

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. _____ OF 2018

(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
5. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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6. [REDACTED]

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13. [Redacted]
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14. [Redacted]
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15. [Redacted]
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16. [Redacted]
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17. [Redacted]
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18. [Redacted]
[Redacted]
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[Redacted]
[Redacted]
[Redacted]
[Redacted]

19. [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

20. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] ... PETITIONERS

Versus

1. Union of India
Through the Secretary,
Ministry of Law & Justice,
4th Floor, A Wing,
Shashtri Bhawan,
New Delhi - 110001 ... RESPONDENT

WRIT PETITION UNDER ARTICLE 32 READ WITH ARTICLES 14, 15, 16,
19 AND 21 OF THE CONSTITUTION OF INDIA CHALLENGING THE
CONSTITUTIONAL VALIDITY OF SECTION 377 OF THE INDIAN PENAL
CODE, 1860

TO:

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

THE HUMBLE PETITION OF THE PETITIONERS ABOVENAMED
MOST RESPECTFULLY SHOWETH:

1. That the present Petition has been filed under Article 32 the
Constitution of India ("**Constitution**"). By way of the present
Petition, the Petitioners herein challenge the constitutionality,
legality, validity and legitimacy of Section 377 of the Indian Penal
Code, 1860 ("**IPC**") as being in contravention of the Fundamental
Rights guaranteed to the Petitioners under Part III of the

Constitution, including their rights under Articles 14, 15, 16, 19 and 21. This Hon'ble Court had directed, by way of its order dated 08th January 2018 in WP (Cr.) 76/2016 (*Navtej Singh Johar & Ors v. Union of India*), that the constitutional validity of Section 377 of the IPC be placed for consideration before a larger bench of this Hon'ble Court. The matter has subsequently been placed for listing before a Constitution Bench of this Hon'ble Court. That the Petitioners herein, being present students as well as alumni of the prestigious Indian Institutes of Technology ("IITs") across the country and who fall within the Lesbian, Gay, Bi-sexual, Transgender ("**LGBT**") community in India, are personally and directly aggrieved by the impact of Section 377 of the IPC. The Petitioners, therefore, have no other efficacious remedy but to approach this Hon'ble Court by way of the present petition under Article 32 of the Constitution. It is stated that the Petitioners have not approached any other court, tribunal or other legal authority for redressal of the grievances and issues raised in the present Petition.

2. That the Petitioners are current students / alumni of various IITs across the country – namely IIT-Bombay, IIT-Delhi, IIT-Kharagpur, IIT-Madras, IIT-Roorkee and IIT-Guwahati, who identify as LGBT. They are all among the best and brightest minds in India. The Petitioners are members of 'Pravritti' – a pan-IIT support group for LGBT members of the IIT fraternity (students, alumni, interns, staff

and anyone else who has lived on the IIT campuses), that has over 350 members. All of the Petitioners herein are ordinary citizens of India who come from diverse backgrounds and various parts of the country. Petitioner Nos. 1-6, 8-9, 11-17 and 19 are gay. Petitioner Nos. 7 and 10 are bisexual women, while Petitioner No.20 is a bisexual man. Petitioner No. 18 is a trans-woman. All the Petitioners are themselves members of the LGBT community in India whose fundamental rights guaranteed under Part III of the Constitution, including, among others, the right to life, privacy, dignity, sexual autonomy, sexuality and choice of partner are infringed by virtue of Section 377 of the IPC. The Petitioners' very dignity and self-worth have been stripped away due to this archaic law which has only resulted in causing and reinforcing feelings of shame and guilt in the Petitioners merely for being who they are and being true to their identities. Needless to state, all of the above are gross violations of the Petitioners' fundamental rights including the right to live one's life with dignity and respect. The Petitioners themselves, therefore, have been and continue to be directly aggrieved by the impact of Section 377 of the IPC on their lives. The Petitioners are therefore filing the instant Writ Petition on their own and not at the instance of anyone else. The present petition is being filed entirely *bona fide* in the interest of protecting the fundamental rights of the Petitioners.

3. The IITs are autonomous institutions of higher education, governed by the Institutes of Technology Act, 1961, which have

become synonymous with academic excellence and scientific temperament and technical achievement, within the country. The first IIT was founded in 1950 in Kharagpur and the IITs were envisioned as representing the aspirations of the new India that was to be built. Declared as institutes of national importance, the IITs are held to be the most reputed and prestigious institutions for higher education in the country and are highly renowned the world over. Students are required to clear a very rigorous and highly competitive entrance examination in order to gain entrance to these institutions. The IIT Joint Entrance Examination (“**JEE**”) at the undergraduate level, the Graduate Aptitude Test in Engineering (“**GATE**”) at the graduate level and the Common Admission Test (“**CAT**”) at the Master of Business Administration (“**MBA**”) level are all extremely rigorous and competitive examinations. The IIT-JEE is considered to be one of the toughest examinations in the country. About 12 lakh students sit annually, for the entrance exam and from out of these, ultimately, only about 11,000 students (i.e. less than 1%) are ultimately selected for admission into the various IITs. Thus, students and alumni of the Indian Institute of Technology represent and best and brightest minds of India. The IITs have several notable alumni who, as scientists, researchers, entrepreneurs, corporate leaders, public servants and social activists, have contributed immensely to their nation as well as to the global community, through their work and achievements. The Petitioners work with some of the top organizations both within

the country and outside India and have established and run various successful organizations in the country. It is therefore a known fact that the IITs attract some of the best talent from various parts of the country.

4. The Petitioners come from diverse backgrounds and cultures. They have grown up in various parts of India ranging from non-metro towns such as Kakinada in Andhra Pradesh, Mandya in Karnataka, Sundergarh and Sambalpur in Odisha, Narasaraopet in Andhra Pradesh to larger cities such as Delhi, Chennai, Hyderabad, Kolkata, Bhopal and Ahmedabad.
5. Those of the Petitioners who are alumni of the prestigious IIT institutions are employed in several leading and highly reputed companies and organizations such as: [REDACTED] - a leading global financial company, [REDACTED] - a top Indian multinational company ("MNC") that provides business consulting, information technology and outsourcing services, [REDACTED] - one of India's best fashion e-commerce companies, [REDACTED]. - a strategy and analytics company in India, as well as another company which is a leading Indian start-up. Those of the Petitioners who are currently abroad are pursuing research fellowships / internships / higher studies in some of the world's best universities and institutes: Carnegie Mellon University, Duke University, Mercedes Benz Research and Development North America, Inc. and the Massachusetts Institute of Technology (MIT) Media Lab.

6. All the Petitioners herein are members of 'Pravritti', which is a pan-IIT support group for LGBT members of the IIT fraternity (composing of students, alumni, staff and anyone else who has lived on the IIT campuses). The idea behind Pravritti as well as its off-shoots in various cities has been to bring together those members of the IIT fraternity falling within the LGBT category, to create a safe and social space for them to interact, so as to provide support and comfort to each other. Pravritti was initially formed in July 2012 as a private online social media (Facebook) group with restricted membership by three IIT students who wanted to create a common platform where all the IIT LGBT students could interact. This soon grew to a size of around 50-60 students across the various IIT institutions. Since then, it has steadily increased in its numbers and Pravritti now has a strength of more than 350 members. Pravritti's composition of members is diverse in terms of its age groups, gender, languages spoken as well as the IITs with which the various members are associated. The key essence of Pravritti also lies in its anonymity and its strict membership criteria – which is to ensure that all LGBT people and particularly those who are closeted and not comfortable with revealing their sexuality and identity to others, can find a safe space to find friendship, relationships, socialize, seek help and also find a sense of belonging and familiarity. LGBT support groups such as Pravritti and their members have been severely affected by Section 377 of the IPC. Groups such as Pravritti are forced not to be public groups

or to become legal entities, in order to protect the identity of those members of the LGBT community who have not yet come out – for fear of the repercussions this would have on them not only in the academic and professional sphere, but also on a very day-to-day basis. However, because they are constrained to remain a private and closed group, these groups are often inaccessible to individuals who are part of the LGBT community but who are not known to individuals in the group itself and therefore have no knowledge of the existence of these groups – thereby severely limiting the help and support that could have been offered to these individuals. True typed copy of a document describing the ‘Pravritti’ LGBT support group is annexed hereto as **ANNEXURE P-1 (Page nos. 105 to 117)**. True typed copy of a document providing details of the composition of Pravritti is annexed hereto as **ANNEXURE P-2 (Page nos. 118 to 119)**. True typed copy of a list of around 47 members of Pravritti is annexed hereto as **ANNEXURE P-3 (Page nos. 120 to 123)**.

7. Further, several of the Petitioners have been part of LGBT support groups during their years in IIT as well as post college. These support groups have played a huge role in the Petitioners’ lives in helping them to come to terms with and accept their identities – and during their most formative years in college. Some of the campus specific LGBT support groups are: Saathi (IIT-Bombay), Unmukt (IIT-Kanpur), Indradhanu (IIT-Delhi), Orenda (IIT-Gandhinagar), Ambar (IIT-Kharagpur), Vannam (IIT-Madras),

Lambda (IIT-Guwahati) and Qagaar (IIT-Roorkee). Some of the Petitioners have themselves helped establish LGBT support groups and LGBT initiatives in their respective IITs, which they all count as some of their greatest achievements. Petitioner No.10 – [REDACTED] and Petitioner No.12 – [REDACTED] are founding members of Ambar (LGBT support group in IIT-Kharagpur), while Petitioner No. 11 – [REDACTED] founded Qagaar (LGBT support group in IIT-Roorkee). These LGBT support groups have also played a large role in initiating open conversations about different types of sexualities and genders between both LGBT and non-LGBT people, which has not only helped bridge the gap between people belonging to different types of sexualities and genders but has also helped those who are heterosexual understand better and be more accepting towards their non-heterosexual peers. True typed copy of an online article published by Vannam (LGBT support group in IIT-Madras) is annexed hereto as **ANNEXURE P-4 (Page Nos. 124 to 128)**.

ARRAY OF PARTIES

8. As mentioned above, all the Petitioners are citizens of India who fall within different categories of the LGBT community in India – namely gay, bisexual and transgender. All of the Petitioners are also current students or alumni or interns of various IITs across the country. Several of the Petitioners come from extremely conservative families while some of them have been raised in more

modern families with relatively progressive mindsets. Many of the Petitioners' families have supported and accepted the sexual identity of their children which has gone a long way in helping these Petitioners navigate their identity issues and also deal with the stigma that they have had to face from society around them. Some of these families have also accepted the Petitioners' choice of partners. On the other hand, other Petitioners have had to face several difficulties at home upon coming out to their family members – leaving their ties with family members extremely strained, which has also impacted them. Many of the Petitioners battle depression and other mental health issues on account of the constant pressures of stigma that they face owing to their sexual identity, which is compounded by the existence of Section 377 of the IPC.

9. The Respondent is the Union of India represented by its Secretary, Ministry of Law and Justice. The Respondent being the Union of India falls within the ambit of "State" under Article 12 of the Constitution and hence, is amenable to the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution.

DETAILS OF PETITIONERS

10. Petitioner No. 1 [REDACTED] No. 2 [REDACTED] No. 6 [REDACTED] No. 7 [REDACTED] No. 8 [REDACTED] No. 9 [REDACTED] No. 11 [REDACTED] No. 12 [REDACTED] No. 15 ([REDACTED]), No. 16 [REDACTED]

██████████), No. 17 (██████████) and No. 19 (██████████) are all recent alumni of IITs – namely, IIT-Bombay, IIT-Kharagpur, IIT-Madras, IIT-Roorkee and IIT-Guwahati, and have graduated from their respective institutions between the years 2014 to 2018. All of the above-named Petitioners are gay, except for Petitioner No.7 who is a bisexual woman. Further details of these above-mentioned Petitioners are given below:

- (i) Petitioner No.1 – ██████████ was raised in a semi-orthodox joint family in Kakinada, Andhra Pradesh. Petitioner No.1's parents had an inter-caste marriage. He is a ██████████ alumnus of IIT-Madras in ██████████ (BTech degree in Engineering Physics). Post his graduation, he worked for two years with ██████████, a strategy and analytics company in India which also has offices in other countries.
- (ii) Petitioner No.2 – ██████████ was raised in a lower middle-class family in Hyderabad and his family was fairly liberal. He is a ██████████ alumnus of IIT-Madras, from where he received a dual degree (BTech and MTech in Computer Science and Engineering). He is currently working as a Data Scientist at a leading Indian start-up. True typed copy of the CV of Petitioner No.2 is annexed hereto as **ANNEXURE P-5 (Page nos. 129 to 136)**.
- (iii) Petitioner No.6 – ██████████ comes from a lower middle-class family and he grew up in Narasaraopet,

Andhra Pradesh; his mother is a housewife while his father is an employee with a state-owned enterprise. He is a [REDACTED] alumnus of IIT-Bombay with a dual degree (BTech and MTech in Electrical Engineering). He is to begin his professional career in [REDACTED].

- (iv) Petitioner No.7 – [REDACTED] comes from a middle-class Sikh family and was born and brought up in Bhopal, Madhya Pradesh. Her father has worked as a Manager in a nationalized bank for about 30 years and recently retired in 2013. Her mother is a homemaker. [REDACTED] is a [REDACTED] alumnus of IIT-Roorkee (BTech graduate). Post her graduation, she has chosen to work and pursue higher studies in the field of ecological sciences and is currently interning with [REDACTED] [REDACTED] [REDACTED] [REDACTED], a leading Indian research institute. True typed copy of the CV of Petitioner No.7 is annexed hereto as **ANNEXURE P-6 (Page nos. 137 to 140)**.

- (v) Petitioner No.8 – [REDACTED] grew up in Patparganj in Delhi. His parents are divorced and he is not in touch with his father. Having grown up in a family with three children [REDACTED] and only a single breadwinner (his mother who teaches at a government school), his family has struggled financially. While they do not have the savings to support his higher education, their situation is a little better since he has now started working.

██████ is a ██████ alumnus of IIT-Kharagpur (BTech in Electrical Engineering). Post his graduation, he has been working as a business analyst at ██████████, a top global financial company.

(vi) Petitioner No.9 – ██████████ was born and brought up in a typical middle-class family in Rajasthan and is a single child to his parents. His father was one of the first people from his ancestral village to graduate from a college and move out of the village. Since his father worked as an engineer in the state government's irrigation department, their family lived in small towns in Rajasthan for most of ██████ childhood. He is a ██████ alumnus of IIT-Bombay (Bachelors degree in Computer Science and Engineering). He is now employed as a quantitative researcher at a leading international hedgefund and quantitative investment management firm. True typed copy of the CV of Petitioner No.6 is annexed hereto as **ANNEXURE P-7 (Page nos. 141 to 149)**.

(vii) Petitioner No.11 – ██████████ was raised in a middle-class family in Multani Mohalla in New Delhi. He is a ██████ alumnus of IIT-Roorkee (Masters in Computer Applications) and is currently working as a Software Engineer at ██████, a top Indian MNC that provides business consulting, information technology and outsourcing services. True typed copy of the CV of Petitioner No.11 is annexed hereto as **ANNEXURE P-8 (Page nos. 150 to 152)**.

- (viii) Petitioner No.12 – [REDACTED] grew up in different towns and cities in Odisha, namely Jharsuguda, Sundergarh and Sambalpur. His father is a government servant in the forest department while his mother is a homemaker. He received his MBA degree from IIT-Kharagpur in [REDACTED]. He is currently employed as a consultant at [REDACTED]. True typed copy of the CV of Petitioner No.12 is annexed hereto as **ANNEXURE P-9 (Page nos. 153 to 156).**
- (ix) Petitioner No.15 – [REDACTED] grew up in Ahmedabad, Gujarat. His father is an Associate Professor in a medical college and his mother is a home-maker. He is a [REDACTED] alumnus of IIT Kharagpur (MBA). He is working as a Senior Analyst at a leading Indian technology MNC. True typed copy of the CV of Petitioner No.15 is annexed hereto as **ANNEXURE P-10 (Page nos. 157 to 162).**
- (x) Petitioner No.16 – [REDACTED] grew up in urban Kolkata in a nuclear family of four, including his parents and a younger brother. Coming from a family that is not financially well-off, money was always an issue. However, both his parents (his mother was a high-school teacher) did their best to protect [REDACTED] and his brother from any financial difficulties and constantly pushed their children to excel in academics, so that both children could work towards a better life than that of their parents. [REDACTED] is a [REDACTED] medallist of IIT-Guwahati (BTech in Mathematics and Computing). He is now

working as a senior analyst at a leading multinational investment bank and financial services company.

- (xi) Petitioner No.17 – [REDACTED] grew up in Bhopal, Madhya Pradesh and is a [REDACTED] alumnus of IIT-Guwahati. He is currently working as a senior designer at [REDACTED], one of India's top [REDACTED] e-commerce companies. True typed copy of the CV of Petitioner No.17 is annexed hereto as **ANNEXURE P-11 (Page nos. 163 to 164).**
- (xii) Petitioner No.19 – [REDACTED] grew up in a nuclear family in Ranchi, Jharkhand and is a [REDACTED] alumnus of IIT-Kharagpur (B Tech, Manufacturing Science and Engineering, Dept. of Mechanical Engineering), who will soon begin his MBA from IIM-Bangalore in [REDACTED]. True typed copy of the CV of Petitioner No.19 is annexed hereto as **ANNEXURE P-12 (Page nos. 165 to 170).**
11. Petitioner No. 4 – [REDACTED] and Petitioner No. 5 – [REDACTED] are older alumni of IITs institutions and are both currently working in India. Both [REDACTED] and [REDACTED] are gay. [REDACTED] pursued his M.Des. from the Industrial Design Centre in IIT, Bombay between the years [REDACTED] to [REDACTED]. [REDACTED] received his BTech degree in Mechanical Engineering from IIT Delhi in [REDACTED] and then went on to receive his MBA from IIM, Kolkata in [REDACTED].

- (i) Petitioner No. 4 - [REDACTED] grew up in Mandya, a small town in Karnataka and was raised in a traditional Brahmin family. He did not know a single gay person during his childhood and college years. It was only after he started working that he managed to connect with other LGBT persons. Eventually, he became comfortable with his identity and in the following years, came to start numerous major initiatives for empowering the LGBT community in India. In 1994, [REDACTED] along with two others, founded the Humsafar Trust which was the first gay non-governmental organization (“NGO”) to be registered and to be working with government agencies on health intervention for the gay, MSM and transgender communities. Petitioner No.4 also co-founded the KASHISH Mumbai International Queer Film Festival in 2010 as a platform to exhibit, promote and nurture LGBT films. This festival has now become one of the most prominent LGBT events in India and South Asia and was also the first LGBT film festival to obtain clearance from the I&B Ministry and to collaborate with various corporate houses. In 2015, he also co-founded the KASHISH Arts Foundation, a charitable trust which was formed to organize the KASHISH film festival. As a filmmaker, [REDACTED] has written, directed and produced several LGBT themed films (such as ‘Gulabi Aiana’, ‘Yours Emotionally’, ‘68 Pages’, ‘Purple Skies’, ‘Breaking Free’ and

'Evening Shadows') which are internationally acclaimed films that have been screened in more than 120 film festivals across the world. His documentary film 'Purple Skies' was the first lesbian themed film to be shown on Doordarshan (with a U certificate). His documentary film 'Breaking Free' won the National Award, the highest award for a film-maker in India. In spite of all of [REDACTED] professional achievements, his choices as an artist and in being able to produce films dealing with LGBT issues have been limited because of Section 377 of the IPC and the difficulties he faced in finding resources to support his films. His struggle has been significantly harder as compared to a heterosexual person given the stigma and discrimination that he has had to face while pursuing his professional career. In fact, in his initial years of film-making, he was forced to shoot his films in secrecy and there was great fear in producing the films as well as finding actors who would be willing to feature and act in LGBT themed films apart from the difficulty in releasing the films due to the social stigma imposed by Section 377 of the IPC. [REDACTED] has also been living with his life partner for the last 23 years and together they have collaborated on a number of films. True typed copy of the Petitioner No.4's biodata is annexed hereto as **ANNEXURE P-13 (Page nos. 171 to 173)**. True typed copy of an online article about Petitioner No.4 and his work is annexed hereto

as **ANNEXURE P-14 (Page nos. 174 to 182)**. True typed copy of the transcript of an interview with Petitioner No.4 published online is annexed hereto as **ANNEXURE P-15 (Page nos. 183 to 188)**.

- (ii) Petitioner No. 5 - [REDACTED] was born and raised in Delhi and his father was a senior central government official. After his education at IIT-Delhi and IIM-Kolkata, he went to the US for higher studies in [REDACTED]. Subsequently, he returned to India to pursue his professional career and has since then held several key leadership positions in numerous organizations and companies including that of Senior Vice President with a large multinational marketing and communications group, Head of Strategy at a prominent Indian financial services company, among others. He is presently an entrepreneur and is the proprietor of [REDACTED] [REDACTED], an IT staffing company. He is also an academic and part-time visiting faculty at various business schools and a fulltime faculty at University of Pennsylvania. In the past 18 years, [REDACTED], along with pursuing a full-time career in marketing, consulting and strategy, has been involved in a number of LGBT activist initiatives in India including organizing LGBT events, funding LGBT themed plays and musicals, etc. True typed copy of the transcript of an interview with Petitioner No.5 published online is annexed hereto as **ANNEXURE P-16 (Page nos. 189 to 195)**.

12. Petitioner No. 10 [REDACTED] No. 13 [REDACTED] and No. 20 [REDACTED] are recent alumni of IITs who are currently based outside India, in the USA. [REDACTED] and [REDACTED] are bisexual and [REDACTED] is gay.

- (i) Petitioner No.10 – [REDACTED] grew up in Palghat, a small town in Kerala with her parents and three sisters. Her mother is an engineer with the [REDACTED] while her father is a Superintendent at [REDACTED]. She is a [REDACTED] alumna of [REDACTED] (BTech in Mechanical Engineering and MTech in Mechanical Systems Design with Minor in Mathematics and Computing and Microspecialisation in Entrepreneurship and Innovation) and is currently pursuing her MS in [REDACTED] [REDACTED] [REDACTED] Carnegie Mellon University and is also interning at [REDACTED] [REDACTED] a research organization in USA. She is the recipient of awards and fellowships including the University of Alberta Research Experience Award, [REDACTED] and the Schlumberger Foundation Award for Women Engineers, [REDACTED]. She was also a founding member of Ambar - an LGBT support group in IIT-Kharagpur. While she is currently pursuing her higher education abroad, [REDACTED] also has financial loans that she has to pay off. True typed copy of the CV of Petitioner No. 10 is annexed hereto as **ANNEXURE P-17 (Page nos. 196 to 201)**.

(ii) Petitioner No.13 – ██████████ grew up in the industrial town of Korba in Chattisgarh. His mother is a home-maker and his father was the first in his immediate family to move out of a very small village in Bihar and shift to Korba to work as an engineer with the state electricity board. He is a ██████ alumnus of IIT-Bombay (BTech and Mtech in Chemical Engineering with Minor in Environmental Engineering) and is currently pursuing his PhD in ██████████ ██████████ from Duke University. True typed copy of the CV of Petitioner No.13 is annexed hereto as **ANNEXURE P-18** **(Page nos. 202 to 205)**.

(iii) Petitioner No.20 – ██████████ grew up in various places in India – from small towns such as Kutra in Odisha to metros such as Chennai, Vizag and Kochi – since his father was with the Indian Navy. His father is now a director of a central government organization ██████████ ██████████ and his mother is a gynaecologist. He is a ██████ alumnus of IIT-Kharagpur (degree in Architecture and Planning) and is currently a visiting student at the Massachusetts Institute of Technology (MIT) media lab in USA where, for the past year, he has been exploring the application of augmented reality in education. He will soon be returning to India to work as a journalist with ██████████ ██████████, one of India's leading national newspapers. True

typed copy of the CV of Petitioner No. 20 is annexed hereto as **ANNEXURE P-19 (Page nos. 206 to 209)**.

13. Petitioner No. 3 – [REDACTED] and Petitioner No. 14 – [REDACTED] are current students at IIT-Delhi and are both gay. [REDACTED] grew up in a middle-class family in Kolkata. He is currently in his second year of his PhD in Humanities and Social Sciences. [REDACTED] comes from a typical conservative Tamil Brahmin community in Chennai. As a child, he was very conservative and pious and devoted himself to religion and rituals much more than other urban kids his age. He is pursuing his undergraduate education (BTech Engineering Physics) in IIT-Delhi. True typed copy of the CV of Petitioner No.3 is annexed hereto as **ANNEXURE P-20 (Page nos. 210 to 211)**.

14. Petitioner No.18 – [REDACTED] is a transwoman who hails from Anantapur, one of the most drought-prone areas in Andhra Pradesh. Her father passed away when she was in the third standard and since then her mother has been single-handedly taking care of their 21 acres of farm land. She is the youngest child in her family. Her family has faced utmost financial difficulty and post her father's death there were days when her family did not even have twenty rupees at home. However, her mother took up the responsibility of ensuring that her children study in a good English school ([REDACTED] studied in a Spanish missionary school) and [REDACTED] completed her 10th standard studying under lamps as their village did not have sufficient facilities at that point of time. [REDACTED] is currently pursuing her research internship at IIT-

Bombay. She has excelled academically and is also the recipient of two prestigious research fellowships at the all-India level – the ‘IRCC Research Fellowship’ Award by IIT-Bombay in [REDACTED] and the ‘Summer Research Fellow’ jointly by Indian Academy of Sciences, Bangalore, the Indian National Science Academy, New Delhi and the National Science Academy, Allahabad. This allowed her to continue his research work at IIT-Bombay and IIT-Kanpur.

[REDACTED] has also been placed with two MNCs and two government research positions in [REDACTED]

[REDACTED]. True typed copy of the CV of Petitioner No. 18 is annexed hereto as

ANNEXURE P-21 (Page nos. 212 to 218).

15. The Petitioners all come from diverse backgrounds and cultures, across the length and breadth of India. They are all accomplished individuals who are current students / alumni of India’s most highly reputed institutions – the IITs across the country. However, these Petitioners have been deprived of their most basic fundamental rights guaranteed to them under the Constitution, including those guaranteed to them under Articles 14, 15, 16, 19 and 21.
16. Some of the issues and difficulties that the Petitioners have had to face on account of the gross violation of their fundamental rights owing to the impact of Section 377 of the IPC are described below:
 - a. Many of the Petitioners have faced severe mental health issues due to several factors often stemming from the

society's lack of acceptance of their sexual identity and the Petitioners having to face the repercussions of such lack of acceptance, as a result thereof. For Petitioner No. 3 [REDACTED] and No. 14 [REDACTED], upon coming out to their parents about their identity, these Petitioners were expressly made to visit doctors for a 'cure' for their 'condition'. In other instances, such as that of Petitioner No. 9 [REDACTED] No. 12 [REDACTED] and No. 18 [REDACTED] family members upon becoming aware of their children's sexuality and identity, have chosen not to address it or have ignored the true sexual identity of their children. Even for Petitioner No. 8 [REDACTED] and No. 13 [REDACTED] whose parents and immediate family members have completely supported and accepted their identities, these Petitioners have still had to deal with instances of ridicule, bullying from some of their peers and society while also in some cases having been subject to express instances of homophobia. Several of the Petitioners have experienced fears of abandonment, stigmatization, exclusion, guilt and shame throughout their childhood years on account of the reaction to their sexuality. Many of them have had to spend their teenage years not understanding and not being able to accept their true identity owing to the lack of access to relevant information at the relevant time. They have also been subjected to ridicule and abuse by

those around them, who have also been ill-informed. They have often been forced to invalidate their true feelings and emotions merely because those around them made them feel that such feelings and emotions were not “normal”. Such reactions have only left them feeling all the more isolated and disappointed and making them wary of seeking any help from traditional institutions. Having to experience these feelings and emotions and that too at such formative years of their lives, has taken a toll on the mental health of several of the Petitioners. Some of the Petitioners including Petitioner No.2 [REDACTED] and Petitioner No.8 [REDACTED] [REDACTED] have grappled with depression and have also had to take medication. Petitioner No.1 [REDACTED] has attempted suicide in the past and Petitioner Nos. 2 and 15 - [REDACTED] and [REDACTED], too, have struggled with suicidal thoughts in the past. Petitioner No.13 [REDACTED] [REDACTED] is still recovering from an addiction to self-harm which began from feelings of loneliness on account of being treated as an outsider and as being “abnormal” during his school years, merely due to his sexual orientation. Several others have continued to feel a deep sense of loneliness and of being entirely misunderstood because of their sexuality. Section 377 criminalises sexual minorities by deeming even consensual sexual intercourse between adults of the same gender to be “unnatural”. This criminalisation has in turn

entrenched the stigmatisation of LGBT identities as unnatural, deviant or abnormal. The Petitioners have therefore had to grapple with doubting their own self-worth, and questioning their identities, and have had to virtually deny expressing themselves, for much of their lives. Striking down Section 377 of the IPC as constitutionally invalid will ensure that LGBT citizens including the Petitioners feel safe and protected particularly in their childhood and teenage years which is an extremely formative and important period in their lives and one during which they themselves are struggling to fully understand and come in terms with their identity. Further, de-legitimizing the stigma associated with being a LGBT individual would also contribute to parents of such LGBT individuals including the Petitioners being able to support and accept the identity of their children.

- b. Petitioner No. 1 [REDACTED] No. 2 [REDACTED]
No. 6 [REDACTED] and No. 15 [REDACTED]
[REDACTED] have had immense difficulty focusing on their studies as well as their professional careers owing to the severe mental stress and agony caused in view of doubts about their identity and the constant fears that their peers and colleagues would become aware of their sexual identity. This has prevented them from developing and achieving their full potential and contributing their talents and capabilities fully to the development of the nation. For

Petitioner No. 18 [REDACTED] [REDACTED] who is a transwoman, inspite of being an academically bright student, she suffered several setbacks on account of being subjected to constant bullying. She was also forced to drop her education for a few weeks in the 12th standard when she was asked to leave the hostel owing to her gender identity issues.

- c. Several of the Petitioners including Petitioner No. 11 [REDACTED] have admitted that they have chosen organizations and companies to work for based on whether the organization has a policy protecting the LGBT community from discrimination. This is because they fear the repercussions and stigma that would result in the workplace (where the individual would spend a large part of his/her time) if they were to be discriminated against on the basis of their sexuality and identity. Some of the Petitioners have also not been inclined to take up roles in Indian government organizations/services due to this very fear of being discriminated against. Petitioner No.13 [REDACTED] [REDACTED] was keen on becoming an IAS officer while growing up; however, he never pursued this dream since he feared that he would be discriminated against as a civil servant. There are also fears that revealing their sexuality would affect their prospects of employment and/or be an impediment to their progress within an organization. In

addition to the fact that this impact of Section 377 of the IPC has denied the Petitioners several job opportunities, it has also deprived the Respondent, i.e. Union of India's organizations and services from availing of some of the best talent that the country has to offer. Several of the Petitioners are also of the opinion that by living in India and with the current legal position regarding their identity as LGBT, their very sense of security and well-being is threatened. They have all grappled with the decision of whether moving abroad and living their lives in freedom in countries where same sex acts have been decriminalized and rights of LGBT persons recognized would be a safer and better alternative to living in India insofar as there would be no threat to their safety and they would also be able to pursue relationships with persons of the same sex without a sense of fear that their acts are in contravention of the law. Section 377 is a contributing factor to the brain drain from India as far as LGBT persons are concerned. This could well result in several talented and accomplished members of the LGBT community in India, who would otherwise be in a position to contribute to the development of the nation, leaving the country to reside in freedom in other countries. This is also squarely against the interests of the Respondent State. Further, needless to state, no one should have to leave their home, country and their families because they

cannot feely express their true identities in their own country and choose partners of their choice.

- d. The most obvious and direct impact of Section 377 of the IPC has been the inhibition of the Petitioners' right to choose to enter into a relationship of their choice with persons of the same sex, openly and on equal terms to a heterosexual partnership. The Petitioners, in several cases, have not been able to find partners at all given the extreme social stigma associated with gay couples or finding partners who themselves are not able to openly accept their own identity owing to family and social pressures. Given the stigma associated with, and the lack of openness about homosexuality in the country, the Petitioners have very few opportunities where they can freely form intimate associations or enter into relationships with like-minded persons of the same sex who have accepted their identity; and even in cases where they have found such partners, they have to struggle to nurture and cultivate their relationships on account of the associated social stigma and fear of prosecution. It is submitted that the right to choose a life partner has been held to be a part of Article 21. The ability to seek companionship and love, and to express one's love, are intrinsic and essential attributes of the right to life. Unlike heterosexual citizens, the Petitioners are not free to form such relationships openly. When they try to form

intimate relationships, the Petitioners have the constant fear that they would be physically assaulted or blackmailed or receive threats of their identity being revealed to their families and workplaces. One of the Petitioners was extorted in south Delhi by his date from the same sex (even though he had only agreed to go on the date after getting to know the person in question), who began to blackmail him and then went on to steal from him. It is submitted that instances such as these prevent members of the LGBT community from openly and freely pursuing their romantic relationships and Section 377 therefore renders the Petitioners and other members of the LGBT community vulnerable in such situations. Moreover, most of the Petitioners have experienced a constant fear that they would be caught and imprisoned or otherwise be held in contravention of the law for engaging in sexual or romantic acts with partners of the same sex, in light of Section 377 of the IPC.

- e. Section 377 also places undue burdens on LGBT individuals' ability to form committed long term relationships. This has led to several loss of relationships which in some cases is also caused by one of the partners choosing to live in countries abroad where they have the freedom to marry persons of the same sex and enjoy a complete and fulfilled life. Petitioner No.6 – [REDACTED] has also had to deal with the pressure from family members and society to

get married to a woman, despite him having explained to his family members that he is not attracted to women.

Petitioner No.7 – ██████████ who is a bisexual woman, does not consider it safe to even consider a long-term relationship with another woman given the absence of laws in India that would protect such a relationship, even when the relationship is entirely based on the consent of both the adults involved. Similarly, for Petitioner No.10 – ██████████ another bisexual woman, Section 377 of the IPC imposes an overriding pressure on her to conform to the expectations of law and society and only pursue heterosexual relationships. The Petitioners grapple with the prospect of moving abroad to countries where they may be free to pursue relationships with persons of their independent choice, without having to suffer legal and consequent social repercussions. In fact, Petitioner No.6 – ██████████ is currently in a relationship with a person of the same sex. Knowing that he and his partner cannot be recognized as a couple under the present law in India, inspite of wanting to remain in the country of their birth, they plan to leave India soon so that they can freely pursue a legal relationship in another country. Petitioner No.8 – ██████████, too, echoes the same sentiment and intends to leave India so that he can marry someone from the same sex and start a family – something that is

impossible for him to even imagine in India. It is submitted that Section 377 of the IPC is thus a brutal denial of the Petitioners' right to seek what makes them fundamentally human – love. It is therefore not just a question of the Petitioners' sexual preference but a question of their very identity.

- f. On account of Section 377 of the IPC remaining a valid legal provision, the Petitioners often are fearful of approaching the police or other law enforcing agencies in India, even in an emergency situation. This is particularly true in cases where sexually active adults of the LGBT community have been blackmailed, robbed, molested or abused or even raped - they are too afraid to approach the police for any help or to report their cases merely because of the fear that they would be further abused and discriminated against, in view of Section 377 criminalizing homosexual acts between adults. This is amply demonstrated by the experience of one of the Petitioners, as set out above. Some of the other Petitioners too voice this concern and have witnessed their friends who are also part of the LGBT community go through these harrowing experiences. In effect, Section 377 of the IPC is preventing these Indian citizens from making use of even the very basic right to speak up against violence or crimes that they have been subjected to, only in view of their sexual orientation and gender identity. They are also denied

the right to seek protection from violence since their very nature and identity have been criminalized, leaving them helpless and without access to the law enforcement agencies including the police authorities. Importantly, the family members of the Petitioners and others of the LGBT community in India constantly fear for the safety of their children in India owing to Section 377 of the IPC and the danger and threat it poses to the safety and lives of their children who are LGBT citizens. In Petitioner No. 16's ([REDACTED]) case, while his parents have strongly supported him when they became aware of his sexual orientation, they still want him to settle abroad owing to the social discrimination that the LGBT community faces in India.

17. It is the Petitioners' submission that their struggle with understanding and accepting their sexuality and identity, their difficulties with coming out to people and dealing with the reactions to the same, and their consequential struggles with depression and other mental health issues, is in large part on account of the stigmatisation of LGBT identities on account of their criminalisation by Section 377 of the IPC. It is the Petitioners' submission that a major contributing factor to society's opinions and beliefs also stems from this legal position in India, which is entirely different from that of several other countries. Section 377 of the IPC has, in effect, legitimized the stigma associated with the Petitioners' sexual orientation. When the Hon'ble Delhi High Court

pronounced its judgment in *Naz Foundation v. Govt. of NCT of Delhi* in 2009 decriminalizing acts between consenting homosexual adults, the Petitioners were optimistic that things would finally be taking a turn for the better in the country. In fact, some members of Pravritti got the courage to reveal their sexual orientation to their family after the judgment of the High Court. Unfortunately, soon thereafter, the Petitioners were left shocked and helpless when the apex court of the country in 2013 in the case of *Suresh Kumar Koushal v. Naz Foundation*, overturned the *Naz Foundation* decision and reinstated the validity of the Section 377 of the IPC. The Petitioners believe that if the Hon'ble Supreme Court were to now grant the reliefs as sought by them in the present petition and strike down Section 377 of the IPC as invalid and unconstitutional, not only would it drastically change how society views the Petitioners, but it would also change how the Petitioners view and accept themselves for being who they are. Children and teens who are part of the LGBT community will not have to grow up with a constant troubling identity crisis and will no longer have to think of themselves as criminals or deviant as compared to the 'normal' people around them. While not all of the Petitioners have chosen to live abroad or intend to move abroad, all of them along with similarly placed members of the LGBT community are aware that their ability to be completely open about their identity to society as a whole and not just to their immediate peers and family may be possible only in other countries with greater freedom. It is

important to highlight that this is not only restricted to the fact that they can find a same-sex partner of their choice in some of these countries. Of greater importance is the fact that they can be completely open about their identity in several other countries without any fear of how they will be treated – something that they cannot hope for in their own country where their very sense of identity and dignity is grossly violated by Section 377 of the IPC remaining on the statute books. Even in cases where upon accepting and revealing their identity to those around, they have found acceptance from the immediate family and peer group and have found a supportive environment, they are still unable to live a completely fulfilled life and pursue all of the opportunities that they would wish to, in view of the looming threat of Section 377 of the IPC which criminalizes their very nature. It is submitted that the law in effect holds back Indian society from fully and completely accepting LGBT citizens as “normal” as compared to other citizens. The presence of Section 377 of the IPC on the statute books therefore prevents LGBT citizens from living a life with dignity.

18. It is evident from the description of the Petitioners and brief accounts of their experiences in the above paragraphs that all of the Petitioners come from diverse backgrounds in terms of their hometowns, culture, upbringing and social and economic background. All of the Petitioners are also accomplished citizens of India who are current students or alumni of the highly reputed IITs across the country. In spite of the above, many of them have

witnessed first-hand homophobia from people around them including in some instances, their own family and close friends who have had difficulty accepting the Petitioners for who they are and their true identity and sexuality. Some of them however, have been fortunate to have extremely supporting families and friends who have been their support system throughout their growing years. What is common to all the Petitioners is the adverse impact of Section 377 of the IPC on their own lives as well as lives of their friends/partners who are similarly placed members of the LGBT community, at some point or the other, inasmuch as Section 377 of the IPC has resulted in a gross impediment of the enjoyment of their fundamental rights which they are guaranteed to under the Constitution including the most basic right to live a life with dignity.

19. By way of the present Petition, the Petitioners, as LGBT citizens of the country have approached this Hon'ble Court under Article 32 of the Constitution of India, in order to protect their fundamental and guaranteed rights including those under Articles 14, 15, 16, 19 and 21 of the Constitution, on the following grounds, which are without prejudice to one another:-

20. **FOUNDATIONS:**

- A. Section 377 of the IPC, insofar as it penalises consensual sexual relations between consenting adults of the same sex, is unconstitutional as it violates the Fundamental Rights of the

Petitioners under Articles 14, 15, 16, 19 and 21 of the Constitution.

The very existence of a statutory provision that criminalises the Petitioners, as also other similarly placed citizens, for their natural instincts and their natural way of being, is entirely unconstitutional and is liable to be declared as such. Inasmuch as the fundamental rights of these Petitioners are thus violated, they are entitled to approach this Hon'ble Court for the protection and enforcement of their fundamental rights, by way of this writ petition under Article 32 of the Constitution.

B. Section 377 of the IPC violates Article 21 of the Constitution:

- I. This Hon'ble Court has interpreted the expressions 'life' and 'personal liberty' under Article 21 in their widest amplitude, as covering a variety of rights that go to constitute an individual's personal liberty, each of which have been raised to the distinct status of fundamental rights. This Hon'ble Court in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, has held that fundamental rights themselves have no fixed content and most of the fundamental rights are empty vessels into which each generation must pour its content in the light of its experience. Rather than limiting their meaning or content by narrow construction, this Hon'ble Court has consistently expanded the reach and ambit of the fundamental rights.
- II. This Hon'ble Court has expressly recognised within Article 21 of the Constitution an individual's right to a gender identity and

sexual orientation, the right to privacy, the right to choose a sexual partner, the right to personal autonomy, the right to health and right to dignity as integral parts of the right to life and personal liberty, all of which rights are infringed by the Section 377 of the IPC.

III. Right to gender identity and sexual orientation:

- i. This Hon'ble Court, in *National Legal Service Authority v Union of India and Ors.*, (2014) 5 SCC 438 ("**NALSA**"), has held that gender identity and sexual orientation are essential and immutable characteristics of one's personality and the most basic aspect of self-determination, dignity and freedom. This Hon'ble Court *inter alia* observed:

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

- ii. Section 377 of the IPC denies LGBT persons their rights to gender identity, sexuality and sexual orientation, which are implicit in the notion of life and personal liberty under Article 21 of the Constitution. In criminalising sexual acts between consenting adults of the same gender, Section 377

criminalises a core part of an individual's personal identity, self-esteem and their relationship with the wider society, solely on account of their sexual orientation, and as such, violates Article 21 of the Constitution.

- iii. The criminalisation of an integral aspect of an individual's natural persona and its branding as "unnatural" has resulted in the Petitioners having to face shame, stigma and self-doubt over their very identity, throughout their lives. The very existence of this law has consequently resulted in several of the Petitioners having to battle depression and mental health issues, on account of the denial of the legitimacy of their very personhood.

IV. Right to privacy:

- i. This Hon'ble Court, in *Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India and Ors.*, (2017) 10 SCC 1 ("**Puttaswamy**"), has expressly recognised the right to privacy as a fundamental right pre-dating the Constitution as it inheres in every human being from the moment of birth and is inalienable. The test as laid down in *Puttaswamy* for encroaching upon the fundamental right to privacy has been held as the three-fold requirement of (i) legality, which postulates the existence of law; (ii) legitimate state aim; and (iii) proportionality. Section 377 of the IPC, insofar as it criminalises consensual sexual acts between adults, is an entirely unwarranted intrusion into

the private space of consenting adults, criminalising acts that are private, and are not causing any harm whatsoever to society at large. In such a scenario, the section neither furthers a legitimate State aim nor is it proportional to any legitimate objective. Section 377 therefore *prima facie* amounts to an unconstitutional infringement of the right to privacy.

- ii. This Hon'ble Court in *Puttaswamy* has held that privacy includes at its core the preservation of personal intimacies and sexual orientation. The right to privacy is intrinsically connected with the right to sexual orientation:

“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. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. 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.”

- iii. The right to be let alone has been held to not simply mean the negative right to occupy a private space free from state intrusion, but as a right to get on with one's life, personality and make fundamental decisions about their intimate relations without penalisation.

V. Right to sexual autonomy and the right to choose one's sexual partner:

- i. The right to choose one's sexual partner as the very essence of personal liberty under Article 21 has been recognised by this Hon'ble Court in *Shafin Jahan v Asokan K.M & ors*, Criminal Appeal No. 366 of 2018, on 9th April 2018 ("**Shafin Jahan**"). The state cannot dictate choice of partners or limit the free ability of every person to take personal decisions. Social approval for intimate personal decisions is not the basis for recognizing them. By criminalising same sex relations, Section 377 of the IPC infringes the Petitioners' right to choose their sexual partner.
- ii. This Hon'ble Court has re-affirmed its observations in *Shafin Jahan* that the right to choose one's partner is integral to the preservation of individual liberty and cannot be subordinated to the social approval of others, in *Nandakumar and Anr. v State of Kerala and Ors.*, Criminal Appeal No. 597 of 2018, decided on 20th April 2018.
- iii. This Hon'ble Court has recognized that the choice of partner is protected by the Constitution and that such choice ought to be free from police interference. Moreover, this Hon'ble Court has always taken account of changing social norms when determining the scope of fundamental rights. Considering the vast changes in the norms governing choice of a sexual partner, the criminalization of such a choice by Section 377 of the IPC is therefore a violation of the rights guaranteed under Article 21.

VI. Right to personal autonomy:

- i. Personal autonomy is inherent in personal liberty, guaranteed under Article 21 of the Constitution. This Hon'ble Court in *Common Cause (A Regd. Society) v. Union of India*, Writ Petition (Civil) No. 215 of 2005, dated 9th March 2018 ("**Common Cause**") interpreted the scope of the right to personal autonomy to include the freedom to choose one's partner without interference from the State:

"Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe and not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives."

- ii. In *Anuj Garg v. Hotel Assn. of India*, (2008) 3 SCC 1 ("**Anuj Garg**"), this Hon'ble Court interpreted the right to personal autonomy to include self-determination of gender as an integral part of personal autonomy and self-expression.
- iii. In criminalising some sexual acts between consenting adults by deeming them "unnatural", Section 377 impinges upon the personal autonomy of such adults to express themselves sexually, in a manner of their choice. The persistent fear of prosecution under Section 377 prevents LGBT persons from living their lives in a way that is true to themselves. By categorising and censoring certain expressions of human intimacy as 'unnatural', Section 377

implicitly prescribes a certain standard of 'normal' conduct and criminalises other behaviour that is the product of their inherent sexual identity as well as free choice merely because it does not conform to a popular social morality.

- iv. It is submitted that public morality, however strong, is not a valid basis for overriding an individual's fundamental rights, which are to be tested purely on the basis of constitutional morality. The continued criminalisation of consensual sexual acts by adult LGBT persons cannot be justified on the grounds of public morality.

VII. Right to health:

- i. The right to health has been recognised as an inherent and essential constituent of the right to life under Article 21 by this Hon'ble Court in *Paschim Banga Khet Mazdoor Samity v. State of WB.*, (1996) 4 SCC 37.
- ii. The right to health encompasses both the *negative* freedom to control one's own sexual and reproductive health as well as *positive* obligation upon the State to create a system of health protection comprising goods, services and health facilities, which must be available and accessible to all, especially the most vulnerable and marginalized sections, without discrimination. It is humbly submitted that Section 377 falls foul of the above right by creating the stigma of criminalisation and preventing LGBT persons from having

access to a system of contraceptives and sexual health services without fear of negative repercussions.

VIII. Right to dignity:

- i. The right to human dignity has been recognised as a vital part of the right to life under Article 21 by this Hon'ble Court in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others*, (1981) 1 SCC 608, and finds specific mention in the Preamble to the Constitution. The constitutional protection of dignity acknowledges the value and worth of all individuals as members of society and recognises a person as a free being who develops his or her body and mind as he or she sees fit. Any law infringing the same must mandatorily meet the requirement of a just, fair and reasonable procedure established by law which is capable of withstanding the test of other fundamental rights.
- ii. Insofar as Section 377 criminalises sexual relations between consenting adults of the same sex, it gives legal sanction to the social stigma and debasement suffered by LGBT persons, it unequivocally implies that the State does not recognise the dignity and worth of LGBT persons, and the prevailing stigma against them for their immutable human attributes. It violates their right of human dignity and falls afoul of Article 21.

- iii. Section 377, by treating their intimate expression and romantic choice as a criminal offence, conveys the idea that LGBT persons are unworthy and undeserving of respect and 'lesser' than other members of society, which is a patently unconstitutional position.
- iv. Another effect of criminal sanctions against LGBT persons is to reinforce the misapprehension and general prejudice of the public and increase the feelings of anxiety and guilt in LGBT persons, leading to depression, questioning of self-worth and other psychological harm. Section 377 thus erodes the dignity of LGBT persons.

C. Section 377 violates Articles 14, 15 and 16 of the Constitution which together lay down a code of equality:

- i. Section 377 fails to make any reasonable classification and does not serve any object that is not unreasonable, arbitrary or redundant:

- i. A manifestly arbitrary and unreasonable law would fall foul of the equal protection of law requirement laid down by Article 14 of the Constitution. This Hon'ble Court has held that for a classification made by any law to withstand the test of Article 14 of the Constitution, there must be an intelligible differentia between those included and excluded by the law, and the said differentia must have a rational nexus with the object that the law seeks to achieve. It is humbly submitted that the above principles envisage

substantive equality before the law and not merely formal equality.

- ii. Section 377 is a hostile class legislation that singles out LGBT persons for differential treatment. LGBT persons are criminalised for their natural inclinations, their sexual orientation, and their choice of sexual partner. This Hon'ble Court has on numerous occasions held that hostile class legislation infringes Article 14 of the Constitution.
- iii. Even if it were to be assumed for the sake of argument that Section 377 is textually facially neutral, in its operation it has a disparate impact upon the LGBT community. Insofar as it criminalises consensual sexual intercourse between adults of the same biological sex, the section fails to make a reasonable classification as it solely distinguishes between people based on their sexual orientation and choice of sexual partner. This Hon'ble Court in the *NALSA* case has noted the historical misuse and abuse of Section 377 against LGBT persons. In practice, the prosecution of non-LGBT persons under the Section 377 is practically non-existent, and it is LGBT persons who are singled out for prosecution and harassment under the said Section.
- iv. The distinction between LGBT and non-LGBT persons has no purpose other than to perpetuate the historical social stigma that has attached to LGBT persons, and no valid purpose is served by Section 377 IPC. It is humbly submitted

that in light of the Protection of Children from Sexual Offences Act, 2013 (“**POCSO Act**”) and the amendments made thereby to Sections 375 to 376-E of the IPC, Section 377 as it stands today, effectively applies only to all forms of penetrative penile non-vaginal sex between LGBT persons (regardless of age and consent), and not heterosexual persons.

- v. This Hon’ble Court, in *Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors* (2014) 1 SCC 1 (“**Koushal**”) held that Section 377 does not criminalize any particular identity or sexual orientation and therefore does not discriminate against homosexual persons as a class, entirely failing to note the effect of the provisions as aforesaid. It is humbly submitted that while the Hon’ble Court in *Koushal* took notice of the abovementioned amendments to the IPC, it completely misconstrued the legislative intent in holding that as Parliament had left Section 377 of the IPC untouched while at the same time amending Sections 375 and 376, it reflected a legislative intent not to repeal Section 377. As a matter of fact, a perusal of the parliamentary debates on the Criminal Law Amendment Bill, 2013 shows that when the question of unnatural offences under Section 377 was raised in Lok Sabha, the Hon’ble Speaker of the House said “...*this matter is currently sub-judice. We do not need to deliberate on the same*”. It is

therefore apparent that the only reason for not amending or repealing Section 377 was that the matter was then *sub-judice*, and the Hon'ble Court erred in construing this as a legislative stamp of approval to Section 377.

- II. Section 377 of the IPC discriminates against LGBT persons on grounds of their sex and sexual orientation and thus falls foul of Article 15 & 16:
 - i. Section 377 of the IPC discriminates on the basis of sex and sexual orientation, and is violative of Article 15 of the Constitution. Article 15 guarantees non-discrimination based on 'sex' which includes discrimination based on 'sexual orientation'.
 - ii. Section 377 of the IPC blatantly discriminates between heterosexual couples, for whom sexual acts only constitute an offence in the absence of consent, and homosexual couples for whom any sexual act is an offence whether consensual or not. As such, Section 377 criminalises conduct without any requirement of harm and as such, is entirely arbitrary and unreasonable. It is humbly submitted that such a classification created by Section 377 falls foul of Article 15 of the Constitution as it discriminates between people solely based on their sex.

- iii. Section 377 of the IPC further falls foul of Article 15 as it criminalises sexual conduct regardless of whether it is committed in public or private.
- iv. LGBT individuals are denied access to the police machinery of the State even in instances where they have been sexually violated or subjected to non-consensual intercourse. Section 377 therefore denies LGBT individuals equal access to the State machinery and thus violates Article 21 of the Constitution of India.
- v. By criminalizing voluntary sexual intimacy between LGBT adults, Section 377 of the IPC denies them the opportunity to participate in a meaningful and fundamental aspect of human experience. The continued existence of the section has meant that LGBT persons either deny themselves a basic human experience to avoid committing a “crime” or otherwise risk prosecution. In view of the fact that adult, consenting heterosexual persons do not face such constraints under the law, Section 377 is clearly discriminatory towards LGBT persons.
- vi. Protection from discrimination based on sexual orientation has been directly recognised in the *NALSA* case, wherein discrimination based on sex in Article 15 has been held to include discrimination on the ground of gender identity and sexual orientation. It is humbly submitted that in light of this Hon’ble Court’s observations, Section 377 clearly

violates Article 15 of the Constitution and is liable to be struck down.

- vii. Section 377 of the IPC is also violative of Article 16 which envisages equality of opportunity for all citizens in matters relating to employment under the State. Prosecution for a criminal offence would expose Government Servants to potential disciplinary proceedings and suspension from service, under the relevant civil service rules. If kept in custody for 48 hours or more, a Government servant is liable to be automatically suspended from service. Since Section 377 criminalises a core part of their identity, LGBT persons are deprived of even the option of seeking employment under the State for fear of exposing themselves to constant scrutiny and potential departmental action. Section 377 therefore contravenes Article 16(2) of the Constitution, which proscribes discrimination on the basis of sex, which must also include sexual orientation and gender identity.

D. Section 377 violates the right to freedom of speech and expression and the right to free association guaranteed under Article 19 of the Constitution

- I. Right to freedom of speech and expression under Article 19(1)(a):
 - i. This Hon'ble Court, in *Puttaswamy* has noted the chilling effect that Section 377 of the IPC has on the free and

unobstructed expression of one's sexual orientation because of the danger of being subjected to social opprobrium or disapproval.

- ii. Section 377 of the IPC prevents the free and uninhibited expression of identity and sexual orientation by LGBT persons by creating the sanction of criminalisation. The fear of police interference or arrest prevent LGBT persons from freely expressing themselves and their sexual orientation through speech, writing, dress, etc. all of which are integral parts of the rights guaranteed to citizens by Article 19(1)(a) of the Constitution. Those of the Petitioners who are currently residing abroad have in large part chosen to do so, only because they are unable to freely express themselves and aspects of their personality in India, in view of the chilling effect of Section 377. It is therefore submitted that Section 377 falls foul of Article 19(1)(a) of the Constitution.
- iii. It is now well settled that Article 19(1)(a) also recognises the right of individuals to information and that access to information is considered essential to the right to freedom of expression. Criminalising of same sex relationships and deeming such relationships as 'unnatural' has a chilling effect on free availability of or access to information that would educate young adults with relevant information that could potentially enable them to understand themselves better and accept themselves. Lack of access to information

directly resulted in damaging the self-esteem and self-worth of several of the Petitioners as set out above, and resulted in their having to struggle with mental health and identity issues. It is submitted that a law that has a chilling effect on information dissemination is therefore violative of Article 19(1)(a), and Section 377 is unconstitutional on this ground also.

II. Right to form associations under Article 19(1)(c)

- i. Article 19(1)(c) of the Constitution guarantees to every citizen the right to form associations of their own choosing and carry on activities under such an association without undue interference. It is humbly submitted that the constant fear of prosecution under Section 377 is inimical to the exercise of the above right and denies to LGBT persons the essential right to form social and political associations that is necessary for all citizens to achieve a sense of social and psychological well-being.
- ii. This Hon'ble Court in *Puttaswamy* has affirmed that the right to form social and political associations is guaranteed to all citizens under Article 19(1)(c). Section 377 therefore prevents LGBT persons from exercising their fundamental rights under Article 19(1)(c) and ought to be struck down.
- iii. Associations and support groups such as Pravritti, of which the Petitioners are members, are constrained to exist in secrecy and cannot be visible to non-members as that could

threaten the peace of mind of its members. Additionally, public visibility of such associations could have an adverse impact upon the careers of the concerned members, who could be persecuted for their membership of such an association. The secret existence of such associations makes them inaccessible to LGBT persons who are not known to existing members. Such LGBT persons are denied the social and psychological well-being they could have drawn from such support groups and associations. Support groups are required to operate in secret only because of the chilling effect of Section 377 and the stigma created around one's identity as LGBT. Thus, Section 377 also falls foul of Article 19(1)(c) of the Constitution.

E. Section 377 is vague, excessive and has no legitimate aim, thereby violating the 'golden triangle' of Articles 14, 19 and 21 of the Constitution

- I. This Hon'ble Court in *Minerva Mills v Union of India*, AIR 1980 SC 1789 observed that Articles 14, 19 and 21 of the Constitution cannot be read in isolation and constitute a combined code or a 'golden triangle' on the touchstone of which any law that infringes fundamental rights must be tested.
- II. This Hon'ble Court, commenting on the relationship between Articles 14 and 21 in *Puttaswamy* has observed:

*"...the evolution of Article 21, since the decision in **Cooper** indicates two major areas of change.*

First, the fundamental rights are no longer regarded as isolated silos or water-tight compartments. In consequence, Article 14 has been held to animate the content of Article 21...Article 14, as a guarantee against arbitrariness, infuses the entirety of Article 21. The inter-relationship between the guarantee against arbitrariness and the protection of life and personal liberty operates in a multi-faceted plane. First, it ensures that the procedure for deprivation must be fair, just and reasonable. Second, Article 14 impacts both the procedure and the expression "law". A law within the meaning of Article 21 must be consistent with the norms of fairness which originate in Article 14. As a matter of principle, once Article 14 has a connect with Article 21, norms of fairness and reasonableness would apply not only to the procedure but to the law as well.

III. Section 377 of the IPC is vague:

- i. Provisions that create offences but are vague and do not provide *any reasonable standards to define guilt* are liable to be struck down as arbitrary, as held by this Hon'ble Court in *Shreya Singhal v Union of India* (2015) 5 SCC 1.
- ii. Section 377, by prohibiting "*carnal intercourse against the order of nature*" does not define with a sufficient degree of precision the categories of sexual conduct that are prohibited by law, and therefore, prevents people from knowing in advance how to conduct themselves so as to not fall foul of the section. Apart from the settled legal proposition that criminal offences must be specifically defined in order to be valid, Section 377 is also completely arbitrary in its definition of the offence and therefore, infringes the rights of LGBT persons under Articles 14 and 21.

IV. Section 377 of the IPC is overbroad and arbitrary:

- i. Section 377, on its plain wording appears to simply prohibit “*carnal intercourse against the order of nature*”, which is an inherently arbitrary and excessive objective with no discernible constitutionally valid purpose. By making no distinction between consensual or non-consensual sexual acts, or acts between adults and minors, or any other rationally defensible distinction, the section suffers from the vice of overbreadth and criminalises conduct by LGBT persons that is otherwise constitutionally valid. Therefore, Section 377 infringes the provisions of Articles 14, 15 and 21.
- iv. For that this Hon’ble Court in *Puttaswamy* has made clear its view that the Hon’ble Court in *Koushal* took an erroneous view of the rights of LGBT persons under Articles 14, 15 and 21. In this regard, the Hon’ble Court *inter alia* observed:

“The view in Koushal that the High Court had erroneously relied upon international precedents “in its anxiety to protect the so-called rights of LGBTQ persons” is similarly, in our view, unsustainable. The rights of the lesbian, gay, bisexual and transgender population cannot be construed to be “so-called rights”. The expression “so-called” seems to suggest the exercise of a liberty in the garb of a right which is illusory. This is an inappropriate construction of the privacy based claims of the LGBTQ population. Their rights are not “so-called” but are real rights founded on sound constitutional doctrine. They inhere in the right to life. They dwell in privacy and dignity. They constitute the essence of liberty and freedom. Sexual orientation is an essential component of identity. Equal protection demands protection of the identity of every individual without discrimination.”

F. Section 377 of the IPC impedes achievement of the Directive Principles of State Policy and Fundamental Duties envisioned in the Constitution

- I. Article 38 of the Constitution envisages State promotion of welfare of the people by securing and protecting a social order which uniformly guarantees social, economic and political justice, and enjoins the State to endeavour to eliminate inequalities in status, facilities and opportunities. Article 46 of the Constitution enjoins the State to promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice. Section 377 is, in its operation, completely antithetical to the welfare of LGBT persons and perpetuates discrimination between LGBT and non-LGBT persons solely on the basis of sexual orientation, thereby denying them equality before the law.
- II. Further, although Article 51-A makes it a duty for every citizen of India to 'develop the scientific temper', LGBT persons such as the Petitioners, who are from the premier scientific and technical institutions of the country, are impeded in fulfilling this duty. The continued criminalisation of the core identity of LGBT persons under Section 377 has interfered with the ability of young LGBT persons, such as several of the Petitioners, to fully realise their educational potential and has negatively impacted their mental health, which presents great obstacles to their

education and their ability to effectively utilise their intellect and talent to the fullest. Such persons are very often compelled to seek employment abroad in countries with a more progressive outlook towards LGBT persons than India. This not only severely inhibits the quality of life and freedom of choice of the Petitioners and other LGBT persons, but also results in a loss to the nation of its brightest minds , only on account of a regressive colonial-era law that does not fit with modern constitutional values.

G. Section 377 is constitutionally invalid in light of the principles of updating and purposive construction

- I. It is submitted that the constitutional validity of a colonial statute may be examined not only based on the past history of the legislation concerned but the manner in which the same has been dealt with by the legislature of its origin.
- II. The relevant legislation criminalising consensual homosexual relations has been struck down not only in the United Kingdom, on which statute Section 377 is based, as long ago as 1967. Similar provisions have been done away with in several countries across the world including in the USA (2003), Scotland (1980), Ireland (1993), Australia (1982), New Zealand, Canada (1989), South Africa (1998), Nepal (2008), Fiji (2005), Mexico, China, Hong Kong (2006), Japan, Belize, Turkey, South Korea, Thailand and Vietnam.

III. It is a settled canon of construction that the Constitution is a living document and must be interpreted keeping in mind the continuously evolving social and political mores that prevail in a given society. It is humbly submitted that Articles 14, 15, 16, 19 and 21 only lay down guiding principles and core values which this Hon'ble Court must interpret keeping in mind the conditions of modern society and the improvements in science and human understanding, that have taken place since enactment of Section 377, which finds its place in a pre-colonial statute.

H. International conventions which are interpretative aids to the Constitution support the stand of the Petitioner that Section 377 of the IPC is unconstitutional

- I. Constitutional guarantees must be construed by reference to international conventions to which India has become a party.
- II. International instruments such as the Universal Declaration of Human Rights (“UDHR”) (Article 12) and International Covenant on Civil and Political Rights (“ICCPR”) (Article 17) explicitly recognize the right of a person to be free from arbitrary and unlawful interference with their privacy. Article 9 of the UDHR also recognises the right to liberty and security of every person. These instruments have been used as interpretative aids by this Hon'ble Court on numerous occasions with regard to Article 21.

- III. Article 7 of the UDHR recognises the principle of equality and prevents discrimination and is based on the same underlying principle as Article 14 of the Constitution, and this Hon'ble Court may draw upon this provision as a source of international law that assists in elucidation of the guarantees under Article 14 of the Constitution.
- IV. This Hon'ble Court in *NALSA* adopted the Yogyakarta Principles on Application of International Human Rights Law in relation to Sexual Orientation & Gender Identity, 2007 ("**Yogyakarta Principles**"). The Yogyakarta Principles contain detailed recommendations to States to the effect of amending national laws to decriminalize consensual, sexual conduct between two adults in private as well as develop policies in place that provide a remedy in law from discrimination, regardless of sexual orientation and gender identity.
- V. The United Nations High Commissioner on Human Rights in Report No. A/HRC/29/23, dated 4th May 2015, stated: "*States that criminalize consensual homosexual acts are in breach of international human rights law since these laws, by their mere existence, violate the rights to privacy and non-discrimination.*"
- I. **Section 377 of the IPC is liable to be struck down by this Hon'ble Court in its exercise of jurisdiction under Article 32 and the power of judicial review**

- I. Judicial review is a part of the basic structure of the Constitution and therefore, declaring Section 377 as unconstitutional is squarely and solely within the province of this Hon'ble Court.
- II. Article 32 of the Constitution is included in Part III of the Constitution, which implies that the right to move this Hon'ble Court for enforcement of fundamental rights is itself a fundamental right.
- III. The judgement in *Koushal* does not stand in the way of consideration of the issues raised in this petition, in view of the judgments of this Hon'ble Court in *Puttaswamy* and *NALSA*. This Hon'ble Court is already seized of other Writ Petitions challenging the constitutional validity of Section 377 which have been referred to a Constitution Bench, namely:
 - i. *Navtej Singh Johar v Union of India*, W.P (CRL.) No. 76 of 2016;
 - ii. *Akkai Padmashali and Ors. v Union of India*, W.P (C) No. 572 of 2016;
 - iii. *Keshav Suri v Union of India*, W.P. (CRL.) No. 88 of 2018;
 - iv. *Arif Jafar v Union of India*, W.P. (CRL.) No. 100 of 2018;
 - v. *Ashok Row Kavi and Ors. v Union of India*, W.P. (CRL.) No. 101 of 2018;

21. The Petitioners have not filed any other petition either before this Hon'ble Court or any High Court challenging the constitutional validity of Section 377 IPC.
22. The Petitioners crave leave to refer to additional grounds at the time of hearing.
23. The present Petition is filed *bona fide* and in the interests of justice.

PRAYER

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

- A. Declare that the Petitioners are entitled to equality before the law and equal protection of law, without discrimination on the basis of their sexual orientation, under Articles 14, 15 and 16 of the Constitution of India;
- B. Declare that Section 377 of the Indian Penal Code, 1860 to the extent it penalizes consensual sexual relations between adults, is violative of Articles 14, 15, 16, 19 and 21 of the Constitution of India;
- C. Issue an appropriate writ, order or injunction prohibiting the Respondent arraigned herein by itself, or through its officers, agents and/or servants from in any manner enforcing the law under Section 377 of the Indian Penal Code, 1860 in relation to consensual, sexual conduct between adults;
- D. Grant costs for the present Petition;

- E. Pass such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case in the interest of justice.

DRAWN BY:

KEYSTONE PARTNERS,

NEW DELHI

FILED BY:

(PRITHA SRIKUMAR IYER)

DRAWN ON: 06.05.2018

FILED ON: 12.05.2018