

SUNIL FERNANDES
ADVOCATE-ON-RECORD

SC-2051

IN THE SUPREME COURT OF INDIA

[CRIMINAL ORIGINAL JURISDICTION]

WRIT PETITION (CRL.) NO. **100** OF 2018
D.No-16206/2018

IN THE MATTER OF:

ARIF JAFAR

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

PAPER BOOK

[FOR INDEX PLEASE INSIDE]

SC-2051

ADVOCATE FOR THE PETITIONER, SUNIL FERNANDES

INDEX

Sr. No.	Particulars	Page Nos. of part to which it belongs		Remarks
		Part 1 (contents of paper book)	Part 2 (Contents of file alone)	
	Court Fees	Rs.	Rs.	
1.	Listing Proforma	A1 - A2	A1 - A2	
2.	Cover Page of Paper Book		A3	
3.	Index of Record of Proceedings		A4	
4.	Defect List			
5.	Note Sheet		NS1-	
6.	Synopsis and List of Dates	B - I		
7.	<u>Writ Petition</u> with Affidavit	<u>1-38</u>		① :- Memos <i>or</i> lies ② :- Facts ③ :- GROUNDS - ④ PRAYERS
8.	APPENDIX Section 109, 110, 120B, 292, 375, 376 & 377 of Indian Penal Code.	39-49		
9.	Filing Memo		50	
10.	Vakalatnama		51	

PROFORMA FOR FIRST LISTING

A//

SECTION: PDL

This case pertains to (Please tick/ check the correct box):

- Central Act: (Title) Indian Penal Code 1860
- Section : Sections 109, 110, 120B, 292, 375, 376 & 377 IPC
- Central Rule : (Title)N.A.
- Rule No(s)N.A.
- State Act: (Title) N.A.
- Section : N.A.
- State Rule : (Title)N.A.
- Rule No(s):N.A.
- Impugned Interim Order : (Date)N.A
- Impugned Final Order /Decree :N.A.
(Date)
- High Court : (Name)N.A.
- Names of Judges:N.A.
- Tribunal /Authority : (Name)N.A.

1. Nature of the matter Civil Criminal
2. a) Petitioner/Appellant No.1.: ARIF JAFAR
 - b) Email I.D. sunilf.adv@gmail.com
 - c) Mobile phone number: 9891639491
3. a) Respondent No.1 UNION OF INDIA
 - b) Email I.D. N/A
 - c) Mobile phone number: N/A
4. a) Main category classification 08
 - b) Sub classification : 0812
5. Not to be listed before: N/A
6. Similar /Pending matter : N/A
7. Criminal Matters: N/A
 - a) Whether accused /convict has Yes No surrendered:
 - b) FIR No.- Date :
 - c) Police Station:
 - d) Sentenced awarded N/A

A/2

- e) Sentence Undergone: N/A
8. **Land Acquisition Matters:** N/A
- a) Date of Section 4 notification : N.A
- b) Date of Section 6 notification : N.A
- c) Date of Section 17 notification N.A
9. **Tax Matters : State the Tax effect:** N.A
10. **Special Category: (first petitioner/ appellant only):** N.A
- Senior citizen > 65 years SC/ ST Woman /child
- Disabled Legal Aid case in custody
11. **Vehicle Number (in case of Motor Accident Claim matters) :** N.A
12. **Decided case with citation :** N.A

[SUNIL FERNANDES]
Advocate for the Petitioner
AOR Code: 1721
A-178, Lower Group Floor
Defence Colony, New Delhi-110024
Mobile: +91 9891639491
Landline/Fax: 011-41084945,
41043573/46702466
Email: sunilf.adv@gmail.com

Date: 26.04.2018

SYNOPSIS

That the Petitioner before this Hon'ble Court is a gay man and a citizen of India. He has suffered arrest, detention and prosecution on account of his sexual orientation and has experienced first-hand the violation of his fundamental rights and freedoms guaranteed under Part III of the Constitution of India on account of Section 377 of the Indian Penal Code, 1860 (hereinafter "IPC").

The aim and objective of Section 377, IPC has substantially diminished after enactment of The Protection of Children from Sexual Offences Act, 2012 (POCSO) which proscribes all forms of non-consensual sexual acts between an adult and a child, and the Criminal Law Amendment Act, 2013 (CLA) whereby the amended Sections 375 and 376, IPC now proscribe all forms of non-consensual sexual acts between a man and a woman. The only legitimate purpose Section 377, IPC currently serves is to criminalize non-consensual sex between a man and a man and a transgender person.

This Hon'ble Court in ***National Legal Services Authority v. Union of India; [(2014) 5 SCC 438]*** held that "*discrimination on basis of sexual orientation and gender identity therefore impairs equality before law and equal protection of laws and violates Article 14 of the Constitution of India*".

A 9-judge bench of this Hon'ble Court in **Justice KS Puttaswamy (Retd.) & Anr. v. Union of India & Ors [(2017) 10 SCC 1]** "hereinafter referred to as Puttaswamy", held that "*the right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution*".

Section 377, IPC does not cumulatively satisfy the three-fold test laid down by this Hon'ble Court in *Puttaswamy*, i.e., (1) existence of law, (2) legitimate aim and (3) proportionality, which may justify restraints on fundamental rights.

Section 377 IPC also does not allow choice of partners as held in ***Shafin Jahan v Asokan K.M & Ors., Criminal Appeal No. 366 of 2018***, dated 09.04.2018 (hereinafter "*Shafin Jahan*").

Section 377, IPC is manifestly arbitrary as per the test laid down by this Hon'ble Court in ***Shayara Bano v. Union of India [(2017) 9 SCC 1]***, as it criminalizes and penalizes a vague offence defined as '*carnal intercourse against the order of nature*' and is disproportionately applied against homosexual males and transgender persons.

Vide its order-dated 08.01.2018 in W.P (CRL.) No. 76 of 2016, this Hon'ble Court has directed that the constitutional validity of Section 377 be examined by a constitution-bench of this Hon'ble Court, by stating that consent is a fundamental pre-condition for determination of a question of law on adults engaging in sexual

conduct. That vide the said order, this Hon'ble Court has also agreed to test the correctness of its decision in ***Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors [(2014) 1 SCC 1]***, wherein Section 377 was held to be constitutionally valid.

Being personally and directly aggrieved by section 377, IPC, the Petitioner has no other efficacious remedy but to approach this Hon'ble Court by way of the present petition under Article 32 of the Constitution to challenge the Constitutional validity of Section 377 IPC.

Hence, the present Writ Petition.

LIST OF DATES AND EVENTS

1860 Section 377 is enacted as part of the *Indian Penal Code* by the British Colonial Government, which reads as:

"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 a term which may extend to ten years, and shall also be liable to fine.

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

- 1860-2000 Courts, including various High Courts and this Hon'ble Court variedly interpreted the phrase '*carnal intercourse against the order of nature*' to include all sexual acts, which are penile non-vaginal in nature.
- 06.07.2001 The office premises of the Petitioner's Bharosa Trust in Lucknow is raided by the police on baseless allegations of running a '*gay sex racket*', and persons in Bharosa Trust, including the Petitioner are charged under Section 109 (punishment of abetment), Section 120B (criminal conspiracy), Section 292 (sale etc. of obscene books etc.) and Section 377 (unnatural offence) of the IPC. Petitioner spent 47 days in jail before he is released on bail. The said case is still pending.
- 06.12.2001 NAZ Foundation (India) Trust files a public interest litigation, being Writ Petition (Civil) No. 7455 of 2001, in the Hon'ble Delhi High Court challenging the constitutionality of Section 377, Indian Penal Code, 1860 (hereinafter '*Section 377, IPC*'), on the grounds that it violates Articles 14, 15, 19 and 21 of the Constitution and seeking a declaration that Section 377 be

read down to exclude adult consensual sexual acts in private and limit its application only to non-consensual acts and sexual acts with minor persons.

- 02.07.2009 The Hon'ble High Court of Delhi delivers its judgment, finding Section 377 IPC, insofar as it criminalizes consensual sexual acts of adults in private, to be in violation of Articles 21, 14 and 15 of the Constitution.
- 09.09.2009 A special leave petition being *Suresh Kumar Koushal v. Naz Foundation and Ors.*, SLP(C) 15436 of 2009 is filed in this Hon'ble Court. Pertinently, Union of India did not appeal against the Hon'ble High Court's decision.
- 20.06.2012 Parliament passes the *Protection of Children against Sexual Offences Act* (hereinafter 'POCSO'), 2012 that seeks to protect children, *inter alia*, from penetrative sexual assault and sexual harassment, and provides a comprehensive child-centric redressal mechanism to deal with such offences and which also acts covered under Section 377 IPC.

- 03.02.2013 The Government of India promulgated *Criminal Law (Amendment) Ordinance, 2013*
- March, 2013 Parliament enacted the *Criminal Law (Amendment) Act, 2013* that introduces certain new offences in the IPC and amends the offences on rape and sexual assault, along with necessary changes in the *Code of Criminal Procedure, 1973* and the *Indian Evidence Act, 1872*. The amended Section. 375 now also covers non-consensual sexual acts between man and woman (penile non-vaginal), which were covered under Section 377 IPC.
- 11.12.2013 This Hon'ble Court delivered its judgment in *Suresh Kumar Koushal v. Naz Foundation and Ors., SLP (C) 15436 of 2009* and all connected petitions, setting aside the decision dated 02.07.2009 passed by the Hon'ble High Court of Delhi and holding that Section 377 IPC did not suffer from the vice of unconstitutionality.
- 24.12.2013 NAZ Foundation (India) Trust filed review petitions (Review Petition No. 41-55 of 2014) pointing out glaring errors on the face of the record and patent errors of law.

28.01.2014 This Hon'ble Court dismisses the review petition by circulation.

31.03.2014 NAZ Foundation (India) Trust files the Curative Petition (Civil) No. 88-102 of 2014 against the judgment dated 11.12.2013 along with the judgment and order in review petitions dated 28.01.2014.

15.04.2014 This Hon'ble Court in *National Legal Services Authority v. Union of India [(2014) 5 SCC 438]* upheld that the constitutional rights of transgender persons, including the right to identify in their chosen gender, whether as male, female or as transgender, irrespective of the gender assigned at birth and independent of any medical intervention. It further held that transgender persons enjoy the right to equality, non-discrimination, freedom of gender expression, dignity, and autonomy guaranteed under Articles 14, 15, 19 and 21 of the Constitution.

Pertinently, this Hon'ble Court observed that discrimination on the ground of sexual orientation

violated the equal protection of law guaranteed under Article 14 of the Constitution.

- 22.04.2014 This Hon'ble Court, in a chamber hearing, directed that the curative petitions be listed in the open court.
- 24.08.2017 This Hon'ble Court in a 9-judge bench decision in *Justice KS Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, [(2017) 10 SCC 1] held the right to privacy to be Fundamental Right protected under Part III of the Constitution of India.
- 09.04.2018 This Hon'ble Court delivered a judgment in *Shafin Jahan v Asokan K.M & ors*, Criminal Appeal No. 366 of 2018, holding that all persons have a right of choice of partners which is not the business of the State
- 08.01.2018 This Hon'ble Court in *Navtej Singh Johar & Ors. v. Union of India*, W.P (CRL.) No. 76 of 2016 decided to refer the examination of the constitutional validity of Section 377, IPC to a 5-judge constitutional bench.
- 26.04.2018 Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA
(CRIMINAL ORIGINAL JURISDICTION)
WRIT PETITION (CRIMINAL) NO. **100** OF 2018
(UNDER ARTICLE 32 OF CONSTITUTION OF INDIA)

IN THE MATTER OF:

ARIF JAFAR

An Indian Resident

R/o: 21/6/3, Peer Pur House

8, Tilak Nagar, Lucknow

Uttar Pradesh

...PETITIONER

VERSUS

1. UNION OF INDIA

Through the Secretary,
Ministry of Law & Justice,
Shastri Bhawan
New Delhi- 110001.

2. UNION OF INDIA

Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi- 110001

3. UNION OF INDIA

Through the Secretary
Ministry of Health
Nirman Bhawan
New Delhi- 110001

...RESPONDENTS

IN THE MATTER OF:

INFRINGEMENT OF FUNDAMENTAL RIGHTS GUARANTEED
UNDER ARTICLES 14, 15, 19 AND 21 OF THE CONSTITUTION
OF INDIA

AND

IN THE MATTER OF:

SECTION 377 (UNNATURAL OFFENCE) OF THE INDIAN
PENAL CODE, 1860

AND

IN THE MATTER OF:

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA SEEKING A DECLARATION THAT SECTION 377
(UNNATURAL OFFENCE) OF THE INDIAN PENAL CODE, 1860
IS UNCONSTITUTIONAL IN AS MUCH AS IT CRIMINALISES
ADULT CONSENSEUAL SEXUAL RELATIONS AMONGST
NON- HETEROSEXUAL PERSONS.

TO,

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

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner before this Hon'ble Court is a gay man and a citizen of India. He has suffered arrest, detention and prosecution on account of his sexual orientation and has experienced first-hand the violation of his fundamental rights and freedoms guaranteed under Part III of the Constitution of

India on account of Section 377 of the Indian Penal Code, 1860 (hereinafter "IPC"). The Respondent is the Union of India and is arrayed through the Ministry of Home, Ministry of Law & Justice and Ministry of Health.

2. That vide its order dated 08.01.2018 in W.P (CRL.) No. 76 of 2016, this Hon'ble Court has directed that the constitutional validity of section 377 IPC be examined by a constitution-bench of this Hon'ble Court. That vide the said order, this Hon'ble Court has also agreed to test the correctness of its decision in **Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors [(2014) 1 SCC 1]**, wherein section 377 was held to be constitutional. Being personally and directly aggrieved by section 377, IPC, the Petitioner has no other efficacious remedy but to approach this Hon'ble Court by way of the present petition under Article 32 of the Constitution to challenge the Constitutional validity of Section 377 IPC.
3. That the present Writ Petition, raises the following important questions of law of public interest for the consideration of this Hon'ble Court:-
 - A. Whether section 377 that criminalizes 'voluntary carnal intercourse against the order of nature', does not violate the fundamental right to privacy?

- B. Whether section 377 that criminalizes intimate expression between consenting adults does not violate the fundamental right to privacy, dignity and autonomy under the Constitution of India?
- C. Whether section 377 that criminalizes persons on the basis of their sexual orientation and identity, does not violate fundamental right to equality and non-discrimination under Articles 14, 15, read with Articles 19 and 21 of the Constitution?
- D. Whether section 377, which neither defines nor explains what constitutes '*carnal intercourse against the order of nature*' is not arbitrary and violative of Articles 14 and 21 of the Constitution?
- E. Whether section 377 that impairs autonomy and expression in one of the most personal decisions of an individual's life, i.e. the choice of one's partner and intimate association is not violative of Articles 19 and 21 of the Constitution?

4. The facts leading to the filing of the present Writ Petition are as follows:

- (i) The Petitioner is an ordinary Indian citizen, born and brought up in Lucknow, Uttar Pradesh. The Petitioner has an academic background in Science and in Sociology. He holds M.A, M.Sc. M.Ed. and M.Phil. degrees. The Petitioner has

been aware of his sexual orientation, *i.e.*, that he is a homosexual man and is attracted to persons of the same sex since his teenage years. Initially reluctant, the Petitioner's family, especially his mother and father, came to accept and embrace him just the way he is. The Petitioner has always been self-assured and confident and never thought of himself as being 'abnormal' or 'lesser' than anyone else.

- (ii) That in 1992, at the age of 17, the Petitioner started an informal support group by the name - 'Friends India' for Lesbian, Gay, Bisexual and Transgender ("LGBT") persons in Lucknow. In 1997, the Petitioner set up 'Bharosa' Trust - a community based organization providing information, counseling, outreach and peer support for homosexual and transgender persons, of which sexual health services became a substantial part, after an increasing number of visitors to the Bharosa Trust, *i.e.* persons who were homosexual or transgender started reporting symptoms of sexually transmitted infections including HIV.
- (iii) That on 06.07.2001 the office premises of Bharosa Trust in Lucknow were raided by the Police, who seized literature on gender, sexuality and safe-sex and condoms as "*evidence*" of running a "*gay sex racket*".
- (iv) That on 08.07.2001, the Petitioner and his four colleagues, who were involved in outreach and distribution of condoms

among men having sex with men were humiliated and beaten up in public before being arrested by the police under Section 109 (punishment of abetment), Section 120B (criminal conspiracy), Section 292 (sale etc. of obscene books etc.) and Section 377 (unnatural offence) of the IPC.

- (v) That the Petitioner and his colleagues were denied bail by the Sessions Court. Scandalous media-reports and hysteria surrounding the allegations of "*conspiracy to promote homosexuality*" and "*a group of men indulging in these activities... (is) polluting the entire society by encouraging young persons and abetting them to committing the offence of sodomy*" ensured that the Petitioner remained in custody for over a month.
- (vi) That the Petitioner was detained in the jail in inhuman conditions, which nearly broke him down as human being. The Petitioner and his colleagues were granted bail by the Lucknow bench of the High Court of Allahabad after spending 47 days in judicial custody.
- (vii) That though the Petitioner was released from jail on the order of the Hon'ble High Court granting bail. Eighteen years after the incident, he is still chained by the memories of his arrest, detention and treatment in prison, which dehumanized him, violating the integrity of his mind, body and soul.

- (viii) That the Petitioner's experience is best described in his own words, which appeared as an article in the Hindustan Times (online edition) dated 07 February, 2018: -

“Let's talk about 377 | Police revulsion for a gay man put me in 'hellhole' jail: Arif Jafar

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

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

The horror had begun a day earlier. Around 5am, a panic call from my mother had jolted me awake. Shahid, a worker from my organisation, had been arrested while doing his job — distributing condoms among MSM (men who have sex with men) population in Lucknow's Charbagh area. He had been dragged to the police station and hadn't been heard of since.

I was confident it was a mix-up. After all, I had been working with the Lesbian, Gay, Bisexual and Transgender (LGBT) population for a decade and knew state and national-level authorities. I called up senior bureaucrats and police officials and was promptly assured it would be sorted. I rushed to the police station to get Shahid back.

Unknown to us, a plan to arrest and humiliate us was already afoot. As I waited in the station, the police raided our offices, ransacked the premises and seized what they thought was damning evidence of our 'perversion' — literature on gender, sexuality and safe sex, stacks of condoms and a couple of dildos we used for demonstration.

We were raided around 4pm on a Saturday. By evening, the channels were splashing bulletins of a "Gay Sex Racket" and discussing theories of how I had taken funding from Pakistan to make all Indian men homosexual.

But that was just the beginning of the nightmare. Within hours, three of my colleagues and I were arrested and beaten up in public at the Hazratganj traffic circle. I think the revulsion for a gay man was so acute that they wanted to hurt our reputation and ensure we could never show our faces in public again.

When we were produced in court the next day, we learnt that we had been charged under section 110 (abetment to a crime), 120B (criminal conspiracy), and section 377 (unnatural offences) of the Indian Penal Code. The police told the court that they had found us guilty of a conspiracy to promote homosexuality, as if perfectly normal sexual behaviour could ever be 'promoted'.

But the pervasive homophobia and stigma surrounding gay sex ensured no one questioned the police, and instead looked at us as if we were animals, undeserving of even the most basic human

rights accorded to every Indian citizen. We were thrown in jail with the then police chief declaring, "Even if I have no proof against them, I will ensure they rot in jail."

Our horrors were just beginning.

Many prisoners had already heard of us. We were beaten up almost every day, and abused — Saaley Gandu aaye hain, mazey se ***. ("Bloody homosexuals have come, we can take advantage of them."). We were beaten up and the jailor would often menacingly threaten to "take remand" of all of us with a wicked smile. What that meant anyone can imagine.

The media reported that we took Rs 70 lakh for supplying boys to ministers and bureaucrats, and many of the burlier prisoners beat us up when we couldn't show the stash. My colleague still has a damaged tailbone because of the torture. The psychological violence also broke me. We were forced to use putrid drain water for cleaning our utensils. Our dirty food bowls were mossy, which could only be cleaned with the drain water. It was clear that they wanted to hit us where it hurt the most — our sanity and self-respect. But even in hell, there was a sliver of light. Some prisoners saw that we were crumbling and offered support. We were moved to another barrack, where two prisoners gave me fresh clothes of their own, arranged for some warm water and a haircut. I used to offer Namaz five times a day, and this forged a bond with some of the other inmates, who were convinced that we were innocent. On day eleven, when the

constables came to beat us up, these prisoners and their friends ring-fenced us and threatened the policemen, who backed off. I can never forget their magnanimity. Still, our fortunes were far from turning around. I used to have severe kidney pain, but the officials offered no help or treatment. The poor hygiene of the jail made me lose most of my teeth — now I make do with artificial ones. We were frequently ill and infected with diseases. Our bail request was turned down repeatedly on the grounds that we were a curse to society. Finally, on Day 47, we stepped out of that hellhole. But the nightmare hasn't ended for me. I am 47 years old now and for the last 18 years, the case has dragged on and poisoned my life. I have to go to court every couple of months. I live in fear and consternation. Only because, as a gay man, I cannot seem to enjoy the same rights my fellow Indians take for granted. It took me almost a decade to come out of the trauma the jail inflicted. An archaic law that is the remnant of a regressive colonial practice was used to strip me of dignity and abuse me, only to serve the homophobic hatred of some people in positions of power. Thankfully, my mother and family were supportive of my case, my sexuality. They understood that there is nothing wrong in falling in love with a man and wanting to live with him. They understood that there is nothing unnatural in being gay. That section 377 is a retrograde law that is designed to make us second-class citizens and criminals for no fault of ours. That I committed no crime in being gay. I am now in a loving relationship with a man I deeply care for. We have been together for almost a decade. But the trauma of

Section 377 continues to hang over my head. The humiliation never leaves you — I have to keep explaining to people that I did nothing wrong, that I am just as “normal” as everyone else. But that jail stint left me stronger and more determined to carry out our work against Section 377 and build it into a nationwide movement. I now know that we have to stand up for our own rights as Lesbian, Gay, Bisexual and Transgender people. I know that section 377 has no right to impose social morality on our community, force it into the shadows — into shameful marriages, extortion, humiliation and even suicide. With the Supreme Court deciding to hear the petition against the abominable law afresh, I am hopeful that a new generation of LGBT people will never face the trauma and shame I faced. It is time we start talking about a law that criminalizes our lives and makes us less than human. It is time to talk about Section 377.”

(Arif Jafar is an LGBT activist and has worked for the community for 30 years)”

- (ix) That aforesaid incident constituted a serious invasion of the Petitioner's privacy, dignity and liberty solely on account of his sexual orientation and how it is viewed under the law of the land, namely, section 377, IPC.
- (x) That for the first time in his life, the Petitioner was made to feel ashamed of himself and his identity as a homosexual man. Though he had done no wrong, the Petitioner was

treated as the most contemptible criminal, whose very existence was a 'threat' and 'curse' to society.

- (xi) That though previously the Petitioner's extended family did not raise any issue about his sexual orientation, after the Petitioner's arrest and detention, they frowned upon his sexuality and reproached his parents for failing to correct his 'deviant' ways, which are also disapproved in law.

- (xii) That the derision and humiliation that the Petitioner was subjected to would not have happened but for the existence of section 377 of the IPC, which criminalizes LGBT persons. It was the unconditional love of his family and friends that enabled the Petitioner to fight back feelings of guilt and fear and hold his head high once again. But for this support, the Petitioner could well have been a shattered man throughout his life, with the law condemning his very being and personhood.

- (xiii) That the Petitioner has always felt the need to reach out to peers, who find themselves isolated, without any understanding, acceptance or social support. That is why he set up support groups like 'Friends India' and the 'Bharosa Trust' in Lucknow. But in light of the criminality attached to LGBT persons, peer-support was seen in the public eye as a '*gay sex racket*' or '*attempt to promote homosexuality*' and in

law as a '*conspiracy*' to commit '*unnatural offences*' ["gay sex"] under section 377, IPC.

- (xiv) That the incident of the Petitioner's arrest and detention in July 2001 sent shock waves among the LGBT community, instilling fear and deep anxiety. The use of Section 377 IPC and other ancillary provisions of the IPC to raid a peer-support programme and arrest volunteers also had a chilling effect on similar interventions including those run with the support of the government to prevent and control HIV among men having sex with men.
- (xv) That the Petitioner's case has been widely written and talked about in India and abroad in the context of health, human rights and anti-sodomy laws. It would not be an exaggeration to say that no conversation around section 377, IPC and its impact on the lives of LGBT persons is complete without a reference to the Petitioner's case and the ineffable suffering that he and his colleagues endured on account of this dehumanizing law.
- (xvi) That the Petitioner presently lives with his partner in Lucknow, with who he has been in a committed relationship. While his family and friends are supportive of his decision, the State shows utter contempt and disregard towards his choice of partner in the guise of section 377, IPC, even

though it is not the State's concern. Relying on the legal disapproval of same-sex love and relationships, society compels gay men and women to marry persons of the opposite sex, against their will.

- (xvii) In an order dated 30.6.2015 in Tr.C.M.P.Nos. 299 & 26 of 2015, which was passed in relation to divorce proceedings, where one of the parties to the marriage was gay, the Hon'ble High Court of Madras questioned whether the criminalization of same-sex relations under section 377 and the non-recognition of sexual orientation of LGBT persons does not constitute a violation of the right to privacy and a dignified life under Article 21 of the Constitution. This gave the Petitioner a glimmer of hope.
- (xviii) That the perception that section 377, IPC covers acts and not a class of persons based on identity, heterosexual or homosexual, is not correct. After the enactment of the Criminal Law (Amendment) Act, 2013, section 375 of the IPC makes non penile-vaginal sex between a man and woman punishable only if the sexual act, which *inter-alia* includes '*penetration by the penis, to any extent, into the vagina, mouth, urethra or anus of a woman*' is carried out against the woman's will or her consent, which is defined as: - "*an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal*

communication, communicates willingness to participate in the specific sexual act.” Consequently, a ‘man’ and a ‘woman’ can engage in penile-oral and penile-anal sex consensually, without attracting punitive consequences under the IPC. However, if the same sexual acts are engaged in by a ‘man’ with another ‘man’ or for that matter, transgender persons, consensually, they will attract penal consequences under section 377, IPC. Thus, section 377 is palpably discriminatory towards homosexual persons like the Petitioner, as also transgender persons.

- (xix) That the hostility and animus that the Petitioner faced on account of his sexual orientation cannot be countenanced under the Constitution of India, which is founded on the values of liberty, dignity, equality and fraternity and protects fundamental rights of all citizens - whether gay or heterosexual.
- (xx) That the Petitioner further found the confidence to approach this Hon’ble Court from a nine-judge bench decision in ***Justice K.S Puttuswamy (Retd.) and Anr v Union of India and ors [(2017) 10 SCC 1]***, wherein this Hon’ble Court accorded constitutional protection to one’s sexual orientation and intimacy under the fundamental right to privacy and virtually declared its decision in ***Suresh Kumar Koushal &***

Anr. v. Naz Foundation & Ors [(2014) 1 SCC 1], wherein a 2-judge bench had upheld section 377 IPC, incorrect.

- (xxi) That the Petitioner's sole motivation in approaching this Hon'ble Court is his wish that no other person should suffer what he had to suffer on account of a discriminatory law i.e. section 377, IPC and that fellow LGBT citizens can live with the freedom, dignity and respect that they are entitled to, under the Constitution of India.
5. The Petitioner has not filed any other petition either before this Hon'ble Court or any other High Court challenging the constitutional validity of Section 377 IPC.
6. The present Petition is filed *bona fide* and in the interests of justice.
7. That in view of the above, the Petitioner approaches this Hon'ble Court on the following, amongst other grounds, which are not prejudice to one another: -

GROUND

- A. Because section 377 of the Indian Penal Code, 1860 (hereinafter "IPC") is in violation of Articles 14, 15, 19 and 21 of the Constitution of India ("CoI").

- B. Because a person's sexual orientation is their private concern and not the concern of the State or the police. Section 377, IPC and its use by law enforcement agencies constitutes a gross violation of the Petitioner's right to equality, non-discrimination, freedom of expression and association, privacy, dignity and liberty enshrined in Articles 14, 15, 19 and 21 of the Constitution of India.

RIGHT TO PRIVACY

- C. Because section 377, IPC is *ultra vires* the Constitution in light of the 9-judge bench decision of this Hon'ble Court in *Justice K.S Puttuswamy (Retd.) and Anr. v Union of India and ors, [(2017) 10 SCC 1]*, (hereinafter "*Puttuswamy*"), wherein this Hon'ble Court unequivocally held that: - "*The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.*"
- D. Because section 377 IPC criminalizes one of the most innate, personal and inviolable aspects of one's personality, i.e. their sexual orientation, which according to this Hon'ble Court in *Puttuswamy* is "...an essential attribute of privacy".
- E. Because in *Puttuswamy*, this Hon'ble Court unequivocally held that: - "*Privacy includes at its core the preservation of*

personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation."

- F. Because protection of one's personal relations and sexual intimacies lies at the heart of the right to privacy. The way in which one gives expression to one's sexuality is at the core of 'personal privacy' and is protected from arbitrary interference under the Constitution.
- G. Because by intruding in the most private aspects of a person's life, section 377, IPC constitutes an unwarranted invasion of personal privacy, which the Constitution does not permit.

NO LEGITIMATE AIM

- H. Because section 377 IPC violates the fundamental right to privacy and does not meet the three-fold requirements laid down by this Hon'ble Court in Puttuswamy, which may justify restraints on privacy. In particular, Section 377 IPC fails to meet the second requirement, which is that of a valid law that serves a 'legitimate aim', or, in other words, a law that is not manifestly arbitrary. The only avowed objective of section 377 IPC is to prohibit sexual activity that is "*against the order of nature*" – which, is *ex facie* arbitrary. In delineating an offence, section 377, IPC does not distinguish between consensual and non-consensual sex as is evident from the expression: "*whoever, voluntarily has carnal*

intercourse....” or whether the parties are adults or minor. It lays down a blanket prohibition on all sexual expression (other than penile-vaginal intercourse) - which cannot be a legitimate object for the State and its criminal justice machinery to pursue.

- I. Because arresting and prosecuting consenting adults for their intimate actions, when no one is harmed or aggrieved, or even affected, cannot be considered a legitimate state action or fair, just and reasonable law within the meaning of Article 21 of the Constitution. [See *Dudgeon v. United Kingdom*, [1981] ECHR 5 (22 October 1981); *Norris v. Ireland*, [1988] ECHR 22 (26 October 1988)].
- J. Because the legitimacy, if any, attached to section 377 IPC has substantially diminished after the enactment of the Protection of Children against Sexual offences Act, 2012 (“POCSO”) and the amended section 375 and 376 of the IPC, which proscribe non-consensual penile-non vaginal sex between an adult and a child as well as between a man and a woman, respectively. The only legitimate purpose that section 377 currently serves is to criminalize non-consensual sex between a man and another man and a transgender person, which too, must be addressed through substantive law(s) on rape/sexual assault and not in vague and arbitrary terms contained in section 377, IPC. As is evident from the

language/text of the law and its interpretation, the inquiry under section 377 is not on whether the sexual act was consensual, but on whether it was [within] or "*against the order of nature*". This can hardly be set to accord protection to a victim of rape/sexual assault.

- K. Because enforcing social morality or public opinion cannot be the province of law in a constitutional democracy, where the protection of fundamental rights and constitutional morality are paramount.

RIGHT TO DIGNITY AND AUTONOMY

- L. Because every person has the fundamental right to be treated with dignity, with full respect for the humanity and potential that inheres in them. Sexual orientation and identity cannot be the basis of denying a person their inherent dignity, which the Constitution of India resolutely protects.
- M. Because section 377, IPC violates the right to dignity, which is inalienable and lies at the heart of fundamental rights guaranteed to the individual under Part III of the Constitution. By treating their intimate expression as a criminal offence, section 377 conveys that homosexual persons are unworthy and undeserving of respect and 'lesser' than other members of society, which cannot be countenanced under the Constitution.

- N. Because the persistent fear of prosecution under section 377, IPC, forbids LGBT persons from living their lives in a way that is true to themselves. By condemning certain expressions of human intimacy as 'unnatural', section 377 imposes a singular and rigid hetero-normativity in human relations, denying the existence and realization of any other sexual orientation or gender identity. This is in contravention of an individual's *right to be different and to stand against the tide of conformity*, which this Hon'ble Court recognized in *Puttuswamy*.
- O. Because section 377 takes away autonomy and censures personal decisions and life choices of LGBT persons, in contravention of the right to life and liberty guaranteed under Article 21. In *Puttuswamy*, this Hon'ble Court held that: -
"The duty of the state is to safeguard the ability to take decisions – the autonomy of the individual – and not to dictate those decisions. 'Life' within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. That which facilitates the fulfillment of life is as much within the protection of the guarantee of life."

**RIGHT TO PERSONAL DECISIONS INCLUDING THE
DETERMINATION OF CHOICE OF ONE'S PARTNER**

- P. Because section 377, IPC restricts individuality and expression in the most personal realm, i.e. a person's sexuality and choice of partner, in contravention of Article 21 of the Constitution.
- Q. Because section 377 IPC is contrary to this Hon'ble Court's recent decision in *Shafin Jahan v Asokan K.M & ors*, Criminal Appeal No. 366 of 2018, dt. 9th April 2018 (hereinafter "Shafin Jahan") wherein this Hon'ble Court held:
- *"The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity."*
- R. Because section 377, IPC prevents LGBT persons from exercising their autonomy and choice in one of the most important areas of life, i.e. determining one's intimate partner, even though such decisions are constitutionally protected under Article 21. In *Shafin Jahan*, this Hon'ble Court held: - *"Neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution." "Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognizing*

them. Indeed, the Constitution protects personal liberty from disapproving audiences."

- S. Because in *Shafin Jahan*, this Hon'ble Court upheld the fundamental right to determine the "*choice of one's intimate partner, within or outside marriage*", which section 377 specifically and directly violates.
- T. Because section 377, IPC forbids LGBT persons from forming intimate relationships or romantic associations with a partner of their choice, in contravention of the freedoms guaranteed under Articles 19(1)(a) and (c) of the Constitution.
- U. Because the criminality attached to homosexuality on account of section 377, IPC prevents LGBT persons from organizing and forming community/peer groups for the empowerment of their members, in violation of Articles 19(1)(a) and (c) of the Constitution.

RIGHT TO HEALTH

- V. Because section 377, IPC frustrates the realization of the right to health, which is guaranteed under Article 21 of the Constitution read with Article 12 of the International Covenant on Economic, Social and Cultural Rights.

- W. Because the right to health guarantees certain: - i) freedoms, i.e. the right to control one's own health and body including sexual and reproductive and, ii) entitlements, in particular, the entitlement to a system of health protection, to goods, services and health facilities, which must be available and accessible to all, especially the most vulnerable and marginalized sections, without discrimination, including condoms for safe sex.
- X. Because the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, who, while examining the impact of criminal laws against adult sexual conduct and sexual orientation on the right to health, observed that: "*Criminal laws concerning consensual same-sex conduct, sexual orientation and gender identity often infringe on various human rights, including the right to health. These laws are generally inherently discriminatory and, as such, breach the requirements of a right-to-health approach, which requires equality in access for all people. The health related impact of discrimination based on sexual conduct and orientation is far-reaching, and prevents affected individuals from gaining access to other economic, social and cultural rights.*" [See Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, A/HRC/14/20, dated 27th April 2010 at para 6.]

DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION

- Y. Because in *National Legal Services Authority v Union of India* [2014 (5) SCC 438] (hereinafter "NALSA"), this Hon'ble Court held that: - "*discrimination on the ground of sexual orientation and gender identity, therefore impairs equality before law and equal protection of law and equal protection of law and violates Article 14 of the Constitution of India.*"
- Z. Because by criminalizing sexual intimacy between gay men, section 377 denies them the opportunity to participate in a profound and fundamental aspect of human experience. The effect is that homosexual persons either deny themselves a basic human experience to avoid committing a "crime" or otherwise risk prosecution under section 377. Adult, consenting heterosexual persons do not face such constraints under the law, which is discriminatory towards LGBT persons.
- AA. Because section 377, IPC *per se* as well as read with section 375 of the IPC (as amended by the Criminal Law (Amendment) Act, 2013 w.e.f. 3.2.2013) discriminates against similarly situated persons, on the basis of their sexual orientation, in contravention of Articles 14 and 15 of the Constitution.

- BB. On the face of it, section 377 prohibits sexual acts that are 'against the order of nature', which has been understood to mean 'penile-anal' and 'penile-oral' sex between a man and another man as also between a man and a woman, irrespective of consent. Yet, prosecution of consenting, heterosexual adults under section 377 is rare and the law has been associated with the prohibition of same-sex conduct, making it discriminatory in its effect and impact.
- CC. Because section 375 and 376 of the IPC, as amended by the Criminal Law (Amendment) Act, 2013, expressly recognize 'consent' or rather the lack of it, as the basis of outlawing sexual acts between a man and a woman [heterosexual persons]. In other words, penile-oral, penile-anal and a host of other sexual acts between heterosexual persons are unlawful *only* if they are engaged in against woman's will or without her consent, which is expressly defined in the law. In contrast, the same activities, when practiced by adult males invite punishment under section 377, IPC even when there is consent. This is patently discriminatory and violative of Articles 14 and 15 of the Constitution.
- DD. Because the amended section 375 and 376, IPC was in force when the judgment in *Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors* [(2014) 1 SCC 1] (hereinafter "*Koushal*") was pronounced by this Hon'ble Court i.e. 11.12.2013. Its

effect however, was not noticed by this Hon'ble Court when it held that section 377; IPC does not criminalize any particular identity or sexual orientation and therefore, does not discriminate against homosexual persons as a class. Having been given in ignorance of the terms of a statute in force, the decision in *Koushal* is *per incuriam*.

EE. That without prejudice to the above, the decision in *Koushal* has been held to be in error by this Hon'ble Court in *Puttuswamy* in terms of the manner in which it treated claims of violation of fundamental rights of LGBT persons by the Respondents in the case.

VAGUE AND ARBITRARY

FF. Because section 377 IPC does not define or explain what constitutes "*carnal intercourse against the order of nature*", for which a person may suffer imprisonment upto 10 years or life. Therefore, for consenting non-heterosexual adults, it is unclear which sexual acts or intimate expression could be construed as an offence under the impugned provision. And despite being in existence for over 155 years, legal authorities remain unsure about whether and what offence has been committed under section 377, IPC.

GG. Because it is settled law that what constitutes an offence must be clear and not vague. Ordinary people must know

with certainty what conduct is prohibited and what is permitted. Those who administer the law must also know what offence has been committed so that arbitrary and discriminatory enforcement of the law, which is contrary to Article 14, is avoided. (See *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569])

- HH. Because in its judgment in *Shreya Singhal v Union of India* [(2015) 5 SCC 1] (hereinafter "*Shreya Singhal*"), this Hon'ble Court categorically stated that: "*where no reasonable standards are laid down to define guilt in a section which creates an offence and where no clear guidance is given to either law-abiding citizens or to authorities and courts, a section which creates an offence and which is vague must be struck down as being arbitrary and unreasonable.*"
- II. Because section 377, IPC is void for vagueness under Article 14 as it fails to define the criminal offence with sufficient definiteness. The expression "*order of nature*" is nebulous; what is natural to one person, may not be to another. A law, which rests on subjective and arbitrary notions of what, is within the order of nature and what is against, must, in light of *Shreya Singhal* be *unconstitutionally vague*.
- JJ. Because in *Shayara Bano v Union of India* [(2017) 9 SCC 1], a decision of the Constitution-bench of this Hon'ble Court,

the majority held that laws that are manifestly arbitrary and patently unjust and unreasonable can be struck down.

CHILLING EFFECT ON EXERCISE OF OTHER FUNDAMENTAL RIGHTS

KK. Because section 377, IPC has a chilling effect on the exercise of various fundamental rights and freedoms by LGBT persons and thereby constitutes hostile discrimination against a class of citizens, on the basis of their sexual orientation. In *Puttuswamy*, this Hon'ble Court noticed the deleterious effect of the law in terms of how it: *"...poses a grave danger to the unhindered fulfillment of one's sexual orientation, as an element of privacy and dignity. The chilling effect is due to the danger of a human being subjected to social opprobrium or disapproval, as reflected in the punishment of crime."* Similarly, in *Shafin Jahan*, this Hon'ble Court further observed that: - *"Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms. Others are dissuaded to exercise their liberties for fear of the reprisals, which may result upon the free exercise of choice. The chilling effect on others has a pernicious tendency to prevent them from asserting their liberty. Public spectacles involving a harsh exercise of State power prevent the exercise of freedom, by others in the same milieu. Nothing can be as destructive of freedom and liberty. Fear silences freedom."*

CONSTITUTION ENVISIONS FRATERNITY, NOT ANIMUS OR HOSTILITY

LL. Because the Constitution of India and its various chapters including the Preamble, Fundamental Rights (Part III) and Fundamental Duties (Part IV-A) is infused with humanism, i.e. the spirit to respect and cherish one another as human beings. In the same vein, the Constitution enjoins the State and citizens to show respect for diversity, accepting and valuing people's differences rather than discriminating against them. In *Subramanian Swamy v. Union of India* [(2016) 7 SCC 221] (hereinafter "*Subramanian Swamy*"), this Hon'ble Court proclaimed:- "*Respect for the dignity of another is a constitutional norm. It would not amount to an overstatement if it is said that constitutional fraternity and the intrinsic value inhered in fundamental duty proclaim the constitutional assurance of mutual respect and concern for each other's dignity.*"

MM. By criminalizing persons on the basis of their sexual orientation, section 377, IPC breeds contempt against LGBT persons and fuels discrimination, contrary to the principles of equality and fraternity enshrined in the Constitution.

INCOMPATIBLE WITH INDIA'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

- NN. Because section 377, IPC is incompatible with international human rights law, which form a part and parcel of our domestic, constitutional jurisprudence. This Hon'ble Court has long rejected judicial-insularity, in favour of accepting international law comparative jurisprudence especially in adjudicating the nature and content of fundamental rights.
- OO. Because Articles 51 (Promotion of International Peace and Security) and Article 253 (Legislation for giving effect to International Agreements) of the Constitution of India require that the development and interpretation of domestic law must be in accordance with changes in international law.
- PP. Because in *NALSA*, this Hon'ble Court adverted to international conventions acceded to by India, in particular the UDHR and the ICCPR to fortify the meaning and content of fundamental rights protected by the Constitution.
- QQ. Because in *Puttuswamy*, this Hon'ble Court held that: "*In the view of this Court, international law has to be construed as a part of domestic law in the absence of legislation to the contrary, and perhaps more significantly, the meaning of constitutional guarantees must be illuminated by the content to the international conventions, to which India has become a party.*"

- RR. Because the Universal Declaration of Human Rights ("UDHR") declares that: - *"All human beings are born free and equal in dignity and rights"*.
- SS. Because the Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) 1976 (which India ratified on December 11th, 1977) provides: - *"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."*
- TT. Because in Toonen v. Australia, the UN Human Rights Committee categorically rejected the contention that the prohibition on homosexuality prevents the spread of HIV/AIDS. Instead, the Committee found that criminalization of homosexuality runs counter to the implementation of effective educational programmes in respect of HIV prevention [See *Toonen v. Australia* [Communication No. 488/1992, decision dated 31/03/1994 at Para 8.5].
- UU. Because in applying international human rights law to the context of LGBT persons, the United Nations High Commissioner on Human Rights observed that: - *"All people, including LGBT persons, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the*

right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly." (See Report of the United Nations High Commissioner for Human Rights, A/HRC/19/41, dated 17th November 2011 at Para 5). In a subsequent report submitted to the Human Rights Council, the UN High Commissioner for Human Rights 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.*" (See Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/29/23, dated 4th May 2015 at Para 43)

VV. Because in *NALSA*, this Hon'ble Court also alluded to the 'Yogyakarta Principles' i.e. a set of principles of international human rights law in relation to sexual orientation and gender identity and did not found them inconsistent with the various fundamental rights guaranteed under the Indian Constitution.

WW. Because the Yogyakarta Principles require Member States to respect human rights in relation to sexual orientation and gender identity by *inter alia*, removing punitive sanctions for same sex sexual activity and relations.

XX. THAT the Principle 1 (Right to Universal Enjoyment of Human Rights) of Yogyakarta Principles states that "*All human beings are born free and equal in dignity and rights. Human beings of all sexual orientation and gender identities are entitled to the full enjoyment of human rights*". States are required to embody principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions and appropriate legislations.

YY. Because laws criminalizing homosexuality have long been repealed in the United Kingdom, the country from which they were imported into India. Because England and Wales themselves decriminalized sexual relations between consenting, adult males in 1967, on the recommendation of The Wolfenden Committee in 1957 that urged "*homosexual conduct between consenting adults should no longer be a criminal offence...The law's function is to preserve public order and decency, and to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others. It is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behavior...*".

ZZ. Because Courts in several countries including South Africa, United States of America, Fiji and most recently, Belize have struck down laws similar to section 377 on similar constitutional grounds. [See: *National Coalition of Gay and Lesbian Equality and Another v. Minister of Justice and Others*, [1998] ZACC 15; *John Geddes Lawrence and Tyron Garner v. Texas*, 539 US 558 (2003), *Caleb Orozco v. Attorney General of Belize*, Claim No. 668/2010]

AAA. Because in *John Vallamattom v Union of India* [(2003) 6 SCC 611] this Hon'ble Court held that in determining the constitutional validity of a statute, the Court may consider not only the past history of the legislation concerned but the manner in which the same has been dealt with by the legislature of its origin.

BBB. Because in *Anuj Garg v. Hotel Association of India* [(2008) 3 SCC 1], this Hon'ble Court held that: "A statute could have been held to be a valid piece of legislation keeping in view the social condition of the times it was enacted it, but with changes occurring therein both domestically as also internationally, such a law can also be declared invalid."

PRAYER

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

- a) Issue a Writ of Mandamus or any other appropriate writ order or direction declaring that Section 377 of the Indian Penal Code, 1860 to the extent it criminalizes practices between consenting adult non-hetero sexual persons engaging in acts in private is in violation of Articles 14, 15, 19 and 21 of the Constitution;
- b) Issue an appropriate writ order or direction prohibiting the Respondents from in manner enforcing the provisions of Section 377 IPC to consenting adult non-hetero sexual persons engaging acts in private;
- c) For costs of this Petition;
- d) For such further and other orders as the circumstances of the case may deem fit and necessary in the interests of justice.

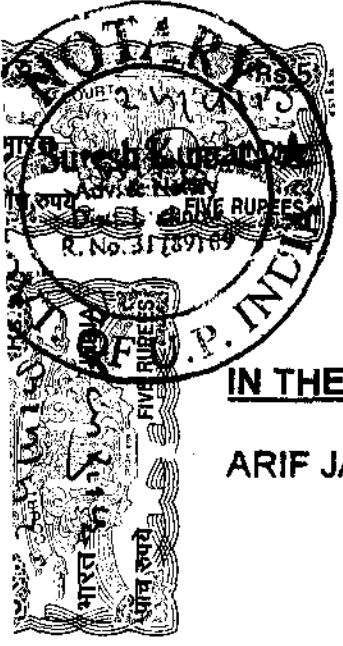
Petition Drawn by
Ms. Tripti Tandon
Advocate

Petition Settled by
Mr. Anand Grover
Senior Advocate

FILED BY

[SUNIL FERNANDES]
Advocate for the Petitioner

NEW DELHI
DRAWN ON: 04.2018
FILED ON: 04.2018



IN THE SUPREME COURT OF INDIA
ORIGINAL CRIMINAL JURISDICTION
WRIT PETITION (CRL) NO. 100 OF 2018

IN THE MATTER OF:-

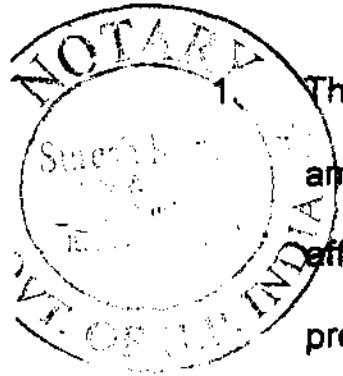
ARIF JAFAR ... Petitioner

Versus

UNION OF INDIA & ORS ... Respondent

AFFIDAVIT

I, Arif Jafar, S/o. Jafar Husain, aged about 47 years, R/o 21/6/3, Peer Pur House 8, Tilak Nagar, Lucknow, Uttar Pradesh, do hereby solemnly declare as under: -



1. That I am the Petitioner in the instant writ petition and as such, I am fully competent and authorized to swear and depose this affidavit and fully aware of the facts and circumstances of the present case.

2. That I have read the contents of the accompanying Writ Petition (Paras 1 - 8 pages 1 - 36) and list of dates (Pages B - I) and Applications and I say that the contents therein are true

to my personal knowledge and belief.

Juresh Kumar
JURESH KUMAR
Advocate & Notary Public
7/175-Ka/14, Near Nigam, Gas Marg
Niwaj Ganj, Lucknow
Reg. No. 31189169

3. That the present affidavit is of the same or subsequent date of the drafting of the petition/application.

[Handwritten signature]

DEPONENT

VERIFICATION:

Verified at Lucknow on this the 24th, day of April, 2018 that the contents of this affidavit are based on the information derived from the records and also on the basis of the information received and believed to be correct. No part of it is false and nothing material has been concealed or suppressed there from.



[Handwritten signature]

DEPONENT

Sworn and verified
before me
at Lucknow
SURESH KUMAR 24/4/2018
Advocate & Notary Public
417/175, Kalyan Nagar, Das Marg
Nizamuddin Chowk, Lucknow

APPENDIX**RELEVANT PROVISIONS OF THE INDIAN PENAL CODE, 1860****109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—**

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

110. Punishment of abetment if person abetted does act with different intention from that of abettor.—

Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

120B. Punishment of criminal conspiracy.—

- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
- (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

292. Sale, etc., of obscene books, etc.—

- (1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever—

- (a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- (b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or
- (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene

object can be procured from or through any person, or

- (e) offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].

(Exception) —This section does not extend to—

- (a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—
- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

- (ii) which is kept or used bona fide for religious purposes;
- (b) any representation sculptured, engraved, painted or otherwise represented on or in—
 - (i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or
 - (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

375. A man is said to commit "rape" if he—

- a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape.—

(1) Whoever, except in the cases provided for in subsection (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever—

(a) being a police officer, commits rape,

- (i) within the limits of the police station to which such police officer is appointed; or
 - (ii) in the premises of any station house; or
 - (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

- (g) commits rape during communal or sectarian violence; or
- (h) commits rape on a woman knowing her to be pregnant; or
- (i) commits rape on a woman when she is under sixteen years of age; or
- (j) commits rape, on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
- (l) commits rape on a woman suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanations.- For the purposes of this sub-section-

- (a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any Law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government, or the State Government;
- (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;
- (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

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 a term which may extend to ten years, and shall also be liable to fine.

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

→ "True Copy"

SUPREME COURT OF INDIA

W.P.(Crl.) No. 000100 of 2018

Process Id-500/2018

ARIF JAFAR

Vs

UNION OF INDIA and others

Listed on:- 01-05-2018 at Item No 39

Office Report of Fresh Cases

1. The limitation period of the appeal(s)/special leave petition(s) is as follows.

S.No.	Court	State	Defendant	Period	Remarks
No Information Available					

2. The advocate has filed Document(s)/Interlocutory Application(s) as follows:-

S.No.	Document No.	Remarks
No Information Available		

3. Similarity found in the present case is based on:

Diary No.	Case No.	Case Name	Remarks
	Writ Petition (Crl) No.76/2016	Navtej Singh Johar and Ors Vs Union of India Ministry of Law and Justice Secretary	Pending. Copy of order 8.1.2016 enclosed.
	Writ Petition (Crl) No.88/2018	Keshav Surt Vs Union of India	Pending. Copy of order 23.8.2018 enclosed.

4. It is submitted that, in terms of Order XV Rule 2, the status of proof of service upon the respondent(s)/caveator(s) is as follows:-

S.No.	Respondent(s)/Caveator(s)	Proof of Service	Remarks
NA	NA	NA	NA

Note:-

Assistant Registrar

SECTION:-

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL APPELLATE JURISDICTION

W.P., T.P., C.A., CRL. A, S.L.P. (CIVIL/CRL.) NO. 100 OF 2018

Arif Jafar

Petitioner(s)

VERSUS

Union of india & ors

Respondents

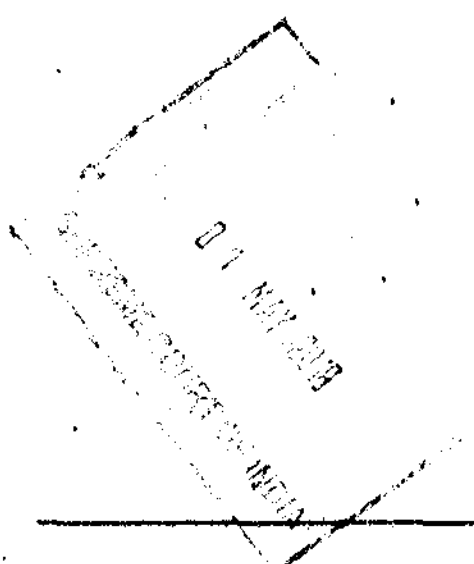
INDEX

S.Nos.	PARTICULARS	COPIES	COURT FEES
--------	-------------	--------	------------

P/F

3

M/



TOTAL :- M/

Place: New Delhi

Date: 1/04/2018

Regd. Clerk

Nagendra Singh

9958966570

I.D.NO.5046

[SUNIL FERNANDES]

Advocate-on-Record

A-178, LGF, Defence Colony

New Delhi- 110 024

TEL 011-41084945, 41043573

FAX:011-46702466

M. 9891639491, C CODE-1721

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION(CRIMINAL) No. 100 OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

ARIF JAFAR

... Petitioner

Versus

UNION OF INDIA AND OTHERS

... Respondents

To,

1 UNION OF INDIA,
THROUGH THE SECRETARY, MINISTRY OF
LAW AND JUSTICE, SHASTRI BHAWAN, PId: 71114/2018 for R[1] (Sec)
District- NEW DELHI, DELHI - 110001

2 UNION OF INDIA THROUGH THE
SECRETARY, MINISTRY OF HOME
AFFAIRS, PId: 71115/2018 for R[2] (Sec)
NORTH BLOCK,
District- NEW DELHI, DELHI - 110001

3 UNION OF INDIA THROUGH THE
SECRETARY, MINISTRY OF HEALTH, PId: 71116/2018 for R[3] (Sec)
NIRMAN BHAWAN,
District- NEW DELHI, DELHI

WHEREAS the Writ Petition above mentioned was filed in the Registry by Mr. SUNIL FERNANDES, Advocate on behalf of the Petitioner(s) above named (copy enclosed);

AND WHEREAS the said Writ Petition above-mentioned was listed before this Court on the 01st May, 2018, when the Court was pleased to pass the following Order:

"Issue notice.
Tag with Writ Petition (Crl.) No. 76/2016."

NOW, THEREFORE, TAKE NOTICE that the Writ Petition above-mentioned will be posted for hearing along with connected matter Writ Petition (Crl.) 76 of 2016 before this Court in due course and you may enter appearance before this Court, either in person or through advocate-on-record duly appointed by you in that regard, within 30 days from the date of service of notice. You may, thereafter, show cause to the Court as to why *rule nisi* in terms of the prayer as contained in the Writ Petition should not be issued .

TAKE FURTHER NOTICE that in default of your appearance the matter will be heard and determined in your absence.

Dated :May 09, 2018


ASSISTANT REGISTRAR

Copy to :-

1 Mr. Sunil Fernandes (adv.)
a-178, Lower Ground Floor, Defence Colony, New Delhi 24 Ph. 011-41084945/41043573
New Delhi , Delhi


ASSISTANT REGISTRAR

Thursday 10 May 2018 03:56 PM

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**WRIT PETITION (CRL.) NO. 76 OF 2016**

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WITH

CRIMINAL MISC. PETITION NO. 8905 OF 2016

(APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION)

AND

CRIMINAL MISC. PETITION NO. 9896 OF 2016

(APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS)

NAVTEJ SINGH JOHAR & ORS.

...PETITIONERS

-VERSUS-

UNION OF INDIA

...RESPONDENT

OFFICE - REPORT

The Writ Petition along with application for exemption from filing official translation has been filed by Mr. E.C. Agrawala, Advocate on 27.04.2016 on behalf of the petitioners above-named.

It is submitted that Civil Appeal No. 10972 of 2013, arising out of similar issue was allowed by this Hon'ble Court vide judgment dated 11.12.2013 [**reported in 2014(1) SCC 1**].

It is further submitted that Curative Petition (C) No. 88-102 of 2014 in Review Petition (C) No. 41-55 of 2014 in Civil Appeal No. 10972 of 2013, was lastly listed before the Hon'ble Court on 02.02.2016, when the Court was pleased to refer the matter to Constitution Bench (copy of the order is enclosed herewith).

It is lastly submitted that the counsel for the petitioner has on 23.05.2016 filed an application for permission to file additional documents and the same has been registered as Crl. M.P. No. 9896 of 2016 (copy of the same as a separate paper book has been placed with the writ petition paper book).

The Writ Petition along with applications above-mentioned is listed before the Hon'ble Court with this Office Report.

Dated this the 27th day of June, 2016.

ASSISTANT REGISTRAR

Copy to:
Mr. E.C. Agrawala, Advocate

ASSISTANT REGISTRAR

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 76 OF 2016

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WITH

CRIMINAL MISC. PETITION NO. 8905 OF 2016

(APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION)

AND

CRIMINAL MISC. PETITION NO. 9896 OF 2016

(APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS)

NAVTEJ SINGH JOHAR & ORS.

...PETITIONERS

-VERSUS-

UNION OF INDIA

...RESPONDENT

OFFICE - REPORT

The Writ Petition along with application for exemption from filing official translation has been filed by Mr. E.C. Agrawala, Advocate on 27.04.2016 on behalf of the petitioners above-named.

It is submitted that Civil Appeal No. 10972 of 2013, arising out of similar issue was allowed by this Hon'ble Court vide judgment dated 11.12.2013 [**reported in 2014(1) SCC 1**].

It is further submitted that Curative Petition (C) No. 88-102 of 2014 in Review Petition (C) No. 41-55 of 2014 in Civil Appeal No. 10972 of 2013, was lastly listed before the Hon'ble Court on 02.02.2016, when the Court was pleased to refer the matter to Constitution Bench (copy of the order is enclosed herewith).

It is further submitted that the counsel for the petitioner has on 23.05.2016 filed an application for permission to file additional documents and the same has been registered as Crl. M.P. No. 9896 of 2016 (copy of the same as a separate paper book has been placed with the writ petition paper book).

It is lastly submitted that the Writ Petition along with application was listed before the Hon'ble Court on 29.06.2016 with office report dated 27.06.2016, when the Court was pleased to pass the following order:

"The issue pertains to the validity of Section 377 of the Indian Penal code.

We are informed that the Constitution Bench of this Court is hearing the issue.

Post this matter before Hon'ble the Chief Justice of India for appropriate orders."

The Writ Petition along with applications above-mentioned is listed before the Hon'ble Court with this Office Report.

Dated this the 5th day of January, 2018.

ASSISTANT REGISTRAR

Copy to:
Mr. E.C. Agrawala, Advocate

ASSISTANT REGISTRAR

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 76 OF 2016

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WITH

CRIMINAL MISC. PETITION NO. 8905 OF 2016

(APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION)

AND

CRIMINAL MISC. PETITION NO. 9896 OF 2016

(APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS)

AND

CRIMINAL MISC. PETITION NO. 6603 OF 2018

(APPLICATION FOR IMPLEADMENT AS PARTY PETITIONER, FILED BY MR. PUKRAMBAM RAMESH KUMAR, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6712 OF 2018

(APPLICATION FOR IMPLEADMENT AS PARTY PETITIONER, FILED BY MS. LIZ MATTHEW, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6791 OF 2018

(APPLICATION FOR INTERVENTION, FILED BY MR. GAUTAM NARAYAN, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6946 OF 2018

(APPLICATION FOR INTERVENTION, FILED BY MR. NIKHIL NAYYAR, ADVOCATE)

NAVTEJ SINGH JOHAR & ORS.

...PETITIONERS

-VERSUS-

UNION OF INDIA

...RESPONDENT

OFFICE - REPORT

The Writ Petition along with application for exemption from filing official translation has been filed by Mr. E.C. Agrawala, Advocate on 27.04.2016 on behalf of the petitioners above-named.

It is submitted that Civil Appeal No. 10972 of 2013, arising out of similar issue was allowed by this Hon'ble Court vide judgment dated 11.12.2013 [**reported in 2014(1) SCC 1**].

It is further submitted that Curative Petition (C) No. 88-102 of 2014 in Review Petition (C) No. 41-55 of 2014 in Civil Appeal No. 10972 of 2013, was lastly listed before the Hon'ble Court on 02.02.2016, when the Court was pleased to refer the matter to Constitution Bench (copy of the order is enclosed herewith).

It is further submitted that the counsel for the petitioner has on 23.05.2016 filed an application for permission to file additional documents and the same has been registered as Crl. M.P. No. 9896 of 2016 (copy of the same as a separate paper book has been placed with the writ petition paper book).

It is lastly submitted that the Writ Petition along with application was listed before the Hon'ble Court on 29.06.2016 and lastly listed on 08.01.2018, when the Court was pleased to pass the following order:

..2/-

29.06.2016:

"The issue pertains to the validity of Section 377 of the Indian Penal code.

We are informed that the Constitution Bench of this Court is hearing the issue.

Post this matter before Hon'ble the Chief Justice of India for appropriate orders."

08.01.2018:

"xxx xxx xxx

...As the question relates to constitutional issues, we think it appropriate to refer the matter to a larger bench.

In the meantime, a copy of the petition be served on the Central Agency so that the union of India can be represented in the instant matter.

Let the matter be placed before Hon'ble the Chief Justice of India, on the administrative side, for consideration of the appropriate larger bench."

It is submitted that pursuant to the aforesaid order, the counsel for the petitioner has on 09.01.2018 filed proof of service after serving a copy of the petition on the Central Agency but no appearance is filed on behalf of Union of India so far.

It is further submitted that Mr. Pukhrambam Ramesh Kumar, Advocate has on 15.01.2018 filed an application for impleadment as party petitioner and the same has been registered as I.A. No. 6604 of 2018 (copy of the same is being circulated herewith).

It is further submitted that Ms. Liz Matthew, Advocate has on 15.01.2018 filed an application for impleadment as party petitioner and the same has been registered as I.A. No. 6712 of 2018 (copy of the same is being circulated herewith).

It is further submitted that Mr. Gautam Narayan, Advocate has on 15.01.2018 filed an application for intervention and the same has been registered as I.A. No. 6791 of 2018 (copy of the same is being circulated herewith).

It is lastly submitted that Mr. Nikhil Nayyar, Advocate has on 15.01.2018 filed an application for intervention and the same has been registered as I.A. No. 6946 of 2018 (copy of the same is being circulated herewith).

The Writ Petition along with applications above-mentioned is listed before the Hon'ble Court with this Office Report.

Dated this the 15th day of January, 2018.

ASSISTANT REGISTRAR

Copy to:

Mr. E.C. Agrawala, Advocate
Mr. Pukhrambam Ramesh Kumar, Advocate
Ms. Liz Matthew, Advocate
Mr. Gautam Narayan, Advocate
Mr. Nikhil Nayyar, Advocate

ASSISTANT REGISTRAR

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 76 OF 2016

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WITH

CRIMINAL MISC. PETITION NO. 8905 OF 2016

(APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION)

AND

CRIMINAL MISC. PETITION NO. 9896 OF 2016

(APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS)

AND

CRIMINAL MISC. PETITION NO. 6603 OF 2018

(APPLICATION FOR IMPLEADMENT AS PARTY PETITIONER, FILED BY MR. PUKRAMBAM RAMESH KUMAR, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6712 OF 2018

(APPLICATION FOR IMPLEADMENT AS PARTY PETITIONER, FILED BY MS. LIZ MATTHEW, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6791 OF 2018

(APPLICATION FOR INTERVENTION, FILED BY MR. GAUTAM NARAYAN, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6946 OF 2018

(APPLICATION FOR INTERVENTION, FILED BY MR. NIKHIL NAYYAR, ADVOCATE)

NAVTEJ SINGH JOHAR & ORS.

...PETITIONERS

-VERSUS-

UNION OF INDIA

...RESPONDENT

OFFICE - REPORT

The Writ Petition along with application for exemption from filing official translation has been filed by Mr. E.C. Agrawala, Advocate on 27.04.2016 on behalf of the petitioners above-named.

It is submitted that Civil Appeal No. 10972 of 2013, arising out of similar issue was allowed by this Hon'ble Court vide judgment dated 11.12.2013 [**reported in 2014(1) SCC 1**].

It is further submitted that Curative Petition (C) No. 88-102 of 2014 in Review Petition (C) No. 41-55 of 2014 in Civil Appeal No. 10972 of 2013, was lastly listed before the Hon'ble Court on 02.02.2016, when the Court was pleased to refer the matter to Constitution Bench (copy of the order is enclosed herewith).

It is further submitted that the counsel for the petitioner has on 23.05.2016 filed an application for permission to file additional documents and the same has been registered as Crl. M.P. No. 9896 of 2016 (copy of the same as a separate paper book has been placed with the writ petition paper book).

It is lastly submitted that the Writ Petition along with application was listed before the Hon'ble Court on 29.06.2016 and lastly listed on 08.01.2018, when the Court was pleased to pass the following order:

29.06.2016:

"The issue pertains to the validity of Section 377 of the Indian Penal code.

We are informed that the Constitution Bench of this Court is hearing the issue.

Post this matter before Hon'ble the Chief Justice of India for appropriate orders."

08.01.2018:

"xxx xxx xxx

...As the question relates to constitutional issues, we think it appropriate to refer the matter to a larger bench.

In the meantime, a copy of the petition be served on the Central Agency so that the union of India can be represented in the instant matter.

Let the matter be placed before Hon'ble the Chief Justice of India, on the administrative side, for consideration of the appropriate larger bench."

It is submitted that pursuant to the aforesaid order, the counsel for the petitioner has on 09.01.2018 filed proof of service after serving a copy of the petition on the Central Agency but no appearance is filed on behalf of Union of India so far.

It is further submitted that Mr. Pukhrambam Ramesh Kumar, Advocate has on 15.01.2018 filed an application for impleadment as party petitioner and the same has been registered as I.A. No. 6604 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Ms. Liz Matthew, Advocate has on 15.01.2018 filed an application for impleadment as party petitioner and the same has been registered as I.A. No. 6712 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Mr. Gautam Narayan, Advocate has on 15.01.2018 filed an application for intervention and the same has been registered as I.A. No. 6791 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Mr. Nikhil Nayyar, Advocate has on 15.01.2018 filed an application for intervention and the same has been registered as I.A. No. 6946 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is lastly submitted that Mr. P.S. Tripathi, Advocate has on 20.01.2018 filed an application for intervention but the same is defective as the prayer (b) and (c) are not proper and the counsel has mentioned "application for directions" instead of "application for intervention" in the supporting affidavit (copy of the unregistered application is being circulated herewith as I.A. D.No. 10779/2018).

The Writ Petition along with applications above-mentioned is listed before the Hon'ble Court with this Office Report.

Dated this the 22nd day of January, 2018.

ASSISTANT REGISTRAR

Copy to:

Mr. E.C. Agrawala, Advocate
Mr. Pukhrambam Ramesh Kumar, Advocate
Ms. Liz Matthew, Advocate
Mr. Gautam Narayan, Advocate
Mr. Nikhil Nayyar, Advocate
Mr. P.S. Tripathi, Advocate

ASSISTANT REGISTRAR

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 76 OF 2016

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WITH

CRIMINAL MISC. PETITION NO. 8905 OF 2016

(APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION)

AND

CRIMINAL MISC. PETITION NO. 9896 OF 2016

(APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS)

AND

CRIMINAL MISC. PETITION NO. 6604 OF 2018

(APPLICATION FOR IMPLEADMENT AS PARTY PETITIONER, FILED BY MR. PUKRAMBAM RAMESH KUMAR, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6712 OF 2018

(APPLICATION FOR IMPLEADMENT AS PARTY PETITIONER, FILED BY MS. LIZ MATTHEW, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6791 OF 2018

(APPLICATION FOR INTERVENTION, FILED BY MR. GAUTAM NARAYAN, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6946 OF 2018

(APPLICATION FOR INTERVENTION, FILED BY MR. NIKHIL NAYYAR, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 65854 & 65857 OF 2018

(APPLICATION FOR IMPLEADMENT AND PERMISSION TO APPEAR AND ARGUE IN PERSON, FILED BY MR. PURUSHOTTAMAN MULLOLI, APPLICANT-IN-PERSON)

NAVTEJ SINGH JOHAR & ORS.

...PETITIONERS

-VERSUS-

UNION OF INDIA

...RESPONDENT

REVISED OFFICE - REPORT

The Writ Petition along with application for exemption from filing official translation has been filed by Mr. E.C. Agrawala, Advocate on 27.04.2016 on behalf of the petitioners above-named.

It is submitted that Civil Appeal No. 10972 of 2013, arising out of similar issue was allowed by this Hon'ble Court vide judgment dated 11.12.2013 [reported in 2014(1) SCC 1].

It is further submitted that Curative Petition (C) No. 88-102 of 2014 in Review Petition (C) No. 41-55 of 2014 in Civil Appeal No. 10972 of 2013 etc., was lastly listed before the Hon'ble Court on 02.02.2016, when the Court was pleased to refer the matter to Constitution Bench (copy of the order is enclosed herewith).

It is further submitted that the counsel for the petitioner has on 23.05.2016 filed an application for permission to file additional documents and the same has been registered as Crl. M.P. No. 9896 of 2016 (copy of the same as a separate paper book has been placed with the writ petition paper book).

It is lastly submitted that the Writ Petition along with application was listed before the Hon'ble Court on 29.06.2016 and lastly listed on 08.01.2018, when the Court was pleased to pass the following order:

..2/-

29.06.2016:

"The issue pertains to the validity of Section 377 of the Indian Penal code.

We are informed that the Constitution Bench of this Court is hearing the issue.

Post this matter before Hon'ble the Chief Justice of India for appropriate orders."

08.01.2018:

"xxx xxx xxx

...As the question relates to constitutional issues, we think it appropriate to refer the matter to a larger bench.

In the meantime, a copy of the petition be served on the Central Agency so that the union of India can be represented in the instant matter.

Let the matter be placed before Hon'ble the Chief Justice of India, on the administrative side, for consideration of the appropriate larger bench."

It is submitted that pursuant to the aforesaid order, the counsel for the petitioner has on 09.01.2018 filed proof of service after serving a copy of the petition on the Central Agency but no appearance is filed on behalf of Union of India so far.

It is further submitted that Mr. Pukhrambam Ramesh Kumar, Advocate has on 15.01.2018 filed an application for impleadment as party petitioner and the same has been registered as I.A. No. 6604 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Ms. Liz Matthew, Advocate has on 15.01.2018 filed an application for impleadment as party petitioner and the same has been registered as I.A. No. 6712 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Mr. Gautam Narayan, Advocate has on 15.01.2018 filed an application for intervention and the same has been registered as I.A. No. 6791 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Mr. Nikhil Nayyar, Advocate has on 15.01.2018 filed an application for intervention and the same has been registered as I.A. No. 6946 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Mr. P.S. Tripathi, Advocate has on 20.01.2018 filed an application for intervention but the same is defective as the prayer (b) and (c) are not proper and the counsel has mentioned "application for directions" instead of "application for intervention" in the supporting affidavit (copy of the unregistered I.A. D.No. 10779/2018 application has already been included in the paper books).

..3/-

It is lastly submitted that Mr. Purushottaman Mulloli, Applicant-in-person has on 02.05.2018 filed an application for impleadment as party respondent along with an application for permission to appear and argue in person. The application has been registered as I.A. Nos. 65854 & 65857 of 2018. Interaction of the applicant-in-person is awaited as per Order IV Rule 1(c). The applicant cannot appear before the Hon'ble Court without interaction with Registrar (the applications for impleadment and permission to appear and argue in person are placed below the paper books of writ petition).

The Writ Petition along with applications above-mentioned is listed before the Hon'ble Court with this Office Report.

Dated this the 7th day of May, 2018.

ASSISTANT REGISTRAR

Copy to:

Mr. E.C. Agrawala, Advocate
Mr. Pukhrambam Ramesh Kumar, Advocate
Ms. Liz Matthew, Advocate
Mr. Gautam Narayan, Advocate
Mr. Nikhil Nayyar, Advocate
Mr. P.S. Tripathi, Advocate

ASSISTANT REGISTRAR

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 76 OF 2016

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WITH

CRIMINAL MISC. PETITION NO. 8905 OF 2016

(APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION)

AND

CRIMINAL MISC. PETITION NO. 9896 OF 2016

(APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS)

AND

CRIMINAL MISC. PETITION NO. 6604 OF 2018

(APPLICATION FOR IMPLEADMENT AS PARTY PETITIONER, FILED BY MR. PUKRAMBAM RAMESH KUMAR, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6712 OF 2018

(APPLICATION FOR IMPLEADMENT AS PARTY PETITIONER, FILED BY MS. LIZ MATTHEW, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6791 OF 2018

(APPLICATION FOR INTERVENTION, FILED BY MR. GAUTAM NARAYAN, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 6946 OF 2018

(APPLICATION FOR INTERVENTION, FILED BY MR. NIKHIL NAYYAR, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 65854 & 65857 OF 2018

(APPLICATION FOR IMPLEADMENT AND PERMISSION TO APPEAR AND ARGUE IN PERSON, FILED BY MR. PURUSHOTTAMAN MULLOLI, APPLICANT-IN-PERSON)

AND

CRIMINAL MISC. PETITION NO. (diary)...91147 OF 2018

(APPLICATION FOR IMPLEADMENT FILED BY MR. PALLAV MONGIA, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 91250 OF 2018

(APPLICATION FOR INTERVENTION FILED BY DHIRAJ ABRAHAM PHILIP, ADVOCATE)

AND

CRIMINAL MISC. PETITION NO. 91890 OF 2018

(APPLICATION FOR DIRECTION FILED BY MR. B.V. BALRAM DAS, ADVOCATE)

WITH

WRIT PETITION (C) NO.572 OF 2016

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WITH

WRIT PETITION (CRIMINAL) NO.100 OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WITH

WRIT PETITION (CRIMINAL) NO.101 OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

AND

CRL. MISC. APPLICATION No.85230 of 2018.

(APPLICATION FOR IMPLEADMENT)

WITH

WRIT PETITION (CRIMINAL) NO.121 OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

NAVTEJ SINGH JOHAR & ORS.ETC.

...PETITIONERS

-VERSUS-

UNION OF INDIA ETC.

...RESPONDENT

OFFICE - REPORT**WP (crl) No. 76 of 2016**

The Writ Petition along with application for exemption from filing official translation has been filed by Mr. E.C. Agrawala, Advocate on 27.04.2016 on behalf of the petitioners above-named.

It is submitted that Civil Appeal No. 10972 of 2013, arising out of similar issue was allowed by this Hon'ble Court vide judgment dated 11.12.2013 [reported in 2014(1) SCC 1].

It is further submitted that Curative Petition (C) No. 88-102 of 2014 in Review Petition (C) No. 41-55 of 2014 in Civil Appeal No. 10972 of 2013 etc., was lastly listed before the Hon'ble Court on 02.02.2016, when the Court was pleased to refer the matter to Constitution Bench (copy of the order is enclosed herewith).

It is further submitted that the counsel for the petitioner has on 23.05.2016 filed an application for permission to file additional documents and the same has been registered as Crl. M.P. No. 9896 of 2016 (copy of the same as a separate paper book has been placed with the writ petition paper book).

It is lastly submitted that the Writ Petition along with application was listed before the Hon'ble Court on 29.06.2016 and lastly listed on 08.01.2018, when the Court was pleased to pass the following order:

29.06.2016:

"The issue pertains to the validity of Section 377 of the Indian Penal code.

We are informed that the Constitution Bench of this Court is hearing the issue.

Post this matter before Hon'ble the Chief Justice of India for appropriate orders."

08.01.2018:

"xxx xxx xxx

...As the question relates to constitutional issues, we think it appropriate to refer the matter to a larger bench.

In the meantime, a copy of the petition be served on the Central Agency so that the union of India can be represented in the instant matter.

Let the matter be placed before Hon'ble the Chief Justice of India, on the administrative side, for consideration of the appropriate larger bench."

It is submitted that pursuant to the aforesaid order, the counsel for the petitioner has on 09.01.2018 filed proof of service after serving a copy of the petition on the Central Agency but no appearance is filed on behalf of Union of India so far.

It is further submitted that Mr. Pukhrabam Ramesh Kumar, Advocate has on 15.01.2018 filed an application for impleadment as party petitioner and the same has been registered as I.A. No. 6604 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Ms. Liz Matthew, Advocate has on 15.01.2018 filed an application for impleadment as party petitioner and the same has been registered as I.A. No. 6712 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Mr. Gautam Narayan, Advocate has on 15.01.2018 filed an application for intervention and the same has been registered as I.A. No. 6791 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Mr. Nikhil Nayyar, Advocate has on 15.01.2018 filed an application for intervention and the same has been

registered as I.A. No. 6946 of 2018 (copy of the same as a separate paper book is placed with paper books of writ petition).

It is further submitted that Mr. P.S. Tripathi, Advocate has on 20.01.2018 filed an application for intervention but the same is defective as the prayer (b) and (c) are not proper and the counsel has mentioned "application for directions" instead of "application for intervention" in the supporting affidavit (copy of the unregistered I.A. D.No. 10779/2018 application has already been included in the paper books).

It is further submitted that Mr. Purushottaman Mulloli, Applicant-in-person has on 02.05.2018 filed an application for impleadment as party respondent along with an application for permission to appear and argue in person. The application has been registered as I.A. Nos. 65854 & 65857 of 2018. Notice for interaction of applicant in person with Ld. Registrar for 09.05.2018 but he didn't appear for interaction (the applications for impleadment and permission to appear and argue in person are placed below the paper books of writ petition).

It is further submitted that Mr. Pallav Mongia, Advocate has on 07.07.2018 filed an application for impleadment on behalf of applicant but the same is defective as the prayer (a) is not proper on whose behalf application filed as petitioner or respondent as a party (copy of the unregistered I.A. D.No. 91147 of 2018 application has already been included in the paper books).

It is further submitted that Mr. Dhiraj Abraham Philip, Advocate has on 09.07.2018 filed an application for intervention and the same has been registered as I.A. No. 91250 of 2018 (copy of the same is being circulated herewith).

It is lastly submitted that Mr. B. V. Balram, Advocate for respondent has on 09.07.2018 filed an application for direction alongwith memo of appearance with the permission of the Hon'ble Court and the same has been registered as I.A. No.91890 of 2018 (copy of the same is being circulated herewith).

WRIT PETITION (CRL.) NO.100 & 101 OF 2018

The matter above-mentioned was listed before the Hon'ble Court on 01-05-2018, when the Hon'ble Court was pleased to pass the following order :

"Issue notice.

Tag with Writ Petition (Crl.) No.76/2016."

It is submitted that accordingly, show cause notices were issued to all the three respondents in W.P. (Crl.) No.100 of 2018 on 15.05.2018 and to all the three respondents in W.P. (Crl.) No.101 of 2018 on 25.05.2018 through registered post AD and the same are delivered as per the tracking report of the postal authorities but no one has entered appearance on their behalf so far.

It is further submitted that Mr. Sunil Fernandes, Advocate has on 25.06.2018 an application for Impleadment on behalf of applicant Mr. Suhail Abbasi along with Vakalatnama/appearance on his behalf in WP (crl) No. 101 of 2018. The said application is registered as I.A. No.85230 of 2018. (Copy of the same has already been included in the paper books).

Service of notice is complete in both the matters.

WRIT PETITION (CRL.) NO.121 OF 2018

The matter above-mentioned was listed before the Hon'ble Court on 17-05-2018, when the Hon'ble Court was pleased to pass the following order :

"Issue notice.

Tag with Writ Petition (Crl.) No.76/2016."

It is submitted that accordingly, show cause notice was issued to the sole respondent on 24.05.2018 through registered post AD and the same is delivered as per the tracking report of the postal authorities but no one has entered appearance on its behalf so far.

Service of notice is complete.

The Writ Petitions along with applications above-mentioned is listed before the Hon'ble Court with this Office Report.

Dated this the 9th day of July, 2018.

ASSISTANT REGISTRAR

Copy to:

Mr. E.C. Agrawala, Advocate
 Mr. Pukhrambam Ramesh Kumar, Advocate
 Ms. Liz Matthew, Advocate
 Mr. Gautam Narayan, Advocate
 Mr. Nikhil Nayyar, Advocate
 Mr. P.S. Tripathi, Advocate
 Mr. Pallav Mongia, Advocate
 Mr. Dhiraj Abraham Philip, Advocate
 Mr. Sunil Fernandes, Advocate

ASSISTANT REGISTRAR