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RRT RESEARCH RESPONSE

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Questions

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RESPONSE

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Summary

On 2 July 2009, the High Court of Delhi handed down a decision which, in the National Capital Territory of Delhi, may decriminalise consensual sexual activity between adults of any gender. According to a 3 July 2009 report in the *New York Times*, the trial judges found that the existing Section 377 “law violates Article 14 of the Constitution, which guarantees all people ‘equality before the law;’ Article 15, which prohibits discrimination ‘on grounds of religion, race, caste, sex or place of birth;’ and Article 21, which guarantees ‘protection of life and personal liberty,’ the judges said”. A 3 July 2009 report from the *Inter Press Service* quotes the director of the Naz Foundation (the “New Delhi-based gay rights nongovernmental organisation” which initiated the High Court case), who reportedly “cautioned that the ‘judgment doesn’t mean that homosexuality is legal, but that adults in consensual homosexual relationship cannot be discriminated against’”. Legal sources quoted in several articles speculate that, although the judgement initially applies only to the National Capital Territory of Delhi, it (according to a *Wall Street Journal* article from 3 July 2009) “effectively applies to the whole of the country by setting a precedent that other state courts would find difficult to contradict”. It is uncertain whether this will be the case, as the Delhi High Court decision was immediately and vigorously opposed by all major religious groups

in India, some political parties, and many high-profile individuals. Two of these individuals, a yoga guru and an astrologer, appealed the decision to the Supreme Court of India, which on 20 July 2009 declined to stay the decision handed down by the High Court of Delhi. The most recent report located, a 17 August 2009 article from the *Indo-Asian News Service* (IANS), notes that two new lawsuits have been launched in the Supreme Court against the Delhi High Court decision, and that the Supreme Court has again decided against a stay; the Supreme Court deferred the matter until 14 September, when it will hear all other petitioners and the position of the union Government of India on the matter. Regardless of the decision of the Supreme Court, the majority of sources indicate that the possible decriminalisation of gay sex is unlikely to have much immediate impact on the marginalisation experienced by minority sexualities in India, and that the greater task of changing long-entrenched social attitudes lies ahead (for the Delhi High Court decision, see: High Court of Delhi 2009, *WP(C) No.7455/2001*, District Courts of India website, 2 July <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf> – Accessed 24 August 2009 – Attachment 1; for reportage on the decision, see: Timmons, H. & Kumar, H. 2009, ‘Indian Court Overturns Gay Sex Ban’, *New York Times*, 3 July http://www.nytimes.com/2009/07/03/world/asia/03india.html?_r=2 – Accessed 28 August 2009 – Attachment 2; Sheth, N. & Bellman, E. 2009, ‘Indian Court Strikes Down Homosexuality Ban’, *Wall Street Journal*, 3 July <http://online.wsj.com/article/SB124651666709884773.html> – Accessed 28 August 2009 – Attachment 3; and: Biswas, R. 2009, ‘India’s Historic Gay Ruling’, *Inter Press Service*, 3 July <http://ipsnews.net/news.asp?idnews=47518> – Accessed 28 August 2009 – Attachment 4; for the applicability of the decision across India, see: Mitta, M. 2009, ‘Will Delhi HC gay order apply across India?’, *Times of India*, 3 July <http://timesofindia.indiatimes.com/news/india/Will-Delhi-HC-gay-order-apply-across-India/articleshow/4731089.cms> – Accessed 28 August 2009 – Attachment 32; and: Sheth, N. & Bellman, E. 2009, ‘Indian Court Strikes Down Homosexuality Ban’, *Wall Street Journal*, 3 July <http://online.wsj.com/article/SB124651666709884773.html> – Accessed 28 August 2009 – Attachment 3; for the reaction of religious groups to the decision, see: Biswas, R. 2009, ‘India’s Historic Gay Ruling’, *Inter Press Service*, 3 July <http://ipsnews.net/news.asp?idnews=47518> – Accessed 28 August 2009 – Attachment 4; ‘Punjab Sikh Clerics Condemns Delhi High Court Decision on Gay’ 2009, *Mera Chandigarh*, 3 July http://merachandigarh.in/punjab-news/delhi_high_court_decision_on_gay.html – Accessed 31 August 2009 – Attachment 10; ‘Legalising homosexual acts is illegal and unnatural: Muslim law board’ 2009, *The Times of India*, (source: PTI), 8 July <http://timesofindia.indiatimes.com/NEWS/India/Legalising-homosexual-acts-is-illegal-and-unnatural-Muslim-law-board/articleshow/4753463.cms> – Accessed 31 August 2009 – Attachment 12; and: ‘Religious leaders urge government against legalising gay sex’ 2009, *Thaindian News*, (source: IANS), 9 July http://www.thaindian.com/newsportal/uncategorized/religious-leaders-urge-government-against-legalising-gay-sex_100215705.html – Accessed 31 August 2009 – Attachment 13; for the appeals against the decision, and the Supreme Court response, see: ‘India court reviews gay sex order’ 2009, *BBC News*, 20 July http://news.bbc.co.uk/2/hi/south_asia/8158796.stm – Accessed 24 August 2009 – Attachment 6; and: ‘Supreme Court seeks government response on gay sex verdict’ 2009, *Thaindian News*, (source: IANS), 17 August http://www.thaindian.com/newsportal/uncategorized/supreme-court-seeks-government-response-on-gay-sex-verdict_100233879.html – Accessed 28 August 2009 – Attachment 9; and for the impact of the decision on minority sexualities in India, see: ‘India: Section 377 and Naz Foundation (India) Trust v. Government of NCT Delhi’ 2009, International Gay and Lesbian Human Rights Commission website, 27 July <http://www.iglhrc.org/cgi->

bin/iowa/article/takeaction/resourcecenter/930.html – Accessed 28 August 2009 – Attachment 8; and: Ravichandran, B. 2009, ‘Delhi court’s decision on gay rights is only the first step’, *Pink News*, 2 July <http://www.pinknews.co.uk/news/articles/2005-13060.html> – Accessed 28 August 2009 – Attachment 5).

Extracts from the abovementioned reports, and from additional reports on the High Court decision and reactions to the decision from the Indian Government, political parties, religious groups, and the public, follow below. Information on the High Court of Delhi decision in this response is provided in four sections, addressing respectively: reportage on the High Court of Delhi decision, and subsequent legal challenges to the decision; the reaction of religious groups to the decision; the public reaction to the decision, and background information on societal attitudes to minority sexualities in India; and the reaction of the government and political parties.

The final section of the response addresses the few general reports on the situation for gay men in New Delhi since the last update in April 2009, and provides a brief overview of the courts and law in India.

High Court of Delhi decision

The full text of the High Court of Delhi decision of 2 July 2009 is provided as Attachment 1 (High Court of Delhi 2009, *WP(C) No.7455/2001*, District Courts of India website, 2 July <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf> – Accessed 24 August 2009 – Attachment 1).

A report from the *New York Times*, dated 3 July 2009, states that “New Delhi’s highest court decriminalised homosexuality” in its decision of 2 July 2009, but that this ruling only applies to the National Capital Territory of Delhi. Nonetheless, the report quotes “lawyers and advocates” who claim that “it is likely to force India’s government either to appeal the decision to the Supreme Court, or change the law nationwide”. The report also notes that “India’s society is generally unwelcoming of homosexuality except in the most cosmopolitan circles”, and that “the decision was condemned from many corners in India”; the report concludes that “some say the next step is a change in the way that society views gay people”:

In a landmark ruling Thursday that could usher in an era of greater freedom for gay men and lesbians in India, New Delhi’s highest court decriminalised homosexuality.

“The inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognizing a role in society for everyone,” judges of the Delhi High Court wrote in a 105-page decision, India’s first to directly address rights for gay men and lesbians. “Those perceived by the majority as ‘deviants’ or ‘different’ are not on that score excluded or ostracised,” the decision said.

...“Clearly, we are all thrilled,” said Anjali Gopalan, the executive director and founder of the Naz Foundation, an AIDS awareness group that sued to have Section 377 changed.

“It is a first major step,” Ms. Gopalan said during a news conference in Delhi, but “there are many more battles.”

Thursday’s decision applies only in the territory of India’s capital city, but it is likely to force India’s government either to appeal the decision to the Supreme Court, or change the law nationwide, lawyers and advocates said.

...India's society is generally unwelcoming of homosexuality except in the most cosmopolitan circles. It is not uncommon for gay men and women to marry heterosexuals and have families, while carrying on secret relationships with members of the same sex.

In their decision, Chief Justice A. P. Shah and Justice S. Muralidhar declared Section 377, as it pertains to consensual sex among people above the age of 18, in violation of important parts of India's Constitution. "Consensual sex amongst adults is legal, which includes even gay sex and sex among the same sexes," they said.

The old law violates Article 14 of the Constitution, which guarantees all people "equality before the law;" Article 15, which prohibits discrimination "on grounds of religion, race, caste, sex or place of birth;" and Article 21, which guarantees "protection of life and personal liberty," the judges said.

Acceptance of homosexuality has thawed somewhat in recent years in some urban areas. Gay pride parades in Indian cities last weekend attracted thousands of marchers, and several recent Bollywood movies, like "Dostana," have included gay themes and characters, often played by Bollywood's biggest heterosexual stars.

Still, the decision was condemned from many corners in India. "This is wrong," said Maulana Abdul Khaliq Madrasi, a vice chancellor of Dar ul-Uloom, the main university for Islamic education in India. The decision to bring Western culture to India, he said, will "corrupt Indian boys and girls."

The High Court's decision should be overturned, said Murli Manohar Joshi, the leader of the main opposition Hindu nationalist Bharatiya Janata Party. "The High Court cannot decide all things," he said.

...Now that the High Court has ruled against Section 377, some say the next step is a change in the way that society views gay people.

"The real problem is still the stigma attached," especially outside big cities, said Ritu Dalmia, one of India's best-known chefs, who lives with her girlfriend in New Delhi.

Change particularly needs to happen in rural India, she said in an e-mail message Thursday afternoon. "I have met women who were forced to sleep with men so that they could be 'cured' of homosexuality," she said.

"Today is a historical moment where at least some tiny steps have been taken, but there is still a very, very long road ahead," she said (Timmons, H. & Kumar, H. 2009, 'Indian Court Overturns Gay Sex Ban', *New York Times*, 3 July http://www.nytimes.com/2009/07/03/world/asia/03india.html?_r=2 – Accessed 28 August 2009 – Attachment 2).

The *Wall Street Journal* reported on 3 July 2009 that the Delhi High Court ruled that "banning consensual sex between two gay adults is at odds with equal-opportunity provisions in the Indian Constitution", and quotes "lawyers" as claiming that: "The decision effectively applies to the whole of the country by setting a precedent that other state courts would find difficult to contradict". The report notes the growing visibility and relative increase in the acceptance of homosexuality in India in recent years, but also cautions that the court ruling "is still just the beginning for this long-stigmatised part of Indian society, which faces a battle in changing attitudes in India's traditionally conservative society":

A law banning consensual sex between two gay adults is at odds with equal-opportunity provisions in the Indian Constitution, the Delhi High Court said in its ruling. The decision

effectively applies to the whole of the country by setting a precedent that other state courts would find difficult to contradict, lawyers say.

The judgment comes amid growing public activism and visibility on the part of India's gay and lesbian community, who celebrated the ruling. But it is still just the beginning for this long-stigmatised part of Indian society, which faces a battle in changing attitudes in India's traditionally conservative society.

...The ruling can be appealed to India's Supreme Court, but India's Ministry of Health and Family Welfare, one of the respondents in the suit, supported the move to decriminalise gay sex, saying the law hampered efforts to stem the spread of HIV.

Last week, India's new government said it is considering legislation to change the laws governing homosexuality. The Hindu nationalist opposition party, the Bharatiya Janata Party, has asked for the government to delay any such moves.

...The movement to support the rights of gays and lesbians in India has been gaining momentum in recent years. Rising incomes, a modernising society, and exposure to gay and lesbian issues through the Internet, television and movies have helped sensitise more Indians to the cause. On Sunday, more than 1,000 people marched in a gay-pride parade in Delhi.

...A larger battle looms in front of the burgeoning movement: changing social attitudes about homosexuality in a country that still has deeply conservative mores. Hindu and Muslim religious groups have spoken against decriminalising gay sex. "Legalisation of homosexuality is an attack on Indian religious and moral values," read a statement signed by over a dozen Indian Muslim leaders this week in anticipation of the ruling.

A grouping of Indian Catholic bishops said the church doesn't oppose the decision but doesn't support extending marriage rights for gay or lesbian Indians.

...The court decision could spark growth among other gay organizations too, who found it difficult to officially organise before. Gay Bombay was started around a decade ago with a group of 10 men who would meet regularly at Mumbai's first McDonald's. Today it has more than 6,000 members. It helps counsel members and their families and arranges regular parties.

"This is definitely going to make a huge difference," said Alok Gupta, a gay Mumbai-based lawyer who worked on the case. "It will give people tremendous confidence and allow people to go out and do what they are doing more openly" (Sheth, N. & Bellman, E. 2009, 'Indian Court Strikes Down Homosexuality Ban', *Wall Street Journal*, 3 July <http://online.wsj.com/article/SB124651666709884773.html> – Accessed 28 August 2009 – Attachment 3).

A 3 July 2009 report from the *Inter Press Service* quotes the director of the Naz Foundation (the "New Delhi-based gay rights nongovernmental organisation" which was behind the court case), who reportedly "cautioned that the 'judgment doesn't mean that homosexuality is legal, but that adults in consensual homosexual relationship cannot be discriminated against'". According to this report, there are conflicting opinions within the Indian government, with the law minister "opposed to repealing the law on moral grounds" while "India's Health Ministry welcomes the decision to amend the law". As in previous reports, a gay rights advocate cautions that "the battle for gay rights is hardly over", and religious leaders are quoted condemning the decision:

“Homosexuals in the country now have the right to live like any other citizen and without being treated like criminals,” Anjali Gopalan, the director of the Naz Foundation, a New Delhi-based gay rights nongovernmental organisation.

But she cautioned that the “judgment doesn’t mean that homosexuality is legal, but that adults in consensual homosexual relationship cannot be discriminated against.”

...However, the controversial ruling has become a hot potato in New Delhi’s corridors of power.

“There are several opinions on the matter,” in the Indian government, Veerappa Moily, union law minister, told the Indian media on July 3.

The minister is opposed to repealing the law on moral grounds, citing that the country was not yet ready for it and advocated retaining it to avoid “far reaching consequences.”

But India’s Health Ministry welcomes the decision to amend the law.

Last year, at the 17th International AIDS Conference in Mexico City, Anbumani Ramadoss, the Indian union minister for health and family welfare said, “Structural discrimination against those who are vulnerable to HIV such as sex workers and MSM must be removed if our prevention, care and treatment programs are to succeed. Section 377 must go.”

But social groups are upbeat.

“Personally it’s a feeling of lightness, as if a huge burden has gone off my shoulders,” said Pawan Dhall, the director of ‘Solidarity and Action Against the HIV Infection in India’, a Kolkata-based nongovernmental organisation. “It’s a sign that progressive India is a place for everyone, where people of different sexual orientations can live together.”

But the battle for gay rights is hardly over, he cautions.

“The Delhi HC decision is the first hurdle we have crossed. It’s a big morale booster for us who work in this field,” he said. “We’ve to be always careful so that we are not seen as breaking the law. Violence against the members of the community has also been common. We didn’t have any standing to fight our case. Now we have. It will also have a social impact.”

The decision has not gone down well with religious conservatives who have long regarded gays and lesbians as ‘aberrations’.

As soon as the Delhi HC ruling was in the public domain, sections of Muslim religious leadership, Catholic Church and Hindu conservatives came out strongly against the decision.

Rev. Babu Joseph, a spokesman for the Catholic Bishops Conference of India said the decision was “disappointing” but clarified that though homosexuals should not be treated as criminals, “we cannot afford to endorse homosexual behaviour as normal and socially acceptable.”

Even before the verdict came out, Jamiat-e-Ulema-e-Hind’s Maulana Mehmud Madani stated that “Homosexuality is Haram (prohibited) and an immoral act. It is unnatural. It is a punishable offence in Shariat. It is against the age old traditions and culture of India and of Islam.”

Some Hindu religious leaders also condemned it calling it “against Indian culture” (Biswas, R. 2009, ‘India’s Historic Gay Ruling’, *Inter Press Service*, 3 July <http://ipsnews.net/news.asp?idnews=47518> – Accessed 28 August 2009 – Attachment 4).

An article sourced from the *Pink News* website, dated 2 July 2009, notes of the Delhi High Court decision that “it is important to understand that, as yet, nothing is certain”, as “religious groups have indicated that they might challenge the court decision”. This report also claims that the reaction of regional governments is another “source of concern”, stating that: “There is a big divide between rural and urban India, and it is by no means an exaggeration to say that the Indian public opinion is overwhelmingly against homosexuality”. The article concludes by stating that the court decision “is just the first step”; that “[t]he real task lies ahead in changing public attitudes to homosexuality; and that: “That, unfortunately, will take some time”:

It took eight long years, but the verdict gay rights activists in India had long been hoping for was finally delivered by the Delhi High Court this morning. Consensual gay sex between adults is no longer criminal. In their 105-page decision, the judges ruled that Section 377, which criminalises gay sex, denies a person his or her right to dignity, thereby violating the Indian constitution.

Needless to say, gay rights activists across the country are celebrating, and rightly so. The 149-year old colonial law, though rarely used to secure convictions, has been used by the police to detain, harass, blackmail, and rape sexual minorities for several years. Indeed, only five years ago, Lucknow police used the said legislation to arrest several members of the Naz foundation, accusing them of running a “gay sex racket”. What’s more, the law has been a significant deterrent in India’s fight against HIV/AIDS.

...The gravity of the verdict notwithstanding, it is important to understand that, as yet, nothing is certain. As soon as the verdict came out, all the major religious groups in India expressed their dismay. The ruling Congress party was mute. The opposition Hindu nationalist Bharatiya Janata Party said it was firmly opposed to the judgement. It is possible that the government, to pander to these groups, might appeal the verdict at the Supreme Court. Even if the government doesn’t, the religious groups have indicated that they might challenge the court decision.

Given that the same Delhi High Court rejected the petition twice, it is not beyond the realms of possibility, though unlikely, that the Supreme Court might reverse today’s ruling.

Another important source of concern is how regional governments, and even other ministries of the national government might react. While the landmark ruling made national headlines, it barely got a mention in regional media. There is a big divide between rural and urban India, and it is by no means an exaggeration to say that the Indian public opinion is overwhelmingly against homosexuality. To court popular support, it is possible that some blatantly anti-gay laws might be enacted. Same-sex marriage and adoption might well be proscribed.

Such possibilities notwithstanding, the High Court judgement is a step in the right direction. But, it is just the first step. The real task lies ahead in changing public attitudes to homosexuality. That, unfortunately, will take some time (Ravichandran, B. 2009, ‘Delhi court’s decision on gay rights is only the first step’, *Pink News*, 2 July <http://www.pinknews.co.uk/news/articles/2005-13060.html> – Accessed 28 August 2009 – Attachment 5).

An 3 July 2009 article in the *Times of India* addressed the issue of whether the Delhi High Court order would apply across India, and claimed that “homosexuals across the country may rest assured that they too are entitled to the benefits of the historic Delhi high court decision”:

Since a high court has a limited territorial jurisdiction, is homosexuality decriminalised only in Delhi or the whole country? Although legal pundits are divided on this, the law laid down by a 2004 SC judgment implies that homosexuals across the country may rest assured that they too are entitled to the benefits of the historic Delhi high court decision on Section 377 IPC.

...Thursday’s Delhi high court verdict is also on the constitutionality of an Act of Parliament, which has jurisdiction throughout the country, and the Central government was anyway party to the case. Since the Indian Penal Code 1860 is applicable throughout the country, except Jammu and Kashmir, the final order of the Delhi high court questioning the constitutionality of Section 377 will have effect far beyond the capital, in terms of the 2004 SC judgment.

...There is another reason why homosexuals outside Delhi can derive strength from the 2004 SC ruling on territorial jurisdiction: This is the first ever pronouncement on the constitutionality of Section 377. As a result, there is no question of any existing judgment conflicting with it (Mitta, M. 2009, ‘Will Delhi HC gay order apply across India?’, *Times of India*, 3 July <http://timesofindia.indiatimes.com/news/india/Will-Delhi-HC-gay-order-apply-across-India/articleshow/4731089.cms> – Accessed 28 August 2009 – Attachment 32).

On 20 July 2009, *BBC News* reported that two Supreme Court challenges to the Delhi High Court decision had been put forward “by an astrologer and a yoga guru”, but that the Supreme Court “has refused to put on hold a landmark court judgement decriminalising gay sex in the country”. According to this report, the court is awaiting responses to the challenges from “the government and human rights groups which campaigned against the law”, and will “resume deliberations on 14 September”:

India’s Supreme Court has refused to put on hold a landmark court judgement decriminalising gay sex in the country.

The court said the Delhi high court ruling had no “penal consequences”, and asked the government to make clear its views on the issue within two months.

The 3 July ruling faces two challenges by people who want to have the 148-year-old, colonial-era law reinstated.

India’s gay community and human rights activists welcomed the ruling, but it was opposed by religious leaders.

The high court ruling has been challenged by an astrologer and a yoga guru.

In his petition astrologer Suresh Kaushal says India’s ancient scriptures and values do not permit homosexuality and argues that the recent court judgement would lead to the spread of HIV and Aids.

The Supreme Court has asked the government and human rights groups which campaigned against the law to respond to the petition. Two judges said they would resume deliberations on 14 September (‘India court reviews gay sex order’ 2009, *BBC News*, 20 July http://news.bbc.co.uk/2/hi/south_asia/8158796.stm – Accessed 24 August 2009 – Attachment 6).

A *Times of India* article from 20 July 2009 also reports on the Supreme Court refusal to stay the Delhi High Court judgement, and claims that, as a result of the decision: “The ruling is now applicable all over India”:

The Supreme Court on Monday refused to stay the Delhi High Court judgment decriminalising homosexuality. The ruling is now applicable all over India.

The apex court also pulled up the government and asked it to speed up its response on the issue.

The Delhi High Court verdict decriminalising consensual gay sex has put the government in a fix as it remains undecided about its stand in the Supreme Court, 11 days after a response was sought from it on the vexed issue.

...While the Centre remained non-committal about its stand on the high court verdict which has been opposed by different sections of society, including religious leaders of all communities and a child rights body, gay rights activists have drawn up a detailed strategy to defend the verdict.

...The apex court had issued notice to the Centre seeking its response on the petition filed by a Delhi astrologer challenging the high court verdict.

Taking note of sentiments expressed by different sections of the society, the Centre said on Sunday it would not take a hasty decision on legalising homosexuality.

“We have taken note of sentiments expressed by cross sections of people and that is why the government is not hasty to form its opinion to be submitted to Supreme Court,” union law and justice minister M Veerappa Moily told reporters on Sunday (‘SC refuses to stay HC order that decriminalises gay sex’ 2009, *The Times of India*, 20 July <http://timesofindia.indiatimes.com/news/india/SC-refuses-to-stay-HC-order-that-decriminalizes-gay-sex/articleshow/4798150.cms> – Accessed 28 August 2009 – Attachment 7).

The International Gay and Lesbian Human Rights Commission (IGLHRC) website noted on 27 July 2009 that if the Supreme Court had decided to issue an interim stay on the Delhi High Court judgement, it would have “suspended the new interpretation of 377 until the Supreme Court decided the case on appeal or the central government changed the law”. This report also provides background information on the Delhi High Court case filed by the Naz Foundation in 2001, which led to the July 2009 decision, and cites some of the “benefits from the recent decision to decriminalise homosexuality”. Nonetheless, the IGLHRC report cautions that “there is some worry of negative repercussions since a favourable judgment will not end homophobia and its devastating effects on the lives of LGBT people in India”, and “that the disappearance of Section 377 will not make a significant difference in the daily lives of vernacular (non-English speaking) youth, economically disempowered people, or non-heteronormative women”:

On July 20, 2009, India’s Supreme Court decided against issuing an interim stay on the July 2, 2009 Delhi High Court judgment which read down Section 377 of the Penal Code, decriminalising “consensual sexual acts of adults in private,” including between two persons of the same sex. A stay would have suspended the new interpretation of 377 until the Supreme Court decided the case on appeal or the central government changed the law.

The Supreme Court made it clear that it would not make any decision before the central government made its position known and gave the government until September 14, 2009 to

decide its stand on the matter. Attorney General G. E. Vahanvati told the Court that three ministers of the government were examining the July 2 judgment and would come out with an official position.

This move by the Supreme Court came in response to a recent challenge of the Delhi High Court judgment by an astrologer, who argued that decriminalising consensual sex between persons of the same sex went against religious teachings and would “give rise to male prostitution” and “lead to the spread of HIV/AIDS.”

...In 2001, the Naz Foundation, filed a public interest litigation (PIL) petition with the Delhi High Court, challenging the constitutional validity of Section 377 under Article 14 of the Indian Constitution on equality, Article 15 on equality on the basis of sex, Article 19 on freedom of speech and expression, and Article 21 on the right to privacy and health. Naz Foundation was represented by the Lawyers Collective with Anand Grover, who is now the United Nations Special Rapporteur on the highest attainable standard of health, as lead counsel. In 2006, Voices Against 377 filed an intervention in the Court in support of the Naz Foundation petition. Voices Against 377 is a Delhi-based coalition of human rights, women’s rights and children’s rights groups, and was represented in this case by Shyam Divan.

...Activists identify several benefits from the recent decision to decriminalise homosexuality. Significantly, opportunities for entrapment and blackmail of LGBT people, which take advantage of their fear of being prosecuted for their sexual orientation and gender identity, can now be challenged more publicly and hopefully decrease. However, it must be noted that regardless of Section 377, sex workers are still entrapped, detained and penalised using other laws. The positive court decision also will enable LGBT and HIV/AIDS groups and activists to continue or expand their work without persecution by the authorities. Individuals can participate in Pride marches and other related demonstrations with less fear of being prosecuted under Section 377.

At the same time, there is some worry of negative repercussions since a favourable judgment will not end homophobia and its devastating effects on the lives of LGBT people in India. One concern is the possibility of organised and social backlash against LGBT people as their issues and identities are made more public and prominent in mainstream media and could potentially increase family and community surveillance and violence. Some activists say there is an even greater urgency now for safe houses, particularly for young lesbians, bisexual women, and non-gender conforming men and women. There is also some criticism that the disappearance of Section 377 will not make a significant difference in the daily lives of vernacular (non-English speaking) youth, economically disempowered people, or non-heteronormative women facing forced marriages, forced confinement by the family, and forced separation from same sex partners because these issues are grounded in denial of autonomy and dignity for non-conforming sexuality, gender identity or expression.

Despite these concerns, the overwhelming feeling among most activists is that the positive verdict in Delhi has tremendous symbolic value and could lead to more public debate, more challenges to other repressive morality laws, and increased support for social change in India (‘India: Section 377 and Naz Foundation (India) Trust v. Government of NCT Delhi’ 2009, International Gay and Lesbian Human Rights Commission website, 27 July <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/930.html> – Accessed 28 August 2009 – Attachment 8).

A 17 August 2009 report sourced from the *Indo-Asian News Service (IANS)* notes two new lawsuits have been launched in the Supreme Court against the Delhi High Court decision, and that the Supreme Court has again decided against a stay:

The Supreme Court Monday sought the central government's stand on decriminalising of gay sex between consenting adults after a set of two fresh lawsuits challenged the Delhi High Court's verdict.

A bench of Chief Justice K.G. Balakrishnan and Justice P. Sathasivam issued a notice to the central government on lawsuits filed by Christian Apostolic Churches Alliance and yoga guru Baba Ramdev's disciple S.K. Tijarawala.

The bench, however, turned down the petitioners' plea to suspend the high court verdict till a final order of the apex court on the issue.

The bench deferred the matter for further hearing Sep 14, when it would take up all similar petitions for the hearing. The bench asked the government to file its response on the matter by then ('Supreme Court seeks government response on gay sex verdict' 2009, *Thaindian News*, (source: *IANS*), 17 August http://www.thaindian.com/newsportal/uncategorized/supreme-court-seeks-government-response-on-gay-sex-verdict_100233879.html – Accessed 28 August 2009 – Attachment 9).

Reaction of religious groups

On 3 July 2009, *Inter Press Service* reported on the negative reactions of Muslim, Catholic and Hindu leaders to the Delhi High Court ruling:

As soon as the Delhi HC ruling was in the public domain, sections of Muslim religious leadership, Catholic Church and Hindu conservatives came out strongly against the decision.

Rev. Babu Joseph, a spokesman for the Catholic Bishops Conference of India said the decision was "disappointing" but clarified that though homosexuals should not be treated as criminals, "we cannot afford to endorse homosexual behaviour as normal and socially acceptable."

Even before the verdict came out, Jamiat-e-Ulema-e-Hind's Maulana Mehmud Madani stated that "Homosexuality is Haram (prohibited) and an immoral act. It is unnatural. It is a punishable offence in Shariat. It is against the age old traditions and culture of India and of Islam."

Some Hindu religious leaders also condemned it calling it "against Indian culture" (Biswas, R. 2009, 'India's Historic Gay Ruling', *Inter Press Service*, 3 July <http://ipsnews.net/news.asp?idnews=47518> – Accessed 28 August 2009 – Attachment 4).

Also on 3 July 2009, the Punjab newspaper *Mera Chandigarh* reported on the negative reaction of the "Sikh clergy and religious leaders in Punjab" to the Delhi High Court ruling:

Opposing the Decision of Delhi High Court on homosexuality the Sikh clergy and religious leaders in Punjab on Thursday called the ruling a "black day" for mankind.

...According to sources, members of SGPC, which manages the affairs of Sikh shrines around the world, have strongly condemned the court ruling.

Avtar Singh Makkar, president of Shiromani Gurdwara Prabandhak Committee (SGPC), the apex Sikh body, told "We are shocked on this decision of the court and directly reject its ruling. There is no need of giving a second thought to it as no religion on this earth allows such kind of disgraceful thing to prevail" ('Punjab Sikh Clerics Condemns Delhi High Court Decision on Gay' 2009, *Mera Chandigarh*, 3 July http://merachandigarh.in/punjab-news/delhi_high_court_decision_on_gay.html – Accessed 31 August 2009 – Attachment 10).

Thaindian News reported on 5 July 2009 that Sikh and Hindu activists had staged a protest in Delhi against the court verdict:

A group of Sikh and Hindu activists staged a demonstration in the national capital to protest the Delhi High Court's recent verdict on Article 377.

...Members of National Akali Dal along with members of Santan Dharam Sabha, a Hindu organisation, staged the protest and demanded government authorities to step in to prevent passing of the law.

"We are planning to meet the President and the Home Minister. If we do not get assurance from them within a week we will move to the Supreme Court and contest our case there," Manohar Lal Kumar, one of the activists said ('Protest against Delhi High Court decision on Article 377 on homosexuality in Delhi' 2009, *Thaindian News*, 5 July http://www.thaindian.com/newsportal/india-news/protest-against-delhi-high-court-decision-on-article-377-on-homosexuality-in-delhi_100213824.html – Accessed 31 August 2009 – Attachment 11).

A 8 July 2009 article in *The Times of India*, sourced from the *Press Trust of India (PTI)*, reported that president of "The All-India Muslim Personal Law Board (AIMPLB)...said the court decision should be 'condemned' as it was 'irreligious and unnatural'", and "will poison the Indian society". He further claimed that "homosexuality was never accepted in the human history as it was 'thought of as an extremely evil and criminal act'":

The All-India Muslim Personal Law Board (AIMPLB) on Wednesday termed the Delhi High Court's verdict decriminalising homosexual acts among consenting adults as "illegal, irreligious and unnatural" for the society.

AIMPLB president Maulana Rabe Hasani Nadvi said that the court's decision was in favour of only a very small gay community.

Nadvi said the court decision should be "condemned" as it was "irreligious and unnatural" and added "we would not allow the western culture to be imposed upon the innocent Indian society."

..."If legalised, these acts, which are contrary to religion, nature, morality and habits, will poison the Indian society," he said.

Maulana claimed homosexuality was never accepted in the human history as it was "thought of as an extremely evil and criminal act" ('Legalising homosexual acts is illegal and unnatural: Muslim law board' 2009, *The Times of India*, (source: *PTI*), 8 July <http://timesofindia.indiatimes.com/NEWS/India/Legalising-homosexual-acts-is-illegal-and-unnatural-Muslim-law-board/articleshow/4753463.cms> – Accessed 31 August 2009 – Attachment 12).

Thaindian News carried an article sourced from *IANS* on 9 July 2009 which reported the views of religious leaders from the Jain, Muslim, Catholic and Sikh communities. The Jain and Muslim representatives argued that the Delhi High Court decision "challenges the will of God" and "would completely distort the foundation of relationships in the country", respectively, while the Catholic and Sikh leaders both stated that they do not oppose decriminalisation of homosexuality, but that they are not in favour of legalisation because, according to the Catholic spokesman, "what they do is unnatural and against the design and will of god":

Maintaining that homosexuality is against nature and the “will of god”, religious leaders Thursday urged the government to take their views into consideration before taking any decision on the court judgement de-criminalising gay sex.

“We urge the union and Delhi governments to keep in mind the views of various religious committees while taking a stand on the judgement of the Delhi High Court,” Jain religious leader Acharya Lokesh Muniji told reporters at a press conference of religious leaders here Thursday.

“It’s not that we don’t support independence of individuals but this judgment challenges the will of god,” he told the media hours after the Supreme Court Thursday issued notices to the union government on its stand on the Delhi High Court verdict de-criminalising gay sex.

Wearing a white robe and his mouth covered with a mask, he said that the court judgement is like a first step towards legalising homosexual marriages in the country.

“As a representative of a religious body, one of my greatest fears is that this judgement may act like a first step towards legalising homosexual marriages in India. This would be completely unacceptable by us,” he said.

“Our views should be kept in mind when the government takes any stand on the judgement,” the Jain monk said.

...Sharing the platform with Muniji was the president of Jamaat-e-Islami Hind, Maulana Syed Jalaluddin Umari.

The Maulana said that according to Islam homosexuality is a crime. “Such behaviour is against the moral values of our nation that is based on cultural and ethical traditions. The government should take our views seriously.”

“The family is the most important unit of the society and legalisation of such acts would completely distort the foundation of relationships in the country,” he added.

Father Dominic Emmanuel, the founder of Sarvadharm Sadbhav (Communal Harmony and Peace), said: “We have no objection or opposition to de-criminalisation of homosexuality because we never considered them (homosexuals) as criminals.”

“However, we are also clear that we are against legalising it... because what they do is unnatural and against the design and will of god.”

Agreeing with him was Sardar Tarsem Singh of the Delhi Sikh Gurdwara Prabandhak Committee.

“Sikh religion doesn’t view homosexuals as criminals but we don’t encourage it” (‘Religious leaders urge government against legalising gay sex’ 2009, *Thaindian News*, (source: *IANS*), 9 July http://www.thaindian.com/newsportal/uncategorized/religious-leaders-urge-government-against-legalising-gay-sex_100215705.html – Accessed 31 August 2009 – Attachment 13).

An article from the 18-31 July 2009 issue of *Frontline* magazine notes that: “Most religious groups have come out with scathing criticism of the verdict”; but also notes that “some of them have adopted a conciliatory approach towards decriminalisation of homosexuality”:

The court ruling has also brought with it a fresh batch of obstacles for queer activists. Most religious groups have come out with scathing criticism of the verdict. Swami Ramdev has even said that homosexuals are mentally ill and need hospitals, not legal vindication.

Similarly, the Vishwa Hindu Parishad, the Catholic Church and Muslim theological bodies have all ordained homosexuality as being against the order of nature. While some of them have adopted a conciliatory approach towards decriminalisation of homosexuality, they vehemently oppose its legalisation.

...The castigating statements of religious groups are, perhaps, a reflection of the fears that they harbour. Legalisation of homosexuality would mean marriage between such individuals, which essentially challenges the fabric of society as we know it. Nivedita Menon pointed out that the patriarchal and religious status quo of society would be destabilised by such a move because the patriarchal heterosexual family is the basis of all identity. "That's why inter-caste and inter-religious marriages attract similar kinds of violent reactions. The family is about descent and inheritance, and there are strict rules about that. Once you challenge the biological basis of descent and inheritance you are a real threat to the status quo," she said (Mahaprashasta, A. 2009, 'Queer politics', *Frontline*, Vol. 26, Issue 15, Jul. 18-31 <http://www.flonnet.com/fl2615/stories/20090731261503300.htm> – Accessed 28 August 2009 – Attachment 14).

An article in *The Times of India*, from 4 July 2009, also reports on the conciliatory approach of some religious leaders to the Delhi High Court decision, quoting Catholic and Muslim figures who claim that homosexuality should not be treated as criminal behaviour, but as sinful behaviour:

In the first flurry of reactions, religious leaders appeared to be slamming the de-criminalization of gay sex. But while most conservative scholars and clerics remain opposed to homosexuality as an article of faith, many say that they aren't advocating making it a criminal act as Section 377 of IPC did.

...Then, while Delhi Catholic Archdiocese has described homosexuality as "unnatural" it says it has nothing against its de-criminalisation. Spokesperson of Delhi Catholic Archdiocese, Father Dominic Emmanuel, told TOI, "Homosexuality is a sin, as opposed to a crime. But we believe that those who indulge in it should be treated with respect and compassion."

In a newspaper article, Father Dominic was even more forthright. "It needs to be made clear that the Christian community does not (repeat it does not) treat people with homosexual tendencies as criminals. Nor does it believe that they can be regarded on par with criminals. Therefore, the church has no serious objection to the repealing of Section 377.

"The Vatican's stand on this is quite clear: Every sign of unjust discrimination in their regard should be avoided" wrote Father Dominic.

Similarly, some Muslim clerics and scholars, too, favour de-criminalisation of homosexuality, saying that while Islam does not permit homosexuality, this doesn't mean it should be equated with criminality.

"The Quran condemns homosexuality, but doesn't prescribe any punishment for it. It's a sin, not a crime. Sin is between Allah and the sinner, but crime concerns the entire society. So, sexual minorities should be left to their conscience. They are answerable to Allah for their act and should not be treated as criminals, said Islamic scholar Asghar Ali Engineer.

Maulana Abu Zafar Hassan Nadvi, a cleric, too accepts that since the Quran is silent on the punishment for homosexuality, it should be treated as an irreligious, immoral act. "Every non-religious act is not liable to be punished. Just as we don't pronounce death for atheists, homosexuals should be left alone until they get reformed," said Maulana Nadvi.

Some clerics maintain that since Indian state is secular, it should not press for laws guided by religions. “Why should we expect that what applies in Saudi Arabia or Iran must also apply in India in regard to punishment for homosexuality? As a religious person, I condemn homosexuality. But I don’t have the right to declare homosexuals criminals,” said Maulana Zaheer Abbas Rizvi, a Shia scholar and member of the All India Ulema Council (‘Homosexuality immoral, but not criminal: Religious leaders’ 2009, *The Times of India*, 4 July <http://timesofindia.indiatimes.com/NEWS/India/Homosexuality-immoral-but-not-criminal-Religious-leaders/articleshow/4736152.cms> – Accessed 31 August 2009 – Attachment 15).

Public reaction

An article from *The Times of India*, dated 3 July 2009, reports on statements of opposition to the Delhi High Court decision from present and former politicians, lawyers, a doctor and a psychiatrist:

Citizens from various walks of life have expressed opposition to Thursday’s Delhi High Court order decriminalising homosexual sex, by holding that section 377 of Indian Penal Code violates the Constitution. Various Central ministers have expressed differing opinions on the issue in the recent past.

In Akola, BJP MP Sanjay Dhotre said he was staunchly against the decision as it would totally destroy Indian culture and put an end to social ethics and values. He said he would fight tooth and nail in Parliament and outside if the Union government moves to scrap section 377 of IPC.

Noted psychiatrist Dr Deepak Kelkar also condemned the move. He said killer diseases like HIV, AIDS and venereal diseases would spread like wild fire if such a move is made legal.

Vice-president of Akola Bar Association Aruna Mankar strongly opposed the step and said the Union government is making a grave mistake if it implements the change without placing a bill on the floor of the Parliament.

President of Akola Bar Association Rajesh Deshmukh favoured the move to a certain extent.

Dr Yogesh Patil favoured permission for such relations only if physiological deformities are found in either of the sexes. Otherwise, he said such a move is vulgar and not suited to Indian culture, besides being against the order of nature.

Advocate Dildar Khan said paedophilia would increase if section 377 is repealed, and people may also establish clubs and groups for such activities.

Former minister and senior Congress leader Azhar Hussain expressed fear that social and ethical values would be ruined by repealing section 377 of IPC (Vyas, S. 2009, ‘Citizens oppose legalising gay sex’, *The Times of India*, 3 July <http://timesofindia.indiatimes.com/NEWS/City/Nagpur/Citizens-oppose-legalising-gay-sex/articleshow/4731005.cms> – Accessed 31 August 2009 – Attachment 16).

Thaindian News reported on 18 August 2009 that according to a “bi-annual nation-wide opinion poll...most Indians feel that homosexuality should be considered illegal”. The poll found that “73% of the respondents feel that homosexuality should be considered illegal”, while “60% of the respondents consider homosexuality as a disease”:

The 8th edition of bi-annual nation-wide opinion poll-‘State of the Nation’, conducted by CNN-IBN, IBN7 & IBN-Lokmat revealed most Indians feel that homosexuality should be considered illegal.

According to the poll findings, 73% of the respondents feel that homosexuality should be considered illegal.

While 77% of the respondents consider attraction towards the same sex unnatural, 60% of the respondents consider homosexuality as a disease.

...HOMOSEXUALITY & LESBIANISM

- 77% consider homosexuality to be unnatural
- 23% feel it is natural to be attracted to the same sex
- 6 out of 10 feel that homosexuality is a disease
- 38% feel that homosexuality is not a disease
- 62% of those who feel homosexuality is disease feel it can be cured
- 18% of those who feel homosexuality is a disease feel it cannot be cured
- 83% feel that being gay or lesbian is against Indian culture
- 4 out of 5 are against homosexuals getting married
- 17% feel there is nothing wrong with homosexual marriage
- 90% would not give their house on rent to a homosexual couple
- 76% parents feel uncomfortable discussing homosexuality with kids
- 94% respondents said they do not have a homosexual friend
- 24% parents don't feel uncomfortable discussing homosexuality with kids
- 80% will have a problem if they have a homosexual person in their family
- 71% will counsel and help in case they find a homosexual family member
- 18% will disown a homosexual family member
- 11% say they will accept a homosexual family member
- 54% feel that Indian films make fun of homosexuality
- 46% feel that homosexuality is depicted seriously by Indian films
- 94% respondents said they do not have a homosexual friend
- Only 6% respondents said they have a homosexual friend ('Homosexuality illegal for most Indians' 2009, *Thaindian News*, 18 August http://www.thaindian.com/newsportal/lifestyle/homosexuality-illegal-for-most-indians_100234206.html – Accessed 31 August 2009 – Attachment 17).

Another article from *The Times of India*, a blog posting from 2 July 2009, suggests that, in the wake of the Delhi High Court decision, “the pressing issue that we now face, really, is how much of a change in attitude society – the heterosexual majority – will show towards a minority that has been persecuted by all sections, all classes, all religions, castes, faiths and political persuasions”. The article continues, claiming that: “More than the law, it is society has to give freedom to homosexuals”, and “that will take quite some time in coming”:

But the pressing issue that we now face, really, is how much of a change in attitude society – the heterosexual majority – will show towards a minority that has been persecuted by all sections, all classes, all religions, castes, faiths and political persuasions.

For, one may not anymore have to live under the fear of being dragged to a police station, to be beaten, abused and humiliated by cops, or face certain punishment if prosecuted, but one will still have to agonise about what the parents, siblings, neighbourhood aunties and uncles, friends and peers would say if someone decided to 'come out'. The real freedom would eventually rest there – an acceptance by society. Because in all cultures, there is a law of the land and there is a more private, more insidious law of the people. It is this that shackles and fetters all those who are perceived to be different, followers not of the norm but aberration.

In India, as in so many Asian countries which are far behind Western nations in their approval and acceptance of homosexuality, parents marry off their sons and daughters to people of the opposite sex knowing fully well that their children won't be happy, acutely aware that they will remain suffocated and trapped in an institution that will kill them a little every day.

Countless families continue to "treat" homosexuality, if not as a disease of the body than of the mind. They will take them to doctors, vaidis, magicians, Bangali Babas, gurus, priests, maulvis and exorcists in the hope that the devil of homosexuality will either be medicated out or beaten away. If "treatment" fails, they try emotional blackmail. When that fails they try to hide it from the public eye. If that too fails they strike a deal that says their gay children can do what they want privately but publicly they should be seen as "normal" and married. When all else fails, there is the punishment of excommunication and banishment. Few, very few, will be at peace, confident and bold enough to give this real freedom to gay family members. Only a minuscule lot will be able to tell society that their children, kin, friends are gay and that they are okay with it.

More than the law, it is society has to give freedom to homosexuals. This is what we have to strive for from here on. And though that will take quite some time in coming, there is a new dawn waiting at the horizon for gays (Soondas, A. 2009, 'Law has freed gays, now society has to', *The Times of India*, 2 July <http://blogs.timesofindia.indiatimes.com/onefortheroad/entry/law-has-freed-gays-now> – Accessed 31 August 2009 – Attachment 18).

A 3 July 2009 article from *The Times of India* speculates on whether Delhi "may soon become India's gay capital", quoting "experts" who "feel" that it may be "a safe city to live in for homosexuals, without being in constant fear of being harassed, blackmailed or imprisoned by the police". Nonetheless, the article also quotes two supporters of the High Court decision, who claim that: "The environment for homosexual people is still very negative"; and that "it will take time for prejudices to melt":

With consensual gay sex no more a criminal offence in Delhi, the city may soon become India's gay capital.

Delhi High Court's landmark judgment on Thursday decriminalising homosexuality makes Delhi, experts feel, a safe city to live in for homosexuals, without being in constant fear of being harassed, blackmailed or imprisoned by the police.

Though the HC verdict can be cited elsewhere also by homosexuals to seek relief from criminal proceedings, the scope for harassment by police will always be there.

The HC has eliminated the room for that in Delhi for sure, raising the prospect of the Capital becoming the city of choice for homosexuals who may wish to lead lives free of fear.

...Teresa (name changed on request), a gay activist, said, "It is truly a landmark judgment that will finally protect our community from undue harassment. And since at present, it only applies to Delhi, the city would be a good place to shift to. However, our fight will be to make it a national policy so that it is safe for homosexuals to live anywhere in India."

Anjali Gopalan from the Naaz Foundation added, “The environment for homosexual people is still very negative. Just because the law has changed does not mean that attitudes have changed. Our focus will now be to spread the information across India and change the law across India.”

Lesley Esteves from the Coalition Voices against 377 said, “Delhi has shown the way. In the individual level, it will take time for prejudices to melt.”

Ashok Row Kavi, who helped design the MSM programmes for NACP-III, said, “Only when it becomes a law and Section 377 is scrapped can homosexuals rest in peace. It has to be applicable nationally” (‘Will Delhi become gay capital’ 2009, *The Times of India*, 3 July <http://timesofindia.indiatimes.com/NEWS/India/Will-Delhi-become-gay-capital/articleshow/4730548.cms> – Accessed 31 August 2009 – Attachment 19).

On 3 July 2009 *The Times of India* reported that while “Delhi does not have a very lively gay nightlife” at present, in the wake of the High Court decision “the gay nightlife scene is all set to come out of the closet”. However, this article also notes that “the community still has its reservations”, and quotes “a prominent member of the LGBT community” who claims that, while high-level police may support the activities of the gay community, “I am not too sure whether attitudes have changed at the grassroot level”:

Till now a very hush-hush affair, the gay nightlife scene is all set to come out of the closet and how. Chanakyapuri’s Pegs N Pints, one of the few pubs which holds regular gay nights, hosted on Thursday the first of many celebrations to come. “We could never party freely. The fear of being harassed by the police always weighed on us. But now, I can do so without a care in the world,” said Rocky (name changed).

Though Delhi does not have a very lively gay nightlife, things have changed over the years. “The city has four gay bars which hold a gay night every week,” says Monish Malhotra, a member of the Delhi queer pride committee. And they are usually packed to capacity.

...Kailash Colony, Noida, Dwarka, Saket etc have been hotspots for gay nights for some time so will the new law make any difference in the party scene? “Now people can party openly so there is going to be a drastic increase in the number of party joints in the Capital,” said R, who hasn’t come out of the closet yet. He pointed out that entry at most gay nights was quite stiff – cover charges can go up to Rs 500 – and a lot of people couldn’t afford it. “But now that it’s all going to be legal, people will come out and party freely,” he added.

...However, the community still has its reservations. “There is no doubt that the recent gay parade in the city and the celebrations today at Jantar Mantar were supported by the top brass of Delhi police. However, I am not too sure whether attitudes have changed at the grassroot level,” said a prominent member of the LGBT community.

According to him, extortion was a routine affair. “Even though Section 377 can no longer be used against us, we are still vulnerable. We would prefer to keep our parties private,” he added. Thursday’s parties, too, were also strictly for the community affair.

The police, meanwhile, denied any “excesses” against the LGBT (lesbian, gay, bisexual and transgender) community. “Delhi has a progressive culture and Delhi police respects that,” claimed an officer. He, however, accepted that there “were stray complaints of excesses from community members from Central park, Janpath, Rivoli turnaround and near Pallika bazar, whenever the community tried to converge together. “We have also ordered departmental inquiries but in a way the Pushkin Chandra murder case helped us understand the community better,” he added (‘Party on as gay nightlife lights up’ 2009, *The Times of India*, 3 July

Another article sourced from *The Times of India*, from 20 July 2009 quotes gay men living in Delhi who claim that the High Court Decision has had a positive impact on their lives, in that “couples are emboldened to face their families” about their sexuality, that they are “no longer fearful of cops harassing and extorting money”, or being “free to go watch a movie with my boyfriend, and hold hands”. This article also cautions that: “On the flip side, the verdict has sharply brought social prejudices as well. Bias against homosexuals has led to some feelings of isolation, and mistrust of the general population”. Other gay men are quoted claiming that in spite of the recent Delhi High Court decision they “have the same insecurities while walking on the street”; that the High Court decision “doesn’t mean my parents will be proud of me or accept me”; and that “[t]he majority of Indians are ignorant or outraged” at the decision:

“Their parents have not willingly accepted them but because of the verdict, they are reluctant to dismiss them outright,” says Rohit Goyal, 24, a friend of the couple, about their parents. The verdict’s immediate impact has been that couples are emboldened to face their families, debate rages at dinner tables and homosexuality is finally being talked about in drawing rooms.

Varun and Nilesh, both Delhi University students, are enjoying a sense of relief after their coming out. Legalising may be a while away but the very fact that they found the nerve to come out to their families has brought them immense satisfaction. “It is heartening to see their relief,” says Goyal.

...In small changes lie the big steps. The immediate impact is in feeling free about moving around. Jatin says he is no longer fearful of cops harassing and extorting money when he steps out of a pub. Vikram Subramaniam, 22, an English honours graduate from Delhi University says he’s more confident now of being “free to go watch a movie with my boyfriend, and hold hands.”

On the flip side, the verdict has sharply brought social prejudices as well. Bias against homosexuals has led to some feelings of isolation, and mistrust of the general population. “I do have the same insecurities while walking on the street. I only know that I won’t get caught by cops while having sex,” says Amit Dheer, a 20-year-old fashion student. “Just because it’s decriminalised doesn’t mean my parents will be proud of me or accept me. It doesn’t mean people will stop making fun of me,” says Harsh Choudhary, 21, in his sparsely furnished South Delhi apartment, all geared to push off to England for higher studies.

The restlessness is evident in their grappling with the slow process of change. Initially euphoric about the impact of legalisation, they realise that society’s mindsets have to change before persecution stops. “The majority of Indians are ignorant or outraged,” says Subramaniam.

But they add that the best bit about the verdict is that it ensured the topic is discussed threadbare. “It will affect people who follow rules. It will probably help change what straight people think of us,” said Nikhil Mathur, a second year mass communication student from Delhi University.

The young gays also know that the judgment is only a small step in their prolonged struggle to obtain equal rights. They are banking heavily on young India’s increasingly liberal thought process to help their fight. “I continue to have straight friends like before I came out. There is a greater understanding of personal choice in my generation. Besides, my sexuality does not

define me as a person,” says Mathur (‘Young gays relish new freedom at home, in pubs’ 2009, *The Times of India*, 20 July <http://timesofindia.indiatimes.com/NEWS/City/Delhi/Young-gays-relish-new-freedom-at-home-in-pubs/articleshow/4795948.cms> – Accessed 31 August 2009 – Attachment 21).

An article from the 18-31 July 2009 issue of *Frontline* magazine claims that the Delhi High Court decision has “effectively opened up public space – long inaccessible – for the queer movement in India”, and that it “permits the queer community to carry out a much more democratic struggle against the oppression of its sexuality”. The article also notes the diversity of the “queer movement” in India, the connections between sexuality, class and gender in India, and criticism of the focus on queer politics as an “elitist” movement “questioned...on the premise that there are more pressing issues at hand”:

WHEN the Delhi High Court struck down the provision of Section 377 of the Indian Penal Code (IPC) that criminalises even consensual sex between same sex individuals, it also effectively opened up public space – long inaccessible – for the queer movement in India. The decision not only permits the queer community to carry out a much more democratic struggle against the oppression of its sexuality but also gives it an opportunity to complicate the language of the movement vis-a-vis class and gender issues in the country.

Ponni Arasu, a member of the Alternative Law Forum and a queer activist, said, “The decision has given the queer community basic access to law. You could not be identified as a homosexual as it was criminal to be so. So, even when there is a case of civil rights abuse or other forms of oppression, you could never go to a police station. You had to hide your identity.” The movement, in a way, starts now as it is out of the courtroom. Gautam Bhan, a member of Voices Against 377, said, “No battle is won in the courtroom. It is from here we start to complicate our language of sexuality and engage it with other forms of oppression and discrimination in society.”

...Contrary to popular notion, the queer movement is not a homogeneous platform. It is a forum for people holding varied views on how the issue of sexuality should be handled on a broader political platform. Nivedita Menon, a feminist and an academic, said: “Sexuality cannot be separated from class and gender issues. The 1990s became the decade when women’s organisations started to actively engage with queer rights issues, both formally and informally. There was openness in them to push the issue. All this and the High Court decision, thus, is a victory for a process of a democratic dialogue in society. It will be a struggle for the soul of the movement now that Section 377 is not paramount. Questions of class and of the hypervisibility of gay men as opposed to, say, lesbian women and hijras, are going to become central in the movement.”

In a country like India, the relevance of the queer movement is often questioned, on the premise that there are more pressing issues at hand. However, Nivedita Menon points out that there cannot be a hierarchy of different kinds of oppression. “If one is a homosexual, she or he is forced to live a marginalised life. How can such marginality not be relevant for his or her other identities, whether as worker or minority or peasant? Do you think homosexuals are not active in other democratic struggles? Democratic politics must address different forms of oppression simultaneously,” she said.

The queer movement in India has also frequently been dismissed as “elitist”. Ponni Arasu said: “Such arguments often ignore the complexity of human lives. There is a large section of the hijra community that has been openly participating in queer pride marches held every year.” Bhan said that in many areas, the movement’s leadership came from working class people. A case in point is the Aravani Welfare Board in Tamil Nadu where the queer people

got the Passport Act amended. Now the passport comes with a separate sexual category – “other” – apart from male and female.

...Social responses to homosexuality, too, have become positively visible only in the last few years after a concerted effort from all sections of the queer movement. Lesley Esteves, a member of Voices Against 377, said: “Ten years ago, when we started the queer movement, we were hardly getting any positive responses. Over the years, the media and many progressive sections of the population have become sensitive to the forms of oppression and violence, including police atrocities, that homosexuals in the country face” (Mahaprashasta, A. 2009, ‘Queer politics’, *Frontline*, Vol. 26, Issue 15, Jul. 18-31 <http://www.flonnet.com/fl2615/stories/20090731261503300.htm> – Accessed 28 August 2009 – Attachment 14).

Political reaction

The Times of India reported on 5 July 2009 that Lalu Prasad, the leader of the Rashtriya Janata Dal (RJD), stated that he “opposed any move to amend Article 377 of IPC for decriminalising gay sex”. The RJD is not presently part of the governing United Progressive Alliance (UPA):

RJD chief Lalu Prasad on Saturday opposed any move to amend Article 377 of IPC for decriminalising gay sex. “This unnatural offence should never be made legal in India,” Lalu said and added he would raise the matter in Parliament.

Referring to the recent verdict of Delhi high court, he described it as a bid to ape the West. Lalu said the Union government should challenge the Delhi HC’s verdict in the Supreme Court.

“The government should also make its stand clear on the issue in the court,” he said, insisting that “unnatural sex” should never be legalised as it would spell doom for the Indian culture and civilization (‘Gay sex should not be legalized at any cost: Lalu’ 2009, *The Times of India*, 5 July <http://timesofindia.indiatimes.com/Gay%20sex%20should%20not%20be%20legalized%20at%20any%20cost:%20Lalu/articleshow/4737916.cms> – Accessed 31 August 2009 – Attachment 22).

On 28 June 2009, a *Thaindian News* article, sourced from *IANS*, reported that leaders of the right-wing Hindu Bharatiya Janata Party (BJP) and of the Communist Party of India-Marxist (CPI-M) were approaching the matter with caution, and “sounded wary over changing the law”. The BJP is the main opposition party in the Lok Sabha, and heads the National Democratic Alliance (NDA) coalition; the CPI-M dominates the Left Front, a coalition of left-leaning parties in the Lok Sabha:

However, voicing caution, BJP leader Mukhtar Abbas Naqvi said: “We are living in India, not in an European country. These issues are very important and sensitive. A thorough discussion is needed on this issue.”

“Without detailed discussion (on the issue) with political parties, social activists and leaders, it is not advisable for the government to make changes in the law in a hurry,” Naqvi told *IANS*.

Union Law Minister M. Veerappa Moily had earlier said the government would discuss the controversial section 377 of the IPC.

Moily told reporters: “The home minister (P. Chidambaram) is planning to convene a meeting of the health and law ministers over this issue.”

However, leaders of other political parties have also sounded wary over changing the law.

Communist Party of India-Marxist politburo member M.K. Pandhe said: “Generally we don’t support homosexuality but I cannot say further on the issue because our party has not discussed the matter.”

The gay community is planning a gay pride march in the capital Sunday evening as well as in other metros (‘Decriminalising homosexuality – gays hopeful, political parties wary’ 2009, *Thaindian News*, (source: IANS), 28 June http://www.thaindian.com/newsportal/uncategorized/decriminalising-homosexuality-gays-hopeful-political-parties-wary_100210528.html – Accessed 31 August 2009 – Attachment 23).

Another article in the *Thaindian News* sourced from IANS, dated 10 July 2009, reported that the “Minister of Overseas Indian Affairs Vayalar Ravi Friday termed the controversy over decriminalisation of homosexuality as an ‘elitist issue’, and said ‘the poor are not concerned with it’”:

Minister of Overseas Indian Affairs Vayalar Ravi Friday termed the controversy over decriminalisation of homosexuality as an “elitist issue”, and said “the poor are not concerned with it”.

“This is a non-issue. This is a country of poor people and this issue is being raked up by the elite,” Ravi told a television channel at parliament premises.

...”It concerns only the elite, so we are not bothered. The government will decide when to reply but as far as I am concerned this is an issue of the elite with which we do not agree,” Ravi said (‘Gay sex is an elitist issue, says Vayalar Ravi’ 2009, *Thaindian News*, (source: IANS), 10 July http://www.thaindian.com/newsportal/uncategorized/gay-sex-is-an-elitist-issue-says-vayalar-ravi_100216322.html – Accessed 31 August 2009 – Attachment 24).

Two articles mentioned previously also contain the reactions of senior BJP figures to the Delhi High Court decision:

- An article from *The Times of India*, dated 3 July 2009 stated that “BJP MP Sanjay Dhotre said he was staunchly against the decision as it would totally destroy Indian culture and put an end to social ethics and values. He said he would fight tooth and nail in Parliament and outside if the Union government moves to scrap section 377 of IPC” (Vyas, S. 2009, ‘Citizens oppose legalising gay sex’, *The Times of India*, 3 July <http://timesofindia.indiatimes.com/NEWS/City/Nagpur/Citizens-oppose-legalising-gay-sex/articleshow/4731005.cms> – Accessed 31 August 2009 – Attachment 16).
- A report from the *New York Times*, dated 3 July 2009, stated that “The High Court’s decision should be overturned, said Murli Manohar Joshi, the leader of the main opposition Hindu nationalist Bharatiya Janata Party. ‘The High Court cannot decide all things,’ he said” (Timmons, H. & Kumar, H. 2009, ‘Indian Court Overturns Gay Sex Ban’, *New York Times*, 3 July http://www.nytimes.com/2009/07/03/world/asia/03india.html?_r=2 – Accessed 28 August 2009 – Attachment 2).

A 3 July report from *Inter Press Services* notes that sections of the Indian government appear to have conflicting responses to the decision, which is opposed by the law minister but supported by the Health Ministry:

However, the controversial ruling has become a hot potato in New Delhi's corridors of power.

"There are several opinions on the matter," in the Indian government, Veerappa Moily, union law minister, told the Indian media on July 3.

The minister is opposed to repealing the law on moral grounds, citing that the country was not yet ready for it and advocated retaining it to avoid "far reaching consequences."

But India's Health Ministry welcomes the decision to amend the law (Biswas, R. 2009, 'India's Historic Gay Ruling', *Inter Press Service*, 3 July <http://ipsnews.net/news.asp?idnews=47518> – Accessed 28 August 2009 – Attachment 4).

A 2 August 2009 article in *Thaindian News*, sourced from *IANS*, notes a shift in the attitude of the "union Law Minister M. Veerappa Moily", as he is quoted as acclaiming the Delhi High Court decision as a "'well-documented and well-researched' ruling on a difficult subject that stands out 'in the judicial annals of the country'". The report also quotes Moily stating that "if the apex court upholds the high court ruling, then the government may suitably amend the relevant penal provisions under section 377 of the Indian Penal Code to make it a law":

The Delhi High Court verdict de-criminalising gay sex between consenting adults has been highly acclaimed by union Law Minister M. Veerappa Moily as a "well-documented and well-researched" ruling on a difficult subject that stands out "in the judicial annals of the country".

Moily has indicated that if the apex court upholds the high court ruling, then the government may suitably amend the relevant penal provisions under section 377 of the Indian Penal Code to make it a law.

...Asked if the government would take any step to change the law and reverse the judgement, Moily said: "There are occasions and occasions where the government will not seek to reverse a judgement."

Endorsing the legality of the judgement, the minister said that the verdict settles an important question of law on liberty and privacy and it would have been "preposterous" for the government to seek its suspension when it came up for hearing in the apex court July 21.

"It is an important question of law – particularly relating to the constitutional provision of liberty, privacy – they have given a judgement. As against that, obtaining a stay may be sometimes preposterous, unless we have a final verdict from the Supreme Court," said Moily, when asked why the government did not seek a stay on the ruling ('Moily praises gay sex ruling, says government may amend section 377' 2009, *Thaindian News*, (source: *IANS*), 2 August http://www.thaindian.com/newsportal/health/moily-praises-gay-sex-ruling-says-government-may-amend-section-377_100226427.html – Accessed 31 August 2009 – Attachment 25).

The Times of India reported on 4 July 2009 on the possibility of the India's gay population becoming a potential future "vote bank" for Indian politicians, but notes that, at present, "political parties get the chills at the mere thought of identifying with homosexual rights":

Christians account for a little over 2% of India's population, while Muslims make up roughly 13% – both significant enough groups to attract the special attention of the political class. Even if a conservative figure of 5% were to be assumed as Indian's gay population, why wouldn't shrewd politicians consider them as a vote bank, now that homosexuality has been decriminalised (unless of course they are scared of alienating the anti-gay lobby)? The added advantage here is that gays, unlike other communities, are a 100% adult population. In short, all of them have voting rights.

And yet, political parties get the chills at the mere thought of identifying with homosexual rights.

...The Indian gay-lesbian community has still a long way to go. But if any lessons can be learnt from the West, building public opinion in their support will galvanise the political class like nothing else ('Gays could make a vote bank' 2009, *The Times of India*, 4 July <http://timesofindia.indiatimes.com/news/india/Gays-could-make-a-vote-bank/articleshow/4736157.cms> – Accessed 31 August 2009 – Attachment 26).

Reports on the current situation for gay men in New Delhi

A report from *Thaindian News*, dated 28 June 2009, provides detail on the second gay pride march to be held in Delhi, which took place on 27 June, and "saw 600-700 people participate". The also notes that:

Some hid their faces behind rainbow coloured masks but others flaunted their sexuality unabashedly. The second edition of Delhi's gay pride march was a riot of colours, and had the marchers dancing and shouting slogans in unison.

...Holding a massive rainbow coloured flag – symbolising the lesbian, gay, bisexual, transgender (LGBT) community – Ranjini, a transgender, said: "It feels so good to be able to walk the streets freely, without having people looking down upon me with a weird look. Yes, I am queer and I am proud of it."

...The march, which saw 600-700 people participate, culminated at Jantar Mantar.

Similar pride marches took place in other metros as well ('Riot of colours at Delhi's second gay pride march' 2009, *Thaindian News*, 28 June http://www.thaindian.com/newsportal/health/riot-of-colours-at-delhis-second-gay-pride-march_100210676.html – Accessed 31 August 2009 – Attachment 28).

On 27 May 2009, *The Australian* reported on a young gay man living in Delhi's suburbs, who planned to march in gay pride parade wearing a mask, as he had not come out to his parents, and expected to "submit to family pressure and live a double life" in marriage. This article also addresses the specific problems faced by lesbians in Delhi:

A regular at the Pahal Beauty Parlour – India's first gay beauty clinic cum drop-in centre – the 19-year-old says he will be marching this Sunday in Delhi's Gay Pride parade. But like many others he will do so behind a mask, notwithstanding the day's preening efforts.

While Mani identifies himself as a Kothi – or effeminate gay man – he says his parents don't know he is gay and would probably throw him out if he told them. They think his waxing is all part of his passion for religious dancing, chuckles Rahul Singh, a gay counsellor at the parlour and co-founder of the Pahal Foundation behind the venture.

Not so amusing is Mani's fate as a lower caste gay Indian man. Asked about marriage, he says he will soon submit to family pressure and live a double life.

...Men at least have the option of a double life, says Singh, who at 32 is a veteran campaigner for the gay rights movement.

“But Indian society still defines women strictly through marriage and family. Most women are married off so young they don’t have time to think of themselves as sexual beings.”

Gay and lesbian suicides are a serious problem in India, and women who attempt to flee an enforced marriage often end up facing criminal charges.

Final year law student and gay rights activist Ponni Arasu has worked on many cases where one woman is charged with kidnapping another by the parents.

“You have to go to court and prove she didn’t kidnap her,” says Arasu. “We also have to actively cover up the nature of the relationship because that’s not something we can say in a courtroom today while it’s still criminalised.”

...”Ending 377 won’t change the daily life of a lot of queer Indians and their negotiations with parents, doctors, colleagues, landlords and police, but it will change the way queer people see themselves. The big impact will be what we do with it.”

He is amazed by the pace of change in urban Indian attitudes in the past decade. “If you had told me 10 years ago there would be a gay pride march in Delhi I would have laughed” (Hodge, A. 2009, ‘Out and proud: India’s gays defy cruel laws’, *The Australian*, 27 June – Attachment 29).

A 24 May 2009 article sourced from IANS, and printed in *The Times of India*, quotes a gay man from Delhi who claims that “family pressure in India is ‘disgusting’”, and that: “The law can’t make any difference till we help ourselves and get support from society and our family. There is a lot of discrimination against us and no law can change that attitude of people towards us”:

Homosexuality is a criminal offence in India, but many gays believe that a change in the law will do no good to them unless society starts accepting them and stops putting pressure on them to conform.

According to Ranjan, 43, who works with an NGO in the capital, family pressure in India is “disgusting”.

“Family pressure in India is disgusting. As a gay, I am not supposed to disrespect my family reputation even though I am feeling miserable from inside,” Ranjan said.

“The law can’t make any difference till we help ourselves and get support from society and our family. There is a lot of discrimination against us and no law can change that attitude of people towards us. The need of the hour is to garner support from society to live a normal life like other human beings do,” said Ranjan.”

...History lecturer and gay activist Rajarshi Chakrabarty said on phone from Murshidabad in West Bengal: “There is so much struggle and stigma associated with homosexuality that it becomes difficult for a gay to survive”

“According to society, you should get married at a certain age, whatever your sexual orientation is because that is a rule you have to follow to gain acceptance in society. Unfortunately, this leads to pressure on homosexuals which in turn leads to fights and confusion within” (‘Family pressure on us disgusting: Indian gays’ 2009, *The Times of India*, (source: IANS), 24 May <http://timesofindia.indiatimes.com/NEWS/India/Family-pressure-on->

us-disgusting-Indian-gays/articleshow/4571715.cms – Accessed 1 September 2009 – Attachment 30).

A 24 April article in *The Times of India* reports on a conference of gay activists in New Delhi, claiming that: “Even as India witnesses a growing lesbian, gay, bisexual and transgender (LGBT) movement, homophobia is rampant and homosexuality is considered sexually predatory” (‘Gays come out in open, demand more awareness’ 2009, *The Times of India*, 24 April <http://timesofindia.indiatimes.com/NEWS/City/Delhi/Gays-come-out-in-open-demand-more-awareness/articleshow/4445655.cms> – Accessed 1 September 2009 – Attachment 31).

The Courts and law in India

The website of the Supreme Court of India provides background information on the Indian legal system, stating that “decisions of the Supreme Court are binding on all Courts within the territory of India”, but also that “local customs and conventions which are not against statute, morality, etc. are to a limited extent also recognised and taken into account by Courts while administering justice in certain spheres”. According to this source, “laws made by Parliament shall prevail over law made by State Legislatures...unless it has received the assent of the President, and in such case, shall prevail in that State”. The Supreme Court of India website states that: “Laws made by Parliament may extend throughout or in any part of the territory of India”:

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. India’s commitment to law is created in the Constitution which constituted India into a Sovereign Democratic Republic, containing a federal system with Parliamentary form of Government in the Union and the States, an independent judiciary, guaranteed Fundamental Rights and Directive Principles of State Policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

SOURCES OF LAW

The fountain source of law in India is the Constitution which, in turn, gives due recognition to statutes, case law and customary law consistent with its dispensations. Statutes are enacted by Parliament, State Legislatures and Union Territory Legislatures. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations as well as by-laws made by Central and State Governments and local authorities like Municipal Corporations, Municipalities, Gram Panchayats and other local bodies. This subordinate legislation is made under the authority conferred or delegated either by Parliament or State or Union Territory Legislature concerned. The decisions of the Supreme Court are binding on all Courts within the territory of India. As India is a land of diversities, local customs and conventions which are not against statute, morality, etc. are to a limited extent also recognised and taken into account by Courts while administering justice in certain spheres.

ENACTMENT OF LAWS

The Indian Parliament is competent to make laws on matters enumerated in the Union List. State Legislatures are competent to make laws on matters enumerated in the State List. While both the Union and the States have power to legislate on matters enumerated in the Concurrent List, only Parliament has power to make laws on matters not included in the State List or the Concurrent List. In the event of repugnancy, laws made by Parliament shall prevail over law made by State Legislatures, to the extent of the repugnancy. The State law shall be

void unless it has received the assent of the President, and in such case, shall prevail in that State.

APPLICABILITY OF LAWS

Laws made by Parliament may extend throughout or in any part of the territory of India and those made by State Legislatures may generally apply only within the territory of the State concerned. Hence, variations are likely to exist from State to State in provisions of law relating to matters falling in the State and Concurrent Lists.

JUDICIARY

One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts lies a hierarchy of Subordinate Courts. Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature. Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class ('Law, Courts and the Constitution' (undated), Supreme Court of India website http://www.supremecourtindia.nic.in/new_s/constitution.htm – Accessed 10 September 2009 – Attachment 33).

The website of the Supreme Court of India provides the following information about the powers of the court:

The Supreme Court has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari to enforce them. The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court. The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself. Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.

...The Supreme Court has also a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.

...The High Court stands at the head of a State's judicial administration. There are 18 High Courts in the country, three having jurisdiction over more than one State. Among the Union Territories Delhi alone has a High Court of its own. Other six Union Territories come under the jurisdiction of different State High Courts. Each High Court comprises of a Chief Justice and such other Judges as the President may, from time to time, appoint. The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The procedure for appointing puisne Judges is the same except that the Chief Justice of the High Court concerned is also consulted. They hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court. To be eligible for appointment as a Judge one must be a citizen of India and have held a judicial office in India for ten years or must have practised as an Advocate of a High Court or two or more such Courts in succession for a similar period.

Each High Court has power to issue to any person within its jurisdiction directions, orders, or writs including writs which are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of Fundamental Rights and for any other purpose. This power may also be exercised by any High Court exercising jurisdiction in relation to territories within which the cause of action, wholly or in part, arises for exercise of such power, notwithstanding that the seat of such Government or authority or residence of such person is not within those territories.

Each High Court has powers of superintendence over all Courts within its jurisdiction. It can call for returns from such Courts, make and issue general rules and prescribe forms to regulate their practice and proceedings and determine the manner and form in which book entries and accounts shall be kept ('Jurisdiction of the Supreme Court' (undated), Supreme Court of India website http://www.supremecourtindia.nic.in/new_s/juris.htm – Accessed 10 September 2009 – Attachment 34).

An essay (sourced from the Human Rights Initiative website) assessing the power of the Indian government to amend the Indian Constitution, and the power of the Supreme Court to challenge laws enacted by Parliament, states that:

According to the Constitution, Parliament and the state legislatures in India have the power to make laws within their respective jurisdictions. This power is not absolute in nature. The Constitution vests in the judiciary, the power to adjudicate upon the constitutional validity of all laws. If a law made by Parliament or the state legislatures violates any provision of the Constitution, the Supreme Court has the power to declare such a law invalid or ultra vires.

...all laws and constitutional amendments are now subject to judicial review and laws that transgress the basic structure are likely to be struck down by the Supreme Court. In essence Parliament's power to amend the Constitution is not absolute and the Supreme Court is the final arbiter over and interpreter of all constitutional amendments (Nayak, V. (undated), 'The Basic Structure of the Indian Constitution', Human Rights Initiative website http://www.humanrightsinitiative.org/publications/const/the_basic_structure_of_the_indian_constitution.pdf – Accessed 10 September 2009 – Attachment 35).

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