

Bill No. 38 of 2012

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2012

By

SHRI ARJUN MEGHWAL, M.P.

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BILL

further to amend the Indian Penal Code, 1860.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2012.

Short title and
commencement.

(2) *Explanation 1* to section 377 shall be deemed to have always been in force notwithstanding anything contained to the contrary in any other law for the time being in force or any judgement, order or decree of any court.

45 of 1860.

2. In section 377 of the Indian Penal Code, 1860, the existing *Explanation* shall be numbered as *Explanation 2*, and before *Explanation 2* as so numbered, the following *Explanation* shall be inserted, namely:—

Amendment
of section 377.

"*Explanation 1*.—For the purposes of this section, the expression "carnal intercourse against the order of nature" shall include consensual homosexual act of adults and such act shall be deemed to be an unnatural offence under this section."

STATEMENT OF OBJECTS AND REASONS

Recently, there have been repeated attempts for decriminalisation of homosexuality or gay sex by the Courts while interpreting the provisions of section 377 of the Indian Penal Code, 1860. In its recent judgement, the Hon'ble Delhi High Court, while legalizing consensual homosexual activities between adults, observed that the essence of section 377 goes against the fundamental rights of the citizens and if not amended, the said section would violate articles 14, 15 and 21 of the Constitution. The Court clarified that the provisions of section 377 of the Code will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors. The Court also observed that the clarification will hold till, of course, Parliament chooses to amend the law to effectuate the recommendation of the Law Commission of India in its 172nd Report.

It is felt that the Hon'ble Court has erroneously interpreted the provisions relating to human rights enshrined in the Constitution in their application to cases of consensual homosexual acts of adults. No Constitution would perhaps permit and justify such kinds of unnatural acts on the grounds of protecting human rights and rule of equality. The human rights and rule of equality enshrined in our Constitution aim at providing dignified life to the masses as a whole as well as to individual citizens. However, any presumption that these provisions permit and justify consensual homosexual activities, which are against the order of the nature, would amount to an offensive interpretation and needs to be undone. With this interpretation the Court might have helped a small section of citizens but this interpretation by the Court has overlooked and ignored not only the feelings and sentiments of a large number of citizens of this country but also the basic tenets of thousand years old Indian civilization. Several social and religious organizations have continuously been protesting against gay-sex and terming it as an illegal, immoral and against the ethos of Indian Culture. It is, therefore, high time that the provisions of section 377 of the Code be affirmed as they existed before the Delhi High Court judgement by declaring the consensual sexual act between persons of same sex as an unnatural offence.

Hence this Bill.

NEW DELHI;
March 27, 2012.

ARJUN MEGHWAL

ANNEXURE

EXTRACT FROM THE INDIAN PENAL CODE, 1860

(ACT NO. 45 OF 1860)

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377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Unnatural
Offences.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

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(Shri Arjun Meghwal, M.P.)