

SC notice to govt. on petition to outlaw Section 377

The Supreme Court on Monday asked the government to respond to a plea by a hotelier to strike down the colonial Section 377 of the Indian Penal Code which criminalises homosexuality.

A bench headed by Chief Justice Dipak Misra issued notice to the Centre on the plea by the Lalit Suri hospitality group head Kesav Suri, seeking the 'Right to choice of sexual orientation' to be declared as part of the fundamental right to life and personal liberty under Article 21 of the Constitution.

The Bench, also comprising Justices A.M. Khanwilkar and D.Y. Chandrachud, considered the submission of senior advocate Mukul Rohatgi on behalf of the hotelier and asked the Centre to respond within a week.

January 8 ruling

On January 8, the three-judge Bench decided to re-visit a December 2013 verdict of the Supreme Court in *Suresh Kumar Kaushal versus Naz Foundation*, which dismissed the LGBT community as a negligible part of the population while virtually denying them the right of choice and sexual orientation.

The court said a section of people cannot live in fear of a law which atrophies their right to choice and natural sexual inclinations. It said societal morality changes with time and the law should change pace with life, adding that the concept of consensual sex may require more protection.

While the court noted that Section 377 punishes carnal intercourse against order of nature, it added that "the determination of order of nature is not a common phenomenon. Individual autonomy and individual natural inclination cannot be atrophied unless the restrictions are determined as reasonable". It observed that what is natural for one may not be natural for the other, but the confines of law cannot trample or curtail the inherent rights embedded with an individual under Article 21 (right to life).

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