

Q&A on the Review Petition being heard before the Supreme Court today

1. What is the **procedure** for admitting a review petition?
 - The review needed to be filed within **30 days** from the date of receiving the certified copy of the judgment that is sought to be reviewed. In this case, several review petitions were filed by January 11, 2014.
 - Oral arguments are **not necessary**. The Supreme Court can issue notice to the opposite party or dismiss the petition on the basis of written submissions. The Court shall only issue notice if it wishes to entertain oral submissions on this matter; otherwise it can reject the petition in chambers itself. However, the Court does reserve the right to call for oral arguments if sees merit in the same.
2. What is the **purpose** behind a review petition?
 - A review petition stands for **re-examination** or re-consideration. The Courts realise that judges are human and can err, thus; exceptions to the general rule of 'finality of litigation' have been carved out in the larger interests of correcting mistakes and miscarriages of justice.
 - However, a review is not an **appeal in disguise**. Its purpose is to correct errors and not to substitute views or disturb the finality of an otherwise sound judgment.
3. What are the grounds under which the Supreme Court can consider admitting a review petition?
 - **Mistake or error apparent** on the face of the record
 - A review petition can be admitted if there is a glaring error on record i.e. error which is based on clear ignorance or indifference to the law. Such errors can be:-
 - Factual errors in recording of evidence
 - Failure to a consider a contention that was urged before the Court
 - Reasoning in the impugned judgment is contrary to the "clear & simple text" of a statute.
 - Judgment is inconsistent or oblivious of a larger bench's decision on a similar matter or a statute (*per in curiam*)
 - Patent error of law which results in a serious miscarriage of law
 - Any other **sufficient reason**
 - "Any other *sufficient* reason" has been previously interpreted by the Supreme Court to mean:-
 - Circumstances are such that they shall affect public confidence in the integrity of the justice system, if the impugned judgment is allowed to stand
 - Recalling an order, as a matter of right, if such order were made by error
 - Necessary for the **sake of justice**
 - This means that the Supreme Court has inherent powers to recall or review its own orders, if it is satisfied that it is required to do so in the larger interests of justice and to prevent the abuse of process of Court.

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- Discovery of **new & important** evidence
 - A review petition may be admitted if new and important matter or evidence, which could not have been produced earlier, is discovered.
- 4. What are the grounds under which the Supreme Court can deny admitting a review petition?
 - The Supreme Court may dismiss the review petition, if it is of the opinion that:-
 - There is a **repetition** of old and overruled arguments which do not merit reopening closed and decided cases
 - There is an emphasis on **minor errors** of an inconsequential nature or errors which are **indirectly relevant** to the question at hand
 - The error in the judgment, even if evident on the face of it, does not **undermine the soundness** of the judgment i.e. it does not result in the miscarriage of justice
 - The error of the judgment is not apparent on the face of the record instead, it **needs to be fished out** and searched for
 - A question is being raised in the review, which could have been asked earlier in the original proceedings but wasn't
 - Apart from the few example above, **mere existence of two perspectives** on a subject is not a ground for review
- 5. What lies next, if the Court does not accept admitting the review petition?
 - Parties may file a '**curative petition**' after an application for review is rejected
 - This is a new mechanism and was first invoked in 2002
 - A curative petition can be permitted if:-
 - There is a violation of the principles of natural justice
 - Say, a person was not a party to the dispute; however, the impugned judgments severely affects her interests
 - If a person was party to the dispute, however, she was not served notice and the matter proceeded as though she had notice
 - The Judge failed to disclose his vested interests in the matter, creating an apprehension of bias, therefore adversely affecting the petitioner.
 - The Supreme Court has held that these conditions must be **strictly** complied with and a senior advocate of the Supreme Court must certify that the review petition does meet these requirements.

Q&A on your rights and s.377

DISCLAIMER – This factsheet on the rights of an individual under s.377 of the IPC after the Supreme Court decision in the 377 ruling is prepared for general information purposes only. The information herein is not legal advice, is not to be acted on as such, may not be up-to-date and is subject to change. Pertinently, this factsheet may not be able to eliminate the harassment that S.377 is usually used for, but may enable you to respond to it with full awareness of your rights. Please consult a legal practitioner to clarify any specific doubts.

1. Can I be out? Do I need to go back to the closet?
 - You can be out and be open about your sexual orientation and gender identity. You do not need to go back to the closet. The Supreme Court in *Koushal* ('377 ruling') does not restrict your freedom of expression in the Constitution.
2. Is 'cruising' illegal? Can one maintain profiles on gay dating platforms (Planet Romeo/Grindr)?
 - 'Cruising' i.e. scouting for casual sexual encounters is illegal under s.377 since it may be construed as an attempt to perform "carnal intercourse against the order of nature". However, maintaining profiles on gay dating platforms such as Planet Romeo or Grindr do not fall within the scope of s.377. Maintaining profiles is simply expressing your identity and not abetting/performing unnatural carnal intercourse.
3. Can I be in a relationship with a person of the same-sex?
 - Yes. The 377 ruling only criminalises sexual acts and not the existence of homosexuals or queer persons. One can be open about their sexuality and express it; the ruling only criminalises sodomy, oral sex and other 'unnatural' sexual acts. The ruling does not take away your right to love.
4. Can I live with my same-sex partner?
 - Yes. You can live with your same-sex partner. Neither the Supreme Court in *Koushal* nor s.377 comes down upon same-sex relationships or cohabitation of two adults of the same sex. It only criminalises "carnal intercourse against the order of nature".
5. Can I access material on safe same-sex sexual activities?
 - Yes. You have the right to access material on safe sex and avoid contracting STIs and HIV. Though there have been incidents previously where health workers have been detained for allegedly abetting carnal intercourse against the order of nature, we believe that such previous incidents will not deter any individual from knowing how to stay safe.
6. Can I access queer porn or erotica?
 - Yes. The Indian Penal Code and the Information Technology Act only criminalise production, publication, circulation or distribution of pornographic material. Possession and consumption, for private purposes, of pornographic material depicting heterosexual or homosexual acts is legal.
7. Are pride marches, protests and 'gay-themed' parties illegal?

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- No. Such community initiatives are legal. The Supreme Court in *Koushal* and s.377 do not restrict your freedom of expression in Article 19 of the Constitution.
8. Why does it matter that we are a miniscule minority? Does that mean we aren't entitled to rights? What kinds of sexual acts are included in the scope of s.377? What does “unnatural carnal intercourse against the order of nature” mean anyway?
- The LGBTAIQ community is entitled to fundamental rights under the Constitution, irrespective of s.377 or *Koushal* (the 377 ruling). Section 377 criminalises same-sex sexual acts or “unnatural carnal intercourse” which is against the order of nature. The courts have previously interpreted it to include anal sex and fellatio within its scope – but it may be extended to include any sexual act which involves penetration that is not penile-vaginal (i.e. penile/anal/digital/oral) and against ‘the order of nature’.
9. On what grounds can I be arrested under s.377?
- You can be arrested by the police under s.377 ***only*** if you have indulged in or abetted or attempted “carnal intercourse against the order of nature”. Also, “mere” suspicion is not a ground for arrest, though “reasonable” suspicion is.
10. On whose complaint can the police act under s.377?
- Since s.377 is a cognizable offence, the police are empowered to investigate and make arrests ***without*** a complaint or a court issued warrant.
11. What can I do if the police threaten me?
- Consult a lawyer! And reach out to [crisis intervention groups](#).
 - In case you have been subjected to harassment by the police about a probable arrest, you have the right to approach the courts for an anticipatory bail. Such a provision is applicable in all states, apart from Uttar Pradesh.
12. Can the police barge into my house and arrest me and my partner?
- Since s.377 is a cognisable offence, the police can potentially arrest without a warrant by barging into your home. However, some points do need to be kept in mind about arrest and questioning by the police.
13. What do I do if the Police arrest me and/or my partner under s.377?
- Please get in touch in a lawyer ***immediately***.
 - You have the right to be informed of the grounds of arrest. Mere suspicion is not a ground for arrest. However, “reasonable” suspicion is a ground nonetheless.
 - You have the right to have a family member or any one of your choice to be informed of your arrest.
 - You have the right to have an arrest memo issued which will be attested by a family -member or a person from the locality where the arrest is being made.
14. What are some questions that can be kept in mind if the police were to question me?
- Please get in touch in a lawyer ***immediately***.
 - You have the right to have a lawyer present with you during such questioning.
 - You have the right to remain silent.
 - You have the right against making statements that could potentially implicate you.
15. How do I respond to harassment that I am facing/ may face from parents or peers about my sexual orientation or sexual identity?

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- Know your rights – you have the right to be ‘out’ and declare your sexual orientation, no one can hurt you for your identity and expression. If the harassment that you’re facing is serious and grave enough to cause apprehensions of safety of yourself or your loved ones – such acts can be prosecuted under ss. 503-510 of the Indian Penal Code which target criminal intimidation. It is still recommended that you [reach out](#) to LGBT groups and organisations to address such issues properly.
16. What remedies do I have against harassment based on my sexual identity in the workplace or educational institution?
- Harassment and intimidation based on one’s sexual orientation or gender identity should be tackled by organisation-specific policies which emphasise on greater sensitization and creation of safe-spaces within the institution. Do note that these policies may not exist in your institution or workplace. For further assistance on such matters, please do not hesitate to reach out to LGBT resource groups in your region.
17. To whom do I reach out to for more resources or help in crisis situations?
- There are a number of LGBT resource groups in each state. Please click [here](#) and [here](#).

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