

UNRAVELED SECTION 377 IPC: A REVIEW OF POST NAVTEJ SINGH JUDGMENT SCENARIO

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Abstract:

The idea that everyone is equal is sacrosanct, and at its heart, is really sophisticated that everyone can love equally, freely and fearlessly. No kind of prejudice and discrimination can continue in perpetuity. Section 377 was introduced in Indian criminal law in furtherance of western notions of morality, based on Abrahamic ideologies. We should not lose sight of the fact that laws like IPC are neither Indian nor God made. Laws like these are not immutable. And in fact, they lose value if they are not abandoned, rewritten, or amended, to suit the changing social, cultural, and economic needs. The Apex courts decision in *Navtej Singh Johar & Ors. v. UOI*, leads one to believe that the Indian judiciary is indeed the last bastion of fundamental rights in the country. An amendment Section 377 is only the start of a larger drive to protect this idea of freedom of personal identity as LGBT people want equal rights, not special rights. Ideally, we should consider enacting a law that explicitly protects against discrimination, in the pursuit of appreciating equality and fraternity within diverse society. Beyond decriminalising homosexuality, we need to think about how homosexuals and persons who identify themselves as being outside the conventional binary, can be integrated into society without using their gender or sexuality as the focus of such integration. The road to full equality remains long, and there are still many serious issues faced by the LGBT community. True and complete freedom is yet to be achieved.

Keywords: Lesbian, Gay, Bisexual, Transgender, LGBT, Section 377, Homosexuality, Decriminalization, Sexual Orientation.

1. Introduction

“It takes no compromise to give people their rights...it takes no money to respect the individual. It takes no political deal to give people freedom. It takes no survey to remove repression.”

-Harvey Milk²

Homosexual behaviour occurs in every culture, even in those where it is most heavily denied. In ancient Indian literature, homosexuality has been documented in various treatises by different authors. Hindu legends abound with references to homosexuality; and archaeologists have found prehistoric cave drawings depicting homosexual acts.³ Homosexuals are normal humans attracted to their own gender. Relationships are defined by comfort levels and not societal sanctions, “Like heterosexuality, homosexuality is an orientation which is not

² Harvey Bernard Milk was an American politician and the first openly gay elected official in the history of California.

³ Felix M. Podimattam, *Homosexuality: The Shifting Sands of Time* 165 (Anamika Publishers & Distributors, Delhi 2007).

unnatural. The world accepts this orientation; society is changing.” What is not changing is the conservative mind-set in India,⁴ though legally LGBT community has started getting approval of their existence as humans. Senior Advocate Ashok Desai stated in *Navtej Singh Johar v. UOI*⁵ that the existence of LGBT community is a part of our culture hence not alien to Indian culture. He added ‘*Homosexuality is existing in society and civilisation has accepted this.*’ ‘Same-sex is not selfish. They just don’t want to produce children. Interestingly, about 123 countries around the World have never penalized or have decriminalized homosexuality. Currently, 57 countries actively criminalize same-sex relations.

In fact, the issue at stake is not just equal rights guaranteed by the Constitution, but the nature of Indian democracy itself. When the British rulers introduced Section 377 in the Indian Penal Code, and a version of it into their own laws in England, it was a great improvement over earlier British law under which people could be and were tortured and executed for same-sex relations. However, India had no history of such laws. Same-sex sexuality had been freely written about, discussed and portrayed in Indian art and literature, for over 2,000 years. As a result of Section 377 and British prejudices imbibed by English-educated Indians in the late 19th century, same-sex relations, which were openly written about and celebrated by poets such as Mir Taqi Mir, Insha, Rangin, Jur’at and many others in the early 19th century, had become unspeakable a century later, when Pandey Bechan Sharma “Ugra” wrote short stories on the subject in the 1920’s and nationalists severely censured him for doing so.

1.2 The Judicial Interpretation of Section 377 over the Years

The objective of Section 377⁶ has remained the subject-matter of deliberation which is clear from the different parameters adopted by the Indian Courts for gauging “unnatural sex” under Sec. 377. However, the moot question which remains unanswered is: Whether the purpose behind its enactment is the prosecution of people who actually commit sodomy or criminalisation of those who appear to be likely to commit the offence? Though superficially neutral, the section predominantly outlaws sexual activity between same-sex people which is by its very nature penile non-vaginal. While heterosexual persons indulge in oral and anal sex, their conduct does not attract scrutiny except when the woman is underage or unwilling.

The foremost parameter for the criminalisation under Sec. 377 was the “criminalisation of the identity and not the act” as it was believed that usually the homosexuals or the transgender persons were the ones who were associated with the sexual practices proscribed under Sec. 377. Such criminalisation of identity dates back to the times of *Queen Empress v. Khairati*⁷, *Noshirwan v. Emperor*⁸ or *DP Minwalla v. Emperor*⁹, when the

⁴ Shivangi Mishra, “Discourse on LGBT,” available at: <http://ijldai.thelawbrigade.com/wp-content/uploads/2016/01/ShivangiMishra.pdf>

⁵ W. P. (Crl.) No. 76 of 2016 (AIR 2018 SC 4321)

⁶ Section 377 of Indian Penal Code titled ‘Unnatural Offences’ and stated that “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.”

⁷ 1884 ILR 6 ALL 204 (The only set of incriminating evidence was that Khairati habitually wore women’s clothes, sang and danced and the orifice of her anus was distorted into the shape of a trumpet- a mark of a habitual sodomite).

Courts created an association between the sexual acts and a certain class of individuals, who were more likely to commit the offence – thereby, giving a character and face to sodomy in the form of a homosexual. *Khairati*, *Noshirwan* and *Minwalla* all belonged to that one class of individuals who could most likely be the perpetrators of such an offence.

This was followed by the “procreative test”¹⁰ that covered under the ambit of Sec.377, those acts which did not have the possibility of conception of human beings. Such measures concluded finally into the “test of sexual perversity/ immorality/ depravation of mind”¹¹ after the Judgement in the case of *Fazal Rab Choudhary v. State of Bihar*¹² wherein the Supreme Court while dealing with an application for mitigating the sentence for a conviction, held that an offence under Sec.377 implied “sexual perversity”. The Court also observed that “neither the notions of permissive society nor the fact that in some countries homosexuality has ceased to be an offence has influenced our thinking”. This junction between sodomy and perversity along with the failure to take into account the consummation of consensual acts in private was approved in the case of *Pooran Ram v. State of Rajasthan*¹³, wherein, the court while holding that “perversity” that led to sexual offences might result either in “homosexuality or in the commission of rape” had equated a homosexual to a rapist.¹⁴

Adding to the misery is the Supreme Court Judgement in the case of *Suresh Kumar Koushal v. Naz Foundation*¹⁵ which has been successful in earning for itself the title of ADM Jabalpur 2, just like its predecessor, which authorised the government to detain without trial, similarly, the Supreme Court through Justice Singhvi and Justice Mukhopadhaya unanimously decided, that the state is entitled to criminalise (and imprison for life) consenting adults who engage in victimless sexual acts in private and thus overturned the valuable judgment delivered by Delhi High Court in *NAZ Foundation v. Govt. of NCT of Delhi*¹⁶ which held that treating consensual homosexual sex between adults as a crime is a violation of fundamental rights protected by India's Constitution. The lawsuit sought to decriminalise homosexuality. After first being dismissed, the Supreme Court returned the petition to the High Court to reconsider the case on merit. A widely-documented hearing followed, which included contradictory stands taken by the government itself. On July 2, 2009, a division bench of the Delhi High Court held, among other things, that section 377 violated Article 21 of the Indian Constitution. In 2013, a two-judge bench of the Supreme Court reversed the HC's 2009 decision.

⁸ AIR 1934 Sind 206 (The Judge reprimanded the accused persons as “despicable” specimen of humanity for being addicted to the “vice of a catamite” on their own admission).

⁹ AIR 1935 Sind 78 (In a desperate attempt to redeem himself, Minwalla had submitted a medical examination to convince the court that his anal orifice was not shaped like a “funnel”, which was the sign of a habitual sodomite).

¹⁰ *Khanu v. Emperor* AIR 1932 Cal 487

¹¹ *Fazal Rab Choudhary v. St. of Bihar*, AIR 1983 SC 323 at pg 3; *Mihir alias Bhikari Charan Sahu v. St. of Orissa*, 1991 Cri LJ 488 at pg 6 & 9; *Khanu v. Emperor* at pg 262.

¹² AIR 1983 SC 323

¹³ 2001 CriLJ 91

¹⁴ Isha Singh, “Is Proscription Of Section 377, The Proscription Of Homosexuality?” 1(3) *International Journal of Law and Legal Jurisprudence Studies* (June, 2014).

¹⁵ Civil Appeal No.10972 of 2013

¹⁶ 160 Delhi Law Times 277.

The thoughtless judgment of a two-judge SC bench in 2013 re-criminalised millions of Indians in an instant. Naz filed a curative petition, arguing that the decision wrongly held that a "minuscule fraction of population cannot claim fundamental rights". Meanwhile, another two-judge bench of the Supreme Court, in 2014, in *NALSA vs. Union of India*,¹⁷ granted personhood to transgenders, a sign that the highest court was open to considering more expansive notions of freedom.

The Petitioner in the present case, *Navtej Singh Johar*, a dancer who identified as part of the LGBT community, filed a Curative Petition in the Supreme Court in 2016 and challenged decision on Section 377 by the same Apex Court in *Suresh Kumar Koushal* on the ground that Section 377 violated the constitutional rights to privacy, freedom of expression, equality, human dignity and thereby sought protection from discrimination, recognition of the right to sexuality, right to sexual autonomy and right to choice of a sexual partner to be part of the right to life guaranteed by Article 21¹⁸ of the Constitution of India. Furthermore, he sought a declaration that Section 377 was unconstitutional. The Petitioner also argued that Section 377 was violative of Article 14¹⁹ of the Constitution (Right to Equality Before the Law) because it was vague in the sense that it did not define "carnal intercourse against the order of nature". There was no intelligible differentia or reasonable classification between natural and unnatural consensual sex. Among other things, the Petitioner further argued that (i) Section 377 was violative of Article 15²⁰ of the Constitution (Protection from Discrimination) since it discriminated on the basis of the sex of a person's sexual partner, (ii) Section 377 had a "chilling effect" on Article 19²¹ (Freedom of Expression) since it denied the right to express one's sexual identity through speech and choice of romantic/sexual partner, and (iii) Section 377 violated the right to privacy as it subjected LGBT people to the fear that they would be humiliated or shunned because of "a certain choice or manner of living."

The five-judge bench²² of the Indian Supreme Court unanimously held that Section 377 of the Indian Penal Code, 1860, which criminalized 'carnal intercourse against the order of nature', was unconstitutional in so far as it criminalized consensual sexual conduct between adults of the same sex. The Court upheld provisions in Section 377 that criminalise non-consensual acts or sexual acts performed on animals. With this, the Court overruled its decision in *Suresh Koushal v. Naz Foundation*²³ that had upheld the constitutionality of Section 377. The Court reasoned that discrimination on the basis of sexual orientation was violative of the right to equality, that criminalizing consensual sex between adults in private was violative of the right to privacy, that sexual orientation forms an inherent part of self-identity and denying the same would be violative of the right to

¹⁷ (2014) 5 SCC 438

¹⁸ "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. (*Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295)

¹⁹ "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

²⁰ "The state shall not discriminate against any citizen on grounds only of race, religion, caste, sex and place of birth."

²¹ Article 19(1) provides that all citizens shall have the right- (originally 7, now 6) to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; omitted by 44th amendment act. (it was right to acquire, hold and dispose of property) to practice any profession, or to carry on any occupation, trade or business.

²² Coram- CJI-Dipak Misra, Justice A.M. Khanwilkar, Justice Rohinton Fali Nariman, Justice D.Y. Chandrachud and Justice Indu Malhotra

²³ (2014) 1 SCC 1

life, and that fundamental rights cannot be denied on the ground that they only affect a minuscule section of the population.

The Court relied upon its decision in *National Legal Services Authority v. Union of India*²⁴ to reiterate that gender identity is intrinsic to one's personality and denying the same would be violative of one's dignity. The Court relied upon its decision in *K.S. Puttaswamy v. Union of India*²⁵ and held that denying the LGBT community its right to privacy on the ground that they form a minority of the population would be violative of their fundamental rights. It held that Section 377 amounts to an unreasonable restriction on the right to freedom to expression since consensual carnal intercourse in private "does not in any way harm public decency or morality."²⁶ Public order, decency and morality are the grounds which can impose reasonable restriction on the fundamental right of expression. Any act done in affection by the LGBT community in public does not disturb the public order or moral values until it is decent enough and is not obscene. However, Section 377 is again unconstitutional in the sense that it does not connect with the criteria of proportionality and is violating the fundamental right of expression of LGBT group.

In the landmark judgment of *Navtej Singh Johar*²⁷ CJI Dipak Misra observed '*LGBT themselves feel discriminated because they are treated differently. They feel stigma because of criminality attached to it.*' The Chief Justice (for himself and J. Khanwilkar) broadly confirmed that, "Autonomy is individualistic. Under the autonomy principle, the individual has sovereignty over his/her body. He/she can surrender his/her autonomy wilfully to another individual and their intimacy in privacy is a matter of their choice. Such concept of identity is not only sacred but is also in recognition of the quintessential facet of humanity in a person's nature. The autonomy establishes identity and the said identity, in the ultimate eventuate, becomes a part of dignity in an individual."²⁸ Justice Chandrachud opined that '*We have created a societal environment that creates a discrimination of these individuals. If Section 377 goes let's hope such societal stigmas change.*'²⁹

1.3 Concomitants of *Navtej Singh Johar v. UOI*³⁰ Judgment

So now homosexuality has been decriminalized but the reaction of society and different organisations is still a challenge for the LGBT community. Though there are organisations such as All India Muslim Personal Law Board and the Jamaat-e-Islami Hind who expressed their disappointment towards the verdict given by the Apex Court on section-377 yet, there also exist organisations and parties who are satisfied with the given verdict, namely, Amnesty International, RSS, CPI (M) and UN.³¹

²⁴ (2014) 5 SCC 438

²⁵ (2017) 10 SCC 1

²⁶ <https://globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-union-india/> (Visited on May 24, 2018)

²⁷ AIR 2018 SC 4321

²⁸ *Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice* AIR 2018 SC 4321 (Page) (Para 162)

²⁹ <https://theprint.in/india/governance/section-377-words-of-supreme-court-judges-that-have-sparked-hope-in-indias-homosexuals/82677/> (Visited on November 24, 2018)

³⁰ AIR 2018 SC 4321

³¹ Michael Kirby & Ramesh Thakur, "Navtej Johar, A Verdict of All Times" *The Hindu*, Dec. 30, 2018.

The judgement has placed reliance on the concept of transformative constitutionalism which has paved a way for a plethora of very essential amendments and reformations in the legal field. It has been a landmark judgement in the history of the country since it not only recognizes the identity of individuals belonging to the LGBT community but also confers upon them global acceptance by the society.

Instead of viewing prospective legislation as the solution, the court diagnosed the long history of legislative inactivity as the problem in the Section 377 case. Espousing the concept of the Indian nation and people as a pluralistic, diverse and inclusive modern society, the long-operating colonial law was judged to abridge constitutionally guaranteed fundamental rights and human dignity when applied to the private conduct of consenting adults. The burden of the penal law targeting sexual minorities was lifted.³² The vital point made was that for constitutional purposes, the LGBT minority is part of, and incontestably included in, the diverse plural Indian nation. The lives of the LGBT community may be impacted in the following ways:

1. **Right to Health:** Under Article 21, the right to life is meaningless unless accompanied by the right to health. The apex court said the right to health is understood to be indispensable to a life of dignity and well-being. “Individuals belonging to sexual and gender minorities experience stigma, discrimination and in some cases denial of care on account of their sexual orientation and gender identity,” the court said. The apex court also recognized that the laws criminalizing same-sex intercourse create social barriers to accessing healthcare and curb the effective prevention and treatment of HIV/AIDS.
2. **Right to Privacy:** The choice of sexuality is at the core of privacy. “In conceptualising the right to sexual privacy, it is important to consider how the delineation of ‘public’ and ‘private’ spaces affects the lives of the LGBTIQ community,” Justice Chandrachud said. The latest verdict calls for the right to sexual privacy, founded on the right to autonomy of a free individual. The verdict also confirms sexual activity between adults and based on consent must be viewed as a “natural expression” of human sexual competences, and sensitivities. The refusal to accept these acts amounts to a denial of the distinctive human capacities for sensual experience outside of the realm of procreative sex.
3. **Strengthen Transgender Persons Bill:** The scrapping of Section 377 also paves the way to strengthen the Rights of Transgender Persons Bill 2014, the bill which granted a legal right to the transgender community. The ambiguity in the definition of the “third sex” gave way to misinterpretation. Section 377 included transgenders in its purview, since it prohibited ‘unnatural’ or non peno-vaginal intercourse. Dwelling upon the rights of transgenders, Justice Arjan Kumar Sikri said gender identification was an essential component to enjoy civil rights by the community. It is only with this recognition that many rights will be available to the said community “more meaningfully” — the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver’s licence, right to education, employment, health and so on.

³² *Ibid.*

4. **Mental health:** The "treatment" of homosexuality as a disorder has had serious consequences on the mental health and well-being of LGBT persons. Persecutory laws against LGBT individuals have led to greater levels of depression, anxiety, self-harm and suicide. "Mental health professionals can take this change in the law as an opportunity to re-examine their own views of homosexuality, "Instead of trying to cure something that is not a disease or illness, the counsellors have to adopt a more progressive view that reflects the changed medical position and changing societal values," Justice Chandrachud said.
5. **From denial to freedom:** The constitutional vision of justice accommodates differences of culture, ideology and orientation. The court held that sexual orientation had become a target for exploitation, if not blackmail, in a networked and digital age. "Does the Constitution allow a quiver of fear to become the quilt around the bodies of the citizens, in the intimacies which define their identities? If there is only one answer to this question, as I believe there is, the tragedy and anguish which Section 377 inflicts must be remedied," Justice Chandrachud said.
- "It is difficult to right the wrongs of history. But we can certainly set the course for the future. That we can do by saying, as I propose to say in this case, that lesbians, gays, bisexuals and transgenders have a constitutional right to equal citizenship in all its manifestations," he added.³³

1.5 Section 377: Beginning of New Era for LGBT

Sixty-eight years after the founding fathers of the Republic of India encoded the right to freedom of life and liberty, the Supreme Court has finally upheld the right of every human being to be free, regardless of sexual orientation or identity. With this, the draconian and anachronistic section 377 of the Indian Penal Code (IPC) will no longer apply to consensual sexual relations among adults in private.³⁴

This will mark an end of an era, where this law will no longer be available for use or abuse, to foster, facilitate, or perpetuate, an atmosphere conducive to human rights violations of a certain kind, and will put an end to the discrimination that many millions have faced because of their sexual orientation or gender identity for so many years now. India now joins a proud league of nations that recognizes true freedom of gender identity and sexual expression.³⁵ This ruling of the Supreme Court will not only impact India, but will also undoubtedly have immense transnational value. The effect of this judgment is especially likely to be felt in other common law countries, and it will, hopefully, provide an impetus to those countries that still have equivalent provisions in their statute books, to critically consider the lawfulness and legality of provisions that similarly criminalize consensual sexual relations. We have come a long way from the journey that started with Naz Foundation, a non-governmental organization (NGO) fighting for gay rights, when it instituted the original lawsuit in the Delhi high court in 2001.³⁶

³³ "Section 377 a willing instrument of repression of LGBT community: Supreme Court" *The Economic Times*, September 06, 2018.

³⁴ "Section 377: Impact will be felt beyond India" *Times of India*. September 07, 2018.

³⁵ *Ibid*.

³⁶ http://economictimes.indiatimes.com/articleshow/65715278.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Visited on November 24, 2018)

Now that independent India is confident enough in its identity to shake off a colonial law that England itself overturned in 1969, we should be grateful to all those activists, lawyers, small groups and large organisations and writers, who lived, worked and died over decades in order to change public opinion in a way that made this judgment possible. Above all, those millions of unknown people who lived with dignity without trying to hide, and thus led all those around them to realise that there that there is no fundamental difference between LGBT people and heterosexual people.³⁷

At present when Section 377 is gone, are homosexuals finally equal citizens? Will landlords and employers accept same-sex couples? Will LGBT's be able to get employment without being vulnerable? Will the law recognize long-term partners as next of kin and legal heirs? Will same-sex couples get property rights of each other? Whether health schemes will be for the benefit of LGBT's? Whether insurance rights, reimbursement rights, nomination rights bestow upon same-sex partners as these rights benefit heterosexual partners.³⁸

They are, or should be equal citizens under the Constitution and before the law, but some landlords and housing societies will probably continue to refuse same-sex couples the right to live together, some employers will continue to refuse them employment, and the law will refuse to recognise their long-term partners as next of kin and legal heirs. A man and a woman who may see each other for the first time on their wedding day get the right to inherit each other's property and make health decisions for each other the moment they marry (regardless of whether or not they have any relationship other than the legal one), but same-sex partners who have lived together for 40 years remain legal strangers to each other with no right to make health or funerary arrangements for one another.³⁹

The picture is very bleak for LGBT youth in India. They face harassment and bullying, and to avoid humiliation and violence they often skip classes or drop out of school altogether. Most teachers are neither well-trained nor empowered enough to respond to anti-LGBT bullying, so in many cases they just ignore it all together. In some cases, it is seen they even participate in the harassment as they also feel such behavior outside gender norm needs to be curtailed by punishing such individual. Court judgments in recent years have laid the groundwork for better protections from discrimination based on sexual orientation and gender identity, and the Indian government's stance on LGBT rights has evolved considerably. But much more is needed to protect people on the basis of sexual and gender identity in India.⁴⁰

Two reports published in June, 2019 shed much-needed light on the experiences of sexual and gender minority youth in India's schools. UNESCO, the United Nations education agency, and the International Commission of Jurists, a non-governmental organisation, have each published harrowing in-depth reports on the plight of

³⁷ *Supra* note 33

³⁸ *Supra* note 33

³⁹ Kyle Knight, "Section 377 is History but Young LGBT Indians Need Concrete Policies to Protect them from Bullying" *available at*: <https://www.hrw.org/news/2019/06/24/section-377-history-young-lgbt-indians-need-concrete-policies-protect-them-bullying> (Visited on June 27, 2018)

⁴⁰ *Ibid.*

LGBT Indians.⁴¹ UNESCO's research focused on youth and school environments, while ICJ's was broader, and included an examination of housing, access to public spaces, and employment – with education analysed as a precursor. “Educational and training opportunities are often denied to LGBTQ persons due to harassment, bullying, and violence,” ICJ found, citing gender-specific school uniforms, lack of access to toilets, and difficulties in obtaining accurate identity documents as barriers for LGBT students. “Accounts of bullying in schools were common.” The report details various cases of teachers beating, torturing and berating male students for acting “too effeminately” and forcing transgender students to sit separately from other peers.

UNESCO surveyed 371 sexual and gender minority youth, and gathered in-depth information from more than 60 through focus groups in Tamil Nadu state. Eighty-four percent of participants reported being bullied, most by other students, but in one-fifth of those cases by a male teacher. Only 18% of those who were bullied said they reported the incident to school authorities. For those courageous enough to do so, school officials told nearly a third to change their gendered mannerisms to avoid future bullying, and half told them to ignore the incident altogether. The majority of respondents reported that they felt such incidents and the poor responses from authorities harmed their academic performance. Over a third of the students surveyed said that such bullying had contributed to a decision to drop out of school.⁴²

LGBT activists in India triumphed last year on September 6, when the Supreme Court unanimously struck down section 377 of India's penal code, which criminalised same-sex relations. Justice Indu Malhotra pointedly stated that “an apology [is owed] to members of the LGBT community... for the ostracisation and persecution they faced because of society's ignorance”. But while legal changes are an important step, much more is needed for LGBT people in India to be able to live without discrimination and with dignity. Young people who are bullied in school are less likely to succeed and more likely to find themselves vulnerable to discrimination and violence as adults.⁴³

Human Rights Watch research in diverse settings across the world whether in South Africa, Kenya, Jamaica, or the US shows that vulnerability as adults correlates with negative experiences as children whether at home or in school. Shifting India to being a nation that protects sexual and gender diversity will require action by multiple ministries and agencies at both the national and state levels. This includes amending education laws to include a spectrum of gender – not just “male and female” students – and updating curricula to make them inclusive of diverse gender and sexuality communities so all students are receiving accurate information.⁴⁴

1.6 Conclusion

All the activists, the lawyers, the petitioners, the human rights advocates, who were in it for the long haul; gay rights advocacy groups, the historians, writers, intellectuals united against Section 377; all the ordinary LGBT

⁴¹ *Ibid.*

⁴² *Supra* note 39

⁴³ Meenakshi Ganguly, “Same-Sex Relations No Longer a Crime in India” *available at*: <https://www.hrw.org/news/2018/09/07/same-sex-relations-no-longer-crime-india> (Visited on May 24, 2018)

⁴⁴ *Supra* note 39

women and men of India, those who have suffered in silence and fear, and those who have suffered - and ultimately won - by being brave.

All the LGBT community deserves ovation for their perseverance, steel, courage and conviction that you were on always the right side of history.

Philistine days are over

India has managed to shake off one of the most pernicious pieces of colonial-era legislations seventy-one years after the end of British rule. It bears repeating that this particular oppression was, naturally, another toxic British import. The British got rid of this barbaric law back in the year 1967. But many of its colonies who are now independent of British rule still have this sodomy law in their penal codes. Theresa May, the ex- British Prime Minister had once said that she “deeply regrets” Britain’s historical legacy of anti-gay laws across the world. She further said, “Nobody should face persecution or discrimination because of who they are or who they love.”

It is a fact that Section 377 was used mostly to blackmail and harass LGBT people while not many have never been prosecuted or convicted under it, rather it was used to terrorize homosexuals. Many homosexual couples who eloped were told by families and the police were harassed by the legal weapon of Section 377 stating that their relationship was illegal because of Section 377.

Decriminalization will curb atrocities against the LGBT community. According to the surveys conducted by various LGBT activists in different parts of the country, life is much better and simple for the LGBT group after the progressive judgment. Every society needs time to accept any change. People had started accepting this minority group in the mainstream and government has started recognizing their rights. The time is not so far when the society will accept the LGBT community and their rights. The road to full equality remains long, and there are still many serious issues faced by the LGBT community. True and complete freedom is yet to be achieved.

In a society where everything is short-lived, this is a decision which will ring the reminder of equality through the centuries not only in India but also in other nations.