

Impact of the Decriminalization of Homosexuality in Delhi: An Empirical Study

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Abstract:

On July 2, 2009, the Delhi High Court read down Chapter XVI, Section 377 of the Indian Penal Code. Prior to the Court's ruling, Section 377 criminalized sexual activity "against the order of nature,"^[3] and served primarily as a vehicle for criminal sanction of male homosexual activity. The 150 year old law, which could impose as harsh a penalty as life imprisonment for violations, had been challenged by public interest litigation for a decade. In its historic judgment, the Delhi High Court found that the provision violated Article 14 and 21 of the Indian Constitution, which provides for the equality of all Indian citizens and the right to live with dignity.

The reading down of Section 377 by the Delhi High Court is a pivotal moment in Indian history. Submissions made in the judgment as well as other studies have shown that anti-homosexuality laws largely impact the LGBT community in two ways: (i) anti-sodomy laws affect the relationship of sexual minorities with law enforcement agencies, leading to differential treatment; and (ii) these laws directly (and adversely) affect individual notions of self-esteem, self-worth and play a major role in social and familial acceptance and respect. Thus, the Centre for Health Law, Ethics and Technology (CHLET) at Jindal Global Law School undertook an empirical study to assess the impact of the judgment on the queer community in Delhi and to especially evaluate (i) whether, after decriminalization, members of sexual minorities have felt any difference in the treatment they receive from law enforcement officials, and (ii) whether they believe that they have achieved a greater level of respect and acceptance, from society as well as from their own families.

The research conducted for this study consists mostly of personal interviews with members of the LGBT community. This impact assessment is the first of its kind in India and, apart from providing valuable first-hand accounts of LGBT life pre- and post-decriminalization of homosexuality. Researchers interacted with individuals belonging to different sexual minorities who described their lives before and after July 2, 2009. The findings of the interviews are consistent with similar studies in other countries, such as South Africa, the United States, Canada, and Australia. These studies show that

decriminalization consistently leads to a rise in the level of social acceptance and, more importantly, self-acceptance of sexual minorities.

The findings of this report clearly show that the Delhi High Court judgment has positively impacted the LGBT community and has improved the quality of life of sexual minorities. However, greater efforts must be made, and strategies must be formulated in order to truly integrate the LGBT community into Indian society, eliminate stigma and discrimination, and award them the same opportunities as those available to other citizens.

1. Introduction

In a culmination of decades of legal challenges to Section 377, the Naz Foundation, an NGO in India, filed a writ petition in the Delhi High Court attacking the law's constitutional validity.^[4] This Section penalized crimes amounting to "unnatural offences", which had the effect of criminalizing consensual sexual intercourse between adults, even when conducted in private.^[5]

The petitioner argued that Section 377 infringed upon Articles 14^[6], 15^[7], 19^[8] and 21^[9] of the Indian Constitution. They also argued that the Section should only criminalize non-consensual penile, non-vaginal sex and penile, non-vaginal sex involving minors.

In its landmark judgment, delivered on July 2, 2009^[10], the Delhi High Court ruled that Section 377 of the Indian Penal Code violated a number of fundamental rights, including the right to privacy and right to dignity under the fundamental right to life and liberty (Article 21), the right to equality (Article 14), and prohibition of discrimination on grounds of sex (Article 15). The case has been appealed to the Supreme Court of India and the judgment is pending.

In order to assess the real impact of the High Court judgment on the lives of the LGBT community in Delhi, the Centre for Health Law, Ethics and Technology at Jindal Global Law School has undertaken a qualitative empirical study. The study was undertaken from February 2011 to October 2011.

This study is the first of its kind in India to assess the impact of the judgment on the lives of sexual minorities. Similar studies have been undertaken in different countries such as Australia,^[11] North America,^[12] and South Africa.^[13]

2. Research Questions

The two main research questions were:

(1) Whether the judgment has had any perceived (positive) impact on the enforcement of rights and upholding of dignity of the LGBT community in Delhi? Whether the attitude of the law enforcement agencies in Delhi, especially the police, has been perceived to change towards the LGBT community since July 2009?

(2) Whether the judgment has resulted in any greater social acceptance of the homosexuals, the transgenders and *hijras* [14]? In other words, whether there has been a visible reduction in social discrimination and greater acceptance by the family?

3. Methodology

The main aim of the study was to find answers to the research questions and obtain insight into the daily lives of people from the LGBT community, before and after the Delhi High Court judgment. The study followed a qualitative research approach, involving semi-structured interviews as the primary method of data collection. In-depth, semi-structured, face-to-face individual interviews were conducted over a period of six months. Thirty-two randomly selected respondents were interviewed. The respondents were mainly recruited through two Delhi-based organizations working on sexual minority issues: Love Life Society Delhi [15] and Aide et Action India [16]. The participants consisted of individuals from diverse groups including MSMs, *hijras* [17], *kothis* [18] and MSM outreach workers, all from different parts of Delhi. The participation in the study was absolutely voluntary. All participants were informed that they could withdraw from the study at any point if they became uncomfortable. Each respondent was asked open-ended questions in the interviews. Each interview usually lasted from 30 to 45 minutes. In order to set the participants at ease, the interviews were informal and absolutely confidential in nature. The interviews focused on self-perception of the participants with regard to the study questions as the research conducted was exploratory in its approach.

Most participants wanted the interviews to be confidential and were not comfortable with video or audio recording. Hence, written notes were taken during the interview in Hindi and English and were later translated to English. After all the interviews were conducted, each participant was contacted for a second time to confirm their consent to be a part of the study, and their interviews were read back to them in the language that they were most comfortable in (predominantly Hindi).

All thirty-two interviews were carefully analyzed to avoid any discrepancies in data or in the findings, results, and conclusion.

4. Finding and Analysis

The study arrived at four main findings: increased self-confidence within the stakeholder groups; reduction in harassment by state actors; increased societal acceptance; and increased familial acceptance.

i. Increased Self-Acceptance and Confidence

Within the stakeholder groups, most people noticed a change after the Delhi High Court judgment. They claimed to feel improvements in self-awareness, self-acceptance, self-confidence and emotional security after the judgment. The judgment has empowered them, enabling them to defend themselves and fight for their rights, even against law

enforcement and state authorities. The majority of respondents felt more confident and fearless while dealing with the police and with public harassment, since they now had the support of the law and their behavior was no longer criminal. One of the respondents said:

"There is a difference. There is a lot of change. Now we feel braver and can speak up for our rights, even against the police. We are not scared of them like before."

After the judgment, many respondents took comfort in the knowledge that their natural homosexual or bisexual tendencies were not "wrong" as the law earlier made them out to be. Before Section 377 was read down, the fact that their behavior was considered criminal in nature only added to the confusion and uncertainty they were already experiencing while trying to understand and accept their sexuality. One respondent said:

"I feel a lot braver now, after the judgment. I can face the police with courage now that I am not doing anything wrong in the eyes of the law."

Some respondents also reported that they could now argue with the police since they know that "there is no Section 377 in the law books any more". Technically, the section is still in the law books and criminalizes non-consensual penile, non-vaginal sex and penile, non-vaginal sex involving minors. However, because the section did not apply to the homosexual community after the judgment, it was perceived by a respondent that the section was not in the law books. Another respondent said:

"Police still trouble me, they know that I am gay and they make fun of me and laugh. But I have become braver now and can stand up for myself."

Another respondent said:

"We have more courage and confidence now. It should be decriminalized all over India because there has been a change."

Thus, it is evident from the interviews that the decriminalization of homosexuality has led to increased self-confidence and self-acceptance among the respondents and has consequently made them stronger and more assertive.

Various studies have outlined the negative impacts of laws that criminalize homosexuality on the gay community. Professor Ryan Goodman, for instance, conducted a study on the impact of sodomy laws on the gay community in South Africa.^[19] He conducted extensive field research on the impact of sodomy laws, and found that they created an environment where homosexuals were constantly being subjected to widespread harassment. This atmosphere of dispersed surveillance created a sense of illegality in the very identity of homosexuals. Such an atmosphere also served to perpetuate and reinforce public disapproval and disgust at the notion of

homosexuality, and led the public to view members of the gay community as abhorrent or diseased.[20]

Professor Goodman found that while the sodomy laws did not serve the ultimate purpose of forcing individuals to conform to recognized "heterosexual" societal norms, the laws severely impacted the self-esteem, self-worth, and personal identities of homosexuals.[21] The laws also greatly affected the relationship of homosexuals with other members of society, due to the public disapproval that was generated. He identified seven ways in which the self-esteem and self-worth of homosexuals eroded, namely through (i) self-reflection; (ii) self-reflection through the family; (iii) verbal assessment and disputes; (iv) residential zones and migrations; (v) restricted public places; (vi) restricted movements and gestures; (vii) "safe" places; and (viii) conflicts with law enforcement agencies and state authorities.[22]

This study illustrates the extent to which sodomy laws and the legal criminalization of homosexuality can affect the very identity of individuals through various aspects of their lives.[23]

Similarly, after the ban on homosexuality in the military in Canada was lifted in 1992, a study was undertaken to study the effect of the same in the military. The final report stated that after the ban was lifted, there was a significant reduction in the number of reported cases of assault.[24]

Other studies, in keeping with Prof Goodman's study, show that sodomy laws criminalizing homosexuality have the same effect worldwide: they reduce the status of homosexuals to "unapprehended felons" and create an atmosphere where discrimination is encouraged in different spheres of life. This was further confirmed by the interviews in Delhi undertaken for this study.

ii. Reduction in Police Harassment

The effect of criminal sanctions against homosexual behavior include violence against homosexuals, blackmail, police intimidation and entrapment, reluctance by homosexual men to report rapes or other crimes for the fear of implications with homosexual activity, adverse psychological effects, which may even result in suicide, and the inability to acknowledge and express sexual preferences without fear of social discrimination, stigmatization and ridicule.[25]

Most respondents said that the police were generally abusive towards them, verbally and physically, often interrogating them without any specific reason. From the interviews, it appears that police harassment has reduced significantly among MSM, outreach workers, but only to a small extent among the *hijra* and *kothi* groups. The responses from the latter group were varied. The *kothi* continue to face harassment at the hands of the police. One respondent stated:

"The problem is that the police very often arrest without any reason and accuse and charge us under false sections. This creates a lot of tension in our lives and especially amongst our families."

Another respondent, a program coordinator with a well-known NGO, was not optimistic about any change following the judgment. He said:

"After the judgment, police harassment has not reduced much. Four to five months ago, my friend and I were in his car. We were not doing anything. The police came and started knocking on the door of the car because the car had been parked on the side. They accused us of having sex."

However, on a more optimistic note, another respondent stated;

"Police does not trouble me as much after the judgment as they did earlier. The media supports us."

Some respondents stated that police often misused their power and tried to sexually exploit them, but there has been a decrease in incidents of sexual harassment after the judgment. One respondent said:

"Police supported us only when we rendered sex services to them. Otherwise they troubled us and they would even snatch our belongings. After judgment, such harassments have definitely reduced".

Another respondent was more optimistic and stated:

"There is also a lot of positive change in police behavior. Generally, there is a lot more awareness about who we are, which is the reason harassment has reduced and acceptance is gradually increasing."

One of the respondents offered an extremely optimistic response:

"There has been a difference in the last two years. People respect me more. I live with my Guruji[26] now. I left my family ten years ago. I have even complained to the police by calling the control room and they did come to help me. The police have definitely started respecting us after the judgment."

Some respondents also claimed that while police harassment has abated in a few areas in Delhi, it is still very high in some areas. One respondent stated:

"Some police officers harass and some do not. But the awareness has increased and I am braver now after the judgment... Except for a few places like ISBT[27] and Azadpur, things have improved a lot."

The fact that homosexuality is no longer a punishable offense, coupled with increased awareness and assertiveness of people belonging to the LGBT community has resulted in a positive change where the gay community is more confident, aware and even able to negotiate with the police. For instance, one respondent said;

"Police harassment still continues, but now we have the law on our side."

The problem of police harassment persists due to a significant number of homophobic police officers who will continue such practices unless given regular sensitization training on this issue.

iii. Societal Acceptance

After the judgment, general acceptance of gay, MSM, and *kothimen* in society has increased. While total acceptance of the sexually marginalized sections will be a gradual process, there has certainly been a marked change in societal perception and awareness since the judgment. Many respondents stated that societal acceptance has grown and people have begun treating them with respect. The media has also played a part in this process, with many sympathetic movies and news items being released after the judgment. A few participants attributed reasons for such change to movies like *Dostana*[28], wide media coverage of the Naz Foundation judgment and the queer pride march in the city. One of the respondents said:

"I am much braver after the judgment and have been able to speak up and explain to people who I am. And most people have understood and accepted me. So there has been a change in people's thinking also."

Another respondent said:

"Dostana has brought about a lot of change. It resulted in spreading knowledge".

An optimistic respondent said:

"People often made fun of me when I walked. They teased me. Now, since the past one year, things are looking different. There are some who still taunt and tease, however I know that if the Supreme Court also passes the same judgment, all such harassment will reduce further."

On a similar note, another respondent said:

"After this judgment people have started accepting us to a certain extent. Some people still pass comments, but now my co-workers have started supporting me and I am respected in my office."

There appears to be greater acceptance of the LGBT community in some sections of society as compared to others. One respondent feels that educated people are more accepting than uneducated people, as they are more aware. One respondent said:

"Upper middle class and the elite class is fine but the lower section of the society has a lot of problems with us. The reason for this is also less awareness and social stigma."

On a similar note, another respondent said:

"I feel that the Supreme Court should also pass laws of anti- discrimination along with the judgment. There should be stringent anti- discrimination laws like the SC/ST Law[29] which provides punishment for discrimination."

In certain areas like Badarpur[30], discrimination and harassment levels are still high. One respondent living there said:

"In the area where I live there are a lot of MSMs so harassment is very common. They take away our money and beat us up. In some affluent areas, societal acceptance is higher."

Similarly, another respondent said:

"People did not know much about our community earlier and used to tease us, but now many are aware and respect the way we are. In areas like Saket, where people are educated and more aware, people do not tease and pass unnecessary comments."

Many respondents seemed to think that the Supreme Court reaffirming the High Court's judgment would result in greater positive changes in society. One respondent said:

"I have noticed a lot of difference among the normal people. Now people talk properly with us and respect us. Earlier, I was scared to admit to myself that I was gay. No one spoke openly about being gay but after this judgment people have started coming out in the open."

Another respondent said:

"Gay people used to hide their sexuality but people have now started coming out. And all this is happening only because of the decriminalization."

There will always be a social minority which will harbor intensely homophobic feelings. Decriminalization is unlikely to alter this, but many homosexuals in "non- criminal" jurisdictions have, on the whole, felt that they have become a more accepted part of society as a result of legal reforms.[31]

iv. Familial Acceptance

Although there was general optimism about change with respect to the three aspects mentioned above, the same did not hold true when it came to how respondents viewed the potential for acceptance by their families. Most respondents stated that they would not disclose their identities to their families. Some also admitted that they had faced severe discriminatory treatment from their families, on such disclosure. One of them said:

"I cannot even go home as my sister has to get married. I feel that there should be an environment in which we can live more openly. Parents play a huge role in discriminating. Even they tease. Why should I be blamed because I do not get attracted

to girls? There has to be anti-discrimination laws to protect us and then families will be more accepting."

Another respondent said:

"People's behavior has changed a lot...But I am still scared to come out to my family as I am afraid of how they will react."

It also seems that for some of them, a few members in the family are more sympathetic than others.

"I have a big family – my mom and sister, support me a lot. I do not get that much support from my dad and brother."

Some families seemed to think that their child's sexual orientation could be changed or "corrected" through heterosexual marriage.

One respondent said:

"My family does not know about me. They will never accept it. I will not be able to survive there if I tell them. Some family members force us to get married. But we don't want to spoil the lives of women. We are helpless."

Contrary to popular belief, however, decriminalization may actually serve to promote the institution of family. The knowledge that society and the law censure their relationships can be very difficult for homosexuals who are trying to accept their own sexuality. One consequence of the anti-sodomy laws is that many feel compelled to conceal this aspect of their lives from their family and friends, sometimes marrying for appearance's sake.^[32]

In the presence of anti-sodomy laws, it has been seen that many homosexuals enter into heterosexual marriages to keep up appearances and prevent societal condemnation. These marriages are often unstable and fail, to the detriment of both partners as well as any children that may result from the marriage.^[33]

According to a report by the Peoples' Union for Civil Liberties, the institution of family reinforces the heterosexist organization of society.^[34] Rather than supporting their homosexual children and protecting them from social violence, families often reflect social intolerance; and those who do not conform to these social norms are humiliated, ill-treated and even disowned by their own families.^[35]

It is clear that one of the major reasons for non-acceptance by families is the fear of social alienation. Many families fear that they may lose respect in society and face ridicule if their children are open about their sexuality. Hence, they either force them into heterosexual marriages or disown them, leaving them with little or nothing. This often leaves LGBT individuals little choice but to hide their sexuality and lead a dual life.

One respondent, who was disowned by his family when they found out about his sexual orientation, was very distressed about being thrown out of his house without even getting his rightful share in the family property. He suddenly found himself not only abandoned by his family, but also without any money or assets, and very little means to support himself. He said:

"Family support is also important, and if they do not support, then at least we should get our share in the property. They just cannot disown us like that."

This non-acceptance and fear of non-acceptance has other dangers as well. It is clear that the police often succeed in harassing these individuals because they are able to blackmail them with information about their sexual orientation to their families. One of the respondents said:

"I am scared of the police as my family does not know that I am gay and I do not want them to find out. I am concerned about my reputation in the society. I once got caught with another man but I managed to escape from the police and I do not know what happened to the man."

5. Conclusion

This study concludes that the decriminalization of homosexuality will ensure that sexual minorities in India are one step closer to living with dignity. The invalidation of Section 377 will ensure greater self-confidence among the LGBT community leading to a gradual but steady acceptance of sexual minorities by their families and society as a whole.

The findings of this study are in line with the results of Professor Goodman in his study of the impact of sodomy laws in South Africa.^[36] He stated that even if sodomy laws in a particular jurisdiction only reflected the moral beliefs and sentiments of a small minority of the population, their presence in the law books would give the impression that criminalization of homosexuality represented the sentiments of society as a whole. This representation results in the laws having a "far-reaching" and "self-reinforcing" effect.^[37]

According to Professor Goodman, anti-sodomy laws have a variety of impacts.^[38] First, they influence the attitudes of society towards the state with members of the LGBT community fearing state authorities. Second, they change peoples' relationships with public spaces; since these individuals are not awarded an equal level of protection by the law,^[39] they acquire a more vulnerable status and have a less active relationship with public space in the society. Third, anti-sodomy laws impact the boundaries of what constitutes a civic community.^[40] Laws that criminalize specific communities lead to exclusion, marginalization and victimization. Since these laws have such a strong influence on social norms and can successfully transform them,^[41] the justice they bring must be analyzed in this social context.

One important conclusion of this study is that there has been a definite increase in confidence and self-acceptance among LGBT community members. All the respondents interviewed unanimously agreed that even if decriminalization did not change attitudes of the police and people in general, it did result in an improvement in their own self-confidence. This is in keeping with the results of prior studies, which have found that jurisdictions criminalizing homosexuality have been home to individuals from sexual minorities with low levels of self-esteem and self-worth. But jurisdictions that decriminalized homosexuality have been associated with gay citizens who demonstrate greater levels of self-acceptance.

Police harassment has definitely reduced after the judgment, though it seems to be more prevalent in some areas of Delhi than others. Acceptance by society as well as by families has increased slowly, but there is still much work to be done. Apart from the law, the media and movies have also played their part in effecting a change in societal perception of the LGBT community.

Decriminalization can remove much of the stigma associated with homosexuality, and can help homosexuals feel more accepted in society as well as within their own families. Decriminalization has also been seen to be associated with more self-acceptance as well as psychological and emotional security among homosexuals and other sexual minority groups. Such qualities help homosexuals form healthy relationships and build and strengthen familial ties. In fact, it is encouraging to note that parents of several homosexual children have filed interventions in the Supreme Court praying for decriminalization of homosexuality. Even though family acceptance of LGBT people still seems to be bleak, this situation will improve if the Supreme Court upholds the High Court judgment on Section 377. It is pertinent to note that an appeal was by filed by several individuals and religious groups in the Supreme Court of India to challenge the decision of the Delhi High Court. The Supreme Court concluded the arguments in March- April, 2012 and the judgment has been reserved. It is hoped that the Supreme Court upholds the Delhi High Court judgment otherwise all the benefits realized by the LGBT community will be imperiled.

[1] This is an abridged version of the study published by the Centre for Health Law, Ethics and Technology (CHLET) at Jindal Global Law School, March 2012. The authors would like to thank the two organizations – Love Life Society, Delhi and Aide et Action India, Delhi for facilitating the study and other JGLS students and faculty members for their valuable inputs. The author would also like to acknowledge the contribution of student research assistants at Jindal Global Law School – Kavya Kommareddy, Parvati Parkkot, Esha Oza, Esha Choudhary and Krithika Balu

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[3] Section 377 read, in pertinent part: "**377. 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 term which may extend to ten years, and shall also be liable to fine."

[4] Naz Foundation v. Government of NCT and Ors., 160 (2009) DLT 277 at 15

[5] *Id.*

[6] See INDIA CONST., available at <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>.; Constitution of India, Article 14, reads as follows: Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

[7] See INDIA CONST; Constitution of India, Article 15 reads as follows: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public (3) Nothing in this article shall prevent the State from making any special provision for women and children (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

[8] See INDIA CONST; Constitution of India, Article 19, reads as follows: Protection of certain rights regarding freedom of speech etc. (1) All citizens shall have the right (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India;(e) to reside and settle in any part of the territory of India; and (f) omitted (g) to practice any profession, or to carry on any occupation, trade or business (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence (3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public

order, reasonable restrictions on the exercise of the right conferred by the said sub clause (4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause (5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe (6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, (i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

[9] See INDIA CONST; Constitution of India, Article 21, is as follows: protection of life and personal liberty. It states that no person shall be deprived of his life or personal liberty except according to procedure established by law.

[10] *Supra* Note 1

[11] Melissa Bull, Susan Pinto and Paul Wilson, *Homosexual Law Reform in Australia*, in Trends and Issues in Crime and Criminal Justice (Australian Institute of Criminology, 1991) and K Sinclair, MW Ross, "Consequences of Decriminalization of Homosexuality: A Study of Two Australian States" 12(1) Journal of Homosexuality (Fall 1985)119-27.

[12] G Geis, R Wright, T Garrett, P R Wilson, "Reported Consequences of Decriminalization of Consensual Adult Homosexuality in Seven American States", Journal of Homosexuality Vol.1 Issue 4, pp. 419-426 (Summer 1976); Inge Lauw, Victimless Crimes: Decriminalisation of Homosexual Sexual Activity, Vol. 1 No. 3, Murdoch University Electronic Journal of Law (1994) Available at <http://www.murdoch.edu.au/elaw/issues/v1n3/lauw132.html> (Feb. 16, 2012);

[13] Ryan Goodman, "Beyond the Enforcement Principle: Sodomy Laws, Social Norms and Social Panoptics", California Law Review, Vol 89, No 3, May 2001.

[14] In the culture of the Indian subcontinent, a *hijra* is a physically male or intersex person who is considered a member of "the third sex." *Hijras* are usually born as biological/anatomical males who reject their 'masculine' identity in due course of time to identify either as women, or not-men, or in-between man and woman, or neither

man nor woman. The term “*Hijra*” is used in North India, while “*Aravani*” and “*Thirunanga*” are used in Tamil Nadu.

[15] Love Life Society is an organization in Delhi working with and providing support to people belonging to the LGBT community. It works to spread awareness about various issues relating to the LGBT community and is also actively involved in HIV/AIDS awareness.

[16] Aide et Action India is an organization that supports and works with people belonging to the LGBT community. It has branches all over India; its South Asia Headquarters is located in Chennai, Tamil Nadu. The organization also works on various other social issues relating to health awareness, such as HIV and AIDS awareness, and the education and empowerment of women.

[17] In the culture of the Indian subcontinent, a *hijra* is a physically male or intersex person who is considered a member of “the third sex.” *Hijras* are usually born as biological/anatomical males who reject their ‘masculine’ identity in due course of time to identify either as women, or not-men, or in-between man and woman, or neither man nor woman. The term “*Hijra*” is used in North India, while “*Aravani*” and “*Thirunanga*” are used in Tamil Nadu.

[18] Males who show obvious feminine mannerisms and who participate mainly, if not only, in receptive anal/receptive oral intercourse with men. Most of the Kothi- identified males show varying degree of feminine mannerisms/behaviour and also cross-dress occasionally. These persons are akin to “queens”/“drag queens” in western countries.

[19] *Supra* note 11.

[20] *Id.* at 688-690

[21] *Id.* at 689-690

[22] *Id.* at 690- 711

[23] *Id.* at 690-694

[24] Aaron Belkin and Jason McNichol, *Effects of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the Canadian Forces: Appraising the Evidence*, 2, (18th Feb, 2012), Report Prepared For: The Center for the Study of Sexual Minorities in the Military, University of California at Santa

Barbara, http://dnt.stanford.edu/commentary/Canadian_Forces.pdf.

[25] Eddie Bruce-Jones and Lucas Paoli Itaborah, *State-sponsored Homophobia: A World Survey of Laws Criminalizing Same-Sex Sexual Acts between Consenting Adults*, 5, (18th Feb, 2012), ILGA report, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2011.pdf.

[26] The *hijra* communities normally resemble a traditional Indian joint family with a household head called *guruji*.

[27] Inter State Bust Terminus (ISBT) is a bus terminus in North Delhi. Azadpur Mandi is the largest fruit and vegetable market in North Delhi.

[28] *Dostana* is a 2008 romantic comedy film directed by Tarun Mansukhani starring Abhishek Bachchan, John Abraham and Priyanka Chopra in the lead roles. The movie is

about Kunal and Sameer, two straight men who pretend to be a gay couple to secure a posh Miami apartment, but both of them fall for their gorgeous room-mate, Neha. In an article surveying representations of the LGBT community in Indian cinema, Prof. Ashley Tellis offers this analysis:

“Ranging from the comic and caricaturedly homophobic (*Masti, Kya Cool Hai Hum*) to the pathologised and the virulently homophobic (*Girlfriend* and *Ghaav*) from the sensationalist and pseudo-cool foil (*Fashion, Page 3, Metro*) to the sensationalist subplot (*I Am*), representations of the homosexual are classic commodified appropriations of the ‘cool,’ symptomatic of the neoliberal marketplace of desires and do offer no real engagement with the subjectivities of same-sex subjects. These characterisations are both spectacular and spectral. This is no more evident than in the *Dostana* where though the pivot of the film is the staging of the two heterosexual heroes as a homosexual couple, actual homosexuality is simply not the concern of the film and is subordinated to the heterosexual plot gone wrong, though homosexuality haunts the film spectrally. Indeed, the film can be read as a cautionary tale for heterosexuals not to mess with the homosexual for the result is sure to be disaster.” Ashley Tellis, *The politics of cinematic visibility*, Daily News and Analysis, Mumbai Apr 15, 2012, available at http://www.dnaindia.com/lifestyle/report_the-politics-of-cinematic-visibility_1676028.

[29] The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Parliament of India (Act 33 of 1989), to prevent atrocities against scheduled castes and scheduled tribes.

[30] is a historic town in South Delhi district in Delhi

[31] *Supra* note 10.

[32] Human Rights Watch, “We’ll Show You You’re a Woman” Violence and Discrimination against Black Lesbians and Transgender Men in South Africa (2011).

[33] *Supra* note 10.

[34] Peoples’ Union for Civil Liberties, Human Rights Violations Against the Transgender Community: A study of kothi and hijra sex workers in Bangalore, India (2003).

[35] *Id.*

[36] *Supra* note 11.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

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