



Nasiruddin

# 377

“My name is Leila Seth. I am 83-year-old and have had a long and happy married life of 60 years with my husband Premo. I am a mother of three children. The eldest Vikram is a writer. I love my children a lot. I and my husband have brought them up with the same values with which we were brought up - honesty, courage and sympathy for others. We know that all of them are very hard working and soft hearted.

But our eldest son Vikram is now a criminal, an unapprehended criminal. This is because like lakhs of other Indians, he is gay. Last month, two judges of the Supreme Court overturned the four-year-old judgement of the two High Court judges which had decriminalised homosexuality. Today, once again if Vikram falls in love with another man, it will be an offence. If he shows his love for the person, it will be an offence and he would commit a crime punishable by imprisonment for life if he expresses his love physically. This judgement of the Supreme Court means that he will have to be celibate for the rest of his life or else he will have to leave the country where he was born, to which he belongs, and which he loves more than any other.

This judgment of the Supreme Court treats the LGBT community in the manner as if they do not have any value...”

—The New York Review, March 20, 2014

The law which Leila Seth is talking about was made by the British. This law is used for those who have an identity which is different from the man-woman sexual sketch. This law, Section 377 of the Indian Penal Code (IPC), states that if a person has a sexual relationship with any man, woman or animal against the order of nature or in an unnatural way, the person will be given imprisonment for life or for 10 years along with a fine.

What does 'against nature' or 'unnatural' mean?

This law is a result of an orthodox colonial mindset. As per that mindset, the objective of any sexual relationship is procreation. Reproduction is possible only with a sexual relationship between a man and a woman. Hence only that relationship is considered natural. According to this mindset, any other kind of love or sexual relationship is unnatural. From it has stemmed the verdict that a relationship between a man and another man and a woman and another woman is unnatural. Lawmakers went a step ahead and made all other relationships other than between men and women, husband and wife, a criminal act.

Today the debate is not about which sexual relationship is natural and which is unnatural. There are lakhs of people in our society who have a different sexual identity which is unlike the man-woman sexual relationship. Among them are several men who feel easy in the company of other men and feel close to them. Similarly, there are many women who find other women close to their heart. There are several others, whom we know as transgenders. All these people are human beings with bones and muscles. The only difference is that like crores of other people they look at a relationship/sexual relationship beyond a man-woman relationship. There is nothing against the order of nature or unnatural about it.

There was a time when homosexuality was considered a disease and it was claimed that there is a cure for the disease. Some still claim that they can cure the disease. Now science, medical science, psychology have all accepted that

homosexuality is not a disease and people having different sexual identities are not ill. It is completely natural. There are several other ways of having a sexual relationship and getting satisfaction besides having sex involving some special parts of men and women.

This discrimination against homosexuals and their harassment is against the Constitution of India. Section 377 speaks of treating homosexuals as criminals. This is against the spirit of the Constitution.

Since a very long time, a large section of people have been demanding abolition of this Section. When the danger of HIV came to the forefront, it was felt that every kind of sexuality should be openly discussed. This can be done only when people of all kinds of sexuality openly come to the forefront. But Section 377 stops such people from coming into the open. They fear to come out and identify themselves. They live with the fear that if they come out, they will be criminalised under Section 377. Leila Seth is talking about this fear.

To end this fear, the NGO Naz Foundation filed a petition against Section 377 in the High Court in 2001. On July 2, 2009, the Delhi High Court gave a historical judgement and termed Section 377 as wrong. The High Court said that as long as a new law is not made, this verdict will continue. According to the High Court, Section 377 of IPC is against the fundamental right (Article 14) guaranteed under the Constitution. It is also against the fundamental rights guaranteed under Articles 15 and 21 of the Constitution. While Article 15 prohibits any kind of discrimination, Article 21 gives an individual the right to live with dignity.

According to the judgement, any kind of sexual relationship between two adults is not a crime. This judgement was historical in many ways. For the first time lesbians, gays, transgenders and bisexuals (LGBT) breathed a sigh of relief and felt liberated. They no more feared to identify themselves and express their sexuality. Leila Seth described this judgement as the ideal use of the spirit of the Indian Constitution.

But it was not all that easy. Though the government did not challenge this decision of the High Court, some organisations and people however filed a petition in the Supreme Court. The division bench comprising two judges of the Supreme Court gave its verdict after the case remained pending in the SC for

two and a half years. The SC overruled the decision of the High Court and Section 377 once again came into force. Once again in independent India the concept of natural and unnatural sex came into force. Once again the sexual relationship between two adults came under the eyes of the law. Once again lakhs of sexual minorities like Vikram Seth came into the category of criminals.

This is an issue not only for sexual minorities, but also for those who believe that this law does not affect them directly. This is also about how we will behave with the minority class, communities and views of our society. Will we always treat minorities as untouchables and create discrimination? If we abide by the Constitution of our country, all citizens despite their race or identity are equal. The law cannot differentiate between them. Therefore, Section 377 is against the spirit of the Constitution. It criminalises some people because they behave differently sexually. Because of Section 377 the LGBT community is a victim of violence and because of this law it is not even able to raise its voice.

It is interesting that the relationship between men and women, husband and wife which is based on the order of nature also comes under the purview of this law. If a man-woman or a husband-wife having a relationship in accordance with the order of nature, in their very private time do something with each other's consent for sexual satisfaction, but which Section 377 describes as against the order of nature, they will also be criminalised and punished. It means as long as this law exists only a particular kind of relationship between men and women will be considered legal. If men and women do something beyond having that particular kind of sexual relationship for their pleasure, it will be considered a crime and they will be criminalised.

This law will peep into the bedrooms of people, which is against the right to privacy. That is another reason for abolishing this law.

This law can criminalise anyone who even with his/her partner's consent and desire does something to achieve sexual satisfaction; lives with his/her own sexuality and chooses his/her partner by themselves according to their wish.

Some time ago, Finance Minister Arun Jaitley and former Finance Minister P Chidambaram had advocated for the abolition of Section 377. Congress MP Shashi Tharoor had even

introduced a private bill in Parliament, though it was rejected. The lawmakers in Parliament should think about it and put an end to Section 377, a dangerous and unequal law.

### **Conclusion**

Is Section 377 a law which will save Indian culture? Perhaps this question can be answered by Amish Tripathi, writer of the famous Shiva Trilogy. In an article published on January 1 in Hindustan Times, Tripathi stated that “Section 377 is a dangerous and conservative law and should be abolished. Section 377 does not at all represent the traditional Indian

viewpoint. In fact it is a reflection of the British colonial mindset. The foundation of a liberal society can be laid only on reverence for individual rights. Every individual has the right to live his life as he wishes to.”

There is hope that in the days to come Section 377 will be abolished from the law books. Lakhs of people like Vikram Seth will then not fear to express their sexuality and will be able to live their life in freedom. We must hope that the atmosphere of inequality and violence currently prevailing against a large section of our people will end soon.

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Publication: 2015  
Layout & Design: CHSJ Creative Communication  
Financial Support: UNFPA  
Translation: Sucheta Das Mohapatra  
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