

# Law Enforcement Manual

A Training Manual for Law Enforcement Agencies on the  
Rights of MSM and Transgender Persons



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## INTRODUCTION

This manual is meant to contain information about the rights of Men Having Sex with Men ('MSM') and of gay men, the laws affecting them, as well as the duties and responsibilities of the police and other law enforcement agencies in protecting their rights. The manual aims to demolish certain myths about the MSM populations, spread awareness and information about their problems and concerns and to sensitise the police on issues of gender and sexuality. Through various case studies, the manual will highlight the way police practices have violated the rights of MSM and gay men and made their lives more vulnerable to violence and discrimination. Instead of being protector of rights, the police is often seen as one of the biggest violators of the rights of sexual minorities, and this manual would strive to change that, by sensitising the police and making them aware of their constitutional and statutory duties.

The need for this manual arises from the fact that lack of awareness and sensitisation on the part of law enforcement agencies constitutes one of the biggest impediments for MSM and gay men to approach the police or legal machinery for the realisation of their rights, or to complain of violations. No law enforcement can be effective, if the most marginalised communities remain outside legal protection or their rights are actively violated by the police and other State machinery.

One big conundrum regarding the rights of MSM and gay men vis-à-vis law enforcement is the existence of Section 377 of the Indian Penal Code, 1860 ('IPC'). This law makes it a criminal offence for anyone to engage in '*carnal intercourse against the order of nature*', i.e., basically anal sex, oral sex and all other penile non-vaginal sexual acts between two individuals. This provision, though applicable only to sexual acts, has become synonymous with the gay and transgender community, thereby resulting in entrenched societal stigma and discrimination. Section 377, IPC will be discussed in detail in later sections of the manual. Owing to it being a criminal

offence, the police officials are often quoted saying that they are merely 'doing their job', by enforcing the law. It is not the mere enforcement of the law, but the targeted enforcement of Section 377 against the gay and transgender persons, wherein the law is, in fact, used as a tool for harassment and violence, by the police, which forms the crux of the issue.

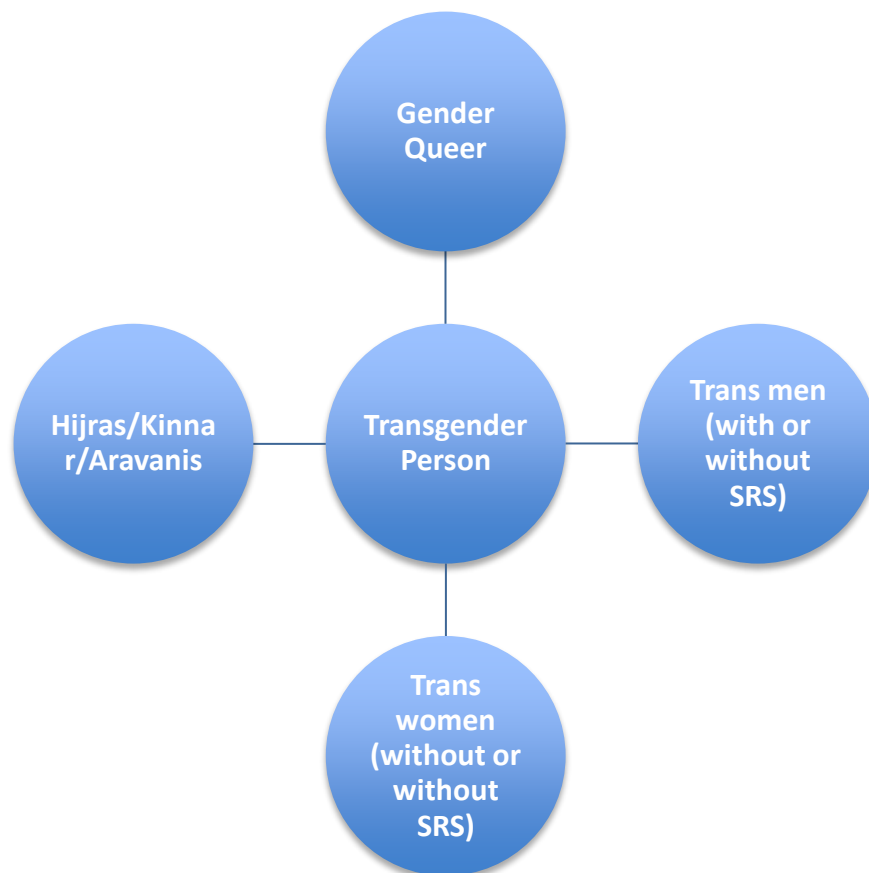
This manual, thus, will attempt to make the police aware of various laws/policies, including judgments of the Supreme Court, which have sought to protect the rights of sexual minorities. In short, the Manual is a brief handbook on basic information about the laws and rights pertaining to sexual minorities, which is relevant for the police to know and comply with.

## TERMINOLOGY

Before discussing the various laws affecting the MSM and gay persons, it is important to understand the relevant terminologies

- **Bisexual:** It refers to a person who is romantically and sexually attracted to both men and women.
- **Gay man:** A man is who is romantically and sexually attracted to another man.
- **Gender:** Gender refers to the socially constructed roles, behaviours, activities and attributes that the society considers appropriate for men and women.<sup>i</sup>
- **Gender Identity:** Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. It includes the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expression of gender, including dress, speech and mannerisms.<sup>ii</sup>
- **Gender Expression:** Gender expression refers to the way a person expresses her gender identity in public, through behaviour, clothing, hairstyles, and voice or body characteristics.<sup>iii</sup>
- **Gender Queer:** Gender queer refers to those persons who identify outside the binary constructs of 'male' and 'female', but as part of a continuum between male and female.<sup>iv</sup>
- **Gender Dysphoria:** It refers to the distress or discomfort that may be caused by the incongruence between one's experienced or expressed gender and sex assigned at birth.<sup>v</sup>
- **Kothis:** The term '*kothi*' refers to those persons who are biological males who show varying degrees of 'femininity' in different situations. They are primarily lower middle class and working class males who take on the role of a receptive partner in penetrative sex with other males.<sup>vi</sup>
- **Sexual Orientation:** Sexual orientation refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relation with, individuals of a different gender or the same gender or more than one gender.<sup>vii</sup>

- **Sex:** For most individuals, sex is assigned at birth, either as male or female and is usually associated with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.<sup>viii</sup>
- **Transgender:** The term 'transgender' refers to an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex. It includes trans men, trans women (may or may not have undergone any medical intervention), gender queer, and socio-cultural identities like *hijras*, *kinnars*, *jogappas*, *shiv-shaktis*, etc.





## LAWS AFFECTING MSM AND GAY MEN

In India, many laws impinge on the rights and health of gay men and MSM, including criminal laws, which include the following:

### **SECTION 377, INDIAN PENAL CODE, 1860**

Section 377, Indian Penal Code, 1860 ('IPC'), which was introduced by the British, criminalises all penetrative non-vaginal sexual acts between individuals, and provides for a penalty of imprisonment up to life (till one's natural life), or ten years, and fine. In effect, Section 377 penalises anal sex, oral sex, and all other penile non-vaginal sexual acts between individuals, irrespective of age and consent. Thus, adult consensual sexual acts between two men, even in private, are prohibited in India and one can face sentence of even up to life imprisonment for merely expressing one's sexual desires.


Importantly, Section 377 makes penetration, i.e., penetration by a penis, the cornerstone of the offence. If there is no penetration, no offence is made out. In effect, sexual acts between two women are not illegal and not covered under Section 377.<sup>ix</sup> Thus, Section 377 prohibits penetrative sexual acts, which are penile non-vaginal, between men and men, men and women and men and animals.

Most importantly, Section 377 does not criminalise the homosexual identity, i.e., being gay is not an offence in India. Section 377 only prohibits sexual acts, and not sexual orientation

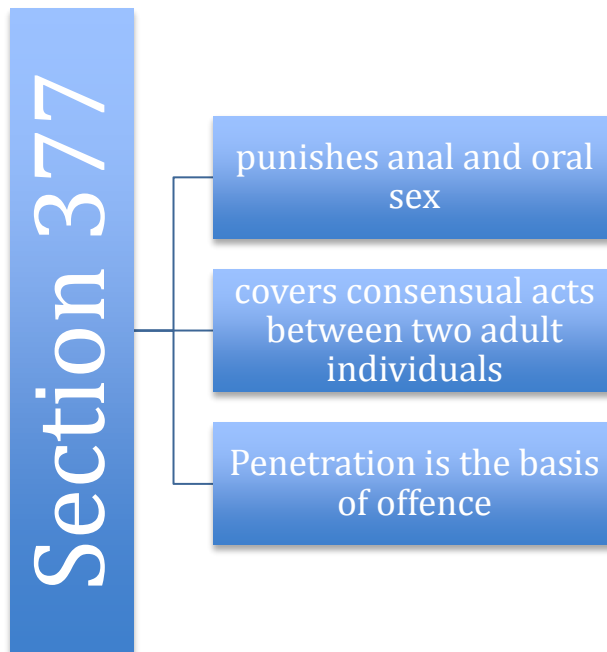
### **Unnatural Offences**

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

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.



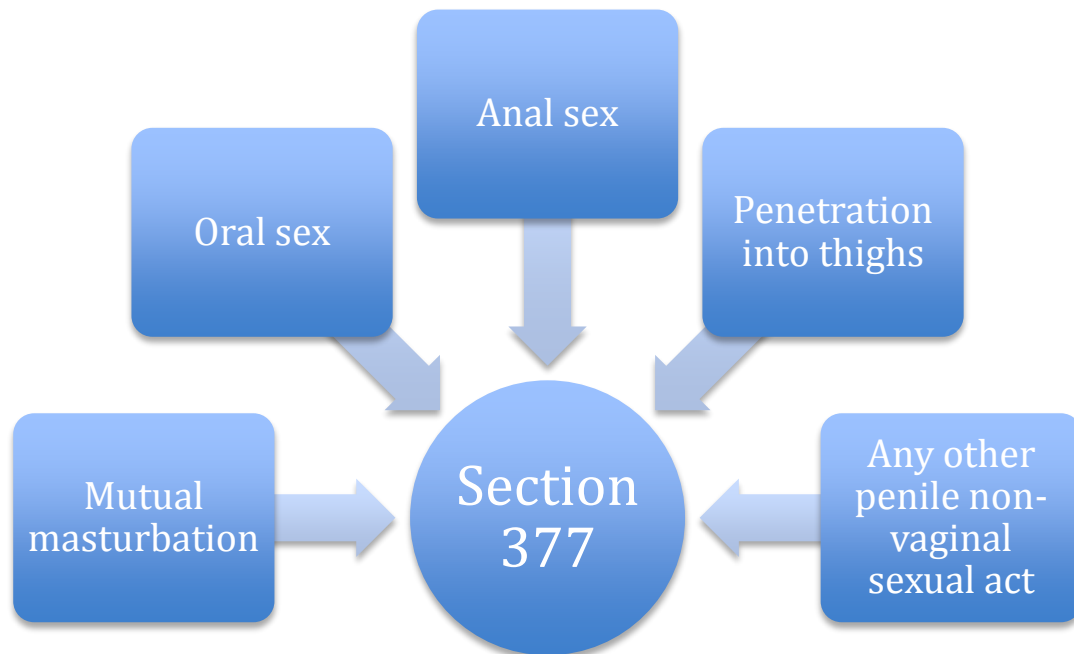
Being gay  
is not a  
crime



Section 377, IPC is a cognizable offence, i.e., the police can arrest without a warrant or permission from a Magistrate. In effect, when a complaint under Section 377 comes to the knowledge of a police officer, it is incumbent upon the police officer to register an offence under Section 377<sup>x</sup>, vide a First Information Report ('FIR')<sup>xi</sup>, and start the investigation. In most cases, the police arrests the accused, who is remanded in police custody by the Magistrate, and thereafter, in judicial custody. It is also a non-bailable offence, i.e., one can get bail only from the Sessions Court<sup>xii</sup>. Thus, Section 377, being a cognizable and non-bail able offence, is serious in nature, and it is quite difficult to secure bail, particularly at the investigation stage, and considering that it is punishable with a maximum of life sentence.

The courts in India have interpreted the phrase '*carnal intercourse against the order of nature*' in varied, and often in arbitrary ways, and have constantly broadened its scope, beginning from restricting it only to anal intercourse,<sup>xiii</sup> to include oral sex,<sup>xiv</sup> rubbing of penis between thighs,<sup>xv</sup> and manipulation of penis, held tightly by hands,<sup>xvi</sup> amongst others. The scope of Section 377 has been broadened so much that no person has any reasonable idea of the nature of the acts that are prohibited, except the fact that it excludes penile-vaginal sex. Any penetrative sexual act outside penile-

vaginal ambit can be said to be proscribed. This results in arbitrariness in the application of the law as well as in imposition of punishment under its penal provisions.



There exists limited data on the number of prosecutions under Section 377 in India. Till date, there have been around 200 reported cases, i.e., those cases that have gone to the High Courts and the Supreme Court. In any case, most cases are either dropped, due to lack of evidence, or result in acquittals at the trial stage. In 2016, National Crime Records Bureau, which is the nodal agency to collate data on criminal justice system, recorded 1347 cases under Section 377,<sup>xvii</sup> but it is not clear how many cases pertained to consensual adults. Further, when an offence is registered under Section 377, even if pertaining to a consensual case, the police registers the FIR only as a non-consensual case.<sup>xviii</sup>

### **Update on the Constitutional Challenge to Section 377**

The validity of Section 377 was challenged by *Naz Foundation (India)*, a NGO working on male sexual health issues, in the High Court of Delhi in December, 2001, on the ground that it violated fundamental rights of individuals. The Ministry of Home Affairs, Government of India, which is the nodal ministry for the enforcement of Section 377, argued that Section 377 ought to be retained, on the grounds of public morality and public health<sup>1</sup>. At the same time, the Ministry of Health, Government of India took a different stand, stating that Section 377 was a major impediment to the HIV prevention interventions in India. In July, 2009, the Delhi High Court in *Naz Foundation India vs. NCT of Delhi* [(2009) 160 DLT 277] declared that Section 377, IPC, in so far as it criminalised adult consensual sexual acts in private, was violative of the fundamental rights to privacy, dignity, health, equality, and non-discrimination guaranteed under Articles 21, 14 and 15 of the Constitution of India.

On appeal, the Hon'ble Supreme Court of India in *Suresh Kumar Koushal v. Naz Foundation (India) Ltd* in December, 2013 [(2014) 1 SCC 1] overruled the High Court decision, and reinstated Section 377. The Apex Court, in fact, referred to the LGBTI community as a 'miniscule minority', which added to the already existing stigma. Interestingly, the Government of India had not appealed against the High Court decision.

On 28th January, 2014, the review petition against Koushal was dismissed, while in March, 2014, curative petitions against Koushal were filed in the Supreme Court. In April, 2014, the Supreme Court directed that curative petitions be heard in the open court, and on 2nd February, 2016, the Supreme Court referred all the curative petitions to a larger Constitution Bench, which is yet to be set up.

In June, 2016, five celebrity gay and lesbian persons filed a writ petition in the Supreme Court in *Navtej Johar & Ors. vs. Union of India* [Writ Petition (Criminal) No. 76 of 2018] challenging the validity of Section 377 for violating their fundamental rights to equality, non-discrimination, dignity and autonomy guaranteed under the Constitution. On 8th January, 2018, when this petition came up for hearing, the Supreme Court held that in light of the right to privacy judgment, Koushal needed 'reconsideration', and referred these fresh petitions to the Constitution Bench. Thereafter, five more petitions have been filed in the Supreme Court against Section 377 by various queer activists, IIT students, and even by entrepreneurs, including one filed by Humsafar Trust [Writ Petition (Criminal) No. 101 of 2018].

In July, 2018, the Constitution Bench of the Supreme Court heard arguments on the validity of Section 377, IPC from the batch of fresh petitions for almost a week, and reserved the judgment. The Government of India did not take any stand on the issue, and left it to the 'wisdom' of the Court to decide the matter.

## IMPACT OF SECTION 377

Although, technically, Section 377 criminalises the homosexual 'act' and not the homosexual 'identity', it has the effect of criminalizing the 'identity' as well. Because it is predominantly the homosexual/transgender persons, who are associated with the sexual practices proscribed under Section 377. Thus, Section 377 disproportionately targets a class of persons, namely MSM and gay men, based on their sexual expression and identity. What is contemplated to be within the order of nature and thus lawful, i.e., penile-vaginal sex, cannot be applicable in the case of men having sexual relationships with other men. Thus, they are deprived from forming intimate relationships, lest they become criminals.

The impact of Section 377 on the lives and health of homosexual and bisexual men has been disastrous, to say the least. The fear of being non-normative gets instilled deep from childhood onwards, wherein any child who looks or behaves or presents differently is subject to ridicule, bullying, and discrimination in school.<sup>xi</sup> The entire edifice of Section 377 is built on creating a culture of fear and silence around homosexuality or same sex relationships, which is evident right from the enactment of the law in 1860.<sup>xx</sup> The sheer aversion of the British law makers to even elaborate on the offence of unnatural sex, owing to their abhorrence, has continued till date, when the present Members of Parliament of India refused to even debate on the subject of homosexuality.<sup>xxi</sup>

## Violence and Harassment

Section 377 has been used to harass, intimidate, blackmail, rape and torture homosexual and bisexual men in India. There have been numerous reported instances of harassment against MSM and gay men by the law enforcement and private non-state actors. The police harassment takes the form of extortion, entrapment, illegal detention, abuse and outing the identity of MSM and gay men.<sup>xxii</sup> Some egregious instances include:

1. In July, 2001, four workers from Bharosa Trust, a HIV prevention NGO in Lucknow, Uttar Pradesh, India, were arrested by the police and charged with obscenity and sodomy under Section 377, IPC along with other charges of criminal abetment and running a gay racket. They were not even granted bail on the ground that they were spreading 'homosexuality', and were finally released on bail by the High Court after 45 days.<sup>xxiii</sup> One of the arrested persons filed a petition challenging the validity of Section 377 in the Supreme Court during the current hearings, citing his own sufferings at the hands of the police.<sup>xxiv</sup>

### Bharosa Case

“Saala angrezi cho\*\*\* hai” (Bloody \*\*\* is sleeping with the British)

*“The inspector screamed at me as he slapped again and again inside the lock up. The date and time is still etched in my mind – 2am on July 8, 2001. I was abused, tortured and humiliated for 24 hours- and made to feel less than human --only because of an archaic law that decided I was a criminal in my own country.*

*... The psychological violence also broke me. We were forced to use putrid drain water for cleaning our utensils. Our dirty food bowls were messy, which could only be cleaned with the drain water. It was clear that they wanted to hit us where it hurts the most—our sanity and self-respect.”*

-Interview given by Arif Jafar published in Hindustan Times on 7<sup>th</sup> February, 2018

2. In 2001, a gay man, who was forcibly subject to conversion therapy at a premier government hospital in Delhi, filed a complaint to the National Human Rights Commission ('NHRC'), a statutory body tasked with monitoring the protection of human rights in India. However, NHRC, after admitting the complaint, refused to entertain the same on the ground that Section 377 existed on the statute book.<sup>xxv</sup>
3. In 2006, four men were arrested under Section 377 in Lucknow, Uttar Pradesh by the police for allegedly engaging in sexual acts in a public place. Facts later revealed that none of the men were either engaging in sexual activity or even at the park, but it was a clear case of entrapment by the police.<sup>xxvi</sup>
4. Many studies<sup>xxvii</sup> have found that there exists structural violence against Men having Sex with Men ('MSM') and gay men in India, wherein social and institutional violence is endemic. In November, 2013, the police from Hassan district, Karnataka arrested 13 men under the false charge of having 'unnatural sex' in public under Section 377. While some were picked up from their homes, others were called to police station and placed under arrest. It was a witch-hunt undertaken by a homophobic police official.<sup>xxviii</sup>

#### **Hassan Case**

"In police station I witnessed the police beating beating X and Y. Police humiliated and teased them in filthy language, accused them of not being proper men and wearing saree and other derogatory remarks...none of us dared to question them after such humiliation. I requested them to allow me to inform my family but they took away my cell phone."

(Z, arrested in Hassan)

## Rise in blackmail and extortion

After the Supreme Court reinstated Section 377, IPC, the number of cases of harassment and violations has seen a sharp rise, especially cases of blackmail and extortion. In several cases, homosexual men meet other men on social networking sites, and when they become sexually intimate, one of the parties begins to blackmail or extort money, in exchange for non-disclosure of former's identity to his family. This makes MSM and gay men particularly vulnerable. In fact, it has appeared that certain organised gangs systematically blackmail the gay community, by first identifying the vulnerable ones, making contact with them, getting sexually intimate, start blackmailing them, and then do the exact same thing with another homosexual man. What is thus clear is an organised pattern of blackmail and extortion of MSM and gay men in cities, by contacting them on social networking sites and then subjecting them to blackmail and threats of disclosure. In most cases, gay and bisexual men cannot report these violations to the police, owing to the fear of themselves being charged under Section 377.

### **Mumbai crime: 4 nabbed for extorting money from homosexual man**

By Saurabh Vaktania | Posted 09-Apr-2014

[Now Available on the mid-day iOS App, Download Now](#)

### **Gay club members extort money, 5 held in Smart City**

Visakhapatnam, Jul 16 (UNI) Five youngsters claiming to be members of a gay club and posing as policemen, were arrested by the cyber crime investigation cell (CCIC) police today for blackmailing and extorting money from a youth, an employee of a famed consultancy MNC, who wanted to join them for pleasure.



## TEACHER LOSES IT ALL AFTER A GAY SEX ENCOUNTER

By Praveen Kumar, Bangalore Mirror Bureau | Updated: Apr 8, 2017,  
04.00 AM IST



A-

A+

*55-year-old unmarried man gives up life's savings and mother's jewellery to blackmailer in 3-year extortion saga; one accused arrested*

INDIA REAL TIME

## How Gangs in India Use Gay Dating Websites to Rob and Extort

By Gabriele Parussini  
Jul 9, 2015 9:27 am IST

0 COMMENTS

THE GAME  
CHANGER

WNI  
WORLD NEWS  
INDIA

Widespread examples of blackmail cases from various parts of India

Section 377 has become a potent weapon for anybody who wants to get back at a person who identifies as gay or bisexual or is perceived to be so. There exists several reported cases where Section 377 has been invoked in the last few years, including one case from Bangalore, where a wife filed a complaint of cheating and unnatural sex against her husband, who was having consensual sex with other men.<sup>xxix</sup> Issues pertaining to marital disputes or souring of relationships or refusal to submit to blackmail have all become subject matter of criminal sanction under Section 377. In none of these cases, it pertained to non-consensual sex or sex involving minors.

### Case Studies No. 1 and 2

In one case, a gay man met another man on a social media application, and called him home after a few days, but there was no sexual contact between them. Still, the second man asked for money, and was not happy with the money given by the former, who now lived in fear for a long time that his identity would be disclosed to his mother.

In another case, a gay student was beaten up by some local goons, who abused him for being gay, which really traumatised him. Initially reluctant, he went, after a few days to lodge a FIR, but the police refused stating that his injury was not serious. Meanwhile, the accused got to know that the victim had approached the police, and started threatening him.

### **Case Study No. 3**

In another case last year, a gay man met another man on a dating application, and called him home in Delhi. They engaged in sex at night, and then the other person left in the morning next day. After few hours, the police came to the house of the gay man, and said that there was a complaint of sexual assault against him at the local police station. Since he was not out to his parents, he panicked and froze in fear, but owing to police's arrival at his house, his parents in any case got to know that he engaged in sexual relations with other men. When they took him to the police station, he found out that the other man who had come to his house the night before was the complainant. He was flabbergasted, and when he confronted him, the other guy just shrugged and asked for a whopping sum of Rs 10 lakhs as the money to take back his complaint. The victim could not believe that the blackmailer was openly blackmailing him sitting at a police station in front of the police officials, who were clearly were party to this conspiracy. Left with no choice, he informed his parents to arrange the money, and also informed his friends. Finally, he 'settled' the case by paying Rs 8 lakhs to the blackmailer. This case showed the real effect of Section 377, wherein blackmailers openly connive with the police personnel to extort lakhs of money from closeted homosexual men, who, in order to escape penalty under Section 377, cannot even complain or rather there is no independent authority to complain to.

#### **Case Study No. 4**

In March, 2018, a young gay man was allegedly killed by a guy he met on a dating application in Delhi, on account of some argument between the two. The accused then called up the victim's family and asked for ransom, only to buy time to dispose off the body. When the family complained to the police, the police did not take it seriously and was really slow in its investigations. After three days, the police managed to find the body of the victim, and from his phone records, they found out about his sexual orientation, and told the family in an extremely callous way. Thereafter, the police called up all his friends, including gay friends, and pressurised them to confess to the crime, and in the process, outing them to their families. They asked extremely demeaning and intrusive questions to the victim's friends from the LGBTI community, which had nothing to do with the investigation and more for their own sadistic pleasure. Almost after a week, the police arrested the accused. This case again clearly showed the risks involved under Section 377, and how it makes even regular dating experiences for gay men fraught with insecurity and danger. The fear of criminalisation drives MSM and gay men to engage in risky practices or makes crimes against sexual minorities easier, since the perpetrators know that there would be no punishment for such offences. The fact that the police could use the excuse of 'investigation' to out the friends of the victim and put them at risk of violence and harassment says much about how it is Section 377 that is the real cause of harm to the MSM and gay men in India.

The biggest effect of Section 377 is that the law, instead of protecting the rights of persons, becomes the main violator of their rights, especially gay and transgender persons. The sheer impunity of the police violence, and the lack of any effective legal redress makes it so egregious and unjust. There have been very few cases of any punitive or disciplinary action being taken against errant police officials, or any compensation being given to the victims, for the violations committed against them.

## **No Protection from Sexual Assault and Rape**

The irony of Section 377 lies in the fact that while consensual sexual acts are prohibited, no effective remedy exists for non-consensual sexual acts. There have been several horrific cases of rape and brutal sexual assault of homosexual men,<sup>xxx</sup> but no action has been taken against the alleged perpetrators. In fact, the specific offence of rape in Sections 375 and 376, IPC excludes the rape of gay men and transgender persons, since the victim can be only a woman. Though sexual assault against homosexual men can be covered under Section 377, this is a highly limited and problematic option. Section 377 is limited only to penetrative sex, thereby excluding any form of non-penetrative sex that is non-consensual in nature. Further, it lacks the victim-centric provisions, like mandatory registration of FIR, protection of identity, time-bound trial, etc, as well as does not provide protective services like mandatory treatment, and compensation. In effect, there is no real remedy available to gay men in cases of sexual assault and rape. As a result, most egregious of offences are not reported.

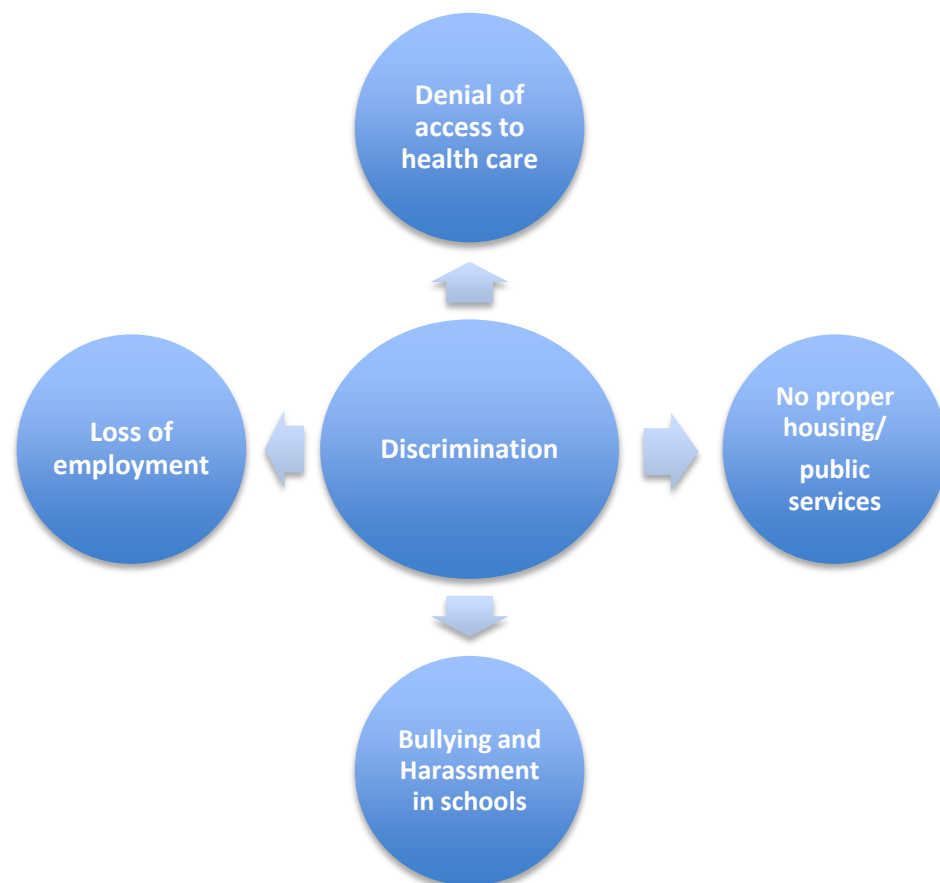
### **Case Study No. 5**

In one case, X met Y on social media, and they decided to become intimate. So X went to Y's house, and Y started engaging in certain sexual acts that X did not like. X then refused to have sex with Y, but Y ignored X's refusal and raped him. X was totally traumatised, and it took him more than 10 days to share his experience with a friend, who then approached a LGBT support group and legal help in the city. After counselling, X was ready to lodge a police complaint, but then retracted when he realised that he himself could get implicated under Section 377.

Thus, most gay men who have been victims of sexual assault and rape are forced to remain silent, owing to Section 377. The peculiar nature of Section 377, i.e., being a sexual offence, makes it particularly difficult to prove a case of sexual assault, when the accused claims that it was consensual. On top of it, the possibility of self-incrimination mostly deters people from reporting cases of assault and rape, as well as the remote prospect of getting any justice in the same.

### **Stigma and Discrimination**

The culture of fear and silence that pervades the issue of homosexuality in India has resulted in a society, where many people do not know a single homosexual person amongst their friends, colleagues and family. In this context, it is extremely difficult for gay men to be open about their sexuality in their family, work place, schools/colleges, or even amidst their friends. The discrimination and stigma is still significant, along with the risk of loss of employment or housing, upon disclosure of sexual orientation.



In India, MSM and gay men face rampant homophobia, especially at workplaces. Since most gay men are not out in their workplaces, they often do not report instances of harassment, and abuse. In fact, those, who are even slightly effeminate or visibly gay, face scorn and ridicule on a daily basis. Studies have documented that 44% of employees in India had been subject to sexual orientation discrimination.<sup>xxxii</sup>

### **Case Study**

In February, 2010, a professor at Aligarh Muslim University, Aligarh, Uttar Pradesh was suspended from his employment, and asked to vacate his university accommodation overnight, when it was revealed that he was gay. Though his suspension was later stayed by the High Court, on the basis of his fundamental right to privacy, he died an unnatural death in few days. [*Dr. Ramchandra Siras vs. Aligarh Muslim University*, Civil Misc. Writ Petition No.17549 of 2010, date of order: 01.04.2010, Allahabad High Court]

### **Case Study No. 7**

In July, 2017, a gay woman in Bangalore was fired by her employer, when unconfirmed news reports came that she had married her girlfriend, which were untrue, and they only lived together. Without giving her any prior notice, the private company terminated the employment, which totally wrecked the concerned person, since she lost her job for no reason at all.

There exists no anti-discrimination law in India for LGBTI persons to protect them from employment discrimination. Though the Constitution guarantees the fundamental rights to equality and non-discrimination under Articles 14, 15 and 16, the existence of Section 377 has meant that it is not clear whether discrimination on the ground of sexual orientation would be covered or not. Though the Supreme Court in *K.S. Puttaswamy & Ors. vs. Union of India* held that no one should be discriminated on the basis of sexual orientation, it remains to be seen how this decision is implemented on the ground. Further, the fundamental rights in India are actionable only against the State, but not against private sector. In the private sector, though

employers can adopt a comprehensive non-discrimination and diversity policy on the ground of sexual orientation, most prefer not to, due to fear of violating Section 377.

Furthermore, sexual harassment of gay men at workplaces is not recognised in India, since the law mandates that only a woman can make a complaint.<sup>xxxii</sup> This leaves the gay men with no choice, if facing frequent sexual harassment and verbal abuse, but to leave their jobs and look for alternative ones.

### Right to Privacy Decision

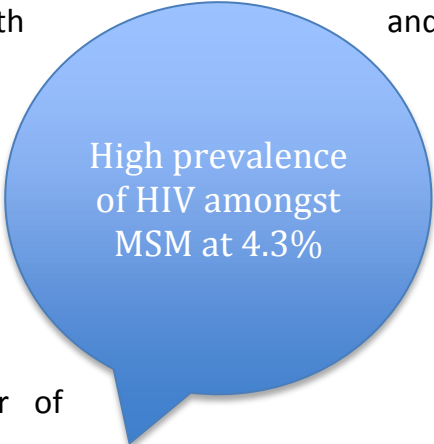
The Supreme Court, in a nine judge bench decision, in ***K.S. Puttaswamy & Ors. vs. Union of India*** (2017) 10 SCC 1 upheld the fundamental right to privacy guaranteed under Article 21 of the Constitution and other fundamental freedoms. The matter was referred to 9 judges in the context of Aadhar litigation, where the Government argued no fundamental right to privacy. The Apex Court categorically held that *“Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual.”*

It further held that *“the right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.”*

## Health Concerns

Homosexuality is still seen as a mental disorder or disease, which can be cured. Families routinely force their young gay children to go to dubious doctors, including psychiatrists, who claim to cure homosexuality. Many studies have documented how rampant the belief still existing amongst the medical community that homosexuality is a medical condition.<sup>xxxiii</sup> Accordingly, conversion therapy, i.e., the practice of seeking to change a person's sexual orientation, which has been discredited the world over, continues unabated.

In terms of HIV, men having sex with men, including gay men, are at a significantly higher risk of contracting HIV than the general population. According to the National AIDS Control Organisation ('NACO'), Ministry of Health and Family Welfare, Government of India, the nodal department responsible for the implementation of the national AIDS prevention and control programme in India, the rate of HIV prevalence amongst MSM is 4.3%, while the rate amongst general population stands at 0.29%.<sup>xxxiv</sup> The fear of criminalisation drives gay men underground, wherein they do not access HIV prevention services like condoms, information about safe sex practices, voluntary testing, after informed counselling, anti-retroviral treatment, etc, thereby driving the epidemic itself underground. At the same time, criminalisation impedes the State from delivering essential health services to gay men.



High prevalence  
of HIV amongst  
MSM at 4.3%



## Other Laws affecting MSM and Gay Men

Besides Section 377, there are many other laws negatively affecting MSM and gay men, including local police laws, like Bombay Police Act, 1951 or Andhra Pradesh Police Act either for allegedly creating public nuisance or for obscene acts. In particular, they are detained by police for hours, and face enormous physical and sexual violence, extortion, etc.

**Public Nuisance** (S. 268, IPC): causing annoyance to public (Punishable in S. 290 with a fine of Rs 200)

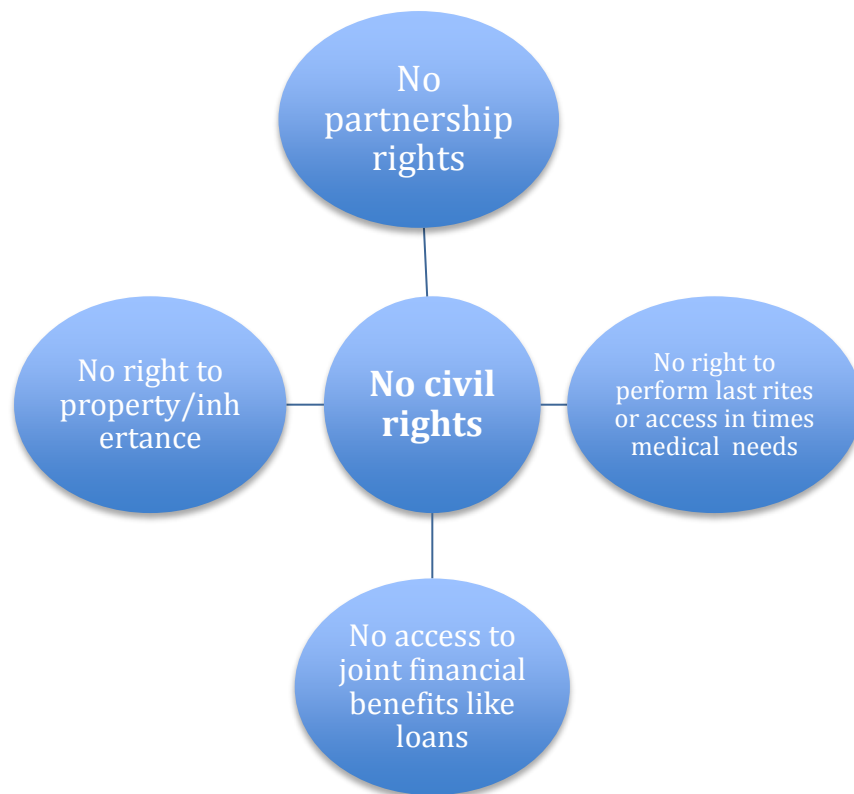
**Obscene Acts** (S. 294, IPC): does any obscene act in public or utters obscene song punishable with three months' imprisonment or fine or both

**Publishing or transmitting obscene material in electronic form** (S. 67, Information Technology Act, 2000): Exchanging nude photos may be penalised with three years' imprisonment, and fine up to five lakh.

**Publishing or transmitting of material containing sexually explicit act in electronic form** (S.67A, IT Act): exchanging videos of sexual acts may be penalised with five years imprisonment, and fine up to ten lakh.

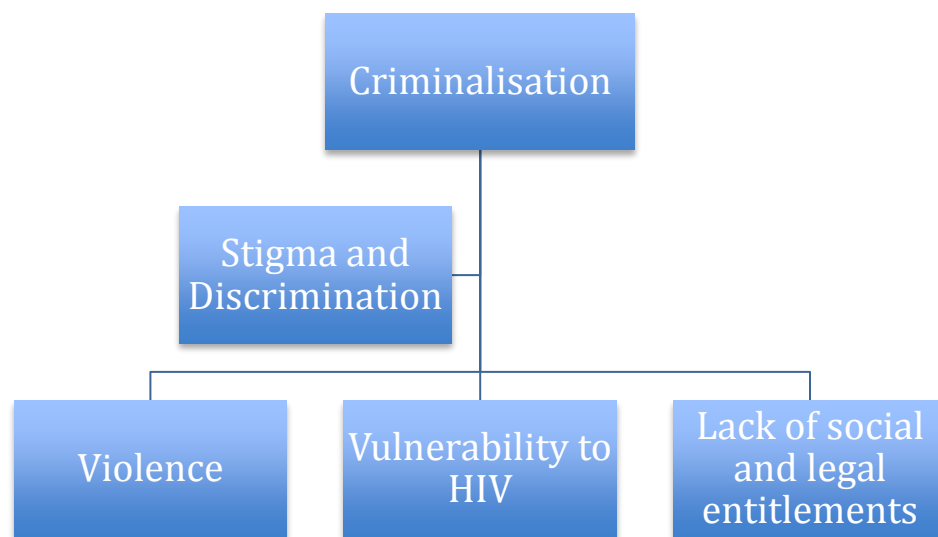
## No Recognition of Civil Rights

There exists no legal recognition of same sex marriage in India, since Section 377, IPC criminalises the sexual acts between two men. In effect, any MSM or gay person who is sexually active is liable for prosecution under the law. Accordingly, MSM or gay men are very reluctant to live together or open about their relationship. Furthermore, because of the same criminal law, there is no recognition of partnership rights, including inheritance, succession, accessing joint loans or financial credit, access in times of medical needs, etc.



Moreover, there exists no right to adoption by two gay men as a couple, though a single man can adopt under the law, subject to certain exceptions.<sup>xxxv</sup> According to Central Adoption Resource Authority ('CARA') regulations, only adoption by heterosexual married couples, who are married for at least two years, are recognised.<sup>xxxvi</sup>

Thus, criminalisation of sexual identity of gay men creates a vicious cycle, wherein they are in constantly in fear of prosecution, and suffer from poor physical and mental health outcomes. They further become vulnerable to police abuse and exploitation and face societal stigma and prejudice.



### **POSITIVE LAWS IN FAVOUR OF MSM AND GAY MEN**

Despite the existence of Section 377, IPC, and its consequent effect on the rights of MSM and gay men in India, certain laws can be used by MSM and gay men to counter violence and discrimination committed against them.

#### **Sections 388 and 389, IPC**

- Section 388, IPC prohibits the act of committing extortion by putting any person in fear of accusation of the offence under Section 377, which is liable for punishment up to life imprisonment.
- Section 389, IPC prohibits the act of putting any person in fear of accusation of the offence under Section 377, in order to commit extortion, and makes it a punishable offence, with maximum imprisonment up to life. Thus, while Section 388 becomes applicable when extortion has been committed, Section 389 penalises the even the act of putting a person in fear to commit extortion.

The ingredients of Sections 388-389 are:

- Putting a person in fear
- The fear is of accusation of committing/attempting offence of Section 377 (or other serious offences)
- Induces the person to give them their property (extortion)



However, there are not many cases on Section 388 – 389 so there is limited guidance available as to how the laws may be applied. Anecdotal evidence suggests that the police are highly reluctant to register FIRs under Sections 388-389, IPC, owing to lack of awareness. They often register only offences of theft or robbery, and do not recognise the higher vulnerability of MSM and gay men for blackmail.

Section 389, IPC has been invoked in one case in Mumbai, wherein the police did not initially invoke it in FIR, but the trial court directed the police to invoke Section 389, which was confirmed by the Sessions Court.<sup>xxxvii</sup>

Further, MSM and gay men, who victims of extortion or blackmail, are highly reluctant to report the crime to police or to register a FIR under Section 389, IPC, owing to the risk of self-incrimination under Section 377. However, the offence of Section 389 is independent of the offence of Section 377, and is not relevant to prove the former. It is for the accused to answer whether he/she threatened or blackmailed the victim by invoking Section 377 and demanded money.

Police ought to register FIRs under Sections 388-389, IPC in cases of extortion/blackmail, and not be concerned with the sexuality of the victim

### The Mental Health Care Act, 2017

Recently, the Parliament has enacted the *Mental Health Care Act, 2017*, which mandates that mental illness be determined in accordance with nationally or internationally accepted medical standards<sup>xxxviii</sup>, and any contravention is punishable with imprisonment, up to 6 months or fine.<sup>xxxix</sup> Conversion therapy has been discredited all over the world by the World Health Organisation, and any doctor practicing it would be violated the Mental Health Care Act, and this liable to be punished.

Conversion therapy is illegal in India

Police to refrain from registering FIRs in case of attempted suicides

Further, Section 115 of the Act mandates that in cases of attempt to commit suicide, the presumption of severe stress would operate, and the concerned person shall not be tried and punished under Section 309, IPC. This is hugely beneficial to the MSM and gay men persons, since most are vulnerable to mental health conditions, including anxiety and depression, on account of their criminalisation and the societal stigma attached to their sexuality.<sup>xi</sup>

### Case Study

In one case, two young adult women were in a romantic relationship, which was disapproved by their families. They left their homes, and got married in a temple in a faraway town. They were traced by the police, and brought back to their village. The families put huge pressure on one girl to separate, who succumbed to that pressure, and called off the relationship, in a mediation happening at the local police station. Distressed at the prospect, the other woman took a blade and slashed her wrist outside the police station. She was immediately given medical attention, and then charged for the offence of attempt to commit suicide. The proceedings went on for almost 9 years, when the charge sheet was quashed by the Supreme Court.

### **The Human Immunodeficiency Virus and the Acquired Immune Deficiency Syndrome (Prevention and Control) Act ('HIV/AIDS'), 2017**

The HIV/AIDS Act was enacted by Parliament in April, 2017. It is meant for the protection of rights of people affected by HIV. The important features of the Act are:

- Prohibition of discrimination against a HIV positive person or anyone living with a HIV positive person in employment, health services, educational establishments, public services, freedom of movement, insurance, etc. [Section 3]
- Prohibition against hate speech [Section 4]
- Informed consent for HIV testing (both pre-test and post-test counselling), and for HIV treatment, except in certain cases [Sections 5-6];
- Confidentiality of HIV status is to be protected, except when disclosure is directed by the Court, or shared confidentiality, or when the partner is at a significant risk of transmission [Sections 8-9]
- Obligation of establishments to maintain confidentiality of HIV related information [Section 10]
- Government to provide ART and Opportunistic Infection management facilities, as far as possible [Sections 13-14]

- Obligation of establishments to provide safe working environment [Section 19]
- Establishment of complaint officer in establishments having more than 100 employees [Section 20]
- Immunity to service providers from criminal or civil liability [Section 22]
- Appointment of Ombudsman by the State Governments to address grievances relating to discrimination under Section 3 and health facilities [Section 24]
- Right to residence in a shared household and the right not to be evicted [Section 29]

In effect, under this Act, if a MSM or a gay man is HIV positive, or is living with a HIV positive person or has lived with him/her, then the former is entitled to certain rights, including

Stigma	Discrimination	Violence
<ul style="list-style-type: none"> <li>• Can't be forced into testing</li> <li>• confidentiality protected</li> </ul>	<ul style="list-style-type: none"> <li>• Can't be denied employment</li> <li>• treated with dignity in hospital</li> </ul>	<ul style="list-style-type: none"> <li>• Protection against hate speech</li> <li>• Peer educators can't be beaten up/harassed</li> </ul>

## CONSTITUTIONAL AND STATUTORY OBLIGATIONS OF THE POLICE

The Constitution of India guarantees certain fundamental rights to all individuals, including MSM and gay men, which include:

- Right to Equality (Article 14) and Non- Discrimination on grounds of 'sex', etc (Articles. 15 and 16);
- Right to Life and Personal Liberty (Article 21) inclusive of bodily autonomy, privacy, dignity, health and livelihood;
- Freedom of Speech & Expression, Assembly, Movement, Residence, etc [Article 19(1)];
- Right against self-incrimination [Article 20];
- Protection against arbitrary arrest and detention [Article 22];
- Right to Constitutional remedies [Article 32];

The State cannot enact laws in violation of fundamental rights guaranteed by the Constitution, except those restrictions, which are mentioned in the Constitution itself. Furthermore, the Constitution of India and the Code of Criminal Procedure, 1973 ('CrPC') imposes certain fundamental and statutory obligations on the police, which are mandatory in nature and cannot be violated. They are:

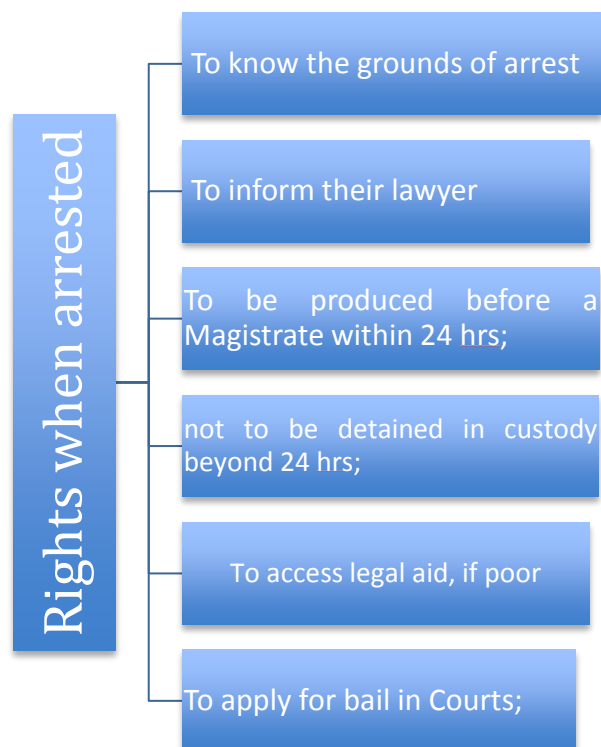
- The police cannot detain a person without informing them of the ground of detention.
- It is a fundamental right of the accused to be informed of grounds of arrest [Art. 22(1) read with Section 50(1), CrPC]. The police cannot arrest a person without informing them of the grounds of arrest [*Joginder Kumar v. State of Uttar Pradesh* (1994) 4 SCC 260]
- If the police arrests an accused without a warrant, then the accused is entitled to know the grounds of arrest (Section 55, CrPC).



- If the police arrests under a warrant, then the accused has to be shown the warrant (Section 75, CrPC).
- The accused has a right to remain silent at the police station [Art. 20(3) read with Section 161(2), CrPC, and reiterated in *Nandini Satpathy vs. P.L. Dani* (AIR 1978 SC 1025)].
- The police cannot subject an accused to narco-analysis, or polygraph, or lie detector tests, though the police have the power to conduct their medical examination [*Selvi vs. State of Karnataka* (2010) 7 SCC 263].
- The accused has a fundamental right to be defended by a lawyer, which begins from pre-arrest [Article 22(1) read with Section 41D, CrPC, and Section 303, CrPC].
- If the accused is poor and cannot afford a lawyer, then the accused has a fundamental right to free legal aid as part of right to fair trial [*Hussainara Khatoon vs. State of Bihar* (1980) 1 SCC 98, read with Section 304, CrPC].
- An arrested accused has to be produced before the nearest Magistrate within 24 hours [Article 22(2) read with Section 56, CrPC].
- The police cannot detain an arrested person in police custody beyond 24 hours without authority of law [Article 22(2) read with S.57, CrPC].
- The accused has a right not to be subjected to unnecessary restraint or handcuffed during arrest [(S. 49, CrPC read with *Prem Shankar Shukla vs. Delhi Administration* (1980 AIR SC 1535)].
- The accused has a right to be released on bail at police station, if arrested under bailable offence [S. 50(2) read with Section 436(1), CrPC, reiterated in *Hussainara Khatoon vs. State of Bihar*, AIR 1979 SC 1360]. It is the obligation of the police to inform the accused that they can be granted bail from the police station, and there is no need to approach the Court.
- The police has to ensure that bail amount is decided, keeping in mind the paying capacity of the accused, and should not be excessive, and no unjust conditions should be imposed [Section 440(1), CrPC read with *Hussainara Khatoon vs. State of Bihar*, AIR 1979 SC 1360]
- The police shall inform the accused that they have a right to call their lawyer, or inform their family members [*Joginder Kumar v. State of Uttar Pradesh* (1994) 4 SCC 260].

- It is the obligation of police to inform the nominated person of the arrested person of the arrest [S.50A(1), CrPC].
- Duty of the police to take reasonable care of the health and safety of the accused (S.55A, CrPC). No arrested person can be beaten up or forced to confess, or tortured, either in police custody or in jail *D.K. Basu vs. State of West Bengal* (1997) 1 SCC 216].
- No statement made to the police at police station or in police custody is admissible in the Court of law (Sections 25 and 26, Indian Evidence Act, 1872).
- The accused is entitled to be released on bail, if arrested for an offence punishable with life imprisonment, if charge sheet is not filed within 90 days of the date of arrest [Section 167(2) (a)(i), CrPC]

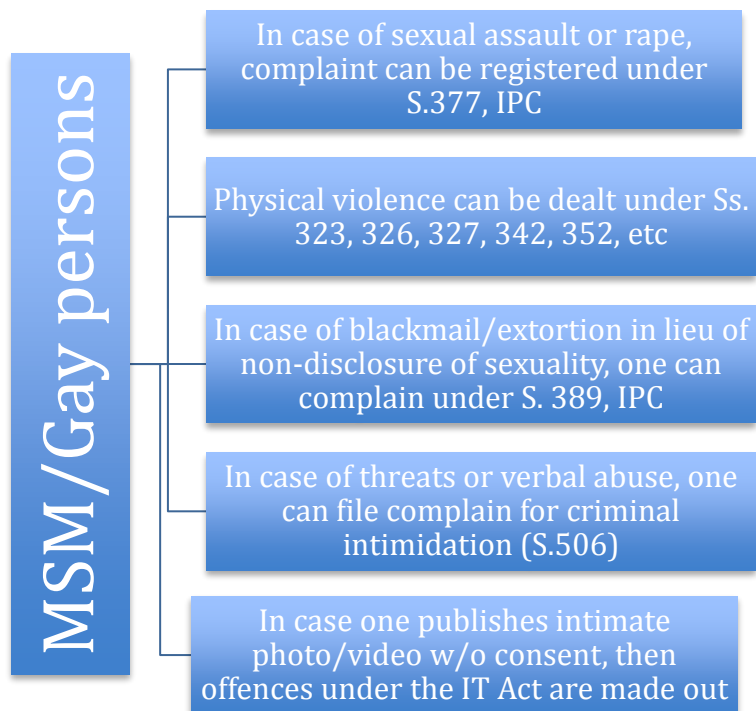
In the context of Section 377, all these obligations, as mentioned above, are applicable. If a MSM or gay man is arrested under Section 377, then the police is duty bound to follow all the procedures as laid in law, and inform him of all his rights, i.e.,



In contrast, if a MSM or gay man is sexually assaulted or faced physical violence, or blackmail or extortion, then the police ought to take appropriate action against the accused, and treat the victim with utmost sensitivity and empathy, instead of abusing him for his sexual identity or threatening to implicate him in a case under Section 377.

The following can be done:

- I. If a gay man has suffered sexual assault, then it is a mandatory obligation on the police to register a FIR under Section 377, since it is a cognisable offence, and start investigation. At the same time, the police ought to remain vigilant against the possibility of false complaints of sexual assault, which may be filed by people, owing to various reasons, including break up of relationships.
- II. In case of physical violence, the police ought to register cases under the relevant provisions of IPC, including hurt (S. 323), grievous hurt (Ss. 326-327), wrongful confinement (S. 342), and use of criminal force (S. 352), amongst others.
- III. In case of threats or verbal abuse faced by gay men, the police can take action for criminal intimidation under Section 506, IPC.
- IV. In terms of blackmail or extortion, the police ought to register FIRs under Sections 388-389, IPC, and take action against the accused.
- V. In case of unauthorised publication of private/intimate photos or videos, then the offences under the IT Act ought to be invoked.



Thus, it is the constitutional and statutory duty of the police to

- i. Treat MSM and gay men with dignity and respect;
- ii. Not subject them to derogatory or discriminatory behaviour;
- iii. Not to use unnecessary force or restraint, while apprehending an accused;
- iv. Not commit any act of torture, abuse or assault, whether within or outside police custody;
- v. Inform the accused and victims of their rights under the law;
- vi. Register cases of violations faced by MSM and gay persons swiftly and efficiently;
- vii. Treat all cases of blackmail/extortion/violence seriously, and invoke the appropriate laws and procedures
- viii. Not harass or abuse the MSM and gay persons.

All these standards are part of the Code of Conduct for the Police in India, issued by the Ministry of Home Affairs, Government of India in July, 1985.<sup>xii</sup>

## **Enforcement of Section 377 by the Police**

The question of validity of Section 377, IPC vis-à-vis consensual acts between two adult individuals is currently pending before the Supreme Court of India. The police should refrain from invoking Section 377 in the context of consensual adults till the final decision by the Apex Court.

In terms of non-consensual acts, if it is case pertaining a minor, the police should only invoke the Protection of Children against Sexual Offences Act, 2016 ('POCSO'), which is a comprehensive legislation enacted to deal with child sexual abuse. Section 377 should not be invoked in cases of child sexual abuse.

In case of non-consensual acts between man and woman, the police ought to invoke the amended Sections 375 and 376, IPC, which were substantially amended, vide the Criminal Law (Amendment) Act, 2013, and now covers non-consensual penile non-vaginal sexual acts within the ambit of the offence of rape in Section 375, IPC. There is no need to invoke Section 377 in such cases.

The only cases when Section 377, IPC can be invoked by the police are:

- a. In cases of non-consensual sex between two men, or sexual assault committed by a man on another man;
- b. Bestiality, wherein the man has penetrative sex with an animal

## **INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS ON THE POLICE**

The international human rights law is binding on all States, including on their police authorities. The police are obliged to know, and apply the international human rights standards in their policing work.

According to the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly of the United Nations, the obligations include

- Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community, and by protecting all persons against illegal acts, consistent with high degree of responsibility required by their profession (Article 1);
- In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold human rights of all persons (Article 2);
- Law enforcement officials may force only when strictly necessary and to the extent required for the performance of their duty (Article 3);
- No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment (Article 5);
- Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention when required (Article 6);
- Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts (Article 7)

- Law enforcement officials shall report violations of those laws, codes and sets of principles, which protect and promote human rights (Article 8)

Besides these, the other international obligations include:

- a. All police action shall respect the principles of legality, necessity, non-discrimination, proportionality and humanity,<sup>xlii</sup>
- b. Police officials, in carrying out their duty, shall, as far as possible, apply non-violence means before resorting to the use of force and firearms,<sup>xliii</sup>
- c. Lethal use of firearms may only be made, when it is strictly unavoidable in order to protect life<sup>xliv</sup>

With respect to the rights of MSM and gay persons, international human rights law has long recognised the obligations of the police and law enforcement officials. The United Nations General Assembly, in various resolutions, has called on the States “*to ensure the protection of the right to life of all persons under their jurisdictions, and investigate promptly and thoroughly all killings, including those motivated by the victim’s sexual orientation.*”<sup>xlv</sup>

The various human rights bodies<sup>xlvi</sup> have condemned several violations of police in the context of the rights of MSM and gay men, including

- a. Violence by police in police custody;
- b. Hate speech by police;
- c. Sexual violence in police custody amounting to torture;
- d. Obstructing peaceful assemblies of gay men;
- e. Forced anal examination to prove ‘homosexuality’

## WAY FORWARD

The decriminalisation of adult consensual acts under Section 377, IPC is most likely to happen soon. In case of a favourable verdict in *Navtej Johar & Ors. vs. Union of India*, the following things need to be done:

- a. Regular sensitisation and training of police officials, starting from constable to highest ranking officers in the department, on LGBT rights and issues,
- b. No police harassment or violence on gay men or transgender persons, and in case of such harassment done by any police official, strict disciplinary and penal actions should be taken against the culprit,
- c. Legal training programmes on making both the LGBT persons and the police aware of their rights and obligations respectively under the law;
- d. Providing legal support to LGBT persons for either taking action against police harassment, or blackmail, or even claiming their rights in court;
- e. Framing of equality and non-discrimination policies for LGBT persons in all workplaces, including police departments;
- f. Granting of benefits like pension, insurance, medical expenses, etc to same sex partners in both public and private sectors.



## CONCLUSION

The sensitisation of the police force towards gender and sexuality is continuing process, not dependent on any law or policy. At the same time, the obligation of the police to comply with constitutional and statutory duties is mandatory, irrespective of the level of sensitivity amongst the police officials. The rights of MSM and gay men are non-negotiable, and the police cannot violate them in any situation, whatsoever, and ought to protect them.

It is evident from several case studies cited above that most egregious violations of the rights of MSM and gay men were committed by the police, merely because of the sexual identity of the victim. It had nothing to do with 'enforcement' of Section 377.

It is mandatory that the police treats the MSM and gay persons as equal citizens of this country, treat them with dignity and respect, protect their rights and entitlements, and provide them effective redress, in case of violations. The police should encourage diversity among its workforce, and create an enabling environment so that those who may identify as gay can work openly and with freedom. Furthermore, the police should liaison with organisations and groups working on LGBTI rights to understand their problems and concerns, and how to resolve them properly.

It is hoped that this manual will go a long way in sensitising the police, and making them act in consonance of the values and principles enshrined in the Constitution of India.

## References

- i Fact sheet of the American Psychological Association, 2011
- ii Yogyakarta Principles, 2007
- iii Fact sheet of the American Psychological Association, 2011
- iv Ibid
- v Diagnostic and Statistical Manual of Mental Disorders-V, published by the American Psychiatric Association, 2013
- vi “Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion”, Issue Brief, published by UNDP India (2010)
- vii Yogyakarta Principles, 2007
- viii Fact sheet of the American Psychological Association, 2011
- ix *Lohana Devchand vs. The State* (1968) CriLJ 1277 (Guj HC), *Calvin Francis vs. State of Orissa* (1992) 2Crimes 455 (Orissa)
- x The Supreme Court in *Lalita Kumari v. State of Uttar Pradesh* (2014) 2 SCC 1 held that registration of FIR is mandatory under Section 154 of the Code of Criminal Procedure, 1973 ('CrPC'), if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- xi Section 154, Code of Criminal Procedure, 1973 ('CrPC')
- xii Section 437, Code of Criminal Procedure, 1973
- xiii *Government V. Bapoji Bhatt* 1884 (7) Mysore LR 280
- xiv *Khanu v. Emperor*, AIR 1925 Sind 286, *Lohana Vasantlal v. State*, AIR 1968 Guj 252, *Calvin Francis v. Orissa*, 1992 (2) Crimes 455
- xv *State of Kerala v. Kundumkara Govindan*, 1969 Cri LJ 818, *State of Gujarat v. Bachmiya Musamiya*, 1998 (3) Guj LR 2456]
- xvi *State of Kerala v. Kundumkara Govindan*, 1969 Cri LJ 818, *State of Gujarat v. Bachmiya Musamiya*, 1998 (3) Guj LR 2456]
- xvii Crimes in India, National Crime Records Bureau ('NCRB'), 2016 <http://ncrb.gov.in/>
- xviii “Unnatural Offences” Obstacles to Justice in India Based on Sexual Orientation and Gender Identity’ International Commission of Jurists, February, 2017 <https://www.icj.org/wp-content/uploads/2017/02/India-SOGI-report-Publications-Reports-Thematic-report-2017-ENG.pdf>
- xix “Sex is Voldemort: A Qualitative Study to understand the experiences of queer students during their school life in India” Surabhi Shukla, 2017 [http://genderdiversityandschools.in/wp-content/uploads/2017/03/Findings\\_School-Experiences-of-Queer-Students-in-India.pdf](http://genderdiversityandschools.in/wp-content/uploads/2017/03/Findings_School-Experiences-of-Queer-Students-in-India.pdf)
- xx Lord Macaulay in his introduction to the Report of the Indian Law Commission of the Penal Code, 1837, referring to unnatural offences, which were slightly different from the present Section 377, stated that “*Clause 361 and 362 relate to an odious class of offences respecting which it is desirable that as little as possible be said. We leave without comment to the judgement of his Lordship in Council the two Clauses which we have provided for these offences. We are unwilling to insert, either in the text, or in the notes, anything which could give rise to public discussion on this revolting subject; as we are decidedly of opinion that the injury which would be done to the morals of the community by such discussion would far more than compensate for any benefit which be derived from legislative measures framed with the greatest precision.*”
- xxi “On 377, I Give Up, Hypocrisy And Bigotry Triumphs” Dr. Shashi Tharoor, MP, 12th March, 2016 <http://www.ndtv.com/opinion/on-377-i-give-up-hypocrisy-and-bigotry-triumphs-1286373>
- xxii Human Rights Violation against sexuality minorities in India: A PUCL-Karnataka Report (2001) <http://www.pucl.org/Topics/Gender/2003/sexual-minorities.pdf>
- xxiii “Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India”, Human Rights Watch, July 2002 <https://www.hrw.org/reports/2002/india2/india0602.pdf>

- 
- xxiv Arif Jafar vs. Union of India [Writ Petition (Criminal) No. 100 of 2018]
- xxv <http://lawandotherthings.com/2009/07/naz-foundation-and-nhrc/>
- xxvi A Preliminary Report of the Fact Finding Team on the Arrest of Four Men in Lucknow Under Section IPC 377 <http://www.suedasien.info/analysen/1974>
- xxvii “Structural Violence Against Kothi-Identified Men Who Have Sex With Men in Chennai, India”: A Qualitative Investigation, Venkatesh Chakrapani et al., 2007;  
“Section 377 and the Dignity of Indian Homosexuals”, Alok Gupta, Economic and Political Weekly, November 18, 2006, pp. 4815-4823 <http://www.iglhrc.org/sites/default/files/15-1.pdf>  
“52% of gay men in India without peer support suffer violence: Survey” Hindustan Times, November 12, 2016 <http://www.hindustantimes.com/india-news/52-of-gay-men-in-india-without-peer-support-suffer-violence-survey/story-HKOutVLK7YblieafqsTrwL.html>
- xxviii “Dignity First: One year of Resistance to Recriminalisation of LGBT lives” December, 2014, Coalition for Sex Workers and Sexual Minority Rights <http://feministlawarchives.pldindia.org/wp-content/uploads/Report-on-11Dec-Anniversary.pdf>
- xxix “Man booked under Section 377 after wife complains to cops” Hindustan Times, October 30, 2014 <http://www.hindustantimes.com/india/bangalore-man-booked-under-section-377-after-wife-complains-to-cops/story-c1d2nJ2tUc3NI2k277F66H.html>
- xxx “Gay Indian man who was raped wants his story told, the violence to end”, The News Minute, April 7, 2015 <http://www.thenewsminute.com/article/gay-indian-man-who-was-raped-wants-his-story-told-violence-end-21024>
- xxxi “In and Out: The Indian LGBT Workplace Climate Survey, 2016, A study by Mission for Indian Gay and Lesbian Empowerment (MINGLE) <http://www.gaystarnews.com/wp-content/uploads/2016/06/Indian-LGBT-Workplace-Climate-Survey-2016.pdf>
- xxxii Section 2(a), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- xxxiii Medical Response to Male Same – Sex Sexuality in Western India: An exploration of ‘Conversion Treatments for Homosexuality, Ketaki Ranade, 2009 <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=1BF45CCBF59740BD65A467A6AEC6C9F0?doi=10.1.1.175.8161&rep=rep1&type=pdf>
- xxxiv NACO Annual Report 2016-2017 <http://naco.gov.in/sites/default/files/Annual%20Report%202016-17.pdf>
- xxxv Section 7 read with Section 11 of Hindu Adoption and Maintenance Act, 1956
- xxxvi Regulation 5(3), Adoption Regulation, 2017
- xxxvii
- xxxviii Section 3(1), the Mental Health Care Act, 2017
- xxxix Section 108, Ibid
- xl “Depression stalks LGBT youth” April 22, 2015, The Hindu <http://www.thehindu.com/news/cities/chennai/depression-stalks-lgbt-youth/article7127900.ece>  
“High risk of suicide haunts LGBT youth” November 17, 2015, The Times of India <http://timesofindia.indiatimes.com/city/nagpur/High-rate-of-suicides-haunts-LGBT-youths/articleshow/49808926.cms>
- xli <http://police.puducherry.gov.in/MHA%20-%20Model%20Code%20of%20Conduct%20-%20Indian%20Police.pdf>
- xlii Human Rights Standard and Practice for the Police, Office of the High Commissioner of Human Rights, United Nations (2004) HR/P/PT/5/Add.5
- xliii United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, September, 1990
- xliv Ibid

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<sup>xlv</sup> General Assembly Resolutions No. 57/214 dated 18<sup>th</sup> December, 2002 at para 6; 61/173 dated 16<sup>th</sup> December, 2006 at para 5(b); 65/208 dated 21<sup>st</sup> December, 2010 at para 6(b)

<sup>xlvi</sup> Born Free and Equal: Sexual Orientation and Gender Identity, published by Office of High Commissioner of Human Rights, 2012 (HR/PUB/12/06)