

# RE-IMAGINING QUEER RIGHTS IN POST-377 INDIA

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Rainbow Pride Walk in Chandannagar, West Bengal on July 1, 2017. / Photograph by Paul Saikat.

On September 6, 2018, the Indian Supreme Court ruled that Section 377 of the penal code was unconstitutional. Section 377 is concerned with “unnatural offences” and criminalizes both heterosexual and homosexual acts that involve “carnal intercourse against the order of nature.” The law has been particularly used to harass, blackmail, arrest, police, and ostracise LGBTQ+ individuals in India, often preventing their access to necessary social and healthcare services and creating a climate of everyday fear and exclusion. Calling the section “arbitrary,” “irrational,” and “unconstitutional,” the five judges unanimously agreed to decriminalize homosexuality. Judge Indu Malhotra said, “History owes an apology to the members of this community and their families [...] for the ignominy and ostracism that they have suffered through the centuries.” Her words are crucial as Section 377 is a colonial-era law that was mainly drafted by Thomas Macaulay in the late 1830s, and brought into effect in India in 1861. Framed around themes of “revolution,” “disgust,” and “immorality,” the law was introduced by the colonial powers to govern and tame racialized unruly bodies and sexualities in accordance with the norms and regimes of British morality. Like the Criminal Tribes Act of 1871, which aimed to control ethnic, caste,

social, and religious groups that were seen as ungovernable and unmanageable, Section 377 was a colonial tool to “control” deviancy and civilize the colonized. While India became an independent state in 1947, however, the law persisted for over seventy years.

After decades of hard work, struggle, grassroots and legal activism by queer communities (and their allies), the arrival of the judgement brought jubilation across the country. Videos, photographs, and stories surfaced for days, capturing the joy and relief of queer Indians and their supporters. As news of the ruling spread, some commentators in Western countries congratulated India for “finally” achieving this “progressive” milestone, praising the country for arriving at “modernity” and embracing “Westernized” ideals of equality and LGBTQ+ rights. Rightfully so, a backlash emerged on social media, pointing to the colonial histories of Section 377 and to the gendered and sexualized dimensions of colonial control and violence. Commentators claimed that India was not “westernising” but “decolonizing.” The Supreme Court ruling is, indeed, a crucial milestone in India’s shedding of its colonial past as well as in the struggle for equality and justice for India’s

LGBTQ+ community. However, this binary of “Westernization” and “decolonization” that emerged in the aftermath of the ruling is not only partial and problematic, but it also obfuscates the systemic violence of the Indian state, thus pinkwashing its widespread violence.

In May 2014, Narendra Modi was elected Prime Minister of India with the Bharatiya Janata Party (BJP) and its allies forming a majority government. Modi and the BJP are part of India’s Hindu nationalist movement; a project of cultural nationalism that emerged in colonial India, and gained immense strength in the 1990s. The project’s key tenets see India (and most of South Asia) as a “Hindu nation” for those with “Hindu values,” and specifically regard the Muslim and Christian communities of India as a threat to the state’s sovereignty, security, and society. Gender and sexuality have been crucial to the movement with women’s bodies and honor symbolizing Hindu territory and “enemy” communities seen as a threat to these bodies and the nation itself.

While Hindu nationalist violence has existed for decades (gaining strength through communal tensions and riots and taking on different modalities), since 2014, with a Hindu nationalist party in power, the violence has become pervasive and bolder. There have been a number of lynchings of Muslim men suspected of eating beef and/or hurting cows; policies that have harmed and marginalised the poor (such as demonetization); attempts at institutionalizing the fear of outsiders (through selective citizenship policies such as the National Register of Citizens in Assam); suppression of protests and control of universities; and a rise in everyday violence in public spaces, gendered and sexualized violence on social media, and racism and Islamophobia. While politicians affiliated with the Hindu nationalist movement have denounced the repealing of Section 377 as dangerous for family, religious, cultural, and national values, a large number of the movement’s younger supporters have responded positively to the decriminalization of homosexuality. Interestingly, these responses have been covered in anti-imperial and decolonial rhetoric, identifying the move as symbolic of India’s greatness and the progressive nature of the current government. The Hindu nationalist project has a long history of disguising its anti-Muslim and anti-outsider narrative as anti-imperial. In the 1920s, when the movement’s key organizations were formed, they mainly identified themselves as anti-colonial although they were firmly rooted in the idea of a Hindu nation. The appropriation of the decolonizing discourse with regards to Section 377 attempts to pinkwash the violence of Hindu nationalism and the misogynistic and patriarchal gender and sexuality politics of the movement.

Suggestions that the Indian state is decolonizing — understood as returning to a pre-colonial era of sexual and gender tolerance — is historically problematic for there was no period of pre-colonial India that was not ordered by patriarchal notions of sexual morality. Like any society structured around the family, a host of individuals would have had a stake in the actions of each member, whom they loved or had sex with, and how they presented themselves to the world. Those who transgressed these boundaries lost their caste and religion. Or, to put it more bluntly, they were shamed, beaten, and cast out of their communities.

Pre-colonial India, therefore, should never be the yardstick for measuring India’s decoloniality. Indeed, overturning colonial laws does not necessarily indicate an anti-imperialist turn in India’s treatment of its minorities, and a solely anti-imperialist reading of the verdict does much to obscure the realities of life under a Hindu supremacist government. After the jubilation has ended, it is India’s colonial practices within its own borders that must trouble Indians everywhere.

Take occupied Kashmir, the world’s largest militarized zone, and the northeastern state of Assam as examples of colonized territories suffocated by laws granting the Indian army and government-backed militia both extraordinary powers to put down separatist movements as well as immunity from prosecution. In recent years, India’s brutality in these regions has brought it closer to Israel; the two, after all, have much to teach each other about policing natives. In 2016 alone, Israeli arms sales to India, which included surveillance drones, bombs, and missiles, reached \$1.6 billion. Since 2003, Israel has also provided Indian forces with training in counter-insurgency operations and security methods. In fact, the tactics used by Indian forces in these regions are remarkably similar to those Israel employs in the occupied Palestinian territories: arbitrary arrests, extra-judicial killings, enforced disappearances, curfews, collective punishment, administrative detention, torture, rape and sexual abuse, the suppression of freedom of speech and assembly, house demolitions, and so forth. The fear, felt by many queer activists and their allies, is that gay rights will be used by Hindutva ideologues to pinkwash or divert attention from such repressive and authoritarian practices. It is on the killing fields of Kashmir and Assam that the “world’s largest democracy” and the “Middle East’s only democracy” have found each other.

The Supreme Court ruling is a monumental text. This cannot be denied. For one thing, the Chief Justice branded Section 377 as “irrational, indefensible and manifestly arbitrary.” A reasonable assessment of Victorian morality, for sure. Indeed, by ending the 158-year-old ban on “carnal intercourse against the order of nature,” the Supreme Court has ruled that “majoritarian views and popular morality cannot dictate constitutional rights.” These words will be profoundly uplifting for many Indians, but the struggle for basic rights and constitutional protection for queer Indians has not yet ended. What, for example, is at stake when upper-caste, urban, wealthy gay men become the symbols of injustice in a country already weighed down by caste, class, and religious inequalities? What are we to think when one of India’s most prominent gay rights activists, Ashok Row Kavi, declares that his political views lie on the extreme right of the Hindutva project, denounces queer Muslim and Dalit struggles as “diluting the movement,” and labels feminists as “convenient lesbians” (*The Print*, July 21, 2018)? The real problem here is that for people like Kavi gay rights has been the hard-won battle of cis-male, upper caste, wealthy Hindus. Other queer identities — transgender, Dalit, Muslim, women — exist only to throw LGBTQ+ spaces into confusion by infusing them with the wrong kind of politics.

Now that the constitution finally recognizes queerness, the wider and ongoing struggle for sexual and gender equality and representation in education, healthcare, housing, employment and welfare must prevail. That fight will not end in petitions submitted by gay celebrities who exult in their caste privileges, ignore India’s colonial practices, embrace casteism, transphobia, misogyny and Islamophobia. Rather, it will end in the marginal, out-of-sight streets and hovels of India’s most transgressive queer communities and the kinds of intersectional, feminist, anti-caste activism taking place there.