INTRODUCTION

Unnatural sexual offences defined as whoever voluntarily has carnal intercourse against the order of the nature with any man, women, or animal. (377 IPC). The Section 377 of the Indian Penal Code (IPC) is an act that criminalises homosexuality and was introduced in the year 1861 during the British rule of India. Which said that whoever voluntarily carnal intercourse against the order of nature shall be punished with imprisonment for life. In 2016, five petitions were filed in SC by LGBTQ (lesbian, gay, bisexual, transgender, transsexual, queer, questioning, intersex, asexual, ally, pansexual) activists claiming that their “rights to sexuality, sexual autonomy, choice of sexual partner, life, privacy, dignity and equality, along with the other fundamental rights guaranteed under Part-III of Constitution, are violated by Section 377”. In August 2017, the Supreme Court had upheld the Right to Privacy as a fundamental right under the Constitution. It also observed that “sexual orientation is an essential attribute of privacy”. On September 6, 2018, the apex court bench announced that consensual adult gay sex is not a crime and article 14 and 21 of Indian Constitution contradict the present view of Section 377. It also said that Section 377 remains in force relating to sex with minors, non-consensual sexual acts, and bestiality.

Writ Petition (Criminal) No. 76 in year 2016 was filed for declaring —right to sexuality, right to sexual autonomy and right to choice of a sexual partner to be part of the right to life guaranteed under Article 21 of the Constitution of India and further to declare Section 377 of the Indian Penal Code to be unconstitutional. Case plea heard by three judges’ bench and they emphasized on gender identity and sexual orientation then nine judges bench gone through this case and majority opined that sexual orientation is an essential component of rights guaranteed under the Constitution which are not formulated on majoritarian favour or acceptance.

American Psychological Association has opined that sexual orientation is a natural condition and attraction towards the same sex or opposite sex are both naturally equal, the only difference being that the same sex attraction arises in far lesser numbers.

The petitioners have highlighted that the rights of the lesbian, gay, bisexual and transgender (LGBT) community, who comprise 7-8% of the total Indian population, need to be recognized and protected, for sexual orientation is an integral and innate facet of every individual’s identity. (1)

Various situation of unnatural sexual intercourse and interpretation by law.

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Unnatural sexual intercourse with children by adult

Unnatural sexual assault with children defined in section 3 (a) of POCSO act 2012, it says that a person is said to commit penetrative sexual assault” means be penetrates his penis, to any extent into the vagina, mouth, urethra or anus of child.

Unnatural sexual assault by this act can be two types under POCSO act.

Unnatural sexual intercourse with female by a male with consent: According to section 375 IPC exception clause and 06 Sept 2018 supreme court LGBTQ related verdict now, it is not punishable.

Unnatural sexual intercourse with female by a male without consent: Unnatural sexual intercourse now explained in rape in section 375, stats that man is said commits rape when – man penetrate his penis to any extent, in the vagina, mouth, urethra or anus of a women or makes her to do so with him or any other person. Punishments of unnatural sexual offences given in different section and subsections under the rape: 376, 376A, 376AB, 376C, 376D, 376DA, 376DB

Unnatural sexual intercourse with male by male with consent: On September 6, 2018, the apex court bench announced that consensual adult gay sex is not a crime and article 14 and 21 of Indian Constitution contradict the present view of Section 377.

Unnatural sexual intercourse with male by male without consent: Sexual intercourse by an adult male with an adult male like Sodomy and buccal coitus without consent shall be booked under section 377 IPC. Punishment for life or with imprisonment of either description for a term of which may extend ten years and shall also liable to fine.

Unnatural sexual intercourse with a minor by a minor with consent or without consent: This type of offences deal concerning with juvenile justice act 2015. This type of cases trial should do at juvenile court of every district. There is no punishment for child and would be send to borstal school or reformatory or rehabilitation centre.

CONCLUSION

Unnatural sexual intercourse offences described and punished in different section. Treating doctor and forensic personnel should examine person and maintain record according to guidelines prescribed in unnatural sexual offences at different section. Government given different guidelines and different Act for the different type of unnatural sexual offences. If doctor not following the government order or guideline is punishable under section 166A IPC which was introduced by the criminal law amendment act 2018.

References


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