



Supreme Court Verdict on Section 377

Why in news?

\n\n

\n

- A Constitution Bench of the Supreme Court has unanimously decriminalised homosexuality.

\n

- Click [here](#) to know more on the judicial journey of Section 377.

\n

\n\n

What were the concerns with Section 377?

\n\n

\n

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

\n

\n\n

\n

- Section 377 creates a class of criminals, consisting of individuals who engage in consensual sexual activity.

\n

- It typecasts Lesbian, Gay, Bisexual, and Transgender, Queer (LGBTQ) individuals as sex-offenders.

\n

- It categorised their consensual conduct on par with sexual offences like rape and child molestation.

- This has led to stigmatisation and condemnation of LGBTQ individuals in society.
- It was a cause for institutional discrimination faced by the LGBTQ community in health care, which even led to ineffective HIV prevention and treatment.

What was the judgment?

- The Bench unanimously held that criminalisation of private consensual sexual conduct between adults of the same sex was clearly unconstitutional.
- The court, however, held that the Section 377 would apply to “unnatural” sexual acts like bestiality.
- Sexual act without consent would also continue to be a crime under Section 377.

What was SC's rationale?

- **Individual** - Bodily autonomy is individualistic as it is a matter of choice and is part of dignity.
- Sexual orientation is biological and innate, as an individual has no control over who they get attracted to.
- Any repression of this by the state will be a violation of free expression.
- **Rights** - Homosexuals, as individuals, have a fundamental right to live with dignity and possess full range of constitutional rights.
- These include sexual orientation, partner choice, equal citizenship and equal protection of laws.
- The State cannot decide the boundaries between what is permissible and

not.

\n

\n\n

\n

- **Society** - Section 377 is based on deep-rooted gender stereotypes ingrained in the society.
\n
- It is a majoritarian impulse to subjugate a sexual minority to live in silence.
\n
- But the societal morality cannot override constitutional morality and fundamental rights.
\n
- **Nature** - The verdict noted that homosexuality was documented in 1,500 species and was not unique to humans.
\n
- This firmly dispels the prejudice that homosexuality is "against the order of nature".
\n
- **Right to love** - Section 377 speaks not just about non-procreative sex but also about forms of intimacy.
\n
- This, the court has acknowledged as the 'right to love'.
\n
- But the social order finds some of these 'disturbing'.
\n
- It is the result of limits imposed by structures such as gender, caste, class, religion and community.
\n
- These limits affect the "right to love" of not just the LGBTQ individuals, but of couples who make relationships across caste and community lines.
\n
- **Perception** - The recent parliamentary re-enactment of the Mental Healthcare Act of 2017 was mentioned.
\n
- The present definition in the Act makes it clear that homosexuality is not considered to be a mental illness.
\n
- It is reaffirmed that mental illness shall not be determined on the basis of non-conformity with moral, social, cultural, religious beliefs.
\n
- **Awareness** - The Centre was urged to take all measures to ensure that the judgment is given wide publicity.
\n
- Government was instructed to initiate programmes to reduce and eliminate

the stigma against homosexuality.

\n

\n\n

\n

- Government officials and police will have to be given periodic sensitisation campaigns.

\n

\n\n

What are the shortcomings?

\n\n

\n

- How the judgment operates on the ground is yet to be seen as recent orders on triple divorce and lynching have not had visible impact.
- The judgment has opened up grey areas, and new guidelines will be needed.
- e.g Say, a gay individual withdraws “consent” and lodges a complaint against their partner.
- India’s laws on sexual assault do not recognise men as victims of rape. Police will now have to establish the principle of consent.

\n

\n\n

\n\n

Source: The Hindu

\n



IAS PARLIAMENT
Information is Empowering
A Shankar IAS Academy Initiative