

NAVTEJ SINGH JOHAR v. UNION OF INDIA

The Supreme Court of India decriminalized consensual gay relations in the historic case of Navtej Singh Johar v. Union of India, which was a major win for LGBTQ+ rights.

Section 377 of the Indian Penal Code (IPC), which declared homosexual conduct unlawful, was contested in this case. The Indian Constitutional values of equality, dignity, and privacy were upheld by this ruling, which overturned earlier decisions.

Facts of the Case

Section 377 was enacted in the Indian Penal Code in 1861 under British colonial authority, criminalizing sexual acts deemed "against the order of nature," aimed at homosexual relations. It eventually turned into an instrument for discrimination and harassment of the LGBTQ+ community, and violations of fundamental rights.

Naz Foundation v. Government of NCT of Delhi (2009), in which the Delhi High Court decriminalized consensual homosexual conduct between adults, was the first significant challenge against Section 377, IPC. But in *Suresh Kumar Koushal v. Naz Foundation (2013)*, the Supreme Court reversed this ruling, holding that only Parliament could change the legislation and that the court lacked the power to enact laws. This ruling sparked a new discussion about LGBTQ+ rights and prepared the way for the Navtej Singh Johar case.

Renowned dancer Navtej Singh Johar and other petitioners petitioned the Supreme Court, arguing that Section 377 of the IPC was unconstitutional. The petitioners claimed that by making LGBTQ+ identity and consenting sexual activity illegal, the clause infringed against their fundamental rights. They said that Section 377, IPC unfairly affected LGBTQ+ people, subjecting them to state-sponsored persecution and social stigma, and they wanted the legalizing of consensual actions between adults in private.

Even though the curative petitions were still pending before the Court, on January 5, 2018, the Supreme Court established a Constitution Bench to hear the challenge to Section 377 in a comprehensive way. On July 10, 2018, Chief Justice Dipak Misra, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud, Justice R.F. Nariman, and Justice Indu Malhotra formed a five-judge panel to hear the case.

Question of Law

The *Navtej Singh Johar v. Union of India* case raised several significant constitutional issues. Central to the challenge was whether Section 377 of the IPC violated the fundamental rights of LGBTQ+ persons under Articles 14, 19, and 21, particularly the guarantees of equality, dignity, personal liberty, and freedom of expression. The petitioners questioned the continued validity of a colonial-era law enacted without regard for individual autonomy or modern constitutional morality, arguing that it was incompatible with contemporary democratic values. The case also examined the scope of the right to privacy, especially after *Puttaswamy*, and whether sexual orientation and consensual relationships between adults fall within a protected zone of intimate personal choice. Additionally, the Court had to consider whether criminalizing consensual same-sex conduct perpetuated stigma, discrimination, and social exclusion, and whether such penalisation could be justified within a constitutional framework committed to inclusivity, human dignity, and substantive equality.

Judgement

The Indian Penal Code's Section 377 was largely overturned by the five-judge bench on September 6, 2018, decriminalizing same-sex relationships between consenting adults. It is now lawful for LGBT people to have consensual sex. The Court has affirmed Section 377's provisions that make it illegal to perform non-consensual or sexual actions on animals.

In reading down Section 377, all four rulings unanimously recognized infringement of fundamental rights. They concluded that Section 377 violates Articles 14 and 15 of the Constitution by discriminating against people based on their gender identity and/or sexual orientation. Additionally, they decided that Section 377 breaches Article 21's rights to life, dignity, and autonomy of choice. Lastly, they discovered that it violates the right to freedom of expression under Article 19(1)(a), which prevents an LGBT person from fully realizing their identity.