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Health Care Barriers Faced by LGBT People in India: An Investigative Study

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Abstract

The disparity of health in medical settings for lesbian gay, bisexual and transgender persons exists in all societies including India. The issues faced by them in medical establishments narrate a tale of institutionalized disrespect for privacy that has marginally more devastating consequences for LGBT community. They continue to face discrimination and exclusion across the world in health care. Despite these encouraging realities deeply embedded homophobia, transphobia combined with the lack of adequate legal protection against discrimination on grounds of sexual orientation and gender identity expose LGBT people of all ages in all regions of the world to egregious violation of human rights including medical health care needs in health care settings and hospitals which negatively impacts their mental health and live lives of secrecy and shame. The present topic highlights how LGBT people are discriminated in medical establishments and how due to fear of law enforcement agencies a large sections of LGBT people remain invisible and unreachable thus pushing cases of infections underground. The topic also recommends major recommendations how these vulnerable minority can be brought to mainstream society and reduce stigma, atrocities inflicted on them.

Key Words: Homophobia, Racism, Sexism, Stigmatization, Transphobia

Introduction:

Sexual minorities are group whose sexual identity, orientation or practice differs from the majority of the surrounding society. It includes a lesbian, gay, bisexual and transgender who have a kind of same-sex activity. All members of these sub-groups are subject to prejudices rooted in beliefs and traditions about sexuality and gender. As a minority they suffer various forms socio-economic and cultural injustice. They are continually thwarted when trying to live freely and authentically. They confront negative attitudes in families and overt discrimination throughout society and regular violation across the entire spectrum of rights including right to health and medical care. They are more likely to experience intolerance, discrimination, harassment and threat of violence due to their sexual orientation and gender identity in health care settings and hospitals. They are discriminated against disowned and denied their rights and most LGBT people living HIV/AIDS lack access to basic health care services and social security. They live in dire poverty and are denied basic healthcare because severe stigma is attached to their HIV status or criminalization of higher risk and socially non-confirming sexual behaviours which leads to depression and anxieties, drug abuse, tobacco abuse, alcohol abuse and even suicides.

Health care and LGBT Community:

LGBT topics in medicine are those that relate to LGBT people's health issues and access to health services. According to

United States gay lesbian medical associations (GLMS) besides HIV/AIDS issues LGBT health includes breast cancer, cervical cancer, mental health problems, tobacco abuse, substance abuse and mental depression. Studies have shown that LGBT people experience health issues and barriers in medical settings and hospitals due to their perceived sexual orientation and gender identity. Heterosexism in medical care still exists, so many avoid or delay care or even receive inappropriate or inferior care services because of the perceived homophobia and transphobia and discrimination by health care providers and institutions. Access to care for transgender persons and their health issues and conversion therapy and refusal clause in legislation and the laws are intend to immunize health professionals from liability from discriminating against persons of whom they disapprove. So LGBT community prefer to stay away from mainstream health services the reason for staying away is the stigmatization faced by them in the hands of health service providers and besides this even the doctors are not oriented about health issues faced by the community.

Sexual minorities are at high risks of developing sexually transmitted diseases (STDs) and HIV/AIDS. In India, HIV incidence is significantly higher among criminalized and marginalized groups, such as sex workers, transgenders, men who have sex with men (MSM) and people who inject drugs. Protecting the rights of the marginalized has been a story of ups and downs. The relationship between a patient and a doctor is a fiduciary one premised on absolute trust but the medical establishments in India have ineffectively infringed the patient's autonomy by its treatment of homosexuality as a disease to be cured and LGBT people as "others". So they are detained in clinics against their will and face whole range of human rights violation.

Right to Health and international campaigns:

Right to health and social security includes freedoms of entitlements that are right to control one's health and body including sexually reproductive health and to be free from torture and interferences.

World health Organization (WHO): the preamble of constitution of WHO (1946) defines "health" as physical-mental social well being of a people.

The United Nation General Assembly: has often emphasized the pressing demand to address the needs of sexual minorities who are at the greatest risk of HIV/AIDS. Both international and regional consultations have confirmed that the stigma; discrimination and criminalization faced by sexual minorities are major movement for universal access to HIV prevention, treatment care and support. The UNGA special session on HIV/AIDS report estimates that there are about 3.1 million men having sex with men (MSM) in India.

Article 25 of Universal declaration of Human Rights (UDHR): says everyone has a right to a standard of living adequate for health and well being of himself and his family including food, clothing housing and medical care and necessary social service.

Article 12 (1) and 2 (d) of international covenant on civil and political right (ICCPR) makes for states to fulfill everyone's right to highest attainable standards of physical and mental health.

The creation of favorable conditions would assure to all medical service and medical attention in the event of sickness.

Article 7 of ICCPR: mandates state parties that no one shall be subjected to torture and cruel inhuman degrading treatment or punishment. In particular no one shall be subjected without his free consent to medical or scientific experimentation.

Article 47 of Indian Constitution mandates states to provide standard of living, nutrition, promote public health and prohibit consumption of intoxicating drink which is injurious to health.

Social exclusion and atrocities faced by LGBT people in medical establishment:

LGBT communities have an important stake in legal injustice issues. They face multiple forms of marginalization such as racism, sexism, poverty, homophobia, transphobia that negatively impacts their mental health. They live in dire poverty and are denied basic health care needs, denial ranges from non-availability of service or refusal of health workers to treat them to outright violence abuse and even deaths. The effect of sexual reproductive health status of these groups of people is severely compromised and their vulnerability of HIV increase several fold. The presumption that someone is a homosexual is annoying at best but when life and death issues are at stake homophobia and invisibility can add tragic complications to life's culminating movement.

Transgenders and hijras face discrimination by medical establishment at two levels:-

1. When they go in for sex-reassignment surgery (SRS); and
2. When they go for treatment for STDs/HIV/AIDS.

Sex-reassignment surgery:

The hazards faced by hijra communities in undergoing the risky sex-reassignment surgery (SRS) are an aspect of their poverty which puts medical care out of their reach as well as their social position as despised underclass which makes lives cheap and despicable. Many transgender like to undergo hormonal therapy and sex-reassignment surgery unfortunately they are denied these services in majority of hospitals. Many of the surgeries are done without proper assessment, psychiatric opinions, hormonal therapy and real life experiences and adequate precautions.

Many hospitals even do not admit hijras in women's ward because women do not feel comfortable and free in their presence and in men's ward they face sexual abuse which leads to emotional disorders, alcohol drinking and use of drugs. So extreme social exclusion, atrocities diminish their self-esteem. In some western countries there are stringent regulations governing such surgery, but the surgery being permitted only after extensive psychological counseling but in India there is no legal framework governing such surgery often such surgeries is undertaken by poorly qualified doctors in hazardous and unsanitary conditions.

Under section 320 of IPC emasculation is considered as grievous offence and under section 326 voluntary causing grievous hurt is punishable in IPC. These two laws pose the greatest hurdles to legalize SRS in India. The section says "whosoever causes grievous hurt shall be punished", makes doctors vulnerable to prosecution. Unless these are reviewed it is impossible to

legalize sex-reassignment surgery country wide. Though in India SRS is allowed through government run medical facilities and in some it is not, SRS cover surgical operation, hormonal treatment and also counseling both before and after the operation. However in states where SRS is carried out in state run hospitals counseling is missing or even extremely of poor quality, court of operation is highly variable between states for such an ambiguity transgender's prefer to conduct SRS in private settings thereby leading to urological problems.

Besides this the type of discrimination reported by hijras/transgender communities in health care settings which includes deliberate use of pronouns to hijras; registering them as males and admitting them in male wards and humiliation faced in having to stand in male queue. They are prone to verbal harassment by hospital staffs and co-patients and lack of health care providers who are sensitive to and providing treatment care to transgender people and even denial of medical services this discrimination can be for their transgender status, sexual work status or HIV status or combination of all three. Most hijras are not under any health and life insurance schemes because of lack of knowledge and inability to pay money and their inability of getting enrolled in the schemes.

HIV/AIDS and drug abuse:

The HIV epidemic has frequently been linked to gays, bisexuals and other men who have sex with men by epidemiologists and medical professionals. HIV infection among MSM has been increasing in recent years around the world particularly in Asia. This global trend is being seen in India with the current estimated HIV prevalence among MSM ranging between 7 and 16.5 percent. This is in comparison with overall HIV prevalence estimated to be 0.31 percent (0.25-0.39%) in 2009. Public health care officials have become increasingly aware that LGBT youths face obstacles of survival on the streets as well as the stigma of sexual minority group membership. Psychological problems like mental and physical problems have amplified LGBT youths who become homeless and become vulnerable to victimization which leads to initiation of escalation of substance use. Some of them are also at the risk of certain negative health outcomes for examples young gay and bisexual males have disproportionately high risk of HIV; syphilis and other sexually transmitted disease (STDs). Besides this the hijras lack shelter homes, HIV care hygiene which leads to depression, hormone pill abuse, tobacco abuse and penectomy. They are exploited and prone to many vices because they indulge in some form of intoxication and drug abuse. The intoxication provides a means to escape from harsh realities of life and hence drugs serve to lessen the turmoil they face in medical facilities in hospitals.

The AIDS epidemic is an urgent reality that needs immediate and concerted global action. Decriminalization of section 377 by Delhi high court in **Naz Foundation (India) Trust v. Government of NCT Delhi and others**[1] targeting LGBT people was a small but an important step in this direction. Section 377 punishes gays and MSM underground, leaves them vulnerable to police harassment and renders them unable to access to HIV/AIDS prevention material treatment

1. 2010 CriLJ 94 (Delhi).

thereby violating right to health under Article 21 and hampers HIV/AIDS prevention efforts.

Major Recommendations:

Here are some major recommendations which would reduce the stigma and atrocities on LGBT people:-

1. The domain for providing social security calls for progressive policy decision by government rather than legal amendment, so a strong anti-discrimination law would form the backdrop of state sponsored social security services.
2. NGOs and CBOs need to stand up in defense of LGBT community besides providing intervention during crisis.
3. To train health care providers to be competent and sensitive in primary health care service to Hijras/transgenders.
4. To implement discrimination reduction measures at various settings through variety of ways mass media awareness for general public to focus training and sensitization for police and health care providers.
5. To develop a protocol for SRS applicable throughout India and to issue proper guidelines in government hospitals for sex-reassignment surgery and make whole process of SRS services, available affordable and accessible in public and private hospitals.
6. There must be separate wards, toilets in hospitals for transgenders.
7. Bringing medical curricula in schools and medical colleges in line with current medical thinking that moves beyond seeing homosexuality as a disease and deviance.
8. The medical council of India should issue guidelines to ensure that discrimination in medical treatment of sexual minorities, which would include refusal to treat a person on the basis of his /her sexual orientation, is treated as professional misconduct.
9. The medical council of India should adopt guidelines specifying that doctors need to do in cases when the patient has a problem with her sexual orientation. The guidelines should require the doctor to mandatorily provide for the right of the patient to have non-judgmental information on sexual minorities and on the existence of support groups. The guidelines should further require that treatment to change sexual orientation should be considered only as a measure of the last resort.
10. To facilitate access to community based providers who have experience providing health services including HIV/STD testing and counseling to LGBT youths.
11. To address HIV related concerns of transgenders in a holistic manner with due consideration for transgender identity would be the key.

Conclusion:

Though there has been emerging activism on sexuality and right of stigmatized and marginalized sexual identities of gay, lesbian, bisexual, transgenders, kothis and hijras all finding expression in public discourse in India and other countries they continue to face discrimination and exclusion across the world in health care

including India. Section 377 of IPC is a serious impediment for public intervention. Sexual minorities experience healthcare disparities that will be eliminated only when clinicians elicit information about sexual orientation and gender identity from their patients through thoughtful non-judgmental discussion to have inclusive clinical environment, standards for clinician, patient communication, and sensitive documentation of sexual orientation, cultural awareness, staff training and addressing health issues of LGBT population. The HIV virus does not discriminate however punishment stigmatization denial, discrimination are common companion to the spread of HIV. Without a cure of vaccine, HIV/AIDS can only be countered by efforts of prevention. This is possible only in a legal environment that aids transparency and allows working with marginalized groups, who are most at risk of the virus this in turn has huge implications for law reforms across the world and including India.

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