

Section 377: SC to start hearing

A march in support of the LGBT community in Chennai. M. Karunakaran

The Supreme Court is likely to hear on September 8 curative petitions against Section 377 of the Indian Penal Code, a colonial-era provision criminalising consensual sexual acts of Lesbian, Gay, Bisexual and Transgender (LGBT) adults in private.

On February 2 last year, a Bench led by the then Chief Justice of India, T.S. Thakur, indicated that the petitions needed to be referred to a five-judge Constitution Bench for a possible back-to-roots, in-depth hearing.

The three-judge Bench of CJI Thakur and Justices Anil R. Dave and J.S. Khehar gave credence to arguments that the threat imposed by Section 377 amounted to denial of the rights to privacy and dignity, and resulted in gross miscarriage of justice.

Major boost

The fight against Section 377 got a major boost when a nine-judge Bench of the Supreme Court, while upholding the right to privacy as a fundamental right intrinsic to life and liberty, ripped apart a 2014 judgment dismissing the case against Section 377.

The nine-judge Bench on August 28 observed that the chilling effect of Section 377 “poses a grave danger to the unhindered fulfilment of one’s sexual orientation, as an element of privacy and dignity”.

In separate judgments, the Constitution Bench led by then Chief Justice of India J.S. Khehar concluded that the 2014 verdict by a two-judge Bench of the apex court pandered to a “majoritarian” view to turn down the LGBT community their inherent fundamental rights of life, personal liberty, equality and gender discrimination.

The 2014 judgment’s view that “a minuscule fraction of the country’s population constitutes lesbians, gays, bisexuals or transgenders” was not a sustainable basis to deny the right to privacy, Justice D.Y. Chandrachud observed in his judgment.

Last stand

The curative petitions was the last stand for the over a decade-old legal fight for LGBT rights. The Review Bench of the Supreme Court, in January 2014, had agreed with its original appeal judgment on December 11, 2013, setting aside the historic verdict of the Delhi High Court. The High Court had declared Section 377 unconstitutional.

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