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FORUM



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Newsletter from Department of Forensic medicine & Toxicology



SECTION 377 IPC

“377. Unnatural sexual offences.—Whoever voluntarily has carnal intercourse against the order of 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 be liable to fine.

***Explanation.*—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”**

Lacking precise definition, Section 377 became subject to varied judicial interpretation over the years. Initially covering only anal sex, it later included oral sex and still later, read to cover penile penetration of other artificial orifices like between the thighs or folded palms. The law made consent and age of the person irrelevant by imposing a blanket prohibition on all penile-non-vaginal sexual acts under the vague rubric of ‘unnatural offences’.

Section 377: A history and key highlights

This section in Chapter XVI of the IPC was introduced during the colonial rule criminalising any sexual activity 'against the order of Nature'. The law states that those who voluntarily indulge in carnal intercourse against the order of Nature with any man, woman or animal shall be punished with imprisonment for life or for a term which may extend to 10 years and also be liable to a fine. According to Rudranee Goswami in her paper, Historical evolution of Section 377 and its location within the LGBT movement in India, the section was written to criminalise, discourage and prevent homosexual relations, especially acts involving penile penetration and "even heterosexual acts such as fellatio and penile penetration maybe a punishable offence."

Section 377, IPC constituted one of the biggest impediments in access to health services for MSM. MSM remained a hidden population due to fear of prosecution under the law. Through its interactions with clients, Naz Foundation became acutely aware of the disproportionate and invidious impact of Section 377 on homosexuals.

Writ Petition in the High Court of Delhi

Lawyers Collective, on behalf of Naz Foundation filed a writ petition in the Delhi High Court in 2001, challenging the constitutionality of section 377 on the grounds that the draconian law grossly violates the right to privacy, dignity and health under Article 21, equal protection of law and non-discrimination under me Articles 14 and 15 and freedom of expression under Article 19 of the Constitution. A notice was issued to Union of India in 2002 and the Attorney General was asked to appear. In 2004, the petition was dismissed by the High Court (citing lack of action). A review petition was then filed against the dismissal, which ironically was dismissed too and then after a Special Leave to Appeal was filed in 2005, a year later the Supreme Court said, "the matter does require consideration and is not of a nature which could have been dismissed on the ground afore-stated." In 2009, the Delhi High Court, much to the relief of the LGBTQI community passed a judgment that Section 377 indeed was violative of Articles 21, 14 and 15 of the Constitution as it criminalized the consensual sexual acts of adults in private.

Before India could take its first steps towards progress, the Supreme Court quashed Delhi High Court judgment in 2013 and declared that it was a judicial overreach and that it was not "for courts to create the law" said the two-judge bench headed by Justice GS Singhvi. The Supreme Court backed out, but passed the ball to the Parliament to review a law that considered private sexual activity criminal.

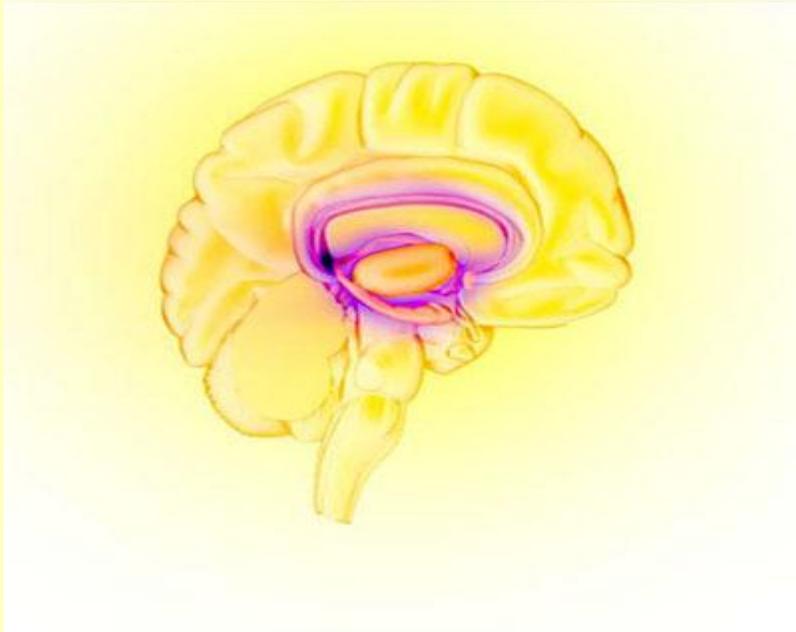
Striking down Section 377

Various NGOs in their petitions and documents has maintained that this section is dangerous to a community because the law sought to criminalize someone's sexual identity and expression, putting them at the risk of extortion, blackmail and harassment. Since the law condemns them as "criminals", they have no legal recourse but only stigma and prejudice. Many homosexual men with HIV do not get tested because of fear of discrimination and prosecution.

"the recent prosecutorial use of Section 377 IPC, the same is detrimental to people's lives and an impediment to public health due to its direct impact on the lives of homosexuals; that the section serves as a weapon for police abuse in the form of detention, questioning, extortion, harassment, forced sex, payment of hush money; that the section perpetuates negative and discriminatory beliefs towards same sex relations and sexual minorities in general; and that as a result of that it drives gay men and MSM and sexual minorities generally underground which cripples HIV/AIDS prevention methods."

DRUG ADDICTION

Addiction is a chronic disease characterized by drug seeking and use that is compulsive, or difficult to control, despite harmful consequences. The initial decision to take drugs is voluntary for most people, but repeated drug use can lead to brain changes that challenge an addicted person's self-control and interfere with their ability to resist intense urges to take drugs. These brain changes can be persistent, which is why drug addiction is considered a "relapsing" disease—people in recovery from drug use disorders are at increased risk for returning to drug use even after years of not taking the drug.



IMPACT OF DRUGS ON BRAIN

Most drugs affect the brain circuit by flooding it with the chemical dopamine. This circuit controls the body's ability to feel pleasure and motivates a person to repeat behaviors needed to thrive, such as eating and spending time with loved ones. This overstimulation of the reward circuit causes the intensely pleasurable "high" that can lead people to take a drug again and again. As a person continues to use drugs, the brain adjusts to the excess dopamine by making less of it and/or reducing the ability of cells in the reward circuit to respond to it. Long-term use also causes changes in other brain chemical systems and circuits as well, affecting functions that include:

- learning
- judgment
- decision-making
- stress
- memory
- behavior

ADDICTION AND MENTALITY OF A PERSON

No one factor can predict if a person will become addicted to drugs. A combination of factors influences risk for addiction. The more risk factors a person has, the greater the chance that taking drugs can lead to addiction.

- **Biology.** The genes that people are born with account for about half of a person's risk for addiction. Gender, ethnicity, and the presence of other mental disorders may also influence risk for drug use and addiction.
- **Environment.** A person's environment includes many different influences, from family and friends to economic status and general quality of life. Factors such as peer pressure, physical and sexual abuse, early exposure to drugs, stress, and parental guidance can greatly affect a person's likelihood of drug use and addiction.
- **Development.** Genetic and environmental factors interact with critical developmental stages in a person's life to affect addiction risk. Although taking drugs at any age can lead to addiction, the earlier that drug use begins, the more likely it will progress to addiction. This is particularly problematic for teens. Because areas in their brains that control decision-making, judgment, and self-control are still developing, teens may be especially prone to risky behaviors, including trying drugs.

ADDICTION COULD BE CURED AND PREVENTED

Treatment for drug addiction generally isn't a cure. However, addiction is treatable and can be successfully managed. People who are recovering from an addiction will be at risk for relapse for years and possibly for their whole lives. Research shows that combining addiction treatment medicines with behavioral therapy ensures the best chance of success for most patients. Treatment approaches tailored to each patient's drug use patterns and any co-occurring medical, mental, and social problems can lead to continued recovery.

Results from NIDA-funded research have shown that prevention programs involving families, schools, communities, and the media are effective for preventing or reducing drug use and addiction. Although personal events and cultural factors affect drug use trends, when young people view drug use as harmful, they tend to decrease their drug taking. Therefore, education and outreach are key in helping people understand the possible risks of drug use. Teachers, parents, and health care providers have crucial roles in educating young people and preventing drug use and addiction.

ACHIEVEMENTS FROM THE DEPARTMENT OF FORENSIC MEDICINE

Department of forensic medicine has conducted a guest lecture on *MEDICAL LAW ETHICS AND CRIMINAL RESPONSIBILITY*, Speaker: Dr Jayaprakash, Prof and Head Dept of Forensic Medicine A. J. Institute of Medical sciences, Mangalore.

