

FOR ALL THAT WE MAY BECOME: ON THE SECTION 377 VERDICT

Relevant for: Indian Polity & Constitution | Topic: Judiciary: Structure, Organisation & Functioning

For all the lines of the [2009 Delhi High Court verdict](#) (colloquially called the *Naz* judgment), the one that stayed with me the longest was perhaps an aside to the main point about reading down Section 377. The High Court had said: “While recognising the unique worth of each person, the Constitution does not presuppose that the holder of rights is an isolated, lonely and abstract figure possessing a disembodied and socially disconnected self. It acknowledges that people live in their bodies, their communities, their cultures, their places and their times.”

As a gay man, what I heard them say that muggy day in July was that I was not just my sexual orientation. That my worth and my rights were not meant to be my responsibility alone. That I could expect, demand, get respect. That I could dream not just of a life free of violence but one of personhood, of joy. That our lives as queer people could hold rights and dignity without needing either extraordinary courage or immense privilege. That I would not have to hold my breath so often, whether in fear or regret. That the cost of freedom would not be loneliness.

On Thursday, standing in the Supreme Court as the [Constitution Bench read down Section 377 once and for all](#), I felt reaffirmed yet also changed. I heard the judges once again speak of sexuality as dignity, as mutual respect, as equality. I heard the invocations of Articles 14, 15, 19 and 21. Yet, I am not the same person I was when I became part of a petition in the *Naz* case in 2005. The law, thankfully, doesn't have nearly the same importance in queer lives. Perhaps most importantly, these are not the same times. This time, what has remained with me are the words of the individual judgment of Justice D.Y. Chandrachud. In what feels like both diagnosis and warning, he says: “We must, as a society, ask searching questions to the forms and symbols of injustice. Unless we do that, we risk becoming the cause and not just the inheritors of an unjust society.”

Full text of Supreme Court's verdict on Section 377 on September 6, 2018

This is a different “we” from *Naz*. This is not a “we” of some of us who are LGBTQ and the others who either accept or reject us. This is not just about our rights as they pertain to our sexualities and gender identities. This is a “we” of all of us as a society, a public, a democracy, and a people needing to face the inequalities that persist in our names today. I realise today that when I heard *Naz* all those years ago, I wanted others to embrace their constitutional morality to extend to queer people the dignity we had been denied. It had felt vital at the time. It was. Today, when dissent, freedoms and civil liberties face unfathomable pressure far beyond just that experienced by LGBTQ communities — a pressure that draws precisely from what the court called majoritarian sentiment and arbitrary state power — it cannot be just heteronormativity that we must fight. What is at stake is all that is endangering the constitutional edifices of equality, liberty, dignity and fraternity that the judges invoked.

Listed immediately after us in the Chief Justice's court was the next hearing in *Romila Thapar*, the [petition challenging the continuing house arrest of activists](#) under the Unlawful Activities (Prevention) Act, a law that defines the many ways in which we are willing to sacrifice our civil liberties. When the judges called for a transformative constitutionality, when they spoke of the need for all of us to do the work to make our Constitution a living organism, when they reminded us, in the words of Justice Chandrachud, that “the process through which a society matures and imbibes constitutional morality is gradual, perhaps interminably so,” what remained

in my mind was that the freedom I had just had affirmed could have meaning only if it found echo in the freedoms of others. We are not just islands, *Naz* had said, but bodies, cultures, communities, places, times. The opposite of loneliness is not freedom but fraternity. Dignity cannot be just what we possess but must be what we give to and share with others. On Thursday, what stayed with me was not just the respect we are owed, but the respect we owe as queer people to insist that the transformative power of constitutional values affirmed for us in page after page of the judgments be one that spreads far beyond us. If our freedoms are not inter-linked, they are not freedoms at all.

The Chief Justice of India, Dipak Misra, began his judgment by saying, "I am what I am." There is no doubt that queer people in India have never had a chance to fully be ourselves, to believe and know what our own possibilities are. I have nothing but happiness that, 24 years after the first AIDS Bhedbhav Virodhi Andolan petition against Section 377 in 1994, queer people will have won the right to breathe and to dream. Yet we have never been alone in not having the right to be who we are. If there is one measure of the injustice and inequalities that define us today as a society, it is how many of us live at some distance from the dignities our Constitution imagined: the dignity of a home and a wage, of a life without fear and violence, of a right to choose love, of a right to express ourselves, of a right to believe in the possibility of justice at all.

A transformational constitutionality must go beyond just being who we are. It must instead ask: who can we be? Who must we be to ourselves and each other? How can we use constitutional morality as a transformative power to speak not just of equality on the basis of sexual orientation and gender identity but on all that divides us? After Thursday, our work must merely begin so that we may not be the cause of injustice from having once been its inheritors. It is only then that we will truly be free.

Gautam Bhan is a writer and an activist

Sign up to receive our newsletter in your inbox every day!

Please enter a valid email address.

Our existing notification subscribers need to choose this option to keep getting the alerts.

END

Downloaded from crackIAS.com

© **Zuccess App** by crackIAS.com

