

Medicine and Society

Gay rights and bigotry

K.S. JACOB

Every day heterosexist ideals and norms encourage homophobia and prejudice. We need to be aware of and debate sophisticated forms of bigotry in today's world.

Modern medicine and psychiatry, since the 1970s, have abandoned pathologizing same-sex orientation and behaviour.¹ The WHO accepts same-sex orientation as a normal variant of human sexuality.² The United Nations Human Rights Council values Lesbian Gay Bisexual and Transgender (LGBT) rights.³ Yet, India's Supreme Court reinstated a law that bans gay sex by restoring Section 377 of the Indian Penal Code.⁴ The response from the mental health and legal establishment to this manifest bigotry was weak.⁵⁻⁷ It betrayed a poor understanding of the issues and reflected deeply ingrained prejudices.

THE SCIENCE

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

Science continues to debate the relative contributions of nature and nurture, biological and psychosocial factors, to sexuality.^{8,9} However, classical theories of psychological development employ un-testable 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 behaviour, including natural inclination and choice. The universality of same-sex orientation and behaviour and variations in its meaning and practice across cultures undermine single and simplistic explanations.

Human sexuality is complex; the distinction between desire, behaviour and identity acknowledges the multidimensional nature of sexuality. The fact that these dimensions may not always be congruent in individuals suggests complexity of the issues. Bisexuality and the discordance between biological sex and gender role and identity add to the complexity. Medicine and psychiatry use terms such as homosexuality, heterosexuality, bisexuality and trans-sexuality to encompass all related issues, while current social use argues for lesbian, gay, bisexual and transgender (LGBT) terminology, which focuses on identities.

Department of Psychiatry, Christian Medical College, Vellore, Tamil Nadu, India; ksjacob@cmcvellore.ac.in

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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 non-heterosexual forms of behaviour, 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.

The hesitancy of the Indian medical and legal establishments to support LGBT rights exposes their subscription to prevailing societal prejudices.¹⁰ Such a state of affairs calls for a clearer understanding of the relationship between medicine and law on the one hand and society on the other.

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.¹¹ 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.¹² 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 re-examine 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.

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 norms for the country,^{5,6,10} due to local religious and social orthodoxy.

LAW AND JUSTICE

The Supreme Court rulings on Section 377⁴ and on transgender rights¹³ are also possibly as a result of some confusion. It is generally believed that law and theory drive legal practice. In fact, legal practice defines theory; concepts of justice drive law. Justice is an agreed value implemented through law. However, laws often fall short of delivering justice and need to be constantly re-interpreted and re-written in order to provide justice. Practice constantly engages with theory and re-tools it. It cites theory in specific contexts, modulating, redirecting, and even re-making it.

The demand for justice brings a case before the law; this demand puts the law at issue. The demand for justice can exceed the law, bring new issues before it and consequently require an extension or a re-interpretation of it. Justice, then, renews the law and extends its hold. The law can never escape from this demand for justice, since it is a demand that can never be fully met.

The demands of our era, the different contexts and the call of justice, mandate a creative citing of the law. Judges may opt not to heed the call of justice, and renew the rule of the law in relation to the new question that was presented, as was done for Section 377. On the other hand, they may take up the challenge and re-think, re-make and cite the law to respond to the call of justice (e.g. the ruling on transgender status). When judicial and legal practice is simply understood as an application of theory, its ability to renew and re-make theory, to render it more accountable to the present, is undermined. Legal and judicial practice needs to cite and re-make theory, and to be aware of its responsibility to do so in situations where laws fall short of the call for justice.

THE WAY FORWARD

There is a need to accept the normalcy and universality of same-sex orientation, behaviour and lifestyle. Society needs to acknowledge that social stigma and consequent discrimination of people with same-sex orientation cause much harm. 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 de-criminalize same-sex orientation and behaviour and to recognize LGBT rights to include human, civil and political rights.⁸ 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 equal age of consent and laws against hate crimes, thus providing enhanced criminal penalties for prejudice-motivated behaviour and violence against LGBT people.⁹

Stereotyping LGBT lifestyles and emphasizing heterosexual norms result in a toxic mix. Behaviours 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 using old justifications and norms. 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. It not only prevents equality 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 psychiatric and legal fraternity should lead in showing the way to justice, equality, freedom and dignity. 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. 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.

Note: The views expressed in this article are the author's and do not reflect those of any institution or organization.

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