

Sri Lanka: MPs' responsibility to vote for pro-LGBTQI+ Bill: Activists

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Civil society organisations representing the lesbian, gay, bisexual, transgender, queer and questioning, intersex plus (LGBTQI+) community yesterday (10) stressed that it is the responsibility of Parliamentarians to pass the private Member Bill submitted to the Parliament by Sri Lanka Podujana Peramuna Government MP, Attorney Premnath C. Dolawatte to amend Sections 365 and 365A in the Penal Code, thereby decriminalising same sex sexual activity.

Speaking at a press conference organised by a group of LGBTQI+ activists yesterday, attorney Visakesa Chandrasekaram said that there are no barriers for MPs to vote to pass the Bill when the Supreme Court (SC) has determined that it is not inconsistent with the Constitution. "The SC ruled unequivocally that the Bill seeking the decriminalisation of adult, consensual, same sex sexual activity by amending Section 365 of the Penal Code and removing Section 365A of the Penal Code is not in contravention of the Constitution. The Judges surpassed the task that was placed before them and went so far as to say that they are of the opinion that the changes to these laws will in fact result in the affirmation of constitutional rights to a section of the Sri Lankan citizenry – the LGBTQI+ population. Therefore, it is the responsibility of the MPs to vote and pass this Bill without considering it just as a private Member Bill," he said.

Chandrasekaram also said that the change in this law will ensure the full realisation of the fundamental rights of this group of citizens as the Court has affirmed such rights with a primary focus on human dignity and the right to privacy, using national and international precedents. "The judgement also states extremely clearly that Sections 365 and 365A are vestiges of colonial morality that are not relevant to the present day Sri Lankan society. It shows this by outlining how the laws came about and how they have since been changed across the world, including in the United Kingdom where they originated. Further, in response to arguments that the change in the law impinges on Buddhism, the Court states that there is no adequate evidence to this effect, adding that in fact, the duty to protect the rights of all beings is enshrined in both the Constitution and within Buddhism. The Court declared in no uncertain terms that the arguments that changing this law will be harmful to children and the security forces and will increase human immunodeficiency virus infections are baseless, legally unviable, excessive and even absurd," he said.

He also said that the judgement is a significant legal affirmation of the plight of LGBTQI+ people in Sri Lanka and the fact that criminalisation hangs like the 'spectre of a sword' threatening their well-being, enjoyment of rights, peace of mind and development in all aspects of their life.

The constitutionality of the Bill had been challenged before the SC through a special determination petition. Retired Army Brigadier Athula De Silva, political analyst Shenali Waduge and businessperson Jehan Hameed had filed this petition naming the Attorney General and Dolawatte as respondents. Others had since filed intervenient petitions defending the Bill.

In last (2022) August, MP Dolawatte presented a Bill to the Parliament in order to amend legal provisions within the Penal Code which criminalise same sex sexual activity. Accordingly, Dolawatte's Bill has proposed amendments to Sections 365 and 365A in the Penal Code. Section 365 of the Penal Code terms "voluntary carnal intercourse against the order of nature with any man, woman, or animal" as an "unnatural offence", while Section 365A penalises "acts of gross indecency between persons".

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