



# Decriminalising homosexuality in India

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**Abstract:** *This paper examines the successful fight against the provision in Section 377 of the Penal Code of India that criminalised private consensual sex between adults of the same sex. This law had led to serious discrimination against people engaging in homosexual acts, who were subjected to frequent beatings and blackmail attempts by police, who used the threat of prosecution against them. NGOs working with sexual minorities have also been harassed and sometimes charged under Section 377. By stigmatising homosexuality and threatening gay men with prison, the law is also likely to have impeded the battle against HIV. The provision was read down in July 2009 after an innovative, sustained, mass media campaign by activists. The Voices Against 377 coalition brought together sexuality and lesbian, gay, bisexual and transgender (LGBT) organisations, who were previously marginalised, with groups working in areas such as children's rights and feminist groups, showing that support for non-discrimination towards sexual minorities was broad-based. Further legal and social changes are needed for LGBT individuals to gain full acceptance and equality within Indian society. However, the judgement transcended the LGBT issue with the implication of protection for all minorities and introduced for the first time in South Asia the idea of sexual citizenship.* ©2009 Reproductive Health Matters. All rights reserved.

**Keywords:** advocacy and political process, homosexuality, law and policy, LGBT organisations, sexual rights, India

*“If there is one constitutional tenet that can be said to be underlying theme of the Indian Constitution, it is that of ‘inclusiveness’. This Court believes that Indian Constitution reflects this value deeply ingrained in Indian society, nurtured over several generations. The inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognising a role in society for everyone. Those perceived by the majority as ‘deviants’ or ‘different’ are not on that score excluded or ostracised.”<sup>1</sup>*

**O**N 2 July 2009, the High Court of Delhi ruled that the provision in Section 377 of India's Penal Code that criminalises private consensual sex between same-sex adults violates the country's Constitution and international human rights conventions. “Consensual sex amongst adults is legal,” ruled the two judges, “which includes even gay sex.”<sup>1</sup>

With this, an eight-year advocacy campaign was brought to a successful conclusion. A provision in the Penal Code of India that had endured since 1860, when it was imposed on all British colonies, was read down. The high publicity of the case has inspired debate and discussion among Indians who had not previously considered sexuality issues, opening minds and increasing the flow of new ideas. Across the country, the decision sparked celebrations among sexuality, lesbian, gay, bisexual and transgender (LGBT) groups, which see decriminalisation of homosexuality as a vital step on the road to their acceptance by the wider society.

This article will focus on the petition filed by Naz Foundation India Trust and the role played by the coalition Voices Against 377. However, this is not to diminish the immense efforts made and progress achieved by numerous other organisations and individuals working on sexuality,

LGBT and other human rights issues, which have made this judgement and other strides towards equality possible. The article traces the history of Section 377 and how it has been enforced in India. It then assesses the impact of the decision on the lives of Indians, in particular its effect on people at risk of or living with HIV. It then describes the fight against the law and how it successfully brought together disparate civil society groups to advocate for change. Finally, it discusses the likely impact of the ruling and what further changes are necessary in India for the country's hitherto marginalised LGBT individuals to gain broad acceptance and equality within the wider society.

### The history of Section 377

Section 377 of the Indian Penal Code was authored by Lord Macaulay, the President of the Indian Law Commission, in 1860, as part of Britain's efforts to impose Victorian values on its biggest colony (similar laws were imposed on most of its colonies, including the United States). It reads as follows:

*"Section 377: Unnatural offences – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine. Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."*<sup>2</sup>

Although not explicitly defined, "carnal intercourse against the order of nature" has been taken by the Indian courts in the intervening years to include anal sex, oral sex, and in some cases other non-procreative sexual acts, such as mutual masturbation.<sup>3</sup> Although heterosexual couples also partake in these acts, the weight of the law over the centuries has fallen on homosexual sex.<sup>4</sup> Even when such sex is consensual, the "voluntary" provision in the law makes it illegal.

Laws such as Section 377 have long been abandoned in most Western democracies, although they persist in many post-colonial countries in Asia and Africa (except South Africa and Nepal). In the 1980s, the European Court of Human Rights ruled that criminalising same-sex sexual

behaviour was a violation of protections of private life.<sup>5</sup> Britain, the author of the Indian Penal Code and Section 377 during the colonial period, decriminalised homosexuality in 1967.

In India, the difficulty of proving that "carnal intercourse against the order of nature" has taken place in private has meant that the law has only infrequently been applied in court judgements. Achieving a prosecution requires catching two people carrying out the sexual act, which usually takes place in private. Since 1930, there has been only one prosecution of adults having same-sex consensual sex.<sup>6,7</sup> Of the 50 reported judgements under Section 377 reviewed by Gupta,<sup>3</sup> 30% were cases of sexual assault or abuse of minors, with the remainder involving non-consensual sex between adults. Gupta<sup>3</sup> notes, however, that this review covered reported judgements of the Court of Appeal only – there may have been other cases that went to trial that, since they were not appealed, were not reviewed.

However, although few cases against consenting adults have gone to trial, the existence of Section 377, and the threat of possible arrest, have allowed the authorities to discriminate against homosexuals and organisations working with them. Thus, Section 377 has had an enormous negative impact on many people's lives.

### The impact of Section 377

*"Although people can be intolerant, silly, or pushy about what constitutes proper diet, differences in menu rarely provoke the kinds of rage, anxiety, and sheer terror that routinely accompany differences in erotic taste. Sexual acts are burdened with an excess of significance."*<sup>8</sup>

In criminalising homosexual acts, Section 377 has meant that those practising them have had to remain at the margins of society, their sexual preferences and activities kept secret from families, communities and the authorities, for fear of blackmail or prosecution. As the following examples show, even in the absence of successful prosecutions, the law has facilitated widespread, institutionally-tolerated discrimination against those whose sexual preferences are different from the majority.

A number of incidents have highlighted the vulnerability of gay, lesbian and transgender Indians as a result of Section 377. Homosexually inclined men who meet in parks and other

public places are often entrapped and blackmailed by the police, who use the threat of penalty under Section 377 against them. It was in response to this type of harassment, the arrest of men in Connaught Place park, New Delhi, that the non-governmental group *AIDS Bhedbhawe Virodhi Andolan* (ABVA) organised the first-ever protest demonstration that openly demanded “gay rights”, in August 1994, outside the Delhi police headquarters. This demonstration followed the 1991 release of *Less than Gay*, the first document to publicly demand gay rights in India.

In December 1999, the film *Fire* was released in India’s major cities. This was the first Hindi film dealing largely with a lesbian relationship. Although it was passed by the National Film Censor Board, thugs supporting the Hindu fundamentalist group Shiv Sena reacted by vandalising cinemas, attacking movie-goers, and demanding, in vain, that the film be banned.<sup>9</sup> According to Ramasubban<sup>9</sup>, the Shiv Sena denounced the film for obscenity and for violating Indian cultural norms.

Many non-governmental organisations working with individuals marginalised by their sexuality have also been harassed. In 2002 in Bangalore, Sangama, a non-governmental organisation working with sexuality minorities, was the victim of sustained repression as the police barred people seeking their services from visiting its offices and ordered it to hold meetings with them outside the city.<sup>9</sup> And in 2001 four activists from Bharosa Trust and Naz Foundation International, organisations working on HIV/AIDS in Lucknow, were accused of running a gay “sex club” and charged under Section 377. The activists, whose employers were recognised by the state AIDS control agency, had been distributing condoms and educational pamphlets to gay men. They were released after 47 days in custody following nationwide protests.<sup>3</sup>

As Gupta<sup>3</sup> argues, “the Lucknow incidents show that the mere existence of Section 377, even if it cannot and is not being enforced in prosecuting sexual acts in private, adds a certain criminality to the daily lives of homosexual men and puts them under the gaze of the law and a constant threat of moral terrorism”. As Kapur<sup>8</sup> points out, “the criminalisation of some activities – such as rape, adultery, and sodomy – and the non-criminalisation of other activities – such as the rape of a woman by her husband – are marked by the idea that there are certain forms of sexuality

that are private, culturally accepted, and exercised legitimately within the family”. This places sodomy and homosexuality outside the margins of what can be practised legitimately, and therefore makes homosexuals illegitimate in the eyes of the law.

Section 377 is likely to have had an adverse impact on the fight against HIV and AIDS in India. Criminalising homosexuality increases the stigma attached to it, and therefore the practitioner. Social stigma, backed up by the threat of ten years’ imprisonment for homosexuality, helps drive the epidemic underground and heighten the risk of transmission, as gay men may be less likely to present for testing, prevention services and treatment, lest they be found out.

An example of the detrimental effect of Section 377 on HIV prevention occurred in 1994, when a group of physicians recommended that condoms be distributed in a Delhi prison where there were high reported rates of homosexual sex. The prison authorities refused because homosexual sex is a crime under Section 377, and distributing condoms would mean condoning a criminal act.<sup>10</sup> The prison authorities’ refusal to provide protection for the prisoners may have greatly increased the risk of infection among inmates.

Organisations working on HIV prevention, meanwhile, also find it harder to reach individuals who are marginalised by their sexuality with information and other services. The threat of prosecution, as demonstrated by the Lucknow case, compounds the difficulty. A 2002 Human Rights Watch report highlighted the contradiction between the Indian government’s HIV/AIDS policies and its prohibition of homosexuality and persecution of groups working with gay men. It pointed out that, although the government recognised the importance of reaching out to marginalised groups in public statements, they also relied on NGOs, which were often persecuted by law enforcement, to provide these services.<sup>11</sup>

### **The fight against criminalisation**

It was in response to the 1994 Delhi prison case that an initial suit was filed against Section 377 in the Delhi High Court in 1994. ABVA, a Delhi-based NGO, filed public interest litigation calling for the repeal of Section 377 on the grounds that it violated the constitutional right to privacy. The case withered, however, as the petition did not

come up for hearing until 2001. As a non-funded group run entirely by unpaid volunteers, ABVA did not have a full-time lawyer keeping track of the case, so when it finally came up ABVA failed to appear and the case was dismissed without their knowledge.

The next attempt to repeal Section 377 began in 2001. The Naz Foundation India Trust, based in Delhi, whose workers had suffered police harassment during HIV education campaigns among marginalised communities, joined up with the Lawyers Collective, a legal aid organisation working for the rights of people affected by HIV and AIDS. They petitioned the Delhi High Court not to repeal Section 377 as a whole, but to read it down to exclude private consensual sex between adults. Children's rights groups were opposed to the entire law being repealed, as it is the only law under which some types of sexual abuse of minors can be prosecuted.

The petition challenged Section 377's violation of four fundamental rights guaranteed by the Indian Constitution:<sup>12</sup> the right to equality before the law (Article 14), since Section 377 discriminates against particular groups; the right to be free from sex discrimination (Article 15), since the law primarily targets homosexual sex; the right to fundamental liberties (Article 19); and the right to life and privacy (Article 21), since Section 377 imperils lives by impeding HIV prevention activities and intrudes upon the private consensual sex of adults.

This petition was dismissed, however, because the Naz Foundation was not personally aggrieved by Section 377 and therefore had no *locus standi* in the case. The Naz Foundation and Lawyers Collective therefore asked the Supreme Court of India to review the dismissal of the petition. The Supreme Court ordered that the grounds for dismissal were not valid, and that the Delhi High Court had to hear the case.

To strengthen the case and provide testimonials from individuals who were personally aggrieved by Section 377, a coalition of NGOs representing various social movements working on human rights issues, joined the petition. Formed in 2003, it brought together a large number of NGOs working to strengthen gay, lesbian and transgender rights, child rights activists, and feminist groups, from which a united voice was articulated against Section 377.<sup>13</sup> The coalition was able to provide the stories of people whose lives had been damaged by

fear of prosecution and blackmail from police and others who took advantage of the discriminatory law. These testimonials were quoted in the final judgement, and served to throw light on the shadows of these marginalised lives. Eventually, this resulted in the July 2009 judgement that Section 377 must be read down to exclude consensual adult sex. The judges declared that the law, "insofar as it criminalises consensual sexual acts of adults in private", violated Articles 14, 15 and 21 of the Constitution.<sup>1</sup> The law would continue to apply in cases of penile non-vaginal sex involving minors.

From the time that the Naz Foundation and Lawyers Collective first filed their public interest litigation in 2001 until the date of the judgement, the environment within which they operated had changed dramatically. The first Naz petition adopted a clear focus on the health risks imposed by Section 377, as it was thought that basing a case on the human rights of sexuality minorities would be more likely to alienate than persuade the court. By 2009, however, the political and social climate had shifted so much that human rights had become a key part of the petition.

The Voices Against 377 coalition was instrumental in this change. Non-governmental organisations such as CREA, Talking About Reproductive and Sexual Health Issues (TARSHI), Nirantar, the Nigah Media Collective, and Prism,\* all Delhi-based NGOs, who had all been working on issues of sexuality and human rights for several years, were among others the founding members of the coalition, bringing in other groups as the case progressed. Voices Against 377 was the first sustained coalition in India (and among the first worldwide) of LGBT and non-LGBT groups, and showed that support for sexuality rights was not limited to traditional LGBT organisations. This was a riposte to the Indian government's earlier assertion that Indians did not care about homosexuality, and that when they did they disapproved.

The petition against Section 377 became a key rallying point, which encouraged hitherto isolated and reticent groups to come out into the

\*CREA, TARSHI and Prism work on sexual rights issues of minority groups including LGBT, sex workers and Dalit. Nirantar works towards empowering women through education. Nigah Media Collective uses media for progressive debates around issues of gender and sexuality.

open and advocate for their rights. Members of Voices Against 377 launched large-scale education campaigns around the issue, raising awareness among the general public, the media, the health professions and students. Activities included demonstrations, press conferences and a “Million Voices” campaign, which gathered tens of thousands of signatures opposed to Section 377, including the signatures of many who were directly affected by the law. The Lawyers Collective organised meetings with local groups in major cities, which numbered over 70 by the time the judgement was delivered.<sup>9</sup> In 2006 Voices Against 377 filed a petition in support of the Naz Foundation’s public interest litigation.

Indians have arguably never been silent on LGBT issues, and the current LGBT movement preceded the Naz case by well over a decade (*Bombay Dost* was founded in 1990, for example, and its founder, leading activist Ashok Row Kavi, came out publicly in the print media in 1986). The Indian media, both print and audio-visual, have been vocal on the issues for at least two decades, and several Indians have been writing significant fiction and non-fiction that has led to the release of many books and other publications\* exploring the importance of understanding sexuality as a basic human right. Beyond the LGBT movement, sex workers in India have shown remarkable organisation and activism to change perceptions of sexuality, embracing diversity among the ranks of members of *Durbar Mahila Samanwaya* Committee (the largest Sex Workers’ union in India). Organisations like CREA and TARSHI have also been training activists

on issues of sexuality, gender and rights for over a decade.

This history of sexual rights advocacy helped increase the activism around Section 377 and has allowed LGBT groups to become more visible and outspoken in India in the past eight years. HIV and AIDS have been a further spur to this increased activity. As Kole<sup>14</sup> notes, international funding for HIV prevention and treatment programmes soared from US\$19m to \$608m between 1990 and 2005. International donors encouraged education on sexual rights and outreach to hitherto marginalised groups, and the influx of funds triggered the formation of numerous NGOs – “between 1994–2004,” Kole<sup>14</sup> reports, “the largest number of gay-lesbian-AIDS-NGOs was ever (sic) registered in the history of the Indian subcontinent”.

The results of this increased activity are evident in India today. Popular Bollywood films have, for the first time, begun to include gay storylines. Queer film festivals have thrived. Media coverage of LGBT issues has become increasingly favourable and led to growing public debate and discussion. And every year, thousands march in gay pride parades in cities such as New Delhi and Kolkata.

These efforts made it more likely that a strategy against Section 377 that included LGBT groups and drew attention to discrimination against them would succeed. Because the Naz Foundation and Voices against 377’s case focused on the adult and consensual aspects of the law, as well as the health arguments, they were able to include other movements not strictly related to LGBT rights in their cause, bringing together marginalised groups to take down a discriminatory law without leaving sections of the population, such as children, unprotected.

Importantly, the petition did not focus on issues of “morality” or what constitutes “natural sex” – instead, by bringing consent to the fore, the petitioners highlighted the discrepancies between Section 377 and the guarantees in the Indian Constitution to respect privacy, liberty and non-discrimination. The High Court’s verdict recognised this contradiction, declaring that “the inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognising a role in society for everyone... Those perceived by the majority as ‘deviants’ or ‘different’ are not on that score excluded or ostracised”.<sup>1</sup>

\*Bombay Dost (1990 to the present) Mumbai; ABVA (1991): *Less than Gay: A Citizen’s Report on the Status of Homosexuality in India*. New Delhi; Ruth Vanita and Saleem Kidwai eds. (2000): *Same Sex Love in India*. St Martin’s Press; Geetanjali Misra and Radhika Chandrimani (2005): *Sexuality, Gender and Rights: Exploring Theory and Practice in Southeast Asia*. Sage Publications, New Delhi; Arvind Narrain and Gautam Bhan (eds.) (2005): *Because I have a Voice*. Yoda Press, New Delhi; Ratna Kapur (2005): *Erotic Justice*. Glass House Press, London; Brinda Rose (2006): *Gender and Censorship*. Delhi: Women Unlimited; Nivedita Menon (2007): *Outing Heteronormativity: Nation, Citizen, Feminist Disruptions in Menon*, Nivedita (2007): *Sexualities*. Delhi: Women Unlimited, 3–51.



## Moving forward

*"I did not ever think that I would hear the words I did. It is momentous and I still cannot think of the morning without crying. Calls from friends who are elated, who have come out to their families once this news was out, people who suddenly found supportive families. The battle has been worth it."*<sup>15</sup>

*"The Naz Foundation judgement once again makes the constitution worthy of our love and affection. It is of course too early to say whether this romance with Naz will stand the test of time, and like all relationships there will be disenchantment, dis-gruntlement and perhaps even cynicism that will creep in, but for now let us enjoy the slightly trippy lightheadedness that only a new love is capable of providing and toast the much delayed but very welcome arrival of the Roe v. Wade of India."*<sup>16</sup>

The reading down of Section 377 has been hailed as a major leap forward for sexual rights in India. Anjali Gopalan, executive director of the Naz Foundation (India) Trust, said, "we have finally entered into the 21st century... The judgement that decriminalises adult consensual same-sex sexual activity is one of the positive steps that have been taken towards affirming the rights of LGBT persons in India".<sup>17</sup> UNAIDS hailed the verdict as a vital measure for HIV prevention in the country. Its executive director, Michel Sidibe, said that, "the Delhi High Court has restored the dignity and human rights of millions of men who have sex with men and transgendered people in India".<sup>18</sup> Legally, the decision makes persecution of same-sex couples more difficult, and organisations working on issues of sexual rights with LGBT communities now have more freedom to operate without police harassment. However, the verdict is only one step towards full equality and acceptance for LGBT individuals. Many more changes are needed legally and socially.

The reading down of Section 377 leaves several legal questions unanswered. As Hunter<sup>19</sup> has warned, "decriminalisation is not deregulation". Family and employment law, for example, may continue to discriminate against people based on their sexual orientation. Will same-sex Indian couples be able to marry, or adopt children? How will inheritance and tax laws apply for same-sex couples? Will workplace discrimination be outlawed, and will such laws be strictly enforced? In the cultural realm, will

censors take the same approach to films, books and press articles that include homosexual content as they take with those that include heterosexual content, or will films such as *Fire* continue to attract especially intense scrutiny? And how far will this important legal change penetrate society? Many people in India remain ignorant of and indifferent to such laws, or unable to access justice where they are aware of their rights. For the change to Section 377 to have a widespread impact, efforts will need to be made to ensure that it is implemented at the local level and among marginalised communities.

The issue of HIV raises a further important legal question. As we have discussed, criminalisation of same-sex sexual activity can drive it underground and make it less likely that crucial HIV services will reach those at risk. The reading down of Section 377 will mitigate this problem, but there remains the question of whether HIV-positive individuals can face criminal prosecution for passing on the virus either deliberately or for having failed to disclose their HIV status to their sexual partners. Currently, a new HIV bill is under discussion, which will determine India's response to the threat of HIV/AIDS, and legislate rights and services open to HIV positive individuals. As of this writing, it contains no provision for criminalisation of intentional HIV transmission.<sup>19</sup>

Although reform of Section 377 is an important step, legal reform will only take the movement for equality for sexual minorities so far. Social changes are also needed. Already, in the wake of the Delhi High Court's decision on Section 377, there has been a backlash against it. Some influential leaders in society have argued that decriminalising homosexuality will lead to moral degradation, the proliferation of homosexuality, the breakdown of traditional family values, and an explosion of HIV cases. In *The Hindu*,<sup>20</sup> MA Shaik Abdullah said the "veiled attempt to legitimise the concept of homosexuality is unacceptable" and expressed concern about the verdict's effect on India's "social fabric". The head of the country's largest mosque said the ruling is "absolutely wrong. We will not accept any such law".<sup>21</sup> The Delhi unit of the Hindu fundamentalist Vishwa Hindu Parishad complained that "it is against the culture and family system in India. It will result in the spread of a number of diseases".<sup>22</sup>



Chennai, India, 2008

Advocates for equality therefore face a long struggle to change societal attitudes. Religious leaders have a great influence on their communities, and countering the backlash will require concerted efforts by activists and by the state and national governments. Changing attitudes relies on information, education and an intention to change the dominant culture. Tolerance of difference should be encouraged in schools, and children should be educated on the importance of human rights. The media also have a role to play, by reporting responsibly on LGBT issues and by promoting a culture of tolerance and freedom for minorities.

The ruling against Section 377 is likely to encourage the formation and growth of more NGOs working on sexuality issues, who must be allowed space to operate. Government must ensure that activists can work free of police harassment and that their access to resources is equal to that of NGOs working in other areas. Support must be given in particular to NGOs working in rural areas, where resistance to homosexuality is more entrenched, and to those work-

ing with hard-to-reach communities, such as the very poor, prisoners or the young.

As well as organisations working on sexuality issues, individuals whose sexual preferences differ from the majority will also need support. It is possible that the backlash against the judgement on Section 377 will extend to LGBT individuals, who may find themselves more vulnerable to physical and verbal attacks in the coming months. The country's health and social services should provide safe houses for those subject to attack, as well as counselling and health services.

More generally, the impact of reform of Section 377 will be limited if LGBT individuals continue to be harassed by the authorities and excluded from government services. To prevent repeats of the harassment cases detailed above, more stringent punishments for offenders should be combined with efforts to educate officials about the changes to the law and about the need to treat all individuals equally and fairly. These efforts will be needed in police forces, health facilities, including sexual health facilities, among legal professionals and in the courts.

Provision of services should also be stepped up. At present, many LGBT individuals do not have access to sexual health facilities and many are reluctant to attend general health facilities because of the risk of discrimination. The same is true of legal services. Reform of Section 377 will make such discrimination harder, but full equality will only come if the government actively reaches out to LGBT individuals with health programmes, HIV and other sexually transmitted disease prevention and treatment programmes, counselling services, and legal support.

## Conclusion

The reform of Section 377 is a big step for sexuality rights. Thanks to years of advocacy and activism by sexuality and LGBT organisations, prior to any filing against 377, widespread media coverage of the case, gay pride marches and other events in recent years, people are discussing sexuality rights more openly. With the flow of discussion comes the opportunity for sharing ideas, and possibly changing public opinion.

At a recent public debate in Delhi on the 377 judgement, moderated by ex-Attorney General Soli Sorabji, how the judgement had radically transformed the terms of debate was explained by Professor Shohini Ghosh.<sup>23</sup> First, the judgement had moved debates on sexuality away from an idea of public morality to one of constitutional morality. Second, it had reconfigured the notion of harm. The question was no longer whether homosexuality “harmed” abstract notions of family values and social fabric but about how the provisions of 377 had harmed members of the LGBT community by marginalising, oppressing and exploiting them. Lastly, and most importantly, said Ghosh, the scope of the judgement far transcended the LGBT issue with its implication of unprecedented protection for all minorities. By so doing it had introduced, for the first time in South Asia, the idea of sexual citizenship.

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## Résumé

Cet article examine la lutte réussie contre la disposition de la section 377 du Code pénal indien qui criminalisait les rapports sexuels consensuels privés entre adultes du même sexe. Cette loi avait abouti à une grave discrimination à l'encontre des individus pratiquant des actes homosexuels, qui étaient fréquemment battus. Ils faisaient aussi l'objet de tentatives de chantage de la part de policiers qui les menaçaient de poursuites. Les ONG travaillant avec les minorités sexuelles étaient aussi harcelées et parfois attaquées en justice en vertu de la section 377. En stigmatisant l'homosexualité et en menaçant les homosexuels de prison, la loi a aussi probablement entravé la lutte contre le VIH. La disposition a été atténuée en juillet 2009 après une campagne médiatique novatrice menée avec persévérance par des militants. La coalition des voix contre la section 377 a associé des organisations de lesbiennes, gays, bisexuels et transsexuels (LGBT), qui étaient auparavant marginalisées, à des groupes travaillant dans des domaines comme les droits de l'enfant et les groupes féministes. Elle a ainsi montré que l'appui à la non-discrimination des minorités sexuelles reposait sur une large assise. De nouveaux changements juridiques et sociaux sont nécessaires pour que les individus LGBT soient pleinement acceptés dans la société indienne. Néanmoins, le jugement a transcendé la question des LGBT pour toucher la protection de toutes les minorités et a introduit pour la première fois en Asie du Sud l'idée de citoyenneté sexuelle.

## Resumen

En este artículo se examina la lucha exitosa contra la disposición en la Sección 377 del Código Penal de la India, que penaliza las relaciones sexuales consensuales entre adultos del mismo sexo. Esta ley provocó grave discriminación contra las personas que participan en actos homosexuales, quienes fueron sometidas a golpizas frecuentes y atentados de chantaje por parte de la policía, que las amenazaba con enjuiciarlas. Las ONG que trabajan con minorías sexuales también han sido víctimas de acoso y a veces son acusadas a raíz de la Sección 377. Al estigmatizar la homosexualidad y amenazar a los hombres homosexuales con condena de prisión, también es probable que la ley haya impedido la lucha contra el VIH. La disposición fue rechazada en julio de 2009, tras una innovadora y larga campaña de activistas por los medios de comunicación masiva. La coalición de Voces contra la Ley 377 reunió a organizaciones de sexualidad y de lesbianas, gays, bisexuales y transgéneros (LGBT), que antes eran marginadas, con grupos que trabajan en áreas como los derechos de los niños y grupos feministas, mostrando una amplia base a favor de la no discriminación hacia las minorías sexuales. Aún se necesitan más cambios jurídicos y sociales para que las personas LGBT adquieran aceptación total e igualdad en la sociedad india. Sin embargo, el fallo trascendió el asunto de LGBT con la implicación de protección para todas las minorías y planteó por primera vez en Asia Meridional la idea de ciudadanía sexual.