

LGBTQIA+ and Healthcare Rights in India: A ‘Hypocritical’ Oath?

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Abstract

The Hippocratic Oath transforms a medical student to a doctor. But it doesn't make them any more human. India has seen several landmark judgments in the favour of the LGBTQIA+ community, to uphold their dignity, inclusion and fundamental rights. Yet we are far from implementing or drafting a plan-of-action, for the same. One such aspect requiring a need for immediate legislation is that of the healthcare system and the systemic discrimination unabashedly attached to it. The Hippocratic Oath has no legal backing and has failed the purpose it once set out to achieve- yielding to us, the power to draft legislative solutions to legitimize that the fundamental right for an LGBTQIA+ person, is a human right.

Introduction

“To most physicians, my illness is a routine incident in their rounds, while for me it’s the crisis of my life. I would feel better if I had a doctor who at least perceived this incongruity”

– Anatole Broyard¹ (Former New York Times critic)

In Medicine, a fact often reiterated to us by legendary doctors, is that a good physician treats the patient and not the disorder. A truly great physician provides a patient with a diagnosis but doesn't focus on it. This thought may appear to be counter-intuitive, but it is quite the opposite. Humanity and medicine are inextricably linked. A patient is a person and not his disorder. The patient is a human and though the diagnosis may be the backdrop, the person needs to be the focus.

A medical student becomes a doctor after being conferred upon the unbreakable vow of ethical practice- the Hippocratic Oath,² which pledges a doctor to treat a person to the best of his skilled ability, whilst remaining confidential and respecting the patient’s privacy, and always

¹ Anatole Broyard, *Doctor Talk to Me*, N.Y. TIMES, Aug. 26, 1990.

² Rachel Hajar, *The Physician's Oath: Historical Perspectives*, 18 HEART VIEWS 154, 159 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5755201/>.

abiding by the laws of humanity. Although the Oath is said to be held sacrosanct by medical professionals across the world, the truth is quite far-removed.

As the month of June just got over, celebrated as Pride Month across the world, the validity of human rights of the lesbian, gay, bisexual, transgender, queer, intersex, and ally people (LGBTQIA+), is still being critiqued, ridiculed and questioned by those very bodies that are sworn to protect and uphold them. Although having garnered significant attention and uproar for change, the medical and legal fraternity are not joining hands to respect the preamble³ of the Indian Constitution that altruistically preaches equality of social, economic, and political justice for all. Systemic discrimination is still rife in our country despite Articles 14⁴ and 21⁵ of the Constitution guaranteeing the right of equality before the law, equal protection under the law, and also the Right to Health. Society turns a deaf ear to the Supreme Court of India ruling in *NALSA vs Union of India*⁶ that the rights and freedoms of transgender people in India were protected by the Constitution or even the ground-breaking decriminalization of consensual same-sex adult relationships in the Section 377 judgment.⁷

The ideology of fundamental human rights lies on the focal premise that all humans are equal. This also affirms the notion that all people are worthy of accessible, affordable, respectful, and non-judgmental healthcare, irrespective of caste, creed, gender, and sexuality. And yet, there is a sense of disappearing humanitarianism in the art of medical practice. Whilst the causation of the same can be the fact that in Indian medical colleges, there is a specific focus on academic prowess and technical determinants of health, rather than importance being given to social determinants of health like interpersonal communication skills and rapport, etc., one can reason that social stigma and prejudice have larger roles to play.⁸

Recovery: A Long Road (not taken) Ahead

The LGBTQIA+ community faces disturbing amounts of healthcare discrimination- from explicit criticism, harassment, humiliation, and ultimately, attempts to censure the "unnatural

³ INDIA CONST. Preamble.

⁴ *Id.* at art. 14.

⁵ *Id.* at art. 21.

⁶ *NALSA v. Union of India*, AIR 2014 SC 1863 (India).

⁷ *Navej Singh Johar and Ors. v. Union of India*, AIR 2018SC 4321 (India).

⁸ Pankaj Gupta, *Humanity in Medicine*, 4 JOURNAL OF MEDICAL ETHICS AND HISTORY OF MEDICINE 3 (2011) (discussing how lack of inter-personal skills has led to social stigma and prejudice finding root).

sexual inclinations" of the individual. This fact was even highlighted by Justice Indu Malhotra during the hearing of petitions for the decriminalization of Section 377.⁹

In 2016, Shivam Sharma, a gay Mumbai native, having had protected relations with a man unaware of his HIV-status, rushed to a Mumbai Hospital in the wee hours of the night and requested a junior doctor for an antiretroviral dose of post-exposure prophylaxis (PEP or preventive medication).¹⁰ To his alarm, the hospital staff was completely clueless, and referring to several archaic manuals, insisted on taking scores of medical tests. Because of his sexuality and implications of being of a 'freak' nature, Sharma had to fight for a basic prescription- a basic human right.¹¹

In a more horrific instance, after a transwoman was gang-raped by 3 men, public hospital doctors refused to prescribe her anti-HIV medication recommended for rape victims, implying deviant behavior on her part.¹²

One cannot fathom the unlawful death of Saikat, a transgender survivor of a train mishap, who lay unattended, for 3-4 hours, while doctors and nurses couldn't conclude whether to concede her to a male or female ward.¹³

There are various layers to discrimination and inequality prevalent in the different strata of healthcare provision. For members of the queer community, this follows them from security guard to doctor, in the form of derogatory remarks, unwanted curiosity, delayed treatment, lack of therapeutic options, follow-up appointment denials, and invasion of privacy. LGBTQIA persons living outside metropolitan areas face an even higher rate of difficulty in acquiring any services due to lack of availability and even less exposure.¹⁴

⁹ Navtej Singh Johar, *supra* note 6, at Justice Indu Malhotra's Judgment, para 16.3.

¹⁰ Sushmita Pathak, *India's Anti-Gay Law is History. Next Challenge: Treat LGBTQ Patients with Respect*, NPR (Sept. 17, 2018), <https://www.npr.org/sections/goatsandsoda/2018/09/17/645279722/indias-anti-gay-law-is-history-next-challenge-treat-lgbtq-patients-with-respect>

¹¹ *Id.*

¹² Elizabeth Soumya, *Indian Transgender Healthcare Challenges*, AL JAZEERA (June 18, 2014), <http://www.aljazeera.com/indepth/features/2014/06/healthcare-distant-india-transgenders201461882414495902.html>.

¹³ *Id.*

¹⁴ Shabab Ahmed Mirza, *Discrimination Prevents LGBTQ People From Accessing Health Care*, CENTRE FOR AMERICAN PROGRESS (Jan 18, 2018), <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>.

This is why there are multiple instances of LGBTQIA people avoiding or delaying healthcare needs, often being compelled to visit sub-standard, unsanitary clinics, endangering their health and lives. An additional concern is a diminished commitment for both Public Health Workers to conduct, and the queer communities to abide by health-promotional activities and disease-prevention exercises particularly with regards to sexual wellbeing, making them a high and at-risk group of contracting sexually-transmitted disorders, including HIV.¹⁵

The segregation created between healthcare being provided to members of the queer community and those not creates a stigma not just from societal perspectives, but also, a self-stigma. A key absence of implementation of rights gives more power to both these types of shame and strengthens them. As LGBTQIA individuals mostly face discrimination and rejection from within their own families as well,¹⁶ being rejected by healthcare systems supposedly designed to save human beings, is the last nail in the coffin. It is difficult for any budding healthcare professional studying equity and equality in Medicine, to swallow the systemic disparity in treatment of all individuals.

Suggestions: A Way Forward

The Hippocratic Oath preaches *Primum Non Nocere* – “First Do No Harm.”¹⁷ And yet, everything we have discussed thus far, both contradicts ethics and violates humanity.

Doctors are valued as the civilizing tenement of society - the gatekeepers of life. The Constitution goes a step further - guaranteeing every citizen a right to a dignified life.¹⁸ It is pitiful to see medicine's willful ignorance leave no place for the convergence of those two guarantees. A life undignified is not worth living.

In Navtej Singh Johar,¹⁹ the Supreme Court of India said that all Indians, including LGBTQ people, were guaranteed, "the right to emergency medical care and the right to the maintenance and improvement of public health" by the Constitution. However, this has yet to be implemented. The need of the hour is to reform the health policy of our country and ensure

¹⁵ Beena Thomas et al., *Unseen and unheard: predictors of sexual risk behavior and HIV infection among men who have sex with men in Chennai, India.*, 21 AIDS EDUCATION AND PREVENTION: OFFICIAL PUBLICATION OF THE INTERNATIONAL SOCIETY FOR AIDS EDUCATION 4 372, 372-383 (2009).

¹⁶ Sabra L. Katz-Wise, *LGBT Youth and Family Acceptance*, 63 PEDIATR. CLIN NORTH AM. 1011, 1025 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5127283/>.

¹⁷ Rachel Hajar, *supra* note 2.

¹⁸ INDIA CONST. art. 21.

¹⁹ Navtej Singh Johar, *supra* note 6.

honorable implementation of the same. This should include, but not limited to- mandatory sensitivity training for doctors, nurses, public health workers, police officers, and other health workforce employees that an LGBTQIA+ person may encounter during their medical needs, new LGBTQ-specific chapters in medical and nursing textbooks and public awareness campaigns to decrease social stigma towards the queer community.

In a swift departure from historical wrongs, two hospitals in Pune- Bharati Hospital and KEM Hospital collaborated with Samapathik Trust and Bindu Queer Rights Foundation after studying various international models and standards to curate a manual titled “Basics of LBTQI Inclusion in Hospitals” and have opened LGBTQIA+ clinics operating by this as a protocol for physiological and psychological therapy, training and sensitization for security guards, ward assistants and nurses, as well as guidance on obtaining medical insurances.²⁰ This revolutionary move must be commended and mirrored to make private and public hospitals and clinics more gender-inclusive throughout the country.

The government must partner with NGOs, NPOs, queer organizations, and create an extensive network that can cater to the needs of LGBTQIA persons across all socio-economic backgrounds. There is also a need for encouraging research and access to such literature that can help understand the needs of their community. It is a long road to right the wrongs of history but we must embark upon it.

Conclusion

While the ‘Oath’ allows for a basic humane morality to be safeguarded, the discrimination faced by the LGBTQIA+ community is systemic and deep-rooted. The protection of their fundamental right to a dignified life cannot depend upon a 'civic responsibility' of a kind-hearted medical professional. Their acceptance as equal to their cis-peers can only be sought through legal and social legitimacy - for their existence can no longer be defined by arbitrary self-righteousness of a flawed society. The archaic, five centuries old- Hippocratic Oath has no legal standing and has failed the purpose it once had. In times of humanitarian conflict when old laws fail us, we must write new ones.

²⁰ Prachi Bari, *Two Pune hospitals initiate changes to offer inclusive services for LGBTIQ community*, HINDUSTAN TIMES (March 8, 2020), <https://www.hindustantimes.com/cities/two-pune-hospitals-initiate-changes-to-offer-better-services-for-lgbtiq-community/story-Q9XeDQ14W1rDWH8d1r3SFP.html>.