

THERE IS NO GOING BACK NOW IN THE FIGHT FOR QUEER RIGHTS

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It takes courage to oppose an injustice — whether committed by a law, the police, the state, your community or, indeed, your own family. It takes courage to oppose in the face of criminal persecution, and to continue to oppose despite persecution. In times when whom you pray to, what you eat, what you wear, and who you love are fraught issues, the tales of the courageous inspire us. Whether it is of jailed activist lawyers who argue for the rights of the dispossessed adivasi or a jailed doctor who spends out of his own pocket to save the lives of babies running out of oxygen; the lone policeman who protects a Muslim man from being beaten by a mob or a transman who fights the ignorance of officials to get an identity document in his chosen gender.

Courage against injustice played an important role in the fight against Section 377. Asserting one's most private, deeply-held sense of self in the face of opprobrium from family, peers or community is a bit like death, because large parts of you find no sustenance to live. To live, in spite of this, is courage of another degree. The Supreme Court on July 11 was schooled on the courage it took each lesbian, gay, bisexual and transgender Indian to survive in light of its 2013 judgment upholding their criminalisation. "How strongly must we love knowing that we are unconvicted felons under Section 377?" asked Menaka Guruswamy, an advocate for the petitioners before the court.

A constitution bench of the Supreme Court of India on Thursday unanimously ruled that Section 377, a colonial era law that criminalised consensual same sex intercourse, was "irrational, indefensible and manifestly arbitrary". The Chief Justice of India, Dipak Misra, said, "Denial of self-expression is akin to inviting death." Justice Indu Malhotra, the lone woman judge in the five-judge bench, said, "History owes an apology to those people persecuted by Section 377."

These words are a balm, not just because they are being uttered by a bench of the highest court of the land that hears matters of Constitutional importance, but because these words strike at the heart of the matter: that a lesbian, gay, bisexual or transgender person has had to face persecution that has not only been relentless but is such an everyday occurrence for so many queer people. Several are bullied in school; several drop out. Several must face the ignominy of hiding their relationships; several are subjected to rapes that supposed to "correct" them. And several must necessarily face the trauma that emerges from loving families that feel compelled to treat them as invisible. The great Indian family, buttressed by tradition and culture, visits the worst sort of violence upon LGBT persons because its sustained message to them is that only part of them is acceptable.

In its 493-page judgment written by the eminent judges, the apex court had acknowledged that there is a problem in the way LGBT persons are treated in society. It tells queer people that they have been right all along, and that their fight has been a vital and important one. It gives them an anchor where no other authority has — in no less than the Constitution of India and the vision of Dr BR Ambedkar, who fought for the primacy of constitutional morality over social morality, for the safety of the individual over the wrath of the mob. It is manifest in the CJI's argument, when he said, "Societal morality cannot trump constitutional morality. Societal morality cannot overturn the fundamental rights of even a single person."

On the ground, things will not change immediately. Families will expect queer people to stay silent about their sexuality and relationships, and make them the receptacle of shame that they

themselves carry; peers will continue to bully and assault LGBT persons; harassment, and violence will continue to occur, especially to those belonging to marginalised identities such as Dalit, adivasi, and women. Many will echo the Rashtriya Swayamsevak Sangh, which said on Thursday that while homosexuality should not be criminalised, same sex marriage is unnatural.

The word “unnatural” will always be a signifier that adduces to the LGBT person. But if the long legal battle and the courage of queer people and communities are anything to go by, this fight for equal rights will not end. It will grow even stronger, now that even the apex court has said that there is no going back.

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