

New Delhi: 12.12.2013

PRESS RELEASE: FOR FAVOUR OF PUBLICATION***PUCL Statement on SC Judgment reversing Naaz ruling of Delhi High Court******"Repeal S.377 IPC ! Use of s.377 IPC is itself an abuse!"***

The People's Union of Civil Liberties is shocked and expresses its deepest disappointment at the judgment of the Supreme Court in '*Suresh Kumar Kaushal v Naz Foundation*' delivered on December 11th, 2013, reversing the Delhi High Court judgment of 2009 which had recognized that Lesbian, Gay, Bisexual, Transgender (LGBT) persons are full citizens of India.

We wish to point out that the key constitutional issue underlying the challenge of sec. 377 IPC, is that sec. 377 essentially discriminates between people on the basis of their sexual orientation thereby criminalizing same-sex relations. Thus by affirming the constitutional validity of the outdated section 377 of the IPC, introduced 153 years ago, the Supreme Court has once again reinstated a discriminatory law which violates the right to equality, privacy and dignity and the freedom of speech and expression of a section of the Indian citizens, by criminalizing same sex consensual relationships in private. The effect of the SC ruling has once again relegated LGBT persons to the status of 'second class citizens' because of their sexual orientation and reduced them to what the Delhi High Court evocatively referred to as '*unapprehended felons*'.

The observations of the Supreme Court that in last 150 years there have been only 200 reported prosecutions is neither here nor there. Firstly, that there are only a few prosecutions is no reason to have a provision which is otherwise unconstitutional. Further, cases of harassment, victimization and torture of LGBT persons seldom translate into 'reported prosecutions'. Thus PUCL wishes to point out that using the number of reported prosecutions as the basis for upholding constitutional vires of any provision is unreasonable and dangerous precedent.

The PUCL is of the opinion that the Delhi High Court judgment was legally robust when it held that section 377 was violative of Articles 21, 14, 15 of the Constitution. The key reasons put forward by the Delhi High Court for reading down sec. 377 IPC have unfortunately not been fully considered or answered by the Supreme Court while upholding the constitutionality of the provision. World over there is recognition that sexual preferences are not an aberration and need to be considered as part of a natural orientation. It is with this progressive understanding that even Britain, from where sec. 377 IPC originated, has repealed such ante-diluvian provisions and is in the process of legalizing same-sex marriages. In the ultimate analysis medieval morality appears to have prevailed over constitutional guarantees.

The SC court erred in concluding that mere abuse of a penal provision does not warrant declaring it unconstitutional. In stating this, the court lost sight of the fact that in the instant case the **use of S. 377 against consenting adults is itself an abuse**. PUCL in its report 'Human rights violations against sexuality minorities in India' as far back as 2003 (<http://www.pucl.org/Topics/Gender/2003/sexual-minorities.pdf>) has documented the persecution, torture and atrocities faced by LGBT community at the hands of the State for the sole reason of their sexual orientation. Such persecution is legalized and therefore legitimized by the existence of S.377 IPC in the statute books. The SC has unfortunately added the weight of its authority to such persecution! In PUCL's view, the judgment will therefore only strengthen the homophobic mindset which exists in a section of Indian society.

PUCL reiterates its position that sec. 377 IPC should be repealed and does not have a place in the law books of a modern India.

PUCL also calls upon political parties to undo the historic injustice done to the LGBT community and immediately repeal S 377 IPC in the current session of Parliament itself.

Prabhakar Sinha
President



Dr. V. Suresh,
National General Secretary, PUCL

Kavita Srivastava , National Secretary