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Whether Section 377 I.P.C. ought to be Modified or Repelled?

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ABSTRACT

Sexual intercourse i.e. between man and lady and such intercourse conjointly referred to as natural sexual orientation, any intercourse rather than natural orientation will be termed as unnatural sexual orientation. This unnatural sexual orientation is punishable below Section 377 of the Indian Penal code. This Section carries as harsh a punishment as that of rape. The Section also stated that consent of the parties is immaterial and if the party giving the consent is equally liable as an abettor. In modern times where LGBT (Lesbian, Gay, Bi-Sexual and Transgender) Community is widely recognised by worldwide, then section 377 of I.P.C. is extraneous in nowadays. Still bearing the probability of Section 377, which was drafted by the British approx 150 years ago. Law was reformed in Great Britain by the Sexual Offences Act, 1967, that de-criminalised sex activity and acts of anal sex between willing adults. The Committee advising the Parliament had suggested repealing of laws grueling homosexual conduct in 1957. In Criminal Justice System, where everyone is treated equally who commits against the law and conjointly treated equally with penalization no matter caste, colour, sex, religion, region and race. The discovery of plentiful instances wherever the crime committed by LGBT are reprimanded within the same manner as a standard person, still, there are several instances wherever they're place behind bars for gratification into an occurrence of prostitution, human trafficking and sexual activities. Netherlands became the primary country to permit gays and lesbians to marry in an exceedingly civil ceremony and adopt kids. It's clear that Section 377 I.P.C. would like a huge modification.

Our Society permits and recognised only one type of sexual intercourse i.e. between man and lady and such intercourse conjointly referred to as natural sexual orientation. Any sexual intercourses between man and man, lady and lady or with any animals by man or lady are termed as unnatural sexual orientation; that is punishable below Section 377 of the Indian Penal code. The expression “Unnatural Offence” is not evidently defined in the Indian Penal Code. The unnatural offence here includes sodomy, homosexuality, bestiality, buggery etc. The

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Section also states that a person who voluntarily commits sexual intercourse against the order of nature shall be punished with imprisonment up to 10 years and fine. This Section carries as harsh a punishment as that of rape. The Section also stated that consent of the parties is immaterial and if the party giving the consent is equally liable as an abettor.

In modern times where LGBT (Lesbian, Gay, Bi-Sexual and Transgender) Community is widely recognised by worldwide, then section 377 of I.P.C. is extraneous in nowadays. The **Indian Penal Code, 1860** was drafted by Lord Macaulay and introduced in the year of **1861**. But we are still bearing the probability of *Section 377*, the code which was drafted by the British approx 150 years ago. Consistent with Wolfenden Committee Report, land law was reformed in Great Britain by the Sexual Offences Act, 1967, that de-criminalised sex activity and acts of anal sex between willing adults. The Committee advising the Parliament had suggested repealing of laws grueling homosexual conduct in 1957. Before this even in European nation, sex activity was against the law, however they reformed their law consistent with would like and wish of their society.

Now the question arises, “Whether Section 377 I.P.C. is violating the Rights enshrined in the Constitution under Articles 14, 15 & 21?” The Highest Court of the Country answered the question in numerous cases. Recently in *Naz Foundation V. Govt. (NCT of Delhi)*², the Delhi High Court declared that the Section 377 I.P.C. is ultra vires with Articles 14, 15 & 21 of the Constitution of India insofar as it criminalises sexual intercourse with male adults with consent. However, the Supreme Court held that Section 377 does not suffer from the blemish of unconstitutionality in *Suresh Kumar Koushal v. Naz Foundation*³.

In Criminal Justice System, where everyone is treated equally who commits against the law and conjointly treated equally with penalization no matter caste, colour, sex, religion, region and race. We discover plentiful instances wherever the crime committed by LGBT are reprimanded within the same manner as a standard person, still, there are several instances wherever they're place behind bars for gratification into an occurrence of prostitution, human trafficking and other sexual activities. If below criminal jurisprudence the LGBT individuals cannot escape penalization whereas committing crimes, the rights related to social norms like wedding, inheritance in joint family property and maintenance ought to be provided to LGBT. The discrimination against them is in each walk of life.

In Gregorian calendar month 2001, “Netherlands” became the primary country to permit gays

² WP(C) No.7455/2001, DELHI HIGH COURT; Decision on 2 nd July, 2009.

³ AIR 2014 1 SCC 1.

and lesbians to marry in an exceedingly civil ceremony and adopt kids. In Gregorian calendar month 2003, “Belgium” created duet legal, however applying with sure restrictions and conjointly in 2006 the country allowed homosexual couples to adopt kids. In July 2005, “Spain” the country’s socialist government created duet legal and these couples were conjointly allowed to adopt, no matter their legal status. In Jan 2009, the “Norway” had place homosexuals and heterosexuals below an equivalent legal footing and allowed to marry, adopt and resort to power-assisted fruitful technologies. In Gregorian calendar month 2010, “Portugal” duet has been legal, however adoptions by homosexuals don't seem to be. In July 2010 “Argentina” became the primary resident country to decriminalize duet and such couples can also adopt. So, from the higher than instances, it's clear that Section 377 I.P.C. would like a huge modification to address the fashionable society.
