Paradigm Shift in SC stand on section 377

Why in news?

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Supreme Court is likely to re-examine the Section 377 of IPC.

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What is Section 377?

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- Section 377 under Indian Penal Code (IPC) of colonial era criminalises homosexuality.
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- It is an archaic law that was introduced during the British era in 1860s and makes gay sex a crime for which the punishment can be a life term.
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- Under this section whoever voluntarily has carnal intercourse against the order of nature with any man, woman shall be punished with imprisonment for life, and shall also be liable to fine.
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What are the earlier stands of SC on this issue?

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- In 2009 Delhi high court gave a historic and globally accepted verdict by decriminalised gay sex, but this order was kept aside by the SC in 2013.
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- In December 2013 Supreme Court dismissed the LGBT community as a negligible part of the population while virtually denying them the right of choice and sexual orientation.
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- A Review Bench of the Supreme Court, in January 2014, had also refused to strike down Section 377 IPC.
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What is recent stand of the Supreme Court?

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- Recently SC clearly stated that the determination of order of nature is not a common phenomenon.
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- Individual autonomy and individual natural inclination cannot be atrophied unless the restrictions are determined as reasonable.
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- The court observed that what is natural for one may not be natural for the other, but the confines of law cannot trample on or curtail the inherent rights embedded with an individual under Article 21 (right to life) of the Constitution.
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- A right to sexuality, sexual autonomy and freedom to choose a sexual partner forms the cornerstone of human dignity which is protected under Article 21.
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- It also proposed that societal morality changes with time and law should change pace with life.
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- Thus the order reveals a paradigm shift in the apex court’s views.
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Source: The Hindu

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