

A CRITICAL ANALYSIS ON CLINICS TREATING HOMOSEXUALITY AS A DISEASE: WITH SPECIAL REFERENCE TO ECUADOR AND INDIA

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Abstract:-

Homosexuality is the romantic, emotional and sexual attraction between two people belonging to the same gender. This can be caused due to genetic, hormonal and psychological or social factors. The reasons for the sexuality are vague and researches are undertaken to gain clarity on the characteristics of the same. Homosexuality is legitimized in many parts of the world, but there are nations which reject homosexuality and rather treat it as a disease. The primary focus of the paper is to reveal about the torturous clinics in Ecuador that claim to treat homosexuality and cure it. The operation of clinics was reported in India as well. The paper gives an insight into societal attitudes on homosexuality over the years. Homosexuality as an invisible conflict which is successfully kept under cover is studied here. The author at the end of the paper tries to establish the fact that homosexuality is not a disease but a personal choice.

Keywords:-*Homosexuality, personal choice, disease, clinics, abusive treatment.*

INTRODUCTION:

This research paper throws light on the fact that homosexuality is not a mental disease but a normal sexual orientation. The paper primarily reveals about torturous clinics in Ecuador which claim to treat the mental disease and cure it. Many reports claim that doctors in India also offer treatment to homosexuality. The structure of the paper is divided into three research questions and answering the same.

- Why homosexuality is considered a ‘disorder’ rather than a sexual orientation of the people?
- Why is there the need for forceful and torturous treatment of homosexuality?

The first two questions are answered through the societal attitude towards homosexuality over the years. Religious interpretations consider homosexuality as a sin and thus people are influenced by the same. This part also deals with the clinics operating in Ecuador and India and their effects on the homosexual community. Fundamental rights provided for the overall development are deprived of the homosexuals, which is also discussed in this part.

• Why laws are always made based on the majority opinion?

This question deals with the relation between laws and morals. It primarily talks about Section 377 of the Indian Penal Code that had criminalized homosexuality as a law based on the majority opinion.

The paper concludes on the note that homosexuality is a choice made by an individual. It is to be treated only if an individual is not able to relate himself with this sexual orientation.

Chapter I

Sexual Orientation and Homosexuality:

Sexual Orientation

Sexual Orientation is the identity an individual chooses for oneself with respect to romantic, emotional and sexual attachment or attraction. The sexual attraction can be towards the members of the same sexes (homosexual), opposite sexes (heterosexual) or both (bisexual). According to scientific study and research, the sexual orientation in an individual emerges during the period of middle childhood and adolescence. Sexual encounters with people, relationship with parents or friends, perspectives on attractions during this period and so on would form the basis for a particular sexual orientation.

Homosexuality

Homosexuality is a kind of sexual orientation where the sexual attraction is towards the same sex members of the community. Thus Homosexuality is having sexual attraction and intimacy with the people of the same sex. The factors causing homosexuality is not very clearly mentioned by any scientific research and thus studies suppose genetic, societal influences, nurture and psychological factors to be responsible for homosexuality.

Homosexuality in the past:

Homosexuality is evident from time immemorial and has been a part of various cultures. The acceptability and understanding of it has varied from different cultures and societies. In the ancient times, people did not know whom they were sexually attracted to or whom they should be attracted to. Homosexuality was earlier called as sodomy and Homosexuality as a concept came into being when the word was coined in the 19th century by Karl Maria Kertbeny, a psychologist who extensively worked on the issue of Homosexuality.

The Ancient city states- Greece and Sparta:

The Greece is known as the motherland for homosexuality. The great scholar Plato states that, it is wrong to call same sex love immoral because the actions aren't out of immorality but due to courage, manliness and masculinity. Later, Plato himself contradicts and states that homosexuality is “utterly unholy” and “ugliest of things” This shows that the Greeks were a little confused about the concept of homosexuality. However sexual relationship between a man and a young boy was not condemned in Greece but was rather looked upon with valor and pride for men. Whereas Sparta, a city state strongly condemned homosexuality as against nature.

The Roman Empire:

The Roman Empire had a negative approach to homosexuality. With the influence of Christianity, Romans strongly condemned and punished homosexual acts. The Christian fathers regarded procreative sex within marriage allowed and all other sexual activities as unnatural and sinful. The Justinian's Code, rule of law existing during the time, provided that, homosexual sex were to be executed, but those who repented could be spared. The decline of the Roman Empire resulted in barbaric kingdoms and they were tolerant of homosexuality.

The reign of the Church:

With the growth of the Church, Christian theologians played a major role in bringing back the condemnation of homosexuality. The first ecumenical council held in this period, to condemn homosexuality stated that “Whoever shall be found to have committed that incontinence which is against nature” shall be punished, the severity of which depended upon whether the transgressor was a cleric or layperson (quoted in Boswell, 1980, 277). Also, persons who engaged in heterosexual sodomy were also sodomites. There are reports of persons being burned to death or beheaded for sodomy with a spouse.

The Renaissance period:

Homosexuality was suppressed by the Roman Catholic Church in the High Middle Ages, which was later continued to the Renaissance period. Church used all means possible to fight what was regarded as “corruption of sodomy”. Men were fined or jailed; boys were flogged, burning at the stake. The Spanish Inquisition began in 1480 during which sodomites were stoned, castrated and burned. In France, first-offending sodomites lost their testicles; second offenders lost their penis, and third offenders were burned. Women engaged in homosexual acts were mutilated and executed. Gradually, the punishment became imposing death sentence. Homosexuality was not only prevalent among commons but also the royalty. But the royalty got away with what they did because they were the supreme rulers. Even though many measures were taken to cure people of homosexuality yet it still flourished.

The Modern Century and Wolfenden Committee:

In the modern centuries, Christian theological views on homosexuality were no longer accepted. Secular and scientific interpretations were given more value. Psychology and medicine gave a different outlook towards homosexuality and considered it as a normal sexual orientation. In England, stricter laws were passed to punish homosexual acts. After the World War II, the number of people arrested for homosexual acts increased rapidly. Hence the government decided to set up a Committee headed by Sir John Wolfenden, in 1957 to look into homosexuality and prostitution. The **Wolfenden Committee** reported that homosexual acts between consenting individuals in private is not a criminal offence. Thus homosexuality became legal in England and Wales. This is one of the earliest examples of decriminalizing homosexuality. The liberalization movements of homosexuals further influenced countries to pass legislations in favour of homosexuality.

Homosexuality in the modern societies:

Liberation movements, protests and activism continuously occurred in the modern societies. As a result of these some countries began decriminalizing homosexuality; others still turned a deaf ear towards the community. However, in Countries where homosexuality was decriminalized clinics to correct them were being established. Clinics began working in the disguise of rehabilitation centers treating drug and alcohol abuse. The treatment offered was torturous, inhuman, abusive and cruel. These clinics consider homosexuality as a problem of the mind rather than genetics or sociological factors.

The World Health Organization on Homosexuality:

The World Health Organization (WHO) had Homosexuality as one the diseases under mental illness. However in the year 1992, due to lack of scientific justifications, and the threat of serious health issues and wellbeing in people, WHO removed homosexuality from the list of mental and sexual disorders list. Homosexuality since then has undergone various study. Study later believed that homosexuality is a natural variant of human sexuality and it's not a pathological condition that can be cured.

The World Health Organization (WHO) has reported that even after removing homosexuality from the list of mental diseases, conversion therapies still takes place across the world, from China to South Africa and the United States. Ecuador, Brazil and Malta are the only countries that have banned the controversial treatment, according to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).

Christianity on Homosexuality as a Sexual Orientation:

Christian belief favors ‘straight’ relationships and regards same sex relationship as a sin which can be cured by prayer, worship and hence driving away the satanic influence. The Christian philosophers contend that Jesus has never laid down a pattern of homosexuality rather provides heterosexuality which is evident from the books of the Bible. In Genesis Chapter 1 verses 27, it is clearly written that, God created mankind in his own image, he made them male and female; and Chapter 2 verses 24 states that Woman was made from the rib of the man , hence both become one flesh. The Church concludes that homosexuality arises out of a sin and it can only be cured by God. For the argument that homosexuality is the ‘choice’ of people, the Church justifies that this choice is due to the deviation of mankind from the path of true faith. This is the root from where people get the conclusion that homosexuality is nothing but a disease which has to be cured.

Chapter II

Homosexuality in Ecuador:

Clinics treating homosexuality as a mental disease:

Life inside the torture clinics that cure Homosexuality by Paola Paredesis an article which describes how homosexuality is treated as a disease in a country like Ecuador where homosexuality is decriminalized. A journalist named Paola went undercover and discovered a clinic which used violent, abusive and torturous methods to treat homosexuality. These clinics work undercover as Rehabilitation centers treating drug addicts but they actually treat homosexuals.

The journalist Paola is a Photographer Journalist based in Quito, Ecuador. She primarily focuses on documenting issues faced by the LGBT community, exploring contemporary attitude towards homosexuality in Ecuador. Being a homosexual, with fully supporting parents, she tries to bring out the social prejudices and invites discourse on the issues of sexuality, family and personal choice in the contemporary world. ‘Until You Change’, her latest work on revealing the torturous clinics is one of the most celebrated works, applauded by prominent publications.

As a part of the project, Paola goes undercover and is shocked to find out the bitter truth. She gained more information by interviewing a victim who was locked up in the clinic for several years. People here are forcefully brought for treatments by their parents. Most of them are conservative Catholics who regard homosexuality as a disease and hope to cure them. The patients in the clinic have a regular routine, failing to compile with results in torture, beatings with cable wire, pushing the hand into the toilet bowl, starvation, beaten up by the staff, and so on. The treatment includes prayers and worship also. The patient is humiliated by repeatedly telling that she or he is a burden to the country and disappointment to the parents and not worthy to live. A patient of the clinic is required to wake up around 6 in the morning and take a shower, followed by Prayer, study of Bible, and further therapies for homosexuality. They are forced to apply makeup, wear short clothes and heels, in order to inculcate femininity. The patients are constantly monitored by the staff. They are made to clean different rooms of the clinic using rags and tooth brush. They are provided with really cheap and malnutrition food. Corrective rape is one among the therapies used to heal people of their homosexual nature. In the name of therapies, women are sexually assaulted by the employees of the clinics.

These are the discriminating, inhuman and abusive treatments meted out to homosexuals so as to cure them. The treatment continues until the patient voluntarily changes. The staff believed that they are doing God's work by saving young people from the devil.

There are several such clinics working under disguise in a country like Ecuador where same sex relationships are legalized. Paola claims that there are approximately 200 clinics around Ecuador treating homosexuals. She has been concluded that shutting down all of them is impossible as they work like a network. Thus making people aware of such inhuman attitude and educating them to be more tolerant was the only solution.

Reason for a country like Ecuador to have such abusive clinics:

The Country of Ecuador is a Catholic faith dominated country. In the Ecuadorian Episcopal Conference of 2007, the bishops held that homosexual unions are contrary to nature and the commandments of God, and thus it should not exist. The Conference also said that the Bishops community or the Church would never accept legalizing Homosexuality at any cost. The Bishops at the conference said that they did not wish to interfere with the activities of the state but had the moral obligation to voice about moral values and sanctity of life. They had the duty to offer guiding principles with respect to moral issues. The Church did not value same sex relationship like heterosexual marriages which was the union made by God.

The people who are conservative Catholics believe the teachings of the Church and blindly accept them as the way of life. They fail to realize that homosexuals are like any other human beings and have all the fundamental rights for their overall development.

Constitution of Ecuador:

Ecuador is one among the few countries in South America which accepted Homosexuality as a way of life and incorporated the same into the Constitution in 1997. The legalization was a result of the various liberation movements and protests by the homosexuals. A review of the *Attala Riffo & Daughters v. Chile* proves that this case had played a major role in striking down the ban on same sex marriage. After which the Ecuadorian Constitution legalized same sex marriage through **Article 68** of the Constitution. Initially the first paragraph of **Article 51 of the Criminal Code of Ecuador** criminalized homosexuality which was overturned by **Case N0.119- TC**.

Numerals 6 and 7 of Article 22 of the Ecuadorian Constitution provides for equality before law and freedom of conscience. Even after all this, clinics treating homosexuality exists in disguise. These clinics have been violating the basic human rights of the people. Their Right to choose one's own sexual orientation and Right to Privacy has been interfered with. Neither has law nor did protests actually change the Country's attitudes towards homosexuality. Until and unless the society accepts homosexuality as a sexual orientation that is the choice of people, such clinics treating homosexuality will continue to work and illtreat people.

Chapter III

Homosexuality in India:

Homosexuality in India was criminalized by the British during imperialism. However it is evident since the ancient centuries. The oldest scripture, Manusmriti condemned homosexuality by severely punishing the offenders. This is an evidence for the fact that such relationships existed then. However in the Arthashastra of Kautilya, written around, 400 to 200 B.C.E, homosexual acts were punished with minor fines. They were regarded as a minor offence. The Dharmashastras referred to homosexual acts, the Kama sutra also gives a disdainful reference to homosexuality. Even though these texts did not allow homosexuality, yet they prove that homosexuality was a part of their societies. The paintings and carvings of gods, goddess, demons, warriors, lovers, and priests and so on, on the temples and monuments built during the 6th Century also had erotic images portraying same sex relationships.

The Mughal rulers who strongly believed in the Islamic faith also condemned homosexual acts. They referred to sodomy as 'Zina' and the punishment ranged from 50 lashes to a slave, 100 for an infidel, and to death by stoning for a Muslim. The British Raj played a major role in criminalizing homosexuality. Thomas Macaulay drafted the Section in 1838 which was implemented during the Sepoy mutiny in 1860. This law punished sexual acts against God and nature. Thus it condemned anal penetration or homosexuality. The Act was further repealed and replaced by the Offences against Persons Act, 1861. This Act broadened the scope of punishing unnatural acts. It prosecuted both rapists as well as homosexuals.

Clinics in India claiming to treat homosexuality:

Like Ecuador, there are clinics in India which claim to treat homosexuality and apparently cure it. However abusive and torturous methods of treatment unlike Ecuador have not been reported of here.

India is a diverse country with different religious beliefs. The Church, just like the Ecuadorian Catholic Church believes that homosexuality is a sin and deviation of men in the wrong path. The choice of choosing such a relationship is because of the satanic influence. The Hindus regard it as a bad addiction. Baba Ramdev, claimed that homosexuality is a bad addiction and that it could be cured through yoga. Other gurus promise people that they could cure homosexuality using mantras and rituals. These are only ways of draining people's wealth.

Apart from spiritual treatments, India influenced by the Western Countries has adopted various therapies to treat Homosexuality. Indian Psychiatrists claim to treat homosexuality using Conversion Therapy, also called as Reparative Theory, Sexual Reorientation theory, etc. These therapies affect the self-confidence and self-esteem of the individuals. More than physical, it emotionally abuses an individual.

Conversion therapy is a pseudoscience which attempts to 'convert' a queer person into a straight person through counseling and psychotherapy. These include electric shocks, counseling sessions, and hormone castration, sexual organs transplantation, and so on. These therapies scar the individuals mentally. The electric shocks could cause memory loss, hypnosis, nausea and so on. The counseling sessions are actually used to brainwash the patients into making them believing that it is caused due to childhood trauma and insufficient male or female affirmation in childhood. These therapies make the patients feel disgusted, lower their self-esteem and evoke violent tendencies like suicide.

Indian Journal of Medical Ethics on emerging conversion therapies:

An article published in the Indian Journal of Medical Ethics, states that Indian doctors have been developing various therapies to treat homosexuality. Therapies like hormone replacement therapy and conversion therapy are advocated by psychiatrists to treat homosexuality. The benefits of these therapies are questionable and are not effective to a great extent. These treatments prove to be means to drain families of their wealth. These therapies adversely affect the mental health of individuals in terms of feeling ashamed leading to depression and anxiety. Psychiatrists have also administered electric shocks to treat homosexual behavior, which has impacted the wellbeing of individuals.

The view of Indian Psychiatric Society:

The Indian Psychiatric Society has declared that homosexuality is no kind of mental illness. They declared that there are no scientific studies which prove that homosexuality can be cured. Treatment of any kind, on the other hand, would affect the self-esteem of the people and stigmatize them. It is just normal as heterosexuality and bisexual orientations. The Society of Psychiatrists stands for the de criminalization of this sexual orientation. They completely agree with the American Psychological Association and World Health Organization which removed homosexuality from the list of mental illnesses. The President of Indian Psychiatric Association, Dr. Ajit Bhide, said "We have to understand that some individuals are just not cut out to be heterosexuals and we don't need to castigate them, we don't need to punish them, we don't need to ostracize them".

Clinics treating homosexuality violates The Right to Life (Article 21)

The Constitution of India provides fundamental rights to ensure the overall development of an individual. Article 21 of the Constitution states that, "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*" Right to life is the primary and most important human right which gives meaning to all the other fundamental rights. Without life, there is no necessity for the other fundamental rights. Right to life makes a person's life worthy, meaningful and complete. It is the only Article in the Constitution which has been given the widest interpretations by the Courts. The basic necessity that helps in the sustenance and overall development of a person is the core principle of the Article. The Right to life includes different rights which ensure that an individual would receive all the benefits for their enhancement.

When, clinics administer forceful treatment and uses violent methods, they are violating a series of Human Rights. Right to personal liberty, right to lead a dignified life, Right to privacy, Right to reputation, and Right to choice implied in Right to life.

Right to Choice: First of all, people have the right to choose a sexual orientation, which he or she is comfortable with. It is the personal choice of an individual. These choices shouldn't be influenced by societal stigmas or prejudices. It comes out of free will. However, being a homosexual is a taboo in the Indian society. This is something which is not right or normal according to the society. Such societal attitudes affect the right to choice of people.

Right to personal liberty: Secondly, considering homosexuality as a disease and forcefully treating homosexuality is depriving an individual of their right to life and personal liberty. The treatments use various therapies which disturb the patients physically as well as emotionally. It demotivates the individuals, make them feel disgusted, unworthy; undermine their confidence, and other negative emotions.

Right to privacy: As per Black's Law Dictionary, privacy means "*right to be let alone; the right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned*" The Right is not explicitly provided in the Constitution of India, but the right to

life and personal liberty includes the right to privacy. The private right of a person has been established through various judgments' of the Courts. It is wrong to interfere with the sexual orientation a person has chosen as the identity. It is one's private life and it should be left alone.

Right to live with dignity: Right to lead a dignified life with reputation makes the life of a man worth living. Right to life is not the physical existence but the existence with dignity and recognition. When an individual is forcefully treated for their homosexuality, against their will, then the right to dignified life is deprived. Moreover, treating them using abusive, cruel and inhuman methods would further deprive the right to dignified life. These methods cause great dangers to the health of the individuals. Memory loss, hypnosis, nausea, depression and anxiety have been inflicted on individuals due to the treatment techniques. These pose a threat to a life with dignity.

Right to reputation: Homosexuals generally do not wish to reveal their gender identity due to the fear of being rejected from the society. The societal stigmas and prejudices is a threat to their life with reputation. The society looks down at people who prefer same sex relationship and sideline them from the mainstream society.

Along with the Right to Life (Article 21) , the rights guaranteeing equality before law for all individuals (Article 14) and right ensuring that no citizen is discriminated on the basis of caste, color, sex, religion, place of birth, (Article 15) is deprived of the homosexual community.

Law based on morality: Section 377 of the Indian Penal Code.

Section 377 of The Indian Penal Code defines unnatural offences and punishes the same.

The history of criminalizing same sex relationship in India can be traced back to the British colonialism period, where proper codification of rules began. The efficient codification of rules played a major role in criminalizing homosexuality. Thomas Macaulay drafted a law in 1838 which was a model of the Buggery Act of 1533 enacted under the reign of King Henry VIII. This law was implemented during the Sepoy mutiny in 1860 and it punished sexual acts against God and nature. Thus it condemned anal penetration or homosexuality.

The Act was further replaced by the Offences against Persons Act, 1861. This Act broadened the scope of punishing unnatural acts. It prosecuted both rapists as well as homosexuals. Over the years, with changes in the legal systems and better codification of laws, Section 377 evolved under the Indian Penal Code and criminalized Homosexuality.

A matter of great criticism is that the Country (UK) that initiated punishment against homosexuality decriminalized it through the Sexual Offences Act in 1967. However, Indian homosexual community had to struggle for so many years for the Courts to strike down the Section in 2018.

Section 377, even though framed by the British, yet was more accepted by the Indian majority and this is evident through the fact that it took so long for its decriminalization. Section 377 is an example for a law formed on the basis of morality and majority opinion rather than rationality. It was formed because the majority thought that it was against the nature's will along with religious interpretations. However, the question is whether morality can be decided by the majority opinion.

Law and morality are invariably connected. Both are forms of social controls. Morality gained sanctions so that people feared punishments and hence followed the same. Article 13(3) (a) of the Constitution states that law includes any ordinance, order, bye-law, rule, regulation, notification, customs or usage having in the territory of India the force of law. The words 'custom' and 'usage' refers to the societal practices which were followed by people for a very long time. Thus the scope of morality and majority opinion becoming laws are very evident since a long time. However, such customs or moralities of a particular society need not be carried forward on to future societies. With progress in time, there has to be changes. One such example is Sati. It was a practice where a widow had to jump into the husband's funeral pyre. With the combine efforts of social reformist Raja Ram Mohan Roy and Lord William Bentick (then Governor of India), Sati was criminalized in the year 1829 There were instances of Sati even after this law and hence the Parliament of India enacted a stricter legislation, 'The Commission of Sati (Prevention) Act, 1987'.

A country like India which gives primary importance to religion and beliefs, consider offspring's as the primary essential of a relationship. A child is necessary to continue the family and heirloom. Therefore the basic necessity of a union is procreation. This is not possible in a same sex relationship. Thus the society had rejected such relationships through laws. This eventually gained sanction from the government and became a law (Section 377 of IPC). The issue of Section 377 was first raised by an NGO in the Naz Foundation case which was dismissed in the court. A series of cases were reported which still denied rights to homosexuals. In 2014, the Apex Court declared transgender as the 'third gender' which gave them recognition in many fields. In 2017, when the Apex Court of India declared Right to Privacy, it also announced that right to sexual orientation forms the core of the fundamental rights and rights of the homosexual community can be found in the Constitution. This came as a great relief to the community. Finally in the year 2018, a petition was filed asking the apex court to look into the Naz Foundation Case. The Court finally decided that sexual intercourse between consenting adults in private is a natural sexual orientation and not a criminal activity.

Years of persistent struggle by the Homosexual community for equal recognition and opportunities, bore fruit in the year 2018. This year is a remarkable point in the legal history of India where, Section 377 of the Constitution was struck down from the Indian Penal Code. Homosexuality is now recognized by the law and the community is free from all bondages. Even though homosexuality has gained legal recognition, the society would take some time to accept the same. It is not difficult for abusive and torturous clinics like those of Ecuador to emerge in a country like India with a majority of Conservative minds.

Conclusion:

Homosexuality is a normal sexual orientation. It is a choice made by people with respect to their gender identity. The society should be made aware of the fact that it is normal and should be encouraged to accept the same. This is the only way to stop considering homosexuality as a mental disorder that needs cure.

Treatment should be the choice of a person to whom the sexual orientation doesn't seem to define them. Dr. Nicolosi, a licensed clinical psychologist who originated the reparative theory to correct homosexuality is a part of the Breakthrough Clinic which uses conventional methods of treatment. According to him, the Re-integrative Therapy is offered to only those who chose to overcome homosexual sexual orientation. Thus preferential treatment of individuals has to be adopted by countries rather than legislations or society interfering into the private life of an individual.

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