



## UNFOLDING THE HOPE FOR PEOPLE UNDER SECTION 377

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Chapter XVI , section 377 of Indian penal code 1860 is very much in news after a landmark judgment was passed by the supreme court of India overruling Suresh koushal (2014) . The supreme court of India decriminalized homosexuality which was before a crime in India , with this judgment a ray of hope came to LGBT community which is primarily based for the homosexual people . Many NGO'S like NARS voice against section 377 and many others came up supporting the decision of supreme court . This judgment gave a wider aspect over individual autonomy as well as decisional privacy to choose the life partner in a way they wanted to , nevertheless before this period the essence of homosexuality was seen . Many writes like Devdutt Pattnaik have mentioned and compared the modern times with mythology ,in his book Shikhandi has illustrated how homosexuality prevailed in earlier times as well . The apex court mentioned that section 377 was used as a weapon to harass members of LGBT community

,the CJI said that “ Courts must protect the dignity of an individual as the right to live with dignity is recognized as a fundamental right “. Respecting the rights and individuality of others in the supreme humanity ,criminalizing gay sex is irrational and indefensible now in the eyes of law as well . The apex court has stated that “sexual orientation is a biological phenomenon and any discrimination with this regard is

violative of fundamental rights ,so far as the consensual unnatural sexual act in private is concerned it is neither harmful nor contagious to the society” this statement however made a huge difference in the lookout society had over homosexuality . Denial to self expression is akin to inviting death which was lived by the homosexual people of India . The state has no business to control the lives of the people of LGBT community members added Justice Chandrachud . The court here by said that unnatural sex with animals and children remain in force . Section 377of IPC was formulated 157 years ago and criminalized certain sexual acts by dubbing them ‘unnatural offences’ . These acts were punishable by a term upto 10 years , the law punished “ carnal intercourse against the order of nature with any man ,woman or animal “ and thus had bigger implications for same sex relationships . Gay sex is considered taboo by many in socially conservative India ,as well as in neighbouring Bangladesh, Sri lanka and Pakistan .In 2009 ,Delhi high court had declared Section 377 unconstitutional but that decision was overturned in a ruling by three SC justices in 2013 on the grounds that amending or repealing the law should be left to Parliament ,but lawmakers failed to take action and in july the government told the apex court to give a ruling in this case . This upliftment of ban has made ways and has affirmed their rights to adopt , marry and have a family of their own . It may also prevent social ostracism with the court declaring affirmatively that it was not a mental disorder but something innate to a human being .No one can be discriminated against only on the grounds of their sexual orientation and called for constitutional



protection to even sexual minorities . Several leading lights of the small but significant LGBT community had challenged the very existing of the law one the statute book .CJI Dipak mishra said “Section 377 is irrational , arbitrary and incomprehensible as it fetters the right to equality for LGBT community , LGBT community possesses same equality as other citizens “. Society as a whole cannot decide the rights of a person based on the sexual orientation one has , this right is wholly a personal right . After the judgment was passes the judges of the apex court stated that society as a whole owes an apology to the members of the LGBT community for all the discrimination . The supreme of country ruled in August 2017 that every individual has a fundamental right to privacy , which is a part of right to life and sex is private . The supreme court mentioned that however less is the number of people of LGBT doesn't mean there rights can be minimized . While the top court acknowledged that sex as per the order of nature was seen as intercourse between a man and a woman for the purpose of procreation , the fact that it had already recognized a third gender needs to be kept in mind . The court mentioned that moment a provision violates the fundamental right of a citizen ,this court has power to strike it down irrespective of the majoritarian government 's power to repel , amend or enact law .Two years ago , a petition was filed by dancer N S Johar , journalist Sunil mehra ,chef Ritu Dalmia ,hotelier Aman Nath and business executive Ayesha Kapur who said that Section 377 violated their right to privacy and personal liberty . The issue of Section 377 was first raised by an NGO ,Naaz Foundation , which in 2001

approached the Delhi High court that then decriminalized sex between consenting adults of the same gender by holding the penal provision “illegal”. This judgment marked the end of an era as after sixty eight years after the founding fathers of Republic india encoded the right to freedom of life and liberty ,the Supreme court upheld the right of every human being to be free ,regardless of sexual orientation or identity .India now joins a proud league of nations that recognizes true freedom of gender identity and sexual expression . This ruling of the supreme court will not only impact India , but will also undoubtedly have an immense transnational value .The effect of this judgment is especially likely to be felt in other common law countries ,and it will ,hopefully , provide an impetus to those countries that still have equivalent provisions in their statute books , to critically consider the lawfulness and legality of provisions that similarly criminalise consensual sexual relations . The present decision ,as much as it was expected , leads one to believe that the Indian judiciary is indeed the last bastion of fundamental rights of the country .The legislatures and the executive each had their chances to undo what our colonizers had left behind, but chose to do nothing .The judiciary , after swinging this way and that eventually found reason ,and brought order to chaos .No kind of prejudice and discrimination can continue in perpetuity . Section 377 was introduced in Indian criminal law in furtherance of western notions of morality based on Abrahamic ideologies . At the time of its introduction , limited consideration was given to a contradictory morality that existed in sub continent , which recognized homosexuality



,and did not criminalize it .Even as the UK and other jurisdictions abandoned it for a more reasoned position of homosexuality being nothing but a variation in human nature ,Indian governments and other public institutions ,over the decades, have tried to perpetuate antiquarian ideas . The first reaction is one of relief ,and joy, this decision is only the beginning of the long walk to ultimate freedom for all . International law strictly prohibits any discrimination on the grounds of sexual orientation or gender identity .The office of the UN High Commissioner of the Human rights oblige states to protect individuals from homophobic violence ; prevent such violence ;decriminalize homosexuality ;and respect fundamental freedoms of all persons ,the removal of section 377 ,which decriminalizes homosexuality ,is but one step towards meeting these obligations .Target populations have been psychologically scarred, subjected to violence and discrimination , not just at the hands of police and enforcement authorities, but by the society at large .Going forward , this cannot mean mere passive non - interference ,but also active protection of, vulnerable population .This may also mean that some form of affirmative action is required to make sure that frictionless assimilation actually takes place. Beyond decriminalizing homosexuality , we need to think about how homosexuals and persons who identify themselves as being outside the conventional binary , can be integrated into society without using their gender or sexuality as the foci of such integration .So , for example , we need to start thinking of how social institutions like marriage or parenting can be re-imagined ;we need to redesign pedagogical tools to embrace these

differences ; we need to redevelop institutions like schools and workplaces to make them all inclusive .This is only the dawn of new era .True and complete freedom is yet to be achieved .We can say that we have won freedom , fully only when everyone, all over India ,genuinely and whole-heartedly ,believes that no person is “different”. The idea that everyone is equal is sacrosanct ,and at its heart .is really uncomplex : that everyone can love equally , freely and fearlessly .The day we can assure ourselves of this is the day we can say that we have truly won our freedom.

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