

India's riotous triumph of equality

The country's Supreme Court didn't just strike down an outdated British colonial law — it did so in a ruling that could reverberate across the globe.

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In a landmark ruling last week, the Indian Supreme Court didn't simply strike down Section 377, the odious British-introduced law criminalizing homosexual acts — it did so in a judgment of remarkable scope and eloquence.

The judgment opens with a quote from Goethe: "I am what I am, so take me as I am." It relies on knowledge from psychology and science to support its reasoning, even giving a nod to rainbow symbolism ("different hues and colours together make the painting of humanity beautiful"). Most of all, it is a heartfelt discourse from the justices to their nation on the importance of human rights and diversity, an invitation to move "from bigotry to tolerance," to serve "as the herald of a new India."

Originally imposed in the 19th century, Section 377 was provisionally

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invalidated in 2009, prompting many Indians to cautiously begin coming out. But in a cruel 2013 reversal, two justices granted the petition of an assortment of self-styled moralists and religious groups and reinstated the law. They ruled that the Indian L.G.B.T. population was a

"minuscule fraction" too small to warrant protection.

The new judgment bluntly labels this argument "fallacious" and "constitutionally impermissible." The justices turn to mathematical metaphor to drive home their point: The idea of population size, they write, "in this context, is meaningless; like zero on the left side of any number." More strikingly, they quote a compendium of international decisions supporting gay rights, in stark opposition to the 2013 justices who declared they would not be swayed by such foreign endorsements. It's impossible, of course, to know the intentions of the five justices who wrote the unanimous decision. But in reading the ruling, it's hard to avoid concluding that the judges may have been deliberately attempting to pick up the torch from Western democracies and make India the newest beacon of hope for L.G.B.T. populations languishing in repression around the globe.

Looking at this rich collection of precedents (including some from nonwhite-majority countries like Nepal, the Philippines and South Africa), one gets the impression that the justices have tried to gaze beyond India, doing the homework for future courts in other countries that will decide similar cases, based on similarly vesti-



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gial colonial-era impositions. Perhaps they're aware of how much more persuasive the example set by a non-aligned country like India might be for countries in Africa and Asia, compared with advice handed down by the West, which is often seen as patronizing. Perhaps they've even slipped in a sly admonition for some of their originalism-obsessed counterparts in the United States, with the repeated exhortation that courts need to view original intent through the lens of contemporary society, that without a "dynamic, vibrant and pragmatic interpretation," the Constitution becomes lifeless.

And what does contemporary society in India say? Well, the last time I met my uncle in Delhi (who's in his 80s and from the more orthodox side of my family), he shooed his grandchildren out of the room to ask me an "important question." To my surprise, it wasn't the usual "When will you get mar-

ried?" — he said he already knew I was gay, had a "friend." Instead, he asked, "But how exactly do gays do it?"

All my attempts to escape this conversation proved futile, and I ended up having to give him a primer on the subject (I still blush at the level of detail he extracted with his persistence). Just when I thought his curiosity was finally sated, he asked, "But how do lesbians do it?"

Certainly, on the five trips to India I've made with my partner, we've never experienced discrimination. From the hotel staff who've smilingly made our bed to a cousin who burst into our room at 7 a.m. with morning tea, everyone has been unfazed by the idea of two men sleeping together. Moreover, there has been an immense amount of media exposure as a result of the twists and turns of Section 377, and even Bollywood has started presenting gay characters who are

full-fledged humans, not caricatures.

But of course, there is still a lot of homophobia in India, which will require much time and effort to overcome.

Indian society is very stratified, and the brunt of discriminatory laws is felt mostly by low-income groups and other vulnerable segments of society. The new ruling repeatedly refers to their need for protection.

It also studiously avoids the subject of gay marriage — and with so much of Indian culture and society revolving around marriage, equal rights on this issue will be crucial. As the United States has demonstrated, marriage equality can significantly hasten the process of broader societal acceptance. Legal unions have a way of neutralizing objections.

But one wonders whether the court, in its extraordinary ruling, has already begun laying the groundwork for a gay marriage decision in terms of how it

has fashioned some of the language. Could the justices really have incorporated statements like "Discrimination of any kind strikes at the very core of any democratic society" without seeing them as steppingstones to marriage equality?

I called my uncle to gauge his opinion of the ruling, but he hadn't heard about it yet.

I told him I was coming to Delhi in December, and this time, he'd be able to meet my "friend."

I wanted to add that we were thinking of finally tying the knot, and ask how he would feel using the term "husband" instead. But the connection was bad, and he had something more pressing to convey. "You two should stay with me," he said.

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Celebrating the Indian Supreme Court's decision to strike down a colonial-era ban on gay sex, in Mumbai.