

JOURNAL FOR LAW STUDENTS AND RESEARCHERS**SECTION 377: HOMOSEXUALITY IN INDIA****Shreya Girish Dargad****BA LLB****Shankar Rao Chavan Law College**

India is a country where the Hijada community is recognized from past 4000 years, God Ardhanatinareshwara is been worshipped; still the way our society looks at this particular community is narrow minded. The term LGBT is an acronym which stands for Lesbian, Gay, Bisexual, and Transgender. A Lesbian is a women attracted to another women, Gay is a man attracted towards another man, Bisexual is a person attracted to both the genders and Transgender is someone whose identity is different from the one that they have been assigned at the time of birth. Adding more to it LGBT also includes Q, I, A where Q stands for Queer, I stands for Intersexual and A stands for Asexual. LGBTQIA have been in spotlight after decriminalizing Section 377 of the Indian Penal Code. As per Section 377, it was a punishable act to have intercourse with any man, woman or animals against the order of nature. It's not the entire Section 377 that has been scrapped. Having sexual intercourse with animals is still a crime. When we speak about Section 377, there are five main important cases that each one of must be aware of.

CASE ONE: THE FIRST CASE IS THE NAAZ FOUNDATION V. GOVERNMENT OF INDIA, 2009.

Naaz foundation is a foundation which deals with HIV, AIDS and other health issues. The question raised in this case was "shall Section 377 be scrapped or not?" The court dealt this question with two angles. The first angle was "Right to Life Under Article 21" where they said that without dignity and privacy no one can enjoy right to life. Wherein the second angle was "Right to Equality Under Article 14 and 15." They said that Section 377 is violative of Article 14 because it makes unreasonable discrimination. It discriminizes homosexual as a class. Under Article 15 it discriminizes on basis of sex is prohibited. (Jain, 2018)

CASE TWO: SURESH KUMAR V. NAAZ FOUNDATION, 2013.

In Suresh Kumar Koushal and another v. Naaz Foundation, the Supreme Court the decision of High Court in the Naaz Foundation Case to be unenforceable. Justice G.S.Singhvi and Justice S.J.Mukhopadhaya were dealing with this case. The both judges where of the opinion that homosexuality is criminal offence and only Parliaments can take the decisions. Courts cannot interfere in the matter. They upheld the constitutional validity of Section 377 of Indian Penal Code which makes anal sex a punishable offence. After this judgement, the people who started disclosing their identity, where been called as criminals by some people . (Chennabasaveshwar, 2018)

**CASE THREE: NATIONAL LEGAL SERVICES AUTHORITY V. UNION OF INDIA, 2014.**

The NLSA(National Legal Services Authority) is an Indian based organization that provides pro bono legal services . In April 2014, it was observed that all the existing Indian laws are binary gendus and no provision protects the rights of transgender. Due to this, transgender community was discriminated. To deal with this loophole, Supreme Court recognised the multi face of transgender. Article 14 protects the rights of everyone which includes men, women as well as transgender. Under Article 15 and Article 16, gender based discrimination is prohibited. So if discrimination is done on the basis of sexual orientation, it would be violative of Article 15. Under Article 19(1)(a) privacy, gender, identity, integrity are protected. Under Article 21, Right to Live with dignity includes right to choose gender identity. Due to this case, gender identity got legal recognition. Justice Radhakrishna delivered the majority opinion of the Supreme Court Of India. After this judgement, the Court directed Centre and State Government to grant legal recognition of gender identity, be it male, female or the third gender. Legal recognition was given to third gender. (Chennabasaveshwar, 2018)

CASE FOUR: JUSTICE K.S.PUTTASWAMY V. UNION OF INDIA, 2017.

K.S.Puttaswamy is a retired High Court Judge. In this case Supreme Court affirmed that Right To Privacy is a fundamental right. A nine-judge bench of the Supreme Court was called. The nine Judges are Justice Chandrachud, Justice Kehar, Justice Agrawal, Justice Nazeer, Justice Chelameswar, Justice Bobde, Justice Nariman, Justice Sapre and Justice Kaul. This judgement was authorised by Justice Chandrachud. He said that Supreme Court has the responsibility to rectify the mistake of Supreme Court in Suresh Kumar Koushal case. He said that sexual orientation is essential attribute of Right To Privacy. The Court also held that the Right was not absolute but allowed restriction where this was provided by law, corresponded to a legitimate aim of the State. (Jain, 2018)

CASE FIVE: NAVJOT SINGH JOHAR V. UNION OF INDIA, 2018.

This case de criminalised all consensual sex among adults in private, including homosexual sex. It was stated that reading down of Section 377 shall not, lead to reopening of any concluded prosecutions, but can be relied upon in all pending matters. (Jain, 2018)

This case is a moment of relief for members of LGBTQIA community as it stated that they are entitled to Benefit Of Equal Citizenship without discrimination. Things have begun a bit easy for this community today compared to the past. People are more aware of the community the perspective of looking at this community is becoming better. It has never been easy for this community to grow up in our society, yet some of these people stood up for themselves and

brought a change in this society. Some of the well-known LGBTQIA personalities are listed below:

1. **LAXMI NARAYAN TRIPATHI**: Laxmi Narayan Tripathi is from Uttar Pradesh and recognizes herself as a part of Hijra Community. She is a transgender rights activist, Bharatanatyam dancer and Hindi Film Actress. She launched the Indian Super Queen beauty pageant in 2010.
2. **VIKRAM SETH**: Vikram Seth is the son of Prem Seth and Leila Seth. He is well known for his novel "A Suitable Boy" and is a famous personality in the field of literacy from past three decades. He is a Padma Shri recipient and has written a breathtaking poem over the verdict of criminalizing gay sex. The title of the poem is "Through love's great power." In 2016 he became a leader of the campaign against Section 377 of the Indian Penal Code, a law against buggery. His mother has written about Seth's homosexuality and her coming to terms with it in her memoir.
3. **ASHOK ROW KAVI**: Born in 1947, Kavi is a journalist and one of the LGBT rights activists in India. He is a chairperson and a founder of the Humsafar Trust. His organisation mobilises legal emancipation of homosexuality in India. Kavi plays an important role in changing the views of people towards the LGBT community.

Various other LGBTQIA personalities who took a step forward to change the views of society and make a positive impact about the LGBTQIA community are Onir, Anjali Ameer, Sonal Giani, Manvendra Singh Gohil, etc.