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CASE COMMENTARY: NAVTEJ SINGH JOHAR V. UNION OF INDIA (2018)

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1. Introduction:

The decision in *Navtej Singh Johar V. Union of India* is one of the most transformative constitutional judgments delivered by the Supreme Court of India. The case challenged the constitutional validity of Section 377 of the Indian Penal Code, 1860, a colonial-era provision that criminalised “carnal intercourse against the order of nature.” For decades, the provision had been used to stigmatise and marginalise members of the LGBTQ+ community despite limited prosecutions. The Constitution Bench judgment delivered on 6 September 2018 marked a significant shift in Indian constitutional jurisprudence by affirming dignity, equality, privacy, and individual autonomy as central constitutional values.¹ The Court recognised that constitutional morality must prevail over social morality and held that consensual sexual relations between adults could not be subjected to criminal sanctions merely because they differed from majoritarian norms.

2. Background of the Case.

Section 377 was introduced during British colonial rule in 1860 and criminalised certain forms of sexual conduct irrespective of consent. Over time, the provision became associated with discrimination against homo sexual individuals. In 2009, the Delhi High Court in *Naz Foundation V. Government of NCT of Delhi* read down Section 377 and decriminalised consensual same-sex relations among adults. However, in 2013, the Supreme Court in *Suresh Kumar Koushal V. Naz Foundation* reversed the Delhi High Court’s decision and restored the provision in its entirety.

The legal landscape changed significantly after the Supreme Court’s judgment in *Justice K.S. Puttaswamy V. Union of India* (2017), which recognised privacy as a fundamental right under the Constitution. The petitioners in *Navtej Singh Johar*, including dancer Navtej Singh Johar and several LGBTQ+ activists, argued that Section 377 violated the rights guaranteed under Articles 14, 15, 19 and 21 of the Constitution. The matter was referred to a Constitution Bench Consisting

¹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

of Chief Justice Dipak Misra and Justices Rohinton F.Nariman, A.M. Khanwilkar, D.Y. Chandrachud, and InduMalhotra.²

3. Issues Before the Court

The principal issues before the Court were:

1. Whether Section 377, in so far as it criminalised consensual sexual relations between adults of the same sex, violated Article 14 guaranteeing equality before law.
2. Whether the provision infringed Article 15 by indirectly discriminating on the basis of sex and sexual orientation.
3. Whether criminalization restricted freedom of expression under Article 19(1)(a), including the expression of one's sexual identity.
4. Whether Section 377 violated Article 21 by interfering with dignity. Privacy, autonomy, and personal liberty.
5. Whether the decision in Suresh Kumar Koushal required reconsideration in light of subsequent constitutional developments.

4. Arguments on both sides.

Petitioner's Arguments

The petitioners argued that sexual orientation is an intrinsic aspect of identity and cannot be altered by state action. Criminalisation of consensual same-sex relationships treated LGBTQ+ persons as unequal citizens and denied them dignity. They contended that Section 377 was arbitrary because it targeted a class of individuals without a rational basis. The petitioners also relied upon the right to privacy recognised in Puttaswamy, asserting that intimate choices concerning relationships and sexuality fall within the protected sphere of personal autonomy.³

Further, it was argued that constitutional rights belong equally to minorities and that the protection of fundamental rights cannot depend upon the numerical strength of a group. The provision was also said to create a chilling effect by forcing LGBTQ+ individuals to conceal their identities.

Respondent's Arguments.

The Union Government adopted a limited position, leaving the issue of consensual adult relationships to the wisdom of the Court. Opponents of decriminalisation argued that Section 377 reflected societal morality and public values. It was also contended that any modification of the provision should be undertaken by Parliament rather than the judiciary. Some submissions

² *Id.*

³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

maintained that the law served a legitimate purpose in regulating sexual conduct and preserving traditional social norms.

5. Inequality of the Existing Framework

The Court examined how the existing legal framework created structural inequality. Although Section 377 was facially neutral, its practical impact fell disproportionately upon LGBTQ+ individuals. The provision legitimised social stigma, exclusion, harassment, and discrimination. Fear of criminal prosecution discouraged many individuals from accessing healthcare, reporting abuse, or openly expressing their identities.

The framework also reinforced a hierarchy of citizenship by privileging heterosexual relationships while treating same-sex relationships as criminal. Such differential treatment violated the constitutional commitment to substantive equality. Criminalisation transformed a natural variation of human sexuality into a basis for exclusion and humiliation, thereby undermining constitutional guarantees.⁴

6. Judgment and Directions

The Constitution Bench unanimously held that Section 377 was unconstitutional to the extent that it criminalised consensual sexual acts between adults conducted in private. The Court read down the provision while retaining its application to non-consensual acts, acts involving minors, and bestiality.

The judges emphasised that constitutional morality requires protection of individual freedoms against societal prejudice. The judgment recognised that LGBTQ+ persons are entitled to the same constitutional protections as all other citizens. The Court declared that dignity, privacy, and autonomy are inseparable aspects of liberty and that consensual adult relationships cannot be subjected to criminal punishment merely because they are disapproved of by a majority.

The Court further acknowledged the historical injustice suffered by LGBTQ+ communities and affirmed their right to live with dignity and without fear of persecution. Consequently, the ruling effectively decriminalized homosexuality in India.⁵

7. Ratio Decidendi and Obiter Dicta

Ratio Decidendi

The central ratio of the case is that criminalisation of consensual same-sex relations between adults violates Articles 14, 15, 19, and 21 of the Constitution. Sexual orientation constitutes an essential attribute of identity, and state interference with consensual intimate relationships is

⁴ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

unconstitutional. The Constitution protects individual autonomy, privacy, dignity, and equality irrespective of sexual orientation.

Obiter Dicta

Several observations made by the judges extend beyond the immediate issue. Justice Chandrachud discussed the need for social acceptance and the harmful effects of historical discrimination. Justice Indu Malhotra famously observed that history owed an apology to members of the LGBTQ+ community for the suffering caused by discrimination and exclusion. These observations, while not necessary for the decision, have become influential in shaping discussions on LGBTQ+ rights and constitutional values.

8. Legislative Developments

Although the judgment decriminalised consensual same-sex relations, it did not create a comprehensive legal framework guaranteeing equal rights in areas such as marriage, adoption, inheritance, and family recognition. Subsequent legal developments have focused on broader LGBTQ+ rights. The enactment of the Transgender Persons (Protection of Rights) Act, 2019 represented an attempt to address discrimination against transgender individuals, though it has also attracted criticism regarding implementation and procedural requirements.

The judgment has served as a foundation for continued advocacy seeking recognition of same-sex unions and greater protection against discrimination in employment, education, healthcare, and housing.

9. Precedents Followed

The Court relied upon several important precedents.

1. Naz Foundation V. Government of NCT of Delhi (2009), which had previously read down Section 377.
2. Justice K.S. Puttaswamy V. Union of India (2017), recognising privacy as a fundamental right.
3. National Legal Services Authority V. Union of India (2014), affirming gender identity and dignity.
4. International human rights jurisprudence emphasising equality and non-discrimination.

The Court expressly departed from the reasoning in *Suresh Kumar Koushal*, holding that constitutional rights cannot be denied merely because the affected population constitutes a minority.⁶

10. Case analysis

⁶ *Suresh Kumar Koushal v. Naz Found.*, (2014) 1 S.C.C. 1.

The judgment represents a mature application of transformative constitutionalism. Rather than limiting itself to a narrow examination of criminal law, the Court situated the issue within broader constitutional principles. The decision demonstrates how constitutional rights evolve to protect marginalised groups against entrenched prejudice.

The Court's emphasis on dignity and autonomy reflects a shift from state-centred regulation toward individual-centred constitutional protection. By rejecting majoritarian morality as a basis for criminalisation, the judgment strengthened judicial protection of minority rights. It also expanded the practical significance of privacy by linking it with identity, intimacy, and self-expression.

11. Case Comment

The judgment is commendable for recognising that constitutional guarantees must have real meaning for vulnerable communities. Its strongest contribution lies in affirming that equality requires respect for difference rather than mere uniform treatment. The Court acknowledged the lived realities of discrimination and moved beyond abstract legal formalism. Nevertheless, decriminalisation alone cannot eliminate social stigma. Many LGBTQ+ individuals continue to face discrimination in family, educational, and professional settings.

12. Conclusion

Navtej Singh Johar V. Union of India stands as a landmark affirmation of constitutional values. By reading down Section 377, the Supreme Court restored dignity and equality to millions of citizens who had long been subjected to legal and social exclusion. The judgment reinforced the principles of privacy, autonomy, and constitutional morality while rejecting discrimination based on sexual orientation. Its enduring significance lies not merely in decriminalizing homosexuality but in reaffirming that the Constitution protects every individual, including those who belong to marginalised minorities.