

**Ruchika Chaudhary****Rethinking India's LGBTQ+ community after Article 377**Assistant Professor- Department of Sociology, C.M.P. Degree College  
(A Constituent PG College of University of Allahabad) Prayagraj (U.P.) India

Received-29.01.2025,

Revised-06.02.2025,

Accepted-11.02.2025

E-mail : [chaudharyruchika123@gmail.com](mailto:chaudharyruchika123@gmail.com)

**Abstract:** A five-judge Constitution bench of the Supreme Court on 06 September 2018, unanimously decriminalized part of the 158-year-old colonial law under Section 377 of the IPC which criminalized consensual unnatural sex. The landmark judgment not only affected the lives of LGBTQ+ community, but also reversed an earlier ruling that had criminalized the community on 11 December 2013. Justice Indu Malhotra, one of the five judges who read out four concurrent verdicts said. Society owes the LGBTQ+ community an apology for the historical wrongs perpetrated against it. Coming out as LGBTQ+ is never easy, even in societies that are supportive and protective of the community's rights. This process starts with first accepting oneself, only then can one face the world with that identity. Judicial reforms can only create an enabling platform to deal with the situation, but it does not necessarily change social realities. Therefore the battle must be fought every day of our lives, inside and outside the courts rooms.

The presented paper attempts to see whether the society's attitude and thinking towards the LGBTQ+ community has changed after the Article 377 verdict. A secondary source will be used to compile facts in this regard.

**Key words:** Criminalized Consensual Unnatural Sex , Landmark Judgment, political equality

**Introduction-** The idea of human rights rests on the central premise that all humans are equal. It follows that all humans have dignity and all humans should be treated as equal. Anything that undermines that dignity is a violation, for it violates the principle of equality and paves the way for discrimination. The LGBTQ+ community's fight for equality started 29 years ago, when a writ petition was filed against Section 377 in Delhi High Court in 1994. The preamble to the Indian Constitution mandates justice social, economic, and political equality of status all. The rights of equality before law and equal protection under the law are guaranteed in Articles 14 and 21 of the Constitution. In April 2014, the Supreme Court of India ruled in NALSA vs Union of India that the rights and freedoms of transgender people in India were protected under the Constitution; in September 2018, the Supreme Court also decriminalized adult consensual same-sex relationships in the Section 377 judgment review. These judgments are considered a landmark both in terms of their expansive reading of constitutional rights and in empowering LGBTQ+ persons. This was a welcome victory, but it does not necessarily mean that LGBTQ+ people in India are fully free or perceived as equal among their fellow citizens. It underscores how much work remains to be done in India and the rest of the world to overturn antiquated and repressive anti-gay laws. India is a vast and diverse country and attitudes towards this subject and experiences of LGBTQ+ individuals vary vastly. The disparity between urban and rural India, language, caste, class and gender add further complexities to understanding this topic more fully. But what we do know is that India's LGBTQ+ citizens are not a "minuscule minority". They have a voice that is strong and refuses to be silent any longer in their efforts to reclaim equality.

**Methodology-** The Objective of this paper is to attempts to see whether the society's attitude and thinking towards the LGBTQ+ community has changed and what are the challenges that still stand before this community after the Article 377 verdict. In this regard a secondary source will be used to compile facts.

**Defining LGBTQ+-** LGBTQ is an acronym for lesbian, gay, bisexual, transgender and queer or questioning. These terms are used to describe a person's sexual orientation or gender identity.

**Lesbian-** A woman who's enduring physical, romantic, and/or emotional attraction is to other women. Some lesbians may prefer to identify as gay or as gay women.

**Gay-** The adjective used to describe people whose enduring physical, romantic, and/or emotional attractions are to people of the same sex. Sometimes lesbian is the preferred term for women.

**Bisexual-** A person who has the capacity to form enduring physical, romantic, and/or emotional attractions to those of the same-sex or to those of another sex.



**Transgender-** An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms including transgender.

**Queer-** An adjective used by some people, particularly younger people, whose sexual orientation is not exclusively heterosexual. Typically, for those who identify as queer, the terms lesbian, gay, and bisexual are perceived to be too limiting and/or fraught with cultural connotations they feel don't apply to them.

**Questioning-** Sometimes, when the Q is seen at the end of LGBT, it can also mean questioning. This term describes someone who is questioning their sexual orientation or gender identity.

**Plus (+) -** The plus that is usually included after the acronym encompasses a list of other identities that fall under the queer umbrella. The "+" aims to include those who identify as queer, intersex, asexual, demisexual, non-binary, gender-fluid, pansexual, polyamorous, questioning and many more.

**Society's Reaction after Article 377-** After the decision of Supreme Court on LGBTQ+, the society is getting mixed response. Some people are appreciating the decision while some people are considering it as a threat to the social future. Overall, it can be said that both positive and negative feedback is being received in this regard. The decision is like a Sanjeevanibooti for them and their families as well as for social activists.

- 25-year-old Arnab Nandy, a Mumbai-based tech professional who came out as gay in a Facebook post. Nandy is seated between his parents in the picture, who are holding up a poster saying, "My son is not a criminal anymore". Nandy says he has been out since he was 23 but told his mother about his sexuality three months before the ruling. It wasn't easy to break the news to the family. I didn't want to come out to the entire world unless my parents were ready to fight for it."
- PaviJulka, a 20-year-old student at Delhi, said the scrapping of Section 377 emboldened her to come out. The removal of the law could bring change for her community.
- Asmita Basu, Programmes Director, Amnesty International India says "The judgment closes the door on a dark chapter of Indian history. It marks a new era of equality for millions of people in India. The remarkable victory is a milestone in the three decade old struggle by the LGBTQ+ community and their allies in India."
- CPI (M) leader Sitaram Yechury also lauded the verdict. Congress party welcome the verdict, Shashi Tharoor says "Decision vindicates my stand". Congress spokesperson Randeep Singh Surjewala tweeted, "Supreme Court verdict on #Section 377 is momentous."
- LGBTQ activist and Kannada writer Vasudhendra, who is the author of Mohanaswamy, a collection of gay short stories, called the Supreme Court verdict a phenomenal one.
- Bollywood celebrities like Karan Johar, Swara Bhasker and many more hail judgment. The United Nations, in a statement, welcomed the judgment and said it was the first step towards ensuring full fundamental rights to LGBTQ+ persons in India.

This historic decision where on the one hand was welcomed whole heartedly, on the other hand, according to the views of some people; this decision is not in the interest of the society.

- The All Indian Muslim Personal Law Board stated, legalizing homosexuality is against Indian values and culture. The Jamaat-e-Islami Hind (JIH) has expressed disappointment over the verdict. JIH secretary general Muhammad Salim Engineer said: "Thus by decriminalizing homosexuality and permitting male-male and female-female marriage will destroy the family system and prevent the natural evolution and progress of the human race."
- Rashtriya Swayamsevak Sangh (RSS) said: homosexuality is not a crime, but it is against nature.
- However, Article 377 has provided a great relief to the LGBTQ+ community because after this decision at least they will not be seen as criminals.

**Some Challenges even after 377-** Legal changes are an important step but much more reformatory actions are needed for LGBTQ+ people in India to be able to live without discrimination and with dignity.





Aditya Shankar, a consultant with a private management firm in Bengaluru, noted that the verdict was certainly a step forward; it did not in fact do anything for their civil rights. It only removed the criminal status. Marriage of a member of the LGBTQ+ community is neither socially nor legally recognized. More recently, on the question of same-sex marriage, the Supreme Court of India ruled against legalizing same-sex marriage in a 3:2 verdict. The court said that it's the responsibility of Parliament to frame such laws. Subsequently, they are denied the basic rights to nominate their partners in insurances, and other legal documents. They cannot open a joint bank account, or sign a house lease with their partner. Same sex couples also cannot adopt a child under the Surrogacy bill. There is no official data available on the LGBTQ+ population in India, but the government estimates there are 2.5 million gay people. According to the survey report conducted by a multinational research firm IPSOS on 500 individuals in India that 3% of Indian population identifies as homosexual (including gay and lesbian), 9% identify as bisexual, 1% identify as pansexual, and 2% identify as asexual. 69% identified as heterosexual (excluding 'do not know', and 'prefer not to answer'). LGBTQ+ rights activists say the true figure could be far higher and want authorities to spread awareness about gay rights to prevent last year's verdict from fading into irrelevance. The picture is bleak for LGBTQ+ youth in India. According to UNESCO report 2018, LGBTQ+ children face a lot of bullying in schools, colleges ect. and are also discriminated. Most teachers are not trained or empowered to respond to anti-LGBTQ+ bullying, so in many cases they don't. In some cases, they even participate in the harassment. UNESCO surveyed 371 sexual and gender minority youth in India and gathered in-depth information from more than 60 through focus groups in Tamil Nadu state. According to this report 84% 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. All these facts indicate that the struggle is still remain.

**Some commendable work done by the society-** In India much works have been done for the LGBTQ+ community to gets the support of the society as well as the attitude of the society changes towards them. Indian cinema has the power to create a moral narrative that reaches all corners of the country. In 2019 "Ek Ladki Ko Dekha Toh Aisa Laga" movie hit the right note especially in depicting the bullying and depression that many young gay people face. It was also special in showing a father moving from bewilderment to supporting his lesbian daughter. In 2020 Ayushman Khurana's movie "Shubh Mangal jada sawdhaan" is also tries to spread awareness in this context. Opportunities are being given to them in reality shows shown on National TV and OTT Platforms. Web series like Sacred Games, Shakti and Taali Bajaungi nhi Bajwaungi are being made to depict the difficulties of their lives and to spread awareness among the masses. The cinematic representations of the community, once portrayed as caricatures, are now handled with a lot of sensitivity and seriousness. Now they have a queer film festival. These LGBTQ+ characters are being woven into everyday lives, everyday cinema. Apart from this, many people of LGBTQ+ community are gaining fame on the strength of their ability in various professions. Today, there are examples of commendable work done by them in the fields of fashion designing, teaching, mainstream politics etc. The Aam Aadmi Party fielded Bhawani Nath Valmiki from the Prayagraj Lok Sabha seat in Uttar Pradesh, and the Bahujan Samaj Party backed Kajal Nayak for the Korei assembly seat in Odisha. In 2019, the Congress party appointed Apsara Reddy, a trans woman, as national general secretary of the All India Mahila Congress. Lok Sabha cleared The Transgender Persons (Protection of Rights) Bill 2019 that sought to create policies for the people of the community, and help them to obtain documents of identification. The country's first LGBTQ+ job fair was organized in Bengaluru in July 2019 by Pride Circle, a volunteer-driven platform that engages with LGBTQ individuals.

**Conclusion-** There is still much that remains to be done if the civil rights of LGBTQ+ persons in India are to be protected. They have the rights to express ourselves identities without fear of violence or retribution. They are human beings, holders of human rights, and they need to recognize as such within the societies they live in. The most remarkable part of the Indian Supreme court's decision is that it didn't just use a universal standard of human rights to decriminalize homosexuality; it also acknowledged the



responsibility of the state to help end the stigma attached to being LGBTQ+. The court could have gone even further and emphasized that the Indian government should put in place mechanisms that would allow the reconciliation of shunned LGBTQ+ children and their parents. Doing so would help end the practice of parents forcing arranged marriages on those children something that can lead to trauma and other mental health problems. It would also help end the shocking practice of “corrective rape,” in which families subject their LGBTQ children to nonconsensual sex.

At the end of this paper a question has arisen that in future if Uniform Civil Code is implemented in India then the legal provisions will also be available to LGBTQ+ community. However, the battle is only half won. Many individuals within the community are yet to feel confident about their sexuality. They are still vulnerable. So when love comes out of the closet, hate comes out of the closet too. So for them to believe everything is hunky dory now is to live in a fool's paradise.

#### REFERENCE

1. <https://gaycenter.org/about/lgbtq/>.
2. <https://www.statepress.com/article/2018/10/spartcult-what-is-the-plus-in-lgbt-plus>. By Jacob Benevento 10/24/18.
3. <https://www.reuters.com/article/us-india-lgbt/one-year-after-landmark-ruling-for-lgbt-rights-in-india-challenges-persist-idUSKCN1VR256>.
4. <https://www.thehindu.com/news/national/live-reactions-to-supreme-court-judgment-on-section-377/article24879585.ece>.
5. *ibid.*
6. *ibid.*
7. <https://www.theweek.in/leisure/society/2019/09/06/One-year-after-Sec-377-verdict-Stirrings-of-change-but-long-way-to-go-for-true-inclusivity.html>.
8. LGBTQ+ Pride 2021 Global Survey (Pdf Report). Ipsos. 9 June 2021. Retrieved 12 June 2021.
9. <https://www.reuters.com/article/us-india-lgbt/one-year-after-landmark-ruling-for-lgbt-rights-in-india-challenges-persist-idUSKCN1VR256>.
10. <https://www.hrw.org/news/2019/06/24/section-377-history-young-lgbt-indians-need-concrete-policies-protect-them-bullying>.
11. <https://www.theweek.in/leisure/society/2019/09/06/One-year-after-Sec-377-verdict-Stirrings-of-change-but-long-way-to-go-for-true-inclusivity.html>.
12. *ibid.*

\*\*\*\*\*