

Supreme Court refers Section 377 appeal to chief justice

The court said the chief justice will decide if petitions against Section 377 can be tagged together and heard by the Constitution bench



This is the first time that lesbian, gay and bisexual citizens have filed writ petitions in the Supreme Court seeking to quash Section 377. Photo: Mint

New Delhi: Supreme Court chief justice T.S. Thakur will now decide whether a fresh petition challenging the criminalization of homosexuality should be heard.

A two-judge bench led by justice S.A. Bobde heard a writ petition on Wednesday filed by Sangeet Natak Akademi awardee Navtej Singh Johar, 57, and others seeking to decriminalise consensual same-sex intercourse between adults.

“We are not inclined to hear it at this stage. Let the chief justice decide if this can be tagged together and heard by the constitution bench,” the judge said, referring to the curative petitions challenging Section 377 of the Indian Penal Code (IPC) that are pending before the court.

The petitioners include journalist Sunil Mehra, chef Ritu Dalmia, Neemrana chain of hotels co-founder Aman Nath and business executive Ayesha Kapur.

Their petition argued that Section 377 violates the right to life and personal liberty, guaranteed under Article 21 of the Indian constitution. It also sought a declaration from the apex court that the article encompasses the right to sexuality, sexual autonomy and choice of sexual partner.

“Why can’t a gay couple adopt children, transfer insurance, enjoy spousal privileges, transfer property posthumously to partners. Who gives anyone the right to prosecute people and deny people the rights to live like anyone else?” asked Mehra, who is Johar’s partner of 25 years. “This is a matter of constitutional rights.”

This is the first time that lesbian, gay and bisexual citizens have filed writ petitions in the Supreme Court seeking to quash Section 377. “The criminalization of sexual minorities under Section 377 IPC has necessarily meant that LGBT (lesbian, gay, bisexual and transgender) persons have been reluctant to approach this Hon’ble Court in their own standing out of fear of both persecution and prosecution,” the petition stated.

In February, a bench comprising chief justice Thakur, and justices Anil Dave and J.S. Khehar had referred a set of curative petitions that sought a review of a 2013 judgment upholding a colonial-era law, to a constitution bench.

A constitution bench hears matters that are of public interest and have constitutional dimensions.

The curative petitions were filed by NGO Naz Foundation, parents of LGBT children, mental health professionals and a coalition of human rights groups who called themselves Voices Against 377, among others.

On 11 December 2013, a bench comprising G.S. Singhvi and S.J. Mukhopadhyaya overturned a Delhi high court verdict that had set aside the 1860 law that criminalized consensual intercourse between same-sex adults. In 2009, the court ruled that Section 377 of the IPC, which prohibits “carnal intercourse against the order of nature with any man, woman or animal”, was unconstitutional. Section 377 also criminalizes sexual intercourse that is penile and non-vaginal, deeming it “against the order of nature”. The law affects the rights of the LGBT population, in particular, but its provisions can also be applied to heterosexual citizens.