

**Second Meeting on issues around Section 377, IPC including writ petition filed in
Delhi High Court by Naz Foundation (India) Trust**

Venue: Urban Health Research and Training Institute, Bangalore

Date: 13 June 2004

Participants: AX (Sangama, Bangalore); H, M (Sakhi Char Chowghi, Mumbai); KL (Alternative Law Forum, Bangalore); XTZ (Humsafar Trust, Mumbai); R (Humjinsi, Mumbai); NT (Aanchal Trust, Mumbai); PL (Jagruthi, Bangalore); QV (Swabhava, Bangalore); MT (Naz Foundation International, Delhi); FR (NIMSW/PLUS, Kolkata); PS, QK (Mithrudu, Hyderabad); ZM, HI, CD (Humsaaya Welfare Sanstha, Mumbai); GD (Manas Bengal, Kolkata); PVZ (NIPASHA+, Guntur); XT (SIP+, Chennai); NF (SWAM, Chennai); FST/F (Integration Society, Kolkata); KM, RD (Gelaaya, Mysore); BC (Udaan Trust, Mumbai); WS, Z, ON (Vividha, Bangalore); C, EF, GH (PLUS, Kolkata); LM (DMSC, Kolkata); TC (Bandhan, Kolkata); SUN (Springfields Trust, Chennai); BA; FA; JR; PA; EC (Lawyers Collective HIV/AIDS Unit - LCHAU, Mumbai)

MINUTES

EC started the meeting by giving an update on the process so far and circulated a summary note on plans made at the last meeting in Mumbai 10 March 2004. He briefly explained that many plans had not been acted upon and this meeting, although without any fixed agenda, could be an opportunity to review the work that been done since March and how to be able to move things ahead more efficiently. To several attendees who were not present at the Mumbai meeting he gave a quick recap of the origins of the present process (explained in the previous minutes). He emphasised that although much discussion in Mumbai did happen around the petition challenging Section 377 that was filed by Naz India in the Delhi High Court, the process of a larger campaign/ movement and the need to coordinate efforts in this broader context were agreed to by all participants. It was hoped that the present meeting would also continue in this vein. Some of the key points from the Mumbai meeting were highlighted: that a national campaign would be difficult but different coalitions in different regions of India would make efforts in connection with opposing Section 377; that various persons (ALF, Sangama, Manas Bengal, Humsafar, Aanchal, Humjinsi, PA, Samapathik, LCHAU etc.) would assist in collecting incidents of rights violations and abuse, document the same, meet with mental health experts/ historians and obtain testimonies in support of the decriminalisation of sexuality minorities; that LCHAU would act as a mailbox for this process till the present meeting. MT inquired why no representative from Naz India, petitioners in the S.377 challenge, was present at the meeting as they should have been, considering that they were centrally involved in the issue. EC explained that on the last occasion Naz India was unable to remain present (the date for the Mumbai meeting was decided late) but it was explained the process and wholeheartedly supported the same and conveyed its regret for not being able to remain present. For the present meeting SA of Naz India was keen to attend and was expected to be present but it appeared that she had not come to Bangalore. MT and BC then raised concerns and cast doubts particularly with reference to LCHAU being part of the 377 litigation process in light of a case that it refused to handle on behalf

of an HIV+ MSM against Naz India on the ground that LCHAU was handling the S.377 case for Naz who were its clients. EC responded that this was not the accurate and complete picture and added that the present meeting was called for another agenda but he would be happy to discuss the issue raised by them outside the meeting. BC added that although the S.377 petition repeatedly referred to HIV/AIDS and the nexus between vulnerability to HIV/AIDS and S.377, yet when an HIV+ MSM sought services of LCHAU, the organisation refused to provide the same. MT reiterated that LCHAU was using the S.377 petition to deny rights to an HIV+ MSM against a powerful organisation, particularly after MK and EC had met the concerned individual and agreed to take up his case. EC stated that fundamental issues were being raised by MT and BC and asked others in the meeting for their views. PA and KL responded by stating that the present meeting was called for a different purpose and that in the limited time available the participants should try and focus on the same. They added that it would be best if MT and BC discussed their grievances with LCHAU outside the meeting. MT and BC expressed that they wished their statements to be minuted. EC explained that this would be done including his statement refuting the version of facts as narrated by MT and BC.

EC then explained that following the Mumbai meeting, he had had a similar meeting with groups and individuals in Kolkata/ West Bengal in end-March where this process was shared and feedback was received from participants that many of them too were supportive on anti-377 issues, both the petition and any larger efforts. Similarly a meeting was held in early-May with groups in Delhi who have formed Voices Against 377 (Voices). From here too, the feedback received was positive. In the Delhi meeting many concerns were raised including assurance of confidentiality of affidavit-givers, homophobic mental health experts etc. However, there was a feeling that Voices would be able to help in talking to journalists to write supportive pieces against S.377 and supportive mental health experts could be approached in various manners.

Having recapitulated the documentation that was visualized in the Mumbai meeting, EC gave an update of the follow-up that had been undertaken by LCHAU. After having coordinated with Humsafar, Aanchal, and individuals from the community who were willing to help, LCHAU had contacted several mental health experts in Mumbai who had expressed support and were perusing the documents in the case and model affidavits that were sent to them. These persons included Dr. Harish Shetty, Dr. Bharat Shah, Dr. Prakash Kothari, Dr. Subhangi Patkar, Dr. Nilesh Shah, Dr. Jhanavi Kedare and Dr. Geeta Joshi. Similarly, in Delhi, with the help of Naz India and Radhika Chandiramani (TARSHI), contacts were made with mental health experts including Sadhana Vohra and Madhu Sarin, who were willing to provide statements in support. In Mumbai, LCHAU had been in contact with outreach workers and peer educators of Humsafar who also had incidents to narrate and were willing to provide support through statements. LCHAU was following upon all these fronts. EC also explained that certain tasks were to be undertaken by others and briefly recapitulated these: AX to bring this process before the South India Coalition and after the Coalition's approval, to begin documenting incidents connected with S.377 (AX explained that the Coalition had not yet met, but was likely to in two days at the Rainbow Planet meeting in Trivandrum and a decision would be taken then); KL and ALF to help with documenting incidents and expert testimonies in

Bangalore (EC explained that there was some delay on LCHAU's part in preparing model affidavits and sending them to ALF. KL explained that time constraints prevented work from proceeding from ALF's end); PA and Humjinsi to help in scrutinising press and other reports of violence against sexuality minorities and compiling the same [R from Humjinsi and PA said that they would follow up and complete this task]; and PA to prepare a note on S.377 and how its impacts the lives of sexuality minorities, both directly and indirectly, which he had forwarded to EC who was in the process of editing the same.

EC then asked others to share their views on the process, their experiences that they would like to raise and how participants saw themselves being able to help in the process. He also gave an update on the S.377 petition in the Delhi High Court – it was due to come up on 7 July and likely to be adjourned further since NACO had not yet filed a reply. NT explained that in her conversation with Dr. Harish Shetty, President, Bombay Psychiatric Association, she received a very positive response and general support although Dr. Shetty sought to know more about the petition. AX explained that Sangama's film footage could be used as part of a campaign against S.377, the Communist Party in Karnataka was very supportive of sexuality minority issues, as evidenced in the Sangama film and alliances were possible there. GD explained that after the Kolkata meeting some work had been done including the collection of newspaper reports; public events in Kolkata including the Pride March, which will highlight S.377 and the case; and a few individuals had been identified who would be willing to provide affidavits as experts in support of the case. F then explained the efforts made for the Walk on the Rainbow in Kolkata in end-June and offered that press releases could be made on that occasion focusing on S.377 and its removal.

XTZ then explained the efforts made by Humsafar since the Mumbai meeting in support of the process. Apart from the names mentioned by EC earlier, he added that Humsafar had spoken to Dr. Mahendra Vatsa who was supportive, TISS departments and child rights groups who were also willing to lend their support in the form of affidavits and statements. XTZ would give a list of names to LCHAU.

MT asked the date by which affidavits are required to be ready. EC responded that a probable date would be some time before the next date of hearing after 7 July i.e. approximately 2 months later / early September. NT mentioned that as a follow up of the Mumbai meeting where it was suggested to conduct studies within the sexuality minority community on various issues, she found out that ORG-Marg wanted about Rs.7 lakh for a study on acceptance of homosexuality in Indian society. MT pointed out that a survey could be problematic because if the study turns up results that reflect the majority being against homosexuality and sexuality minority rights, it could be harmful.

PA then mentioned that at a meeting in the Sexualities Conference in Bangalore the previous day, there was a strong articulation of the need to work together through networks, coalitions etc. and the present meeting should try and move that discussion ahead. He particularly pointed to XTZ's statement on the previous day in this regard. XTZ mentioned that in Mumbai Humsafar has tried to make links with several (150?)

counsellors and psychiatrists on issues around queer sexuality and this has met with a very positive response. MT expressed appreciation that the process around S.377 had become consultative and there was a sense of participation from various groups and individuals on this with some clarity on what needs to be done and what people can do and how they can contribute. He suggested that if it was agreed that activism on this process should happen around coalitions and networks then it would be good if representatives of each coalition could meet thrice a year for a pan-Indian movement. NT suggested that if not meet, these representatives could at least keep in touch constantly and update each other about progress being made etc. and the possibilities of coordination.

TC and LM also appreciated the efforts being made to bring persons concerned with the issues together. They also expressed that similar efforts should be made locally (in Kolkata/ West Bengal) in order to widen/ build coalitions. Their comments which were directed toward Manas Bengal elicited a response from GD who stated that there were definitely certain hurdles and differences to be overcome, which may not be possible but where work could happen together on issues of common concern and thinking, it could. GD then added that there was a need to keep each other informed and the newsletter put out by LCHAU [“Positive Dialogue”] could be used to update everyone on the S.377 case and other processes around the issue. PA suggested that the lgbt-india listserve could be used. It was agreed by all that this listserve be used to move the current process forward and minutes of the meetings should be posted there. EC agreed to do the same. PA then suggested that there should be a better way by which groups and individuals are able to manage and use the media effectively to project the concerns and views of sexualities minorities. For e.g. press conferences etc. should be organized on occasions of public hearings, protests etc. Conscious attempts should be made to communicate developments. R suggested that it would be a good idea to get women’s and children’s groups on board to support the process. MT pointed out that this was being done in Delhi by Voices.

Thereafter several persons (including BB, BC, H, SUN, ZM, FR, RD, WS, EF, Z and ON) started narrating incidents of harassment and violence by police and within homes particularly that suffered by hijras and kothis in public spaces, even when no sex is taking place but when they are just walking. Their concern was that even if S.377 goes hijras and kothis will continue to get harassed. PA pointed out that these were issues of concern for all on the table – whether decriminalization of sodomy will benefit in terms of reduced harassment of hijras and kothis in public spaces and how to deal with the issue of sex in public spaces vis-à-vis law. An incident of suicide by a family of a kothi who was outed in Chennai was narrated by SBJ. BB and XT narrated incidents of harassment and violence against hijras. They mentioned that bookings under S.377 rarely took place – either there is no booking or it takes place under false charges e.g. the Narcotics Act.

EC felt that there have been several horrific cases of violence, extortion and abuse for many in the community. These are often shared and narrated at meetings such as the present one but very little is being done to note these details down and maintain records. He felt it vital that this is done in a concerted and coordinated manner to make effective

use of these incidents in terms of accountability of the perpetrators and also for the larger movement for sexuality minority rights. He suggested one outcome of this meeting could be a plan to produce and publish a nation-/ region-wide document of incidents faced by sexuality minorities. PA suggested that all NGOs should maintain a register, note down incidents and away of publishing this should be thought out. Since ALF had worked on this in the past in the form of 2 PUCL-Karnataka reports on violence against sexuality minorities and transgender communities, KL with PA volunteered to take up the job of documentation. This was agreed to by those present. It was felt that NGOs and individuals should begin to send the written incidents to KL & PA after the meeting. The issue of funding was raised in terms of publication etc. It was felt that contributions should be and need to be raised from the community.

NT also suggested that lobbying needed to be done with NACO vis-à-vis the S.377 case (persuade it to file an affidavit in its support) and that NGOs should start writing in to NACO lobbying for this. She asked when the next meeting would be held, particularly in the context of organizing/preparing affidavits for the case. EC suggested that substantial work on the affidavits should be done by end-August (in the likelihood that the case is adjourned on 7 July by 2 months, as has often been the case, i.e. next hearing in early September). He added that the next meeting should also be held in end-August to monitor progress.

Meeting concluded.