










NAVTEJ SINGH JOHAR V. UNION OF INDIA (2018)

Constitutional Interpretation & Basic Structure

PRELIMS SNAPSHOT

-  1. Prelims Snapshot (Fact Box)
-  Year: 2018
-  Case: Navtej Singh Johar v. Union of India
-  Bench Strength: 5 Judges (Constitution Bench)
-  Key Articles Involved: Article 14, Article 15, Article 19, Article 21
-  Doctrine Evolved: Decriminalisation of homosexuality; Affirmation of sexual orientation as a facet of dignity and liberty
-  Famous Line: "History owes an apology to the members of this community."

CONTEXT & BACKGROUND

Section 377 of the Indian Penal Code, a colonial-era law, criminalised "carnal intercourse against the order of nature," effectively targeting the LGBTQ+ community. In 2009, the Delhi High



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Court in Naz Foundation v. NCT of Delhi had decriminalised it, but this was overturned in 2013 by the Supreme Court in Suresh Kumar Koushal v. Naz Foundation.

In 2016, dancer Navtej Singh Johar and others filed a fresh petition before the Supreme Court challenging Section 377 on the grounds that it violated their fundamental rights. The matter was referred to a 5-judge Constitutional Bench.

CONSTITUTIONAL ISSUES RAISED

- Does criminalising consensual same-sex relations violate Article 21 (Right to life and dignity)?
- Does Section 377 infringe upon Article 14 (Equality) and Article 15 (Non-discrimination)?
- Can personal sexual orientation be protected under freedom of expression (Article 19)?

VERDICT & RATIO DECIDENDI

The Court unanimously struck down the part of Section 377 IPC that criminalised consensual sex between adults, ruling that:



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- Sexual orientation is an innate part of identity and is protected under Articles 14, 15, 19, and 21
- Section 377, in criminalising consensual same-sex relationships, violated the right to dignity, privacy, and equality
- The earlier Suresh Koushal judgment (2013) was overruled

Justice Indu Malhotra memorably stated: “History owes an apology to the members of this community and their families.”

DOCTRINE / PRINCIPLE EVOLVED

- Right to choose one’s partner, express identity, and enjoy privacy and dignity is constitutionally protected
- State cannot discriminate against individuals based on sexual orientation
- Reaffirmed that constitutional morality must prevail over social morality



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IMPACT & LEGACY

- Decriminalised homosexuality in India, marking a monumental shift in civil rights jurisprudence
- Strengthened the Right to Privacy laid down in Puttaswamy (2017)
- Empowered the LGBTQ+ community with a constitutional identity
- Paved the way for demands around anti-discrimination laws, civil union rights, and gender justice



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RELEVANCE FOR UPSC

- GS Paper 2:
 - Human rights, constitutional equality, judicial review
 - Role of the judiciary in social reform
- GS Paper 4 (Ethics):
 - Dignity, inclusion, justice, and moral courage
- Essay Paper:
 - Topics on Rights of the Marginalised, Liberty and Identity, Judiciary and Social Change
- UPSC Interview:
 - Relevant in debates on LGBTQ+ rights, equality, constitutional morality, or progressive constitutionalism

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