

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.



Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

FROM CRIMINALIZATION TO DECRIMINALIZATION: THE JOURNEY OF SECTION 377 IPC AND ITS REPEAL

AUTHORED BY - MR SANAT SINGHAL¹

Abstract:

The paper traces the historical, legal, and social trajectory of Section 377 of the Indian Penal Code, 1860 (IPC), from battlefield criminalization of unnatural offences in colonial times to laudable deportation in 2018 and repealing the same provisions in 2023. With that, Section 377 IPC was introduced in 1860 to legitimize "carnal intercourse against the order of nature," with very few provisions unique like homosexual acts and other non-procreative sexual acts. This criminalization, for more than a century, became an instrument of marginalization and oppression against the LGBTQ+ community of India, and thus, Section 377 IPC became a precursor of systemic discrimination and human rights violations against them. However, the journey from the criminalization of Section 377 IPC to decriminalization speaks of how legal activism, judicial pronouncements, and social movements created change. The study begins with the context and legal regime of Section 377 IPC in history. The authors discuss the genesis of Section 377 IPC in British colonial rule and its effect on people, especially those in marginalized communities, concerning the LGBTQ+ population. Thereafter, it discusses the legal confrontations and social movements that challenged the constitutionality of Section 377 IPC, concluding with the Supreme Court's decision in Navtej Singh Johar v. Union of India (2018), when it declared consensual homosexual acts not to be unlawful. Another domain of this paper consists of analysing the legal climate post-judgment, scrutinizing the challenges and the missing links that sprang after the repeal of Section 377 IPC. In this context, it talks about the absence of provisions against unnatural offences concerning animals, rape of males, and asymmetrical legal protection for the transgender population.

Besides, the intersection of Section 377 IPC with the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the latter's consequences for the prosecution of offences

¹ Third Year Law Student, School of Law, CHRIST University, Bangalore. Email id-sanat.singhal@law.christuniversity.in

involving child sexual abuse are examined. A comparative analysis of like enactments in other jurisdictions is made, extracting valuable lessons from the progressive legal framework of the United Kingdom, Canada, and South Africa. The study identifies the ongoing hurdles concerning legal enforcement and societal acceptance while suggesting avenues for future legal reforms, training, and advocacy to create an inclusive and equitable society. Through case law, legislative changes, and scholarly literature, this paper argues the pivotal importance of Section 377's repeal as a landmark victory for the LGBTQ+ rights movement in India.

Keywords: unnatural offences, LGBTQ+ rights, judicial approach, non-consensual intercourse, Section 377 repeal, POCSO Act, gender-neutral laws, bestiality, and transgender rights.

I. Introduction

Section 377 of the Indian Penal Code (IPC), enacted in 1860, made criminal "carnal intercourse against the order of nature," effectively aimed at same-sex acts as well as a few other non-procreative sexual behaviours. For more than a century, this law was misused to marginalize and oppress the community of LGBTQ+ India, leading to rampant discrimination and violations of human rights. More than criminalization and decriminalization, Section 377 is testimony to the power of legal activism, social movements, and judicial intervention.²

The present paper attempts to thoroughly study the historical background, litigation scenarios, and social ramifications of Section 377, culminating in its repeal in 2023. The study highlights the weight of this legal evolution and its change vis-a-vis LGBTQ rights in India while identifying the existing challenges and opportunities for more reform.

II. Historical Context and Legal Framework of Section 377

Section 377 was initially enacted through colonial rule in India and enshrined Victorian morality, which denoted upper-class values condemning non-procreative sexual acts. According to legal conviction, such acts were deemed "unnatural" and therefore required criminalization for social order.³ Over time, Section 377 indeed became an instrument to police particular sexualities, especially that of the LGBTQ+ community.

² Arvind Narrain, *Section 377 and Beyond: The Role of Public Opinion and the Judiciary in Striking Down an Unjust Law*, SSRN (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3339086.

³ *Khanu v. Emperor*, AIR 1925 Sind 286.

Early judicial interpretations of Section 377 remained conservative and upheld the law as important in protecting public morality. However, the law received subjectivity and public denial as society changed its perception.⁴ The law primarily subject to public denial also included the much harassed, blackmailed, and violently affected LGBTQ community, all within the shield of Section 377.⁵

In *Brother John Antony v. State*⁶, the Madras High Court had to deal with a situation where one was accused of carnal intercourse against the order of nature as per Section 377. The petitioner was the Sub-Warden of a boarding home who was accused of sexually assaulting the male inmates. In the case, the court had to decide whether the acts attributed to the petitioner fall within the ambit of Section 377. The judgment significantly indicated the complexity of interpretation under this provision and the difficulties involved with non-consensual cases and sexual perversions. The court observed that in many cases of sexual abuse, Section 377 had been invoked as a part of such cases. Its vagueness, to an extent other than the actual text of the law, was susceptible to misinterpretation.

III. The Fight for Decriminalization: Legal Battles and Social Movements

Understanding Section 377 as an incident in the history of the struggle for decriminalization is difficult. It had to go through many high-profile legal battles and huge mobilizations. Among the first and most widely recognized cases was the Naz Foundation Case⁷, where the Delhi High Court decided that Section 377 violated the fundamental rights to equality, privacy, and dignity. However, the encouragement from this judgment did not last long because the Supreme Court, in *Suresh Kumar Koushal v. Naz Foundation Case*⁸, overturned it and reinstated the criminalization of homosexual acts.

Respected LGBTQ+ communities and their champions eventually led them to the next significant case in this long march of claims, *Navtej Singh Johar v. Union of India*⁹. This ended with the unanimous judgment of the Supreme Court striking down that portion of Section 377, which criminalized consensual homosexual acts as unconstitutional. Individual autonomy,

⁴ Lohana Vasantlal Devchand v. State of Gujarat, AIR 1968 Guj 252.

⁵ Mahendra P. Singh, Constitutionality of Section 377, Indian Penal Code---A Case of Misplaced Hope in Courts, 6 NUJS L. Rev. 569 (2013).

⁶ Brother John Antony v. State of Kerala, 1992 Cri LJ 1352 (Mad).

⁷ Naz Foundation v. Government of NCT of Delhi, 160 Delhi Law Times 277 (2009).

⁸ Suresh Kumar Koushal v. Naz Foundation, Civil Appeal No. 10972 of 2013 (2013).

⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

respect for privacy, and the right to live with dignity are some of the fundamentals the court justified in this judgment.

Social movements, with the active participation of several NGOs, have extensively linked Indian and international fronts in securing rights for the LGBTQ+ communities.¹⁰ The pressing international discourses of human rights and progressive legal frameworks of other countries further strengthened the calls for addressing the growing momentum for decriminalization.

IV. The Supreme Court's Landmark Judgment of 2018

The case of Navtej Singh Johar¹¹ was a significant turning point in the fight against Section 377 IPC in the courts. The Hon'ble Supreme Court's ruling was based on equality, non-discrimination, and the right to privacy, which are enshrined as fundamental rights under the Constitution of India. It further clarified that the protection of persons from sexual violence required that Section 377 IPC does not extend to non-consensual acts. The judgment also dealt with the difficulties concerning interpretation posed by Section 377. In Brother John Antony's case¹², the court inter alia had to grapple with whether various forms of sexual perversion, such as sodomy, bestiality, and exhibitionism, fell within the ambit of Section 377. The Supreme Court in Navtej Singh Johar stated that Section 377 was not to be construed to criminalize consensual acts between adults but would still find application in the case of non-consensual acts and bestiality.

The repeal of Section 377 IPC in 2023 has thus created a legal vacuum concerning certain types of sexual offences, including bestiality and sexual violence against men and transgender people.¹³ This was. However, an issue already foreseen in previous cases like Brother John Antony, where the court grappled with applying Section 377 in cases of sexual perversion as well as for cases of non-consensual acts.

V. Post-Judgment Legal Landscape

The year 2018 marked an important milestone in the history of India's LGBTQ+ rights, which

¹⁰ Minakshi Das, LGBTQ Rights and the Role of Civil Society in Repealing of the Laws in India: Section 377, 7 Kalahari J. (Special Issue) (2022).

¹¹ *Supra* note 8.

¹² *Supra* note 5.

¹³ Kanad Bagchi, Transformative Constitutionalism, Constitutional Morality and Equality: The Indian Supreme Court on Section 377, 51 *Verfassung Und Recht in Übersee / Law and Politics in Afr., Asia & Lat. Am.* 367 (2018).

began with repealing Section 377 IPC and continued to be followed by its replacement legislation in 2023. However, the abolition of this colonial law did not leave much of a legal framework, creating several voids and obstacles, especially in spheres where Section 377 IPC had earlier provided some legal groundwork for particular kinds of sexual offences. Let us see three critical challenges which post-repeal legal history has now thrown up to us:

1. Unnatural Sexual Offences Against Animals: A Legal Vacuum

One of the unintended repercussions of repealing Section 377 is the loss of a specific penal provision to address unnatural sexual offences targeting animals. Under Section 377, acts of bestiality (or sexual acts between humans and animals) were criminalized as "unnatural offences", but now, with the repeal of Section 377, there exists no explicit provision in the Indian Penal Code that would bar such acts.

When considering animal welfare and the prevention of cruelty, this disparity presents a serious problem. Although it addresses animal abuse generally, the Act on the Prevention of Abuse to Animals, 1960, does not expressly criminalize sexual acts against animals. As a result, animals are left vulnerable to such exploitations since there is no clear way to hold those responsible for such atrocities accountable.¹⁴

This issue calls for a detailed review of the legal framework dealing with all types of sexual violence, including that directed against animals. Legislators should consider the need for some special provision targeting this offence- either inserted into the IPC directly or otherwise, in terms of amendments to any other existing animal protection law.

2. Absence of Legal Protection for Sexual Offences Against Men

Section 377 removal has enabled sexual violence against men to remain unwarranted by law. Under the repealed Section 377, non-consensual acts against men could have been construed as crimes against nature. However, no clause that punished rape or any other form of sexual violence against males was included in the Bharatiya Nyaya Sanhita, 2023¹⁵ (BNS) after Section 377 IPC was repealed.

According to the Indian Penal Code, rape under Section 375 is a crime against women only. This male-centric definition then systematically excludes from its ambit male

¹⁴ Mabel Chandra, Nitin Nishad & Mahesh A. Tripathi, Bestiality: A Cruelty Towards Animal, 15 Indian J. Forensic Med. & Toxicology 3414 (2021).

¹⁵ The Bharatiya Nyaya Sanhita, Act No. 45 of 2023, Acts of Parliament, 2023 (India).

persons and transgender persons, leaving them unprotected under the law for cases of sexual violence. While non-consensual acts can still be charged under other provisions of IPC, such as assault or outraging modesty, these do not offer the same recognition and protection as the offence of rape does in law.¹⁶

It is necessary to have rape laws that are gender-neutral, seeing sexual violence as a crime against any and every gender. If no such laws exist, then gender discrimination will be perpetuated, and the facts around men and transgender people's sexual assault will be ignored entirely and unremedied. A complete legal reform will ensure that all the victims of sexual abuse, regardless of gender, will have the same legal protection.¹⁷

3. Asymmetrical Legal Protection for Transgender Rape

Repealing the said provision has exposed asymmetries in an otherwise legal protection framework regarding transgender persons. The legal framework is still modified regarding sexual offences against transgender individuals, as the Protection of Children from Sexual Offences Act, 2012, or some similar laws would give shelter in cases of sexual violence. For instance, if an act of sexual offence is committed with a woman by a trans person, existing laws would hold an offence against him, either Section 63 (rape) of the BNS 2023 or the POCSO Act. However, if the same sexual act were inflicted on a trans person, it would not be under any specific provision in the BNS. Since existing legal frameworks do not recognize the unique vulnerabilities and experiences of transgender people, they are often left without legal recourse or justice.¹⁸

As with all legislation, legal inertia about perfect protective mechanisms is probably only the last straw in an already existing marginalization towards transgender people, and gradually constructed legal frameworks tend, at times, to carry a small quantity of societal stigma into their systems. There is an imperative need for a gender-inclusive law which recognizes, understands and protects violence against transgender persons. This legislation would entail legal protection and further integrate the entire agenda for equality and justice.

¹⁶ Nikita Sultania & Pritha Chatterjee, Men Don't Cry Can Be Raped, 5 NUJS J. Regul. Stud. 36 (2020).

¹⁷ Priyanka Narayanan, Gender Neutrality of Rape Laws: A Denial of Rights to Men? 11 Supremo Amicus 248 (2019).

¹⁸ Supra at 16.

VI. Broader Implications and the Need for Legal Reform

The current regulations of Indian law regarding sexual offences are entirely up to date in light of the mentioned problems. Despite it being one of the significant accomplishments in the fair treatment of LGBTQ+ people and the legalization of homosexuality through private acts, the annulment of Section 377 IPC has lately become a red flag for Tacking legislative changes that ensure protection against abuse and crimes from both the public and private sector of the society will fill this gap. In particular, the following steps are the most urgent:

- 1. The legislature should bring out separate laws:** Introduction of laws that prohibit sexual acts with animals either in the BNS or through amendments to the existing laws related to animal protection should be implemented. On the other hand, such a move would guarantee that animals are spared from sexual abuse and suffering.
- 2. Introduction of Gender-Neutral Rape Laws:** Amendments to the BNS are thus necessary in order to provide for gender-neutral definitions of rape and sexual assault. This would ensure equal protection under the law for men and transgender individuals along with women.
- 3. Recognition of Transgender Rights in Sexual Offences Laws:** The introduction of specific legislation relating to sexual violence against transgender individuals will address their unique vulnerabilities and ensure the adequate protection of the transgender community under the law.

VII. Protection of Children: Intersection with the POCSO Act, 2012

The repeal of Section 377 IPC left a mark on the rights found in the Protection of Children from Sexual Offences Act, 2012.¹⁹ Whereas Section 377 IPC essentially took care of "unnatural offences," the POCSO 2012 seemed more concerned with the protection of children from sexual abuse. The repeal of Section 377 IPC cast doubt on the legal framework capable of prosecuting child sexual offences, particularly in the case of same-sex acts. The relationship between Section 377 IPC and the POCSO Act 2012 gave rise to the need for a more inclusive law dealing with sexual offences. With the repeal of Section 377, the protection under the Preamble for the prosecution of children under POCSO remains intact, but the repeal called for rearranging the law to address the entire gamut of sexual violence.

¹⁹ Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

VIII. The Repeal of Section 377 in 2023: Legal and Social Implications

After almost 70 years of struggle by the LGBTI community leaders, India's Supreme Court voted on 377 on March 2023, which is a watershed verdict. The replacement of Section 377, which is the new criminal code, has a broader scope of criminal activities of sexual nature, is more inclusive to offenders, and offers more latitude to victims, thus creating a balance between the protection of freedoms and respect of personal rights.²⁰ The LGBTIQ community feels a lot stronger after the removal of corporal punishment and now enjoys better legal safeguards and social identity. The deletion of the statute represents an elevation of enlightenment with social attitudes improving and more people showing concern and support for LGBTQ+ rights. On the other hand, the removal of the statute brings up legal questions that have significance in conjunction with sexual offenses laws in which non-consensual acts and protecting specific individuals may occur.

IX. Comparative Analysis with International Jurisprudence

About same-sex relationships and the acceptance of LGBTQ rights within jurisdictions, the paths of democratization and recognition tend to be quite different. This section will compare and contrast the legal and judicial frameworks governing India's relationship with Kenya and Barbados regarding LGBTQ rights.

India: A Progressive Judicial Approach

India's decriminalization of same-sex relationships reached a historic landmark in the Navtej Singh Johar²¹ judgment. In this transformative judgment, India's Supreme Court unanimously declared Section 377 IPC unconstitutional because it criminalized "carnal intercourse against the order of nature." The court ruled that Section 377 infringed the constitutional fundamental rights to equality, privacy, and dignity recognized in the Constitution of India of the people. Besides, it stressed the point of hooking sexual orientation with people who form an integral part of society. Thus, they could not be prosecuted for consensual same-sex relationships that would violate the right to privacy and dignity under Article 21 of the constitution of India, respectively.

Furthermore, Section 377 IPC was found to have had a grossly disproportionate effect on

²⁰ Scott De Orio, The Invention of Bad Gay Sex: Texas and the Creation of a Criminal Underclass of Gay People, 26 J. of the Hist. of Sexuality 53 (2016).

²¹ *Supra* note 8.

LGBTQ persons, and hence, it was adjudged as violative of their right to equality under Article 14²². Besides, the judgment also acknowledged the public health consequences of criminalization of same-sex relationships since it severely impedes access to HIV prevention and treatment for LGBTQ people. The Navtej Singh Johar judgment, however, marks just one victory in the struggle for LGBTQ rights in India; there remain many challenges, such as the absence of gender-neutral rape laws and legal recognition of same-sex marriages.

Kenya: Upholding Colonial-Era Laws

Unlike India, in Kenya, the High Court, during the case of *EG & Z Others v. Attorney General* in 2019²³, validated the constitutionality of Sections 162 and 165 of the Penal Code²⁴ that penalized same-sex sexual acts. It rejected all claims by the petitioners that these provisions violated rights to equality, privacy, dignity, and health under the Kenyan Constitution. It dismissed the argument that the definitions "carnal knowledge against the order of nature" "and gross indecency" were vague; it purported anal penetration and indecent acts between men. It observed that the law did not directly discriminate against LGBTQ+ individuals as it applies to anyone or any male person but did not explicitly target LGBTQ+. That was illegal to have same-sex relationships within the context of traditional family values taken care of by the constitution under the right to marry, which is stated in Article 45(2) only for opposite sexes. In addition to the evidence brought forth by petitioners, the court dismissed the claim that criminalization of same-sex relationships blocked access to HIV prevention and treatment, citing unearthed evidence connecting the law and health outcomes. The ruling was a significant blow against LGBTQ rights in Kenya, for it upheld neo-colonial laws criminalizing same-sex relationships and perpetuated stigma and discrimination against LGBTQ persons.

Barbados: A Step Toward Decriminalization

Barbados, like several other Caribbean islands, has colonial laws comparable to making same-sex relationships illegal. Section 9²⁵ speaks about the crime of 'buggery', and Section 12²⁶ talks about 'serious indecency' between same-sex people. However, there seems to be a consistent push towards decriminalising progressive developments. In 2018, the Eastern Caribbean

²² India Const. art. 14.

²³ *EG & Z Others v. the Attorney General; DKM & 9 Others v. the Attorney General*, Petition 150 & 234 of 2016 (Kenya High Court, 2019).

²⁴ Penal Code, (Cap. 63) § 162, 165 (Kenya).

²⁵ Sexual Offences Act, Cap. 154, § 9 (Barb.).

²⁶ *Id*

Supreme Court ruled in *Jones v. the Attorney General of Grenada*²⁷ that laws criminalizing same-sex relationships were unconstitutional. This ripple effect has been felt across the Caribbean, including Barbados, where activists have clamoured for similar reforms. Barbados also has to contend with increasing international pressure from human rights organisations and the United Nations to repeal anti-sodomy laws. The government of Barbados has shown a disposition towards reviewing these laws, but progress has been slow. Activists have argued that decriminalization is a precursor to public health interventions, particularly concerning HIV prevention and treatment. While Barbados is not yet decriminalizing same-sex relationships, the more significant push for reform has been growing, indicating that change might be in store.²⁸

Comparative Analysis

The experiences in India, Kenya, and Barbados highlight different approaches towards LGBTQ+ rights and the decriminalization of same-sex relationships. The Supreme Court of India²⁹ adopted a progressive and rights-based approach, for which it saw individual autonomy, privacy, and dignity as key concerns. In contrast, the High Court of Kenya³⁰ chose a conservative view, reaffirming laws from the colonial era and family values of a more traditional nature. While Barbados³¹ still retains the criminal status of same-sex acts, it is growing in reform momentum, mainly due to regional and international human rights norms that have urged decriminalization. Whereas in India and Barbados, the criminalization of same-sex relationships is recognized as impacting public health, in Kenya, this consideration has been ignored. The cases raise fundamental questions about how WHO engages in activism for human rights; they also stress the role of international human rights norms and public health in the discourse on LGBTQ+ rights.

X. Conclusion and the Way Forward

The path of decriminalization of section 377 of the Indian Penal Code from a few years ago turned into one of the most successful transformations ever of legal activism, court intervention and social movements in action. The whole development was the highlight of LGBTQ+ rights

²⁷ *Jones v. Attorney General*, No. CV 2022/HCV/03163, (Barb. High Ct. Dec. 12, 2022).

²⁸ BBC News, Barbados LGBT: The Fight Against Colonial-Era Laws, BBC (Apr. 26, 2018), <https://www.bbc.com/news/world-43822234>.

²⁹ *Supra* at 9.

³⁰ *Supra* at 23.

³¹ *Id*

in India, as they repealed Section 377 in 2018 and repealed it in 2023 by introducing the new act BNS 2023, replacing the earlier IPC 1860. It was the evolution from the repression of colonial morality to a more democratic and rights-based regime that embraced the new values and recognised the dignity, privacy, and equality of homosexuals. The victory, though, is just a new turning point in an old struggle for equality, dignity, and justice for all people, no matter what their sexual orientation or gender identity is.

Decriminalization of consensual sex under the same-sex provisions of Section 377 of the IPC was a bold step, but it brought to light the sizeable deficits within the Indian judicial structure. On account of the non-existence of laws concerning unnatural forces against animals, lack of gender-neutral laws for rape, and unfair treatment of transgender people in law, it is vivid how much the Indian laws are deficient. Thus, they argue for the importance of laws that would reflect the actual situation of sexual violence that is prevalent and people who need to be protected.³²

Succeeding to resolve these issues is not the only pivotal thing. The interplay of Section 377 of the Penal Code and the Protection of Children from Sexual Offences Act 2012 is more so, and it is also the consequences that have widespread implications for child sexual abuse prosecutions. The situation in some jurisdictions about homosexuality as strictly enforced a criminal matter is best revealed through a comparative analysis of the situation with Kenya and Barbados, especially on decriminalization, even though we may have already seen some positive outcomes and the other jurisdictions remain perniciously attached to laws that are based on colonialism and thus allow negative attitude toward LGBTQI people.³³ These global outlooks will significantly benefit India's effort to deal with the intertwined legal reform and social acceptance paths.

To move forward, India must prioritize the following:

1. The enactment of gender-neutral laws:

Gender-neutral laws on rape must be enacted since all human beings are equally deserving of the protection of the laws from sexual violence, irrespective of their sex. This will fill up the existing legal gap that renders men and transgender individuals

³² Caitlin Ryan & Ian Rivers, Lesbian, Gay, Bisexual and Transgender Youth: Victimization and Its Correlates in the USA and UK, 5 Cult. Health & Sex. 103 (2003).

³³ Ila Nagar & Debanuj DasGupta, Public koti and private love: Section 377, religion, perversity and lived desire, 23 Contemp. S. Asia 426 (2015).

susceptible to sexual violence but without any legal recourse.

2. Protection for Transgender Individuals:

Special laws must be opened that address the peculiar vulnerabilities facing transgender individuals; these include recognition and criminalization of sexual violence against transgender persons, provision of access to justice, and promotion of their integration within society.

3. Animal Welfare and Bestiality Laws:

The repeal of Section 377 IPC has created a vacuum in the legal understanding of unnatural offences against animals. Legislators should be making specific provisions to define bestiality as a crime, whether in the BNS 2023 or by amending animal protection laws, in order to protect animal welfare.

4. Public Health and LGBTQ+ Rights:

Decriminalization of same-sex relationships has grown into a part of significant public health importance, and this has been explicitly seen in HIV and proper care for that virus' prevalence. A must is that the government and private institutions must not merely tolerate LGBTQ+, but rather, they should have unhindered and unrestricted access to whatever healthcare facilities they need without a threat of discrimination, homophobia, and persecution.

5. Education and Advocacy:

Legal sanctions and even ostentatious "enforcement" can only go so far without people being willing and able to accept and love their neighbours, relatives, and friends without unwanted reference to their actual or perceived homosexuality. Instead of relying only on legal reform, view the situation from a sociological perspective. Support, advocacy and educational programs are instrumental in dispelling phobias, increasing empathy, fostering inclusion, and achieving a fairer, more cohesive and equitable environment. While the repeal of Section 377 IPC was an important turning point, it is just the beginning of a very long path towards absolute equality and justice for LGBTQ+ people in India. The obstacles still exist in the social, cultural, and legal areas require the continuous input of lawmakers, activist groups, and society. By getting past these obstacles, India can continue to build up a legal environment that is based on the

principles of equality, dignity, and justice, regardless of sexual orientation or gender identity. The fight for LGBTQ+ rights might still have a long way to go, but hopeful thoughts of an inclusive, equitable future have subtly started to sow and grow.

Acknowledgements

The author express sincere gratitude to Dr Shibu Puthalath, faculty, school of Law, CHRIST university, for invaluable guidance and support in preparing this paper.

