

MSM and the law in India

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In India the situation of MSM is not very rosy. The criminal law in the country has a section called Section 377, which criminalises “carnal Intercourse against the order of nature” with upto life imprisonment and possible fine. Although what constitutes carnal intercourse against the order of nature has not been specified in the statute, the courts have interpreted the same to include anal sex, oral sex, intra femoral sex [thigh sex], and mutual masturbation. In effect all the possible forms of sexual expressions between males have been criminalised.

But it must be stated that in India we have a very effective and strong evidence law which means that 377 is very hard to prove in a court of law, for penetration has to be evidentially established. This means that very few charges under 377 are brought in the courts. But 377 acts as a Damocles sword that hang on the head of all MSM. In public spaces it is the tool that the beat police have in their hands to threaten, abuse [sometimes sexually], and extort from MSM, for no one wants to be charged under a draconian law that is unbailable, not to speak of the shame that one and ones family faces in a traditional and oft conservative country like India. Often this harassment extends to outreach workers [drawn from the community] who go to the field to do HIV/AIDS intervention work. Thus HIV works gets impeded.

The other consequence of this section is that people and organisations that work with MSM can be charged with either abetting [encouraging] or conspiring to commit the offence under 377. This is exactly what the Lucknow 4 have been charged with.

Other than some NGOs that have clinics specific to the needs of MSM, there are no clinical facilities that are available for their typical/specific need. Often there is a marked lack of expertise on conditions like anal STDs.

The psychiatrist and psychologists associations of India have thus far chosen to ignore or not address that issue of homosexuality. In private interactions many agree that homosexuality is not treatable pathological condition, but innumerable psychiatrists, including those from some of the leading medical and mental health institutions in the country continue to iterate homosexuality.

The form that this treatment takes can safely be described as torture. It includes hormone therapy with several side effects, usage of drugs that dulls the faculties and leads to other psychological complications, and most horrendously aversion therapy. The way aversion therapy is conducted is nothing short of gory. The one being treated is shown a series of sexual pictures and, every time there is a homosexual picture, he receives an electric shock. The fact that the Psychiatrists the world over has rejected this form of treatment and the new scientific thinking is otherwise seems not to have made any impact what so ever on our psychiatrists.

The sad fact is that a complaint brought to the National Human Rights Commission over the fact that such treatment is continuing in the AIIMS [the

premier medical institution in India] by Naz Foundation India Trust was rejected as they thought of it as a non issue. One of the reason that NHRC took was that their hands were tied in view of 377. There 377 comes in again to shut up the NHRC. Even as homosexuals continue to be electrocuted into living zombies.

Well that is the law and services in a nutshell. Now to the Double Standards of the state:

With the advent of HIV, the state has taken a very progressive posture in the formulation of its policies and in international forums on the rights of MSM to health and HIV intervention. In this regard they have made many public announcements and this forms part of the National Aids Control policy. But the law has not been changed and that continues to exhibit not only a conflict and double standard in the government machinery, but also a impediment to effective intervention. This when serological data shows that HIV amongst MSM is very rapidly spreading.

NGOs have taken on the onus of all the effective intervention that is happening in India with PWAs and in regard to service provision. The government of both the centre and the various states have failed pathetically to provide the service that PWAs deserve as part of their fundamental right to health. PIP for opportunistic infections are not available in most governmental hospital in spite of the promise being made many months ago. They have done nothing effective to make ARVs affordable (here the private drug manufacturers have taken the lead, while the government does very little to support them in their fight against the multinational drug companies in the WTO, and via TRIIPS). The NGOs are the ones providing counselling, care, support, treatment, needle exchange, intervention for prevention, etc. All the government does is create impediments in accessing funds by creating bureaucratic problems, in accessing non-discriminatory care (for most government institutions still discriminate) etc.

The law creates the biggest impediment to intervention. The laws that discriminate and hurt the human rights of the most vulnerable has not been changed in India. The Narcotics and psychotropic substances act criminalised needle exchange with IDUs. The immoral traffics act allows police to harass sex workers and increase their vulnerability. Often identifiable vulnerable groups are tested against their wishes without their state consent, although the policy on testing says otherwise. In prisons setting there is no effective HIV policy and prisoners continue to be vulnerable. The state government often actively discriminate against positive prisoners, they are denied ARV [although their health is a state responsibility] and they are isolated in jails.

There has been no effective training of the police on the HIV policy or the human rights concerns of the vulnerable and affected. This means that they are at the forefront of creating impediment to intervention [Lucknow is an example]. The sad fact is that even when their role is publicised, the state does not do anything to control the damage and correct the wrongs (again Lucknow is an example). In effect the state, and more specifically NACO, has rarely come out in defence of its own policies even when those working under these policies have been targeted by the police and other state agencies.

The current climate can be assessed from what has been written above. But at the same time there is a very strong NGO response emerging and through NGOs and Human Rights organisations there is a lot of mobilisation for the rights of the vulnerable. It is happening for MSM and other vulnerable groups. I see the silver lining in this NGO effort. I have very little hope that government will do much by way of pro active intervention for the protection of the rights of the vulnerable.

Lucknow has helped in the coming together of many organisations for the cause of the rights of vulnerable groups. It has also generated enormous support for the MSM issue and has made it into a mainstream discourse in the HIV field. In that light Lucknow has been very helpful. please get back me any other clarifications or query.