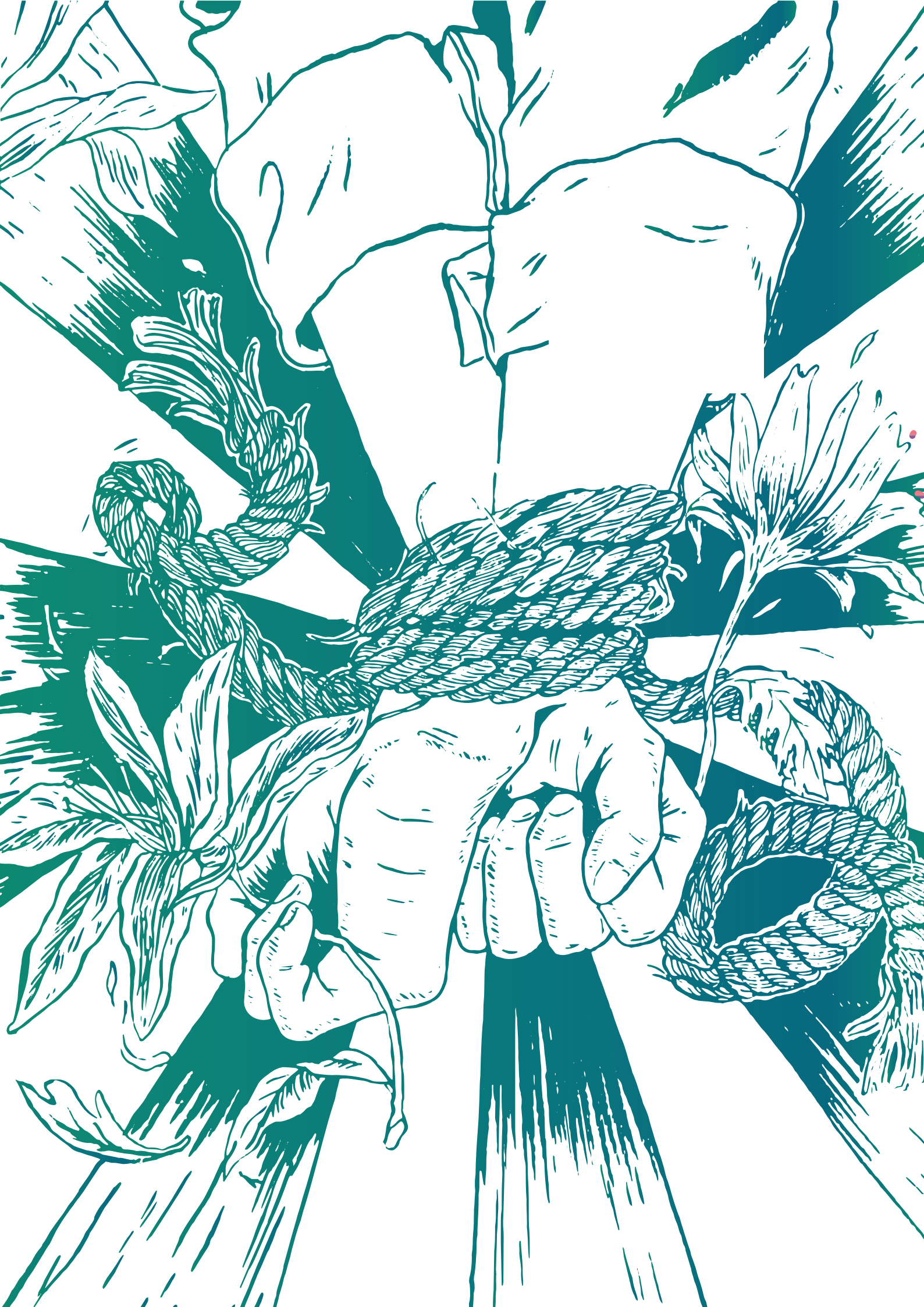


CRIMINAL NO MORE



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Most of all, we thank the resilience and spirit of all the queer people out there whose lives, resistances and struggles have brought us to this political moment and has laid the foundation for the limitless possibilities we have now to critique and reflect on the SC judgement.

This is for you.

TW : THE CONTENT OF THIS PUBLICATION CONTAINS REFERENCES TO PHYSICAL AND SEXUAL VIOLENCE, QUEERPHOBIA, TRANSPHOBIA, AND EMOTIONAL ABUSE.

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PREFACE

On 6th September 2018, the Supreme Court of India read down Section 377 of the Indian Penal Code, declaring that homosexuals were criminals no more. At least with regards to sexual acts between consenting adults. While many hailed this moment as an end to a long legal struggle, others saw it as a new start towards a politics beyond legality to challenge the discrimination experienced by queer people. “What next” after 377, became the most asked question to those engaged with queer rights work and communities directly affected by the discriminatory law. A year later, this publication is an attempt to address that question through the voices and experiences of that same community of activists and citizens. What did the judgement mean to us? What did it change in our lives? What freedoms does it enable and which still elude its ambit? These were some of the questions we posed to ourselves and others for framing the writings in this collection.

Underlying these questions is the overarching examination of what exactly comprises “queer rights”, and whether sexual self determination can be isolated away from multiple axes that construct selfhood and identity. In the very text of the judgement, Justice Chandrachud wrote, “The struggle of citizens belonging to sexual minorities is located within the larger history of the struggles against various forms of social subordination in India.” The very attempt to characterise certain issues as ‘queer’ was itself a violent exercise, premised on the exclusion of those issues which were decidedly not-queer. This compilation an exploration of the gap between a judgement that spoke of constitutional morality, equality and rights and the media headlines the next day that celebrated the decriminalisation of gay sex. As diverse communities of queer persons from a colonised context, a queer narrative can be neither linear, not singular. This collection of voices aims to build a larger more complex narrative that exemplifies our diversity.

Amritananda’s article traces the history of the long legal struggle against Section 377 in India spanning almost a decade, leading up to the present moment with contemporary challenges to the law a year after the SC judgement. It opens up possibilities of conversations that move beyond 377 to address issues of employment, housing, migration and citizenship for young queer people. Anirudh’s article challenges the hegemonic position that the judgement has come to occupy within queer politics. Shals’ poem is a nuanced take on the ways in which the SC judgement has become a mere symbol of liberation and freedom, but has not really translated into the lives of many in tangible, material ways. It speaks to the inadequacy of a change in law to propel a concomitant change in complex queer lives inhabiting

multiple oppressions. Haav Bhaav's art is similar in its theme and tone - while acknowledging the idea of freedom and liberation that the judgement seemed to promise through its depiction of a figure with wings, the fact that this figure is situated within a cage marks the disillusionment of the artist with a freedom that seems to still remain outside of the grasp of many. Rukmini's poem captures the exhaustion of occupying a place at the margins wherein the personal is always accused of being too political, too risky, too visible.

Shivalal's article is a sharp indictment of the NRC process unfolding in Assam, and challenges the exclusion of trans-persons in this exercise, further raising pertinent questions on the issues of migration and citizenship. Zaddy Astro connects a macro analysis of queer movements to lived accounts of discrimination in work places and the need to incorporate disability frameworks in queer rights movements, and queer frameworks in disability rights movements. Esvi and Vihaan's articles challenge the centring of a particular subject - in this case, the cis-savarna subject - at the centre of queer politics, and the Brahmanical nature of queer oppressions. They make a strong case for the impossibility of separating queer struggles from anti-caste struggles, and instead, see this separation in the current political moment as a conscious method to uphold the status quo.

Rahul challenges the reading of sexuality in the SC judgement under the twin registers of desire and identity, and seeks not to reconcile, but rather questions the very impulse for reconciliation. Abhimanyu further complicates questions of identity, and challenges the reduction of queer people to their sexual identities.

Pavel's article situates the judgement within the particular socio-political context of Manipur, and gives insights into the many conversations propelled by the judgement amongst queer groups there. Pavel's article highlights the shift in a discourse that looks outwards towards the law to a more poignant moment of self-reflection and introspection. In a similar vein, Koyel questions her own privilege to raise pertinent questions of extending solidarities and building intersectional movements in order to pose a challenge to rising conservative political regimes across the globe. Sai's article complicates the very dichotomy between public and private ; an especially relevant analysis as the right to privacy was claimed by many to be one of the cornerstones of the Supreme Court judgement. Similarly, Bhanu's poem is a telling reminder of the many ways in which the right to privacy is inaccessible to those who bear multiple oppressions along vectors of ability, class, caste, race, gender. Aditi and Mabel's poems and Mallika's art capture the sense of joy and relief after

the judgement, emphasising the ways in which the judgement has opened up new avenues for living and loving in a post-377 social context.

As the writings in this volume demonstrate - in order to truly incorporate intersectional frameworks in our common struggles, it is important to see the reading down of Section 377 not as a single-fix-fits-all solution, but to rather reflect on what the judgement achieved and the ways in which this judgement, and the political moment, fell short. We see this publication as an attempt to contribute to these existing conversations and debates within queer movements, as also within different feminist and anti-caste movements.

For a youth organisation, it is important to continuously question power hierarchies that any categorisation brings. To break the singular and homogenous notion of "youth" as well as "queer", and ally with the voices of those who are disenfranchised within any system. As we bring these diverse narratives into a collection, our hope is not to make queerness acceptable, but to ensure that social, cultural or political acceptance is not a condition for the realisation of human rights. The YP Foundation locates itself between movements and activism and the development sector, pushing for young people's leadership to be enabled and acknowledged. While we acknowledge the limitations that funding frameworks place on our location within movements, we also see the potential in our close connect with activism to ensure that communities of young people in our networks continue to build their own politics of questioning the fixing of power in any space.

* * *

*Manak Matiyani
Avali Khare*



**most importantly,
for the first time,
queer persons felt
that they were an
equal part of a
democratic country,
with its
constitutional
promises of equality
and dignity within
their reach.**

One Year of Navtej

No Longer only a Queer Fight

It is often said that one year is a short time in the lifetime of a country, and even law, but one year could be a long tumultuous one in an individual's life. On 6th September, 2018, the lesbian, gay, bisexual, transgender and queer ('LGBTQ') community changed forever, at least in law, if not in reality. On that day, the Supreme Court of India in *Navtej Johar & Ors. V. Union of India* [2018 (10) SCC 1] struck down Section 377, IPC, to the extent that it criminalized sexual acts between consenting adults, especially between homosexual persons, as unconstitutional. In doing so, the Supreme Court overturned its own appalling decision in *Suresh Kumar Koushal v. Naz Foundation*

(2013) which upheld the validity of Section 377, thereby bringing to a close one of the longest litigations in the history of India, starting from November 2001 in Delhi High Court in *Naz Foundation v. NCT of Delhi* (2009), with its roots going even further in *AIDS Bhedbhav Virodhi Andolan ('ABVA') v. Union of India* (1994). For over 20 years, the entire LGBTQ community had rallied around to repeal the law, and to claim their fundamental rights to dignity, freedom and non-discrimination, while navigating their sexual identity in family, schools, colleges, workplaces, and in public spaces.

As a queer lawyer working on LGBTQ rights for over a decade, I have been intimately involved in the legal struggle against Section 377, and experienced the ‘highs’ and ‘lows’ of the journey. Though not present in Court on 2nd July 2009, when the landmark Naz Foundation judgment was delivered, I witnessed first hand the effect of *Naz Foundation* in the next four years. Thousands of queer persons came out to their families, friends, peers and colleagues, support groups for queer people rose exponentially, police harassment reduced, and most importantly, for the first time, queer persons felt that they were an equal part of a democratic country, with its constitutional promises of equality and dignity within their reach.

Then came the horror of 11/12/2013, the completely wrong and atrocious judgment of the Supreme Court in overruling Naz Foundation, and in upholding Section 377. The memory of that day is still imprinted in my mind, and the realization that we had ‘lost’; it was not just simply losing a case, it was losing as a queer person, lawyer, and a citizen who had faith in the Constitution of her country. It was also a sense of disbelief as to how the Apex Court could go so wrong, while completely failing to understand the import of Section 377, and its pernicious impact. The oft-repeated phrase ‘unapprehended felon’ to describe the effect of Section 377 fails to capture the sheer devastating impact the law has had on the rights and health of LGBT persons, with lives destroyed, bodies brutalized, and minds scarred forever. No act of decriminalization itself can compensate for the decades lost, bullying in childhood, loneliness and isolation suffered, and the constant feeling of being considered ‘less than human’.

Almost five years later, when the Supreme Court finally struck down Section 377 on 06.09.2018, the overwhelming feeling amongst most of the lawyers and activists in the courtroom was that of sheer relief. What made the victory even sweeter was an emphatic and unequivocal articulation of fundamental rights of equality, non-discrimination, privacy, dignity, autonomy and health guaranteed under Articles 14, 15, 19(1), and 21 of the Constitution in the judgment by four judges, especially Justice D.Y. Chandrachud. The Court for the first time enunciated ideas of ‘sexual privacy’, ‘fluidities of sexual experience’, ‘public manifestation of sexual identity’, and ‘right to intimacy’, amongst others, which would go a long way in entrenching and protecting the constitutional rights of not just LGBTQ persons, but also inter-caste and inter-faith couples in India. The entire judgment was underscored by an emphasis on constitutional morality, and the transformative power of the Constitution, whereby in matters of “consensual intimacies, the Constitution adopts a simple principle: the state has no business to intrude into personal matters.”

As I said before, one year is too short a time to assess any judgment, that too a path-breaking one like *Navtej Johar*, but not for those of us who are working on the ground with LGBTQ persons on a daily basis. In our experience in Delhi, we have seen a noticeable decrease in the cases of extortion/blackmail, especially social media like Grindr related, which had reached enormous proportions before. Prior to the judgment, we were getting almost 2-3 calls every week of gay men facing extortion/blackmail, but in the last 12 months, we have not received (on an average) even one case in each month.

However, there are increasing reports of lesbian couples facing family/police violence. After the judgment, many lesbian couples, who earlier had no voice or hope that they could exercise their choice, have decided to speak out, and tell their families about their sexuality or same sex partner, or the families have found out themselves. During this period, we have handled almost 12-15 cases of lesbian couples either leaving their families or trans men leaving with their female partner. While in most cases, there was tremendous fear of police being let loose, or the families filing false cases, in some, we had to go to Courts to seek protection orders, or get the person released from family detention.

In one case, we had to go to Delhi High Court to get the married partner of a trans man released from her parental home, and the High Court very reluctantly allowed the woman to stay with her partner, especially since she was married. In another case, the parents of one of the lesbian partners filed a police complaint in Noida, and when we went with the concerned woman to withdraw the complaint, the police officer threatened us with registering the case, if bribe was not paid. In a third case, a lesbian couple from Punjab and Delhi had to seek shelter in a women’s safe house in Delhi, facing severe family violence and harassment. While the High Court granted protection order

to the couple easily, the Court failed to understand the intensity and degree of the family violence, and sought to tell the queer women to adjust with their families, and not to disappoint their parents. In yet another case, the partner of a trans man was forcibly taken back to her hometown in Haryana from Delhi, the habeas petition filed by the trans person was disposed of by the Delhi High Court on technical grounds of jurisdiction, and the case was adjudicated in both Punjab & Haryana Court and Supreme Court of India. Finally after almost 6 months, the couple managed to come back to Delhi, got married, and then secured police protection from Delhi High Court.



Besides Delhi High Court, other High Courts, including Calcutta and Kerala, following the Supreme

Court decision in *Navtej*, have protected the rights of lesbian couples or transgender couples to live with each other. The Calcutta High Court held that “*fundamental right to life under Article 21 of the Constitution of India inheres within its wide amplitude an inherent right of self-determination with regard to one’s identity and freedom of choice with regard to sexual orientation or choice of partner. We are of the view that such self-determination in the matter of sexual preference or consensual intercourse, even if not procreative, is inherent for the*

enjoyment of life and liberty of every individual and is protected under our scheme of constitutional morality and cannot be whittled down on the concept of morality or religion of others.”

What all these cases indicate is that there is a huge churning that is happening in the queer community, with people wanting to come out, or wanting to live with their partners, but there are no systems in place to facilitate the exercise of those choices. There is a desperate need for shelter homes or safe houses, where queer couples can be housed for weeks, if not months, till they settle down or start their lives afresh. One needs more lawyers who can do both crisis cases and regular handholding of people needing legal services as well as risk assessment with the couples themselves, in terms of anticipating family backlash. In so many cases, where people have moved houses, and relocated to another city, they have had to leave their colleges or employment, and needed to make a fresh start in a new city or area. Most of these people are from lower middle class or working class background, with limited social and financial capital, and making a fresh start is not easy, especially in a city like Delhi, including getting a rented house, without paying security/brokerage, finding employment, restarting education, etc. In many cases, even when queer couples or individuals had managed to find a rented place, they had to undergo police verification, which involved that police from new jurisdiction would verify from the hometown police about their particulars, thereby often disclosing their location to the home town police, and in turn to their own family members, who would then swoop down immediately to harass the women.

With respect to recognition of same sex relations, there have many queries from people wanting to marry, or desiring some form of recognition of their relations. Some are also looking at State legitimacy as a means to get family acceptance. It is important for people to take incremental steps, i.e., trying to open a joint bank account in a government bank, get partner's name as nominee in LIC insurance, or Bank FDs, applying for a joint loan etc, in order to test the level of State acceptance of queer relationships.

The last one year has also shown that movements are not fought in isolation, but on the basis of solidarity and alliances. In the same year, when the queer community got its freedom, the dalit and Muslim communities were facing mob lynching and violence almost on a daily basis, from a marauding Hindutva fascist state hellbent on destroying all democratic institutions and constitutional norms. In the run up to the one year of striking down of Section 377, the Central Government has unilaterally and undemocratically abrogated Article 370 of the Constitution, which was the basis of accession of the State of Jammu & Kashmir to the Indian Dominion in 1947, and has imposed a complete communication black out on 7 million people in Kashmir. The principles that existed in fighting against Section 377, i.e., fundamental right to dignity, autonomy, choice and self-determination, apply equally to other struggles, including the struggle in Kashmir. As Dr. Martin Luther King had famously said, *“injustice anywhere is a threat to justice everywhere,”* there is a dire need for coalescing and coalition of all progressive forces to fight against this onslaught of ‘New India’, and to

preserve and protect the Constitution in its true letter and spirit.



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Amritananda Chakravorty is a queer lawyer based in New Delhi.

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Resisting Queer Homogenisation

Acknowledging Multiple Oppressions

It has been over a year since the Supreme Court of India read down Section 377 of the Indian Penal Code which criminalised sexual intercourse “against the order of nature”. In that one line alone, I can feel myself straying into a very academic discussion about the judgement, something that I have found myself involuntarily doing since the verdict on September 6, 2018. Perhaps I tend to intellectualise this conversation because it hits too close to home and I want to preserve my stoicism. Then again, maybe I intellectualise precisely because, as a transgender person, this judgement makes little difference to me beyond its symbolic value.

So I guess that is a good place to start. What does the judgement actually mean? Section 377 has stood as the legal (and by extension, moral, since the majority of the Indian population equates legality with morality) representative of queer-phobia. The law has been used to legitimise the hatred of LGBTQIA+ people and their relegation to the status of the unnatural. The reading down of Section 377, therefore, serves as a kind of symbolic victory for the LGBTQIA+ community of India. This is further substantiated by the fact that one of the judges in the 5-judge bench that passed the verdict acknowledged that the country and its people have been systematically unfair and discriminatory to us, and, consequently, that we are deserving of an apology.

When the verdict came out, it seemed that the entire queer population of the country erupted in joy, along with activists who have been working to take Section 377 down for decades. Of course, this eruption came only from those who were familiar with the law and had access to the verdict somehow. In all our conversations around 377, we keep forgetting the massive proportion of the queer population that has not had the judgement trickle down to them after the gatekeepers of knowledge and resistance (cue the urban upper castes and classes). More on that later.

The eruption, however, made sense. After all, there is a certain joy to be found in being declared “no longer a criminal” in your own country. To those of us who come from the more privileged spaces of being queer, it either means a sense of safety and security or a sense of ideological belongingness.

There is a crucial element of understanding here which I will highlight as the last part of my praise for this judgement, after which I will launch into the angry-young-queer narrative that we so dearly love to hate. To many, many people, the reading down of Section 377 is a huge victory. To many, it is the final battle that had to be won. To many others, it is a way to finally feel comfortable with their own identities (refer to the legality and morality point made earlier), resulting in a lot more people feeling comfortable to come out at their workplaces, homes, schools, etc.

And that is right about where shit hits the fan.

In order to fully understand the utter lack of significance of the Navtej Singh Johar judgement, we need to start with the way that the government acted in the last phase of hearings in July 2018. They basically stepped away from any conversation around 377 and put it in the hands of the court, unless it came to matters of civil and social rights and liberties. Basically, the BJP government told the court “we don’t care who they have sex with behind closed doors, but if they want to be treated as actual citizens, we will have things to say”. I am, needless to say, mildly paraphrasing.

Days after the verdict was announced, we saw a sharp increase in violence against transgender people, especially trans women. We saw cisgender, upper-caste, upper-class queer folks treating this verdict as the end to all strife. We saw corporate organisations who had, at best, been operating on a don’t-ask-don’t-tell policy decked up in the rainbow as though they have

been our allies since Adam.

It is a year later now and the parts of the judgement that gave instructions to the government seem to have been completely forgotten in the face of the celebratory nature of this “victory” and the “positive changes” that have come since. A more holistic understanding of the instruction to sensitise government officials, one that goes beyond the sensitisation of the police as mentioned in the judgement, shows how much work there is to be done. Medical institutions need to be informed and sensitised. Educational institutions need to make gender and sexuality an essential component of their sex education programmes (another ball game altogether). RTIs filed to find out exactly what the government has done on these fronts have either not come back, or have come back with scant, dismissive, and non-cooperative responses.

The “positive changes” seem to mostly be corporate performativity. There is a surge in Diversity and Inclusion initiatives which seem to cater only to - you guessed it - the upper-caste, upper-class gay man, who has somehow become the figurehead of queerness. Perhaps the only change that can actually be treated as positive is the slight increase in judicial cooperation that queer people are seeing. Needless to say, those queer people are ones who aren't first brutalised by the police, can afford legal aid, or are at the mercy of pro-bono legal services.

This begs the question: whose victory is it? The mass of working-class queer folks who are still subject to homophobic and transphobic police brutality? The non-cis queer folks who are unable to understand how something that

doesn't stop them having sex is supposed to be the magical solution to the scores of issues they experience?

No. It is only an ideological victory, categorically for those who were unaffected by the actual impact of the law before and get to reap the benefits of the trend shift now. If I seem bitter (yes, I do. Bitterness is, in fact, my USP), it is because the entire queer community has to bow our heads down and pretend that this is some great stride in the right direction, simply because the world understands being queer only in terms of the rich cis-queer folks.

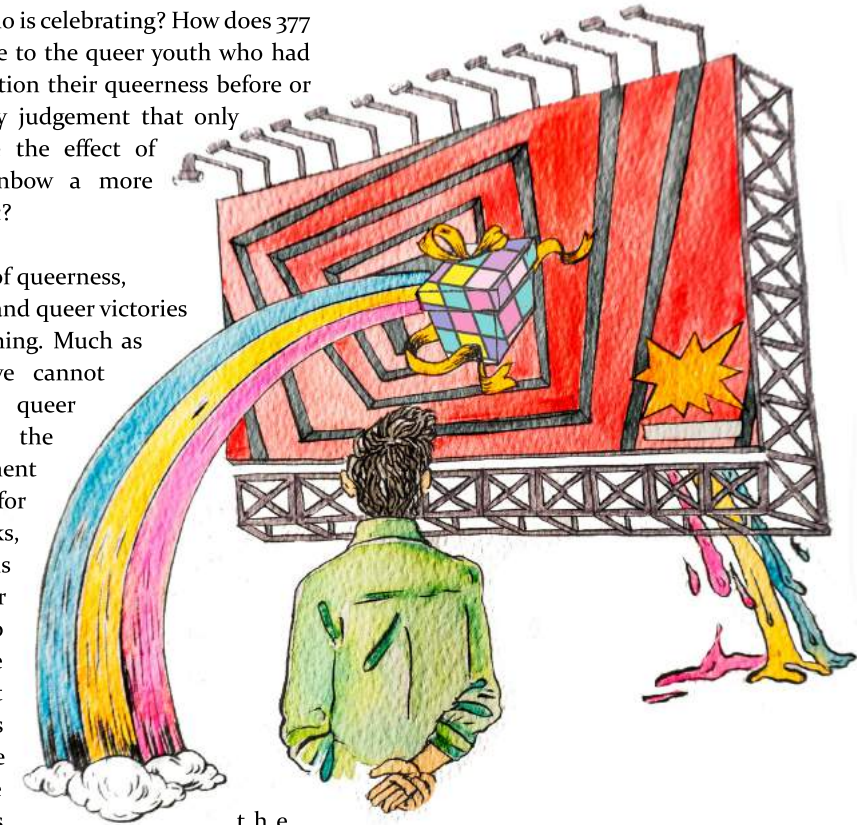
Interestingly, the demographic to get completely sidelined in this conversation is the queer youth, in spite of a group of IIT Pravriti students and members filing a separate petition and participating in the proceedings directly. If I am being completely honest, I believe queer youth gets sidelined in all conversations; the ones around youth and the ones around queerness. In my years of work with the queer youth communities and spaces, I have seen little to no addressal of queer youth issues that is not tokenistic or performative in nature.

Having sexual freedom is definitely an essential part of being young, but it is not the definitive part. Queer youth have concerns that impact their relationships, their careers, their families, their health, and their safety. What does 377 mean to a young college student who is contemplating coming out at an institution that is structurally homophobic? What does the celebration around 377 mean to the queer youth who is just now coming to terms with their gender/sexuality for themselves, but is somehow expected to be completely in sync

with everyone who is celebrating? How does 377 make a difference to the queer youth who had no space to question their queerness before or after an arbitrary judgement that only seemed to have the effect of making the rainbow a more popular aesthetic?

The single story of queerness, queer struggles, and queer victories is a dangerous thing. Much as we want to, we cannot homogenise the queer identity. Yes, the Navtej judgement has been a win for many queer folks, and that is something for them to celebrate, but the people who got us this judgement, the trans folks, the working classes, the

the oppressed castes, the sex workers, are far from free. With the trans community facing the imminent threat of the Trans Bill, with adoption and co-parenting rights not even looming on the horizon, with the continued harassment and alienation of queer persons by institutions (medical, legal, law enforcement), it is hard for me to see the 377 judgement as a win. In fact, I see the judgement as something that has fragmented the queer community in totality, for those who think that it is a win feel that they do not need to be a part of the larger, much more difficult fights that still remain to be fought.



I don't want to be a cynic or rain on anyone's parade (pun fully intended), but if someone tells me that we won the match because we won the coin toss, I will have things to say. In solidarity. Jai Bhim!

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Anirudh is a queer human rights activist and social worker. They are based in Bangalore and have been working on issues of gender and sexuality for a few years. They enjoy reading, writing, cooking, and envisioning the end of Brahmanical Patriarchy and capitalism.

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The Word is Red

Tweet thread on
#NotesfromtheMainland
#CriminalNoMore
#FiniteFreedoms

I.

Do not ask me how I am.
As always, I am well
enough (as well as can be).

It is my inability to ask you the same
that defines my freedom today.

II.

I saw the video. Hand on heart,
they sang. Not a smiling face
in the lot. Their tag –
#StandWithPride (1/2)

As they stood before the camera,
singing the national anthem for take after take –
Was it the idea of freedom that made them so grim? (2/2)

III.

She sent me another picture, late last night.
“I have an early morning flight
and this is what I’m wearing.” (1/3)

“You think they’ll body check me more
than when I wore that skirt?”
Wear your perfume of freedom, I said.
Your name should do the rest. (2/3)

Brahmins pass better, and get checked
much less. Also, your hair is
really long. (3/3)

IV.

When there isn’t enough water to wash after work,
she reminds herself she is free. Wipes her face, goes
to sleep, her body’s pain unrequited.

V.

We really haven’t done a good PR job on this.
A year on, and the number of people running away
from families? Still increasing. (1/2)

The families don’t seem to have got the memo yet –
“You cannot persecute that which is legal.”
But guess what? The state hasn’t, either! (2/2)

VI.

When he was refused a house on rent once again,
his professor credentials making no dent,
nor the university lifting a finger to help, (1/2)

he went back home to Srinagar
carrying with him the
“no more a criminal” tag
his gay self had in Mumbai.
The city gave him that, no more. (2/2)

VII.

There is a mythical place
where we queers collect
in all our absurdities,
our differences legible
in our bodies and voices,
singing of freedom. (1/3)

These myths are written
in revisionist histories of glorious pasts,
NGO-funding proposals and reports,
and self-pleasing poetry.(2/3)

As for the rest –
we are forging
impossible longings.
No myths please. (3/3)

VIII.

You know na, who's the most legal, don't ya?
It's the saffron in the rainbow flag. (1/2)

And hush! Don't go on about the six colours,
that's so very yesterday! (2/2)

Shals Mahajan is a writer, layabout, part feline, somewhat hooman, queer feminist fellow who lives in Bombay, but mainly in their head. Their published work includes Timmi in Tangles, Timmi and Rizu and No Outlaws in the Gender Galaxy.



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HaavBhav is a 19 year old Delhi based artist. Their work revolves around queer lives, mental health and personal experiences. Their favorite part of creating is when their work speaks to people and makes them interact and wonder.

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If Resistance Could Be Tender

I'm tired of holding my lover's hand
As a symbol of resistance
Instead of a declaration of love.
I remember being told casually,
In the middle of sipping a cup of coffee,
that my rebellious nature of showing queer affection unabashedly was inspiring.
That cup of coffee took too long for me to digest,
My response is still stuck in my throat.
I couldn't thank someone for a compliment
That has cost me my intention of softness
about something as tender as loving.

The day I heard "gone are the days when we were told that to love was a crime"-
I rejoiced with my friends,
We sang and we danced,
I stepped outside the gates of familiarity and I held my lover's hand as a symbol of resistance,
Instead of a declaration of love.
Our mouths were canons spitting slogans of victory
But my mind was weary of this feeble triumph
Because I still made a weapon of something as tender as loving.

Almost ten months since our short lived joy,
My trans friend asked me if she should dress more conservatively because
"My celebration shouldn't land me in a hospital, now that would be terrible".
"Provided you're not alone or out at night, you should declare your love for your body"-
And so her friends, including me, helped her make up her mind
To love her body
As a symbol of resistance.

I don't know if we're meant to love as a symbol of resistance all our lives,
And if to piss off a homophobe is what all my lovers will think my reason to hold their hand is.
But maybe my tired is showing,
Maybe my fury is showing,
Maybe my affection will always be a symbol of resistance
And my biggest weapon
Something as tender as loving.

*Rukmini Banerjee is the co-convenor of the
Ambedkar University Delhi's Queer Collective.*



Multi-Layered Exclusions for Trans Persons in Assam NRC Process

Rinki, 26, is from Harmati village in Tezpur district of Assam. She is one of the very few trans persons in the state whose name has appeared in the final draft of the National Register of Citizens (NRC) published end of July 2018. But the painful irony is that it is her dead name or birth name that has been recorded in the NRC. She pointedly asks, "What's the point of being enlisted in a name that I have no connection to? I feel suicidal sometimes. I'm neither here nor there."

August 31, 2019 was a crucial date in the NRC updating process in Assam for all those who had applied to be enlisted but not been included so far in this citizenship list as well as those doubted as illegal citizen despite their names being included in the 30th July draft, through the process of claims and objections, under which a person's documents were reverified to ascertain their citizenship. But for trans persons in the state, the question of inclusion in the NRC is far more than a nominal figuring of one's name in the list. Long read alert!

On May 23, 2019, the Bharatiya Janata Party (BJP) came to power at the Centre for a second consecutive term. In its election manifesto, it claimed that the NRC would be updated across the country. The party's campaigning in the Lok Sabha elections in Assam revolved around the issues of indigenous identities and immigration, with the focal points being the NRC and the Citizenship Amendment Bill, 2018. The Bill was later not pushed by the BJP in the face of massive opposition across North-East India, and later lapsed when the term of the 16th Lok Sabha ended.

Amid all the noise, the implications of the NRC being updated for the marginalised communities were downplayed. In particular, the concerns of trans communities of Assam were completely left out of the picture by all political parties.

What is the NRC?

The NRC is a list of all citizens of India prepared in 1951 after the first Census of independent India was conducted to record citizens, their houses and holdings. But the process of updating this register was never taken up till 2014-15, when the issue came alive in the state of Assam. This happened after Guwahati-based NGO Assam Public Works filed a public interest litigation in the Supreme Court of India in 2009, and the court directed the Assam state government to supervise the updating process in 2013.

Assam for long has battled with the issue of immigration, but especially so during and after the Bangladesh Liberation War of 1971 to compel the Government of India to identify and expel illegal immigrants. In the period 1979-85, the All Assam Students Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) led a series of protests, popularly known as the Assam Movement. This movement led to the signing of the Assam Accord between AASU, AAGSP and the then ruling Indian National Congress (INC) central government in 1985 to deal with the issue of illegal immigration.

Subsequently, in 1985 itself, a new political party, the Asom Gana Parishad (AGP) was formed, and it came to power in Assam. Though the AGP formed two state governments, it was unable to push the updating of NRC, the very rationale of its formation. The INC governments that ruled Assam in different phases till 2016 were unwilling to take up the issue. It was the BJP, when it came to power at the Centre in 2014 and

in Assam in 2016, which capitalized on the apex court's directive of 2013 and made the NRC its political plank. The NRC issue in Assam therefore is a legacy of the Assam Movement.

The updated register includes the names that appeared in the NRC prepared in 1951, or in any of the electoral rolls prepared up to the midnight of March 24, 1971, or in any one of the other admissible legacy documents issued up to the midnight of March 24, 1971 – the idea being to conclusively prove one's citizenship by proving one's presence in Assam or any other part of India on or before March 24, 1971. The descendants of these categories of citizens are also to be included in the register provided they are able to prove their lineage (more details later). People who fail to have their names included in the NRC are supposed to be marked as illegal immigrants, put in detention camps or deported.

The first draft of the updated NRC in Assam was released on December 31, 2017 and the final draft on July 30, 2018 which excluded 40 lakh from the 3.30 crores people who applied for inclusion in the NRC (the process of updating the NRC in Assam is application based as compared to enumeration based in the rest of India). Later another 1.02 lakh people were excluded from the final draft of the NRC. In the final list released on 31st August, out of the 41.02 lakhs people left out as well as the ones whose inclusion was objected and being reverified, more than 19 lakhs people did not make it to the list while over 3.11 crore persons were included. After this date, those who have not applied afresh *as yet will have another opportunity to do so, but the final date by which they must do so is not known. There is also uncertainty about

the fate of those who did not find their names in the NRC on August 31st, 2019. As per the guidelines issued by the Central government, the excluded people will be sent letters with reason for their exclusion from the final list of NRC and within 120 days of the letters being sent to them, a person can approach one of the 400 foreigners' tribunals and appeal against their exclusions by proving their citizenship. The tribunals are set up the government to hear the appeals of those who have been excluded from the Assam NRC list. Under the provisions of Foreigners Act, 1946 and Foreigners Tribunal Order, 1964, only the tribunals are empowered to declare a person as a foreigner. Hence, non-inclusion of a person's name in the final list of the NRC does not by itself amount to them being declared a foreigner. Will they get yet another opportunity for inclusion or will they get yet another opportunity for inclusion or will they be declared illegal immigrants?

Impact on Trans Communities

Many will agree that what started out as a political movement to deal with illegal immigration has taken on serious communal undertones (read : keeping out Muslim immigrants or disenfranchising Muslim citizens). But what most people still do not know or care about is the impact of the NRC updating exercise on the trans communities of Assam. In 1951, no one thought about the inclusion of trans persons in the NRC, and in 2019 the situation is still the same. The only difference is that now trans community leaders are running pillar to post, requesting the authorities to relax the rules for citizenship for trans persons.

The last Census in 2011 put the trans population (primarily trans women) in the state at 11,374, though the number is likely to be much more. According to the All Assam Transgender Association (AATA), the state has at least 20,000 trans individuals (broadly speaking individuals who identify as ‘trans woman’ or just ‘woman’, ‘trans man’ or just ‘man’, or as ‘third gender’).

Out of these individuals, AATA says that only 2,000 applied for being enlisted in the NRC. We will come to the reasons why such a small number of people applied. But according to AATA, in the first draft of the updated NRC released on December 31, 2017, there was not a single trans person included in the register in their desired gender identity, while a few were included but in the gender assigned to them at birth.

Notably, many of the trans applicants had voter identity cards (with their gender mentioned as ‘others’). According to the Chief Electoral Officer of Assam, as quoted in media reports, the latest electoral records have 503 voters listed as ‘others’ in the state. It remains a mystery why even trans individuals possessing valid voter identity cards were not included in the draft NRC as trans persons. The reason could lie in a mismatch in lineage documents. At the same time, it could also be that some trans individuals may have been marked as D voters (doubtful voters), that is, individuals who are not allowed to vote because of improper citizenship credentials and therefore not included in the NRC. The identification of D voters is done by the Foreigners Tribunals set up under the Foreigners Tribunal Order 1964.

However, a Guwahati-based judge working in one of the many Foreigners Tribunals in Assam seeking anonymity told this author: "As of now we haven't received any case of a trans person being marked as a D voter, which bars a person from getting their name listed in the NRC till they prove their citizenship." Of course, the fact remains that there are many Foreigners Tribunals in Assam, and the experience of one judge may not be enough to go by.

The publishing of the draft NRC prompted trans community leaders to contact the NRC officials. AATA Founder Swati Bidhan Baruah, in an interview to *The Wire* said, "As the discrepancies began to come to light, we contacted the authorized persons [Registrar General of India and the NRC State Coordinator], and they assured us that by the date of the publication of the final draft of the NRC, they would be able to evolve some format so that we wouldn't be left out of the final NRC. They kept assuring us, but nothing happened!"

Fearing large scale non-inclusion of trans persons in the final draft of the NRC, a 113-page writ petition was filed by advocate Anitha Shenoy on behalf of AATA in the Supreme Court on July 22, 2018 – just a week before the final draft was supposed to be released. A bench consisting of Justices Ranjan Gogoi and Rohinton Nariman took up the petition, but Justice Ranjan Gogoi asked the advocate why the association had filed the petition so late: "You missed the bus. We cannot re-open the entire exercise now." However, the court said it did not want to dismiss the plea and kept it pending.

About the apex court's decision, Swati Bidhan Baruah says, "It took us time to collect information from the community in 33 districts and finding an advocate to represent our case in the highest court." She adds that AATA filed the petition at the last moment only because of verbal assurances from NRC State Coordinator Prateek Hajela. In January 2018, just after the release of the first draft of the NRC, Prateek Hajela told BBC Hindi that there were problems with regard to legacy and lineage documents of trans community members. He said that a solution would be found so that trans individuals did not face exclusion from the NRC final draft. All these turned out to be false promises, complain dejected trans community leaders.

Like most other stakeholders, what the Supreme Court judges failed to appreciate was that ascertaining citizenship through patriarchal lineage was hardly inclusive of people marginalized on myriad grounds of gender, sexuality, race, religion, caste, socio-economic status and interplay between these factors. To apply and get enlisted in the NRC, a person has to have any one of the government-approved legacy documents, which prove that they were present in Assam or any other part of India on or before the midnight of March 24, 1971.

Legacy documents that are admissible include evidence that shows inclusion of a person's name in the 1951 NRC or in any of the electoral rolls prepared up to the midnight of March 24, 1971. One's birth certificate, board or university certificate, permanent residential certificate, land / tenancy records, refugee registration certificate, citizenship certificate, court records

/ processes, bank / post office account, any government service / employment certificate, any government issued license / certificate, Life Insurance Corporation of India (LIC) policy, passport, or any other legally acceptable document can also serve as a legacy document.

If a person's date of birth is after the cut-off date, they must produce documents to show their lineage or linkage with the legacy documents of their parents or other ancestors, whose own citizenship should be beyond doubt. Lineage documents include one's birth certificate, land document, board / university certificate, bank / LIC / post office records, voter identity card, ration card, a certificate from a Circle Officer or Gram Panchayat Secretary (in case of married women), or any other legally acceptable document that proves one's lineage.

Further, a person must also pass the ‘family tree’ test introduced to check the veracity of citizenship claims made through the legacy and lineage documents. Applicants for enlistment in the NRC have to submit a manual family tree that NRC officials crosscheck on the basis of computerized records. If there is a mismatch anywhere on the family tree between the manual and computerized data, an applicant has to go for verification checks and hearings, and if they fail to do so, they may be in danger of losing citizenship.

One reason why hardly any of the 2,000 trans applicants made it to the first NRC draft (in their desired gender identity) could be complications related to the family tree criterion. Many trans persons in Assam face extreme family violence as they grow up and are

either evicted by their families or leave home on their own accord, often around adolescence. Some of them migrate within the state or to other parts of India. Chances are their families may not even mention them as their children in official records because of deep-seated stigma around gender nonconformity, or they may mention the gender assigned to their children at birth.

Moreover, since the Supreme Court's April 2014 NALSA verdict gave every Indian citizen the right to self-identify their gender, many trans persons have undergone legal gender identity (and name) change, which may not match their gender and name recorded in other documents. Then again, some trans women who are part of Hijra gharanas, prefer to mention their guru's name as their father. But the NRC updating exercise is not equipped to recognize non-normative family structures. In such situations, the family tree criterion may act as a major barrier to inclusion in the NRC for trans persons.

Low Number of Trans Applicants

Leave aside the family tree criterion. For trans individuals who have long been separated from their families and survived with little education, livelihood opportunities or social capital, gaining access to any legacy or lineage document itself can be a major challenge. Ashish Kumar Dey, Secretary of Gharoa, an NGO working on HIV prevention in central Assam, was quoted in a Times of India news report: "They need the same legacy and lineage

documents as other people, like their birth certificate or ancestry documents. How will they procure these documents?" Indeed, and without such documents, how could they have applied for enlistment in the NRC in the first place?

Ashish Kumar Dey added, "It's ironic that most of the trans women facing exclusion from the NRC were born in Assam. Some of them migrated from Lower Assam, especially Cachar. I can vouch that the majority are from this state's soil. We had talks with officials on how we can verify their legacy or lineage since they're given one name when they are born but usually adopt a new name once they step outside their home to join the [trans] community. They may have a legally verifiable identity with all documents when they're at home but they abandon such validation when they leave home. If a system isn't worked out to resolve this issue, a majority of trans women will be excluded from the NRC."

According to AATA as well, a number of Hijra individuals could not even apply for enlistment because they had no documents to establish their legacy

or lineage. The few who did apply, found that they had not been included at all or included in the name and gender assigned to them at birth.

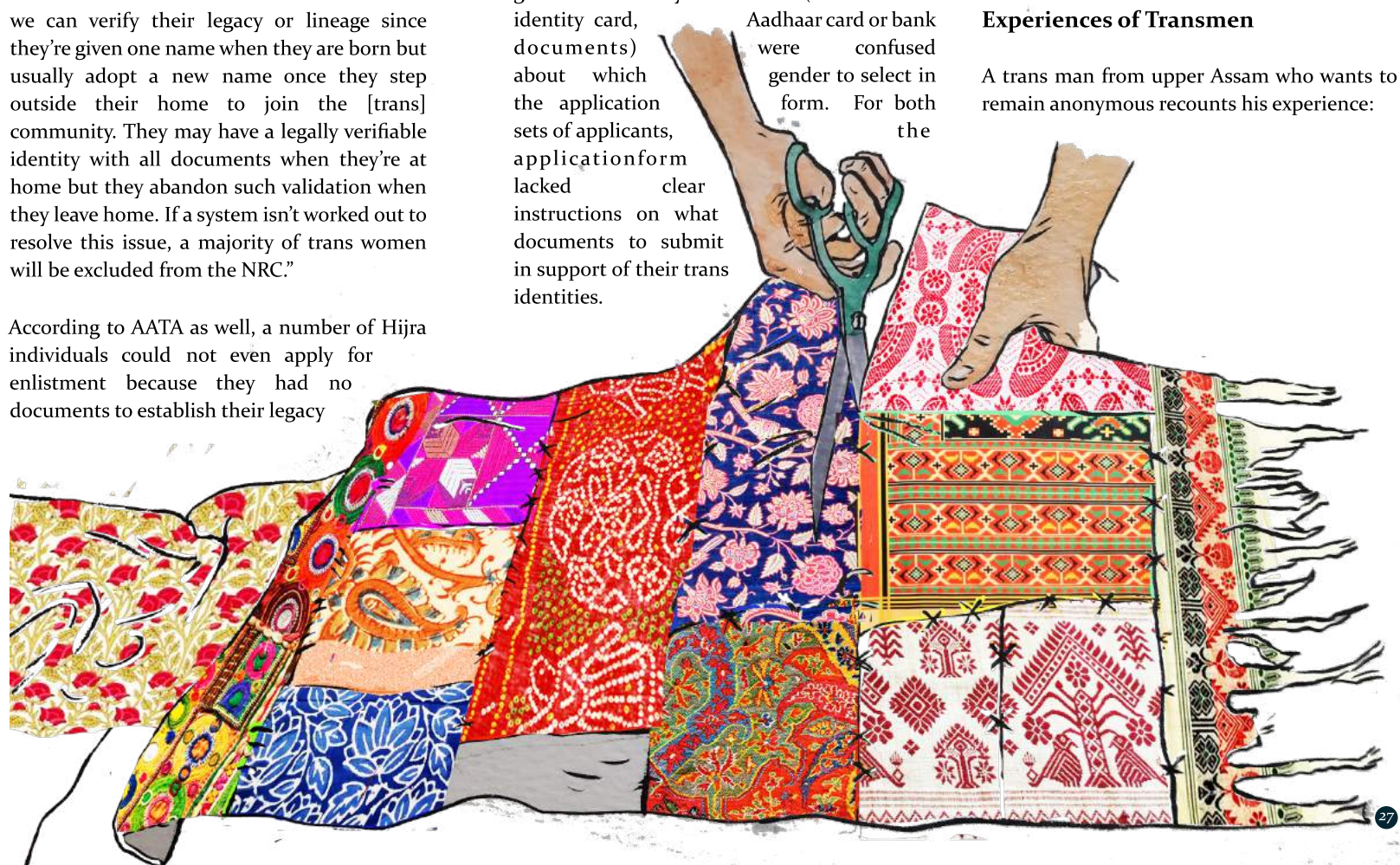
There was confusion in the filling up of the application forms as well. The NRC application form did have three gender options - 'male', 'female' and 'others'. Many Hijras mentioned 'others' as their gender. But their birth certificates mentioned their gender as 'male'. Trans individuals who had undergone gender transition surgery and changed their name and gender in identity documents (like the voter identity card, Aadhaar card or bank documents) were confused about which gender to select in the application form. For both sets of applicants, the application form lacked clear instructions on what documents to submit in support of their trans identities.

This probably dissuaded many from completing the application process.

Another factor behind the low number of trans applicants could be the fact that many trans women in Assam (as in other parts of the country) are often on the move for reasons of livelihood. The application process may have been not only intimidating but also time consuming for many, and therefore not worth pursuing.

Experiences of Transmen

A trans man from upper Assam who wants to remain anonymous recounts his experience:



"Well, when the NRC process started in Assam, I was already in the process of transition and was trying to get my name and gender changed in my documents. I asked my dad what should be done about my name and gender in the NRC application, as I had all my documents in my previous name and gender. He said we should let it be like this, we'd see what could be done later since it was first important to get my name into the NRC. So he filled up the form using my previous name and gender, and my name came up in the NRC final draft.

"Subsequently, I got my name and gender changed legally through an affidavit, and I changed my name in the PAN card as well. I also got my name and gender changed in the voter list through an online application, and I voted in the recent Lok Shaba elections with my new identity, though I haven't got the new voter identity card yet.

"In our place people, including government officials, aren't fully aware about trans issues, and don't have proper knowledge about the gender spectrum. So, my dad prefers to do all my paperwork online. But we haven't found anything yet on how to get my name and gender changed in the NRC. I have a distant brother-in-law who's engaged in the NRC process, but even he's been unable to give any intel about how to change one's name and gender in the NRC list. So I have to say I'm disappointed. The government needs to look into the matter and NRC officials must compulsorily be made aware of trans people's issues."

Purab Brahma who is from Kokrajhar and identifies as a trans man says, "My experience

with the NRC was mostly scary. Though I knew my name would be there but what about the inclusion of my new name and gender? I'm afraid if I'll ever be able to change them in the NRC records. Trans persons are so often kicked out or disowned [at a young age], which makes it difficult for them to establish links with their families [later in life]. Mine was okay only because I didn't have to make endless visits to government offices – my identity was crosschecked through photographs."

The NRC updating process started in 2015, after the Supreme Court's verdict on transgender rights in April 2014 (National Legal Services Authority Vs. Union of India and Others). In this verdict, the court directed the government to recognize the gender identity of trans persons and ensure that they were given relevant social security support. The court also gave all Indian citizens the right to self determination of one's gender. It is ironic that the Supreme Court, while supervising the NRC updating process, has not weighed the challenges that trans persons might face in acquiring and producing legacy or lineage documentation, and has not considered any variation for trans persons in the norms for establishing one's credentials.

In Assam, AATA filed a public interest litigation in Guwahati High Court against the state government in 2017 for not taking measures to form a transgender welfare board. Even after the state government constituted a core committee on the directions of the court, there was little progress in drafting a transgender welfare policy. Sanjib Chakraborty, who works with the National AIDS Control Organisation in Dispur, and was included in

the committee as an 'expert', said the committee met only three times in the last few years. He said, "The expertise and recommendations collated in the meetings were sent to all the departments for their suggestions. But before anything could happen, the Director of the Department of Social Welfare got transferred." He added that the NRC issue was not discussed in any of the meetings conducted with the experts and government officials.

It must also be noted that the NRC updating process was demanded and brought into effect after the BJP win in Assam. The party, in its recent Lok Sabha elections manifesto, also claimed that it would replicate the NRC process all over India. It is the same party which has now revived the problematic Transgender Persons (Protection of Rights) Bill, 2018 in the Parliament. It is ironic that the party made claims of working for the empowerment of trans communities in its election manifesto without taking into consideration the exclusion trans people were already facing because of the NRC updating process.

Which Way Home?

A reliable source working on the NRC updating process in Guwahati since the last few months says, "I receive 30-40 cases per day at my desk, but till now I haven't received a single case of a trans person contesting their exclusion from the final draft of the NRC list". No surprises there, given that the grounds for contesting the

exclusion are so uncertain for trans persons. But then what about the 2,000 trans persons who applied for inclusion and were left out? There has been no government response on how they will deal with these exclusions, and what the fate of the individuals excluded will be.

Some of the NRC officials inform that they are unable to include any names without legal documents as approved by the Supreme Court. They further add that trans individuals whose names have not appeared in the final draft and who have not applied afresh so far will be able to do so after August 31, 2019. But the question remains, without any relaxation on producing legacy and lineage documents, what will be the use of applying afresh?

It is shameful that there are hardly any voices of protest from other parts of the country against the implications and impact of the NRC process in Assam. Perhaps when the BJP fulfills its 'promise' of implementing the process across India that more voices will come up. Till then the trans communities in Assam seem to be waging a lonely and uphill battle for

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Shivalal Gautam is 28, gay, engaged in queer activism in Guwahati, and derives the strongest sense of contentment and achievement in being able to help other queer individuals.

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This article is based on an earlier article by the same author titled Multi-layered Exclusions for Trans Persons in Assam NRC Process and published in Varta webzine, July 2019 issue.

Since this article was written and published, the Transgender Policy of Assam has come into force on 22nd April 2020 and subsequently a Transgender Welfare Board comprising of six transwomen and hijra persons has been set up in Assam. There are no transmen on this board. The board will carry a census of the transgender community's population in Assam, with help from NEVARD.

NRC-CAA has now become the subject of a huge political debate across the country, and protests and demonstrations have been held (and continue to be held) against it. Even now, in the midst of the COVID-19 crisis, political arrests of anti-NRC-CAA activists are being made.

The Transgender Persons (Protection of Rights) Bill 2019 is now an Act.

Decriminalisation of what happens in one's private space doesn't give one access to equal socio-economic and political rights, which is what the queer movement is ultimately about.

Section 377 is Over Let's Talk About the Hangover

Now that it's been a year since Section 377 of the Indian Penal Code was read down, let's talk about the dark realities of this law, and how it impacts the queer community and society's changing view towards us perverts.

I was born and brought up in a small town where queer visibility was almost non-existent. Let's just say that there are more closets in small towns compared to that of bigger cities. For years, I thought I was the only queer weirdo, but then came the advent of the internet and social media. I was finally sure of the fact that I'm a human and not some alien from a planet where people of other sexualities and genders existed. Internet validated the fact that I'm an earthling after all. I hoped to pursue further studies and get a job in a big city thinking I'd have to go through much less discrimination there as people would be open-minded and aware.

It was a naive thought.

It is hard to work anywhere as a genderfluid, queer person with mental illnesses. I've hardly been able to attain capitalistic career standards and financial stability. I've lost or quit jobs within a few months over the last 7 years. I couldn't finish my studies "on time" according to societal expectations based on the maximum age to complete graduation. Many times I've had to abscond or quit jobs due to depressive episodes and panic attacks. In fact, at one particular MNC, my paycheck was held back until they forced me to write a resignation letter without mentioning any details of harassment or oppression that I went through. When I brought this up, they blamed me for harassing them. For instance, after work hours when I would board the office cab services, security guards would scrutinise my body from

head to toe and deny to believe that I am indeed Nikita, because it's perceived as a "feminine" name, and did not match my so called "masculine" attire and buzzed haircut. Many cab drivers in the parking lot verbally harassed me and when I complained to higher authorities, they told me that I should sit in the waiting hall instead of loitering in the parking area to avoid this, instead of taking any action or educating the employees. I tried my best at various workplaces to be the star employee who gets work done efficiently and effectively. I did better in capitalistic productive terms compared to the work of my cisgendered, heterosexual colleagues and yet, I never received the appreciation I deserved. All I got in return was unequal wages, abuse and harassment.

Talking about cis gay male colleagues, occasionally, they were asked questions about their love life, but weren't faced with the kind of harassment that I'd face as a genderfluid person. They were welcomed in the office social circles, given equal pay and opportunities to grow. You see, one's sexuality can have closets and as long as you conform to cis-normativity, you will do just fine. But being on the trans spectrum, one doesn't have the closet privilege that cis-gay men enjoy. Not conforming to the binary standards of society makes you a target for bullying, especially when it comes to asserting control and power.

Even when I tried to work in the disability sector, I faced similar kinds of harassment. Able bodied and able minded employees made fun of me constantly. They asked me questions about my gender expression - why I don't wear clothes like a "woman" does, such as skirts, tops, kurtis.

One teacher even asked "don't you want to get married?" implying that an AFAB person must wear "girly" clothes only to get married. We're supposed to dress up for men to address their patriarchal, capitalistic and misogynist needs to objectify, fetishize and deem us worthy of any kind of relationships, jobs, rights and overall existence. Then they proceeded to ask how old I am and what I do. I would say that I'm 27 and pursuing my graduation. They instantly responded with "so, you wasted so many years!". These are special education teachers with hypocritical minds and no regard for struggles, sufferings and failures. I wonder what these abled teachers actually think of children with disabilities they teach, if this is how they treated me. This shows that conversations about sexuality, mental illnesses or psychosocial disabilities has not reached the disability sector.

On 6th September 2018, the Supreme Court ruled that consensual sexual relations between adults of the same sex is not a crime in India, but that is not equivalent to guaranteeing socio-economic rights. This law only benefits the corporate and media worlds. Decriminalisation of gays sparked a race for representation, from advertisements by companies to movies and TV shows - everyone wants to prove that they are allies and sell the belief of "love is love" or "love wins".

Uber came up with rainbow route lines. Hero Honda, a bike company, decorated the metro station it maintains in Delhi with rainbow lights. Indigo airlines put up rainbows stickers on their flights. Reading down of Section 377 has become a great opportunity to attract queer money and profit-making for corporations If

these corporates were genuinely concerned about our rights, Uber would hire queer drivers and employees, Metro Stations would stop scrutinising trans bodies to put them in binary boxes and harassing them during security checks, and perhaps, Indigo airlines wouldn't have refused to take the dead body of an HIV positive child.

Now, while representation itself is very important, but what's more important is how exactly queers are being represented in the media. Let's take a look at India's MTV reality show called "Elevator Pitch". It's a speed dating show where ten men or women try to woo one particular person of the opposite sex. They introduced a gay themed episode with ten men

trying to win one gay man's heart. They never did a lesbian or gender-queer episode because society is still too uncomfortable of them having any kind of sexual desires. The star of that gay episode was also judgemental of men who didn't fit the required masculine standards. "Feminine" gay men were made fun of because that's the kind of entertainment the show's audience feeds on. The kind where queers are laughed at for being non conforming or breaking the binary. The kind of entertainment that society enjoys is what breaks, bullies and costs us our lives.

Another MTV reality show called Love School joined this allyship race. In the current season, they invited a cis gay couple, and a bisexual



man and woman. However, two single bisexual people simply couldn't choose from the same sex contestants because they were expected to conform to heteronormativity and only pick someone of the opposite sex. The gay couple was seen in binary terms with one being the "man" and the other as a "woman" in the relationship. Hosts of the show would keep giving them compliments such as "you're so brave for being who you are" or "I'm so proud of you guys for being out". But compliments don't mean acceptance. They don't recognise or validate our unique existence. We want our rights, real visibility, and genuinely equal space in the society. We don't want token representation that feeds the sadistic pleasures of this society at the cost of our lives.

Transwomen and Hijra communities get the worst of this industry. They're either seen as a great asset for comedy or as villains. Every famous comedian in India has joked about them. A show called Comedy Nights with Kapil makes people laugh by dressing up male actors as women as a core part of their show. Another show called Shakti was based on a story of a trans woman that portrayed the Hijra community as an evil cult. The truth is that transgender people are constantly faced with violence, rejection and abandonment.

Transmisogyny is a major similarity between the binary and queer communities. Gay men make fun of trans folks because they benefit from patriarchy. While gay women think that transwomen don't understand the struggles of being a "real" woman. Need I mention the kind of ciswomen who talk shit about transwomen but date transmasculine or non-binary AFAB people because they are "cuter than cis men".

What has really changed since the decriminalisation of gays last year? Nothing but the fact that it has given more power and access to cis gay men who are rich and upper caste. They look down upon trans, queer and disabled bodies. Mere representation and laws are not enough. Decriminalisation of what happens in one's private space doesn't give one access to equal socio-economic and political rights, which is what the queer movement is ultimately about. These are the things we need to fight for because in the end we're all the same ass perverts in this shit together.

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Zaddy Astro is neurodivergent, genderfluid, non binary trans person and uses 'ze/hir' pronouns. Ze is a witch, healer, astrologer and tarot reader. During hir free time, ze loves to write rap songs about feminist issues. Hir favourite thing to do is to make memes to call people out on their transphobia and ableism.

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Still Criminals

Moving Beyond Section 377

As I read the theme for this publication, I started to think about it - before 6th September 2018, I was a criminal, and after IPC Section 377 was read down, I was no longer a criminal in this country. The landmark Supreme Court judgment decriminalized homosexuality.

I identify as a Bahujan transman and I am in a relationship with another transmasculine person. Therefore, our relationship is a homosexual relationship, and hence, with Section 377 gone, I am no longer a criminal. However, my identity is not limited to my sexual orientation, it is beyond that.

As a transman, the Transgender Persons (Protection of Rights) Bill, which was recently passed in the Lok Sabha, takes away my right to self-determination of my gender identity. According to the bill, unless I undergo surgery, I will not get legitimacy as a man. I will not get a certificate as male. For instance, what happens if and when I am not able to get my gender certified and I wish to access gender-segregated spaces like bathrooms? Will I become a criminal in the eyes of the law if I use the men's bathroom? The Bathroom Bills have drawn much controversy in the US. Once transgender people get recognition, is that what awaits us?

Recently the government made amendments to the Unlawful Activities (Prevention) Act or UAPA. It says that any individual who commits an act or writes anything that disrupts the territorial integrity or sovereignty of India, they will be declared a terrorist. Now, if as a trans person or a Bahujan person, I question the sovereignty of the state and its policies, which are Brahminical and heteronormative in nature, will I be declared a terrorist? After September 2018, our country has witnessed many lynchings of Dalits, Adivasis and Muslims. Atrocities in university spaces and in public spaces are routinely reported, almost on an everyday basis. The sexual harassment case against CJI Ranjan Gogoi was tactically brushed under the carpet. Article 370 and 35A have recently been scrapped. Every other day, I read cases of rapes and lynching of transpersons. Every other day in my work, I come across cases of lesbian women who are kept under surveillance and house arrest. How can we call this country free any more?

I do acknowledge that because of the judgment

of the Supreme Court on 377 last year, it has become possible for many lesbian and gay couples to run away from their families, and for them to live their life without any legal implications. I am also gaining the strength to run away from my family, only because of the reading down of Section 377. I have great faith in the Indian Constitution and after this Supreme Court order, I was able to convince myself and finally take this decision. It gave me assurance that I am not doing any illegal work or committing any crime. After this judgment in September, I decided to go to my first ever pride march. While the legal battle has given me much strength, I continue to face everyday violence. I stand out in a crowd because of my gender identity, and I face discrimination on a daily basis because of that. I have overheard people talking about Section 377 being read down, in metros and on the road and other public spaces, and I know people are aware of the judgment. However, that doesn't stop them from being violent. After the decriminalization of homosexuality, I had to face physical and verbal violence. I was beaten up in the women's compartment of a train, where they mocked me because of my gender, and referred to the Supreme Court decision while hitting me.

Many corporate organisations are making marketing strategies by flaunting rainbow colours, but what are they doing beyond that? When it comes to employment, we rarely find queer persons in their offices and companies. In fact, I do believe queerness is being used as a token nowadays in every sector. But there is no freedom for me, or many people like me. On paper, homosexuality is not a crime anymore. But in the eyes of the society, we are

still criminals. And the State is also made up of people of the society. The various government polices and laws that have been passed recently reflect that it is only the upper caste, cis gay men or cis queer persons who fit into the idea of queer normativity, which was safeguarded by

the reading down of Section 377. It is only the upper caste, cis queer people who are no longer criminals. But all other queers, whose identities and marginalizations extend beyond their sexual and gender identity, continue to be criminals.



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*Vihaan is an Ambedkarite Queer
Feminist Trans Man*

Whose Decriminalisation Are You Drumming On About?

Recognising the Roots of Our Oppression

As much as it is incumbent on those who fall somewhere on the queer spectrum to celebrate 6 September 2018 as a day of 'liberation', I would respectfully refuse to do so. For the simple reason that it is no such thing. A day of liberation is one that evokes in you certain emotions: of hope, of approaching unbridled possibilities of living, of joy, and most importantly of universally shareable, reproducible freedoms. Instead, when I visited the site of celebration in Mumbai that day, a promenade called Carter Road run by the rich and powerful of Bandra, a promenade marked by regular police patrols, all that was visible to me was the hopeless vacuum of ciscentric savarna queer assertion, and a refusal to wrap up their tepid performance of the radical.

Almost a month later on 8 October 2018, something else happened, once again in a court complex. Sheelabai Pawar and Kanta Ramesh Ayare, with the assistance of Dawood Shakeel Sheikh, smeared black paint on the statue of Manu that has been standing for 30 years in the Rajasthan High Court. Will the figureheads of the 'queer movement' remember to celebrate this moment of radical action, this act of courageous leadership as being towards true and absolute decriminalisation, real liberation? They will not. Just as they will never organise or come together to protest the murder of trans people. Remember, Mumbai was the only 'vibrant' city of queers that didn't bother to light even one candle for the trans/gender diverse people we lost last year, and every year before that.

But I am not here to appeal to our evanescent conscience or invite myself into the staging of an empty ally protest. I would only like to place two arguments here: one, the notional decriminalisation vis-a-vis 377 is a redundant issue, absolute decriminalisation and liberation will be achieved only when we are relieved from the clutches of Manu's laws; two, this will not be possible as long as any queer movement is led by ciscentric savarna queers.



A criminal may be defined in at least two prominent terms: modern legal and psycho-sociological. In modern legal terms a criminal is one who commits that which has been or can be listed as a crime in the books of law. In psycho-sociological terms a criminal is someone who commits or may commit any act/s deemed by the society as 'shameful and unpardonable'; someone who leads a 'wasted' existence; someone who must not be 'reproduced' into their society. The psycho-sociological criteria are not only contextual to each society but also defined by the 'majority', and to be criminalised under these assumptions means to live in a permanent state of social immobility, absent opportunity, and without any form of creative autonomy or self-determination in the psychological/biological realms of life.

Instead of addressing and uprooting the psycho-sociological criteria for repeatedly criminalising and eliminating certain sections of human society, the cis savarna LGB queer movement, by focusing only on legally securing a position already made possible for them centuries back, has not only failed the queer movement, but further propelled the Brahminical queers to erase, occupy and misrepresent the Bahujan and Dravidian ideologies of queerness. A position already made possible? You ask. To understand this we only need to review RSS' position on homosexuality.

Two years before the SC judgement, the RSS declared that "it is not a crime as long as it does not affect the lives of others" and after the SC judgement they said that they agree with the SC but "these relationships are not natural, so we do

not support this kind of relationship." The media reported this as a 'softening' or 'progression' in their stance, but the RSS is merely restating to its Brahminical cisgender audience the laws available to them in the Manusmriti. No doubt same-sex sexual intercourse is identified as an 'unnatural' act by Manu, but the twice-borns may bathe with their clothes on, or perform penance/fasting to 'cleanse' themselves of this 'breach'. All three—the act, the bath, the penance/cleanse—can be performed in the privacy of twice-born homes and castes, without 'affecting' the lives of others. It is in this context that we must understand the deployment of the Puttaswamy judgment for reading down 377: privacy, at its most superfluous. Why did the SC not read the Puttaswamy judgement in the matter of the Aadhar (the original issue), and specifically in the matter of its imposition for availing welfare schemes? Are those who demand welfare from the government not eligible to the fundamental right to privacy?

Who are the rightful claimants of any and all such welfare—the ones without claim to privacy—from within the queer community? The Dalit Bahujan Adivasi Trans/gender diverse people. In every society that is fundamentally unequal, the most oppressed trans/gender diverse communities have resisted the ciscentrism and trans erasure (or appropriation) practised by the queer movement. This cannot be without reason. Because the structuring of gendered bodies is a fundamental and continuous process in the maintenance of all systems of inequality, the source force of oppression will always be the manner in which gender is controlled and

ordered rather than the surveillance over private individuals' private acts of sexual intercourse. No doubt, this surveillance may definitely be a symptom or instrument of the force, but it is unfortunate that the misplaced impetus of this 'queer movement' has reduced a beautifully coarse, light and netted fabric such as sexuality—one that must be sewn, worn and changed by every body to their best fit—into such a limited, limiting, yet overarching discourse of acts. Now, if the structuring and control of gendered bodies is the source force, the particular ways in which a given society has structured it to ensure that the criminalisation of our trans/gender diverse identities persists, must be understood.

There is a narrative that has existed for long, now gaining greater strength: that 'Hinduism' is incredibly accepting of trans/gender diverse identities. This narrative has been fuelled in no small measure by the savarna cis queers as well as Brahminical trans persons in their desperation for acceptance. All of these narratives hinge on one or other seemingly exemplary character in a mythological text. But what does the Manusmriti say? In the complete absence of even the whiff of concepts such as self-determination in these texts, it remains unfortunate that we must trace our histories and find our truths recorded under the terms such as 'eunuchs'/ 'hermaphrodites'. And despite international and national communities rejecting these terms, we find repeated use of these terms in government documents. It is not incidental that Sanskrit has almost 40 different derogatory words to signify 'eunuch'. And many of these words are used at different points in the Manusmriti to firmly establish the exclusion of our people from the material and social fabric of

this world.

In sum, what is written about us is: we are born because the 'male seed and female seed' are equal in amount; a Brahmin should never eat food offered by us; we must not look at a Brahmin while they eat; the Brahmin among us are unworthy of partaking in oblations to gods; we shall have no right to property; savarna women are allowed to leave us without fearing loss of their caste or property; we are all impotent, no sterile, but children if any born to us can claim share to any property, even though we will not have such share; and a Brahmin must give a spade of black iron for killing a snake whereas for killing us he need only give a load of straw and less than a gram of lead.

There has been an attempt on the part of the Hindu sections of society to claim—a claim parroted by various government reports—that the genesis of our exclusion is in the colonial instrument of Criminal Tribes Act 1871. There is no doubt about the vileness of this instrument of the colonisers (just as there has never been any doubt about the wrongness of 377 or any other destructive instrument of British colonisation), but as students of history should we not ask: if the Hindu claim is that our people were well respected in 'their time', what were the situations of the life of our people that forced them to live lives and be counted in modern legal terms as 'Criminal Tribes'? Do the British colonisers not have a history of joining hands with already existing dominant (Hindu) colonisers, and interpreting and implementing laws as per the influence of the latter? And what today, is the state of all the people counted among 'Vimukt' jaati—denotified in 1952 and replaced by the Habitual Offenders Act that

continues to operate to this moment? Do we recognise this pattern of so-called decriminalisation in modern legal terms that is simply a ploy of words; a combination of savarna liberal posturing and the active propagation of the Manuvaadi status-quo vis-à-vis criminality?

Do we recognise that the much talked about TG Bill is an almost exact reflection of the laws of Manu? From the confused definitions to the compulsory sterilisation, the absence of inheritance, the discriminatory punishments, and the desire to further ghettoise our people by deepening the criminalisation of beggary and forcing upon us 'rehabilitation'; it's all there, the absolute refusal to operate on the principle of self-determination and the absolute desire to oppress.

So then, whose decriminalisation, whose liberation are you drumming on about?

Is there a possibility of resolving this inequality within the 'queer movement'? No, not without an absolute recognition of the root of the issue. We must understand that all queer and trans/gender diverse identities in Hindu India are defined and controlled as being socially and biologically 'impotent' to varying degrees. The ciscentric savarna queers must recognise that their twice-born status is a conditional get-out-of-jail-free card and as long as they are not rejecting these limits they are not effectively living their queerness to bring about any structural change, or contributing to the development of a queer ideology that centres and nourishes Dalit Bahujan Adivasi queer ideologies. Decriminalisation in modern legal terms does not strike at the root of an enforced

impotency that holds our lives, our transness and our queerness ransom to Brahminical control; it does not create an environment that actively supports the proliferation of inter-caste trans queer households and communities that can thrive not just survive; it does not destabilise the almost absolute social isolation that pervades our lives; it does not erase the loneliness of always feeling inhuman, unequally queer, unequally trans/gender diverse; it does not repair the centuries worth of trauma that we have inherited, and continue to bear—to varying degrees—by being the bodies repeatedly carved out by the Brahminical cis masculinist society as vessels to freeze their society's impotence, the bodies repeatedly enslaved by this society's fear. The fear of our gentle but absolute potency in fertilising, carrying and nourishing a post-Hindu social order.



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esvi anbu kothazham is an asexual transgender bahujan individual who holds a Master's in Development Studies. They have faith in a world led by Dalit bahujan adivasi trans/gender diverse excellence and are currently just building self and holding space.

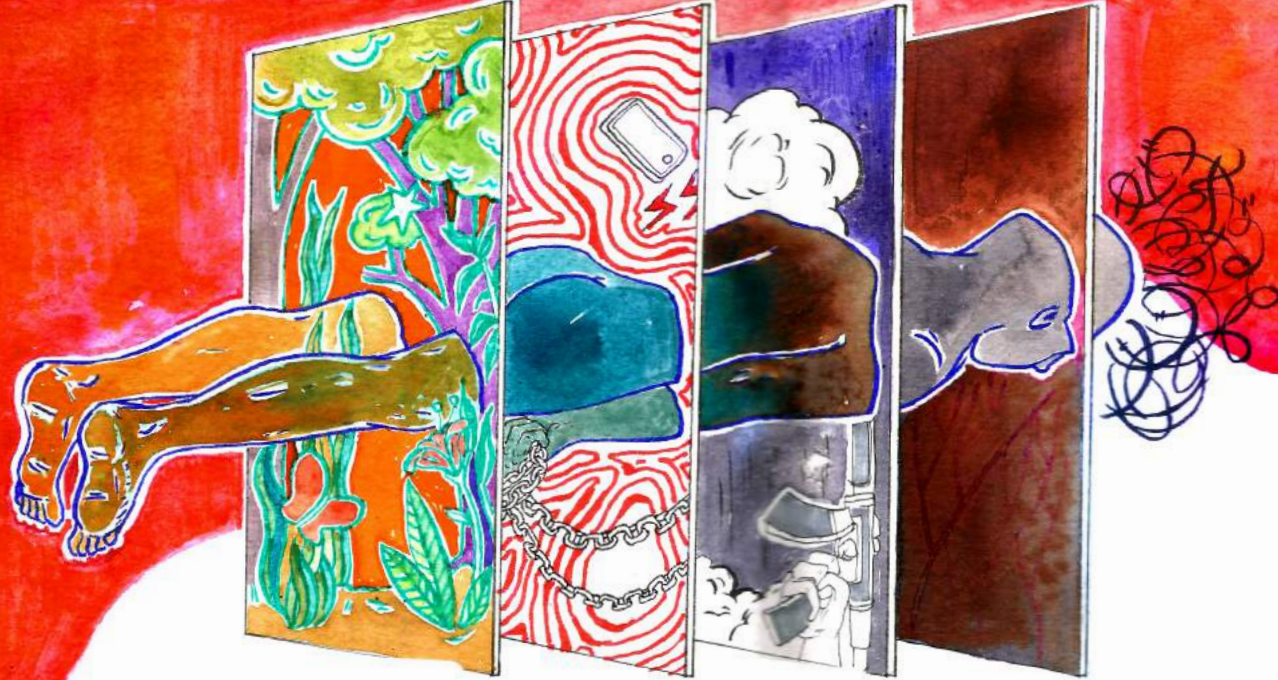
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Sexuality, or the Will to Fiction!

The first few pages of the *Navtej Singh Johar v. Union of India* judgment lays down the importance of 'identity' in one's life. In a laudatory tone it asserts:

"Identity is pivotal to one's being. Life bestows honour on it and freedom of living, as a facet of life, expresses genuine desire to have it ... the sustenance of identity is the filament of life. It is equivalent to authoring one's own life script where freedom broadens everyday. Identity is equivalent to divinity."

Few pages later, it specifically addresses the questions and concerns of 'sexual identity' vis-à-vis homosexuality. The judgment says:



"It has to be appreciated that homosexuality is something that is based on sense of identity. It is the reflection of a sense of emotion and expression of eagerness to establish intimacy. It is just as much ingrained, inherent and innate as heterosexuality."

In these two extracts, sexuality is translated into identity and recognized as a site of freedom; it is that register which, under the force of law, will now be set free from the shackles of public morality and make life bearable for queer people. In this short space, I will argue, that there are two contradictory movements in the Supreme Court verdict of 2018 – its reading of sexuality as ‘desire’ and sexuality as ‘identity’ which irreconcilably run into each other. I will attempt to demonstrate, how in the aftermath of the reading down of Section 377 and the re-election of a strengthened Hindu right-wing government at the centre, either of these

readings of sexuality is inadequate to fathom its machinations. Sexuality is an ‘excess’ that erupts unexpectedly, manifests itself in unanticipated ways that betray the constraining pulls of identity.

Let me explain the point with two examples.

On February 2019, in an unfortunate and deadly terror attack in the Pulwama district of Jammu and Kashmir, forty Indian soldiers lost their lives. Consequently, tension heightened along the borders of both nations, India and Pakistan. Think about the aftermath of the Pulwama attack: at a time when the entire nation was baying for blood of the neighbouring country, demanding war and revenge by shouting “how’s the josh”, we got to witness two sets of images circulating on social media of an incredibly sexy and charming actor – Vicky Kaushal. On the one hand, Kaushal

kept sharing his shirtless, bare-bodied, sexually titillating and erotically charged images on Instagram; while on the other, another set of images of Kaushal attired as a military personnel – belligerent, ruthless, fierce – ready to avenge the wrongs committed on the nation by its arch-rival, went viral on social media. The latter avatar is Vicky Kaushal’s role in the film *Uri: The Surgical Strike*, which celebrates the surgical strike executed by the Indian army in Pakistan in 2016. These two strikingly different range of images – which are not so different in their intent, perhaps – drew legitimacy from one another. Those driven by the spirit and rage of gratuitous nationalism, celebrated *Uri* and Kaushal’s on/off-screen theatrics to the extent that they started quoting on the film’s dialogues to prove their nationalist credentials, post-Pulwama; and those who were sexually enamoured of his sensual appeal were willing to compromise

on their anti-nationalist politics and watch the film, only to experience the wanton sensations of watching Vicky Kaushal on screen.

In many queer groups on social media, people shared Vicky Kaushal’s images – from *Uri*, as well as others – and a trail of lusty comments followed with raining adjectives such as ‘jock’, ‘hunk’ and so on. I do not say this with any moral trepidation whatsoever, but try to put finger on the fact that the articulation of sexuality as ‘desire’, and locating within it a possibility of freedom, may not necessarily be a politically useful tool. The manifestations of desire can oftentimes take dangerous, hateful forms; its expression can be aided by fascist, right-wing nationalist tropes, as in this case. The person with the strongest political convictions is also not safe from the deadly psychic pulls of desire. To this extent, sexuality as desire and fantasy may not always be a radical, or transgressive force – it can be conservative, and politically upsetting.

The next example is fairly recent. Defending the abrogation of article 370, some people, including the BJP spokesperson Baijayant “Jay” Panda, argued that this was a necessary step to ensure full rights of queer people in Kashmir. Now that Kashmir will be fully unified with the Indian nation, and come under the legal purview of the Indian constitution with no special status/exception, queer Kashmiris will finally be fully liberated. I am not qualified and entitled to enter into a discussion on article 370

here, but this argument is useful to support the point I wish to make. The rhetoric and logic of identity are one of homogenization, purity, and totalitarianism; identities cannot allow for messiness, impurity, or democracy. In the above instance, the 'national' identity seems to cancel out the 'sexual' identity, even though the 'national' can only be made realizable through the 'sexual'. This is the fundamental trap and tragedy of identity that it does not allow us to be anything more than one thing; it takes away from us the possibility to be plural and speak in a language of multiplicity that can also be a language of resistance against the fascist dispensation that we are surviving.

We are living at a time when oneness and singularity are celebrated: one nation, one religion, one narrative. And all of this is aided by the projection of an authentic, unfaltering sense of 'identity'. Therefore, to argue against the Supreme Court judgment, which hailed identity as "pivotal" and linked it to "divinity", I would suggest that identities are the basis for policing borders, creating partitions, holding and perpetuating violence towards one another in the pursuit of retaining one's purity. Think about the rationale behind the National Register of Citizens of India, or the panic around the India-Pakistan border: both are predicated on the performance of an Indian identity that is genuine, authentic, undisputed and differentially marked from its other in terms of religion, appearance, nationality, food habits, language and so many other registers. But we know that all performatives are marked by an element of failure and parody: Judith Butler's lessons on gender as drag explains that in its ability to identify a "doer behind the deed", drag performances upset the identitarian and

foundationalist narrative of gender by demonstrating that the image of the "doer" is conjured and constructed through the act of the "deed". Similarly, the fantasy of a homogenous, authentic "Indian" identity, that is marked from its other, is invariably destined to fail, since the language that we speak, the clothes that we wear, the food that we eat are messed with multiple cultural influences. It is impossible to churn out authentic from the inauthentic, truth from falsity. A nation is always a nation in drag!

The *Navtej Singh Johar v. Union of India* judgment should definitely be celebrated for lifting the burden of criminality from those practicing "carnal intercourse against the order of nature" but it must be noted that while it attempts to erase the discriminatory border between hetero and homo, in its lauding of "identity" it ends up instituting other forms of borders and shifts criminality to other kinds of bodies – those who do not fit within the singular narratives of one nation and one religion.

How do we then negotiate with the problem of sexuality, if we are to move away from its articulation both as 'desire' and 'identity'? I would suggest that we make an attempt to read sexuality as fiction – a plot, a story, a novel, or even a poem – and not as a pre-given script. It may allow us to see where and under what circumstances does it emerge, what other registers does it work with or against, and how politically enabling or limiting it stands. Think about the Bollywood film, *Chameli*, released in 2004 and directed by Sudhir Mishra. The titular protagonist is a sex-worker who one evening meets a wealthy man, Aman. When Aman asks

Chameli about her past, she recounts a sad and horrid story of poverty, and how she was pimped into prostitution at a very early age. At the moment where Aman is visibly disturbed, Chameli breaks out into laughter admitting that the story is false, but this narrative fetches her 500 more rupees. Extremely angry and irritated, Aman presses her to tell her actual story; Chameli recounts how her mother too was a sex worker. It was only after her brutal rape and murder that Chameli was traded into the profession to repay her mother's debts. Aman is once again visibly disturbed. Chameli once again breaks into laughter and says, this story can fetch her 1000 more rupees! This brilliance of the film lies in not letting the spectators know the "truth" of Chameli's identity: in this case, a gender-sexual identity. It only offers stories upon stories, stories within stories, and leaves the audience with those; as if hinting that there is no such thing as a true identity. There is no one story that can be foregrounded, perhaps, because all of these stories are equally true, or none of these stories are true. Each story has a different material value in the way sexuality interacts with economic and erotic capital, but in all these instances sexuality remains devoid of identity, as an empty signifier, contingent as fiction which can only be read – never touched, or felt, or seen!

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Queer Liberation or Mere Appeasement Towards the Indian Queer Diaspora?

“Parivaar,” which is another word for family in the Sanskrit language, is a simple reminder that the notion of ‘a group of people connecting themselves amongst each other and members of their society with whom they sense a familial bond’, is one that dates back to the very dawn of civilization itself. The definition of a family is subjective and ever-changing in the context of

what society perceives it to be, with respect to the myriad cultures and their subtleties and differences. This realization of familiarity is more profound than ever in the information era ; where access to information exists in abundance for all of us, but the veracity of this information remains scarce. With the internet, and access to all sorts of information on the

concept of the family in different cultures, it is easy to get lost in a scholarly attempt of jotting down points of difference while inadvertently missing out on the complexities and consequent bare human similarities of these norms that bind humans together across all regions, religions, gender identities, sexual orientations, colors, races, castes and creeds into collective units that define the very qualitative nature of what makes us human.

I remember waking up to WhatsApp messages from family members and friends, congratulating me on the decriminalization of Section 377, which supposedly decriminalized "gay sex" or at least that is the way the mainstream Indian media was covering it. I remember feeling a little irked about it being made into a big deal, and moreover, seeing the title “gay sex decriminalized” all over the headlines made me feel like I was being reduced to my sexual identity. I had naively thought

that I had transcended and normalized my sexual identity for all the people around me since I had come out publicly in December 2016. Come to think of it, the adverse reaction to the celebration of banners screeching “gay sex decriminalized”, was either an internalized homophobic one or potentially a trigger developed while growing up; seeing the word “gay” pop up every time in the mainstream culture in an inferior capacity, and almost always used to either demean an individual or refer to them as abnormal, which often leads many queer folks to assimilate into an innocuous heteronormative framework in order to navigate societal structures. The othering never helped and having come out two years before the reading down of the colonial-era law, made me feel like I was right back to the day I had come out, and it was going down all over again in my head; I was once again being reduced to my sexual identity. I did appreciate all the messages congratulating me on the reading down of 377;

but just to be clear, while I am proud and open about my sexual identity, it is simply not the only source of all my anxieties and problems. In fact, on that particular day, I remember struggling with a number of issues on my head ranging from being worried about an argument that I had with a close friend, to stressing about having to take a leave of absence from college, to being annoyed by the constant back and forth with my Dad being worried about my future prospects along with dealing with the daily micro-aggressions of life



which happens to indiscriminately be a reality of the human experience for all. It was not that 'gay love' was decriminalized, but yet, I was supposed to celebrate that at least 'gay sex' was.

Consequently, in no way do I undermine the effort of all the queer diaspora that has come before us and made it conceivable for someone like me to even write a possibly entitled rant about the decision not being enough, while the Indian queer youth actively fought day in and day out against the system, forming grassroots organizations, to help turn over the archaic colonial-era law for the benefit of the entire community, irrespective of the mass demonization of their intersectional religious and caste identities, which have been historically used to police and systematically set back the communities that make up a part of these individuals identities in a rising fascist Hindutva regime. I have had my share of my extended family, acquaintances as well as complete strangers scrutinizing my sexual identity, but I have not had to face any sort of physical violence or hate crime for living my truth yet, which is unfortunately a reality for a lot of the minorities as well as queer folk, not only in India, but all over the world. I may be far off from the reality of the subject and even obviously privileged enough to not have to face certain obstacles in my way that a lot of the queer diaspora have had to overcome. Many queer people face persecution by not only their families and the government, but by further hierarchical divisions of class, caste, color, religion, and gender within the queer community as well. On the anniversary of the reading down of Section 377, I feel like the queer parivaar should celebrate but also continue to demand equal human rights for all within the community as well as acknowledge

our privilege and dismantle a heteropatriarchal system that feeds off of hate and division between all of us . We must not give up on the good fight to make sure that every human gets the right to love and live without discrimination, as it only takes a little bit of complacency and entitlement to set ourselves back to darker times, or worse, be complicit in perpetuating the horrors of the status quo.

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Abhimanyu Sharma is currently a senior at the University of Southern California, majoring in Cinema and Media Studies along with a Digital Studies minor. His lifelines are his two Pekingese, Vodka and Whiskey. He has past experience with directing and crewing for live shows Soundstage and The Morning Brew, within the Trojan Vision network at USC that airs throughout LA. He is currently working in direction and post-production processes for several short film collaborations with upcoming artists. He hopes to collaborate with like-minded individuals to direct and make content that reflects the pluralism as well as the changing tide of culture within the South Asian context.

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Fearless Conversations

What decriminalisation meant became clear as the judgement suddenly allowed our feelings and emotions to pour out in curious and exciting ways. It brought honour to us from other countries, and from within the different queer communities in India to the larger Indian society and vice versa. We gleamed with happiness and tears and “vogue-d” like never before. But for all of us, it finally allowed us the space for a lot of conversations which were somehow constrained before. This is how I see it.

Many gay boys from Manipur also celebrated and shared their jubilations within their social media circles. Most of them understood the reading down of Section 377 as a “change in law which will allow gay people to marry each other”. A young friend from Manipur messaged me on Facebook and asked me if it was really so. I explained to him that it was about decriminalisation of sexual identities, and explained the law and the judgement. He asked again, “but doesn’t it imply that we can marry each other now?!” I didn’t want to kill his vibe. Some of us from Manipur have been thinking about and trying to form some sort of a safe space at home for young gay people. To ask a person to come out in Manipur is not easy. Most of the time, I look at where I am and how coming out was so easy for me, given my privileges. At the same time, I look up to the Trans Rights Activists in the Manipur region and the trans community for being such a strong powerful presence in our society. My friend, Kumam Davidson, formed a collective called Queer Boys Collective Manipur. SAATHII Imphal had a big role to play in giving us the push to go ahead with it. They invited us for some of their legal and human rights sensitisation programmes, and we mobilised a few gay boys from the city. We were asking them to play with fire, we honestly admit that. We don’t state it obviously, but two of us are out and proud people who have chosen the out and proud lifestyle. We talk about the need to have a place of our own and our people and a safe place to meet and build relationships. It was a tricky terrain, because the first impulse for many gay boys in the community is the fear of coming out. And in a place like Imphal, you might lose more and gain very little if one was to come out. It needs bravery of a certain level

that could be terrifying for a young gay person. However, the gay folks in Imphal couldn’t care enough to take a closer look at the judgement. Rather, they told each other that they could now marry a partner of their choice, and there was a law to enable such unions.

When I went back to Imphal to visit my family and my old and ailing grandmother, I met some of my gay friends from Imphal. In our get together party, we raised one peg to the judgement, telling each other how our shame and helplessness when police rounded us up in the past from cruising spots and gay dating spots has been avenged. That feeling was definitely worth brooding over and worth acknowledging. It restores confidence and self-esteem and with it brings back our hope and faith. The gay community back home is very aloof from the LGBTQ+ movement in the northeast region as well as the mainland. They are very well versed in gay pop cultures and trends through smart phones and mobile internet. But coming out onto the street to demand rights seems a bit far off. As an underground subculture, the community has found their own corners and crevices of the city to fulfil their desires. Dreams are easily compromised, because of the stigma and related consequences. Meanwhile the police knows where to find them and extort money from them.

While this is true, it is also evident that within the gay community in Manipur, the narrative is still heteronormative. This narrative of how ‘sacred’ monogamous love is and how ‘sweet’ the first love is and what is best is for it to eventually end up in marriage. But it seems to have spread like wildfire. The promise of ‘a love



that succeeds' got rekindled in the heart of young queer boys and in their secluded networks of Facebook. Regular posts are generally about quick hook-ups and discreet relationships and there are very few people who post stories of coming out, liberation and self-determination. So far, at every juncture, coming out is never an option for the power they are against. But the news of a law that allows them to be who they are, got a lot of status updates of jubilations and about how amazing it would be to marry one's choice of love. The comments and thereafter the dialogue was also already set in a decriminalised world. There was a shift in the paradigm of what one can express and be, and accordingly, the content of the conversations within the community and their social media posts also shifted. However, the fear of social stigma persists.

I also remember my conversation with a close friend called Sandra who is a transwoman. She told me how she would always quote and remind the state police of the NALSA Judgement while interacting with them. In Imphal, police are deployed in all known junctions of the city roadways where regular checking is done. She says that the policemen and transwomen in Manipur are not aware of the NALSA judgement, but it helps in telling them that there is a judgement that accords a sense of dignity and integrity to transgender citizens. Maybe not always, but for all those times that it worked - that has got to count for something. There are very few gay people who know the law and the judgement and are invested in the LGBTQ+ rights movement. Many of us don't even know what the QIA+ acronym stands for. Maybe the gay folks might

not use the judgement now, but when they can or want to, they can. For the time being, a sense of fearlessness against police vandalism and a community dialogue on how blissful it would be to be able to marry a guy, are some of the positive conversations happening within the gay community in Manipur.

The conversations are changing and that is evident from community events that are being conducted nowadays. They are taking forth the movement in various directions. The conversations were mostly outward-looking towards the law before the SC judgement, now the conversations are also directed inwards to the community and the self. Social media is now full of groups that recover and reclaim lost voices that have been silenced for long. New groups amplifying various voices on queerness such as the Bi Collective, The Queer Muslim Project, The Chinky Homo Project, The Chennai Queer Chronicles, Naan Biryani and many others are emerging and they are pushing the conversation further from just fearing the law to reclaiming one's pleasures, fantasies, choices and rights. This allows for a lot of dialogues that expand and thereby propagate and deepen our understanding of gender, sex, sexuality and allied issues and brings forth emerging identities and revelations of fantasies and ways of exploring pleasure.

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Pavel is from Imphal, Manipur. Pavel is a vagabond at heart and a Queer Feminist by Practice. Storytelling is their passion. Pavel has written on Beauty, Sex and Sexuality for InPlainspeak, a digital magazine by TARSHI.

Currently, Pavel is associated with Nazariya - A Queer Feminist Resource Group in Delhi and is also a co-founder of The Chinky Homo Project - a digital anthology project on lived narratives of queer from northeast India. Pavel has also worked with Centre for Health and Social Justice, Delhi in the field of 'Engaging Men and Boys for Gender Justice' and with Breakthrough India as a consultant for College Youth Networking and Engagement towards 'Creating a Safer and Shared Space for Women and Girls in Delhi'.

Reflecting on Life After Section 377

"ये गम के और चार दिन,
सितम के और चार दिन,
ये दिन भी जाएंगे गुज़र,
गुज़र गए हज़ार दिन,
कभी तो होगी इस चमन पर भी
बहार की नज़र!
अगर कहीं है स्वर्ग तो
उतार ला ज़मीन पर!....

तू ज़िन्दा है"



When I was asked how the past year has been post the decriminalisation of consensual sexual conduct between adults of same sex, I started introspecting. That day filled my heart with hope. I remember being stuck in my school all day trying to establish contact with my fellow comrades who were glued to their television screens waiting for the decision to be made. When finally it was announced, I got frantic calls on my phone and for a moment my world stood still. I was no longer a criminal in the eyes of the law. I no longer would have to fear living my life outside the closet. I no longer have to pretend and lead a dual life. I no longer had to

dread walking hand in hand with my partner in the middle of the night. Or so I thought. As per the decriminalisation of Section 377, members of the LGBTIQ+ community were finally entitled to the benefit of equal citizenship without discrimination and to the equal protection of law. We celebrated this day of victory with my collective, my people. We went out wearing our colourful slogans and wore our sexuality on our sleeves. We hugged, kissed and sang. It was a collective euphoria - a sense of triumph. We were no longer criminals! But the cynicism refused to leave me. What has changed?

I went back to school the next day and realised that nothing had really changed. Yes, I could no longer be branded as a criminal and put behind bars for my sexuality or my gender identity. But the shame and fear prevailed. In the eyes of society, nothing had changed. I could hear whispers across the corridor when I walked past a particular class. A judgement cannot change the societal mindset. A judgement cannot bestow you with acceptance. A judgement cannot change the way people perceive you. If you are not marginalised for your sexual identity, you continue to be marginalised for identifying as a woman. A woman who refuses to wear formals (saree) during school functions, a woman who refuses to keep her hair long, a woman who does not conform to the stereotypes of gender. I knew the fight was far from over. The battle against patriarchy continues. When I had just joined the movement, I was particularly attracted to one slogan - 'none of us are free until all of us are free' ; with time I have come to realise what this truly means. Soon after the decriminalisation of Section 377, the transgender community was subjected to the horror of the TG Bill (2019). We knew the bill needed to be challenged as it talks of a screening committee which would determine whether a person can identify as a transman or a transwoman. Self determination was not given any importance. While the scrapping of Section 377 of the IPC seemed like a progressive move, this was a sure blow to the community. The surrogacy bill, the mob lynchings, hate crimes, the Hindutva hyper-nationalism made us realise that one historic judgement has not changed the overall psyche of the Indian society. The mainstream continues to bifurcate, traumatize and hurt the sentiments of the marginalised. This past year I have come to terms with a lot of things, like

acknowledging my privileges and not being complacent about them. As I am an upper class, upper caste, Hindu woman, I have had a lot of privileges, and I try to be cognisant of those privileges now. I can clearly see the illusion of justice in our society. Post the verdict, there has been no further discussion on the same. Will the LGBTIQ+ community be granted adoption rights? Will we be able to add the name of our partner in our insurance policies? Will we be able to jointly open a bank account or buy a property together? None of this is still clear to us. This is the ground reality. However, all hopes are not lost. With the verdict in place, it's now comparatively easier for us to have conversations with healthcare professionals and police officials to initiate change. We are trying to convince schools and colleges to permit us to conduct workshops on gender and sexuality, and this verdict always comes in handy while conducting these discussions."

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Koyel is a gender non-confirming person and a teacher by profession. She is a jovial dyke on a bike who is obsessed with cats. She is also a member of Sappho for Equality.

The Unmet Promises of Liberation

Criminalisation as an experience of existence has far ranging effects on the personhood and expression of an individual/community/identity. In the context of modern democracies, extensive criminalisation of communities stifles the idea of equality and equal participation in society and polity. The commonly accepted and popularised idea that the consequences of criminalisation are justified is substantiated by the fact that we have created institutions around the concept of justice.

The journey from law being divine to being a social contract has had one underlying consistency - the law ensures conformance to a norm set by power and privilege. The lived reality of criminalisation is that one of the only ways in which you can engage with the State is through the criminal justice system. Existence beyond one's criminality is either inconsequential or an object of unhealthy and intrusive curiosity. This is the way in which queer communities have been historically written about or discussed, as the oriental vice/ the exotic secret. We are at a stage where we are trying to string together the reality of what this experience meant; reading between the lines of someone else's vision of us. In this journey of exploration, the idea of "us" is complicated with the realisation that "we" do not share common experiences. There is no homogenous "queer" experience, and any attempts at creating homogeneity in this experience are nothing short of violent erasure.

With compulsory heterosexuality being one of the focal themes of families, queer explorations of identity, sexuality and intimacy have forever ventured into the public. The public has been the site for ceremonial and ritualistic existence of queerness. The liminal spaces lingering between the public and the intention of privacy have harboured and fostered many desires and stories of love and heartbreak. Privacy, in the strict sense of it, has never been the necessity for expression of sexuality irrespective of its conformance and acceptability. The people who could afford privacy, however, were able to avoid being policed and persecuted.

A brief overview of the laws that have criminalised, policed and persecuted queerness

include Section 294 of the IPC, Criminal Tribes Act, Hyderabad Eunuchs Act, Prevention of Beggary Acts and Section 377 of the IPC. When read together, all these laws have a consistent stand that it is the public space and life that must be rid of these "perversions" of queerness. This begs the question whether consensual intimacy between two adults in private has ever been the site of criminalisation or persecution? In this context, what does it mean to have fought for the reading down of Section 377, and what are the ramifications of this "decriminalisation"?

The movements that finally lead to the reading down of Section 377 came from the reality that there is rampant violence and discrimination on the basis of gender identity, expression, sexual orientation and sexual characteristics. The initial petition by the ABVA (AIDS BhedBhav Virodi Andolan) in 1991 stemmed from this violence, and so did the Naz Foundation petition in 2001. What is also important to note is that the Naz Foundation petition did not initially make its way to the High Court, but instead to the National Human Rights Commission (NHRC). The case was of a gay man being made to go through electric shock treatment as part of the conversion therapy to cure him of his homosexuality by a doctor working at the All India Institute of Medical Sciences (AIIMS). The NHRC refused to act on this gross violation of rights, citing that Section 377 criminalised gay sex, and hence it was beyond their purview. The battle to fight against this archaic section of the Indian Penal Code was necessary, as the assurance of even human rights seemed to be dependent on it. Though the discourse has advanced to talk about the human rights even of individuals who

are in conflict with law, the hurdle of 377 had to be crossed.

The reading down of Section 377 was an initial hurdle to the movements which aimed at securing and advancing the agency and the rights of people who have faced historical marginalisation by being branded as "criminals". What it was not, was an all encompassing moment of liberation. The law, as well as the movements to do away with it, were symbolic. The Delhi High Court read down Section 377 to exclude sex between consenting adults in private in 2009, and the memories of my 13 year old self recall a newspaper headline "Gay sex is not a crime: Delhi High Court". This was one of the first instances where I felt something akin to acceptance for what I was feeling. This symbolism, manufactured with much effort, has been able to spread the message that "we are not criminals anymore" far and wide across the country. However, the daily lives of many people this judgement claims to have decriminalised are still freight with excessive policing, violence and persecution.

The reading down of section 377 the second time by the Supreme Court of India in 2018, was also the time when the Transgender community in India was struggling to fight active attempts by the State to regulate (read criminalise) the lives of Trans people (and still continues to do so). The celebration of liberation ensued as public spaces were actively being chastised; they ensued through the creation of a civilised private queer, who was respectable and acceptably conforming; they ensued over deaths, lynchings, murders and rapes of many who had been liberated.

The fact remains that for many people who were affected under Section 377, this was the pinnacle of liberation. The fact also remains that the judgment which read down Section 377 gives rise to the "respectable" queers to take their rightful place in society. The fault lines of caste, region, gender and politics have turned into canyons leaving the major chunk of the queer population to fight on.

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Sai Bourothu is a Bahujan Trans Woman and a Criminologist. Her work focuses mainly on research and advocacy for accountable Police institutions in India.

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Let's talk privacy

I
You talk about the right to privacy
I ask, "For whom?"
Believe me, I hear you
I too have wanted a room,
to write personal diaries
that people care enough to not read,
to not worry about multiple passwords in phones and laptops
to be able to wear whatever, wherever
hoping that the gaze
would not pierce my body, inside my home at least.

Let's talk about privacy only
You think it's a matter of social privilege?
I think it's cultural too
Who gets to access it,
And what for?

How would you talk privacy
for Laila in *Margarita*
who needs assistance in getting dressed?
What does privacy mean
when through the carer a body is accessed?
We, with our able-bodies
don't have the language
or imagination
to make sense of this intimacy
this access - mediated through the parent-carer.
So privacy is already sexualized
It is corporeal too.

Oh I forgot, ability is yet to become a privilege
for us talking about sexual rights
So we can wait for the time to come
For the disabled to speak for their own sexuality
And they better do this on their own
As the privileged capitalize at best
in visiblizing the invisible.

II

“Reading may be a legitimate leisure
but sex isn’t.

Or is it?”, I wonder

For the Bahujan man in his teenage
is pushed into bringing money home
and starting a family quick and soon
before he could know

that may be he wants to sing, or write?

He can have sex

casual or not,

with women, of course

Gay? “Useless.

What good are you if not to reproduce?”

“What’s the harm in a cuddle”, they say

“Shush your hanky-panky stories

And look after your man and children

Dare you reject a man for being queer”

Single woman in 30s?

“Dare you speak of sex

You’re already eyeing your sisters’ husbands

To fill the absence of a penis in your life!”

I am here to corrupt your minds

To break families

Or take away your taken men, isn’t it?

Here’s a piece of thought:

Maybe I am just not interested in your men?

Think about it.

Single women are threats

Queers are the insatiabables

Because all we do is lesbianing, you see.

Not monogamous?

Another list is ready for you

“You are the convenient ones,

the oversexed.

Is one not enough for you?”

Mind you, queers would say this too.

III

Why don’t you tell me what your fears are
of the monster I might become if I have a room?

You fear those books, perhaps

of Phule and Ambedkar

that lie on my bed

as I make love to you,

or the posters in my room

Of smashing brahminical patriarchy

Are you afraid that I may not obey you?

Men expect obedience from women, they say

But women don’t tolerate dissent too.

I refuse to abide by

your brahminical morality

while you liberal savarnas

teach me ‘how to be an intellectual’

as you impose your language and mannerisms on me.

I want my room

and my time

I refuse to be your clerk

at your service

an uncritical mind

I refuse to be another yesman

You so desire us to be.

IV

I don’t want to end up with another elite queer

whose upper-caste gaze operates on my body

as they assess how I smell

dress

talk, think, articulate

An intimacy that only works to disempower me.

They only seem to know to pity or patronize

the ones they have grown up othering.

Social conditioning impacts the psyche, you see

you cannot erase it with mere activism.

Unlearning demands far more time and intent.

I don't want to end up with another leftist
whose janeu boasts of Hindutva pride
and so I need Phule and Ambedkar in my bed
as I recall my dating thread.

I wish I grew up reading novels
and had taken my doze of popular series and films on time
to get more right swipes
But caregivers seldom have time for leisure, you see.

V

Sexuality has been quite there in our two-room house for six
with some privacy for parents
young boys exploring through porn
women laughing at sexual innuendos
sisters bonding as they discuss men.
Once a cousin recalled in public
How we would sometimes curl up in sheets
As she shared happily in nostalgia
I, filled with shame
did not know homophobia then
but there I was, doing it
as I dismissed
"another of her madness streaks!"
only to absolve myself of shame.

VI

She was new in the neighbourhood
The only child
Her parents would be out for work all day
She offered me space to read and sleep
while I waited for her to crawl and creep.
This had to happen silently
she never liked talking about it
but would mind if I stayed at someone else's some day.
The many romances I have had there!
The friends I invited home!
But it had to be her home
she had to see me
every day.

VII

I live in a rented room now
alone, finally!
One morning, my brother stood right there
outside the window
peeping through the glass
those eyes filled with fury
waiting for the opportunity
(to catch me red-handed?).
He had climbed up the railing to grab the view
I saw him carry a rod
thick enough to beat the shit out of you!
I hid myself
as he could see me
lying with her.

I barely managed to catch some breath
but could neither act nor move
in trying to cover us with a quilt
I only froze further
as if being raped again.
As I gathered the strength to scream
she woke me up
asking
if it was another bad dream.

***Bhanu** is a Bahujan, queer feminist, a caregiver and a research scholar based in Delhi. She does free writing to vent and sometimes be creative. Lately, she is developing her taste in food, travel and sarees. Grown up as a vegetarian, she began eating meat in resistance to hindutva politics, but is beginning to realize what she has been missing all her life!*

Tamarind Teeth Lollipop Suckers



this one's for the sweet loverfuckers
the street ruckus
the funky jugglers who juggle
pronouns on the tip of their tongue
like cigarette smoke
the dandies in ties and coats
the daddies in heels and skirts
this is for the heart smugglers
who steal and break hope
this one's for the orgies of revolutions
where we scream fuck you fuck us
it's for the freaks and the fuckups
the easy hippie hipster hooligan hookers
for the tamarind teeth lollipop suckers
i wanna write for the closets
for the under covers
i wanna write poems
for all my brothers
and my lovers
i wanna tell them
they're brave
and that we love us
and that we love us.

Aditi Angiras is a poet, writer and artist based out of New Delhi.

A Dream

I always knew I liked and loved differently,
Not the typical kind that you'd see in the movies
I would dream of a man sweeping me off my feet
Faceless but charming as he was, I began my search to make my own destiny
But who knew the universe had other plans for me



5 years and 5 men later, I met a beautiful woman.
With brown eyes, curly hair, and soft skin,
It felt like she was the person of my dreams,
It wasn't too long after that I began to think about her
Too often than I should've been.

It took me some courage
To realise that I had begun to have feelings
She had swept me off my feet
And my hopeless romantic self finally felt complete

As weeks past by, I found myself to be in love with her whole heartedly,
But then came judgement day that would tell me if I could be who i truly have always wanted to be.
"I am free" I wanted to scream,
As the judgement passed that I would no longer be called a criminal in my own country,
Oh, we held each so tightly and cried our hearts out like we had won a glorious victory.

A year after since then, we're still together
Spreading love for the better
Maybe someday we'll live equal lives of marriage and raising a family with children
Maybe someday there will be zero discrimination
For everything is fair in love and war
And if the war for love brings hope,
I'd like and love differently the way i always knew.
Just like I didn't see in the movies.

Mabel Andrady is a 21 year old poet, budding sociologist, actor and self taught instrumentalist, who loves sharing her experiences and adventures to the world through her blog, songs and stage performances. She wrote her first song when she was 7 and produced and directed her original play in 2018, expressing a common reality of coming out as their true self to themselves and their loved ones just like any other person from the LGBTQ+ community ever dreams of. She wishes to be a writer/director or music producer some day and adopt a few cute little puppies. Basically, just be her true self.

"SECTION 377 DECRIMINALISATION WAS A PORTAL TO MY NEW LIFE."

- R Mallika Iyer , Lesbian



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Mallika is a communication and visual designer working in the field of interaction and experience design. She loves to understand human behaviour and deliver a design best suitable for them. Other than design, she loves to sing and experiment with music. Being gay is just her sexuality, but being creative is her being herself.

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