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India: Historic ruling against “sodomy” laws, the first step to equality

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Amnesty International welcomes the historical decision by the high court in Delhi to decriminalize homosexuality. The decision is a significant step toward ensuring that people in India can express their sexual orientation or gender identity without fear or discrimination, said Amnesty International.

“The decision is a significant step toward ensuring that people in India can express their sexual orientation and gender identity without fear or discrimination. This British colonial legacy has done untold harm to generations of individuals in India and across the Commonwealth” said Madhu Malhotra, Deputy Director, Asia Pacific, Amnesty International.

The ruling overturns a 19th century British colonial law which bans engagement in consensual sex with an individual of the same sex as “carnal intercourse against the order of nature”. The law had been used to stifle the work of organizations working on HIV/AIDS prevention in India. The court rejected the law as discriminatory and “against constitutional morality”.

“Amnesty International urges the Indian government to address abuse and discrimination by police and other officials and take measures to end discrimination on the basis of sexual orientation and gender identity in access to economic, social and cultural rights, including housing, employment and health services,” said Madhu Malhotra.

The court’s ruling rejected every argument put forward by the government in defence of the law. It found that section 377, the law criminalizing homosexuality, reflected an understanding of sexual orientation that is “at odds with the current scientific and professional understanding”. In particular, the government’s contention that the measure helped stop the spread of HIV/AIDS is “completely unfounded” and “based on incorrect and wrong notions,” the court said.

The court acknowledged that Section 377 has been used to “brutalis[e]” members of the gay community and other men who have sex with men, abuses that have long been documented by local human rights defenders and Amnesty International. The Judges ruled that popular morality or public disapproval of certain acts is not a valid justification for restriction of the fundamental rights set forth in the Indian Constitution.

India has no laws specifically criminalizing child sexual abuse and has used Section 377 to address this gap. The court’s ruling now restricts section 377 to cases of rape and child abuse. Amnesty International urges lawmakers to rewrite the law to deal explicitly with those crimes.

The Naz Foundation, an Indian sexual rights organization which brought the case against Section 377, told Amnesty International: “It's an incredible day, it's been a long battle. Today homosexuality has been decriminalized but not legalized. It is a baby step but finally India has entered the 21st century.”

With this decision, India becomes the latest country to join the global trend towards decriminalization. Amnesty International calls on those countries that continue to criminalize homosexuality to follow India's example and repeal those laws. The majority of these laws are retained within Commonwealth countries. For more information see, Love, hate and the law: Decriminalizing homosexuality (<http://www.amnesty.org/en/library/info/POL30/003/2008/en>)