
CONSENSUAL HOMOSEXUALITY AND THE INDIAN PENAL CODE: SOME REFLECTIONS ON INTERPLAY OF LAW AND MORALITY

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ABSTRACT

This paper explores the interplay between law and morality concerning consensual homosexuality in the context of the Indian Penal Code. The decriminalization of homosexuality in India through the landmark *Navtej Singh Johar v. Union of India* judgment in 2018 has reshaped legal discourse surrounding LGBTQ+ rights. However, the legacy of Section 377 of the IPC, which previously criminalized same-sex relations, underscores the enduring tension between legal frameworks and societal norms. The study begins by tracing the historical trajectory of Section 377 and its roots in colonial-era moralistic values. It analyses the socio-legal dynamics that perpetuated discrimination against LGBTQ+ individuals and the gradual shift towards recognizing sexual orientation as a matter of personal autonomy and dignity. Drawing on jurisprudential theories and comparative legal analysis, the paper examines the evolving conceptualization of morality within legal frameworks. It interrogates the role of the state in regulating private consensual behaviour and the inherent challenges in reconciling diverse moral perspectives within a pluralistic society. Furthermore, the study delves into the implications of legal reforms on societal attitudes towards homosexuality and LGBTQ+ rights advocacy. It considers the transformative potential of judicial pronouncements in fostering social acceptance and challenging entrenched prejudices. Moreover, the paper critically evaluates the limitations of legal reforms in addressing deep-seated cultural biases and structural inequalities faced by LGBTQ+ individuals. It underscores the imperative of complementary measures, including education, public awareness campaigns, and institutional reforms, to effectuate meaningful societal change. The paper reflects on the complex interplay between law, morality, and social change in the context of consensual homosexuality in India. It advocates for a holistic approach that combines legal reforms with broader societal interventions to promote equality, dignity, and inclusivity for LGBTQ+ individuals. Through nuanced analysis and interdisciplinary insights, this study contributes to ongoing debates surrounding LGBTQ+ rights and legal reform efforts in India.

OBJECTIVES OF STUDY

1. To explore the historical context of Section 377 of the Indian Penal Code, 1860.
2. To assess the legal framework surrounding consensual homosexuality in India.
3. To delve into the interplay of law and morality concerning consensual homosexuality.
4. To evaluate the impacts of decriminalizing consensual homosexuality on LGBTQ+ rights, societal attitudes, and the broader legal and social landscape in India.

RESEARCH QUESTION

1. what lenses of law, morality, and societal evolution can we understand the interplay between consensual homosexuality and the Indian Penal Code, in light of societal shifts???
2. what implications does this interplay have for LGBTQ+ rights and societal acceptance in India?"

INTRODUCTION

In India, consensual homosexuality has generated a lot of legal and societal discussion, especially because of its relationship to the IPC. Under British colonial authority, the IPC was created in 1860 and Section 377¹ made “unnatural offences” such as homosexual activities illegal. For more than a century, this law was in force, which resulted in widespread stigma, discrimination, and persecution of the LGBTQ+ population.²

But significant legislative changes have changed the face of consensual homosexuality in India. The most significant event occurred in 2018 when the Indian Supreme Court invalidated a portion of Section 377 in a landmark decision.³ Consensual homosexual actions between adults were decriminalised by this historic ruling, which was a major win for LGBTQ+ rights in the nation. The court affirmed that sexual orientation is an inherent part of an individual's identity and acknowledged the significance of individual autonomy, dignity, and equality.

Even with this court ruling, there are still obstacles in the way of eliminating prejudice and social stigma towards LGBTQ+ people. Acceptance and equality are nevertheless hampered by ingrained cultural conventions, religious beliefs, and societal attitudes. LGBTQ+ people frequently experience assault, harassment, and discrimination in public places as well as within

¹ Section 377., The Indian Penal Code. (1860 October, 6). Retrieved from <https://www.indiacode.nic.in>

² Noor Anand. C., (2024 April, 6). The Legal Struggles of LGBTQIA+ community in India. Retrieved from <https://daily.jstor.org>.

³ Navtej Singh Johar v UOI; Akkai Padmashali v UOI., AIR 2018 SC 4321. <https://www.scobserver.in>

their communities. Furthermore, although consenting to gay actions is no longer illegal, LGBTQ+ people still lack full legal protections. Comprehensive statutory safeguards for issues including adoption, marriage rights, job discrimination, and hate crimes are still lacking.⁴

Conclusively, the decriminalisation of consensual homosexuality in India is a noteworthy advancement in the acknowledgement and validation of the rights of the LGBTQ+ community. To achieve complete equality, though, calls for persistent work to combat prejudice, push for all-encompassing legislative safeguards, and promote increased inclusion and acceptance in society. In order to ensure justice and dignity for all Indian citizens, it is imperative that the complications surrounding consensual homosexuality are addressed as the country makes its way towards becoming a more inclusive and fair society.

HISTORICAL OVERVIEW OF HOMOSEXUALITY

All forms of love were accepted and celebrated in ancient India. This is evident in Indian religious literature that featured homosexual themes and characters but otherwise avoided discussing homosexuality.⁵

The *Rigveda* has a passage called Vikriti Evam Prakriti, which means that what appears to be abnormal is actually natural. Lesbians were referred to as "Swarinis" in Kamasutra, and they frequently got married and had kids together.⁶ The 12th-century Khajuraho temple in Madhya Pradesh, which is renowned for its blatantly erotic sculptures demonstrating the presence of sexual fluidity between homosexuals, is another striking example.⁷

Although homosexuality was not widely accepted throughout the *Middle Ages*, LGBT individuals were not shunned. They were accepted by society, and no one was persecuted for having a different sexual inclination.

It was well known that Mubarak, the son of Alauddin Khalji, was having an affair with a nobleman at his court.⁸ Mubarak governed the Delhi Sultanate from 1296 to 1316. The founder of the Mughal Dynasty, Babur, wrote about his love for a youngster named Baburi, and neither

⁴ Mark. L, Micah. R, Sarah. M, et al., (2024 February, 9). Structural stigma and LGBTQ+ health: a narrative review of quantitative studies. *The Lancet Public Health*, Vol 9 Issue 2. [https://doi.org/10.1016/S2468-2667\(23\)00312-2](https://doi.org/10.1016/S2468-2667(23)00312-2)

⁵ Aditi Y., (2020 August, 8). A Brief History of LGBTQ+ in India. The CBS Post, Retrieved from <https://newsletter.sscbs.du.ac.in>

⁶ Sanjana. R., (2018 September 11). Indian Culture Does Recognise Homosexuality, Let Us Count the Ways. Retrieved from <https://www.thequint.com>

⁷ Ibid

⁸ Shruthi. S., (2018 November, 12). Dark side of Alauddin Khilji's sexuality and Baccha Bazi that led to his brutal death. Retrieved from <https://www.speakingtree.in>

his work nor his period of time saws any backlash. There were numerous instances of Mughals from the aristocratic elite becoming homosexual.⁹

Following the arrival of the British in 1861, all gay behaviours as well as other sexual acts “against the order of nature were illegal under Indian Penal Code section 377.”¹⁰ The Catholic Church's view that a sexual act unrelated to reproduction was immoral had a significant influence on this.¹¹

The first research on homosexuality in India, titled “The World of Homosexuals,” was published in 1977 by Shakuntala Devi. “Full and complete acceptance, not tolerance and sympathy,” was demanded.¹² The first All-India Hijra Conference was held in Agra shortly after, in 1981, and 50,000 people from the community nationwide attended. Hijras were given the legal ability to vote in 1994 as a third sex. The AIDS Bhedbhav Virodhi Andolan filed the first petition opposing section 377 in 1994, but it was ultimately dismissed.¹³

Naz Foundation filed a Public Interest Litigation at the Delhi High Court in 2001 to contest section 377. The Delhi High Court determined in 2009 that section 377 clearly violated the Indian Constitution's guarantees of equality, privacy, life, and liberty. This meant that although homosexual sex was no longer illegal, it was still not acceptable.¹⁴ However, the Delhi High Court's ruling was contested in the Supreme Court by the opponents, who included Delhi-based astrologer Suresh Kumar Kaushal. In the LGBTQ community's fight for freedom, this remained a significant turning point.

The Supreme Court rejected the Centre's and many other organisations' review appeal against its earlier ruling on section 377 in 2014, stating that the LGBTQ community was a "miniscule fraction" of the nation's population and could not be sustained lawfully. The Indian Supreme Court declared in 2014 that transgender persons ought to be classified as the third gender category.¹⁵

⁹ Lubna. I., (2018 September, 16). From Babur to Dara Shukoh: Fluid sexuality was never 'unnatural' during Mughal era. Retrieved from <https://www.dailyo.in>

¹⁰ Section 377., The Indian Penal Code. (1860 October, 6). Retrieved from <https://www.indiacode.nic.in>

¹¹ Marry H., (1986 January, 10). Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons (Joseph Cardinal Ratzinger). Retrieved from <https://catholiccitizens.org>

¹² Mythreyee. R., (2020 July, 30). Shakuntala Devi's Book on Homosexuality – Yay or Nay? We Find Out. Retrieved from <https://www.thequint.com>

¹³ Shirin. R., (2024 May, 1). The History of the Hijra: The Third gender in the Indian Subcontinent. The Journal Urology. <https://doi.org/10.1097/01.JU.0001008828.35887.de.11>

¹⁴ Naz Foundation Vs. Government of NCT and Ors., (2009 July, 2). MANU/DE/0869/2009. Retrieved from <https://www.manupatrafast.in/pers/Personalized.aspx>

¹⁵ Naz Foundation (India) Trust and Ors. Vs. Suresh Kumar Koushal and Ors. (2014 January, 28). MANU/SC/0080/2014. Retrieved from <https://www.manupatrafast.in/pers/Personalized.aspx>

The country's LGBTQ community was granted the ability to safely express their sexual orientation on August 24, 2017, by the Supreme Court. The Right to Privacy statute protected a person's sexual orientation. LGBTQ individuals now had the freedom to express their sexual preference, although gay activity was still illegal at this time.¹⁶ Ultimately, the Supreme Court invalidated the portion of section 377 that made consenting gay behaviour illegal on September 6, 2018.¹⁷

On November 26, 2019, the Transgender Persons (Protection of Rights) Bill was approved by the Parliament. According to this bill, a transperson is a person whose gender identity differs from their biological gender. It made it illegal to discriminate against them whether hiring, providing healthcare, education, or using other services.¹⁸ However, because it required that each person be recognised as transgender based on an identity certificate issued by the district magistrate following proof of sex reassignment surgery, it was rejected by India's gay community. The focus was primarily on hijras or transwomen, with less attention given to intersex, gender queer, or transmen. The Transgender Persons (Protection of Rights) Rules, 2020 were updated and passed by the Ministry of Social Justice and Empowerment in July of this year.¹⁹ Under this, state-run hospitals will offer expensive sex reassignment surgery at no cost to patients. In addition, the government will cover the expense of housing and education for the transgender population.²⁰

LEGAL ASPECTS OF SECTION 377 OF IPC,1860

Enacted in 1860 during British colonial authority, Section 377 of the IPC has been the focus of much legal discussion and contention. This clause, which defined homosexual acts as "against the order of nature" and subject to imprisonment, made homosexual acts and other "unnatural offences" illegal.²¹

¹⁶ Naz Foundation (India) Trust Vs. Union of India (UOI) and Ors. (2017 May, 5). MANU/SC/0788/2017. Retrieved from <https://www.manupatrafast.in/pers/Personalized.aspx>

¹⁷ Navtej Singh Johar and Ors. Vs. Union of India (UOI) and Ors. (2018 September 6). MANU/SC/0947/2018. Retrieved from <https://www.manupatrafast.in/pers/Personalized.aspx>

¹⁸ Bill no. 169., The Transgender Persons (Protection of Rights) Bill. (2019 July, 19). Retrieved from <https://www.manupatrafast.in/pers/Personalized.aspx>

¹⁹ Section 6., Transgender Persons (Protection of Rights) Rules. (2020 September 15). Retrieved from <https://ourgovdotin.wordpress.com/wp-content/uploads/2020/04/the-transgender-persons-protection-of-rights-rules2020>.

²⁰ Section 10., Transgender Persons (Protection of Rights) Rules. (2020 September 15). Retrieved from <https://ourgovdotin.wordpress.com/wp-content/uploads/2020/04/the-transgender-persons-protection-of-rights-rules2020>.

²¹ *ibid*

Legal experts have criticised Section 377 for having imprecise and confusing wording that allowed for arbitrary enforcement and subjective interpretation. Its wide-ranging effects hindered the rights of LGBTQ+ people to privacy, dignity, and equality before the law in addition to making same-sex partnerships illegal. Section 377 was used as a tool for discrimination and persecution for the duration of its existence, which led to the marginalisation of LGBTQ+ populations and acts of violence against them. It exacerbated institutionalised homophobia and thwarted attempts at social integration and acceptance.

Legal challenges to Section 377 in recent years have brought to light the provision's inconsistency with the fundamental values of equality, non-discrimination, and individual liberty. Proponents contended that making consensual adult sexual actions illegal went against the fundamental freedoms protected by the Indian Constitution, including the right to privacy and the right to free speech.²²

In 2018, the Supreme Court of India rendered a landmark decision that partially invalidated Section 377, thereby altering the legal landscape surrounding the law. The court upheld LGBTQ+ people's rights to consenting sexual encounters without worrying about facing criminal charges, acknowledging the value of human autonomy. This ruling represented a significant turning point in India's progress towards LGBTQ+ rights and a break from the discriminatory legacy of Section 377.

Nevertheless, legal obstacles continue to exist in order to guarantee the full protection and acknowledgement of LGBTQ+ rights, even in the wake of the decriminalisation of consensual homosexuality. In order to alleviate structural disparities, issues including discrimination in employment, housing, healthcare, and education must be addressed through legislative reforms and proactive actions.

In summary, Section 377's legal viewpoint highlights how difficult it is to negotiate LGBTQ+ rights inside India's legal framework. Even though this provision has been partially repealed, more work has to be done to completely remove discriminatory laws, advance inclusive policies, and defend the rights of all people to equality and justice, regardless of their gender identity or sexual orientation.

²² Navtej Singh Johar v UOI; Akkai Padmashali v UOI., (2018 September 6). MANU/SC/0947/2018. Retrieved from Constitutionality of Section 377 IPC - Supreme Court Observer

ROLE OF CONSENT

An important consideration in the interpretation and application of the law is the function of permission in relation to Section 377 of the Indian Penal Code (IPC). When Section 377 was first passed, it made it illegal to engage in "carnal intercourse against the order of nature," which meant that those sexual practices that the law considered "unnatural" were forbidden. But because the clause did not specifically address permission, it is unclear whether or not consensual sexual behaviour is allowed.²³

Since Section 377 did not specifically mention consent, it was interpreted to criminalise both consensual and non-consensual sexual interactions between people of the same sex. Due to the prosecution and social condemnation of their private and consensual relationships, this broad interpretation added to the shame, discrimination, and persecution LGBTQ+ communities endured in India.

The fact that Section 377 does not specifically address consent aroused concerns about the infringement of fundamental rights, including as the right to privacy, autonomy, and dignity. Proponents contended that making consenting sexual acts between adults illegal violated people's freedom to control their own bodies and personal relationships.

During legal challenges to Section 377, the significance of consent in the provision was scrutinised more closely. Courts and legal scholars struggled to decide how far the law might be stretched and still adhere to fundamental constitutional values. Legal reforms are necessary to guarantee that rules controlling sexual behaviour respect individual liberty, dignity, and equality before the law. This is highlighted by the ambiguity around consent in Section 377.

In a historic ruling in 2018, the Supreme Court of India largely invalidated Section 377, decriminalising consenting gay conduct between adults. The court upheld LGBTQ+ people's freedom to have consenting sexual relationships without worrying about facing criminal charges, acknowledging the value of consent and human autonomy.

An important step towards advancing LGBTQ+ rights and resolving the harms sustained by discriminatory legislation was the acceptance of consent in the context of Section 377. Nonetheless, obstacles persist in guaranteeing all-encompassing legal safeguards and societal acknowledgement for LGBTQ+ persons, underscoring the continuous requirement for legal

²³ Krishnadas Rajagopal, (2018 September, 6). Section 377 will not apply to consensual same-sex acts, says Supreme Court. Retrieved from <https://www.thehindu.com>

modifications and advocacy endeavours to foster inclusiveness, parity, and reverence for personal autonomy within India's legal structure.

DEVELOPMENT AND IMPLICATIONS FOR LGBTQ+ RIGHTS IN INDIA

Recent years have seen a great deal of change in India with regard to the evolution and consequences for LGBTQ+ rights due to continued advocacy activities, societal upheavals, and legal improvements. These advancements have profound effects on the LGBTQ+ community and have changed the face of rights in India.²⁴

LEGAL REFORMS

Decriminalization of Consensual Homosexuality: Parts of Section 377 of the Indian Penal Code were set down by the Supreme Court of India in the historic decision of *Navtej Singh Johar v. Union of India* (2018), decriminalising consensual sexual encounters between adults. This legal change, which marked a break from the colonial-era legislation that made same-sex relationships illegal, was a turning point for LGBTQ+ rights in India.

Acknowledgment of Transgender Equality: The Supreme Court upheld transgender people's rights to equality and non-discrimination in 2014 and acknowledged them as a third gender²⁵. The Transgender Persons (Protection of Rights) Act, 2019, along other later legal initiatives, attempted to protect the rights of transgender people, despite criticism of the act's flaws.²⁶

CONSEQUENCES FOR LGBTQ+ RIGHTS

Legal Protections and Rights: The LGBTQ+ community has achieved important legal triumphs with the decriminalisation of consensual homosexuality and the recognition of transsexual rights. Securing complete legal safeguards, such as anti-discrimination laws, marriage equality, adoption rights, and access to healthcare, is still difficult.²⁷

Ongoing Activism and Advocacy: The advancements in LGBTQ+ rights have galvanised action and advocacy throughout India. Advocating for legislative reforms, societal acceptance, and the enforcement of legal rights, civil society organisations, LGBTQ+ campaigners, and supporters are not stopping.

²⁴ Diva Rai., (2020 June, 21). Evolution of LGBT Rights in India and taking the narrative forward. <https://blog.ipleaders.in>

²⁵ *ibid*

²⁶ *ibid*

²⁷ Tanuj. M., (n'd). Analysis of Section 377 of Indian Penal code 1860. Retrieved from <https://www.legalserviceindia.com>

Intersectional Challenges: Caste, gender, religion, class, and LGBTQ+ rights are some of the social justice concerns that interact with one another. Encouraging inclusive and equitable societies and guaranteeing the full realisation of LGBTQ+ rights depend on addressing these intersecting disparities.

In conclusion, the evolution of LGBTQ+ rights in India and its ramifications are a result of a complex interaction between societal shifts, legal reforms, and persistent difficulties. Even though there has been a lot of progress, much more has to be done to guarantee LGBTQ+ people in India complete equality, dignity, and rights.

CRITICAL ANALYSIS: NAVATEJ SINGH JOHAR v UNION OF INDIA²⁸

FACTS

Consensual intercourse between gays was classified as an "unnatural offence" and made illegal under Section 377 of the IPC. It is similar to the banned basis of sex in that it discriminates against a minority group based only on that minority's sexual orientation. In Suresh Kaushal and Anr v. NAZ Foundation and Ors²⁹, the section was contested. claiming that Articles 14, 15, and 21 of the Constitution are violated. In response, the Supreme Court issued a somewhat ambiguous ruling declaring that Parliament, not the courts, ought to have decided whether or not to decriminalise homosexuality. Courts can only do this in cases when it is proven beyond a reasonable doubt that the statute violates certain parts of the constitution. In addition, the court emphasised that there is no evidence to declare that section 377 IPC supersedes Articles 14, 15, and 21 of the Constitution, given that fewer than 200 cases have been filed in the past 150 years. Without going into further detail, the Supreme Court concluded that Sec. 377 is not unconstitutional. In the Navtej Singh case, the same ruling was contested by five LGBTQ individuals who filed a petition to repeal Section 377 IPC, which criminalised gays having consensual sex.

ISSUES

The main issue here was about the constitutionality of Section 377 of the IPC.

The court dealt with these major issues in finally upholding the constitutionality or

²⁸ Navtej Singh Johar and Ors. Vs. Union of India (UOI) and Ors. (2018 September 6). MANU/SC/0947/2018. Retrieved from <https://www.manupatrafast.in/pers/Personalized.aspx>

²⁹ Naz Foundation (India) Trust and Ors. Vs. Suresh Kumar Koushal and Ors. (2014 January, 28). MANU/SC/0080/2014. Retrieved from <https://www.manupatrafast.in/pers/Personalized.aspx>

unconstitutionality of Section 377 IPC:

1. Whether it violates Articles 14 and 15 of the Indian Constitution for discriminating against individuals on the basis of sexual orientation or gender identity?
2. Whether it violates Article 21 by penalising consensual acts between the members of that community?
3. Whether it violates Article 19(1)(a) by criminalising the gender expression of the whole community?

PETITIONER SUBMISSIONS

Being gay is completely normal and unrelated to any form of disease. It is a reflection of personal preference, and making it illegal will violate Article 21 of the Indian Constitution by undermining people's sense of dignity and gender identity.

The LGBTQIA+ community, which makes up 7–8% of India's population, needs to have their rights recognised because the general public's rejection of their community does not imply that any of its members are foreigners.

The Victorian era, when sexual activity was solely viewed as a reproductive function, gave rise to Section 377. The community as a whole is the only cause of the discrimination and abuse that it is experiencing, and these problems will only worsen if homosexuality is made illegal once more.

The community's fundamental rights, including the freedom of expression, the right to privacy, and the right to equality, will be violated if Section 377 of the IPC is kept in place without any modifications.

It was also said that since it is their freedom to choose, persons who choose to marry outside of their caste are no different than those who prefer to marry someone of the same sex. Even if society may not support intercaste unions, the court must uphold each citizen's constitutional rights.

The LGBTQIA+ group holds the same position: the court must defend their fundamental and constitutional rights even while the majority does not agree with them.

There is no logical way to distinguish between sexual actions that are natural and those that are not, thus the phrase "carnal intercourse against the order of nature," which appears in Section 377, has no definition. Therefore, Section 377 contravenes Article 14 and is arbitrary.

Additionally, because the section discriminates against people based on the sex of their partners—a practice that is forbidden by Article 15—it violates that article.

RESPONDENTS SUBMISSIONS

Decriminalising Section 377 would, according to one argument, disrupt India's entire family structure, and a lot of young, dishonest Indians would see this as a trade and begin using homosexuality as a means of making money. Furthermore, engaging in such acts increases one's risk of contracting HIV/AIDS.

Additionally, they argued that a country as varied as India would not have the same political, economic, or cultural traditions as nations where gay activities committed with consent are no longer illegal.

Furthermore, decriminalisation will render all religions practiced in the nation intolerable and result in a breach of Article 25 of the Indian Constitution, which also requires careful examination. Fundamental rights are not absolute.

Additionally, they argued that even if the section has been decriminalised, definitions for all the contentious terms contained in it can still be introduced. Subsequently, the section will solely target those engaging in non-consensual actions.

Moreover, the primary rationale for making carnal relations against the law is to safeguard citizens from the negative outcomes and advance the goals of our nation's criminal codes.

Since discrimination based on sex, not sexual orientation, is prohibited by Article 15, Section 377 of the IPC does not violate Article 15. Additionally, since Article 14 only lists a specific offence and its penalty, it does not violate that article.

JUDGEMENT

The court ruled that LGBTQIA+ people have the same right to privacy as everyone else, including the freedom to choose their sexual orientation and individuality, regardless of how tiny their part may be. Even though they may have chosen a different companion, they won't face consequences for it. They are deprived of their human dignity and freedom of choice by Section 377, which infringes upon their right to privacy guaranteed by Article 21.

The primary goal of keeping Section 377 of the IPC in place is to shield women and children from being mistreated and tormented by non-consenting sexual activity; nevertheless, consensual sexual activity, which is carried out by members of the LGBT community, does not

harm either gender or child. Furthermore, non-consensual acts are already listed as crimes under Section 375 of the IPC, implying that Section 377 is unconstitutional because it targets a single segment of society and is redundant and discriminatory, in violation of Article 14 of the Indian Constitution.

Because of the liberal nature of our Constitution, the right to choose cannot be guaranteed. As such, this privilege has also been subject to certain limitations. But the freedom to select a partner for a sexual relationship is an unalienable right that cannot be limited. In contrast, Section 377 of the Indian Penal Code imposes unreasonable and arbitrary restrictions on this community's ability to select a sexual partner.

According to Article 19(1)(a), reasonable limitations on the basic right of expression may be imposed on the basis of public order, decency, and morality. Until an act is sufficiently respectable and not offensive to the general public, it does not in any manner disrupt public order or moral principles when performed in public by any member of this community. But Section 377 is illegal once more because it disregards proportionality standards and infringes upon the LGBTQIA+ community's fundamental right to free speech.

The Supreme Court reversed the ruling in *Suresh Kaushal and others. v. Naz Foundation and others*, ruling that Section 377 is partially invalid since it breaches Articles 14, 15, 19, and 21 of the Indian Constitution. Additionally, it said that only non-consensual sexual actions against adults, sexual acts against minors, and even bestiality would be punished under Section 377.”

SOCIETAL ATTITUDE AND CULTURAL SHIFTS

In India, there have been significant changes in the way society views LGBTQ+ people since Section 377 of the Indian Penal Code (IPC), which had previously made consensual gay acts illegal, was decriminalised. Significant ramifications of these changes have been felt by the LGBTQ+ community and the general public:³⁰

More Acceptance and Visibility: Decriminalisation has made LGBTQ+ people more visible in Indian society. The prevalence of public conversations around gender identity and sexual orientation has raised knowledge and understanding. Diverse sexual orientations and gender identities have been gradually normalised as a result of LGBTQ+ people feeling more at ease sharing their identities in public.

³⁰ Vibhute. K. I., (n'd). Consensual Homosexuality and The Indian Penal Code: Some Reflections on Interplay of Law and Morality. *Journal of the Indian Law Institute*, 51(1), 3–31. <http://www.jstor.org/stable/43953422>

Supportive Movements and Advocacy: Throughout India, LGBTQ+ rights movements and advocacy efforts have gotten a boost from the decriminalisation of Section 377. To promote legislative changes, anti-discrimination policies, and social acceptability, civil society organisations, activists, and supporters have banded together. There are now more pride parades, workshops, and awareness initiatives, which help the LGBTQ+ community come together and grow.

Legal Recognition and Rights Advocacy: In India, decriminalisation has made it possible for LGBTQ+ people to receive legal recognition and to advocate for their rights. The movement to obtain legal rights to healthcare, adoption, protection from discrimination, and acceptance of same-sex partnerships has gathered steam. Although there are still obstacles in the way of achieving complete legal equality, the repeal of Section 377 has improved the climate for legislative and policy changes.

Cultural Shifts and Representation: The way LGBTQ+ people are portrayed in Indian literature, entertainment, and media has undergone a significant change. Popular and critically acclaimed works of literature, television, and film that feature LGBTQ+ themes and characters have grown in popularity. The heightened visibility of LGBTQ+ identities has played a role in dispelling myths and altering public opinion.

Difficulties and Opposition: Although there has been progress, there are still obstacles in the way of LGBTQ+ people in Indian society being fully accepted and included. Social shame, ingrained cultural standards, and religious convictions all continue to impede the advancement of equality. LGBTQ+ people continue to experience violence, harassment, and discrimination in a variety of contexts, which emphasises the necessity of persistent efforts to dispel prejudice and advance acceptance.

Inclusive Education Policies: Following the decriminalization of Section 377, there has been an increased focus on creating inclusive education policies that promote diversity and acceptance of LGBTQ+ students in educational institutions. These policies aim to provide a safe and supportive environment for LGBTQ+ individuals to pursue their education without discrimination or harassment.

Societal attitudes and cultural shifts regarding consensual homosexuality in India have undergone significant changes, particularly in recent years. Until relatively recently, Section 377 of the Indian Penal Code criminalized "unnatural offences," including consensual sexual acts between same-sex individuals. This law was often used to discriminate against and

persecute LGBTQ+ individuals.

However, there has been a notable shift in societal attitudes and legal frameworks surrounding consensual homosexuality in India. One of the landmark moments was the decriminalization of consensual homosexual acts between adults in a historic judgment by the Supreme Court of India in September 2018. The court ruled that consensual adult same-sex relationships are not illegal, striking down parts of Section 377 that criminalized such relationships.

This legal shift has been accompanied by a gradual change in societal attitudes. While there are still conservative and traditional views held by some segments of society, there has been a visible increase in acceptance and support for LGBTQ+ rights and equality. This change is reflected in various aspects of Indian society, including media representation, public discourse, and advocacy efforts.

Cultural shifts regarding consensual homosexuality in India are also evident in the increasing visibility of LGBTQ+ individuals in various spheres, including entertainment, politics, and academia. Pride events and LGBTQ+ rights movements have gained momentum, contributing to greater awareness and acceptance within the broader population.

It's important to note that while progress has been made, challenges and stigmas still exist, particularly in more conservative or rural areas. LGBTQ+ individuals may still face discrimination, social pressure, and challenges in accessing healthcare, employment, and other services. Efforts to promote education, awareness, and inclusivity remain crucial in fostering a more accepting and supportive environment for LGBTQ+ individuals in India.

CONCLUSION

The way that the Indian Penal Code (IPC) and morality interact with regard to consensual homosexuality raises important questions for the development of legal doctrine, society norms, and individual rights. The transition from Section 377's prosecution of homosexual actions to its partial decriminalisation illustrates a complicated dynamic influenced by shifting public attitudes, difficult legal situations, and advancements in society.

For more than a century, the application of Section 377 represented the imposition of moral principles through the legal system, with little respect for human dignity, privacy, or individual liberty. In addition to making personal relationships between consenting adults illegal, this antiquated rule also helped to normalise prejudice, stigma, and violence against LGBTQ+ people.

But with the Supreme Court's historic decision in 2018, which acknowledged the inalienable rights of LGBTQ+ people to freely love and express themselves without fear of repercussion, the legal landscape saw a revolutionary change. This judicial intervention upheld the importance of fundamental principles like equality, liberty, and non-discrimination, signalling a dramatic break from the moralistic foundations of Section 377.

The decriminalisation of consenting homosexuality served as a reminder of the limitations of the legal system's ability to impose social norms and values, emphasising the value of respecting individual liberties and rights in a pluralistic society. It underlined the necessity of inclusive, equitable legal structures that mirror changing social norms rather than being predetermined by dogmatic moral beliefs.

However, the relationship between morality and the law is still a hotly contested topic, especially in communities where traditional beliefs coexist with contemporary ideas of equality and human rights. Legal changes have brought about progress for LGBTQ+ rights, but societal attitudes and cultural views still influence public policy and debate, making full acceptance and inclusion difficult to achieve.

In summary, the history of consenting homosexuality and the Indian Penal Code illustrates the complex relationship between morality and the law, which has been characterised by societal advancement, legislative changes, and equality movements. It is a moving reminder of the necessity of defending individual liberties, opposing laws that discriminate against people, and promoting a more accepting and caring community that values the range of human experiences and manifestations of love.

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