

Naz Foundation withdraws curative petition against SC's 2013 ruling re-criminalising homosexuality

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On Monday, the Bench comprising of Chief Justice Ranjan Gogoi and Justice Sanjiv Khanna of the Hon'ble Supreme Court, has allowed NGO Naz Foundation Trust to withdraw its curative plea challenging the apex court's 2013 verdict.

Naz Foundation Trust had challenged the Apex Court's verdict in the Year 2013, of again criminalising gay sex between two consenting adults.

The bench has now considered the plea of the NGO that its curative plea has now become infructuous in view of the Five-Judge Constitution Bench verdict in 2018 which has set aside the 2013 judgement.

The Naz Foundation, which had first knocked doors of the Delhi High Court with its plea in 2001, seeking decriminalising of the consensual sexual act, had filed the curative petition.

After the 2013 verdict, the Supreme Court had dismissed the review plea that had laid the foundation to file the curative petition.

However, a five-judge constitution bench headed by then Chief Justice Dipak Misra entertained fresh petitions seeking decriminalising of the consensual gay sex.

The NGO said that the 2018 judgement had already set aside the earlier one, and hence it be allowed to take back its curative petition. The apex court allowed it.

A five-judge bench had on September 6 last year unanimously struck down part of the British-era law and held that Section 377 of the Indian Penal Code that criminalised consensual gay sex was "irrational, indefensible and manifestly arbitrary".

The bench had held that the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) community possess the same constitutional rights as any other citizen and part of Section 377, which prohibits sexual relationship between consenting adults of the same sex, is violative of the right to equality and the right to live with dignity.

The court referred to its 2013 verdict and said that upholding the validity of Section 377 on the ground that LGBTs comprised a minuscule fraction of the total population was constitutionally

"impermissible" and the law was being misused.

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