

Gay rights, psychiatric fraternity, and India

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The recent past has been turbulent for Lesbian Gay Bisexual and Transgender (LGBT) people and Gay Rights in India. The Delhi High Court's landmark judgment in July 2009, which read down Section 377 of the Indian Penal Code, was a major victory. It held that Section 377 to be violative of Articles 21, 14, and 15 of the constitution, as it criminalized consensual sexual acts of adults in private.^[1] The judgment struck down a 19th century law, which the police used to threaten and blackmail LGBT people. Violation of the law is punishable by a fine and imprisonment.

Subsequently, India's Supreme Court issued a ruling against human rights by reinstating the law that bans gay sex in 2013.^[2] The response from mental health and legal establishment to this manifest bigotry was weak.^[3] The hesitancy of the establishment to clearly support LGBT rights exposes their subscription to prevailing societal prejudices. Fortunately, the Supreme Court referred a batch of curative petitions against Section 377, to a five-judge Constitution Bench for an in-depth hearing.^[4]

THE SCIENCE

Modern medicine and psychiatry, since the 1970s, have abandoned pathologizing same-sex orientation and behavior.^[5] The World Health Organization accepts same-sex orientation as a normal variant of human sexuality.^[6] The United Nations Human Rights Council values LGBT rights.^[7]

Psychiatry's new understanding is based on studies that document a high prevalence of same-sex feelings and behavior in men and women, its prevalence across cultures and among almost all nonhuman primate species.^[8,9] Investigations using psychological tests could not differentiate heterosexual from homosexual orientation. Research also demonstrated that people with homosexual orientation did not have any objective psychological dysfunction or impairments in judgment, stability, and

vocational capabilities. The consistency of same-sex attractions, the failure of attempts to change, the lack of success with treatments and the harm caused by these efforts support the stability of homosexual orientation.^[3,8,9]

Science continues to debate the relative contributions of nature and nurture, biological and psychosocial factors, to sexuality.^[3,8,9] However, classical theories of psychological development employ untestable conjectures and argue without proof that the origins of adult sexual orientation lie in childhood experience and development. Similarly, genetic and biological theories are reductionistic and do not explain complex aspects of human behavior, including natural inclination and choice. The universality of same-sex orientation and behavior and variations in its meaning and practice across cultures undermine single and simplistic explanations.

Human sexuality is complex; the distinction between desire, behavior, and identity acknowledges the multidimensional nature of sexuality.^[3,8,9] The fact that these dimensions may not always be congruent in individuals suggests the complexity of the issues. Bisexuality and the discordance between biological sex and gender role and identity add to the complexity.

THE CULTURAL CONTEXT

Anti-LGBT attitudes once considered the norm, have changed over time in many social and institutional settings in the west. However, heterosexism is also common; it idealizes heterosexuality and considers it the standard while denigrating and stigmatizing all nonheterosexual forms of behavior, identity, relationships, and communities. Religious and social orthodoxy and patriarchy complicate the issues in many conservative and tradition-bound societies. This is particularly true in India, making it difficult for LGBT people to be accepted as equals in society.^[3,8,9]

The hesitancy of the Indian medical and legal establishments to fully support LGBT rights exposes their subscription to prevailing societal prejudices.^[3] Such a state of affairs calls

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for a clearer understanding of the relationship between medicine and law on one hand and society on the other hand.

MEDICINE AND SOCIETY

Despite its scientific base, medicine is a system sanctioned by the society in which it practices. Scientific knowledge is composed of beliefs shared by experts.^[10] The social nature of science argues that scientific authority belongs to communities, both within and outside medicine. The prevalent views on a topic are based on the emphasis on specific data and by particular experts.

Michel Foucault recognized knowledge structures, which enhance and maintain the exercise of power.^[11] He suggested that the religious practice of confession, secularized in the 18th and 19th centuries, allowed people to confess to their innermost thoughts. These became data for the social sciences, which used the knowledge to construct mechanisms of social control. Medicine in the 19th and early 20th centuries medicalized sexuality, converting the emphasis from sin to pathology. The vibrant Gay Rights movements in the west forced medicine to reexamine the issues involved. A critical analysis of the evidence did not suggest pathology, impairments or reduced capabilities, resulting in the deletion of homosexuality from psychiatric classifications.^[3]

LAW AND JUSTICE

The Supreme Court rulings on Section 377^[1,2,4] and transgender rights^[12] document confusion of thought within the judiciary. The conflicting judgments of the court on homosexuality seen in conjunction with its enlightened ruling on transgender rights possibly reflects a slow evolution of liberal thought within higher Indian judiciary.

The demands of the 21st century and the enlightened vision of the Indian Constitution, with its focus justice, liberty, equality, and fraternity assuring the dignity of the individual, mandate a creative citing of the law. The judges who reinstated Section 377 opted not to heed the call of justice and renew the rule of the law in relation to the new question that was presented. On the other hand, the judges of the Delhi High Court on Section 377 and those of the Supreme Court on Transgender status took up the challenge and rethought the law and cited them in response to the call of justice. They were aware of their responsibility of remaking theory in situations where laws fall short of the call for justice.^[3,8,9]

INDIAN PSYCHIATRY'S HESITANCY

Modern medicine and psychiatry in India, despite their dependence on and slavery to western thoughts, ideas,

diagnostic classifications and treatment options, continues to be reluctant to emphatically support these liberal sexual norms for the country,^[3,8,9] due to local religious and social orthodoxy. Views for homosexuality across the society seem to vary. The continued pathologization of homosexuality as expressed by a senior psychiatrist to a national newspaper did not go down well with the liberal media. On the other hand, a more humane approach, yet one wrapped up in unprovable psychoanalytical ideas, which continued to pathologize same-sex behavior, seemed to receive more support within the fraternity.^[13] A strongly worded statement in support of homosexual attitudes, behavior, and lifestyle was watered down to a one line official statement by the society stating that homosexuality was not a disorder.

Indian psychiatry needs to evaluate the evidence and accept the normalcy and universality of same-sex orientation, behavior, and lifestyle. This needs to happen before Indian society and culture at large can take up the cue and support justice, liberty, equality, and fraternity for LGBT people.

Stereotyping LGBT lifestyles and emphasizing heterosexual norms result in a toxic mix.^[3] Behaviors of the past, which openly discriminated against human beings, based on sex, gender, caste, race, ethnicity, language, religion, etc., are not now openly advocated; prejudice is now cloaked in subtle language and sophisticated arguments, but still employing old justifications and norms.^[3] Such practices ensure the persistence of discrimination. Bigotry related to sexual orientation is now rarely manifested in its crude form (i.e., putting people in jail) but is still widely prevalent within social conservatism.^[3] It not only prevents equalities of opportunity but also of outcomes for LGBT people. We need to be aware of and debate sophisticated forms of prejudice in today's world.

THE WAY FORWARD

Society needs to acknowledge that social stigma and consequent discrimination of people with same-sex orientation cause much harm.^[3,8,9] It should respect the dignity and human rights of all people, irrespective of their sexual orientation. Medical and legal fraternities should support the need to decriminalize same-sex orientation and behavior and to recognize LGBT rights to include human, civil, and political rights. The recognition of people's humanity also advocates the legal recognition of same-sex relationships, anti-bullying legislation, anti-discrimination laws in employment and housing, immigration equality, law for an equal age of consent and laws against hate crimes, thus providing enhanced criminal penalties for prejudice-motivated behavior and violence against LGBT people.^[3,9]

The psychiatric and legal fraternity should lead in arguing for justice, equality, freedom, and dignity for all India's people.

It is the everyday heterosexual attitudes in society, which encourage prejudice and bigotry. We need to emphasize people's humanity rather than focus on their sexuality.^[3] We should measure our own goodness and humanity, not by the people we exclude, but rather by the attitudes we embrace and those we include.

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