

# The Impact of Medical Negligence on LGBTQIA+ Community

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## ABSTRACT

The umbrella phrase 'medical negligence' has gained popularity for describing wrongdoings committed by medical personnel while practicing their trade and interacting with patients. In none of the Indian laws that have been passed, the phrase is defined or even mentioned once. This article aims to describe the fundamental aspects of "medical negligence". Additionally, this article is meant to enlighten rather than debate the complex problems raised by the topic. Instead of being an exhaustive list of authorities, this article is informative and the methodology used is descriptive. Outlining some of the medical negligence histories, the general effects of medical negligence are described at the beginning of this article, followed by an outline of the fundamental elements of medical negligence, a description of the obligations of doctors, some examples, and the legal minimum standards of care. The article then discusses the type of information that must be given to the patient for consultation and treatment before coming to a conclusion with a mention of the general advice that the Supreme Court issued for doctors to heed as a precaution and the guidelines it issued to protect doctors from harassment if criminally prosecuted. In the end it suggests that bringing awareness in people's mind will not only help the people of the LGBTQIA+ Community feel safe in the society but also help them be their true self and reduce mental health stressors.

**Keywords:** Medical Negligence, Awareness, Homosexuality, Sexual Orientations, Mental Disorder

## INTRODUCTION

People who identify themselves as lesbian, gay, bisexual, transgender, queer/questioning (I.e., someone who is questioning their gender identity), intersex, asexual or LGBTQIA+ are people who have been a part of history but have been often repressed, subjugated, discriminated and criminalized all throughout history. There have been many reasons for their suppression, for example - the evolution of religion, industrial revolution and the medical sciences. This paper focuses on how the Medical Sciences have affected and contributed to discrimination against the LGBTQIA+ community.

Medical literature indicates that approximately 1 to 4 percent of the world's population may be intersexed and have either ambiguous or non-congregant sex features. Medical Science, along with, social stigmatization, faith, non-conventional sexual orientation has been one of the main reasons for the ill treatment of the people of the LGBTQIA+ community from societies all around the world. Being or identifying yourself as homosexual was, and still is, in many societies all throughout the world considered to be unnatural, sinful and considered to be a mental disease or disorder.

Awareness about the community and the fight for their rights began sometime in the mid 20th century. The Stonewall riots, which were a series of protests by the LGBTQIA+ community at Stonewall Inn in Manhattan, New York city against the New York City Police Department, was a landmark in the LGBTQIA+ rights movement in US and it also had a ripple effect on the start of many such movements all throughout the world. There are many examples about the people of queer community who had fought for their rights – Dr John Fryer, an American psychiatrist and gay right activist, bravely stood up to the 1972 American Psychiatric Association Annual Conference. His speech began with words, “I am a homosexual; I am a psychiatrist.” These words and this one particular moment would soon change the course of history in the field of mental health and the LGBTQ right movement for years to come.

It is no wonder then that by the 1960s, with the emergence of the gay rights movement, many LGBTQ people had come to mistrust the medical establishment. Health care providers often either exhibited hostility or ignorance about the unique health concerns of LGBTQ people.

With the advent of LGBTQIA+ rights movements, many renowned organizations recognized and questioned their reasoning of terming homosexuality as a mental disorder. Until 1973, homosexuality was termed as a mental disorder under the Diagnostic and Statistical Manual for Mental Disorders published by the Later American Psychiatric Association, which is one of the most important manuals for mental disorders in the field of psychology. The association discarded its classification on December 15, 1973. Until 1990, the World Health Organization (WHO), an agency of the United Nations, considered homosexual orientation under the international classification of diseases.

It's been a theory and assumption in the minds of people that the queer community feels things just on the basis of how their mind processes. If they are going to think straight or heterosexually, they are going to be straight but because they have made an imaginary world in their mind of them being different from the society, it is the sole reason of them thinking and considering homosexuality a mental disorder.

In 1980, Karen Ulane lost her job as a pilot for Eastern Airlines because she had transitioned from a male to a female identity. Ulane sued under Title VII of the Civil Rights Act of 1964, which prohibits discrimination “because of sex” in the workplace. A federal court dismissed her case. It reasoned that Ulane was not fired because of her sex; she was fired because she suffered from “transsexuality,” an “untraditional and unusual” mental disorder.

Talking about various researches which have been done in this category, it has found that there is no inherent association between any of these sexual orientations and psychopathology. Both heterosexual behaviour and homosexual behaviour are normal aspects of human sexuality. Both have been documented in many different cultures and historical eras. Despite the persistence of stereotypes that portray lesbian, gay and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organizations in this country to conclude that these orientations represent normal forms of human experience. Lesbian, gay and bisexual relationships are normal forms of human bonding. Therefore, these mainstream organizations long ago abandoned classifications of homosexuality as a mental disorder.

This stigmatization of the community has also been caused by the normative gender roles created by the society and has led to the discrimination of the LGBTQIA+ community in the healthcare system and has endangered their lives through denial or delays of medically necessary care. For example, after one patient with HIV disclosed to a hospital that he had sex with another man, the hospital refused to provide his HIV medication. This discrimination also affects the family members of the LGBTQIA+; in

Michigan, USA, an infant was turned away from a pediatrician's office because she had same-sex parents. A survey was conducted by Center for American Progress (CAP) in 2018 and amongst the LGBTQIA+ respondents who had visited a doctor or health care provider:

- 8 percent said that a doctor or other health care provider refused to see them because of their actual or perceived sexual orientation
- 6 percent said that a doctor or other health care providers refused to give them health care related to their actual or perceived sexual orientation
- 7 percent said that a doctor or other health care providers refused to recognize their family, including a child or a same-sex spouse or partner
- 9 percent said that a doctor or other health care providers used harsh or abusive language when treating them.
- 7 percent said that they experienced unwanted physical contact from a doctor or other health care provider (such as fondling, sexual assault, or rape).

Amongst the transgender people who visited a doctor or healthcare provider:

- 29 percent said a doctor or other health care provider refused to see them because of their actual or perceived gender identity
- 12 percent said a doctor or other health care provider refused to give them health care related to gender transition
- 23 percent said a doctor or other health care provider intentionally misgendered them or used the wrong name
- 21 percent said a doctor or other health care provider used harsh or abusive language when treating them
- 29 percent said that they experienced unwanted physical contact from a doctor or other health care provider (such as fondling, sexual assault, or rape)

This survey also mentions that 14 percent of those who had experienced discrimination on the basis of their gender identity or sexual orientation have avoided or postponed the needed medical care. This survey alone proves the discriminatory and derogative mindset of the healthcare workers. The main reason for the discrimination of queer community in medical science is knowledge gaps. A lack of inclusivity in medical science has leads to gaps in knowledge. This means that doctor knows less about the females, intersex and trans health than male health.

A report from the National LGBTQ Task Force found that 50 percent of respondents have had to teach their doctor about caring for trans people and LGBTQIA+ people. This shows that there is not only lack of awareness but also lack of research in the field of healthcare for the LGBTQIA+.

One of the important aspects of transgender health is hormone therapy. Hormone therapy is a critical component of medical care for many transgender individuals. However, there is a lack of education and training among medical professionals on this topic. This can result in improper treatment and negative health outcomes for transgender individuals.

LGBTQ+ individuals face health disparities that can result from societal stigma, discrimination, and a lack of access to quality healthcare. These disparities can lead to higher rates of mental health disorders, substance abuse, and chronic diseases.

The LGBTQIA+ community is at least twice more likely to face mental health challenges compared to the general public. The question arises that why the LGBTQIA+ community experiences more mental health concerns?

The most obvious answer could be life experiences and the fear of discrimination and exclusion from society. The people of the community have often faced challenges expressing their sexual orientation or their gender identity in public because of the fear of judgment and rejection from this society and the fear of being left out. Queer people are not only unsupported but face negative attitude and behaviour from others.

To give an example, Arvey, 16-year-old boy from Faridabad, Haryana, India, committed suicide because he was bullied about his sexual orientation from his peers in school. He was called “gay” in an abusive manner and people around made fun of him. He was sexually assaulted by his peers. He was touched inappropriately and was even kissed by someone on his neck without consent. Eventually, he went into therapy where he shared an incident where in 9th class after his morning sports practice and during the lunch break, while peeing in the bathroom he was blindfolded, his hands and legs were tied, his clothes were ripped off and even his mouth was covered and the boys touched him inappropriately and he was asked to suck their penises and when he refused to they masturbated all over his body. And this was just one incident; after being assaulted and raped multiple times and being isolated; he went into depression and suffered multiple panic attacks. Eventually he committed suicide as he was afraid of being himself and lost all hope to live. This is only one of the many similar stories of the people of this community and shows that how our society is full of hate and disgust for the community and how this hate is affecting people and, in many cases, making people take their own lives.

Antonio Roberto Jr, senior director of behavioral health at the lesbian gay bisexual and transgender community center at NYC, mentions that one of his clients was told in the workplace not to talk too much about their sexual orientation in order not to make others feel uncomfortable.

The lack of support and respect for the LGBTQIA community leads many not to be open about their identity which not only takes a toll on their mental health but also makes them feel unsafe and may lead to mental problems such as depression, anxiety, stress and fatigue and it robs of them a chance to live a happy healthy life.

## CONCLUSION

Due to the discrimination and mistreatment in the Medical Sciences, the LGBTQIA+ community also had to face many discriminatory policies and practices. Medical sciences considering homosexuality a medical disease/disorder in the past have also of the main reason for the stigmatization of homosexuality which has taken years to overcome. For example, some medical professionals make assumptions about an individual's gender identity or sexual orientation without even questioning the patient which can lead to false and inappropriate diagnosis of their real problem. This stigmatization has often led to medical professionals refusing to provide medical care. Though in the recent years there has been a rise in the recognition and importance of providing inclusive and proper healthcare to LGBTQIA+ individuals. Medical societies have begun to develop guidelines and training programs to promote LGBTQIA+ health including the increased risk of health conditions such as mental health issues, sexually transmitted infections, substance abuse, etc. For the most part, there is a lot of awareness that must be brought in the Medical Sciences about LGBTQIA+ healthcare.

There is a long road ahead on this journey as changing people's mindset is one of the hardest tasks to perform in this world because people are easily influenced and trying to make people understand that their religious beliefs or thoughts are in any way wrong and should be disregarded has brought up a roaring resistance against the community and the supporters of the community. There is an institutionalized prejudice in the society and changing that perspective or view is a challenging task and has been rigorously worked on in the past century. The normative gender roles and the unyielding heterosexual ideals are the ones that we must change. To increase inclusivity and to reduce overall homophobia would be through awareness. By increasing awareness about the community and assuring them that their way of living is not due to mental disorder and is on the other hand extremely normal everywhere; they should be treated as any straight person would be treated and that they just want peace and acceptance. Education and awareness programmes for both the young and old can immensely help in the destigmatization of the community.

Bringing awareness in people's mind will not only help the people of the LGBTQIA+ community feel safe in the society but also help them be their true self and reduce mental health stressors. It will also benefit them in acquiring a job or a career in any part of the government or the private sector where they previously have been discriminated against. People of the community have expressed that they feel scared about their treatment because of their gender identity/ sexual orientation while applying for a job as many companies and countries do not accept the people of the LGBTQIA+ community. Marriage is also an important aspect in life and same sex marriage is not promoted or even accepted in many parts of the world which not only takes away the right of the people to choose their partner but also makes them question themselves and create fear in their minds. This not only leads to anxiety, depression and stress but also leads to suicide in many cases. The only way to prevent this would be in advocating equality and the importance of mental health. It is high time now that we all come together and bring this change for the betterment of humanity.

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