



# SELAQUI MODEL UNITED NATIONS CONFERENCE 2017

AIPPM

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## Agenda I: Section 377 Should Be Amended Not Scrapped

Section 377 reads:

“Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.”

In simple words, the section makes physical relations between two consenting adults of the same sex a punishable offence. Further, the reference to “intercourse against the order of nature” also criminalises sexual activity like anal sex, fellatio (commonly known as blowjob) etc., even if it takes place between a man and a woman. However, although not mentioned in so many words, sexually assaulting a minor too invites a punishment under Section 377, apart from the relevant sections of the POCSO (Protection of Children from Sexual Offences) Act. Necrophilia (sexual intercourse with a dead body), sex with animals and other such ‘unnatural’ practices too fall under the ambit of the section.

As evident, Section 377 is somewhat like a double edged sword. While on one hand, it denies individuals an essential fundamental right, on the other, some of its clauses are crucial to the society and, hence, cannot be ignored. With the raging debate to scrap Section 377, it has become all the more important to review it carefully. Perhaps then we might realise that the need of the hour is to amend Section 377 as opposed to entirely repealing it.

The clause wherein two consenting adults are denied the right to establish a physical relationship with one another, on account of both belonging to the same sex, or to sexual activity between man and woman deemed as ‘unnatural’, poses an immense danger to a very basic right. The Lesbian, Gay, Bisexual and Transgender (LGBT) community in India has been relentlessly raising its voice against the Section. The clauses of this section are in direct violation of their fundamental rights, which goes against the ethos of the Constitution.

Apart from denying gay people the right to be with the person of their choice, the Section often poses problems for sex workers as well. Furthermore, it only gives a

fillip to the stigma attached to being gay, with a large number of people feeling that the community has no place in their society. Criminalisation of gay sex, or a particular way of having sex for that matter, cannot be a part of a progressive society and nation and this aspect of the Section needs to be done away with.

However, one cannot ignore the implications of 'unnatural' sex entirely. It is on account of this very clause that those accused of sexually assaulting minors are brought to justice. In the recent past, cases of sexual abuse against minors (those below the age of 18 years) have been on the rise. In such circumstances, it becomes essential to safeguard the dignity and fundamental rights of the children of the country. Those held responsible for sexually abusing minors are now charged under Section 377, making their punishment more stringent.

Furthermore, other sexual activities which truly are 'unnatural' like having sex with dead bodies or animals, among others, too fall under this Section. Therefore, this aspect of the section needs to be retained, since it is essential in upholding the fundamental rights of minors and preventing their exploitation.

The hue and cry about the scrapping of the Section seemed to have died down a few months back, but a fresh protest has been launched against Section 377. On February 2 this year, a curative petition filed by the Naz Foundation, which concerns itself with the welfare of the LGBT community and others was heard by the Supreme Court. The tribunal headed by Chief Justice of India T. S. Thakur said that all the eight curative petitions submitted would be reviewed afresh by a five member bench. The petition was filed after the Supreme Court in 2013 overturned the Delhi High Court's 2009 verdict that decriminalised gay sex. The SC in its verdict also stated that the onus of amending or repealing Section 377 would be on the Parliament. Disappointed with the apex court's verdict, those fighting for the scrapping of Section 377 had to start their struggle from scratch. The conservative views expressed by some sections of society, including politicians and religious leaders only added to their worries. However, the LGBT community in its fight against the Section received immense positive response from members of the film and literary fraternity, who vowed to stand by them.

As the nation awaits a review of the Section and hopes that the judicial system will not disappoint them, Section 377 has managed to become a significant turning

point in the history of the country. Firstly, it has managed to unite sections of the society, which have so far been segregated on basis of countless things. Secondly, it has allowed the people to question the judiciary in the country and demand answers as they thought it was in the wrong. However, the climax to this nail-biting fight is yet to come.

Will the section be repealed? Will it be amended? Will our faith in the judiciary be restored? Or will this battle continue for ages to come? However, any decision must be taken only after considering each and every implication of the Section. Further, those fighting for justice must ensure that they have understood the intricacies of the section and are standing up for what is right. A lot hinges from this one decision. One verdict will decide how far we really have come in these 150 years since the Section came into being. This very verdict will decide our fate as a people and, more importantly, as a nation that claims to be a developing one.

“The very fact that the Supreme Court is willing to hear a new petition in open is a good thing and we are hopeful. If the apex court upholds the law, Parliament will be our last recourse,” said a petitioner who did not want to be named.

Equal rights activists in India have been fighting a long legal battle asking for Section 377 to be repealed on grounds that it violates human rights of lesbians, gays, bisexuals and transgenders (LGBTs).

They argue that section 377 violates articles 14, 15, 19 and 21 of the Constitution of India, which guarantee equality, freedom of expression and personal liberty to all citizens.

The section denies basic human rights to sexual minorities, who can be arrested and imprisoned for life for their sexual orientation.

In a celebrated judgment in July 2009, the Delhi highcourt decriminalised consensual homosexual sex between adults but the apex court overturned the judgment in 2013 on grounds that amending or repealing Section 377 should be left to Parliament, not the judiciary.

The curative petition challenges the SC verdict upholding the validity of section 377 and its January 2014 order that dismissed a bunch of review petitions.

Though Lok Sabha member Shashi Tharoor's private member's bill proposing to replace Section 377 was defeated out right in Parliament in December last year, activists have support from some senior leaders in the government, including finance minister Arun Jaitley, who has spoken publicly in favour of decriminalising gay sex.

Cultural and religious beliefs are the biggest hurdle to gay rights. In 1992, the World Health Organisation (WHO) removed homosexuality from the category of mental illness, but many governments and religious groups do not accept homosexuality as normal.

Some religious leaders, such as yoga guru Ramdev, are convinced that homosexuality is a perversion, a disease that can be cured.

Experts, however, say homosexuality is a sexual orientation one is born with and not a behavioural choice. "It is not a choice you make willingly, why would anyone choose an orientation that is not accepted by society and puts them at the threat of discriminated against and being imprisoned," said Dr Chinkholal Thangsing, president, Touch of Hope Foundation, which works for equal rights.

## Agenda II: Consensus on Babri Masjid

The dispute is about a plot of land measuring 2.77 acres in the city of Ayodhya in Uttar Pradesh, that houses the Babri mosque and Ram Janmabhoomi. This particular piece of land is considered sacred among Hindus as it is believed to be the birthplace of Lord Ram, one of the most revered deities of the religion. Muslims argue that the land houses the Babri mosque, where they had offered prayers for years before the dispute.

The dispute arises over whether the mosque was built on top of a Ram temple – after demolishing or modifying it in the 16th century. Muslims, on the other hand, say that the mosque is their sacred religious place - built by Mir Baqi in 1528 - and that Hindus desecrated it in 1949, when some people placed idols of Lord Ram inside the mosque, under the cover of darkness.

The dispute over this piece of land has defined and then redefined state politics outfits and influenced the mindsets of people throughout the country. Spanning across half a millennium, it predates empires – Mughal and British – and now even threatens to disrupt the fabric of modern india.

. The dispute erupted and escalated into full blown violence in 1992, when around two lakh karsevaks (volunteers to a religious cause) demolished the Babri mosque, inciting communal riots across the country. More than 1,000 people were killed in these riots. Twenty years have passed since the demolition of the Babri mosque but it has left a lasting impact on the socio-political fabric of India.

What prompted the Conflict?

In December, 1949, statues of Ram and Sita were placed inside the mosque. The idols were placed in order to stake claim and convert the existing mosque into the Ram temple. Then then prime minister, Jawaharlal Nehru, reached out to the then

Uttar Pradesh chief minister, GB Pant, asking him to address the issue and remove the idols as "a dangerous example is being set there."

But many Hindu nationalist leaders quickly dismissed Nehru's concerns and declined requests to remove the idols. Following this dispute, the gates of the mosque were locked and remained shut for the next 40 years.

In 1989, Nehru's grandson Rajiv Gandhi, in an attempt to appease voter-sentiment, ordered for the gates to be reopened. In retaliation, many of the BJP's Hindutva brigade leaders, along with RSS, VHP and Bajrang Dal workers, ran campaigns to rebuild the Ram temple. The campaign wave escalated over the next three years until 6 December, 1992, when LK Advani organised a rath yatra to Ayodhya, culminating in the demolition of the 400-year-old mosque.

The Conflict :

The Hindus regard the land in Ayodhya, on which the Babri Masjid was built in the year 1528, is the Ram Janmabhoomi. It has been said that one of Babur's generals, Mir Baqi demolished a temple of Lord Ram in order to build the mosque, which was named after Babur himself (Babri Masjid). Meanwhile, both the communities prayed at the site. But in the year 1885, the head of Nirmohi Akhara had filed a petition, where he asked for permission to pray to Ram Lalla inside the Babri Masjid. The court did not grant the permission, but in 1886, district Judge of Faizabad court Colonel FEA Chamier famously said that it was an unfortunate event that a mosque was built in a sacred place for Hindus, yet with the passage of more than three centuries, it was too late now. Similar petitions and judgements continued for a long time. The way the dispute has been reduced to a mere law and order situation and assigned culpability to particular sections of the society and the eventual treatment is a clear indication of a myopic mindset which disregards the overarching historical political and religious avenues. It is essentially a very simplistic approach and has been the bane of this controversy.

## What did the Court say?

Just ten days after the incident, on 16 December, 1992, the government established the Liberhan Commission of India to investigate the demolition of the Babri Mosque. The report found many BJP leaders culpable including Atal Bihari Vajpayee, LK Advani, Murli Manohar Joshi, Kalyan Singh, Pramod Mahajan, Uma Bharti and Vijayaraje Scindia, as well as VHP leaders like Giriraj Kishore and Ashok Singhal.

On Tuesday, the Supreme Court has asked for '[an amicable, out-of-court settlement](#)' in the dispute. A bench comprising Chief Justice Jagdish Singh Khehar, Justice DY Chandrachud and Justice Sanjay Kishan Kaul said that they believed this 'to be a better course of action than insisting on a judicial pronouncement.' Back in 2010, the Allahabad High Court had said that there should be a partition of the Ayodhya land between the two parties. BJP leader Subramanian Swamy had urged the apex court to hear a batch of petitions challenging the Allahabad High Court order. The SC has asked Swamy to consult the parties and mention the matter on or before 31 March.

The Allahabad High Court's ruling had stated that the 'disputed land was Ram's birthplace', that the 'mosque was built after the demolition of a temple' and that 'it was not built in accordance with the tenets of Islam'. It had ruled that the disputed land would be divided into three equal parts – one-third going to the Ram Lalla, for the construction of the Ram temple; one-third going to the Islamic Sunni Waqf Board and the remaining to Nirmohi Akhara, a Hindu religious denomination.

The apex court had, however, suspended the ruling in 2011 after the Hindu and Muslim groups had appealed against verdict.

