

Footnote to Chapter 3

This note is a dedication of pride, remembrance and gratitude to LGBTQIA+¹ peoples, activists, lawyers, kin, and supporters who have pledged lives and lifelong commitments to Queer movements in South Asia. On September 6th, 2018, In *Navtej Singh Johar v Union of India*, the Supreme Court read down Section 377 of the Indian Penal Code. When I wrote this chapter, the Supreme Court had made an historic decision in support of Trans-rights but refused to speak to IPC 377, which identifies some of the specific tensions around the ways in which discourses of gender are stripped of their intertwining connections to sexuality, homophobia and desire. The September 2018 decision challenged that dualism, deliberately choosing to use the powerfully affective language of love, compassion, and dignity². The move to deploy language that is generally inadmissible in institutional spaces of the State is both a testament to courage, and the ways in which radical transformation can be enabled. To some, the reading down of IPC 377 might diminish the relevance (as understood in a teleological understanding of knowledge) of this chapter. To me, it is the opportunity for an absolutely crucial interlocution. The magnitude of the SC decision as a response to the transformative resistance that LGBTQIA+ peoples have been performing for decades now, allows us space to observe, and thoughtfully consider the relationship between constitutionality, cosmopolitan imaginaries as well as the intersectional fault-lines of caste, class, disability and queerness (among many others). In a recent address, Arvind Narrain describes the repeal of 377 as the “use of constitutional morality”³ to transform society and protect minorities. In our current modes of living, and relating to both one another, and the State apparatus, constitutional morality emerges as a necessary lodestar of protection. In the

¹ Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, plus other marginalised groups such as Pansexual, Aromantic, and other emerging identifications

² See full decision at: http://altlawforum.org/wp-content/uploads/2018/09/RightToLove_PDFVersion-1.pdf

³ See <https://www.youtube.com/watch?v=Zld1K9PECOI>

same address however, Narrain also notes that the transformation of *people* is a much messier, and more complex process, and, it is here that we might reflect upon the capacities of constitutional morality. That is to say, what are the limits and possibilities of constitutional morality, no matter how progressive, with respect to the *deep* transformation into radical openness that decolonial-queer-black feminisms insist upon? Recent reports tell of increased right-wing backlash against LGBTQIA+ individuals⁴ in the wake of the repeal, as well as the central government's silence in disseminating and sensitising the public⁵ to the Supreme Court decision, illustrating the lacunae between constitutional morality and State violence. The liberal cosmopolitan faith in constitutional transformation is, in many ways, validated by the repeal of IPC 377, while simultaneously revealing the limits of deploying the language of love, compassion, and desire within the remit of legality both as practice and institution. The work of corporeal cosmopolitanism, as theory-praxis really inheres here, in this moment. It prompts us to clarify what it is we are asking for in larger imaginaries of connectedness; to consider what modalities of love and desire we really want to inhabit. Are we ultimately content for love to be inscribed within constitutional and State bounds of dignity, choice, and individual desire? Or do we long for love to dismantle the very inhabitation of certain ontologies of boundedness?

⁴ <https://theleaflet.in/censorship-section-377-ruling-and-the-rise-in-right-wing-assault/>

⁵ <https://theleaflet.in/exclusive-centre-still-sitting-on-supreme-court-diktat-to-publicise-section-377-judgment-via-sensitisation-programmes-on-public-media/>