**Jaypee Institute of Information Technology**



Indian Constitution of And Traditional Knowledge  
Case Study Project

Title – Repealing Section 377(2018)

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**INTRODUCTION-**

* A notorious clause that has long been a source of conflict in India's legal system is Section 377 of the Indian Penal Code (IPC). This rule from the colonial era was a glaring example of injustice and prejudice against the LGBTQ+ community. Section
* 377 effectively criminalized consensual homosexual conduct, thereby marginalizing and stigmatizing a sizable portion of the populace.
* Section 377 was repealed in 2018, marking a significant milestone in Indian legal history as a result of the legal and social struggles around this law.
* This paper begins a thorough investigation of the complex path that resulted in the historic repeal of Section 377. With profound effects on social justice, equality, and human rights, the repeal of this harsh rule marked a significant turning point in India's legal history.
* Through a thorough analysis of the historical context, legal obstacles, pro- and anti-repeal arguments, and the historic ruling by the Indian Supreme Court, this paper aims to offer a comprehensive grasp of the implications and importance of this historic development.



**BACKGROUND-**

Examining the historical background of Section 377 in greater detail reveals that it dates back to the British colonial period, when it was implemented to control what was deemed "carnal intercourse against the order of nature." Understanding the long-term effects of this statute and the following fight to abolish it requires an understanding of the colonial context in which it was enacted.

* Colonial Origins:
  + - The prevalent moral sentiments and conventions of India during the British colonial era are largely responsible for the creation of Section 377. British imperialists attempted to impose their own Victorian-era norms and values on the colonies they ruled during this time. They consequently carried a plethora of rules and regulations with them, many of which were influenced by their conservative beliefs.
    - The restrictive social beliefs of the Victorian era were reflected in Section 377 of the Indian Penal Code, which was passed in 1860. Consensual sexual actions between individuals of the same sex were now illegal according to this statute. The British perspective that these kinds of activities were immoral and ought to be forbidden had an impact on how it was framed.
* The Post Independence -Era:
* Even after India attained independence in 1947, the LGBTQ+ community was nevertheless negatively impacted by Section 377. It was a holdover from the colonial past that persisted long after the colonial era was over. The statute persisted, allowing for the continuation of harassment, discrimination, and even incarceration on the basis of a person's sexual orientation alone.
* The fact that Section 377 was kept in place in India after independence demonstrated how powerful laws from the colonial past remained. The antiquated legislation exposed LGBTQ+ people to prejudice and mistreatment, leaving them open to extortion and social exclusion. Over time, as India's social and cultural milieu changed, Section 377's continued existence became a symbol of an injustice that required rectification.
* The discrimination that Section 377 continued to enforce was addressed through a number of initiatives and judicial challenges during the post-independence era. However, there were major barriers in the way of the fight for LGBTQ+ rights because of political inertia and traditional social values that impeded the removal of this oppressive clause.
* In addition to being a significant legislative achievement, the 2018 repeal of Section 377 demonstrated how Indian society is evolving and how committed it is to equality and human rights. It was a significant step in acknowledging the fundamental rights and dignity of all citizens, regardless of their sexual orientation, and it signalled the end of a long-standing injustice based in moral standards from the colonial era. The repeal served as an example of how legal systems change over time and how important it is to amend laws that no longer reflect modern values and human rights principles.
* Legal Challenges: Battling for Equality-
* There were several court challenges and significant turning points along the path to repealing Section 377. A landmark ruling by the Delhi High Court in 2009 essentially decriminalized consenting homosexual conduct. The important concepts of privacy, equality, and individual freedom were acknowledged by this historic decision. Nevertheless, the LGBTQ+ community and its allies were deeply disappointed when the Supreme Court reinstated Section 377 in 2013, making this historic win short-lived.



**ARGUMENTS-**

* Arguments in Favor of Repeal:
* Individual Freedom and Autonomy: Proponents of Section 377 repeal stressed how crucial it is for each person to have their own freedom and autonomy. They contended that consenting adults ought to be free to select their partners and partake in personal partnerships without fear of legal repercussions. This viewpoint was founded on the idea that a person's right to personal freedom includes the ability to select a romantic or sexual partner.
* Violation of Fundamental Rights: The claim that Section 377 blatantly violated the fundamental rights guaranteed by the Indian Constitution was one of the main reasons in favour of its repeal. The Supreme Court itself had acknowledged the right to privacy as a basic right, and this one was directly violated by the law. Furthermore, it was claimed that it violated the right to dignity, which is a fundamental part of human rights.
* Fighting Social Stigma and Discrimination: Proponents emphasized the pressing necessity of eradicating prejudice and social stigma against LGBTQ+ people. Because of the fear and prejudice that Section 377 had created, there had been harassment, extortion, and social exclusion. In order to put an end to this discrimination and advance a more inclusive and equal society, repealing the statute was thought to be essential. Proponents contended that in order for society to progress, it must become more tolerant and cognizant of a range of sexual orientations.
* Global Human Rights Framework: Removing Section 377 was justified by India's adherence to international human rights conventions. The significance of LGBTQ+ rights and the absence of discrimination based on sexual orientation has been acknowledged by numerous nations and international organizations. Proponents contended that eliminating Section 377 will align India with international human rights standards and enhance its reputation as a contemporary, rights-abiding country.
* Arguments Against Repeal:
* Beliefs in Culture and Religion: Rejectors of the repeal frequently used cultural and religious justifications to support their positions. They argued that religious teachings and traditional Indian values were incompatible with homosexuality. Removing the rule, according to others, would violate society's moral foundation, which is supposed to be built on heterosexual marriages and families.
* Fears of Possible society Changes: The dread of possible society changes was another concern raised. Some others thought that Section 377's repeal would encourage non-traditional family structures or values, which they saw as in odds with the long-standing cultural norms and beliefs in India. They expressed worries about how it might affect family and society norms.
* Misconceptions and preconceptions: A lack of knowledge or exposure to LGBTQ+ issues frequently led to the misconceptions and preconceptions that some opponents had regarding homosexuality. They might have fought against the acceptability of homosexuality because they misunderstood it to be a choice or the product of Western influence.
* Legal and Ethical Concerns: A few opponents brought up legal and ethical issues, speculating that eliminating Section 377 would have unforeseen repercussions or lead to legal problems in some circumstances.

**JUDGEMENTS-**

* The Supreme Court's decision was supported by thorough and convincing legal reasoning. The Indian Constitution's guarantees of individual rights and inclusion were acknowledged by the justices. They stressed that all individuals, regardless of their sexual orientation, should be entitled to these rights, which include the rights to equality, privacy, and dignity. The ruling was a resounding defence of individual liberty and a rejection of discrimination.
* The judgment's legal justification emphasized how LGBTQ+ people had been singled out by Section 377 and subjected to intimidation, extortion, and other types of discrimination. The court acknowledged the significant harm the law caused and how it affected the mental and emotional well of LGBTQ+ individuals. This recognition was a crucial element in the judgment, as it highlighted the injustices that had persisted for decades.
* The unanimous decision of the Supreme Court was one of its most notable features. A strong message of unanimity and consensus regarding the significance of deleting Section 377 was sent by the fact that all five justices on the bench agreed with their decision. This unanimous decision showed that the justices understood how critical it was to safeguard LGBTQ+ people's rights and dignity as well as put an end to the long-standing legal discrimination.
* The ruling significantly contributed to the Indian Constitution's protection of the right to privacy as a basic freedom. Beyond the context of LGBTQ+ rights, its acknowledgment had wider ramifications for individual freedoms in India. It stood for the idea that people should be free to choose their personal relationships without intervention from the government and that the government shouldn't trespass into the private lives of its inhabitants.
* The Significance of the Judgment:
* An important turning point in Indian legal history was the Supreme Court's decision to abolish Section 377. It signalled a change in the judiciary's position on the acceptance and defence of LGBTQ+ rights. Regardless of a person's sexual orientation, the ruling affirmed the fundamental rights to equality, privacy, and dignity for all citizens and stressed that these rights were unaffected by historical prejudice. In order to create a more equal and inclusive society where LGBTQ+ people may live openly without always fearing legal repercussions, Section 377 had to be repealed.
* The ruling also made a strong statement about India's commitment to equality and human rights to the world community. It gave hope and fuel to movements for LGBTQ+ rights around the world.
* In summary, the 2018 unanimous ruling by the Supreme Court to abolish Section 377 was a historic and revolutionary development. It was a significant step in acknowledging and defending the rights and dignity of LGBTQ+ people in India and reaffirmed the values of privacy, equality, and individual freedom. The ruling had a significant effect on both India's legal system and its reputation in the international movement for LGBTQ+ equality and rights.



**IMPORTANCE AND IMPACTGT:**

* There were significant and wide-ranging effects from the abolition of Section 377. In India, it was a major step toward the recognition and protection of LGBTQ+ rights. For the LGBTQ+ community, it meant not having to live in constant dread of legal repercussions and being able to live openly. It was a turning point in their fight for equality and acceptance because it freed them from the threat of discriminatory legislation as they celebrated who they were.
* Moreover, the repeal established a standard for court cases pertaining to discrimination, not just in India but globally as well. It demonstrated the effectiveness of legal action in overturning laws that discriminate against people and highlighting the value of equality, privacy, and individual rights. The ruling had a knock-on effect, giving people hope and spurring movements for LGBTQ+ rights in other nations.



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**WORK DISTRIBUITION-**

* Anirudh – done all work
* Shubhangam – kuch na kra
* Priyanshu – kuch na kra
* Arpit – kUch na kra