

India: ‘Same-sex marriage not a part of our culture’, says top government lawyer, opposes plea in Delhi HC

Friday 9 October 2020, by [MANDHANI Apoorva](#) (Date first published: 14 September 2020).

The Delhi High Court is hearing a PIL that seeks marriage rights for the gay community under the Hindu Marriage Act 1955.

New Delhi: [Same-sex marriages](#) are neither a part of “our culture” nor a part of the law, Solicitor General Tushar Mehta told the Delhi High Court Monday, opposing a petition demanding marriage rights for the [gay community](#) under the Hindu Marriage Act 1955.

The submission was made during a hearing before a bench comprising Delhi High Court Chief Justice D.N. Patel and Justice Prateek Jalan.

The court is hearing a PIL filed by four members of the LGBTQ+ (lesbian, gay, bisexual, trans, queer, and others) community — Abhijit Iyer Mitra, a security and foreign policy commentator, Gopi Shankar M, a Tamil Nadu-based intersex activist who contested the 2016 assembly elections, Giti Thadani, founding member of the Sakhi collective journal of contemporary and historical lesbian life in India, and G. Oorvasi, transgender activist.

The submission made by Mehta, one of the central government’s top lawyers, seeks to challenge the petitioners’ contention that the Hindu Marriage Act doesn’t distinguish between heterosexual and homosexual marriage since it doesn’t describe marriage as a union between man and woman, but only “two Hindus”.

He said he hasn’t received instructions but was merely pointing out legal provisions to show that the law does not permit same-sex marriages.

In light of his submission, the bench has asked the petitioners to file affidavits from members of the community who are aggrieved by the refusal of authorities to register same-sex marriages.

The petition will next be heard in October.

‘One of the petitioners wants to get married’

The petition said that Gopi Shankar M “wishes to marry someone from the LGBT community as per his own choice in India”. Denying the LGBT community the option to marry “is absolute discriminatory and creates them a second class of citizens (sic)”, it added.

Filed through advocates Raghav Awasthi and Mukesh Sharma, the petition pointed out that the [Supreme Court read down](#) Section 377 of the Indian Penal Code in 2018 and decriminalised consensual homosexual acts in the country.

It then asserted that the Hindu Marriage Act “does not distinguish between heterosexual and homosexual marriage”.

This is because Section 5 of the Act lays down the conditions for a Hindu marriage and begins with the words, “a marriage may be solemnized between any two Hindus”.

The petition submitted that despite there being no statutory bar under the 1955 Act against gay marriage, it is not being registered throughout the country.

“As a result of the same, there are many benefits that would otherwise be available to heterosexual married couples that are not available to them,” it stated.

The petition also pointed out that the right to marry is a part of the right to life under Article 21 of the Constitution.

“...The non-recognition of the rights of LGBT couples who wish to get married is a violation of the Right to Equality guaranteed to all persons within the territory of India under Article 14 of the Constitution,” it contended.

On his part, Mehta argued that marriage is a “sacrament”, adding that there are other provisions of law that do refer to a “husband and a wife”. For instance, he cited Section 498A of the Indian Penal Code, which talks about “husband or relative of husband of a woman subjecting her to cruelty”.

Mehta submitted that the “culture of any country is codified in a statutory law like degrees of prohibited relationship, special or additional rights to ‘wife’, different age limits for ‘husband’ and ‘wife’, use of the terms ‘husband’ and ‘wife’ — which cannot be determined in same-sex marriage”.

He said the relief sought by the petitioners cannot be granted unless several laws are altered. This, he said, is something the courts cannot do. Mehta added that he will file a note in the court on these provisions.

This report has been updated with additional information.

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