

SECTION 377: A DECREE OF HOPE

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The verdict by the Supreme Court, on Thursday, of rescinding Section 377 of the Indian Penal Code — which criminalised homosexuality — has also given cheer to HIV-positive patients, health-care workers and rights activists. They say it restores dignity and gives hope for enabling better care to HIV-positive gay individuals who previously were faced with the dilemma of going untreated or facing ridicule and discrimination after coming out.

“This ruling opens access for many to treatment with dignity without fear and discrimination. Those who feared being counted are now getting a new voice with this judgment,” says Paul Lhungdim of the Delhi Network of Positive People, a trust that works on ensuring equitable access to medicine to those living with HIV.

“From testing centres, to doctors’ rooms, to medicine dispersal units, discrimination towards gay people with HIV has been rampant. We were treated almost as if we deserved to be ill. Hopefully, this mentality will change now,” says an HIV+ gay patient registered in Delhi, who did not want to be named.

He adds that he has friends who have had to leave their State, home and family for fear of backlash.

“Access to protection, education about safe sex and timely medical interventions are all vital in our fight to contain HIV. This judgment has made us equal participants in the journey,” he adds.

According to UNAIDS, there were 2.1 million people with HIV in India and 62,000 AIDS-related deaths, in 2016. Only half were accessing anti-retroviral therapy. The prevalence of HIV among gay men and other men who have sex with men (MSM) was 4.3%.

In South Africa, there were 7.1 million people living with HIV in 2016. Since 1998, the Lesbian, Gay, Bisexual, Transgender (LGBT) community has had the same legal rights as non-LGBT people. The HIV prevalence there among gay men and MSM was 26.8%.

The government admits that the existence of Section 377 in India encouraged “under-reporting” or even missing on HIV+ cases, and made risky sexual practices go unnoticed and unaddressed.

“It is a known fact that for several decades now, Section 377 has hampered HIV/AIDS coverage. Many self-excluded themselves from the benefits of government programmes out of fear of life-threatening discrimination and backlash. The worst affected were people who were engaging in sexual acts that were criminalised under the law,” says a senior official in the Ministry of Health, who did not want to be identified.

“The judgment of the Supreme Court is extraordinary and just,” says former Union Health Secretary K. Sujata Rao. “The decriminalisation of Section 377 will give access and ease of working for non-governmental organisations and workers from the National AIDS Control Organisation (NACO) to work openly and without fear of being charged as abettors of a crime.”

To Dr. K.K. Aggarwal, former president of the Indian Medical Association (IMA), the job of health-care providers or the judiciary is to adapt with the changing times and broaden, delete or re-interpret the laws as per the needs of society. He says, “The medical community has always

considered homosexuality as a normal and natural phenomenon and not a disease or crime. It becomes important now for a medical doctor to know if the person is a LGBT. Till now, many of them did not come forward and disclose their sexual orientation out of fear of the law.”

However, another expert, Dr. Archana Dhawan Bajaj, gynaecologist and obstetrician at Nurture IVF Centre, New Delhi, says the judgment has posed new questions.

She asks: “It’s a welcome judgment, but the next big debate is how are these couples going to start a family? What are the guidelines to having babies for same sex couples?”

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