

Abrogation of Section 377 - A Business Case for Pinkwashing

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Abstract

India is the fastest growing economy with so many sub-cultures existing together. Perhaps no nations face the greatest challenges and opportunities for LGBTQ Community than India. 92% of India's transgender population is deprived of the right to participate in any form of economic activity (Human Rights Commission Report, 2017). Less than half of them have an access to education and those (62% approx.) who have access face abuse and discrimination against them. India is said to have incurred the loss of \$32 Billion of GDP due to Homophobia and Transphobia (World Bank Report 2016). Experts have opined that there is a strong business case in favour of LGBTQ inclusion. In the historic verdict on September 6, 2018, Honorable Supreme Court decriminalized Section 377 of the Indian Penal Code (IPC) that violated rights of the Lesbian, Gay, Bisexual, Transgender (LGBT+) community. Given the huge number of LGBTQ population in India, this judgement is expected to have significant implications for various stakeholders of the society as well as business. This paper attempts to analyze the business and economic impact of this legislation in India. The paper also seeks to examine the challenges of LGBTQ Inclusion in India and across the world and offer suitable suggestions to the various stakeholders for bringing out inclusion in true sense for the overall wellbeing of the economy.

Keywords: Business and Economic Impact, Homophobia, Section 377, LGBTQ Inclusion

1. Introduction

India is the fastest growing economy with so many sub-cultures existing together. Perhaps no other nation faces the kind of challenges and opportunities for LGBT Community than India. 92% of India's transgender population is deprived of the right to participate in any form of economic activity (National Human Rights Commission Report, 2017). Less than half of them have an access to education and those (62% approx.) who have access face abuse and discrimination against them. As per the estimates of the World Bank report, India is said to have incurred the loss of \$32 Billion of GDP due to Homophobia and Transphobia (Badgett, M. V. L., & Crehan, P. R., 2016). Experts have opined that there is

a strong business case in favor of LGBTQ inclusion. In the historic verdict on September 6, 2018, Honorable Supreme Court decriminalized Section 377 of the Indian Penal Code (IPC) that violated rights of the Lesbian, Gay, Bisexual, Transgender (LGBT+) community. Given the huge number of LGBTQ population in India, this judgment is expected to have significant implications for various stakeholders of the society as well as business houses. This paper attempts to analyze the business and economic impact of this judgement in India. The paper also seeks to examine the challenges of LGBTQ Inclusion in India and offer suitable suggestions to the various stakeholders for bringing out inclusion in true sense for the overall well-being of the economy.

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2. Homosexuality in India LGBTQ and Battle for Existence in Homophobic Society

The acronym LGBTQ stands for Lesbian, Gay, Bisexual, Transgender and Queer. These individuals differ with respect to sexual identity and sexual orientation. Sexual identity refers to personal conception of one's own gender. Sexual orientation refers to one's pattern of emotional, sexual or romantic relationships.

Indian society seldom acknowledged the existence of homosexuality. Any matter pertaining to sexuality is rarely open to public discussion under the pretext of indecency. As per the estimates by Government of India 2.5 million gay people recorded in India in the year 2012. Homophobia refers to feeling of hatred, discomfort, fear and distrust towards people who are identified as Lesbian, Gay, Bisexual, Transgender (LGBT+). Homophobia results in hostile behavior like discrimination and abuse against members of LGBTQ community. LGBTQ community has been a victim of homophobia since ages in India and across the world. They are shunned by the family, isolated by society, abused by people around and unrepresented and unprotected at their workplaces. They are forced to miss out on education due to school bullying while the harassment at workplace limits their employment opportunities. Thus they are forced to hide their sexual orientation to lead a normal life.

3. Objectives of the study

- To examine the challenges of LGBTQ inclusion in India.
- To analyze the business case for Pinkwashing by Indian corporations post abrogation of Section 377.
- To offer suitable suggestions to the organizations to create LGBTQ friendly workplace.

4. Social Exclusion Framework- A Visible Challenge to LGBTQ Inclusion

Social Exclusion Framework (Chakrapani, V. 2010) emphasizes the difficulties and hurdles faced by the members of LGBT community in India. The striking feature of Social Exclusion Framework is that it seeks

to address the challenges in achieving the Millennium Development Goals, especially those concerned with exclusionary social relations and institutions.

The framework seeks to explain how the LGBT community is systematically excluded from taking part in social, economic and political spheres. This segment utilizes the framework to demonstrate vivid forms of hardships faced by LGBT community members in India.

4.1 Exclusion from Social and Cultural Participation

Indians are seen to be very tolerant people when it comes to respecting the differences in cultures, religion, language etc. But so far as same sex relationships are concerned there is very little awareness and acceptance for the same in the society. As such there have been numerous instances of abuse against sexual minorities in the country. The male kid behaving like females is still not accepted by the families. Such individuals are straightaway disowned by their family for having brought them disgrace. Such kids eventually find refuge with local Hijra groups and face difficulty in finding suitable employment. Transgender individuals also face discrimination at the hands of medical officers who lack adequate know-how of the health issues faced by LGBTQ individuals.

4.2 Exclusion from Economic Activities

For ages, LGBTQ community has faced major economic hurdles in the face of scanty employment opportunities, lack of social security measures, accessibility issues relating to life and health insurance schemes etc.

5. Section 377 Verdict - Rise of Pink Economy

On September 6, 2018, the Supreme Court of India in a landmark judgment for LGBT Community decriminalized homosexuality between consenting adults thereby declaring Section 377 'manifestly arbitrary'. Also the four concurring judgments touch upon the fundamental rights of LGBT people to live with dignity, get access to healthcare, and how constitutionalism trumped majoritarian morality.

Section 377 is a penal provision which deals with 'unnatural offences' 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, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to pay a fine.

The ruling implies remarkable socio economic change for the members of LGBT. Total number of transgender in Indian population stands at 4.88 Lakhs (2011 Census). However experts suggest that the actual number may vary between 5 to 6 million given the fact that many of them prefer to keep their sexual orientation secret due to perils of homophobia. Uttar Pradesh has a maximum of transgender population (137,467) followed by Andhra Pradesh (43769) and Maharashtra (40891). Most of them are employed in the informal sector (Chandramouli & General, 2011)

6. Economic Costs of Homophobic Sentiments and Untapped Pink Economy

India has been facing critical repercussions because of criminalization of homosexuality. It has been incurring the loss of 1.4% of its national output which equals to approximately 2.6 billion per year. Many international players have faced a hitch in entering Indian markets due to fear of being criticized especially if they happen to appeal LGBTQ consumers. The prevalence of Section 377 also had adverse consequences for the domestic market as it restricted the growth of certain industries which were primarily targeted towards LGBTQ consumers. The scrapping of the draconian section will have remarkable effects on the country's economic sector especially for the growth of "Pink economy".

Pink economy or Pink Capitalism is the process of bringing about inclusion of LGBTQ individuals who have developed decent purchase power with that of market economy i.e., to create a market that exclusively focus on their community (Ramírez, H. N. R, 2011). If estimates are to be believed, LGBT community would have been the fourth largest economy in the world in terms of the GDP (LGBT Foundation Hong Kong 2018). A survey estimated LGBT share of Household Wealth at Global level to US\$18 trillion (Global Wealth Report 2018). Companies having the highest level of gender diversity were found to be earning \$599.1 million more average sales revenue than the ones with low rate of gender diversity (Herring 2009).

It is an undeniable fact that India has a large untapped LGBTQ economy which offers huge business potential. Driven by global reports claiming increased revenue and better access to talent pool as the benefits of diversity to corporations, many Indian businesses are also compelled to adopt a Pro - LGBTQ stance to leverage the opportunities. Indian businesses are fast recognizing the fact that this huge LGBTQ community not only serves as their potential customer but also can serve as a unique talent pool that can provide a competitive edge to its business.

7. Pinkwashing & Indian Corporations

Pinkwashing refers to the business strategy through which brands position themselves as the one supporting LGBTQ community in their struggles in order to make profit from them by creating a favorable image for themselves.

7.1 Indian Corporate Pressing "Diversity" Button for Unique Talent Pool

Indian corporations post abrogation of section 377 have started adopting a more open approach towards LGBTQ candidates. Companies are seen to have been indulging into increasingly hiring LGBTQ candidates in a bid to create a more inclusive work environment. HR professionals across the businesses are recognizing the strong business case for having a diverse workforce. The researches across the world have already established that a diverse workforce is a source of innovations and creativity for the organizations. Also Indian businesses are leaving no stone unturned to create a supportive ecosystem for these LGBTQ employees to thrive well in their organizations by designing LGBTQ centric HR policies.

7.2 Lalit Hotels

When it comes to LGBT friendly workplaces, Lalit group of hotels are at the forefront of the mission. At The Lalit, transgender employees are not only accepted but are celebrated. The hotel has introduced a well drafted policy for hiring transgender candidates across its properties. It takes proud in hiring transgender employees for various customer facing roles as well. The Lalit has been India's first hotel chain to have extended healthcare benefits to its LGBTQ employees and their families. The hotel has

forged a tie up with ICICI Lombard to include same sex partners, adoptive parents and children, and children born through surrogacy under its employee health insurance cover (*The Lalit, 2018*). They have an anti-discriminatory policy in place which ensures that issues related to one's gender identity, gender expressions etc. fall within the purview of protected classes. Their dress code policy allows its employees to dress as per their full time gender expression. The group is known for offering a range of gender neutral benefits. They also adhere to gender neutral approach in all their basic work related processes like three gender options in all their forms, gender neutral restrooms in the premises etc. The brand has known for always extending its passionate support for LGBTQ welfare cause.

7.3 Tata Steel

Tata steel has rolled out a new HR policy in the year 2019 wherein it has asked its LGBTQ employees to disclose their partner's identity to avail all the benefits permissible under law. The company provides 30 days leave and financial assistance to its LGBTQ employees who undergo reassignment surgery. The partners of LGBTQ employees are eligible for attending any of its corporate event where the spouses of employees are invited. The partners of LGBTQ employees at Tata steel are also eligible to receive the benefits provided under a special career come back initiative called Take 2. The company provides a range of benefits to help LGBTQ employees familiarize with their partners like Tata Executive Holiday Plan honeymoon package and temporary transfer policy.

In 2018, Tata steel had launched its LGBTQ employee resource group as a part of its Diversity and Inclusion initiative Mosaic. The company has created workplace integration modules to be utilized for sensitizing everyone including staff and colleagues as to what is expected from them when any transgender joins the workplace. Tata steel intends to have a fourth of its employees from the diverse groups and ensures that 5% of them are from LGBTQ community ("*Tata Steel asks*", 2019).

7.4 Godrej

So far as LGBTQ movement in Indian corporate world is concerned, Godrej group of companies has emerged as an undisputed leader. The company is known for its very well-defined LGBTQ friendly policies and sensitization

programmes. The LGBTQ employees at Godrej are entitled to 3 months paid leaves for primary care giving if they choose to adopt a child. There is a provision for health insurance reimbursement of same sex partners of LGBTQ employees. The employees are also free to nominate their same sex partner for treatment at company's hospital at Godrej. All in all, Godrej adopts an equal opportunity policy for all sections of employees. Godrej India Culture Lab is known to have hosted over 40 LGBTQ themed events over the last 7 years. Through these events, the company has been closely engaged with LGBTQ leaders and the employees have been sensitized towards LGBTQ issues. To provide LGBTQ inclusive work environment, Godrej has adopted gender neutral anti-harassment policies and gender transition support policies as well (Nambiar, N., & Shahani, P, 2018).

8. 4B Model for Creating LGBTQ Friendly Workplace

8.1 Blind Recruitment

In order to remove any barriers which prevent LGBTQ talent from entering the organizations, it is suggested that companies adopt blind approach to hiring. Blind recruitment entails removal of all key personal details about the candidate like name, age, gender, image, residential address etc. from the resume and job application in order to build up an unbiased hiring process. Managers when presented with unbiased data about a candidate base their hiring decision purely on skills and experience of the candidate. This also leads to hiring the person who is the "best fit" for the job at hand.

8.2 Be Inclusive

Creating inclusive work environment call for changing the policies of the organization. Having well documented equal opportunity policy goes a long way in branding the company as Equal opportunity employer in the eyes of LGBTQ candidates and sends out a message that the company does not discriminate on the basis of sexual orientation. Using Pride colors on the website clearly indicates that organization is a pro LGBTQ one.

An attempt should be made to bring in inclusivity in all the processes as well. For example the application process can be made inclusive by allowing for various gender

categories – male, female, trans, “*I prefer to self-identify as*”. Also there should be a provision of revealing gender identity on optional basis. A dress code policy must also be framed allowing people to dress as per their full time gender expression.

8.3 Be Sensitive

While the organization is working on becoming LGBTQ friendly workplace, it must take necessary steps to ensure that the existing employees must be aware of such policy changes. Also they must be sensitized towards new joiners by the way of conducting roundtables with senior leaders of the organization. Workshops can be conducted to educate employees about the process of transition and what is expected of them. Pre placement sensitization programs must be conducted to ensure smooth entry of Trans employees in the organization. Also bullying and harassment policies should link the workplace behaviors of the employees with their performance evaluation for their effective implementation. The organizations should also beef up their physical infrastructure to better accommodate LGBTQ employees by building in gender neutral washrooms.

8.4 Build Supportive Ecosystem

The organizations can create their Employee Resource Group for LGBTQ community. These ERGs engage with members of LGBTQ community and help them connect with the organization. A reverse mentoring program can also be initiated by the organizations wherein junior employees from LGBTQ community can sensitize the senior professionals. It's important for the organization to publicize Pro LGBT stance to the internal and external stakeholders. This can be advocating LGBTQ friendly policies on a company's website or by sponsoring community specific events.

8.5 Benefits

The organizations must extend same sex partnership benefits to its LGBTQ employees by properly recognizing their same sex partners and by giving them equal status at par with married spouses. There should be a provision for gender neutral adoption leaves. For the purpose of health insurance, the cohabiting partner should be treated equivalent to a spouse.

9. Indian Brands on Pinkwashing Spree

Since the abrogation of Section 377, brands have also flocked to display their whole hearted support to LGBTQ community. The underlying idea is to cash on the growing purchasing power of LGBTQ community to shoot up their sales revenues.

9.1 Times of India's Out & Proud Campaign

Country's leading news publication group Times of India launched an initiative named 'Out & Proud' on May 17, 2019 the *International Day against Homophobia, Transphobia, and Biphobia*. Through this campaign, TOI has introduced a colorful classified section through which LGBTQ community can come on TOI's yellow pages. The campaign provided for free publication of ads for the first three months from the day of launching of the initiative to attract maximum trials.

9.2 Yatra.com

The brand had introduced Honeymoon packages for LGBTQ community starting from Rs 377 as a special offer for a limited period of time post abrogation of Section 377.

9.3 Zomato

The online food delivery app Zomato had taken an initiative in the year 2019 wherein it launched a new “LGBTQ friendly tab” on its app. The new tab was added after Zomato received an input from LGBTQ members that they felt unwelcome at some restaurants due to their sexual orientation.

9.4 Senco Gold & Diamonds

To support LGBTQ movement, India's largest jewellery retail brand, Senco Gold & Diamonds launched its exclusive Pride collection in the year 2019. The collection was showcased in a one of its kind LGBTQ centric fashion show titled “*Sphulingo - Freedom of Expression*”.

9.6 Social Media Campaigns

Many Indian brands celebrated abrogation of section 377 to show their support for LGBTQ community by undertaking campaigns on social media. Some brands

tinted their logos with rainbow colors while others flaunted pro LGBTQ taglines-

Bata: *Shoes don't discriminate*

Mother dairy: *There is Pride in our Diversities!*

Cafe Coffee Day: *A lot can happen over coffee 'for everyone'*

KFC: *Love is Love*

10. Major Implications

Off late legal and social aspects of abrogation of Section 377 have been comprehensively researched however the business aspects of abrogation of Section 377 have missed the attention of researchers in general. On one hand, it has led to emergence of big business opportunities for the marketers to tap hitherto overlooked market by offering highly curated products while on the other hand, LGBTQs' represent an untapped talent pool for the HR managers to win over the ongoing talent war. All in all, abrogation of Section 377 has brought LGBTQs' at the business forefront both as potential customer and as a potential employee.

11. Conclusion

It's been almost 3 years since the Supreme Court gave the landmark judgement striking down Section 377. It has been an undeniable fact that LGBTQ community has been discriminated against for ages but the winds of change have begun to blow post scrapping of Section 377. The abrogation has paved the way for the inclusion of the members of LGBTQ community on all fronts, be it social, cultural or economical. Given the increasing pace of globalization, section 377 verdict has also created a strong business case for LGBTQ inclusion through Pinkwashing. Indian corporations are all set to offer a warm welcome to LGBTQ community. Adoption of pro LGBTQ HR policies by many corporate houses and marketing initiatives directed towards LGBTQ customers are a living conclusive evidence of the same. Scraping up of the draconian section marks the first step towards LGBT inclusion. The journey of transformation has just begun.

The real inclusion would come when the mindset of the society towards LGBTQ community would undergo a complete positive change.

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