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A WIN FOR L.G.B.T. RIGHTS IN INDIA

After a court decision sets an admirable example for other countries, India still has work to do at home.

There are many reasons to find fault with modern India. The grinding poverty. The crippling caste system. A culture in which sexual attacks against women often go unpunished. The rise of Hindu extremists obsessed with demonizing Muslims. A political system that often fails to address these challenges.

So the recent groundbreaking, unanimous decision of the country's top court to overturn a colonial-era ban on consensual gay sex was a welcome affirmation of human dignity.

It was also proof of the power of the judiciary in a democracy — in this case, the world's most populous democracy — to right wrongs that have long penalized, even terrorized, the most vulnerable members of society, wrongs that politicians would rather ignore.

The 495-page judgment, handed down by the Indian Supreme Court this month, decriminalized gay sex, which had been barred under an 1860 law imposed by the British when they ruled India that banned "carnal intercourse against the order of nature."

The law, under which thousands of people were prosecuted and could be imprisoned for up to 10 years, was "irrational, indefensible and manifestly arbitrary," Chief Justice Dipak Misra wrote. (It remains illegal to have sex with animals or children.)

"Consensual sex between adults in a private space, which is not harmful to women or children, cannot be denied as it is a matter of individual choice," the court decision said.

Justice D.Y. Chandrachud said, "The state has no business to get into controlling the private lives of the LGBT community members or for that matter that of any citizen."

Significantly, though, the court went beyond the specific question of gay sex by emphasizing the broader

concept of the humanity of L.G.B.T. people and the Indian Constitution's responsibility to protect individual rights and dignity. The court even apologized for Indian society's past mistreatment of gay people.

Such an outcome was not foreordained in India, a socially conservative nation of 1.3 billion people where the law has often been used for intimidation and where the government, a broadly right-wing Hindu national coalition, is not known for defending minority rights.

Although efforts to overturn the ban have been underway for years, they gathered momentum in 2000 when a young man sought help from an H.I.V. advocacy organization after his parents forced him to undergo electroshock therapy to "cure" his homosexuality.

After a serious setback in 2013, the lawyers who spearheaded the successful legal challenge, Menaka Guruswamy and Arundhati Katju, devised a new strategy that focused on the personal cost of constitutionally sanctioned discrimination.

They highlighted those who suffered under the law by enlisting as co-petitioners in the suit more than two dozen gay, lesbian, bisexual and transgender people who risked arrest simply for publicly identifying themselves as L.G.B.T.

"This is a plea by 6 to 8 percent of the Indian population to be regarded as full citizens and not unconvicted felons," Ms. Guruswamy told the court. "This is love that must be constitutionally recognized and not just sexual acts," she added.

After the decision, Ms. Guruswamy wrote in *The Hindustan Times*, "This jurisprudence of freedom will have resonance all over the Commonwealth, in the many countries that the colonial raj left behind unnatural sex laws inspired by Victorian, not local, morality."

In 35 of the 63 Commonwealth countries, mostly in Africa or the West Indies, homosexual acts remain a criminal offence.

Given India's democratic tradition and importance as a rising regional power, the court's enlightened decision is already inspiring similar legal challenges in more than a half-dozen countries, including Kenya and Singapore.

As often is the case when barriers are broken, there is still much work to do, and one can assume a cultural backlash as gay people in India seek to exercise their newfound freedoms.

One troubling sign was the silence of top politicians, especially Prime Minister Narendra Modi, even as the Indian news media, including several conservative outlets, lauded the ruling. Mr. Modi's government has indicated that while it will support the decision, it will oppose a further expansion of gay rights.

Good luck with that.

Given the court's sweeping and principled assertion that fundamental rights apply to all Indians, regardless of sexual orientation, activists have made clear their intention to push for the other rights they are denied, including to marry, adopt children, be protected from hate speech and inherit their partner's wealth.

As Ms. Guruswamy told an interviewer at *The Caravan* magazine: "But you create constitutional principle. And then you build on it."

India's Supreme Court laid that foundation, and has offered renewed hope in the power of democratic institutions to ensure that all people enjoy equal protection under the law.