

Explanation:-
penetration is
sufficient to constitute
the



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Explanation:- Penetration is sufficient to constitute the carnal intercourse necessary for the offence described in this section.

” Section 377 of the IPC is intended to punish carnal intercourse committed against the order of nature by a man with another man, or in the same unnatural manner with a woman, or by a man or a woman in any manner with a beast. Section 377 considers the acts of sodomy, buggery and bestiality as unnatural sex offences. Section 377 requires proof of the following conditions to hold a person liable for the offence: i) The accused must have carnal intercourse with a man, or a woman or an animal; ii) The act was against the order of nature; iii) The act was done voluntarily by the accused; and iv) There was proof of penetration. The offence under Section 377 is cognizable, and warrant should ordinarily issue in the first instance. It is both non-bailable and non-cognizable, and is triable by a Magistrate of the first class. The word ‘sodomy’ means carnal copulation committed by a human being with another human being per anus. Sodomy may be either homosexual or heterosexual.

In case the parties are of the same sex, it will be termed as homosexual and if the parties are of opposite sex it will be called as heterosexual. The term ‘bestiality’ means the sexual intercourse either by a man or by a woman carried out in any way with a beast. In *State of Kerala v. K. Govindan* [(1969) Cr. LJ 818 (Ker.)], it has been observed that: “The word ‘intercourse’ is the temporary visitation of the organisms by a member of the other organism

There is no intercourse unless the visiting member is enveloped at least partially by the visited organism, for intercourse connotes reciprocity. Therefore, to decide whether there is intercourse or not, what is to be considered is whether the visited organ is enveloped at least partially by the visiting organism. The term ' whoever' in Section 377 of the Code represents both male and female. The section is wide enough to include a woman as well.

Hence, a woman is also liable for committing unnatural offence under this section. However, the section is not attracted if the act is done either by a man or a woman with an inanimate object. Section 377 punishes unnatural carnal intercourse i. e., sodomy and bestiality. Under this section consent is wholly irrelevant.

The party consenting would be equally liable as an abettor. By virtue of explanation appended to it, penetration, as in the case of rape, however minimal it be, is required to constitute the carnal intercourse. The terms ' carnal intercourse' and ' penetration' are not defined in the I PC. According to Section 377, penile-anal, penile-oral or penile-animal penetration constitutes the ' carnal intercourse' against the order of nature. In *Lohana Vasantlal Doechand v. State of Gujarat* [AIR 1968 Guj. 252], it was observed that even mere penetration will be sufficient to constitute the carnal intercourse and there need not be necessary a seminal discharge for constituting the carnal intercourse. Mostly the offences of unnatural intercourse are committed upon boys or girls and eunuchs also known as Hijras.

In *Brother John Antony v. State* [1992 Cr. LJ 1352 (Mad.)], the petitioner a sub-warden of a Boarding Home was alleged to have committed unnatural offence with the inmates. The acts committed by the petitioner fell in two categories, namely, (i) insertion of the penis into the mouth of the victim boy and doing the act of carnal intercourse upto the point of ejaculation of semen into the mouth; and (ii) manipulation and movement of the penis of the petitioner whilst being held by the victim boys in such a way as to create an orifice like thing for making the manipulated movements of insertion and withdrawal upto the point of ejaculation of semen. It was held that both the above categories of acts fall within the sweep of unnatural carnal offences under Section 377.

In *Smt. Sudesh Jhaku v. State* [(1998) Cr.

LJ 2428 (Del.)], it was held that penile-mouth penetration amounts to an act contrary to Section 377 of the Code. In *Calvin Francis v. State of Orissa* [(1992) 2 Crimes 455 (Ori.

)], it was held that the person guilty of carnal intercourse against the order of nature when he puts his sex organ into victim's mouth as an initiative act of sexual intercourse. In *State of Kerala v. K.*

Govindan [(1969) Cr. LJ 818], the Kerala High Court held that an act of inserting the male organ between the thighs of another amounts to an unnatural offence contrary to Section 377. In *Khandu v. Emperor* [AIR 1934 Lah.

261], the accused was convicted for the carnal intercourse by placing his penis into the nostril of a bullock. The offence of the bestiality by men and women is performed with animals such as cows and buffaloes, mares, dogs and fowls, and in such cases penetration need not be per anum. The offence under Section 377 requires penetration, however little.

Hence, an attempt to commit this offence should be an attempt to thrust the male organ of the offender into the anus of the passive agent. A mere preparation for the operation is not enough. In *Nowshirwan Irani v.*

Emperor [AIR 1934 Sind 206], it was observed that where the offender made every preparation to satisfy his lust by carnal intercourse but he spent some time himself before he could thrust his organ in, he cannot be held guilty of an attempt to commit this offence. The offence of unnatural intercourse under Section 377 is cognizable, and warrant should ordinarily issue in the first instance. It is both non-bailable and non-compoundable and is triable by the Court of Sessions.

In *Ganpat v. Emperor* [AIR 1918 Lah. 312 (2)], it was observed that the other party to the offence in unnatural intercourse, if a rational being, would naturally be an abettor, and, according to the well-established practice of the Courts, his testimony should not, except in special circumstances, be acted upon, unless it is corroborated in material particulars. In 9 Case where the accused had committed an unnatural offence upon his wife, Patterson, J said: " There was a case of this kind which I had the misfortune to try and in it there appeared that the wife consented.

If that had been so here, the prisoner must have been acquitted; for, although consent or non-consent is not material to the offence, yet as the wife, if she consented, would be an accomplice, she would require confirmation; and so it would be with a party consenting to an offence of this kind, whether man or woman." An offence under this section can have no extenuating circumstances to warrant leniency in the sentence. In *Fazal Rab Choudhary v. State of Bihar* [AIR 1983 Cr. LJ 632 (SC)], the accused was charged and convicted under Section 377 IPC. While reducing the sentence to six months from three years, the Supreme Court held that for determining the quantum of sentence all aspects of the matter including the nature of offence and whether any force was used by the accused must be taken into account. In *State of Karnataka v. Gowrishankara Swamy* [Times of India, Lucknow, 3 Feb, 2004], the mark of the Sri Siddagana Mutt al Kyatasandra, Tumkur district, Sri Gowrishankara Swamy was found guilty of sodomy on a 13 year old student staying in the mutt for education and lodging and was convicted under Section 377 IPC to 10 years rigorous imprisonment and fine of Rs.

25 lakh. In *Mihir v. State* [1992 Cr. LJ 488 (Ori.)], the accused committed unnatural offence with a minor girl who gave minute details of the offence and her evidence was found reliable. The conviction of the accused under Section 377 was confirmed but considering that he had a broken family life and belonged to lower strata of society, his sentence of rigorous imprisonment for three years was reduced to two years. In *Raju v.*

State [1998 Cr. LJ 2587 (P&H)], the accused of 20 years old committed the offence of having carnal intercourse with the prosecutrix who is of nine years
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old against order of nature. The incident being properly proved, conviction under Section 377 followed with three years imprisonment in trial Court. In view of the nature of the offence and age of the appellant, the High Court held the accused should be kept in an environment of an institution other than jail to ponder and repent over his perversity and that the punishment under the circumstances is adequate.