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SEXUAL ORIENTATION, GENDER IDENTITY AND RIGHT TO HEALTH.

The Dehumanization of human life with regards to Gender Identity.

AUTHORED BY: - Z. SASHA. L.

ABSTRACT.

Human beings have sexual orientation and gender identity. In this era, where (our) human rights are being discriminated and not protected, people are facing a lot of pressure to come out and talk about it the main reason to this is - Yes, we can point out that 'RELIGION' and 'SOCIAL NORMS' have been playing a big role in our lives, right from early age we were taught and told about our 'real' identity and side by side we ought to obey what's written in our religious books and this is the most important part. Alongside, there are also scientific facts which talks about the sexual orientation and gender identity of a human being. To add, health is the essential right of life; and every human being who possesses life are entitle to health. Hence, this paper seeks to give an approach of right to health in relation to sexual orientation and gender identity from a socio – legal point of view.

KEYWORDS: LGBTQ, Religion, Social norms, Health, Violence.

INTRODUCTION.

The Universal Declaration of Human Rights lays out the key principle of modern human rights, declaring, "All human beings are born free and equal in dignity and rights."¹ Thus, be it the international or national human rights convention they all protect the sexual orientation and gender identity of a human being. We might have many laws or organisations, for example the LGBTQ community or the HIJRA Community to protect these people belonging to such communities, yet we have heard of many cases that these people belonging to such a community have been stigmatised,

¹ The Universal Declaration of Human Rights (adopted 10 December 1948), UNGA Res. 217 A(III) (UDHR)art.1.

abused, raped or for extremecases are being killed at their homes, workplace, religious places, health centre, etc. this is simply because society can't accept them or the main reason is that our holy books have taught us that it is a sin to behave like the opposite sex or live a life of the opposite sex. Thus, most religious places don't accept the LGBTQ community as these people goes against their religious norms. And when it comes to health centre, most medical workers don't know how to treat them or won't treat them at all, the main reason being - they're confused as to which gender identity should they consider them.

WHAT IS SEXUAL ORIENTATION AND GENDER IDENTITY?

Sexual orientation is different from gender identity. Firstly, sexual orientation is whom you are attracted to, with whom you want to build a physical or mental relationship with be it a male or female that includes a lesbian, transgender, gay etc. Secondly, gender identity tells you about "who you are" whether you're a male, female, genderqueer, etc. This means thatbeing transgender (feeling like your assigned sex is very different from the gender you identify with) isn't the same thing as being gay, lesbian, or bisexual.

There are a bunch of identities associated with sexual orientation:

- People who are attracted to women) often call themselves straight or heterosexual.
 - People who are attracted to people of the same gender often call themselves gay or homosexual. Gay women may prefer the term lesbian.
 - People who are attracted to both men and women often call themselves bisexual.
 - People whose attractions span across many different gender identities (male,female, transgender, genderqueer, intersex, etc.) may call themselves pansexual or queer.
 - People who're unsure about their sexual orientation may call themselves questioning or curious.
 - People who don't experience any sexual attraction for anyone often call themselvesasexual.²

² <https://www.plannedparenthood.org/learn/sexual-orientation/sexual-orientation> (last visited October).

The Scientific Context: Being a man or a woman is a matter of gender identity, not a simple matter of a chromosomal algebra. Certainly the genes on our chromosomes contribute to our development, but they don't simply dictate our gender identities as boys or girls, men or women.

The X and Y chromosomes are called "sex chromosomes" because they contribute to how a person's sex develops. Most males have XY chromosomes and most women have XX chromosomes. But there are girls and women who have XY chromosomes. This can happen, for example, when a girl has androgen insensitivity syndrome. And there are boys and men who have XX chromosomes. This can happen, for example, when a gene on the Y chromosome ends up on an X chromosome, causing that X chromosome to function more like a Y.³

DISCRIMINALIZING OF THE LGBTQ COMMUNITY.

By now we all know what Section 377 of the Indian Penal Code is all about, but for some who are still unaware what this Section is all about, allow me to explain in brief. Well according to the IPC Section 377 categorised consensual sexual intercourse between same sex people as an "unnatural offence" which is "against the order of nature". It prescribed a punishment of 10 years imprisonment. Thus:

*377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.*⁴

With a historic move in the Indian legal system, this Section 377 of the Indian Penal Code, 1860 which was a '*Victorian law*' was struck down by a five-bench Judge from the Indian declaring it to be unconstitutional on the 6th September 2018, it was a triumph for the LGBTQ community. They found that Section 377 discriminates against individuals on the basis of their sexual orientation or gender identity, violating **Articles 14** and **Article 15** of the Constitution. Further, it was also ruled

³ <https://www.accordalliance.org/faqs/does-having-a-y-chromosome-make-you-a-man-does-lacking-one-make-you-a-woman/>

⁴ Section 377 of the Indian Penal Code, 1860.

that **Section 377** violates the rights to life, dignity and autonomy of personal choice under **Article 21**. Finally, they found that it inhibits an LGBT individual's ability to fully realize their identity, by violating the right to freedom of expression under **Article 19(1)(a)** of The Constitution of India.

With everything being said in the above paragraphs, we still find that even today the people belong to the LGBTQ Community and the Hijra Community, are still being stigmatized, decriminalized, abused, raped and even to the extent of being killed. We still hear of cases that men who are transgender are being taken out from their work place and being beaten up in roadside by men, some are not being accepted in the fashion society, activist being treated as prisoners and being kept in jail simply because of their sexual orientation. Thus, for some people belonging to this community, they still find it a hard time to express their own gender identity and we still find them hiding behind their closet.

The **Naz Foundation (India) Trust** challenged the constitutionality of **Article 377** under **Article 14, 15, 19** and **21**⁵ before the Delhi High Court. The Foundation contended that Section 377 reflects an antiquated understanding of the purpose of sex, namely as it means of procreation, and has no place in a modern society. Further, the police had weaponized the provision, which impeded efforts aimed at preventing the spread of HIV/AIDS.

The Foundation cited an instance in 2001 in Lucknow where HIV prevention workers, who were distributing condoms to homosexual men, were arrested on the allegation that they were conspiring to commit an offence. The Naz Foundation also argued that the provision was being misused to punish consensual sex acts that are not peno-vaginal.⁶

There has been an increased rate of discrimination and stigmatization when it comes to the health of these people, for those who can acquire health care without any issues, then it's a good thing. But for those people living in places where discrimination is high they tend to become depressed, have suicide ideation and other mental disorders.

When it comes to people living in places where the socio-economic rate is low, women who are lesbians and transgender are more prone to diseases such as HIV/AIDS/STDs than those living in

⁵ The Constitution of India.

⁶ <https://www.scobserver.in/court-case/section-377-case>

places where the socio-economic rate is high.

A recent study from southern Africa showed that one-third of 591 participating women who had sex with women had experienced sexual violence, demonstrating HIV risk for a population previously considered exempt; moreover, there was a 10% self-reported rate of living with HIV.⁷ the UN High Commissioner for Human Rights has emphasized that homophobia (the irrational fear of and hatred of lesbian, gay, and bisexual people) should be considered as significant and comparable to sexism, racism, or xenophobia

THE HIJRA COMMUNITY.

We are all aware who the ‘Hijras’ or ‘Eunuchs’ are, we have all seen them in the trains and in the roads especially when there’s a traffic jam, we all noticed them with their flashy saris, bright makeup and their bawdy songs, thus these third gender belong to a small minority.

The question is ‘Who are these ‘Eunuchs’ from the mother’s womb? Are they really naturally born this way? Who are these manmade Hijras?’

Firstly, we shall understand the meaning or terminology of the term ‘Eunuch’ or ‘Hijras’. The Urdu and Hindi word *hijra* may alternately be romanized as *hijira*, *hijda*, *hijada*, *hijara*, *hijrah* and is pronounced [ˈɦɪdʒrɑː]. This term is generally considered derogatory in Urdu and the word Khwaja Saraa is used instead. Another such term is *khasuaa* (खसुआ) or *khusaraa* (खुसरा). In Bengali *hijra* is called হিজড়া, *hijra*, *hijla*, *hijre*, *hizra*, or *hizre*. The eunuchs can be termed as male to female (MTF) transsexual.

□ **Religious context on Eunuch:**

Who are those eunuchs “so born from their mother's womb”. And are they the same as those From the biblical point of view, it has been clearly stated in Mathew 19: 12⁸:

⁷ Sandfort T., Baumann L., Matebeni Z., Reddy V., Southey-Swartz I. “Forced Sexual Experiences as Risk Factor for Self-Reported HIV Infection among Southern African Lesbian and Bisexual Women.

⁸ KJV Holy Bible

For there are some eunuchs, which were so born from [their] mother's womb: and there are some eunuchs, which were made eunuchs of men: and there be eunuchs, which have made themselves eunuchs for the kingdom of heaven's sake. He that is able to receive [it], let him receive [it].

spoken of in Isaiah 56:4-5?

For thus saith the LORD unto the eunuchs that keep my sabbaths, and choose [the things] that please me, and take hold of my covenant; Even unto them will I give in mine house and within my walls a place and a name better than of sons and of daughters: I will give them an everlasting name, that shall not be cut off.

Eunuchs are those without the 'equipment' to have sexual relations, not to include those who call themselves homosexual. Eunuchs, because they lacked some necessary equipment to have sexual relations therefore they could not have sons or daughters, hence this scripture where the Lord promises them something better than sons or daughters in His house.

Category 1 - those born eunuchs from their mother's womb. This means those men born without the necessary physical equipment to have sexual relations that will end in possible pregnancy.

Category 2 - Eunuchs made that way by men. This means some men, through acts of war, etc. were actually made so that they could not have sexual relations. This caused them to be placed as overseers in harems of kings, where they were trusted not to have relations with any of the women, because they actually couldn't. Making eunuchs of men captured in war, was not an uncommon practice in antiquity. Not for example, the Bible record of the slaughter of 'all the male children'. This is another way Kings conquered certain people groups, by eliminating generations of males, within that people group.

Category 3 - Men who made themselves eunuchs for the kingdom of heaven's sake. This means that some men like Paul, lived celibate lives, although he had the right to have a wife, (and Paul may have had a wife at one time, because of certain Jewish groups he wrote that he belonged to) Paul made himself 'like a eunuch' for the sake of the gospel. These words may also mean that some men actually 'castrated themselves' physically, for the sake of the kingdom of God.

Homosexual could not be included in the eunuch category at all, because homosexuality is something that is expressly forbidden and called sin, by both the old and new testament, and does not involve

dismemberment of any kind. Homosexual attraction is not castration.⁹ Even in the Mahabharata, it's written that in Indralok, Arjuna was propositioned by apsara Urvashi, however, he addressed her as a mother which annoyed her. She cursed him that he would become a eunuch. When Indra came to know about this, he told Arjuna that the curse would serve him as a boon during the one year stay in hiding and after spending that period he would regain his masculinity. After spending 12 years in the forest, Pandavas spent the 13th year of exile incognito where Arjuna made use of the curse and lived as a eunuch named Brihannala.

According to one article '*Eunuchs not always born but made*'¹⁰ which was published in The Times of India, it was stated that only one in a lakh are naturally born a eunuch, statistics do not reveal how youngsters are being kidnapped by the gurus or paid agents and indulge these youngsters into drugs thus leading them into homosexuality and risky operations.

Majority of these Hijras are being made to work as sex workers, one Kirpal who was being sold to the Eunuchs by his employer, though he had to work as a sex worker, he was luckier, as the Sabha saved him from the castration.

□ **Medical Health Context:**

There has been an increased rate of prostitution in the Hijra community, which sadly leads to the high risk of sexual diseases such as HIV/AIDS. They are more likely to have mental health issues than those who have had male to male intercourse. They are vulnerable to alcohol, psychiatric disorders and other disorders, despite the issues that they are facing the main problem is that these hijras are scared to seek help due to stigma from the health professionals.

From the limited mental health studies that exist, issues with gender identity are occurring there. A cross-sectional study of 50 hijra women in Mumbai showed that 84% of participants met criteria for gender identity disorder according to DSM-IV-TR. This finding was supported by a subsequent qualitative study, in which researchers interviewed eight hijra in Bangalore, India, regarding what

⁹ <https://hermeneutics.stackexchange.com/questions/5420/who-are-eunuchs-of-their-mothers-womb>

¹⁰ <https://timesofindia.indiatimes.com/city/delhi/eunuchs-not-always-born-but-made/articleshow/1219979.cms>

factors and unique experiences contributed to their well-being. Among this small sample size, there appeared to be a persistent need for sex change and gender change because they felt discordance between their internal and external identity. Other contributors to well-being among this sampling were joining a *gharana* and finding a community of similar people.

Aside from discordance between gender identity and natal role, there appear to be several socio-cultural stressors for the hijra that predispose them to mental health issues. These include family pressures to conform to gender norms, coming to terms with sexual identity and orientation, and migration to cities with strong hijra communities. Poor self- and social acceptance as a teenager, traumatic transitions, and physical, verbal, and sexual abuse from family and law enforcement were also major stressors. The hijra continue to be disadvantaged within society as evidenced by the barriers to obtaining voter identity cards and ration cards, as well as acceptance to educational institutions.

The hijra women commonly encounter a wide variety of discriminatory attitudes and institutional difficulties in meeting their basic needs or in having their gender identity respected. This discriminatory attitude toward the hijra is extremely invasive and destructive for their mental health and has created a strong sense of loneliness.¹¹

Thus, these Eunuchs are being view by different eyes from different people.

CONCLUSION.

India does not have a proper law to protect the LGBTQ community; we cannot find any anti-discrimination laws, nor proper medical health laws to protect the people belonging to the LGBTQ Community or the Hijras Community. Even if the Constitution prohibits any sort of discrimination, we can say that, that injunction only applies to the Government and its instrumentalities.

Thus, these communities are an integral part of the Indian Society; they are at a disadvantage when it comes to quality of health care. Even if they are a minority group, there has been an increasing rate of sexual transmitted diseases. We have seen many awareness programs on HIV/AIDS and programs

¹¹ <https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp-rj.2017.120504>

on mental health – It is important to take the need of gender identity and sexual orientation when it comes to health care and patient care.

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