

**SUMMARY OF CIVIL WRIT PETITION 1784 OF 1994
IN THE HIGH COURT OF DELHI
as prepared by ABVA**

AIDS BHEDBHAV VIRODHI ANDOLAN (ABVA)
(Aids Anti-Discrimination Movement)

... Petitioner

Versus

- (1) Union of India and others
- (2) Delhi Administration
- (3) The District & Session Judge, Tis Hazari
- (4) Inspector General of Prisons, Tihar Jail
- (5) Superintendent of Jail, Tihar Jail
- (6) National Aids Control Organisation (NACO)

Respondents

A writ petition under Articles 226 and 227 of the Constitution of India challenging the constitutional validity of section 377 of the Indian Penal Code 1908 and for the issuance of a writ in the nature of Mandamus, certiorari, prohibition or any writ direction or order directing the respondents to take appropriate measures in order to prevent the spread of the disease known as Aids and the targetting/segregation of certain groups or individuals.

The Petitioner urges:-

1. That the ABVA is an association established in 1988 working in the field of AIDS, brought out several reports on the status of the so called high risk groups, including "Less than Gay", a report on status of homosexuality in India.
2. That, as reported in the Press recently (Pioneer 10.2.94, 21.2.94, Sunday 27 March - 2 April 94) respondent No. 4 Ms. Kiran Bedi, I.G. Prisons has made statement which will lead to horrific consequences, that condoms will not be supplied in the Tihar Jail because it would (a) mean encouraging homosexuality, (b) admitting that homosexuality is rampant amongst prisoners & since it is a crime under Art 377, IPC, distributing condoms will mean acceptance of a crime aiding this crime.
3. That the petitioner fears that the Government's own National AIDS Program is not going to be implemented, condoms are not going to be supplied to prisoners & those suspected to be homosexual might be segregated or prosecuted under section 377.
4. That this will lead to large scale spread of HIV infection in India. Preventing HIV transmission in prisons not only protects prisoners, but the larger communities also since prisoners many leave the jail infected & spread the infection.

5. That sex between prisoner is wide spread all over the world, inspite of penalties. Consensual adult sexual acts can not be clipped with forced homosexual acts which the petitioner is against.
6. That a plain reading of section 377 shows that homosexuality per se is not an offence; sodomy (heterosexual or homosexual) is
7. That section 377 itself is obsolete and must be struck down as being unconstitutional & violative of fundamental rights of Indian citizens for following (among other) reasons:-
 - (a) Because the right to privacy is part & parcel of the fundamental right to life & liberty under Art 21, of the Constitution and has also been recognized by the International Convention on Human Rights 1948.
 - (b) Because section 377 is violative of Art 14 of the Constitution since it discriminates against persons purely on basis of their sexual orientation.
 - (c) Because drafted in 1883, section 377 is archaic & absurd, passed by the British in all its colonies. Campaigns in other countries have resulted in decriminalising private adult homosexual consensual acts (in England & Wales in 1967, HONG KONG in 1990) India is one of few countries to retain this law.
 - (d) Because even Amnesty International has taken a positive stand on homosexuality in its report of 1987. The Kinsey report on Human Sexuality, in 1948-1953 surveyed that 2% of women are lesbian & 4% of men have been homosexual, the American Psychiatric Association established homosexuality to be perfectly normal. The President, Indian Medical Association has also made a statement to this effect. The idea of sexual relations must take place only within a prescribed sexual format shows bias, ignorance, lack of tolerance.
 - (e) Because that homosexuality is 'imported' from the West is an erroneous supposition as Indian art, sculpture & sexual manual 'Kamasutra' will testify.
8. That even if section 377 is not held unconstitutional by the court, the court should direct the respondents to supply condoms to jail inmates without segregation, for AIDS prevention and other reasons.
 - (a) Because segregation, torture, surveillance will go against fundamental rights of prisoners and would not prevent spread of HIV. The most obvious way of AIDS prevention is to make condoms available at the jail pharmacy, which would be in keeping with public interest & health.
 - (b) Because there is no nexus between distribution of condoms & increased sexual activity.

- (c) Because the National AIDS control Programme must be implemented which ensures condoms to all citizens including prisoners failing which the Rs.200 crores been given to the Union Gov. from teh World Bank after signing the London Declaration can be withdrawn.

PRAYER

The petitioners prays the Court to:-

- (a) declare section 377 of IPC 1908 as unconstitutional & void;
- (b) direct the implementation of Gov's National AIDs Program;
- (c) restrain respondents from segregating or isolating prisoners with a certain sexual orientation or those suffering from AIDS.
- (d) direct the respondents to immediately make condoms available at the dispensary in Tihar Jail, as also disposable syringes;
- (e) direct the jail authorities to regularly consult respondent 6, NACO;
- (f) direct an independant citizens enquiry to look into health of prisoners & sanitary condition in Tihar Jail.

The case was admitted by H.C. on 8th of Feb'95.