

PRAYAS INSTITUTE OF JUVENILE JUSTICE
LEGALISING HOMO-SEXUALITY
Discussion, February 1, 2003

OUTLINE OF ISSUES

A voluntary organisation has filed a public interest litigation (PIL) in the High Court of Delhi, praying for the legalization of homosexuality, on the ground that law against it is violative of 'fundamental rights' and 'human rights' and that it jeopardizes HIV/AIDS prevention efforts. The prayer is that Section 377 of the IPC is deleted. This gives rise to several basic and serious issues, before a considered view could be taken.

Section 377: *Whoever voluntarily has carnal intercourse against the order of the nature, with any man, woman or animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also liable to fine.*

May it be noted that very few cases are reported to the police in the country under this law.

RETROSPECT

- In ancient India, homosexuality was considered an unnatural and pervert behaviour, and was looked down upon.
- In the Western world, much before such expressions as 'horrible vice' or 'buggery' came into vogue, it was considered a major sin. Old Testament describes a whole civilization, during prophet Lut, being annihilated because, among others, of widespread homosexuality.
- In Mughal India, though capital punishment was not awarded for homosexuality, it was considered a major sinful behaviour punishable under Islamic laws.

CIVIL SOCIETY & HOMOSEXUALITY

- Sexual activity is personal, emotional and physical behaviour. Whether heterosexuality or bi-sexuality or homosexuality, primary sexual activity almost always takes place in privacy. Hence, the issue of interference into one's privacy does not arise.
- Freedom does not mean license. Injection Drug Users (IDUs), organized Commercial Sex Workers (CSWs), or Men having Sex with Men (MSMs) can hardly take recourse to Fundamental Rights to persist in their behaviour unhindered.
- It is erroneous and imprudent to say that we have a 'gay community'. There are present hardly any of the accepted prerequisites of community. At best, gays make for a small discrete group of freaks or perverts. It would be unwise to ignore larger interests of society, in order to cater to the whims of these disparate microscopic groups.
- It is incorrect to assume that homosexual behaviour is not 'unnatural'. It is just not there in other species. It is not the natural order. Clandestine and subterranean, homosexuality cannot be taken to be in consonance with Human Rights.

This would be abundantly clear, once attention is paid to the nature of human sexuality.

NATURE OF HUMAN SEXUALITY

- The foregoing would be abundantly clear, once attention is paid to the nature of human sexuality.
- *Homo sapiens* or human beings can control their sex urge.
- Sex urge among humans is not 'seasonal', it is perennial.
- Humans are capable of finding sex stimulation even in *asexual* situations. This is what explains homosexuality in this species, namely, *homo sapiens*.

- Homosexuality may not be a pathological condition, but it is assuredly a moral and social depravity.

HOMOSEXUALITY & SOCIAL CONTEXT

- Socio-cultural milieu in certain Western societies, with pronounced permissiveness, is markedly different from what we have on the sub-continent.
- In India, the custom of dating hardly enjoys social approbation.
- Problems of pre-marital or extra-marital sex relations are more of an exception than being the rule.
- The situation of *un-wed mothers* is hardly a public issue.
- The issue of homosexuality needs to be appraised against this backdrop.

HEALTH & HOMOSEXUALITY

- It is presumptuous to assert that strengthened Human Rights lead to 'safe sex'.
- It is also presumptuous to assert that legalization of homosexuality would promote 'safe sex'.
- It may well be kept in view that homosexuality or heterosexuality is not the route of transmission of HIV, but promiscuity and multi-partner sex is. Legalisation of homosexuality is no insurance against the latter.

IMPLICATIONS OF SANCTIFIED HOMOSEXUALITY

- Homosexuality attacks the very foundation of human civilization.
- It militates with the social values and norms of individual and group behaviour in India.
- This is likely to adversely affect interpersonal relations in the family, neighbourhood, school and workplace.
- This is likely to encroach upon the sensibilities of decent citizens.

IMPLICATIONS FOR CHILDREN

- The afore-mentioned PIL does not differentiate between children and adults.
- Year after year, a large number of cases are reported about children and juveniles being sexploited by grownups. Sometimes the trauma they undergo remains etched on their psyche throughout their life. Apart from Section 377 of the IPC, JJ Act, 2000, carries specific provisions against this (Section 23).
- Legalisation of homosexuality is likely to open the floodgates and make children and juveniles still more vulnerable.

LAST WORD

It is logical and rational (maybe it is not fashionable) that the law against homosexuality continues to be there on the statute book. Though the incidence is minuscule, but it serves as a vanguard for decent behaviour in public.
