

Space for Privacy, Self-Determination and Same Sex Relationship in Constitutional Governance in India

Introduction

An egalitarian society accommodates diversity of linguistics, culture and ideologies-liberal and conservative as well. Everyone deserves equal freedom to choose one's partners. It always keeps its laws *in motion* to build an egalitarian and just order. The laws preserve their basic structure intact and stick to their axis of the welfare of its subjects. It necessitates pre-dominance of legal spirit instead of cosmetic virtues of law. The concept of inclusive governance bound the states to create such an atmosphere in their geo-political jurisdiction to address the discrimination based on gender identity and sexual orientation.

The proposed chapter is an attempt to underline the friction between constitutional morality and societal morality. Though the Constitution is itself an outcome of dynamic socio-politic forces yet there are many complex areas witnessing exclusion, alienation and intermingling in different contexts. It appears as anti-thesis of inclusive governance in context of rights of LGBTs and the jurisprudential status of same sex relationships in India. The legislative organs preferred neutral approach due to the differences in ideological and generational diversity. Nonetheless, the constitutional governance marked progressive realization of rights and transformed it from a positivistic approach to a pragmatic approach due to alive and vigilant judiciary barring few exceptions. The Indian judiciary responded appreciably to the community's sense of humanizing justice. Appreciating the social impact of recognition of right to privacy in *Puttaswamy's* (2018), the SCI in *Navtej Singh Johar* (2018) revisited its decision pronounced in *Suresh Kumar Kaushal* (2014). It declared Section 377 of IPC as unconstitutional being contradictory to Articles 14, 19 and 21 of the Constitution in the backdrop of international recognition of right to privacy as well.

Keywords:

constitutional morality, egalitarian, gender identity, governance, laws in motion, privacy, natural rights, sexual orientation, societal morality.

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