

CHANGING TIMES

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THE HEALING NEWSPAPER

Friday, December 13, 2013

“The Empress of Darkness & Fierce Morality”

- *Nalin K. Nirula*

On an appeal against the 2009 Delhi High Court order that held Section 377 of the Indian Penal Code as violative of Articles 21, 14 and 15 of the Constitution, insofar as it criminalized consensual sexual acts of adults in private, the Supreme Court set aside that 2009 High Court ruling on 11th December.

This effectively reinstates the Victorian law which criminalizes gay sex.

A hangover of the British Colonial era, this statute has been on the books since 1860. The originator of these laws, the erstwhile Empress of India is more deserving of the title “Empress of Darkness” for imposing such punishing laws based on her ideas of a fierce morality.

Queen Victoria, Empress of India (1837-1901)



Originator of the infamous Section 377 IPC 1860

The Supreme Court has made it clear that it has not ruled upon the *desirability* of maintaining the law as it stands. At the end of their 98 page judgment the Lord Justices G.S. Singhvi and Sudhanshu Jyoti Mukhopadhaya had this to say in closing:

“While parting with the case, we would like to make it clear that this Court has merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of Section 377 IPC and found that the said section does not suffer from any constitutional infirmity.”

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Among the politicians of the ruling UPA government, there are many expressing disappointment with the Supreme Court judgment. Here are some legal voices: Mr. P. Chidambaram, Harvard educated former corporate lawyer, now the Finance Minister, said on the Times Now news channel yesterday: "I am extremely disappointed with the Supreme Court judgment. I'm terribly sad. We can't go back to 1860...".

Mr. Manish Tewari, spokesman for the UPA Government expressed his bewilderment at the Supreme Court judgment on the same news channel, saying, "why a consensual relationship between two consenting adults should be a criminal act? Even as a lawyer I do not understand it."

Well, gentlemen, take the trouble to read the 98 page verdict and see the painstaking and masterly examination of the issue by the Supreme Court Justices, and applaud the wisdom of their ruling instead of delivering sanctimonious crocodile tears.

Mr. Kapil Sibal, Minister for Law and Justice has astutely understood this and addressed the core issue, saying, "we should not jeopardize those GLBT relationships and we should not consider them as criminal activity."

He echoes the Supreme Court when he says, "I think the government stand was clear... it is a matter to be taken up by the legislature." At the same time Mr. Sibal the appeasing politician says, "the mindset behind this decision of the SC belongs to the 19th century...it is unfortunate that the SC has upheld the legality of Section 377."

Continuing in their closing, the honorable Lord Justices stated:

"Notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting Section 377 IPC from the statute book or amend the same as per the suggestion made by the Attorney General."

That is the point. In a most solemn, measured and dignified way, the Supreme Court is saying:

"Legislators, do your job. Our job is to interpret law and we cannot legislate it. It is up to the legislature to amend, modify or repeal a provision of law if deemed necessary."

We say to the legislators and politicians and the government of the day, "for too long have you been giving your job and responsibility to the Courts for fear of political fallout.

"Stop passing the buck to the Courts—take responsibility and get on with your job of governing."

We say:

"Parliamentarians, step up and end this racism against the differently oriented in our society. Come out of the darkness into the light. Repeal fierce oppressive Victorian morality, repeal section 377 of the IPC."

