

SEXUAL EQUALITY AFFIRMED: ON THE SECTION 377 VERDICT

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

With the words, “Take me as I am”, five Indians led the way to a new India, one where the rule of law assures its citizens liberty. A Constitution Bench of [the Supreme Court in a concurring judgment](#) ruled that sex between two consenting adults of the same gender is no longer a criminal offence. In one stroke, this restores the equality before the law of all sexual orientations and identities, which cover a wide range. To term this judgment as ‘historic’ would be an understatement. Of course, it is historic in the literal sense that it struck down a law imposed on India in the middle of the 19th century by a colonial power, leaving it in place for over a century and a half. However, it is momentous also in terms of the sheer number of people affected by it. The Kinsey Report on sexuality, though based on a narrow cultural base, had estimated that about 10% of a population is not exclusively heterosexual. Accordingly, the lives of over 100 million Indians may have been freed by the Supreme Court. While India’s highest court has in the past ruled on many important issues ranging from civil liberties to property rights, it would be difficult to match this one verdict for its immediate impact on the lives of Indians. As the law that has been struck down is a British colonial vestige, the ruling is bound to have a ripple effect on its future in other erstwhile colonies, many of which are far richer than India but have a less vibrant civil society.

There is a degree of uniqueness about this victory for India’s Lesbian, Gay, Bisexual and Transgender, Queer (LGBTQ) community. First, it has been the outcome of a battle fought by its members. In the U.K., for instance, the decriminalisation of homosexuality came about by an Act of Parliament after the Labour Party had constituted a committee to look into the issue. So the freedom gained by the LGBTQ community in India is not something gifted to them. On the contrary, India’s political parties had distanced themselves from their cause, no doubt fearing majoritarian backlash, revealing that they have no convictions of their own. The top leadership of the Communist Party of India (Marxist) alone has been the exception. Nor has there been much support from India’s liberal intelligentsia, the right and left wings of which have not been able to slough off a deep conservatism when it comes to matters of sex. The weakness led them to adopt the incredible pose that the only axes of inequality in India are income and caste. This section, otherwise quite active in the political discourse in the country, lost the opportunity of being on the right side of history as it was being made in India.

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

A second feature is that the movement to get Section 377 of the Indian Penal Code struck down has not been so male dominated here, with a far greater presence of women than was historically the case in the West. Far from this being just a matter of political correctness, it has made the struggle for sexual equality in India more effective and joyous than it may have been.

Finally, the verdict has brushed aside religious opposition to the expansion of human rights. Not even in Catholic Ireland had the religious establishment attempted to stall gay rights as it has done in India. In 2013, a coalition of religious groups — Hindu, Muslim and Christian — came together to reinstate Section 377. And they succeeded. Since then Christian groups have persisted in their aim, but this time the Supreme Court did not entertain claims made in the name of religion. Secularism has thus been given a fresh lease of life in India. Henceforth, political parties that appease religious interests for electoral gain do so at a cost to their credibility.

As a gay Indian I have only two things to say at this moment. The first is to express the hope that having won their own freedom, the country's LGBTQ community will now work to further the freedom of all, many far less privileged than some of them. The second would be to express gratitude. The debt owed to the five judges of the Supreme Court for the sheer intellectual power of their pronouncements is so large that any expression of gratitude would be wanting.

Section 377 verdict: Homosexuality not unique to humans, says Supreme Court

But an attempt may be made in other quarters. Now, the first one would be to thank the leaders of the Indian LGBTQ movement. While they, along with the lawyers who represented the community in the courts, are numerous, I believe everyone would agree that two deserve particular mention. They are Ashok Row Kavi who started a gay support group in Mumbai over 25 years ago, flagging off a movement in India, and Anjali Gopalan of the Naz Foundation in Delhi who took the matter to the courts over a decade ago, paving the way for the present ruling. The dates remind us of how long a journey this has been.

Secondly, the media in India has been quite unusual in the support it has demonstrated. This is quite unlike the experience in the West where gay rights activists received far less expressive support in the mainstream media when their struggles were on. It is a different matter that the media there has become more solicitous of the gay community after they won the battle. While something similar may be at play in this country too, with the Indian languages media having shown less enthusiasm for their cause, this detail need not detain us at present. At the rendezvous of victory there is room for all.

Pulapre Balakrishnan is Professor at Ashoka University, Sonapat, Haryana

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

Please enter a valid email address.

An urban redevelopment project must apply for approvals in an integrated manner

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

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

