

**ON 11 DECEMBER 2013
THE SUPREME COURT OF
INDIA RE-ESTABLISHED
THE COUNTRY'S ANTI-GAY
SEX LAW. THIS BRIEFING
EXPLAINS WHAT HAS
HAPPENED AND WHAT
CAN BE DONE.**

BACKGROUND AND RECENT DEVELOPMENTS:

Sex between people of the same sex was effectively banned in India when Section 377 of the Penal Code was introduced by the British in 1860. The law penalised 'voluntary carnal intercourse against the order of nature' with life imprisonment.

In 2001 the HIV/AIDS charity the Naz Foundation filed a petition before the High Court in Delhi challenging Section 377. The petition argued that Section 377 violated the human rights of LGB & T people to equality and life with dignity and privacy. It explained that the law was used to harass, intimidate and torture LGB & T people and to discriminate against men who have sex with men in healthcare provision.

In 2009 the Delhi High Court ruled on the Naz Foundation's case, stating that Section 377 should not be used to criminalise consensual sex between adults of the same sex. Since the Delhi High Court ruling, LGB & T people in India had begun to be more open about their sexual orientation. The Indian Government endorsed the Delhi High Court's decision, but a third party not directly affected by Section 377 filed a petition to appeal the Delhi High Court's decision before the country's top court – the Supreme Court. In December 2013 the Supreme Court rejected the Delhi High Court ruling and referred the matter to Parliament to decide whether to repeal or amend Section 377.

The Supreme Court ruling effectively re-criminalised same-sex sexual relations and rolled back equality for India's estimated 74 million LGB & T people. To put this in perspective the population of Britain is 64 million.

REACTIONS TO THE SUPREME COURT'S DECISION

The Supreme Court's decision came as a great shock to many LGB & T people and their allies in India. Dissatisfaction with the Supreme Court's judgment was expressed by a wide range of people including academics, Bollywood actors, business, and the United Nations.

Sonia Gandhi, the leader of the Congress Party which rules India, called on Parliament to address this issue and uphold constitutional guarantees of life and liberty for all citizens of India. This statement was supported by other ministers. The Attorney General called the re-criminalisation of same-sex sexual relations a tragedy.

Sadly, the main opposition party endorsed the Supreme Court's judgment. LGB & T groups report a number of negative impacts as a result of the judgment including:

- A rise in homophobia, transphobia and in particular hate speech
- An increase in the strength of anti-LGB & T equality campaigners
- A concern amongst sexual health workers that men who have sex with men may not come forward to use their services due to a fear of prosecution

The Supreme Court's ruling was also a blow for LGB & T equality activists in other countries which criminalise same-sex sexual relations. India was the first country where anti-gay sex laws were introduced during British rule. Similar laws were then adopted as part of the legal codes of many countries in Asia, Africa and South America. If the Indian Supreme Court had upheld the Delhi High Court's 2009 ruling it would have set an important precedent for the Supreme Courts of other countries.

WHAT ACTION ARE PEOPLE IN INDIA TAKING TO CHALLENGE THE LAW NOW?

On 19 December 2013 the Indian Government filed a petition for a judicial review of the Supreme Court's decision. The petition argued that the judgment is unconstitutional and pointed out 78 grounds on which the Supreme Court's decision was unsound. The Naz Foundation, the original petitioner in the constitutional challenge to Section 377, also filed a petition for a judicial review. Sadly on 28 January the Judges dismissed the petitions and refused to review the case.

Although interested parties are able to file another petition this is very unlikely to succeed. The Indian Government has said that it will not consider repealing or amending Section 377 until all judicial process is complete. India is due to hold a general election in 2014. This makes it very unlikely for a legislative solution to be found in the near future.

WHAT ARE LGB & T EQUALITY GROUPS IN INDIA DOING?

The judgment has prompted LGB & T equality groups in India to come together to stand up for their human rights.

- LGB & T organisations across India are actively campaigning against the Supreme Court's decision. Thousands of activists took to the streets in protest on 15 December 2013 in a 'Day of Rage'.
- LGB & T activists are working hard to build new relationships and coalitions to challenge the anti-gay sex law. These include new alliances between LGB & T and straight Christians aimed at challenging homophobia in religious groups.
- HIV/AIDS organisations continue to deliver services to men who have sex with men but are concerned that the ruling may make it harder for those men to come forward for support due to increased stigma and the fear of prosecution.

WHAT IS STONEWALL DOING?

At the moment there is limited opportunity to influence events in India, as there is soon to be an election.

- Stonewall is in contact with LGB & T equality activists in India and is following the situation closely. We are making sure that the UK Government continues to encourage the Indian Government to do all they can to remedy the situation and uphold the human rights of LGB & T people.
- In December we launched '[Engaging with the UK Government: A guide for lesbian, gay, bisexual and transgender activists worldwide](#)'. This guide supports LGB & T equality campaigners in India and elsewhere by detailing how they can use the UK Government's support for campaigns in their country.

WHAT IS THE UK GOVERNMENT DOING?

The UK Government has discussed the Supreme Court's decision with the Indian Government including at a meeting between the UK Minister of the Foreign & Commonwealth Office and the new Indian High Commissioner in London.

WHAT CAN BUSINESSES WHICH OPERATE IN INDIA DO?

Businesses have a responsibility to their staff worldwide and can be influential in India. Through Stonewall's [Diversity Champions](#) and [Global Diversity Champions](#) programme, we now work with over 120 international businesses to help them improve the working environment for their gay staff and promote equality more broadly.

You can:

- Meet privately with politicians and officials and make sure they understand how such laws negatively impact your business operations in India. As India is in an election year you may want to make sure you speak to politicians across the political spectrum.
- Make a public statement explaining why your organisation supports LGB & T equality. This could be done in partnership with other international businesses in India.
- Do all you can to keep treating your gay staff equally. Although some benefits may be hard to provide you can make sure everyone knows that your workplace is one where gay people should be treated with respect.
- Use materials, such as posters and internal messages, to reiterate your support for equality for all.

WHAT CAN INDIVIDUALS DO?

You can:

- Let LGB & T people in India know you support their work for equality. Use messages and images (for example our Hindi [‘Some People Are Gay. Get Over It!’](#) image) and let people know that in India such openness would risk prosecution.
- Send messages of encouragement to Indian LGB & T equality groups (for example via the [Facebook](#) pages or [Twitter](#) accounts of the main campaign groups) to keep fighting for their rights.
- If you plan to travel to India then make sure you read the [FCO’s travel guidance](#) just before you go.
- Finally, it may be some time before the campaign against Section 377 is successful, so be committed for the long haul. Stay in touch with Stonewall and receive updates on our work on India.



**STONEWALL'S VISION IS OF A BRITAIN, AND A WORLD, WHERE
ONE DAY EVERY SINGLE PERSON WILL NOT ONLY BE ENTITLED
TO FAIR TREATMENT AND RESPECT BUT WILL BE AFFORDED
FAIR TREATMENT AND RESPECT.**

USEFUL LINKS

- www.stonewall.org.uk/international
- www.facebook.com/stonewalluk
- Twitter: @stonewalluk
- www.facebook.com/orinam.net
- Twitter: @chennaipride