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SECTION 377 AND LGBT RIGHTS IN INDIA

**“I am what I am, so take me as I am”
-Johann Wolfgang von Goethe**

INTRODUCTION

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[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. Explanation. —Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section. ¹

DELHI COURT’S JUDGEMENT, 2009

The issue of section 377 was first raised by the NGO Naaz Foundation, which appealed to the Delhi High Court in 2001, which decriminalized consensual same-sex sexual relations by calling the criminal provision "illegal" in 2009. This 2009 Superior Regional Court ruling was reversed in 2013 by the Supreme Court, which also dismissed the appeal against which the pending remedial actions were filed.

The Supreme Court had started the hearing on the newly written petitions against the re-criminalization of consensual homosexual sex between two adults and rejected the center's request to postpone the process for four weeks.

¹ The excerpt is taken from THE INDIAN KANOON.

The crime of same-sex sexual relations had been reinstated in 2013 after the Delhi High Court decriminalized them in 2009 by failing to respond to requests for hearing and to decide on newly written petitions in this regard.

NAVTEJ SINGH JOHAR VS. UNION OF INDIA

Five individuals from the LGBTQ communities (Navtej Singh Johar, Ritu Dalmia, Ayesha Kapur, Aman Nath, and Sunil Mehra) filed a new writ petition challenging the constitutionality of Section 377.

ISSUES

The court disputed the validity of DELHI COURT'S 2009 decision. It was also examined whether article 377 violates:

- article 142, since it discriminates against people because of their "sexual orientation" and "gender identity".
- The right to autonomy and dignity under article 213 through the punishment of consensual private acts between persons of the same sex?
- The right to freedom of expression under Article 19 (1) (a)4 by criminalizing gender expression by the LGBTQI + community?

JUDGEMENT

On September 6, 2018,

The court unanimously declared the law unconstitutional "to the extent that it criminalizes consensual sexual conduct between adults of the same sex". The verdict was hailed as a landmark decision for LGBT rights in India, with activists waiting in front of the court and cheering after the verdict was delivered.

2. ARTICLE 14: the state shall not deny any person equality before the law or the equal protection of the laws within the territory of India.

3. ARTICLE 21: No person shall be deprived of his life or personal liberty except according to a the procedure established by law.

4. ARTICLE 19(A): all citizens shall have the right to freedom of speech and expression.

THE LITMUS TEST FOR THE SURVIVAL OF ARTICLE 377

The Supreme Court examined the constitutionality of article 377 in relation to the notions of equality, freedom and dignity under articles 14, 19 and 21.

RIGHT TO EQUALITY AND FREEDOM FROM DISCRIMINATION: the Court determined that section 377 arbitrarily punishes people who have interacted in identical sexual relationships. To support this, the court pointed out that article 377 classifies and penalizes people who are in contact with the natural order with carnal sex to guard women and children. However, this goal has no affordable connection to classification, as unnatural crimes were also punished sequentially under Section 375 and the POCSO Act. Therefore, the Court determined that the unequal legal recourse of LGBT persons violated Article 14. Furthermore, the Court determined that Article 377 is manifestly arbitrary, since it no longer distinguishes between consensual and non-consensual adult sexual acts. It focused on people who train safe alternatives and treat them as "much less than human" and recommended prejudices and stereotypes that were persecuted as a means to weaken social impact. This violates article 14, which is the very basis of non-discrimination.

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FREEDOM OF EXPRESSION:

The court mentioned that all people, along with LGBTQI people, had the right to formulate their alternatives without fear. Identified identical sexuality during intercourse as an everyday version of human sexuality. In particular, the Court noted that Section 377 stigmatizes and discriminates against transgender people. The Court then examined whether public order, decency and morality are reasonable grounds for restricting the right to freedom of expression of sexuality under Article 19 (1). (to).

It indicated that article 377 criminalizes consensual personal acts that do not disturb public order or damage public decency or morals. Sexual acts cannot be seen entirely from the point of view of morality, although they may be visible in basic terms for procreation. Inappropriately

restricting actions within a person's personal sphere could have a deterrent effect on freedom of choice.

For these reasons, the Court considered that Article 377 was disproportionate and contrary to the essence of freedom of expression. Right to life and personal liberty: The court found that Section 377 violated human dignity, autonomy for decision-making, and the essence of privacy. Every man or woman has the freedom to determine his sexual orientation, seek company and train it in his personal sphere. Since article 377 prevents the exercise of private freedom to interact in voluntary sexual acts, it violates article 21. It socially marginalized LGBT people and now no longer allows the individuality of a man or a woman to be fully realized. Therefore, the Court ruled that the scope of privacy uniqueness should be broadened to include.

CONCLUSION

Annulment of article 377 was a leap of faith taken by the supreme court of India and it was a step which was particularly necessary for the queer youth of India. Being homosexual is not a crime. Abolishing this article was just one step towards a very long road, people of our country are still backward minded and it would take time to make them understand this concept. Even after this judgment, queer community still faces a lot of problem living in India the most important problem being acceptance not only our society but sometimes even our government officials are not willing to accept them, to acknowledge them. People say homophobic things and it is not okay. Such a section was a part of our constitution is a big shame and there are still many countries like Nigeria where homosexuality is a crime and we need a change, we need people to understand love is love and to accept people as they are.