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Decriminalisation of Sec. 377 and it's Impact on the Society

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Abstract

This research deals with the **Decriminalisation of Sec. 377 and it's Impact on the Society**. Decriminalisation means an act which was considered as a crime or an offence previously and later it is not considered as a crime or an offence. Decriminalisation describes the state of reducing or lessening the punishments and penalties of a crime. The sec 377 under IPC have been defined as the carnal intercourse with any man, woman or animal voluntarily shall be punished with imprisonment for life or may extend up to ten years and shall also be liable to fine. The section 377 (Unnatural offences) has been decriminalised on September 06 2018 by a five-judge Constitution bench headed by Chief Justice Dipak Misra termed the part of Section 377 of the Indian Penal Code which criminalises unnatural sex as irrational, indefensible and manifestly arbitrary. It also said it is violative of right to equality. This law was decriminalised only the intercourse between men and women. But it does not decriminalise the intercourse with animals and children. The present study is an empirical study done by survey method. The simple random sampling method was used for the purpose of the research. There were totally 1502 respondents who were taken as the samples. The independent variables are taken here as age and gender. The dependent variables are decriminalisation of sec 377 having a positive impact in the society and decriminalisation of homosexuality. The alternative hypothesis is proved i.e Decriminalisation of Sec 377 do have a positive impact and decriminalisation is a boon for our society regarding the homosexuality and sexual orientation.

Keywords: Decriminalisation, Sec 377, Homosexual, Sexual orientations , LGBT community, Un natural offenses

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Introduction:

This research deals with the **Decriminalisation of Sec. 377 and it's Impact on the Society**. Decriminalisation means an act which was considered as a crime or an offence previously and later it is not considered as a crime or an offence. Decriminalisation describes the state of reducing or lessening the punishments and penalties of a crime. The sec 377 under IPC have been defined as the canal inter course with any man, women or animal voluntarily shall be punished with imprisonment for life or may extend up to ten years and shall also be liable to fine. The section 377 (Unnatural offences) has been decriminalised on September 06 2018 by a five-judge Constitution bench headed by Chief Justice Dipak Misra termed the part of Section 377 of the Indian Penal Code which criminalises unnatural sex as irrational, indefensible and manifestly arbitrary. It also said it is violative of right to equality. This law was decriminalised only the inter course between men and women. But it does not decriminalise the inter course with animals and children.

The Section 377 of the Indian Penal Code (IPC) is an act that criminalises homosexuality and was introduced in the year 1861 during the British rule of India. It was referred to the 'unnatural offences'³ and says whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life. The issue regarding the Section 377 was first raised initially by an NGO, Naaz Foundation, and AIDS Bedhbhav Virodh Andolan, in the Delhi high court in 2001. Both the petitions were dismissed in the court initially⁴. Sec 377 was presented by **Lord Macaulay** in 1860 as a piece of the Indian Penal Code⁵. The absence of an assent based qualification in the offense has made gay sex synonymous to assault and compared homosexuality with sexual perversity. However, in a historic verdict, the Supreme Court of India on September 6, 2018, decriminalised the Section 377 of the IPC and allowed gay sex among consenting adults in private. The Supreme Court ruled that consensual adult gay sex is not a crime saying sexual orientation is natural and people have no control over it. It has been stated that Right to privacy has now been Recognised to be the Intrinsic part of the right to life and personal liberty under article 21 of the Indian Constitution⁶. Sexual orientation is an Essential attribute

³ (Meng 2013)

⁴ (Williamson, n.d.)

⁵ (Han and O'Mahoney 2018)

⁶ ("Decriminalization," n.d.; Longazel, n.d.)

of the identity of LGBT persons⁷. Sexual orientation is about who you're attracted to and want to have relationships with. Sexual orientations include gay, lesbian, straight, bisexual, and asexual. Sexual orientation of the person is an extension attribute of privacy its protection lies at the core of fundamental rights can Guaranteed by articles 14, 15, and 21⁸. The right to privacy is broad-based and pervasive under our constitutional scheme and encompasses decisional autonomy to cover intimate /personal decisions and preserves the sanctity of the private sphere of an individual⁹. The Right to Privacy is not simply the 'right to be left alone' and have to travel far beyond that initial concept. It now incorporates the ideas of spatial privacy and decisional privacy and privacy of choices¹⁰, it extends to the right to make a fundamental personal choices including those relating to intimate sexual contact without unwarranted state interference. Initially Section 377 affected the private sphere of the lives of LGBT persons. It takes away the decisional autonomy of the LGBT persons to make choices consistent with a sexual orientation which would further a dignified existence and a meaningful life as a full person section 377 prohibits LGBT¹¹ persons from expressing their sexual orientation and engaging in sexual contact in private decision which inheres in the most intimate spaces of one's existence¹².

The aim of the study is to understand the term Decriminalisation, to know more about sec 377 in a deeper way, to analyse it's impact on the Society, and to enrich real side of the Decriminalisation of the 377¹³.

METHODOLOGY

The study deals with empirical research non-doctrinal study. It deals with both primary as well as secondary source of data and various secondary sources like books, articles, research papers etc. were used as reference. The study deals with survey method and the main tool for calculating or analysing the results in pearson chi-square table and the crosstabulation count. The method of collecting is through direct survey method by getting people's opinion and

⁷ ("Decriminalization," n.d.)

⁸ (Lee 2014)

⁹ (Gupta and Human Rights Watch (Organization) 2008)

¹⁰ (Cousins 2018)

¹¹ (Krishan et al. 2018)

¹² (Puri 2016)

¹³ (Gupta and Human Rights Watch (Organization) 2008; Vanita 2008)

answers to the questionnaires. Sampling Method:

Random sampling method was used for the purpose of this study. Sample Size:

There are a total of 1502 samples collected with regard to this study. Independent variable:

Age, Gender.

Dependent Variable:

Decriminalisation of the sec 377 and homosexuality creates a positive impact over the society.

Frequency Table

Analysis and Discussion

A survey was conducted with 1502 people regarding the Decriminalisation of Sec 377 and its impact over the society. The collected results are depicted below,

Table-1

AGE				
	Frequency	Percent	Valid Percent	Cumulative Percent
60 and Above	140	9.3	9.3	9.3
46-60 Years	213	14.2	14.2	23.5
36-45 Years	217	14.4	14.4	37.9
26-35 Years	351	23.4	23.4	61.3
18-25 Years	581	38.7	38.7	100.0
Total	1502	100.0	100.0	

Out of 1502 respondents, 38.7% of them were into age group of 18-25 years, 23.4% of them were in the age group of 26-35 years, 14.4% of them were in the age group of 36-45 years, 14.2% of them were in the age group of 46-60 years, 9.3% of them were above 60.

Table 2

Gender

	Frequency	Percent	Valid Percent	Cumulative Percent
Female	556	37.0	37.0	37.0
Valid Male	946	63.0	63.0	100.0
Total	1502	100.0	100.0	

In this survey, out of 1502 respondents, 63% of them were Male and the rest 37% of them were Female.

Hypothesis:

Null Hypothesis

(H0)-- Decriminalisation of Sec 377 does not have a positive impact and decriminalisation is a ban for our society regarding the homosexuality and sexual orientation.

Alternative Hypothesis

(H1)-- Decriminalisation of Sec 377 do have a positive impact and decriminalisation is a boon for our society regarding the homosexuality and sexual orientation.

Table 3

Age*Decriminalisation of sec 377 having a positive impact in the society.

Crosstab

		Decriminalisation of sec 377 having a positive impact in the society .					Total
		Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
AGE	60 and Above	Count 28 20.0%	37 26.4%	24 17.1%	49 35.0%	2 1.4%	140 100.0%
	46-60 Years	Count 17 8.0%	90 42.3%	53 24.9%	33 15.5%	20 9.4%	213 100.0%

36-45 Years	Count	40	13	112	42	10	217
	% within AGE	18.4%	6.0%	51.6%	19.4%	4.6%	100.0%
26-35 Years	Count	3	43	155	64	86	351
	% within AGE	0.9%	12.3%	44.2%	18.2%	24.5%	100.0%
18-25 Years	Count	78	61	250	117	75	581
	% within AGE	13.4%	10.5%	43.0%	20.1%	12.9%	100.0%
Total	Count	166	244	594	305	193	1502
	% within AGE	11.1%	16.2%	39.5%	20.3%	12.8%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	309.500 ^a	16	.000
Likelihood Ratio	315.069	16	.000
N of Valid Cases	1502		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 15.47.

Null Hypothesis (H₀): There is no significant association between age and opinion on the Decriminalisation of the sec 377. It have a negative impact over the society.

Alternative Hypothesis (H₁): There is significant association between age and opinion on the Decriminalisation of the sec 377. It do have a positive impact over the society.

From the above table, the respondents from the age group of 18-25 years,

13.4% of them,ie., 78 strongly disagreed; 10.5% of them,ie., 61 members disagreed; 43.0 % of them,ie., 250 were neutral; 20.1% of them,ie., 117 members agreed and the rest members

strongly agreed with the statement that the Decriminalisation of sec 377 having a positive impact in the society .

From the respondents from the age group of 26-35 years, 0.9% of them,ie., 3 strongly disagreed; 12.3 % of them,ie., 43 members disagreed; 44.2 % of them,ie., 155 were neutral; 18.2% of them,ie., 64 members agreed and the rest members strongly agreed with the statement.

From the respondents from the age group of 36-45 years, 18.4 % of them,ie., 40 strongly disagreed; 6.0 % of them,ie., 13 members disagreed; 51.6 % of them,ie., 112 were neutral; 19.4% of them,ie., 42 members agreed and the rest members strongly agreed with the same.

From the respondents from the age group of 46-60 years, 8.0% of them,ie., 17 strongly disagreed; 42.3% of them,ie., 90 members disagreed; 24.9% of them,ie., 53 were neutral; 15.5 % of them,ie., 33 members agreed and the rest members strongly agreed with the statement that the Decriminalisation of sec 377 having a positive impact in the society.

From the rest, above 60, 20% of them,ie., 28 strongly disagreed; 26.4% of them,ie., 37 members disagreed, 17.1% of them,ie., 24 were neutral; 35.0% of them,ie., 49 members agreed and the rest members strongly agreed with the same.

In the above table, the variable Age is taken as the independent variable and the statement that as the dependent variable. Here through this analysis, the chi square Pearson value result is 0.000. According to chi square test, the ratio obtained is below 0.05. Therefore the **alternative hypothesis is proved** from the above analysis. Hence, the **alternative hypothesis** that there is significant association between age and Decriminalisation of sec 377 having a positive impact in the society.

Table 4

AGE * Decriminalisation of homosexuality Crosstab

	Decriminalisation of homosexuality		Total
	Ban	Boon	

60 and Above	Count	99	41	140
	% within AGE	70.7%	29.3%	100.0%
46-60 Years	Count	64	149	213
	% within AGE	30.0%	70.0%	100.0%
36-45 Years	Count	128	89	217
	% within AGE	59.0%	41.0%	100.0%
26-35 Years	Count	135	216	351
	% within AGE	38.5%	61.5%	100.0%
18-25 Years	Count	205	376	581
	% within AGE	35.3%	64.7%	100.0%
Total	Count	631	871	1502
	% within AGE	42.0%	58.0%	100.0%

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	98.136 ^a	4	.000
Likelihood Ratio	98.129	4	.000
N of Valid Cases	1502		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 58.81.

Null Hypothesis (H0): There is no significant association between age and opinion on the boon of the decriminalisation of homosexuality.

Alternative Hypothesis (H1): There is significant association between age and opinion on boon of the decriminalisation of homosexuality.

DISCUSSION :

From the above table, the respondents from the age group of 18-25 years, 35.3% of them, i.e., 205 voted for Ban of the decriminalisation of homosexuality; 64.7% of them, i.e., 376 members voted for Boon of the decriminalisation of homosexuality; From the respondents from the age group of 26-35 years, 38.5% of them, i.e., 135 voted for Ban; 61.5% of them, i.e.,

216 members voted for Boon; From the respondents from the age group of 36-45 years,

59.0% of them, i.e., 128 voted for Ban; 41.0% of them, i.e., 89 members voted for Boon; From the respondents from the age group of 46-60 years, 30.0% of them, i.e., 64 voted for Ban; 70.0% of them, i.e., 149 members voted for Boon; From the respondents above the age group of 60 years, 70.7% of them, i.e., 99 voted for Ban; 29.3% of them, i.e., 41 members voted for Boon of the decriminalisation of homosexuality.

In the above table, the variable Age is taken as the independent variable and the statement that decriminalisation of homosexuality as a boon is the dependent variable. Here through this analysis, the chi square Pearson value result is 0.000. According to chi square test, the ratio obtained is below 0.05. Therefore the **alternate hypothesis** is proved. Hence, the alternative hypothesis is that there is significant association between age and opinion on boon of the decriminalisation of homosexuality.

Recommendation

Gender rights activists have argued that Section 377 violates different articles of the Indian Constitution - Article 14 guaranteeing equality before law to all individuals¹⁴; Article 15 ensuring that no person is discriminated against on the basis of caste, gender, creed etc; and Article 21 ensuring the right of life and liberty to all the citizens of the country. The petitioners, had argued that Section 377¹⁵, in so far as it criminalizes homosexuality, violates Article 14 (equality before law), Article 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth), Article 19 (freedom of speech and expression, and to form associations or unions) and Article 21 (right to Life) of the Constitution of India. The court highlighted that LGBT¹⁶ community possesses same human and fundamental rights as other citizens. Since it has been judged before law and when it prevails in our society, it has been made into analysis that the decriminalisation of this sec 377 had prevailed a positive impact in our society. But minority of the people doesn't accept with the fact that this has a positive impact in our society. It is recommended that the minority of the people should also

¹⁴ (Moore 2015)

¹⁵ (Burleson 2015)

¹⁶ (Lin and Israel 2012)

analyse the true fact and rely on the fact. Those people should be properly educated by various NGO's and institutions and organisations about these communities. This would be a better solution for these varied thoughts.

Conclusion

"The Constitution of India begins by saying We, the people of India and not we the heterosexual people of India. We cannot look at the state as a parent. We have to demand our rights," said Kaushik Gupta, a lawyer activists¹⁷. The vast thing of this sec 377 has been narrow that Sexual orientation is a biological phenomenon, any discrimination on this grounds is violative of fundamental rights. The SC in 2014 directed the government to declare transgender a 'third gender' and include them in the OBC quota. In August 2017, the SC had upheld the Right to Privacy as a fundamental right under the Constitution¹⁸. It also observed that "sexual orientation is an essential attribute of privacy". Beyond decriminalising¹⁹ homosexuality²⁰, we need to think about how homosexuals and persons who identify themselves as being outside the conventional binary, can be integrated into society without using their gender or sexuality as the foci of such integration²¹. So, for example, we need to start thinking of how social institutions like marriage or parenting can be re-imagined; we need to redesign pedagogical tools to embrace these differences; we need to redevelop institutions like schools and workplaces to make them all inclusive²². The present study is an empirical study done by survey method. The simple random sampling method was used for the purpose of the research. There were totally 1502 respondents who were taken as the samples. The independent variables taken here were age and gender. The dependent variables are decriminalisation of sec 377 having a positive impact in the society and decriminalisation of homosexuality. The alternative hypothesis is proved i.e. Decriminalisation of Sec 377 does have a positive impact and decriminalisation is a boon for our society regarding the homosexuality and sexual orientation.

¹⁷ (Lin and Israel 2012; Kocet and Curry 2011)

¹⁸ (Wells 2017)

¹⁹ (Couvillon 2008)

²⁰ (Ouer 2015; Martin 2017)

²¹ (Boehmer and Elk 2015)

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Abstract: This research deals with the Decriminalisation of Sec. 377 and its Impact on the Society. Decriminalisation means an act which was considered as a crime or an offence previously and later it is not considered as a crime or an offence. Decriminalisation describes the state of reducing or lessening the punishments and penalties of a crime. The sec 377 under IPC have been defined as the canal inter course with any man, women or animal voluntarily shall be punished with imprisonment for life or may extend up to ten years and shall also be liable to fine. The section 377 (Unnatural offences) has been decriminalised on September 06 2018 by a five-judge Constitution bench headed by Chief Justice Dipak Misra termed the part of Section 377 of the Indian Penal Code which criminalises unnatural sex as irrational, indefensible and manifestly arbitrary. It also said it is violative of right to equality. This law was decriminalised only the inter course between men and women. 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The aim of the study is to understand the term Decriminalisation, to know more about sec 377 in a deeper way, to analyse its impact on the Society, and to enrich real side of the Decriminalisation of the 377.

Sources	Similarity
Section 122 of Indian Penal Code, 1860 - Explained! Compare text shall also be liable to fine. the words 'also be liable to fine' were added by act xvi of 1921. the offence under this section is cognizable, non-bailable and non-compoundable, and is triable by court of session. http://www.shareyouressays.com/knowledge/section-122-of-indian-penal-code-1860-explained/118475	10%
LGBT Community celebrates SC verdict on Section 377 - YouTube Compare text the constitution bench headed by chief justice dipak misra termed the part of section 377 of the indian penal code which criminalises unnatural sex as irrational, indefensible and manifestly arbitrary. https://www.youtube.com/watch?v=Z_6DU2BZtSk	7%



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METHODOLOGY The study deals with empirical research non-doctrinal study. It deals with both primary as well as secondary source of data and various secondary sources like books, articles, research papers etc. were used as reference. The study deals with survey method and the main tool for calculating or analysing the results in pearson chi-square table and the crosstabulation count. The method of collecting is through direct survey method by getting people's opinion and answers to the questionnaires. Sampling Method: **Random sampling method was used for the purpose of this study.** Sample Size: There are a total of 1502 samples collected with regard to this study. Independent variable: Age, Gender. Dependent Variable: Decriminalisation of the sec 377 and homosexuality creates a positive impact over the society. Out of 1502 respondents, 38.7% of them were into age group of 18-25 years, 23.4% of them were in the age group of 26-35 years, 14.4% of them were in the age group of 36-45 years, 14.2% of them were in the age group of 46-60 years, 9.3% of them were above 60. Null Hypothesis (H0): There is no significant association between age and opinion on the Decriminalisation of the sec 377. It have a negative impact over the society. Alternative Hypothesis (H1): There is significant association between age and opinion on the Decriminalisation of the sec 377. It do have a positive impact over the society. In this survey, out of 1502 respondents, 63% of them were Male and the rest 37% of them were Female. Hypothesis: Null Hypothesis (H0)-- Decriminalisation of Sec 377 does not have a positive impact and decriminalisation is a ban for our society regarding the homosexuality and sexual orientation. Alternative Hypothesis (H1)-- Decriminalisation of Sec 377 do have a positive impact and decriminalisation is a boon for our society regarding the homosexuality and sexual orientation. Table 3 Age*Decriminalisation of sec 377 having a positive impact in the society. From the above table, the respondents from the age group of 18-25 years, 13.4% of them,ie., 78 strongly disagreed; 10.5% of them,ie., 61 members disagreed; 43.0 % of them,ie., 250 were neutral; 20.1% of them,ie., 117 members agreed and the rest members strongly agreed with the statement that the Decriminalisation of sec 377 having a positive impact in the society . From the respondents from the age group of 26-35 years, 0.9% of them,ie., 3 strongly disagreed; 12.3 % of them,ie., 43 members disagreed; 44.2 % of them,ie., 155 were neutral; 18.2% of them,ie., 64 members agreed and the rest members strongly agreed with the statement. From the respondents from the age group of 36-45 years, 18.4 % of them,ie., 40 strongly disagreed; 6.0 % of them,ie., 13 members disagreed; 51.6 % of them,ie., 112 were neutral; 19.4% of them,ie., 42 members agreed and the rest members strongly agreed with the same. From the respondents from the age group of 46-60 years, 8.0% of them,ie., 17 strongly disagreed; 42.3% of them,ie., 90 members disagreed; 24.9% of them,ie., 53 were neutral; 15.5 % of them,ie., 33 members agreed and the rest members strongly agreed with the statement that the Decriminalisation of sec 377 having a positive impact in the society. From the rest, above 60, 20% of them,ie., 28 strongly disagreed; 26.4% of them,ie., 37 members disagreed, 17.1% of them,ie., 24 were neutral; 35.0% of them,ie., 49 members agreed and the rest members strongly agreed with the same.

Sources	Similarity
Observational study on foot pressure distribution in Compare text random sampling method was used for the purpose of this study. the materials used for the study include podia scan, anthropometry rod, weighing machine, harrison mats, podia scan made and calibrated by diabetic foot care of india, chennai. http://oaji.net/articles/2014/287-1407761633.pdf	10%



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Abstract: This research deals with the Decriminalisation of Sec. 377 and it's Impact on the Society. Decriminalisation means an act which was considered as a crime or an offence previously and later it is not considered as a crime or an offence. Decriminalisation describes the state of reducing or lessening the punishments and penalties of a crime. The sec 377 under IPC have been defined as the carnal inter course with any man, women or animal voluntarily shall be punished with imprisonment for life or may extend up to ten years and shall also be liable to fine. The section 377 (Unnatural offences) has been decriminalised on September 06 2018 by a five-judge Constitution bench headed by Chief Justice Dipak Misra termed the part of Section 377 of the Indian Penal Code which criminalises unnatural sex as irrational, indefensible and manifestly arbitrary. It also said it is violative of right to equality. This law was decriminalised only the inter course between men and women. But it does not decriminalise the inter course with animals and children. The present study is an empirical study done by survey method. The simple random sampling method was used for the purpose of the research. There were totally 1502 respondents who were took as the samples. The independent variables are took here was age and gender. The dependent variables are decriminalisation of sec 377 having a positive impact in the society and decriminalisation of homosexuality. The alternative hypothesis is proved i.e Decriminalisation of Sec 377 do have a positive impact and decriminalisation is a boon for our society regarding the homosexuality and sexual orientation. Keywords: Decriminalisation, Sec 377, Homosexual, Sexual orientations , LGBT community, Un natural offenses. Introduction: This research deals with the Decriminalisation of Sec. 377 and it's Impact on the Society. 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