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## **Queering the Indian Policy Space: An exploration of frames used by LGBTQ activists in India & frame evolutions in declaring Section 377 as unconstitutional**

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**BSc Political Science: International Relations & Organisations**

*Bachelor Thesis*



**Queering the Indian policy space**

*An exploration of frames used by LGBTQ activists in India & frame evolutions in declaring  
Section 377 as unconstitutional*

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## ***Chapter 1: Introduction***

The 6th of September, 2018 is the historic date when Section 377 of the Indian Penal Code (IPC, from now on referred to as Section 377) was repealed. This move was celebrated widely by LGBTQ activists across the country (Lohia, 2018; Sommerlad, 2018). The contentious Section 377 was introduced under Lord McCaulay in the 1860s, during the British Raj (Rozatkar & Gupta, 2018, p. 95).

*“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to a fine.  
Explanation - penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section”* (Indian Penal Code, 1860, p. 88)

Pre-colonial India is believed to be a more sexually liberal society, as is evidenced by ancient religious texts, art and architecture (Nanda, 2014, p. 138; Hinchy, 2019, p. 27). This attitude was replaced by Victorian ideals of chastity and heteronormativity in the mid-18th century, transforming dominant attitudes towards gender and sexual minorities into a hostile ‘other’ category, having lasting impacts on the post-colonial society (McClintock, 1995, p. 5). The British colonised India and enacted the IPC derived from Christian values and morality in 1860. British rulers viewed Asia or ‘the Orient’ as an overly erotic society and wished to ‘protect’ their soldiers from ‘unnatural’ sexual behaviours (Wong, 2021). In the colonial period, this act was especially used against gender minorities. Since then, this policy has been used to harass and arrest people, especially homosexual men and transgender persons on the pretext of criminal conspiracy to spread homosexuality or unnatural sex (Human Rights Watch, 2006).

The first anti-377 movement is traced back to the mid-1980s, when the HIV/AIDS epidemic made its way to India, with a report by the ‘AIDS Bhedbhav Virodhi Andolan (ABVA)’ or the first sexual-health movement that highlighted the discrimination faced by LGBTQ individuals. The Government of India used a national-surveillance program to disproportionately monitor homosexual individuals and sex-workers as high-risk groups for AIDS, justified using Section 377 (Ramachandran, 2012, p. 23). This notably triggered the Naz foundation, an organisation focused on sexual-health to petition the Delhi High Court (HC) in 2001, challenging

Section 377. While initially dismissed, in 2009 sustained activism and the additional support of a coalition of NGOs ('Voices against 377') led to the decriminalisation of Section 377 (Thomas, 2018). However, this victory was short-lived. A Delhi-based astrologer, Suresh Kumar Koushal, claimed that Section 377 is not discriminatory against any particular gender and therefore does not violate any fundamental rights. He also called upon tradition and culture to claim that decriminalising Section 377 would hurt the institution of marriage. The HC set aside the verdict in 2013 (Times of India, 2018). Between 2013 and 2018, high-profile influential LGBTQ Indians such as hoteliers and artists and various civil society organisations petitioned the ISC against Section 377 (Thomas, 2018). The ISC renewed their interest in the issue in 2018, and unanimously ruled to overrule Section 377 of the IPC (Sommerlad, 2018).

### **1.1 Problem statement and Research question**

LGBTQ communities have clearly existed in India for millennia but continue to face discrimination and hate crimes despite legal victories (Nag, 2020). This discrimination produces an institutional gap that leads to unequal access to opportunities, resources and accelerates poverty (Samelius & Wagberg, 2005, p. 16). Despite this, LGBTQ activists and civil society organisations in India have been challenging policies such as Section 377 that criminalise their identities for several decades. Thus, this thesis will study the framing of claims by activists to identify how the narrative was constructed to impact policy change. LGBTQ activism has been explored at length in the context of liberation and Pride movements in the West, and these studies dominate academia (Kole, 2007, pp. 2 - 3). Only recently has there been an increase in the study of LGBTQ activism strategies and techniques in the context of the 'Global South' (Moreau, 2017, p. 439; Monro, 2020, pp. 315 - 316). Furthermore, there are not any comprehensive studies attempting to theorise a frame evolution in the legal battle against Section 377 in India. This thesis will attempt to contribute meaningfully to the discourse surrounding LGBTQ movements in the Global South, specifically focusing on the Indian case, thus exploring the question: *In what ways did LGBTQ activists in India frame their claims against Section 377 of the Indian Penal Code? How have these frames evolved over time?*

This question has been investigated in the following ways. First, an explanation of the acronym LGBTQ is provided. Next, Chapter 2 reviews understandings of the concepts of social movements, framing and frame evolutions. Prior research on framing in LGBTQ movements was

used to develop expectations for the Indian case, namely that activists make use of multiple types of frames and that there was a frame evolution between 2009 and 2018. Next, Chapter 3 will clarify the single-case study design, the Qualitative Content Analysis method, the sources used and finally, the coding scheme. Using this method, Section 377 was found to be framed as an injustice, as a violation of human rights and as a remnant of colonial policy. It was also found that between 2009 and 2018, the movement grew to be inclusive of the larger LGBTQ community and that the frames of individual injustices and discrimination were linked with economic discrimination. Finally, the conclusion summarises these findings, reflects on the limitations and strengths, and suggests scope for future research.

## **1.2 Terminology**

This thesis will use the acronym 'LGBTQ' when describing activism in India pertaining to sexual minorities. 'LGB' denotes the sexual orientations of people as lesbian, gay and bisexual. Rozatkar and Gupta (2018, p. 95) view sexual orientation as patterns of romantic, emotional and/or sexual attractions between different genders. 'T' means transgender, typically referencing people whose gender identities deviate from their biological sex (p. 95). Finally, 'Q' means queer, and is increasingly used to include sexual orientations that fall in between the heterosexual-homosexual continuum (Kole, 2007, p. 3). This acronym or variations on the same are conventionally used to describe sexual behaviours and gender identities that deviate from the heterosexual and cisgender norms.

It is important to note that the inclusion of sexual orientations as well as gender identities into a single merged acronym can be potentially problematic. LGBTQ does not represent any single sexual identity, instead grouping together a wide variety of sexual and gender identities. Furthermore, the history of homosexual behaviours in India predates the creation of these labels. For example, the term 'Hijra' has historically been used to describe people who project feminine attributes, connected to 'discipleship-based' communities and are engaged in the arts and donation collection (Hinchy, 2024, p. 131). Though today they are referred to as transgender, in pre-colonial times, the 'hijra' label encompassed a diverse set of gender-nonconforming people who viewed themselves as somewhere between the male and female spectrum (p. 134). The petition from Padmashali (2016, pp. 19 - 21) clarifies that in the legal space challenging Section 377, the transgender label is used to encompass various types of gender minorities, including Hijras. The

term 'queer' is also used as an umbrella term to include diverse gender and sexual identities that deviate from the cisgendered and heterosexual norms. Scholars have often criticised the LGBTQ terminology on account of being a Western social construct (Kole, 2007, p. 2). However, due to its wide use in academia as a whole and its use in the data analysed, this paper will stick to this conceptualisation.

## ***Chapter 2: Literature Review & Theoretical Framework***

This chapter will provide an overview of the concepts and theoretical lenses that are to be used in this thesis. First, an overview of the Frame theory, and the concepts of framing and social movements is provided. Next, prior research is reviewed to identify salient frames and to devise a list of expected frames for my research. Finally, the concept and processes of frame evolution are reviewed. The literature and theories reviewed in this section have given way to two hypotheses which will be explored in this research.

### **2.1 What is framing in social movements?**

There are various theoretical approaches to analysing social movements (SMs). SMs operate through the principle of collective action, requiring successful strategies for mobilizing large groups of people (Tilly, 2004, p. 53). McAdam (1999, p. 24), on the other hand, defines SMs in terms of the organised efforts from ‘excluded groups’ to pressure changes using ‘non-institutional’ forms of political participation. Tarrow (1994, p. 4) similarly defines SMs as group reactions to ‘collective challenges’, coming from a place of shared exclusion and solidarity. These definitions all share certain common elements - SMs are non-state groups that challenge authorities and opponents (Bennett, 2017, p. 347). Within this view of SMs, a strategy from social constructivist literature is the framing of their claims. Social constructivist views posit that reality is socially created through ideas, cultures, norms and ideologies (Entman, 1993, p. 52).

There is some contention in defining ‘framing’ in academia, as it denotes different things in different fields, such as in psychology, media studies and political science (Entman, 1993, p. 51; Chong & Druckman, 2007, p. 114). A formative definition of ‘framing’ in social movement theory can be traced back to Goffman (1974) who argued frames to signify a “schemata of interpretation”, by virtue of which individuals can “locate, perceive, identify, and label” personal and global experiences (p. 21). Collective action frames in this view go beyond simply being a collection of individuals but involve an aspect of negotiating collective meanings (Gamson, 1992 as cited in Benford & Snow, 2000, p. 614). Authors such as Edelman (1993, p. 231) and Entman (1993, p. 52) further clarify the relevance of frames in highlighting the salience of certain political events and issues in order to simplify complex political realities. By making particular events seem more relevant than others, activists guide public perceptions and discourse surrounding the subject.

It is important to clarify here that frames are not intended to manipulate an audience in this context, rather they intend to “activate pre-existing beliefs and cognition” (Nelson et al., 1997, p. 236).

In the context of SMs, frames are used to understand how activists perceive their problems to mobilise support (Ince et al., 2017; Oktavianus et al., 2021). Benford & Snow (1988) identify three main core framing tasks - diagnostic, prognostic, and motivational frames. Diagnostic frames are used to identify problems and attribute blame. These frames call attention to the injustice faced by the people mobilizing and use their victimization to identify a problem source and mobilise against it. (Snow et al., 2019; Benford & Snow, 2000). For instance, movements focused on refugee rights may highlight their victimisation through exclusion from political participation. Prognostic framing proposes solutions to the problem and possible outcomes (Pu & Scanlan, 2012; Snow et al., 2019). This is what Entman (1993, p. 52) identifies as the “evaluative” component of the frame. These solutions may indicate a policy direction, guiding audience opinions (Gamson & Modigliani, 1966). Finally, the motivational frames are those that draw in participants and mobilise people for the cause (Benford & Snow, 2000). These frames are constructed by highlighting the urgency of an issue and mobilising people with a call to action (ibid.). Typically, SMs make use of multiple frames that encompass these tasks.

## **2.2 Framing in LGBTQ Movements**

As established in 2.1, SM actors will frame their claims in different ways. Prior research, mainly from Western cases, have found identity, legal recognition, and sexual rights as human rights to be relevant for LGBTQ SMs (Van der Wal, 2012). Some scholars believe that activists in the ‘Global South’ often rearticulate and replicate frames from Western activists (Seckinelgin, 2009; Ford, 2012). This is largely true for queer Pride movements, with the caveat of colonial histories. ‘Global South’ countries share the unique experience of being colonised and under imperial rule. This is relevant to the movement against Section 377, as this policy was passed and continues to remain in several former British colonies, such as Malaysia, Brunei, Pakistan and Sri Lanka. Thus, this research replicated some frames from Western cases that were found to be relevant in former colonies, being cognizant of the colonial history of the law.

### *2.2.1 Injustice framing*

The concept of ‘identity’ is central to SMs advocating for equality. Bernstein (2002, p. 536) identifies identity to be a central concept in SMs, as states recognise and grant rights to certain identities over others. Following Charles Taylor’s influential work on the politics of recognition, identity is shaped by recognition, and the misrecognition of identities produces prejudices and discrimination (Taylor, 1994, p. 25). ‘Recognition’ is commonly classified as an understanding or acknowledgement of certain fundamental attributes of other people or group identities (ibid.). Alcoff and Mohanty (2006, p. 2) define the invoking of identity by activists in SMs to be ‘identity politics. Identity-based discrimination is highlighted as a core injustice that is preventing groups from achieving equality. Linking this discrimination to Benford & Snow’s (2000) use of framing to highlight grievances or injustice, this type of framing attributes discrimination and exclusion of a social group to the misrecognition of identities.

### *2.2.2 Postcolonial legacy*

Loomba (2015) defines postcolonialism as the “contestation of colonial dominance and the legacies of colonialism” (p. 33). Postcolonial perspectives on LGBTQ activism in the ‘Global South’ have identified the abolishment of colonial sexual policy legacies to be relevant from prior cases such as Sri Lanka, Ghana, South Africa, Singapore and India (Wilkinson et al., 2017; Bennett, 2017; Baisley, 2015; Naryanamoorthy, 2020). Prior studies on LGBTQ movements in the Global South have also identified decolonisation frames (Baisley, 2015; Bennett, 2017). Considering the inception of Section 377 under British colonial rule, it has often been framed in news and prior research studies as a remnant of Victorian morality and ideals (Naryanamoorthy, 2020; Rozatkar & Gupta, 2018).

### *2.2.3 Human Rights Framing*

Moreau (2017, p. 443) defines human rights to be the fundamental attribute of LGBTQ activism. Specifically, third-generation human rights (solidarity rights) have developed as an umbrella term for the collective rights of communities or groups (Heywood, 2014, p. 307). Thoreson (2008, as cited in Baisley, 2015, p. 380) and Moreau (2017, p. 442) find that claims made by LGBTQ activists in the Global South are explicitly linked to International Human rights conventions. This is because such topics are often culturally taboo or difficult to relate to for the majority. By calling

upon frameworks like the 1948 *Universal Declaration of Human Rights*, one can call upon the common humanity and fundamental rights that everyone is entitled to. *The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, signed in 2006, establishes a universalist frame of sex and gender to address how international human rights laws apply to diverse sexual and gender identities (Baisley, 2015, p. 389). For example, Bennett (2017) and Paul (2022) find the human rights frame to be salient in LGBTQ activism in India and South Africa. They found that the use of universal human rights rhetoric universalised the issue beyond simply injustices groups. It is important to also note that there is extensive criticism of LGBTQ rights being absent from earlier conceptions of human rights and sensitivity of acceptance to the cultural context (Kollman & Waites, 2009, as cited in Moreau, 2017, p. 444). Regardless, the inclusion of human rights in prior research including the Indian case justifies its inclusion in this thesis (Bennett, 2017, p. 359).

Based on these prior frames, the following hypothesis could be developed to investigate the frames constructed by LGBTQ activists in India.

*H<sub>1</sub>: LGBTQ activists in India constructed multiple different frames in their claims against Section 377.*

### **2.3 Frame evolution**

Social movements change and evolve over time. One way that SMs may evolve is by changing the way issues are framed. Benford & Snow (2000) identify four key transformations in framing: frame bridging, frame amplification, frame extension, and frame transformation.

Frame bridging refers to the linkage of two or more ideologically compatible frames regarding an issue (Benford & Snow, 2000, p. 624). Frame amplification is the “idealization, embellishment, clarification, or invigoration of existing values or beliefs” (Snow et al., 2019, p.400). This could be understood as how SMs highlight specific frames as being more important and relevant than others. Frame extension conveys movement interests and framings that go beyond initial expectations and concerns; including issues and concerns that are thought to be relevant potential allies and bystanders (Benford & Snow, 2000, p. 625; Snow et al, 2019, p. 401). For example, the broadening of issue frames from sexual health advocacy grew the LGBTQ movement to include other groups outside of gay men. This may also create a potential limitation

of broadness, causing rifts within different factions of an SM. Finally, frame transformation is how meanings can transform or how activists create new meanings (Benford & Snow, 2000, p. 625). These frame evolution processes will be used to study the transformation of meanings in petitions against Section 377 submitted to the Indian courts, with the following hypothesis.

*H<sub>2</sub>: The frames used by LGBTQ activists against Section 377 evolved and transformed between 2009 and 2018.*

### ***Chapter 3: Research Design & Methodology***

This chapter will outline the single-case study research design and methods utilized in this thesis. To clarify, this paper will follow Gerring's (2004, p. 342) understanding of a single-case study in quantitative research, as the in-depth analysis of a single unit for the purpose of understanding a larger population of cases. The exploratory nature of this research is facilitated by this design, as it allows for the development of specific hypotheses and questions from an informed understanding of the context.

LGBTQ activism in the 'Global South' has had a myriad of contrasting policy outcomes. In large countries like India and Brazil, certain claims have been embraced in policy outcomes. Due to the legal impacts of the LGBTQ movement in India, this case provides a strong context for exploring potential links between activism and policy changes. Furthermore, the literature review for this study highlighted the importance of postcolonial policy legacies in anti-LGBTQ laws in the Global South, and India's strong colonial history coupled with its precolonial history of tolerating certain LGBTQ behaviours make it a unique case to explore.

The analysis will be conducted using a Qualitative Content Analysis (QCA). This method allows for a more nuanced understanding of the frames used by LGBTQ activists, as it is concerned with the latent 'meanings, motives and purposes' in the text, useful for studying the underlying frames (Halperin & Heath, 2017, p. 346).

The primary sources collected for this analysis include seven petitions, one to the Delhi HC and the others to the ISC, coming to a total of 469 pages. It may appear to be a small number of sources, but the rich depth of information provided in each petition was more than sufficient for the scope of this paper. While many petitions were submitted to the ISC and various Indian HCs regarding Section 377, these ones were the most relevant in the legal proceedings against Section 377. The petition submitted by the Naz Foundation in the Delhi HC was the first to gain some traction and success. This petition succeeded, albeit briefly, to decriminalise sexual activities between consenting homosexual partners in 2009. However, this verdict was overturned in 2013. This overturning triggered a ripple effect and the formation of a national coalition of LGBTQ activism NGOs, and a large number of civil society actors and individuals submitted petitions to the ISC. The six key petitions read at the historic 2018 (submitted between 2016 and 2018) hearing

that decriminalised Section 377 were thus chosen for the analysis. These documents have been obtained from the Supreme Court Observer, a database recording all the activities of the ISC. Looking up the specific case that debated the *Constitutionality of Section 377* and scrolling down to the documents section, the relevant writ petitions can be downloaded. Since most of the petitions were not numbered, for the sake of clarity they have been numbered starting with 1 from the first page.

It is important to also note the actors behind each of these petitions, as they were instrumental in constructing the narratives and meanings in these petitions to the government. A complete list of the actors behind these petitions can be found in Appendix B.

The data was analysed as follows. An open coding strategy was used to identify major themes in the primary data alongside a list of categories developed from a review of prior research in LGBTQ movements. As certain patterns of data revealed themselves, these were used to analyse the seven petitions. The themes were kept flexible to incorporate any new indicators that seemed relevant from the data. The three themes are directly based on the broad frames obtained in previous literature. Since most of the claims revealed themselves to be either under 'Human rights' or 'Injustice', the data collected was meticulously sorted. In order to avoid double coding, references to prior judicial proceedings and petitions were ignored. For the 'Injustice' code, petitioners largely used frames of discrimination/stigmatisation/perpetuation of negative stereotypes; and frames of physical and sexual harassment and violence. Thus, this category was divided into 'Discrimination' and 'Violence'. For the 'Human Rights' code, claims either seemed to link explicitly to the Fundamental Rights guaranteed by the Indian Constitution or to International Frameworks of Human Rights, motivating me to create 'Constitutional violations' and 'International framework' as the two subcategories. The Postcolonial legacy category did not require subcategorization as the claims coded here provides a unified argument. An example from the coding process can be found in Appendix A. Based on these considerations, the following coding scheme was developed (Table 1):

**Table 1.** Coding Scheme

<b>Category</b>	<b>Description</b>	<b>Indicators</b>	<b>Subcategories</b>	<b>Code</b>
Injustice	This code will be applied to any sentences or phrases that frame Section 377 as an injustice to or as a misrecognition of LGBTQ people	Discriminatory, equality, vulnerable, victim, recognition, stereotypes, harassment, stigmatisation	Discrimination	D
			Violence	V
Human rights	This code will be applied to claims that frame Section 377 as a violation of human rights under the Indian Constitution.	Dignity, autonomy, fundamental rights, personal freedoms, right to privacy, right to life	Constitutional violations	CV
			International framework	IF
Postcolonial legacy	This code will apply to any claims that frame Section 377 as a colonial policy legacy and as a remnant of colonial ideals.	Victorian morals, colonial era relic, British Raj, archaic		P

Since this paper is not only attempting to explore the key frames, but also to investigate a potential frame evolution, it is important to select data sources from two different time frames. The justification for this time frame is derived from the two most relevant court proceedings in the history of Section 377, the 2009 case of the Naz Foundation vs. the Government of Delhi and the 2016 case of Navtej Singh Johar vs. the Indian Supreme Court. The Singh Johar case was highlighted in the news most and sparked off the creation of further petitions. It is important to

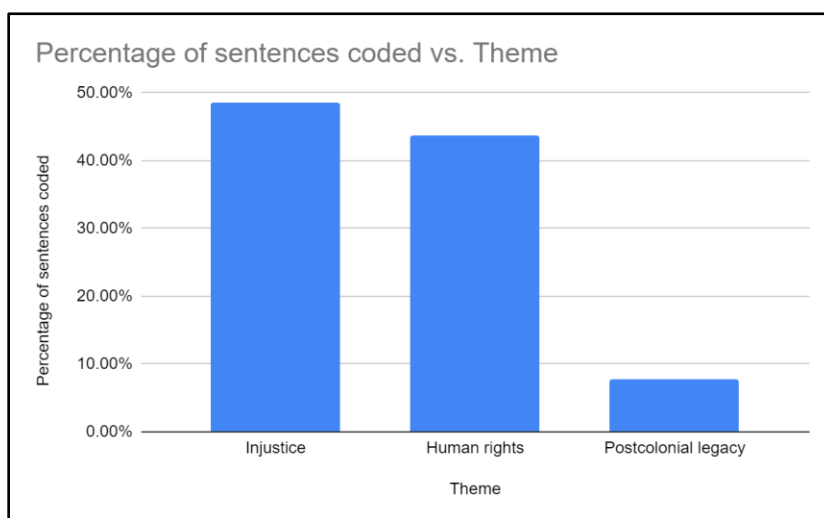
note that the amount of data sources from each year is not equivalent which could potentially limit the scope of exploring the second hypothesis.

Finally, a note about potential biases, validity and reliability concerns. Firstly, the choice of case is motivated by the fact that English is one of the official languages of India. As an Indian educated in English as my first language, choice was made. It is important to acknowledge that a lot of ground-level activism is conducted in regional languages. Upadhyay (2018) critiqued the movement against this policy for being dominated by upper-caste Hindu narratives. Gender and sexuality-based injustices intersecting with caste, class, religions and other political divides create very different experiences. This creates a class and caste baggage to this research that will also be reflected upon briefly in the analysis. However, this study's focus on Supreme Court documents justifies the use of English sources, as under Article 348(1) of the Indian Constitution all ISC proceedings are to be held in English (unless otherwise permitted). Additionally, my personal experiences from conducting prior research on transgender rights in India produces some positive bias towards the LGBTQ activists. For this reason, the QCA method is used to ensure a degree of objectivity and transparency in my research. Halperin & Heath (2017, p. 346) argue that QCA is an unobtrusive method and helps reduce researcher bias. This transparent research process also helps make this research easily replicable by future scholars to increase reliability. However, since frames are inherently a subjective construction, there are always some interpretations that are influenced by my prior knowledge and experiences. As much as possible, I have tried to keep transparent my analyses and interpretations so as to achieve a substantial degree of reliability. Another potential limitation could be the focus on a relatively small set of texts. However, the depth of information provided in these petitions has provided a high level of validity, coupled with the salience of these petitions with the specific years of ISC hearings regarding Section 377 helps to alleviate this concern, striving for a high level of validity.

## Chapter 4: Analysis & Results

In this section, the results obtained from the qualitative content analysis of the seven writ petitions will be presented and analysed. The results of the content analysis across all the textual material revealed the following trends. Out of the 313 statements coded in total, 48.56% used injustice framing, 43.77% used human rights framing and 7.67% mentioned the postcolonial legacy framing. In case certain statements possessed keywords from both categories, a decision was made to code them as one or the other depending on the latent meaning. Figure 1 shows a visual representation of these trends.

**Fig 1. Percentage of quotes coded per theme**



First, section 4.1 will explore  $H_1$  by breaking down the types of frames utilised by LGBTQ activists in court petitions. Next, section 4.2 will explore  $H_2$  by comparing the major patterns from the 2009 Naz Foundation Petitions and the six petitions between 2016 and 2018 to see if there were any frame evolutions.

### **4.1. Three different framing patterns**

#### *4.1.1. Injustice*

The injustice frame was the most recurring one from the analysed material, with a total of 152 mentions. Throughout all the petitions, Section 377 was framed as fundamentally exclusionary towards a community of people. It was also highlighted how this policy has been used to legitimise violence and harassment of people on account of their gender and sexual identities.

### Section 377 as discriminatory

Unanimously across the petitions, Section 377 is shown as inherently discriminatory towards LGBTQ individuals. This is clarified in a few different ways. First, different petitioners convey that the terminology used in Section 377 is such that it disproportionately targets gender and sexual minorities, with explicit references to homosexuals and transgender individuals. For instance, statements like:

*“The only legitimate purpose that section 377 currently serves is to criminalise non-consensual sex between a man and another man and a transgender person, which too, must be addressed through substantive law(s) on rape/sexual assault and not in vague and arbitrary terms contained in section 377, IPC.” - (Jafar, 2018, p. 9)*

This position is further confirmed by other petitions, such as Row Kavi (2018, p. 68), where they claim that men and transgender people are unequally affected by sexual violence and assault, with Section 377 only preventing penetrative assault, whilst other laws in the IPC protect women and children specifically from other types of sexual and physical assaults as well. An important finding here is how the distinct communities under the LGBTQ label are impacted in various ways. Padmashali (2016, pp. 15 - 20) highlights in particular the unique nature of discrimination faced by the transgender community in India. In particular, evidence from cases of discrimination against hijras and other transgender people are referenced. This is further evidenced by references to previous judgements such as the NALSA judgement from 2014 which specifically focused on the rights and entitlements required for transgender people. Row Kavi (2018, p. 23) is also the only petition that mentions the impact of 377 on lesbian, bisexual and queer women, stating how it was used to harass lesbian couples.

This highlights a larger trend noticed in all the petitions. Due to the explicit focus on penetrative sexual acts, there is a strong focus on homosexual men and transgender women and not as much information about how this act also affects queer women and transmen. This is perfectly encapsulated in the earliest petition analysed of the Naz Foundation (2009) framing Section 377 as a problem primarily in terms of how it was used to justify the surveillance of men who have sex with men (MSM) in the state’s AIDS prevention efforts. In fact, even the prior judicial proceedings and cases referenced in the later petitions reference data and research from

the HIV/AIDS prevention efforts. This is further confirmed in the Singh Johar (2016, p. 27) and Pokkuluri (2018, p. 45) petitions highlighting how the criminalisation of consensual sexual acts between LGBTQ people legitimises the stigma and misrecognition of their identities, thus, normalising social discrimination against them on the basis of their identity. The type of language used to convey these feelings posits sexual preference as an ‘intrinsic, inherent, and immutable’ attribute of persons and that Section 377 relegates them to second-class citizens in their own country. Ergo, there is an overwhelming agreement across petitions that this policy unfairly criminalises all LGBTQ individuals. Thus, while Section 377 is agreed to be discriminatory to LGBTQ groups as a whole, the nature of this discrimination varies across different communities.

Next, this framing was applied to highlight how this discrimination and misrecognition of identities, especially on a legislative level, produces negative consequences for LGBTQ individuals on the personal and professional levels. Many petitioners refer to the trauma faced on account of stigmatisation, ranging from childhood bullying and trouble in school, to mental health issues, and fears of employment discrimination. For example, Row Kavi (2018, p. 11) notes that one of the petitioners contemplated suicide and self-harm due to the bullying, social stigma, and lack of mental healthcare facilities in school. There are mentions of workplace discrimination,

Returning to Charles Taylor’s theory of the politics of recognition, this framing links to how the stigmas and misrecognition of group identities can produce ‘real damage’ and can in turn result in internalised feelings of exclusion and not belonging. Pokkuluri (2018, pp. 39-40) also illustrates this through feelings of “shame, loss of self-esteem and self-worth” manifested due to discrimination. This stigma and negative rhetoric towards LGBTQ also normalise cisgender and heterosexual majorities’ exclusion of them.

Finally, there are also claims that position Section 377 as economic discrimination. This is especially evident in the petitions from Pokkuluri (2018) and Suri (2018) which frame the issue through the lens of employment discrimination and in terms of a potential ‘brain drain’. These petitions were drafted by alumni from the highest-ranking academic institutions in India from individuals employed primarily in the private sector. He frames their claims from the perspective of a ‘brain drain’, whereby highly educated individuals are forced to find employment abroad due to discrimination. This concept is best encapsulated in this quote:

*“The economic cost has at least two facets: i. exclusion and/or limited inclusion of an able and talented workforce belonging to the LGBTQ community. This directly impacts personal health costs, wealth-creation and work-force loss and ii. Loss of contribution to the GDP.”* (Suri, 2018, p.11)

This form of framing places extends the problem from merely impacting LGBTQ individuals to impacting the GDP and the economy, so affecting the general population. These statements highlight the varied consequences of exclusion and stigmatisation from various sections of the society.

### Section 377 as violence

Another way that Section 377 was framed as an injustice was through the violence it poses against the LGBTQ community. Especially highlighted here is the disproportionate amount of violence and harassment inflicted by police and law enforcement on account of Section 377. In the Naz foundation (2009) petition, we see an overview of all these different types of violence.

*“By criminalising private, consensual same-sex conduct, Section 377 IPC serves as the weapon for police abuse; detaining and questioning, extortion, harassment, forced sex, payment of hush money; and perpetuates negative and discriminatory beliefs towards same-sex relations and sexuality minorities; which consequently drive the activities of gay men and MSM, as well as sexuality minorities underground thereby crippling HIV/AIDS prevention efforts.”* (Naz Foundation, 2009, p. 7)

Essentially, the criminalisation of their identities puts LGBTQ people at an unfair risk for harm and limits their ability to approach the police or government for legitimate problems due to the fear of police violence (Singh Johar, 2016, p. 26; Padmashali, 2016, p. 17). Jafar (2018, pp. 7-11) also highlights his personal experience of being arrested under Section 377 in 2001 for spreading sexual health advocacy and the violence faced, from the police as well as from other prisoners.

Reflecting on the Benford & Snow (2000) core framing tasks, the injustice framing could be understood as a diagnostic frame, wherein the crux of the problem is identified as discriminatory and as an injustice, and the blame for this is attributed to the criminalisation of a whole community.

It is important to reflect on the limitations of caste and class biases that were mentioned in the methodology. Many of the petitioners are influential elites, ranging from prolific dancers to corporate employees to hoteliers. Upadhyay (2018, p. 472) cites the example of Row Kavi discriminating against Jafar and some of his arrested colleagues due to their Muslim identity, calling them foreign agents of Bangladeshi origin. This is also linked with the increasing political dominance of Hindu the right wing and the Hindutva nationalism project, but that has not been explored in the scope of this paper. The distinctions in injustices faced are clear, as Arif Jafar's traumatic experience as a homosexual Muslim man was the basis of his injustice, whilst other petitioners highlighted economics and GDP as their most significant arguments. Nonetheless, the overarching theme of injustice is well represented in these sources and in many cases, bridged with the human rights themes, which will be discussed next.

#### *4.1.2 Human rights framing*

The second most salient frame observed in the data was the framing of 377 as a violation of fundamental human rights, with 137 mentions. Specifically, every single petition referenced Articles 14, 15, 19 and 21 of the Indian constitution, while all except two petitions referenced international frameworks of human rights, such as the Yogyakarta principles and International Covenants of human rights.

#### Constitutional violations

All petitions highlighted how Section 377 is problematic because it violates the fundamental human rights that all Indian citizens are entitled to, particularly under Articles 14, 15, 16, 19 and 21 in Part III of the Indian constitution. Article 14 of the Indian Constitution provides full equality to all individuals under the law. Each petition highlighted the unreasonable divisions created by Section 377 and the examples of discrimination and violence enumerated earlier as prohibiting individuals from fully enjoying equality before the law. Essentially, the exclusion of a section of society purely based on personal or social attributes is portrayed as antithetical to the most basic fundamental right to equality.

Next, article 15 guarantees protection from discrimination on the grounds of religion, race, caste, sex and place of birth (Constitution of India, 1949, p. 7). Specific mentions are made to the provision of 'sex', and how it should be extended beyond biological sex to self-determined gender

and sexual orientations. For instance, Naz Foundation (2009, p. 9) calls for the concept of 'sex' as used in Article 15 to include both gender and sexual orientation, to protect citizens against discrimination on grounds of both.

Furthermore, Article 16 prevents economic and employment discrimination. Singh Johar (2016) shows how Section 377 creates discrimination in employment, especially in Government jobs, thus, violating the fundamental right to equal opportunities. The previously mentioned examples of fears of economic discrimination from Pokkuluri (2018) and Suri (2018) were also bridged with the violation of this article.

Next, Article 19 provides various basic freedoms such as the freedom of speech and expression and the right to assembly and free associations. This is limited by Section 377 in the following ways. First, by limiting one's right to express their gender and their attraction towards certain individuals based on gender, the right to expression is prohibited (Suri, 2018; Row Kavi, 2018; Padmashali, 2016). Next, LGBTQ individuals, due to fear of arrest and violence due to their criminalisation under Section 377, are restricted from forming professional and social associations, which further violates article 19 (Singh Johar, 2016, p. 40).

Finally, Article 21 guarantees every Indian citizen a right to life, autonomy and dignity. This is interpreted in several ways. First, there are strong mentions of sexual autonomy, in claims highlighting the right to choosing a partner and consensual sexual intercourse. (examples: Singh Johar, 2016, p. 24; Row Kavi, 2018, p. 30). Next, Section 377 is viewed as a violation of the right to health, as it prohibits LGBTQ individuals from seeking contraceptives or receiving sexual health knowledge, as well as restricts them from seeking mental health advice (Pokkuluri, 2018; Singh Johar, 2016). Taken together, these different articles form Part III of the Indian constitution guaranteeing fundamental rights, and Section 377 is framed as a violation of them all.

### International framework

All but two of the petitions also make references to international frameworks of human rights that are considered universal and inalienable to every human being. For example, the International Covenant on Civil and Political Rights is linked with the fundamental rights of the Indian Constitution to argue that Section 377 is inherently a violation of the right to dignity, liberty and privacy. The Yogyakarta Principles on Application of International Human Rights Law for Sexual

Orientation and Gender Identity were also referenced by Jafar (2018), Naz Foundation (2009) and Singh Johar (2016).

This form of framing is in line with the theoretical expectations of the LGBTQ movement in ‘Global South’ countries emphasizing human rights violations. The creation of Fundamental Human Rights frameworks indicates a sense of universal, intrinsic values and morals. This form of framing puts pressure on the state to protect these rights, as being signatories to such frameworks proves increased scrutiny of their protection on the national level. I argue this is a motivational frame, as it appeals to the common humanity of all individuals irrespective of gender or sexual orientation and motivates them to join the cause. It also helps connect oppression along the lines of sexual preference and gender to the oppression of other minorities, essentially acting as a type of ‘frame bridging’, wherein a law that is based on prohibiting certain forms of sexual intercourse is linked with the basic fundamental rights to speech and expression.

#### *4.1.3 Postcolonial legacy*

Finally, the framing of Section 377 as a colonial policy was used least, with only 24 total mentions. While six out of seven petitions mentioned the colonial history of Section 377, it was not as significant a frame, and the number of mentions went down from the first Naz foundation petition to the latter petitions studied. The different words used to highlight it as a symbol of the colonial past ranged from ‘archaic’ to ‘relic of the colonial era (Suri, 2018, p. 37). Suri (2018) also highlighted the pre-colonial attitudes towards sexual preferences being more accepting while Naz Foundation (2009, p. 76) firmly roots it in the Victorian ideals of sexual morality that included Christian ideas of ‘carnality’ and ‘sinfulness’. There is specific attention drawn to the vagueness of the word ‘carnal’ as it does not explain the nature of sexual acts prohibited by Section 377 and thus, does not warrant the ‘10 years or life’ prison sentence (Jafar, 2018, p. 15). This could also be argued to be a ‘diagnostic frame’ under the Benford and Snow (2000) framework as it attributes the problem of criminalisation to a past time under foreign rulers and does not represent Indian attitudes towards sexual preferences.

Coming back to H<sub>1</sub>, this analysis revealed that multiple different frames were used to evaluate Section 377 prior to its repeal. Most statements analysed fit into the ‘Injustice’ or ‘Human rights’ frames. The claims were formulated in a manner that links the injustices caused by Section

377 to human rights frameworks, so as to highlight the constitutional invalidity of an archaic act that criminalises their activity.

## **4.2 Frame Evolution**

Coming to the second hypothesis, I analysed the Naz Foundation petition (2009) alongside the other six petitions from 2016 to 2018 to theorise if there was a potential frame evolution between the two hearings. This section will discuss the major frame transformations between the two sets of petitions that helped in redoing the decision in the Supreme Court.

First, the Naz Foundation petition was deeply rooted in the HIV/AIDS crisis and primarily highlighted Section 377's focus on homosexual men as unreasonable. The evidence of injustices presented is linked to the criminalisation of LGBTQ activists and NGOs working in the space of sexual literacy, HIV/AIDS prevention and the inhibition of access to healthcare facilities for such men due to their identity (for e.g. see p. 6 & p. 76 ). It can be argued that there was a frame extension to include other groups of the LGBTQ population to highlight to the Supreme Court that this is a larger issue affecting multiple sections of society. Padmashali (2016, p. 33) added the nuance of how Section 377 impacts hijras and other transgender individuals disproportionately by criminalising both their sexual and gender identities. Singh Johar (2016, p. 17) also highlighted how such criminalisation can negatively impact LGBTQ people and their personal relationships, with one petitioner being unable to bring her partner to family occasions. Jafar (2016, p. 8) mentioned how his family and friends were accepting of his sexuality, but by extension also traumatised and negatively affected by his arrest for being gay. Extending the issue beyond the realm of physical and sexual health and appealing to Indian family values potentially helped contextualise it to other bystanders.

Next, the Naz Foundation highlighted the violation of Articles 14, 15, 19 and 21 in their petition focusing on fundamental rights. Petitioners like Suri (2018) and Pokkuluri (2018) bridged these existing frames with Article 16, linking issues to the economy and the GDP. By bridging the issues of fundamental rights with the question of participation in the labour market, the issue is once again brought into a larger public purview. Suri (2018, p. 25) mentions how most of the petitioners live or wish to live abroad so as to have access to better jobs with no gender or sexuality-based discrimination. Thus, the highlighting of skilled workers leaving the country due to discrimination may have brought to light negative impacts on the country's economy.

Returning to H<sub>2</sub>, the analysis over time from 2009 to 2018 reveals that the negative impacts of Section 377 were drawn away from simply focusing on gay men to include the larger LGBTQ community, while the discrimination and exclusion frames were bridged with the labour market and the problem of skilled workers leaving the country for better opportunities and more freedom. This implies that the 2018 decriminalisation of Section 377 affected a much larger group of people, and the framing of Section 377 as unconstitutional and problematic for a large subset of people made it difficult to criminalise it again after the 2018 judgement.

## ***Chapter 5: Conclusion***

This thesis attempted to answer the question: *In what ways did LGBTQ activists in India frame their claims against Section 377 of the Indian Penal Code (prior to its repeal in 2018)? How have these frames evolved over time?* This was explored by applying the Frame Theory to petitions to the government declaring Section 377 unconstitutional, using the Qualitative Content Analysis method. Using previous literature, the potentially striking frames constructed by LGBTQ activists were identified. In practice, H<sub>1</sub> was accepted as the movement in India made use of multiple different frames, prioritising the injustice and human rights frames. As for the frame evolution, the Naz Foundation case of 2009 was compared with the six petitions read at the 2018 hearing. This revealed a frame extension from exclusively focusing on homosexual men to include the larger LGBTQ community, as well as frame bridging such issues with larger issues of economy and GDP. H<sub>2</sub> was also accepted. In conclusion, the LGBTQ movement was framed in many different ways prior to its repeal, and the broadening of frames to include larger sections of society between 2016 and 2018, declaring Section 377 as unconstitutional. Following these conclusions, I will now discuss the limitations of this study.

First, while the seven government petitions analysed fulfil the scope and extent of this research, there were many other documents and press releases from various NGOs and private influential LGBTQ actors that were also released between the 2013 recriminalisation of Section 377 and the decriminalisation that were not read at the 2018 hearing but could be argued to play a role too. This focus on government petitions provides us with a focused understanding of which frames are striking for policy change. Future researchers may expand the sources to include media sources, interviews with LGBTQ activists and so on. Furthermore, the exclusive focus on sources in English poses a limitation, as mentioned before in Chapter 3. It would be interesting for future research to explore the variations in injustices faced with the intersections of gender and sexual identity with caste, religion and class attributes. By triangulating multiple forms of data, a more holistic conclusion may be drawn. Next, framing is an inherently subjective activity, and the frames developed and explored in this paper are, at the end of the day, my opinion and my interpretation. For example, the framing of Section 377 as discriminatory could be interpreted as both an injustice and as a violation of Article 15. This paper has tried to make explicit the decisions behind coding sentences as either injustice or human rights violations to make the researcher's

thought process evident. Due to the limitations of the thesis process, the researcher and the coder were the same. Future research, especially at a higher level may employ multiple researchers or coders to increase inter-coder reliability. Third, this single-case study design with the focus on India has provided strong case-specific results, which may not necessarily represent other countries' LGBTQ movements. Future researchers may conduct a comparative case study analysis with other countries in the Global South to identify larger trends and see whether these frames are represented similarly in other contexts.

Despite these limitations, this research has relevant implications for both academic and policy contexts. Academically, it contributes to the larger study of contentious political actions, particularly social movements in the Global South which still remain relatively under theorised. The strength of this paper lies in its exploration of how frames were created and to an extent, replicated in the Indian case. It is also the novel exploration of a frame evolution in this context, which provides a good scope for future research. While previous research on the Indian LGBTQ movement has largely focused on sexual health advocacy and AIDS, this research has also covered other frames and issues. Additionally, the focus on the key date of Section 377's repeal helps contribute to the discourse on gender and sexual minority policies. Moreover, this research demonstrates the type of framing strategies that work to affect policy change in LGBTQ movements in India and can be applied to other countries in the Global South to study the transferability.

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To access the petitions, go to URL: <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/> and scroll down to ‘Documents’. What follows is a list of documents downloaded:

- Writ Petition: by Navtej Singh Johar (2016, April 21)
- Writ Petition: by Akkai Padmashali (2016, July 8)
- Writ Petition: by Keshav Suri (2018, April 10)
- Writ Petition: by Arif Jafar (2018, April 12)
- Writ Petition: by Anwesh Pokkuluri (2018, May 16)
- Writ Petition: by Ashok Row Kavi (2018, July 10)

- High Court Judgement: Naz Foundation v. Government of NCR of Delhi (2009, July 2; Petition is included in the whole judgement)

*Appendix A: Example from coding*

Source	Category	Subcategory	Codes	Quotes
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	Finally, this Hon'ble Court held that Article 21 includes the right to recognition of one's gender identity, which lies at the core of the fundamental right to dignity.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	Section 377 of the IPC is in direct contravention of these fundamental rights
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	in order to protect the rights of transgender persons, it is necessary to declare Section 377 as ultra vires  Part III insofar as it applies to consenting adults. If Section 377 is allowed to stay on in the statute book, the protection guaranteed to transgender persons by NALSA under Articles 14, 15, 19 and 21 of the constitution will be negated.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	Despite these developments, Section 377 of the IPC which criminalizes transgender persons, acts as an obstacle to the full realization of the rights of transgender persons and meaningful recognition of their right to life with dignity, personal autonomy and self-determination.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	Whether, in light of the decision in NALSA, it can be held that Section 377 of the Indian Penal Code, 1860, violates the rights of the Petitioners as members of the transgender community?
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	Whether Section 377 of the Indian Penal Code, 1860 insofar as it applies to consenting adults violates the rights of the Petitioners being transgender persons under Articles 14, 15, 19 and 21 of the Constitution of  India and hence is ultra vires Part III of the Constitution of India?

Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	this Hon'ble Court in NALSA, held that the right to equality has been declared as a basic feature of the constitution and that Article 14 guarantees to everyone the equal protection of laws so that everyone including transgender persons are afforded equal protection of the laws
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	Because the gender identity of transgender persons is not based on their biological sex, section 377 makes an unreasonable classification against transgender persons making all acts of sexual intercourse by them a criminal offence due to the non-recognition of their gender identity, therefore treating them unequally and violating their fundamental right to equality under Article 14 of the Constitution.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	Since transgender persons' gender identity has been recognized and it has also been recognized that they have the right to be declared as third gender, by criminalizing their forms of expression of their gender identity section 377 violates their fundamental right to freedom of speech and expression, privacy and autonomy.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	By depriving transgender persons the freedom to self-determine their gender identity and engage in consensual sexual acts as adults, Section 377 violates the rights to dignity, privacy and health of transgender persons.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	THAT the constitutional invalidity of Section 377 is clear in light of the observations in NALSA that reiterate sexual orientation as an integral part of a person's right to life:
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Human rights	Constitutional violations	CV	The Petitioners 1 to 3 are transgender persons whose right to gender identity and autonomy as read into Article 14, 15, 19 and 21 by NALSA are adversely affected and violated by the continued existence and enforcement of Section 377 of the Indian Penal Code against consenting adults, particularly against transgender persons and therefore the Petitioners are constrained to file this present petition under Article 32 of the Constitution of India before this Hon'ble Court.

Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	While dealing with various forms of discrimination faced by members of transgender community on account of their gender identity and sexual orientation, this Hon'ble Court inter alia observed that Section 377 of the IPC though associated with specific sexual acts, was used as an instrument of harassment and physical abuse against hijras and transgender persons.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	Hence if transgender persons were to have intercourse with their partners, the same would fall foul of the section and would amount to a criminal offence.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	Section 377 of the IPC would thus not give them equal protection of the law as transgender persons would be particularly vulnerable to being criminalized under Section 377.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	The Petitioners seek to respectfully place before this Hon'ble Court, the discrimination faced by them and members of transgender community on account of their continued criminalization under Section 377 of the IPC despite the protection of their right to gender identity and orientation by this Hon'ble Court in NALSA.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	This Report documents violence by the police that sexual minorities face on a daily basis, including harassment faced by the threat of Section 377 of the IPC.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	She (third petitioner) has faced an immense amount of violence, including sexual and physical violence at the hands of the police due to the fact that she is a transgender person.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	The transgender community, being identifiably distinct, is highly vulnerable to repeated harassment through complaints under Section 377, IPC. The violence faced by the transgender community especially at the hands of the police, using Section 377 against

				them has been documented extensively in many well-researched reports.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	The Petitioners herein have also been subject to repeated harassment by being criminalized and being threatened to be criminalized under Section 377 of the Indian Penal Code.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	It acknowledged that the non-recognition of the identity of transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail and also by the police.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	It is submitted that Section 377 of the IPC works unequally against transgender persons based on the non-recognition of their gender and sexual identity.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	Section 377 is ultra vires Article 14 of the Constitution as it discriminates against the Petitioners as members of the transgender community by not recognizing their gender identity or sexual orientation and criminalizing their acts of sexual intercourse.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	However, the ratio of the judgment focused mainly on rights of homosexual men and did not address the specific instances of discrimination and harassment faced by the transgender community
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	The transgender community faces specific types of discrimination and is more vulnerable than other LGBT members, because the members of this group are publicly identifiable by their mannerisms
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	The police especially target transgender persons when they find them involved in begging and sex work

Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	...transgender persons are subjects of brutal attacks, harassment and false criminal cases with the aid of section 377 of the IPC, forcing transgender persons to seek release by payment of fines or through intervention from NGOs and community-based organizations
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Discrimination	D	this Hon'ble Court clearly recognized that Section 377, IPC is used to harass and abuse transgender persons.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	Because transgender persons are largely recognizable as being transgender due to their manner of dressing, mannerisms, conduct, they are vulnerable to harassment by the police under Section 377 of  the IPC, which has been recognized by this Hon;ble Court in NALSA, and hence Section 377 is ultra vires Article 19 (1)(a) of the constitution.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	Section 377, permits interference with the private life of adult transgender persons by attempting to regulate their actions within the privacy of their home and actions that are a result of the exercise of their personal autonomy and liberty
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	Section 377 criminalizes self-identification and self-definition of sexual orientation of transgender persons as it makes it criminal for transgender persons to act on their self-defined sexual orientation and gender identity, thereby depriving transgender persons of integral parts of their right to selfdetermination,  dignity and freedom
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence	V	Section 377 violates the rights to gender identity and sexual orientation as guaranteed to transgendered persons in NALSA.
Writ petition: Akkai Padmashali vs. the Union of	Injustice	Violence	V	There has been a total non-recognition of the history of discrimination that the transgender community faces due to their gender identity

India (2016) - 51 pages				
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Injustice	Violence, Discrimination	V, D	it is imperative that the Petitioners are permitted to challenge the vires of Section 377 IPC, because while upholding the validity of Section 377 in Suresh Kumar Koushal, this Hon'ble Court had proceeded on the basis that the respondent no. 1 therein (Naz Foundation) had failed to furnish adequate material to establish that homosexuals, gays, etc. face hostile discrimination at the hands of the State or its agencies or the Society.
Writ petition: Akkai Padmashali vs. the Union of India (2016) - 51 pages	Postcolonial legacy	P	P	as far back as in 1884 in Queen Empress v. Khairati [ILR (1884) 6 All 204] a transgender person was arrested and prosecuted under Section 377 on suspicion that he was a "habitual sodomite" and was later acquitted on appeal.

### *Appendix B: Actors behind the petitions*

**Naz foundation:** Founded by Anjali Gopalan, this NGO was started in 1994 to address the HIV/AIDS crisis and to provide care and support to LGBTQ individuals in India. (Naz India, 2024). They first approached the Delhi HC in 2001 challenging the constitutionality of Section 377 which was initially dismissed, but picked up again in 2006 when a larger coalition of NGOs came in to support them. They succeeded in decriminalising Section 377 till 2013, when Suresh Koushal challenged the Delhi High Court's decision in the ISC (Thomas, 2018).

**Navtej Singh Johar:** He is a world-renowned classical Bharatnatyam dancer who filed a petition to the ISC with his partner. They were supported by some other high-profile Indians, such as hotelier Aman Nath and chef Ritu Dalmia (Times of India, 2018).

**Akkai Padmashali:** She is a renowned Indian transgender activist and politician based in Bangalore who, along with some other transgender rights organisations, filed a petition to the ISC in 2016.

**Arif Jafar:** He was arrested in 2001 under Section 377 whilst engaging in HIV/AIDS advocacy, charged with criminal conspiracy and promotion of homosexuality. He was abused in prison and his family was ostracised. This case is very well-known in the space of LGBTQ advocacy in India, and he used this experience to file for the unconstitutionality of 377 in 2018.

**Anwesh Pokkuluri:** He is an alumni from the Indian Institute of Technology (IIT), Delhi, which is considered to be one of the most premier engineering institutions in the country. Him, alongside other alumni members of the LGBTQ group 'Pravritti' filed a petition in 2018.

**Ashok Row Kavi:** He is a LGBTQ rights activist who has worked with many NGOs focused on gender and sexual health advocacy. Representing the NGO 'The Humsafar Trust', he filed a petition to the ISC in 2018 challenging the constitutionality of Section 377.

**Keshav Suri:** He is the youngest Executive Director of the Lalit Suri Hospitality Group, one of the top 5-star hotel chains in the country. He also filed a petition to the ISC in 2018.