Annexure-I

Questionnaire

Notes:

1. This questionnaire is set to put before you for knowing about the facts of your experiences while interacting with the working legal members of different institutions of Indian Criminal Justice System i.e. (Police, Prosecution, and Court) including some personal information to use in research study.

2. For the purpose of not disclosing of identity and maintaining privacy, the sl. no./Name/Identity of participating respondents (Completely based on personal choice) has been putted here.

Sl. No./Name/Identity: ____________________________ Occupation ______________________

Q.1. Society relates LGBT identity (Homosexuality Identity) specifically with sexual intercourse acts, activities, preferences, do you agree or not?

(A) Yes

(B) No

Q.2. How do you see and understand LGBT persons (Homosexual Persons) in Delhi?

(A) Normal

(B) Abnormal

(C) Minorities

(D) Other (Please Specify): ________________________________

Q.3. How do you see and understand the Orientation/Identity/behaviour of LGBT persons (Homosexual Persons) in Delhi?

(A) Disease/No Disease

(B) Natural/Unnatural

(C) Moral/Immoral

(D) Legal/Illegal

(E) All Above
Q. 4. Do you think violence against LGBT persons (Homosexual Persons) in Delhi exist?
   (A) Yes
   (B) No
   If Yes,

Q. 5. Do you think the rights of LGBT persons (Homosexual Persons) in Delhi are violated through such violence?
   (A) Yes
   (B) No

Q. 6. Do you think sec. 377 of IPC violate the rights of LGBT persons (Homosexual Persons) in Delhi?
   (A) Yes
   (B) No
   If yes,

Q. 7. What types of violation of right of LGBT persons (Homosexual Persons) in Delhi do you see and understand?
   (A) Violation of Constitutional Rights
   (B) Violation of Statutory Rights
   (C) Violation of Human Rights
   (D) Violation of Social Rights
   (E) All above
   (F) Other (Please Specify): ________________________________

Q. 8. How will you respond about the LGBT rights (Homosexual’s Rights) particularly in Delhi and India in general now after passing of three judgments in Naz Foundation Case, Suresh Kumar Khosal Case and NLSA Case? (Please Specify): ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
Q. 9. According to you, how can the socio-legal problems of LGBT persons (Homosexual persons) in Delhi be solved?

(A) By repealing sec. 377 of IPC

(B) By amending sec. 377 of IPC

(C) Any other (Please Specify): ____________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Q. 10. Any other information you want to share? ____________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Date: ____________________________ Signatures: ____________________________
Annexure-II

Consent Form

(Please Detach This and Send Back To Researcher)

I, __________________________________ do hereby voluntary agree to participate in Mukesh Bharti’s research study entitled “A Socio-Legal Study of Sexual Minorities with Reference to Indian Criminal Justice System in Human Rights Perspective” conducting under Ph.D. course. I have read and understood what participation entails as set out in the informed consent letter. I understand that:

1. Participation in this study is voluntary. No information that may identify me will be included in the research report, and my responses will remain confidential.

2. I may withdraw information from the study at any time.

3. There are no risks or benefits associated with the study.

4. I may choose not to answer any question that I would prefer not to answer and free to refuse to answer any question for any reason.

5. The study may be written up for publication in a journal or presented at a conference; therefore raw data will be stored safely in a locked cupboard on campus for a period of up to three years and then destroyed.

I have read the foregoing information. I have had the opportunity to ask questions about it and any questions I have asked/have been answered to my satisfaction. I consent voluntarily to be a participant in this study and understand that I have the right to withdraw from at any time without in any way affecting me.

Name of Participating Respondent: ____________________________________________

Signature of Participating Respondent: __________________________________________

Date: ___________________________
Annexure-III

An Organization Report

General Population Suicide Attempt Rate 1.6%

Heterosexual Teen Suicide Attempt Rate 4%

LBG Teen Suicide Attempt Rate 20%

Trans* Suicide Attempt Rate 41%
Annexure-IV

View on Reproduction

SOMEONE TOLD ME BEING GAY IS WRONG BECAUSE WE CAN’T REPRODUCE. I SAID, “WELL THEN, LET THE GAYS ADOPT ALL THE KIDS THAT THE STRIGHTS ABANDONED AFTER REPRODUCING”

Event Invitation

JNU Queer Film Festival
20-22 March 2015
Auditorium, School of Arts & Aesthetics, JNU

You are cordially invited to attend SATRANG, JNU’s Queer Film Festival, 20-22 March 2015. The three-day film festival will explore issues of freedom of choice, sexuality and gender rights. The festival is curated by Sappho for Equality, Kolkata. This will be a great opportunity for the entire JNU community to know about Sappho’s activities regarding queer politics and interact with them.

The festival will be inaugurated on 20 March 2015, Friday at 7.30 pm in the Auditorium of School of Arts and Aesthetics, JNU followed by a Press Meet. The festival will open with the film, Call Me Kuchu.

The festival will be followed by March for Love to celebrate the freedom of love. The March will start at 5 pm from the auditorium to Ganga Dhaba on 22 March 2015, Sunday. The March and the Festival will come to a close with a short cultural programme comprising poetry reading, songs and performances at Ganga Dhaba.

20 March 2015, Friday
Inauguration
Press Meet
Call Me Kuchu [Documentary] 2012
(Dir. Katherine Fairfax Wright & Melissa Zouhali-Worrall | English
USA/Uganda | 89min.)

7.30 pm
8.00 pm
8.30 pm

* All films are with English subtitles
* Venue: Auditorium, School of Arts and Aesthetics (close to the Administrative Block, JNU)
* Curator: Sappho for Equality, Kolkata
* Festival supported by: School of Arts and Aesthetics JNU, New Delhi

Annexure-V
Annexure-V
Event Invitation Brochure
Annexure-VI

Event Invitation Brochure

Delhi's Rainbow Mega Events

Delhi Queer Pride 2015
Nov 29
2:00 pm
Tolstoy Road
CP, New Delhi

Delhi Queer Fest 2015
Nov 27-Dec 07
10:00 am - 10:00 pm
Max Muller
Bhavan, Kasturbha Gandhi Marg, Delhi

Delhi International
Queer Theater and Film Festival
Dec 12-13
12:00 pm - 9:00 pm
Lok Kala Manch
Lodhi Road

Ticket of Play on Homosexuality

unicorn actors studio presents
Brave play explores situation of the gay community

A Straight Proposal

12th October
at 7:00 p.m
Sri Ram Center
Annexure-VII

Stickers of Pride Parade Events
Annexure-VIII

Pride Parade Brochure

Sunday, 29th November 2015
2pm Onwards
Starts at the Intersection of Tolstoy Marg and Barakhamba Road, Connaught Place
facebook.com/delhi queer pride
delhi queer pride committee@gmail.com

This year marks the 8th anniversary of the Delhi Queer Pride. Once again, we take to the streets of our city to celebrate – publicly, proudly – the diversity of gender and sexuality that mark our lives. We celebrate the gains we have made towards our collective dignity but our celebration is also part protest against the continuing discrimination against transgender, lesbian, gay, intersex and queer people. Protections for transgender people extended under the NALSA judgment remain weakly implemented even as Section 377 remains a blight on our laws. In our everyday lives, too many of us remain fearful of being ourselves in homes, schools, workplaces, hospitals, and the public spaces of our city.

Yet this year more than ever, we march in solidarity for a whole range of freedoms that are under threat. Intolerance and violence towards Dalits, Muslims, women, advocates of free speech, rationalists, and those voicing dissent, surrounds us. This year, we assert that queer freedoms are inseparable from a broader culture of respect for dissent and difference. Many movements have stood by the queer struggle in the past, we stand by them in return today.

We march alongside a wave of voices rising in protest to defend our democratic values: of writers, artists, scientists, academics, filmmakers speaking out; of the sound of cages/pingas being broken; of students and teachers demanding dignity in universities; of censored films being screened in resistance. We recognize that a country in which queer people are free is one where all of us are free to be who we are – to have our dignity uncompromised by fear. We walk and speak with our feet and our bodies, remembering the words of Faiz:

“Speak, for your words are free,
Speak, for the words are still yours,
Speak, for the truth is still alive,
Speak, all that you wish to speak”

We Demand:

- Enactment of comprehensive anti-discrimination laws that prohibit discrimination on the basis of age, sex, class, caste, religion, tribe, ability, ethnicity, gender identity, and sexual orientation
- Effective implementation of the provisions of the Supreme Court judgment in NALSA vs Union of India on the rights of trans* people
- Stringent action against violence against minorities and the silencing of freedom of expression and dissent
- Repeal of Section 377 of the Indian Penal Code

Organized by the members of the Delhi Queer Pride Committee, a wholly voluntary collective supported only by community funds, the Delhi Queer Pride March brings together members and supporters of the queer community to celebrate their diversity and stand in solidarity with those who face persecution because of their gender or sexual identity.
We, teachers, researchers and academics from all over India, welcome the Delhi High Court judgement reading down Section 377 of the Indian Penal Code to decriminalize consensual sex among adults in private. The judgement held that “Section 377 IPC, insofar as it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution.” In other words, the court believes that continuing to criminalize citizens on the grounds of their sexual preference violates the Fundamental Rights to life and personal liberty, to equality, and the right not to be discriminated against on non-relevant grounds.

We in the academic community have had a hitherto silent engagement with the pain, harassment, fear and discrimination that comes with being non-heterosexual/queer. We know students, colleagues, friends and family members who are queer, or may be queer ourselves.

But sexual preference and identification is only one part of people’s identities. We believe that a modern democracy must respect diversity regardless of whether consensus exists in society on the desirability of each such practice, provided such practices respect the personhood of others. There need not be consensus in society, for instance, on either meat-eating or vegetarianism as desirable, provided both groups are free to follow their dietary preference. Similarly if “religious leaders” believe that homosexuality is not sanctioned by the scriptures, they have the right to propagate their views, provided that these views are not taken as having the final sanction on the issue for society as a whole.

At the same time, religious identity is as important for many homosexuals as for heterosexuals. Homosexual people who are practicing Hindus, Muslims, Sikhs and Christians have fully participated in this challenge and supported the decision.

We state emphatically that Section 377 as it exists is anti-democratic, and reiterate our support for the Delhi High Court judgement.

180 Signatories:

Apurba K Baruah, Manorama Sharma (NEHU, Shillong);
Tilottama Sharma Misra, Udayon Misra (Guwahati);
Shaila Desouza, (Goa University and Member, Goa State Commission for Women);
Alito Siqueira, (Goa University);
Prabhakar Bhimalapuram, K Madhava Krishna, Harjinder Singh ‘Laltu’, (IIIT, Hyderabad);
Sowmya Dechamma, G Haragopal, Jenson Joseph, R.V.Ramana Murthy, Yasser Arafath P.K, Sanjay Palshikar, Sujata Patel, Arun Kumar Patnaik, Aparna Rayaprol, (University of Hyderabad);
A.Suneetha, (Anveshi, Hyderabad);
Satish Poduval, M. Madhava Prasad, N. Manohar Reddy, Susie Tharu (EFLU Hyderabad)
Anup Dhar, Rakhi Ghoshal, Tejaswini Niranjana, Rochelle Pinto, (CSCS Bangalore)
Annapurna Garimella, Lata Mani, Kavery Nambisan, Vijay Nambisan, Rekha Pappu, Rajeswari Sunder Rajan, (Bangalore)
Janaki Abraham, Sadhna Arya, Naman P. Ahuja, Pratiksha Baxi, Maitrayee Chaudhuri, Anuradha Chenoy, Kamal Mitra Chenoy, Rohan D’Souza, Ajay Gudavarthi, Siddharth Mallavarapu, Ranjani
Johannes Manjrekar, Shivaji K Panikkar, Indrapramit Roy, Santhosh.S (M S University of Baroda);
Meera Velayudhan (Ahmedabad);
J Devika, Praveena Kodoth, V.J.Varghese, (CDS Thiruvananthapuram)
Jiju Varghese Jacob (Govt. Polytechnic College Punalur)
T.V.Sajeev (Kerala Forest Research Institute, Peechi)
Janaky Sreedharan, Mini Sukumar, K.Gopinathan, (University of Calicut)
V C Harris (Mahatma Gandhi University, Kottayam)
Sibaji Bandyopadhyay, Dwaiyayan Bhattacharyya, Anjan Ghosh, Epsita Halder, Janaki Nair, (CSSS Kolkata);
Abhijit Gupta, Kavita Panjabi, (Jadavpur University)
Nikhila H., (Pondicherry University)
Pushpesh Kumar, (SRTM University, Nanded)
Rekha Chowdhary, Ellora Puri, (University of Jammu)
Oishik Sircar (Jindal Global Law School, Sonipat)
Sukla Sen, Life Fellow, Indian Academy of Social Sciences, Allahabad.
Annexure-X

Participation in various events
Annexure-XI

Indian Psychiatric Society Letter on Homosexuality

The Indian Psychiatric Society's Position Statement on same-sex attraction, orientation, behaviour and life style

Modern medicine and psychiatry, since the 1970’s, have abandoned pathologizing same-sex orientation and behavior. The World Health Organization accepts same-sex orientation as a normal variant of human sexuality. The United Nations Human Rights Council values Lesbian Gay Bisexual and Transgender (LGBT) rights.

India's Supreme Court recently issued a ruling against human rights by reinstating a law that bans gay sex by restoring Section 377 of the Indian Penal Code. The prevalent circumstances and recent controversies in India suggest the need for caution and hence this position statement.

The Indian Psychiatric Society recognises the universality of same-sex expression, across cultures. It holds the position that homosexual orientation per se does not imply any objective psychological dysfunction or impairments in judgement, stability and vocational capabilities. The Indian Psychiatric Society considers same-sex attraction, orientation and behaviour as normal variants of human sexuality. It recognises the multi-factorial causation of human sexuality, orientation, behaviour and lifestyles. It acknowledges the lack of scientific efficacy of treatments, which attempt to change sexual orientation and highlights the harm and adverse effects of such therapies.

The Indian Psychiatric Society acknowledges social stigma and consequent discrimination of people with same-sex orientation. It recognises that the difficulties they face are a significant cause for their distress and calls for the provision of adequate mental health support.

The Indian Psychiatric Society supports the need to de-criminalise same-sex orientation and behaviour and to recognise LGBT rights to include human, civil and political rights. It supports efforts at seeking the repeal of Section 377 IPC as the 19th century law has no place in a 21st century democracy. It supports the legal recognition of same-sex relationships, civil unions and marriage, adoption and parenting. It also supports anti-bullying legislation, anti-discrimination student, employment and housing laws, immigration equality, equal age of consent law and hate crime laws providing enhanced criminal penalties for prejudice-motivated violence against LGBT people. The Indian Psychiatric Society supports government efforts and encourages Parliament to leave a lasting legacy of progress by repealing Section 377 IPC.

Dr. G. Prasad Rao

M.D., D.P.M.

President

Indian Psychiatric Society

4 March 2016
Annexure-XII

Academic Institution’s Initiative

Jamia Millia Islamia admission forms for the academic year 2015-16 have the option for “Transgender” under the Gender category. Also, a gender neutral field for “Spouse's Name” for married applicants.

(Image: screenshot of JMI’s admission form online; April 26, 2015; JamiaJournal.com)
Annexure-XIII

UGC Initiative

University Grants Commission

SA-III Section

Notice

Inclusion of Transgender as Third Gender under the various Scholarships/Fellowships

As per the judgement of Hon'ble Supreme Court of India Transgender will be included as a third gender under the various scholarships/fellowships schemes of UGC.

(Prof. (Dr.) Jaspal S. Sandhu)
Secretary, UGC
UGC Initiative

UGC to fund research projects on transgenders

NEW DELHI: The University Grants Commission (UGC) will award major research projects to academics willing to undertake research into the lives of transgenders so as to assist in their inclusion within the society and bust myths around them.

“The UGC wishes to award major research projects to academics who can, in collaboration with community members and experts in the field, undertake ethnographic research on the life and culture of the TG community,” says a letter sent to Vice-chancellors of all universities by UGC secretary Jaspal Sandhu.

“Such research, you would agree, will lead not only to a better understanding of the TG subculture but also help dispel several myths pertaining to the community embedded in popular discourse.” The letter invites academics from all universities to undertake this challenging task.

While this is an attempt to help mainstream transgenders, it is also likely to be politically interpreted as the government’s attempt to reach out to half a million transgenders in India and also project a liberal image.

The BJP-led government has faced criticisms in the recent past for the illiberal statements of fringe right wing groups.

The term transgender refers to people whose gender identity, gender expression and behaviour do not conform to those associated with the sex with which they were associated at birth.

The letter urges all universities to take immediate steps to ensure social inclusion of transgenders and safeguard their human rights and expresses the hope that all institutions are moving towards a TG-friendly infrastructure.
Annexure-XV

Sex-Reassignment Surgery Counseling Cum Consent Form

TG Documentation

One of the major steps in the lives of transgender people is establishing official documentation that attests to their sex-reassignment surgery and consequent identity. Transgender people are often subjected to embarrassment, harassment and discrimination if their documentation does not match their gender presentation.

In India, transgender people can change most of their documentation after a medically certified Sex Reassignment Surgery (SRS). However, as far as we have researched birth certificates cannot be changed.

Steps for sex change in legal documents issued in India

1. Get the Sex Reassignment Surgery (SRS) done. Usually, the hospital where you get the surgery performed should be able to guide you about legal formalities to be completed, since this must be a routine and crucial requirement for all their patients of this type.

2. Post-surgery, get a certificate of sex change by a board of doctors of the hospital concerned.

3. Put a newspaper advertisement to that effect. (Samples below)
   **FTM:** “I, aged.........., having my date of birth as ............, resident of ................................and so far known as Ms....................., have changed my gender and name and will henceforth be known as Mr.........................”.
   **MTF:** “I, aged.........., having my date of birth as ............, resident of ................................and so far known as Mr........................., have changed my gender and name and will henceforth be known as Ms.........................”. 
4. If you are employed, submit an application to your employer requesting necessary change in the records and issuance of a new identity card. Please include copies of your certificate of sex change from the hospital, a notarized affidavit to that effect and the newspaper advertisement. You can check with your HR department for more information.

5. An application accompanied by copies of affidavit, newspaper advertisement and employer’s identity card to the following authorities for change in their records and issuance of fresh documents incorporating the change:

- Voter’s identity card
- Driving license
- Ration card
- Bank account and debit / credit card
- PAN Card
- Passport

They have done it!

Giving the Indian system its due credit, I have had very little, if any, trouble in getting my official identification documents altered as per my new physical gender. Driving license and Passport are through already, while PAN card is in the process of application.” – Gazal, GazalHopes blog (Nov 2009)

Two months ago, I applied formally to change my gender in the voter’s list. The government officials were very indifferent to me at first. Just a week ago, I got an acknowledgement slip saying the change has been made.” The gender in Rose’s all other identity proofs like the PAN card and passport have also been changed. – Rose Venkatesan via Times of India (Apr 2010)
Annexure-XVI

Data Analysis in Original (Survey Monkey Analysis)
Annexure-XVII

The Yogyakarta Principles
Annexure-XVIII
Private Member’s Bill on Section 377 IPC

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2015

By
Dr. Subam Tewari, M.P.

BILL

further to amend the Indian Penal Code, 1860.

Be it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows—

1. (1) This Act may be called the Indian Penal Code (Amendment) Bill, 2015.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. For Section 377 of the Indian Penal Code, 1860, the following sections shall be substituted, namely:

"377. Whoever has sexual intercourse with any person, under the following circumstances, is said to commit a sexual offence:

(1) Against his will.
(2) Without the person's consent.
(3) With the person's consent, when his consent has been obtained by putting him or any person in whom he is interested, in fear of death or of hurt.
(4) With the person's 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 otherwise habit-forming substance, he is unable to understand the nature and consequences of such to which he gives consent.
(5) Without the person's consent, when he is under eighteen years of age.

Explanation 1.—For the purposes of this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (f) of section 375.

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

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

Exception.—Sexual intercourse other than penile-vaginal intercourse between consenting parties shall not be an offence, provided both the parties have attained the age of eighteen years.

377A. (1) Whoever commits a sexual offence specified under section 377 shall be punished with rigorous imprisonment for a term, which shall not be less than three years and which may extend to imprisonment for life, and shall also be liable to fine.

(2) Notwithstanding anything contained in any law for the time being in force, where an act constitutes an offence punishable under sub-section (1) and also under sections 375, 376, 376A, 376B, 376C, 376D or 376E, then the offender found guilty of such offence shall not be liable to be punished under sub-section (1)."

STATEMENT OF OBJECTS AND REASONS
**Research questionnaire on LGBT**

Q1

Society relates LGBT identity specifically with sexual intercourse acts, activity, preferences, do you agree or not?

Answered: 19  Skipped: 1

<table>
<thead>
<tr>
<th>Answer Choices</th>
<th>Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>yes</td>
<td>78.95% 15</td>
</tr>
<tr>
<td>no</td>
<td>21.05% 4</td>
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</table>

Total Respondents: 19

Q2

How do you see and understand LGBT persons in Delhi?

Answered: 19  Skipped: 1

- Normal: 57.89% (11)
- Abnormal: 5.26% (1)
- Minorities: 26.32% (5)
- Other (please specify): 10.53% (2)

No shared data

Sharing allows you to share your survey results with others. You can share all data, a saved view, or a single question summary. Learn more »
**SurveyMonkey Analyze - Research questionnaire on LGBT**

**Q3**

**How do you see and understand the Orientation/Identity/ behaviour of LGBT persons in Delhi?**

Answered: 19  Skipped: 1

<table>
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<tr>
<th>Answer Choices</th>
<th>Responses</th>
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</thead>
<tbody>
<tr>
<td>Disease/No Disease</td>
<td>15.79% 3</td>
</tr>
<tr>
<td>Natural/Unnatural</td>
<td>52.63% 10</td>
</tr>
<tr>
<td>Moral/Immoral</td>
<td>15.79% 3</td>
</tr>
<tr>
<td>Legal/Illegal</td>
<td>10.53% 2</td>
</tr>
<tr>
<td>All Above</td>
<td>10.53% 2</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>21.09% 4</td>
</tr>
</tbody>
</table>

Total Respondents: 19

**Q4**

**Do you think violence against LGBT persons in Delhi exist?**

Answered: 19  Skipped: 1

<table>
<thead>
<tr>
<th>Answer Choices</th>
<th>Responses</th>
</tr>
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<td>Yes</td>
<td>94.74% 18</td>
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<tr>
<td>No</td>
<td>5.26% 1</td>
</tr>
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</table>

https://www.surveymonkey.com/analyze/LOQv7kz2T_2FNzhU9Wk2zQaiOz6fDxxXp_2FFE_2FANhuk5yg_3D
Q5
Do you think the rights of LGBT persons in Delhi are violated through such violence?
Answered: 19  Skipped: 1

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<td>89.47%</td>
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<tr>
<td>No</td>
<td>10.53%</td>
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</table>

Total 19

Q6
Do you think sec. 377 of IPC violate the rights of LGBT persons in Delhi?
Answered: 19  Skipped: 1

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<th>Responses</th>
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<td>Yes</td>
<td>89.47%</td>
</tr>
<tr>
<td>No</td>
<td>10.53%</td>
</tr>
</tbody>
</table>

Total 19
What types of violation of right of LGBT persons in Delhi do you see and understand?

Answered: 19  Skipped: 1

- Violation of Human Rights: 36.84% (7)
- Violation of Social Rights: 5.26% (1)
- All above: 52.63% (10)
- Other (please specify): 5.26% (1)

Answer Choices

<table>
<thead>
<tr>
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<th>Responses</th>
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<tbody>
<tr>
<td>Violation of Constitutional Rights</td>
<td>0.00%</td>
</tr>
<tr>
<td>Violation of Statutory Rights</td>
<td>0.00%</td>
</tr>
<tr>
<td>Violation of Human Rights</td>
<td>36.84%</td>
</tr>
<tr>
<td>Violation of Social Rights</td>
<td>5.26%</td>
</tr>
<tr>
<td>All above</td>
<td>52.63%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>5.26%</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
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</table>

Q8

How will you respond about the LGBT rights particularly in Delhi and India in general now after passing of three judgments in Naz Foundation Case, Suresh Kumar Khosal Case and NLSA Case?

Answered: 18  Skipped: 2

- No comment: 61.11% (11)
- Other (please specify): 38.89% (7)

Answer Choices

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<th>Responses</th>
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</thead>
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<td>No comment</td>
<td>61.11%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>38.89%</td>
</tr>
<tr>
<td>Total</td>
<td>18</td>
</tr>
</tbody>
</table>
Q9

According to you, how can the socio-legal problems of LGBT persons in Delhi be solved?

Answered: 20  Skipped: 0

- By repealing sec. 377 of IPC: 35.00% (7)
- By amending sec. 377 of IPC: 40.00% (8)
- Other (please specify): 25.00% (5)

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<th>Responses</th>
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<tr>
<td>By repealing sec. 377 of IPC</td>
<td>35.00%</td>
</tr>
<tr>
<td>By amending sec. 377 of IPC</td>
<td>40.00%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>Responses</td>
</tr>
<tr>
<td></td>
<td>25.00%</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
</tr>
</tbody>
</table>

Q10

Any other information you want to share?

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- No comment: 50.00% (9)
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THE YOGYAKARTA PRINCIPLES

PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY
The English version is the authoritative text. Official translations are available in Arabic, Chinese, French, Russian and Spanish.

March 2007
THE YOGYAKARTA PRINCIPLES

Principles on the application of international human rights law in relation to sexual orientation and gender identity
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All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation and gender identity are integral to every person’s dignity and humanity and must not be the basis for discrimination or abuse.

Many advances have been made toward ensuring that people of all sexual orientations and gender identities can live with the equal dignity and respect to which all persons are entitled. Many States now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity.

Nevertheless, human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability, or economic, social or other status.

Many States and societies impose gender and sexual orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationships and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

The international system has seen great strides toward gender equality and protections against violence in society, community and in the family. In addition, key human rights mechanisms of the United Nations have affirmed States’ obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity. However, the international response to human rights violations based on sexual orientation and gender identity has been fragmented and inconsistent.

1) Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

2) Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
To address these deficiencies a consistent understanding of the comprehensive regime of international human rights law and its application to issues of sexual orientation and gender identity is necessary. It is critical to collate and clarify State obligations under existing international human rights law, in order to promote and protect all human rights for all persons on the basis of equality and without discrimination.

The International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organisations, have undertaken a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States’ human rights obligations.

A distinguished group of human rights experts has drafted, developed, discussed and refined these Principles. Following an experts’ meeting held at Gadjah Mada University in Yogyakarta, Indonesia from 6 to 9 November 2006, 29 distinguished experts from 25 countries with diverse backgrounds and expertise relevant to issues of human rights law unanimously adopted the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

The rapporteur of the meeting, Professor Michael O’Flaherty, has made immense contributions to the drafting and revision of the Principles. His commitment and tireless efforts have been critical to the successful outcome of the process.

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. The Principles affirm the primary obligation of States to implement human rights. Each Principle is accompanied by detailed recommendations to States. The experts also emphasise, though, that all actors have responsibilities to promote and protect human rights. Additional recommendations are addressed to other actors, including the UN human rights system, national human rights institutions, the media, non-governmental organisations, and funders.

The experts agree that the Yogyakarta Principles reflect the existing state of international human rights law in relation to issues of sexual orientation and gender identity. They also recognise that States may incur additional obligations as human rights law continues to evolve.

The Yogyakarta Principles affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.

Sonia Onufer Corrêa
Co-Chairperson

Vitit Muntarbhorn
Co-Chairperson
PREAMBLE

RECALLING that all human beings are born free and equal in dignity and rights, and that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

DISTURBED that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all regions of the world because of their sexual orientation or gender identity, that these experiences are compounded by discrimination on grounds including gender, race, age, religion, disability, health and economic status, and that such violence, harassment, discrimination, exclusion, stigmatisation and prejudice undermine the integrity and dignity of those subjected to these abuses, may weaken their sense of self-worth and belonging to their community, and lead many to conceal or suppress their identity and to live lives of fear and invisibility;

AWARE that historically people have experienced these human rights violations because they are or are perceived to be lesbian, gay or bisexual, because of their consensual sexual conduct with persons of the same gender or because they are or are perceived to be transsexual, transgender or intersex or belong to social groups identified in particular societies by sexual orientation or gender identity;

UNDERSTANDING ‘sexual orientation’ to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender;

UNDERSTANDING ‘gender identity’ to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms;
OBSERVING that international human rights law affirms that all persons, regardless of sexual orientation or gender identity, are entitled to the full enjoyment of all human rights, that the application of existing human rights entitlements should take account of the specific situations and experiences of people of diverse sexual orientations and gender identities, and that in all actions concerning children the best interests of the child shall be a primary consideration and a child who is capable of forming personal views has the right to express those views freely, such views being given due weight in accordance with the age and maturity of the child;

NOTING that international human rights law imposes an absolute prohibition of discrimination in regard to the full enjoyment of all human rights, civil, cultural, economic, political and social, that respect for sexual rights, sexual orientation and gender identity is integral to the realisation of equality between men and women and that States must take measures to seek to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped roles for men and women, and noting further that the international community has recognised the right of persons to decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free from coercion, discrimination, and violence;

RECOGNISING that there is significant value in articulating in a systematic manner international human rights law as applicable to the lives and experiences of persons of diverse sexual orientations and gender identities;

ACKNOWLEDGING that this articulation must rely on the current state of international human rights law and will require revision on a regular basis in order to take account of developments in that law and its application to the particular lives and experiences of persons of diverse sexual orientations and gender identities over time and in diverse regions and countries.

FOLLOWING AN EXPERTS’ MEETING HELD IN YOGYAKARTA, INDONESIA, FROM 6 TO 9 NOVEMBER 2006, HEREBY ADOPT THESE PRINCIPLES:
PRINCIPLE 1

THE RIGHT TO THE UNIVERSAL ENJOYMENT OF HUMAN RIGHTS

All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.

States shall:

A. Embody the principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions or other appropriate legislation and ensure the practical realisation of the universal enjoyment of all human rights;

B. Amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights;

C. Undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity;

D. Integrate within State policy and decision-making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.

PRINCIPLE 2

THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition,
enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

**States shall:**

**A.** Embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realisation of these principles;

**B.** Repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;

**C.** Adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;

**D.** Take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights. Such measures shall not be deemed to be discriminatory;

**E.** In all their responses to discrimination on the basis of sexual orientation or gender identity, take account of the manner in which such discrimination may intersect with other forms of discrimination;

**F.** Take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression.

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**The Right to Recognition Before the Law**

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation...
or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

**States shall:**

A. Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;

B. Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person’s self-defined gender identity;

C. Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person’s gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person’s profound self-defined gender identity;

D. Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;

E. Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy;

F. Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment.

**PRINCIPLE 4 THE RIGHT TO LIFE**

Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity. The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity.
**States shall:**

A. Repeal all forms of crime that have the purpose or effect of prohibiting consensual sexual activity among persons of the same sex who are over the age of consent and, until such provisions are repealed, never impose the death penalty on any person convicted under them;

B. Remit sentences of death and release all those currently awaiting execution for crimes relating to consensual sexual activity among persons who are over the age of consent;

C. Cease any State-sponsored or State-condoned attacks on the lives of persons based on sexual orientation or gender identity, and ensure that all such attacks, whether by government officials or by any individual or group, are vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished.

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**THE RIGHT TO SECURITY OF THE PERSON**

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.

**States shall:**

A. Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;

B. Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family;

C. Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence;

D. Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;

E. Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.
PRINCIPLE 6

THE RIGHT TO PRIVACY

Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one’s sexual orientation or gender identity, as well as decisions and choices regarding both one’s own body and consensual sexual and other relations with others.

**States shall:**

A. Take all necessary legislative, administrative and other measures to ensure the right of each person, regardless of sexual orientation or gender identity, to enjoy the private sphere, intimate decisions, and human relations, including consensual sexual activity among persons who are over the age of consent, without arbitrary interference;

B. Repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;

C. Ensure that criminal and other legal provisions of general application are not applied to *de facto* criminalise consensual sexual activity among persons of the same sex who are over the age of consent;

D. Repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity;

E. Release all those held on remand or on the basis of a criminal conviction, if their detention is related to consensual sexual activity among persons who are over the age of consent, or is related to gender identity;

F. Ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.
THE YOGYAKARTA PRINCIPLES

THE RIGHT TO FREEDOM FROM ARBITRARY DEPRIVATION OF LIBERTY

No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice;

B. Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention;

C. Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person’s sexual orientation or gender identity;

D. Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention, and ensure independent oversight of all places of detention by bodies that are adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person.

THE RIGHT TO A FAIR TRIAL

Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in a suit at law and of any criminal charge against them, without prejudice or discrimination on the basis of sexual orientation or gender identity.
**States shall:**

A. Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process, in civil and criminal proceedings and all other judicial and administrative proceedings which determine rights and obligations, and to ensure that no one’s credibility or character as a party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity;

B. Take all necessary and reasonable steps to protect persons from criminal prosecutions or civil proceedings that are motivated wholly or in part by prejudice regarding sexual orientation or gender identity;

C. Undertake programmes of training and awareness-raising for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

**Principle 9**

**The Right to Treatment with Humanity While in Detention**

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person’s dignity.

**States shall:**

A. Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;

B. Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;

C. Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;

D. Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;
**THE YOGYAKARTA PRINCIPLES**

**E.** Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;

**F.** Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;

**G.** Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

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**THE RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity.

**States shall:**

**A.** Take all necessary legislative, administrative and other measures to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts;

**B.** Take all reasonable steps to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to sexual orientation or gender identity, and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support;

**C.** Undertake programmes of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent such acts.
PRINCIPLE 11

THE RIGHT TO PROTECTION FROM ALL FORMS OF EXPLOITATION, SALE AND TRAFFICKING OF HUMAN BEINGS

Everyone is entitled to protection from trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity. Measures designed to prevent trafficking shall address the factors that increase vulnerability, including various forms of inequality and discrimination on the grounds of actual or perceived sexual orientation or gender identity, or the expression of these or other identities. Such measures must not be inconsistent with the human rights of persons at risk of being trafficked.

STATES SHALL:

A. Take all necessary legislative, administrative and other measures of a preventive and protective nature regarding the trafficking, sale and all forms of exploitation of human beings, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity;

B. Ensure that any such legislation or measures do not criminalise the behaviour of, stigmatise, or in any other way, exacerbate the disadvantage of those vulnerable to such practices;

C. Establish legal, educational and social measures, services and programmes to address factors that increase vulnerability to trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity, including such factors as social exclusion, discrimination, rejection by families or cultural communities, lack of financial independence, homelessness, discriminatory social attitudes leading to low self-esteem, and lack of protection from discrimination in access to housing, accommodation, employment and social services.

PRINCIPLE 12

THE RIGHT TO WORK

Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.
**States shall:**

A. Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;

B. Eliminate any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public functions, including serving in the police and military, and provide appropriate training and awareness-raising programmes to counter discriminatory attitudes.

---

**The Right to Social Security and to Other Social Protection Measures**

Everyone has the right to social security and other social protection measures, without discrimination on the basis of sexual orientation or gender identity.

**States shall:**

A. Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave, unemployment benefits, health insurance or care or benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death;

B. Ensure that children are not subject to any form of discriminatory treatment within the social security system or in the provision of social or welfare benefits on the basis of their sexual orientation or gender identity, or that of any member of their family;

C. Take all necessary legislative, administrative and other measures to ensure access to poverty reduction strategies and programmes, without discrimination on the basis of sexual orientation or gender identity.
PRINCIPLE 14 THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

Everyone has the right to an adequate standard of living, including adequate food, safe drinking water, adequate sanitation and clothing, and to the continuous improvement of living conditions, without discrimination on the basis of sexual orientation or gender identity.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to adequate food, safe drinking water, adequate sanitation and clothing.

PRINCIPLE 15 THE RIGHT TO ADEQUATE HOUSING

Everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure security of tenure and access to affordable, habitable, accessible, culturally appropriate and safe housing, including shelters and other emergency accommodation, without discrimination on the basis of sexual orientation, gender identity or marital or family status;

B. Take all necessary legislative, administrative and other measures to prohibit the execution of evictions that are not in conformity with their international human rights obligations, and ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that a right to protection against forced evictions has been violated or is under threat of violation, including the right to resettlement, which includes the right to alternative land of better or equal quality and to adequate housing, without discrimination on the basis of sexual orientation, gender identity or marital or family status;

C. Ensure equal rights to land and home ownership and inheritance without discrimination on the basis of sexual orientation or gender identity;

D. Establish social programmes, including support programmes, to address factors relating to sexual orientation and gender identity that increase vulnerability to homelessness,
especially for children and young people, including social exclusion, domestic and other forms of violence, discrimination, lack of financial independence, and rejection by families or cultural communities, as well as to promote schemes of neighbourhood support and security;

E. Provide training and awareness-raising programmes to ensure that all relevant agencies are aware of and sensitive to the needs of those facing homelessness or social disadvantage as a result of sexual orientation or gender identity.

THE RIGHT TO EDUCATION

Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity;

B. Ensure that education is directed to the development of each student’s personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;

C. Ensure that education is directed to the development of respect for human rights, and of respect for each child’s parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities;

D. Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;

E. Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment;

F. Ensure that students subjected to such exclusion or violence are not marginalised or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner;

G. Take all necessary legislative, administrative and other measures to ensure that discipline in educational institutions is administered in a manner consistent with human dignity, without discrimination or penalty on the basis of a student’s sexual orientation or gender identity, or the expression thereof;
H. Ensure that everyone has access to opportunities and resources for lifelong learning without discrimination on the basis of sexual orientation or gender identity, including adults who have already suffered such forms of discrimination in the educational system.

**PRINCIPLE 17**

**THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH**

Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.

**STATES SHALL:**

A. Take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity;

B. Take all necessary legislative, administrative and other measures to ensure that all persons have access to healthcare facilities, goods and services, including in relation to sexual and reproductive health, and to their own medical records, without discrimination on the basis of sexual orientation or gender identity;

C. Ensure that healthcare facilities, goods and services are designed to improve the health status of, and respond to the needs of, all persons without discrimination on the basis of, and taking into account, sexual orientation and gender identity, and that medical records in this respect are treated with confidentiality;

D. Develop and implement programmes to address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity;

E. Ensure that all persons are informed and empowered to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent, without discrimination on the basis of sexual orientation or gender identity;

F. Ensure that all sexual and reproductive health, education, prevention, care and treatment programmes and services respect the diversity of sexual orientations and gender identities, and are equally available to all without discrimination;

G. Facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support;

H. Ensure that all health service providers treat clients and their partners without discrimination on the basis of sexual orientation or gender identity, including with regard to recognition as next of kin;
I. Adopt the policies, and programmes of education and training, necessary to enable persons working in the healthcare sector to deliver the highest attainable standard of healthcare to all persons, with full respect for each person's sexual orientation and gender identity.

PROTECTION FROM MEDICAL ABUSES

No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure full protection against harmful medical practices based on sexual orientation or gender identity, including on the basis of stereotypes, whether derived from culture or otherwise, regarding conduct, physical appearance or perceived gender norms;

B. Take all necessary legislative, administrative and other measures to ensure that no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration;

C. Establish child protection mechanisms whereby no child is at risk of, or subjected to, medical abuse;

D. Ensure protection of persons of diverse sexual orientations and gender identities against unethical or involuntary medical procedures or research, including in relation to vaccines, treatments or microbicides for HIV/AIDS or other diseases;

E. Review and amend any health funding provisions or programmes, including those of a development-assistance nature, which may promote, facilitate or in any other way render possible such abuses;

F. Ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed.
Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

**States shall:**

**A.** Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer-sex information;

**B.** Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the personnel recruitment and promotion policies of such organisations are non-discriminatory on the basis of sexual orientation or gender identity;

**C.** Take all necessary legislative, administrative and other measures to ensure the full enjoyment of the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of name or any other means;

**D.** Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities;

**E.** Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;

**F.** Ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.
Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities.

**States shall:**

A. Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity;

B. Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities;

C. Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights;

D. Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection;

E. Ensure that information disclosure rules for voluntary associations and groups do not, in practice, have discriminatory effects for such associations and groups addressing issues of sexual orientation or gender identity, or for their members.
PRINCIPLE 21

THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity. These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure the right of persons, regardless of sexual orientation or gender identity, to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs;

B. Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.

PRINCIPLE 22

THE RIGHT TO FREEDOM OF MOVEMENT

Everyone lawfully within a State has the right to freedom of movement and residence within the borders of the State, regardless of sexual orientation or gender identity. Sexual orientation and gender identity may never be invoked to limit or impede a person’s entry, egress or return to or from any State, including that person’s own State.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure that the right to freedom of movement and residence is guaranteed regardless of sexual orientation or gender identity.
THE RIGHT TO SEEK ASYLUM

Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity.

States shall:

A. Review, amend and enact legislation to ensure that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for the recognition of refugee status and asylum;

B. Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation or gender identity;

C. Ensure that no person is removed, expelled or extradited to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of that person’s sexual orientation or gender identity.

THE RIGHT TO FOUND A FAMILY

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity;

B. Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis
of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration;

C. Take all necessary legislative, administrative and other measures to ensure that in all actions or decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration, and that the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests;

D. In all actions or decisions concerning children, ensure that a child who is capable of forming personal views can exercise the right to express those views freely, and that such views are given due weight in accordance with the age and maturity of the child;

E. Take all necessary legislative, administrative and other measures to ensure that in States that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners;

F. Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege, obligation or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners;

G. Ensure that marriages and other legally-recognised partnerships may be entered into only with the free and full consent of the intending spouses or partners.

PRINCIPLE

25 THE RIGHT TO PARTICIPATE IN PUBLIC LIFE

Every citizen has the right to take part in the conduct of public affairs, including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, including serving in the police and military, without discrimination on the basis of sexual orientation or gender identity.

STATES SHALL:

A. Review, amend and enact legislation to ensure the full enjoyment of the right to participate in public and political life and affairs, embracing all levels of government service and employment in public functions, including serving in the police and military, without discrimination on the basis of, and with full respect for, each person’s sexual orientation and gender identity;
B. Take all appropriate measures to eliminate stereotypes and prejudices regarding sexual orientation and gender identity that prevent or restrict participation in public life;

C. Ensure the right of each person to participate in the formulation of policies affecting their welfare, without discrimination on the basis of, and with full respect for, their sexual orientation and gender identity.

THE RIGHT TO PARTICIPATE IN CULTURAL LIFE

Everyone has the right to participate freely in cultural life, regardless of sexual orientation or gender identity, and to express, through cultural participation, the diversity of sexual orientation and gender identity.

States shall:

A. Take all necessary legislative, administrative and other measures to ensure opportunities for the participation in cultural life of all persons, regardless of, and with full respect for, their sexual orientations and gender identities;

B. Foster dialogue between, and mutual respect among, proponents of the various cultural groups present within the State, including among groups that hold different views on matters of sexual orientation and gender identity, consistently with respect for the human rights referred to in these Principles.

THE RIGHT TO PROMOTE HUMAN RIGHTS

Everyone has the right, individually and in association with others, to promote the protection and realisation of human rights at the national and international levels, without discrimination on the basis of sexual orientation or gender identity. This includes activities directed towards the promotion and protection of the rights of persons of diverse sexual orientations and gender identities, as well as the right to develop and discuss new human rights norms and to advocate their acceptance.
**States shall:**

A. Take all necessary legislative, administrative and other measures to ensure a favourable environment for activities directed towards the promotion, protection and realisation of human rights, including rights relevant to sexual orientation and gender identity;

B. Take all appropriate measures to combat actions or campaigns targeting human rights defenders working on issues of sexual orientation and gender identity, as well as those targeting human rights defenders of diverse sexual orientations and gender identities;

C. Ensure that human rights defenders, regardless of their sexual orientation or gender identity, and regardless of the human rights issues they advocate, enjoy non-discriminatory access to, participation in, and communication with, national and international human rights organisations and bodies;

D. Ensure the protection of human rights defenders, working on issues of sexual orientation and gender identity, against any violence, threat, retaliation, *de facto* or *de jure* discrimination, pressure, or any other arbitrary action perpetrated by the State, or by non-State actors, in response to their human rights activities. The same protection should be ensured, to human rights defenders working on any issue, against any such treatment based on their sexual orientation or gender identity;

E. Support the recognition and accreditation of organisations that promote and protect the human rights of persons of diverse sexual orientations and gender identities at the national and international levels.

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**PRINCIPLE 28**

**THE RIGHT TO EFFECTIVE REMEDIES AND REDRESS**

Every victim of a human rights violation, including of a violation based on sexual orientation or gender identity, has the right to effective, adequate and appropriate remedies. Measures taken for the purpose of providing reparation to, or securing adequate advancement of, persons of diverse sexual orientations and gender identities are integral to the right to effective remedies and redress.

**States shall:**

A. Establish the necessary legal procedures, including through the revision of legislation and policies, to ensure that victims of human rights violations on the basis of sexual orientation or gender identity have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate;
B. Ensure that remedies are enforced and implemented in a timely manner;

C. Ensure that effective institutions and standards for the provision of remedies and redress are established, and that all personnel are trained in issues of human rights violations based on sexual orientation and gender identity;

D. Ensure that all persons have access to all necessary information about the processes for seeking remedies and redress;

E. Ensure that financial aid is provided to those who are unable to afford the cost of securing redress, and that any other obstacles to securing such redress, financial or otherwise, are removed;

F. Ensure training and awareness-raising programmes, including measures aimed at teachers and students at all levels of public education, at professional bodies, and at potential violators of human rights, to promote respect for and adherence to international human rights standards in accordance with these Principles, as well as to counter discriminatory attitudes based on sexual orientation or gender identity.

ACCOUNTABILITY PRINCIPLE 29

Everyone whose human rights, including rights addressed in these Principles, are violated is entitled to have those directly or indirectly responsible for the violation, whether they are government officials or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation. There should be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.

STATES SHALL:

A. Establish appropriate, accessible and effective criminal, civil, administrative and other procedures, as well as monitoring mechanisms, to ensure the accountability of perpetrators for human rights violations related to sexual orientation or gender identity;

B. Ensure that all allegations of crimes perpetrated on the basis of the actual or perceived sexual orientation or gender identity of the victim, including such crimes described in these Principles, are investigated promptly and thoroughly, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished;

C. Establish independent and effective institutions and procedures to monitor the formulation and enforcement of laws and policies to ensure the elimination of discrimination on the basis of sexual orientation or gender identity;

D. Remove any obstacles preventing persons responsible for human rights violations based on sexual orientation or gender identity from being held accountable.
ADDITIONAL RECOMMENDATIONS

All members of society and of the international community have responsibilities regarding the realisation of human rights. We therefore recommend that:

A. The United Nations High Commissioner for Human Rights endorse these Principles, promote their implementation worldwide, and integrate them into the work of the Office of the High Commissioner for Human Rights, including at the field-level;

B. The United Nations Human Rights Council endorse these Principles and give substantive consideration to human rights violations based on sexual orientation or gender identity, with a view to promoting State compliance with these Principles;

C. The United Nations Human Rights Special Procedures pay due attention to human rights violations based on sexual orientation or gender identity, and integrate these Principles into the implementation of their respective mandates;

D. The United Nations Economic and Social Council recognise and accredit non-governmental organisations whose aim is to promote and protect the human rights of persons of diverse sexual orientations and gender identities, in accordance with its Resolution 1996/31;

E. The United Nations Human Rights Treaty Bodies vigorously integrate these Principles into the implementation of their respective mandates, including their case law and the examination of State reports, and, where appropriate, adopt General Comments or other interpretive texts on the application of human rights law to persons of diverse sexual orientations and gender identities;

F. The World Health Organization and UNAIDS develop guidelines on the provision of appropriate health services and care, responding to the health needs of persons related to their sexual orientation or gender identity, with full respect for their human rights and dignity;

G. The UN High Commissioner for Refugees integrate these Principles in efforts to protect persons who experience, or have a well-founded fear of, persecution on the basis of sexual orientation or gender identity, and ensure that no person is discriminated against on the basis of sexual orientation or gender identity in relation to the receipt of humanitarian assistance or other services, or the determination of refugee status;

H. Regional and sub-regional inter-governmental organisations with a commitment to human rights, as well as regional human rights treaty bodies, ensure that the promotion of these Principles is integral to the implementation of the mandates of their various human rights mechanisms, procedures and other arrangements and initiatives;

I. Regional human rights courts vigorously integrate those Principles that are relevant to the human rights treaties they interpret into their developing case law on sexual orientation and gender identity;

J. Non-governmental organisations working on human rights at the national, regional and international levels promote respect for these Principles within the framework of their specific mandates;
THE YOGYAKARTA PRINCIPLES

**K.** Humanitarian organisations incorporate these Principles into any humanitarian or relief operations, and refrain from discriminating against persons on the basis of sexual orientation or gender identity in the provision of aid and other services;

**L.** National human rights institutions promote respect for these Principles by State and non-State actors, and integrate into their work the promotion and protection of the human rights of persons of diverse sexual orientations or gender identities;

**M.** Professional organisations, including those in the medical, criminal or civil justice, and educational sectors, review their practices and guidelines to ensure that they vigorously promote the implementation of these Principles;

**N.** Commercial organisations acknowledge and act upon the important role they have in both ensuring respect for these Principles with regard to their own workforces and in promoting these Principles nationally and internationally;

**O.** The mass media avoid the use of stereotypes in relation to sexual orientation and gender identity, and promote tolerance and the acceptance of diversity of human sexual orientation and gender identity, and raise awareness around these issues;

**P.** Governmental and private funders provide financial assistance, to non-governmental and other organisations, for the promotion and protection of the human rights of persons of diverse sexual orientations and gender identities.

**THESE PRINCIPLES AND RECOMMENDATIONS** reflect the application of international human rights law to the lives and experiences of persons of diverse sexual orientations and gender identities, and nothing herein should be interpreted as restricting or in any way limiting the rights and freedoms of such persons as recognised in international, regional or national law or standards.
ANNEX

SIGNATORIES TO THE YOGYAKARTA PRINCIPLES

Philip Alston (Australia), UN Special Rapporteur on extrajudicial, summary and arbitrary executions and Professor of Law, New York University School of Law, USA
Maxim Anmeghichean (Moldova), European Region of the International Lesbian and Gay Association
Mauro Cabral (Argentina), Researcher Universidad Nacional de Córdoba, Argentina, International Gay and Lesbian Human Rights Commission
Edwin Cameron (South Africa), Justice, Supreme Court of Appeal, Bloemfontein, South Africa
Sonia Onufer Corrêa (Brazil), Research Associate at the Brazilian Interdisciplinary AIDS Association (ABIA) and co-chair of Sexuality Policy Watch (Co-Chair of the experts’ meeting)
Yakin Ertürk (Turkey), UN Special Rapporteur on Violence against Women, Professor, Department of Sociology, Middle East Technical University, Ankara, Turkey
Elizabeth Evatt (Australia), Former member and chair of the UN Committee on the Elimination of Discrimination Against Women, former member of the UN Human Rights Committee and Commissioner of the International Commission of Jurists
Paul Hunt (New Zealand), UN Special Rapporteur on the right to the highest attainable standard of health and Professor, Department of Law, University of Essex, United Kingdom
Asma Jahangir (Pakistan), Chairperson, Human Rights Commission of Pakistan
Maina Kiai (Kenya), Chairperson, Kenya National Commission on Human Rights
Miloon Kothari (India), UN Special Rapporteur on the right to adequate housing
Judith Mesquita (United Kingdom), Senior Research Officer, Human Rights Centre, University of Essex, United Kingdom
Alice M. Miller (United States of America), Assistant Professor, School of Public Health, Co-Director, Human Rights Program, Columbia University, USA
Sanji Mmasenono Monageng (Botswana), Judge of the High Court (The Republic of the Gambia), Commissioner of the African Commission on Human and Peoples’ Rights, Chairperson of the Follow Up Committee on the implementation of the Robben Island Guidelines on prohibition and prevention of Torture and other Cruel, Inhuman or Degrading Treatment (African Commission on Human and Peoples’ Rights)
Vitit Muntarbhorn (Thailand), UN Special Rapporteur on the human rights situation in the Democratic People’s Republic of Korea and Professor of Law at Chulalongkorn University, Thailand, (Co-Chair of the experts’ meeting)
Lawrence Mute (Kenya), Commissioner with the Kenya National Commission on Human Rights
Manfred Nowak (Austria), UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, member of the International Commission of Jurists, Professor of Human Rights at Vienna University, Austria and Director of the Ludwig Boltzmann Institute of Human Rights

Ana Elena Obando Mendoza (Costa Rica), feminist attorney, women’s human rights activist, and international consultant

Michael O’Flaherty (Ireland), Member of the UN Human Rights Committee and Professor of Applied Human Rights and Co-Director of the Human Rights Law Centre at the University of Nottingham, United Kingdom (Rapporteur for the development of the Yogyakarta Principles)

Sunil Pant (Nepal), President of the Blue Diamond Society, Nepal

Dimitrina Petrova (Bulgaria), Executive Director, The Equal Rights Trust

Rudi Mohammed Rizki (Indonesia), UN Special Rapporteur on international solidarity and Senior Lecturer and Vice Dean for Academic Affairs of the Faculty of Law at the University of Padjadjaran, Indonesia

Mary Robinson (Ireland), Founder of Realizing Rights: The Ethical Globalization Initiative and former President of Ireland and former United Nations High Commissioner for Human Rights

Nevena Vuckovic Sahovic (Serbia), Member of the UN Committee on the Rights of the Child and President of the Child Rights Centre, Belgrade, Serbia

Martin Scheinin (Finland), UN Special Rapporteur on human rights and counter-terrorism, Professor of Constitutional and International Law and Director of the Institute for Human Rights, Åbo Akademi University, Finland

Wan Yanhai (China), Founder of the AIZHI Action Project and director of Beijing AIZHIXING Institute of Health Education

Stephen Whittle (United Kingdom), Professor in Equalities Law at Manchester Metropolitan University, United Kingdom

Roman Wieruszewski (Poland), Member of the UN Human Rights Committee and head of Poznan Centre for Human Rights, Poland

Robert Wintemute (Canada and United Kingdom), Professor of Human Rights Law, School of Law, King’s College London, United Kingdom
THE INDIAN PENAL CODE (AMENDMENT) BILL, 2015

By

DR. SHASHI THAROOR, M.P.

A

BILL

further to amend the Indian Penal Code, 1860.

Be it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:

1. (1) This Act may be called the Indian Penal Code (Amendment) Bill, 2015.
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. For Section 377 of the Indian Penal Code, 1860, the following sections shall be substituted, namely:

"377. Whoever has sexual intercourse with any person, under the following circumstances, is said to commit a sexual offence:

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(First) — Against his will.
(Secondly) — Without the person's consent.
(Thirdly) — With the person's consent, when his consent has been obtained by putting him or any person in whom he is interested, in fear of death or of hurt.
(Fourthly) — With the person's 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, he is unable to understand the nature and consequences of that to which he gives consent.
(Fifthly) — With or without the person's consent, when he is under eighteen years of age.

Explanation 1. — For the purposes of this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

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

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

Exception — Sexual intercourse other than penile - vaginal intercourse between consenting parties shall not be an offence, provided both the parties have attained the age of eighteen years.

377A. (1) Whoever commits a sexual offence specified under section 377 shall be punished with rigorous imprisonment for a term, which shall not be less than seven years and which may extend to imprisonment for life, and shall also be liable to fine.
(2) Notwithstanding anything contained in any law for the time being in force, where an act constitutes an offence punishable under sub-section (1) and also under sections 375, 376, 376A, 376B, 376C, 376D or 376E, then the offender found guilty of such offence shall not be liable to be punished under sub-section (1)."

STATEMENT OF OBJECTS AND REASONS

http://www.shashitharoor.in/in-parliament-details.php?id=382
In 2009, while reviewing the legitimacy of section 377 of the Indian Penal Code, 1860 in *Naz Foundation vs. Government of NCT of Delhi*, the Hon’ble High Court of Delhi had considered four important contentions — the object of the provision, concerns of public health, public morality, and constitutional validity. The Hon’ble High Court had concluded that the inherent object of section 377 was not to protect children and women from sexual abuse but to enforce Victorian notions of morality that viewed homosexuality as the worst of crimes. The Indian Penal Code was drafted by Thomas Babington Macaulay and enacted under the Viceroy Canning in pre-independent India. In 1967, the United Kingdom, itself, decriminalised homosexual acts between consenting adults by enacting the Sexual Offences Act. In India, the Protection of Children from Sexual Offences Act, 2012 (POCSO) and the Criminal Amendment Act, 2013 have enacted stringent provisions to protect children and women from rape and sexual abuse. Today, section 377 is a redundant provision as far as children and women are concerned and a nuisance as far as consensual sexual acts between adults in private is concerned.

Second, contrary to an old belief that section 377 preserves public health by criminalising non-procreative sexual acts, the provision has exposed public health to the risk of HIV/AIDS, by deterring homosexuals and other men having sex with men from accessing health services. Third, the fundamental rights of dignity, autonomy and privacy are above moral outrage and therefore, public morality is not a valid ground to restrict consensual sexual acts between adults in private. Such acts pose no serious harm to anyone else or the society as a whole but its criminalisation discriminates against homosexuals on the basis of their sexual orientation and also impairs their dignity. Therefore, section 377, in so far as it criminalises consensual sexual acts of adults in private, violates the fundamental rights guaranteed under articles 21, 14 and 15 of the Constitution of India and lacks constitutional validity.

However, in late 2013, this progressive precedent was set aside by the Hon’ble Supreme Court in *Suresh Kumar Koushal and another vs. NAZ Foundation and others* which upheld the constitutional validity of section 377. Despite different views on the legitimacy of section 377, both the Hon’ble High Court of Delhi and the Hon’ble Supreme Court of India placed an onus on the competent legislature or the Parliament "to consider the desirability and propriety of deleting section 377 IPC from the statute book or amend the same". Therefore, as a Member of Parliament, I have proposed an amendment to section 377 of the Indian Penal Code to decriminalise consensual sexual acts between adults in private.

The Bill proposes to restrict the applicability of section 377 of the Indian Penal Code to non-consensual sexual acts between persons or sexual acts with persons under the age of eighteen years as long as such acts are not punishable under sections 375, 376, 376A, 376B, 376C, 376D or 376E of the Indian Penal Code. The Bill lists the elements of 'consent' in accordance with section 375 of the Indian Penal Code and due attention has been given to replace the term 'Unnatural Offences' with the term 'Other Sexual Offences' and delete the words 'against the order of nature' from the text of the provision. Moreover, a new section 377A has been added to prescribe punishment according to the punishment for rape under section 375 of the Indian Penal Code and punishment for penetrative sexual assault under section 4 of the Protection of Children from Sexual Offences Act, 2012. The Bill expressly decriminalises consensual sexual acts between adults in private, rather than leaving it to inference or interpretation.

Hence this Bill.

**NEW DELHI,**

**November 18, 2015.**

**SHASHI THAROOR**

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**ANNEXURE**
377. 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.

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further to amend the Indian Penal Code, 1860.

(Dr. Shashi Tharoor, M.P.)

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