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NAVTEJ SINGH JOHAR V. UNION OF INDIA: **A MILESTONE FOR LGBTQ+** **6 SEPTEMBER 2018 AIR 2018**

AUTHORED BY - PRABHJOT SINGH CHAHAL, CT UNIVERSITY

ABSTRACT

The historic case of Navtej Singh Johar v. Union of India is credited with helping to establish LGBTQ+ rights in India. The case's history, legal arguments, verdict, and social effects on Indian society are all represented in this case brief.

Prior to the filing of this case, homosexuality was illegal per colonial Indian Penal Code Section 377.

The article points out how important it is for advocacy alongside legal reforms to tackle unfair treatment and ensure equal rights for all, regardless of sexual orientation or gender identity. Navtej Singh Johar and others challenged the constitutionality of the law, arguing that it violated the fundamental rights of people guaranteed by the Indian Constitution of India.

The court declared Section 377 unconstitutional, decriminalizing same-sex relationships. The judgment was celebrated as a victory for LGBTQ+ rights, legal recognition and social acceptance. However, challenges of achieving full equality and freedom for LGBTQ+ individuals in India are still going as still society see LGBTQ as mental ill individuals, being a gap bisexual is not easy as it is still deemed as Taboo.

CASE DETAILS

Judgment cause title	Decriminalized homosexuality in India
Case number	WRIT PETITION (CRIMINAL) NO. 76 OF 2016
Judgment date	6 September 2018

Court	Supreme Court of India
Bench	Chief Justice , Rohinton Fali Nariman , A.M. Khanwilkar , D.Y. Chandrachud , Indu Malhotra
Citation	AIR 2018 SUPREME COURT 4321
Legal provisions Involved	Section 377 IPC, Article 14, Article 15, Article 19, and Article 21 of Constitution

INTRODUCTION AND BACKGROUND OF THE JUDGMENT

LGBT stands for Lesbian, Gay, Bisexual, and Transgender. It's a group of people who love and identify themselves differently from what some might consider 'normal'. They want to be treated fairly and with respect, just like everyone else. They fight against unfair treatment, like being judged or hurt because of who they love or how they identify. They believe everyone should have the freedom to love who they want and be who they truly are without being afraid or treated badly. The LGBT community has a strong history of standing up for themselves and others, and they're working hard to make the world a better and more accepting place for everyone.

This milestone judgment by the High Court of India has had huge effect, in legitimate terms as well as in the cultural view and treatment of sexual minorities. This article intends to dig into the case, its experience, the lawful contentions. Introduced, the judgment delivered, and its more extensive effect on Indian culture. The Navtej Singh Johar v. Union of India case stands out as a significant moment in the struggle for LGBTQ+ rights in India.

Before this case, a law called Section 377 made homosexuality illegal, causing discrimination and hardship for LGBTQ+ individuals. Navtej Singh Johar and others decided to challenge this unjust law in court, arguing that it went against the rights guaranteed by the Indian Constitution. Finally, in 2018, the Indian Supreme Court ruled in their favor, declaring Section 377¹ unconstitutional and decriminalizing same-sex relationships. This decision was a huge win for LGBTQ+ rights, marking a shift towards greater acceptance and equality in Indian society.

• ¹ Indian Penal Code, 1860, s. 377, No. 45 of 1860, India.

FACTS OF THE CASE

Navtej Singh Johar is a dancer and LGBTQ+ rights activist, along with four others, filed a petition in the Indian Supreme Court in 2016 challenging the constitutionality of Section 377. Section 377² deals with Unnatural offenses.

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, they argued that this law violated fundamental rights guaranteed by the Indian Constitution, such as the right to equality, privacy, and freedom of expression in the country.

LEGAL ISSUES RAISED

- *Article 145 discriminates against individuals based on their “sexual orientation” and “gender identity”?*
- *The right to autonomy and dignity under Article 21 by penalizing private consensual acts between same-sex persons?*
- *The right to expression under Article⁴ 19(1)(a) by criminalizing the gender expression of the LGBTQI+ community?*

APPELLANT’S ARGUMENTS

It is submitted by the petitioners that the that homosexuality, bisexuality and other sexual orientations are equally natural and reflective of expression of choice founded on consent of two persons who are lawfully to express such consent and it is neither a physical nor a mental illness, rather they are natural variations of expression and free thinking process how it make it a criminal offence is offensive of the well-established principles , individual dignity and decisional autonomy inherent in the personality of a person, a great discomfort to gender identity, destruction of the right to privacy which is a pivotal facet of [Article 21](#) the Constitution, unpalatable to the highly cherished idea of freedom and a trauma to the conception of expression. Biological desire which revolves around the pattern of true manifestation of identity. The order of nature is limited to the concept that may have been conceived as natural by a systemic conservative and such limitations do not really take note of inborn traits or developed orientations for that matter, consensual acts which relate to responses to series of free exercise of assertions

• ² Indian Penal Code, 1860, s. 377, No. 45 of 1860, India.

of one 's bodily autonomy.

It is further argued that their growth of personality, relation building endeavor to enter a live-in relationship or to form an association with a sense of commonality have become the essential desires are crushed, which violates [Article 19\(1\)\(a\)](#) of the Constitution.

Petitioner also submits that the LGBT group suffer discrimination and abuse throughout their lives due to the existence of [Section 377 IPC](#)³ which is nothing but a manifestation of a mindset of societal values during the era where sexual activities were considered mainly for procreation. The said community remains in a constant state of fear which is not conducive to their growth. It is contended that they suffer at the hands of the law and are also deprived of citizen rights. The LGBT persons cannot, according to the petitioners, be penalized simply for choosing a same sex partner.

RESPONDENT'S ARGUMENTS

Respondent states that the Prohibition against carnal intercourse involving penetration into non-sexual parts of the body does not constitute discrimination as laws based on biological reality can never be unconstitutional, for if a male is treated as a male, a female as a female and a transgender as a transgender, it does not amount to discrimination.

Criminal law is to protect the citizens from something that is injurious and since carnal intercourse between two persons is offensive and injurious.

JUDGMENT

The Supreme Court, in looked back at the decision in Suresh Kumar Kaushal, acknowledged that it used the idea of a very small minority to justify denying fundamental rights to the LGBT community. It didn't consider the difference between consensual and non-consensual sexual acts among adults. The Court pointed out that we need to distinguish between private relationships where adults agree to be together, regardless of whether they are heterosexual or homosexual. And these consensual relationships among adults shouldn't be treated the same as crimes like

• ³ Indian Penal Code, 1860, s. 377, No. 45 of 1860, India.

sodomy, bestiality, or non-consensual relationships.⁴

The court examined the constitutionality of Section 377 based on principles outlined in Articles 14, 15, 19, and 21. It drew upon the NALSA judgment, which afforded equal protection under the law to transgender individuals, to reaffirm that sexual orientation and gender identity are integral aspects of one's personality. Additionally, it referenced the Putta swamy judgment, which acknowledged the connection between privacy and autonomy, asserting that the right to sexual orientation falls within the purview of the right to privacy. Consequently, the court advocated for an expansion of the right to privacy to encompass "sexual privacy" as a means of safeguarding the rights of sexual minorities. Court also referred to the Yogyakarta Standards.⁵

The Court determined that sexual orientation is something people are born with and cannot change. It said that when LGBTQ+ individuals choose to have intimate relationships with others of the same gender, it's their own decision, showing their independence and freedom to make choices. Even though LGBTQ+ people are a minority when it comes to sexual preferences, the court said they have the same protection under the Constitution as everyone else.

CONCLUSION AND COMMENTS

The court turning point for LGBTQ+ rights in India. The Supreme Court struck down Section 377 of the Indian Penal Code, making consensual same-sex relationships legal. This decision recognized the dignity and rights of LGBTQ+ individuals, stating that sexual orientation and gender identity are important parts of who they are. The judgment emphasized the right to privacy, including "sexual privacy," protecting sexual minorities from discrimination. It also rejected the idea that LGBTQ+ people should change themselves and affirmed their right to live authentically. The Supreme Court made a big decision in India for LGBTQ+ people. They said it's okay for people to love who they want, even if they're the same gender. This decision was important because it recognized that LGBTQ+ people deserve respect and fair treatment. The court also said that everyone has the right to keep their personal life private, including their romantic feelings.

This helps protect LGBTQ+ people from being treated badly just because of who they love. Even though this decision was a big win, some people still treat LGBTQ+ people unfairly. So, while

• ⁴ Navtej Singh Johar v. Union of India, Writ Petition (Criminal) No. 76 of 2016, Supreme Court of India (2018).

⁵ <https://indiankanoon.org/doc/168671544/>

things are getting better, there's still work to do to make sure everyone is treated the same, no matter who they love.

This ruling has not only changed laws but also influenced how society sees LGBTQ+ individuals in India. Despite this progress, discrimination and violence against them persist. So, while this case was a big win, there's still work to do to ensure full equality for LGBTQ+ people in India.

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