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Lessons from Legalizing Love: A Case Study of the Naz Foundation's Campaign to Decriminalize Homosexuality in India

Preston G. Johnson

PIM-75

Course-Linked Capstone in Policy Analysis and Advocacy

A capstone paper submitted in partial fulfillment of the requirements for a Master of Arts in Intercultural Service, Leadership, and Management at SIT Graduate Institute in Brattleboro, Vermont, USA

4 December 2017

Advisor: Jeff Unsicker

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Student name: Preston G. Johnson

Date: 4 December 2017

Acknowledgments and Dedication

This journey has been a wild ride to say the least. I pushed myself and was pushed by others to reach heights I never thought possible, but also fell into some of my deepest emotional holes. I was forced to confront my biases, my insecurities, and my skeletons. Thankfully, I have come out the other end a better person and practitioner due to such a strong support system.

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To Mom, your unwavering compassion for others has always inspired me to seek ways to make the world a better place. Thank you for always being there when I needed you and reminding me of my potential. I couldn’t have made it this far without you.

Finally, I would not have survived this chapter without my two best friends, ice cream and wine. You were always there for me when I needed you. I see many more years together in our future.

I dedicate this paper to my dad, Jim, and my sister, Melissa. I know you both have been watching over me through all my ups and downs, and I hope I have made you proud in the end. I miss you both so much.

I also dedicate this paper to every beautifully unique member of my global queer family. We must stay strong and we must stay united. Together, we will prevail. Together, we will find our freedom.

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Key Acronyms

ABVA – AIDS Bhedbhav Virodhi Andolan (*AIDS Anti-Discrimination Movement*)

AIDS – acquired immunodeficiency syndrome

AIIMS – All India Institute of Medical Sciences

AIMPLB – All-India Muslim Personal Law Board

APA – American Psychiatric Association

BJP – Bharatiya Janata Party

DHC – Delhi High Court

DSM-II – 2nd Edition of the APA's Diagnostic and Statistical Manual of Mental Disorders

FCRA – Foreign Contribution Regulation Act

GSM – gender and sexual minorities

HIV – human immunodeficiency virus

ICCPR – United Nations' Human Rights Committee's International Covenant on Civil and Political Rights

IPC – Indian Penal Code

JACK – Joint Action Committee, Kannur

LGBTQI – lesbian, gay, bisexual, transgender, queer, intersex

MHA – Ministry of Home Affairs

MHFW – Ministry of Health & Family Welfare

MSM – men who have sex with other men

NACO – National AIDS Control Organization

NACP – National AIDS Control Plan

NCT – National Capital Territory of Delhi

NHRC – National Human Rights Commission

OHCHR – Office of the United Nations' High Commissioner for Human Rights

PIL – public interest litigation

SCOI – Supreme Court of India

SLP – special leave petition

SOGIE – sexual orientation and gender identity/expression

STI – sexually-transmitted infection

UDHR – United Nations' Universal Declaration of Human Rights

UNAIDS – Joint United Nations Programme on HIV/AIDS

Abstract

In 1860, British colonizers codified Section 377 into the Indian Penal Code. 377 is an anti-sodomy law based on Victorian/Judeo-Christian values which criminalizes homosexuality through judicial interpretation and the manipulation of ambiguous language. On August 15th, 2017, India celebrated 70 years of independence from British control, yet 377 still exerts oppressive control over the safety and freedom of Indian LGBTQI communities. Defining queerness as perversion has caused LGBTQI individuals to become victims of false accusations, blackmail, harassment, housing and workplace discrimination, familial rejection, forced “conversion therapy”, assault, rape, torture, and even murder because of this power imbalance and ensuing legitimization of cultural violence against queer peoples. In 2001, the Naz Foundation filed a petition with the Delhi High Court (DHC) arguing 377 violated Articles 14, 15, 19, and 21 of the Indian Constitution. On July 2, 2009, the DHC decided in favor of Naz’s petition and read down 377 to exclude private, consensual acts among adults. Gender and sexual minorities throughout India finally received a very special freedom. Gays, lesbians, bisexuals, intersex, transgender, hijras, kothis, aravanis, and others who have been historically oppressed for their sexual orientation or gender identity were, for the first time in their lives, no longer criminals for simply expressing their most authentic self. Unfortunately, this freedom was short-lived. Four years later, the Supreme Court of India overturned the DHC’s ruling, reinstating the prior interpretation of Section 377. This resulted in a recriminalization of homosexuality and queerness in India and a continuation of Naz Foundation’s vigorous activism against 377. However, this capstone focuses on the initial campaign (2001-2009) which led to such an historical victory and outlines the advocacy of the Naz Foundation and its allies situated within the socio-political context of India. Their triumph in 2009 has been lauded for the campaign’s tenacity and effective utilization of issue framing, constituency building, and public education. The paper will analyze these strategies and resulting outcomes to identify relevant lessons for policy advocacy practice through conceptual frameworks covered in the Policy Analysis and Advocacy courses at SIT Graduate Institute.

Figure 1: Map of States and Capitals of India



Image credit: <http://www.mapsopensource.com/india-states-map-black-and-white.html>

Introduction

On July 2, 2009, the Delhi High Court (DHC) issued a ruling regarding a petition filed eight years earlier by the Naz Foundation (India) Trust which challenged the constitutionality of Section 377 of the Indian Penal Code (IPC). The decision of Chief Justice Ajit Prakash Shah and Justice S. Muralidhar reads, in part, as:

If there is one constitutional tenet that can be said to be [the] underlying theme of the Indian Constitution, it is that of 'inclusiveness'. This Court believes the Indian Constitution reflects this value deeply ingrained in Indian society, nurtured over several generations. The inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognizing a role in society for everyone. Those perceived by the majority as 'deviants' or 'different' are not on that score excluded or ostracized. Where society can display inclusiveness and understanding, such persons can be assured of a life of dignity and non-discrimination...It cannot be forgotten that discrimination is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual. We declare that Section 377 in so far as it criminalizes consensual sexual acts of adults in private is a violation of Articles 21, 14, and 15 of the Constitution. (Naz, 2009)

Section 377 is a contentious, anti-sodomy law imposed by British colonialists over 150 years ago which essentially criminalizes homosexuality through the manipulation of ambiguous language and judicial interpretation. The presence of the law has allowed for continued intimidation, harassment, and abuse of LGBTQI¹ communities in India. The DHC acknowledged a breach in three of the four constitutional rights violations argued by the Naz Foundation, and the law was read down to exclude private, consensual acts among adults. This judgment was a major victory for the movement towards LGBTQI recognition and equality in the non-Western world. Gender and sexual minorities (GSM)² throughout India finally received a very special freedom, the personal impact of which most will never

¹ Lesbian, gay, bisexual, transgender, queer, and intersex

² Used interchangeably with GSRM (gender, sexual, and romantic minorities) and GSD (gender and sexual diversity)

be able to fully understand. Gays, lesbians, bisexuals, intersex, transgender, hijras³, kothis⁴, panthis⁵, and all other individuals who have been historically oppressed for their sexual orientation or gender identity/expression (SOGIE) were, for the first time in their lives, no longer criminals for simply expressing love and sexuality in their most authentic way.

Unfortunately, this freedom was short-lived. Petitions of appeal from various sections of Indian society were immediately filed after the decision was announced. Four years later, on December 11, 2013, two justices of the Supreme Court of India (SCOI) overturned the DHC's ruling and reinstated the full wording and prior interpretation of Section 377. This resulted in a recriminalization of homosexuality and queerness in India and a continuation of Naz Foundation's vigorous activism against 377.

The success of the initial campaign (2001-2009) was a momentous occasion in a multi-religious country characterized by rife homophobia and a strict adherence to heteronormative constructions of gender roles, marriage, and family. The triumph of Naz and their allies has been lauded for the campaign's tenacity and effective utilization of issue framing, constituency building, and public education. It can be argued that the advocates' victory in 2009 is credited not only to their successful litigation, but also to their awareness that the battle for LGBTQI freedom and equality would not be limited to the courtroom alone. Developing and delivering a strong court case was the primary route to their desired policy change. However, the advocates also knew how important it was to educate, empower, and mobilize a broad base of constituents if they wanted to secure the true and lasting social change necessary for protecting the dignity and self-determination of all queer people throughout India.

³ The most common male-to-female transgender identity in India. Hijras complete specific rituals and traditions, form clans and live in intentional communities, and even have their own language and code of conduct. "Hijra" is also sometimes used as an umbrella term for Indian transgender identities.

⁴ Biological males who express varying levels of femininity. Kothis often take a traditionally "female" role within a same-sex relationship between two males, and usually takes a receptive role in sexual acts.

⁵ Biological males who express traditionally "masculine" roles within a same-sex relationship between two men. Panthis usually perform the active (penetrating) role in sexual acts. Many panthis are in heterosexual marriages and do not identify as gay or bisexual.

The Naz Foundation and their allies are still spearheading a campaign to bring justice to the Indian LGBTQI community once and for all. On February 2, 2016, the SCOI agreed to revisit the most recent ruling on 377 in response to curative petitions the Naz Foundation and others have filed. As long as 377 remains a codified law in India, the reports of physical, sexual, financial, and psychological abuse against LGBTQI individuals will continue to pour in.

Motivation and Challenges

This capstone paper is part of a much larger learning process seeking to continue the evolution of my capacity as a practitioner to: (a) develop multiple lenses of observation and analysis in the context of global LGBTQI populations, and (b) more effectively engage with, and advocate for, the disparate needs of culturally diverse LGBTQI communities, both in the U.S. and abroad. The purpose of this specific research, as an aspiring advocate for universal LGBTQI equality, is to learn more about the lived realities of queer⁶ peoples in a country with which I am unfamiliar. Prior to my first Policy Advocacy course, I was unaware of Section 377, the types of oppression faced by queer communities in India, and the organizations working to change the reality for these marginalized populations. During one class, a student shared a video from Jhatkaa, an Indian, social justice organization. After exploring their website, I learned about 377 and the Naz Foundation, and decided it would be a valuable research topic since I had no experience with, and minimal knowledge about, socio-political issues in India.

Therefore, this Policy Advocacy Course-Linked Capstone (CLC) is a case study of the Naz Foundation (India) Trust, a sexual health and civil rights organization based in New Delhi. Since 2001, Naz has been fighting against the oppressive, colonial-era law, Section 377, which has been deployed in a way that institutionalizes religious “morality,” legitimizes cultural violence against the diverse sexual

⁶ The term “queer” is used interchangeably with the acronym LGBTQI throughout this paper, acting as a blanket adjective for any identity that would be considered contradictory to heteronormative identities within the gender/sex binary.

and gender identities throughout India, and, by extension, drives the HIV/AIDS epidemic underground and acts as a catalyst for the virus's proliferation within the country.

I grew up in a rural town in the highly conservative southeastern U.S. where Christian "morality" dominates socio-political ideology and legislation. My personal objective with this CLC is to discover how an organization can fight against blatant oppression of LGBTQI communities within a highly conservative and religious socio-political context. My primary academic and professional objective is to explore advocacy tactics to uncover the strategic benefits of issue framing, public education, and mobilizing both LGBTQI and non-LGBTQI individuals and groups in efforts to secure rights for those with marginalized identities. Achieving these objectives will improve my competence as a practitioner advocating for rights and respect for international and domestic queer communities.

My research on the 377 campaign was limited to desk research. Due to logistics and time restraints, I was unable to directly connect with the actors involved in the advocacy work presented in the following case study. I attempted to counter this limitation by conducting very extensive research from a variety of sources, including court transcripts, documentaries and interviews with the advocates, and many other valuable sources. There is a level of depth that will always be missing without the personal accounts of those involved, but I am confident that the exhaustive approach to my research will produce an accurate representation of the details surrounding this campaign.

One limitation that I struggled with was the immense scope of this topic. There are so many facets of this case study that could be explored individually and expanded into independent research projects. As my research progressed, I often found myself overwhelmed by the breadth of information available. For me to present the subject with the veracity and reverence that it deserves, I kept digging deeper. Synthesizing all the available data as completely yet concisely as possible was a challenge for me as a researcher, but a challenge I welcomed and tackled head-on due to the passion and commitment I developed for this topic during my research.

The biggest challenge I found when conducting and analyzing this research was continuously confronting my biases and privilege throughout the process as a cisgender, gay, White, U.S. American male. I can never truly understand nor articulate the lived realities of LGBTQI communities outside of the ones to which I directly belong, regardless of how much research I pursue. I approached this paper with the intent to share the experiences of a community I relate to on one level, but am far separated from on so many others. For this research to be a respectful and authentic presentation of the Indian LGBTQI reality as I have absorbed it, I had to allow exploration of local queer identities and experiences. This could only be done by dismissing the homonormative, “Global Gay”⁷ frame of analysis of queer issues and social progress to which gender and sexual minority communities around the world are constantly compared and critiqued. Language and terminology related to SOGIE plays a huge role in this process, because identity-specific vernacular varies throughout the world and from one community to the next. To understand the reality for specific GSM communities, it is imperative to first learn this terminology and then implement that language into one’s work.

Each queer community has its own story, its own evolution. These communities should be honored for their respective evolution, and not evaluated as a gay, bisexual, trans, or other gender non-binary reflection of their most closely-similar Western counterpart. Opponents to LGBTQI rights in non-Western nations, often contend that homosexuality is a Western construction, and therefore not a facet of that respective native culture. This argument is often used as a political weapon to deny rights and recognition to local LGBTQI populations. The more synonymously Western and non-Western LGBTQI communities are portrayed, the more power the argument of the opposition holds (Jackson, 2001).

⁷ See also: Altman, D. (2002). Globalization and the international gay/lesbian movement. In D. Richardson & S. Seidman (Eds.), *Handbook of lesbian and gay studies* (pp. 415-425). London, Thousand Oaks, and New Delhi: SAGE Publications.; Bravman, S. (1997). *Queer fictions of the past: History, culture and difference*. Cambridge, New York, and Melbourne: The Haworth Press, Inc.; and Cass, V. (1996). Sexual orientation formation: A Western phenomenon. In R. P. Cabaj & T. S. Stein (Eds.), *Textbook of homosexuality and mental health* (pp. 227-251). Arlington, VA: American Psychiatric Association

As a researcher and a practitioner, it is important to avoid perpetuating the view that there is a global reality of queer experience. The attempted homogenization of an LGBTQI narrative is merely an oversimplification of the needs and goals of LGBTQI peoples in the “Global West” that is being prescribed to gender and sexual minority identities elsewhere in the world. Living with a traditionally marginalized identity can be very lonely; and as a queer-identifying person myself, there have been many times in my life where I have actively searched for more people “like me”. This mindset can carry into our professional work due to the desire to find that sameness, often resulting in a devaluing of the differences between our experiences and therefore dismissing the diversity within our global queer family that makes us that much more beautiful. With my utmost diligence, I have attempted to present this case study from as local of a lens as possible by deeply exploring the historical, social, and political contexts to which these differences manifested and imagining how these differing realities could lead to a variety of desired future outcomes. However, this is still a capstone paper written through the lens of a cisgender, gay, White, U.S. American, male outsider.

Methodology

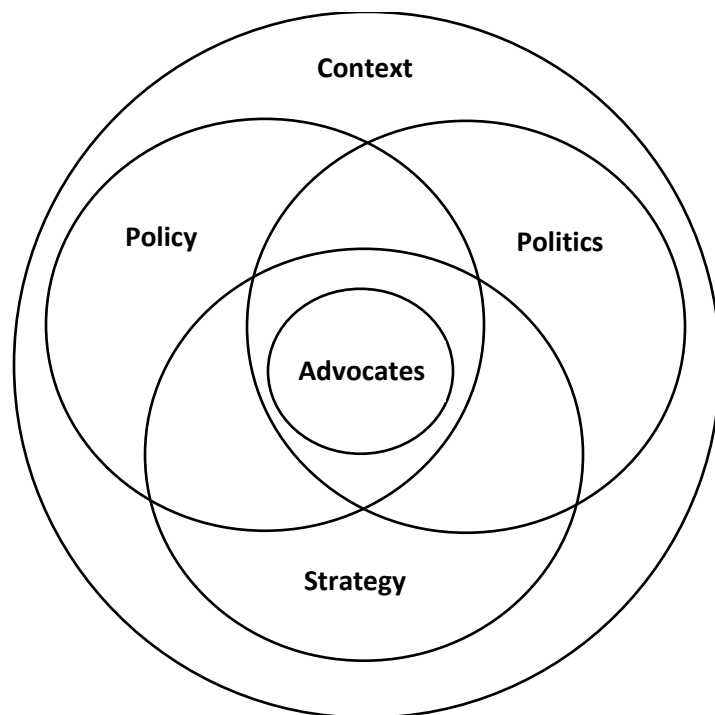
I conducted the research for the following case study through an analysis of reports and information attained from the websites of India’s major political parties and the organizations involved in the advocacy efforts. I also relied heavily on transcripts and court documents from the relevant High Court and Supreme Court cases, news coverage from Indian and International sources, academic articles from inside and outside of India, the Policy Advocacy course books, documentaries and previously published interviews, and books and articles highlighting the historical and socio-political context of the region. This case study outlines the advocacy work of the Naz Foundation and its allies situated within the socio-political context of India. The paper analyzes the strategy and outcomes of their advocacy efforts and identifies relevant lessons for policy advocacy practice through conceptual frameworks covered in the Policy Analysis and Advocacy courses at SIT Graduate Institute, including the works of

Unsicker (2013), VeneKlasen & Miller (2007), and Shultz (2003). The primary conceptual map utilized for the overall analysis of the subject is Jeff Unsicker’s (2013) “Advocacy Circles”⁸. Policy advocacy is the process of combining people and coordinated action to affect change in existing practices and laws, beliefs and ideas, and resource and power distribution (VeneKlasen & Miller, 2007). Advocacy is illustrated with the following framework as an iterative process through five circles interconnecting in different ways, providing five separate yet interrelating lenses of observation [see Figure 2].

The small, center circle represents your **advocates**. The advocates are the group of people pushing for a specific change, whether they are an informal network of like-minded individuals, a formal organization, or a coalition of organizations and/or individuals. The advocates circle is situated directly in the middle of this framework because that is the reality for an advocate. They are right in the middle of it all, interacting the most with the other actors and frames of analysis. Each of the other circles, independently and collectively, constantly shape and reshape the work of the advocates.

The large, outer circle that encompasses the rest of the process is your **context**. This dimension of analysis represents the complex setting in which the advocacy occurs. Advocates must understand the overlapping dynamics of the historical, cultural, religious, social, economic, and political factors surrounding the policy in question.

Figure 2: Jeff Unsicker's Advocacy Circles



Source: Unsicker, J. (2013). *Confronting Power: The practice of policy advocacy*. Sterling, VA: Kumarian Press. 17-19.

⁸ Also informally known as “Jeff’s Circles”

Advocacy work is not a static process. There is no step-by-step instruction manual for achieving your policy objectives. If you take everything inside your framework, exactly how it is, and situate it within a different context, the results of the advocacy efforts are going to differ. Therefore, to really understand why and how things operate and interconnect the way they do, and how those dynamics affect the outcomes of a campaign, you must comprehend the context in which the reality is occurring.

The three interconnecting rings represent the various arenas in which the advocates are constantly analyzing, interacting, and intervening. These dimensions – policy, politics, and strategy – are also respectively referred to in Unsicker (2013) as the *what*, *who*, and *how* of advocacy. They overlap in this model because there is a constant interplay between these areas that impacts the other arenas, creating an ongoing evolution of the actors involved and tactics employed. The first of these circles represents the **policy**, the actual legislation, administrative regulation, or decision-making procedure the advocates seek to change in some way. Through this frame of analysis and information gathering, a problem surrounding the continued existence or nonexistence of a contended policy is defined, the causes of the policy's origin are explored, and a specific outcome or goal is shaped and defended. Without a clear picture of the cause and effect of the policy, and/or a clear vision of the desired outcomes, it becomes very difficult to formulate an effective advocacy strategy.

The next circle in the framework represents the **politics**. This section examines all the actors involved in the campaign and how these actors interact with one another within the respective political and social systems in which the advocacy is taking place. *Who are the primary targets? Who are the decision-makers who, at the end of the day, have the power to implement and enforce the desired change?* The identified targets are where the advocacy efforts are ultimately aimed, whether directly or indirectly. It is also important to identify secondary targets, those who may not have direct power or ability to implement a change, but are able to advise and influence those who make the decisions. Allies, opponents, the media, and the general public are also situated within this conceptual arena. Common

focuses of political analysis include: motivation, policy position, potential strengths and weaknesses, level and nature of interaction with other actors, evolution of interpersonal dynamics and policy position over time, etc.

The last circle of this framework is the **strategy**. This is where the examination of the specific combination of tactics executed by the advocates is analyzed. *Why were these tactics chosen or prioritized over others? What was the deliberate strategy behind choices made within these tactical decisions?* It is not enough to only understand what tactics were used. One must also be able to identify why they were used, how they were used, how they were edited and reformed throughout the campaign to increase effectiveness, and what further strategic alterations could have been made to make the tactics even more impactful.

There are two other dimensions of advocacy work that need analyzing which are not specifically represented by the *Advocacy Circles*. **Evaluation** and **Learning** are crucial functions for any advocate or advocacy organization. They are not distinguished by separate circles in this framework, because the work involved in evaluation and learning should be integrated into all other frames of analysis within the *Advocacy Circles* map. The actors within these circles, the dynamics of their interactions, the strategies employed, and contextual nuances affecting all these components will evolve over time. It is necessary to continue evaluating, reevaluating, and reanalyzing the experiences occurring “on the ground” and the lessons learned throughout that process. An effective advocate extracts these insights and utilizes them to guide necessary adjustments either during a campaign or at the start of a new campaign (Unsicker, 2013). This process of continual evaluation, analysis, and modification reinforces the fact that advocacy is a complex, iterative procedure. It is not a linear process of defined steps with which you achieve a goal. Things are constantly happening within each frame of analysis, in each arena of advocacy, but these dynamics are also interacting with one another and evolving throughout the process.

Organization of Paper

The strength of the *Advocacy Circles* framework is that it highlights this dynamic nature of advocacy work. This is also its weakness though, because translating this complexity into a static, written document proves to be a challenge since a clear sequence towards success does not exist. For this reason, the following case study is presented chronologically in some parts and thematically in other parts. It begins with a description of the contended policy, how it is egregiously used to oppress queer peoples in India, and the primary policy objectives for the advocates. This policy is then situated within the Indian socio-political context through an examination of religious, political, social, and cultural history. Next, the advocates, politics, and strategy sections are explored, individually and collectively, through the description and analysis of the timeline of the Naz Foundation's campaign, paying specific attention to instances where they employ issue framing, constituency building, and public education. The focus of the case study primarily targets the campaign from its origin in 2001 to its success in the Delhi High Court in 2009; but there is also an examination of the years that followed the DHC's decision, the impact on Indian LGBTQI communities, and the current state of queer oppression in India. More contextual description and analysis is weaved in throughout each of the other sections as well since, as previously mentioned, all the advocacy arenas are interacting and evolving within a specific context. The final two sections of the paper will use the analysis of the Naz Foundation's campaign through the *Advocacy Circles* framework to explore two overarching research questions: (1) How effective has the advocacy been in terms of process and outcomes? and (2) What are some general lessons we can learn from the campaign and apply in the context of advocacy work elsewhere or on other policy issues?

Policy: What is 377?

Section 377 is a draconian law based on Victorian/Judeo-Christian values which essentially criminalizes homosexuality. It was officially included into the Indian Penal Code (IPC) in 1860 by British colonialists attempting to defend Western masculinity from contamination by the "effeminacy" of

Indian society (Gupta, 2008). It became the first anti-sodomy law written into a colonized nation's penal system, and quickly became a model for almost every country where British imperialism reigned. There were no sanctioned, pre-colonial punishments for homosexual orientation and/or expression in India. In fact, there is plenty of historical evidence to prove the prevalence of sexual and gender queerness embedded within Indian culture long before colonization.

377 was drafted during the British government's experimentation with administration tactics to perfect laws and governance and create a flawless system to govern both the domestic and foreign populations over which they held control. Creating laws concerning sodomy, or any non-normative, non-procreative sexual act, was important since they believed for a society to be well-governed, there had to be a strictly-enforced, morally-based legal code (Nicol, 2014). The British government released its grip on the subcontinent in 1947. On August 15th of this year, India celebrated 70 years of independence from British control, yet Section 377 still exerts oppressive dominance over the lives, safety, and freedom of India's queer communities. The law is written as:

Unnatural offences – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section (Naz, 2009).

377 doesn't explicitly mention "homosexuality" anywhere in its wording, nor does it distinguish between consensual and nonconsensual acts among adults⁹. It also fails to specify what constitutes an "unnatural offence". However, judicial interpretation of 377 transferred power to the Courts to reimagine homosexuality and essentially classify the homosexual as a sexual deviant. 377 is an

⁹ "Voluntarily" was decided during opening arguments of *Naz Foundation v. Govt of NCT of New Delhi* (2009) to not always signify consent due to the fact that "consent" specifically requires agreement from all involved parties

unbailable offense and carries the possibility of ten years to life in prison. In comparison, those arrested for obscene, heterosexual acts in public are often booked under Section 294¹⁰ of the IPC, a bailable offense which brings a much lighter prison sentence of up to only three months. Section 377 is reserved for the “unnatural offenses” of same-sex sexual acts, whether in public or private (Naz, 2009).

Defining queerness as perversion severely impacts the daily lives of queer people by infringing upon their most basic human rights and leaving them vulnerable to many forms of harassment and abuse. In the documentary, “No Easy Walk to Freedom” (Nicol, 2014), the prominent queer activist, Gautam Bhan, described 377 “for a lot of queer people [as] sort of a sword that was always hanging over your head”. If an LGBTQI person faced any form of harassment, blackmail, physical or sexual abuse, or other violation, their right to go to the authorities for redress was practically nonexistent since all queer people were technically criminals themselves. A lack of distrust in law enforcement adds another obstacle for victims seeking a remedy for their grievances, because authorities are often the main perpetrators of abuse towards queer individuals. Many victims regularly accept the abuse and pay the demanded bribe out of fear for the repercussions of publicizing their identity through a legal battle. Without official reports filed, there is scant evidence that 377 is actually used as an intimidation tactic and therefore not worth investigating (Nicol, 2014).

On March 31, 2002, activists and community members were barred from Sangama, a resource center for gender and sexual minorities (GSM) in Bangalore, because the center allowed hijras and kothis to meet in that space. Officials decreed that these gender minorities are only allowed to have meetings outside of the Bangalore city limits, clearly indicating the outcast label attached to those with non-binary gender identities (Human Rights Watch, 2002). On June 18, 2004, a 21-year-old, hijra sex-

¹⁰ “Whoever, to the annoyance of others; (a) Does any obscene act in any public place, or (b) Sings, recites or utters any obscene song, ballad or words, in or near any public place; Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both”. The Indian Penal Code can be accessed at: <http://lawmin.nic.in/ld/P-ACT/1860/186045.pdf>

worker was attacked and gang raped by ten men while she was waiting for a client. Most of the men fled when two policemen arrived at the scene. Instead of initiating a report or taking the victim to the hospital, the police put her in the van with two of her attackers, not even allowing her time to pick up her clothes. For the next seven hours, she remained naked while undergoing hours of brutal torture at the hands of six drunk policemen. They handcuffed her, verbally assaulted her, hit and kicked her, burned her, and sodomized her with a rifle. When she was finally released into the custody of a civil rights activist, she had suffered severe injuries to her hands, shoulders, and legs, among other places (Prabhughate, Noronha, & Narang, 2015).

In 2006, an aravani¹¹ was repeatedly apprehended by police and questioned under allegations of theft. While in custody, the victim underwent constant physical and sexual abuse at the hands of the authorities who arrested her. The victim died later that year from injuries sustained after setting herself on fire in front of the police station where the attacks transpired (Nicol, 2014). In October 2008, five hijras were wrongfully arrested under false charges and beaten by police, including the Assistant Commissioner, and denied medical treatment while in custody. Five members of Sangama's crisis team, whose intervention program is endorsed by the Indian government's National AIDS Control Plan (NACP) III, arrived at the jail to inquire about the detention of the hijras. The crisis team members were all detained and accused of several offenses, including unlawful assembly and rioting. Throughout the process, they underwent physical and verbal abuse by the police. A peaceful protest developed outside of the police station, where about 150 activists and lawyers organized in an attempt to negotiate with the police. Authorities chose six delegates from the group to enter the station. Once inside, the delegates quickly became detainees, and were verbally, physically, and sexually assaulted for close to

¹¹ Term used for hijras in the state of Tamil Nadu in southern India

four hours. Police then returned to the crowd of peaceful protesters and began attacking them with lathis¹². By the end of the altercation, 31 more people had been arrested (Gupta, 2008).

In 2010, a professor and Chair of the Modern Languages department at India's prestigious Aligarh Muslim University committed suicide two months after a group of men barged into his apartment and filmed him while he was engaged in a sexual act with another man. The initial invasion resulted in the professor's sexuality being publicly disclosed. He was evicted from his apartment and his employment at the university was suspended on the grounds of "immoral sexual activity". The details of his suicide have been questioned by several civil rights activists, leading to the 2015 release of a biographical film¹³ of the professor's life and death (Overdorf, 2016).

377 is harmful even for those lucky enough to have a strong social support system and who have never been directly aggrieved by the law. Its existence alone still alters the way a person constructs their self-image and situates their position within a larger social and cultural space as a person who has committed a criminal act simply by living (Nicol, 2014). A criminalization of identity obliterates one's self-esteem, impedes personal growth, and restricts a person's ability to attain their highest potential for fulfillment in all aspects of their life. 377 induces a degradation of self among those with minority sexual and gender identities, and relegates them to second-class citizens by attributing shame and perversity to their authentic expressions of love, therefore invading their feelings of self-worth within society (Naz, 2009).

The desire to socialize and search for a potential mate is a natural urge of any person. For many queer individuals, this desire for human connection is stronger than the fear of harassment and retaliation from police and community members, but private spaces to seek those connections are

¹² Long, heavy, wooden stick, often made of bamboo, used as a weapon by police and martial artists in India

¹³ "Aligarh", directed by Hansal Mehta, premiered at the 20th Busan International Film Festival in October 2015. The film was received with a standing ovation.

severely limited. Therefore, GSM must cruise¹⁴ in public spaces. The government takes advantage of that desire and is practically herding queer people into these limited spaces then exploiting them under the guise of moral policing. Every day, these marginalized individuals must therefore make the exhausting choice between jeopardizing their freedom or denying themselves the natural desire and need for authentic, human connection (Bondyopadhyay, 2002).

Over time, 377 has allowed for a reshifting of societal norms and a residual, cultural conservatism which has survived in India for decades beyond its independence. There is also a systemic perpetuation of a masculine, heterosexual, North Indian, Hindu, Hindi-speaking, male supremacy resulting from the presence of the law (Purkayastha, 2014). Systemically, the law allows for an unbalanced power dynamic, putting the power in the hands of the accuser. The LGBTQI community has fallen victim to false accusations, blackmail, harassment, housing and workplace discrimination, family isolation and rejection, forced “conversion therapy”, assault, rape, torture, and even murder because of this power imbalance and ensuing legitimization of cultural violence against queer peoples (Ghosh, 2015; Purkayastha, 2014).

Police and community harassment has also extended to HIV/AIDS and sexual health organizations and their volunteers. Outreach workers are often harassed and wrongfully imprisoned for simply distributing condoms and educational materials about sexual health. The threat of enforcement of 377 has pushed the deadly virus underground, led to risky sexual behavior, and therefore supported the continuation of new HIV infection rates, especially among gay men, men who have sex with men (MSM)¹⁵, and transgender women (Ghosh, 2015). In 2006, the most recent data available during the

¹⁴ The act of searching for a potential sexual partner in public; often used in specific reference to the search for a same-sex sexual partner.

¹⁵ Refers to a sexual identity that describes a male who is willing to engage in sexual acts with another male. These men however, do not necessarily identify as gay or bisexual.

DHC case against 377, 1% of the general Indian population were HIV-positive, whereas 8% of self-disclosed gay men and MSM were infected (Naz, 2009)¹⁶.

Furthermore, the problem with 377 extends beyond the dignity of the queer individual; it also impacts the dignity of the State. The law has fostered the proliferation of corruption among police forces who solicit bribes through the threat of prosecution under 377 which would therefore publicly designate the victim as an admittedly queer person. Such disclosure of one's minority identity makes them vulnerable to further harassment, abuse, and isolation from their communities and families. This tactic has become a source of "easy income" for those with policing power. Employers, extortionists, rapists, violent criminals, and others also inherit power from this law, and use it for their own advantage. LGBTQI citizens pay the price of dignity, freedom, and justice so the true criminals can continue committing illegal acts with relatively little culpability. (Bondyopadhyay, 2002).

Action is needed against Section 377 since it breaches the constitutional rights of GSM throughout India. Specifically, under the Indian Constitution, it denies their right to equality (Article 14), their right to equality on the basis of sex (Article 15), their freedom of speech and expression (Article 19), and their right to privacy and health (Article 21). It also violates international human rights law by intruding upon an individual's right to privacy and right to equality without discrimination, Articles 2 and 26 of the United Nations' Human Rights Committee's International Covenant on Civil and Political Rights (ICCPR). These same rights are guaranteed in Articles 2 and 7 in the United Nations' Universal Declaration of Human Rights (UDHR). The ICCPR and UDHR also protect an individual's right to freedom from torture and cruel punishment (Articles 14 and 5 respectively) and freedom from arbitrary arrest (Articles 8 and 9 respectively) (Naz, 2009). The Naz Foundation believed the best option to begin solving

¹⁶ Reports from 2016 show a decrease in overall infection rates. 0.3% of the general, adult Indian population were HIV-positive. Infection rates in self-disclosed gay men and MSM had declined to around 4%. However, it was also determined that 9% of hijras tested positive for the virus. (Avert, 2016).

this problem was to convince the court to either (a) repeal Section 377 completely or (b) read down the law to exclude private, consensual acts among adults.

Context: The Evolution of Oppression

A Queer History of India

Prior to European colonization, India¹⁷ had a far more liberal view of sex and sexuality than the conservative country would lead one to believe. The first ever sex treatise, Vatsyayana's *Kama Sutra*, was written in India sometime between 400 BCE and 200 CE¹⁸. In the small town of Khajuraho in the state of Madhya Pradesh in central India, 85 intricately-carved Hindu temples once stood, though only 22 remain today. A UNESCO World Heritage site since 1986, the Khajuraho Temples display carved depictions of a sexual legacy long since forgotten and ignored by the Indian mainstream. The carvings that completely cover the walls of the temple illustrate every sexual position presented in the *Kama Sutra* and are repeated throughout the temple grounds with various combinations of participants. Groups of two, three, and more participants of all genders engaged in myriad forms of intimate interaction can be seen and celebrated during a visit to the holy site. The temples were erected during the Chandela dynasty, sometime around 1000CE. Interspersed with the erotic carvings are depictions of warriors, gods and goddesses, musicians, and animals. Similar celebratory expressions of Indian eroticism can be found in the Sun Temple at Konark (built in 13th Century CE) and the monastic caves, Ajanta (built in 2nd Century BCE) and Ellora (built sometime between the 5th to 10th Centuries CE). The existence of these temples and monuments highlights the belief that Hinduism and other traditional

¹⁷ Prior to 1947, "India" also included what is now the sovereign nations of Pakistan and Bangladesh. The historically malleable, geographical borders and shared cultural heritage among these nations should be kept in consideration (Dasgupta, 2011).

¹⁸ The BCE/CE dating system is a secular alternative to the BC/AD system more commonly found in traditional English language usage. Dates using BCE (Before the Common/Current Era) and CE (Common/Current Era) correspond directly to the same years using BC (Before Christ) and AD (*Anno Domini*; "the Year of our Lord") respectively.

theologies and spiritualities in India historically viewed sex as a natural and essential part of life that should be embraced in all its diverse beauty (Nicol, 2014; Ramadurai, 2015).

The literary history of India provides further evidence that same-sex intimacy and gender queerness were long prevalent in Indian culture. The most famous example is the same-sex relationship between Arjuna and Krishna in the *Bhagvad Gita*, the ancient Hindu text read more often than any other piece of Indian literature. Krishna declares that Arjuna is more important to him than wives and children, because there are many of them, but only one Arjuna in the world. The connection between the protagonists is so strong that Krishna gave life to Arjuna's stillborn child through the energy of the pure love shared by Krishna and Arjuna, illustrating new life birthed from same-sex love instead of heterosexual forms of procreation. Furthermore, after resisting the sexual advances of the heavenly maiden, Urvashi, Arjuna was exiled to Virata's palace where he lived for a year as a woman among the other concubines (Dasgupta, 2011; Nicol, 2014; Vanita & Kidwai, 2000).

The power of same-sex attraction and the expression of gender as a fluid construction can be observed in ancient Hindu mythology as well. Many Hindu deities are presented as multidimensional in terms of gender, able to present themselves in a male, female, neuter, or non-human form at different times. One of the primary gods, Vishnu, often appeared as a woman despite being a male deity. Shiva, another male deity, developed a deep attraction to the beauty in Vishnu's fluidity. Shiva's pursuit of Vishnu eventually led to an offspring, Ayyappa (Vanita & Kidwai, 2000). This same-sex encounter that leads to a child born of two males adds more support to the traditional Hindu view of gender and sexuality as far more complex than the normative, binary view of male/female gender roles and expectations in modern society.

The Muslim-led invasions of India beginning near the 10th Century CE, along with heavily impacting Indian culture with Islamic mores, brought their own culture of homoerotic normativity that was contradictory to the archetypal Qur'anic interpretation which severely chastises homosexuality. The

pluralistic and cosmopolitan nature of the urban, Islamic culture at the time fostered spaces of high visibility. Same-sex love affairs were regarded as legitimately as other relationships in these spaces. Even Sultan Mahmud of Ghazna (971-1030 CE), a widely-celebrated military ruler, had a deeply affectionate and intimate relationship with one of his male slaves, Ayaz. There is ample literature on the revered leader about both his military and romantic prowess. Scholars have compared the Sultan's relationship with Ayaz to several of the famous, heterosexual couples in Asian history and folklore, including Layla and Majnun¹⁹ (Dasgupta, 2011).

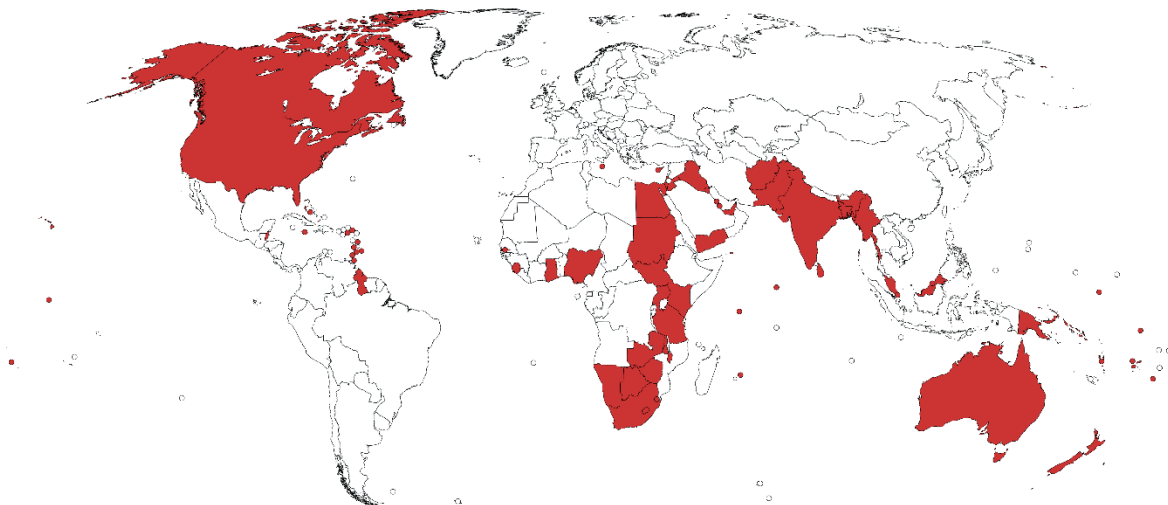
The historical and folkloric evidence of a culture beyond mere "acceptance" of gender and sexual minorities is vast. The socio-political shift away from this view appears to coincide with the arrival of European colonialists to the South Asian subcontinent. The Portuguese were among the first Europeans to arrive in India and lay claim to a section of its territory. With many studies examining the economic effects and religious influence of Portuguese colonization, minimal scholastic evidence has been collected regarding any shifting social paradigm around gender and sexual normativity. This lack of academic exploration into the social effects of Portuguese colonization could signal the Portuguese government did not prioritize social and moral control over the Indian society which they governed.

The first indication of a socio-political shift towards social conservatism accompanied the spread of the British Empire through India starting as early as the 17th Century, under the auspices of the British East India Company (Dasgupta, 2011). The concept of the "modern", Victorian family, complete with defined roles and behaviors, began to seep into indigenous constructions of gender-based expectations. In terms of romanticism and eroticism, same-sex relationships were rarely, if ever, punished prior the cultural and political invasion of Great Britain. There is some evidence of disapproval among factions of pre-colonial Indian society, but scarce indication that homosexual desire or expression was ever worthy

¹⁹ A love story from Arabia around the 7th Century CE. Described by Lord Byron in *The Giaour* (1819) as the "Romeo and Juliet of the East".

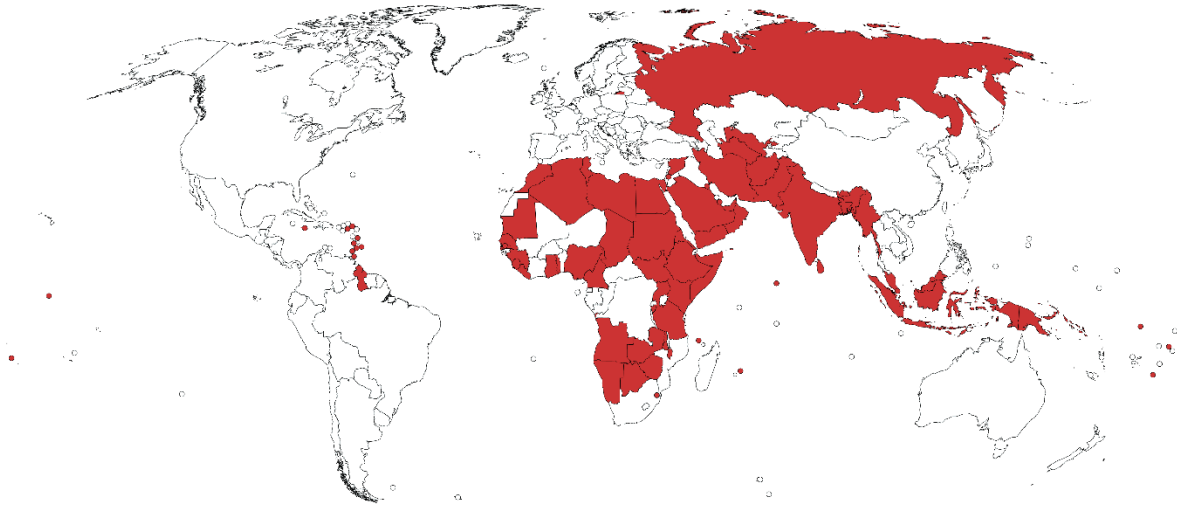
of persecution. In fact, prior to the enactment of Section 377 in 1860, it was far more commonplace for sexual and gender queerness to be accommodated, accepted, or even embraced and celebrated. This connection between British imperialism and the rise of state-sponsored homophobia and queer oppression, provides support for Foucault's (1978) theory that social identities formed around sexuality and gender were primarily a European construct developed throughout the 19th Century. (Dasgupta, 2011; Nicol, 2014; Vanita & Kidwai, 2000). As of today, 47 of Great Britain's 65 former colonies still criminalize homosexuality to some extent. These former colonies represent 62% of the 76 countries where queer (non-normative; non-binary) identity and/or expression is illegal [see Figures 3 & 4 and Appendix 1].

Figure 3: Map of Colonies of the British Empire



Source: See Appendix 1 for sources; map created at <https://mapchart.net/detworld.html>

Figure 4: Map of Current Criminalization of Homosexuality



Source: See Appendix 1 for sources; map created at <https://mapchart.net/detworld.html>

Global Progress Leaves India Behind

The global queer rights movement began to progress in the West in the 1960's, but garnered very little momentum in India, if any. Section 377 remained steadfast in the IPC long after the view of homosexuality around the world began to evolve. Great Britain, the creator of this oppressive statute, repealed their version of the law 50 years ago, in 1967 (Misra, 2009). In 1973, homosexuality was removed from the second edition of the American Psychiatric Association's (APA) Diagnostic and Statistical Manual of Mental Disorders (DSM-II) (Drescher, 2010). The European Court of Human Rights ruled in 1988 through the case of *Norrie v. Ireland (1988)* that criminalizing homosexuality violated a person's right to privacy guaranteed under the European Convention on Human Rights and Fundamental Freedoms (Helfer, 1990). The United Nations Human Rights Commission echoed this same ruling when it ruled against Tasmania's anti-sodomy law in *Tonnen v. Australia (1994)*. The UN Commission decided the International Covenant on Civil and Political Rights (ICCPR) violation extended to also denying a person's right to equality (Gupta, 2008). Courts in South Africa (1998)²⁰ and the United States (2003)²¹

²⁰ *National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others.* (1998)

²¹ *Lawrence v. Texas* (2003)

also decreed that sodomy laws infringe upon a person's fundamental human rights due to societal and political persecution that coexisted with the presence of such laws. In Asia, 31 countries and territories²²²³ do not currently criminalize homosexuality, including India's neighbor, Nepal (Carroll & Mendos, 2017). The climate in India though was reflected in a statement by then Additional Solicitor General, P. P. Malhotra, in 2001 where he stated:

In our country, homosexuality is abhorrent and can be criminalized by imposing proportional limits on the citizens' right to privacy and equality...that right to privacy is not absolute and can be restricted for compelling state interest. Article 19(2) expressly permits imposition of restrictions in the interest of decency and morality. Social and sexual mores in foreign countries cannot justify decriminalization of homosexuality in India...in Western societies the morality standards are not as high as in India (Naz, 2009).

Along with Section 377, the British government also enacted the Societies Registration Act in 1860. This required registration with colonial authorities of any association that had eight or more members due to British fear of the potential threat posed by the organizing of Indian citizens. Although India gained its independence from the British monarchy in 1947, the effects of these two laws, and others, remained in the systemic structure of modern Indian society (Horton, Rydstrom, and Tonini, 2015). Recognizing the power behind limiting the abilities of civil societies, the Indian government sought to strengthen the Societies Registration Act by issuing the Foreign Contribution Regulation Act (FCRA) in 1976. This was an overt attempt to disrupt the financing of any actions that could potentially

²² Kazakhstan (since 1998); Kyrgyzstan (since 1998); Tajikistan (since 1998); Abkhazia (since 1991); Armenia (since 2003); Artsakh (since 2000); Azerbaijan (since 2000); Georgia (since 2000); Russia (since 1993); South Ossetia (since 1991); Turkey (since 1858); Bahrain (since 1976); Iraq (since 2003); Israel (since 1963); Jordan (since 1951); Lebanon (since 2014); Nepal (since 2007); China (since 1997); Hong Kong (since 1991); Macau (since 1996); Japan (since 1880); Mongolia (since 1961); North Korea (never illegal); South Korea (never illegal); Taiwan (since 1895); Cambodia (never illegal); East Timor (since 1975); Laos (never illegal); Philippines (since 1933); Thailand (since 1956); and Vietnam (never illegal)

²³ This concerns only the codification of law regarding sexual orientation. In several countries where homosexuality is technically "legal", there are often other forms of state-sponsored oppression against local LGBTQI communities, and offenses against LGBTQI peoples are often overlooked, including "honor killings" of queer family members

manifest into political resistance against the controlling political regime. Following an amendment to the FCRA, and the creation of a Commission of Enquiry in the mid 1980's, the government extended the scope of their query into the finances of these organizations to further stymie their activities. This manipulation of power is still evident in India today. In 2013, the government blocked the Indian Social Action Forum, a coalition of over 700 human rights organizations from all over the nation, from accessing any of their financial accounts (Horton et al., 2015).

The 1980's saw the advent of the worldwide AIDS epidemic and a consequential rise in the number of NGO's working in sexual health-based advocacy and intervention. The initial cases of HIV in India were reported in 1986, with the first case being reported in what is now the city of Chennai. This led to the formation of the first National AIDS committee the following year (Horton et al., 2015). The NGO, AIDS Bhedbhav Virodhi Andolan (ABVA)²⁴, began working in AIDS activism in India in 1989 after doctors with police support began forcibly testing female sex workers for HIV (ABVA, 1991). The National AIDS Control Organization (NACO) was formed in 1992 and went on to implement the first National AIDS Control Plan (NACP I) in 1999 (Horton et al., 2015). Responding to the epidemic, Naz Foundation was officially formed in 1994 after Kiran Bedi, warden of Tihar Jail, denied Anjali Gopalan permission to dispense condoms at India's largest and most heavily populated prison, disregarding reports of a significant rise in new HIV infection rates there (Voices Against 377, n.d.). Although the focus of these organizations was on sexual health, each of them became very important actors in the future battle for LGBTQI rights.

In the 1980's, visibility of queer identities also began to increase and individuals with these marginalized identities began to mobilize. Ashok Row Kavi, eventual creator of India's first magazine for queer men, *Bombay Dost*, shared his story in an interview with *Savvy* magazine in 1986, becoming the first person to publicly "come out" as gay in India (Joseph, 2005). The first public demand for equality in

²⁴ Translates to "AIDS Anti-Discrimination Movement"

India specifically for the LGBTQI community came in 1991 when ABVA published a notable document titled, *Less than Gay: A Citizens' Report on the Status of Homosexuality in India*. However, it is widely accepted that the impetus of the modern gay rights movement in the South Asian subcontinent came in 1992. Police would clandestinely patrol Connaught Place Park in New Delhi, a common hook-up location for gay men and MSM. Police entrapped and arrested several men during one of their sting operations. This abusive exercise of power led to the first public protest of citizens imploring rights for LGBTQI people on August 11, 1992 (Misra, 2009). The following year, the first-ever anthology of gay experiences was published. Written by Rakesh Ratti, *Lotus of Another Color: An Unfolding of the South Asian Gay and Lesbian Experience* explores the lives of gay, lesbian, and bisexual Indians and Pakistanis. The collection of narratives was published for the queer community to “make ourselves more visible, and to define ourselves on our own terms” (Sengupta, 1993). The following year, in 1994, ABVA filed the first petition against Section 377 on the grounds that it was unconstitutional. This specific action unfortunately didn't receive much traction. The petition was ignored for years before it expired and was dismissed by the Court in 2001. However, the move helped set the stage for further activism (Horton et al., 2015).

Tensions continued to escalate into the late 1990's. When Deepa Mehta's film, *Fire*, was released in India in 1998, there was a massive uproar from the Hindu Right and their loyal constituents. *Fire* is a film about pure love between two women. It is based around the story of a middle class, Hindu family in contemporary New Delhi; centering on the emotional and sexual relationships between two sisters-in-law. In the end, both lovers choose to leave their husbands to live a life together. Portraying a same-sex relationship with a happy conclusion for the couple showed that happiness can also be found by going against the standard heteronormative expectations and familial obligations so deeply engrained in Indian society. The first two weeks of the film's release went smoothly. The blatant depiction of female sexuality as an unrestrained passion free to follow a heart's true desires was too much for conservative opponents though. Throughout Bombay and Delhi, the outraged citizens attacked

theaters, ripped down posters, and disrupted screenings. The common argument was that homosexuality did not exist in India, and therefore lesbians didn't exist. If they didn't exist then there was no reason for this movie to be showing such things. Other opponents said there is a possibility that homosexual attraction was real and exists in India, but regardless, it is not something that should be talked about because it could send the wrong message to viewers that homosexuality is acceptable. In response to the backlash and censorship, a massive pro-LGBTQI protest march erupted. A visible queer constituency had finally organized in India and they were no longer willing to stand aside and hide. For the first time, people took to the streets with signs announcing their sexuality publicly and standing up for themselves and their community. However, while queer communities were strengthening, so was the social and political intolerance against them. Everything came to a head in 2001 (Nicol, 2014)

The Naz Foundation knew it was time to fight Section 377 head-on after police raided Naz's office in Lucknow and the office of the Bharosa Trust, a civil society organization created to assist Naz with the rising sexual health crisis. Bharosa started in 1997 and consisted of mostly volunteers. They would distribute condoms and educational material, go to known cruising areas to meet and talk with people about sexual health, and collect donations whenever and wherever they could. Starting around March 2001, the Ministry of Home and the Indian Investigations Bureau began conducting inquiries into Naz and Bharosa's work even though both organizations were endorsed by NACO and the Uttar Pradesh State AIDS Control Society. On July 7, 2001, police forces showed up with a media circus in tow. Dildos used for condom demonstrations and sex-related books from their library were taken and flashed in front of news cameras as "sex toys" and "pornographic material", clearly proving the intention behind the raid was to portray the outreach workers as a gang of sexual miscreants. Four men were lined up, photographed by the media, and then arrested for "running a sex club" and for "criminal conspiracy and selling obscene materials". They were then refused bail based on the fact they were "polluting society". For 47 days, the "Lucknow Four" had to withstand constant interrogation, verbal abuse, beatings, and

torture at the hands of prison guards and prisoners. Protests began erupting throughout India with support from civil society organizations. Representing various issue areas, the groups were unified in defending the wrongfully imprisoned since the constant victimization of marginalized peoples affects all of society. After the release of the Lucknow Four, the Naz Foundation joined with the Lawyers Collective to file a public interest litigation (PIL) petition with the DHC in December of that year to finally challenge Section 377 of the IPC (Gupta, 2008; Human Rights Watch, 2002; Misra, 2009; Nicol, 2014).

Advocates and Politics: Battle Lines are Drawn

The lead petitioner in the DHC's court case, and the organization at the forefront of the movement to defeat Section 377, was the Naz Foundation (India) Trust, a community-based nonprofit formed in New Delhi in 1994 by Anjali Gopalan. Her work through the Naz Foundation has been recognized all over the world, including being shortlisted for the Nobel Peace Prize in 2005 and being named one of TIME magazine's 100 Most Influential People in the World in 2012. Ms. Gopalan first began working with community organizations while in New York City in the 1980's, regarded by many as the epicenter of the HIV/AIDS epidemic. Her roommate and friend contracted HIV, giving Ms. Gopalan valuable experience as a caretaker and first-hand knowledge of the individual impacts of the virus. She took these experiences back home to India in the early 1990s. Working out of her basement, she established India's first HIV clinic. The more experience she gained with the virus in India, the more clearly she could see the massive gap that existed in HIV/AIDS prevention and care in India. Federal funding to combat the epidemic was scarce and unevenly distributed, and the framing of the issue dangerously depicted the general public as relatively low risk for contracting the virus. Her focus immediately turned to fundraising and public education. Through working on the grassroots level, she was shocked to learn about the extremely unsafe sexual practices of MSM. Since homosexual behavior was such a taboo in India, no one was discussing it. Men were getting a variety of sexually-transmitted infections (STIs), but were refusing to seek treatment out of fear of discovery and disclosure of their

sexual proclivities. An overwhelming majority of the men in these spaces were married with families, and there wasn't really a "gay" identity and culture similar to that which is often found in Western countries. The Naz Foundation's staff had to reevaluate how they themselves viewed sex and sexuality in order to effectively reach these populations. Relying on the help of a few of her gay friends, Ms. Gopalan gained access to known cruising spots and secret queer spaces. Along with some trusted doctors, she began getting necessary information, testing, and medication to the populations who most desperately needed the intervention. The trust she was gaining in the community through these methods was paramount to any potential success the Naz Foundation and others could have in combatting the HIV/AIDS epidemic (Ashoka, n.d.; Naz Foundation, 2017; Nicol, 2014).

Initially focusing their work on sexual health, the Naz Foundation has evolved over the years to take a more holistic approach to combat the global HIV/AIDS epidemic and systemic oppression in general. Their mission is to reduce stigma, improve health, and empower families. With the goal of sensitizing the public to issues of sex and sexuality, the primary objectives of Naz Foundation's work are to implement a rights-based approach to public education, report unbiased sexual health facts, and provide quality care and support for those living with HIV/AIDS. Currently, Naz runs six key programs: (1) a care home for 31 HIV-positive orphans; (2) outreach and home-based care for families who have been affected by HIV/AIDS; (3) capacity building initiatives and training workshops for marginalized communities and service providers; (4) Goal: a girls empowerment program incorporating netball and life skills training through peer education for at-risk adolescents in Delhi, Mumbai, and Chennai; (5) outreach, counseling, medical support, and legal services to LGBTQI/MSM; and (6) advocacy and activism for various social justice movements. The Naz Foundation is a registered charitable trust and also registered under FCRA, therefore making them eligible to receive funds from both domestic and foreign donors, including: Ford Foundation, FHI 360, MacArthur Foundation, the Australian Sports Commission, and the UN Development Fund for Women. The diligence they employ in regard to

accountability and transparency led them to receive the GuideStar India Transparency Badge endorsement. The board of directors for Naz, which meets at least twice annually, includes health economists, doctors, businessmen/women, lawyers, and activists. As the Founder and Executive Director of Naz Foundation, Ms. Gopalan, has become the face of the LGBTQI rights and sexual health rights movements in India, and the Naz Foundation were already making a huge impact in queer communities prior to 2001. Yet they knew if they wanted to take down Section 377, they could not fight the crusade alone (Naz Foundation, n.d.; Naz Foundation, 2017).

Teamwork

In May 2001, prior to the arrest of the “Lucknow Four”, Naz Foundation filed a formal complaint with the National Human Rights Commission of India (NHRC) about a reported case of psychological abuse. A boy in his early twenties was forced by his parents to undergo nearly four years of homosexual “conversion therapy”.²⁵ In addition to counseling and psychotropic medication, the victim received electroshock therapy as part of his treatment regimen at the All India Institute of Medical Sciences (AIIMS), the largest hospital in the National Capital Territory of Delhi (NCT). The NHRC rejected the complaint on the grounds that Section 377 outlawed homosexuality and therefore the conversion treatment was not against the law. Outraged over this, and the unconstitutional arrest and detention of the Lucknow Four, Naz Foundation joined forces with the Lawyers Collective to get rid of this dangerous law.

In the late 1990’s, Lawyers Collective began seeing large numbers of gay men and MSM in their offices seeking legal advice and assistance. Most of them were infected with and/or impacted by HIV/AIDS, and the majority of which were closeted.²⁶ Some of them were married with children. All of

²⁵ The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) declared that any involuntary treatment designed to change a person’s sexual orientation is a form of torture. India was among the nations to ratify this declaration in 1997. (Outright International, 2001)

²⁶ “Closeted” and “In the closet” refer to gender and sexual minorities who have not disclosed their true gender and/or sexual identity

them were reporting harassment and blackmail from police who were using 377 as their tool of intimidation. Lawyers Collective knew they had to join the fight against 377 since it impacted not only the rights of queer individuals, it also had a massive impact on the HIV/AIDS epidemic. They counseled with Naz Foundation and drafted a writ petition to the DHC to decide the constitutionality of 377. From that day forth, Naz and Lawyers Collective would be equal partners in the long battle to come (Outright International, 2001; Nicol, 2014)

The Lawyers Collective is a group of lawyers, law students, and human rights advocates which provides legal assistance and advocacy support to organizations fighting violations of fundamental human rights. The Collective was established due to significant judicial reform which took place in the early 1980's. Prior to this reorganization, only someone directly aggrieved could approach the court. Legal standing, *locus standi*, was expanded during this period which allowed for an increase in cases revolving around issues affecting marginalized groups. These cases became known as public interest litigation (PIL). Lawyers Collective formed in 1981 to represent underprivileged peoples who wanted to approach the court under these new conditions. Although they take professional clients to fund their public interest clients, they will not represent any company, organization, or individual who would conflict with the ethical code of the Collective or with public interest in general. As one of the most renowned providers of public interest services in India, they also organize and facilitate community meetings regarding various issues, such as meetings about Section 377, constitutional rights, DHC and SCOI rulings, and other relevant policy changes (Nicol, 2014; Lawyers Collective, 2017).

The third main party in this campaign joined in 2003. Voices Against 377 is a coalition of twelve organizations and five professionals who represent various social justice platforms. Creating bridges across identities to form diverse alliances helps build common ground among marginalized groups and strengthens legitimacy of a particular movement (VeneKlasen & Miller, 2007), and that was the goal of Voices. The work of these individual organizations covers children's rights, women's rights, sexual health

rights, LGBTQI rights, legal representation, effective media usage, workers' rights, and other social issues

[see Figure 5].

Figure 5: Organizational & Individual Members of Voices Against 377

Organizations	Issue Focus
Anjuman	Queer rights; students' rights
Breakthrough	Media & human rights
Creating Resources for Empowerment in Action (CREA)	Women's rights; reproductive rights
Haq: Centre for Child Rights	Children's rights
Jagori	Women's rights; capacity building
Nigah Media Collective	Media; queer rights
Nirantar	Women's rights; capacity building
Partners for Law in Development	Women's rights; social justice; legal access
Prism	Human rights; crisis intervention
Saheli	Women's rights; social justice
Sama	Women's rights; queer rights; sexual health
Talking About Reproductive & Sexual Health Issues (TARSHI)	Women's rights; reproductive & sexual health; sex workers' rights; disability rights
Individuals	Occupation (Specialty)
Gautam Bhan	Educator; writer; consultant (urban poverty; development & contemporary Indian politics; queer issues)
Lesley Esteves	Organizer; counselor (queer rights, crisis intervention)
Ponni Arasu	Activist; researcher; theater practitioner (queer feminism; feminist history; labor rights)
Pramada Menon	Activist; consultant; performance artist (queer feminism; sexual rights; intersectionality; body positivity)
Sumit Baudh	Lawyer; consultant; researcher; professor; artist (social exclusion; inclusive policy; social justice)

Source: *Voices Against 377 – Who We Are* (n.d.). Retrieved from: <http://www.voicesagainst377.org/who-we-are/>

This new alliance joined Naz Foundation and Lawyers Collective in 2003 to strengthen the voice of the campaign. By hosting community events and producing reports, the coalition has worked to create a “climate of acceptance” for GSM in India. They hosted several trainings and spaces for public dialogue and debate on the topics of “Criminalization of Sodomy and Human Rights Abuses in India” and

“Lesbian and Gay Human Rights in India”. Their public engagement events included the “Million Voices Campaign”, several public demonstrations throughout the country, and mobilizing larger constituencies for LGBTQI Pride marches throughout India starting in 2008. (Voices Against 377, n.d.). The intersections of identities and agendas within this coalition displays the truth that sexuality rights is an issue of importance for non-LGBTQI groups as well as LGBTQI-specific organizations. Voices Against 377 made history as the first ongoing coalition in India represented by LGBTQI and non-LGBTQI groups, and was also among the first of its kind in the world (Misra, 2009).

During the campaign, the alliance garnered many additional allies, both domestic and international, to help strengthen their cause and expand the scope of their efforts. Among the most influential to the actual court cases would arguably be the members of the LGBTQI community and their family members who submitted affidavits to the DHC and SCOI describing how 377 has affected their lives directly. NACO offered in-court corroboration to Naz’s claim that 377 was detrimental to combatting the AIDS epidemic (Naz, 2009). Many national HIV/AIDS and health rights organizations and LGBTQI organizations offered support as well. The Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) publicly criticized the Indian law. Human Rights Watch also condemned the law by publishing a 33-page report in 2002 that described police harassment towards public health workers and emphasized the contradiction of Indian policies (Misra, 2009). Finally, many health professionals and religious, legal, and historical academics also offered support as signatories to open letters submitted by Voices Against 377 and by providing supporting evidence during the DHC and SCOI cases (Voices Against 377, n.d.).

Advocates Take Aim

The primary target of the campaign was the DHC. The High Courts of India are the second highest tiered court in the country, with the Supreme Court as the apex. The High Courts act as India’s constitutional courts. Since they were arguing the unconstitutionality reflected in Section 377, Naz

Foundation filed their petition at the High Court level instead of with the Supreme Court (Society for Indian Law Firms, 2011). There are 48 seats on the DHC, but only two justices presided over Naz's case, Justice A. P. Shah and Justice S. Muralidhar. Though the focus was on the DHC, the SCOI remained an important secondary target. If the DHC were to rule against Naz's petition and keep 377's original wording in its entirety, Naz's next step would be to file an appeal with the Supreme Court.

Two executive ministries would represent the central government of India in the case and were tasked with drafting the government's opinion of Section 377 in relation to Naz's petition. The Ministry of Home Affairs is responsible for domestic policy and national security. The Ministry of Health and Family Welfare oversees the country's health policies (Naz, 2009). The positions the ministries presented to the DHC would prove to be an important factor in the court's decision, delegating them as an important secondary target for Naz as well.

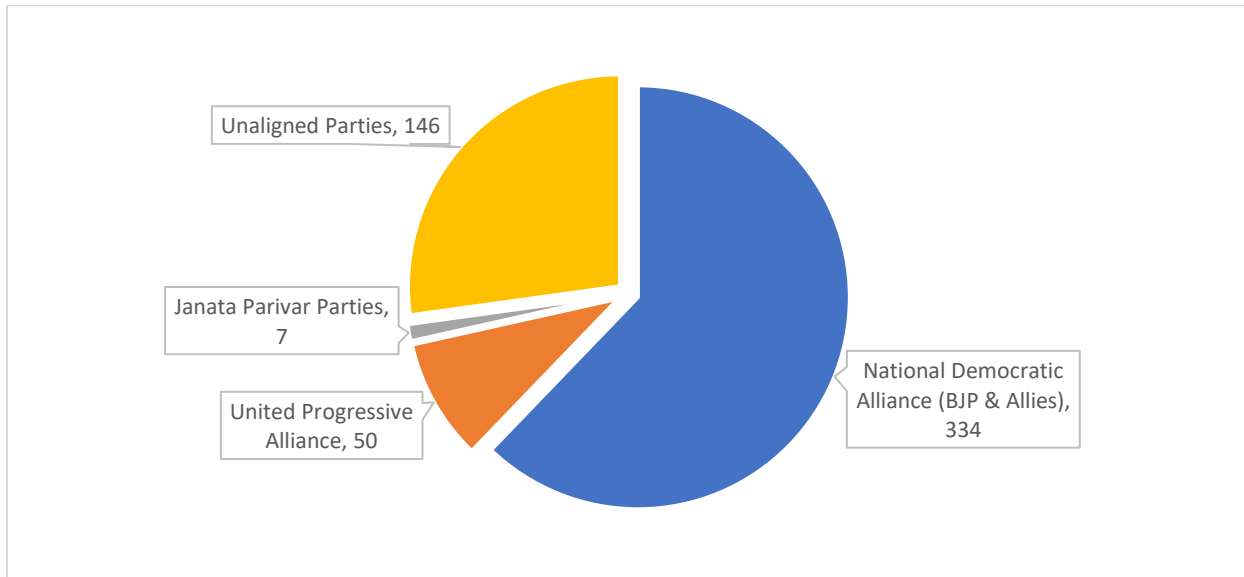
India's Parliament was also a secondary target of the campaign, albeit a distant one. India has a bicameral legislature within its multi-party political system. The Bharatiya Janata Party (BJP) is a highly-conservative, Hindu-based party that has consistently been among the highest represented parties in Parliament (Bharatiya Janata Party, 2016). There are 39 political parties currently represented in the Lok Sabha (House of the People – lower house of Parliament), and the BJP alone occupies half of the 545 available seats²⁷ [see Figure 6 & Appendix 2]. The BJP also holds a quarter of the 245 seats in the Rajya Sabha (Council of States – upper house of Parliament). The other 27 political parties who hold seats collectively represent the remain three-quarters.²⁸ (Parliament of India, 2017) [see Figure 7 & Appendix 3]. I have been unable to find documentation of attempts to persuade the legislature during the DHC case (2001-2008) other than open letters that were sent out in 2006 and 2008 to leaders in both houses

²⁷ There are also currently seven vacant seats and three seats occupied by Independents

²⁸ There are also currently four vacant seats, six seats occupied by Independents, and twelve seats assigned by Presidential appointment for those who have made significant contributions to the fields of art, science, literature, and social service. Of the twelve nominated seats, four of them are aligned with the BJP and the remaining eight are currently unaffiliated with a political party.

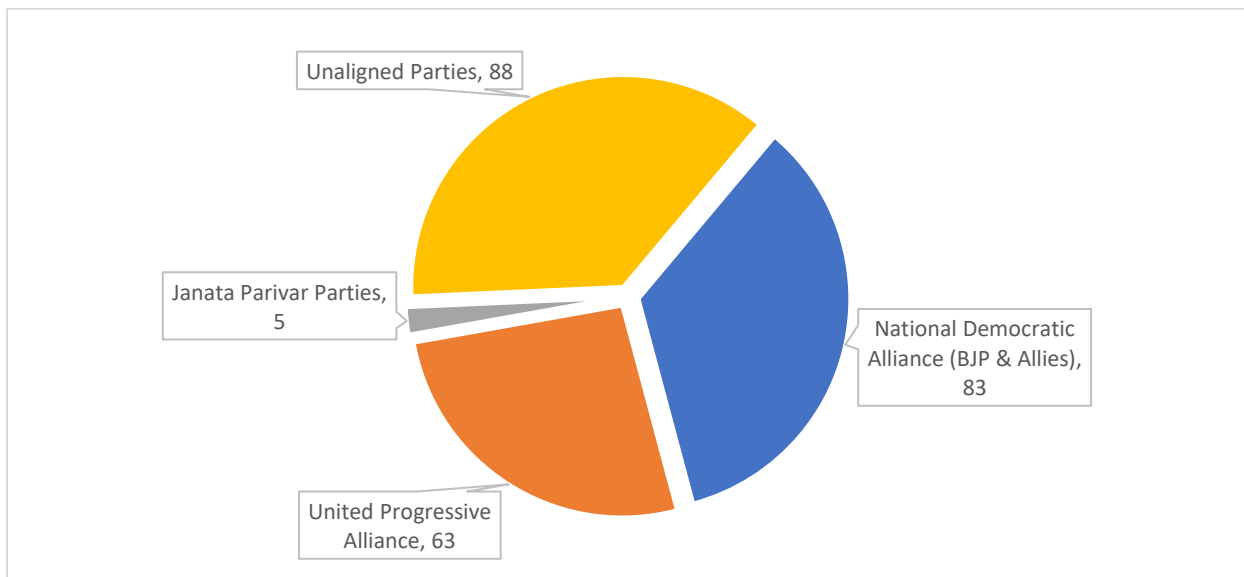
as well as many other political bodies. I can only assume that Naz Foundation, Lawyers Collective, and Voices Against 377 agreed to focus their efforts on the court, because they knew that was their best, if not only, avenue to have 377 read down since it was a matter of constitutionality of law.

Figure 6: Partisan Coalitions & # of Seats in Lok Sabha (2017)



Source: Parliament of India – Lok Sabha. (2017). Retrieved from: <http://loksabha.nic.in/>

Figure 7: Partisan Coalitions & # of Seats in Rajya Sabha (2017)



Source: Parliament of India – Rajya Sabha. (2017). Retrieved from: <http://rajyasabha.nic.in/>

On the other side, fighting to secure the continuance of 377 in its entirety, many groups were coming together to form a strong opposition to the Naz case. The opposing counsel received supporting affidavits from B. P. Singhal (a former politician from the BJP who argued that homosexuality was immoral) and Joint Action Committee, Kannur (JACK; who argued that 377 helps prevent the spread of HIV by suppressing homosexuality) (Naz, 2009). Religious organizations provided the vast majority of the public opposition. India is a multi-religious society and leaders from the three main religions in the country (Islam, Hinduism, and Christianity) all agreed that Section 377 should not be adjusted. All-India Muslim Personal Law Board (AIMPLB), Vishwa Hindu Parishad (World Hindu Council), and the Utkal Christian Foundation are just some of the organizations who combatted the social movement that was growing in support for the reading down of 377 (Khan, 2009). Suresh Kumar Kaushal is a television astrologer who made many public claims against the movement. He received a lot of positive reactions and was the first person to file a special leave petition (SLP) with the Supreme Court following the 2009 DHC decision to read down 377 (Voices Against 377, n.d.). Even though the national website for the Indian government claims the country is a secular one (National Portal of India, 2017), the case of the opposition revolved almost entirely around a platform of religious morality and the protection of a Hindu nation, a defense that would prove difficult to defeat (Naz, 2009).

Strategy: How to Fight for Freedom

A Message for All

At the start of this campaign, Naz Foundation and their allies had two big decisions to make: (1) what the focus of their strategy should be and (2) what they wanted done to 377. Issue framing proved to be an essential tactic for the campaign from the very beginning. One of VeneKlasen and Miller's ten *Advocacy Planning Moments*²⁹, framing is the deliberate choices made that shape an issue in a way that

²⁹ See: VeneKlasen, L. & Miller, V. (2007). *A new weave of power, people, & politics: The action guide for advocacy and citizen participation*. Warwickshire, UK: Practical Action Publishers. pp. 84-85

widens the appeal of your campaign and increases support for your desired policy outcome (2007). Naz filed their petition with the DHC in December 2001 with an initial focus on sexual health rights (Ghosh, 2015). They specifically argued the breach of Articles 14 (equal protection of the law), 15 (non-discrimination clause), 19 (freedom of speech and expression), and 21 (right to privacy, life, and liberty) of the Indian Constitution. Naz contended that 377 was directly culpable for the rampant police harassment towards LGBTQI communities and sexual health organizations which was thwarting HIV/AIDS education, prevention, and treatment efforts (Naz, 2009).

They decided to present their case as a public health issue, because the advocates believed framing a campaign on the platform of LGBTQI rights alone would further alienate the petitioners instead of persuading the court and the public to support their cause (Misra, 2009). Funding also played a major factor in their framing decision. A member of the Naz Foundation stated, “The starting point for [us] was using the health programs to get into the whole subject because that is where funding was available...and that is where the government was ready to engage with us because there was a scare of HIV” (Ghosh, 2015, p. 60). However, since the case clearly wasn’t only about sexual health and public safety, the advocates still argued other rights. As Anand Grover, Senior Counsel for Naz Foundation and founding member of the Lawyers Collective, explained, “We took up all issues. We argued gender. Argued equality. Argued privacy. We argued health. HIV was the entry point [that] opened up discussion on all these arguments” (Nicol, 2014).

They also concluded that the best strategy for a successful outcome would be to request that Section 377 be read down to exclude specific sexual acts instead of being repealed completely. This was decided because 377 was the only law at the time which provided certain protections for minors regarding cases of nonconsensual sexual abuse committed against them. To protect their campaign from potentially fierce opposition from children’s rights groups, they determined the best method would be to only request Section 377 be read down to exclude sexual acts among consenting adults that

take place in private settings (Misra, 2009). With their framing strategy in place, they just had to wait for the DHC to take up their case.

Justices B. C. Patel and Badar Durrez Ahmed finally decided almost three years later, in September 2004, to dismiss Naz's petition on the grounds they had no legal standing, *locus standi*, to approach the court on this issue since no member of Naz Foundation was currently being prosecuted under the law and therefore not personally aggrieved. Even though the judicial reform of the 1980's allowed for NGOs to file PIL petitions on behalf of affected communities, the justices argued that Naz's petition was arguing unconstitutionality from an academic standpoint and relying on theory as their evidence. Due to formal charges and official complaints rarely being filed, Naz and the Lawyers Collective couldn't prove a prevalence of instances of police harassment and obstruction of prevention and treatment services. They were also unable to find many members of the LGBTQI community at the time who were personally affected and willing to testify due to the fear of what could result from revealing themselves publicly. Therefore, the petitioners' only option was to pursue the PIL. They used this argument to file a review petition with the DHC immediately following the dismissal. The review plea was also dismissed in November of that year, leading Naz to file an SLP with the Supreme Court requesting their opinion as to whether the DHC had appropriate grounds to dismiss their case. Justices Y. K. Sabharwal and P. P. Naolekar ruled on April 3, 2006 that the DHC should indeed hear Naz's case since it was an appropriate submission of a PIL (Voices Against 377, n.d.).

In late 2004 and throughout 2005, while waiting for the Supreme Court's decision on the DHC petition, the framing of the campaign led by Naz and their allies began to shift to more of an LGBTQI-specific movement. Shifting to a rights-based³⁰ approach began after the original petition dismissal in

³⁰ A rights-based approach to advocacy "builds on the legitimacy of economic, social, cultural, and political rights gained through UN conventions and procedures. Where rights are enshrined in laws and international conventions...advocacy is about compliance, enforcement, and equal protection. When rights are not enshrined in law...advocacy focuses on legislation and policy change" (VeneKlasen & Miller, 2007, p. 24).

2004 when the number of organizations representing sexual minorities began to proliferate (Misra, 2009). The intersections between agendas and identities began to obscure the nature of NGOs and their work. The advocates in this case are a prime example. Naz Foundation was originally founded as an HIV/AIDS organization and began working more and more within the LGBTQI community since these populations were among the most vulnerable for new diagnoses. They remained a sexual health organization, but their work revolved primarily around making health care accessible to queer communities, thus gaining them a reputation throughout India and global human rights' circles for being an LGBTQI rights group (Horton et al., 2015). Between 1990 and 2005, international donor contributions for sexual health organizations in India skyrocketed from US\$19 million to \$608 million, but the majority of donor funding had to be specifically allocated for HIV prevention. The character of the Naz Foundation gave it a strategic advantage to permit the reallocation of those funds to pro-LGBTQI platforms if they so desired (Misra, 2009). Through this effective use of framing, Naz and their allies were able to secure the increased funding and legitimacy necessary for the growing case against 377.

More People, More Power

After the DHC agreed to hear their case, amassing people power quickly became a primary concern for Naz so they could continue increasing their validity in the eyes of the court. Building and maintaining strong networks and coalitions is an effective approach to the necessary task of constituency building. This tactic comes with many benefits, including: strengthening a public image; combining diverse resources, skills, and ideas; linking groups that work locally, statewide, and nationally; allowing exchanges between nascent and veteran advocates; and providing moral support during tough fights (Shultz, 2003). All of that would be essential for the Naz Foundation and Lawyers Collective to have any chance of achieving their ultimate policy goal. They needed people power and that's exactly what they received. When the SCOI returned Naz's case to the DHC, Voices Against 377 submitted an intervention in support of Naz's petition. NACO also filed an affidavit supporting Naz's claim that 377

was hindering efforts to curb the spread of HIV. Further support came on August 20, 2006 when an open letter was released to justices of the Supreme Court and the DHC, members of Parliament, the Prime Minister, some strategic executive ministries, and domestic and international news outlets. The letter was signed by 145 high-profile members of Indian society, including Vikram Seth (author), Soli Sorabjee (former Attorney-General), Nitin Desai (former UN Under-Secretary-General), and Admiral (ret.) R. H. Tahiliani (former Chief of the Indian Navy and Governor of Sikkim; Chairman, Transparency International India) [see Appendix 4]. Renowned Indian economist, philosopher, and former Nobel Prize winner, Amartya Sen, wrote a *Statement of Support* that was released in tandem with the open letter (Voices Against 377, n.d.) [see Appendix 5].

Educating the Masses

While Naz was pressuring the judiciary and building a solid case with support from many influential allies, they also knew it was important to garner public support outside of the courtroom. Formal coalitions add legitimacy and resources to a campaign, but grassroots constituency building must not be overlooked since organizing and mobilization of the general public advances validity, integrity, and negotiating power to advocacy efforts (VeneKlasen & Miller, 2007). A stronger, unified voice from a larger constituency of both LGBTQI and non-LGBTQI individuals would assist in pressuring the court when it was time for them to issue a decision.

The impetus of their public opinion campaign came in 2003 when Voices Against 377 joined the fight to show that support for this movement came from various groups, and not just from LGBTQI groups and sexual health organizations. Voices Against 377 used an intersectional approach to initiate a massive education offensive as an effort to help citizens understand the inherent societal dangers associated with the continuation of Section 377 and to reduce the stigma surrounding HIV/AIDS and gender and sexual queerness. They collaborated with Lawyers Collective and began holding community

meetings in 2003 to educate the community and discuss strategy. These meetings were held in major cities throughout India and included concerned individuals and local civil society organizations.

By the time the DHC ruled on 377 in 2009, the advocates had held more than 70 meetings nationwide. During these consultations, attendees discussed new instances of harassment, assault, unwarranted raids, or any other abuse of 377 in the news. Updates from the court proceedings were also shared with the community. People would disclose their own experiences with abuse due to the existence of 377 and the social stigma surrounding the queer community. Working with Alternate Law Forum, Voices Against 377 and Lawyers Collective began turning the testimonies shared in the meetings into official affidavits that would be submitted as evidence to support Naz's case. These affidavits were a key ingredient for a victory in court, because individual narratives allow the court to hear public voices on the issue at hand. It allows them to understand the personal impact that laws have on the everyday life of a citizen. There were stories from LGBTQI individuals who were victims of sexual assault, domestic violence, community violence, and nonconsensual conversion therapy. Along with these stories, affidavits were filed from academics discussing the existence of queerness throughout India's history, parents writing about their affected family members, and LGBTQI people describing depression and their deflated sense of self even though they had never directly been aggrieved by 377. Through this work, Naz built a stock of corroborating evidence about the violent exploitation of queer communities all over the country (Nicol, 2014; Misra, 2009).

The public engagement campaign began to accelerate in 2004. The first of six public demonstrations occurred on July 1. The coalition organized a rally to protest 377 outside New Delhi's Jantar Mantar observatory which had become the country's main location for public protests (Voices Against 377, n.d.; Sharma, 2015). Voices Against 377 also released the first edition of their 51-page report titled *Rights for All: Ending Discrimination Against Queer Desire Under Section 377* that same

year, with an edition published in Hindi released the following year.³¹ The report included statements from all the organizations represented in the Voices coalition that described that respective organization's position on 377 and why they are offering support to the Naz Foundation's case. (Nicol, 2014). Some of the individual testimonies from the case were also included. This kickstarted a humanization campaign led by the coalition. On December 9, 2004, on the eve of the internationally-observed Human Rights Day, Voices Against 377 launched the "Million Voices Campaign". The goal of which was to get citizens to artistically portray on pieces of fabric, either through words or art, how they have personally been affected by 377. The fabric would then be quilted together to make a massive symbol of solidarity.³² When the Naz Foundation began shifting the issue of their case from sexual health to LGBTQI rights, there was also an increase in pressure from the movement on the public opinion front. Starting in November 2005 until February 2006, Voices Against 377 set up five more public events to facilitate dialogue around 377 and its consequences. From January 2006 to April 2006 the coalition organized four additional public demonstrations, including one on March 2, 2006 to protest President Bush's visit to India (Voices Against 377, n.d.).

The grassroots movement was gaining great momentum. The petitioners were preparing to begin their case in front of the DHC, and Voices Against 377 continued collecting affidavits from members of the LGBTQI community and their loved ones. In addition to the continuing public education initiatives, several organizations within Voices were educating their own constituents to empower and mobilize more members of their respective communities. Sangama facilitated many trainings for GSM who utilized the community resource center. There were classes on: leadership development, capacity

³¹ Report can be accessed in English at: <https://docs.google.com/file/d/0BwDlipuQ0I6Zc0xXUzAyYkZqM2c/edit> and in Hindi at: <https://docs.google.com/file/d/0BwDlipuQ0I6ZZIJ0MEFvZVI3R0k/edit>

³² The only follow-up reports I could find concerning this project stated it received "tens of thousands of signatures" (Misra, 2009, p. 24) and an image search of the final quilt produced zero results. It would appear they did not receive the participation they hoped for.

building, life skills, communication and public speaking, and civic engagement. With their new skills, these traditionally marginalized individuals began leading meetings and organizing rallies and protests.

A key resource of advocacy, people power for the Naz Foundation and their allies continued to grow (Nicol, 2014). On June 29, 2008 two ground-breaking “gay pride parades” took place in the cities of Bangalore and Mumbai. They were heavily attended but due to the fear of further persecution and discrimination, many of the attendees opted to wear paper masks to conceal their identity. Two weeks before opening arguments commenced in September 2008, Voices released a second open letter to the Minister of Home Affairs (MHA), the Minister of Health and Family Welfare (MHFW), and the Minister of Law and Justice to “clarify some common misconceptions and to humbly urge you to view the matter more favourably” (Voices Against 377, n.d.) [see Appendix 6]. The MHA and MHFW were tasked with preparing statements reflective of the government’s position on the issue. The MHA disagreed with the petitioners and believed that Section 377 was maintaining Indian morality, whereas the MHFW insisted 377 was indeed a major hindrance to HIV prevention. The government requested more time due to the conflicting reports submitted by the ministries, but the petition was denied by the court. The conflicting views of the government led to increased advocacy against 377 and caused the DHC to criticize the government for not presenting their position in a unified voice (Ghosh, 2015; Naz, 2009).

A Queer Victory

Opening arguments for the DHC case began on September 18, 2008. Naz, represented by Senior Advocate Anand Grover, presented the four specific constitutional abuses that accompany the presence of 377. He argued 377 breached Article 14 and its guaranteed “equal protection of the law”, because the law was vague and unreasonable. The opposition, led by Additional Solicitor General Mr. P. P. Malhotra, countered that the law is not arbitrary, but instead provides clear intent to prevent acts defined as being “against nature”. He further argues the law is equal because it also covers heterosexuals too.

Concerning Article 15, the non-discrimination clause, Mr. Grover said the law discriminates against a

specific population by denying them the right to partake in sexual acts granted to heterosexual partners. Mr. Malhotra rebuked this argument by stating the Constitution does not recognize sexual orientation or sexual minorities explicitly so 377 couldn't be a direct infringement based on this article. Next, Mr. Grover explained how the LGBTQI community is denied the right to expression and organizing allowed through Article 19. However, the opposing counsel contested with the claim that there is no infringement because of the two Pride parades which had been previously permitted. Article 21 guarantees the right to privacy, life, and liberty, but according to Mr. Grover, 377 was an intrusion of privacy and violated a population's right to dignity and health since they could not safely seek out treatment if they were indeed infected with HIV. Contrarily, Mr. Malhotra argued homosexuality was a disease that directly causes HIV to proliferate and the reading down of 377 would lead to an increase in HIV infections. He further maintains that decriminalizing homosexuality was a direct attack on public morality and would threaten public order (Naz, 2009). In fact, the whole case made by the opposition, primarily comprised of faith-based organizations, revolved almost entirely around a platform of religious morality even though the Indian government was established as a secular democracy (National Portal of India, 2017).

Both sides leveraged the art of framing to their advantage. With such a polarizing topic, the opposing parties fought for every new voice they could recruit. The opposition's strategy revolved around the belief that homosexuality is immoral and reflected perversity. If 377 was read down then society would undergo extreme moral degradation. He attempted to present an article by Dr. John Diggs from the U.S. which suggests a direct correlation between homosexual behaviors and the rapid spread of HIV/AIDS. The court interrupted with the fact that Dr. Diggs was an internist and not a practicing doctor so the report was inadmissible. On October 15, 2008, the DHC informed them that the government could not rely merely on religious text nor use Indian culture as their defense, requiring them instead to provide valid, scientific evidence that would backup their claims. Nevertheless, the

opposition continued to base their case on religious mores. With one final push, the counsel for the government went on to argue that the Court had no right to rule on this case because it was a parliamentary matter not up for judicial review (Naz, 2009).

Mr. Grover and Mr. Shyam Divan, counsel for Voices Against 377, proceeded with the rights-based approach to their case, and provided a wide range of substantial material to show the necessity of reading down 377. They pointed out global examples of evolving ideologies and statutes concerning homosexuality. They argued, successfully, that the government cannot use morality as a defense when the nation criminalizes an entire category of people and therefore affecting every facet of their daily life. The petitioners highlighted the specific dangers that accompany 377 with personal affidavits from individuals severely aggrieved by the law. Finally, they argued that India prides itself as being an inclusive society where everyone has a place and a purpose (Naz, 2009). Closing arguments concluded on November 7, 2008 and a decision was reached eight months later on July 2, 2009, just days after a second set of gay pride parades were held in Chennai, Delhi, Kolkata, Bangalore, and Bhubaneswar (Voices Against 377, n.d.).

Evaluation: And the Winner Is...

The advocates' main objectives in this campaign were to: (1) have Section 377 read down; and (2) increase acceptance and dignity for India's LGBTQI communities and those living with HIV/AIDS. As soon as Justice Shah of the DHC read the Court's decision, Naz Foundation and their allies were successful in achieving their first goal. 377, as far as being a codified law criminalizing homosexuality, was no longer a direct threat to gender and sexual minorities and those living with HIV/AIDS. However, the residual effects of a law that has been long-engrained into the fabric of Indian society would make the advocates' second objective much more difficult to achieve.

The 2009 ruling immediately created a more positive and accepting space for the LGBTQI community than was initially available. The DHC had awarded LGBTQI people the freedom refused to

them by their own government for a century and a half. The fact that they were no longer considered criminals provided a much-needed morale boost to the queer community. Pride parades increased in both size and frequency. More LGBTQI-specific events were held (e.g. film festivals, theme nights at restaurants/bars, etc.), and queer rights' organizations began to form in communities and on college campuses all around the country. Societal perception began to improve due to an increase in positive media coverage, but not everyone welcomed the new social dynamic (Boesch, 2012; Ranganathan, 2014).

Police harassment was still evident towards queer communities and sexual health workers, though not to the same degree as previously witnessed. Many cases of reported abuse resulted due to the miseducation of law enforcement officials. The details of the new ruling had not been properly reported to officials, especially in areas outside of major metropolises (Boesch, 2012). While there was also an increase in reports of families of LGBTQI people becoming more accepting, many families still refused to accept any reality beyond the traditional, heteronormative pursuit of marriage between a man and woman. The potential threat of having one's queer identity disclosed still led to the continuance of similar instances of blackmail, extortion, and harassment that had been evident since Section 377 was enacted (Boesch, 2012). The previously mentioned suicide in 2010 of the professor who had been secretly filmed in his own home engaging in sexual relations with another man, occurred during this new period of sexual "freedom". The threat of disclosure, even with 377 read down, remained prevailing enough to empower criminals to barge into the professor's home, blackmail him, get him fired and evicted from his apartment, and ultimately led to his death (Vij, 2013). Therefore, it is difficult to retroactively measure how successful the advocates were in this objective. Some would argue that any positive movement towards broader social inclusion for a marginalized group should be celebrated as a victory. Others would disagree because as long as there is discrimination present to any degree then there is not yet a victory to celebrate. Instead of trying to evaluate the overall objectives of the

campaign, I focused on evaluating the specific tactics employed by the advocates to see how effective they were in strengthening support.

In the courtroom, the Naz case was successful because it focused on two specific aspects of the law: consent and being an adult. Due to this focus, they were able to include other social movements in their fight against a discriminatory law in a way that wouldn't leave children, or any other group of society, unprotected. Focusing on the unconstitutionality of 377 and how it impeded access to proper healthcare and infringed upon one's right to privacy, liberty, and non-discrimination created an agenda many directly unaffected individuals and groups could support. (Misra, 2009). By framing the issue in this way, Naz broadened the appeal of their movement to the degree that anyone working in the field of human rights could join the ranks.

Although Naz's campaign was ultimately about queer rights, the issue also became about sexual health rights. Sex and sexuality affects everyone. It is a part of everyone's life. This issue framing tactic allowed many groups and individuals an opportunity to take ownership in the cause. The case also became a women's rights issue. It became a children's rights issue. It became a workers' rights issue. It became a Dalits³³ rights issue. The outcome of this case was going to affect every minority community in India either directly or indirectly. When one group's inalienable civic protections are compromised, it makes all other marginalized identity groups vulnerable to the potential of a similar fate. Naz Foundation and their allies recognized this dynamic, leveraged it in their favor, and actively began trying to secure diverse support around their cause.

The success of the Naz Foundation can also be attributed to their focused commitment on constituency building tactics outside of the courtroom. Through coalition and alliance building, public education, and community engagement, Naz and their allies effectively utilized three empowering

³³ "Dalit" means "oppressed" in Sanskrit and "broken" in Hindi. This is the category of people who are assigned to the lowest socio-political level of India's caste system. Historically severely marginalized and excluded from Indian society, Dalits are often offensively referred to as "the Untouchables".

strategies of power expression described in VeneKlasen & Miller (2007)³⁴. Power is often seen as a win-lose situation; for someone to gain power, someone else has to lose it. This expression of *power over* usually comes with negative connotations of discrimination, corruption, and abuse. Even on the interpersonal level, people often resort to this pattern of power expression when no other models of expression are available or visible.

The strategies proposed by the authors describe three collaborative ways of utilizing and expressing power within an advocacy movement that empower constituents, affirm the capacity of often marginalized groups, and lead to more equitable relationships. The first of these, *power with*, expands skills and knowledge of a group by fostering unity and collaboration through exploration of experiences and discovery of common ground. This power distribution is the leading motivation that fuels alliance and coalition building. Next is *power to* which recognizes that everyone has the capacity to shape their own reality. Community education and leadership development rely on this expression of power, supported by the collective, to bring individuals to the realization that every member of a community can affect social change. The third power dynamic is *power within*. This expression focuses on the self; recognizing how the individual judges their knowledge and worth as well as respecting the differences of others' experiences. Individual storytelling and reflection allows this form of power to mature, leading to increased agency among constituents as their search for dignity and justice is affirmed.

The stimulus behind the formation of Voice Against 377 was the realization that the magnitude of this court case was going to inevitably spill into the streets. "Naz" and "377" would be integrated into the common vernacular for general, public discourse on sexuality and civil rights. Voices Against 377 recognized the power in diversity and intersectionality, expressing *power with*, and understood that combatting marginalization and violence towards any specific identity group should never be the

³⁴ See: VeneKlasen, L. & Miller, V. (2007). *A new weave of power, people, & politics: The action guide for advocacy and citizen participation*. Warwickshire, UK: Practical Action Publishers. p. 45

responsibility of that respective group alone. Everyone working in the field of human rights also had the responsibility of offering mutual support and standing up against 377. Voices was such a unique coalition due to the fact that most of the affiliated organizations represented other human rights' issue groups, yet they still approached this campaign from a unified queer lens.

For marginalized groups to succeed in securing their rights, they must demand them as a community. Building bridges between diverse identities and issue-based organizations leads to the discovery of common ground, strengthens the movement, and adds legitimacy. Combining forces around a common concern (i.e. consent, privacy, and access), allows traditionally excluded groups the opportunity to express *power to*. As a collective, these groups have the *power to* secure rights for themselves and others and ultimately build a more inclusive society (VeneKlasen & Miller, 2007). Voices was a successful coalition because these diverse identities and issue platforms collectively embraced queer rights as their own issue. Manohar Elavarthi, founder of Sangama, a human rights organization in Bangalore and member organization of Voices, explained this opinion in the 2014 documentary, *No Easy Walk to Freedom*. "When there is solidarity then we can build a society based on justice...Today we march for sex workers; tomorrow sexual minorities, then Dalits. This gives the strength we need to bring change to our society." (Nicol, 2014). The growing coalition of diverse organizations expanded access for the advocates to reach many more primary constituents as well as supportive secondary constituents³⁵. With the expanded coalition, they now had resources to continue engaging specifically with the communities most directly aggrieved by the existence of 377.

Through trainings and community meetings, Naz and their allies created spaces for queer people that fostered the development of *power within*; a very important advancement for a population that is

³⁵ Primary constituents are those directly affected by the problem identified by the advocates. Secondary constituents are also concerned about the policy issue and its effects, because they are either affected indirectly or are motivated by their concern for the primary constituents and/or the societal benefits that accompany the success of the advocate's desired policy outcome (Unsicker, 2013; VeneKlasen & Miller, 2007).

constantly degraded and defamed. Popular adult education, originating from the work of Paolo Freire³⁶, is based on the idea that utilizing an individual's experiences empowers them to act. This approach expands knowledge while validating lived realities, therefore leading the individual to a critical consciousness. This consciousness allows people to view the larger picture of systemic oppression and stimulates the development of collective action. (VeneKlasen & Miller, 2007). Through Sangama's trainings and workshops, for example, gender and sexual minorities who regularly used the organization's community resource center began to understand how they could recognize their own value, become civically-engaged, and demand dignity and rights for themselves and others. The development of agency gave members a heightened sense of self, as more and more of them began taking active roles within the organizations to which they belonged, as well as within the broader campaign for social justice. Through increasing pride in self and in community, mobilization efforts grew exponentially. Furthermore, by utilizing the trainings and community meetings to share personal accounts of discrimination and oppression, the groups could continue finding commonalities across identities and experiences (e.g. sexual minorities realizing they faced similar problems as Dalit minorities) and therefore strengthen their cause (Nicol, 2014).

My research did uncover an interesting critique of the campaign. Gee Semmalar (2014) stated that the coalition never held democratic meetings with members of the LGBTQI communities, specifically transgender communities. They were left out of the discussions concerning needs of the campaigns, strategy possibilities, etc. The author felt as if the "trans identity [was] being co-opted by the campaign to strengthen itself" (p. 289). The rest of my research however, paints a different picture. Personally, I believe the Naz Foundation and their allies put forth a very well-planned, diverse, and successful campaign. There is plenty of documentation of people with varying gender identities holding leadership roles through the public education and engagement arenas of the campaign. There possibly could've

³⁶ See: Freire, P. (1972). *Pedagogy of the oppressed*. New York, NY: Herder and Herder.

been some more representation of diverse identities with the work taking place within the Court. This is where the limitation of my research becomes the most evident. I was unable to interview those directly involved with the campaign, and therefore missed out on exploring deeper levels of analysis. Without this insight, I cannot dismiss the possibility that the dire need for increased numbers led the campaign to unintentionally marginalize their own constituents. When people who come from marginalized groups gain decision-making power, they often begin to unknowingly “imitate the oppressor”. One cannot assume that because a person has historically been excluded, they innately have the capacity to portray democratic leadership qualities without exposure to new, well-defined, and more inclusive forms of power expression. (VeneKlasen & Miller, 2007, p. 45).

Although the Naz campaign implemented an effective strategy, there are other tactics that could have proven beneficial to their advocacy efforts. Garnering support from a member of the opposition, specifically a member of a religious community, could have strengthened their legitimacy even more. The opposition’s case revolved almost entirely on the grounds that homosexuality directly conflicts with the religious morality on which Indian society is based. My research did not uncover any significant examples of the advocates attempting to discredit the opposition’s position by persuading someone affiliated with the major religious institutions to speak in support of the advocates and their desired policy change. Not one of the signatories of any of the Open Letters represented a religious organization or institution. Even one signature could have added another important layer of legitimacy to the movement. Further research could potentially uncover that attempts were indeed made by the advocates, but they just proved to be futile.

I previously mentioned the partisan composition of India’s legislature leaned heavily towards the conservative Right, and this made the judiciary the much more favorable route to affect the advocates’ anticipated change; but I would have preferred to see more engagement with Parliament. Even though the policy problem was an issue of constitutionality and therefore a matter for the courts, engaging with

and influencing the policy positions of members of the legislature could have begun setting the foundation for a potential pursuit of comprehensive LGBTQI non-discrimination legislation. It is mere assumption, however, that the desires of the Indian LGBTQI community can be achieved with such legislation. As a cisgender, gay, white, U.S. American male, it is difficult to imagine how the local communities in India envision their ideal future. Maybe their collective goals do not require an intervention in the legislative branch. That said, it would still be beneficial to increase parliamentary support for sexual health rights, queer rights, privacy rights, or any other issue for which the Naz Foundation and allies were fighting.

After 377 was read down, there was a continuation of abuse towards LGBTQI peoples throughout India, even though there was a noticeable reduction in frequency. This has been attributed to education, or more appropriately, the lack of education. The advocates earned a lot of their success through their extensive public education strategy. This same focus on knowledge development and sharing could be expanded to reach those who are perpetuating the oppressive environment for gender and sexual minorities. If outreach workers engaged with police officers, employers, teachers, emergency service providers, and other members of civil society, attitudes towards those with queer identities could have been shifted even further towards inclusion. Ignorance of the law is never a valid defense; and in this case, making sure police officers and others all throughout the country were aware of the new developments with Section 377, specifically in the more rural areas and villages, could have significantly reduced reported, and unreported, cases of abuse against the LGBTQI community. Of course, this expansion of outreach would require a substantial amount of valuable resources that might not have been available to the advocates.

The DHC ruled in favor of Naz's petition on the grounds that Section 377 violates the guaranteed rights provided by Articles 14, 15, and 21 of the Indian Constitution, but they did not offer a ruling concerning the argued breach of Article 19. In this sense, the campaign to defeat 377 was a success

because they achieved their desired policy goal. They weren't searching for special rights or protection; they merely wanted 377 read down to exclude private acts between consenting adults and that is what the court awarded them. They knew exactly what they wanted, devised a solid strategy to get it, and worked various angles to reach their goal. If I pursue further research in this subject through direct information-gathering from the actors involved in the campaign, my primary areas of inquiry would regard the critiques presented above: inclusion of gender nonconforming identities, alliance building with religious groups, engaging with the legislature, and expanding educational outreach to police forces and the broader community. Though there is room for improvement in Naz's strategy, as with any advocacy campaign, the groundbreaking work of Naz Foundation, Lawyers Collective, Voices Against 377, and all their many devoted allies has opened the door to the possibility that queer-identifying members of Indian society may one day have the same dignity and freedom awarded to the rest of their country.

Where Are They Now?

Temporary Freedom

Immediately following the DHC's ruling in 2009, 15 SLPs (special leave petitions) were filed to appeal the decision to read down 377. All the petitioners were either individuals or representatives of ultra-conservative religious organizations. Among the main petitioners was an astrologer and guru who postulated that homosexuality was a disease easily remedied with yoga (Hajratwala, 2014). No representative of the Indian government, however, was among those who filed an appeal (Ranganathan, 2014). In response, Naz Foundation filed an intervention along with supporting interventions filed by Voices Against 377 and NACO, and affidavits from parents of LGBTQI people, mental health professionals, law academics, and others (Suresh, 2013).

In February 2012, arguments from the involved parties began. The petitioners continued with the same arguments that homosexuality went against the moral code of India and that the issue was

one for Parliament to decide, not the judiciary. Naz Foundation and the other respondents also framed their case around similar arguments as the DHC case in 2009. They argued the breach of constitutionally-guaranteed freedoms and provided stories from aggrieved members of the LGBTQI community (Suresh, 2013). Many of the accounts presented portrayed shocking testimonies of rape and torture suffered by LGBTQI people because of the oppressive power imbalance fostered by 377 (Seth, 2014). Various examples of international jurisprudence stating the criminalization of homosexuality to be a breach of basic human rights were also introduced (Rao & Jacob, 2014). To counter the opposition's claims that homosexuality went against Indian culture, counsel for Naz and their allies provided documentation of various historical accounts which proved the presence and acceptance of homosexuality in India long before the colonial era law was enacted (Rao & Jacob, 2014).

Despite their hard-fought battle, the coalition against Section 377 was defeated. On the morning of December 11, 2013, 21 months after closing arguments concluded, the two-justice bench presiding over the case decided that the DHC ruling should be overturned and the full wording of 377 was to be reinstated. They claimed the prior judgment was unsustainable and the issue should be taken up by Parliament as it was not a matter of judicial review (Ranganathan, 2014). Since constitutionality was the substance of the entire case, this decision was clearly incorrect. They further claimed that the LGBTQI minority represented an insignificant portion of the Indian population and could not be used as a reason for changing a law. Coincidentally, one of the presiding justices retired immediately following the release of this decision (Seth, 2014).

"No Going Back"

The judgment issued by the apex court was not viewed favorably in India or abroad. Immediately following the announcement of the judgement, the "No Going Back" campaign was initiated. Members of the LGBTQI community who had been enjoying their newly gained freedom for four years refused to be pushed back into the closet and hide their true selves once again (Ranganathan,

2014). Protests were organized in over 40 cities throughout the world in a “Global Day of Rage” to show that this decision would not be accepted quietly (Vij, 2013) [see Figure 8]. A demonstration at Jantar Mantar, the most popular location for protests in New Delhi, saw allies from many groups and communities standing in solidarity with their LGBTQI compatriots. Various members of the Indian government even stepped in to show unprecedented support (Bhowmick, 2013). Thousands of letters were sent to the Chief Justice of the Supreme Court from LGBTQI people and their friends and family begging the Court to revisit the judgment. A curative petition was promptly filed by Naz Foundation to have the Court hear the case with a full bench of five justices in an open court. Subsequent petitions were filed by Naz and various organizations to pressure the SCOI to take up their case (Ranganathan, 2014). The SCOI finally accepted the petitions in 2014 then delayed committing to a specific date to hold the open court hearing (Jhatkaa, 2017).

The campaign to end 377 did not slow down. More and more advocacy groups joined the fight. Jhatkaa, a social justice advocacy organization, joined immediately following the 2013 decision. They mobilized 15,000 of their supporters who issued a joint statement to the government urging them to take immediate action on the matter. Within weeks, representatives from Jhatkaa met with the Minister

Figure 8: "Global Day of Rage" Poster



Source: https://www.buzzfeed.com/tasneemnashrulla/the-world-raging-against-indias-ban-on-same-sex-intercourse?utm_term=.dtYdl3JL3w#.mrO1LbYmbI

of Law, Kapil Sibal, to lobby for action (Jhatkaa, 2017). The organization has been working hard to monitor political discourse and hold people accountable when moments arise. In January 2015, Shaina NC, spokesperson for the extreme Hindu-right BJP, which holds the majority in Parliament, claimed the BJP was in support of decriminalizing homosexuality because it was the way for a modern India to progress. Jhatkaa capitalized on the moment and asked the party to file an official affidavit in support of the decriminalization (Jhatkaa, 2017).

Members of Parliament are using their position to push for action as well, but are not seeing much progress in the multi-party, bicameral legislature. Currently, the BJP holds a majority of seats in the Lok Sabha and holds the highest number of seats in the Rajya Sabha (Parliament of India, n.d.). Although public pressure to move more to the left, especially concerning their stance on 377, many of its members are still holding on to their strongly conservative ideologies. Congress MP Shashi Tharoor failed twice in three months to introduce a bill that would allow Parliament to discuss Section 377 and vote on whether to restrict the law and rule to decriminalize homosexuality. During one attempt, the BJP used its vast majority to keep the bill from even reaching the debate floor. Members of Tharoor's coalition, who promised support for the bill, failed to even show up for the vote. MP Tharoor said he will not pursue the bill again and will wait for the SCOI to rule on the issue (Press Trust of India, 2016). Last year, the SCOI reiterated their agreement to hold an open court hearing to address the curative petitions filed by Naz Foundation and others, and recommended the case to a Constitution bench to issue the ultimate judgment regarding 377 (Anand, 2016).

A Glimpse of Hope

The volatile atmosphere since the 2013 SCOI decision has increased the fear and prevalence of abuse of the inequitable power dynamic resulting from Section 377. A surge in the utilization of online dating apps as a platform to meet other LGBTQI people has also led to a new opportunity for entrapment. In 2014, a 33-year-old man was in a hotel room with a man he met online when two

accomplices invaded the room. The three men punched and whipped the man before robbing him. The victim refused to report the assault to police out of fear of being arrested himself under Section 377 (Parussini, 2015). It can be said that it is even more dire now than ever to bring justice to innocent LGBTQI Indians once and for all.

A slightly evolving consciousness within the judiciary affords the LGBTQI community cautious optimism. In the 2014 case of *National Legal Services Authority v. Union of India*, the Supreme Court declared that hijras, aravanis, and all other non-binary gender identities would become an official “third gender”. This decision legitimizes gender minorities in the eyes of the law and guarantees them the equal protection of constitutional rights they have historically been refused. The decision also recognized the history of oppression against the community and implemented an affirmative action program to provide more access to opportunities for educational and professional advancement. The Court further instructed the government to initiate a social welfare scheme for transgender citizens and begin a public education campaign to combat the stigma surrounding gender queerness (Mahapatral, 2014). This judgment by the SCOI gives a huge boost to Naz’s petition that is still waiting for a hearing date. It showed that the Court is ready to recognize that GSM in India have been denied their dignity and freedom and is willing to act accordingly to remedy the problem.

Three months ago, on August 24th, the Indian LGBTQI community received another hint of a broader paradigm shift. A nine-judge bench of the Supreme Court ruled in the case of *Justice K S Puttaswamy (Retd.) v. Union of India* that an individual’s privacy is a fundamental right guaranteed to all citizens by Article 21 of the Indian Constitution. In the decision, Justice Sanjay Kishan Kaul specifically extended this right to matters of sexual orientation. The advocates were overjoyed by the news as they knew this decision gave their case solid ground from which to continue their campaign (Sopelsa, 2017). These rulings suggest a significant progressive shift among the Courts. This development is an immense

advantage for the movement against 377, and it is an advantage the advocates do not plan to take for granted.

Lessons Learned

This case provides significant insight that can prove very beneficial to future advocacy campaigns, and can work in many other contexts and countries. As my advisor, Jeff Unsicker, said “A good strategy needs to be laser-focused, not shotgun-focused (personal communication, 2015). I really saw the importance of that with this case. The advocates initially focused only on the court, and spent over a year deciding how they would move forward before they began working on building public support. They potentially could have formed separate strategies to also approach Parliament or other levels/branches of government. Due to the sophistication of the campaign, it seems they knew the court was their best avenue and pursued only that route.

Another major lesson reaffirmed by this case concerns Naz’s decision to have the law read down instead of repealing it in totality. Jim Shultz (2003) describes choosing your objective as an art that is “half policy analysis, half political intuition” (p. 73). Naz exemplified this statement when mapping their strategy. They had to analyze the law to learn on what ground they could approach the court, but also had to analyze the Constitution if they were going to argue infringement of rights. They also relied on their intuition to notice that if they tried to repeal the entire law, they would face opposition from children’s rights groups. If they chose to have it read down in a way that would continue to offer protection to minors, they could potentially garner support from those same groups instead. Framing your issue to cast the widest net for support is a very strategic tactic and requires advocates to start deciding strategy from the very beginning by analyzing the policy, the context, and the politics surrounding their specific campaign.

This case also furthered my appreciation and support for the inclusion of humanization campaigns in advocacy work. Naz Foundation, Lawyers Collective, and Voices Against 377 were the main advocates in

this case yet none of these groups had been directly persecuted or prosecuted. Instead, they represented a significant portion of society who had been intimidated into secrecy. These people were scared to live an open life true as themselves and did not have a safe way to voice their grievances. Using affidavits from members of the LGBT community in the case gave them the voice they deserved. It allowed their story to be heard without putting them in harm's way. The details in some of the affidavits were explicit and difficult to read, but allowed a chance for empathy if the audience was open to it. Putting a face on a movement, or at least a personal narrative, provides that opportunity to change a person's vision of a people or an issue. Changing one person's opinion could be all that you need to get momentum moving towards your objective.

And finally, if resources allow, significant focus should be placed in public education and constituency building. Getting more numbers isn't going to win a campaign by itself. How you get those new voices and where those voices are coming from is also a very important consideration. Showing diversity in the support for your campaign further legitimizes your arguments, reduces stigma, and broadens the appeal of a movement's platform. As those voices unite, it is important to continue educating both the constituents and, when possible, the opposition. Reach across battle lines to engage intellectually. Educate each other to open the doors for negotiation and dialogue. If nothing else, at least just to say you tried. Systemic change will never happen overnight nor with the passage of a single policy, especially in a country with a population of more than 1.2 billion people. It is a long process that could potentially take generations to fully materialize, but there is nothing wrong with pursuing small victories, celebrating them, and then moving forward to pursue the next battle.

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Appendix 1: Former British Colonies and/or Countries Which Criminalize Homosexuality¹

<i>Country</i>	<i>British Colony</i>	<i>Year of Independence²</i>	<i>Criminalizes Homosexuality³</i>	<i>Year Decriminalized</i>
<i>Afghanistan</i>	Yes	1919	Yes	X
<i>Algeria</i>	No	X	Yes	X
<i>Angola</i>	No	X	Yes	X
<i>Antigua and Barbuda</i>	Yes	1982	Yes	X
<i>Australia</i>	Yes	1901	No	1997 ⁴
<i>The Bahamas</i>	Yes	1973	No	1991
<i>Bahrain</i>	Yes	1971	No	1976
<i>Bangladesh</i>	Yes	1971 ⁵	Yes	X
<i>Barbados</i>	Yes	1966	Yes	X
<i>Belize</i>	Yes	1981	No	2016
<i>Bhutan</i>	No	X	Yes	X
<i>Botswana</i>	Yes	1966	Yes	X
<i>Brunei</i>	Yes	1984	Yes	X
<i>Burundi</i>	No	X	Yes	X
<i>Cameroon</i>	No	X	Yes	X
<i>Canada</i>	Yes	1867	No	1969
<i>Chad</i>	No	X	Yes	X
<i>Comoros</i>	No	X	Yes	X
<i>Cook Islands</i>	Yes ⁶	1965 ⁷	Yes ⁸	X
<i>Cyprus</i>	Yes	1960	No	1998
<i>Dominica</i>	Yes	1978	Yes	X
<i>Egypt</i>	Yes	1922	Yes	X
<i>Eritrea</i>	No	X	Yes	X
<i>Ethiopia</i>	No	X	Yes	X
<i>Fiji</i>	Yes	1970	No	2010
<i>The Gambia</i>	Yes	1965	Yes	X
<i>Ghana</i>	Yes	1957	Yes ⁹	X
<i>Grenada</i>	Yes	1974	Yes ¹⁰	X
<i>Guinea</i>	No	X	Yes	X
<i>Guyana</i>	Yes	1966	Yes	X
<i>India</i>	Yes	1947	Yes	X
<i>Indonesia</i>	No	X	Yes ¹¹	X
<i>Israel</i>	Yes	1948	No	1988
<i>Iran</i>	No	X	Yes	X
<i>Iraq</i>	Yes	1932	No	2003
<i>Jamaica</i>	Yes	1962	Yes ¹²	X
<i>Jordan</i>	Yes	1946	No	1951
<i>Kenya</i>	Yes	1963	Yes	X
<i>Kiribati</i>	Yes	1979	Yes ¹³	X
<i>Kuwait</i>	Yes	1961	Yes ¹⁴	X
<i>Lesotho</i>	Yes	1966	No	2012 ¹⁵
<i>Liberia</i>	No	X	Yes	X

<i>Libya</i>	No	X	Yes	X
<i>Malawi</i>	Yes	1964	Yes	X
<i>Malaysia</i>	Yes	1957	Yes ¹⁶	X
<i>Maldives</i>	Yes	1965	Yes	X
<i>Malta</i>	Yes	1964	No	1973
<i>Mauritania</i>	No	X	Yes	X
<i>Mauritius</i>	Yes	1968	Yes ¹⁷	X
<i>Morocco</i>	No	X	Yes	X
<i>Myanmar (Burma)</i>	Yes	1948	Yes	X
<i>Namibia</i>	Yes	1990 ¹⁸	Yes ¹⁹	X
<i>Nauru</i>	Yes	1968	No	2016
<i>New Zealand</i>	Yes	1907	No	1986
<i>Nigeria</i>	Yes	1960	Yes	X
<i>Oman</i>	No	X	Yes	X
<i>Pakistan</i>	Yes	1947	Yes	X
<i>Palestinian Territories</i>	No	X	Yes ²⁰	X
<i>Papua New Guinea</i>	Yes	1975 ²¹	Yes ²²	X
<i>Russia</i>	No	X	Yes ²³	X
<i>Qatar</i>	Yes	1971	Yes	X
<i>Saint Kitts and Nevis</i>	Yes	1983	Yes ²⁴	X
<i>Saint Lucia</i>	Yes	1979	Yes ²⁵	X
<i>Saint Vincent and the Grenadines</i>	Yes	1979	Yes	X
<i>Samoa</i>	No	1962 ²⁶	Yes ²⁷	X
<i>Saudi Arabia</i>	No	X	Yes	X
<i>Senegal</i>	No	X	Yes	X
<i>Seychelles</i>	Yes	1976	No	2016
<i>Sierra Leone</i>	Yes	1961	Yes ²⁸	X
<i>Singapore</i>	Yes	1965 ²⁹	Yes ³⁰	X
<i>Solomon Islands</i>	Yes	1978	Yes	X
<i>Somalia</i>	No	X	Yes	X
<i>Somaliland</i>	No	X	Yes	X
<i>South Africa</i>	Yes	1910	No	1998 ³¹
<i>South Sudan</i>	Yes	2011 ³²	Yes	X
<i>Sri Lanka</i>	Yes	1948	Yes	X
<i>Sudan</i>	Yes	1956	Yes	X
<i>Swaziland</i>	Yes	1968	Yes ³³	X
<i>Syria</i>	No	X	Yes	X
<i>Tanzania</i>	Yes	1961	Yes	X
<i>Togo</i>	No	X	Yes	X
<i>Tonga</i>	Yes	1970	Yes ³⁴	X
<i>Trinidad and Tobago</i>	Yes	1962	Yes	X
<i>Tunisia</i>	No	X	Yes	X
<i>Turkmenistan</i>	No	X	Yes ³⁵	X
<i>Tuvalu</i>	Yes	1978	Yes ³⁶	X
<i>Uganda</i>	Yes	1962	Yes	X
<i>United Arab Emirates</i>	Yes	1971	Yes	X
<i>United States</i>	Yes	1783	No	2003 ³⁷

<i>Uzbekistan</i>	No	X	Yes ³⁸	X
<i>Vanuatu</i>	Yes	1980	No	2007
<i>Yemen</i>	Yes	1967	Yes	X
<i>Zambia</i>	Yes	1964	Yes	X
<i>Zimbabwe</i>	Yes	1980	Yes ³⁹	X

¹ Data source: Encyclopaedia Britannica <https://www.britannica.com> ; and International Lesbian, Gay, Bisexual, Trans, and Intersex Association <https://www.ilga.org>

² Or “year of sovereignty”

³ Criminalizes, to any extent of the law, any form of queer (non-normative; non-binary) orientation, identity, and/or expression; also includes any interpretation of other laws that doesn’t explicitly criminalize homosexuality, but manipulated to persecute queer behavior/identity

⁴ Decriminalized by territory starting in 1972

⁵ Independence from GB in 1947, but was part of Pakistan and renamed West Pakistan; gained independence from Pakistan in 1971

⁶ Became a British protectorate in 1888; included as part of Colony in New Zealand in 1901

⁷ Obtained self-governing status from New Zealand, but remained in free association with New Zealand

⁸ Male illegal; Female legal

⁹ Male illegal since 1860s; Female always legal

¹⁰ Male illegal; Female always legal

¹¹ Only illegal in provinces of Aceh and South Sumatra, and for Muslims living in city of Palembang

¹² Male illegal; Female always legal

¹³ Male illegal; Female always legal

¹⁴ Male illegal; Female always legal

¹⁵ Male legalized in 2012; Female always legal

¹⁶ Male illegal; Female always legal

¹⁷ Male illegal since 1838; Female always legal

¹⁸ Independence from South African administration, but British control since 1920

¹⁹ Male illegal since 1920; Female always legal

²⁰ Male illegal in Gaza; Male legalized in West Bank since 1951; Female always legal

²¹ Independence from Australian administration, but British control since 1884

²² Male illegal; Female always legal

²³ Officially legal since 1993; Unofficially punishable by death in Chechnya

²⁴ Male illegal; Female always legal

²⁵ Male illegal; Female always legal

²⁶ League of Nations transferred control from Germany to New Zealand in 1914; gained independence from New Zealand in 1962

²⁷ Male illegal; Female always legal

²⁸ Male illegal since 1861; Female always legal

²⁹ Gained independence with GB in 1963, but joined with other former territories to form Malaysia. Left 2 years later in 1965

³⁰ Male illegal; Female legal since 2007

³¹ Male legalized in 1998; Female always legal

³² Separated from Republic of Sudan; as a combined nation, received sovereignty in 1956

³³ Male illegal since 1880s; Female always legal

³⁴ Male illegal; Female always legal

³⁵ Male illegal; Female always legal

³⁶ Male illegal; Female legal

³⁷ Legal in some states since 1962; Legalized nationwide in 2003

³⁸ Male illegal; Female always legal

³⁹ Male illegal since 1891; Female always legal

Appendix 2: Partisan Composition of Lok Sabha (2017)

GOVERNMENT COALITION	334
National Democratic Alliance	334
Bharatiya Janata Party (BJP)	277
Shiv Sena (SS)	18
Telugu Desam Party (TDP)	16
Lok Jan Shakti Party (LJSP)	6
Shiromani Akali Dal (SAD)	4
Rashtriya Lok Samta Party (RLSP)	3
Apna Dal (AD)	2
Janata Dal (United) (JD(U))	2
Jammu and Kashmir Peoples Democratic Party (J&KDP)	1
All India N.R. Congress (AINRC)	1
Nagaland Peoples Front (NPF)	1
National Peoples Party (NPP)	1
Pattali Makkal Katchi (PMK)	1
Sikkim Democratic Front (SDF)	1

OPPOSITION PARTIES	203
United Progressive Alliance	50
Indian National Congress (INC)	46
Indian Union Muslim League (IUML)	2
Kerala Congress (M) (KC(M))	1
Revolutionary Socialist Party (RSP)	1
Janata Parivar Parties	7
Rashtriya Janata Dal (RJD)	3
Indian National Lok Dal (INLD)	2
Janata Dal (Secular) (JD(S))	2
Unaligned Parties	146
All India Anna Dravida Munnetra Kazhagam (AIADMK)	37
All India Trinamool Congress (AITC)	33
Biju Janata Dal (BJD)	20
Telangana Rashtra Samithi (TRS)	11
Communist Party of India (Marxist) (CPI(M))	9
Yuvajana Sramika Rythu Congress Party (YSRCP)	9
Nationalist Congress Party (NCP)	6
Samajwadi Party (SP)	5
Aam Aadmi Party (AAP)	4
All India United Democratic Front (AIUDF)	3
Independents (Ind)	3
Jharkhand Mukti Morcha (JMM)	2
All India Majlis-E-Ittehadul Muslimeen (AIMIM)	1
Communist Party of India (CPI)	1
Jammu and Kashmir National Conference (J&KNC)	1
Swabhimani Paksha (SWP)	1

Appendix 3: Partisan Composition of Rajya Sabha (2017)

GOVERNMENT COALITION	83
<u>National Democratic Alliance</u>	83
Bharatiya Janata Party (BJP)	57
Janata Dal (United) (JD(U))	8
Telugu Desam Party (TDP)	6
Shiromani Akali Dal (SAD)	3
Shiv Sena (SS)	3
Jammu and Kashmir Peoples Democratic Party (J&KDP)	2
Bodoland People's Front (BPF)	1
Naga Peoples Front (NPF)	1
Republican Party of India (A) (RPI(A))	1
Sikkim Democratic Front (SDF)	1

OPPOSITION PARTIES	156
<u>United Progressive Alliance</u>	63
Indian National Congress (INC)	57
Dravida Munnetra Kazhagam (DMK)	4
Indian Union Muslim League (IUML)	1
Kerala Congress (M) (KC(M))	1
<u>Janata Parivar Parties</u>	5
Rashtriya Janata Dal (RJD)	3
Indian National Lok Dal (INLD)	1
Janata Dal (Secular) (JD(S))	1
<u>Unaligned Parties</u>	88
Samajwadi Party (SP)	18
All India Anna Dravida Munnetra Kazhagam (AIADMK)	13
All India Trinamool Congress (AITC)	12
Biju Janata Dal (BJD)	8
Communist Party of India (Marxist) (CPI(M))	7
Bahujan Samaj Party (BSP)	5
Nationalist Congress Party (NCP)	5
Telangana Rashtra Samithi (TRS)	3
Communist Party of India (CPI)	1
Jharkhand Mukti Morcha (JMM)	1
Yuvajana Sramika Rythu Congress Party (YSRCP)	1
Nominated (NOM)	8
Independent & Others (IND)	6

Appendix 4: Open Letter Against Section 377 (2006)

To the Government of India, Members of the Judiciary, and All Citizens,

To build a truly democratic and plural India, we must collectively fight against laws and policies that abuse human rights and limit fundamental freedoms.

This is why we, concerned Indian citizens and people of Indian origin, support the overturning of Section 377 of the Indian Penal Code, a colonial-era law dating to 1861, which punitively criminalizes romantic love and private, consensual sexual acts between adults of the same sex.

In independent India, as earlier, this archaic and brutal law has served no good purpose. It has been used to systematically persecute, blackmail, arrest and terrorize sexual minorities. It has spawned public intolerance and abuse, forcing tens of millions of gay and bisexual men and women to live in fear and secrecy, at tragic cost to themselves and their families.

It is especially disgraceful that Section 377 has on several recent occasions been used by homophobic officials to suppress the work of legitimate HIV-prevention groups, leaving gay and bisexual men in India even more defenceless against HIV infection.

Such human rights abuses would be cause for shame anywhere in the modern world, but they are especially so in India, which was founded on a vision of fundamental rights applying equally to all, without discrimination on any grounds. By presumptively treating as criminals those who love people of the same sex, Section 377 violates fundamental human rights, particularly the rights to equality and privacy that are enshrined in our Constitution as well as in the binding international laws that we have embraced, including the International Covenant on Civil and Political Rights.

Let us always remember the indisputable truth expressed in the opening articles of the Universal Declaration of Human Rights that “All persons are born free and equal in dignity and rights...Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind.”

We will move many steps closer to our goal of achieving a just, pluralistic and democratic society by the ending of Section 377, which is currently under challenge before the Delhi High Court. There should be no discrimination in India on the grounds of sexual orientation. In the name of humanity and of our Constitution, this cruel and discriminatory law should be struck down.

Sincerely,

Vikram Seth, author. Swami Agnivesh. Soli Sorabjee, former Attorney-General. Aditi Desai, sociologist, and Nitin Desai, former UN Under-Secretary-General. Captain Lakshmi Sahgal, freedom fighter, Padma Vibhushan. Siddharth Dube, author.

And

Rukun Advani, Author/Publisher

MJ Akbar, Editor-in-Chief, Asian Age & Deccan Chronicle

Ashok Alexander, Director, Avahan, Bill and Melinda Gates Foundation

Subashni Ali, President, All India Democratic Women's Association

Arjun Appadurai, Provost and Senior Vice President for Academic Affairs; John Dewey Professor in the Social Sciences. University of Chicago

Kanti Bajpai, Headmaster, The Doon School

Runa Banerjee, CEO, SEWA Lucknow

Kaushik Basu, Professor of Economics, Cornell University

Upendra Baxi, Professor of Law, University of Warwick

Pooja Bedi, Actress

Shyam Benegal, internationally-acclaimed film director and Member of Parliament, Rajya Sabha

Amitava Bhaskar, Associate Professor, Institute of Economic Growth

Prashant Bhushan, advocate, Supreme Court, and civil rights activist

Urvashi Butalia, author, publisher and activist

Uma Chakravarty, Vedic Scholar and Feminist Historian

Geeta Chandran, Founder President, Natya Vriksha

Purnendu Chatterjee, Chairman, Chatterjee Group Gerson Da Cunha, Trustee, AGNI (Action for Good Governance and Networking in India)

Maja Daruwala, human rights activist

Nandita Das, award-winning actress and activist

Veena Das, Professor, Johns Hopkins University

PR Dasgupta, former secretary education and social welfare, first head of the National AIDS programme

Mahesh Dattani, playwright, Sahitya Akademi Award 1998

Devika Daulet-Singh, photographer

John Dayal, Member, National Integration Council, Govt of India

Shobhaa De, best-selling author and columnist

Astad Deboo, choreographer & dancer

Armaity Desai, Former Director, Tata Inst. of Social Sciences & Former Chairman, University Grants Commission

Anil Divan, Senior Advocate

Darryl D'Monte, environmental journalist & author

Dilip D'Souza, author and journalist

JB D'Souza, former Maharashtra Chief Secretary and Bombay Municipal Commissioner (IAS retd)

Neela D'Souza, writer

Bharat Dube, Counsel, Richemont Group S.A.

Barkha Dutt, Managing Editor, NDTV

Mallika Dutt, Breakthrough, National Citizen's Award 2001

Rajiv Dutta, President, Skype

Rehaan Engineer, actor

Naresh Fernandes, Editor, Time Out Mumbai

Meenakshi Ganguly, Human Rights Watch

Amitav Ghosh, author, Sahitya Akademi Award 1990

Sagarika Ghosh, author, and CNN-IBN

Shohini Ghosh, Filmmaker and Lecturer, Jamia Millia Islamia

Anand Grover, Human Rights Lawyer

Ramachandra Guha, Social Anthropologist, Historian

Satish Gujral, Artist, Sculptor

Ruchira Gupta, activist and Emmy-winning journalist

Syeda Hameed, Member of the Planning Commission

Zoya Hasan, Professor of Political Science, Jawaharlal Nehru University

Tanuja Desai Hidier, author and musician

Indira Jaising, Human Rights Lawyer

Ashok Jethanandani, editor, India Currents

Ruchir Joshi, writer

Sudhir Kakar, psychoanalyst and author

Mira Kamdar, author, Senior Fellow, World Policy Institute

Coomi Kapoor, Indian Express

Sanjay Kapoor, Vice President, Raytheon Integrated Defense Systems

Bachi Karkaria, Author and Columnist, Times of India

Girish Karnad, Playright, Actor

Sujata Keshavan, Graphic Designer

Soha Ali Khan, actor

Sunil Khilnani, Director of South Asian Studies, Johns Hopkins

Shanno Khurana, Classical vocalist, Padmabhushan, Fellow (Ratna Sadasya) Sangeet Natak Akademi

Saleem Kidwai, Historian and Co-editor, Same-Sex Love in India

Amitava Kumar, writer, Professor of English, Vassar College

Radha Kumar, author and professor Jamia Millia Islamia

Jhumpa Lahiri, author, Pulitzer Prize 2000

Ruby Lal, Assistant Professor of South Asian Civilizations, Emory University

Rama Mani, Geneva Centre for Security Policy

Sonal Mansingh, eminent dancer, Padma Vibhushan

Ajay K. Mehra, Director, Centre for Public Affairs

Suketu Mehta, author, Kiriayama Prize 2005

Nivedita Menon, Department of Political Science, Delhi University
Aziz Mirza, Filmmaker
Saeed Mirza, Filmmaker
Shomit Mitter, author
Sophie Moochala, businesswoman
Shubha Mudgal, vocalist, Padmashree Award 2000
Mira Nair, internationally acclaimed film director
Ashish Nandy, political psychologist and sociologist
Kuldip Nayar, author and columnist
Derek O'Brien, author and television quiz master
Onir, film director, My Brother Nikhil
Pankaj Pachauri, Senior Editor, NDTV
Dileep Padgaonkar, former Chief Editor, Times of India, member of the Minorities Commission
Latika Padgaonkar, art and cine expert
Amol Palekar, Filmmaker
Gopika Pant, Partner, DSK Legal
Gyanendra Pandey, Distinguished Professor of Arts and Sciences, Emory University
Kirit Parikh, Member, Planning Commission
Vibha Parthasarathi, ex-Chairperson, National Commission for Women
Vibhuti Patel, journalist
Pradip Prabhu, Activist, Kasthakari Sangathan
Sanjay Pradhan, Director, Public Sector Governance, The World Bank
Rajeswari Sunder Rajan, Global Distinguished Professor (Elect), New York University
Rahul Ram, Indian Ocean band
Raka Ray, Professor of South Asian Studies, Univ of California, Berkeley
Debraj Ray, Julius Silver Professor of Economics, New York University
Aruna Roy, Mazdoor Kisaan Shakti Sangathan, Ramon Magsaysay Award 2000
Arundhati Roy, Activist and Author. Booker Prize 1997
Sandip Roy, Editor, New America Media and Trikone Magazine
Sanjoy Roy, managing director, Teamwork Films
Sarika, Actress
Siddharth Dhanvant Sanghvi, Author
Mallika Sarabhai, dancer
Mrinalini V. Sarabhai, dancer and choreographer, Padma Shree 1965, Padma Bhushan 1992
Rajdeep Sardesai, editor-in-chief CNN-IBN

Madhu Sarin, psychoanalyst

Sumit Sarkar, social historian

Tanika Sarkar, historian and Professor, Jawaharlal Nehru University

Vir Sanghvi, Anchor, Writer, and Editorial Director, Hindustan Times

NC Saxena, former Secretary Planning Commission and Rural Development, and Director, LBS National Academy of Administration

Aparna Sen, acclaimed director and actor

Atul Setalvad, Senior Advocate

Teesta Setalvad, Communalism Combat

Konkana Sen Sharma, actress

Malvika Singh, Publisher, Seminar

Dayanita Singh, photographer

Kirti Singh, Advocate and Women's Rights Activist

Sreenath Sreenivasan, Professor, Columbia Graduate School of Journalism

Sonal Man Singh, acclaimed danseuse and Padma Vibhushan

Seema Sirohi, columnist

Sreenath Sreenivasan, Professor, Columbia Graduate School of Journalism

Vidya Subrahmaniam, Deputy Editor, The Hindu

Nandini Sundar, Professor, Delhi School of Economics

Admiral (Rtd.) R.H. Tahiliani, former Chief of the Indian Navy and Governor of Sikkim; Chairman, Transparency International India

Tarun Tahiliani and Sal Tahiliani, designers

Tarun Tejpal, editor and founder of Tehelka

Dolly Thakore, theatre personality

Tilotamma Tharoor, Humanities Professor, New York University

Laila Tyabji, Chairperson, DASTKAR

Nilita Vachani, documentary-maker, President's Award 1992

Ruth Vanita, author and professor, U of Montana

Siddharth Varadarajan, Deputy Editor, The Hindu

B.G.Vergheese, former editor of several national papers, and human rights and development activist

Jafar Zaheer, Air Vice Marshal (retd, Param Vishist Seva Medal), and **Mrs Rafath Zaheer**

Shama Zaidi, script writer and film maker

(Listing of institutional affiliations does not imply that these organizations necessarily endorse this statement)

Appendix 5: Statement of Support by Amartya Sen, Nobel Laureate (2006)

Cambridge 20 August 2006

A Statement in Support of the Open Letter by Vikram Seth and Others

I have read with much interest and agreement the open letter of Vikram Seth and others on the need to overturn section 377 of the Indian Penal Code. Even though I do not, as a general rule, sign joint letters, I would like, in this case, to add my voice to those of Vikram Seth and his cosignatories. The criminalization of gay behaviour goes not only against fundamental human rights, as the open letter points out, but it also works sharply against the enhancement of human freedoms in terms of which the progress of human civilization can be judged.

There is a further consideration to which I would like to draw attention. Gay behaviour is, of course, much more widespread than the cases that are brought to trial. It is some times argued that this indicates that Section 377 does not do as much harm as we, the protesters, tend to think. What has to be borne in mind is that whenever any behaviour is identified as a penalizable crime, it gives the police and other law enforcement officers huge power to harass and victimize some people. The harm done by an unjust law like this can, therefore, be far larger than would be indicated by cases of actual prosecution.

It is surprising that independent India has not yet been able to rescind the colonial era monstrosity in the shape of Section 377, dating from 1861. That, as it happens, was the year in which the American Civil War began, which would ultimately abolish the unfreedom of slavery in America. Today, 145 years later, we surely have urgent reason to abolish in India, with our commitment to democracy and human rights, the unfreedom of arbitrary and unjust criminalization.

Amartya Sen

Appendix 6: Open Letters Against Section 377 (2008)

B-64 Second Floor
Sarvodya Enclave
New Delhi 110017

Date: 2 Sep 2008

To:

Shri Hansraj Bharadwaj

Honourable Minister for Law & Justice
Ministry of Law and Justice,
4th Floor, A-Wing, Shastri Bhawan
New Delhi-110001

CC:

Shri Shivraj V. Patil

Union Home Minister
Room 103
North block
New delhi 110001

Dr. Anbumani Ramadoss

Union Minister for Health & Family Welfare
Ministry of Health & Family Welfare
Nirman Bhavan
Maulana Azad Road
New Delhi – 110011

Sub: Decriminalisation of adult and consensual same-sex sexual acts by reading down Section 377 of the Indian Penal Code.

Ref: "Gays have no legal rights: ministry", Hindustan Times, 28 Aug 2008."

Dear Sir

We write to you as child rights groups, groups working on issues of child sexual abuse, women's groups, sexual rights groups including groups working for the rights of gay, lesbian, bisexual and transgender people, NGOs working on a range of issues including health and HIV/AIDS prevention, human rights groups and concerned citizens from across the country.

This bears reference to a newspaper report titled "Gays have no legal rights: ministry", published in the Hindustan Times on 28 Aug 2008. It reports the Law Ministry's opposition to "scrapping of section 377 of

the Indian Penal Code” and quotes an unnamed senior Law Ministry official thus, “... it [S. 377] acts as an effective deterrent against paedophiles and those with sick minds”.

We write this letter to clarify some common misconceptions and to humbly urge you to view the matter more favourably please.

1. The PIL in the Delhi High Court related to S. 377 does not ask for its repeal. It seeks to read down the section in order only to remove consenting sexual acts between adults from its purview. In terms of such reading down, it would still be possible to prosecute instances of child sexual abuse under (an amended) S. 377.
2. S. 377 is not an effective deterrent against paedophiles. S. 377 was not intended to prosecute child sexual abuse, but has served as a partial means to do so in the absence of a specific law on the subject. While it has been used to deal with child sexual abuse that involve non penile-vaginal penetration, for example, penile penetration of the anus, it cannot be used to respond to other rampant forms of abuse, such as fondling, penetration with objects, fingers, etc. Unfortunately, such grave abuses in the case of girls, can only be prosecuted under S. 354 IPC (*a lesser offence onoutraging modesty*), that has much lower punishment or at most, under S. 319 or 320 (*for simple or grievous hurt*), both very inadequate for addressing the offence in question. Likewise, most sexual abuse for boys would only be prosecuted inadequately if at all, under *simple or grievous hurt*, mentioned above. Therefore, and at best, in cases of child sexual abuse S. 377 is effective only in partial legal recourse.

In this context, we the undersigned are concerned about the absence of a comprehensive law on child sexual abuse. For child sexual abuse to be addressed in all its dimensions, for children to be protected and for child molesters and paedophiles to be dealt with appropriately, there is an urgent need for a new law. Retaining an outdated and unjust Victorian law (S. 377) that was not designed to address child sexual abuse, but has due the absence of such a law served to provide an inadequate and partial legal remedy is not the solution.

The legislative scheme of section 377, 354, and 376 are grossly inadequate to cover the range of sexual violence that children and women are subject to. Recognising the lacunae in the present framework, the 172nd Law Commission Report and the National Commission for Women in its 'Recommendation on Amendments to Laws Relating to Rape and Related Provisions', recommended the deletion of section 377.

In view of the injustice resulting from the absence of law on child sexual abuse, as well as injustice resulting from the criminalization of adult, consensual sex by S.377, we urge your support and urgent action in this matter of public interest.

Thanking you,

Yours sincerely,

On behalf of

1. *Astitva, An NGO for Rights of Sexual Minorities, Mumbai*
2. *AALI, Association for Advocacy and Legal Initiative, U.P*

3. *Aangan, An NGO for children and Youth in state run Institutions*
4. *Askios, Group for adult survivors of child abuse, Bangalore*
5. *Arpan, Spreading awareness to Prevent and Heal Child Sexual Abuse, Mumbai*
6. *Akshara, Women's Organization, Mumbai*
7. *Child Rights, Mumbai*
8. *CEHAT, Centre for Enquiry into Health and Allied Themes, Mumbai*
9. *Enfold, Health Trust, Bangalore*
10. *India Centre for Human Rights and Law, Mumbai*
11. *Centre for Women's Development Studies (research institute under ICSSR), New Delhi*
12. *CREA, Women's Organization, New Delhi*
13. *Gujarat State AIDS Control Society (GSACS)*
14. *Indian Association for Women's Studies (National association of academics, activists and professionals engaged in the field of women's studies and established in 1982)*
15. *LABIA, Lesbians and Bisexuals in Action, Mumbai*
16. *Mitr Trust, MSM Organization, New Delhi*
17. *Nigah Media Collective, New Delhi*
18. *Nirantar, Centre for Gender and Education, New Delhi*
19. *Nation MSM & HIV, Policy, Advocacy, and Human Rights Task Force*
20. *Network of Asia pacific Youth, Bangkok*
21. *Partners for Law in Development, New Delhi*
22. *People Like Us (PLUS), Kolkata*
23. *People's Union for Democratic Rights (PUDR), Delhi*
24. *Point of View, Gender and Media Collective, Mumbai*
25. *Population Foundation of India*
26. *PRTHOMA, An NGO for transgender community, Kolkatta*
27. *Recovery and Healing from Incest (RAHI), New Delhi*
28. *Sahayatrika, An NGO for sexual minorities and women, Kerala*
29. *SAHAYOG, a group working on gender equality and women's health, U.P*
30. *Saheli, Women's Organization, New Delhi*
31. *Sama, Women's Organization, New Delhi*
32. *SUTRA, Community based NGO, Himachal Pradesh*
33. *TARSHI(Talking About Reproductive and Sexual Health Issues), working towards expanding Sexual and Reproductive choices*
34. *Vikalp, Women's Organization, Baroda*
35. *WeMove Foundation for Performing Arts, Bangalore*
36. *Women's Centre, Bombay*
37. *Healthwatch Forum*
38. *Youth for Change, Uttar Pradesh*
39. *Zubaan, Feminist Publishing House, New Delhi*

Individuals

1. *Abha Iyengar, Writer and Poet, New Delhi*
2. *Abhay Dang, Student, IIT Roorkee*
3. *Abhijit Majumder, Research Fellow, IIT Kanpur*
4. *Amit Varma, Writer, Mumbai*
5. *Ammel Sharon, Student, Tata Institute of Social Sciences*

6. *Anindita Sengupta, Freelance Writer, Bangalore*
7. *Anita Vasudev. Writer and Consultant, New Delhi*
8. *Annie Zaidi, Writer and Journalist, Mumbai*
9. *Anu Malhotra, Share Trader, Mumbai*
10. *Ashim Lal, Marketing Head in a leading IT MNC, New Delhi*
11. *Atiya Bose, Child Rights activist, New Delhi*
12. *Chandni Parekh-Psychologist, Mumbai*
13. *Commander Balaji Masilamani, Bangalore*
14. *Dr. Dominic Franks, Copywriter, New Delhi*
15. *Debraj Roy, Junior Research Fellow, SN Bose National Centre for Basic Sciences, Kolkata*
16. *Deepika Tandon, Lecturer, Miranda House, Delhi University*
17. *Dhoundup Dolma Bhotia, Delhi*
18. *Dina Mehta, Market Researcher, Mumbai*
19. *Dr. Sarada Balagopalan, Associate Fellow, CSDS*
20. *E. Venkat, Investment Banker, New Delhi*
21. *Elizabeth Thomas, Graphic designer, New Delhi*
22. *Gaurav Gogoi, Student, Master's of Public Administration, New York University*
23. *Gita Sahni, Designer, New Delhi*
24. *Gowri Sinha, Consultant, New Delhi*
25. *Himanshu Verma, Director, Red Earth*
26. *Iona Sinha, Communication Professional, New Delhi*
27. *Ishieta Chopra, Researcher and Consultant, New Delhi*
28. *Jai Talwar, Advertising Professional, Mumbai*
29. *Joanita Pinto, Writer, Mumbai*
30. *Manjula Padmanabhan, Author/Artist, New Delhi.*
31. *Mohua Chaterjee, Writer and Mother, New Delhi*
32. *Niti Saxena, Consultant – Human Rights (Women and Child Protection), Lucknow*
33. *Parvathi Menon, Lecturer in Law, Bangalore*
34. *Pawan Sony, Writer, Mumbai*
35. *Peter Griffin, Writer, Journalist, Communications Consultant, Bombay*
36. *Ipsita Pal Bhowmick*
37. *Kapil Advani, Chartered Accountant, New Delhi*
38. *Kumkum Roy, Centre for Historical Studies, School of Social Sciences, JNU*
Leena Uppal Thongam, Development Professional, Guwahati
39. *Lesley A. Esteves, Journalist, New Delhi*
40. *Naman P. Ahuja, Associate Professor, Indian Art and Architecture, School of Arts and Aesthetics, Jawaharlal Nehru University*
41. *Pramada Menon, Activist, New Delhi*
42. *Nivedita Menon- Professor SIS, Jawaharlal Nehru University, New Delhi*
43. *Nupur Chaturvedi, Entrepreneur and Writer, Gurgaon*
44. *Priyanka Mukherjee, Social Worker, New Delhi*
45. *Priyanki Mehta, HR professional*
46. *Rachana Kamtekar, Associate Professor of Philosophy, University of Arizona*
47. *Rachna Chawla, Educator and Trainer, New Delhi*
48. *Rahi Goswami, HR Counsultant, Gurgaon*
49. *Rahul Rao, Lecturer, School of Oriental & African Studies, University of London*
50. *Rajnish Mehra*
51. *Ram Rahman, New Delhi, Photographer and Activist*

52. *Ramachandra Guha, historian and writer*
 53. *Rashmi Dhanwani, Media Professional, Mumbai*
 54. *Ritambhara, Student, New Delhi*
 55. *Ritu Bhatia, Writer, New Delhi*
 56. *Ritu Chugh, Media Professional, New Delh*
 57. *Rohini Kandhari, Documentation Consultant (Health), New Delhi*
 58. *Saleem Kidwai, Historian, Lucknow*
 59. *Salim Yusufji*
 60. *Sandeep Kumar Singh*
 61. *Sandeep Vegad, Social Worker, Bangalore*
 62. *Sanghamitra Chowdhury, Software Professional, Kolkata*
 63. *Sharmi Surianarain*
 64. *Shelly Jain, Training Consultant, New Delhi*
 65. *Shivangini Tandon, Social Worker, Mumbai*
 66. *Shrimoyee Nandini Ghosh, Lawyer, New Delhi*
 67. *Shubra Chaturvedi, Media Professional, New Delhi*
 68. *Sophia Kamaruddin, Trichur, Kerala.*
 69. *Sophie Murphy, Journalist, New Delhi*
 70. *Sreela Das Gupta, Activist*
 71. *Suchetana Ghosh,, Research scholar & activist, Jawaharlal Nehru University, New Delhi*
 72. *Suchitra Chari, Social Worker, Melbourne*
 73. *Sunita Bhadauria, Documenter, New Delhi*
 74. *Supriya Varma, Associate Professor, Centre for Historical Studies, School of Social Sciences, Jawaharlal Nehru University, New Delhi*
 75. *Sushmit Ghosh*
 76. *Svati P. Shah, Ph.D., Postdoctoral Fellow, Duke University, USA*
 77. *Thomas Joseph, Aid Worker, New Delhi*
 78. *Trisha Gupta, PhD student and Freelance Writer, New Delhi*
 79. *Trupti Chengalath Sreedharan, Researcher, Bangalore*
 80. *Udayan Dhar, SGSITS Indore*
 81. *Udit Bhatia, DPS, RK Puram*
 82. *Vibha Mitra, Education Trainer, Kolkata*
 83. *Vidhu Singh, College Professor/Theatre Director, New Delhi*
 84. *Vineet Trikha, Trainer*
 85. *Vipin, Director (Ashoka's youth venture)*
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To:

The Prime Minister

South Block, Raisina Hill,
New Delhi,
India-110 011
14 October 2008

CC:

Minister for Health and Family Welfare

Minister for Home Affairs

Minister for Law and Justice

Sir,

Ever since the prestigious Rhodes Scholarships were first given to Indian students in 1947, its recipients have contributed in many different ways to the progress of India, in education, the civil service, science, and business. We, the undersigned, belong to this diverse community of Indian Rhodes Scholars but write in our individual capacity as Indian citizens with a commitment to public service and the fundamental principles of the Indian constitution — liberty, equality, justice, and the dignity of the individual. We believe that it is clear what these principles demand of us today: to join the growing body of concerned citizens that calls for the decriminalisation of consensual sex between adults of the same sex by the reading down of Section 377 of the Indian Penal Code.

As the historic case over the constitutionality of Section 377 now awaits the attention of the Delhi High Court, we write to register our profound disagreement with the language of the Additional Solicitor General P. P. Malhotra, who, in articulating the government's stance, has argued that reading down the section could 'open the floodgates for delinquent behaviour and be misconstrued as providing unbridled licence for homosexual acts'. He has argued, in addition, that strong social disapproval and the 'right to health of society' is sufficient reason to justify the treatment of homosexuals as criminals.

We have long been grateful for your involvement in the selection process for the Rhodes Scholarships, some of whose recipients are gay or lesbian. We greatly respect your contributions to the public life of our country and find it difficult to believe that you and your cabinet share the views expressed by the Additional Solicitor General.

Contrary to Shri Malhotra's insinuation that opposition to Section 377 comes from some vocal minority of 'delinquent' individuals and interest groups, this campaign is a grassroots movement uniting people from every section of society. Moreover, the demand to read down Section 377 comes not only from civil society but from within the highest circles of government — including the National Commission for Women, the 172nd report of the Law Commission of India, the Health Ministry in this government, and the Planning Commission in its recommendations for the 11th Five Year Plan. The undersigned wish to add their voices to the chorus calling for an end to a law that, as the Nobel laureate Amartya Sen has pointed out, 'goes not only against fundamental human rights [but] also works sharply against the enhancement of human freedoms'.

The health of our society, our democracy, and our polity, requires that we recognise the historic nature of this moment. Section 377 is a colonial relic, an imposition of un-Indian Victorian attitudes towards human sexuality that even the United Kingdom rejected in 1967. The government today has the unique chance to extend the fundamental right to equality and freedom to Indians who have long been discriminated against. This discrimination is real and manifests itself in police arrests, the threat of blackmail, and brutal violence, among other things, relegating India's sexual minorities to second-class citizenship. We recall the courage of earlier governments in putting principle above immediate popularity in fighting for an end to institutionalised caste- and gender-based discrimination. We urge this government, a government committed to the cause of social and political justice, to seize the moment and make the historic decision to end discrimination on the basis of sexual orientation.

Yours sincerely,

Abhilash Mishra (2008), Oxford
Amal Isaiiah (2006), Oxford
Amit Upadhyay (2001), Hyderabad
Anasuya Sengupta (1996), Berkeley & Bengaluru
Anisha Sharma (2007), Oxford & Kolkata
Antara Datta (2002), Cambridge (MA) & Kolkata
Arghya Sengupta (2008), Oxford
Aveek Sen (1989), Kolkata
Dev Gangjee (2000), London
Dev Lahiri (1975), New Delhi
Girish Karnad (1960), Bangalore
Lavanya Rajamani (1996), New Delhi
Megha Kumar (2003), Oxford
Meghana Narayan (2000), London & Bangalore
Nakul Krishna (2007), Oxford & Bangalore
Neel Mukherjee (1992), London
Neha Jain, Freiburg, Germany
Niharika Gupta (2001), New Delhi & Kolkata
Prashant Sarin (2001), New Delhi
Prithviraj Datta (2004), Cambridge (MA)
Raghav Shankar (2007), Oxford
Rahul Rao (2001), London & Bangalore
Rakesh Ankit (2005), Oxford
Rakhi Mehra (2001), Boston (MA)
Rishab Gupta (2008), New Delhi
Sandeep Sreekumar (1999), India
Saranya Sridhar (2003), Berkeley (CA)
Seshadri Vasani (1998), Reading
Skanda Gopal (2004), London
Somak Ghoshal (2004), Kolkata
Sudhir Krishnaswamy (1998), Bangalore
Tarunabh Khaitan (2004), Oxford
Thomas Sebastian (1999), Geneva
Upamanyu Mukherjee (1996), Coventry