

SEC - 377

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INDIA NOT READY FOR GAYS, PUBLIC MORALITY SUPREME: CENTRE TO SC
by G Ananthakrishnan

NEW DELHI, NOVEMBER 30: In 2005, India, the emerging superpower, is not ready for homosexuality.

That's the upshot of the Centre's response to a petition in the Supreme Court where the Naz Foundation has challenged the validity of Section 377 of the Indian Penal Code (IPC)-it deals with unnatural offences and makes gay sex a punishable act.

The Union Home Ministry's affidavit states that "public opinion and the current societal context in India does not favour the deletion of the said offence from the statute book."

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Yet the affidavit also mentions that the Government was "examining" recommendations of the Law Commission of India which favoured deletion of the clause from the IPC.

The affidavit, filed by Deputy Secretary (Judicial) Y K Baweja states "Even if it is assumed that the rights of sexual minorities emanates from a perceived right to privacy, the right of privacy cannot be extended to defeat public morality which must prevail over the exercise of any private right."

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"The question of homosexuality is not a mere question of personal preferences but may involve behavioural sanction of legislative authority of the state as it tends to affect the social environment...In fact, homosexuality/sodomy is still an offence in large number of countries all over the world," states the affidavit which furnishes an exhaustive list of countries where it is illegal and where it is legal.

all over the world

As per the list, some of the countries that still retain the offence in their statute book are Algeria, Angola, Egypt, Libya, Barbados, St Lucia, Trinidad and Tobago, Afghanistan, Bhutan, Myanmar, Nepal, Maldives, Singapore, Solomon Islands and almost all Middle East countries except Iraq.

The NGO had approached the Supreme Court against an order of the Delhi HC which last November dismissed their petition. In the appeal, the Foundation contended that the presence of the law was hampering its work in the field of HIV/AIDS intervention and prevention. Countering this, the Centre said it was only a "general apprehension" and that no specific instance or reasons have been given to support the claim. The Centre also pointed out that it was for the legislature to decide whether homosexuality should be an offence or not and that "there are no judicially manageable standards by which to assess as to whether a particular act should be made an offence or not."

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