

Meeting with LGBT groups in West Bengal to share the details of the S.377 Petition and Affidavits required for the same

Date and time: March 29, 2004, 11 am to 4 pm

Venue: SAATHII Support Center, Salt Lake, Kolkata

Participants:

Name	Organisation	Places
AB	MANAS Bangla	Uttarpara
CD	MANAS Bangla	Calcutta
EFG	MANAS Bangla	Calcutta
H	Astitva	Baruipore
IJK	Amitie	Chandannagar
LM	Astitva	
NO	Swikriti	Garia
PQ	MANAS Bangla	Bangaon
RST	MANAS Bangla	Barrackpore
UV	MANAS Bangla	Bangaon
WX	MANAS Bangla	Jalpaiguri
Y	Sappho for Equality	Calcutta
ZA	Sappho for Equality	Calcutta
BE	SAATHII	Calcutta
HD	SAATHII	Calcutta
HI	SAATHII	Calcutta
GD	SAATHII	Calcutta
JX	SAATHII	Calcutta
MS	Lawyers Collective HIV/AIDS Unit	New Delhi
EC	Lawyers Collective HIV/AIDS Unit	Mumbai
LM	New Alipore Praajak Development Society	Calcutta
FST	Palm Avenue Integration Society	Calcutta

Minutes

Introduction: After a round of introductions, EC explained the background to the filing of the S377 petition. He also explained that the petition was asking for a reading down of the section so that consensual sexual intercourse between adults could be excluded from

the purview of the section. This he explained was keeping in mind the concerns of child rights activists working on child sexual abuse who used these section extensively to prosecute cases of CSA in the absence of substantive laws on the same.

He explained that the idea of the present series of meetings on the S377 petition germinated from a meeting of MSM/Queer/L/G/B/T groups who attended the Lawyers Collective HIV/AIDS Unit (LCHAU) workshop on the Draft Legislation on HIV/AIDS in September 2003. At that meeting discussions regarding activism around LGBT issues, including the 377 petition took place. Among other things, participants there asked and discussed how they could be of assistance in the process of the petition. Some of the issues that emerged from the meeting included:

1. Individuals/organisations could intervene as parties in the petition, and
2. Affidavits of people affected by S.377 and expert opinions could be collected, and that these affidavits could be filed in support of the petition

EC explained that LCHAU and Naz had discussed these ideas and are appreciative of the interest expressed by persons present on supporting the petition. Also, after interactions with some other MSM/Queer/L/G/B/T groups and individuals it was felt that such a process of documentation and collection of testimonies for the petition would be useful in supporting a larger LGBT movement/ campaign as well. Pursuant to this LCHAU and Naz sent out an email explaining this sequence of events and ideas to approximately 39 MSM/Queer/L/G/B/T groups and individuals seeking feedback on whether such a process would be one which they saw themselves participating in and contributing to.

As a follow-up, a meeting was organized in Mumbai on 10 March 2004 (minutes to be circulated) to look at issues around the petition, but also to see how it may be an opportunity to support efforts in a larger LGBT movement/ campaign. The aim of the meeting was to discuss this and related issues further, how best to work with others who would like to assist in the petition, take the issues forward, shoulder certain responsibilities, coordinate a proper effort etc. Many from the community, including GD from Manas Bengal expressed their inability to make it to Mumbai, but were extremely interested in supporting the petition. This meeting was therefore organized in Calcutta with the L/G/B/T community in West Bengal and members of LCHAU to discuss how they could support/assist the petition.

Update on Naz Petition: It was explained that the case was coming up for hearing next on 7 July 2004, but was unlikely that the matter would be go on as the National AIDS Control Organisation (NACO) had not yet filed its reply, and was unlikely to do so by July. EC explained that the process of collection of testimonies for the petition was likely to take some months, as it required considerable discussion/preparation from within the community.

Affidavits: The discussion then shifted to the agenda for the day, particularly the 3 kinds of affidavits/statements/testimonies envisaged and identified as helpful for the petition and as important documentation for an LGBT movement/campaign: 1. From the LGBT

community – those affected by the criminal sanction of the law, 2. From experts like historians, psychiatrists, sociologists, anthropologists etc. and 3. From people in public life/celebrities. EC mentioned that this was suggested in the first letter that kicked off this process, together with some names that came to mind particularly in the last 2 categories. He added that clear, powerful statements from within the community and experts may prove beneficial to the petition. They could demonstrate the highly negative impact of S.377 and its outdatedness. Also, even if several such affidavits are obtained it may not be useful to file each and every one in court. Instead filing just a few very eloquent ones would likely have more of an impact. However, the others could be published in the form of an advocacy document and used for a broader campaign/movement on LGBT rights. It would be necessary, however, to contact a number of people and begin collecting statements. He also explained that statements/testimonies from celebrities/people in public life were being planned more as an advocacy tool to build public debate and opinion around the petition rather than for submission in the court.

Documenting Testimonies: EC also explained that there were hardly any documented cases of the police actually booking the person under S.377. Many had been threatened or harassed by the police on grounds of S.377, but for purposes of the petition, needed to provide accurate facts such as dates, what happened, police person's name, under the jurisdiction of which police station etc. He also explained that even testimonies of those who had not been harassed directly by the police were important to document the impact of the existence of the section on the personal lives and behavior of the LGBT community.

Many participants related incidents and violations stemming from their status under the law. Participants from Sappho narrated incidents of lesbians being threatened/abused and forcibly separated from their partners with no legal recourse. While Y explained that support groups like theirs and 'Moitree' (a network of women's NGOs in West Bengal) extended psychosocial support in most situations, nothing could be done legally to challenge the violations.

Participants also narrated incidents of sexual assault against gay/transgender persons. In one case the survivor was unable to lodge a complaint as the police officer advised him that his sexual orientation would also come out during the investigation, leading the survivor to withdraw the complaint.

Other incidents included increased extortion from members of the gay/transgender community by police persons before the Durga Puja festivals. Refusal often meant physical violence and being detained at the police station.

A member of Manas Bengal also related his personal experience of being abused by his father on the grounds of his sexual identity. He also related that the father has legally disowned him and is attempting to disinherit him from the property on the same basis.

Sappho members also described their apprehension in lodging criminal complaints, as an investigation would attract attention of the police to their personal lives and to the

possibility of breach of their confidentiality regarding their sexual orientation and residence in their locality with their partners.

Concerns

- *Regarding Confidentiality:* EC explained that an application for suppression of identity could be moved before the court, which if granted protects the identities of those submitting the affidavits. PQ also raised some concerns regarding the issue of confidentiality of the affidavits. He felt that despite pseudo – names, for small places like Bangaon, local people would be able to identify the person by the incident described, which can incite violence against the victims involved in the incident.
- Y also spoke about the issue of lesbian organizations/support groups supporting the petition by including their testimonies. EC felt that this required greater discussion and debate among lesbian groups, as till now the police has not linked lesbians with this section and has not used this particular section to harass them. Making this link in the petition could give the government/police ideas regarding the use of the section to further harass lesbians and violate their rights.
- *Regarding approaching experts for affidavits:* EC also explained that affidavits from experts is a sensitive issue, as those who did not give empathetic expert affidavits could still approach the court directly to submit their opinion for consideration even if the petitioners did not submit their particular affidavit. GD and others at the meeting felt that many experts whom they had interacted with and worked with were a good starting point to explore for expert opinion. Many names were suggested by the group for expert opinion, which are listed below.
- *Regarding filing the petition in the SC or another HC:* EC shared the reasons behind not filing a petition in the Supreme Court. Firstly it was the final court. Once the petition is rejected no appeal is possible. Secondly this would further strengthen/legitimize the use of this archaic section for through out the country. LCHAU also feels that it was always a better legal strategy to exhaust all options like High Courts before approaching the SC. EC also shared the discussion around the possibilities of filing another petition challenging S.377 in another High Court. EC clarified that a similar petition on the same issue in more than one HC, gave the authority to the SC to take it up for consideration. Therefore, right now filing of another petition could backfire as the new petition and the Delhi HC petition could be transferred to the SC, exhausting the option of challenging it at the HC level.

Collecting literature and other documents: EC suggested that any literature/study/research/historical journal/ essays, anthologies and biographies in local languages or in the local context, which can be used in the petition to address some of the issues raised by the government in it's reply should be collected. Such documents can be useful in bringing out and tracing the existence/acceptance in society of homosexuality

and also in documenting violations and personal accounts from the community. In this context participants mentioned the work of Niloy Basu, Ajay Majumder that could be collected for this purpose. Also, a TISS study on violence faced by lesbians in India was mentioned. Besides such documents, EC also requested the collection of newspaper articles on any cases reported under S.377. GD and other participants felt that organizations could go through their archives for such articles. SAATHII promised to follow up for the same in their documentation cell.

Follow-ups: It was finally decided that SAATHII would receive formats for affidavits and letters to public personalities and the copy of the 377 petition from LCHAU and then disseminate them among the LGBT Groups in West Bengal. SAATHII will also coordinate the progress regarding the affidavits with LCHAU.

EC shared that a follow-up meeting for the collection of affidavits was being planned around the International Conference on Sexualities, Masculinities and Cultures in South Asia, at Bangalore in June 2004, being organized by the Dharani Trust.

Participants identified a list of possible names of various community members and celebrities for affidavits and public support. They are as follows:

Name	Organisation / profession	Who will contact
Dr. Ranjita Biswas		Sappho
Maitrayee Chatterjee		Sappho
Swapnamoy Chakraborty		Swikriti
Sanjukta Singha		Swikriti
Jolly Laha	Psychiatrist	SAATHII
Dr. Debasish Bose		SAATHII
Ruchira Goswami		SAATHII
Rudranshu Mukherjee		SAATHII
Rupa Ganguly		
Koushik		
Churni		
Amit Kr Basu	Psychiatrist / academic	Sappho
Suresh Kumar		SAATHII
Dr. Reena Mukherjee		
Niloy Basu	Academic / Researcher	Ptk
Ajay Majumder	Academic / Researcher	
Subrata Mukherjee	Mayor	BkD
Usha Utthup	Singer	
Siddhartha	Music Band - Cactus	Integration
Rushi Modi	Businessman	
Harsh Neotia	Businessman	
Justice Aniruddha Bose	Calcutta High Court	SAATHII
Dr. Ranjit Panja		
Labonita Ghosh		

Dr. Debasish Chatterjee		
Mallicka Sen Gupta		
Sabyasachi Mukherjee		
Surdarsan Chakroborty	Contemporary Dancer	SAATHII
Gopal Bhattacharya		SAATHII

Other Issues

- Some of the participants wanted information about whether a condom demonstration in public and publishing materials on alternative sexuality in books and sex education materials is a punishable offence or not. EC and MS explained that currently our obscenity laws and S.377 could be used to harass organizations and individuals working on sexuality and also to censor such sexuality material.
- EC shared information regarding the Brazilian Resolution on non-discrimination on grounds of sexual orientation, that is being discussed in the United Nations Human Rights Committee and he also added that the Indian government is planning to vote against the resolution.

Meeting concluded.