

Short Despatches from the 377 Courtroom

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Today's hearings at the Supreme Court began with the unveiling of the much awaited position of the Centre on Section 377, which at first turned out to be not much a position. We were told that the Centre would defer to the wisdom of the Court. Let's be clear: this is not the same as the government supporting decriminalization. What is more, this silence was accompanied by insidiously worded notes of caution from the Additional Solicitor General, Tushar Mehta. The ASG told the Court that he held a few apprehensions, but as it turned out, it wasn't an apprehension that the mistakes of Suresh Kumar Koushal might be repeated. Instead, all the government wanted to strike a note of caution was about the level of relief the court might grant, the potential civil liberties overload that we might be confronted with, or the possibility of being beset by the twin abominations of incest and bestiality. There was a different stance that the government could have taken and indeed, in 2012 the UPA did so by unequivocally supporting the Delhi High Court decision, and then in 2013 filing a review petition against the Supreme Court decision. For those of us who keep saying the Centre is silent on the question of LGBTQ rights: what happened today was not silence. Their choice of words betray nothing but contempt for the queer community.

A notable difference from the Koushal hearings continued today in the form of the altered nature of digressions from the Court. Our two judges back then maintained a singular obsession with the roots and interpretation of the law, what it meant, how it could be interpreted, and of course, what was "carnal intercourse against the order of nature?" The Constitution Bench on the other hand is concerned with questions about the future. It seems to be almost a given that the time for decriminalization has come: the questions instead are about the content of what the fundamental rights chapter of the Constitution has in store for LGBTQ persons. The debate keeps going back to how broadly worded the final declaration in this matter could be, what possible futures it would entail.

If the first day of the 377 Constitution Bench hearings was a chance to see the Court display its empathy, today was about the lawyers displaying incredible craft. [Menaka Guruswamy](#), representing the IIT petitioners, reduced many of

us to tears. It wasn't the fact that she was the first female lawyer to speak in a testosterone packed litigation (and courtroom), though that was crucial. It wasn't the fact that she made it a point to address the sole female judge on the Bench time and again, though that was significant. No, it was rather the sheer force of her arguments that seemed to rip through the tangles of legal discourse and force the Court to confront the human cost of this case. In 2012 the judges in Koushal would keep asking the lawyers about the existence of LGBT persons. Today, Guruswamy acknowledged the presence of the petitioners who stood in the room, while also invoking the names of those who weren't there. These are the individuals the law affects, and in story after story, she told the judges how many lives were going by living under the shadow of this law. She opened up the space of what it meant to be queer, speaking of the right to love, of the Court's own mandate in protecting individuals, of times when district judges had protected runaway inter-caste lovers from their families. She spoke about the law's specific impact on transgender persons, on how it impeded the promise of full citizenship that NALSA pointed towards. In no uncertain terms, she reminded the Court of its duty to not just give a hearing, but to bridge the gap towards emancipation, to fulfil a promise that harks back to the framing of the Constitution.

Following her, Anand Grover's submissions reminded the Court that the judgment they delivered would be a potentially powerful shield for the community and should be composed accordingly. Jayna Kothari, representing a set of transgender persons from Karnataka spoke about the continuing impact of the Criminal Tribes Act through provisions such as the recently repealed Section 36 A of the Karnataka Police Act which specifically targeted "eunuchs". Shyam Diwan brought the days proceedings to a close with notably pointing out how the right to life under Article 21 included the right to intimacy.

I write these words charged with a sense of hope that feels all the more crucial because it is increasingly rare. For all the hurt that we have felt because of the Court, for all the times that it will probably trip and potentially fail us in the future, today was important. At one point, the ASG attempted to interrupt Menaka Guruswamy, prompting the Chief Justice to snap: "Let her speak!".

She spoke, and we were heard.