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## Towards decriminalisation of a sexual choice

S. Bageshree and M. Raghava

*The LGBT community sees Section 377 of the IPC as a major obstacle to their possible integration into mainstream society*

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*Section 377 of IPC was enforced by the Colonial Government in India in 1860*

*There is more awareness about the rights of the sexuality minority community*

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— Photo: K. Gopinathan



**Booked: Activists of Sangama and transsexuals, who were arrested by the police on Monday, being brought to the Magistrate's court in Bangalore on Tuesday.**

Bangalore: Harassment of the sexuality minority community, particularly by the police, is not uncommon in Bangalore.

In fact, the submission of the petitioners in the ongoing case in the Delhi High Court (Naz Foundation Vs. Government of Delhi and others) seeking decriminalised status for sexuality minorities, cites two cases from Bangalore of arbitrary arrest, illegal detention and custodial torture of LGBT (Lesbian, Gay, Bisexual and Transgender) persons in 2004 and 2006. A fact-finding report published by the People's Union of Civil Liberties (in 2003 and 2005) on the human rights violations against the transgender community in Bangalore carries testimonials that narrate unspeakable brutality and abuse suffered by them, particularly at the hands of the police.

The most recent example of this intolerance happened as recently as Monday. The Banashankari police on Monday arrested five transsexuals for alleged "extortion" of money from vehicle

riders on the road. Two of five volunteers of the support group Sangama, who went to inquire about the arrest, were allegedly stripped and beaten by the police. When more Sangama activists led by Manohar protested the action, the police allegedly beat them with lathis and later booked cases against 32 activists for allegedly obstructing them from doing their duty.

The activists alleged that the policemen, including an inspector and an Assistant Commissioner of Police, molested and hit Sangama activists Manohar, Yashoda, Sumati and two others. "We could see them being pushed and beaten before us," said Usha Jee of Alternative Law Forum.

The 32 Sangama activists were produced before the 2nd Additional Chief Metropolitan Magistrate late on Monday night, who ordered for medical examination at the Bowring and Lady Curzon Hospital.

On Tuesday, they were produced before the Magistrate, who ordered for their release on bail.

The LGBT community in India, now slowly developing an organised presence in the city, sees the archaic Section 377 of the Indian Penal Code that criminalises same-sex relationships, as a major but not the only obstacle to their possible integration into mainstream society.

The High Court of Delhi is hearing arguments for the "reading-down" of Section 377 of the Indian Penal Code. The "reading-down" seeks to decriminalise LGBT communities and allow them a life of dignity, while retaining the provisions of the Section for real offences such as child sexual abuse.

Siddharth Narrain of Alternative Law Forum says that crisis-intervention efforts of organisations like Sangama and Samara have created some degree of awareness of their rights within the sexuality minority community. Though cases of harassment continue, it is being resisted stoutly, as the incident that took place on Monday illustrates.

Even as many countries in the world have done away with laws that discriminate against sexuality minorities, the submissions made by the respondents in the Delhi High Court argue that "reading-down" of Section 377 will lead to the "degradation of moral values" and prove a "health hazard."

However, the claim that it will lead to the spread of HIV/AIDS has been countered by the National AIDS Control Organisation. The Ministry of Health and Family Welfare is in favour of "reading-down" the law, while the Ministry of Home Affairs wants the law to stand in its present form. In response to the claims of the respondents, one of judges pointed out that the "consensus around the world is that criminalisation will drive HIV underground."

Section 377 of IPC was enforced by the Colonial Government in India in 1860. Notion of sexual morality have changed enormously since everywhere in the world.

The U.S. Supreme Court in the famous Lawrence Vs. Texas case in which anti sodomy law was struck down said: "... Times blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom."

This applies as much to our own laws.

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