



DECRIMINALISATION OF SAME-SEX RELATIONS IN INDIA



Section 377, Indian Penal Code

Unnatural Offences - 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.

Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."



NAZ FOUNDATION V. GOVERNMENT OF NCT DELHI & ORS.

"If there is one constitutional tenet that can be said to be underlying theme of the Indian Constitution, it is that of 'inclusiveness'. This Court believes that Indian Constitution reflects this value deeply ingrained in Indian society, nurtured over several generations. The inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognising a role in society for everyone. Those perceived by the majority as 'deviants' or 'different' are not on that score excluded or ostracised.

In our view, Indian Constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions of who the LGBTs are. It cannot be forgotten that discrimination is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual."



NAVTEJ JOHAR V. UNION OF INDIA

"In the case at hand, whatever be the percentage of gays, lesbians, bisexuals and transgenders, this Court is not concerned with the number of persons belonging to the LGBT community. What matters is whether this community is entitled to certain fundamental rights which they claim and whether such fundamental rights are being violated due to the presence of a law in the statute book. If the answer to both these questions is in the affirmative, then the constitutional courts must not display an iota of doubt and must not hesitate in striking down such provision of law on the account of it being violative of the fundamental rights of certain citizens, however minuscule their percentage may be."

"Individuals belonging to sexual and gender minorities experience discrimination, stigmatization, and, in some cases, denial of care on account of their sexual orientation and gender identity. However, it is important to note that 'sexual and gender minorities' do not constitute a homogenous group, and experiences of social exclusion, marginalization, and discrimination, as well as specific health needs, vary considerably. Nevertheless, these individuals are united by one factor - that their exclusion, discrimination and marginalization is rooted in societal heteronormativity and society's pervasive bias towards gender binary and opposite-gender relationships, which marginalizes and excludes all non-heteronormative sexual and gender identities."



< Akkai Padmashali, Umi Umesh and Sana (in absentia) – the transgender petitioners who challenged Section 377 – with Jayna Kothari, Senior Advocate and Executive Director of Centre for Law and Policy Research

Akkai Padmashali celebrating the decriminalisation of same-sex relations after the *Navtej Johar* decision, after a nearly two-decade long battle >

