

8.6.22

Q1. Write an essay on the inclusion of Article 377 in the Indian Constitution.

Ans = Article 377

The Supreme Court recently decriminalised homosexuality by striking off parts of Section 377 of the Indian Penal Code (IPC) which were held violative of Fundamental Rights of LGBTQ+ community.

Section 377 of the IPC 1860, a relic of British India, states that "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished." This included private consensual sex b/w adults of same sex. After the recent SC judgement, provisions of section 377 remain applicable in cases of non-consensual carnal intercourse with adults. Sexual orientation & its relationship to the Fundamental Rights of the individuals has been at the heart of the debate. The Supreme Court, while decriminalising consensual sex b/w homosexuals, observed that members of the LGBTQ community possessed the same



fundamental rights as others. Criminalisation of homosexuality leads to discrimination & results in LGBTQ+ people getting poor or inadequate access to services within the health system. Those against legalising gay sex argue that it is against the moral values of the society. However, activists arguing for it say what is forbidden in religion need not be prohibited in law.

Sexual minorities in India are one step closer to living with dignity. LGBTQ+ community will be able to come out in the open with their sexual preferences. Though the judgement goes a long way in removing the stigma attached with the LGBTQ+ community, there is a need for a multi pronged approach to deal with issue of prejudice & discrimination prevalent in society against them. The community needs an anti-discrimination law that empowers them to build productive ~~lives~~ lives & relationships irrespective of gender identity or sexual orientation.