

India decriminalizes consensual gay sex

gay rights activists
participates in a rally
celebrating the
groundbreaking ruling by the
Delhi High Court
decriminalizing homosexuality,
in Calcutta, India, Thursday.
Sucheta Das/AP

The ruling overturns a 150-year-old law in the deeply conservative country. The court said the law violated the Constitution.

By Mian Ridge | Correspondent of The Christian Science Monitor
from the July 2, 2009 edition

New Delhi - In a historic ruling, an Indian court decriminalized homosexual sex Thursday – a move that was hailed by gay rights activists as the first concrete step toward achieving equal rights for homosexuals in this deeply conservative country.

Homosexual sex has been illegal in India since 1861, when a law introduced by Lord Macaulay, a British politician, made it punishable by up to 10 years in prison.

But Thursday, Delhi's High Court ruled that, "consensual sex amongst adults is legal, which includes even gay sex and sex among the same sexes."

Referring to the 150-year-old law that had banned it, the court said that implementing that law violated the country's Constitution and international human rights conventions.

The ruling means that the government must now either repeal the law nationwide, or appeal against the judgment in the country's Supreme Court.

The ruling follows a long, drawn-out legal battle. In 2001, the Naz Foundation, a sexual health organization, filed a petition arguing that the law – Section 377 of India's penal code – was used by police to harass and intimidate homosexuals. The law is rarely used for arrests or convictions.

The group also argued that the law contributed to the spread of HIV and AIDS, because it made it difficult for health workers to reach those at risk. Around 2.5 million of India's 1 billion-plus population is thought to have HIV.

Indeed, the petition was supported by the National Aids Control Association of India, a government body. In the past eight years, the campaign to repeal Section 377 has become increasingly high profile, with several Bollywood stars supporting it.

It was opposed, however, by the last government's home ministry and by religious groups.

Thursday, spokesmen from Christian, Hindu, and Muslim communities criticized the ruling.

Changing attitudes

Gay rights activists hope that Thursday's ruling will hasten a creeping change in society's attitudes toward homosexuals here.

"It's great news and so exciting, so positive," says Parmesh Shahani, author of the book, "Gay Bombay." "As soon as the news broke, I got texts from friends saying 'at last, we're equal.' "

But while homosexuality is increasingly accepted in India's big cities, this remains a deeply conservative country. At the annual gay pride march in the capital on Sunday, many participants wore face masks, lest their families saw them on television.

Activists say they hope the government will not attempt to appeal to some religious groups and political parties by appealing the decision in the Supreme Court.

The US-based Human Rights Watch also urged the government not to appeal the Delhi High Court's ruling and called on Parliament to rewrite

Section 377 as soon as possible.

India's law minister said Thursday that the Congress Party-led government will study the judgment carefully.

"This is really the beginning of a very long fight," says Mr. Shahani, adding that he hoped the ruling would pave the way for civil partnerships between Indians of the same sex.

<http://www.csmonitor.com/2009/0702/p06s11-wosc.html>