexual assault.

Both objectives have been comprehensively covered by Protection of Children from Sexual Offences Act, 2012 and the Criminal Law (Amendment) Act, 2013. There is even

less reason therefore to retain section 377 on the statute book. This was new and important matter that ought to have been considered by this Hon'ble Court while deciding the petitions before it.

- LL. That there is an error apparent on the face of the record as this Hon'ble Court quotes 375 and 376 as they stood prior to the Criminal Law (Amendment) Act , 2013, and has not even mentioned the Protection of Children from Sexual Offences Act, 2012 even though judgment was rendered after these enactments/amendments had come into force.
- MM. That there is an error apparent on the face of the record as this Hon'ble Court has not considered the submissions of present review petitioner on the naturalness of homosexuality. At para 38 of the judgment under review this Hon'ble Court cites a number of decisions where it is stated that sexual activity between adults of the same sex is "unnatural". However, the present review petitioner has submitted scientific material to show that
- a. Mental health professionals do not consider homosexuality unnatural or a mental illness. Instead it is now acknowledged as a natural expression of human sexuality
 - b. That there is stable percentage of the population that will be lesbian, gay, bisexual or transgender.
 - c. That same-sex sexual activity occurs in different species.

Given this overwhelming scientific evidences, the petitioner submits that consensual sexual acts between adults are natural and do not fall within the purview of the phrase "carnal intercourse against the order of nature."

- NN. That there is an error apparent on the face of the record as this Court, in discussing the judicial interpretation of section 377 has not noticed that the prayer before the High Court was to decriminalize *consensual* adult sexual activity. At paragraph 38, (which runs between pages 69 and 77), this Court has considered precedent under Section 377, involving minors or where one of the parties did not consent to the sexual act. The prayer in the Writ petition

and the prayer of the present petitioner before the High Court was to decriminalize *consensual* sexual activity between adults of the same sex.

- OO. That there is an error apparent on the face of the record as this Hon'ble Court at para 38 on page 77 holds that "*Section 377 would apply irrespective of age and consent.*" By this the extension of this logic, even those upon whom oral and anal penetration was done forcefully, or if one of the parties to the sexual act was a minor, they too would be deemed criminal under Section 377.

Misunderstanding the stand taken by the Union of India:

- PP. That there is an error apparent on the face of the record as this Hon'ble Court has erred in recording the stand of the Union of India, a necessary and proper party to these proceedings and the only party with the *locus standi* to defend the constitutionality of laws.
- a. Paragraph 21 of this Hon'ble Court's judgment records that the learned Attorney General argued this case as an *amicus*.
 - b. Paragraph 22 of this Hon'ble Court's judgment records that the learned Additional Solicitor General Mr. P.P. Malhotra appeared on behalf of the Ministry of Home Affairs who submitted that the Ministry of Home Affairs opposed the decriminalization of homosexuality. It is submitted that this Court has misunderstood the case of the Union of India.
 - c. On 23.02.2012 the Learned Additional Solicitor General Mr. P.P. Malhotra appeared and submitted that he represented the Ministry of Home Affairs.
 - d. Immediately after he finished his arguments, another Learned Additional Solicitor General, Mr. Mohan Jain submitted that he was instructed by the Attorney-General to state that the Union of India had not yet taken any stand in the matter.

- e. On 28.02.2012 Mr. Mohan Jain submitted the recommendations of the Group of Ministers and the decision of the Cabinet with regard to this case.
- f. This was recorded by order dated 28.2.2012, where Hon'ble Court was pleased to record that
- learned Additional Solicitor General appeared and read out what he termed as the recommendations made by the Group of Ministers and the decision of the Cabinet.*
- g. By the same order, the Union of India was directed to
- file an affidavit of the concerned Secretary incorporating therein the recommendations made by the Group of Ministers and the decision taken by the Cabinet.*
- h. Thereafter, the an affidavit dated 1.3.2012 was filed on behalf of the Union of India by the Home Secretary which negatived the earlier submissions made by the learned Additional Solicitor General Mr. P.P. Malhotra on behalf the Ministry of Home Affairs.
- i. In this affidavit, filed by the Home Secretary, it was stated that there was no legal error in the impugned judgment by the High Court.
- j. On 22.03.2012 and 23.03.2012 the learned Attorney General appeared before this Hon'ble Court on behalf of the Union of India and reiterated the stand of the Union of India that it finds no legal error in the judgment of the High Court and accepts the same. The Attorney General also filed written submissions before this Hon'ble Court stating that Union of India
- “does not find any legal error in the judgment of the High Court and accepts the correctness of the same. This is also clear from the fact that it has not filed any appeal against the judgment of the High Court.”*
- k. Before this Hon'ble Court, the Attorney General represented the Union of India in his constitutional

capacity as the chief legal advisor and lawyer of the government of India. In such capacity, the relationship between the government and the Attorney General is akin to a lawyer-client relationship [*B.P. Singhal v. Union of India* (SC 2010)] and hence the Attorney General was making submissions on fact and law upon instructions from the Union executive. Having misunderstood the capacity in which the Attorney General addressed the court, this Court did not even deal with his submissions, let alone give them the weight they deserve as expressing the view of the Union of India, the only party with the locus standi to defend the constitutionality of a statute.

Self Correction of errors of the Court :

QQ. It is respectfully submitted that when a decision of this Court suffers from grievous errors which have the effect of depriving persons of the protection of the Fundamental Rights, this Court has not hesitated to correct its error.

a. In *A.R. Antulay v. R.S. Nayak* (1988) 2 SCC 602para48 this Court has held that

We are of the opinion that this Court is not powerless to correct its error which has the effect of depriving a citizen of his Fundamental Rights and more so, the right to life and liberty. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or Article 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the Fundamental Rights of a citizen or any legal right of the petitioner.

b. In *Ramdeo Chauhan v. Bani Kanta Das* (2010) 14 SCC 209, at para 50, this Court held

50.. The assumption in the judgment under review that there can be no violation of a person's human right by a judgment of this Court is possibly not correct.

51.This Court in exercise of its appellate jurisdiction has to deal with many judgments of High Courts and Tribunals in which the High Courts or the Tribunals, on an erroneous perception of facts and law, have rendered decisions in breach of Human Rights of the parties and this Court corrects such errors in those judgments.The instances of this Court's judgment violating the Human Rights of the citizens may be extremely rare but it cannot be said that such a situation can never happen.

52. We can remind ourselves of the majority decision of the Constitution Bench of this court in Additional District Magistrate Jabalpur v. ShivakantShukla reported in (1976) 2 SCC 521..The majority opinion was that in view of the Presidential order dated 27.6.1975 under Article 359(1) of the Constitution, no person has the locus standi to move any writ petition under Article 226 before a High Court for Habeas Corpus or any other writ to enforce any right to personal liberty of a person detained under the then law of preventive detention{ Maintenance of Internal Security Act of 1971}, on the ground that the order is illegal or malafide or not in compliance with the Act.(See SCC paras 78 and 136 of the Report)....

.....

54.There is no doubt that the majority judgment of this court in the ADM Jabalpur case (supra) violated the Fundamental Rights of a large number of people in this country.

It is submitted that since the judgment under review erroneously and wrongly, criminalizes a significant section

of the population by sanctioning them for who they are, this Court should exercise its powers to rectify this anomalous situation

5. MAIN PRAYER

It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to:-

(a) review final common judgment and order dated 11.12.2013 passed by this Hon'ble Court in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013.

(b) and pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

(PUKHRAMBAM RAMESH KUMAR)

Advocate for the Petitioners

NEW DELHI

DRAWN ON :

FILED ON:

Court in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013.

2. By this judgment this Court has set aside the judgment dated 02.07.2009 of the Hon'ble High Court of Delhi in Writ Petition (C) 7455 of 2001. The judgment of the Hon'ble High Court of Delhi declared Section 377 of the Indian Penal Code, 1860 unconstitutional insofar as it criminalised consensual sexual activity between adults in private. By this historic judgment, the Hon'ble High Court decriminalized millions of Lesbian, Gay, Bisexual and Transgender (LGBT) citizens of India and removed the taint of criminality from their lives.
3. The judgment of this Hon'ble Court, however, has re-criminalised millions of LGBT people for no fault of their own, and has sanctioned the view that the State may not only discriminate against, but also criminalise, certain types of people that it disapproves of.
4. It is respectfully submitted that the jurisdiction of this Court under Article 136 has been improperly invoked, the judgment under review has misunderstood the stand of the Union of India, a necessary and proper party to these proceedings and that the judgment has fundamentally erred in appreciating the law regarding Articles 14, 15 and 21 of the Constitution.
5. It is further submitted, that this Court in the judgment under review has erred in understanding its role in protecting fundamental rights of citizens and has declared that the rights of a "miniscule" fraction of society may be taken away by a majority vote.
6. That since the date of the judgment under review there have been many instances of harassment, torture and

threats towards LGBT persons that arise as a direct consequence of the judgment of this Hon'ble Court. Several of these instances have been attested to on affidavit in the accompanying review petition.

7. That the present review petition is being filed to prevent the further violations of the fundamental rights of LGBT persons.
8. That it is essential in the interests that justice is not only done, but also seen to be done, that the review petition be disposed of after hearing oral arguments in open court.
9. That the Applicant has a good *prima facie* case for review of the judgment dated 11.12.2013 in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013.
10. That the present Application is made *bona fide* and in the interests of justice.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court be pleased to

- a) direct that the accompanying review petition be disposed of after hearing oral arguments in open court, of the parties
- b) and pass any further orders as this Hon'ble Court may deem fit and proper in the interests of justice

Filed By

(Pukhrambam Ramesh Kumar)

Advocate for the Petitioners/Applicants

Filed On:

IN THE SUPREME COURT OF INDIA

(Under Article 137 of the Constitution of India)

REVIEW PETITION (CIVIL) NO. OF 2014

IN

CIVIL APPEAL NO. 10972 OF 2013, CIVIL APPEAL NO. 10986 OF 2013, CIVIL APPEAL NO. 10986 OF 2013, CIVIL APPEAL NO. 10981 OF 2013, CIVIL APPEAL NO. 10983 OF 2013, CIVIL APPEAL NO. 10984 OF 2013, CIVIL APPEAL NO. 10975 OF 2013, CIVIL APPEAL NO. 10973 OF 2013, CIVIL APPEAL NO. 10985 OF 2013, CIVIL APPEAL NO. 10976 OF 2013, CIVIL APPEAL NO. 10980 OF 2013, CIVIL APPEAL NO. 10982 OF 2013, CIVIL APPEAL NO. 10977 OF 2013, CIVIL APPEAL NO. 10979 OF 2013

BETWEEN :

Voices Against 377...

...Applicant

Versus

Suresh Kumar Koushal & Others...

...Respondents

**Application under Articles 137 and 142 of the Constitution
read with Section 151 of the Code of Civil Procedure, 1908
for a stay of the final common judgment and order dated 11th
December, 2013.**

The Hon'ble Chief Justice of India
and His Companion Justices of the
Supreme Court of India at New Delhi

The humble application of the
applicant abovenamed

MOST RESPECTFULLY SHOWETH :

1. That the accompanying Review Petition has been filed by the Petitioner under Article 137 of the Constitution of India read with Order XL of the Supreme Court rules, 1966 for review of the judgment dated 11.12.2013 passed by this Court in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil

Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013.

2. That the contents of the review petition are not repeated herein for the sake of brevity, but the Petitioners/Applicant seeks to rely on the contents of the accompanying review petition.
3. By the judgment under review this Court has set aside the judgment dated 02.07.2009 of the Hon'ble High Court of Delhi in Writ Petition (C) 7455 of 2001. The judgment of the Hon'ble High Court of Delhi declared Section 377 of the Indian Penal Code, 1860 unconstitutional insofar as it criminalised consensual sexual activity between adults in private. By this historic judgment, the Hon'ble High Court decriminalized millions of Lesbian, Gay, Bisexual and Transgender (LGBT) citizens of India and removed the taint of criminality from their lives.
4. The judgment of this Hon'ble Court, however, has re-criminalised millions of LGBT people for no fault of their own, and has sanctioned the view that the State may not only discriminate against, but also criminalise, certain types of people that it disapproves of.
5. It is respectfully submitted that the jurisdiction of this Court under Article 136 has been improperly invoked, the judgment under review has misunderstood the stand of the Union of India, a necessary and proper party to these proceedings and that the judgment has fundamentally erred in appreciating the law regarding Articles 14, 15 and 21 of the Constitution.
6. It is further submitted, that this Court in the judgment under review has erred in understanding its role in protecting fundamental rights of citizens and has declared that the rights of a "miniscule" fraction of society may be taken away by a majority vote.

7. That since the date of the judgment under review there have been many instances of harassment, torture and threats towards LGBT persons that arise as a direct consequence of the judgment of this Hon'ble Court. Several of these instances have been attested to on affidavit and permission has been sought to file them in the I.A. seeking permission to file additional documents.
8. That the present review petition is being filed to prevent the further violations of the fundamental rights of LGBT persons.
9. That the present Review Petitioner has established a good prima facie case on merits.
10. The balance of convenience tilts overwhelmingly in favour of the petitioners and against the respondents.
11. No prejudice would be caused to the respondents if the interim reliefs as prayed for are granted. The Respondents/Appellants are neither beneficiaries of the judgment under review, nor are any of their rights effected in any way by the judgment under review.
12. On the other hand grave prejudice would be caused to the LGBT community if the reliefs as prayed for are not granted.
13. IT is submitted that this Hon'ble Court has in the past granted stay of judgments pending review *in Union of India v. Namit Sharma* in Review petition No. 2309 OF 2012 IN W.P(C) 210/2012 in an order dated 16.04.13. This Court has also passed similar orders in *Indian Charge Chrome Ltd. & Another versus Union of India and Others* (2005) 4 SCC 67.
14. Ever since the judgment under review was pronounced, there have been profound and deleterious consequences on the right to life, dignity, privacy and equality of the LGBT population. There are documented instances coming in from across the country of how the judgment of this Hon'ble Court has emboldened the local police authorities to intensify the harassment of the LGBT population. There are also documented incidents of how the judgment of the Hon'ble Court has sanctioned public declarations of

extreme prejudice towards LGBT people. In one particularly egregious incident, emboldened by the judgment, a civil society group has called for the death penalty for homosexuals. Counsellors and mental health professionals are beginning to see the impact of harsh and discriminatory laws such as Section 377 on LGBT persons sense of self esteem, dignity and the ability to be full and productive citizens of India. Counsellors have also attested to discriminatory attitudes becoming more marked in spaces as diverse as workspaces, family spaces and public spaces. Parents of LGBT Persons have expressed how the re-criminalisation of their children's lives has resulted in a huge blow to the ability to enjoy family life free of the fear of harassment by the police. Gay people have testified to the fact of how the judgment has increased prejudice in spaces as diverse as the family, the workspace and public spaces.

15. It should also be noted that it is less than a month since the judgment under review, upholding the constitutional validity of Section 377 was pronounced. In this short period of time, there is already compelling evidence of the deleterious impact of the law. It is submitted that these instances of harassment and discrimination unleashed by the full force of Section 377 will only increase in number over a period of time. As such the review petitioner craves leave of this Court to file additional information regarding harassment and abuse, which may continue to occur in the near future. The review petitioner has herein below documented harassment and violation perpetrated on LGBT persons through nine affidavits from people of diverse backgrounds including LGBT persons, parents of LGBT persons, counselors and psychiatrists:

- i. Annexures P-7 and P-8 in the application seeking permission to file additional documents annexed to this application seeking permission for filing additional documents are affidavits from two *kothi's* (effeminate men who may identify themselves as women)

residing in Haveri district, Karnataka, who are working as HIV/AIDS prevention outreach workers. Their work includes promoting HIV awareness, condom distribution and encouraging HIV testing. Both these affidavits testify to separate incidents of harassment after the Supreme Court's judgment currently under review.

In Annexure P-7 in the application seeking permission for filing additional documents it is stated

7. Post the judgment of the Supreme Court re-criminalizing homosexuality, the problem of police harassment has only increased. On the Saturday following the judgment on 11 December, 2013, myself and a counsellor Prem who works in my organization were in the field. Again two police officers came and checked my bag and threw the contents down including pamphlets, condoms and lubes. They dragged Prem by the collar hurting him. When I and Prem protested this harsh and uncalled for treatment, we were told that anyway people like us were illegal.

I was told that anyway our community was being talked about on all media including the TV and the newspaper. I was told that in spite of such a big publicity of the Supreme Court judgment which made it a criminal offence to be a sexual minority, I and Prem were still indulging in homosexuality. The police said that we should stop being homosexual since the judgment had now come out

8. I answered by saying that we have not come to the railway station to have sex, I and Prem had only come there to hear the

community members speak about their pains and sorrow. The police then threatened us and told us that they will file cases against us as anyway now what we were doing was illegal.

In Annexure P-8 of the Application seeking permission for filing additional documents it is stated

On 20.11.13, I was in a meeting with sexual minority community members, when a police officer came to us and started asking us questions in an aggressive, demeaning and rude manner. They inquired about the reasons for our gathering and the reasons for the meeting. I explained the work of our organization to him and duly answered all his questions.

5. However, the police officer was not convinced and asked to check my bag. He emptied the contents of the bag which had condoms, gels, training material and flipchart with information on STDs. The officer asked what these disgusting photographs for. All my attempts at explaining our work to prevent sexually transmitted diseases were unheeded to.

6. The officer went on to say that carrying condoms is illegal and alleged that we distribute it to everyone in the name of distributing it to sexual minority community members. When I denied such allegations, the officer got very angry and exasperated and said that the societal attitudes against members of the community are correct and that we are the reason HIV is prevalent. Further, they abused us for taking up such a job and asked us to pursue other respectable jobs.

7. All my attempts at explaining that this is

a project recognised by NACO and the kind of harassment that community members face in other job settings including being called chakka, gandu and other such derogatory terms for having female mannerisms and being effeminate was received with a severe admonishment that we never be spotted again at that place. Subsequent, yet again, a week after the judgment of the Supreme Court recriminalizing homosexuality, two police officers harassed members of the community. We had just then received the details of the judgment at our office and I had gone to the field to check on the members of the community. To my utter shock and distress I saw two police officers beating community members. I urged the police to stop beating them and asked them why they were doing so. The officers mockingly said that I should be knowing the reason better as the news is out everywhere including the news papers, TV and everyone is talking about it. They said that they are aware of the judgment and will not tolerate seeing us in the open in spite of it.

...

11. I was accepted at home by my family before the Supreme Court delivered its verdict criminalising homosexuality. My father came for family counselling to my organization and was accepting of my identity as a kothi. However, subsequent to the judgment of the Supreme Court, there is immense pressure on me to get married. A lot of my friends have stopped talking to me as they are afraid that people will think

they are homosexual as well like me. I am facing sever ostracization from all quarters. I was so scarred by the harassmt by the police that I have asked my project officer to not send me on field work anymore.

- ii. Annexure P-9 in the application seeking permission for filing additional documents is an affidavit of a gay man in Madurai who attests to the hatred towards LGBT people that has been sanctioned by the judgment under review. On 18.12.2013, the deponent notes that he saw posters in Tamil appearing in several parts of the city. A photograph of the poster has been annexed to this affidavit. The posters state:

Government of India:

** Forget about legalizing homosexuality in the name of personal liberty*

** Change the punishment for homosexuality under Sec 377, from life in prison to death penalty*

Government of Tamil Nadu:

Arrest those people, the cultural terrorists, who support homosexuality

"If a society turns a blind eye to social evil, it will be punished by god" - Prophet Mohammad

INL Party, Madurai

- iii. Annexure P-10 in the Application seeking permission for filing additional documents is an affidavit by Dr. Shekhar Seshadri, Professor of Psychiatry, National Institute of Mental Health and Neuro Sciences. He states that in his professional opinion, the continued existence of section 377 has negative impacts on the mental health of LGBT individuals.

14. That in the doctoral dissertation "Validity of Ego-Dystonicity in Homosexuality: An Indian Perspective" by Dr. Ami Sebastian Maroky that I was co-guide on, the scientific data clearly showed the links between LGBT persons facing psychological distress and the prejudice that they face in their daily lives. That in my understanding of Dr. Maroky's data it is clear that LGBT persons felt socially disadvantaged and at risk due to the Section 377 of the Indian Penal Code (IPC). LGBT people expressed that they felt ashamed due to the harassment and disapproval they faced from many sources, legitimized by the law. This torment forced many LGBT people to try to change their orientation medically, thereby further eroding their sense of well being. It is my belief that an important step to ensure that LGBT persons do not succumb to different psycho-social stresses is to remove consensual sexual relationships from the ambit of the criminal code as well as remove civil legal restrictions placed on LGBT people.

15. That the prejudice fostered by Section 377 of the Indian Penal Code accentuates the isolation and helplessness that LGBT people feel and the psychological distress experienced by LGBT persons thereby making them vulnerable to self-harm and suicide.

17. That it is my understanding that there is a clear established link between public perception on LGBT issues and psychological distress felt by LGBT persons. In my understanding, Section 377

exacerbates the apprehension of persecution, isolation, fear and helplessness felt by LGBT people. That this persecution of LGBT persons is based on unscientific foundations and is based on nothing more than irrational prejudice.

18. That it is clear to me that the legal environment in India had to change to protect the rights of LGBT persons. I have come to the conclusion that treating LGBT persons as full citizens as per the law is integrally linked to fulfilling the objective of a life free of unnecessary stress, unproductive anxiety and life disrupting fears which is the lot of LGBT persons....

. . . .

19. That since the Delhi High Court judgment, my professional work on sexuality and gender had been greatly eased owing to the emergence of many organisations working with LGBT issues and the numerous public individuals who openly claimed their different sexuality or gender identity and thereby provided my LGBT clients multiple sources for role models that made it easier for them to reclaim their sense of self and to live their lives with dignity. The increased social acceptance following the Delhi High Court judgment created a strong sense of mental well being and belonging among LGBT persons.

21. That I was deeply shocked by the Supreme Court judgment on 11th December 2013, re-criminalising homosexual relationships. The effect of the judgment is the return of a feeling of oppressive and continuous persecution for my LGBT clients. My LGBT clients again feel a sense of

isolation and helplessness which is particularly strong among those who lack support systems. It is also true that LGBT individuals from small towns, with little social support in terms of friends and family are the ones who are most at risk psychologically.

22. That it is my fear that these feelings of helplessness and isolation will once again increase numerous vulnerabilities of LGBT persons: including a variety of mental health crises; multiple discriminatory experiences that will demoralise them and affect their sense of self; severe stigmatisation of their lives and relationships that will increase depression and suicidal tendencies; various forms of violence both within families and outside that will further disempower them and affect their productive lives as citizens of a free country.

- iv. Annexure P-11 in the application seeking permission for filing additional documents is an affidavit by Vinay Chandran, a trained counselor in Bangalore. He attests to the marked increase of distress amongst his clients and the deleterious impact on their mental health and their sense of self as a direct result of the Supreme Court's judgment under review. He states that

32. That in another instance, D, a 39-year old Bangalore-based medical transcriptionist, called on the SAHAYA helpline, which I run, on the 12th December 2013 to state a few of his worries. He revealed to me that because he was effeminate he was harassed in his office. He said that his colleagues knew that he

was attracted to men and they treat him with contempt because of his sexual orientation. He also said that he was very fearful for his life. He was worried that his office colleagues could complain to the police and have him arrested. I believe that the fear that D speaks of and feels is very real and is affecting his health seriously.

33. That in another instance, E, a 32-year old self-identified gay man, who works as a software analyst at an investment bank told me that after the news broke about the Supreme Court judgment, he has heard demeaning, violent and hateful statements from colleagues in his office against homosexuals suggesting that people like him should be jailed. E told me that he feels helpless in tackling this kind of prejudice in his work place, because the law of the land had essentially made him a criminal.

...

36. That about 20 people, including my clients, and members of different support groups came to me and broke down crying and were in need of immediate counselling that could help them regain a sense of self and confidence that was lost to them due to the animosity, hatred and prejudice that the Supreme Court judgment fostered.

- v. Annexure P-12 in the application seeking permission for filing additional documents is an affidavit filed by Pawan Dhall, who works in the area of HIV/AIDS prevention in West Bengal, Odisha, Manipur and other eastern states. He states that transgender individuals have been arrested under section 377 in Manipur. In Odisha, LGBT individuals are opting out of health services for fear that they

might be identified and arrested by the police. He states that, based on incoming data and reports from the field, HIV/AIDS outreach workers fear that they may be seen as abettors to an offence under Section 377.

vi. Annexure P-13 in the application seeking permission for filing additional documents is an affidavit of Vijayalakshmi Chaudhuri a former school teacher in Chandannagar, West Bengal whose son is a gay man. She states that

5. I along with my husband was thus deeply elated by the decision of the Delhi High Court decriminalizing homosexuality on July 2, 2009. What the judgment of the Delhi High Court did was to signal that my son was a full and equal member of society. It helped enormously in decreasing popular prejudice and lessening public opposition to people of a different sexual orientation such as my son. It was an important moment, which marked the fact that my family was no more vulnerable to the fear of police harassment and violence. It allowed me and my family to for the first time, peacefully enjoy my family life, without the fear of unjust persecution.

6. It was thus a deep shock for both me and my husband, when we heard about the decision of the Supreme Court re-criminalizing homosexuality on December 11, 2013.

7. The decision of the court has re-induced a deep level of trauma in me as I fear once again for my son. I am more fearful than ever before that the law could be used to unfairly target my son. Now that post the wide publicity given to the judgment of the Supreme Court, more people know that my son is a criminal.

...

9. Some members of our extended family, who never supported my son's right to be what he is and were unhappy with our decision of coming out in his support are emboldened by the 11th December judgment of the Hon'ble Supreme Court and have started expressing prejudicial opinions against me and my family members. I am also apprehensive of this form of prejudice which has now been legitimized by the verdict of the Supreme Court being used to adversely impact my family's ability to make a living. This form of unreasonable prejudice is now being sought to be used to even deprive me and my family of our stake in the family business and even deprive us of our place of residence. This form of prejudiced action was unthinkable in the days before the Supreme Court judgment.

vii Annexure P-14 in the application seeking permission for filing additional documents is the affidavit of Chitra Palekar, a film maker from Mumbai, whose daughter Shalmalee Palekar is a lesbian. She states that :

The judgement calls only "the sexual act" between same sex people criminal and not the people themselves. However I am afraid that this ruling can be easily misinterpreted to target the LGBT people. My fear was justified when, immediately after the Supreme Court ruling, I read in press, the comments of Shri. Yashwant Sinha, "... Now, after the Supreme Court ruling, it (same sex relationship) is completely illegal in our country." He further added, "So, why does not the Government of India go ahead and arrest them (companions of same sex) and punish them?" No doubt Mr. Sinha's comment

was in the context of a diplomatic row between India and the USA, in relation to an Indian diplomat, and he suggested arrest only of the American diplomats' same-sex partners. However, the fact is that the comments were based on misinterpretation of the judgement. When such a senior Indian politician with a reputation of being a moderate, learned and balanced figure, can misinterpret the ruling and brand same-sex 'companions' as criminal, the less informed police force as well as society are bound to do the same. Such perception of criminality can only adversely affect my daughter and her partner' life if they come to live in India.

I am currently the co-owner along with my daughter of the flat I occupy in a housing society in Mumbai, and in the course of time my daughter will inherit this flat. However in the light of the Supreme Court judgment, I am afraid that she may face problems in being able to claim the flat. The judgement will allow hostile neighbours to claim that she is considered a criminal under the law and she can be barred from membership of the housing society. If she lives there with her partner, any homophobic neighbour can use section 377 to complain that "immoral" and 'criminal' activity is going on in the flat and harass her. Housing societies are notorious as places of conflict where personal issues of members are used against them. The Supreme Court judgment provides excellent ammunition to hostile neighbours to attack the LGBT people including my daughter.

Viii Annexure P-15 in the application seeking permission for filing additional documents is the affidavit of Vijay Mogli who

identifies as a gay man. He testifies to the increasing prejudice he faces within his own family, after the passing of the judgement under review. Vijay Mogli states:

That the judgement of the honourable Supreme Court of India in the case Suresh Kumar Kaushal and Others Vs. Naz Foundation and others shocked me and threw me and my parents back by 15 years.

That my father now strongly feels that his negative bias against homosexuality has been endorsed by the Supreme Court and insists that I should undergo conversion or reparative therapies again. My father uses threatening language to blackmail me emotionally and to attack my character and says that I am a threat to the society because of my homosexuality. My father also calls me a pervert in these threats.

That consequent to the judgement of the apex court, the situation in my house is either tense or gloomy with my father trying to persistently pressurize me to get married immediately to a girl. He refuses to understand that this could have a deleterious effect on my mental health and is most importantly a fraudulent transaction with an innocent girl. That he now feels that the Supreme Court judgement that criminalises homosexuality thus legitimises conversion or reparative therapy as conversion or reparative therapy seeks to convert homosexuals into heterosexuals.

16. That it is in the interests of justice that the judgment dated 11.12.2013 rendered by this Court in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No.

10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013 are stayed by this Court.

17. That this application is *bona fide* and in the interests of justice.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court be pleased to

- a. Stay the judgment and final common judgment and order dated 11.12.2013 passed by this court in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013;
- b. and pass any further orders as this Hon'ble Court may deem fit and proper in the interests of justice

Filed By
(Pukhrambam Ramesh Kumar)
Advocate for the Petitioners/Applicants

Filed On:

2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013..

2. That the contents of the review petition are not repeated herein for the sake of brevity, but the Petitioners/Applicant seeks to rely on the contents of the accompanying review petition.
3. That the Petitioner/Applicant has filed an uncertified copy of the judgment dated 11.12.13 with this petition and undertakes to furnish a certified copy as and when called upon to do so.
4. That the Petitioner/Applicant is not filing a certified copy of the judgment dated 11.12.13 as the matter is of urgency. The Petitioner/Applicant has not had sufficient time to apply and procure a certified copy of the judgment given that it is of a recent date, and the fact that this Court was shut for vacations for a considerable period between the date of the judgment and the time of filing this review petition.
5. That the Petitioner/Applicant herein has a good *prima facie* case on review.
6. That grave and irreparable harm and injury will be caused to the Petitioner/Applicant if not allowed to rely upon the uncertified copy of the judgment dated 11.12.13 during the course of the hearing of this review petition.
7. That no prejudice will be caused to the Respondents if the Petitioner/Applicant is allowed to rely on the uncertified copy of the judgment dated 11.12.13.
8. That this application is *bona fide* and in the interest of justice.

PRAYER

It is therefore most respectfully prayed that this Court be pleased to:

- a. Exempt the Petitioner/Applicant from filing a certified copy of the judgment in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No.

10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013, with this review petition;

- b. and pass any further orders as this Hon'ble Court may deem fit and proper in the interests of justice.

Filed By

(Pukhrambam Ramesh Kumar)
Advocate for the Petitioner/Applicant

Filed On:
New Delhi

2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013.

2. That the contents of the review petition are not repeated herein for the sake of brevity, but the Petitioners/Applicant seeks to rely on the contents of the accompanying review petition.
3. That the matter that dates back from the year 2001 and involves complex legal and factual arguments and hence the Applicant craves leave to file an extended synopsis and list of dates beyond the 10 pages limit prescribed by the rules of this Hon'ble Court.
4. That the Petitioner/Applicant will face irreparable harm if it is not allowed to file this extended list of dates and synopsis as the Petitioner/Applicant will not be able to present the full essential facts and circumstances of the matter before this Hon'ble Court. On the other hand, no harm or prejudice will be caused to the Respondents if the Petitioner/Applicant is allowed to file an extended List of Dates and Synopsis.
5. That this application is *bona fide* and in the interests of justice.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court be pleased to:

- a. Allow the Petitioner/Applicant mentioned above to file an extended Synopsis and List of Dates.
- b. and pass any further orders that this Hon'ble Court may deem fit.

Filed By:

(Pukhrambam Ramesh Kumar)

Advocate for the Petitioner

New Delhi

Dated __.01.2014

Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013.

2. That the contents of the review petition are not repeated herein for the sake of brevity, but the Petitioners/Applicant seeks to rely on the contents of the accompanying review petition.
3. By the judgment under review this Court has set aside the judgment dated 02.07.2009 of the Hon'ble High Court of Delhi in Writ Petition (C) 7455 of 2001. The judgment of the Hon'ble High Court of Delhi declared Section 377 of the Indian Penal Code, 1860 unconstitutional insofar as it criminalised consensual sexual activity between adults in private. By this historic judgment, the Hon'ble High Court decriminalized millions of Lesbian, Gay, Bisexual and Transgender (LGBT) citizens of India and removed the taint of criminality from their lives.
4. The judgment of this Hon'ble Court, however, has re-criminalised millions of LGBT people for no fault of their own, and has sanctioned the view that the State may not only discriminate against, but also criminalise, certain types of people that it disapproves of.
5. That since the judgment of this Hon'ble Court, there have been documented instances of harassment by the state authorities of LGBT people, adverse impact on HIV/Aids prevention efforts discrimination against LGBT people in workspaces, severe impact on self esteem of LGBT persons, impact on families of LGBT persons as well as increase in prejudice against LGBT persons.
6. The petitioner respectfully submits that the affidavits, FIR's as well Reports which document instances of such harassment may be taken on record, with the same being annexed as Annexures A1 to A9.
7. **Annexure P-4** is the affidavit of Fazil., a HIV/AIDS outreach worker in Hassan, attesting to his arrest under a fraudulent case under Section 377 and his torture and harassment at the hands of the police and other inmates

while in judicial custody. This arrest took place on 4.11.2013 before the judgment under review.

8. **Annexure P 5** (Colly) is a translated copy of FIR's under which Mr Fazil A. and eleven others were arrested
9. **Annexure P 6** is a copy of a Fact Finding Report conducted by civil society members on the arrests of eleven persons in Hassan in 4.11.2013 under Section 377.
10. **Annexure P 7** is the affidavit of Ajay R.M. a transgender HIV/AIDS field worker documenting harassment by police officers in Haveri Karnataka as a direct result of the judgment under review and occurred after the judgment under review.
11. **Annexure P 8** is the Affidavit of Laxman S.T. a HIV/AIDS outreach workers documenting harassment of HIV/AIDS field workers by police officers in Haveri, Karnataka after the judgment under review.
12. **Annexure P 9** is the affidavit of Mukesh Deivanayagam attesting to posters that appeared in Madurai on 18.11.2013 (one week after the judgment under review) calling for the death penalty for homosexuals.
13. **Annexure P 10** is the affidavit of Dr. Shekhar Seshadri, Professor of Psychiatry, NIMHANS attesting to the deleterious impact of Section 377 on the mental health of LGBT persons especially after the judgment under review was passed.
14. **Annexure P 11** is the affidavit of Vinay Chandran, a trained counsellor in Bangalore, attesting to the trauma experienced by his clients after the judgment under review was issued.
15. **Annexure P 12** is the affidavit of Pawan Dhall, an HIV/AIDS activist in Odisha, West Bengal, Manipur and other eastern states attesting to the arrest and harassment of HIV/AIDS workers as a direct result of the judgment under review.
16. **Annexure P 13** is an affidavit by Mrs. Vijayalakshmi Chaudhuri, a mother of a gay man attesting to her fear that people may use the judgment under review to file criminal cases against her son.

17. **Annexure P 14** is an Affidavit by Mrs Chitra Palekar ,a mother of a lesbian woman who attests to her apprehension as to how the consequence of the judgment under review is to increase prejudice against her family because her daughter is lesbian.
18. **Annexure P 15** is an affidavit by Vijay Mogli, a gay man who attests to how there has been an increase in hostility within the family towards him ever since the judgment under review was pronounced.
19. That this application is *bona fide* and in the interests of justice.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court be pleased to

- a. permit the Petitioner to file additional documents as Annexure P-4 to P-15
- b. pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed On:

Filed By

(Pukhrambam Ramesh Kumar)

Advocate for the Petitioners/Applicants

10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of 2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No. 10979 Of 2013.

2. That the contents of the review petition are not repeated herein for the sake of brevity, but the Petitioners/Applicant seeks to rely on the contents of the accompanying review petition.
3. That the Applicant has filed with the petition, true translations of FIR's 350/2013, 351/2013 and 352/2013 registered in Hassan Town Police Station. The applicant has also filed translation of a poster calling for death penalty to homosexuals.
4. That these translations are true and correct to the best of the knowledge of the Applicant.
5. That the Applicant is not filing official translations as the petition is of some urgency.
6. That the Applicant undertakes to file official translations of the documents as and when called upon to do so.
7. That grave and irreparable harm and injury will be caused the Applicant if he is not allowed to rely on unofficial translations of documents at the hearing of his petition for review
8. That no prejudice will be caused the Respondent if the Applicant is allowed to rely on unofficial translations of documents at the hearing of the review petition.
9. That the Applicant has a good *prima facie* case for review of the final common judgment and order dated 11.12.2013 in Civil Appeal No. 10972 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10986 Of 2013, Civil Appeal No. 10981 Of 2013, Civil Appeal No. 10983 Of 2013, Civil Appeal No. 10984 Of 2013, Civil Appeal No. 10975 Of 2013, Civil Appeal No. 10973 Of 2013, Civil Appeal No. 10985 Of 2013, Civil Appeal No. 10976 Of 2013, Civil Appeal No. 10980 Of 2013, Civil Appeal No. 10982 Of

2013, Civil Appeal No. 10977 Of 2013, Civil Appeal No.
10979 Of 2013

10. That the present Application is made *bona fide* and in the interests of justice.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court be pleased to

- a. Exempt the Applicant/Petitioner from filing official translations of Annexures P -5 (Colly) and P-9 ;
- b. and pass any further orders as this Hon'ble Court may deem fit and proper in the interests of justice

Filed By
(Pukhrambam Ramesh Kumar)
Advocate for the Petitioners

Filed On: