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Choosing a Partner is a Person's Fundamental Right: SC

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The Supreme Court has observed that choice of a partner is a person's fundamental right, and it can be a same-sex partner. The observation came on the first day of hearing by a Constitution Bench of petitions challenging the constitutionality of Section 377 of the Indian Penal Code. Section 377 criminalises private consensual sex between adults.

Key Observations

- The right to sexual orientation was meaningless without the right to choose a partner.
- The observations were drawn from the March 2018 judgment in the Hadiya case, which held that influencing an adult's choice of partner would be a violation of the fundamental right to privacy.
- It is to be further tested whether Section 377 stood in conformity with Articles 21 (right to life), 19 (right to liberty) and 14 (right to equality) of the Constitution.

Background

- Section 377 of the IPC dates back to 1861 and criminalises sexual activities against the order of nature and the ambit of this law extends to any sexual union involving penile insertion.
- In 2009, in a landmark judgment, the Delhi High Court had described Section 377 as a violation of the fundamental rights guaranteed by the Constitution. Following this, religious groups moved the Supreme Court for a direction against the verdict.
- However, the Supreme Court in 2013 overruled the Delhi High Court's order and reinforced criminalisation of homosexuality stating that changes to the legislation should be made by the Parliament
- This judgment was highly criticised by the LGBTQ community in India and was seen as a setback for human rights.
- In January 2018, the Supreme Court observed that the 2013 judgment requires to be reconsidered because of the constitutional issues involved.