

Short Despatches from the 377 Courtroom

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Today's Section 377 hearing at the Supreme Court was empathetic and invigorating, a far cry from the 2012 hearings that reduced the LGBT community to a series of acts, then refused to provide any kind of safeguards against state abuse because, as those judges asked, who really was targeted under this law?

In the Koushal Court in 2012, the two judges constantly interrupted counsel with outright irrelevant digressions on what constituted "carnal intercourse against the order of nature", the fig leaf of a phrase that targets LGBT persons under section 377. Today, instead, there were many minutes of humdrum monologue, that bordered on boredom, as the lawyers submitted their arguments at length, as the affirmative words of Naz Foundation, Lawrence and Puttaswamy were spoken unchallenged in a court of law. Where the Court did interrupt, it was in a manner that elevated the discussion. When Mukul Rohatgi argued that sexual orientation had nothing to do with gender he was stopped by J. Chandrachud to be told that to also speak of gender would be to expand the ambit of protection.

At another point, J. Nariman told the counsel he hoped there would be reliance on precedents from the European Court of Human Rights as well. The same judge also perfectly distilled the arguments at the heart of this case into two sentences: that the order of nature is a relative, constantly changing zone, and that in any event, LGBT individuals don't lie outside it.

Contrast this to the Koushal Court's horror of foreign precedent, to their mocking the Delhi High Court's "anxiety to protect the so-called rights of LGBT persons". Well, today's court seemed anxious too, but the anxiety seemed to be more about how to set right a past wrong. Nothing is going to make up for the fact that the Supreme Court should have finished off the decriminalization story with the 2013 judgment, but if it's taken this long, let's at least hope we get some fantastic jurisprudence for the struggles ahead.