

Sri Lanka: Time to repeal not amend

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This week Singapore decided to lift a colonial-era ban on sex between men. Prime Minister Lee Hsien Loong said the government would repeal Section 377A of the penal code, a colonial-era law that criminalises sex between men, adding that society was becoming more accepting of gay people.

“I believe this is the right thing to do, and something that most Singaporeans will now accept,” he said, adding however that his government had no intention of changing the city-state’s legal definition of marriage as a union between a man and a woman. “Even as we repeal Section 377A, we will uphold and safeguard the institution of marriage (...). Under the law, only marriages between one man and one woman are recognised in Singapore.”

This comes the same week it was reported that a Sri Lanka MP is set to present a private Members bill to amend the penal code to amend legal provisions within the country’s penal code which criminalise same-sex sexual activity. It is unclear what amendments will be included in the bill expected to be presented by Sri Lanka Podujana Peramuna MP Premnath C. Dolawatte. Activists have been calling for the complete repeal of these draconian provisions rather than amending them. In a comical twist, an attempt to ‘amend’ these provisions in the 1990s led by then Justice Minister G.L. Peiris ended up strengthening the law against the LGBT persons.

Sri Lanka penal code Section 360 terms “voluntary carnal intercourse against the order of nature with any man, woman, or animal” as an “unnatural offence”, while Section 365 A penalises “acts of gross indecency between persons”. These provisions carry a maximum penalty of 10 years’ imprisonment and a fine. The 1883 Penal Code was inherited from the British during the colonial period, in which the English criminal law was imposed upon Sri Lanka, and we retained the law upon independence and continue to uphold these outdated laws.

There is substantial evidence of the law being enforced in recent years, with LGBT people being frequently subject to arrests. On occasion the law has been weaponised against political opponents as well. In a recent case Police arrested two women in Akkaraipattu who were sent for a psychiatric evaluation by the magistrate. Such degrading treatment of LGBT individuals should be a matter of shame for the whole of society. In March this year the UN Committee on the Elimination of Discrimination against Women (CEDAW) found that Sri Lanka violated the rights of a leading LGBT activist who was subjected to discrimination, threats and abuses due to the country’s laws. CEDAW found that Sri Lanka had breached the rights of Rosanna Flamer-Caldera, the founder and Executive Director of Equal Ground, an organisation defending the rights of the lesbian, gay, bisexual, transgender and intersex community in Sri Lanka.

The fact that law abiding citizens need to fear the law due to their sexual orientation is an abomination of justice. The State, the judiciary and the laws of a country should be there to protect vulnerable communities and not to cement inherent prejudices and discriminations.

India with its rich diversity, numerous conservative religions and a ‘culture’ that predates Sri

Lanka's by many millennia, has shown that it is possible for a society to evolve and reflect the values of non-discrimination and equality as suited to the modern times. In 2017, India's Supreme Court gave the country's LGBT community the freedom to safely express their sexual orientation. It ruled that an individual's sexual orientation is protected under the country's Right to Privacy law. A year later consensual gay sex was legalised by India's Supreme Court when it struck down Section 377 of the penal code.

Sri Lanka too must undertake such a journey in which fellow citizens are celebrated for their diversity and are reassured of their rights and dignity which are inherently theirs by birth. Amending the outdated sections of the penal code should not suffice and it is imperative that the sections of the penal code that criminalise same-sex sexual activity between consenting adults should be immediately repealed.

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