

**SC defends govt. stand on Sec. 377**

Seeking their space: Supporters of the LGBT community at a rally in Kerala.K.

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The Supreme Court on Thursday quickly came to the rescue of the government when it came under attack for not contesting the challenge to Section 377 IPC, which criminalises homosexuality.

The court reasoned that a subsequent “development” in the form of a nine-judge Bench upholding privacy as a fundamental right in 2017, may have prompted the Centre to leave the fate of the colonial provision entirely in the hands of the apex court.

Advocate Manoj George, representing the Apostolic Alliance of Churches in India and the Utkal Christian Council, accused the government of taking a “U-turn” before the five-judge Bench, led by Chief Justice of India Dipak Misra, examining the legality of Section 377 IPC.

**December 2013 order**

Mr. George, in a brief address, supported Section 377 IPC. He criticised the Centre for not standing up to the challenge to the provision. He read out to the court the arguments made by the Centre’s counsel from the December 2013 judgment in the Suresh Kumar Koushal case, which had upheld Section 377 and set aside the historic verdict of the Delhi High Court, reading down the penal provision to exempt consensual acts between adults from the purview of the Section.

The lawyer said the High Court, according to then Additional Solicitor General P.P. Malhotra, had imposed “extraordinary moral values” on the society by de-criminalising homosexuality in 2009. He said the present no-challenge of the government is nothing but a complete reversal of stance.

But Justice A.M. Khanwilkar immediately intervened to observe, “Why do you say this is a U-turn? There was a development with the Puttuswamy judgment (upholding right to privacy). There is no U-turn”.

Justice D.Y. Chandrachud joined in to note that the Centre had never contested the High Court verdict by filing an appeal in the Supreme Court. It was private parties like Mr. Koushal who came to the apex court.

Additional Solicitor General Tushar Mehta, for the Centre, rose from the second row to protest Mr. George’s statements. “We leave it to the court. We are merely not conceding to say if this (Section 377 IPC) right or wrong... we leave it entirely to your wisdom”.

Chief Justice Misra addressed the courtroom, saying “Let the Bar understand this. The issue raised here is of choice. They (petitioners) are saying ‘I have a choice. The court has conferred privacy on me. My sexual orientation comes with dignity and privacy. Now there is this one provision which annihilates my privacy and dignity. Is this not an interference on my constitutional rights’.”

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