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Indian Government Objects to Supreme Court Ruling on Transgender Rights

ARTICLE COMMENTS

NAZ FOUNDATION SHANOOR SEERVAI SUPREME COURT TRANSGENDER RIGHTS



By SHANOOR SEERVAI



Members of India's transgender community celebrate an Indian court's ruling decriminalizing gay sex between consenting adults in Mumbai, July 1, 2009. — Agence France-Presse/Getty Images

In April, India's Supreme Court in a **landmark ruling granted transgender people legal protections** and access to affirmative-action type programs. Now, India's government is asking the justices to reconsider some aspects of their judgment.

The government — led by the conservative Bharatiya Janata Party, which has deep roots in the country's Hindu nationalist movement — said in an application to the Supreme Court that the transgender ruling "may pose problems both practically and politically" and asked for clarifications and changes.

The application complained that the court's finding that the term transgender people can also apply to gay, lesbian and bisexual Indians, "seeks to create an ambiguity."

It also argued that on procedural grounds it would "not be proper" for the court to classify the transgender community as part of **India's backward classes, which are eligible for**

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affirmative-action benefits.

A group can only be listed as backward if the National Commission for Backward Classes, a statutory body under India's Social Justice Ministry, deemed it so, the government argued.

"The government is stonewalling," said Colin Gonsalves, a Supreme Court lawyer and founder of the Delhi-based Human Rights Law Network. "They had no intention of implementing this judgment."

Mukul Rohatgi, India's attorney general, said the government is not trying to block the judgment. "We just want clarification," he said. He said it is the government's view that transgender people should not be included in the backward-class category.

A spokesman for the BJP, Nalin Kohli, said: "It's a sensitive issue with social and legal aspects."

In April, the Supreme Court gave transgender people the right to identify themselves as a third gender on official identification documents. It ordered the state and central governments to take steps to address problems like fear, shame and social

In doing so, the court was Pakistan, Bangladesh and government documents.

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India has a diverse transgender community; the most prominent group, the Hijras, are considered sacred according to some Hindu texts. Today they are one of India's most marginalized communities.

The government may ask for clarification on the Supreme Court's judgment, said Anjali Gopalan, director of the Naz Foundation (India) Trust, a New Delhi-based NGO that works on HIV prevention and has fought in court to decriminalize gay sex.

"Going back on the judgment would be very problematic for the community," Ms. Gopalan said.

Saurabh Chaturvedi contributed to this post.

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