

Section 377: Avenues of Changes

Neha Bhartiya¹

¹Assistant Professor, Amity Law School, Amity University,
Jaipur, Rajasthan, India

Abstract

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

These words said by him are in continuance from the ancient time till present modern society. The individuality or an identity of a person or human is given to him by the Almighty and whatever is being gifted by the Almighty cannot be denied by the human subjected to the nature. When any person defines himself it is the best expression of individuality. When we discuss the identity from the law of the land, it's connected with the idea of “identity with dignity”, It cannot be characterized singularly to one's orientation that will be related to his/her birth and also the feeling he/she develops once he/she grows up.

The question that's essential to arise here is whether or not sexual orientation is alone is to be sheltered or each orientation selection is to be accepted? As long because the exercise of those rights by a person doesn't have an effect on another's choice and has the consent of the opposite where dignity of each individual is maintained and one's privacy isn't bent. In the recent ruling of the Supreme Court in the case of *Navtej Singh Johar Vs. Union of India*, the court declared section 377 of IPC unconstitutional as when two person of same gender in a private place maintains sexual relationship with free consent of each other it doesn't constitute an offence.

Keyword: *Personal Liberty, LGBT Rights, Unconstitutional, Section 377, Unnatural Offences.*

1. Introduction

India is a country which is known for its Culture, Arts, Tradition, Philosophy, Orientation, and way of living. A country which is deeply traditional on the other hand a country which has accepted community which is commonly known LGBT community. The fight for the rights of said community has increased aggressively. Today in post-modern era various groups and institutions have raised their voices to fluent flow the rights of this section of society to live with respect and without a threat of brutality. India has a constitution which is dynamic and progressive. The Indian Constitution equally affords the rights and safeguard to every citizen of the country. The Constitution treats every individual equal and fair without any discrimination on any basis and it is the duty of the state to secure the rights of every one and no one should be deprived from enjoying his liberty. The people of LGBT community belong to the minority section but they also hold the equal constitutional rights. But they were not treated equally in the society and their rights were also violated by the society continuously. Not only the society but also the state machinery used to treat them in the same manner under the shade of **Section 377 of India Penal Code 1806.** They were impoverished of their basic human right which right to enjoy life properly.

2. Section 377, Indian Penal Code 1860: A Way Back

Section 377 of unnatural offences reads as: *whoever voluntarily has carnal intercourse against the order of nature with in any man, woman or animal shall be punished with imprisonment of*

either description for a term which may extend upto 10 years and also liable for fine.

This section was introduced by British Rule as anti-sodomy law, which penalizes all voluntarily sexual intercourse against natural order. The same is not defining the “unnatural sex” also not distinguishing “consensual sex” and “coercive sex”. As indicated by details of the section a small penetration is sufficient to establish sexual intercourse and construed to include anal and oral sex. The section follows the traditional Judeo Christian moral and ethical norms which conceive of sex in purely functional terms. The Vedas of our society mentions that the sexual activities is only for proliferation and by the reason of the same Indian society considers the otherwise. Homosexuals are not able to reproduce and the only purpose of their sexual activity is pleasure which is fated by the society because the same is contrary to moral norms that are being followed since ages. This section is a misconception of British creation because homosexuality falls within its ambit and attracts the punitive measures. This section is been heavily used by the law executors to harass the homosexuals and Trans-genders. As it was found in a recent case scenario of which shows that a transgender was arrested by the police for the offence of theft, thereafter he was subjected to carnal abuse resulting his death in the police station¹. Gay people and category have likewise been at the upset completion of financial blackmail by police in arrival for not snug their personalities to the general public This section is not providing any civil benefit and genuine concern of the state. The homosexuals are treated harshly by the society and the law. By the reason of their sexual bearings which is named as unnatural they are denied from essential rights and exposed to separation in different circles of life. They are deprived from the fundamental rights and victimized by dread; hopelessness and despondency. 377 of IPC enable and encourages the evil of seclusion, discrimination and humiliation.

3. Rise of Hope

The Apex Court of Country by proclaiming section 377 of IPC, 1860 as unconstitutional has given a

¹ Jayalakshmi v.State of Tamil Nadu (2007) 4 MLJ 849

capable identity to the LGBT community for being recognize equally and fairly among the society without being subjected to the discrimination. The declaration has decriminalizes the sexual relations between homosexuals and protection from ill treatment and deprecate at the hands machinery of state. The impugned law has also been found as violating of the various fundamental rights as specified in part 3 of the Indian constitution. The advantageous development with the verdicts are equal protection of law to the LGBT community, removal of discrimination and the addition of sexual preferences in scope of right given under Article 21 as to Right to life and personal liberty. Equality before law and equal protection of laws is offered by Article 14 of Indian Constitution hence it operates with dual approach. Section 377 recreated the class enactment disrespecting LGBT people group and consequently stands against the provisions of Article 14, the anti-sodomy law betrayed the said community and damaged the procedure of right to equality. A legislation that distinguishes the individual on parameters of sexual choice defeat the spirit of Article 14 as it is criminalizing the homosexuality resulting authoritative aggression rather than care for them hence it is in breach of fundamental concept of Article 14 and is obligated to be suppressed.

Most interesting aspect of declaring the impugned statute as unconstitutional is the same is in violation of Article 21. The law which is criminalizing the homosexuality or the homosexual conduct is a direct contravention of the Article 21². The scope of right of personal liberty is limitless. Thus the penalizing of the homosexual acts established immense shame rise of absolute right of sexual minorities to their self-worth and solitude.

The state and society would have no right to suppress or restrain the homosexual act with consent in private and which are not causing any damage to the society. The general public ought to be given opportunity of the decision regarding terms of private morality. As long as the act does not involve any illegal practice and doesn't disturb social order. The Law has no right to condemn it. Homosexuality as long has been done secretly and with consent the state has no privilege and power to suppress this act. The law should not interfere in

² Right of life and Personal Liberty.

the private sphere in concerning with sexual preferences and consensual sexual activity that one is doing privately without causing harm to others. In relation to sexual choices and consensual sexual activity that one is doing secretly without making hurt others. Seclusion of every individual ought to be honored and balance should be kept up between society and people. Sexual preferences are one of the most personal domains of one's life and it needs heavy protection.

4. Conclusion

Every individual has a privilege as to his privacy and it reaches out on the matter of marriage, reproduction, learning, family connections and so forth they reserve an option to be let alone and have a personal privacy that is free from government guidelines and settle on choice of cozy relations without being penalized. The said community simply expresses their sexuality

without hurting others. The matter of one's sexual inclination and individual choices focus on his poise and self-governance the privilege of privacy is need of quest for one's bliss and one's sexuality is at the center of this zone of privacy.

5. References

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