



The Politics Of Sexuality And Section 377: A Historical And Contemporary Analysis Of Queer Struggles In India

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Abstract: In India, sexuality, sexual movements, and queer identities are closely tied to Section 377 of the Indian Penal Code, a colonial-era law imposed by the British in 1860 to criminalize same-sex relationships. This law suppressed India's historically diverse approach to sexuality, which included acceptance of same-sex love in ancient texts and poetry. The paper explores how Section 377, rooted in Victorian morality, erased India's rich sexual traditions, with its impact still felt today. While the Delhi High Court partially decriminalized certain aspects of Section 377 in 2009, the Supreme Court reinstated it in 2013, intensifying the fight for sexual rights. The LGBTQIA+ movement in India gained momentum in the 1990s, driven by organizations like ABVA and the Naz Foundation, with international NGOs playing a key role. However, this movement often sidelined poorer and more diverse queer identities, influenced by Western perspectives. The 2018 Supreme Court ruling decriminalizing same-sex relations was a major legal victory, but the paper argues that it has not led to full societal acceptance or equality. Challenges such as workplace discrimination, lack of mental health support, and cultural

stigma persist. The paper concludes that true equality in India requires more than legal reform; it demands a shift in social attitudes and structural changes to support marginalized queer identities.

Keywords: Section 377, LGBTQIA+ rights, Colonialism and sexuality, Queer identities, Decriminalization, Social acceptance

Sexuality, sexual movement and the queer are inextricably linked in India. This link and the uncomfortable silence tagged along can be associated with the section 377 of the Indian Penal Code (IPC). The section 377 of IPC has its roots in the British colonial state. It can be said to be a colonial morality imposed upon the people of India, which before the colonial invasion was supposedly open to the ideas of sexuality. The openness of the “Indians” towards sexuality can be well justified with the ancient and medieval texts, which includes various forms of poetry like the Ghazals and the Rekhti poetry which had vivid portrayal of same sex love and eroticism.

Before we understand the rise of sexuality movement in India which this paper focusses on, it would be necessary to understand the incorporation of section 377 in the IPC and the history associated with it. Section 377 was penned by Lord Macaulay in 1860, who was the President of the Indian Law Commission. This was to deploy the British Victorian morality on the people of India and various other British colonies as well. Section 377 of the IPC reads as follows.

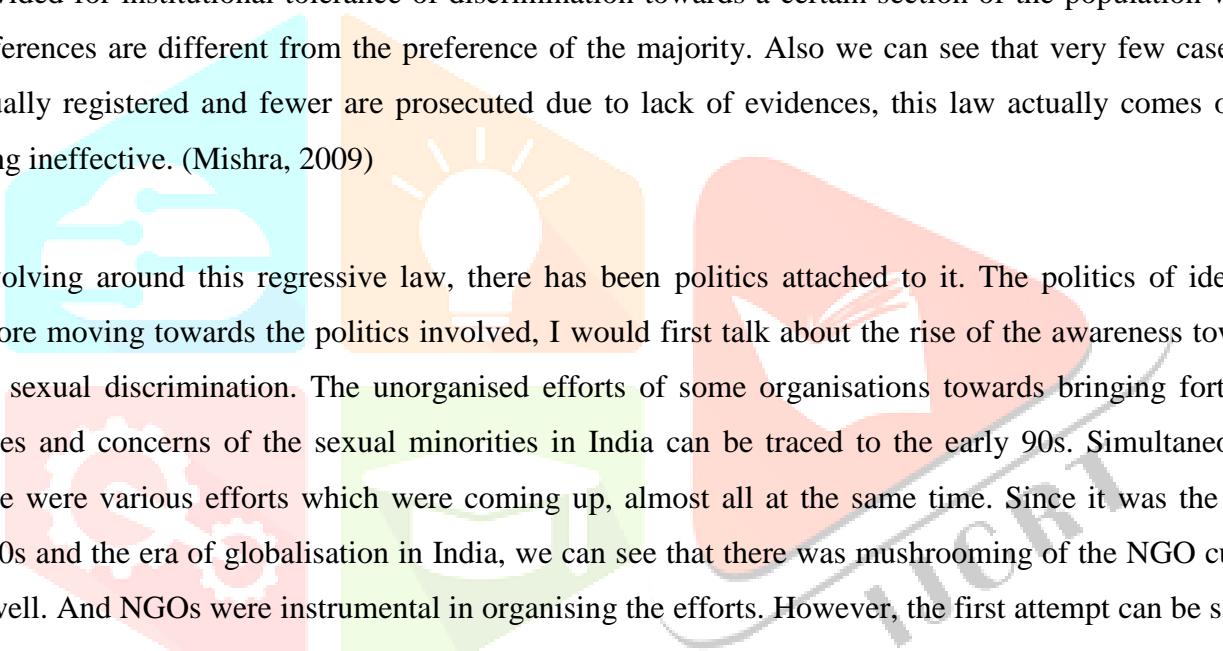
“Section 377: Unnatural offences - Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine. Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

As we can see, that the section does not explicitly lay down or define what would count as the “carnal intercourse against the order of nature”. However, it is believed that the procreative sex or sexual intercourse or the carnal intercourse is the only form of carnal intercourse which is as per the order of nature. Going by this understanding, it would mean that the acts of sex or sexual desires which does not lead to procreation would fall under the criminal activity. This may include oral sex, anal sex, masturbation or even vaginal-penile intercourse with a condom.

Introduction of section 377 in the subcontinent served to institutionalise what was in pre-colonial India a minor strand of homophobia. Along with the introduction of anti sodomy law, the Britishers also suppressed Rekhti and the heterosexualisation of the Ghazals (which supposedly imbibed passion amongst men). The criminalisation of same sex sexual practices regardless of age and consent was symbolic of the gradual suppression and partial erosion of rich and varied traditions of same sex eroticism, sexual practices and representation within the subcontinent. (Bhaskaran, 2001)

The introducer of section 377 in India, the Britishers themselves had de-criminalised homosexuality in 1967. Most western democracies have moved away from the regressive laws against homosexuality. The European court of Human Rights ruled that criminalisation of homosexuality is a basic violation of human rights and the privacy of individuals. However, homosexual practices are still criminalised in some post-colonial countries barring Nepal and South Africa. (Mishra, 2009)

Although, very few cases have been registered and sent to trial in violation of section 377's norms, there is no denying that section 377 stands against the basic rights of the homosexuals and discriminates against them. It is important to state that under section 377, an individual cannot be booked for identifying themselves as a homosexual. The criminalisation of the homosexual act(s) has come to marginalise the people who practice it. Their desires and sexual preferences are subjected to remain under cover in the secret and also are often subjected to being blackmailed. Section 377 has also provided for institutional tolerance of discrimination towards a certain section of the population whose preferences are different from the preference of the majority. Also we can see that very few cases are actually registered and fewer are prosecuted due to lack of evidences, this law actually comes out as being ineffective. (Mishra, 2009)



Revolving around this regressive law, there has been politics attached to it. The politics of identity. Before moving towards the politics involved, I would first talk about the rise of the awareness towards this sexual discrimination. The unorganised efforts of some organisations towards bringing forth the issues and concerns of the sexual minorities in India can be traced to the early 90s. Simultaneously, there were various efforts which were coming up, almost all at the same time. Since it was the early 1990s and the era of globalisation in India, we can see that there was mushrooming of the NGO culture as well. And NGOs were instrumental in organising the efforts. However, the first attempt can be said to be taken by the AIDS Bhedbhav Virodhi Andolan (ABVA). ABVA was a human rights groups, primarily concerned with the LGBT issues. In 1991 they were the first organisation to bring out a report titled, "Less than Gay: A Citizens' Report on the Status of Homosexuality in India". They brought out the discriminatory practices towards the same sex couples, marriage, parenting etc. ABVA in 1994 reported that in Tihar jail, there was homosexual activities taking place in large scale and that the jail authorities must provide for condoms to check the spread of AIDS. The then incharge of Tihar jail, Kiran Bedi ruled this out because it would mean constitutional violation of section 377. Later in 1994, ABVA filed a petition in the Delhi High Court, challenging the constitutionality of section 377. It argued that section 377 is a serious threat to the right to privacy of an individual. Also that it discriminates towards people who have a different sexual orientation than the majority. After almost 15 years of the filing of the petition, the Delhi High Court on 2nd July, 2009 gave a verdict to read down certain parts of section 377 which discriminates against certain people. But, later in 2013, December 13th the Supreme Court again dismissed the ruling of the Delhi High Court.

The rise of sexuality movement in India can be traced from the HIV/AIDS epidemic. Also the liberalisation of the Indian market was one driving factor for the rise of sexuality movement in India. The lesser organised efforts were taken forward with the help of the international NGOs who were working for the LGBT group and the queer issues. One such NGO is the Naz Foundation headed by Shivananda Khan from London which has been instrumental in taking the sexuality movement ahead. Naz foundation entered India in around 1989-1990 with the motive to organise support groups for the Lesbians and the Gays in the south Asian countries. Naz foundation along with its Indian associate, Humsafar Trust organised the first ever Gay conference for those who identified themselves as being gay and the MSMs. The primary objective of this conference was to explore the issues of sexual health, sexuality and sexual behaviour among the emerging gay identity in South Asia. This was highly successful. However the primary focus of the Naz Foundation was HIV/AIDS issues and sexual health. Naz Foundation later in 1996 separated two different organisations. The Naz Project in London and the Naz Foundation in India to work for the LGBT population in India and other south Asian countries like Pakistan and Bangladesh.

Naz foundation in 2001, had filed a petition to the Delhi High Court to read down certain parts of section 377 as it was discriminatory against certain sections of the population. The Delhi High Court had rejected the petition stating that the law does not directly affect the Naz Foundation. However, as per the provisions even if one is not directly affected by the law they can still file a petition. The Supreme Court of India then directed the High Court of Delhi to hear the petition. In 2009, the Delhi High Court gave a verdict in favour of reading down certain parts of section 377.

Like the Naz foundation there were several other multinational NGOs which were entering India and along with the local organisations were raising the voices for the oppressed. They worked as fund raiser, donor and technical support for the local organisations. There was a rise of the donor based organisations. Subir Kole says, "An important component of Indian HIV/AIDS program was 'media advocacy' a donor-driven concept to diffuse and popularise the ideas of ruling class to such an extent, that common people perceive and evaluate the social reality in their context". We can say that these western or western minded/centric organisations has in some ways tried to mould the movement in accordance with the west. The politics of coming out of the closet was very much influenced by the western politics. The coming out politics started in India right after the international influence of the NGOs. There had been numerous writers in India who had written extensively on homosexuality, same-sex love and also various poetry based on it. Well known writers were Michael Madhusudhan Dutt, Ismaat Chughtai, Kamala Das, Pandey Bechan Sharma, Rajkamal Chaudhary etc. But these writers never came out as being homosexuals. But the western influence on the eastern society had provoked the writers of the 1990s to come out through their writings usually known as confession. It was indeed revolutionary as it was seen as an assertion of the gay rights and the gay space.

In mid 1980s the homosexual diasporic community in Europe and America had mostly moved to the bigger cities of the country and together brought out magazines and newsletters like Trikone, Shakti Khabar, Khushi Khayal etc. These newsletters and magazines were primarily a response to the dominant white queer community who racially undermined the south Asian queers. This culture had even spread to India in the early 1990s. There were some newsletters which were published like the Bombay Dost. Bombay Dost was until 1994 published in Hindi. However, a single edition of the Bombay Dost was priced at Rs. 40 per edition.

This rise in the sexuality movement can however be criticised at many levels. The first criticism would be directed at the petition filed by the Naz foundation. Naz foundation, in the petition focussed on the gay men and the MSMs as they were identified as the most vulnerable group to the spread of HIV/AIDS. The lesbians were sidelined as they were identified as a low risk group. The petition had advocated for the sexual rights in the private space, but the poorer sections of the society who did not always have the privacy of home or hotel were not talked about and were prone to being booked under section 377. The petition of the Naz foundation also did not include the Hijra, Kothi, Panthi, Jogta etc. They were all together clubbed under the category of transgender which is problematic.

The sexuality movement in India can be said to be very elitist in nature, where the western was in some ways dominating the movement. As stated earlier, the programs were all donor based. Since the west was providing the funds they tried to impose their ways. Except a few NGOs, some of which are based in Hyderabad, most of the NGOs had clubbed the multiple alternative sexualities such as Hijra, Kothi, Panthi, Jogta, Kinnar, Chakkar etc under the transgender category which is the western understanding. All these separate identities do not consent to be broadly classified under the transgender umbrella because their different sets of practices and traditions get diluted. At the same time we cannot only point the finger at the western donors only. The factors like opening up of the market and the Indian middle class's inclination towards it are also responsible. In the earlier part, I had talked about the Indian writers who were confessing their queer identity in their books and this has been predominantly adopted from the western culture. The assertion of the queer identity and the queer space is not the issue which is in question. The question is that whether this assertion of the identity is limited to the elites, the middle class? Were the poor homosexuals or the Indian alternative sexual identities able to assert their own identities or their space? It is always the elites who were benefitted. The privacy of the space is available to the middle class. The access to the books, magazines, newsletters and the voice of the new liberal were all limited to the urban middle class elites who could afford. The Bombay Dost which was very much an Indian publication was priced so high. Due to the high price of it, this was limited only to the elite middle class. The poor could not afford to buy a newsletter with Rs.40 per edition. Also the Bombay Dost was criticised for publishing the news of the western celebrity gays and the western

LGBT issues only. The pride march which were organised were initially extremely elitist in nature. It was later that the Indian alternative sexualities were a part of this pride marches.

The decriminalization of consensual same-sex relations in India on September 6, 2018, marked a critical turning point in the country's legal treatment of non-heteronormative sexual identities. While the ruling removed colonial-era criminal sanctions, scholarship has consistently highlighted that this is only the beginning of broader cultural and structural change. Next part of the paper consolidates post-2018 academic research and critiques to evaluate the broader societal impact of the judgment.

In 2018, the Supreme Court of India made a significant legal advancement by decriminalizing consensual same-sex relationships, acknowledging the dignity and privacy of LGBTQIA+ individuals. However, as Gandham (2018) points out, this legal shift did not erase the deep-rooted societal stigma surrounding queer identities. Discrimination and prejudice persist across both urban and rural regions, indicating a continued lack of widespread sensitization at the grassroots level.

In terms of workplace inclusion, the promised cultural shifts have been slow. Fatwani and Rajpal (2020) highlight that, despite legal reforms, LGBTQIA+ employees still face exclusion, microaggressions, and limited career progression opportunities. Inclusive policies are rare, and when implemented, they are often inconsistent, particularly in private and informal sectors.

Media representation has seen a notable transformation since the 2018 ruling, with increased visibility of LGBTQIA+ voices in both news outlets and popular culture. Paul (2022) observes this change but also critiques the narrow representation that often centers on upper-class, cisgender gay men, leaving marginalized queer and trans experiences underrepresented.

Psychosocially, while some queer individuals report feeling more validated post-verdict, challenges such as familial rejection and a lack of queer-affirmative mental health services remain. Jain (2013) emphasizes that without comprehensive support systems, the legal victory has limited effects on improving the mental and emotional well-being of LGBTQIA+ individuals.

Sherin (2023) argues that while the decriminalization of same-sex relations was a step forward, the absence of civil protections—like anti-discrimination laws in housing, education, and employment—keeps the LGBTQIA+ community vulnerable. The current legal framework fails to provide the necessary safeguards, and Sherin calls for reforms that move beyond mere decriminalization to ensure full equality.

In conclusion, although the 2018 ruling was a crucial legal victory, it has not solved the broader issues of systemic oppression faced by LGBTQIA+ individuals in India. While symbolic progress has been made, significant barriers remain in employment, healthcare, legal recognition, and societal acceptance. Addressing these issues will require intersectional and multi-faceted efforts that prioritize the inclusion of marginalized groups within the LGBTQIA+ community, including Dalit queers, trans people, and gender non-conforming individuals.

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It is the privileged, educated, elite middle class who are being benefitted. Is the voice of the queer indeed the voice of the marginal? Are there marginals among the marginalised? Is the rainbow indeed so colourful?