

# India strikes down colonial-era law against gay sex

NEW DELHI

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In a groundbreaking victory for gay rights, India's Supreme Court on Thursday struck down one of the world's oldest laws criminalizing consensual gay sex, putting to rest a legal battle that stretched for many years and burying one of the most glaring vestiges of India's colonial past.

After weeks of deliberation in the Supreme Court and decades of struggles by gay Indians, Chief Justice Dipak Misra said the law, known as Section 377, was "irrational, indefensible and manifestly arbitrary."

In court filings that stretched for hundreds of pages, more than two dozen petitioners related the emotional cost of living closeted lives, the bouts of depression, the abuse, the persecution, the blackmail and the coming-out journeys they had made while living under a shadow that made their most intimate behavior illegal.

"This ruling is hugely significant," said Meenakshi Ganguly, the South Asia director for Human Rights Watch. India is the world's second-most populous country, home to many millions of gay people, and Ms. Ganguly said the ruling could set a precedent for nations with similar colonial-era laws to end their "discriminatory, regressive treatment" of gay and transgender citizens.

India has a mixed record on the issue. Its dominant religion, Hinduism, is actually quite permissive of same-sex love. Centuries-old Hindu temples depict erotic encounters between members of

the same gender, and in some Hindu myths, men become pregnant. In others, transgender people are given special status and praised for being loyal.

But that culture of tolerance changed drastically under British rule. India was intensely colonized during the height of the Victorian era, when the British Empire was at its peak and when social mores in England were very conservative.

In the 1860s, the British introduced Section 377 of the Indian Penal Code, imposing up to a life sentence on "whoever voluntarily has carnal intercourse against the order of nature." The law was usually enforced in cases of sex between men, but it officially extended to anybody caught having anal or oral sex.

Though in recent years more and more Indians have come out, and acceptance of gay, lesbian and transgender people has grown to some degree, the fact that intimate behavior was still criminalized created much shame and discouraged countless Indians from coming out.

In hearings in July, lawyers argued that the law was a harmful anachronism and legally inconsistent with other recent court rulings, including one made last year that guaranteed the constitutional right to privacy.

They pointed to similar old anti-sodomy laws that had been toppled in the United States, Canada, England and Nepal, India's neighbor. And they said that Section 377 had a long and ugly history as a cover for blackmailing, harassing and sexually assaulting gay and transgender Indians.

Occasionally, lawyers pushed beyond the legal arguments and made pleas for judges to recognize the humanity of the petitioners.



REBECCA CONWAY FOR THE NEW YORK TIMES

**A pride march last year in New Delhi. Acceptance of gay, lesbian and transgender people has grown in India, but the law discouraged countless people from coming out.**

Menaka Guruswamy, one of the lawyers, spoke of the decades-long relationship between two older petitioners, Navtej Singh Johar and Sunil Mehra, and the professional sacrifices they had made to prevent their partnership from being detected.

Ms. Guruswamy encouraged the judges to consider the effect that scrapping Section 377 would have on the lives of petitioners in their 20s.

"Tell my young clients that their lives will be different," she pleaded. "The rec-

ognition of equal citizenship, that is the business of life, so that they know they are loved, protected."

At points, the judges seemed to sympathize. Justice Indu Malhotra called homosexuality a "variation, not an aberration." After a lawyer appearing for India's government tried to cut off Ms. Guruswamy, Chief Justice Misra said, "Let her speak!"

India's leading politicians have mostly stayed out of the debate.

Prime Minister Narendra Modi has

refrained from addressing Section 377, or the rights of gay people in India more broadly, despite the conservativeness of his governing Bharatiya Janata Party on some social issues.

Early in the Supreme Court's July hearings, the central government decided not to take a position on Section 377. In recent years, leaders from a far-

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right Hindu nationalist group associated with the Bharatiya Janata Party have come out in support of decriminalization.

It was some of India's Christian groups that put up the most spirited defense of the law. Lawyers for these groups argued that sexual orientation was not innate and that decriminalizing gay sex would lead to the transmission of H.I.V.

Prosecution under the law was rare. But over the years, many Indians feared that if they reported crimes such as rape, they, too, would be arrested or harassed by police officials.

The legal battle to strike down Section 377 lasted for years before the Delhi High Court ruled in 2009 that the law could not be applied to consensual sex.

Soon after, Hindu, Muslim and Christian groups filed appeals in the Supreme Court, and in 2013, the court restored the law, saying Parliament, and not the Delhi High Court, should take up the issue.

In its judgment that year, the Su-

preme Court justified the ruling by writing that only a "minuscule fraction of the country's population constitute lesbians, gays, bisexuals or transgenders."

Activists regrouped, and in 2016 five gay and lesbian Indians submitted a writ petition challenging Section 377 on the basis that it violated their rights to equality and liberty, among other infractions, under India's Constitution.

The initial group included Mr. Johar, a dancer, and his partner, Mr. Mehra, a journalist; Ritu Dalmia, a celebrity chef; Ayesha Kapur, a businesswoman; and Aman Nath, a hotelier.

Leading up to the Supreme Court hearings, at least 26 other Indians with varied social and economic backgrounds joined them.

Among those to file a petition was Anurag Kalia, 25, an engineer living in Bangalore, who was once so afraid to say the word "gay" that he practiced doing so in front of the mirror. "I used to whisper it," he said.

Mr. Kalia said announcing his sexuality in such a public way with the court petition was a "personal victory of sorts," reflecting a broader evolution.

In 2013, more than 100 of his classmates and teachers gave Mr. Kalia a standing ovation when he announced that he was gay during an end-of-year celebration at the University of Delhi, where he studied. A few years later, he came out to his mother before she died. "That was one thing that would have forever pinched me," he said.

The end of Section 377 started a new chapter in India, he said. And though there were more battles to be fought, Thursday's decision was a beginning.

"I look back and think, 'It did turn out well for me,'" he said.