

CJI: COMMUNITY NEEDED THE RAINBOW OF HOPE

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The 2013 Supreme Court judgment in the Suresh Koushal case had upheld Section 377 and set aside the reprieve won by the LGBTQ community when the Delhi High Court in 2009 decriminalised homosexuality. It had cast the community back into the shadows as “unconvicted felons.”

The five-judge Constitution Bench declared that once a nine-judge Bench had declared privacy to be a part of the fundamental right to life, nothing could stop the Supreme Court from upholding bodily autonomy and sexual orientation as a fundamental right too.

Chief Justice Dipak Misra, in his separate opinion shared with Justice A.M. Khanwilkar, held that the LGBTQ community possessed equal rights as any other citizen. Any societal repression of their innate and biological sexual orientation was against the fundamental right to free expression. Homosexuality was their order of nature.

Chief Justice Misra said the community needed the rainbow of hope for the sake of humanity. It should be allowed to live with dignity and without pretence about its identity. This verdict should be the beginning of a journey towards greater dignity, equality and liberty, he said.

Justice Rohinton F. Nariman, in his separate opinion, held that homosexuals had a fundamental right to live with dignity. They were entitled to be treated as human beings and should be allowed to imbibe the spirit of fraternity. Justice Nariman embraced the Yogyakarta Principles, which recognise freedom of sexual orientation and gender identity as part of human rights.

Justice Chandrachud said medical science should stop being a party to the stigmatisation of homosexuals by “trying to cure something that is not even a disease.” Medical professionals and counsellors should tweak their own attitude. Stigmatisation seriously affected members of the community.

Justice D.Y. Chandrachud pointed out that variations in sexual orientation had become a reason for blackmail on the Internet. Quoting Lenoard Cohen, he described how “shadows of a receding past” still controlled the quest of LGBTQ community for fulfilment.

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