

Indian Penal Code section 377 and LGBT

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This presentation explains an exploration the sodomy act and the constitutional review in and out of courts for 25 years in India. On September 6, 2018, the Supreme Court pronounced a landmark and partly unconstitutional decision related section 377 of the Indian Penal Code, which had criminalized “carnal intercourse against the order of nature” as a colonial relic. That is, IPC 377 had stigmatized people who had intimate home/same-sexual relationship for centuries. A Legal reform movement arose against IPC 377 in the 1990s. At the end of 2001, the NGO Naz Foundation India filed public interest litigation against the archaic law, which violated fundamental rights guaranteed under the Constitution. Apparently, endeavors were successful: the bench of Delhi high court ruled an unconstitutional decision against IPC 377 in 2009, because of the collectivization of men who have sex with men (MSM) and other LGBT groups in the times of HIV/AIDS. Moreover, the plaintiff deployed the court strategy of a “read down,” which was the reductive interpretation that excludes the application of consensual intercourse between two adults in private, not abolishment of the sodomy law. Because the law remained necessary to protect children from sexual crimes. Yet the Supreme Court issued a reverse judgment in 2013. A third court battle began at 2016. During those years, juridical and legislative current policy tends to be gender-neutral and punitive against sexual offences. For instance, the protection of children from sexual offences act 2012 came into force and law amendments 2013 IPC 375 and 376 interpreted rape with a broader definition. Although the Supreme Court’s verdict on national legal services authority act approved third gender as transgender including hijras in 2014, it also emphasized their ruling of unhindered fulfilment of one’s sexual orientation as an element of privacy and dignity in 2017. Eventually, the Supreme Court decriminalized home/same sexuality with its judgment on IPC 377 in 2018. It reconfigured the intimacy with new Indian juridical terms of ‘privacy’, ‘gender identity’, and ‘sexuality’ in a global context.