

GLOBAL PERSPECTIVE TO LGBTQ COMMUNITY AND THEIR RIGHTS INCORPORATED IN VARIOUS LAWS

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ABSTRACT

The concept of “Homosexuality” is not novel and has existed for a very long time. The article begins by highlighting the history of “Homosexuality,” which does not start in the United States but began with the Greeks. There were depictions of “Homosexuality in various art forms by the Greeks. This was followed by the emergence of various statutes and eventually writing supporting “Homosexuality.” It was when many artists such as Charles Demuth and Greek philosophers like Plato became open about their views on different gender orientations.

After this, the article involves the initiatives which paved the way for the acceptance of the LGBTQ community. It includes various Associations formed in support of the LGBTQ community and the efforts undertaken to promote “equality for marriage.” Numerous challenges counter every major initiative. Therefore, the article then mentions the challenges faced by the LGBTQ community in the form of various bills passed against them. The bills presented multiple limitations for the LGBTQ community, which have been mentioned briefly.

KEYWORDS: *Homosexuality, LGBTQ Community, Gender Identity, Sexual Orientation, Transgender, Gender Dysphoria, Gender- Reassignment Surgery, Non- Binary, World Health Organization, Hypermasculine, United States, TGJIP Project, Disorder, International Olympic Committee, Anti- LGBTQ Bills*

INTRODUCTION

The Objectives of the Article are

- Understanding if breeding inclusivity in sports leads to competitive fairness or an unequal playing field concerning the new framework brought by the International Olympic Committee involving the inclusion of Transgender people in sports.
- Understanding how violence towards Transgender people comes from the very authorities entrusted with protecting one’s safety. They are understanding the concept of “Gender affirmation” and how the prisons are “Hypermasculine” or “Hypergendered” environment.
- Understanding if Gender Equality in the workplace has been attained or is still a distant dream.
- Understanding the Positive and negative impacts of allowing Transgender people to be a part of military services.
- Understanding if identifying as Transgender has been recognized as a mental illness or if it is just a myth.

- Understanding the concept of being “Agender,” “Intersex” and “non-binary,” which is an umbrella concept. Understanding the difference between “sex” and “gender.”
- To know if it is fair to be sued for using pronouns inconsistent with an individual’s gender identity.
- Understanding if literary works on gender identity are useful or explicit with respect to the book titled “Gender Queer,” “a graphic memoir authored by Maia Kobabe.
- To analyze if Gender Reassignment surgery for minors is a boon or a bane.

ORIGIN

Homosexuality is not a new concept. It has been in existence since time immemorial. However, the only thing that has majorly changed is the openness expressed with respect to homosexuality. Homosexuality can be dated back to the explicit images expressed by Greeks in their art forms. Despite of expressing homosexuality through various art forms, they did not possess appropriate pronouns to correlate with homosexuality or heterosexuality and believed that humans in general had an incorporation of both from within. Greeks expressed homosexuality not only through art forms such as pots and sculptures but also through their writings. For instance, some writings of Plato centered on the homosexual theme.

When it comes to the biblical interpretation of sexuality, it is very rigid. Since, Christians consider Bible to be god’s written word which is why they rely on biblical interpretations. Bible makes a very strict interpretation of sexuality where people attracted to the same sex are told to “elevate” their experiences over the scriptures. During the nineteenth and twentieth century, production of statues depicting homosexuality reached its peak that even the greatest museums had them. It was also the same time when the oppression towards such depictions reached its highest point. It was the time when gay culture began and artists such as Charles Demuth became open about their sexual orientation. This confirms that there was an existence of homosexuality since a long time regardless of whether it was accepted or not. On one hand, sexuality was prohibited in the Bible while on the other side; it flourished when it came to Ancient Greece.

Such ideas were spread across the West with the help of various sources such as records of missionaries, diplomats and anthropologists. Europe was initially not open about the idea of cross-dressing. However, cross-dressing was eventually accepted in modern Europe and America. In many instances, cross-dressing was a choice adopted by women in order to get job opportunities which at that time were only open for men.

LGBTQ RIGHTS IN AMERICA

The LGBTQ community not only includes people who are Lesbian, Gay, Bisexual and Transgender but also people of other sexual orientation such as pan-sexual individuals, people who identify as non-binary. The term Agender which was coined in 2000 on an internet Forum called UseNet is used for people who do not identify themselves with any gender. Therefore the term LGBTQ has acquired a very wide connotation.

The first “gay right group” was created in the year of 1924 in America by a veteran of World War one. There was a case against the “Homosexual Magazine” and the Supreme Court ruled in favor of the rights asserted upon gays for the first time. In the year of 1973, it was the first time in the history when Homosexuality was not perceived as a mental illness.

One of the most remarkable events in favor of the recognition of the LGBTQ community rights was the raid taken place at the Stonewall Inn which was a gay bar. A lot of activists came in support of the LGBTQ rights. Not only activists but a lot of family members and allies also came forward for their support.

The pre-conceived notion of marriage in the minds of people was “a union of a man and a woman.” This statement goes against the concept of “equality of marriage” or the recognition of “same sex marriages.” In 1989, Andrew Sullivan, an author and a blogger, in one of the essays written by him asserted how legalizing gay marriage would lead to cohesion and a sense of emotional security among people. “Marriage Equality” was not regarded as an “end goal” but it was one of the means to an end. The end goal here was to ensure that all the humans, irrespective of their gender, live their lives with dignity. Efforts to legalize “same- sex marriage” were actually put in action during 1990. However, there were various challenges barring it such as the Defense of Marriage Act (1996) which exclusively defined marriage as a “union between a man and a woman” and the “Proposition 8”, a ballot initiative which had similar views as the act. Despite of the major challenges presented by these two, the Supreme Court decisions assisted in enforcing equality with respect t to marriage such as *Hollingsworth v. Perry* and *United States v. Windsor*. It was only after DOMA was declared unconstitutional that “full equality” paved its way.

In a landmark decision of the US Supreme Court on 15th June, 2020, it was emphasized that an employer who was merely filed based on sexual orientation is against the Chapter seven of the Civil Rights Act of 1964. It was also mentioned that employment decisions should not be based merely on someone’s sexual orientation. Even though, before this judgment a lot of workplaces had gender inclusive policies but the judgment acted as another rolling stone towards LGBTQ inclusiveness.

RECENT CHANGES MADE

Amidst all these initiatives, there were also many others who were opposed to the idea of gender inclusivity. Many anti-LGBTQ bills have also been passed over the years. The amount of anti- LGBTQ bills passed annually skyrocketed from forty one bills in the year of 2018 to two thirty eight bills in the beginning of 2022. The year was regarded as the worst year in the history of LGBTQ rights

The American Civil Liberties Union attempted to keep a track of all the anti-LGBTQ bills passed. The bills passed focused on limiting the gender information which is presented on ID proofs and related records. The bills also emphasized on weakening the non- discrimination laws followed by the workplaces. They also aimed at limiting the access of books about LGBTQ and censoring drag queen performances. Drag had been popularized by minstrel shows during the twentieth century.

The bills also prescribe strict penalties in case of extending healthcare to Transgender or Cis gender people. Apart from banning the catering of healthcare services, these bills also restrict from providing insurance coverage for these people. Bills with respect to “public accommodations” prohibit Transgender people from using public washrooms as well as locker rooms. Few anti-LGBTQ bills also restrain the transgender students from participating in school activities and censor discussions about them in school. In 2023, the maximum numbers of anti-LGBTQ bills have been passed. This is because of many reasons which would be discussed below.

COMPETITIVE FAIRNESS

The International Olympic Committee has announced a new set of framework for participation of transgender and intersex people. This framework has been arrived at after a two year consultation with around 250 athletes. The primary aim behind such framework is to promote gender inclusivity and to create a welcoming environment for people having different sexual orientations. The importance has been placed on respecting human rights and to provide a harassment-free environment of people with sex variations. The Committee has issued ten guidelines for sporting bodies which come under the category of “internationally ascertained human rights.”

There was a controversy revolving the medical procedures which athletes had to undergo because of identifying as non-binary. The medical procedures were deemed to be necessary due to varying testosterone levels and only after genital surgery, transgender were allowed to participate. This was with respect to the previous framework. However, many people objected to this as it affected the “right to choice” of people and also the medical examinations were considered invasive in nature. The new framework was initiated to overturn the old one due to these reasons. The first trans athlete to participate in a US National team was Chris Mosier who also challenged the previous guidelines.

Even though the main aim of IOC was to promote competitive fairness by an inclusive participation but it is a hotly debated topic. It is one of those concepts which have the most divisive opinions. Since transgender women are allowed to participate in women’s Olympics, a few people have presented reasonable arguments such as the fact puberty might provide Transgender women with certain physical advantages even if the level of testosterone is suppressed. The physical advantages constitute broad shoulders, big hands, comparatively longer torsos, an increased lung and heart capacity. All these characteristics clearly prove to be in favor of women athletes who are Trans while they are participating in women’s Olympics. This has been a major cause of people having distinctive opinions on this aspect.

However, another opinion with respect to this could be point of view expressed by the Quinn, a gold medalist in soccer who referred the new frame work as “ground breaking.” According to her, Transgender women did not have any inherent advantage as none of the sport policy throw slight on the lived experience of Transgender women so in no way it could be an inherent advantage to them. All sides of the argument have very reasonable points. If all these points are kept in mind and a separate section is kept under sports for the participation of all Transgender, then on one hand it might be a good initiative giving them an opportunity to participate but on the other it might deprive them of a sense of belongingness because of creation of a separate category for them from other genders. Therefore, this concept continues to remain controversial.

PROTECTIVE MEASURES

Transgender people are frequently subjected to violence and abuse from the very authorities who are supposed to protect them. The Police tend to harass and profile Transgender people due to their gender representation which causes distrust among them towards the Police authorities. A Transgender Survey was conducted in US in the year of 2015 where it was revealed that about fiftysevenpercentofTransgenderpeoplewereafraidtoapproachthePolice. Transgender people are subjected to horrendous rates of violence by their own inmates. They face more physical and mental distress when compared to their counterparts.

Transgender people come under the category of “special population.” A study revealed that women who were Transgender i.e. women counterparts with male genitalia were more likely to commit crimes and therefore there is an increased percentage of them being subjected to imprisonment. Social marginalization arises from their own families who refuse to accept them the moment they express their gender identity. After doing so, most of them are rejected by their own families and since a lot of workplaces are skeptical to hire them, they resort to illegal modes of securing income. A study of 2012, reveals, in support of this statement that women incarceration rates have raised from thirty seven percent to sixty five percent. The study has also revealed that Incarceration leads to poor health among Transgender women.

An appropriate solution for the increased risks of health presented by incarceration would be “Gender affirmation.” Gender affirmation refers to the process through which a particular gender feels affirmed in their own sexual identity; it is an important determinant when it comes to their health. However, prisons do not provide a gender affirmed environment as they are “Hypermasculine” or “Hypergendered” environment. “Hypermasculine” environment is used in context with the sexual aggression showcased by men towards women.

Transgender women already come across various forms of discrimination throughout their life and on top of it placing them in a “Hypermasculine” environment just heightens their vulnerability. In some instances, they are placed in segregated environments or special housing places such as Ad- Seg which is similar to solitary confinement. This would protect the Transgender inmates from sexual exploitation experienced by them by being placed in male prisons. However, Ad- Seg can only provide partial protection as the Transgender inmates can still be sexually exploited by the prison staff. Moreover, being in solitary confinement might make them feel disassociated from the general population.

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Are allife example of a Transgender woman being sexually assaulted in male facilities would be Jasmine Rose Jones who was subjected to rape and sexual assault during her incarceration. She was scared of seeking help from officers due to a fear of being placed in solitary confinement. After she was released from the prison, she became an assistant at the “Transgender-Gender Variant and Intersex Justice Project” in San Francisco because of her personal experience of going through so much at the male’s facility. TGIJP was an initiative under taken to protect abuse against human rights. It aimed at expanding its network to create awareness about the various issues which exist among Trans and intersex people. It has a core volunteering team to do the same. It also instills leadership skills among the core members. TGIJP Project particularly created a mental health team which focuses on the Trans community of color who have undergone violence and pain.

CONCEPT OF GENDER EQUALITY

Years ago, the Times magazine had mentioned that the society had reached the tipping point for Transgender people as they had been emerging to the point in the society where they were considered as equals. Many policies and activists have contributed their part in restoring equality for people belonging to the LGBTQ community in schools, hospitals, military and the workplaces. However, despite of the Time magazine mentioning that the society had reached its tipping point, it was not actually seen in the circumstances taking place. Attaining complete equality in terms of a person’s sexuality still felt like a farfetched dream.

In the recent years, there have been various advancements to enforce LGBTQ rights at workplaces such as the executive order which was signed by President Biden in the year of 2020 which involved the implementation of a judgment passed during the same year by the Supreme Court. Along with this, a lot of workplaces focus on maintaining diversity in the workplace with respect to sexual orientation rather than solely focusing on someone’s gender identity. However, the workplaces should not hire people for the purpose of maintaining diversity at the cost of their merits. The workplaces should maintain a balance between hiring employees based on their merits as well as hiring people in such a way that gender diversity is maintained. Just to accommodate more people of different gender expressions, workplaces should not set aside the merits of a person. However, another contending issue is that the workplaces should also take into consideration the fact that due to the discrimination faced by people belonging to LGBTQ community, they would not have been able to have as much work experience as others.

INCLUSION OF LGBT IN VARIOUS SECTORS

During Clinton administration, there was a “Don’t look, don’t tell” policy, the military personnel had been prohibited from discriminating or causing harassment towards people who are heterosexual. However, it only mentioned protection of lesbians, gays or bisexual people. It also extended protection only for people who had closeted their sexual identity and not to people who came out about their gender representation. The policy prohibited people who engaged in homosexual acts because it goes against the very idea of standards maintained in the military based on good morale, discipline and cohesion. However, there was an exception to this prohibition where the discharge of a person engaged in homosexual activities would not take place if the act is conducted in the best interest of the armed forces or it is done with the intention of avoiding or terminating the military service in United States.

In the year of 2011, the “Don’t ask, don’t tell” policy came to an end and following its end, lesbian, gay and bisexual people were allowed to openly serve in the military. Yet the medical examination which individuals underwent as a procedure of becoming a part of the United States armed forces restricted Transgender from being a part of the armed forces. These exclusions were deemed to be on the ground of “psycho sexual disorders.” The policy after “Don’t ask, don’t tell” mentioned that once the Transgender status was disclosed or someone already serving was suspected of being a Transgender, they would be discharged. However, it was most likely that the Transgender status of a person would be disclosed once they were subjected to physical examinations which were a part and parcel of entering into the armed forces which increased the chances of being discovered as a Transgender before even getting the chance to serve in the military forces. This completely barred the Transgender people from serving.

Personnel identifying as Transgender were allowed to openly serve after a policy which was initiated in the month of June in the year of 2021-22. This criterion also applies for people with Gender Dysphoria. Involving qualified personnel was considered as the key necessity rather than dismissing individuals based on their gender identity. Before the Army guidelines had been updated, individuals who have Gender Dysphoria used to be disqualified unless they had been stable for thirty six months and they were willing to serve in their biological sex. Under the new guidelines, the duration included eighteen months of stability and individuals had the chance to serve in the gender they identified themselves with.

Although, it is hard to estimate the data of Transgender personnel in the military due to insufficient empirical data but the prevalent estimates indicate that out of a million active Trans members, only a few thousands were actually serving. The bone of contention would be if it would be fair to let Transgender people identifying as a female to become a part of women’s armed forces. It is due to the fact that the existing levels of testosterone in Transgender women causes them to have different physical characteristics compared to women such as broad shoulders, big hands, comparatively longer torsos, an increased lung and heart capacity. This in turn contributes towards Transgender people who identify as women to have a greater chance to do well in physical examinations conducted as a procedure for selection in military services when compared to women who identify as straight.

Moreover, some individuals with Gender Dysmorphia as well as Transgender people are supposed to consult with medical professionals while they are undergoing the procedure for serving in the military. There are a few cases where a person need not be diagnosed with “Gender Dysphoria” by a qualified medical professional which can lead to negative self- diagnosis. It happens only in case of individuals who want to undergo Gender- Transition Related Treatment which is a very expensive procedure. For the Gender- Transition Related Treatment, the military personnel has to ensure that the

individuals going through with the treatment receive the best care from medical professionals which would incur another round of expenditure. Despite of incurring the expenses, estimates derived from a survey and insurance claims indicates that receiving the treatment might hamper an individual's ability to deploy.

If fairness and diversity have to be in corporate during physical examination, then people should be persuaded to join military services based on their sex and not based on their gender. "Sex" refers to their bodily characteristics and "gender" refers to what they identify themselves as. The term "Gender" and "Sex" cannot be interchangeably used as a person's gender identity might be different from the sex assigned to them at birth. For instance, a Transgender man who was born as a female at birth might identify as a male or a Transgender woman who was born as a male at birth might identify as a female. Actual gender diversity would be ensured by appointing individuals in the military service based on their bodily characteristics and chemical composition.

MENTAL ILLNESS OF TRANS PEOPLE

There have been various myths and theories revolving around the fact that Transgender people might have mental illness but there are various studies to prove that they do not. Many Medical Associations such as American Psychiatric Association and American Medical Association have proved that identifying oneself as a Transgender cannot be termed as an illness. The support towards not considering Transgender people as "mentally ill" or "mentally unstable" extended to such an extent that the Psychiatric Association mentioned in explicit terms that the term "Gender Dysphoria" should be used instead of using the term "Gender Disorder." It is necessary to choose the right words while defining people who identify themselves with a different gender than that assigned at birth. Therefore, choosing appropriate words considering the sensitivity of the issue forms the first step as words have an influence over the minds of people. Gender Dysphoria is a widely recognized situation. It is in fact more widely recognized than we realize. If not attended to, then it can have impact on the mental health of an individual and they may experience depression, anxiety and other mental health issues along the same lines. What the studies mean to conclude is that "Gender Dysphoria" in itself is not a disorder but is associated with mental health disorders.

"Gender Dysphoria" can be present in different degrees in different people. Some Transgender people undergo major "Gender Dysphoria" while for others it might not be as excruciating as the former. This confirms that the feeling of distress and disability is not inherent in all Transgender people which contributes to the reason why "Gender Dysphoria" cannot be termed as a disorder. As per the American Psychiatric Association and American Medical Association, the term "disorder" refers to a state of mind which accompanies severe distress and disability. Since "Gender Dysphoria" is not the same for all the Transgender people because some experience more distress than others, it is not in consonance with the definition because the definition of "disorder" implies that distress is experienced by each and every individual. Therefore, the myth that being Transgender is a disorder comes from a longstanding history of miscategorization and misrepresentation.

Before, identifying as a Transgender person was categorized under ICD- 10 which was a list of mental health disorders. It seemed almost impossible to remove "Gender Dysphoria" from the category. Many organizations working on gender identity felt the same. However, it did get removed from the category eventually. One of the health experts at the world health organization said that ascertaining oneself as Transgender was not exactly a "mental health condition" and terming it as one would only aggravate the already existing stigma in the minds of people. Even though, the term

Transgender had been removed from the ICD- 10 list of disorders still the World Health Organization kept using the term loosely and even associated it with “Gender Incongruence.” The term “Incongruence” means “out of place” or “something which is not aligned.” Using the right words is very important when it boils down to a concept like “Gender.” Henceforth, the loose interpretation of the term aggravated a lot of activists who felt that the initiative undertaken by WHO might not be as progressive as it appears to be.

GENDER REASSIGNMENT SURGERY

The World Association for Transgender health and the Centre for Gender Surgery announced that the minimum age has been revised with respect to getting a Gender- Reassignment Surgery and can be performed from ages of fifteen to seventeen years old. Along with it, it has been declared that the hormone therapy can be started just at the age of fourteen. There might be certain risks which are associated with Gender- Reassignment Surgery despite of which the World Transgender Association has reduced the age for getting a surgery done.

The idea behind reducing the age is that as times have changed, various individuals are inclining towards “Gender Affirming” practices and getting a surgery done associated with what a particular individual identifies as is a part of those “Gender- Affirming” practices. More and more children have been coming out to their families with respect to their gender identity. The initiation of various policies has paved the way for children to have more courage and openly express their identity. Many studies have shown that the estimated number of children who have “Gender Dysphoria” have considerably increased over the past few years.

CONCLUSION

The aforementioned might seem like a good initiative but there are also various disadvantages associated with allowing Gender- Reassignment Surgery for minors. Minor children are believed to have not attained an adequate level of emotional maturity and cognitive ability so they are not in the position to realize the consequences of their actions. Moreover, minor children are more likely to be easily influenced and manipulated by people which might persuade them to conduct wrong self- diagnosis of them identifying as “Transgender” when in reality they are not. Not just people, minor children can get manipulated even by shows or series which can lead to wrong self-diagnosis. Minor children are not aware of the aftereffects of surgery. There are many risks associated with the surgery such as infection, bleeding or various other complications. Moreover, the surgery can be very painful and take months to recover. It aggravates health complications. They might have to be put on medications for recovery which would have additional side- effects and also affect their day to day lives. The surgery is very expensive and some procedures are also irreversible by nature.

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