

SC decriminalises homosexuality

■ Section 377 has been a reason for much tragedy and anguish

■ Bench says history owes the LGBTQ community an apology

■ Choice of a partner is part of the fundamental right to privacy

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In a landmark judgment on Thursday, a five-judge Constitution Bench of the Supreme Court decriminalised homosexuality, with a prayer to the LGBTQ community (Lesbian, Gay, Bisexual, Transgender and Queer) to forgive history for subjecting it to “brutal” suppression.

The Bench, led by Chief Justice of India Dipak Misra, unanimously held that criminalisation of private consensual sexual conduct between adults of the same sex under Section 377 of the Indian Penal Code was clearly unconstitutional. The court, however, held that the Section would apply to “unnatural” sexual acts like bestiality. Sexual act without consent continues to be a crime under Section 377.

In four concurring opinions, the Constitution Bench declared the 156-year-old “tyranny” of Section 377 “irrational, indefensible and manifestly arbitrary.” Section 377 thus far punished homosexuality with 10 years of imprisonment.

Lawmakers’ lethargy

The prayer for forgiveness came from Justice Indu Malhotra, the lone woman judge on the Constitution Bench. “History owes an apology,” she said, reaching out to the rainbow spectrum.

Historic verdict



Rainbow nation: Supporters of the LGBT community celebrating outside the Supreme Court in New Delhi on Thursday. ■ R.V. MOORTHY



CJI FOR HIMSELF AND JUSTICE A.M. KHANWILKAR

Section 377 assumes the characteristic of unreasonableness, for it becomes a weapon in the hands of the majority to seclude, exploit and harass the LGBT community. Bigoted and homophobic attitudes dehumanise. Section 377 is irrational, indefensible and manifestly arbitrary

Justice D.Y. Chandrachud called the law “Macaulay’s legacy,” which continued for 68 years despite a liberal Constitution because of the manifest lethargy of the lawmakers. He said it shackled the human instinct to love. It had been a reason for much tragedy and anguish.

“It is difficult to right a wrong by history. But we can set the course for the future,” Justice Chandrachud wrote in his separate opinion.

He said decriminalisation of homosexuality was just a step. This case was about pe-

ople wanting to live with dignity. Citizens cannot be pushed into obscurity by a colonial law, he wrote.

A self-correction

Section 377 discriminated against a minority based solely on their sexual orientation. It violated the right of the LGBTQ community to “equal citizenship and equal protection of laws.” The court held that bodily autonomy was individualistic. Choice of a partner was part of the fundamental right to privacy.



R.F. NARIMAN

When the state has no compelling reason to penalise same-sex couples who cause no harm to others, it is a violation of fundamental rights



D.Y. CHANDRACHUD

What is the ‘order of nature’? State cannot decide the boundaries between what is permissible or not. Section 377 is based on deep-rooted gender stereotypes



INDU MALHOTRA

History owes an apology to members of this community and their families, for the delay in providing redressal for the ignominy and ostracism they suffered...

The court set aside its 2013 judgment in the Suresh Koushal case. Legal experts said this was a much-needed self-correction of a past judicial wrong committed against the community. Experts said the Constitution Bench verdict would become the foundation for members of the community to seek individual rights.

COMMUNITY NEEDED THE RAINBOW OF HOPE: CJI ▶ PAGE 13
GOVT. SHOULD HAVE TAKEN A STAND, SAYS JUDGE ▶ PAGE 13
THE RIGHT TO LOVE ▶ EDITORIAL