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India decriminalized homosexual acts Gay sex is no longer a crime in India: High Court



Indian gay rights activists march in Bangalore on June 28.

NEW DELHI (AFP)

The New Delhi High Court made the prospect of freedom and understanding for gays and lesbians in India a closer reality on Thursday as it decriminalized gay sex between consenting adults.

The British colonial law

One of the top Indian courts, The New Delhi High Court ruled that an existing 149 years old statute from the British colonial era prohibiting homosexual acts was discriminatory and therefore a violation of fundamental rights under the constitution.

"It cannot be forgotten that discrimination is the antithesis of equality and that it is the recognition of equality which will foster dignity of every individual," the bench said in a 105-page judgment.

The statute in question is a British colonial-era law banning "carnal intercourse against the order of nature." Conviction carried a fine and maximum 10-year jail sentence.

Although prosecutions were rare, gay activists said police used the law to harass and intimidate members of their community.

Decriminalization of gay sex

The High Court ruling was made on a petition brought by the Naz Foundation, a gay advocacy group fighting for equal rights and AIDS awareness.

"This is a long-awaited and incredible judgement," said gay rights activist Gautam Bhan.

"The judges in their verdict spoke about inclusivity, equality and dignity. They spoke about a vision of India as an open, tolerant society and to hear all this from the Delhi High Court was amazing," Bhan said.

While the ruling is non-binding outside the Indian capital, lawyers supporting the petition said it set a precedent that effectively decriminalized consensual gay sex nationwide.

Opposition

The petition had been staunchly opposed by religious groups, particularly leaders of India's Muslim and Christian communities who argued that all homosexual acts were "unnatural" and should therefore be banned.

"The Church's stand on the issue has always been clear. For us it is an unnatural act, against the divine law. We will definitely oppose it," said Joseph Dias, general secretary of Mumbai-based organization Catholic Secular Forum.

"Homosexuality is an offence under shari'a law and haram (prohibited) in Islam," Deputy Vice Chancellor Maulana Abdul Khalik Madrasi of the Islamic and academic center Darul Uloom Deoband said.

Gay sex has long been a taboo subject in conservative India, where many still regard homosexuality as an illness.

A vocal homosexual community

In recent years, however, the country's largely closeted homosexual community has raised its profile, organizing gay pride marches in major cities such as New Delhi and Mumbai.

"I feel very proud to be an Indian today. This was a very just ruling," said openly gay fashion designer Wendell Rodericks.

"The entire legal community was in favour, I think, of the act being declared legal if it was between consenting adults," Rodericks said.

The Indian government has offered mixed messages on its policy regarding the decriminalization of gay sex, with some ministers speaking out in favor of the petition, only to be contradicted by others in the cabinet.

"The government can't ignore this," Naz Foundation executive director Anjali Gopalan told reporters after the ruling was announced.

Law Minister Veerappa Moily declined to offer any immediate comment on Thursday's ruling, telling reporters at parliament that he needed to study the text properly.

The government has the right to appeal against the court ruling.

The petitioners at the High Court had received substantial overseas support, including from the United Nations.

Jeffrey O'Malley, director of the United Nations Development Program on HIV/AIDS, had argued that decriminalizing homosexuality would help India to combat the spread of the illness.

India has an estimated 2.5 million people living with HIV.

Bollywood actress and gay rights campaigner Celina Jaitley said the High Court ruling was historic.

"I'm overwhelmed," Jaitley told AFP in Mumbai.