PREFACE

In India, few cases have been so closely followed, and their judgments as keenly awaited by a large section of society as Naz Foundation V. Government of NCT of Delhi in 2009. The verdict was eagerly awaited, not just by lawyers and commentators, but also by activist and a broad cross section of ordinary people. Acutely aware of the case’s importance Chief Justice Ajit Prakash Shah and Justice S. Murlidhar of the Delhi High Court has not disappointed the struggling LGBT Community of India.

The Court recognized that what was at stake was not only the decriminalisation of a particular Sexual act but rather the decriminalization of the intimate lives of queer people. It also recognized that sexuality was integrally linked to identify and that ‘for every individual, whether homosexual or not, the sense of gender and sexual orientation of the person are so embedded in the individual that the individual carries this aspect of his or her identity wherever he or she goes’. The court concluded that the expression of sexuality requires a partner, real or imagined. It is not for the state to choose or to arrange the choice of partner, but for the partners to choose themselves. The judgment was more than just a legal verdict as it marked the beginning of the process by which queer people became subjects of rights.

The moment of the judgment is indeed the moment of queer people becoming citizens as the Court declared Section 377 to be violative of the rights of equality, privacy and dignity of queer people. Their stirring conclusion that Section 377 of Indian Penal Code, 1860 is unconstitutional for criminalizing consensual adult sex is set within the elegant drapery of an aesthetically spun judgment, neatly embroidered with careful reasoning and plentiful citations. The Naz bench displayed great courage and craftsmanship in fashioning a historic decision heard loud and clear, not only in India, but across the world.

1Naz Foundation v. Union of India 160 (2009) DLT 277 (129)
At the same time judges have displayed great humanism sensitivity and empathy.

It indeed was a historic judgment related to life of homosexuals. It is more than six decades since our country gained independence and yet there is one important minority that still continues to live in constant fear and daily humiliation. It's a minority whose very existence is treated as a crime. To this minority belong all those with alternative sexualities; lesbians, gays, bisexuals and transgender (LGBT).

In India, homosexuality is still considered taboo by the civil society. The oppression faced by gays and lesbians are no less tragic. They become aware of their different sexual orientation in a very homophobic society. The resultant confusion, fear and guilt haunt them through their youth. Doctors and psychiatrists in India have been known to subject gays and lesbians to shock therapies in order to supposedly 'cure' them. Unfortunately, this happens despite associations of psychiatrists and psychologists all over the world stating that it is a normal human variant. Some parents force heterosexual marriage on their gay son or daughter, believing after the marriage their son or daughter will become normal. The result is disastrous not just for the individual but also for the person they are married to.

Though news stories related to Gay, Lesbians, Bisexuals, Transgender topics have made front page news and headlines, between July 2009 to December, 2013, still there has not been enough understanding of the LGBT men and women or their lives. While there has been certain openness of late in metros, and other big cities, the LGBT population has still been largely invisible, not only due to marginalization by a dominant patriarchal society, but also because of fear of ridicule and stigma. The society at large has always overlooked the existence of LGBT community. They usually do not know enough about real life LGBT Persons, their lives at work apart from the stereotypical portrayals they have seen in movies or television. The LGBT community themselves feel that they lack positive role models, making it
difficult for LGBT persons to ‘come out’ and demand their rights and social equality.

The effects of Naz Judgment were rampant and visible in newspapers, Social Media, television, print media etc. whereby many LGBT people have come out of closet revealing their sexual preference and identity without any fear or guilt. Many Bollywood celebrities, psychologists, columnist have stood by them and pleaded general public to accept LGBT people with open heart. Many psychologists’ column even started counseling people with how to deal if their friends turns out to be a gay. The money makers were not left behind, few travel planners had designed special packages for gay travelers luring and projecting India as a safe Gay Honeymoon destination. Famous Archies Gallery has also released special Valentine cards for gay couple. But the mass of India, including politicians, religious leaders acted like custodian of morality and Indian society, unaware of real intricacies involved with the LGBT struggle kept on showcasing their disappointment, disagreement and a complete set of revolt against Naz Foundation Judgment. This all has resulted in appeal filed before Supreme Court of India with the objective of challenging the bold and liberal judgment of the Delhi High Court. The Supreme Court verdict of 2013 in Suresh Kumar Kaushal & Ors.V. Naz Foundation and Ors twisted the fate of LGBT people in India by again recriminalizing all consensual or non-consensual homosexual acts. The Supreme Court’s judgment was criticized by a host of academicians, lawyers and Human rights & LGBT activist. The judgment claimed that the fact that a minuscule fraction of the country's population was gay or transgender could not be considered a sound basis for reading down Section 377. The Supreme Court has abdicated its responsibilities by not giving any weightage to the amount of harassment, torture and molestation suffered by LGBT community. Rather, the apex court of India has shuffled off its responsibility to Parliament, by declaring that the present homosexual law is completely sound & if the government feels it is suitable for parliament to legislate upon this issue. The consequences of Supreme Court’s judgment was obvious, the LGBT people again disappeared
and went back to closet even in metro cities. Various NGO’s who were working openly for the cause of homosexuals again stopped responding to homosexual queries, as they fear of being charged for abetment of an offence under section 377 IPC. The LGBT News was missing in all sources of media. After a long gap, a famous show on star plus by Bollywood actor Aamir Khan productions, named ‘Satyamev Jayate’ raised up this issue in its season 3rd episode on ‘alternate sexuality’, telecasted on 19 October, 2014.

The biggest obstacle to equality for the LGBT community comes from the law. To our eternal shame, Section 377 of the Indian Penal Code still criminalizes homosexuality even among consenting adults calling it ‘against the order of nature’ and punishes such acts for a term which may extend to 10 years. This law is a blot on modern India and must be amended.

The Delhi High Court verdict of 2009 gave some breathing space to this minority community but as Supreme Court again recriminalized it, the battle is still on.

The judgment given by Supreme Court of India is still challenged under curative petition before the apex court itself. What is expected of the apex court is that it will give its verdict in favour of humanity and ‘equity, justice, and good conscience’.

Untill now, a certain level of compassion, understanding, respect for human values is wanted from all of us so that we accept people of alternate sexuality with dignity and respect. After all ‘Humanity is above sexuality’.

This multi-dimensional research work aims at tracing the legal and social journey of homosexuality in India.