

Economic Impact of Homophobic Laws

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Abstract: Homophobia is the feeling of apprehension that one might garner against homosexuality or people who consider themselves to be a part of the LGBTQ community. Many countries have laws which encourage evils like that of homophobia. This paper deals with homophobic laws in the Indian context and it specifically focuses on Section 377 of the Indian Penal Code. Section 377 of the Indian Penal Code criminalized consensual sex between two individuals which was considered to be "against the order of nature". Failure to adhere to this law was seen as a punishable offense which could even lead to lifetime imprisonment. On the 6th of September, 2018, in a historic ruling, the Supreme Court of India decriminalised Section 377 and declared that consensual gay sex between two adults was no longer to be considered a crime. This study analyses section 377 of the IPC while looking at the economic implications of the same. The study is aimed at explaining how Section 377 was discriminatory and had a direct as well as indirect effect on the productivity, efficiency and economic achievement of members of the LGBTQ community. It was found that the discrimination faced by the members of the LGBTQ community was not only reflected in the form of lack of opportunities in workplaces but also in the form of degrading mental and physical health conditions. The paper also shows how the decriminalization of the archaic law and legal acceptance of the Queer community in the mainstream population helped boost the economy of the country..

Index Terms - Section 377-IPC, LGBTQ, Queer, economic productivity, health, discrimination.

I. INTRODUCTION

The LGBTQ community represents a large group of people who identify as lesbians, gays, bisexuals or transgenders. Therefore, it basically includes all the people who are not heterosexual or cis-gendered. They are often referred to using the umbrella term "Queer".

Gender has been defined as a "constellation of rules and identities that prescribe and proscribe behaviour for persons, in their social roles as men and women". These socially constructed roles exist in all societies and are sometimes consciously and sometimes unconsciously implemented. The idea of gender has evolved from being compartmentalised differences between the masculine and the feminine to being thought of as a spectrum of several gender identities which are fluid. Gender is one of the most basic aspects of one's life which is why any kind of non-conformity or deviation from the socially approved gender norms becomes a major ground for discrimination. It is also important that we also point out the difference between sex, gender and sexuality. Generally, sex refers to the biological differences between male and female and it is assigned at the child's birth based on the baby's genitals. Gender, on the other hand deals with how one sees him/herself. Sexual orientation entails a more interpersonal point of view: it looks at who one is romantically/ sexually/emotionally attracted to.

The term "homophobia" is a colloquial expression used to refer to the irrational feeling of negativity, fear and hatred towards gays and lesbians (O'Brien, 2001). Homophobia more often finds its roots in cultural prejudice than in individual phobia. According to social historians, the idea of a sexual binary emerged in the nineteenth century which, in fact, put forward the idea of heterosexuality being socially desirable and natural as against homosexuality which is unnatural as well as immoral. Expectations of "compulsory heterosexuality" can be found in clinical, social and religious definitions of homosexuality where it has been described as an illness, a social evil, or a curse. This, indeed, is a mirror of society's idea of homosexuality.

Deviation from heterosexuality, has therefore, been condemned by governments across the globe for many years. Even though, there has been considerable progress in this field, with many governments allowing same sex marriages and relationships, there is still a lot of catching up to do. Even though the right to equality is considered a basic human right in most countries, people from the LGBTQ community have been on the receiving end for discrimination for many years. This irrational fear for the sexually non-conforming has been further fuelled by many archaic and biased laws. Even though ancient India is said to have celebrated sexual diversity, the influence of the British rule led to the introduction of Section 377 of the Indian Penal Code. It declared all sexual activities which were deemed to be "against the order of nature" as illegal. After a long battle against this law, victory was achieved on the 6th of September, 2018, when the Supreme Court decriminalised Section 377, thus allowing consensual sex between two same sex adults.

The bias further encouraged by the State leads to social exclusion of the individuals. These individuals who become victims of social exclusion suffer a lot of social disadvantages including unemployment, poverty, lack of skill development, low educational attainment, and blockages in the social and political system (Teraji, 2011). Therefore, the discrimination and pertaining disadvantage spreads across multiple spheres: education, training, employment, housing, financial accessibility and so on. Social exclusion, as we can see, entails not only personal losses but also harms the overall economy of a nation as it increases incidence of unemployment, poverty and inequality.

In this study, we take a detailed look at Section 377 and critically analyse it in order to understand its impact on the economy. In the course of this paper, we refer to previous studies done in the same field to understand the losses that an economy curtails because of discrimination and how the decriminalisation of Section 377 might benefit the Indian Economy.

II. SECTION 377 OF THE INDIAN PENAL CODE

The prejudice against the homosexual that is existent in the country is majorly backed by the Section 377 of the Indian Penal Code (Agoramoorthy, Hsu, 2015).

Section 377 of the Indian Penal Code is a section which declares sexual activities "against the order of nature" to be illegal. England in the 1800s considered homosexuality to be a crime which was punishable by death. The section 377 of the Indian Penal

Code which derived its values from the Victorian era and was modelled on the Buggery Act of 1533 was thus imposed on us in the latter part of the 1800s. It was introduced by Thomas Macaulay, who was the then President of the Indian Law Commission, in 1838 and was implemented only in 1856.

The law reads: "Section 377: Unnatural 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 10 years, and shall be liable to fine. Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

Because of the blurriness of the phrase "carnal intercourse against the order of nature", a lot of interpretations have been made of it which includes oral sex, anal sex, and any other type of non-procreative sex. The law made such sex illegal even when it was illegal in nature. Sharma (2008) vehemently argued that this law does not have any "jurisprudential justification" as it enables the State to declare a particular practice as immoral and punishable only on the basis of majority belief.

However, in the year 1828 the Act was repealed only to be substituted by the Offences against the Person Act 1828. Even though this act gave a wider meaning of unnatural sexual acts and also enabled for faster prosecution of rapists it still held on to homophobic aspects. Further down the line, this Act was also substituted by the Offences against the Person Act 1861. In 1967, homosexuality was declared to be no more a punishable offence in the UK by the Sexual Offences Act 1967. In fact, laws similar to Section 377 were gradually abandoned by all the Western democracies while the post-colonial countries still continued to follow the same archaic laws. In 2001, Naz Foundation (India) Trust, a nongovernmental organization, filed a lawsuit against Section 377 in the Delhi High Court. This was what paved the path for the historic judgement in 2009 which decriminalised consensual acts of sex between adults. In 2018, Section 377 was declared unconstitutional by the Supreme Court of India.

While homosexuality is still criticised for being against the law of nature and as a harbinger of several sexually transmitted diseases, there have been several negative impacts of the Section 377. Criminalization of the Act has led to the marginalisation of a whole community of people who have to be victims of discrimination in every field of life till present date. There were reports of increased crimes against Homosexuals as a result of Section 377. Even though the Section 377 was passed with the intention of reducing the incidence of diseases like AIDS, criminalising of homosexuality only led it having increased taboo attached to it and thereby, to the practitioner as well.

III. ECONOMIC IMPLICATIONS

Impact on Employment Opportunity and Economic Achievements

Multiple studies have been conducted to find out the extent and kind of discrimination faced by the people from the LGBTQ community. A study conducted by Badget, Lau, Sears and Ho (2008) found out that 16% to 68% of LGBT people report experiences of discrimination at the time of employment. Out of that, 15% to 57% of the transgender community experience employment discrimination. Homosexual men were also observed to be earning less than similarly qualified heterosexual men. A Resume Audit study in the USA also exposed how Queer women face opportunity bias at the time of employment (Mishel, 2016). The study showed that from among the 800 resumes that were sent out, the resume of a queer woman received about 30% lesser call-backs. The study 'Documented Evidence of Employment Discrimination and its Effect on LGBT people' by Sears and Mallory (2011) presents to us the following findings: 27% of the LGBT people have experienced sexual orientation based discrimination while 7% had lost a job; only 25% LGBT people had come out to their co workers.

Badget (2011) built a model to calculate the economic cost incurred by the nation because of the exclusion of the Queer people from education, employment, families, healthcare and other such social institutions. The paper threw light on the existing stigma against the queer community. It gave evidences showing how the queer people were left to fend for themselves with no laws ensuring the protection of the LGBT people existing in the country, increased reports of violence, rejection and discrimination in various fields, and so on. As per the report 56% of white collar LGBT workers report discrimination. 64% of transgenders across India had income below \$70 per month while 66% of gay men in Chennai were seen to have income level below \$1.50 per day. 28% of urban females reported having faced violence and physical abuse in their families.

Therefore, from the various studies we can see how homophobia leads to social exclusion in the form of violence, job loss, opportunity bias, family rejection, harassment and bullying in educational institutions, isolation in workplaces and so on. These result in less education, lower productivity, lower level of earnings, poor health and low labour force participation among the LGBTQ individuals. At a macro-level these individual problems present themselves in the form of higher health and social program costs, lower economic output and fewer incentives to invest in human capital. Thereby, Badget (2011) in his report derived connections between the exclusion of the LGBTQ through lower productivity and lower output and estimated the cost of homophobia to be around 0.1 to 1.7% of the nation's GDP.

Impact on Health and Productivity

As discussed earlier, discriminatory laws often have a marginalizing effect on the individuals at the receiving end of discrimination. Marginalisation can have a negative effect on the psychological emotional and physical well being of the individuals. It can lead to issues of anger, anxiety, paranoia, fear, depression, self blame, stress, isolation, frustration and so on. Fear of discrimination might have relations with higher chances of psychiatric disorders, depression, loneliness, low self esteem and the alike. (Sears, Mallory. 2011). Perceived discrimination was conceived to be the highest contributor of emotional distress among the LGBTQ (Almeida et al, 2009). They are also reported to have greater inclination towards self harm and suicidal tendencies. A study reveals that 30% of LGBTQ individuals are inclined towards self harm as compared to 6% heterosexuals. In fact, along with one's mental health their physical health also gets affected. The minority stress model also indicates that the bias faced by the LGBTQ individuals puts them in an environment of stress which leads to adverse health effects because of a negative impact on their immunity system. It has also been seen that cases of HIV is 15 times more prevalent among homosexual men. The existence of a homophobic law further prevents men from coming forward to be tested for HIV (Agoramoorthy, 2015). Several health experts have expressed their concern over growing AIDS cases in Asia.

Therefore, the prejudice leads to considerable health consequences which lead to higher health costs being incurred by the nation. In fact, the health disparities have been estimated to cost the country \$712 million to \$23.1 billion (Badget, 2014). Poor mental health will also hinder one's productivity and ability to work as they will tend to reach a stage of burnout (Rajgopal, 2010). Poor

performance and less productivity at work reduces one's chances of getting a pay raise, promotion or any other opportunity thus adversely affecting them all the more. Therefore, once again it translates to higher economic costs and lower economic outputs at a macro level.

IV. IMPACT OF DECRIMINALIZATION OF SECTION 377 IPC

By decriminalizing the law and allowing gay sex, the Indian businesses have opened the door to the so-called 'Pink Economy'. Pink economy refers to an economy which is inclusive of the sexually diverse and gender non-conforming population. Therefore, inclusivity and being trans-and gay-friendly makes India open to businesses from Western companies. India has become a safer space for international companies who do not have to fear ill-treatment of their gay or transgender employees. A study conducted in 2018 had found that inclusive policies were directly correlated to higher GDP per capita, better competitiveness, entrepreneurship, higher rate of development, better capacity of talent retention and greater ability to attract additional direct investment.

The overturning of Section 377 also makes available to us a huge untapped market for both the consumers and producers. This might lead to the creation of a new range of companies and products for sale.

Other than that, this will make the environment a safer place for the employees which will positively impact their efficiency, productivity and creativity at workplaces. This increase in productivity is bound to reflect at a macro level as well.

V. CONCLUSION

In the course of the study we saw the various adverse effects of discriminatory laws and their impact on the economy. Decriminalisation can lead to loss in productivity and economic output while also entailing higher social costs. Discrimination also has several health consequences which further add to the costs incurred due to prejudice. By revoking discriminatory and homophobic laws like that of Section 377, workplaces can be made a safer zone which inspires higher productivity and efficiency. It also becomes more attractive in the international market and creates chances for inviting more businesses.

It also becomes each individual's responsibility to make the world a little safer for the sexual minorities. We must all become self aware and get rid of all our biases. We must also voice ourselves against all kinds of oppression and spread awareness. The media has now become the largest hub of information at the present. It has to be ensured that the media puts up a more justified portrayal of the LGBTQ community and also works towards spreading awareness and positivity. More research should be taken up to understand the complexities of the community and also to compensate for the lack of data on the Queer community.

Many steps can be taken to make the workplace a safer zone for the sexual minorities. One such way can be to create employee groups which help in creating a support network for the employees and thus empower them. There should be gender neutral washrooms made available to them. Strict policies prohibiting bias on the grounds of sexual orientation should be in place. The tone of leadership should be such that it supports the community and encourages them to be themselves. In fact, the sensitization should reach the support staff as well. While these steps will ensure internal revamp, the companies should also make sure that the external culture is also fixed. This can be done through the company website and social media posts that support and encourage the community and make them more inclusive to the organisation.

With more inclusivity, economic development will also take place at a smoother and faster pace.

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