

IN THE SUPREME COURT OF INDIA
(CRIMINAL ORIGINAL JURISDICTION)

WRIT PETITION (CRIMINAL) NO. _____ OF 2016
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

1.Navtej Singh Johar
Aged about 56 years
Son of Sh. Ujagar Singh
Resident of F-27, Green Park
New Delhi 110016

2.Sunil Mehra
Aged about 60 years
Son of late Sh. Hargopal Mehra
Resident of F-27, Green Park
New Delhi 110016

3.Ritu Dalmia
Aged about 43 years
Daughter of Sh. Natwar Dalmia
Resident of M-113 (ground floor)
Greater Kailash – II, New Delhi 110048

4.Aman Nath
Aged about 65 years
Son of Sh. Ashok Nath
Resident of 12, Jaipur Estate
Nizamuddin East, New Delhi 110013

5.Ayesha Kapur
Aged about 41 years
Daughter of Sh. Vijai Kapur
Resident of G-9 (ground floor)
Maharani Bagh,
New Delhi 110065

....PETITIONERS

VERSUS

Union of India
Through the Secretary,
Ministry of Law & Justice
Shashtri Bhawan,
New Delhi

... RESPONDENTS

**PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA SEEKING A DECLARATION THAT SECTION
377 OF THE INDIAN PENAL CODE, 1860 IS
UNCONSTITUTIONAL**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS OTHER COMPANION JUDGES

OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE

PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1.The Petitioners are lesbian, gay and bisexual ['LGBT persons'] citizens of India whose rights to sexuality, sexual autonomy, choice of sexual partner, life, privacy, dignity and equality, along with the other Fundamental Rights guaranteed under Part III of the Constitution, are infringed by Section 377 of the Indian Penal Code, 1860. In any event, the challenge to constitutional validity of Section 377 IPC is pending before this Hon'ble Court in the case of Naz Foundation Trust v. Suresh Kumar Koushal & Anr being Curative Petition (Civil) No. 88-119/2014. However, the issues for challenge to Section 377 IPC raised by the Petitioners in the present petition are varied and diverse from those raised in the Curative Petition. Thus, the Petitioners have no other efficacious remedy but to approach this

Hon'ble Court by way of the present petition under Article 32 of the Constitution of India challenging the constitutional validity of Section 377 IPC.

1A. That the Petitioners have not approached any other authority for redressal of the grievances agitated in the present Petition.

2.The issue of constitutionality of Section 377 has come to be placed before the Constitution Bench in the following background:

i.On 06.12.2001, Naz Foundation v. Govt. of NCT of Delhi & Ors. [W.P. (C) No. 7455/2001] was filed and registered before the Delhi High Court. The said petition, inter alia, challenged the constitutionality of Section 377 IPC.

ii.The Delhi High Court allowed the petition filed by Naz Foundation v. Govt. of NCT of Delhi & Ors. [W.P. (C) No. 7455/2001] by declaring that Section 377 of the Indian Penal Code, 1860 is violative of Articles 14, 15 and 21 of the Constitution insofar as it criminalizes consensual sexual acts of adults in private. A copy of the judgment dated 02.07.2009 passed by the Delhi High Court in the case of Naz Foundation v. Govt. of NCT of Delhi & Ors. *reported in 2009 (111) DRJ 1* is annexed hereto and marked as '**ANNEXURE P-1**' (At pages 52 to 109).

iii.On 09.07.2009, this Hon'ble Court issued notice on a petition titled as Suresh Kumar

Koushal & Anr. v. Naz Foundation & Ors. [SLP (C) CC No. 9255/2009], which challenged the judgment of the Delhi High Court dated 02.07.2009 passed in the case of Naz Foundation.

iv. Vide judgment dated 11.12.2013, this Hon'ble Court allowed the appeal in the case of Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors. [Civil Appeal No. 10972/2013] and held that Section 377 of the Indian Penal Code, 1860 does not suffer from the vice of unconstitutionality. A copy of the judgment dated 11.12.2013 passed by this Hon'ble Court in the case of Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors. *reported in (2014) 1 SCC 1* is annexed hereto as **'ANNEXURE P-2'** (At pages 110 to 190).

v. On 28.01.2014, this Hon'ble Court dismissed the review petition filed by Naz Foundation being Review Petition (C) No. 41-55/2014 titled as Naz Foundation (India) Trust v. Suresh Kumar Koushal & Ors, wherein the judgment of this Hon'ble Court dated 11.12.2013, was impugned. A copy of the order dated 28.01.2014 passed by this Hon'ble Court in Review Petition (C) No. 41-55/2014 *reported in (2014) 3 SCC 220* is annexed hereto as **'ANNEXURE P-3'** (At pages 191 to 192).

vi. Pursuant to the dismissal of the Review Petition, Naz Foundation filed a Curative Petition being Curative Petition (Civil) No. 88-102/2014 titled as Naz Foundation Trust v. Suresh Kumar Koushal & Anr, impugning the judgment and order[s] dated 11.12.2013 and 28.01.2014. Vide order dated 22.04.2014, this Hon'ble Court directed that the Curative Petition[s] be listed before the Court. A copy of the order-dated 22.04.2014 passed by this Hon'ble Court in Curative Petition (C) No. 88-102 of 2014 in Review Petition (C) No. 41-55 of 2014 in Civil Appeal No. 10972 of 2013 and other connected matters is annexed hereto and marked as **'ANNEXURE P-4'**. (At pages 193 to 194)

vii. Thereafter, vide order dated 02.04.16, this Hon'ble Court, observing that the issue sought to be raised are of considerable importance & public interest, ordered the petitions to be placed before a Constitution Bench. A copy of the order dated 02.02.2016 passed in the case of Naz Foundation Trust v. Suresh Kumar Koushal & Anr being Curative Petition (Civil) No. 88-119/2014 is annexed hereto as **'ANNEXURE P-5'**. (At pages 195 to 200)

3.The present Writ Petition, thus, raises the following important questions of law for the consideration of this Hon'ble Court:

A. Whether Section 377 of the Indian Penal Code is unconstitutional and violative of Part III of the Constitution of India, and thus, ought to be struck down?

B. Alternatively, whether Section 377 of the Indian Penal Code ought to be read down to exclude its applicability to consensual sexual acts of adults in private, so as to safeguard the fundamental rights of such consenting adults?

Details of the Petitioners

4.The Petitioners are upstanding, public-spirited citizens who live and work in India and have the greatest love for this country and faith in the rule of law. They are highly accomplished citizens and their work has been duly recognized by the Respondent as well as national and international bodies. They contribute to the economic, social and cultural development of India through their business, art, and writing.

5.The Petitioner No. 1 is one of India's leading dancers, a master of the classical art form of Bharatnatyam and the recipient of the 2014 Sangeet Natak Akademi Award for "Creative Dance/Choreography." His performance draws upon the plural vocabularies of Bharatnatyam, Yoga and

physical theatre. Born into a middle-class neighborhood in Chandigarh, Petitioner No. 1 was trained in Bharatnatyam at the prestigious Kalakshetra, Chennai and studied Performance Theory at New York University, New York. He is a globally renowned performer and an ambassador for Indian culture. He served as the Performance Director of the Commonwealth Parade for the Queen's Golden Jubilee Celebrations in London in 2002 and has also performed with the New York City Opera. Petitioner No. 1 has been the recipient of the Times of India Fellowship in 1995, the Charles Wallace Fellowship in 1999, and is presently the holder of the "Interweaving Performance Cultures Fellowship" at Freie University, Berlin (Germany). The Petitioner No. 1 has also set up a Dance Training Program along with musician Justin McCarthy which focuses on incorporating dance technique with dance theory and history. The Petitioner No. 1 taught at the University of Michigan in 2010, and presently teaches at Ashoka University. The Petitioner No. 1 is a co-founder and Artistic Director of Studio Abhyas, a centre for yoga, dance and care of stray animals and urban development in New Delhi.

6. The Petitioner No. 1 trained in Yoga at Krishnamacharya Yoga Mandiram, Chennai and presently also teaches Yoga. The Petitioner No. 1 received the Sri Krishna Gana Sabha Award for his choreographic work *Abhinaya* in 2010 and the

Mohan Khokar Overall Excellence Award for Dance in 2012. Petitioner No. 1 has also written several articles and scholarly papers, including *inter alia* Deepfreeze Nritya (The Outlook, 1997), Framing the Fluid- Multiple Perspectives on Bharatnatyam: philosophical, historical, attitudinal, aesthetic and socio-cultural (Asia Intangible Cultural Heritage Encyclopaedia, 2006), Physical Traditions as Continuity (Lila Foundation for Translocal Initiatives, 2014), Why Yoga is important as a dancer, as a person (The Wire, 2015), and How the Transformative Practice of Yoga has gradually been drawn into the chauvinism of Identity Politics (The Caravan, 2015). True typed copy of the Sangeet Natak Akademi Award presented to Petitioner No. 1 in 2014 alongwith photocopy of its original is annexed hereto as **ANNEXURE P-6. (At pages 201 to 202)**

True typed sample copy of the article written about Petitioner No.1 Sh. Navtej Singh Johar and his body of work dated Nil is annexed hereto as **ANNEXURE P-7. (At pages 203 to 204)**

True typed copy of article written by Petitioner No.1 Sh. Navtej Singh Johar dated Nil is annexed hereto as **ANNEXURE P-8. (At pages 205 to 216)**

Performance photograph of Petitioner No.1 Sh. Navtej Singh Johar is annexed hereto as **ANNEXURE P-9. (At pages 217)**

7.The Petitioner No. 2 was born in Jaipur and is a renowned journalist who has written hundreds of articles and columns for leading publications such as Outlook, Tehelka, India Today, Pioneer, Saturday Times, Swagat and Discover India in a career spanning over three decades. Petitioner No. 2 also taught English Literature as an Assistant Professor at the University of Rajasthan, Jaipur from 1981-88. Petitioner No. 2 was also formerly the editor of Maxim India. Throughout his career, Petitioner No. 2 has sought to bring to public attention social issues which otherwise have been largely ignored, *inter alia* on women's marital rights ("Empowering Edict" Outlook, 1996), ignorance of doctors regarding HIV/AIDS ("Fatal Ignorance" Outlook, 1996), pollution threat to Narara Coral Reefs, Gujarat ("Threatened Idyll" Outlook, 1996), violence during Partition ("Sufferers & Survivors" Outlook, 1997), absence of fire safety measures for Delhi's public buildings ("337 more 'Upahars' " Outlook, 1997), medical negligence leading to blindness for 16 persons at Amritsar Mental Hospital ("Gross Oversight" Outlook, 1998). Petitioner No. 2 is also acclaimed as an art and culture critic who has written on *inter alia* children's plays in Delhi and the Jaipur School of miniature painting.

8.The Petitioner No. 2 was also involved during 1999-2001 with Centrestage, a weekly culture show on DD Metro and

DD International. During this period he directed, produced, wrote and anchored 86 episodes of Centrestage. Petitioner No. 2 also shot 45 short films on Indian classical and contemporary dance, which are currently a part of the French National Archive of Dance and are marketed across 44 countries by the Alexander Street Press Conglomerate. The Petitioner No. 2 has also authored two books "Rajasthan, An Enduring Romance" and "Desert Lion: The Life and Times of Bhawani Singh of Jaipur" both published by Roli Books in 1990 and 2016, respectively. Petitioner no. 2 has written and spoken about having experienced violence as a gay man and being unable to approach the police because of fear of prosecution under the impugned Section 377 of the Indian Penal Code, 1860. In fact, the Petitioner No. 2 might have become a civil servant for the Respondent, as he had duly cleared the Preliminary examination for admission to the central civil services.

9.However, the Petitioner No. 2 chose not to sit for the Mains Examination as he was apprehensive about his career prospects in State employment because of criminalization of his sexual orientation. In this manner, the country has lost the services of countless well-qualified, upstanding citizens due to this draconian law. True typed sample copy of the article authored by Petitioner No.2 Sh. Sunil Mehra dated

26.10.2015 is annexed hereto as **ANNEXURE P-10**. (At pages 218 to 220).

A copy of the brief description of the books authored by Petitioner No.2 Sh. Sunil Mehra dated Nil is annexed hereto as **ANNEXURE P-11**. (At pages 221 to 222)

10.Petitioners No. 1 and 2 have been in a committed relationship for over 20 years. They have lived together since 1998, with the help and support of their families, friends and colleagues. Together, they started Studio Abhyas, a yoga, dance and urban development studio in New Delhi. Together, they also conceptualized and ran the Power of Seeing initiative to connect schoolchildren with the urban environment and to inspire them to improve the city.

11.The Petitioner No. 3 is a chef, author, restaurateur and TV personality. She is renowned as one of the leading chefs in India and has built the much-acclaimed 'Diva' chain, consisting of seven restaurants, which currently employs over 250 people. Petitioner No. 3's 'Diva Italian' restaurant has won numerous awards including the Times Food Guide Best Italian Restaurant (2004, 2006, 2009, 2010, 2011, 2012, and 2013); Times Food Guide Outstanding Restaurant Wine List (2005 and 2006); HT City Awards Vir Sanghvi's Personal Award (2007), Buurp Certified Best Wine Menu (2010), Mail Today's Best of the Best – Best Italian (2011), HT City

Crystals City's Finest Italian Restaurant (2012), Food and Nightlife Award for Best Italian Restaurant (2012) and the Zomato Connoisseur's Guide to Eating Out Best Italian Award (2013). Further, another restaurant "Latitude 28" has won HT City Crystals City's Finest Café (2010), Best Coffee Shop HT City Awards Vir Sanghvi's Personal Award (2010).

12. The Petitioner No. 3 received the "Woman Chef of the Year" Award in 2007 and the Order of the Star of Italian Solidarity in 2011 awarded by the decree of the President of the Italian Republic. She is the author of popular and acclaimed Italian cookbooks which have made her a household name, including "Italian Khana" (2009), "Italian Khana – bilingual miniseries in English and Hindi" (2010) (winner of the Paris Book Fair Best Series Award (2011), "Travelling Diva – Recipes from Around the World" (2012), and "Diva Green – A Vegetarian Cookbook" (2013). She is also a popular television celebrity chef and hosts "Italian Khana" which has received the Indian Telly Awards Best Cookery Show (2009) and Best Food Show (2010). True typed sample copy of the article authored by Petitioner No.3 Ritu Dalmia dated Nil is annexed hereto as **ANNEXURE P-12**.
(At pages 223 to 226)

A copy of the brief description of the books authored by Petitioner No.3 Ritu Dalmia dated Nil is annexed hereto as **ANNEXURE P-13**. **(At pages 227 to 230)**

True copy of the certificate awarded to Petitioner No.3 Ritu Dalmia and her restaurants dated 12.6.2014 dated Nil is annexed hereto as **ANNEXURE P-14**. (At pages 231 to 238)

13.The Petitioner No. 4 is a hotelier, writer and historian. In 1984, Petitioner no. 4 and his late partner Francis Wacziarg were among the founding members of the Indian National Trust for Art & Cultural Heritage (“**INTACH**”). Later, in 1991, Petitioner No. 4 together with Mr. Wacziarg established the acclaimed chain of Neemrana Hotels. The Neemrana chain of hotels has restored and preserved several historical properties and in this manner preserved Indian culture and traditions. The Neemrana Hotel chain has established more than twenty-five historical properties across twelve states and the UT of Pondicherry. Most of the properties restored by Neemrana Hotel chain are from the 19th century, with the oldest being the Hill Fort Kesroli at Alwar, Rajasthan from the 14th century.

14.The Petitioner No. 4 along with his late partner Sh. Francis Wacziarg was awarded the Lifetime Achievement Award by the Ministry of Tourism in 2014. Petitioner No. 4 has written 15 books and dozens of articles on the arts & crafts, culture and historical architecture of India, including on Rashtrapati Bhawan, Lutyens’ Delhi, Jodhpur’s Umaid Bhawan, Jaipur’s architecture, the Pushkar Fair, and the

Painted Walls of Shekhawati, Rajasthan. The Petitioner No. 4's book on Rashtrapati Bhawan, namely, "Dome under the Sky" has been the gift of choice by the last four Presidents of India to visiting foreign dignitaries. His book "Jaipur: The Last Destination" was the first Indian book to be distributed worldwide by Christie's, the world's leading art auction house.

15. In 1977, the Petitioner No. 4 wrote the first catalogue & publicity campaign for the first Indian contemporary art auction for Times of India and Sotheby's. Petitioner No. 4 has been invited as a speaker at prestigious festivals such as the Jaipur Literature Festival (2012 & 2016), TedX at Shekhawati (2011), Pushkar Literature Festival (2009), Odisha Literature Festival (2014) and Kumaon Literary Festival (2015). The Petitioner No. 4 served for seven years as the curator of Art Today (India Today's Art Gallery). Petitioner No. 4 is on the Board of Trustees for India Foundation for the Arts, and is the Managing Trustee of the Neemrana Music Foundation. Petitioner No. 4's Neemrana Fort Palace received the award for the Best Heritage Hotel (National Tourism Award) from the Ministry of Tourism for 2010-11 and the award for the Best Heritage Hotel from Outlook Traveller. In 2013, two of the properties run by Petitioner No. 4 received the Certificate of Excellence from TripAdvisor, i.e. Neemrana Fort Palace and Hotel De L'Orient, Pondicherry. Petitioner No. 4 met the late Sh. Francis Wacziarg through their common interest and

passion in the cultural and historical heritage of India. Petitioner No. 4 was in a committed relationship with the late Francis Wacziarg for about 23 years till the latter's death in 2014. True typed sample copy of the article written about Petitioner No.4 Sh. Aman Nath and his body of work dated Nil is annexed hereto as **ANNEXURE P-15**. (At pages 239 to 241)

True typed sample copy of the article authored by Petitioner No. 4 Sh. Aman Nath is annexed hereto as **ANNEXURE P-16**. (At pages 242 to 244)

A true copy of the certificates awarded to Petitioner No.4 Sh. Aman Nath alongwith typed copy is annexed hereto as **ANNEXURE P-17**. (At pages 245 to 249)

A true typed copy of book authored by Petitioner No.4 Sh. Aman Nath titled "A Dome over India Rashtrapati Bhavan: Rashtrapati Bhavan" dated Nil is annexed hereto as **ANNEXURE P-18**. (At pages 250 to 252)

A true typed copy of book authored by Petitioner No.4 Sh. Aman Nath titled "Rajasthan: The Painted Walls of Shekhavati" dated Nil is annexed hereto as **ANNEXURE P-19**. (At pages 253 to 254)

A true typed copy of book authored by Petitioner No.4 Sh. Aman Nath titled "Arts and Crafts of Rajasthan" dated Nil is annexed hereto as **ANNEXURE P-20**. (At pages 255 to 256)

A true typed copy of book authored by Petitioner No.4 Sh. Aman Nath titled "Gota" dated Nil is annexed hereto as **ANNEXURE P-21**. (At pages 257 to 258)

A true typed copy of book authored by Petitioner No.4 Sh. Aman Nath titled "Jaipur: The Last Destination" dated Nil is annexed hereto as **ANNEXURE P-22**. (At pages 259 to 260)

A true typed copy of book authored by Petitioner No.4 Sh. Aman Nath titled "Jodhpur's Umaid Bhawan: The Maharaja of Palaces" dated Nil is annexed hereto as **ANNEXURE P-23**. (At pages 261 to 263)

A true typed copy of book authored by Petitioner No.4 Sh. Aman Nath titled "Rajasthan: the painted walls of Shekhavati" dated Nil is annexed hereto as **ANNEXURE P-24**. (At pages 264 to 265)

16. The Petitioner No. 5 spent her childhood in Mumbai and formative years in Delhi. The Petitioner No. 5 did her B.A. from Clark University, Massachusetts, U.S.A. with a Double Major in Sociology and Psychology where she graduated Magna cum Laude and received the Outstanding Psychology Undergraduate Award. During her period of study at Clark University, the Petitioner No. 5 was the Student Representative for the Clark Fund in which role she raised funds for scholarship aid and academic programs from *inter alia* the alumni. The Petitioner No. 5 returned in 1998 to

Delhi, a city much less accepting of LGBT persons then vis-à-vis today. Over the next decade, Petitioner No. 5 worked in the budding e-commerce sector and achieved great success in the field of marketing, rising to the post of Business Head. However, in 2008, the Petitioner No. 5 had no option but to quit a lucrative corporate career due to the fear of her sexual orientation being discovered and the adverse consequences that would have followed. Thus, the Petitioner No. 5 went on a hiatus of more than a year and a half, during which time she cared for her mother ailing from cancer and finally managed to come to terms with her sexual orientation. The Petitioner No. 5 first hand experienced the social stigma that attaches to LGBT persons as a result of Section 377 IPC. The Petitioner No. 5 did not reveal her sexual orientation to even her mother much less her extended family or friends until she was already in her mid-thirties and even then only in the last few months of her mother's battle with cancer. Even today, the Petitioner No. 5 is unable to accompany or be accompanied by her committed partner at social and family occasions. Presently, the Petitioner No. 5 works as a consultant in the Food and Beverages industry.

The Respondent

17. The Respondent is the Union of India through the nodal and concerned Ministry i.e. Ministry of Law & Justice, which is responsible for promulgation and enforcement of statutes

and legal provisions in the country. Evidently, the Respondent is State within the meaning of Article 12 of the Constitution.

Challenging Section 377 IPC

18. The Petitioners find their lives inexorably constricted and their rights infringed by Section 377 of the Indian Penal Code, 1860. Despite their formidable achievements and contribution to India, they are denied the right to sexuality, the most basic and inherent of fundamental rights. Section 377 of the IPC renders them criminals in their own country. Section 377 IPC does not criminalize only specific acts whose commission a law-abiding citizen may avoid and steer clear of. Rather, it criminalizes the very existence of LGBT persons by criminalizing their sexuality, an attribute which is as inherent and intrinsic to a person as their race or gender. Sexuality lies at the core of a human being's persona. Sexual expression, in whatever form, between consenting adults in the privacy of a home ought to receive the protection of Fundamental Rights. Section 377 of the Indian Penal Code infringes the Petitioners' right to sexuality, and also has a cascading effect of barring the Petitioners from accessing the unenumerated rights which this Hon'ble Court has held flow from Article 21 of the Constitution of India.

19. The ability to be open with one's friends, family, colleagues and employees about an integral and intrinsic part of one's life and personality, is fundamental to unfold the full potential of the personality of any human being. The Petitioners can attest that being open about one's sexual orientation, is essential to the pursuit of personal and professional success and happiness. That even the fields of medicine and psychology have accepted that homosexuality is not an abnormality, but that human sexuality has myriad forms and diverse expressions.

20. The continuance of Section 377 IPC on the statute books in free and independent India makes it all too clear that the constitutional guarantees of equality, fraternity, dignity, life and liberty, which are the basis of the constitutional contract on which this country was founded, are not extended to the Petitioners. The fear that criminalization and coercive state action will follow if a person expresses a core part of their personality can have an unmeasurable harmful effect on one's economic, social, and political life. The Petitioners are highly accomplished professionals, entrepreneurs and artists who have been felicitated for their professional achievements, but can attest to the deleterious effect of this draconian law on their personal and professional lives. Their parents, friends, colleagues and well-wishers fear for the consequences that

may ensue if the Petitioners are open about their sexual orientation.

21.The Petitioners have no legal status or protections. The law recognizes them only as criminals and reduces their love to a crime.

22.The Petitioners are unable to form professional associations with other similarly placed persons to voice their concerns about discrimination which they may face in places of employment, education, or otherwise. The Petitioners cannot overcome a lurking fear that their consensual relationships, even within the privacy of their homes, may invite coercive state action at the hands of a busybody, rival, political party, or any other 3rd party who has no bona fide interest with the private lives of the Petitioners, and is motivated only by malice/prejudice.

23.It is submitted that the issue in the present case does not concern only removing an injustice perpetuated by a colonial law, but also affirming the constitutional vision of a society based on tolerance and mutual respect. The Constitution of India does not envisage a heterogeneous society but rather recognizes, celebrates and protects the plurality and diversity of Indian society and culture. Article 38 of the Constitution that states the welfare of the people is to be promoted by securing and protecting the social order such

that all institutions of national life be informed by justice:
social, economic and political.

24.Criminal laws and pre-constitutional statutes in particular, must be judged on the touchstone of constitutional and not public morality. Section 377 IPC in particular is a relic of colonial rule and of 19th century Victorian morality. The evolution of the law after the coming into force of the Constitution has meant that acts which were crimes earlier like suicide and the Criminal Tribes act are not offences now, and acts which were not crimes earlier like sati, dowry and bigamy are criminalized.

25.It is respectfully submitted that the judgment in *Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors.*, (2014) 1 SCC 1 has not considered any of these aspects raised by the Petitioners in this Writ Petition.

26.Finding that their Fundamental Rights are violated by this draconian and unjust law, the Petitioners are invoking the extraordinary writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India, on the following amongst other:

GROUND

A. For that the impugned Section violates the Fundamental Rights of the Petitioners under Articles 14, 15, 16, 19 and 21 of the Constitution of India.

B. For that the right to move this Hon'ble Court for the enforcement of rights conferred by Part III of the Constitution is guaranteed under Article 32 thereof.

Violation of Article 21 | The Right to Sexuality and the Right to Choice of a Sexual Partner are Fundamental Rights protected under Article 21 of the Constitution of India

Right to Sexuality, Sexual autonomy and Right to Choice of a Sexual Partner

C. For that the right to sexuality is the most basic, inherent and immutable of all natural rights that attain to a person. The free and natural expression of sexuality without fear of criminalization forms the cornerstone of dignity and personal autonomy.

D. For that this Hon'ble Court in *NALSA v. Union of India* [(2014) 5 SCC 438] has accorded recognition and the right of choice to attributes which are an inherent, integral and immutable part of an individual's personality and can on the strength of growing medical and psychiatric knowledge be rightly regarded as but a natural benign variant of the human experience.

E. For that this Hon'ble Court in *NALSA v. Union of India* [(2014) 5 SCC 438] has recognized that sex and gender are primarily psychological rather than biological phenomena/attributes. This Hon'ble Court also recognized sexual orientation as being integral to an individual's personality and as the most basic aspect of self-determination, dignity and freedom, and held:

“Sexual orientation includes transgender and gender-variant people with heavy sexual orientation and their sexual orientation may or may not change during or after gender transmission, which also includes homosexuals, bisexuals, heterosexuals, asexual, etc. Gender identity and sexual orientation, as already indicated, are different concepts. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.”

F. For that this Hon'ble Court in *NALSA v. Union of India* [(2014) 5 SCC 438] has recognized an individual's right of choice vis-à-vis their sex/gender identity which is integral to their personality. For that sexual autonomy and freedom to

choose one's sexual partner is an intrinsic part of the sense of selfhood of any human being. It is an intimate and fundamental life decision which can determine a person's self-worth and self-respect.

G. For that this Hon'ble Court has recognized that bodily integrity and the freedom to consent to procreative or non-procreative sexual activity, are dimensions of personal liberty as understood under Article 21 of the Constitution of India. Such personal liberty is guaranteed to every person and cannot be limited to non-LGBT persons alone.

H. For that freedom of sexuality and consequentially choice of sexual partner is a key determinant for any person to live a happy and fulfilling life and is protected under Article 21 of the Constitution of India.

I. For that Section 377 of the IPC criminalises a core part of a person's identity solely on account of his or her sexuality and thus violates Article 21 of the Constitution. Section 377 IPC denies LGBT persons their rights to full personhood, sexuality, sexual autonomy, and choice of sexual partner, which are implicit in the notion of life under Article 21 of the Constitution of India. This Hon'ble Court has upheld the right to choice of conjugal partner under Article 21 of the Constitution of India

J. For that this Hon'ble Court has in a number of judgments recognized the advent of changes in society regarding sexual and romantic choice and protected adults who seek to exercise such choice.

K. For that this Hon'ble Court has recognized that the choice of partner is protected by the freedom of conscience and expression and that such conjugal choice ought to be free from police interference. This Hon'ble Court has in fact strongly condemned invocation of the police machinery to impede the freedom of conscience as a gross abuse of the process of law. The criminalization of choice of sexual partner under Section 377 IPC is prima facie a violation of the Right to Life under Article 21 of the Constitution of India.

L. For that social norms on the choice of conjugal partner have evolved with time and the law is not only expected to follow such societal changes, but also to be a catalyst for social change.

Recognizing the right to sexuality has a cascading effect on unenumerated rights guaranteed under Article 21 of the Constitution

M. For that this Hon'ble Court has held that the right to life encompasses unenumerated rights including the right to education, health, privacy and reasonable residence.

N. For that LGBT persons regularly suffer harassment, discrimination, and violence at the hands of both the police machinery as well as other institutional forms of violence and discrimination in schools, places of employment or other public places on account of their sexual orientation and identity.

O. For that Section 377 IPC renders LGBT persons unable to take recourse to the criminal justice system, the police, or public and even judicial authorities out of fear of criminalization. In this manner, by infringing the right to sexuality, Section 377 IPC has a cascading effect, preventing LGBT persons from enjoying other Fundamental Rights guaranteed by the Constitution of India.

P. For that Section 377 by creating a taint of criminality affects the reputation of LGBT persons. This Hon'ble Court has recognized reputation as being closely linked to livelihood and being a facet of the rights guaranteed under Article 21.

Section 377 IPC violates the right to dignity and personal autonomy

Q. For that the expression "dignity of the individual" finds specific mention in the Preamble to the Constitution of India. This Hon'ble Court in *Prem Shankar Shukla v. Delhi Admn.* [(1980) 3 SCC 526], observed that the guarantee of human dignity forms part of our constitutional culture.

R. This Hon'ble Court in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others* [(1981) 1 SCC 608] has held that the right to human dignity is a part of the right to life under Article 21 COI and any law infringing the same has to satisfy the requirement of a just, fair and reasonable procedure established by law which stands the test of other Fundamental Rights.

S. For that “dignity” is an acknowledgement of the value and worth of all individuals as members of society, and the recognition of a person as a free being who develops his or her body and mind as they see fit. At the root of dignity is the autonomy of private will and a person's freedom of choice and action. Human dignity rests on recognition of the physical and spiritual integrity of the human being, his or her humanity, and value as a person.

T. For that Section 377 IPC gives legal sanction to the social and historical stigma suffered by LGBT persons and by criminalizing conduct most closely associated with them, conveys a message that in the eyes of the State and the law, such stigma is acceptable and lawful and that LGBT persons deserve to be criminalized for an intrinsic, inherent and immutable attribute.

U. For that recognition of and respect for the dignity of diverse forms of human existence lies at the heart of the protection of the Right to Life under Article 21 of the Constitution of India.

V. For that sexual orientation lies at the core of one's sense of being and personality and is an essential aspect of the right to dignity.

Section 377 violates the right to privacy

W. For that this Hon'ble Court in *Kharak Singh v. The State of U.P.*, (1964) 1 SCR 332 held the right to privacy expressly is part of the right to liberty under Article 21, part of the right to freedom of speech and expression in Article 19(1)(a), and also of the right of movement in Article 19(1)(d) of the Constitution.

X. For that this Hon'ble Court in *Gobind v. State of M.P.*, (1975) 2 SCC 148, has observed that, in consideration of a human being's spiritual nature, feelings and intellect, the Constituent Assembly "must be deemed to have conferred upon the individual as against the Government a sphere where he should be let alone."

Y. For that this Hon'ble Court in *District Registrar and Collector, Hyderabad & Anr. v. Canara Bank & Anr.*, (2005) 1 SCC 496, held that the right to privacy deals with persons and not places. Further Lahoti, CJ. referred to *Thornburgh v.*

American College of O and G, 476 US 747 (1986), that “the concept of privacy embodies the moral fact that a person belongs to himself and not to others nor to society as a whole” and also referred to (1976) 64 Cal. L. Rev 1447, that privacy centres round values of repose, sanctuary and intimate decision. Repose refers to freedom from unwanted stimuli; sanctuary to protection against intrusive observation; and intimate decision, to autonomy with respect to the most personal of life choices.

Z. For that international instruments such as the Universal Declaration of Human Rights (Article 12) and International Covenant on Civil and Political Rights (Article 17) explicitly recognize the right of a person to be free from arbitrary and unlawful interference with his or her privacy.

AA. For that in *Gobind v. State of M.P.* [(1975) 2 SCC 148] this Hon’ble Court has explicitly recognized that the right to privacy encompasses the personal intimacies of the home. This Court has elucidated the basis for protecting the privacy of home, namely, ‘that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such “harm” is not constitutionally protectible by the State’ and that home is a ‘place of sanctuary’ where people are free from societal controls.

BB.For that Section 377 unreasonably and unjustly infringes upon the right of privacy, both zonal and decisional. The State ought not to enter the bedrooms of consenting adults and such unwarranted and unnecessary intrusion on conduct that causes no harm, *prima facie* amounts to an unconstitutional infringement of the Right to Privacy.

Section 377 violates the Right to Health

CC.For that this Hon'ble Court in interpreting Article 21 in light of Article 12 of the International Covenant on Economic, Social and Cultural Rights held that the right to health inheres in the right to life under Article 21. [*Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37].

DD.For that Article 12 of the ICESCR makes it obligatory on the “State to fulfil everyone's right to the highest attainable standard of health.” General Comment No. 14 (2000) [E/C. 12/2000/4; 11 August 2000] on Article 12 of the ICESCR recognizes right to health as encompassing both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. The entitlements include equal treatment, and non-discrimination in terms of access to

health care and the underlying determinants of health based on *inter alia* sexual orientation.

EE.For that the impugned provision violates the right to health of LGBT persons as it renders them unable to access health services which require them to reveal their sexual orientation out of fear of prosecution, particularly as hospitals are required to intimate the local police about the possible commission of any offence and to prepare a Medico-Legal Certificate in such cases.

FF.For that the Ministry of Health, Government of India had admitted before the Hon'ble Delhi High Court in W.P. (C) No. 7455/2001 that Section 377 interferes with HIV/AIDS prevention efforts and even with the dissemination of information about HIV/AIDS amongst high risk groups.

Section 377 infringes Art. 21 for being vague and excessive

GG.For that Section 377 IPC infringes Article 21 inasmuch as it is vaguely defined and overbroad in its scope.

HH.For that Section 377 IPC, in penalising “carnal intercourse against the order of nature” does not give adequate notice to a reasonable degree of certainty of prohibited conduct to a person of normal understanding.

II. For that Section 377 IPC is overbroad inasmuch as it extends to prohibiting of acts which are otherwise protected as Fundamental Rights under the Constitution. Thus, Section 377 forces LGBT persons to choose between either breaking the law or living a life without love or companionship, and being untrue to their natural selves.

Violation of Article 14 | The State has a positive obligation to create an equal and just society under Article 14 of the Constitution

JJ. For that Article 14 of the Constitution enjoins upon the State not only to protect against inequality but also entails a positive obligation to create just, fair and equal society that ensures equality of status and opportunity to all citizens who can all enjoy fundamental rights guaranteed under Part III of the Constitution.

KK. For that the guarantee of equality of opportunity to unfold the full potential of an individual's personality is an enduring value of our polity.

LL. For that this Honorable Court has recognized that social inequality is accentuated and perpetuated by legal inequality.

MM. For that justice, liberty, equality and fraternity are supreme constitutional values to establish an egalitarian social, economic and political democracy.

NN.For that social justice consists of the diverse principles essential for the growth and development of the personality of every citizen.

Law cannot render sexual minorities as invisible

OO.For that sexual minorities are rendered invisible by the law inasmuch as the law denies them the right to identify themselves based on characteristics that differ from the majoritarian norm.

PP.For that the State has an obligation to protect the fundamental rights of permanent and invisible minorities, like the Petitioners.

QQ.For that exclusion by criminalization, silence and omission is as effective in law as exclusion by express language.

Section 377 is a hostile class legislation

RR.For that Section 377 targets LGBT persons as a class. Although the impugned provision appears to criminalize acts and not identities, in fact, it targets LGBT persons for an inherent and immutable attribute of their personalities. It criminalizes conduct which in the eyes of the public is associated only with LGBT persons.

SS.For that by virtue of Section 377, the State legalizes social stigma and discrimination against such persons and does

great disservice and dishonour to the contribution of LGBT persons, including the Petitioners, to the economic, political, cultural and social life of the country. Section 377 is a hostile legislation.

TT.For that equality before law is designed to protect all persons against legislative discrimination amongst equals and to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.

UU.For that Section 377 criminalizes the whole of the class resulting in substantial and adverse infringement of their legal and fundamental rights denies the entire class of LGBT persons equality before law and the equal protection of laws.

Section 377 is inherently arbitrary and unreasonable, and promotes unreasonable and arbitrary state action

VV.For that the criminalization of a section of society merely on the grounds of their sexual orientation is inherently arbitrary and unreasonable.

WW.For that Section 377 exposes LGBT persons to harassment and abuse at the hands of the executive/law enforcement agencies based purely on their sexual orientation and irrespective of their engaging in “carnal intercourse against the order of nature.”

XX.For that this Hon'ble Court in *NALSA v. Union of India* [(2014) 5 SCC 438] noted that even though Section 377 IPC was associated with specific sexual acts, it highlighted certain identities and exposed them to harassment and abuse. [para 19]

YY.For that the enforcement of public or majoritarian morality against a minority violates the rule of law which is an integral facet of Article 14 of the Constitution of India.

ZZ.For that this Hon'ble Court in *NALSA v. Union of India* [(2014) 5 SCC 438] observed that it was a moral failure on the part of the society where it was not willing to recognize differences which are in fact merely natural benign variations of the human experience. [paras 1 & 118]

AAA.For that the historical misuse and abuse of Section 377 IPC has been acknowledged by this Hon'ble Court in *NALSA v. Union of India* [(2014) 5 SCC 438] in the context of transgender persons.

BBB.For that numerous accounts and affidavits by LGBT persons attest to torture, harassment and discrimination at the hands of state agencies including the police on account of Section 377 IPC.

CCC.For that equality under the Indian Constitution goes beyond preventing discrimination to recognizing the historical discrimination suffered by social groups because of their

characteristics and taking steps to remedy such discrimination.

The criminalization of LGBT persons under Section 377 fails to meet the test of reasonable classification | Section 377 has no constitutionally valid objective

DDD.For that Section 377 has no discernible objective other than the stigmatization of, and discrimination against LGBT persons.

EEE.For that this Hon'ble Court has held that if there is nothing on the face of the law or the surrounding circumstances to justify the basis of the classification, then it cannot be presumed there is some undisclosed or unknown reason for a hostile or discriminating law. Rather, the law would be liable to be struck down.

FFF.For that Section 377 serves no constitutionally valid objective or legitimate state interest whatsoever.

GGG.For that even a pre-constitutional law must have a demonstrable constitutionally valid objective to be upheld after the coming into force of the Constitution.

HHH.For that to withstand the test of Article 14 the objective of a statute must be in tune with constitutional morality and not an assumed public or majoritarian morality.

III. For that this Hon'ble Court has held in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, [(2009) 6 SCC 498] that the role of this Hon'ble Court mandates taking a perspective on individual rights at a higher pedestal than majoritarian aspirations and to that extent the Court plays a counter-majoritarian role. Public opinion may run counter to the rule of law and constitutionalism.

JJJ. For that after the coming into force of the Protection of Children from Sexual Offences Act, 2013 and the amendment of Sections 375 – 376E of the Indian Penal Code, 1860 vide the Criminal Law (Amendment) Act, 2013; Section 377 IPC is not required on the statute books for either the criminalization of child sexual abuse nor for sexual offences other than penile rape for which it may have been invoked prior to these Acts.

There is no intelligible differentia between LGBT persons and non-LGBT persons

KKK. For that Section 377 violates Article 14 insofar as the classification thereunder is arbitrary and unreasonable inasmuch as it seeks to criminalize a section of society based merely on its personal or social characteristics.

LLL. For that even otherwise, there is no constitutionally valid, intelligible differentia between LGBT and non-LGBT persons.

MMM.For that the only ostensible ground to differentiate between LGBT and non-LGBT persons is on the basis of the sex of their sexual partner. Such a class created only on the grounds of sex *prima facie* runs afoul of Article 15 of the Constitution of India.

NNN.For that Article 15 expressly prohibits discrimination against citizens only on the basis of sex.

OOO.For that to be valid under Article 14, a classification must also be valid under Article 15 inasmuch as Articles 14, 15 and 16 together form the equality code under the Constitution, wherein Article 14 is the genus and Article 15 is the specie.

PPP.For that Section 377 is as unconstitutional as any other law that would seek to criminalize sexual conduct between persons based only on the religion, caste, race, or place of birth of a sexual partner.

Section 377 fails to meet the rational nexus test

QQQ.For that there can be no rational nexus if both the grounds of classification and the objective of the Act are unconstitutional.

Violation of Article 15

RRR.For that Section 377 discriminates against citizens only on the grounds of sex of their sexual partner and hence violates Article 15 of the Constitution of India.

SSS.For that 'sex' under Article 15 of the Constitution includes 'sexual orientation'; and hence the prohibition against discrimination on the grounds of sex under Article 15(1) includes the prohibition of discrimination on the grounds of sexual orientation.

TTT.For that sexual orientation is as inherent and immutable a characteristic as the other grounds of non-discrimination which are expressly laid down in Article 15(1).

UUU.For that Articles 14, 15 and 16 together form the equality code under the Constitution, wherein Article 14 is the genus and Article 15 is the specie.

VVV.For that this Hon'ble Court ought to interpret the Constitution in a manner which would enable citizens to enjoy rights guaranteed by it in the fullest measure, and not interpret rights so as to whittle them down.

Violation of Article 19

WWW.For that Article 19(1)(a) protects the right of freedom of speech and expression of all citizens, including the expression of sexual orientation.

XXX.For that Section 377 has a chilling effect on a person's ability to be open and speak freely about his or her sexual orientation, and to create artistic or literary works that capture the experiences of LGBT persons, which is an infringement of the freedom of speech and expression.

YYY.For that Section 377 infringes the Petitioners' right to form professional, social and other associations that are the norm for all other communities and that are essential for a sense of social, financial, psychological and political well-being.

Violation of Article 16

ZZZ.For that Article 16(1) of the Constitution of India grants to every citizen, equality of opportunity in matters relating to employment or appointment to any office under the State.

AAAA.For that this Hon'ble Court has described public employment opportunity as a natural wealth in which all citizens are entitled to an equal share.

BBBB.For that Section 377 IPC effectively prevents LGBT persons from seeking employment and appointment under the State, and thereby infringes their Fundamental Rights under Article 16 of the Constitution.

CCCC.For that this Hon'ble Court had noted in *Supreme Court Advocates On Record Association & Anr. v. Union of India*

[Order dated 16.10.2015 in W.P. (C) No. 13/2015] the extent to which Section 377 IPC had exposed LGBT persons to stigmatization. Insofar as this Hon'ble Court observed that in the present times it was unlikely that the Respondent would appoint any LGBT person as a judge of this Hon'ble Court or any of the High Courts.

DDDD.For that, moreover, Section 377 IPC by criminalising conduct that is a core part of the identity and existence of LGBT persons creates an imminent threat of exposing them to automatic suspension from service and disciplinary proceedings.

EEEE.For that the All India Services (Discipline and Appeal) Rules, 1969 [Rule 3] and the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [Rule 10] provide for automatic suspension from service upon a public servant's being detained in official custody for more than 48 hours on a criminal charge or on conviction. Moreover, even where a public servant is not arrested and is being merely investigated, he may be suspended at the discretion of the Government if the offence involves "moral turpitude."

FFFF.For that Section 377 IPC is a non-bailable offence punishable with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

GGGG.For that as a result of Section 377 IPC, LGBT persons are discriminated against in matters relating to employment and appointment under the State based solely on the gender of their sexual partner, which is a prohibited ground for discrimination under Article 16(2) of the Constitution of India.

HHHH.For that Article 14, 15 and 16 form part of the equality code under the Constitution wherein Article 14 is the genus and Article 16 is the specie.

Pre-constitutional laws carry no presumption of constitutionality

IIII.For that there is no presumption of constitutionality of pre-Constitutional statutes, rather, a pre-Constitutional statute becomes amenable to the test of fundamental rights upon the coming into force of the Constitution.

Principle of updating construction

JJJJ.For that this Hon'ble Court may take into consideration the legislative history of an impugned statute or provision for the purposes of determining the constitutionality of an impugned statute. In the cases where the impugned statute or provision is based on a colonial statute and said colonial statute has been repealed, this Hon'ble Court has considered the same

as sufficient cause for striking down the impugned Indian legislation.

KKKK.For that the Constitution is a living document and its ongoing interpretation accounts for the social changes in the national polity, and should not be restricted to the state of law at the time of commencement of the Constitution.

LLLL.For that the Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and therefore a purposive rather than a strict literal approach should be adopted in its interpretation. A constitutional provision must be construed in a wide and liberal manner so as to take account of changing conditions and purposes so that it does not get fossilized but rather endures.

MMMM.For that same-sex relations have been accepted and the bar of criminality lifted in South Africa, Nepal, Fiji, Mexico, China, Nepal, Hong Kong, Japan, Turkey, South Korea, Thailand, Vietnam, the UK and the USA.

NNNN.For that Constitutional courts must keep in mind their own experience, international treaties and covenants, and the doctrine of flexibility.

Judicial review and the duty of this Court to protect Fundamental Rights

OOOO. For that judicial review is part of the basic structure of the Constitution of India; and the question of the constitutionality of Section 377 IPC cannot be left to Parliament to decide.

PPPP. For that in adjudicating the constitutional validity of statutes, this Hon'ble Court determines whether the laws made by the Legislature are in conformity with the provisions of the Constitution.

QQQQ. For that the role of the judiciary is the protection of fundamental rights which is essential to promote a just and tolerant society.

RRRR. For that the purpose of Part III of the Constitution is to withdraw certain subjects from the area of political controversy and to place them beyond the reach of majorities.

Article 32

SSSS. For that the right to approach this Hon'ble Court seeking redress for violation of fundamental rights is in itself a fundamental right protected by the Constitution of India.

TTTT.For that Article 32 enables persons to approach this Hon'ble Court even in the case of a threatened violation of Fundamental Rights and they need not await the actual deprivation of their life or liberty, particularly in the case of criminal statute.

UUUU.For that Dr. Ambedkar while addressing the Constituent Assembly said of Article 32 of the Constitution that - "If I was asked to name any particular article in this Constitution as the most important – an article without which the Constitution would be a nullity - I could not refer to any other article except this one. It is the very soul of the Constitution and the heart of it."

International covenants

VVVV.Article 7 of the Universal Declaration of Human Rights lays down the principle of equality and bars discrimination. Article 12 of the UDHR recognizes the right of a person to be free from arbitrary and unlawful interference vis-à-vis his privacy, home and reputation among others.

WWWW.Article 9 of the International Covenant on Civil & Political Rights recognizes the right to liberty and security of every person. Article 17 of the ICCPR is in pari material to Article 12 of the UDHR and recognizes the right of a person to be free from arbitrary and unlawful interference vis-à-vis

his privacy, home and reputation among others. Article 19 of the ICCPR recognizes the right of every person to the freedom of expression.

XXXX. For that this Hon'ble Court has held that international conventions insofar as they are not inconsistent with the fundamental rights and are in harmony with its spirit, may be relied upon to promote the object of the constitutional guarantee.

YYYY. For that the Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles) were adopted in 2007 as a coherent and comprehensive identification of the obligation of States to respect, protect and fulfil the human rights of all persons regardless of their sexual orientation or gender identity by a group of twenty-five internationally renowned jurists which included one former UN High Commissioner for Human Rights, 13 current or former UN Human Rights Special Mechanism Office Holders or Treaty Body Members, two serving Judges on domestic courts and a number of academics and activists.

ZZZZ. For that this Hon'ble Court has already recognized Yogyakarta Principles and held that they must be recognized

and followed to the extent that they are not inconsistent with Part III of the Constitution.

27.The Petitioners have not filed any other petition either before this Hon'ble Court or any other High Court challenging the constitutional validity of Section 377 IPC.

28.Any other ground which this Hon'ble Court may allow the Petitioners to plead at the time of arguments.

29.The present Petition is filed bona fide and in the interests of justice.

PRAYER

In light of the above mentioned facts and circumstances, it is prayed that that this Hon'ble Court may be pleased to pass:

- A. Writ of mandamus declaring the "Right to Sexuality," "Right to Sexual Autonomy" and the "Right to Choice of a Sexual Partner" to be part of the Right to Life guaranteed under Article 21 of the Constitution of India; and
- B. Writ of mandamus declaring Section 377 of the Indian Penal Code, 1860 to be unconstitutional; and/or
- C. Writ of mandamus declaring that to Section 377 IPC does not apply to consensual sexual acts of adults in private; and/or

D. And pass any other order this honorable court may deem fit
and unnecessary in the interests of justice.

DRAWN BY:
Ms. Arundhati Katju, Advocate and
Mr. Himanshu Suman, Advocate

FILED BY

(E.C. AGRAWALA)
ADVOCATE FOR THE PETITIONERS

NEW DELHI
DRAWN ON: 30.3.2016
FILED ON: 27.4.2016

LIST OF DATES

- 06.12.2001 Naz Foundation v. Govt. of NCT of Delhi & Ors. [W.P. (C) No. 7455/2001] was filed and registered before the Delhi High Court. The said petition, inter alia, challenged the constitutionality of Section 377 IPC.
- 02.09.2004 A Division Bench of the Delhi High Court dismissed Naz Foundation v. Govt. of NCT of Delhi & Ors. [W.P. (C) No. 7455/2001] on the ground of maintainability.
- 03.11.2004 Review Petition No. 384/2004 against the order dated 02.09.2004 was dismissed by the Delhi High Court.
- 03.02.2006 This Hon'ble Court set aside the order of dismissal and remanded the matter i.e. Naz Foundation v. Govt. of NCT of Delhi & Ors. [Civil Appeal No. 952/2006] back to the Delhi High Court for reconsideration.
- 02.07.2009 Delhi High Court allowed Naz Foundation v. Govt. of NCT of Delhi & Ors. [W.P. (C) No. 7455/2001] by declaring that Section 377 of the Indian Penal Code, 1860 is violative of Articles 14, 15 and 21 of the

Constitution insofar as it criminalizes consensual sexual acts of adults in private.

- 09.07.2009 This Hon'ble Court issued notice on a petition being Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors. [SLP (C) CC No. 9255/2009], which challenged the judgment of the Delhi High Court dated 02.07.2009 passed in the case of Naz Foundation.
- 11.12.2013 Vide judgment dated 11.12.2013, this Hon'ble Court allowed the appeal in the case of Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors. [Civil Appeal No. 10972/2013] and held that Section 377 of the Indian Penal Code, 1860 does not suffer from the vice of unconstitutionality.
- 28.01.2014 This Hon'ble Court dismissed the review petition filed by Naz Foundation being Review Petition (C) No. 41-55/2014 titled as Naz Foundation (India) Trust v. Suresh Kumar Koushal & Ors. challenging the order of this Hon'ble Court dated 11.12.2013.
- 22.04.2014 Pursuant to the dismissal of the Review Petition, Naz Foundation filed a Curative Petition being Curative Petition (Civil) No. 88-102/2014 titled as Naz Foundation Trust v. Suresh Kumar Koushal & Anr, impugning the judgment and order[s] dated

11.12.2013 and 28.01.2014. Vide order dated 22.04.2014, this Hon'ble Court directed that the Curative Petition[s] be listed before the Court.

02.02.2016 Vide order dated 02.02.2016, this Hon'ble Court directed that Curative Petition (Civil) No. 88-119/2014 titled as Naz Foundation Trust v. Suresh Kumar Koushal & Anr., may be placed before a Constitution Bench of this Hon'ble Court as the issues involved are of considerable importance and public interest, and some of the issues have constitutional dimensions.

27.04.2016 The present petition under Article 32 of the Constitution of India is filed challenging the constitutional validity of Section 377 IPC, by certain lesbian, gay and bisexual citizens of the country, whose fundamental rights have been jeopardized by the said provision. It is pertinent to mention that each of the Petitioners are well-accomplished and respected citizens, who have made a mark for themselves in professional pursuits.

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**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
Crl. M.P. No. _____ of 2016**

IN

WRIT PETITION (CRIMINAL) NO. _____ OF 2016

IN THE MATTER OF:-

Navtej Singh Johar & Ors. Petitioners

Versus

Union of India Respondent

**AN APPLICATION FOR EXEMPTION FROM FILING OFFICIAL
TRANSLATION**

TO,

THE HON'BLE CHIEF JUSTICE AND
HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is filing the accompanying Writ Petition under Article 32 of the Constitution of India challenging the constitutional validity of Section 377 IPC. The Petitioners have not filed any other petition either before this Hon'ble Court or any other High Court challenging the constitutional validity of Section 377 IPC.
2. The Petitioners pray that the averments made in the Writ Petition may be read as part and parcel of this application and the Petitioners crave leave of this Hon'ble Court to refer to and

to rely upon the averments made in the Writ Petition which has not been reproduced herein for the sake of brevity.

3. The Petitioners respectfully submit that the Annexure P-6, which were originally in Hindi and had been translated by the local counsel and the Petitioners is therefore praying for the exemption from filing official translation of the Annexures P-6.

PRAYER

It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to: -

- a) Exempt the Petitioners from filing official translation of Annexure P-6;
- b) pass such further order/orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS IS AS DUTY BOUND, SHALL EVER PRAY.

FILED BY:

(E.C. AGRAWALA)
ADVOCATE FOR THE PETITIONERS

Filed on: 27.4.2016
New Delhi

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. _____ OF 2016
(Under Article 32 of the Constitution of India)

IN THE MATTER OF: -

Navtej Singh Johar & Ors. ... Petitioners

Versus

Union of India ... Respondent

WITH
I.A. NO. _____ OF 2016
APPLICATION FOR EXEMPTION FROM FILING OFFICIAL
TRANSLATION

PAPER – BOOK
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ADVOCATE FOR THE PETITIONERS : E.C. AGRAWALA

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

CRL. M.P. NO. _____ OF 2016

IN

WRIT PETITION (CRIMINAL) NO. 76 OF 2016

(Under Article 32 of the Constitution of India)

IN THE MATTER OF: -

Navtej Singh Johar & Ors.

... Petitioners

Versus

Union of India

... Respondent

**APPLICATION FOR PERMISSION TO FILE ADDITIONAL
DOCUMENTS**

VOLUME-II

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ADVOCATE FOR THE PETITIONERS : E.C. AGRAWALA

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

CRL. M.P. NO. _____ OF 2016

IN

WRIT PETITION (CRIMINAL) NO. 76 OF 2016

(Under Article 32 of the Constitution of India)

IN THE MATTER OF: -

Navtej Singh Johar & Ors.

... Petitioners

Versus

Union of India

... Respondent

**APPLICATION FOR PERMISSION TO FILE ADDITIONAL
DOCUMENTS**

VOLUME-III

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PAPER – BOOK

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ADVOCATE FOR THE PETITIONERS : E.C. AGRAWALA

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**IN THE SUPREME COURT OF INDIA
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Crl. M.P. No. _____ of 2016**

IN

WRIT PETITION (CRIMINAL) NO. 76 OF 2016

IN THE MATTER OF:-

Navtej Singh Johar & Ors. Petitioners

Versus

Union of India Respondent

**AN APPLICATION FOR PERMISSION TO FILE ADDITIONAL
DOCUMENTS**

TO,

THE HON'BLE CHIEF JUSTICE AND
HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

1. The Petitioner has filed the abovesaid Writ Petition under Article 32 of the Constitution of India challenging the constitutional validity of Section 377 IPC. The Petitioners have not filed any other petition either before this Hon'ble Court or any other High Court challenging the constitutional validity of Section 377 IPC.
2. The Petitioners pray that the averments made in the Writ Petition may be read as part and parcel of this application and the Petitioners crave leave of this Hon'ble Court to refer to and to rely upon the averments made in the Writ Petition which has not been reproduced herein for the sake of brevity.

3. The Petitioners are placing on record the following documents:-

- (i) True typed copy of the various articles written about Petitioner No.1 Sh. Navtej Singh Johar and his body of work.
- (ii) True typed copy of the various articles authored by Petitioner No.2 Sh. Sunil Mehra.
- (iii) True typed copy of the various articles authored by Petitioner No.3 Ritu Dalmia.
- (iv) True typed copy of the various articles authored by Petitioner No. 4 Sh. Aman Nath and his body of work.
- (v) True typed copy of the various articles authored by Petitioner No. 4 Sh. Aman Nath.

It is submitted that the said documents are necessary for proper adjudication of the present matter. It is submitted that the Petitioner herein seeks leave of this Hon'ble Court to place the said documents on record.

- 4. That the balance of convenience lies in the favour of the Petitioner and in the interest of justice, equity and good conscience the prayer may be granted.
- 5. The present application is being filed bonafide and in the interest of justice.

PRAYER

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

- i) permit the Petitioner to file additional documents in the present matter as Volume-III and IV; and
- ii) Pass such other or further orders as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case.

FILED BY

(E. C. AGRAWALA)
ADVOCATE FOR THE PETITIONER

Filed on:
New Delhi