Section 377

Why in news?

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A five-judge Constitution Bench of the Supreme Court headed by Chief Justice of India Dipak Misra pronounced the verdict on a batch of petitions seeking decriminalization of Section 377 of the Indian Penal Code, 1861.

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What is Sec 377 of Indian Penal Code?

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- It came into force in 1862 and deals with consensual private sexual acts between adults.
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- The archaic, colonial-era law criminalizes “carnal intercourse against the order of nature”.
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- The 172nd report of the Law Commission of India recommended the deletion of Section 377 but no action was taken.
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What is the case history of Sec 377?

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- Naz Foundation filed the first major case, Naz Foundation vs. Government of NCT of Delhi & Ors against Section 377 in **2001**.
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- However a two-judge Delhi High Court Bench dismissed the case in 2004, terming it as a mere academic challenge to the constitutionality of a legislative provision.
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- The Supreme Court ordered Delhi High Court to hear the case again.
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- As a result, in a **landmark decision on 2009**, the High Court

decriminalized Section 377, ruling that consenting intercourse between two adults was not illegal.
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- The verdict declared that Section 377 of IPC was violative of Articles 21, 14 and 15 of the Constitution.
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- However, the verdict was challenged by Suresh Kumar Koushal, an astrologer and journalist, along with 15 others, in the Supreme Court on July, 2009.
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- On December, **2013**, a two-judge Supreme Court Bench upheld the appeal and **recriminalized gay sex.**
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- The 2013 verdict left it to Parliament to consider the desirability and propriety of deleting Section 377 IPC from the statute book or amend the same., if it so wished.
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- The verdict was criticized across the world, it led to widespread protests across India, and LGBTQI activists observed a “Global Day of Rage”.
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- After review petitions filed by Naz Foundation, the Union government, and others in 2014 were quashed, the court in February **2016 referred a curative plea to a five-judge Bench**.
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- The boost in the arm came through **two important Supreme Court judgments that helped the anti-377 movement** to get back on track.
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- In 2014, in **the NALSA judgment**, the SC accorded the transgender community the right to be called the third gender, separate from male and female.
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- Transgender individuals could now seek legal, political and economic rights, and remedy against discrimination
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- It led to a reopening of the conversation regarding homosexuality.
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- The **second landmark judgment** in terms of LGBTQI rights came on August 2017, when a nine-judge Bench of the Supreme Court ruled that the **right to privacy was a fundamental right.**
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- The order said that privacy included the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation.
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- The judgment put Section 377 in direct opposition to the legally protected fundamental right to privacy.
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- In July 2018, a Constitution Bench, led by Chief Justice Dipak Misra, re-opened the entire issue, saying a section of people could not live in fear of the law which atrophied their rights to choice, privacy and dignity.
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- The petitioners have argued that the presence of Section 377 IPC in the statute books makes it clear that the constitutional guarantees of equality, fraternity, dignity, life and liberty are not extended to them.
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Source: The Indian Express

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