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India decriminalises gay sex

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NEW DELHI: India took a giant, albeit belated, step towards globalisation on Thursday when the Delhi high court delivered a historic judgement to amend a 149-year-old colonial-era law — Section 377 of the IPC — and decriminalise private consensual sex between adults of the same sex. It is the biggest victory yet for gays rights and a major milestone in the country's social evolution. India becomes the 127th country to take the guilt out of homosexuality. ([Watch](#))

Full text of Delhi HC judgment (PDF)

In a judgment that has aroused strong reactions from religious and political groups, the court declared that Section 377 IPC, where it ``criminalized consensual sexual acts of adults in private'', violated fundamental rights to personal liberty (Article 21 of the Constitution) and equality (Article 14) and prohibition of discrimination (Article 15).

A bench comprising Chief Justice A P Shah and Justice S Muralidhar clarified that the provisions of Section 377, enacted in 1860 to deal with an unspecified range of ``unnatural offences'', would hereafter be restricted to non-consensual penile ``non-vaginal sex'' (rape by a homosexual) and ``penile non-vaginal sex involving minors'' (pedophilia).

In a courtroom tense with anticipation, the bench invoked Jawaharlal Nehru's stirring words to the Constituent Assembly, while linking the issue of homosexuality with the politically resonant theme of inclusiveness. ``If there is one constitutional tenet that can be said to be (the) underlying theme of the Indian Constitution, it is that of inclusiveness.'' As a corollary, it added that ``those perceived by the majority as 'deviants' or 'different' are not on that score excluded or ostracized.''

Upholding the petition filed by Naz Foundation, the court ruled: ``Indian constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions of who the LGBTs (lesbians, gays, bisexuals and transgenders) are. It cannot be forgotten that discrimination is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual.''

``There is almost unanimous medical and psychiatric opinion that homosexuality is not a disease or a disorder and is just another expression of human sexuality,'' the court observed.

While stating that its reinterpretation of Section 377 would hold till Parliament amends the law, the court commended the Law Commission's 172nd report which, it said, ``removes a great deal of confusion''. The Law Commission suggested repeal of Section 377 while redefining rape to include sexual offences of non-consensual sex between adults of the same sex and pedophilia.

The verdict triggered protests from religious leaders across the spectrum who invoked the ``will of God'' to claim that the ruling would lead to the ``ruination'' of society and family values. Social workers and psychologists, however, welcomed the order, describing it as ``scientific and humane.''

Political parties seemed divided. The CPM welcomed the judgement, while Samajwadi Party said it was totally opposed to it. Both Congress and BJP sought to buy time in order to assess the popular opinion — both said they would have to study the order before commenting on it. BJP leaders like Murli Manohar Joshi, though, came out in opposition, indicating an emerging left-right divide on the issue.

The court has clarified that its judgment would not result in the re-opening of criminal cases involving Section 377 IPC that have already attained finality.

[QnA: What does the decriminalization of homosexuality by the Delhi HC mean for India?](#)

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