

DECriminalIZATION OF HOMOSEXUALITY AND ITS FUTURISTIC CONSEQUENCES.

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The LGBT community in India has been fighting for their rights since decades and the Supreme Court verdict of decriminalizing gay sex comes as a big relief for In a landmark verdict, the Supreme Court ended Section 377, a controversial British-era law that criminalizes gay sex in India. The Supreme Court reversed its own 2013 decision and while reading out the verdict, Chief Justice of India Dipak Misra said, "LGBT community possesses rights like others. Majoritarian views and popular morality cannot dictate constitutional rights." With this verdict, India entered the list of countries where homosexuality is legal.

The LGBT rights have made considerable progress in some parts of the world and now India has joined the list. United Kingdom decriminalized gay sex in 1967 and the United States allowed same-sex marriage in 2015. India joins 17 Commonwealth nations that have overturned laws criminalizing homosexuality, a legacy left behind in most of these nations by the former British colonial rulers. Homosexuality still remains illegal in 36 Commonwealth countries, including Singapore, Kenya and Sri Lanka. The ruling may also help dismantle the stigma attached to HIV and AIDS among gay men as the law impeded many

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from seeking the medical care they needed. Although a 2017 UNAIDS study showed that new HIV infections in India have decreased by 46% from 2010, experts say more LGBTQ people will now be able to approach doctors and medical services without the fear of discrimination. LGBTQ activists say the next step is pushing for marriage equality and property rights, but they will face an ongoing battle to ensure that their new-found right is not taken back from them, as it was in 2012.

“We cannot rest on our laurels,” says Harish Iyer, a prominent LGBTQ activist, who shot to fame after his mother posted a matrimonial advertisement seeking grooms for her son in 2015. “When love comes out of the closet, hate shall too raise its hood.” This will help the community claim equal constitutional status as other citizens. It also affirms their right to claim the right to adopt, marry and have a family.

It may also prevent social ostracism with the court declaring affirmatively that it was not a mental disorder. But something innate to a human being. The Delhi High Court had in 2009 taken this view, but a bench of the top court had controversially undone the ruling saying changing mores were best left to Parliament to deal with. Section 377 makes even consensual sexual acts -- both homosexual and heterosexual – a crime if they are against the order of nature. Those in favour of diluting the law to decriminalize all consensual sexual behaviour have argued that majoritarian morality must make way for constitutional

morality which makes it mandatory for the state to provide equality to all. No one can be discriminated against only on the grounds of their sexual orientation and called for constitutional protection to even sexual minorities. Those against diluting Section 377 urged the court to retain the law on the statute book citing morality, religion and cultural ethos of India. The government on its part left the issue to the court, but insisted it cannot go beyond debating criminality, to examine other civil rights for the community such as the right to marry, adopt etc. Several leading lights of the small but significant LGBT community had challenged the very existence of the law on the statute book. Laws affecting lesbian, gay, bisexual, and transgender (LGBT) people vary greatly by country or territory — everything from the legal recognition of same-sex marriage to the death penalty for homosexuality.

Laws that affect LGBT people include, but are not limited to, the following:

- laws concerning the recognition of same-sex relationships, including same-sex marriage, civil unions, and domestic partnerships
- laws concerning LGBT parenting, including adoption by LGBT people

- anti-discrimination laws in employment, housing, education, public accommodations
- anti-bullying legislation to protect LGBT children at school
- hate crime laws imposing enhanced criminal penalties for prejudice-motivated violence against LGBT people
- bathroom bills affecting access to sex-segregated facilities by transgender people
- laws related to sexual orientation and military service
- laws concerning access to assisted reproductive technology
- sodomy laws that penalize consensual same-sex sexual activity
- age of consent laws that may impose higher ages for same-sex sexual activity
- laws regarding donation of blood by men who have sex with men
- laws concerning access to sex reassignment surgery and hormone replacement therapy
- legal recognition and accommodation of reassigned gender

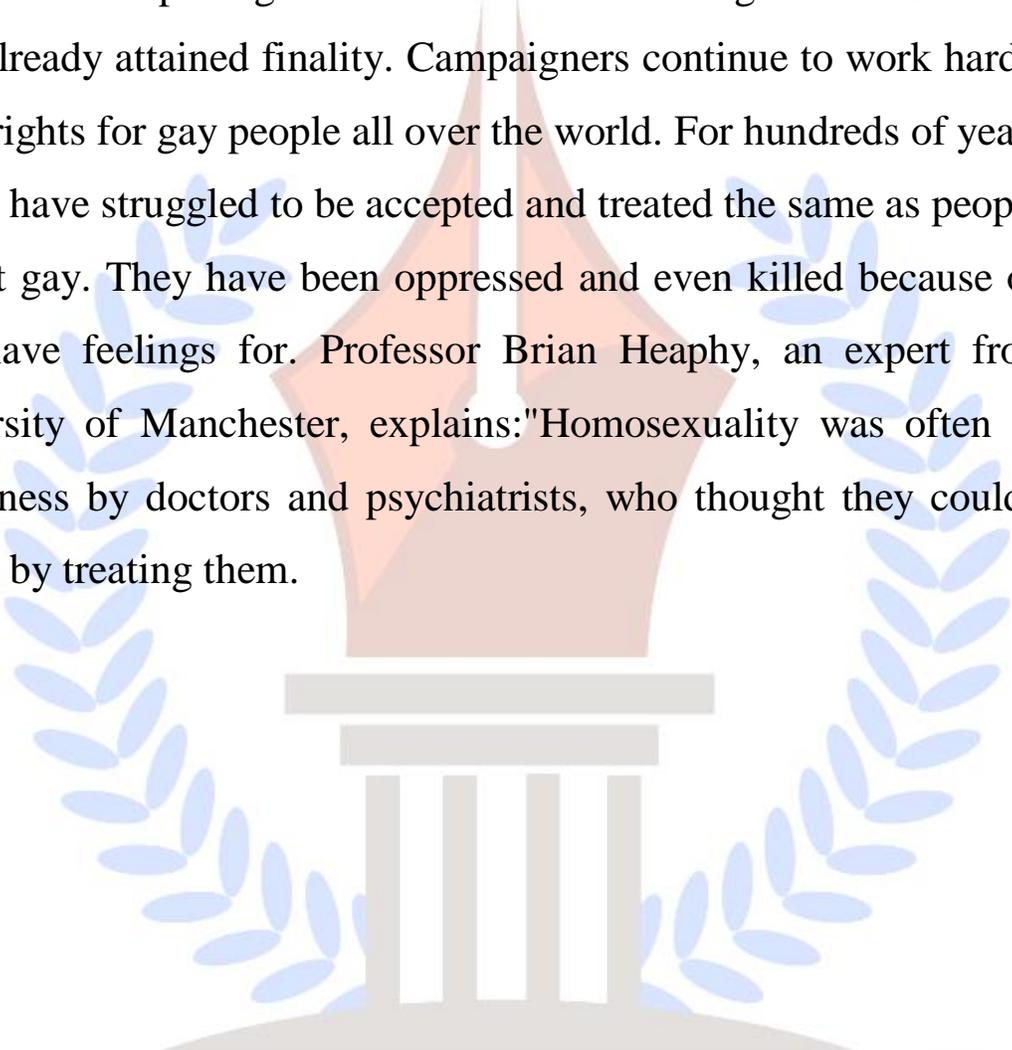
Notably, 25 countries, all of which are developed democracies or developing democracies, recognize same-sex marriage. By contrast, 10 countries or jurisdictions, all of which are Islamic and ruled by sharia, impose the death penalty for homosexuality. In 2011, the United Nations Human Rights Council passed its first resolution recognizing LGBT rights, following which the Office of the United Nations High

Commissioner for Human Rights issued a report documenting violations of the rights of LGBT people, including hate crimes, criminalization of homosexual activity, and discrimination. Following the issuance of the report, the United Nations urged all countries which had not yet done so to enact laws protecting basic LGBT rights. Delhi struck down much of S.377 of the IPC as being unconstitutional. The Court held that to the extent S.377 criminalised consensual non-vaginal sexual acts between adults, it violated an individual's fundamental rights to equality before the law, freedom from discrimination and to life and personal liberty under Articles 14, 15 and 21 of the Constitution of India. The High Court did not strike down Section 377 completely. It left the section to be valid in case of non-consensual non-vaginal intercourse or to intercourse with minors, and it expressed the hope that Parliament would legislatively address the issue.

On 11 December 2013, on responding an appeal filed by an astrologer Suresh Kumar Koushal and others, the Supreme Court of India upheld the constitutionality of Section 377 of the IPC, and stated that the Court was instead deferring to Indian legislators to provide the sought after clarity. The Delhi High Court judgement was as follows:

We declare that Section 377 IPC, in so far as it criminalises consensual sexual act between adults in private, is violative of Articles 21, 14 and 15 of

the Constitution. The provisions of Section 377 IPC will continue to govern non-consensual penile non-vaginal sex and penile on vaginal sex involving minors...Secondly, we clarify that our judgment will not result in re-opening of criminal cases involving Section 377 IPC that have already attained finality. Campaigners continue to work hard to get equal rights for gay people all over the world. For hundreds of years, gay people have struggled to be accepted and treated the same as people who are not gay. They have been oppressed and even killed because of who they have feelings for. Professor Brian Heaphy, an expert from the University of Manchester, explains: "Homosexuality was often treated as an illness by doctors and psychiatrists, who thought they could 'heal' people by treating them.



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