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## Constitutional Right to Life And Personal Liberty - Navtej Singh Johar vs Union of India

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### ABSTRACT

The apex court of "India", in "Navtej Singh Johar", has undeniably taken a bold and important step toward a legal framework that enforces the "Constitution of India's" incorporationist and egalitarian principles. Via progressive constitutionalism, it aims to reform the "status quo" and current social norms while upholding constitutional morality above and beyond majority culture. In doing so, the court acknowledged the importance of the "right to privacy" and how important it is for it to work in the "private, consensual behaviour of homosexual adults."

### INTRODUCTION

In India, the debate over "homosexual rights" has continued. The "constitutionality" of "section 377<sup>1</sup>" of the "Indian Penal code 1860<sup>2</sup>", which deals with immoral crimes and, above all, criminalizes homosexuality, is often a contentious topic. The definition of "homosexual behaviour" as a whole is considered contradictory to nature and is undesirable in society. The

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<sup>1</sup> India, Indian Penal Code, Act No. 46/1860, sec. 377

<sup>2</sup> India, Indian Penal Code, Act No. 46/1860.

debate on homosexual criminalization has been raised centering on “Articles 14, 15 and 21” of the “Indian Constitution<sup>3</sup>”, which is a basic right to provide a no discrimination based on equality, gender and individual freedom. The natural order of men, women and animals and those who knowingly engage in sexual intercourse are subject to life in jail, or up to ten years in prison, or the death penalty and fines because of this homosexuality is a criminal offense that can be punished under “section” 377 of the Indian Criminal Code. LGBT people don't have the same rights as any other individual because of “section 377”. Homosexuality is described as permanent seductive, sentimental, and/or erotic attraction on the same gender. India became the 28th Asian country in legalizing homosexuality and acknowledging the rights of LGBT people in the case of “Navtej Singh Johar v. Union of India<sup>4</sup>” decriminalized homosexuality. Many important constitutional issues have also been discussed with the Indian Homosexual Union. The decisions of the previous case have changed the lives of many people around the world. Prior to this decision, lesbians, gays, bisexuals and transgender people had no such guarantees, since homosexuality was considered a crime under “section” 377 of the 1860 Indian Criminal Code.

#### **RESEARCH OBJECTIVES:**

- To analyse the case “Navtej Singh Johar vs Union of India.”
- To discuss the rules, sections and acts applied in the case.
- To discuss natural law with respect to the above-mentioned case.

#### **LITERATURE REVIEW:**

“K I Vibhute. Consensual Homosexuality and the Indian Penal Code: Some Reflections on Interplay of Law and Morality. Journal of the Indian Law Institute. Vol.51. <https://www.jstor.org/stable/43953422>.” Historically, criminal law has placed a high value on sexual norms and values, among other things. The Indian Penal Code used to criminalise homosexuality, including consensual homosexuality between consenting adults in private, and bestiality as “unnatural” sexual acts because they, in the end, violate widely held sexual mores and values.

“Geetanjali Misra. Decriminalising Homosexuality in India. Reproductive Health Matters. Vol.17. <https://www.jstor.org/stable/40647442>.” In the 1980s, the European Court of Human Prohibiting same-sex sexual behaviour was held to be a breach of “private life freedoms”. Britain is

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<sup>3</sup> India, Constitution of India (1949)

<sup>4</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

credited with inventing the “Indian Penal Code” and ““section 377”, decriminalised homosexuality in 1967 during the colonial period.

*“K.C. Abraham & Ajit K. Abraham. Homosexualities: Some Reflections from India. The Ecumenical Review. Vol.50.*

<https://search.proquest.com/openview/1b4c2c75ba81c83b60eb3b78af53cd97/1?pq-origsite=gscholar&cbl=41812>.” Human sexuality has never been discussed in “India”. The

dominant patterns of behaviour, especially sexual behaviour, followed a rigid code imposed by customs, symbols, and communal practises in the traditional joint-family system. Since the word "homosexuality" was never used in “India.”

*“Aman Ullah, Samee Uzair. Right to Life as basic structure of Indian Constitution. South Asian Studies. Vol.26.*

<http://journals.pu.edu.pk/journals/index.php/IJSAS/article/viewFile/2834/1079>.” In British India, the right to life was not recognised as a constitutional right. It was, however, in high demand. After independence, it was incorporated into the Constitution as Article 21. However, it was not an absolute fundamental privilege that could not be repealed by ordinary legislation.

*“Dr. Amitkumar IshwarBhai Parmar. Fundamental Rights Under the Indian Constitution. International Journal of Law. Vol.2. <http://www.ijless.kypublications.com/>.”* Since 1950, the judiciary has played an important role in human rights protection. Judicial interpretations have broadened the scope of rights in a variety of ways. The government and administration of our country work within the framework of this overall structure. Rights place restrictions on government operations while still preserving the country's democratic governance.

*“Krishnajyoti Nath (2020) “ANNIHILATION OF GENDER DISCRIMINATION THROUGH INDIAN CONSTITUTION”, PalArch’s Journal of Archaeology of Egypt / Egyptology, 17(6), pp. 13743-13753. <https://archives.palarch.nl/index.php/jae/article/view/3676>”:* The term "equal treatment under the law" is derived from the American constitution. The expression "fair protection of the laws" implies that equal justice should be provided in equal circumstances, both in terms of rights conferred and liabilities imposed by the laws. It means that the state must handle an individual in the same manner as others in similar situations and circumstances.

*“Anup Surendranath, Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta. Life and Personal Liberty. The Oxford Handbook of the Indian Constitution. 10.1093/law/9780198704898.003.0042.”* It explains the content of this right, how its meaning has developed and been interpreted, and how jurisprudence in this area has taken shape. It

delves into the fundamental rights guaranteed by the right, as well as how the right has been expanded, especially through the Supreme Court's emphasis on dignity. It examines debates over the hierarchy of rights, as well as the existence and intent of this guarantee in Indian constitutional law.

*"P.S. Atchuthen Pillai. LAW OF THE INDIAN CONSTITUTION. Journal of the Indian Law Institute, Vol. 14. <https://www.jstor.org/stable/43950164>."* Since the adoption of the Indian Constitution on January 26, 1950, several treatises covering all aspects of Indian constitutional law have been published. In eleven chapters totalling 383 pages, the author discussed the most important provisions of the Indian Constitution relating to fundamental rights, accounting for more than one-fifth of the book's total length.

*"Devika Sharma. 2018: The Year of The Supreme Court of India. The SCC Online Blog. <https://ezproxy.svkm.ac.in:2090/blog/post/2018/12/31/2018-the-year-of-the-supreme-court-of-india/>."* The court has been asked to make same-sex and other unlawful sex acts illegal by "section 377" of the Indian penal Code" is unconstitutional this is because the courts criminalized private consent for adult sexual activity, they attempted to "set a course for the future" by declaring IPC "section 377" "unconstitutional" in the landmark case of "Navtej Singh Johar v. Indian Union."

*"Pratik Dixit. Navtej Singh Johar v Union of India: Decriminalising India's Sodomy Law. The International Journal of Human Rights. Vol.24. 2020. <https://ezproxy.svkm.ac.in:2152/10.1080/13642987.2019.1690465>."* This article provides a brief overview of the progress made by the "Supreme Court of India" in the field of gender equality, especially homosexual justice. In the case of Navtej, the "Supreme Court" held that "section 377" of the "Indian Penal Code of 1860", which criminalizes "physical intercourse not in accordance with natural order", was unconstitutional. This article explains why courts are currently more interested in analysing the material impact of the law on those affected rather than purely formal methods.

## **CHAPTER 1: CRITICAL ANALYSIS OF A CASE LAW**

### **"Navtej Singh Johar v. Union of India, (2018) 10 SCC 1<sup>5</sup>"**

#### **BENCH**

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<sup>5</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

A five-judge bench of Former Chief Justice Dipak Misra, Justice Rohinton Fali Nariman, Justice D.Y. Chandrachud, Justice A.M. Khanwilkar, and Justice Indu Malhotra decided the case “Navtej Singh Johar and Others v Union of India.”

### **“JURISDICTION OF THE COURT”**

The case of “Navtej Singh Johar and Others v Union of India” was decided by the apex court of “India” on Sep 6, 2018.

### **FACTS OF THE CASE**

The case revolved around the constitutionality of ““section 377” of the Indian Penal Code, 1860 (“section 377”) insofar as it referred to consensual sexual acts of adults of the same sex in private. ““section 377”, titled "Unnatural Offenses," declared that "whoever willingly 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 period which may extend to ten years, and shall also be liable to a fine."

In 2009, the Delhi High Court ruled in “Naz Foundation v. Govt. of N.C.T. of Delhi<sup>6</sup>” that “section 377” was unconstitutional insofar as it applied to consensual sexual intercourse between two adults of the same sex. In the case of Suresh Kumar Koushal v. Naz Foundation<sup>7</sup>, a two-judge Supreme Court bench overturned the Delhi High Court decision and gave “section 377” “the stamp of approval.” When the current case was brought in 2016 to challenge the 2014 decision, a three-judge bench of the Supreme Court ruled that the issues raised needed a broader bench to answer. As a result, a five-judge jury heard the case.

In 2016, Navtej Singh Johar, a dancer who identified as a member of the LGBT community, petitioned the Supreme Court for recognition of the right to sexuality, the right to sexual integrity, and the right to choose a sexual partner as part of the right to life guaranteed by Article 21 of the Indian Constitution (Constitution). He also asked for a ruling that “section 377” was unconstitutional.” The “Petitioner” also claimed that “section 377” violated “Article 14 of the Constitution (Right to Equality Before the Law)” because it was too broad, failing to describe “carnal intercourse against the order of nature.” There was no discernible distinction or differentiation between normal and “unnatural consensual sex”. The “petitioner” also argued that (i) “section 377” violated “Article 15 of the Constitution (Protection from Discrimination)”

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<sup>6</sup> Naz Foundation v. Govt. of NCT, Delhi, (2016) 15 SCC 619

<sup>7</sup> Suresh Kumar Kaushal v. Naz Foundation, (2014) 1 SCC 1

Since it refuses the right to express one's sexual orientation through language and space, and (ii) "section 377" puts LGBT people "at risk of being humiliated or denied for certain choices or methods." It breaches their constitutional right to privacy in this aspect

The defendant in this case was the Indian Federation. In addition to the plaintiffs and defendants, many NGOs, religious groups and other representative groups have submitted applications to participate in the case.

The Indian Federation claimed that it had left the constitutional powers of "section 377 (applicable to consent of same-gender adults) to "Wisdom of the Court". The coordinators of some plaintiffs say that the "right to privacy" is not unlimited and such actions violate the "constitutional concept of dignity", and such actions expand the spread of "HIV/AIDS in society" and "section 377" It causes fundamental damage to marriage and "can violate article 25 of the Constitution<sup>8</sup>".

### **TIMELINE OF THE CASE**

"Section 377" was derived from the "Buggery Act of 1533"<sup>9</sup>. In this act, homosexual acts and sexual activities with animals were described as immoral and punishable offences. The English parliament passed this act in 1533, which described "buggery" as an act against God's will, under the leadership of King Henry7. According to this act, anyone found guilty of unnatural offences was subject to the death penalty. "Thomas Babington Macaulay," who headed the first ever law commission, introduced and drafted this law under "section 377" of the "Indian Penal Code"<sup>10</sup>.

In India, the battle to decriminalise "section 377" of the Indian Penal Code" began in 1994, when a "NGO (Aids Bhedbhav Virodhi Abhiyan)" filed a "petition" before the "High Court of Delhi" to decriminalise "section 377" of the "Indian Penal Code," but the "petition" was rejected in 2001. Then, in 2001, a "NGO (NAZ Foundation)" filed a PIL before the High Court of Delhi to challenge the constitutionality of "section 377" of the IPC, However, this petition was dismissed in 2001. Since 2001, a non-governmental organization (NAZ Foundation) has submitted a PIL to the "Delhi High Court" to object to the constitution of IPC "section 377", but this PIL has been rejected as grounds. standi. The same NGO challenged the decision of the "Delhi High Court" to the "Supreme Court of India", and the "Delhi High Court" asked the

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<sup>8</sup> India, Constitution of India (1949), art. 25

<sup>9</sup> Buggery Act. 1533. 25 Hen. 8 c. 6

<sup>10</sup> India, Indian Penal Code, Act No. 46/1860.

“Delhi High Court” to review the PIL because the petitioner had reason to file a “PIL”. Subsequently, the “Delhi High Court” ruled that IPC 377 was declared “unconstitutional” for violating “Articles 21, 14 and 15” of the “Indian Constitution”. It challenged a decision under section 377 of the IPC, which was filed with the “Supreme Court of India” in 2013 and declared unconstitutional. The “Supreme Court's” legal panel believes that section 377 is the constitution and that individuals who violate the natural order should be punished.

The dancer Navtej Singh Johar, who identified herself as an LGBT, finally filed in writing in 2016.

In the Supreme Court, the court ruled in favour and “Article 377 is unconstitutional.

### **ISSUES**

✚ Whether “section 377” violates “articles 14 and 15 of the constitution”?

The court ruled that there is no rationale for distinguishing between normal and unnatural sexual acts. The state has no control over the intimacy of consenting adults of the same gender. It fails to differentiate between consensual and non-consensual sexual acts of responsible adults in private space that are neither harmful nor contagious to society. Without excuse, “section 377” often discriminates against a group of people based on their sexual orientation. As a result, “Articles 14 and 15 of the Indian Constitution” are violated.

✚ Whether “section 377” violates the “right to privacy” under “article 21”?

According to the court, denying the LGBT community privacy just because they are a minority violates their human right to live in dignity. Suresh Koushal's (supra) reasoning that the LGBT community is a minuscule fraction of the total population and that the inclusion of “section 377” IPC abridges the civil rights of a very minuscule percentage of the total population strikes a discordant tone. Furthermore, the LGBT community has long been oppressed, and they are afraid of being shunned by society.

✚ Whether “section 377” has a “chilling effect” on “article 19 (1) (a)” by criminalizing gender expression by the “LGBT” community?

According to the court, gender identity is fundamental to a person's identity, and rejecting it is a violation of one's integrity. LGBT people are often stigmatised as a result of “section 377”. Homosexuals are often subjected to a great deal of scrutiny. As a result, they often hide their identity. This has far-reaching social consequences. It unreasonably limited public dignity and morality. Physical communication between people of the same gender in an adult personal

space does not compromise public dignity and morality, as these people have the right to choose a partner of their choice, who does not violate the law and restricts or stops public speaking. Expressing speech or speech based on a same-sex partner who prefers to have sex with mutual consent.

## **JUDGEMENT**

The court ruled that “section 377” discriminated against people on the basis of sexual orientation and/or gender identity in violation of “Articles 14 and 15 of the Constitution”. They also thought that “section 377” violated “Article 21's right to life”, independence, and individual autonomy. Finally, we have found that this interferes with LGBT people's ability to fully understand their identities, which violates “Article 19(1) of the Right to Freedom of Expression”. Both are *NALSA v. Indian Union* (transgender identity recognition) and *Judge K.S. Puttaswami v. Indian Union* (basic right to privacy is recognized).

The court upheld the constitution of “section 377” in the case of “*Suresh Kumar Koushal v. Naz Foundation* in 2013”. The court found that Suresh Kushal not only refused to understand how section 377 violates basic rights, but also referred to unacceptable legal justification. Suresh Kushal used minority claims, and because section 377 only affects a small number of people, the courts do not need to intervene. The Constitution guarantees the human rights of all citizens, regardless of gender identity. The court is interested in maintaining "constitutional morality", not "people's morality".

Thus, a panel of five judges from the “Supreme Court of India” unanimously ruled that “Article 377 of the Indian penal Code 1860” was unconstitutional because it privately dealt with consensual sex between adults.

## **CHAPTER 2: APPLICATION OF RULES, ACTS AND**

### **SECTIONS TO THE CASE**

“**ARTICLE 14 of the CONSTITUTION OF INDIA**<sup>11</sup>”: This article is divided into two parts. Whereas the state demands not to deny "the equality of people before the law", the state does not demand that it does not deny "equal protection under the law". Discrimination is illegal under the constitution, and equality is before the law prohibits it. This is a negative thought. The principle of “equal protection before the law” has a positive spirit by allowing the state to provide favourable support to people in different situations to achieve equality for all. As a

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<sup>11</sup> India, Constitution of India (1949), art. 14



result, it is important to emphasize that peers are treated the same way, but inequality is treated differently. In India, the state cannot deny the equality of individuals before the law or the equal protection under the law. Protect against discrimination based on religion, ethnicity, caste, sex or place of birth. The term "equality before the law" guarantees constitutional rights to "all people, regardless of birth, religion, sex, or race; that is to say, there shall be no arbitrary discrimination between one citizen or class of citizens by another." "All men shall be equal before the law in the same way as all human beings are equal before the law." "All residents are guaranteed equality before the law."

**"ARTICLE 15 of the CONSTITUTION OF INDIA<sup>12</sup>":** Article 15 is the tool that breaks down the barrier of inequality between the upper and lower castes. Article 15 is a continuation of Article 14, which discusses equality between persons and equality before the law. It protects people from discrimination by the state on the basis of religion, ethnicity, caste, gender, or place of birth, among other things. This Article, however, does not preclude the State from making special arrangements for women or children. Furthermore, it empowers the government to make special arrangements for socially and economically disadvantaged groups in order to help them advance. It also refers to "Scheduled Castes (SC)" and "Scheduled Tribes (ST)". "Part III of the Indian constitution" protects the article of the constitution, and article 15 explicitly falls under the title of "Right to Equality".

**"ARTICLE 19 of the CONSTITUTION OF INDIA<sup>13</sup>":** The "right to free speech and expression" is guaranteed to all Indian people under "Article 19(1)(a)" of the "Indian Constitution". According to the constitution, "all people shall have the "right to freedom of speech and expression." "Article 19(2)" allows for fair limitations on the exercise of this right for specific purposes. Any restriction on the exercise of the right under "Article 19(1)(a)" that does not fall within the scope of "Article 19(2)" is void.

According to "Article 19(1)(a)", "freedom of expression" requires the "right to express" an individual's views and opinions in any way, including language, text, publication, painting, film, film, etc. Thus, freedom of expression and the right to give or post individual opinions are included, but this right is subject to the lawful restrictions of "Article 19". Freedom of expression should not be confused with the right to make unfounded and irresponsible claims against the judiciary.

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<sup>12</sup> India, Constitution of India (1949), art. 15

<sup>13</sup> India, Constitution of India (1949), art. 19

The basic “right to freedom of expression” is recognised as one of the most fundamental aspects of a sound democracy because it allows citizens to engage completely and efficiently in the state's social and political processes. In reality, freedom of speech broadens and deepens the concept of citizenship, elevating it beyond the basic level of existence and providing a person with a political and social life.

This right is only available to citizens of "India," not to foreigners. This right, however, is not absolute; it enables the government to pass laws that place equal constraints on the interests of India's "sovereignty" and "dignity," security, friendly ties with foreign countries, public order, dignity, and morality, court contempt, Defamation, and induction of errors.

In the “preamble to the Indian Constitution”, the Indian people announced a sincere decision to guarantee “freedom of thought and expression” for all “citizens”. The “right to freedom of expression” is stipulated in the “Constitution”, which includes the “right to self-expression”, the “right to seek information and ideas”, the “right to receive information” and the “right to share information”. “India” is responsible for creating an environment in which everyone can effectively and efficiently enjoy the above guaranteed rights.

**“ARTICLE 21 of the CONSTITUTION OF INDIA<sup>14</sup>”**: Everyone has the “right to life”, freedom and safety of man. “The right to life” is undoubtedly the most important human right. All other rights add value to the life in question and depend on one's life. Given that only living things can relate to them, we have the right to: I look forward to it, life is the most important, because no other right can have meaning or benefit without it.

“Article 21 of the Indian Constitution of 1950” states that “no one shall be deprived of his life or personal liberty except in accordance with the process provided by law.” “Article 21 of the Constitution” defines ‘life’ as more than just the physical act of breathing. It does not imply mere animal nature or a life of drudgery. It has a much broader definition, which includes the “right to live with dignity”, “the right to a livelihood”, “the right to health”, “the right to clean air”, and so on.

The sphere of life is the center of our existence. Without it, you cannot survive as a “human being”. It includes all aspects of life that make a meaningful, complete and dignified contribution to human life. This is the only article in the “Constitution” that has received the broadest interpretation. Many rights took protection, development and food under the

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<sup>14</sup> India, Constitution of India (1949), art. 21

protection of Article 21. Therefore, the basic principles of the right to life are the basic and fundamental conditions necessary and inevitable for an individual.

**“SECTION 377” OF THE INDIAN PENAL CODE (IPC)<sup>15</sup>**: “Section 377” states, “Whoever willingly has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with life imprisonment, or imprisonment of any description for a period which may extend to ten years, and shall also be liable to fine.” It punishes immoral behaviour such as homosexuality, bestiality (sexual contact with animals) and beetles. Consent is irrelevant under this provision. “Section” 377 of the Criminal Code of India is governed by “SURESH KUMAR KUSHAL v. NAZ FONDA 2014” criminalized anal sex. But “NAVTEJ SINGH JOHAR & ORS. UNION INDIA”, a panel of five judges chaired by former Supreme Justice Deepak Mishra, ruled that Article 377 was partially abolished and violated the constitutional “right to privacy”. In addition, the court ruled that “section 377” remains in effect in case of unnatural sex with animals and children. The “Supreme Court” ruled that “section 377” was used to threaten “LGBTQ+ community” members, resulting in discrimination.

**“THE BUGGERY ACT, 1533<sup>16</sup>”**: This behaviour is considered an unnatural violation of homosexual behaviour, homosexuality and sexual activity involving animals. This law was passed by the “British Parliament in 1533” during the reign of “Henry VII”. In this act, cheating is described as an act contrary to God's will. Unnatural crimes during this act were executed. The “very first law commission of India”, led by “Thomas Macaulay”, introduced this law into “India” and drafted it as “section 377” of the “Indian Penal Code of 1860.”

### **CHAPTER 3: ANALYSIS WITH RESPECT TO NATURAL LAW**

**“RIGHT TO LIVE WITH HUMAN DIGNITY”**: It is insufficient to ensure that an individual has the Right to Live. Since one's integrity and respect are fundamental components of life, each individual has been guaranteed the “right to live with dignity” – which includes having access to the necessities of human life as well as autonomy over one's personal decisions.

In the case of “Navtej Singh Johar v. Union of India (2018)”, the “Supreme Court” stated that the “right to dignity” entails the “right to absolute personhood”, which “requires the right to carry such functions and activities as would constitute the substantive expression of the human

<sup>15</sup> India, Indian Penal Code, Act No. 46/1860, sec. 377

<sup>16</sup> Buggery Act. 1533. 25 Hen. 8 c. 6

self." In this scenario, a crucial element of human integrity was discussed: power over one's own personal relationships.

As can be shown, human integrity is not a shackling concept. Rather, it encompasses all of the rights and liberties that allow a person to live his or her life without jeopardising his or her self-respect, pride, or protection.

***"RIGHT TO EQUALITY AND NON-DISCRIMINATION"***: The court ruled that "section 377" unfairly punished people in same-sex relationships. To support this, the court noted that "Section 377" categorizes and punishes individuals who have sex contrary to natural procedures for the protection of women and children. However, this purpose is not fair to classification. This is because unusual violations are punished separately under "section 375" and "POCSO law<sup>17</sup>". As a result, the court ruled that the unfair treatment of "LGBT" people violated "Article 14". In addition, the court ruled that "section 377" was clearly unconstitutional in that it did not discriminate against sexual activity without the consent of an adult. He punished those who made these decisions, regarded them as "not such people," and promoted prejudices and stereotypes that exacerbated social consequences. This is a violation of "Article 14", which is the basis of non-discrimination, and the natural right of "non-discrimination" that all citizens have from birth.

***"FREEDOM OF EXPRESSION"***: The court has recognized that everyone, including "LGBTQI", has the right to freely express their views. Same-gender marriage was perceived as a natural change in human sexuality. The court specifically noted that "section 377" stigmatizes and discriminates against transgender people. The court then investigated whether public order, morality, dignity and morality were merely grounds for limiting the "freedom of expression of sex" in accordance with "Article 19(1)(a)". Sexual behaviour cannot be interpreted only through a spiritual lens, it is considered only the result of childbirth. Unreasonable restrictions on actions taken in an individual's personal space limit his freedom of choice. For this reason, the court ruled that "section 377" was excessive and violated the "constitutional right to freedom of expression".

***"RIGHT TO LIFE AND PERSONAL LIBERTY"***: The "right to life and personal freedom" has a wide range that expands over time. There is a growing understanding of the various aspects of life that someone has the "right to influence" and helps them improve their quality

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<sup>17</sup> The Protection of Children from Sexual Offences Act, 2012 [Act No. 32 Of 2012]

of life. The “Supreme Court” has established this right as the "heart and soul" of the “Indian Constitution”, and in reality, it reflects the most basic needs of human existence.

From the point of view of the court, “section 377” violates the “constitutional right to human dignity”, decision-making sovereignty and privacy. Everyone has the right to choose his sexual orientation, maintain friendly relations and use it in his own personal space. “section 377” violates “article 21” by limiting personal freedom to engage in voluntary sexual activity. This socially isolates “LGBT people” and prevents them from fully realizing their identities. If the “right to determine” your sexual orientation is denied, your privacy is violated. As a result, the court ruled that the definition of the “right to privacy” should be extended to include and preserve "sexual integrity".

**“THE ORDER OF NATURE”**: “section 377” criminalises "unnatural sex," which is "against the natural order." The Court ruled that distinguishing between normal and unnatural intercourse is not legally permissible. The legality or acceptance of a phenomenon should not be determined by its naturalness. Penalties for an unnatural or incorrect act cannot be enforced unless there is adequate justification.

#### **CHAPTER 4: SIGNIFICANCE OF THE JUDGEMENT**

This decision was based on transformative constitutionalist principles that paved the way for several important legal reforms and transformations. This is a turning point in the history of the “country” as it not only recognizes people's identities in the “LGBT community”, but also provides a global awareness of the community. Following the promotion of this important decision, the next battle in the legal realm concerns the “social and economic” conditions of such people, including the “freedom to marry a person of the same gender or of their choice”. I think this is a historical and important decision because after a lot of hard work and time, the “LGBT community” can live openly in this “country” without fear.

The “Indian constitution” is a living document that can be changed to satisfy the needs of society, but “social morality” cannot be used to violate an individual's “constitutional rights.”

#### **“CONCLUSION”**

As per “Navtej Singh Johar,” the three institutions of the “State and society” have a long way to go to ensure that the morality and values derived from the “constitution” prevail and lead us to a better future for the “LGBT community in India” with “dignity, sexual autonomy, and individuality.”

According to surveys conducted by numerous “LGBT” activists around the world, life for the “LGBT community” is much easier and simpler after the decision. Every culture requires time to adjust to any transition. The “LGBT community” and their rights will be accepted by society in the not-too-distant future.

They are in the minority, but they are still "people of India," and it is the "Hon'ble Court's" duty to protect the "rights of all citizens" in this country. Since “section 377” of the “Indian Penal Code” violated “Articles 14, 15, 19(1)(a), and 21” of the “Indian Constitution,” which are “fundamental rights” guaranteed under “Part 3 of the Indian Constitution<sup>18</sup>,” the “Hon'ble Court” once again followed their obligation and secured the “rights of LGBT community members.”

Prior to the decriminalisation of "section 377" of the "IPC," members of the "LGBT" community were unable to travel freely in this "country," lacked the "freedom to express their thoughts in public," were constantly discriminated by society, and lacked the "right to choose the same gender partner." However, now that the same part has been decriminalised, members of the “LGBT community” have the “right to live with dignity” and are no longer discriminated against by society.

Nevertheless, free and comfortable living in “Indian society” is a challenge for “LGBT community members”, but this problem can not only be solved by time and proper application of the law, but also by raising people's awareness of accepting reality without thinking that it is authentic. can. These people understand that they deserve freedom in society because they have “equal rights” with others.

Therefore, “IPC section 377” is a member of the “LGBT community”, “Navtej Singh Johar v. Union of India” has been duly applauded by respected judges who support the “LGBT community.” It gives the rights of members and the same status as other members of society.

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<sup>18</sup> India, Constitution of India (1949), Part 3.

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