

Landmark Verdict: India decriminalises homosexuality

After 67 years of independence, India has finally shed away the prejudice of its past, at least in so far as one of its archaic laws are concerned. Today, the Supreme Court of India in its landmark Judgment decriminalised same sex relations between consenting adults. After a relentless battle put up by the LGBTQ community for close to nearly two decades, India and more particularly the Judiciary has truly lived up to its founding principles of Justice, Liberty, Equality and Fraternity, all enshrined in the Constitution.

The Judgment brings to life the safeguards provided to the LGBTQ community under the Constitution of India under Articles 14 and 15. It is a leap towards a more inclusive and progressive society, ridding the nation of one of its colonial laws. In times where intolerance seems to be the norm, this move truly shows the moral fibre and forward thinking attitude of the Indian Judiciary.

Section 377 of the Indian Penal Code has curtailed the rights of the LGBTQ community for over a century. The Section sought to punish 'carnal intercourse against the order of nature', which could result in a consenting adult maintaining same sex relations to be imprisoned for a term which may extend to 10 years. In the present Judgment this section has been struck down by the Supreme Court as it violates the provisions of the Constitution with a view that laws must be interpreted as per the requirement of changing times. The Judgment sets out that "the effect of Section 377, thus, is not merely to criminalize an act, but to criminalize a specific set of identities. Though facially neutral, the effect of the provision is to efface specific identities. These identities are the soul of the LGBT community."

This battle for inclusion and recognition of rights commenced around 17 years ago, in the year 2001, when two not for profit organizations, namely, the Naaz Foundation and AIDS Bedhbhav Virodh Andolan filed a public interest litigation in the Delhi High Court. Nearly two decades later with the issue going back and forth in the Courts, the fight has today ultimately resulted in a unanimous decision to decriminalise same sex relations between consenting adults by holding Section 377 to be irrational, arbitrary and incomprehensible as it fetters the right to equality for the LGBTQ community.

Justice Chandrachud stated in his Judgment, "It is difficult to right the wrongs of history. But we can certainly set the course for the future. That we can do by saying, as I propose to say in this case, that lesbians, gays, bisexuals and transgenders have a constitutional right to equal citizenship in all its manifestations."

The Supreme Court has in its current Judgment held:

- (i) Section 377 of the Penal Code, in so far as it criminalises consensual sexual conduct between adults of the same sex, is unconstitutional;
- (ii) Members of the LGBT community are entitled, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution;
- (iii) The choice of whom to partner, the ability to find fulfilment in sexual intimacies and the right not to be subjected to discriminatory behaviour are intrinsic to the constitutional protection of sexual orientation;
- (iv) Members of the LGBT community are entitled to the benefit of an equal citizenship, without discrimination, and to the equal protection of law

If you have any questions, please contact:

Harsha Joshi | harsha.joshi@veritaslegal.in

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Our mailing address is:

Veritas Legal

Forbes Building, 1st Floor, Charanjit Rai Marg, Fort, Mumbai 400001 India

Write to us: veritas@veritaslegal.in