

Gantavya Gulati vs Union Of India on 28 August, 2024

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(CRL) 2474/2024 & CRL.M.A. 24072/2024
GANTAVYA GULATI

Through:

UNION OF INDIA

Through:

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

OR

% 28.08.2024

1. Present public interest petition has been filed seeking issuance of directions to the respondent to restore legal protection against non- consensual sexual acts, equivalent to those provided under the now-repealed Section 377 of the Indian Penal Code, 1860 ("IPC") to ensure the safety and dignity of individuals, particularly those from the LGBTQIA+ community, who are at risk of non-consensual sexual acts in the absence of such protection.

2. Petitioner, who appears in person, states that Section 377 IPC, prior to its repeal, criminalised non-consensual sexual acts with any man, woman or animal, thus providing a critical legal recourse for victims of such acts, regardless of their gender or sexual orientation. He states that after repeal of Section 377 IPC, the newly enacted Bharatiya Nyaya Sanhita, 2023 ("BNS") This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/08/2024 at 02:20:13 excludes any provision equivalent to Section 377 of the IPC for providing protection against non-consensual sexual acts. He states that such legislative gap poses a significant threat to the safety and dignity of individuals, particularly those from the LGBTQIA+ community, who are now left without adequate legal protection against such acts.

3. He submits that this omission undermines the progressive jurisprudence established by the Supreme Court in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, which decriminalised consensual same- sex relationships and emphasised the protection of the dignity and autonomy of LGBTQIA+ individuals.

4. Mr. Anurag Ahluwalia, learned CGSC for Union of India/respondent nos.1 and 2 prays that the present writ petition be directed to be treated as a representation to the respondent as the Government is in the process of receiving observations/inputs on the new Criminal laws from various stakeholders. He states that the Government will take a holistic view on all such observations/inputs received. He has also handed over a copy of letter dated 27th August, 2024 written by him to the Joint Secretary to the Government of India. The relevant portion of the said letter reads as under:

"I am directed to refer to the above mentioned subject wherein the petitioner has requested the Hon'ble Court to direct the UOI to restore legal protections against non-consensual sexual acts, equivalent to those provided under the now-repealed Section 377 of the Indian Penal Code to ensure the safety and dignity of individuals, particularly those from the LGBTQ+ community, who are at risk of non-consensual sexual acts in the absence of such protections.

2. In regard to the instant Writ Petition, it is stated that the new Criminal laws i.e., the Bharatiya Nagrik Suraksha Sanhita, 2023, the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023 have come into force w.e.f. 1.7.2024. The Government is receiving observations/inputs on these new Criminal laws from various This is a digitally signed order.

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5. Keeping in view the aforesaid, this Court disposes of the present writ petition and the application with a direction to the Union of India to treat the present writ petition as a representation and decide the same as expeditiously as possible. In the event, there is inordinate delay in considering the petitioner's representation, the petitioner shall be at liberty to seek revival of the present writ petition.

ACTING CHIEF JUSTICE TUSHAR RAO GEDELA, J AUGUST 28, 2024 kct This is a digitally signed order.

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