



5. Dr. Devendra Keshav Shirole  
Aged about 52 years  
Son Of Keshav Shirole  
Residing at 432, Shukrawar Peth,  
Shivaji Road,  
Pune, 411002 ...Applicant No. 5
6. Arvind Mukund Panchanadikar  
Aged about 44 years  
Son of Mukund Panchanadikar  
41 Shantala Manisha society,  
Karve Nagar, Pune-52 ...Applicant No. 6
7. Dr. Bhooshan Dattatraya Shukla  
Aged about 37 years  
Son of Dattatraya Shukla  
B-804, Padmavilas Apartments  
Survey no. 131/1,  
Pashan - Baner Link Road  
Pune- 411021 ...Applicant No. 7
8. Dr. Kaustubh Ashok Joag  
Aged about 32 years  
Son of Ashok Joag  
Residing at C 6 , Flat No 5,  
Sarita Nagari Phase 2,  
Sinhagad Road,  
Pune 411030 ...Applicant No. 8
9. Dr. Raman Shivkumar Khosla  
Aged about 48 years  
Son of Shivkumar Khosla  
Residing at 805  
DSK Vasant Vaibhav Apts,  
Lakaki Road, Model Colony,  
Pune 411016 ...Applicant No. 9
10. Dr. Subir Kumar Hajra Chaudhuri  
Aged about 47 years  
Son of Dilip Hajra Chaudhuri  
Residing at 39 B, Creek Row,  
Kolkata 700014 ...Applicant No. 10
11. Dr. Debashish Chatterjee  
Aged about 50 years  
Son of Amalesh Chatterjee  
Residing at 199 Block A,  
Bangur Avenue,  
Kolkata 700055 ...Applicant No. 11
12. Sarbani Das Roy  
Aged about 45 years  
Daughter of Upal Chatterjee  
Residing at 193A/2,  
Picnic Garden Road,  
Flat 8; Kolkata 7000039 ...Applicant No. 12

13. Jolly Laha  
Aged about 58 years  
Daughter of Madhusudan Laha  
Residing at 20B,  
Deshapriya Park Road,  
Kolkata 700026

...Applicant No. 13

TO,

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

THE HUMBLE APPLICATION  
OF THE APPLICANTS ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. The Applicants abovenamed have filed the present application seeking impleadment seeking the permission of this Hon'ble Court to be impleaded in the Special Leave Petition (C) No. 15436/2009. It is submitted that the said Special Leave Petition impugns the judgment passed by the Hon'ble High Court of Delhi in W.P. (C) No. 7455/2001 which declared Section 377 of the Indian Penal Code, 1860 as unconstitutional and violative of Articles 14, 15 and 21 of the Constitution of India, insofar as it criminalized consensual, homosexual sexual activity between adults in private.
2. That on 9.7.2009 this Hon'ble Court was pleased to issue notice in the aforementioned Special Leave Petition and on 20.7.2009 this Hon'ble Court was pleased to direct that this matter be posted after eight weeks. A true copy of the order dated 9.7.2009 passed by this Hon'ble Court in SLP (C) No. 15436/2009 is annexed herewith and marked as **Annexure A**. A true copy of the order dated 20.07.2009 2009 passed by this Hon'ble Court in SLP (C) No. 15436/2009 is annexed herewith and marked as **Annexure B**.

3. The Applicants herein are mental health professionals who have been practising as psychiatrists, clinical psychologists, behavioural psychologists in the field of mental health in reputed medical institutions throughout India. The Applicants submit that sexual orientation is an immutable characteristic and is present at birth. Much like being left handed, a homosexual orientation is something that individuals are born with.
- 4(i) The Applicant No 1 is a reputed Professor of Psychiatry at the National Institute of Mental Health And Neuro Sciences (NIMHANS) Bangalore, a deemed University that functions under the authority of the Ministry of Health and Family Welfare, Government of India. The Applicant No. 1 has been a faculty member at NIMHANS in the Department of Psychiatry for twenty five years. The Applicant No 1 is a highly qualified and well-recognised professional in his field. The Applicant No. 1's qualifications include an MBBS from the Maulana Azad Medical College, University of Delhi , MD in Psychological Medicine and Diploma in Psychological Medicine from NIMHANS. Bangalore University.
- (ii) The Applicant No. 1 has published widely in a range of professional journals of internationals standing in the field of psychiatry. The Applicant No. 1 has in the course of his professional career of over twenty five years presented and participated in numerous professional conferences. A list of Applicant No 1's publications and presentations is annexed herewith as **Annexure C**.
- (iii) As part of his clinical practice the Applicant No. 1 is providing

professional assistance to numerous clients including clients who happen to be Lesbian, Gay, Bisexual and Transgender (hereinafter referred to as LGBT) who approach the Department of Psychiatry. In addition, the Applicant No 1 has provided consultations to referrals from other units of NIMHANS. The Applicant No. 1 has also provided numerous professional consultations with family members of LGBT persons. The Applicant No. 1 is also currently the Guide of a doctoral dissertation on establishing the legitimacy of homosexuality and addressing egodystonicity as internalised homophobia, the protocol of which has been cleared by NIMHAN's Ethics Committee.

- (iv) The Applicant No. 1's professional consultations have related to:
- a. establishing the client's sexual orientation,
  - b. assessing the client's personal and family issues
  - c. assisting in family psychoeducation and reconciliation,
  - d. correcting misconceptions of clients and establishing their health and well-being.
  - e. Correcting misconceptions of family members of LGBT persons with respect to homosexuality being a natural part of human sexuality.

Over extended sessions with these LGBT patients the Applicant No. 1 has become aware of the level of mental distress caused by the unscientific and irrational perspective that homosexuality is a mental illness. The Applicant No. 1 has provided professional inputs to raise his clients awareness and knowledge

that it is the social stigma attached to homosexuality which needs redressal and not the client's own sexual orientation.

- (v) The Applicant No. 1 based on his wide and thorough reading of the latest scientific and medical literature, as well as his own clinical experience, is of the firm opinion that homosexuality is not a disorder or pathology, but a normal and natural expression of human sexuality and the Applicant No. 1 has publicly advocated this opinion. The reason the Applicant No. 1 has felt impelled to publicly advocate the rights of Lesbian, Gay, Bisexual and Transgender persons is because of the level of social stigma and irrational prejudice faced by this group. This according to the Applicant No. 1 is totally at odds with the scientific position of homosexuality being a natural variant of human sexuality. The Applicant No. 1 was further of the opinion that the criminalisation of homosexuality was a cause of great psychological distress in many of his patients. To take forward public advocacy on the decriminalisation of homosexuality, the Applicant No. 1 has become a Board Member of a Sangama a human rights organisation in Bangalore that advocates the rights of sexual minorities. The Applicant No. 1's public advocacy work has been recognised and the Applicant No 1 has been invited as an expert to share his conclusions based on both research and clinical experience in a number of public fora:

- a. Presentation titled 'Homosexuality is not an mental health problem', at Seminar on Gay Rights, National Law School of India University, Bangalore , 1997
- b. Workshop for volunteers of Swabhava, a Bangalore based

- non-profit NGO that run telephone helplines for Lesbian, Gay, Bisexual and Transgender persons, January, 2000.
- c. Workshop on Mental Health and Sexuality at Good As You, Bangalore, a support group for Lesbian, Gay, Bisexual and Transgender persons, November 30<sup>th</sup>, 2000.
  - d. Presentation on Sexuality and LGBT Persons in India at Seminar titled "Lessons for India: Freedom of Nepalese Sexuality Minorities" at the Town Hall, Bangalore, November 2008.
  - e. Workshop for the Sexual Health Intervention Project run by the Association for the Promotion of Social Action (APSA), a Bangalore-based child rights organisation on dealing with street youth and their sexuality, 2009.
  - f. Seminar on "Perspective of Mental sciences on Sexual Minorities", organised by Sangama at the Indian Medical Association Hall, Bangalore, August 17, 2010.
- 5(1) The Applicant No. 2 is a senior psychiatrist, practicing in New Delhi for the last twenty-four years, and currently heads the psychiatric services at the Sitaram Bhartia Institute of Science and Research, New Delhi, a leading multispeciality hospital in New Delhi. Applicant No. 2 has been involved in clinical practice, research and teaching for the last two decades, and is today regarded as one of the leading psychiatrists of the city.
- (ii) The Applicant No. 2 is an MBBS, and an MD in Psychiatry, from the All India Institute of Medical Sciences, New Delhi. Applicant No. 2 is a Fellow of the Indian Psychiatric Society, a member of the

Indian Medical Association, the World Psychiatric Association, the Indian Association of Private Psychiatry, the Indian Association of Biological Psychiatry, the Indian Association of Social Psychiatry, a corresponding member of the American Psychiatric Association and the International Board Member of the World Association of Psychosocial Rehabilitation,

(iii) The Applicant No. 2 has published a number of research papers, has spoken at many conferences, and has organised many continuing medical education programmes. The Applicant No. 2 is the listowner, and moderator of the mailing list Indian\_Psychiatry@yahoogroups.com., an internet discussion group for psychiatrists, which is India's first psychiatry e-group, started in 2001, and is very active till today.

(iv) The Applicant No. 2, in his practice, has dealt with many patients with issues of homosexuality, and has helped LGBT persons become more comfortable with their sexuality. A list of Applicant No 2's publications and presentations is annexed herewith as **Annexure D.**

6(i). The Applicant No. 3 is a reputed psychiatrist, presently a consultant at Ruby Hall Clinic, Pune. The Applicant No.3's professional qualifications include:

- a. M. R. C. Psych, Royal College of Psychiatrists, London
- b. M.D. (Psychiatry), University of Mumbai (Gold Medallist)

- c. Diploma in Psychological Medicine, University of Mumbai
  - d. M.B.B.S., Seth G.S. Medical College and K.E.M. Hospital, Mumbai.
- (ii) The Applicant No. 3 is a consultant to the Department of Mental Health and Substance Dependence, World Health Organisation, Geneva. The Applicant No. 3 has been a Consultant Psychiatrist (May 1999- April 2000) to the Maharashtra Institute Mental Health, Sasson Hospital Campus, Pune which is the Maharashtra Government's state level apex mental health institute. The Applicant No. 3 is a member of the Royal College of Psychiatrists, UK and registered with the Maharashtra Medical Council, Mumbai, India.
- (iii) The Applicant No. 3 is on the International Advisory Board, International Journal of Social Psychiatry since January 2002. The Journal is a premier international peer reviewed publication in the field of social psychiatry, published quarterly by SAGE Publications, London. The Applicant No. 3 has also been the Co-Editor, Journal of Mental Health, a multidisciplinary peer reviewed journal dealing with Mental Health (October 1997 to April 1999).
- (iv) The Applicant No.3 has taught undergraduate medical students as well as postgraduate psychiatry residents at the Maharashtra Institute of Mental Health, Pune. The Applicant No.3 works with patients who are distressed by their homosexuality by helping him/her accept their sexuality The Applicant No. 3 has a vast

number of research publications, a list of which is annexed herewith as **Annexure E**.

- 7(i). The Applicant No. 4 is an internationally renowned psychiatrist with a special interest in global mental health. The Applicant No. 4 is currently an International Professor in Global Mental Health, and Senior Clinical Research Fellow in Tropical Medicine at the Centre for Global Mental Health, London School of Hygiene and Tropical Medicine, which focuses on research, teaching and training in policy, prevention, treatment and care in issues related to mental health.
- (ii) The Applicant No. 4 has made significant contributions to the field of mental health. The Applicant No. 4 co-founded an NGO that works on mental health issues in Goa called Sangath that won the Macarthur Foundation's International Prize in 2008. The Applicant No. 4 is an editor of the influential Lancet series on Global Health (2007). The Applicant No. 4 has been a leader in setting up a new movement for global mental health.
- (iii) The Applicant No. 4 is the author of the book, "Where There is No Psychiatrist", a mental health care manual for non specialist health care workers, which is widely used in developing countries. The Applicant No. 4 is involve with research related to social and cultural determinants, epidimiology, and treatment of mental disorders in community and primary health care settings in India and other developing countries. The Applicant No. 4 has a vast number of research publications, a selected list of which is annexed

herewith as **Annexure F**.

- 8(i). The Applicant No. 5 is the head of Department, Department of Psychiatry at the Kamala Nehru Hospital, Pune Municipal Corporation, Pune. The applicant is a well-recognised psychiatrist and the Member Secretary, CPS (College of Physicians and Surgeons of Bombay) Selection Committee, Pune Municipal Corporation. The Applicant No.5 is the former President of the Indian Medical Association, Maharashtra state and the former President of the Pune Psychiatric Association. The Applicant No.5 is a highly qualified and experienced psychiatrist holding a MBBS, DPM, DPH, and LGS and has 25 years of experience in the field.
- (ii) The Applicant No.5 has professionally assisted individuals of homosexual orientation in coming to terms with their sexuality and helping them become comfortable with it.
9. The Applicant No.6 is a highly qualified psychiatrist with 14 years of professional experience, and is attached with to the K.E.M. Hospital, Pune. The Applicant No.6 is an elected member of the Indian Psychiatric Society and is a former Executive Member of the Pune Psychiatrists Association. The Applicant No.7 is a reputed psychiatrist and a former Lecturer in Psychiatry at the Maharashtra Institute of Mental Health, Pune. The Applicant No.8 is a Consultant Psychiatrist with Inlaks and Budhrani Hospital, Pune and a Visiting Consultant Psychiatrist at Joshi Hospital and Ratna Hospital, Pune. The Applicant No.8 is an Associate Member of the Indian Psychiatry

Society and a Life Member of the Bombay Psychiatry Society. The Applicant No.9 is an experienced psychiatrist and psychotherapist with over 20 years experience. The Applicant No.10 is a reputed psychiatrist based with the Institute of Psychiatry, Kolkata. The Applicant No. 11 is a psychiatrist with a private practice in Kolkata and is a consultant to a number of organisations that work on mental health issues in Kolkata. The Applicant No. 12 is a counselor and is the Honorary Secretary of Ishwar Sankalpa, a non-profit organization in Kolkata founded by professionals from the field of psychological well being. The Applicant No. 13 is a psychotherapist with over 30 years experience associated with Samikshani, a Kolkata based NGO dealing with mental health. A table containing the details of the professional qualifications and experience of Applicants Nos. 6-13 in dealing with LGBT issues is annexed herewith as **Annexure G**.

10. The Applicants submit that they are all reputed mental health professionals dealing with a diversity of mental health issues which they have come across in their practice. As psychologists, psychiatrists and reputed academics in the field of mental health, the Applicants share a wide range of experiences in dealing with patients who may be Lesbian, Gay, Bisexual or Transgender and hence have had considerable expertise in addressing the mental health concerns of Lesbian, Gay, Bisexual and Transgender Persons.
11. The Applicants submit that sexual intimacy is a sensitive, aspect of human relationships. It is central to family life, community, individual well being and the development of the human

personality. The applicants further see to submit that mental health professionals have for several decades recognized that sexual intimacy is a core aspect of human relationships and it is very important for individuals to lead productive and psychologically healthy lives. The Applicants submit that the fact that Section 377 IPC even applies to adult consensual sexual relationships means that the State seeks to deny the very opportunity to participate in these profound aspects of the human experience to a particular class of persons namely Lesbian, Gay, Bisexual and Transgender (LGBT) persons.

12. The Applicants further submit that the existence of Section 377 IPC and its applicability to consensual adult homosexual relations has created a social perception of homosexuality as illegal and abnormal. Thus though homosexuality is a normal variant of human sexuality, it is perceived and treated as abnormal. This larger public climate of intolerance fostered by the law encroaches on the individual rights of LGBT persons and causes severe mental distress and loss of self-esteem. Section 377 IPC creates immense pressure on homosexuals which severely affects the ability of the homosexual to live his/her normal lives. Thus the Applicants submit that, the criminalization of homosexuality by Section 377 contributes to social isolation of homosexuals and leads to harassment of homosexuals. The presence of Section 377 results in homosexuals being forced to live a dual life, causing significant anguish and leading to a range of mental health problems.

13. The Applicants submit that in the course of their professional lives, the Applicants have interacted with hundreds of LGBT persons in India. Many of them are well known successful people, who are forced to live in the closet because of Section 377 IPC. This situation results in many men forcibly getting married thereby ruining lives of their wives, as they continue to have emotional and sexual relationships with men. Those that resist, lead double lives or lonely lives, thereby predisposing them to depression & even suicide. The Applicants submit that Section 377 IPC prior to the impugned judgment has resulted in marginalisation and stigmatisation of LGBT persons and caused enormous mental distress stress to Lesbian Gay Bisexual and Transgender individuals thereby placing them at greater risk of psychiatric morbidity and even fatal outcomes like suicide.
14. The Applicants submit that it is the scientific consensus, that homosexual or bisexual orientation per se is not a mental disorder. The Applicants submit that the entire international mental health fraternity recognises and follows the diagnostic manual of the American Psychiatric Association (APA) which is the Diagnostic and Statistics Manual IV (DSM IV) and the World Health Organisation (WHO) classification system International Classification of Diseases (ICD-10). Both these classification systems unequivocally posit that homosexuality is not a disease. The conclusion of both the APA and the WHO was based on rigorous studies and hard scientific evidence which proved that the link between homosexuality and mental illness does not withstand rigorous scientific testing. It is in fact based on rigorous scientific evidence that the APA in 1973

removed homosexuality from its list of mental disorders. The rationale put forward by the APA was that for a mental or psychiatric condition to be considered a psychiatric disorder, it must either regularly cause subjective distress, or regularly be associated with some generalized impairment in social effectiveness or functioning. In the considered opinion of the APA, homosexuality, per se, does not meet the requirements to be classified as a psychiatric disorder. A true copy of the statement by the American Psychiatric Association, Homosexuality and Sexual Orientation Disturbance: Proposed Change in DSM- II is annexed herewith and marked as **Annexure H**. A similar process of intense deliberation based upon scientific data resulted in the WHO in 1992 dropping homosexuality per se from the list of mental disorders in ICD 10 Guidelines. The Clinical Descriptions and Diagnostic Guidelines of the ICD 10 reads: "Disorders of sexual preference are clearly differentiated from disorders of gender identity, and homosexuality in itself is no longer included as a category."

15. The Applicants also submit that sexual orientation is an immutable characteristic and is present at birth. Much like being left handed, a homosexual orientation is something that individuals are born with. According to the *amicus* brief filed in 2002 by the American Psychiatric Association before the United States Supreme Court in the case of *Lawrence v. Texas* 539 U.S. 558 (2003):

*"According to current scientific and professional understanding, however, the core feelings and attractions that form the basis for adult sexual orientation typically emerge between middle*

*childhood and early adolescence. Moreover, these patterns of sexual attraction generally arise without any prior sexual experience."*

They further argue that

*"More recent studies have reported that most gay men and most or many lesbians experience either no choice or very little choice in their sexual attraction to members of their own sex. In a study that included a community-based sample of 125 gay men and lesbians, 80% of the gay men and 62% of the lesbians said they had "no choice at all" about being gay, lesbian, or bisexual. See G.M. Herek et al., Correlates of Internalized Homophobia In a Community Sample of Lesbians and Gay Men, 2 J. Gay & Lesbian Med. Ass'n 23 (1998). The same researchers subsequently conducted a larger study that included 898 gay men and 980 lesbians. In that larger study, 85% of the gay men and 68% of the lesbians reported having either "no choice" or "very little choice" about their sexual orientation."*

It further argues that since all sexual orientation cannot be changed.

*"All major national mental health organizations have officially expressed concerns about therapies promoted to change sexual orientation. Given the strong stigma against homosexuality that remains in place in our society, however, it is perhaps not surprising that some persons who experience sexual attractions towards members of their own sex nonetheless feel that they should attempt to change their sexual orientation and seek treatment to that end...To date, however, there has been no scientifically adequate research to show that interventions aimed at changing sexual orientation*

*are effective or safe. Moreover, critical examinations of reports of the effectiveness of these therapies have highlighted numerous problems with such claims.”*

A true copy of this *amicus curiae* brief is annexed herewith and marked as **Annexure I**.

16. To summarize, the Applicants are of the opinion that Section 377 IPC should not apply to consensual adult relationships inter-alia on account of following reasons
  - a. As it would violated the mandate of equality if the State were to deny the very opportunity to participate in a profound aspect of the human experience, namely the experience of sexual intimacy to a particular class of persons, namely Lesbian, Gay, Bisexual and Transgender (LGBT) persons.
  - b. As the criminalisation of homosexuality stigmatizes homosexuals it results in social isolation, depression, mental distress and loss of self esteem for members of the LGBT community and violates the right of LGBT persons to life with dignity.
  - c. Since homosexuality per se is not a mental disorder according to established scientific evidence and is an immutable characteristic it is arbitrary to criminalise its expression.
  
17. It is for the above mentioned reasons that the Applicants welcomed the judgment of the Hon'ble High Court of Delhi in

WP(C) 7455/2001, titled Naz Foundation v. Government of the National Capital Territory of Delhi & Ors., which declared section 377 unconstitutional insofar as it applied to consensual same-sex sexual acts between adults in private. The applicants are of the firm opinion that a major source of the stigma and discrimination faced by LGBT persons in India had been rightly removed through the judgement of the Hon'ble Delhi High Court.

18. The Applicants submit that the Hon'ble Delhi High Court had correctly appraised the constitutionality of the said provision based both on the current history of use of the law as well as the latest medical and scientific opinion. In particular the applicants are in agreement with the following observations of the Hon'ble High Court:
  - a. The Hon'ble High Court correctly observed at para 67 of its judgment that there is a unanimous medical and psychiatric opinion that homosexuality is not a disease or a disorder and is just another expression of human sexuality. Homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1973 after reviewing evidence that homosexuality is not a mental disorder. In 1992, the World Health Organisation removed homosexuality from its list of mental illnesses in the International Classification of Diseases (ICD 10). Guidelines of the ICD 10 reads: "disorders of sexual preference are clearly differentiated from disorders of gender identity and homosexuality in itself is no longer included as a category."

- b. The Hon'ble High Court was also correct in para 68 of the impugned judgment, in referring to the *Amicus* brief filed by the American Psychiatric Association before the United States Supreme Court in the case of *Lawrence v. Texas* 539 U.S. 558 (2003), wherein it was stated that :

*"According to current scientific and professional understanding, however, the core feelings and attractions that form the basis for adult sexual orientation typically emerge between middle childhood and early adolescence. Moreover, these patterns of sexual attraction generally arise without any prior sexual experience."*

Thus, the Hon'ble High Court was correct in its observation at para 68 of the impugned judgment that homosexuality is not a disease or mental illness that needs to be, or can be, 'cured' or 'altered', it is just another expression of human sexuality.

- c. The studies conducted in different parts of world including India show that the criminalisation of same-sex conduct has a negative and deleterious impact on the lives and mental health of LGBT people. The Hon'ble High Court correctly observed at para 50 that "Even when the penal provisions are not enforced, they reduce gay men or women to what has been referred to as "unapprehended felons", thus entrenching stigma and encouraging discrimination in different spheres of life. Apart from misery and fear, a few of the more obvious consequences are harassment, blackmail,

extortion and discrimination.”

- d. At para 47 of the impugned judgment, it is correctly observed that “For every individual, whether homosexual or not, the sense of gender and sexual orientation of the person are so embedded in the individual that the individual carries this aspect of his or her identity wherever he or she goes. A person cannot leave behind his sense of gender or sexual orientation at home. While recognising the unique worth of each person, the Constitution does not presuppose that a holder of rights is as an isolated, lonely and abstract figure possessing a disembodied and socially disconnected self. It acknowledges that people live in their bodies, their communities, their cultures, their places and their times. The expression of sexuality requires a partner, real or imagined. It is not for the state to choose or to arrange the choice of partner, but for the partners to choose themselves.”
19. That the Delhi High Court's judgment decriminalising consensual sexual relationships between adults in private was rooted in a concrete understanding of the mental and psychological harm that Section 377 IPC inflicts on the LGBT population. The judgment was also based on an understanding of the current medical and scientific opinion on homosexuality as well as the meaning of citizenship under the Indian Constitutional order.
20. It is submitted that the Applicants were not alone in welcoming the judgment of the Delhi High Court as numerous public intellectuals, lawyers, teachers, academics, artists and politicians as well as

common people welcomed the judgment of the Delhi High Court. However the Applicants was deeply distressed to note the protests which followed the judgement of the Delhi High Court.

21. That the range of arguments raised in the Special Leave petitions challenging the judgment of the High Court of Delhi can be summarized as follows:
  - a. Homosexuality is a disease that is curable.
  - b. That consenting sexual acts between two adult members of the same sex in private is a 'perversion of sex' therefore it has to be construed as unnatural sex.
  - c. That AIDS is a punishment for 'unnatural' sexual acts.
  - d. Homosexuality may lead to uncontrolled paranoid delusions.
  - e. That homosexuality is akin to rape, murder, drug addiction.
  - f. That as a result of the judgment, more and more people will become homosexual.
  - g. The judgement will cause 'value disorientation' and torment children.
  - h. The judgment, in decriminalising homosexuality will cause an increase in cases of child sexual abuse.
  
22. The Petitioner in particular repeatedly canvassed the viewpoint that homosexuality is unnatural and that homosexuality was akin to a perversion, paranoid delusion and to rape and murder. The thread running through the argument of the petitioner is the supposed unnatural status of homosexuality and hence its grave threat to

society. The Applicants respectfully submit that this viewpoint is based on any scientific evidence. The Applicants submit that it is incorrect to link homosexuality to a perversion, paranoid delusion or to rape and murder. It is submitted that the scientific consensus among the mental health profession is that homosexuality per se is not a mental disorder but rather only a normal variant of human sexuality.

23. It is submitted that it is incorrect to visualise homosexuality as something which spreads from person to person. A person's sexual orientation appears to emerge between middle childhood and early adolescence. It has been credibly established that men and women who identify themselves as homosexual consistently report little or no choice in their sexual attractions to those of the same sex. It is submitted that people have at the core of their personality, a sexuality and that this is immutable and hence the question of the youth or any other category of persons becoming homosexuals does not arise. It is also incorrect to link homosexuality to child sexual abuse and to value disorientation in children. The Applicants are deeply concerned about the existence and extent of child sexual abuse and in their professional capacities have worked with survivors of child sexual abuse. The Applicants have also considerable expertise in child psychiatry and developmental issues concerning children. The Applicants submit that there is no connection between decriminalising same sex acts in private and the causing of so called value disorientation in children. On the contrary, in the opinion of the Applicants the impugned judgment would have a positive impact by promoting the values of

inclusiveness, tolerance of diversity and respect for difference.

24. The Applicants also submit that the specific decision of the Delhi High Court to retain the applicability of Section 377 IPC to all sexual acts between adults and those below the age of eighteen takes care of the valid concern with respect to having laws to prosecute certain forms of child sexual abuse. The applicants further submit that there is no link between the spread of HIV/AIDS and the decriminalisation of homosexuality. It is submitted that the affidavit before the Hon'ble High Court of the National AIDS Control Organisation (NACO) makes it abundantly clear that Section 377 IPC hinders HIV/AIDS prevention efforts and therefore allows HIV/AIDS to spread unimpeded. A true copy of the Affidavit filed by the National Aids Control Organisation (NACO) before the Delhi High Court in the Impugned judgement in annexed herewith and marked as **Annexure J**.
25. The Applicants are deeply disturbed by the above arguments of the Petitioners, as they are not based on any scientific evidence or principles. The Applicants are of the opinion that the petitioners have made various incorrect and false assertions of scientific 'fact' that can only serve to confuse, misguide and mislead. It is most respectfully submitted that irrationality and prejudice are at odds with the Fundamental duty of every citizen of India under Article 51A (h) of the Constitution of India which is to develop a scientific temper, humanism and the spirit of inquiry and reform.

26. The Applicants submit that the 'scientific' views presented by the Petitioners are merely ill informed opinions masquerading as fact. The Applicants, based on the latest medical and scientific literature as well as their wide experience can state with confidence that:
- a. Homosexuality is natural and normal. In other words, homosexuality is neither a disease, disorder or an error in human development.
  - b. Homosexuality is neither 'unnatural' nor 'against the order of nature' and hence Section 377, insofar as it criminalises homosexuality is not based on science, and is irrational and arbitrary.
  - c. Homosexuality is not a disease that need or can be cured or altered.
  - d. Homosexuality cannot 'spread' from one person to another. And hence the fear that homosexuality may now spread due to the impugned judgment is unscientific and irrational.
  - e. Homosexuality is innate and immutable and hence the criminalisation of homosexuality would be like criminalising persons on the basis of their skin colour, the colour of their eyes, or their race, or ethnic origin.
  - f. Sexual activity between two men, does not per se lead to the spread of HIV/AIDS. All sexual practices between men and men, and men and women may lead to the spread of HIV/AIDS if one of the persons is infected with the virus and if the parties engage in unprotected sex.

27. Furthermore, the Applicants are of the firm opinion that Section 377 IPC:
- a. Causes mental stress and anxiety in LGBT persons as it forces LGBT persons to hide their sexuality.
  - b. Causes LGBT persons to be looked at criminals, for no fault of their own.
  - c. Encourages discrimination, harassment and abuse of LGBT persons as Section 377 conveys the message that LGBT persons are criminals and are hence to be accorded less dignity than other citizens.
  - d. Encourages hatred and prejudice in society as it conveys the message that people who are different are not to be tolerated.
28. The Applicants submit that Section 377 IPC violates the right to privacy and the right to dignity embodied in Article 21 of the Constitution. The right to privacy as embodied in Article 21 and interpreted by the Hon'ble Supreme Court includes the right to form intimate attachments with those of one's choice, provided that it is done consensually and without harm. Further in the opinion of the Applicants, the formation of intimate ties include consensual sexual relationships with other adult human beings is a sensitive, key aspect of human existence and is at the core of what is meant by the right to privacy. Personal intimacy is so core an aspect of the right to privacy that neither the state nor the outside community has a role in dictating or controlling those choices. Further the right to privacy and respect for intimate choices of a human being is

integrally linked to the notion of autonomy which enables persons to attain fulfilment, grow in self esteem and build relationships of one's choice. The Applicants thereby submit that Section 377 IPC by criminalising the expression of same sex adult consensual relationships denies LGBT persons the very opportunity to form intimate attachments, to grow and flourish as members of the human family and thereby violates the right to live with dignity and the right to privacy of LGBT persons.

29. The Applicants submit that in their experience as mental health professionals they have repeatedly come across instances of LGBT persons who suffer from mental health problems ranging from depression, low sense of self esteem to suicidal tendencies. The origin points of the mental health problems faced by LGBT persons is the stigma, social isolation and discrimination fostered by Section 377 of the IPC. Section 377 of the IPC causes mental stress and anxiety in LGBT persons as it forces LGBT persons to hide their sexuality. It also encourages discrimination, harassment and abuse of LGBT persons by conveying the message that LGBT persons are criminals and are hence to be accorded less dignity than other citizens. The Applicants are of the opinion that Section 377 both through the social attitudes it fosters and the direct impact on the mental well being of LGBT persons violates the right of LGBT persons to live with dignity.
30. The Applicants submit that Section 377 violates the right to equality of LGBT persons. Though the law ostensibly targets only acts and not identities in its operation it ends up targeting LGBT persons as

a community. By criminalising sexual acts which are a part of the very sexual expression of LGBT persons, the State seeks to deny LGBT persons the right to form intimate attachments. By denying LGBT persons as a class the very possibility of forming intimate attachments with others of the same sex, the state violates the mandate of equality.

31. The Applicants further submit that Section 377 IPC creates an association of criminality towards LGBT persons face consequences including blackmail and sexual abuse as well as consequences such as stigma and discrimination. Section 377 both in its operation as well as its over broad classification which includes consensual sexual acts between adults violates the mandate of equality in Article 14.
  
32. The Applicants further submit that the criminalisation of consensual same sex sexual acts is arbitrary. In the opinion of the Applicants homosexuality is not a disease or mental illness that needs to be, or can be, 'cured' or 'altered', it is merely a natural variant of human sexuality. To criminalize what is a inborn characteristic of human beings over which they have no control is much like criminalizing left handed people for being left handed or blue eyed people for having blue eyes. Thereby the Applicants submit that the very criminalisation of homosexuality which is not only natural but also an inborn characteristic of LBGT persons lacks any clear rationale, is prima facie arbitrary and a violation of Art 14.

33. The Applicants also submit that Section 377 targets individuals on the basis of stereotypical perceptions of sex. The Applicants submit that the prohibition against discrimination on grounds of sex embodied in Art 15 would include within its purview the discrimination faced on grounds of sexual orientation.
  
34. The Applicants submit that there is no compelling State interest which justifies the existence of Section 377. The three key arguments by the petitioners which make out a compelling state interest to continue to preserve Section 377 are that
  - a. Section 377 is necessary to prevent the spread of the HIV epidemic
  - b. Section 377 prevents child sexual abuse.
  - c. Section 377 protects public morality
  
35. The Applicants submit that it has been established in the affidavit before the Hon'ble High Court of the National AIDS Control Organisation (NACO) that Section 377 IPC instead of preventing HIV/AIDS actually allows HIV/AIDS to spread further.
  
36. The Applicants also submit that the specific decision of the Delhi High Court to retain the applicability of Section 377 IPC to all sexual acts between adults and those below the age of eighteen takes care of the valid concern with respect to having laws to prosecute certain forms of child sexual abuse.

37. With respect to the contention that Section 377 IPC is necessary to protect public morality, the Applicants contend that public morality by itself does not constitute a ground of compelling state interest in favour of continued criminalisation of homosexuality. In the absence of any harm caused by consensual adult same sex behaviour, its criminalisation cannot be a compelling state interest.
  
38. Finally the Applicants submit that the scientific consensus is that sexual orientation is an immutable characteristic, and a person's sexual orientation is not a matter of choice. To continue to criminalise an immutable characteristic such as the expression of one's sexual orientation which causes no harm to any third party, cannot under any circumstances be construed to be a compelling state interest. The Applicants conclude that since the interest harmed by Section 377 IPC that is the freedom to choose ones sexual partner, is so basic and the state interest served through continued criminalization, is non existent, the provision is a violation of the non discrimination guarantee under Article 15 of the Constitution of India.
  
39. The Applicants submit that Section 377 IPC by criminalizing homosexual acts has a chilling effect on the free speech and expression of LGBT persons. The shadow of criminality cast by Section 377 curtails a free and frank discussion on issues of sexuality, which enables people to publicly own their identity. Whereas, wearing religious symbols or other markers of one's identity is a public expression something that is essential to one's identity and is protected by the law, Section 377 IPC does not allow sexual minorities to openly express their sexuality, an aspect that is

intrinsic to whom they are, and is hence in violation of their right to expression. The Applicants submit that the consequence of the culture of silence fostered by Section 377 IPC is on the mental well being of LGBT persons.

40. The Applicants further submit that since the issue of decriminalisation has become so deeply controversial with the expression of so many conflicting and varying subjective opinions, it is necessary to come to a conclusion based upon objective scientific opinion drawing upon extensive research. The Applicants also submit that through their clinical practice, they are familiar with the sad history of isolation and stigmatization of LGBT persons and that the Applicants seek to represent the concerns of LGBT persons who have been victimised by Section 377 IPC. It is in the interests of justice that for the above mentioned reasons, the Applicants, who are renowned experts in the field be impleaded as parties to the Present Petition.

41. The Applicants submit that the wider public interest attached to the constitutionality of section 377 IPC is not in dispute and has been aptly recognized by the Hon'ble Supreme Court in its order dated 4.10.2006 in Civil Appeal No. 952 of 2006 remanding the matter back to the Delhi High Court for a fresh consideration. The Hon'ble Supreme Court stated aptly that:

*"...We think that the questions raised in the Writ Petition involve participation from the general public so as to have a view point, which varies to a great extent."*

A true copy of this order is annexed herewith and marked as

**Annexure K.**

42. That the Applicants are both necessary and proper parties to this petition.
43. That no prejudice will be caused to the parties if the Applicants are permitted to implead in this matter and are arrayed as respondents. On the other hand, if the Applicants are not allowed to implead themselves as parties to the present petition, irreparable harm will be caused as the Applicants will not be able to present objective, scientific facts, with regard to homosexuality before this Hon'ble Court. Further if the Applicants are not allowed to implead themselves as parties to the present petition, they will not be able to present the harm that LGBT persons have suffered as a inevitable consequence of the existence of Section 377 IPC and hence suffer irreparable harm. That this Application is bona fide and in the interest of justice
44. It is therefore submitted that it would be in the interest of justice if the Applicants are permitted to intervene in the present Special Leave Petition and assist this Hon'ble Court on the questions of law raised.

**PRAYER**

In the premises it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Implead the Applicants abovenamed as Respondents in the present Petition;
- b. Pass such other and further orders as this Hon'ble Court may deem fit and proper.

DRAWN BY:

FILED BY:

MAYUR SURESH  
Advocate

GAUTAM NARAYAN  
Advocate for the Applicants

Drawn On: .4.2010  
Filed On: 2.4.2010

