

# **India: Talking Equality, To a Conservative Society - a landmark judicial verdict decriminalising homosexuality extends frontiers on personal rights**

Thursday 13 September 2018, by [KAPOOR Harsh](#) (Date first published: 9 September 2018).



*Art work by Katerina Gribkoff* [\[1\]](#)

In four separate and combined judgments on September 6, 2018, in the Navtej Singh Johar case a constitution bench of the Supreme Court of India ruled that the section 377 of Indian Penal Code (a colonial era provision from 1860) was discriminatory to the extent that it penalised consensual sex between adults. Chief Justice Dipak Misra introduced the verdict saying “vanish, prejudice and embrace inclusion and ensure equal rights” . . . “Any discrimination on the basis of sexual orientation violates fundamental rights”. This ruling also overturned the retrogressive judicial error of 2013 in Suresh Kumar Koushal case, that had struck down a fine 2009 judgment of the Delhi High Court reading down Section 377. The ruling also said the Supreme Court had earlier recognized the right to choose a partner and the partner can also be a same sex partner.

This court verdict recognises homosexuality, the right freely conduct one’s sexual life and stands up for equality of all citizens as enshrined in the constitution and gives hope for new jurisprudence challenging the thousand and one discriminations and exclusions that shape the realities of everyday life in India.

This victory in the courts has been possible through long sustained work over the past two and half decades by a rare tribe of socially committed cosmopolitan lawyers and a movement challenging compulsory heterosexuality and homophobia and organising people facing discrimination due to their sexual orientation, resisting violence, arrests and by creating and sustaining LGBT groups and organisations in a very conservative social environment. Thousands of gay, lesbian, citizens remain in the closet for fear of the society and their own families.

But, hang on, there is a considerable social distance between the court decision and real world societal norms. While the LGBT groups celebrate, they also need to now open up (they too like much in India have been marked by a flourishing ‘identitarian’ logic) and work with other movements on common issues of secular citizenship.

Burly men of the Muslim, Christian, Hindu right wing have already sounded the alarm, and they do call the shots among large numbers in India. Hindu Mahasabha says the court verdict was a threat to society and national interest calling for Parliament to intervene [2]. Big guns of the All India Muslim Personal Law Board and some ulema types from Deoband say "Homosexuality is dirty, filthy and against nature". And the Apostolic Churches Alliance says "Homosexuality is an abomination as per the Bible". So here is another kind of Indian style 'Sarva Dharma Sambhava (all religions possible) masala' secular alliance against our sinful, personal freedoms as citizens.

These chaps are no aliens, there is widespread prejudicial societal behaviour towards people with a different sexual orientation or all manner of social 'deviation'. We run the risk all the time of being mowed down by our own people and from the left right and center (and now the new fashionable shoot at sight naming shaming anonymous internet list makers) for having chosen to go against the grain, to not be forced in marriage, to have the right to love and to show affection, to be able to dress, eat, write without offending someone, to have sex and to talk freely about it, to mock at society, to show irreverence, have the right to drop out of religion, caste, ethnicity and all manner of identity; without fear of binaries of majority, minority, national, foreign.

Independent India has long had a deafening taboo on sex and sexuality — on all things that went against dominant sexual mores, The censor board used to decide whether you could show a kiss on the screen. There are schools that can expel someone from school if a student hugs a person of another sex. We remain a rigid and conservative place.

Even the progressive circles of the left reflected that dominant sensibility, there have been exceptions in their midst the progressive writers Saadat Hasan Manto and Ismat Chughtai who had been both charged with obscenity in pre-independence days for their sensitive writings on the taboos of speaking of sexuality also had much trouble with their comrades of the left who classified such writing as bawdy.

The political elites and all mainstream political parties have failed us to bring safeguards and equal protections on matters of sexuality and private lives of citizens and education in schools and outside towards open-minded society with a healthy sexuality and a non-authoritarian culture.

There was a large social silence all around on sex, sexuality, sexual orientation.

In 1977 India's famous math wizard Shakuntla Devi in her book '*The World of Homosexuals*' said that "rather than pretending that homosexuals don't exist. it was time we face the facts squarely in the eye and find room for [homosexual people]."

Its important to recall the AIDS Bhedbhav Virodhi Andolan from the early 1990s - first AIDS activist movement in India that published *Less Than Gay* a pioneering citizens report on the status of homosexuality [3]

The reaction from official circles then was that homosexuality doesn't exist in India. They went on with this for many years.

In 1994 Vimla Farooqi the vice president of progressive National Federation of Indian Women (NFIW) wrote to the then Prime Minister Narasimha Rao to stop a gay men's conference in Bombay. Even in 2000 NFIW found it difficult to include the issue of lesbian rights on the agenda of the International Women's rights day. The left had been a very timid, puritanical and conventional on the question of sexual orientation and private life for long time and rejected LGBT struggles as petty bourgeois / bourgeois reactionary fashionable behaviour coming from the west. In the past 15 years the old left has changed track caught up with times and supported the struggles for rights of

Lesbian, Gay, Trans-sexual citizens at least in their public statements, though they still continue to shy away from taking 'personal is political' to their constituency of the working classes where too misogyny, homophobia and conservative tradition, prejudice of all shape rules. It is a pleasure to see that NFIW has now stood up and supported the court ruling decriminalising section 377 and the All India Democratic Women's Association associated with CPI(M) has welcomed the 6 Sept ruling [4]

In the 21<sup>st</sup> century Its time the people of left embraced personal rights / personal or private sphere in the wider agenda for social emancipation. Sexual violence is only going to grow in this country with a declining sex ratio, its time to challenge it not through more repressive laws and punishment. We are a violent and under-developed society, here rape passes for sex, there is no privacy for most, there is no choice, society leaves you no space to choose, caste, religion, community shape arranged marriages - people lack the ability to choose or to challenge imposed marriages, strangers get married and are clueless about sex or sexuality, those who do try to have partnerships on their own hide in parks when dating, they book hotel rooms under false names, they have no sexual education, they access porn secretly. The progressive organisations don't talk sexual pleasure. How do you challenge moral policing of the right-wing and by the state. It has to be challenged in very real terms by creating places for it within social movements and in society. It is time to promote an open and healthy sexual culture and work for a sexual enlightenment. A sexually repressed society will inevitably be a violent place. The state should not have a place in our beds but the lumpen mobs armed with 'moral social sanction of a halal / kosher / holy' that roam freely to check 'sin' should be shown their place too.

Break the convention, the silence, break the taboo.

**Harsh Kapoor**, 09.09.18

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## **P.S.**

• siawi.org, 11 September 2018:  
<http://www.siawi.org/article17572.html>

A shorter version of this article is appearing in Mainstream weekly in India.

• The author is the founder and editor South Asia Citizen's Web - sacw.net

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## **Footnotes**

[1] <http://www.rawartists.org/katerinagribkoff>

[2] <https://communalism.blogspot.com/2018/09/india-verdict-was-threat-to-society-and.html>

[3] <http://www.sacw.net/article10497.html>

[4] <https://www.aidwaonline.org/aidwa-welcomes-sc-judgement-decriminalisation-ipc-377>