



## The Section 377 IPC Collection

The legal battle to decriminalise homosexuality in India began with the ABVA (AIDS Bhedbhav Virodhi Andolan) filing a petition in the High Court of Delhi in 1994 which challenged the constitutionality of Section 377 of the Indian Penal Code (IPC). Sec 377 IPC, India's sodomy law, stated:

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.

Judicial proceedings conducted at the High Court of Delhi and later at the Supreme Court of India over the next 24 years led to the historic Supreme Court decision in *Navtej Singh Johar v. Union of India*, which struck down the 1860 law criminalising the lives of LGBT persons. On 6 September 2018, the Supreme Court of India read down Sec 377 IPC as unconstitutional, and not only decriminalised consensual sex between adults, but also went much further in affirming the dignity as well as rights of all LGBT people in the country.

This collection presents the Sec. 277 litigation process in five series. It contains material in multimedia formats: 1) Court Documents, 2) Research and Writing, 3) Ephemera 4) Newspaper Articles, and 5) Videos. The court documents and research material came to QAMRA from the legal offices of Alternative Law Forum, Bangalore and Jawahar Raja's Chambers, New Delhi. The audio visual material is from the T. Jayashree Collection. Ephemera and newspaper articles are from multiple sources comprising of individuals and organisations.

Each series affords a unique vantage point into the intersection of law, society, the state, culture, morality, access to healthcare, queer activism and the media, working with and sometimes against each other to affect social change and legal reform. The courtroom documents record the inner workings of the court and make it accessible to the public. In chronological order, the 377 litigation movement includes different cases:

- **ABVA's** Petition filed in 1994 in the Delhi High Court (which was dismissed in 2001).
- **Naz Foundation v. Government of NCT of Delhi** – Naz Foundation (Naz) filed a petition in 2001 in the Delhi High Court (DHC), which was dismissed in 2003 for insufficient locus standi. Naz then appealed to the Supreme Court (SC), which referred the case back to the DHC. In *Naz Foundation v Government of NCT of Delhi*, the DHC on 2 July 2009 ruled that Sec 377 was unconstitutional, stating that criminalisation of consensual homosexual



intercourse violated the rights to dignity and privacy, and the right to life and liberty

- **Suresh Kumar Koushal v. Naz Foundation** - Several Special Leave Petitions (SPL's) were filed by individuals and organisations in the Supreme Court of India, challenging the Delhi High Court's judgment in Naz (2009). Voices Against 377, mental health professionals, academics, parents of LGBTQ+ persons, queer individuals, and Naz presented a united front in support of the 2009 judgment. On 11 December 2013, the Supreme Court of India in *Suresh Kumar Koushal v. Naz Foundation*, decided in favour of upholding the constitutionality of Sec 377, overturning the Delhi High Court judgment in Naz (2009), thus re-criminalising queer lives.
- **Curative Petitions** – Naz petitioners in 2014 filed a curative petition challenging the Supreme Court's judgment in 2013. They persuaded the court to hear the petition in open court with oral submissions. Curative petitions were further filed by mental health professionals (Dr. Shekhar Seshadri, Vinay Chandran, and others) and parents of LGBTQ+ persons (Minna Saran and others). Naz was allowed to withdraw its curative petitions in 2019.
- **Navtej Singh Johar v. Union of India** – Navtej Singh Johar, Sunil Mehra, Ritu Dalmia, Aman Nath, Keshav Suri, and Ayesha Kapur, filed a new writ petition in 2016, challenging the constitutionality of Sec 377 IPC. On 6 August 2018, the Supreme Court of India in *Navtej Singh Johar v. Union of India* ruled that certain portions of Sec 377 IPC were indeed unconstitutional. The judgment reinforced the idea that LGBTQ+ individuals were full citizens under the law.

To frame their arguments for court, lawyers on both sides consulted extensive lists of books, essays, media articles, surveys, reports, judicial precedents, international accords, employment policies and multidisciplinary research papers. These are contained in the Research & Writing series, along with hand written research notes made by a few lawyers. This series portrays the meticulous research and attention to detail that goes into constructing the written and oral submissions for court.

The ephemera and newspaper articles presented in two different series depict collective and individual efforts to sensitize and mobilize different sections of the society to support the decriminalisation of homosexuality. Many social movements allied themselves with the queer communities in this struggle to bring about a change in public opinion.



The videos in the last series of this collection are of interviews with the lawyers, activists and individual intervenors who were a part of the legal process. They document the memories of the people involved in order to preserve a personal aspect to this vigorous interaction with the law.