Sexual Liberties - IPC 377

Why in news?

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The recent SC verdict on ‘Right to Privacy’ has reignited the debate on IPC - section 377.

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What is IPC - Section 377?

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- Section 377 of the Indian Penal Code dating back to 1860, criminalises sexual activities "against the order of nature".
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- This arguably included homosexual sexual activities but wasn’t restricted to it.
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- The section was decriminalized with respect to sex between consenting adults by the High Court of Delhi in 2009.
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- That judgement was overturned by the Supreme Court of India in 2013, with the Court holding that amending or repealing Section 377 should be a matter left to Parliament, not the judiciary.
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- Hence, same-gender sex remains a crime in the country.
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How does the ‘privacy’ verdict affects the 2013 verdict?

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- The ‘Privacy judgement’ was strident and explicit in its criticism of criminalisation of homosexuality, noting that Section 377 had been an instrument of harassment and abuse.
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- While stressing on human liberty and dignity, it also noted that the 2013 verdict was flawed and unsustainable.
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- The astounding claim of the previous verdict that there was no need to challenge Section 377 as the LGBT community constitutes only a minuscule minority has been completely discredited.
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- The ‘Privacy Verdict’ highlights the constitutional basis for protection of rights based on sexual orientation, thereby relegating the previous contention that legislative route was the answer.
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What is the way ahead?

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- By commending the current norm, the court has located sexual orientation not only as a freedom flowing from the right to privacy, but as demanding of non-discriminatory treatment.
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- Hence, a key principle that discrimination based on sexual orientation and gender identity must end has been recognised clearly.
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- This has laid the foundation for restoring the Delhi High Court judgment of 2010 in Naz Foundation case that decriminalised consensual sex among adults irrespective of gender.
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Source: The Hindu

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