

---

## Legalizing Homosexuality: A counter-view

---

**Amod K. Kanth**

General Secretary – Prayas

Institute of Juvenile Justice

59, Tughlakabad Institutional Area, New Delhi-110062

Telefax: 011-29955505, 29956244 (M)- 09810995059

Email: kanthamod@hotmail.com

---

All that Sonu (13, name changed) wanted was to spend some time with his mother, a sex worker, always surrounded by customers. Frustrated, he decided to stay home frequently visited by his mother's clients, and pursue his dream, going to school. One day, while his mother was away, a man entered his house and closed the door behind, started fondling his private parts, and sodomized Sonu causing him injury, severe pain and a life-time trauma. Sonu ran away from his home, became a truant and landed up in a crowded, shabby and terribly mis-managed institution, which he finds better than watching his mother being sold everyday and himself being sodomized by strangers.

Sonu was one of the 18,200 respondents interacted by the National Study on Child Abuse team led by me and the Joint Secretary, conducted by Prayas Institute of Juvenile Justice, sponsored & supported by the Union Ministry of Women & Child Development, Unicef and Save the Children Fund. Among the various forms of child abuse – physical, emotional, economic, drugs and girl child neglect, the most startling findings were about the sexual abuse. Among 12,447 children and 2,511 young adult respondents, over 50% disclosed having experienced different types of sexual abuse ranging from fondling & forcible kissing, violation of bodily privacy, pornography, sexual exposure & exploitation, to sodomy, rape and child prostitution. Out of them, surprisingly, 48.1 were female and overwhelming 51.9% were male children like Sonu, for whom the only legal remedy available in India is Section-377 Indian Penal Code (IPC) that provides against unnatural offences i.e. voluntarily having 'carnal intercourse against the order of nature with any man, woman or animal'. Whereas, sexual intercourse with a woman of all ages against her consent is prohibited under the law, there is nothing to protect the man including a child (below 18) from being 'raped'. The National Study on Child Abuse forms a basis for legislations and policy formulation to protect the children in the country and deserves to be considered.

Joining hands with the gay activists, the reported policy announcement made by Union Minister, Health & Family Welfare, in the International AIDS Conference in Mexico City suggesting deletion of Section-377 IPC, appears to be a one-sided affair, even contradicting the Ministry of Home Affairs which believes that it would open flood-gates of delinquent behaviour and take away the solitary legal course to prosecute the child abusers in India. Enthusiastic supporters of the homosexuality in India, sitting extremely odd with our socio-cultural ethos, it appears, have not carefully examined the legal provisions, their implications and the actual application on the ground. Enforcement of this law pertaining to unnatural sexual offences is so half-hearted, albeit insignificant,

that the National Crime Records Bureau (NCRB) has no collective data about them. However, Delhi Police Crime Records Bureau that covers a population of over 17 million, reports an annual average of about 80 cases, over 80% being registered in favour of sexually assaulted children and practically none that may concern our 'harassed' gay community. All over the country, the trend appears to be the same. The criminal cases are all about the public nuisance or indecent behaviour against homosexual lovers, transsexuals, transvestites or other (WHO classified) forms of personality and disorder behaviour in sexual preferences, such as, fetishism, exhibitism, voyeurism and pedophilia. Legally, socially and psychologically, one has to define and understand the issues before we take a stand on the subject.

As a sequel to the PIL filed in Delhi High Court supporting the gay rights which is now coming up for hearing in September 2008, in February 2003, a discussion was organized, 'Legalizing Homosexuality', chaired by the former Union Law and Justice / Information & Broadcasting Minister and the proceedings were forwarded to the government. All aspects of the issue, including the concept, origin and aetiology (genetic basis of homosexuality, biological and anatomical, endocrinological determinants, physical, gender and psychological abnormalities) besides the specific problems of children and youth, dormitories, forces, crimes and other relevant factors were considered in depth. Internationally acknowledged experts, social workers and activists concluded that homosexuality, a behaviour found in no other species, was considered as unnatural as the functions of specific body organs and senses. The need for some modifications in Section-377 IPC was appreciated but unnatural carnal sex with man, woman & animal was found against the law of nature and social norms universally.

Since, someone as responsible as India's Health Minister has pleaded for deletion of the legal provision that alone protects all male children and adults of India against sexual assaults and the issue is already in public domain through a PIL and the Ministry of Home Affairs, the views of the experts, stakeholders, concerned citizens and the voluntary organizations working for the Protection of Child Rights must be elicited. One has to examine whether the arguments being advanced on behalf of the homosexuals stand the legal & experts' scrutiny; whether this move has the wider societal approval; whether the deletion of Section 377 IPC alone will protect the so-called gay community in their public demonstration of their sexual practices which are considered to be an essentially private affair in the civilized world. Through plethora of legislations, policy pronouncements, national and international commitments to protect the children from abuse and exploitation, India's government and civil society is bound to take a duly considered view instead of being swayed by a minuscule segment of activists.