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News Analysis (07 Sep, 2018)

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Supreme Court Decriminalizes Homosexuality

Supreme Court of India has scrapped a 158 years old British era law that banned same-sex relations between consenting adults in private.

- Section 377 of the Indian Penal Code (IPC) criminalizes private consensual sexual conduct between the adults of the same sex.
- Supreme Court has stated Section 377 as **“irrational, indefensible and manifestly arbitrary”**.

Judgment of SC

- Supreme Court decriminalized a part of section 377 of the IPC stating that it violated the identity of an individual, the right to equality and the right to privacy.
- The provision will, however, continue to apply to cases of bestiality, carnal intercourse with minors and in case of no consent.
- In a **5-0 verdict**, a Constitution Bench has revised its own judgment given by a two-member Bench in Suresh Kumar Koushal (2013).

Upholding Rights of Minority

SC upheld the rights of the minority over the opinion of the majority. SC noted that under the constitutional scheme no minority group must suffer deprivation of a constitutional right because they do not adhere to majoritarian views.

The constitution is not for just the majority, the fundamental rights are guaranteed to “any person” and “any citizen”, and the sustenance of these rights does not require majoritarian sanction.

Upholding rights of Individual

SC noted the importance of individual liberty over community preferences. SC said that **“Denial of self-expression is like death”**.

- Sexual autonomy is an important pillar and inseparable facet of individual liberty.
- The sexual orientation of the LGBTQ community is intrinsic to their dignity, inseparable from their autonomy and at the heart of their privacy.
- In broadening the scope of the term “sex” prohibited as the ground of discrimination in Article 15. SC stated that it is not merely restricted to the biological attributes of an individual, but also includes their “sexual identity and character”.

Homosexuality is not a Mental Illness

SC has noted that modern psychiatric studies and legislation recognizes that gay persons and transgenders are not the person suffering from mental disorder and therefore cannot be penalized.

It also noted that the Mental Health Care Act, 2017 clears the misconceptions and stigma around homosexuality as mental illness.

Against stigma faced by LGBTQ

SC noted that decriminalization of homosexuality was necessary to bury the stigma related to sexual orientation of individual in society.

Sexual orientation implicates negative and positive obligations on the state. It not only requires state not to discriminate but also calls for the state to recognize rights which bring fulfillment to a same-sex relationship.

Not Against the Order of Nature

SC has noted that homosexuality is documented in 1,500 species and is not unique to humans hence it dispel the prejudice that it is against the order of nature.

- It rejected the notion of natural and unnatural sexual relations and said that what nature gives is natural and the natural identity of an individual should be treated absolutely essential to his being.
- It also rejected the logic of Suresh Koushal(2013) judgment, saying there is no cogent reason to support the idea that uncommon behavior is abnormal, and must be deemed ethically or morally wrong. And even behavior that may be considered wrong or unnatural cannot be criminalized without sufficient justification.

Constitutional morality triumphs over societal morality

SC judgment laid emphasis on **“transformative constitutionalism”**, that is, treating the Constitution as a dynamic document that progressively realizes various rights.

- The judgment said that **“Constitutional morality is not confined to the literal text of the Constitution, rather, it must seek to usher in a pluralistic and inclusive society.”**
- It also mentioned that Constitutional morality triumphs over social morality and personal freedom and the idea of individual rights are free from the pressure of public opinion.
- The **doctrine of non-retrogression**, which means that once a right is recognized, it cannot be reversed was emphasized.
- It also emphasized that “unbridgeable divide” between the moral values on which Section 377 is based and the values of the Constitution.

Way Forward

- This judgment can be considered as a revolutionary one in a society like India. But every judgment has two parts, one is written and other is its execution. The written part is progressive and reformist and its execution includes sensitizing society and institutions in accepting what is written in this judgment. That may take time.
- Currently, the SC has restricted itself to look into only on the matters of decriminalization of homosexuality. The issues like gay marriages, adoption and ancillary civil rights of the LGBTQ community are yet to be recognized, which are now left for parliament. It is advised that Parliament should step in making society at large inclusive and progressive.

Naz Foundation vs Govt Of NCT of Delhi (2009)

A 2001 plea against Sec 377 IPC was dismissed in 2004 but was remitted back to the High Court(HC) by the SC in 2006. In this judgment, HC decriminalizes consensual sexual acts of adults in private and said Section 377 to be violative of Articles 21, 14 and 15 of the Constitution.

Suresh Kumar Koushal & Anr vs Naz Foundation & Ors (2013)

In this judgment two-judges, SC bench quashed HC order of 2009 and said that HC order is legally unsustainable.

National Legal Services Authority v. Union of India (2014)

- In this judgment, the Supreme Court held that transgender people be treated as ‘third gender’ for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- It upheld transgender persons’ right to decide their self-identified gender and directed the Centre and State Governments grant legal recognition of their gender identity.

- It also directed them to treat transgenders as socially and educationally backward classes of citizens [OBCs] and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

KS Puttaswamy vs. Union of India, (2017) (Right to Privacy Judgement)

- In this judgment, SC disagreed with its 2013 judgment and said that “we disagree with the manner in which Suresh Kumar Koushal v. Naz Foundation (2013) has dealt with the privacy dignity based claims of LGBT persons on this aspect.
- Section 377 was held to be a denial of the dignity of an individual and to criminalize his or her core identity solely on account of sexuality would violate Article 21.
- It further said that “sexual orientation is an essential attribute of privacy”.

LGBTQ stands for Lesbian, gay, bisexual, transgender, queer.

Important Facts for Prelims (7th September 2018)

Centenary of the Battle of Haifa

- The Embassy of India held a ceremony in Haifa to mark the Centenary of the Battle of Haifa.
- On Sep 23, 1918, Indian soldiers from the Jodhpur, Mysore and Hyderabad Lancers liberated the city of Haifa during World War I from the Ottoman Empire forces.
- The Indian Army commemorates September 23 every year as Haifa Day to pay its respects to the three Indian Cavalry Regiments - Mysore, Hyderabad and Jodhpur Lancers.
- Earlier, in his visit to Israel, the Prime Minister of India unveiled a plaque commemorating Major Dalpat Singh, known as the ‘Hero of Haifa’ for his critical role in the liberation of the city.
- The famous Teen Murti Memorial in Delhi has been recently rechristened as Teen Murti-Haifa Memorial by the Indian government to pay respect to the brave Indian soldiers who fought in this historical battle.
- The Teen Murti memorial was constructed in 1922 in the memory of the Indian soldiers from three princely states of Jodhpur, Hyderabad and Mysore.

AAPOORTI Mobile App

- The Ministry of Railways has launched ‘AAPOORTI’ mobile App of ‘Indian Railways e-procurement system (IREPS)’.
- This App provides information and data related to e-tendering and e-auction related activities of Indian Railways.

- Digitization of Railway supply chain is an ongoing program with new features and facilities being added through the e-procurement system "IREPS".
- Central Vigilance Commission has recognized and awarded the system under "Vigilance Excellence Awards-2017" for outstanding contribution in the category of "IT initiatives for transparency in the organization".

Bengaluru Space Expo (BSX-2018)

- While addressing the 6th edition of the biennial Bengaluru Space Expo, held from September 6-8, the ISRO Chairman urged country's industry to invest in space business in a big way.
- BSX-2018 is organised by the Confederation of Indian Industry (CII) in association with ISRO and the Department of Space.
- The three-day event consists of an international exhibition and conference on 'World Space-Biz.'
- The theme of the Conference is "Creating Dynamism in Indian Space Ecosystem" with specific focus on enabling New Space in India.

Bharat Ke Veer Trust

- Government has granted status of a trust to 'Bharat Ke Veer', a private initiative promoted by actor Akshay Kumar, which aids families of paramilitary personnel killed in action.
- The web portal and mobile application named "Bharat ke Veer" was launched in 2017 which is an IT based platform, with an objective to enable willing donors to contribute towards.
- Bharat Ke Veer Trust now comes under section 80G of Income Tax Act 1961 which means that all contributions to the trust will be exempted under the income tax.
- The general public can visit the Bharat Ke Veer application and website, and make a contribution to support the families of bravehearts who sacrificed their lives in the line of duty.

2nd World Hindu Congress

- The 2nd World Hindu Congress (WHC) is being held in Chicago on the occasion of 125th Anniversary of Swami Vivekananda's historic speech at the Parliament of the World's Religions in 1893.
- Organised by the World Hindu Foundation, the first Congress was held in New Delhi in 2014.
- Held once every four years, WHC is a global platform for Hindus to connect, share ideas, inspire one another and impact the common good.

- WHC 2018 theme is "*Sumantrite Suvikrante*" – THINK COLLECTIVELY, ACHIEVE VALIANTLY.

1893 World's Parliament of Religions

- The 1893 World's Parliament of Religions, held in Chicago, was the largest and most spectacular event among many other congresses in the World's Columbian Exposition.
- The World Congress of Religions marks the first formal gathering of representatives of Eastern and Western spiritual traditions. Today it is recognized as the birth of formal interreligious dialogue worldwide.
- Swami Vivekananda influenced the 5,000 assembled delegates, greeting them with the words, "Sisters and brothers of America!". This speech, which introduced Hinduism to America is memorized by school children in India to this day.
- 19 women spoke at this Parliament, an unprecedented occurrence in 1893.

Tsunami mock Exercise IOWave18

- India, along with 23 other Indian Ocean Nations, participated in a major Indian ocean-wide tsunami mock exercise.
- The Exercise, known as IOWave18, was organized by the Intergovernmental Oceanographic Commission (IOC) of UNESCO, which coordinated the setting up of the Indian Ocean Tsunami Warning and Mitigation System (IOTWMS) in the aftermath of the December 26, 2004 tsunami.
- In India, IOWave18 is being coordinated by the Indian National Centre for Ocean Information Services (INCOIS), Ministry of Earth Sciences (MoES) with support from National Disaster Management Authority (NDMA), Ministry of Home Affairs (MHA), National Disaster Response Force (NDRF) and the Coastal States/UTs.

National Centre for Ocean Information Services (INCOIS)

- ESSO-INCOIS was established as an autonomous body in 1999 under the Ministry of Earth Sciences (MoES) and is a unit of the Earth System Science Organization (ESSO).
- ESSO- INCOIS is mandated to provide the best possible ocean information and advisory services to society, industry, government agencies and the scientific community through sustained ocean observations and constant improvements through systematic and focussed research.

National Disaster Management Authority (NDMA)

- NDMA is an agency of the Ministry of Home Affairs whose primary purpose is to coordinate response to natural or man-made disasters and for capacity-building in disaster resiliency and crisis response.

- It has been constituted under the Disaster Management Act 2005, with the Prime Minister of as its Chairman, a Vice Chairman with the status of Cabinet Minister, and eight members with the status of Ministers of State.
- The agency is responsible for framing policies, laying down guidelines and best-practices and coordinating with the State Disaster Management Authorities (SDMAs) to ensure a holistic and distributed approach to disaster management.

National Disaster Response Force (NDRF)

- NDRF is a unit created by the government for the purpose of specialised response to natural and man-made disasters.
- It works under the National Disaster Management Authority (NDMA) which lays down the policies, plans and guidelines for disaster management.
- It consists of eight battalions of Central paramilitary forces - two battalions each from the Border Security Force (BSF), Indo-Tibetan Border Police (ITBP), Central Industrial Security Force (CISF) and Central Reserve Police Force (CRPF) for the purpose of specialist response in disaster situations.