

Indrayuga is a one of the developing country situated in South Asia, with population of more than 1 billion. It, has a Quasi federal nature of Government and is the largest democracy in the world. It has the lengthiest written Constitution. The Constitution of Indrayuga declares Indrayuga as a sovereign socialist secular democratic republic. Part III of the Constitution provides for certain elementary and fundamental rights to the people of Indrayuga which cannot be taken away except under exceptional circumstances. In a democracy, the State owes certain responsibilities towards all its citizens. All these responsibilities are enshrined in Part IV of the Indrayugan Constitution under the title Directive Principles of State Policy.

In the present case, the Petitioner is Navtej Singh Johar. He is a dancer by profession. Mr. Navtej is identified as a part of the LGBT community. He filed a Writ Petition before a three judge bench of the Supreme Court of Indravuga. The said Petition was filed in 2016. The Petition seeks recognition of the right to sexuality, right to sexual autonomy and right to choice of a sexual partner to be part of the right to life guaranteed by Art. 21 of the Constitution of Indrayuga.

Furthermore, he sought a declaration that Section 377 was unconstitutional. He contended before the Court that Section 377 to the Indrayugan Penal Code violates Article 14 to the Constitution

(Right to Equality Before the Law) because it was vague in the sense that it did not define “carnal intercourse against the order of nature”. Other contention raised by the Petitioner was that there was no intelligible differentia or reasonable classification between natural and unnatural consensual sex.

Among other things, the Petitioner further argued that

(i) Section 377 was violative of Art. 15 of the Constitution (Protection from Discrimination) since it discriminated on the basis of the sex of a person’s sexual partner,

(ii) Section 377 had a “chilling effect” on Article 19 (Freedom of Expression) since it denied the right to express one’s sexual identity through speech and choice of romantic/sexual partner, and

(iii) Section 377 violated the right to privacy as it subjected LGBT people to the fear that they would be humiliated or shunned because of “a certain choice or manner of living.”

The Respondent in the case was the Union of Indrayuga. Along with the Petitioner and Respondent, certain non-governmental organizations, religious bodies and other representative bodies also filed applications to intervene in the case.

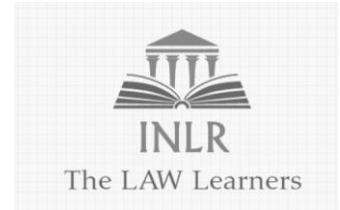
The Union of Indrayuga submitted that it left the question of the constitutional validity of Section 377 (as it applied to consenting adults of the same sex) to the “wisdom of the Court”. Some interveners argued against the Petitioner, submitting that the right to privacy was not unbridled, that such acts were derogatory to the “constitutional concept of dignity”, that such acts would increase the prevalence of HIV/AIDS in society, and that declaring Section 377 unconstitutional would be detrimental to the institution of marriage and that it may violate Art. 25 of the Constitution (Freedom of Conscience and Propagation of Religion).

The Petition was filed for declaring right to sexuality, right to sexual autonomy, right to choose a sexual partner, and right to marry a person of the same sex to be part of the right to life guaranteed under Article 21 of the Constitution of India and further to declare Section 377 of the Indrayugan Penal Code (for short, —IPC|) to be unconstitutional.

When the said Writ Petition was listed before a three-Judge Bench on 08.01.2018, the Court referred its own previous judgments on the said matter.

The three-Judge Bench expressed the opinion that the issues raised should be answered by a larger Bench and, accordingly, referred the matter to the larger Bench.

The matter is pending for the final hearing in the Court on 1st September 2018.



ISSUES

1. Whether or not Section 377 of the Indrayugan Penal Code be declared as violative of the Constitution and thus void.
2. Whether or not Right to Sexuality, Right to Sexual Autonomy and Right to Choose a Sexual Partner is a part of Article 21 of the Constitution of Indrayuga.
3. Whether or not Right to Marry a person of the same sex should be held a part of Article 21 of the Constitution of Indrayuga.