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## Navtej Singh Johar v. Union of India: A Constitutional Triumph for LGBTQ+ Rights

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### Introduction:

The 2018 judgment in **Navtej Singh Johar v. Union of India**<sup>1</sup> marked a watershed moment in Indian constitutional history. It reaffirmed the judiciary's role in upholding dignity, autonomy, and individual freedom. The Court partially struck down **Section 377 of the Indian Penal Code (IPC)**<sup>2</sup>, thereby decriminalizing consensual same-sex relations among adults. This ruling wasn't just about one law - it was about asserting constitutional morality over social prejudice, and about aligning domestic law with evolving international human rights standards. This commentary explores the context, key arguments, judicial reasoning, and the lasting significance of this historic verdict.

### Background:

Section 377 IPC, enacted during British colonial rule in 1860, criminalized "carnal intercourse against the order of nature." Over time, this provision became a legal tool for the harassment, persecution, and social marginalization of LGBTQ+ individuals. The Delhi High Court's progressive ruling in **Naz Foundation v. NCT of Delhi (2009)**<sup>3</sup> decriminalized consensual homosexual acts between adults, invoking principles of

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<sup>1</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India), < <https://indiankanoon.org/doc/168671544/> > accessed 19 July 2025.

<sup>2</sup> Indian Penal Code § 377 (1860) (India), < <https://indiankanoon.org/doc/1836974/> > accessed 19 July 2025.

equality and dignity. However, in **Suresh Kumar Koushal v. Naz Foundation (2013)**<sup>4</sup>, the Supreme Court reversed this decision, re-criminalizing same-sex conduct. The verdict was met with widespread public and legal criticism.

In response, a group of petitioners - including renowned dancer Navtej Singh Johar and others - approached the Supreme Court under **Article 32**<sup>5</sup> of the Constitution, challenging the constitutional validity of Section 377 once again.

### **Issues Before the Court:**

The central constitutional question was whether Section 377, to the extent that it criminalized consensual same-sex relationships among adults, violated the **fundamental rights** guaranteed under:

**Article 14**<sup>6</sup> - Right to equality before the law

**Article 15**<sup>7</sup> - Prohibition of discrimination

**Article 19**<sup>8</sup> - Freedom of speech and expression

**Article 21**<sup>9</sup> - Right to life and personal liberty

Additionally, the case examined the interplay between personal liberty, dignity, privacy, and the evolving standards of constitutional morality.

### **Arguments Presented:**

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<sup>3</sup> Naz Foundation v. Govt. of NCT of Delhi, 160 DLT 277 (Del. HC 2009), < <https://indiankanoon.org/doc/58730926/> > accessed 19 July 2025.

<sup>4</sup> Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1 (India), < <https://indiankanoon.org/doc/118566543/> > accessed 19 July 2025.

<sup>5</sup> India Const. art. 32, < <https://indiankanoon.org/doc/981147/> > accessed 19 July 2025.

<sup>6</sup> India Const. art. 14, < <https://indiankanoon.org/doc/367586/> > accessed 19 July 2025.

<sup>7</sup> India Const. art. 15, < <https://indiankanoon.org/doc/609295/> > accessed 19 July 2025.

<sup>8</sup> India Const. art. 19, < <https://indiankanoon.org/doc/1218090/> > accessed 19 July 2025.

<sup>9</sup> India Const. art. 21, < <https://indiankanoon.org/doc/1199182/> > accessed 19 July 2025.

The petitioners contended that Section 377 infringed upon the right to equality by treating LGBTQ+ persons as unequal under the law. It discriminated solely on the basis of sexual orientation, violating **Article 15**. Further, the statute intruded on private consensual conduct, breaching the right to privacy and autonomy recognized in **K.S. Puttaswamy v. Union of India (2017)**<sup>10</sup>, where the Supreme Court had held that the right to privacy is intrinsic to the right to life under **Article 21**.

The petitioners also highlighted the chilling effect that criminalization had on freedom of expression under **Article 19**, as it silenced LGBTQ+ voices and stifled identity. Notably, the Union of India chose not to contest the challenge to Section 377 insofar as it related to consensual adult relationships and left the issue to the "wisdom of the Court".

### **Judgment and Reasoning:**

On **6th September 2018**, the Constitution Bench of the Supreme Court unanimously declared that Section 377 was unconstitutional to the extent that it criminalized consensual sex between adults. The judgment was delivered in four concurring opinions by **Justices Dipak Misra (with A.M. Khanwilkar), Rohinton Nariman, D.Y. Chandrachud, and Indu Malhotra**.

Justice Misra emphasized the doctrine of **constitutional morality, arguing that the Constitution protects individual autonomy and dignity irrespective of majoritarian societal norms. Justice Nariman noted that Section 377 lacked rationality and served no legitimate state interest, rendering it arbitrary under Article 14.**

Justice Chandrachud observed that the law perpetuated stigma and harmed the mental health of LGBTQ+ individuals. He called for an inclusive interpretation of constitutional rights. Justice Indu Malhotra delivered one of the most powerful statements: "History owes an apology to members of the LGBTQ+ community and their families".

### **Impact and Significance:**

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<sup>10</sup> K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India), < <https://indiankanoon.org/doc/127517806/> > accessed 19 July 2025.

The ruling in Navtej Singh Johar was not merely a judicial pronouncement; it was a social and cultural milestone. It restored legal recognition and dignity to millions who had lived under the shadow of criminality. The judgment opened the door for deeper legal and policy reforms - ranging from anti-discrimination laws to debates on same-sex marriage, adoption, and inheritance rights.

Though Section 377 remains valid for non-consensual acts and bestiality, its decriminalization for consensual relationships among adults is hailed as a pivotal step in the fight for LGBTQ+ equality in India.

The ruling also set a strong precedent for using **constitutional morality** as a lens to interpret fundamental rights and expand protections for marginalized groups, even in the face of societal opposition.

### **Conclusion:**

The Supreme Court's decision in Navtej Singh Johar v. Union of India marked a vital shift in Indian constitutional thought. By reading down Section 377, the Court affirmed that the Constitution must evolve with society to protect individual dignity, privacy, and equality.

This judgment went beyond legal doctrine - it recognized the human cost of criminalizing identity and restored the rights of LGBTQ+ individuals as equal citizens. Emphasizing constitutional morality over outdated societal norms, the Court upheld that fundamental rights cannot be denied based on majority opinion.

Though the verdict did not address broader issues like marriage or adoption, it laid a crucial foundation for future legal reform. It sent a clear message that personal liberty and the right to love cannot be subordinated to prejudice.

Navtej Singh Johar will be remembered not only as a legal turning point but as a moment of moral clarity. It reaffirmed that the Constitution stands for inclusion, and that dignity and freedom must apply to all - without exception.