

# **India: Apex Court verdict re-criminalizing consensual same sex relationships unconstitutional and inhuman**

Monday 16 December 2013, by [NAPM](#) (Date first published: 14 December 2013).

**For Immediate Release  
14<sup>th</sup> December, 2013**

Apex Court verdict re-criminalizing consensual same sex relationships unconstitutional and inhuman

NAPM demands legal recognition of the natural right to life and love of lakhs of gender diverse individuals

New Delhi, December 14 : As lakhs of individuals and groups across the country, celebrated the 4<sup>th</sup> anniversary of the historical judgement by Justice (Retd). A.P. Shah and Justice (Retd). Muralidharan of the Delhi High Court, recognizing the natural right to life and life of gender diverse persons on the International Human Rights Day, the verdict of the Supreme Court, just a day after, on 11<sup>th</sup> December, comes as a serious blow to and blot on the Constitution of India which guarantees social, political, economic and cultural equality to all citizens and upholds the dignity of every individual as sacrosanct.

In a unjustifiable order, the Apex Court, overturned the Delhi High Court's Judgement which held Section 377 of the Indian Penal Code to be unconstitutional and upheld the right to consensual sexual relationships of lesbian, gay, transgender, bi-sexual and other gender variant individuals. Drawing from Gandhi, Marx and Ambedkar, the Delhi High Court judgment re-introduced the idea of inclusivity, which is at the heart of the Indian Constitution. The Supreme Court's verdict rejecting the High Court's judgment is blow to the lofty constitutional values and inalienable fundamental rights.

We, at the National Alliance of People's Movements are deeply disturbed by this retrograde move of the Supreme Court, an institution, which continues to enjoy the faith of millions of people of this country and is looked upon as a beacon of hope in our democracy. We are of the clear opinion that the not just Section 377, but even the present order of the Apex Court, is in stark violation of Articles 21, 14 and 15 of the Constitution and will be challenged by all progressive forces of this nation, through the Parliament and also on the streets.

We also strongly think that struggle of gender diverse individuals is not just for the right to consensual sexual relationships, but is for their very right to life and is inseparable from their personal, political, emotional and social well-being. It is not just a 'personal issue', but an intense issue of political and human justice, which every one of us are deeply concerned about. For gender variant persons, every day is a struggle and we stand by the brave community of gender variant people who face violence and discrimination at homes, in the society and in their dealings with the State.

We would also like to note that any agency of the State, including the Judiciary, does not have the

right to interfere with the right to life of any individual, except in accordance with law, that must be based on a clear constitutional premise. The right to live one's own life with dignity and without interference with the rights of others or without any disturbance to the society cannot be taken away by any law of the legislature, Parliament or order of the Courts.

In a State and society, which is not outraged enough even after the rape of thousands of women, where women and other gender diverse individuals still do not have the real freedom to move and express safely, where tribals get displaced from their traditional land and resources in the name of 'development', where thousands of struggling urban poor are under-paid, sleep on the pavements, where a whole community gets killed because of their religious identity, violence on lakhs of gender variant individuals cannot be perpetuated in garb of 'abstract morality' !

This is neither a moment of sorrow nor defeat. It's a moment for collective reflection and action, for us, as a nation. Just as thousands of farmers, adivasis, fish workers, labourers and others, refused to accept 'defeat' after the Supreme Court's Judgement on Narmada in 2000, and intensified their legal and mass struggle for the right to life, the community of gender diverse individuals also shall stand up in this moment and assert their right to life, which is integral with the Constitution of India.

Continuing with the resolution adopted at our 8<sup>th</sup> biennial convention in Badwani, Madhya Pradesh, (given below after this statement) NAPM joins hands with our friends celebrating diversity, plurality calls for a rainbow of resistances against injustice and violence. We also urge the gender diverse community to join hands with other social and political movements to build a nation beyond caste, class, creed, gender, race, religion and regional differences and challenge corporatization, communalism and corruption in every walk of life.

NAPM also urges and demands the Indian Parliament of India to completely remove Section 377 from the IPC, uphold the right to life of all gender diverse individuals and enact a comprehensive law for their social, political and economic well-being. UPA govt. should take urgent step to save LGBTQ rights file review petition in Supreme Court immediately.

---

### **Resolution on the LGBTQ Issues adopted at 8<sup>th</sup> bi-ennial Convention of NAPM, Badwani, October 26, 2010**

We oppose persecution and discrimination on the basis of sexuality and gender orientation in all forms and strive towards full social and political equality of all individuals who identify as Lesbian, Gay, Bisexual, Transgendered, Intersex and Queer (LGBTQ).

While welcoming the July 2<sup>nd</sup> 2009 judgment of the Delhi high court to decriminalize homosexuality NAPM recognizes that the LGBTQ community continues to be discriminated against in schools, colleges, workspaces, homes, the streets and before the law. We affirm that sexual orientation and gender identity are innate and cannot be consciously changed and we oppose attempts to convert LGBTQ individuals into heterosexuals or force them to conform to dominant notions of masculinity or femininity on the grounds of morality, religion or nature. We call for an official recognition of the LGBTQ community and demand changes in policies and laws that guarantee their rights not only to identity and dignity but also to welfare, protection from persecution and self-determination. These include affirmative action to ensure equal opportunity for LGBTQ individuals in relation to education, employment, health, housing, livelihood and people oriented development. We strive to ensure that the LGBTQ community joins the political mainstream on the same level as other groups

in society and value the empowerment and participation of the LGBTQ community in all fields including organizing within our own movements.

Therefore, we also call upon the movements, constituents of NAPM and other concerned friends to move towards greater sensitivity and awareness on LGBTQ issues; by incorporating greater inclusiveness of LGBTQ voices, perspectives and concerns to the understanding of our struggles and the framing our demands. NAPM affirms that this is the way forward in the alliance building process we set out to do sixteen years back. More importantly it is the only way towards truly building a just society, which guarantees dignity, human rights, equality and people oriented development, which forms the heart of the struggles that come together in NAPM.

*Medha Patkar - Narmada Bachao Andolan - National Alliance of People's Movements (NAPM); Prafulla Samantara - Lok Shakti Abhiyan, NAPM, Odisha; Dr. Sunilam, Aradhna Bhargava - Kisan Sangharsh Samiti, NAPM, MP; Gautam Bandopadhyay - Nadi Ghati Morcha, NAPM, Chhattisgarh; Vilas Bhongade, Suniti SR, Prasad Bagwe Suhas Kolhekar - NAPM, Maharashtra; Gabriel Dietrich, Geetha Ramakrishnan - Unorganised Sector Workers Federation, NAPM, TN; C R Neelakandan - NAPM Kerala; Ramakrishnan Raju, Saraswati Kavula, P Chennaiah - NAPM Andhra Pradesh, Bhupender Singh Rawat, Rajendra Ravi, Anita Kapoor - NAPM, Delhi; Arundhati Dhuru, Sandeep Pandey - NAPM, UP; Sister Celia - Domestic Workers Union, NAPM, Karnataka; Sumit Wanjale, Madhuri Shivkar - Ghar Bachao, Ghar Banao Andolan, NAPM, Mumbai; Manish Gupta - Jan Kalyan Upbhokta Samiti, NAPM, UP; Vimal Bhai - Matu Jan sangathan, NAPM, Uttarakhand; Krishnakant, Anand Mazhgaonkar, Paryavaran Suraksh Samiti, NAPM Gujarat; Madhuresh Kumar, Seela M Mahapatra, Meera - NAPM*

---