

ಪತ್ರಿಕಾ ತುಣುಕುಗಳು
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Centre opposes move to recognise same-sex unions

Legal system, society don't recognise it, govt. tells Delhi HC

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NEW DELHI

The Centre on Monday opposed before the Delhi High Court a petition seeking recognition of same-sex marriages, saying, "our legal system, society and values do not recognise marriage between same sex couples".

Solicitor General Tushar Mehta, representing the Centre, said the 2018 judgment of the Constitution Bench of the Supreme Court "merely decriminalises homosexuality or lesbianism, nothing more, nothing less".

Struck down in 2018

On September 6, 2018, a five-judge Constitution Bench, led by then Chief Justice Dipak Misra, unanimously held that criminalisation of private consensual sexual conduct between adults of the same sex under

Section 377 of the Indian Penal Code is clearly unconstitutional.

"This is my version on record. I will not even file an affidavit. I will only rely on statutory provisions. If a wife dies within seven years, there is a separate punishment. Now, who will be treated as a wife [in same sex marriage]?" Mr. Mehta asked.

Contrary to provisions

The Solicitor General said the petition was not permissible as it was asking the court to legislate and also that any relief granted "would run contrary to various statutory provisions".

Responding to the submission, a bench of Chief Justice D.N. Patel and Justice Prateek Jalan said, "As far as maintainability part is concerned, today what we are

thinking is whether a PIL [Public Interest Litigation] should or should not be entertained... At the moment, we are trying to understand whether we should get into the issue or whether we have to wait."

"Worldover, today things are changing. Those changes may be applicable in our country or they may not be," the Bench said, adding that for "our country we have to see what our constitutional values say".

Later, the Bench asked if any of the petitioners or others have faced difficulties while trying to register same-sex marriages. "If these petitioners are well-educated and their marriage registration is denied, they can surely come to the court," the Bench said.

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The court also asked petitioners to bring on record details of people whose application for same-sex marriage registration was denied. The petition was filed by Abhijit Iyer Mitra, a member of the LGBT community, and three others seeking to recognise same sex marriages under Section 5 of the Hindu Marriage Act on the ground that "it does not distinguish between homosexual and heterosexual couples".

The petitioners argued that "despite the fact that there is absolutely no statutory bar under the Hindu

Marriage Act of 1955 and the Special Marriage Act of 1956 against gay marriage, the same are not being registered throughout the country and also in the National Capital Territory of Delhi".

"The prohibition of marriage of LGBT people on the basis of sexual orientation and gender identity is an absolute discrimination towards them and is also violative of Right to Equality as granted by the Constitution of India," it argued. The petition also cited names of 27 countries including the U.S. where same sex marriage is legal.