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HEALTH, EDUCATION AND RIGHTS**

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**Documenting Outcome Experiences of
Gay University Students in Taiwan***

Gary L. Vore Jr.

* This paper and oral presentation for ICSHER 2017 is a modified and abridged version of a manuscript currently under review for publication.

Abstract

Documenting students' accounts of bullying is essential for continued awareness and understanding within the scope of gender equality throughout the world. Moreover, as a Western researcher investigating bullying within Taiwan, this provides insight in English for lesser-known concepts from a Mandarin Chinese perspective.

The purpose of this paper is the documentation of bullying outcomes endured by gay male university students in Taiwan during their undergraduate years. These self-report incidents originated from a 269 student quantitative survey. A qualitative process of 12 volunteer in-depth interviews were conducted to document more precisely individual student's explanations on why they believe they were bullied and how they have come to cope to their abuse experiences.

Results showed Taiwanese gay students still experience bullying at the university level, beyond the middle school or secondary school levels where the majority of research is, and has been, focused. The most common form of bullying experienced by university students is verbal abuse. Students experienced homophobic or heteronormative comments from family members, friends, and university professors. Most interviewees show limited awareness or concern for negative effects of being verbally abused. Students believe they have become stronger individuals due to negative experiences.

Key Words: Taiwan, verbal abuse, gay university students, outcomes

Overview

Taiwanese gay men are more closeted than are their Western counterparts. This is due in part to customs such as family values and traditional Chinese thinking including filial piety. The growing support for same-sex couples and equality continues with (1) the constant growth of its annual LGBT Pride Parade, (2) the support and promotion of homosexuality in a positive light led in part by the Taiwan Tongzhi Hotline Association (TTHA), and (3) the May 2017, Constitutional Court ruling which essentially paves the way for same-sex marriage in Taiwan (the first Asian nation to do so). Yet, with these supportive interventions, many gay men in Taiwan keep their personal experiences a secret.

The core of this presentation is the outcomes of gay university students in Taiwan who have suffered from verbal abuse. Its purpose is to support the lived experiences of 12 volunteer participants through qualitative in-depth interviews. Additionally, how gay Taiwanese students consider influences or ramifications of verbal abuse is documented.

Consequences of Verbal Abuse

Homophobia and verbal abuse experienced from friends and classmates can be an issue when handling life events. In the US, the Gay, Lesbian and Straight Education Network (GLSEN) has taken the lead in the area of bullying of non-heterosexual students in compulsory education by researching and biennially publishing its National School Climate Survey (Kosciw, 2004; Kosciw & Cullen, 2002; Kosciw & Diaz, 2006; Kosciw, Diaz, & Greytak, 2008; Kosciw, Greytak, Bartkiewicz, Boesen, & Palmer, 2012; Kosciw, Greytak, Diaz, & Bartkiewicz, 2010). According to the most recent GLSEN poll, homophobic taunts were used against nearly 75% of those surveyed (Kosciw, Greytak, Palmer, & Boesen, 2014). This statistic has remained virtually stagnant over the past decade of their research.

Despite bullying being a worldwide problem, Westerners and Asians likely view this problem, react to verbal or physical victimization, and consider outcomes quite differently (Nisbett & Masuda, 2003). Within Taiwan, differing concepts of bullying reflect cultural differences (Cheng, Chen, Ho, & Cheng, 2011). While Taiwan appears to follow more closely to the Olweus Western definition model, due to differences in Asian culture, teachers, students and parents often have conflicting definitions of what constitutes bullying (Cheng et al., 2011; Hokoda, Lu, & Angeles, 2006). Liu (2012) notes, in Taiwan, depression among LGBT students was due to being bullied on campus, feeling isolated because of fear of disclosing their gay/lesbian identity, and/or internalized homophobia.

One consideration of bullying is the outcomes it produces. Are present research results throughout the West similar to the way Taiwanese gays handle their experiences? In addition, the consequences of verbal abuse are brought about from not only being bullied but also how the students view the supportiveness of family and peers.

Negative personal outcomes of bullying can include difficulties in accepting sexuality (Rivers & Noret, 2008), higher risk of psychological distress and anxiety (Muñoz-Plaza, Quinn, & Rounds, 2002; Swearer, Turner, & Givens, 2008), damage to students well-being (Rivers & Noret, 2008), add to feelings of self-loathing and worthlessness Friedman (as cited in Rivers, 2004), nightmares and flashbacks (Yule & Udwin, 1991), and suicidality (Baker, 1993; Hershberger & D'Augelli, 1995; Muñoz-Plaza et al., 2002). Rejection from friends and family (Gibson, 1994), family violence (Ortiz-Hernandez, Gomez Tello, & Valdés, 2009), and filial disownment (Gibson, 1994) have also been reported.

Education-related consequences include school problems (Muñoz-Plaza et al., 2002), not keeping up with their peers or doing poorly (Gibson, 1994; Russell, Seif, & Truong, 2001), loss of interest in friends or school (Davis, 2006) playing sick or being truant (Rivers, 2000), or dropping

out of school (Elias et al., 1992). Further consequences may involve unsafe sexual activities (Shidlo, 1994), outbursts of anger or being wary of meeting new people (Rivers, 2004) along with violent behavior, eating disorders, alcoholism, and substance abuse (Buhrich & Loke, 1988; Hershberger & D'Augelli, 1995; Otis & Skinner, 1996). Kimmel and Mahler (2003) show the connection between gay epithets toward straight students are correlative with school shootings in the US. In short, students face innumerable outcomes from being victims of bullying.

Methods

In-depth interviews target volunteer students in order to further substantiate their verbal self-report claims and their experiences in dealing with the verbal abuse. Interview questions related to experiences were of open-ended response with two questions related to personal information, seven questions related to verbal abuse, and three questions related to outcomes of verbal abuse. Interviewee responses were in English (and occasionally in Mandarin Chinese) which aided in trustworthiness of intended meanings. Inductive analysis formed the basis for data analysis. A secondary researcher reviewed the analysis. A total of 12 interviews have been conducted with an average duration of 92 minutes with the shortest at 49 minutes and the longest at 2 hours and 37 minutes. Several ethical considerations were addressed. Names and personal information of interviewees remain anonymous to everyone except the researcher. Pseudonyms are used in the article. The use of “[sic]” warrants mention. Within the confines of this article, [sic] has been omitted from interviewee responses. This researcher has made slight modifications for readability while leaving original grammar, mechanical errors, and intended meanings intact, which were articulated by each interviewee.

Results

All 12 of the interviewees have experiences with verbal abuse on university grounds during their undergraduate years. Interviewees noted they had heard rumors spread about them leaving them with feelings of having been singled out and excluded due to their sexual identity. Interviewees reported occasional feelings of exclusion brought on by peers due to their own sexual orientation and interviewees did not report these exclusionary tactics to friends, family, faculty, or counselors. This is likely due to students who open up about their feelings of exclusion could be forced to further open themselves up to issues of sexuality when attempting to address their experiences. This verbal abuse was evident despite a student's outward self-labeling appearance of masculine or feminine characteristics. Two interviewees were overtly masculine in physical and verbal attributes while another was overtly feminine. All three noted experiences of being excluded. All interviewees recounted events took place on a university campus in front of groups and most often consisting of several of their friends.

Once I heard them [my friends] say that I like to do body training. But they said, “Am I looking at girls or boys [in the gym] who are same body type as me?” They see me and lie in my face they don't talking about me.... Then I really feel lonely and don't want to be in their group. [Cheetah]

I can't speak I am a gay to my friends. I like working my body and I like muscle boy. Because my physical [appearance], my friends say I like girls. But I can hear them talking in the dormitory when they question if I'm a gay. They often say a negative thing behind my back. But they lie to my face when we go together. So, I can't speak I'm a gay. [Gin]

I remember that feeling to be left out because they think I am too sissy and want me to proof them and show my dick to be sure I am boy to be joining them.... I didn't reply anything just leaving. [Dian]

These three students experienced exclusionary tactics because they are different from perceived images of what makes a man or as Heasley (2011) notes, they do not fit in to the desired ways of being male. In addition, the exclusionary tactics of peers happened despite Cheetah and Gin being “in” and Dian being “out.”

Rye addressed his exclusion due to his sexuality. Rye’s experience was also on school grounds but he reflects on his feelings after being excluded rather than what was said to him.

Even I’m gay, sometimes I feel left out. I mean, just because I am gay, I sometimes feel left out. But in my university, when my “friends” leave me out of the group or the activity, it lets me hurt more.... I know sometimes others do it just because sexuality issues. [Rye]

These four of 12 interviewees confirmed feelings of being left out. These exclusionary tactics are brought on by peers and friends and are viewed by interviewees as corresponding directly to their sexual identity rather than their outward appearance or physical traits.

Regardless of the negativity these Taiwanese university students have experienced, they verbally expressed resilience and strength. Interviewees were confident, despite feeling verbally abused, their negative experiences have made them better individuals. Interviewees made the following comments about how and why they believe they have become stronger.

I think I am strong.... But I think it’s so tired to always have complaints by other people. Why not they can just accept so differences in people and the world? [Dian]

It remains difficult for Dian to understand why people must view him differently. However, he continues to deal with it as a way for him to continue building emotional strength.

I think being gay is um, is not a stigma anymore. It’s not a bad thing anymore.... I think, once I heard one of my straight friend tell me that he was, he was envy [of me].... He think in this society, like everybody looks alike. They have the same goal, they all want to get a wife or get a job or get a house or something. Sometimes he thinks he is missing in the life. But he say that being a gay is at least one thing that make me unique. [Chihming]

Chihming’s friend, by affirming Chihming’s homosexuality and individuality, assists with Chihming’s personal acceptance of his homosexuality and validation as an individual. Chihming is lucky to have such a friend. All gay students could benefit emotionally from such supportive heterosexual friends and peers.

The more we can advance and the more we can improve ourselves and our knowledge, the better and stronger we become. I hope one day I can see many gay people in many power positions in Taiwan.... Then everyone can know that sexual orientation means nothing about to define a person. It is about what we gays can accomplish will make us stronger. [Rye]

I didn’t bully the other students but others say bad things to me. I don’t find offensive of that. I think sometimes they just do it for no reason, but sometimes they do it to hurt me. These events make me think they do it because I am different. I am, but now I become more different than them.... I think I can understand my gay life more too.... I think one day I will be happy when they can know how great and professional and how educated I become.... Now they know I am a better and a more well-off person than them. [Yen]

Rye and Yen also try not to reflect too much on what has happened in the past. They both understand how their experiences have helped them become more mature. They both mention their individual validation, contribution to society, and the empowerment of gay individuals. While I do not negate any of the negative experiences these students have endured, it is clear reflecting on these negative experiences can be emotionally and psychologically beneficial for personal growth.

I think if there is no bully in my life, I will become weaker than now. And I will not be so independent. [Evan]

I know I am a strong gay. I think a lot about my life before. Those bully things the others say really make me down. But slowly, over the time, I got better and feel strong. Not my body strong but my mind strong. I think I can do something great in my future. Then I can proof that bully make me a better person. [An]

Evan and An's comment above is simplistic yet provides a summation of all the interviewees. The personal empowerment and mental strength gay students say they have gained from being bullied is that which can support them throughout their lives. This can also be viewed as a form of support and encouragement to younger individuals dealing with similar abuse experiences.

Conclusion

Gay students in Taiwan are dealing with negative epithets, experiences with being bullied and some have considered taking their own life due to bullying. Virtually all research dealing with bullying and its harmful effects on students, address suicide as a possible outcome (Baker, 1993; Birkett, Espelage, & Koenig, 2009; Davis, 2006). As Olweus (1993) notes, some students may not wish to defend themselves. This can be relevant to Taiwanese university students who may be more concerned with status-quo of university life or protecting their sexual orientation from family or others. As similarly shown in research in the West by D'Augelli (1992) and Lance (2002, 2008), bullying and its negative effects is evident within the university setting in Taiwan.

Despite all the negativity associated with verbal abuse, it was encouraging to hear these students turning their bullying experiences into positive experiences. Interestingly though, while students believe their encounters with bullying have made them stronger, students are in part, playing into the characteristics of masculinity. Being both physically and emotionally strong or showing courageousness and assertiveness over others can be construed as stereotypes associated with "being a man."

Finally, although it hoped to uncover statistically divergent results in Taiwan compared to the US, this was not the case. Despite genuine interest and concern for this topic and in this region, this researcher has learned and documented more about bullying and verbal abuse in Taiwan and presented these results establishing a link between homophobic abuse in the US and in Taiwan. The researcher uses this as a platform to express the results and opinions of gay students in Taiwan to the Western world and to share some unknown or undocumented experiences of Mandarin Chinese students to an English audience.

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Islamic Perspective of Sexuality Education

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Abstract

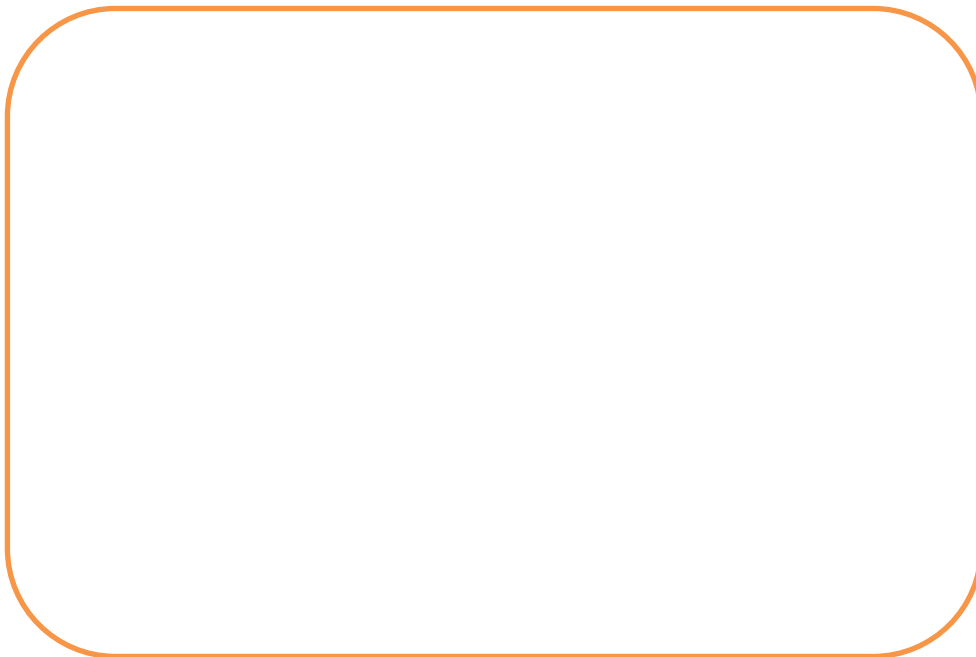
The world during the recent times has turned into a global village. This has become possible due to media (print and electronic both). There are hundreds of sources working day and night to instigate the sexual desires of an individual. The young generation is being agitated and as a result they have become victims of sexual anarchy. However, it is also an undeniable fact that inspite of all these free-sex environments, the present-day human beings are not satisfied. They are not getting what they ought to get as a result of having sexual pleasure at such an enormous scale and the sexual desire and demand of the present-day men and women is increasing day by day.

Sexuality education in the developed countries is being imparted since about two centuries but inspite of billions of dollars being spent, all such efforts have proved fruitless. However, sexuality plays an important role in the human life covering both the individual and social life of human beings. As a result of marriage, there comes into existence family which ultimately culminates into tribes, nations and civilization. Amongst the social problems are the divorce, illegitimate births, and many physical problems (diseases like AIDs), sexual violence and sexual perversions. In order to save humanity from all such disasters, Islamic teachings (Quran and Hadith) have provided guidance for human beings to regulate their sexual life. In view of the many problems of birth control, infanticide, abortion, diseases like AIDs and unwed mothers etc, the Islamic teachings provide a well-balanced way to enjoy the sexuality within the bounds of marriage. This article intends to present the scheme of sexuality education as contained in Quran and Hadith. Here, it may be pointed out that the concept, objectives and methodology of sexuality education in Islam is poles apart from that of sexuality education in Europe and America.

Key Words: Islam, Code of life, Sex Education, Aims and objectives, Quran, Hadith

Role of Sexuality in Human Life

Sexuality plays an important role in the human life. It covers both the individual and social aspects of human beings, as shown in diagram.



A bird's eye view of Sexuality Education in the developed countries:

- Sexuality education was started in Sweden during 1950 to address very simple questions of children;
- Its scope, concept and objectives widened under the slogan of safe sex;
- Over the time, a generation grew up thinking that they could have sex “with whosoever they wanted”, “whenever they wanted”, and “wherever they wanted”, and not facing any consequences (Dennis Tucker, 1998);
- Since the last few decades, a debate on classroom sexuality education is going on in America and Europe. Two systems i.e. **comprehensive sexuality education** and **abstinence-only program** are working in Europe and America. Parents, teachers, public, national and government organizations are taking part in this debate; it has torn the community apart, and even the matter has landed in the courts.
- In 1986, American Surgeon General's (Dr. C. E. Koop') statement radically shifted this debate towards AID's. He cautioned that “there is no doubt that we need sex education in schools (3rd grade).

It may be appreciated that both the systems of sexuality education in the developed countries have failed to achieve the objectives for which billions of dollars are being spent. For the present day youngsters, it is not enough to tell them that they should not engage in sex. On the contrary, it is essential to apprise them of the hazards of early sex, STD's, teenage pregnancy etc. Further, they are required to be made aware of the biological development and hormonal changes due to puberty as well as the psychological behavior which ensues with it. In addition, they are to be advised to have sex with their wife after marriage. Moreover their questions about sex and related matters should be answered honestly.

Here comes the role of a Divine religion to induce men and women to discipline their lives for the community and civilization at large. Thus all the Divine religions made marriage as an institution of legal relationship between man and woman for the propagation and continuation of human race through the family system. Further all the Divine religions declared sexual satisfaction outside marriage as unlawful. ___Here, someone may say, “Why dragging in religion in the matters of sex”? ___It is not dragging in. Rather, if psychology be defined as the science of behavior, religion is without doubt the most potent mold of human behavior in the world. (Kinsey et. al 1953 a & b) Indeed the right kind of religious teachings are the only hope for a permanent cure of the problems being faced by the humanity nowadays.

It may be asserted that a true Divine religion and psychology, faith and science need to be yoked together and intelligently applied in order that sex, to many people a pleasure first and last and to others an unclean (sinful) thing, may become what surely God who implanted it, meant it to be. As pointed out that the present day sexuality education has become an activity divorced from philosophy and moral outlook on life. An education based on sex for the sake of sex is no education at all. That’s why all the sex education in the west has not created any impact on teenage pregnancy and many other social problems shattering the family life. ----- The only way to make satisfying sex possible is to place it within a philosophy where it is neither the sole purpose nor an end in and of itself! ___this is what Islam stands for.

It may thus be concluded that knowledge of sexual matters be imparted by God given code of life. i.e. Quran; its practical demonstrations in the form of Sunnah (sayings and practice of the Prophet) and its further details in the form of *Fiqhi* rulings by the jurists during 1400 years till today. It can then be viewed as part of a belief system and not just as a separate subject in the school curriculum. As such, it needs to be emphasized that problems with regard to sexuality education are more religious than cultural. This is an integrated subject dealing with the whole life of a Muslim (Abdul Mabud, 1998). He has rightly pointed out that “traditionally, sexuality education has never featured as a separate subject in the school curriculum in Muslim countries but has been integrated into religious education. It has been a practice since centuries that it has been taught in the Islamic schools (*Madaras*) while discussing *Taharat(cleanliness)*, *marriage*, divorce, sexual relations between the spouses, rights and obligations of each other and many other socio-sexual issues.”

Further, the young ones have also been learning all such etiquettes from the society and their elders (men and woman); the young boys and girls have been practicing the same in their daily life. Since there had been separates Madras/schools for girls and boys from the early childhood, all these important issues of sexuality had been taught to them by the elderly women and men, respectively. In all the famous books of Ahadith and Fiqh, one finds the most delicate matters of proper cleaning/*Taharat* (from urination to *Janabat* due to sexual intercourse and nocturnal emissions). Further, while discussing them, the aspect of *Haya* (modesty) has always prevailed.

After having said this much, now it is easy to understand the concept of sexuality in Islam. However, there are certain misconceptions about Islam which need to be clarified at the outset.

- Contrary to common belief, Islam is not a religion (Simple performance of some rituals), rather it is a code of life encompassing all spheres of human life .

- Islam has never condemned the instinct of sex, rather it is considered as a gift from God to human beings, a source of (*Hasana*) a virtue of the highest order;
- Islam considers it a source of emotional satisfaction, enjoyment and procreation within the bounds of marriage.
- The concept, aims, objectives and methodology of sexuality education in Islam are poles apart from those of western concept, objectives and methodology.
- Allah/God also sent His last Prophet Muhammad, who gave detailed education and training to the highly uneducated and vicious Arabs who were dubbed in drinking and fornication. However, within a short span of 23 years, those illiterate Arabs became the most civilized nation with respect to this human instinct;

Aims and objectives of sexuality education in Islam: The canvass of sexuality education in Islam is a very broad encompassing physical, ethical, spiritual, psychological and emotional aspects. It is pertinent to point out here that Islam not only seeks to provide Knowledge but also gives training so that the Muslims may become a practicing individual. Sexuality education in Islam aims at providing such information, according to age and development of the young Muslim boys and girls so that they may be able to know the following aims and objectives:

- He/ she may be able to understand the physical, emotional and psychological changes in the body due to puberty;
- He/ she may also become aware of the Commandments of Allah/God due to the onset of nocturnal emission and mensuration, respectively etc on attaining puberty;
- He/ she may also become aware of different *Halal* (permissible) acts (marriage) and *Haram* (forbidden) acts (fornication, masturbation etc).
- In this way, when married, they may start a happy family life, having detailed knowledge and information about the obligations, duties and rights of each other as spouses;

The most vivid verses with regard to sex education in Quran is revealed in Surah Maryam, (19:16-25)

⊙ **وَإِذْ كَتَبَ فِي الْكِتَابِ مَرِيَمَ إِذِ اتَّيَبَتْ مِنْ أَبْلِهَا مَكَانًا شَرْقِيًّا ﴿١٦﴾ فَاتَّخَذَتْ مِنْ دُونِهِمْ حِجَابًا ۗ فَأَرْسَلْنَا إِلَيْهَا رُوحَنَا فَتَمَثَّلَ لَهَا بَشَرًا سَوِيًّا ﴿١٧﴾ قَالَتْ إِنِّي أَعُوذُ بِالرَّحْمَنِ مِنْكَ إِنْ كُنْتَ نَقِيًّا ﴿١٨﴾ قَالَ إِنَّمَا أَنَا رَسُولُ رَبِّكِ لِأَهَبَ لَكِ غُلَامًا زَكِيًّا ﴿١٩﴾ قَالَتْ أَنَّى يَكُونُ لِي غُلَامٌ وَلَمْ يَمَسِّنِي بَشَرٌ وَلَمْ أَكُ بَغِيًّا ﴿٢٠﴾ قَالَ كَذَلِكَ قَالَ رَبُّكِ بِإِذْنِ رَبِّكَ الْعَلِيِّ ۗ وَنَجَعَلَهُ آيَةً لِلنَّاسِ وَرَحْمَةً مِّنَّا وَكَانَ أَمْرًا مَّقْضِيًّا ﴿٢١﴾ فَحَمَلَتْهُ فَانْتَبَذَتْ بِهِ مَكَانًا قَصِيًّا ﴿٢٢﴾ فَجَاءَهَا الْمَخَاضُ إِلَى جِذْعِ النَّخْلَةِ ۗ قَالَتْ يَلَيْتَنِي مِتُّ قَبْلَ بَدَا وَكُنْتُ نَسِيًّا مَّسِيًّا ﴿٢٣﴾ فَوَدَّعَهَا مِنْ تَحْتِهَا إِلَّا تَحْرِيًّا ۗ قَدْ جَعَلَ رَبُّكِ تَحْتَكِ سَرِيًّا ﴿٢٤﴾ وَوَبَّرِي ۗ إِلَيْكِ بِجِذْعِ النَّخْلَةِ تُسَلِّطُ عَلَيْكِ رُطْبًا جَنِيًّا ﴿٢٥﴾**

“There We sent to her Our Spirit (an Angel) and he appeared before her in the form of a perfect man.” “Mary cried out involuntarily, “I seek God’s refuge from you, if you are a pious man”. “He replied, “I am a mere Messenger from your Lord and have been sent to give you a pure son”. “Mary said,” how can I bear a son when no man has touched me, and I am not an unchaste woman”? ----- Accordingly, Mary conceived the child, and with it she went away to a distant place. Then the throes of child birth urged her to take shelter under a date palm. There she began to cry, "Oh! would that I had died before this and sunk into oblivion". At this the Angel at the foot of her bed consoled her, saying, "grieve not at all, for your Lord has set a

spring under you; as for your food, shake the trunk of this tree and fresh, ripe dates will fall down for you; so eat and drink and refresh your eyes''.

From the above verses it may be easily concluded that Quran has given guidance in these verses about:

- The birth of a child which is possible only as a result of conjugal union of a male and female with the exception of the Jesus – (PBUH)
- Chastity and *Haya* had been a concept in vogue since the time of the Christ and virginity has been the symbol of the chastity;
- That a child remains in the womb of the mother before delivery;
- The birth of a child is preceded by “labor pain, and this birth was normal” having no need of assistance from some female individual.
- Just after the birth of a child, the woman remains in a state of weakness / stress and in order to combat the bad effects of stress, drinking of water (mineral water from a spring) and eating of the fresh and ripe dates as a rich source of energy has been directed.
- There is mention of the gender (sex) of the child (male or female).

After having a glimpse of the topics revealed in Surah Maryam(19:25) ,(the Mary_PBUH), following Table 1(Khan M.A and Ahasn,2010) gives an overall picture of the enormous topics so extensively discussed in Quran about the most important aspects of human sexuality (400 verses in 65 (Surahs).

It is evident that the Holy Quran has dealt with all topics of human sexuality with which an individual is confronted in his life. Someone who reads Quran, with the passage of time will come to know the meanings and the guidance given in these Commandments. Further, if along with it, narrations of the Prophet (called as Ahadith) are also read, the matter becomes clearer.

Table 1: Different aspects of sex education as revealed in Quran

Topics	Surah's/Verses
Creation of Adam and Eve	
i. Creation of Adam from clay.	Al-Aaraf, 7:11; Al- Hijr, 15:26; Al-Mominun, 23:12; Ar-Rahman – 55:14
ii. Adam as Viceroy of Allah	Al-Baqarah,2:30-38, Al-Aaraf-7:11-25 Al-Hijr-15:26
iii. Multiplication of human species	An-Nisa, 4:1; Al-Furqan- 25:54 As-Shura,42:11; Al-Hujurat,49:13
Marriage, <i>Nikah</i> and Spouses	
i. A pair of each species	Hud,11:40 & 71, An-Nahl,16:72 Yasin,36:36; As-Shura,42:11
ii. Objectives of marriage	An-Nisa,4:1; Al-Aaraf,7:189 Al-Furqan,25:74; Ar-Rum,30:21
iii. Love between spouses	Al-Furqan,25:74; Al-Rum,30:21
iv. Qualities of heavenly wives- <i>hoors</i>	Al-Baqarah,2:25; Aal-i-Imran,3:15

	An-Nisa,4:57; As-Saaffat,37:48 Ad-Dukhan,44:54; Ar-Rahman-55:56 & 72 A-Waqia,56-22,23 & 36; At-Tahrim,66:5 At-Tur,52:21; An-Naba,78:33
v. Polygamy with justices	An-Nisa-4:3, 129
vi. With whom marriage is permissible and/or forbidden.	Al-Baqarah,2:221; An-Nisa,4:3: 22-23 Al-Maidah,5:5; Al-Mu'minun,23:6 An-Nur,24:3, 32, Al-Ahzab,33:49-50 Al-Mumtahinah,60:10-11; Al-Ma'arij-70-30
vii. Marriage of Moses(PBUH)	Al-Qasas-28:27,29
viii. Marriage of an adulterer with an adulteress	An-Nur-24:3
Etiquettes of Sexual Relations between the Spouses	
i. Spouses as garments	Al-Baqarah-2:187
ii. Covering a woman (wife)	Al-'Araf-7:189
iii. Permission of sexual intercourse during the nights of Ramadan	Al-Baqarah-2:187
iv. Prohibition during <i>itekaf</i> , <i>hajj</i> and menstruation	Al-Baqarah-2:187;196;222
v. Prohibition of monasticism/celebrity	Al-Hadid-57:27
Pregnancy and its Duration	
i. Pregnancy	Aal-i-Imran,3:6,35, 37-38; Al-'Araf,7:189 Ar-Ra'ad,13:8; An-Nahl,16:78 Al-Hajj,22-1,5; Luqman,31:14,34 Al-Fatir,35:11; Az-Zumar, 39:6 Ha-Min-As-Sajdah,41:47; Al-Ahqaf,46:15 An-Najam,53:31; Al-Musalat,77:20
ii. Birth of a child (Jesus) without a father	Aal-i-Imran,3:45, 59; An-Nisa,4:170 Maryam,19:20-26; At-Tahrim,66:12
Procreation and Developmental Stages of Fetus in Uterus	
i. Semen	Yasin,36:77; Ad-Dahr,76:2 Al-Mursalat,77:20; At-Tariq,86:6-7
ii. Developmental stages of fetus in the uterus of mother	Aal-i-Imran,3:6; Al-Kahf,18:37 Al-Hajj,22:5; Al-Mu'minun,23:13-14 Ar-Rum,30:54; Az-Zumar,39:6 Al-Mumin,40:67; Al-Qiyamah,75:37-38
iii. Infertility (old age as a factor)	Aal-i-Imran,3:38-40; Hud,11:71-72 Al-Hijr,15:53-55; Maryam,19:5-8 Al-Anbiya,21:89-91; As-Saaffat,37:112 Adh-Dhariyat,51:28-29
Matters Related with Marriage	
i. Dowry	An-Nisa,4:4,19-21,24; Al-Maidah,5:5
• Working for 8-10 years by moses as dowry	Al-Qasas-28:26-28

• Giving something if divorced without touching	Al-Baqarah,2:236-237; Al-Ahzab,33:49
• Divorce and <i>Idda</i>	Al-Baqarah,2:226-240; Al-Ahzab,33:49 At-Talaq,65:1-6
ii. Defiance (<i>Nashooz</i>)	An-Nisa,4:35
• On the part of a woman	An-Nisa,4:34
• On the part of a man	An-Nisa,4:128-129
Sexual Hygiene and Taharat	
i. Taking bath when <i>janabah</i>	An-Nisa,4:43
ii. Keeping garments clean and pure	Al-Mudathir,74:4
iii. Some aspects of <i>Taharat</i> for women/prohibition of sexual intercourse during menstruation	Al-Baqarah,4:43; Al-Maidah,5:6
Rights of Women	
i. Woman and equality of rights	An-Nisa,4:124
ii. Justice between wives if more than one	An-Nisa,4:129
iii. Giving <i>Maher</i> to wives	An-Nisa,4:24
iv. Husband to be polite/generous with wife	Al-Baqarah,2:236
v. Arbitration between wife/husband in case of differences	An-Nisa,4:35
vi. Sucking and rearing of children	Al-Baqarah,2:233; Al-Qasas,28:7,12-13 Al-Ahqaf,46:15
vii. Protection of honor of woman	An-Nisa,4:156; An-Nur,24:1-16,23,26 Al-Ahzab,33:58
viii. Provision of shelter for widow and her remarrying after <i>Idda</i>	Al-Baqarah,2:240-241
ix. Right of a widow to remain in the husband's home during <i>Idda</i>	At-Talaq,65:1-7
Rights of Parents and Children	
i. Rights of parents: Kind treatment and being dutiful to mother	Al-Anam,6:151; Al-Isra',17:23-24 Maryam,19:32; Al-Ankabut,29:8 Luqman,31:14; Al-Ahqaf,46:15
ii. Rights of Children: Love, affection and praying (<i>Dua</i>) for them	Al-Anam,6:151; Hud,11:45 Al-Ahqaf,46:15
iii. Rights of orphans	An-Nisa,4:6,10,127; Al-Anam,6:152 Al-Isra',17:34
iv. Adoption of children	Al-Ahzab-33:4-5
Inheritance	
Laws of inheritance	An-Nisa-4:10-13,176
Socio-Sexual Reforms	
Restraining gaze, maintenance of <i>Haya</i> , and	An-Nur,24:30-31,59; Al-Ahzab,33:59

not to display ornaments	Al-Ma-Arij,70:29
Sex, Gender and Feminism	
i. Creation of male and female by Allah	Al-Muminun,23:27; Al-Fatir,35:11 Al-Hujrat,49:13; Adh-Dhariyat,51:49 An-Najm,53:45; Al-Qiyamah,75:39 An-Naba,78:8; Al-Lail,92:3
ii. Birth of a girl (Mary) to wife of Imran	'Aal-i-Imran-3:35
iii. Giving a pure son (Jesus) to Mary	Maryan-19:19-24
iv. Male and female are offspring	Aal-i-Imran-3:195
v. Believing men and women are equal	At-Taubah,9:71-72; Ar-Ra'ad,13:23 An-Nahl,16:97; Al-Ahzab-33:35-36 Al-Mu'min,40:40; Al-Fath,48:4-5 Al-Hadid,57:18; An-Nuh,71:28
vi. Hypocrites (men or women) are equal in their punishment	At-Taubah-9:67
vii. Rewards for good deeds irrespective of gender	An-Nisa-4:124
viii. Condemnation of people who are aggrieved over the birth of a girl	An-Nahl,16:58-59; Az-Zukhruf,43:16-17
ix. Woman as ruler of a country	An-Naml,27:23
x. Praise of the wife of Pharaoh	At-Tahrim,66:11
xi. Inheritance to woman given as a right by Allah	An-Nisa,4:11-14,176
Wives of the Prophet Mohammad (PBUH)	
i. They are Mothers of all the Muslims	Al-Ahzab,33:6,28-34
ii. Many Commandments are passed on to us through them	Al-Ahzab,33:28-34,53,59
Birth Control	
i. Pharaoh: Killing males and leaving females	Al-Baqarah,2:49; Ibrahim,14:6 Al-Qasas,28:4; Al-Mumin,40:25
ii. Killing of children by Arabs	Al-Anam,6:137
iii. Prohibition of killing of offspring because their sustenance is provided by Allah	Al-An'aam,6:151; Hud,11:6 Al-Isra'-17:31
iv. While ignoring their cruel parent, Allah will directly question girls about why were they killed?	At-Takwir,81:8-9
Fornication (Zina)	

i. Invoking Allah to protect Yusuf from the traps of women of Egyptian high society.	Yusuf,12:23-32,50-51
ii. Do not go near fornication	Al-Isra',17:32
iii. Do not commit adultery	Al-Furqan,25:68
iv. Punishment for <i>zina</i>	An-Nisa,4:15-17,25; An-Nur,24:2,4-5
v. Punishment for false charges (calumny) against men and women	An-Nur,24:4-5; Al-Ahzab,33:58
Nudity and Pornography	
i. Prohibition to go near indecent things (irrespective of open or hidden)	Al-Anam,6:151; Al-Aaraf,7:33
ii. Tempting Yusuf for adultery/fornication	Yusuf,12:23-32,51
iii. Covering privates parts by garments	Al-Aaraf,7:26
iv. Nakedness of Adam and Eve when they disobeyed Allah's Command	Ta-Ha,20:121
v. Punishment for those spreading indecency in this world	An-Nur,24:19
vi. Punishment for spreading tales to lead people away from Allah	Luqman,31:6
Sexual Perversions	
i. Prohibition of homosexuality	Al-'Araf,7:80-84; Hud,11:77-81 Al-Hijr,15:70-74; An-Naml,27:54-58 Al-Qamar,54:33-34
Prohibition of Wine	
No prayers while under intoxication and prohibition of all intoxicants	Al-Baqarah,2:219; An-Nisa,4:43 Al-Maidah,5:90-91
Violence	
i. Forbidding violence towards children	Al-Baqarah,2:49
ii. Condemning killing of girls	At-Takwir,81:8-9
iii. No violence towards spouses in Islam rather love and mercy	Ar-Rum,30:21
iv. Forbidding sexual intercourse while woman is in menstruation	Al-Baqarah,2:222

Further, like Quran the language of Ahadith, while dealing the teachings about sexuality is also very sober, serene and without inciting any feelings of lust!_____ just see an example.

Guidance in Ahadith about sexuality education

مَنْ يَضْمَنْ لِي مَا بَيْنَ لَحْيَيْهِ وَمَا بَيْنَ رِجْلَيْهِ أَضْمَنْ لَهُ الْجَنَّةَ

“Whoever can guarantee (the chastity of) what is between his two jaw-bones and what is between his two legs (i.e. his tongue and private parts), I guarantee Paradise for him”. (Bukhari: 6474; Tirmidhi; #2004; 2409).

This Hadith covers the most important two crucial aspects of human life i.e. regulation of sexual organ and proper use of the tongue. It may be understood that in the vast literature of Ahadith, detailed instructions for living a pious life by refraining from fornication, masturbation, homosexuality (gayism and lesbianism) and other sexual perversions (bestiality, etc) have been given. This Hadith has summed up all sexual activities of men and women out of the marriage institution. A comparison of what is available on internet, T.V, video cassettes and porn literature would reveal to an honest person, the difference between the two sources!

There are a number of aspects dealing with the marital life of human being as discussed hereunder.

1) Marriage: The institution of marriage and family is at the top of social problem at global level. Following Hadith emphasizes the importance of marriage by young people.

يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصْرِ، وَأَحْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّهُ لَهُ وَجَاءٌ

"O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power." (Bukhari: 5066). This Hadith has also been narrated by Muslim # 1400

2) Divorce: The rate of divorce has gone so high that thinkers, philosophers and right minded people all over the world are upset. Just see the deep heart cries of a mother about the divorce of her daughter.

“Most people acknowledge that divorce is sometime a necessary evil, that some marriages do not deserve to be saved; but nobody marries hoping to end up divorce, and nobody, in the privacy of her heart, dreams of the day her daughter will become a single parent” (Maggie Gallagher, 1999).

The pain and sentimental appeal underlying this statement could only be visualized by some whose beloved one has passed through the bitter experience of this dilemma. This is because that marriage in the human society is considered as a one flesh union whose character and value gives a man and women moral reasons to pledge sexual exclusivity, fidelity and permanence of commitment. (Robert P. George, 2001). However, divorce has been an issue known since the institution of marriage in the human history. In this regard, see how the Prophet has condemned the incidence of divorce (although permissible in many cases).

الطَّلَاقِ " . عَنْ ابْنِ عُمَرَ، عَنِ النَّبِيِّ ﷺ قَالَ " أَبْغَضُ إِلَيَّ اللَّهُ تَعَالَى

Narrated Abdullah ibn Umar: The Prophet (ﷺ) said: Of all the lawful acts the most detestable to Allah is divorce. (Abu Daud: 2178)

- 3) **Selection of Spouses:** Before marriage, selection of spouses is most important. Since Islam intends to make marriages on permanent footings, the guidance about the traits for the selection of spouses has been given by the Prophet.

عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ " تُنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا فَاظْفُرْ بِدَاتِ الدِّينِ تَرِبَتْ بِدَاكِ "

Narrated Abu Huraira: The Prophet (ﷺ) said, "A woman is married for four things, i.e., her wealth, her family status, her beauty and her religion. So you should marry the religious woman (otherwise) you will be a losers. (Bukhari: 5090) ---- Muslim has also narrated this (Hadith # 1466)

- 4) **Virginitly:** From this, one should not get the impression that beauty and virginitly has not been considered as important criterion for marriage. In the following hadith, Prophet emphasized virginitly for marriage.

عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ قُلْتُ يَا رَسُولَ اللَّهِ أَرَأَيْتَ لَوْ نَزَلَتْ وَادِيًا وَفِيهِ شَجَرَةٌ قَدْ أَكِلَ مِنْهَا، وَوَجَدَتْ شَجَرًا لَمْ يُؤْكَلْ مِنْهَا، فِي أَيِّهَا كُنْتُ تُرْتَعُ بِعَيْرِكَ قَالَ " فِي الَّذِي لَمْ يُرْتَعُ مِنْهَا ". تَعْنِي أَنَّ رَسُولَ اللَّهِ ﷺ لَمْ يَتَزَوَّجْ بِكَرْمٍ غَيْرِهَا.

Narrated `Aisha: I said, "O Allah's Messenger (ﷺ)! Suppose you landed in a valley where there is a tree of which something has been eaten and then you found trees of which nothing has been eaten, of which tree would you let your camel graze?" He said, "(I will let my camel graze) of the one of which nothing has been eaten before." (The sub-narrator added: `Aisha meant that Allah's Messenger (ﷺ) had not married a virgin besides herself.) (Bukhari 5077):

It is our honest opinion that, in whole of the literature at global level, one may not find such a nice and loving way with which this aspect of marital life of spouses has been described. The books of Seerah (Biographies of the Prophet) contain a lot of guidance about the most cordial and loving attitude of the Prophet with his wives in general and the first wife Khadija. Just after her death, whenever a goat was slaughtered in his home, the Prophet used to send some meat to the relatives and friends of Hadhrat Khadija as a gift (Bukhari 3818, 3821).

- 5) **Love between the Spouses:** Following Hadith also portrays the love of the Prophet for his first wife after death.

عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ مَا غَرَّتْ عَلَيَّ أَحَدٍ مِنْ نِسَاءِ النَّبِيِّ ﷺ مَا غَرَّتْ عَلَيَّ خَدِيجَةَ، وَمَا رَأَيْتُهَا، وَلَكِنْ كَانَ النَّبِيُّ ﷺ يُكْتَرُ ذِكْرُهَا، وَرُبَّمَا دَبِحَ الشَّاةَ، ثُمَّ يَقَطِعُهَا أَغْضَاءً، ثُمَّ يَبْعُثُهَا فِي صَدَائِقِ خَدِيجَةَ، فَرُبَّمَا قُلْتُ لَهُ كَأَنَّهُ لَمْ يَكُنْ فِي الدُّنْيَا امْرَأَةً إِلَّا خَدِيجَةَ. فَيَقُولُ إِنَّهَا كَانَتْ وَكَأَنَّتُ، وَكَانَ لِي مِنْهَا وَلَدٌ.

Narrated 'Aisha: I did not feel jealous of any of the wives of the Prophet as much as I did of Khadija thought I had not seen her, but the Prophet used to mention her very often, and whenever he slaughtered a sheep, he would cut its parts and send them to the women friends of Khadija. When I sometimes said to him, "(You treat Khadija in such a way) as if there is no woman on earth except Khadija," he would say, "Khadija was such –and-such, and from her I had children."(Bukhari: 3818: 3821; Muslim: # 2437 has also narrated this Hadith with some modification).

Status of Women: The question of status of women in Islam has also remained a topic of much debate in the literary circle of the western countries. Much propaganda has been done in the past and is also continued in the present time. Without going into details, the following few facts may suffice for understanding the broader aspects of this issue:

1. In another hadith the Prophet praised the two women:

" خَيْرُ نِسَائِهَا مَرْيَمُ، وَخَيْرُ نِسَائِهَا خَدِيجَةُ "

Narrated 'Ali: The Prophet said, "the best of the world's women is Marry (at her lifetime), and the best of the world's women is Khadija (at her lifetime)." (Bukhari: 3815. Muslim: 2430)

2. Islam has made wife as Queen of the home. Earning a living for the family is the responsibility of the husband; while her responsibility is to keep and run the family affairs with his earning. She is also obliged to provide a congenial environment at home for the happy life of family.

3. A man asked the Prophet "what is the right of our wives on us?" Prophet said, "Feed her when you eat and provide clothing whenever you make your own clothes; do not beat her on her face, do not blame her for ugly face and do not cut the relation with her except in her home".

4. She has been exempted from all outdoor religious obligations like saying prayers in a mosque.

After having the above submissions, it seems logical to pause a little and ponder over some questions arising as a result of the deplorable condition of free sex in the developed countries.

1. The most important question posed by this alarming situation is "as to what is the destination of this journey of "safe sex" and how far the humanity can afford to go along with "safe sex attitude" of the west and facing many social, physical and other problems as its bitter fruits?"
2. The 2nd question is that the overwhelming influence of free sex on the present day generation is unprecedented in the history. Yet all this free sex, far from producing joy and happiness, has led to more and more angst. Majority of people in the world feel inadequacy rather despair. This poses a question as to why all this sexual despair and unhappiness especially in the age having no inhibition and no limits about sexual accomplishment.
3. Another very important question pertains to the indecent rather cruel treatment of women folk in the developed countries and elsewhere. Women folk have been brutally shown in the porn literature. Nowhere in the history had she been exposed so shamelessly as during the modern time. Is it this poor gender only to satisfy the lust of few men (may be millions). Why the

women folk should be the target of sexual satisfaction of men being shown in TV, dish, internet and other print media? The question here arises to which of the Divine religion or moral ethics have allowed the poor sex to offer their body for such brutal treatment? The Christ's attitude towards women folk was positive, wholesome, sane and just. His famous saying is known to everybody that "**He that is without sin amongst you cast the first stone on her**". It has been observed that Jesus never despised women, but sought to set them upon equality with them.

4. There arises still another question. Towards the end of 18th century, and D.H Lawrence (1928) criticized the moral ethics of church about sexuality. Bertrand Russell (1929), have also described the influence of those moral ethics during their days as disastrous. As a result of French Revolution, the Europeans have brought to the brink of "sexual suicide" and "The American sexual suicide (Albert Ellice, 1962; Gilder, G.F., 1975), leading to the fall of marriage institution. A Muslim scholar commented that "A nation that develops hatred and hostility against the institution of family cannot be saved from annihilation even by miracle (Syed Maududi, 1998). The question here is whether the present day humanity is ready to face extinction of human race on this earth?

There could also be many more questions about the present day "safe and free sex" concept being propagated by the developed countries. While considering different aspects by the intellectuals and experts in this conference, it is earnestly desirable to ponder over these questions seriously in the larger interest of humanity, thus promoting health and creating happiness for our future generation.

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Marriage Equality for LGBTIQs in Thailand¹

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Abstract

The objective of this research is to study the concepts and the relevant theories which are the sources of Marriage Equality Rights by analyzing causes of the lack of marriage equality of Lesbian, Gay, Bi-sexual, Transgender, Inter-sex, Queer (LGBTIQs) in Thailand. In addition, comparison between Thai laws, International laws, France laws and United Kingdom laws were also performed. The results from the comparison were used as the guideline for the consideration of modifying the existing laws or proposing the new law that can solve the problems for LGBTIQs Couples in Thailand. The applied methodology was qualitative method, basing on documentary works from Thai and International laws, researches and articles, including in-depth interviews of LGBTIQs Couples, Non-Governmental Organizations (NGO), Laws Lecturers and other parties related to Marriage Laws in Thailand. The results of the study showed that LGBTIQs Couples in Thailand faced problems. The problems were caused by the enactment of Marriage Law under Thai Civil and Commercial Code (CCC), stating that only the gender assignment at birth as a man and a woman can be a couple who has the marriage right to be legally married. The action affected LGBTIQ Couples to lose their rights and duties under CCC and under other local laws as the laws refer to the rights of spouses, husband and wife and statutory heir with the reference to the mentioned problems. Although Thai Constitution B.E. 2550 and B.E. 2560 were legislated with the principle of non-discrimination against gender and Thailand also signed and ratified Conventional International Laws having the same principle, but the problems still exist. Internationally, there are two types of legislation for LGBTIQs relationships, Marriage Equality Law and Civil Partnership Laws and such laws exist in France and United Kingdom. Rights and Liberties Protection Department, Ministry of Justice in Thailand has drafted Registration Civil Partnership Bill, while Thai NGO has drafted Civil Partnership Bill. However, both of drafts did not achieve the same level of equality, dignity and rights as they were presented in Marriage Law under CCC.

Keywords: Marriage Equality, Same-sex Marriage, LGBTIQs, Family Laws

1. The wedding according to the Thai Tradition, the Social Acceptance and Ignored by the Law.

In a few years ago, there were much news in the newspaper and social network media regarding the wedding ceremony of the LGBTIQ in Thailand, between Gay, Lesbian or transgender. That seems like Thai society accept the relationship of these people, but according to Thai law, such wedding ceremonies has no legal rights, because of the Civil and Commercial Code Law of Thailand (CCC) has stated A marriage can take place only for man and woman³, in addition, it must be registered with the registrar. After registered the marriage, they will be “Husband and Wife”⁵ and “Spouse”⁶ according to the law.

The CCC has regulated the duties and rights from being “Husband and Wife” and “Spouse” according to the law. The important duties according to the CCC are, maintain and support each other, manage marriage property, and the important rights are rights in using the family name of the spouse, right to be statutory heir as surviving spouse, right in join adoption. In addition, the other law of Thailand has fixed the word “husband and wife” and “spouse” in giving some rights according to the laws, such as rights in tax reduction according to the Revenue Act, rights in Social Security Fund of the spouse according to the Social Security Act BE 2533 (1990), rights in case accusation according to the Criminal Procedure Law, rights to use Reproductive Technologies under Surrogacy Act BE 2558 (2015).

From the example, it can be clearly seen that, Thai state has given the privilege to the legitimate husband and wife, such as rights to use reproductive technology, given this rights especially to the legitimate husband and wife⁷, such as the case of the gay couple of American and Spanish, which

³ Commercial and Civil Code of Thailand (CCC) Article 1448

⁴ Commercial and Civil Code of Thailand (CCC) Article 1457

⁵ Commercial and Civil Code of Thailand (CCC) Article 1458

⁶ Commercial and Civil Code of Thailand (CCC) Article 1459

⁷ Surrogacy Act BE 2558 (2015) Article 21

Has contracted for a Thai woman to Assisted Reproduction but the carrier does not agree to give the child to them⁸, with that such gay couple has filed this case to the Central Juvenile and Family Court to consider in child legitimate registration for Baby Carmen born with Assisted Reproductive technology to be their own child. Later, the Director General of Central Juvenile and Family Court also block for such rights of LGBTIQ people in Central Juvenile and Family Court Presidential Message, No. 50, dated 26 August 2015, as follows⁹;

“Being the legitimate child before the enforcement of this Act must be apply to Central Juvenile and Family Court to issue order, with that the same-sex couple has no rights in claiming...the application for child legitimate registration according to the Civil and Commercial Code, Book No.5, is in regard of the family, male and female cohabited as husband and wife until having a child, but the same-sex couples cannot having cohabit and giving birth to a child, therefore it cannot be deemed as a family, therefore it cannot be applied for child legitimate registration.”

The researcher found that, the wedding ceremony or marriage registration might having the meaning in the symbolic meaning in regard of relationship of two persons, but more from that, is that “the lawful spouse, in which Thai state gives many duties and rights, in which the LGBTIQs in Thailand has been forgotten and ignored from Thai state completely.

2. The problems of LGBTIQs Thailand.

The researcher has interviewed 22 LGBTIQs couples, which contains various sexual orientation and gender identity; found that they have faced the problems from never receiving rights according to the law in many aspects, such as 1) rights in medical treatment decision and spouse postmortem management 2) rights in co-filing legal proceed or for the spouse 3) rights in join child adoption 4) rights in being the parent of Assisted Reproductive Child 5) rights in certified the child born with the spouse 6) rights in receiving estate as legitimate heir of the spouse 7) rights in performing transaction and loan with the spouse 8) rights of foreign marriage party in nationality change and permanent resident 9) rights in receiving government or private welfare with spouse 10) rights in being beneficiary from life insurance of the spouse 11) rights in receiving the reduction rights of ordinary person income tax as spouse 12) rights in receiving benefit in provident fund of the spouse 13) rights in receiving benefit in social security fund of spouse 14) rights in using surname of the spouse 15) rights in assets during cohabiting after cohabiting ends 16) rights in receiving rights in child support after cohabiting ends 17) rights in receiving the compensation in case of spouse having affair and 18) rights in receiving acceptance and dignity as legitimate spouse

⁸ <http://www.bangkokpost.com/news/general/723772/gay-couple-seek-help-in-surrogacy-row>

⁹ <http://www.jvnc.coj.go.th/userfiles/file/boss50.pdf>

The researcher found that, many rights that LGBTIQs people lacked of are gained easily by different-sex spouse registered marriage according to Thai law and gained automatically, if the LGBTIQs couple want such rights, they need a lot of will and cost, such as rights in receiving estate from being spouse must be made a Wills, the rights in using surname, needs the surname owner of the spouse to agree in using surname, but one rights that seems to be taboo for Thai state is the right in using the word “spouse” according to the law, which not only this word brings many rights according to the law, but also showing dignity of relationship of two persons whether such person will have any gender identity or sexual orientation.

3. Draft Thai Civil Partnership Registration Bill, the First Draft by the Thai government, Rights and Liberties Protection Department, Ministry of Justice of Thailand.

The beginning of the draft Thai Civil Partnership Registration Bill starts on 9th August 2012 by a gay couple has requested for the marriage registration to the registrar at Mueang Chiang Mai District Office, Chiang Mai Province, but the registrar has rejected the marriage registration for such couple¹⁰ due to not in accordance with CCC Article 1448 and 1458. Therefore, gay couple has filed the petition to the Justice and Human Rights Law Committee, Commissioner Office 2, House of Parliament, in 13th September 2012, stated that, the rejection for marriage registration is against the Constitutional Law of Thailand, BE 2550 (2007), the committee, with the Rights and Liberties Protection Department, Ministry of Justice, has drafted the “Draft Civil Partnership Registration Bill” (Parliament Draft), in which allow same-sex persons registered as “partnership” and use principle of Spouse Relationship to be applied on Draft Civil Partnership Registration Bill “by considering” , with the draft by parliament has been arranged for the seminar to listen to the comment of the public for 5 times, in which the first time is in 8 February 2013, in associate to receive comments about the parliament draft, the last time on 19 April 2013 at Congress Building 1, Bangkok Metropolis, the Thai Sexual Diversity Network, which contains 16 NGOs, applied the unsealed letter to the committee director , with an important offer for the Draft of Parliament to specify the principal that creates the equality, anti-discrimination and suggest the government to train the law enforcer, especially how to use principal of CCC on the draft bill “by considering” by anti-discrimination , but since Coup occurs in May 2014; therefore the Draft of Parliament has no movement.

¹⁰ Daily News Web, “Gay Natee Strolls with boyfriend to registered marriage”, search from 1 June 2015 from <http://www.dailynews.co.th/>

The researcher had the opportunity to attend the meeting with the 2nd subcommittee in the Justice and Human Rights Law Committee, which the meeting has consider to study and inspecting the fact of such gay couple, it can be found that, the timeline of the procedure of Act Draft of Parliament are as follows;

Period	Dated	Proceed by	Procedure
1	26 SEP 2012	Justice and Human Rights Law Committee, House of Parliament	Meeting, consider for study and inspecting fact about the petition of the same-sex couple rejected the marriage registration from the government
2	15 OCT 2015	Justice and Human Rights Law Committee, House of Parliament	Appoint the workgroup to consider the fact and the law regarding LGBTIQs people
3	29 NOV 2012	The 2 nd subcommittee of Justice and Human Rights Law Committee, House of Parliament	Group meeting to consider about the fact and the law for the rights of LGBTIQs person
4	27 DEC 2012	The 2 nd subcommittee of Justice and Human Rights Law Committee, House of Parliament	Group meeting to consider about the fact and the law for the rights of LGBTIQs person
5	31 JAN 2013	The 2 nd subcommittee of Justice and Human Rights Law Committee, House of Parliament	Group meeting to consider about the fact and the law for the rights of LGBTIQs person

6	5-7 FEB 2013	The 2 nd subcommittee of Justice and Human Rights Law Committee, House of Parliament	Group meeting to consider about the fact and the law for the rights of LGBTIQs person
7	8 FEB 2013 – 19 APR 2013	Fact and Law Committee regarding the Rights of LGBTIQs Person	Arranging seminar to receive the comments from the public sector all over the country for the Draft Civil Partnership Registration Bill to the committee director
8	18 JUNE 2013	Fact and Law Committee regarding the Rights of LGBTIQs Person	Submit final report of study the law and fact regarding the Rights of LGBTIQs Person

It is noticeable that, the Draft Civil Partnership Registration Bill uses the time since October 2012 to February 2013, only 5 months; therefore, the researcher has the question that, why the law that important to LGBTIQs person uses the draft in for such short period.

The researcher had the opportunity to attend the meeting with the 2nd subcommittee on 27 December 2012 at the Congress Building 3 with Ms. Anjana Suvarnananda, the Director of Anjaree Foundation Project, the LGBTIQs NGO, one of the workgroup in considering fact, has offer the idea of oversea experience, although it might be the offer of civil partnership bill in the initial, but it will be amend the marriage law in anyway, therefore it has been offered to amend the law by using the word “persons” instead of “man and woman”, and “spouse” instead of “husband and wife”, but such idea has been rejected by the workgroup according to this minutes:

*“Mr. Kantophon Rangsisawang, the chief of legal Section, Department of Women’s Affair and Family Development, Ministry of Social Development and Human Security, has offered the draft to be as partnership registration, but not to touch marriage under CCC... Mr. Kerdchok Kasemwongchit, the workgroup, agrees for partnership registration draft bill, therefore, the workgroup has agreed to proceed ... the conclusion of the meeting has agreed, therefore, given the workgroup to draft the civil partnership bill and not to touch with the Civil and Commercial Code.”*¹¹

In the associate for receiving the public sectors comments for Draft Civil Partnership Registration Bill, the 5th, which is the last time on 19 April 2013 at the Congress Building, Bangkok Metropolis, Mr. Wirat Kalayasiri, the workgroup director for consideration of Fact and Law regarding the Rights of LGBTIQs Person in Justice and Human Rights Law Committee, house of Parliament, has given interview to the press as follows;

*“the asking of why not to amend the Civil and Commercial Code, amend the law that has been exist for a hundred years is a hard thing to amend such law so, but if we issued as the specific act, doing anything to have least and shortest law and benefit the most, lower the topic that might not been passed, means that, never greedy”*¹²

The researcher has invited Mr. Kerdchok Kasemwongchit, the specialist of Rights and Liberties Protection Department, Ministry of Justice, the Drafter of Civil Partnership Registration Bill, Parliament Edition, as an expert in the Research Project Development Report Seminar, 1st Time, on 7 July 2015 at Sukhothai Thammathirat Open University, and he has offered the comment as follows;

“The important thing we’ve done is, making easiest and fastest thing, doing everyway for the law to be approved by the Congress, and given the society to accept that LGBTIQs are in Thai society. If we amend the Civil and Commercial Code, it might be take so long time, but we all know that it is the final objective, but the government organization want some law to talk about the LGBTIQs person to be existed in Thai law. Frankly, whether it would be issued Civil Partnership Bill or amend the CCC, it is hard as same, the important thing is,

¹¹ the meeting record of the 2nd subcommittee of Justice and Human Rights Law Committee, House of Parliament, 40th period, dated Thursday 27 December 2012 at the Committee Meeting Room No. 3201, 32th Floor, Congress Building 3

¹² <https://www.youtube.com/watch?v=3aCkWELNZ9c>

*Are there any government organization will be in-charge to propose new law , in which in the past time, there is none of the government organization has offered to amend the CCC in regarding the marriage for LGBTIQs”*¹³

The researcher found that, Draft Civil Partnership Registration Bill of Parliament, has been drafted from the basis that, draft quick and do whatever it takes to make the law passed, whether the law will protecting rights or not, the rights in marriage is just the rights that government gave to LGBTIQs people, the movement for claiming any rights from the Draft is an act of greed, such Draft is just a tool to show the acceptance of the society in some level, which might be the slightest and a long way to reach the target of equality, besides, the government found that, the marriage according to the law is something exclusively for the legitimate heterosexual only, and LGBTIQs people could not reached such thing.

The researcher found that, May 2014 coup d'état in Thailand is one of the reason that makes Draft Civil Partnership Registration Bill of Parliament stalled, but the fact is, the National Legislative Assembly in coup d'état era since 2014 has quickly approved the law and in large number, with the law has been enforced for 108 bills within 1 year with having the fastest issue law for just a day, the reason that such law has never been move forward might not because of military junta, but might be from none of any government organization want to be in-charge to propose the law in military junta era, which is the era that rights and freedom had been doubted the most in Thailand nowadays.

4. Draft Civil Partnership Bill (Public Sector Version), the Different View from the Civil Partnership Registration Act (Parliament Version).

Foundation for Sexual Orientation and Gender Identity Rights and Justice (For-SOGI), with Teeranat Kanjanauaksorn Foundation, had arranged the associated stage for recruiting comments on “Principal for Consideration in Drafting Civil Partnership Registration Bill of Public Sector” in 28 May 2013 at the Thai Journalist Association, For-SOGI has offered Associate Professor Somchai Preedasilapakul, to gathered the offer from the associate to specify the principal of the law as a basis in Drafting Civil Partnership Registration Bill of Public Sector, with that Associate Professor Somchai has stated for not amend the CCC that;

*“Although we use CCC as principal of draft Civil Partnership Bill according to family law by considering but there are many problems in CCC that’s why we need to draft a new law”*¹⁴

¹² <https://www.youtube.com/watch?v=KltIHdRBBTs>

¹³ Somchai Preedakul, the Sexual Diversity Person in Thai Law System

For-SOGI has applied for an advice to Professor Dr. Khanit Na Nakhon, the Director of Law Reform Commission of Thailand, Office of Law Reform Commission of Thailand, in 3 December 2013, the Gender Equality Committee in the Law Reform Commission of Thailand has arranged the associate for receiving the comments from the public sector, in regarding of Draft Civil Partnership Bill (Public Sector) in 16 January 2014 at Office of Law Reform Commission of Thailand, which in such associate, Associate Professor Somchai Preedasilapakul has given the principal of Draft Civil Partnership Bill (Public Sector) as follows;

“The Draft Civil Partnership Bill (Public Sector) is a choice for both same-sex and different-sex couple to use the rights according to the law, with that the regulations of CCC will stay the same, the ending of Civil Partnership Status can be done by showing intention to end the relationship with no fault base”

The Law Reform Commission has cooperated with For-SOGI to Draft Civil Partnership Bill (Public Sector) and publicized in social media for the first time in November 2014. Later, in 15 July 2015, National Council for Peace and Order (NCPO) has issued the Order No. 20/2558 to stop chosen Law Reform Committee for the former set which has been reaching their position ending period, and given Office of Law Reform Commission of Thailand to support the work of Office of Council of State, in addition, For-SOGI has stated that will not apply for Draft Civil Partnership Bill (Public Sector) until having election in Thailand.

The researcher found that, the incident that NCPO stop chosen Law Reform Committee and that For-SOGI not apply for Draft Civil Partnership Bill (Public Sector) until having election in Thailand might be the reason for the Draft Civil Partnership Bill (Public Sector) to be discontinued, but the researcher has already stated that, if any government organization with the courage in propose the law and with the private development organization or NGO given the legal comments as Public Sector Draft Bill, the researcher believes that, at least there is still the learn of the society with the movement in which better than both of Bills to store in the folder with discontinued.

5. Principle of amendment the Civil and Commercial Code, Book No. 5 and 6.

The principle with the question that, the Civil Partnership Registration Bill (Parliament Version) or Civil Partnership Bill (Public Sector) of both drafts still not the marriage equality, and the difference between both Civil Partnership Registration Bill (Parliament Version) or Civil Partnership Bill (Public Sector) with the amendment of the Civil and Commercial Code, Book No. 5 and 6.

The researcher has compared the CCC of the present date with Draft Civil Partnership Registration Bill (Parliament Version & Public Sector Version); found the difference as follows;

Y: Clearly stated by law / draft bill

N: Not stated clearly by law / draft bill

Y/C: Stated by law / draft bill but by considering

Particular	Topic	Present Civil and Commercial Code (CCC)	Draft Civil Partnership Registration Bill Parliament Version	Draft Civil Partnership Bill Public Sector Version
	Registration condition			
1	Registered marriage at Age 17 years	Y ¹⁵	N ¹⁶	Y ¹⁷
2	The registration needs no rules and regulations by any additional ministry regulations, just only showing consent before the registrar and registrar recorded such consent	Y ¹⁸	N ¹⁹	Y ²⁰

¹⁵ Commercial and Civil Code of Thailand (CCC) Article 1448

¹⁶ Draft Civil Partnership Registration Bill of Parliament, Article 5

¹⁷ Draft Civil Partnership Bill of Public Sector, Article 7

¹⁸ Commercial and Civil Code of Thailand (CCC) Article 1476

¹⁹ Draft Civil Partnership Registration Bill of Parliament, Article 4

²⁰ Draft Civil Partnership Bill of Public Sector, Article 7

3	Rights in being and using the word “husband and wife” and “spouse” according to the law	Y ²¹	N ²²	N ²³
4	Rights in manage marriage property	Y ²⁴	Y/C ²⁵	Y/C ²⁶
5	Rights in receiving the support amount from the spouse from cannot cohabit or the other spouse or party become insane	Y ²⁷	Y/C ²⁸	Y ²⁹
6	Rights in being curator or guardian	Y ³⁰	Y/C ³¹	Y ³²

²¹ Commercial and Civil Code of Thailand (CCC) Article 1458 & 1459

²² Draft Civil Partnership Registration Bill of Parliament, Article 3

²³ Draft Civil Partnership Bill of Public Sector, Article 4 (1)

²⁴ Commercial and Civil Code of Thailand (CCC) Article 1458 & 1459

²⁵ Draft Civil Partnership Registration Bill of Parliament, Article 10

²⁶ Draft Civil Partnership Bill of Public Sector, Article 18

²⁷ Commercial and Civil Code of Thailand (CCC) Article 1462

²⁸ Draft Civil Partnership Registration Bill of Parliament, Article 9

²⁹ Draft Civil Partnership Bill of Public Sector, Article 16

³⁰ Commercial and Civil Code of Thailand (CCC) Article 1463

³¹ Draft Civil Partnership Registration Bill of Parliament, Article 9

³² Draft Civil Partnership Bill of Public Sector, Article 15

7	Rights in no fault base divorce	N	N	Y
8	Rights in receiving the compensation from the divorce clause according to the CCC Article 1516 (1) (adultery)	Y ³³	Y/C ³⁴	Y/C ³⁵
9	Rights in receiving the alimony from being divorce without guilt	Y ³⁶	Y/C ³⁷	Y/C ³⁸
10	Rights in estate dividing in the position of heir equally as spouse	Y ³⁹	Y/C ⁴⁰	Y ⁴¹
11	Rights in being beneficiary according to the insurance contract of the deceased spouse	Y ⁴²	N ⁴³	N ⁴⁴

³³ Commercial and Civil Code of Thailand (CCC) Article 1523, 1516 (1)

³⁴ Draft Civil Partnership Registration Bill of Parliament, Article 14

³⁵ Draft Civil Partnership Bill of Public Sector, Article 33 (3)

³⁶ Commercial and Civil Code of Thailand (CCC) Article 1526

³⁷ Draft Civil Partnership Registration Bill of Parliament, Article 14

³⁸ Draft Civil Partnership Bill of Public Sector, Article 34

³⁹ Commercial and Civil Code of Thailand (CCC) Article 1529

⁴⁰ Draft Civil Partnership Registration Bill of Parliament, Article 15

⁴¹ Draft Civil Partnership Bill of Public Sector, Article 49 - 50

⁴² Commercial and Civil Code of Thailand (CCC) Article 1637

⁴³ Draft Civil Partnership Registration Bill of Parliament, has no specified article

⁴⁴ Draft Civil Partnership Bill of Public Sector, has no specified article

12	Rights in receiving annual money according to the contract that both parties has issue the money for making contract together	Y ⁴⁵	N ⁴⁶	N ⁴⁷
13	Rights in receiving the minor as an adoptive child with the other marriage party	Y ⁴⁸	N ⁴⁹	Y ⁵⁰

The researcher found that, Draft Civil Partnership Registration Bill of Parliament and Draft Civil Partnership Bill of Public Sector still regulated on the word that “spouse” as something that too far to reach, although the rights and dignity in being “spouse” is the rights that gains automatically, in addition, the rights from being “civil partnership” might passed the interpret and argument form Thai state that “partnership” has the rights same as “spouses” or not, and will allow for the couple of LGBTIQs people to gains the rights and dignity as different-sex marriage couple in the present law or not.

Therefore, the researcher has offered that, it should be amend the Civil and Commercial Code, by that the researcher has exemplified the Additional Amendment of Civil and Commercial Code, by using the Gender Neutral Language in amend the law, such as;

³³ Commercial and Civil Code of Thailand (CCC) Article 1523, 1516 (1)

³⁴ Draft Civil Partnership Registration Bill of Parliament, Article 14

³⁵ Draft Civil Partnership Bill of Public Sector, Article 33 (3)

³⁶ Commercial and Civil Code of Thailand (CCC) Article 1526

³⁷ Draft Civil Partnership Registration Bill of Parliament, Article 14

³⁸ Draft Civil Partnership Bill of Public Sector, Article 34

Article 1448, s marriage can take place only when ~~the man and woman~~ two persons have completed their seventeenth year of age, but the court may, in case of having appropriate reason, allow them to marry before attaining such age. (Amend article)

Article 1448/1, such marriage two persons, means including same-sex person. (Propose new article)

Article 1458, the marriage can take place only if ~~the man and woman~~ two persons agree to take each other as ~~husband and wife~~ spouse, and such agreement must be declared publicly before the registrar in order to have it recorded by the registrar. (Amend article)

Article 1458/1, two persons who willing to marry according to the article 458, means including the person of same-sex, after the registrar agreed, given such two persons to marry as legitimate spouse according to this Code. (Propose new article)

6. Comments Thai state to the offer of amends the Civil and Commercial Code, Book No. 5 & 6.

The researcher has interviewed the related organization in amending the Civil and Commercial Code, Book No. 5-5 as follows;

- 1) Ms. Raweewan Atsawakul, Professional Attorney, Office of Attorney General
“In amending the CCC, you must understand that law amendment and issuing new one, which would be easier. From my view, to amend is harder than to issue new one, because of the former law, you need time to arrange and amend, but to issue the new one. It might be a lot ones, but for the person needs to proceed and given the Ministry of Interior to issue inner regulations to act, I found that it would be easier, but if you want to amend in the Civil and Commercial Code, it will be very hard, you have to know the basis before choosing the option, do not put options into the basis. I see that, the basic is the marriage must be between man and woman, but if you invade, means that you done the irregular things to be correct; do not put the irregular thing into the law, it is not the correctness, may such correctness stand.”

2) Mr. Jumpol Srijongsirikul, Decree Lawyer, Professional Level, the Council of State of Thailand

“The possibility in offering the law, issuing the law, until enforcing the law, might contains many things, such as, surveying the comments of major third gender for what are they wish for, what they asked for, and draft the bill that answer in what they want or not. For the possibility in offering the draft and move until it is enforced, it also has to check the possibility of the society; of course that every people have the same level of rights, if our rights claiming might affected the other people. In France, as far as I know, there are the claimants for a long time, but still they are the people who do not agree, and same as Thailand, ask them whether the other group of people can accept this or not. At last, the way we would offer the law to be enforced, it has to be consider, if we asked the major vote, then we should certified the rights of this one, there will be the people who do not agree in this society for sure, and the movement will be harder, the solution is to move by a little step.”

The researcher found that, the idea that seeing that the LGBTIQs person is an “abnormal” person is still deep down in the spine of Thai state, and the person having power to issue the law of Thailand, in which would take time to giving knowledge to Thai state, in which when the time comes that the society and state accept the people of LGBTIQs, the movement of the law, whether in any form, will be possible.

7. The point of view from the NGO for amending the Civil and Commercial Code Book No. 5-6.

The researcher has interviewed Mr. Pongthorn Chanlearn, the Director of MPlus Foundation and For-SOGI Committee as follows;

“When we talked about the spouse, the Thai society will think of woman and man, but why we choose not to use the word ‘spouse’, we use the word ‘partnership’ to shows that there are difference between partnership and spouse, the partnership is more than being woman and man, means that you would have the differ gender identity persons from being woman or man and you can register, because of, the former meaning, the marriage is strict for woman and man, Thai society has regulated like that, but we’re giving new meaning in partners, which is more wide open, I’m not agree with amending the Civil and Commercial Code because of, we should have a new law that is wider than that and to be the law that try to amend the flaw of the Civil and Commercial Code and giving opportunity to the person who is not woman and man to involve, means that they have not got themselves into the frame of woman and man.”

The researcher found that, the word “partner”, although it might be the word that NGO reflects the open for LGBTIQs person already, but such word is a new one, in which might not receive the equality in certifying rights and dignity, and such word could led to stigmatize and discrimination. The fact that the Civil and Commercial Code still has flaws, we might need to analyze that what is such flaws, and what is the principal to issue the new law, and whether such new law can amend such flaw for real or not, or that, the idea of issuing law is to be easy to pass, then so the Parliament edition might be mixed with the Public Sector edition once again.

8. Conclusion and Suggestion from the Researcher.

- 1) The Thai Laws, such as Civil and Commercial Code, regarding family and wills of the present has been regulated on the basis of heterosexuality, means that only for biological sex of male and female, making the LGBTIQs person never receive the equality in marriage
- 2) The Others Thai Bills, such as the Bills, Ministerial Regulations and Justice System of Thailand has fixed and referred the word ‘spouse’ and/or “husband & wife” from the Civil and Commercial Code, making the person of LGBTIQs couples never receive rights and protection from the laws.
- 3) In order to achieve the marriage equality, should be amend on the Civil and Commercial Code in regarding of family and wills, which is the foundation of rights to be lawful spouse according to the law in order to give the rights for everyone whether having any sexual orientation or gender identity can registered the marriage according to the law. The Civil Partnership Bills will give no equality rights for LGBTIQs while compare to CCC due to the word “Spouse” from CCC has been related to CCC Codes and others Thai Laws.
- 4) Although “Civil Partnership Draft Bill” open for all gender including LGBTIQs to access the law but if there are two law which stated about marriage and formation of family as the same it will in doubt that why such love, relationship, rights, equality and dignity of LGBTIQs has no value enough to apply marriage registration and use word “Spouse” from CCC. Two laws for two groups of people may cause stigmatization and discrimination by state and law enforcement officers. In addition, LGBTIQs not second class citizen that should have other law to use. Everyone should equal before the laws. In the other hand, if all genders can access to Civil Partnership Bill (Public Sector Draft), LGBTIQ must able to access to use CCC as well.
- 5) Give education to social that LGBTIQs is not abnormal persons especially for state and authority officer are important to move forward the new laws or amend current law. Cooperation between the state and NGO and unity among NGO will support the laws on basis of equality and anti discrimination for all genders.

Registration Act without amend the Civil and Commercial Code would make the person of LGBTIQs not to receiving the rights according to some law and from any other inner law as the spouse according to the Civil and Commercial Code

- 6) Making understand to the society that, the person of LGBTIQs is not an abnormal person, especially to Thai state and the person having power to issue the law, has the important role in moving the law forward. In addition, the accompanying between Thai state and Private Development Organization regarding LGBTIQs will support the draft of the law to be based on the equality and eliminate discrimination.

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Modeling job performance: The moderation of gender identity discrimination

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ABSTRACT

Drawing upon the human capital theory and attachment theory, this study develops a research model that explains how on-the-job training (OJT) effectiveness and work engagement play key mediating roles in the long-term development of job performance in high-tech industry. In the proposed model, job performance is indirectly influenced by cultural learning, professional learning, and mentorship learning via the full mediation of OJT effectiveness. At the same time, job performance is indirectly impacted by social interaction, leader support, and self-efficacy via the full mediation of work engagement. Gender identity discrimination and leader support both play moderating roles in the model. Finally, theoretical and managerial implications based on our propositions are discussed.

Keywords: Work engagement, self-efficacy, leader's support, social interaction.

Modeling job performance: The moderation of gender identity discrimination

Training and engagement are two critical pillars that influence job performance in high-tech industry (Ahlowalia, Tiwary, & Jha, 2014; Khan, 2012; Madukoma, Akpa, & Okafor, 2014). Previous studies have unanimously suggested that training is important for improving employees' performance and productivity (Rosli & Mahmood, 2013; Singh & Mohanty, 2012; Smith & Oczkowski, 2015). At the same time, many studies in the literature have indicated that engagement is beneficial for workers' optimal functioning and job productivity (Song, Kim, Chai, & Bae, 2014; Van den Broeck, Lens, De Witte, & Van Coillie, 2013). Despite their importance, the neglect of training and engagement has often been a common problem for business organizations (Attridge, 2009; Hausdorf & Risavy, 2015). Developments in the area of training and motivation have led to close attention being paid to what is now coined as on-the-job training (OJT) effectiveness and work engagement (e.g., Fletcher, 2016; Petrou, Demerouti, Peeters, Schaufeli, & Hetland, 2012; Thavakumar & Nawaratne, 2015).

OJT effectiveness refers to the extent to which employees acquire the skills to complete their tasks assigned in OJT programs (Kim, Hahn, & Lee, 2015), whereas work engagement is defined as a positive work-related state of fulfillment characterized by vigor, dedication, and absorption (Bakker, Tims, & Derks, 2012). The literature has noted that job performance is directly affected by OJT effectiveness (Bafaneli & Setibi, 2015) and work engagement (Karatepe & Aga, 2016). Since well-trained and engaged employees are capable of doing and fully concentrating on their work, it is therefore of critical importance to enhance OJT effectiveness and work engagement in order to achieve job performance. For that reason, this study explores what factors drive respectively OJT effectiveness and work engagement, which consequently influence job performance.

This study differs from previous research in two important ways. First, this study is a pioneer that examines both OJT effectiveness and work engagement as paralleling mediators for explaining job performance. Although the full mediating role of work engagement in the development of job performance has been somewhat discussed in previous research, no research study has simultaneously taken OJT effectiveness into account. Second, this study is one of the few that examines how OJT effectiveness and its predictors influence job performance by using both primary data from a field survey and secondary data from a leading firm's database. Indeed, with relatively few exceptions (e.g., Barron, Black, & Loewenstein, 1989), many studies used data on training that were self-reported by employees, resulting in interesting questions about the accuracy of their training outcome during a long period of training and education. To complement the literature, by analyzing OJT effectiveness and its relevant predictors based on the database this study helps reduce the

biases that generally occur when employees are unable to accurately recall the amount of OJT they received and when the definitions of the OJT outcome vary across different employees. Collectively, by evaluating the mediating effects of OJT effectiveness and work engagement in the development of job performance, a clear picture of how job performance is improved in the long run can be clearly presented.

Theory and Development of Propositions

Drawing upon the human capital theory and attachment theory, this study develops a research model that examines how OJT effectiveness and work engagement fully mediate the relationship between job performance and its exogenous determinants. In the proposed model, job performance is indirectly affected by cultural learning, professional learning, and mentorship learning via the full mediation of OJT effectiveness. At the same time, job performance is also indirectly influenced by social interaction, leader's support, and self-efficacy via the full mediation of work engagement.

The fundamental principle underpinning *human capital theory* is the belief that people's learning capacities are of comparable value to other resources involved in the production of goods and services (Lucas, 1988; Tarlau, 2016). According to the theory, the knowledge and skills that employees acquire through practicing OJT tasks are an important form of capital that can yield relatively long-term job performance (Nafukho, Hairston, & Brooks, 2004). The human capital theory suggests that the investment in employees' OJT is similar to business investments in equipment (Becker, 1993). Specifically, OJT investment on employees is very beneficial for their job performance (e.g., Becker, 1993; Naqvi & Khan, 2013). The theory further recommends that employees' polishing their knowledge and skills via OJT is justifiable in terms of future productivity and performance (Naqvi & Khan, 2013). This perspective is partially supported by Lee, Law, & Bobko (1999) in that both formal training and OJT should be provided for the long-term purpose of job performance improvement. Collectively, OJT effectiveness has a positive influence on job performance in the long run.

As investment in accumulating human capital is important for firms and individuals, the human capital theory emphasizes that employees make rational choices concerning investments in their own human capital (Wayne, Liden, Kraimer, & Graf, 1999). In other words, employees make rational choices regarding how much effort they make to learn through training and education. Based on this learning perspective, this study proposes three complementary kinds of learning that help build up new employees' human capital to enhance OJT effectiveness that influences job performance: cultural learning, professional learning, and mentorship learning. Cultural learning helps new employees understand a firm's history and the behavior that will better fit the firm to which they belong (Mirela & Mădălina-Adriana, 2010), whereas professional learning helps new employees master broad

knowledge contents, hone professional skills, and increase their flexibility to deal with professional challenges in the organization. Focusing on learning by doing and practicing, mentorship learning complements cultural learning and professional learning that count heavily on handouts or coursepacks and can reduce the gap between studying and practicing. The theoretical justifications about these three kinds of learning are discussed in the following.

The first direct motivator that influences OJT effectiveness is cultural learning. Cultural learning is defined as the extent employees have learned the knowledge about their organizational and work culture through training interventions. Previous research has found that trainees' perception of the organizational and work culture can help adjust and change their behavior positively (Orpen, 1999; Santos & Stuart, 2003). OJT may not involve having the desired effectiveness when employees' insufficient understanding about the culture hinders their ability to implement tasks of OJT in an effective way (Santos & Stuart, 2003; Tracey, Tannenbaum, & Kavanagh, 1995). Understanding the culture is a prerequisite to employees' active behavior and an efficient approach for them to work with others (Esler & Nipp, 2001). Employees' cultural learning helps make them adhere to the firm's appropriate values, strengthening their learning confidence in achieving OJT effectiveness, and eventually accomplishes the long-term objectives in which they strongly believe (Mirela & Mădălina-Adriana, 2010). Therefore, cultural learning can indirectly influence job performance through the full mediation of OJT effectiveness.

The second direct motivator that influences OJT effectiveness is professional learning. Professional learning is defined as employees' development of professional abilities through training activities and experiences related to industry-specific knowledge, skills, and expertise (e.g., Lawson, Taylor, Papadopoulos, Fallshaw, & Zanko, 2010). Through professional learning, the construction of new professional knowledge and expertise can be established, initially boosting OJT effectiveness and subsequently job performance (Gartmeier, Bauer, Gruber, & Heid, 2008). Many studies in the literature have suggested the relationships between employees' professional learning and effectiveness (Fenwick, 2003). Specifically, professional learning is often viewed as inseparable from the work systems of relationships and interactions in which they practice (Davis & Sumara, 1997) and is holistically entwined with practical knowledge in OJT (Clandinin & Connelly, 1995). As a result, professional learning can directly influence OJT effectiveness, consequently driving higher job performance with better OJT effectiveness.

The third direct motivator for OJT effectiveness is mentorship learning. Mentorship learning is defined as the extent to which employees experience and try social and business practices through the guidance of a senior expert. Previous research has indicated that learning through mentoring is an effective method for people to grow and develop and that relational learning based on mentor relationship is an essential aspect of developing their own

individual effectiveness (Raka, 2015). With greater mentorship learning, employees are more capable of coping with practical difficulties in the workplace and thus show better OJT effectiveness. In the long run, mentorship learning can increase job performance through the improvement of OJT effectiveness. In summary of the above justifications, the first proposition is derived as below.

P1: OJT effectiveness fully mediates the effects of cultural learning, professional learning, and mentorship learning on job performance.

According to the attachment theory, work engagement is a key mediator between job performance and its exogenous predictors. Work engagement is defined as a positive and fulfilling state of mind that is characterized by vigor, dedication, and absorption in the workplace (Derks, Duin, Tims, & Bakker, 2015). The attachment theory is based on the premise that human beings have a natural inclination to make and maintain long-lasting bonds — or engagements — to familiar, irreplaceable objects (e.g., work) (Sable, 2008) through which the quality and stability of individuals' belief, social ties, and social support are established. Such belief, ties, and support can be examined from three respective aspects of self-efficacy, social interaction, and leader support. For example, some previous studies have shown the critical effect of self-efficacy and social support on individuals' work engagement (e.g., Theppanya, Suwannapong, & Howteerakul, 2014), while others have revealed self-efficacy and social interaction as being key predictors for individuals' attachment towards their work (e.g., Man, Moosmayer, Borgia & Schwarz, 2013; Sequeira, Mueller, & McGee, 2007; Xing, Kim, & Goggins, 2015). The rationale behind these three factors (i.e., self-efficacy, social interaction, and leader support) and their influence on job performance is justified in the following.

Self-efficacy is a key predictor that directly affects work engagement and is defined as individuals' faith in their ability to perform the courses of action required to deal with prospective conditions (Hirschi, 2012). Self-efficacy makes a unique contribution to explaining variance in work engagement over time (Bakker & Demerouti, 2008; Hirschi, 2012; Xanthopoulou et al., 2007). Employees who are strongly self-efficacious are often highly engaged in their work due to their confidence in being able to meet the demands they face in a broad array of contexts (Bakker & Demerouti, 2008). Previous research has indicated that employees' self-efficacy substantially motivates daily work engagement, which in turn contributes to better job performance on a daily basis (Bakker, 2011).

Defined as the quality of communication and social relationship among employees in the workplace, social interaction is a direct driver of work engagement. Social interaction promotes employees' motivation to boost their attachment to the work, thus enhancing job performance indirectly (McCoy, 2002), because social interaction helps shift attention away from negative thinking or work-related situations (Lahey & Tanner, 2013). Previous research

by Schaufeli and Bakker (2004) has revealed that social interaction, as manifested by social support from colleagues, enhances work engagement among Dutch employees. Similarly, Schaufeli, Taris, and Van Rhenen's (2008) have found that quality social interaction among coworkers is viewed as a form of psychological support to significantly and positively increase vigor and dedication (i.e., elements of work engagement), thus indirectly promoting job performance.

Analogous to social interaction, leader's support can influence job performance indirectly via work engagement. This study defines leader's support as the degree of support and consideration that individuals perceive from their immediate supervisor. Previous empirical research has indicated that when leaders give stronger support by empowering employees to deliver optimal service, they promote a greater sense of fit between employees' expectations of work life quality and organizational goals and processes, thereby creating greater work engagement (Greco, Laschinger, & Wong, 2006). Leader support bolsters work engagement, because leader support is considered a symbol of the work environment with social and tangible resources that strengthen the psychological state of work engagement (Swanberg, McKechnie, Ojha, & James, 2011). A strand of research has indicated that a supervisor's responsiveness to subordinates' scheduling needs substantially contributes to their work engagement (Swanberg, James, Werner, & McKechnie, 2008), eventually leading to job performance (e.g., Karatepe & Aga, 2016). In summary of the preceding justifications, the second proposition is derived as below.

P2: Work engagement fully mediates the effects of self-efficacy, leader support, and social interaction on job performance.

Drawing upon theories of gender identity theory (Vantieghem, Vermeersch, & Van Houtte, 2014), this study proposes that the relationship between cultural learning and OJT effectiveness is moderated by gender identity discrimination. Sexual orientation-based and gender identity discrimination is a common occurrence in many workplaces. Employees encountering stronger gender identity discrimination are less compatible with others and have a worse relationship with coworkers. On the contrary, employees with less gender identity discrimination can easily make good use of cultural learning to achieve OJT effectiveness. As a result, this study proposes a negative moderating effect of gender identity discrimination on the relationship between cultural learning and OJT effectiveness. The proposition is thus stated as below.

P3: The relationship between cultural learning and OJT effectiveness is negatively moderated by gender identity discrimination.

Gender identity discrimination weakens the positive effect of professional learning on OJT effectiveness, because employees with stronger perceived gender identity discrimination feel

a weaker obligation to make the most of their professional skills to accomplish OJT tasks, leading to decreased OJT effectiveness. Accordingly, this study proposes a negative moderating effect of gender identity discrimination on the relationship between professional learning and OJT effectiveness, which is stated below.

P4: The relationship between professional learning and OJT effectiveness is negatively moderated by gender identity discrimination.

Gender identity discrimination weakens employees' capacity to develop and maintain social relationships with others and to be resilient in terms of their learning from others (Hogan & Roberts, 2004). In other words, workplaces with low gender identity discrimination are more likely to bring their mentorship learning into full play for the better improvement of OJT effectiveness. Employees without gender identity discrimination are open to critical feedback from their mentor(s) and pay full attention to negative feedback for future improvement in OJT (e.g., Hogan & Roberts, 2004). For that reason, on the basis of mentorship learning, employees with less gender identity discrimination are more likely to find solutions for dealing with their OJT tasks. Hence, gender identity discrimination is likely to amplify the negative effect of mentorship learning on OJT effectiveness, as stated in the following proposition.

P5: The relationship between mentorship learning and OJT effectiveness is negatively moderated by gender identity discrimination.

Based on the job demands-resources model (JD-R model) (Demerouti, Bakker, Nachreiner, & Schaufeli, 2001), this study proposes that leader support plays a moderating role in the formation of work engagement. According to the JD-R model, leader support is considered a job resource that can minimize the psychological impact of social demands and also promote personal growth, development, and self-confidence (Llorens, Schaufeli, Bakker, & Salanova, 2007; Schaufeli & Bakker, 2004). For that reason, a leader's support is perceived by employees as an important job resource that can amplify the positive effect of self-efficacy on work engagement. Consequently, the next proposition is derived as below.

P6: The relationship between self-efficacy and work engagement is positively moderated by leader support.

High levels of leader support provide aid to employees, not only in terms of physical assistance, but also in terms of social capital needs (Eisenberger, Huntington, Hutchison, & Sowa, 1986). Without leader support as resources for employees, the positive effect of social interaction on work engagement becomes attenuated. This is understandable, because leader support facilitates employees' positive attitude and helps them behave proactively at social occasions (Wu & Parker, 2014). On the contrary, for employees with low leader support, they

are more likely to feel frustrated towards the enhancement of social interaction specific to their work current role (Cornelis, Van Hiel, & De Cremer, 2006). All in all, this study proposes the positive interaction between leader support and social interaction to augment work engagement, leading to the following proposition.

P7: The relationship between social interaction and work engagement is positively moderated by leader support.

Discussion

Implications for research

This research demonstrates how the human capital theory and attachment theory can be jointly applied to explain job performance using a combination of primary and secondary data. This perspective is consistent with what previous research has found about career success as explained by a hybrid of the human capital theory and motivation theory (Wayne et al., 1999) whereby motivation is represented by employees' work engagement and human capital by employees' learning in training and education programs.

Employees of a firm perceive leader support differently, which is similar to the argument of the leader-member exchange theory about different exchanges with different subordinates. In other words, leader support may be developed based on the differentiation process through which leaders form different kinds of support for different subordinates. High quality support that involves the supply of material, non-material resources, and substantial support extends beyond what is often expected from leaders in general. This study suggests that leaders should offer their support carefully to boost employees' work engagement, because it may not be efficient or possible for leaders to provide high quality support for all subordinates due to limited resource constraints. In fact, what this study has found about the interaction of leader support and self-efficacy for triggering work engagement is accordant with the contention of the self-concept based motivational theory, which explains how leaders engage followers' self-concepts in the interest of the work articulated by those same leaders (Shamir, House, & Arthur, 1993).

In addition to the perspective of human capital initially adopted in this study, the mediating role of OJT effectiveness can be also justified from the perspective of the social learning theory, which claims that OJT can be improved by integrating "related" training with actual production tasks (Aghazadeh, 2007). For that reason, managers responsible for human resource development should examine and select related training tools and materials that best support the OJT tasks by taking dual perspectives of human capital and social learning into account.

Implications for practice

The derived propositions of this study show that job performance can be indirectly improved by increased self-efficacy, leader's support, and social interaction through the full mediation of work engagement. Management should periodically measure work engagement as a key checkpoint to maintain or improve job performance. It is important to take actions to improve work engagement from three aspects: employees' self-confidence on the job, leaders' helping behavior towards subordinates, and the social networking of employees. First, self-efficacy can be improved by managing modelling interventions (e.g., Short & Ross-Stewart, 2009), providing verbal persuasion, engaging employees in experiential learning activities, and offering them a variety of practical experiences that lead to success. Second, leaders should understand that their support of subordinates is not simply a gratuitous gesture, but rather it reflects their genuine anticipation of subordinates' success. Leaders should learn to provide their support in various forms such as concentrating on social reciprocities, giving effective empowerment, providing important coaching in a timely manner, encouraging new things, etc. Third, to improve social interaction among employees, management should create a healthy environment in which mutual trust is highly valued and, at the same time, design effective conflict management strategies that prevent serious interpersonal conflicts from happening.

With regard to the positive moderation of leader support on the relationship between self-efficacy and work engagement, it is found herein that confident employees with stronger leader support are more interested in plunging headlong into their work than similar employees with weaker leader support. In other words, leader support has an additive effect for self-confident employees to amplify the degree of their work engagement. It is mistakenly assumed that employees with strong self-efficacy have little need whatsoever for leader's support.

The negative moderation of gender identity discrimination on the relationship between cultural learning and OJT effectiveness is understandable, because employees without problems of gender identity discrimination often show a differentiated self-awareness and realize the unity of self and the cultural environment in the organization (e.g., Mezzich et al., 2010). To enlarge the effect of cultural learning on OJT effectiveness, management can help employees develop a workplace without gender identity discrimination by motivating them to mentally "visualize" their strength and courage them to actualize their abilities at taking responsibility in the workplace.

This study contains two noticeable limitations related to the research factors and interpretations of the proposed model of this study. The first limitation of this study is its generalizability, due to the highly delimited nature of the subject sample in Taiwan's banking industry setting. The inferences drawn from such a sample in Taiwan may not be fully generalizable to employees from other industries. The second limitation relates to our specific

focus based on the human capital theory and attachment theory. Therefore, this study did not address other theoretical aspects regarding institutional variables, such as firm ownership (e.g., family business), workplace climate, organizational politics, organizational sizes, organizational structure, organizational leadership, profitability, etc. Future studies may improve these shortcomings by including more control variables for further empirical tests and also by observing research subjects over time so that the genuine relationship between work engagement, job performance, and their predictors can be transparently revealed from broader horizons.

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**Positive Youth Development Program, Stimulator to Increase Competences
for Sexual Educator: A Documentation Study**

Abstract

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Sexual harassment; teenager premarital sexual activities; and sexually transmitted infections (STIs) among teenager are remain alarmingly high for Indonesian youth. Actually, these three phenomen can be overcome by conduct sex education training. Researchers found that sex education training is still an effective way to prevent youth from those phenomenons and enhance the well being of them. The ideal sex educators are parents and teacher as a closest side to the youth. But, In Indonesia, sex educator still threat by many constraints such as belief of discussion about sex is taboo, lack of knowledge, and lack of confidence to conduct the training.

This gap could overcome by developing program called Positive Youth Development Program. Design of this program consist of two topic, the sex education training for the youth, and training of trainer for the sex educator. This paper focused on how to preparing sex educators in case of conduct the Positive Youth Development Program.

The discussion on this paper come out with two topics: (1) What is Positive Youth Development Program: concept and training topic and (2) how to be a good sex educator: how to design the program, and how to deliver the positive youth development program.

Keywords: positive youth development program, sex education, sex educator, youth sexuality, training program

Positive Youth Development Program, Stimulator to Increase Competences for Sexual Educator: A Documentation Study

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Introduction

Indonesia is a very big country. Based on data from the Central Bureau of Statistics, the estimated population of Indonesia in 2016 reached 258,704,986 people. However, issued about sexual problems such as sexual harassment, unintended pregnancy, and sexually transmitted infections (STIs) such as HIV/AIDS in the Indonesia remain alarmingly high. The victims and patients are dominated from children until teenager.

Sexual Harassment Cases

In 2014, Indonesian National Committee of Child Protection or Komisi Nasional Perlindungan Anak Indonesia (KPAI) released data about sexual exploitation and harassment in Indonesia. In 2011, there were 329 cases and increased at 2012 as 746 cases, and 525 cases on 2013. Report from End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes or ECPAT which written on the KPAI report in 2014 also showed an increase of 450% of online sexual criminal acts in 4 years with recorded more than 18,000 cases. In 2013, KPAI receives more than 100 complaints about sexual violence, such as rape, immorality, obscenity and sodomy. From the year 2013 to 2014, KPAI reported that up to 100% increase in cases of violence and sexual harassment. In 2014, based on Indonesian complaints, there were 15% of commercial sex exploitation cases, 40% of online child prostitution, and 23% of trafficking cases, and 22% of economic and child labor exploitation (source: <https://web.kominfo.go.id>; Soeparyono, 2014; Setyawan, 2015; Hendrian, 2016)

Child protection organizations, or Komnas Perlindungan Anak, also released data on 2015 which are in 2010 there were 2,400 sexual cases with 1152 of whom were sexual violence. In 2011, there were 2508 cases of violence in children with 1075 cases of sexual violence. The number is increasing in 2012 with 2637 cases of violence in children where 1700 cases of sexual violence. Finally, in 2013, there were 1032 cases of violence in children ranging from January to June with 52% or 535 cases of sexual violence with case details, sodomy (52 cases), rape (280 cases), obscenity (182 cases), and incest (21 cases) (Erlinda, 2014).

The data released by KPAI further reinforces Indonesia's emergency sexual violence statement. In 2015, 1726 cases of sexual harassment still occur, and 58% of victims are experienced by children and teenager Similarly, the National Commission on Violence Against Women (Komnas Perempuan) issued its Annual Record (Catahu) in 2016, where there were 321,752 cases of violence against women, 2399 cases of rape, 601 cases of abuse, and 166 cases of sexual harassment (BBC.com).

Teenager Premarital Sexual Activities

Based on the research of Australian National University and Health Research Center University of Indonesia in 2010 in Jakarta, Tangerang, and Bekasi with sample of 3,006 respondents aged less 17 to 24 years, there were 20.9% of teenager got pregnant and gave birth before marriage; 38.7% of teenager got pregnant and gave birth after marriage. The survey results of the National Family Planning Coordinating Board or Badan Kependudukan

dan Keluarga Berencana Nasional (BKKBN) found that 51% of female students in Jabodetabek have had premarital sex. In Surabaya, single female adolescents whose confirmed lost their virginity before marriage reached 54%, in Medan 52%, Bandung 47%, and Yogyakarta 37% (Sari & Muis, 2014). Reproductive Health Study Group of Medical Faculty of Airlangga University (FSKR FK Unair) found the 16% (87 people out of 533) of male respondents had had sexual intercourse, 14.3% did oral sex activities, 51% did anal sex intercourse, and 22% did petting. For the female respondents, they founded, 43% ever had kissing, 6.5% ever had intercourse sex, 5.5% had oral sex activities, 2.5% had anal sex intercourse, and 9.7% ever done petting (Mentari in Sari & Muis, 2014).

According to the Head of National Population and Family Planning Coordinating Board or Badan Kependudukan dan Keluarga Berencana Nasional (BKKBN) (2010), 51% teenagers in Jakarta, Bogor, Tangerang, and Bekasi or (JABOTABEK) have premarital sex. From other cities in Indonesia, data from 100 teenagers (100%) who have had premarital sex were recorded at 54% in Surabaya, 47% in Bandung and 52% in Medan. In 2012, 19.1% of male teenager and 2.5% female teenager in range 15-24 years have did the pre-marital sex (Center of Data and Information, Indonesia Ministry of Health, 2015). Maryatun's research (in Siregar, 2014) found that 71.4% (91 respondents) of teenager with range age 14-17 years old just did premarital sex. The phenomenon of premarital sex among teenager in Indonesia predicts increase by couple years later. Based on United Nations Development Economic and Social Affairs (UNDESA, 2010), Indonesia was the 37th country with a high percentage of young marriages and is the second highest in ASEAN after Cambodia. Will Indonesia become the first country for the highest score in young marriages?

Teenager and sexually transmitted infections (STIs)

Based on data from the Director General of the P2P Ministry of Health, the number of new AIDS cases from 2014 to 2016 increased to reach 7491 per January 31, 2017 (Report of Health Profile, 2016). The Report of Health Profile 2015 from Indonesia Minister of Health is also described that the majority of AIDS cases are in the age group 20-29 years with 31.8%; 30-39 years with 29.9%, and 40-49 years with 12.1%. It means, the patients are in their productive age. Unfortunately, the Case Fatality Rate (CFR) up to 1.62% of all cases. The number of AIDS cumulative cases from 1987 to 2016 reached 86,780 cases. Similarly, new cases of HIV also experienced a significant increase, from 2015 to 2016, from 30,935 cases to 41,250 new cases.

The question is, how these three phenomenon's could happen at Indonesia? Is Indonesia known as a taboo country in sexuality? Is the religiosity of the citizen are high and can prevent these issues?

The simple answer is sex education training still not an effective method to prevent all sexual issues phenomenon at Indonesia. Why? Is it true that the sex education training is not an effective method?

Many researcher found, sex education training is still an effective program for acknowledge teenager about sexual issues. It's important to aware that sex education training is not only talking about human reproduction process and genital organ. Sexuality issues are multidimensional phenomenon that consists of many aspects, such as biology, psychology, social, moral, and even cultural (Marters, Johnson, & Kolodny, 1992; Tretsakis, 2003). Even in some country such as Indonesia, discussion about sexual issues can't be separated from aspect of religiosity, and values of Indonesian (Djiwandono, in Siregar, 2014).

In general, the purpose of sexual education training is to create a healthy emotional attitude toward sexual problems and guide children and adolescents toward a healthy, responsible adult life. There's a lot of benefit for giving sex education training for youth. Sarwono (2004) states that sexual education could prevent and reduce sexual abuse,

preventing deviant sexual behavior such as premarital sex which can result the unwanted pregnancies, sexually transmitted diseases, and also to avoid violence and / or sexual harassment. Sexual education training teaches youth how to being thankful for their body by taking care of it (Jatmikowati, Angin & Ernawati, 2015). Sexual education training also could change a person's behavior so that it becomes one of the alternatives to prevent sexual deviant behavior in children and adolescents (Safita, 2013; & Umah & Saputro, 2016).

Youth on their development ages will always find their self-identity and confuse with it. A sexual issue is one of the things that make them confuse. Youth are tending to get misinformation about sex. If don't get proper sex education training, youth could have miss understanding about sexual issues. Actually, the youth are not having lack of knowledge about sexual issues. But, Youth, as their task of stages development, are curious about many things. They want to get much information, learning and know about everything. They are curious with their life including sexual issues (Hurlock, 1999). Fortunately, the technologies to provide the information about sexual issues are open-widely. Internet is an easy tool to "open the world" especially acknowledge about sexual issues.

However, the number of person-in-charge to filtering this wave of information is still low. Most of Indonesian still have an "local paradigm" that having discussion about sexual issues is taboo and even moral-abuse (Martin, in Helmi & Paramastri, 1998). Research by Siregar (2014) even found that: many school at Indonesia still believed sex education and scientific discussion about sexuality issues are prohibited. But, on the other hand, information about sex should be obtained directly from parents who have special attention to their children (Safita, 2013). Meilani, Shaluhayah & Suryoputro (2014) did some research about the role of parents especially for mother to giving the sex education training. Mother must being open-minded to share and have discussion with youth about sexual issues. Not only for parents, sexual education training for youth must also given by their school. Andika (2010) states that sex education or education on reproductive health is important through the family as well as the school curriculum. Parents and Teacher is known as the closest side with the youth. Parents and teacher has important part to give sex education for the youth (Astuti, 2007). But, unfortunately, they refuse to conduct this training because feeling of un-competent, and lack of sexual issues knowledge (Siregar, 2014). Nugraha's research on 2002 found that, if parents or teacher have enough knowledge to conduct sex education training, they are confidence to delivering the topic. But, if they don't, the self-confidence from parents and teacher are going low, and intent to be "I don't care".

The explanation above shows a gap between a need for sexual education training and competence of parents and teacher to conduct it. Noe (2005) stated that, the lack of competence could be overcome by training. So, this paper will discuss about how to make training of trainer or TOT Program, especially how parents and teacher could being sex educator for youth. This TOT Program is a part of Positive Youth Development Program.

Positive Youth Development Program

Positive Youth Development Program aims specifically empowering the youth to take control of their sexuality activities, starts by making sure they know how their bodies work and how to keep them safe. Simplify called as comprehensive sex education training. This training program provides teenager with factual information about sexual issues such as sexual activities (intercourse, masturbation, abortion), sexual orientation; healthy relationship; communication skills among teenager; and bodily autonomy. By this program, youth as the participant receive good quality sex and relationships education, they will have an knowledge about appropriate sexual and reproductive health behavior, and they are able to access confidential advice from professionals, also develop resilience among youth whenever they face some sexual issues.

Actually, positive youth development program is an effective program. This program has been proven time to time to lower rates of unprotected sex, unintended pregnancy, and sexual transmitted infections (STIs). According to research conducted by the Journal of Adolescent Health written on Feministcampus.org, teens that receive comprehensive sex education are 50% less likely to experience pregnancy than those who receive other types of sex education. Comprehensive sex education called Positive Youth Development Program leads to a healthier youth population.

The problem is, are the sex educator at Indonesia ready to conduct, develop, and sustain this program?

Facilitator called sexual educator will deliver Positive Youth Development Program. Sexual educator are consists of parents, teacher, trainer, counselor, psychologist, or whoever want to join this positive campaign to empowering youth. But the question is, how to be a good sexual educator?

The Topic of Training in Positive Youth Development Program

The fear and low self-confidence of parents and teacher to conduct the sexual education training must be stop! In 2009, the United Nations Educational, Scientific, and Cultural Organization (UNESCO), an organization incorporated in the United Nations organization, worked with other organizations such as the United Nation Population Fund (UNFPA), the United Nations Children's Fund (UNICEF), And the World Health Organization (WHO) issued a guideline for sexual education for all ages and subjects entitled "International Technical Guidance on Sexuality Education". This guide is specifically issued as a basis for the production of sexual education materials for teachers in schools, educators and teachers, or for anyone wishing to participate in sexual education. You can download it via the following link:

http://portal.unesco.org/en/ev.php-URL_ID=47268&URL_DO=DO_TOPIC&URL_SECTION=201.html

Another useful link to generate sexual education training can found by following link:

<http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-sexuality-education.pdf>

Below is the brief explanation about the topic of sexual education training based on the ages of children:

Infancy (0-2 years): all babies explore their bodies and learn that touching the sex organs feels good. As a sexual educator, you have make sure that they get the correct names for sexual body parts, such as penis, vulva, and breasts. Don't use any language in your "tongue terms language". For example, at Indonesia, penis called as a "bird", or vagina called as a "hole".

Early until middle childhood (3-8 years): on this range of ages, children are begin curious with their bodies – their own and others'. Many children on this age assume their sex organs for comfort or pleasure things. They also start to explore the masculine and feminine aspects of gender identity. They also start to common question "where did I come from" or "how are babies made?". Sex educator must answer the question with simple and brief description scientifically. For example, "babies grow in a special place inside mom's, called the womb or uterus." On this age, children are starting to masturbate. Sex educator must reassure them it's normal to masturbate while gently teaching them to do so in private, but not make it as a

habit. The topic of sex education training that can be delivered for this range of ages are: how to take care our body; good touch and bad touch topic; and how to prevent ourselves from the foreigner.

Late childhood (9-12 years): The puberty periods just started on this range of ages. Preteens really need valid and reliable information about puberty, such as body changes, menstruations and wet dreams. Sex educator must know that every child are different on their level of puberty. On this range of ages, sex educator can start to conduct and delivering the sex education training with topic about sexual decision-making, a danger of unwanted pregnancy and early marriages, STI's, and all sexual issues. The preteen are often interested in these topics. In order of fast changed of the world, sex educator has to know that the preteen will get sexual knowledge or sexual issues from many channels. Internet is the common channel to get the sexual issues. Don't get behind from this teenager. The sex educator must always updating about the changed of technology among the teenager.

Adolescence (13-18 years): on this range of age, teenager will start to explore their next stage of development level. They start to explore about dating, intimacy, and relationship. Teens are need information and support, not only from their parents and teacher, but also from their peers. On this age, teens are closer with their peers rather than their parents. They don't like be told by adult and want to take action by themselves. Sex educator must know "how to act like teen" in order to conduct sex education training for adolescence. When you delivered your training topic, use creative method and simple language. You must know about popular issues around them, or what is the trending topic to discuss in teenager.

The Competencies for Being a Good Sex Educator

However, there's also some criteria how to be a good sex educator. First, sex educator must have competencies in designing and delivering Positive Youth Development Program. Second, sex educator must having and also developing soft skills in facilitating such as having an openness behavior, desire to learning new things, empathy, creative, and good communication.

Designing Positive Youth Development Program

Positive Youth Development Program as a training must have an effective design program. An effective training program design refers to a systematic approach that consists of step for developing training program. Sex educator must mastery this step in order to create an effective positive development-training program for youth. Here's the step to conduct and designing an effective positive youth development as a training program (Noe, 2005).

Step 1 - Conduct a need assessment.

On this step, sex educator must identify if training needed or not, make sure that the topic is appropriate with the trainee (youth), and also ensuring the youth readiness for training. Need analysis result shown gap between what ideal and what the fact.

For instance, ideally, youth have to know about contraception and what the function of it. In fact, they thought that contraception is a "magic tools" that could help prevention of pregnancy in premarital sexual activities. So, the gap is youth having misunderstanding about concept of contraception. Based on this gap, sexual educator will create and designing the training about contraception' function.

Step 2 – Design of instructional objectives or behavioral objectives

Designing the instructional objectives is a step which sex educator must specify what

the aims of the training session. In this step also consist of what the expected behavior as an outcome of this training. Instructional objective is also known as behavioral objectives. A behavioral objective is always consisting of key performance indicator or KPI. KPI is molecular behavior, overt and tangible behavior, and un-multi-interpretative. KPI are consisting three indicators: knowledge, skill and attitude or KSA. Every time sex educator want to design positive youth development program, they must decide what the target of KSA. Is the training just acknowledging the knowledge of trainee? Is the training will equip the youth with specific skill? Or even, is the training will enhance the trainee with some attitudes? Always using result of need assessment to identify what KPI' indicator you want to use for. The functions of this KPI is for designing the evaluation program and determine the effectiveness of training program

For instance, from the step 1, as a result of needs analysis, the youth need knowledge about what is contraception. So, from this step 2, sex educator must design behavior objectives based on the need. In this case, the behavioral objective is focusing to enlighten the knowledge of the youth about contraception. So, the instructional objectives are are: "(1) youth will be able to explain what the definition about contraception; (2) youth will be able to explain the function of contraception.

Step 3 – Design of instructional design or lesson plan

From the example above, the youth having gap in understanding about function of contraception. Sex educator will give positive youth development training program about function of contraception. Thus, in this step, sex educator will design more specific activities about contraception training program called instructional design or lesson plan

Instructional design or lesson plan will consist of training material, time and duration of delivering training, training method, training tools which help for training process (such as, LCD, Laptop, Speaker, etc) training evaluation, and person-in-charged. The outcome of this step is complete lesson plan document.

Step 4 – Implementation

After designing the instructional objectives and instructional design, it's time to implement the Youth Development Program. As a good sex educator, you must be confident, and having set of soft skills in delivering the topic (see below for further explanation). In this step, sex educator must always remember that there always be a possibility and differences between what you have design and what will be happen on the field. In condition the design is different with on the field, just always stick on the aims.

For instance, sex educator just prepared the design and topic about contraception. But, many trainee ask about abortion. Try to answer the question based on what do you know, scientifically. If you don't have any possible answer, tell the youth or trainee, "*Okay, for now, I don't know how to answer it. But. I'll find the answer and will give to you later. Just keep in touch, okay?*"

Step 5 – Evaluation

To evaluate a training program, it's necessary to identify how sex educator will determine if the program is effective. As mentioned earlier in the Step 2, this involves identifying training outcomes. Kirkpatrick & Kirkpatrick (2006) conducted a framework called Kirkpatrick's Four-Level Framework Training Evaluation.

First level, called as 'Reaction Evaluation', is focus on trainee satisfaction. Second level, called as 'Learning Evaluation', is focus on acquisition of knowledge, skills, and attitude behavior. This level is usually used for measuring the effectiveness-training program for knowledge dimension in KPI. The first and second level data are collected before trainees

return to their life, and using questioner & pencil test as a data gathering method.

Third level, called as 'Behavior Evaluation', is focus on improvement of behavior on the youth life. This level is usually used for measuring the effectiveness-training program for skill dimension in KPI. The fourth level, called as 'Results Evaluation', is focus on the final results achieved by trainee on their life. This level is usually used for measuring the effectiveness-training program for change attitude dimension in KPI. Level three and level four criteria measure the degree to which trainees are using training content on their life. That's these two levels are used to determine transfer of training. These evaluations will conduct 3-6 months after the training programs.

Step 6 – Maintaining the Action Plan

Action plan is very important step. After finished the training session, youth will give some additional assignment called action plan. Action plan program will be a realization of training content. Action plan also could be a control program for sex educator to maintain the result of training.

For instance, after joined the Positive Youth Development Program in topic of 'Contraception', youth as a trainee will ask to design an action plan. For example, in three month after training program, youth will make a positive campaign through their peers about "What is Contraception". So, sex educator will meet with them after three month, then; follow up the progress of realization the positive campaign.

These six steps are cycling process. That's why Positive Youth Development is continues and sustainable program. It's better to still develop this study and create more comprehensive Positive Youth Development Program. The developing of program always adjusts with the condition of the youth, the needs, and the fast dynamic changing of the world.

Delivering Positive Youth Development Program

In order to delivering positive youth development program, sex educator must have these sets of soft skills. Actually, these soft skills are not easy to develop. Sex educator must have sustaining willing to learn and develop these sets of soft skills. Commitment and passion in developing youth's life must always "burn" in sex educator' heart. So, what's the set of soft skills for sex educator?

Openness behavior. Sexual issues, for some youth is a sensitive thing to discuss. Perhaps, they have high curiosity about those topics, but their parents prohibit them to discuss about it. It's make them fear or shy to come out with their question. As a good sex educator, you must have an openness behavior. Express your open-mindedness so that the youth will feel comfortable to come out with a lot question in their mind. Let youth know that it's okay to ask questions and bring up concerns throughout the class. They could ask everything they want, and the sex educator will always give an appropriate answer.

Desire learning new things or continuous learning. Sex educator must actively identifying new areas, and participates in appropriate learning activities that help fulfill learning needs. They must actively participates in a way that makes the most of the learning experience, also regularly creating and taking advantage of learning opportunities. Don't ever give up if many threats come to sex educators. Puts new knowledge, understanding, or skill and furthers learning through trial and error.

Being Empathy. Some of youth may have had sad, emotional, or even traumatic experiences related to some of the topics in your training topic. For this reason, don't ever impose them to share about their experienced if they don't want to. In case they want to share with you, always keep their story between you and they. Simplify, sex educator must always be respectful of youth privacy.

Being creative and have a good communication. Sex educator must clearly conveying information and ideas through a variety of media to individuals or groups in a manner that engages the audience and helps them understand and retain the message. Always clarifies purposes and importance in every topic you deliver in training activities. Sex educator must always keeps the audience engaged through creative and fun learning, such as using humor, illustration, body language, and voice inflection. Youth have dynamic personality. They tend to like humor than serious activity, such as lecturing, or seminar, but, always aware with using appropriate humor. While the humor may relieve awkwardness to act silly or make light of certain topics, remember that sexual education training directly impacts the youth' live. In delivering the training, always using two-ways communication by seeks input from audience, and using some games as a training method. Be a good listener by let them speak and ask. Don't interrupted when they want to ask or explain something. Watch your pace, volume, diction, and language. Sometimes, sex educator can use "the slank language" or "youth language". But, you have to make sure that the topic of training correctly interprets messages and responds appropriately. Remember, before delivering the training, prepare the material, know it well, master in it, and walk into the training classroom confidently.

Conclusion

Positive Youth Development Program as a part of Sex Education Program is effective to prevent various sexual problems in teenager. This program was created in order to fulfill the needs in Indonesia society to overcome three main phenomenons in sexual issues for youth, which are sexual harassment; teenager premarital sexual activities; and sexually transmitted infections (STIs). The advantage of Positive Youth Program is not only for the youth, but also for the sex educator and whoever looking to engage and care about youth development.

For sex educator, this program becomes a media for learning, developing knowledge-skills-attitudes and module to conduct sustain positive youth development program. Sex educator will be taught how to conduct proper topic based on range of ages of trainee. They also will be taught how to be a good sex educator. There will be competences and set of soft skills that the sex educator must to be mastery. The competences to become a sex educator are (1) sex educator designs the Positive Youth Development Program; and (2) sex educator delivers the Positive Youth Development Program. Sex Educator must get the better of designing program and mastery each step. The steps to developing program consist of conduct needs assessment; design of instructional or behavioral objectives; design of instructional design or lesson plan; implementation; evaluation; and maintaining the action plan. In order to delivering the topic in Positive Youth Development Program, there will be set of soft skills that sex educator must be mastery. The set of soft skills are: continuous learning; being empathy; being creative; and have a good communication.

All the discussion on this paper would like to invite parents, teachers, counselors, psychologists, and all of us who want to develop the youth. We have to know that youth is very special for each nation. They are the future of the nation. Don't let misunderstanding of sexual issues influence their bright future. Sexual education training in Positive Youth Development Program could be one of the methods to develop their knowledge and understanding about sexual issues. Knowledge and understanding of sexuality also be one

effort to prevent the occurrence of various violations and abuse of sexuality and sexual behavior that deviates. In the end, children and adolescents can grow optimally, accomplish, prosper and happy.

Don't worry and always be confident to design and deliver the training in sexual issues topic. As long as we want to develop competences in design Positive Youth Program and apply how to deliver the program with sets of soft skills, we just begin to contribute in developing our youth and taking care with our nation future.

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Reading Jin Xing, China's Transgender Oprah:

An Empirical Study of the Media, Agency and Transgender Empowerment in China

First Draft

Huai Bao, Ph.D.

Abstract:

This study examines the role of a transgender celebrity in transgender awareness education in popular media in the People's Republic of China (PRC). I will explore how the transgender celebrity in the PRC, Jin Xing, one of the most celebrated dancers in the PRC and a TV competition judge often compared to Simon Cowell, has contributed to transgender awareness education in the country, through reviewing and analyzing how she has dramatically shifted the public attitude towards transgenderism, and how acceptance and normalization of transgender individuals are mediated through aggressive self-personification, in which process I find a similar nature to homeopathy in terms of the strategy.

Keywords: transgender; trans* education, gender studies, celebrity culture

Introduction

This study builds on my doctoral work on sexual artifice in gender transgression, which challenges mainstream perception of gender norms, but now focuses in particular on transgender awareness education. Whereas little scholarship has been done on transgender policies in the People's Republic of China (PRC), this proposed study will investigate the role of the transgender celebrity, Jin Xing (1967-), in enhancing public awareness of transgenderism in the PRC in this digital age, and will offer critical insights into the impact of the growing obsession of the celebrity culture. The education here, which is in a broader sense, refers to the process of knowledge distribution, which includes but is not limited to public education.

Cross-Gender China, my first English monograph published by Routledge offers insights through in-depth interviews into gender alternative expressions on a wide range of topics, including motives, construction of identities, obstacles, searching online for self-guidance, and social progress. Many of my informants have voiced concern on how this wealth of information can reach out to a wider audience without official support from the government and state-run media. Besides, even within the LGBTQ communities, stigmatization of and social bias against transgender people exist everywhere and elsewhere. Is there anyone fulfilling the educational role in proactively distributing transgender knowledge? Is mainstream media facilitating the process of knowledge distribution on transgenderism? While the celebrity culture is seen as the “world religion,” will its dominance make a constructive change in our society?

The objective of this study is to present an empirical study that examines the utility, influence and implications of engaging celebrities for transgender awareness promotion purposes in the PRC. In doing so, I not only review the literatures on the sex culture and transgender history in China, but also have conducted qualitative interviews in the PRC significant to unofficial transgender awareness education. I will also assess the effect of knowledge distribution by conducting surveys in the PRC on the reception of audience members of both sexes and from different generations. I will employ a comparative method for analysis, examining gender and generational differences in relation to media and the advances of technologies. In this assessment, I will explore post-Jin Xing possibilities and potentialities of the outcome of the grassroots reconstruction of a new gender pattern, and its impact on institutional change and social justice.

The importance of qualitative research in the social sciences lies in how the meaning of gender identity, sexual orientation and gender transgression is given by each individual. The existing gender pattern as a whole is constructed on the commonality among individuals. While there is a collective belief in society, it is also personal and individualized. It is important not only to approach the collective belief of what constitutes gender norms in its fixed form, but also conduct interpretive qualitative study to interpret and analyze raw data collected through interviews.

Transgenderism in China

Western scholars working on gender and sexuality in East Asia often show their immense interest in cross-gender behaviour and/or aesthetic activities in traditional

East Asian societies (Senelick, 2000), while it is acknowledged that transphobia has nonetheless prevailed across East Asian societies (Liu, 1993; Mann, 2011; Chiang, 2012; and Zhang, 2014). In China, Confucian thoughts have valued the importance of descendants for over two thousand years. While the family-oriented thoughts have been internalized by Chinese in forming the “Chineseness,” those Chinese individuals who may be factually classified in the modern term as transgender have been considered to be a challenge of filial piety and violators of social norms. Thus, to “avoid humiliation and maintain family glory” yields to widespread cover marriage or otherwise familial rejection (Zhang, 2013, 181). According to the 2010 report from *the International Gay & Lesbian Human Rights Commission on China* transgender Chinese citizens face systemic discrimination—

*Transgendered people face serious levels of police harassment in China. The transgendered community also faces particular difficulties in obtaining employment. The Chinese authorities are currently consulting on new rules on gender realignment surgery. In certain aspects these rules fail to meet international standards on individual autonomy and privacy.*¹

It must be brought to attention that in the past Chinese scholars included transgender individuals and homosexuals into homosexuality, and that homosexuals in the PRC were in fact “transgenderal homosexuals,” a term coined by Hinsch (181-182). In this sense, there was no clear distinction between homosexuality and transgenderism. Even in the present-day Chinese society, people in general are not aware of the distinction between the two terms. The representation of transgenderism in the PRC has largely embodied the cross-gender performance, such as *nandan* in *jingju* and other forms of performance of a similar nature. According to my informants for research on *nandan*, the *nandan* art has almost always been associated with homosexuality, sassiness, transvestism and sodomy. Homosexuality, or transgenderal homosexuality to be more accurate, was for decades a pathological term in the PRC. In fact, due to the lack of gender education and transgender education in particular, even within academia, the masses have gained their knowledge about transgenderal homosexuality largely from the widely popular cinematic masterpiece, *Farewell My Concubine* (Dir. Chen, 1993). In reality, the derogatory term particularly applied to Thai *kathoey*, known to the Chinese tourists as *renyao* (human monster), is often used to describe transgender people and even cross-gender performers in *jingju*, as well as cabaret shows. Moreover, socio-cultural construction of gender is generally believed to be the major cause of gender dysphoria, while parenting style has been over stated in pathological analysis. According to Dr. Chen Huanran, one of the leading specialists in sex reassignment surgery in the PRC, about 30% of his patients are raised as a member of the opposite sex during childhood (Wei, 2002, 26). During a media interview, he claims that the one child policy in the PRC is an instrumental factor triggering gender dysphoria, as a young boy socializes with primarily all female adults, including his mother, nanny and school teachers (26). Although Western queer theorists may contest his constructionist theory, in the present-day Chinese society, Chen’s belief is still prevailing nationwide.

In addition, original scholarship on gender studies in the PRC is lagging substantially behind the West, let alone transgender studies. Under Western influences, women’s

¹ See more at <http://iglhrc.org/content/china-legal-position-and-status-lesbian-gay-bisexual-and-transgender-people-people's>

studies was introduced to the PRC in the 1980s, with the first conference on women's studies held in Zhengzhou in 1985, of which most of the participants were women (Li, 2003, 12). In 1999, with the sponsorship of the Ford Foundation, Tianjin Normal University's Centre for Women's Studies launched the program of "Developing China's Women's and Gender Studies" (Du and Wang, 2003, 1-2). The warm reception of the new disciplines, however, did not result in creating a legitimate academic field or an addition to curriculum in higher education nationwide (Wang, 2001). As of 2003, very few universities in the PRC offered courses on women's Studies or gender studies. As of 2014, Wang Ning, a nationally recognized scholar and a professor who has taught at the prestigious Tsing Hua University and Peking University informed me that there were no gender studies programs offered at the two top ranked universities, though I have observed an increasing number of scholarly articles and translated volumes from both Chinese and English language sources.² The Chinese University of Hong Kong, however, established the first gender studies program in Hong Kong in 1997, now offering both undergraduate and postgraduate degrees.³ My general impression is that the involvement of Chinese scholars from Mainland China in international gender-related conferences that I have attended is almost non-existent.

This study was initially triggered by two incidents that occurred in 2015. The first was in Beijing, where the informants for my previous project talked in great depth about transgenderism and womanhood. Surprisingly, they had not heard of gender studies, let alone transgender studies, nor had read any scholarly works, but had formed their concepts and theories, inspired by a transgender celebrity, Jin Xing. The second was in Canada, where a group of ethnic Chinese residents of Metro Vancouver were protesting the Vancouver School Board's policies to embrace transgendered students. I invited one protestor, a landed immigrant from the PRC and a father of two sons, to my class. After an extended discussion that explored transgenderism, he told me that he had totally changed his mind about transgender people. He also acknowledged that he had literally no adequate knowledge about gender; his very limited knowledge about transgenderism came from those long opposed schools instituting anti-homophobia policies and transgender rights.

Transgender awareness education is nearly nonexistent in my country of origin, the PRC. Until recently, academic investigators made no clear distinction between homosexuality and transgenderism. Even today, few Chinese are sensitive to the distinction. Moreover, socio-cultural construction of gender is generally believed to be the major cause of "gender dysphoria," while all-female parenting style is believed by a renowned plastic and reconstructive specialist in the PRC to be an instrumental factor that triggers "gender dysphoria" in male children (Wei, 2002, 26). In higher education, other than the Chinese University of Hong Kong, which established the first gender studies program in Hong Kong in 1997, no PRC universities offer both undergraduate and postgraduate degrees in this area (Li, 2003, 1-14; Wang, 2003, 15-40). Governmental engagement in transgender policies in Mainland China is also nearly non-existent. Over the past 15 years there has been improvements in public health policies focused on MSM (men who have sex with men) due to the AIDS epidemic, but transgender policies remain weak (USAID, 2014, 8-9). The 2014 USAID report concludes, "To date national and local governments have been largely

² Email 2013

³ See <http://www.cuhk.edu.hk/gender/What-is-gender/about-us.html>

silent on sexual orientation and gender identity related issues, taking a ‘not encouraging, not discouraging, not promoting’ attitude” (11-12).

In the case of clinical practice, the PRC had its first publicly reported sex change operation by Dr. He Qinglian at the No. 2 Military Medical University Hospital in 1986, while the State Department of Public Health did not launch its technical regulations governing sex change operations until November 13, 2009 (Mo, 2012). From the top down political level, over the past 15 years there has been improvements in public health policies focused on MSM due to the AIDS epidemic in the PRC, but transgender policies remain weak (USAID, 2014, 8-9). The report concludes that legal registration of LGBT civil society organizations, which remains extremely difficult, is “the primary bottleneck for the development of the LGBT community.” Back in 1998, one of Dr. Chen Huanran’s MTF patients was going to be removed from her teaching position at a prestigious university in Beijing after receiving the sex reassignment surgery, and eventually, with the intervention of Dr. Chen, she was suspended from the teaching position for 3-4 years till all her students had graduated (25). In the present-day Mainland Chinese society, the situation remains largely the same for transgender individuals, who are still victims of employment discrimination (9).

While very few academic programs in women’s and gender studies are offered in higher education in the PRC, governmental engagement is nearly non-existent. The USAID report concludes, “To date national and local governments have been largely silent on sexual orientation and gender identity related issues, taking a ‘not encouraging, not discouraging, not promoting’ attitude,” though various governmental departments have shown interest in LGBT issues (11-12).

Chinese Media’s Dilemma

Several colleagues in Canada have been surprised—as well as impressed—by the immense success of the transgender celebrity in the PRC, Jin Xing, as they had thought that Chinese state-run media had been prudish and transphobic to the extent that they would never allow a transgender individual featured in a TV show.

Chinese media regulation has been restrictive, inconsistent, and uncertain. Under the one party rule, Chinese media are controlled by the Chinese Communist Party’s (CCP) Central Publicity Department (CPD). Given the arbitrariness of the control mechanism, news workers in the PRC “self-censor to a critical degree” “into more conservative coverage” to avoid the risks of punishment (Hassid, 2008, 415). While the CDP has the absolute power to decide what coverage is acceptable and what is unacceptable, inconsistencies in film and TV censorship regarding content associated with non-mainstream sexualities and gender identities are unpredictable to domestic productions and foreign observers. In 1993, the most acclaimed Chinese cinematic masterpiece, *Farewell My Concubine*, was banned for a while in the beginning because it “deals with homosexuality and depicts some of the turmoil in the Communist period” from the Politburo’s point of view (Kristof, 1993). After the film won the Palme d’Or, the top prize at the Cannes International Film Festival, the government authorities finally allowed the film’s public screening (Interview, Li, 2014). Other films that explicitly depict homosexuality, such as Ang Lee’s *The Wedding Banquet* and *Brokeback Mountain* and Stanley Kwan’s *Lan Yu*, however, were not released in movie theatres in Mainland China, though pirated DVDs could

be purchased at video stores across the country.

In recent years, as the competitiveness within the TV market increases along with the immense popularity of social media or self-media, audience members in the PRC find more gender alternative expressions in TV variety shows and reality shows. Interviews conducted for my previous study drag or gender-ambiguous performance in popular media discuss the general reception of gender transgression in performance, which can be seen in many reality talent competitions on TV in the PRC, including “Avenue of Stars” (*Xing guang da dao*), “Voice of China” (*Zhongguo hao shengyin*), “So You Think You Can Dance” (*Zhongguo hao wudao*), “China Has Got Talent” (*Zhongguo da ren xiu*) and “Drama Contest” (*Guo se tian xiang*). In these shows, gender transgression is represented through crossing gender binaries and subverting gender norms. In “So You Think You Can Dance” in 2014, for example, three male dancers, Li Yang, Whyan Chen, and Shi Sunhao, wear high heels and unisex outfits when dancing. There are also two male dancers performing a belly dance, which is usually associated with femininity. Another male dancer performs the peacock dance, a folk dance usually exclusively performed by female dancers. It should be noted that none of these competitors was doing drag or explicitly cross-dressed in their performance. In singing competitions, Huo Zun (1990-) has gained fame in the singing competition by singing his original *Rolled-up Pearl Curtain* (*Juan zhu lian*) with his gender-ambiguous rendition partially using falsetto voice. He also emerges as a new drag artist after Li Yugang (1978-), a “grassroots” drag artist who has become phenomenon in Chinese popular culture.

Some observers may perceive the emergence of gender alternative expressions on mainstream media as the PRC’s government authorities’ growing openness to LGBT communities and to the destruction of the compulsive order of heterosexuality. My previous study, however, interrogated this assumption and observed through in-depth interviews within the industry that it was rather the outcome of the industry’s market-oriented navigational strategy. One of my interviewees, Xu Haiyun (pseudonym), a successful TV producer with one of the prestigious TV stations in Beijing, knows all the tricks of negotiating between creative openness and the risks of challenging uncertain state censorship.

As a [TV] producer, I know all about the do’s and don’ts in China. In China, you have to serve two grandmothers – one is government authorities in charge of propaganda and one is audience. Of course, sometimes you’d always please those big shots. We could have been more creative and adventurous with our shows, but there is always an unpredictable censorship based on the authorities’ likes, dislikes, beliefs and perception of current political trends. For example, we aired a reality show on cosmetic surgery, which was very popular, but suddenly, we were asked to stop it by a leader because the show might mislead young people by shifting their attention on the inner world to their appearance. Cultural Revolution, religions, Tibet, Xinjiang and the Tian’anmen [massacre] are all sensitive topics that we don’t want to touch. Cross-gender performance is fine. We could air it, not because we suddenly became liberal, but because it had been green lighted by some authorities, and because it increased our audience ratings. We get the [audience rating] report every week and we know what attracts audience members’ attention and interest. But who knows what will happen tomorrow? Maybe another day the authorities will ask us to take it down without telling us why. (Interview, 2010)

Xu's observations of the inconsistencies on media regulation in the PRC has been confirmed by *General Rules for Television Series Content Production*, announced the PRC's television producers, the State Administration of Press, Publication, Radio, Film and Television (SARFT) at an annual meeting of the PRC's television producers (Horwitz and Huang, 2016). The new guidelines prohibit TV shows that promote "Western lifestyles" and ban a long list of items including content that "[e]xpresses or displays abnormal sexual relations or sexual behaviour, such as incest, homosexuality, perversion, sexual assault, sexual abuse, and sexual violence" (2016). The guidelines also apply to online dramas, and "staff censors will supervise online content around the clock."

With the long list of banned items, will there be anything interesting to watch on the Chinese TV in the future? Xu had expressed his doubt a few years before the announcement of the said guidelines—

Remember, there is more "rule of man" than "rule of law" here [in the PRC], and we see these new rules as a signpost for political trends for the time being. Who knows when new guidelines will be made, and who knows if these rules will be seriously enforced? (Interview, 2010)

Thus, the dilemma of Chinese media may help us understand why Jin Xing, a transgender dancer, could have risen to a celebrity and a national opinion leader known to almost every household in the PRC, though the state-run media have not by any sense been officially supportive to LGBT communities.

The Rise of China's Transgender Oprah

Who is Jin Xing? I have translated her biography into English from the official website of the Shanghai Jin Xing Dance Theatre—

Jin Xing is a true icon as artist and opinion leader in today's Chinese society. Trained as a dancer and being a highly decorated officer in the PLA at an early age, Jin Xing pursued further studies in the U.S. and Europe for several years before returning to her home country in 1995. She founded Jin Xing Dance Theatre, the country's first independent dance company and led it to international acclaim.

In addition to her awarded dance career Jin Xing proved her versatile talent by establishing Shanghai Dance Festival, China's first festival for contemporary dance, as well as excelling in movies and theatre plays. Her achievements in the cultural field have received manifold recognition: two honorary doctor degrees in the UK and the French government's "Chevalier de l'Ordre des Lettres et des Artistes," just to name a few.

Since 2012, Jin Xing has commanded a highly influential voice in public through her strong TV presence, among others as host of her own talk show, and through her huge fan base in the Chinese blogosphere, which reaches more than 9 million followers.

(Translated by Huai Bao from the official website of the Jin Xing Dance Theatre)

There is no shortage of previous Western media coverage of Jin Xing online, but mostly revolving around her transformation and transgender status tied up to her

dance career, as well as her German husband and three adopted children. With the continuing success of her signature talk show, the *Jin Xing Show*, this phenomenal woman has been covered by more and more prominent Western media in the past two years for as a cultural icon, among them, *The Economist*, which praises her as “the empress of reality TV” and refers to her “China’s transgender Oprah” (Anonymous, 2017). Likewise, *The Hollywood Reporter* also calls her “the Oprah of China, who happens to be transgender” (Rahman, 2016). The Economist praises her success generously—

In a conservative society where even homosexuality is frowned upon, let alone sex-reassignment, her life would seem to place Ms Jin well outside the stodgy mainstream of Chinese broadcasting (she is pictured at her home in Shanghai). Yet Ms Jin, who is 49, is the country’s most popular television judge. She began with a local version of “So You Think You Can Dance” and hit the jackpot with “The Jin Xing Show”, a variety and chat programme with an audience of around 100m. She has appeared with her husband on the Chinese version of “The Amazing Race”, in which couples race each other around the world. Her latest venture, “Chinese Dating”, is in its first season. (Anonymous, 2017)

Jing Xing, which literally means Venus or the golden star, was born in an ethnic Korean family in Shenyang, Liaoning province in 1967. She joined the People’s Liberation Army (PLA) at the age of nine to receive dance training. Since then she has received numerous dance awards including a scholarship that enabled her to study modern dance in New York—the first one from PRC to have received a dance scholarship from America. She achieved recognition in the dance scene in the PRC after she returned, but her emergence as a national celebrity was largely due to her controversial role as a TV reality competition judge. In 2011 and 2012, she became known to a much wider audience as a scathing judge for the *Let’s Shake It (wu lin da hui)*, a TV dance competition. In 2013, she hosted her own TV talk show, *Venus Hit Mars (jinxing zhuang huoxing)*, reviewing and critiquing current issues with guest speakers. In 2013, she served as a judge for the TV reality competition, *Mamma Mia!* as well as the immensely popular *So You Think You Can Dance* of the Chinese version, becoming the headline of media with the nickname, “poisonous tongue” (*du she*). Her transgender status, unique experiences, and her family with three adopted children became the focal point of media and public attention. In the mean time, she has appeared in Chinese, Korean and Thai films and Chinese theatre, and has delivered public talks, raising awareness of transgenderism and promoting gender equality and social justice.

As of January 28, 2015, the Dragon TV in Shanghai—the formerly Shanghai Metropolitan Satellite TV, launched *Jin Xing Show*, a talk show with Jin Xing as the signature host.⁴ Her first show did not only receive positive media feedback for the “sharpness” in her speech that “broadcasts positive energy (*zheng nengliang*),”⁵ but also topped the audience ratings of Dragon TV (2015).⁶ In addition, I find that China Central Television (CCTV) has posted her talk show video on their official website,⁷ which suggests that the state government’s non-oppositional attitude. The

⁴ See more at http://www.js.xinhuanet.com/2015-01/30/c_1114190647.htm

⁵ See more at <http://ent.163.com/15/0127/13/AGVJFB0000031GVS.html>

⁶ See more at http://ent.ifeng.com/a/20150203/42234292_0.shtml

⁷ See <http://tv.cntv.cn/video/VSET100219580335/5bef5764674a3ddfc99c61b90a4e5c44>

celebrification of Jin Xing is not only a product of the globalization of the PRC and the societal transition to the digital age, which has boosted China's celebrity culture, it is also a process of Jin Xing's reconstruction of her self identity through politicizing her pre-existing identity and re-organizing distribution of visibility and attention. I want to add that it is also a process of educating her audience members, Internet users and everyone else in the PRC that has access to her visibility on gender and particularly transgenderism.

Jin Xing represents a new generation of China. Her name means more as a synonym for courage, freedom, self-responsibility and the endless power of an artful spirit. As a reality TV competition judge, Jin Xing is compared to Simon Cowell. Her later talk show, *The Jin Xing Show*, an equivalent to *The Ellen DeGeneres Show* in the USA, enjoys the highest audience ratings at Shanghai's Dragon Television (Wang and Xu, 2015). On numerous occasions, she has talked about transgender lives. The Jin Xing phenomenon is currently one of the most talked about China-related subjects in Chinese media (*Qilu Weekly*, 2013), which I find is subversive, revolutionary and powerful. Her becoming a celebrity not only has generated a nationwide critical debate over a mélange of social issues, but also has increased social acceptance and influenced the public's perspective of transgenderism.

Among others, Li Yinhe, whose announcement in her *sina* blog that she had been in a 17-year gratifying relationship with a transgender man stirred a media whirlwind and public debates in the PRC (Wu, 2014). The larger part of the case studies will examine how acceptance, inclusion and normalization of transgender individuals are mediated through aggressive self-personification using mainstream media as well as self-media facilitated by modern technologies.

As such, it is not hard to imagine how difficult it may have been for transgender individuals to survive decently in Mainland China, if not more so than in some of the more liberal cultures, given the social bias, inadequate public knowledge and sympathy, lack of academic programs in higher education, and systemic discrimination. Ironically, in the traditionally prudish Chinese society, a transgender woman named Jin Xing has emerged as one of the most popular celebrities in the past few years. As a pioneer in Chinese contemporary dance, Jin owns her dance company in Shanghai, the only one of its kind in the PRC. She hosts TV talk shows, enjoying high audience ratings with her razor sharp tongue and radical criticism of moral issues in the present-day Chinese society. She has acted as a judge for a number of TV reality competitions, including *So You Think You Can Dance* of the Chinese version, often equated with Simon Cowell by Internet users due to her harsh critique and wisecracks about contestants. She has also received the Ordre des Arts et des Lettres, and has been granted an honorary doctorate by the Royal Conservatoire of Scotland for her achievements in modern dance.⁸ Moreover, she is a mother of three adopted children—a role model for many parents across China who seek parenting advice from her. She has a devoted German husband, who, according to Jin, is the only man she has worshipped for his moral integrity, kindness and loyalty. She is one individual that has demystified the transgender world to millions of Chinese people including myself.

⁸ See more at <http://edu.sina.com.cn/kaoyan/2014-07-03/1709426318.shtml>

Based on my interviews with over 50 Chinese nationals who claim to be a fan of Jin Xing during the past few years, it may be maintained that the multi-faceted Jin Xing has played a significant role in widely educating the masses about genders and especially transgenderism, offsetting the inadequacy and hysteresis of such education nationwide. In other words, she has done the job academics have failed to. As a matter of fact, when I first heard about Jin Xing in Beijing back in the late 1990s, many Chinese nationals' awareness of homosexuality was very limited, let alone transgenderism or transsexuality. Among others, one of my interviewees by the pen name of Lin Fanyin, a Chinese poet who first told me about Jin Xing, for example, had no clear distinction between homosexuality and transgenderism, since she described Jin Xing as "a gay man who had been 'gay enough' to undergo a sex change operation." Neither did I understand any distinction between the two back then. Neither was Jin Xing herself aware of the distinction prior to her trip to America, according to herself in several TV interviews, where she confesses that for a time in her pre-operative life he was confused about his sexuality, thinking that maybe he was gay.⁹

Even in the present-day Mainland Chinese society, it is not surprising to see an educated individual revealing confusion about homosexuality, transvestism and transgenderism when talking about Jin Xing. Many interviewees of mine have asked me the same question repeatedly, "Do all those drag queens at the bars in Beijing want a sex change operation like Jin Xing?" Although Jin Xing constantly expresses her lifelong obsession with *qipao* (*chi-pao*),¹⁰ which highlights oriental femininity with its cutting style and fabrics, she was not a transvestite before the sex reassignment surgery in modern terms. Transvestism is a term coined by Magnus Hirschfeld¹¹ in his sexological scholarship to refer to the practice of cross-dressing, which is used by Hirschfeld to describe persons wearing clothing traditionally associated with the opposite sex. Hirschfeld argues that transvestism cannot be reduced to homosexuality, fetishism, masochism and the illusion of sexual metamorphosis (2006, 28-39, edited by Stryker and Whittle); it is an expression of a person's "contra-sexual" (transgender) feelings and fetishistic behavior. Hirschfeld also talks about the "four clear groups that can be defined one from the other" between pure manliness and pure womanliness concerning the sexual organs, the other physical characteristics, the sex drive and other emotional characteristics (p. 35). The fact of the matter is that even though there are individuals out there who display a form of expressions of mental conditions using clothing, most of the drag queens that I have interviewed do not necessarily want to alter their male sexual organ or physical characteristics. It seems that the transvestites in Hirschfeld's understanding are not what we understand as transvestites today, but transgender people. There are drag queens or cross-dressers for occasional pleasure who are male-bodied, male-identified, and self-identified as heterosexual. As Harry Benjamin¹² has put it, they are not "genuine transvestites." He uses the term "transsexualism" (p. 45-46) to

⁹ See <https://www.youtube.com/watch?v=IC01XrgzZ7w>

¹⁰ A close-fitting woman's dress with high neck and slit skirt

¹¹ Magnus Hirschfeld (1868-1935) was a German physician and sexologist. An outspoken advocate for sexual minorities, Hirschfeld founded the Scientific Humanitarian Committee, which Dustin Goltz called "the first advocacy for homosexual and transgender rights."

¹² Harry Benjamin (1885-1986) was a German-born, American endocrinologist and sexologist, widely known for his clinical work with transsexualism.

differentiate “cross-dressing” that is not transvestic from “genuine transvestism.” Jing Xing fits in Benjamin’s term. She was a male-bodied and female-identified “cross-dresser” before her surgery. Now, she is a female-bodied, female-identified and heterosexual woman. Like Alfred Kinsey, Benjamin also considers transvestism and homosexuality “totally independent phenomena,” though the two have something in common in terms of psychic causality. Jin Xing’s case has raised questions for us: Are homosexuality and transgenderism also “totally independent” from one another? Do they also have commonality in terms of psychic causality? This is a contentious question that has long confused us. Should Jin Xing have been considered a homosexual before her sex change operation? Some people would support this presumption, because the pre-operative Jin Xing fit in the definition of homosexuality, due to the enduring pattern of emotional, romantic and sexual attractions exclusively to people of the same sex. Some even affirm that to determine if one is gay or not, we should listen to the member’s own judgment, and Jin Xing once believed that she was gay—While trying to make sense of her feelings, she thought she might be gay for a while after she moved to New York. Others would deny, as the pre-operative Jin Xing was primarily, if not always, female identified, according to her own account. In this sense, she should be considered a heterosexual transgender woman, instead of a homosexual man, before the sex change operation. As a matter of fact, Jin Xing presented a vibrant “maleness” before the surgery, and still demonstrates both male and female genders even after the surgery, as has been confirmed by herself and her husband, Heinz Gerd Oidtmann, in numerous interviews including one with NBC.¹³ Jin Xing never denies that she still possesses qualities normally perceived as masculine, such as aggression, domination and determination, while her husband claims that he observes male “traces” in her. In the NBC interview, Jin Xing claims that she has “extended” some of the male qualities she used to have, because, in her own words, “to work in society, you need a male attitude.” Indeed, her gender expression on such occasions broadcast by influential TV networks has been instrumental in educating audience members about the complexity of genders, by interrogating the traditional binary gender patterns and normally perceived nexus between gender and sexuality. As one of my interviewees contends, “I’m really confused now. She looks so feminine now, and yet she is more manly than most men I know.”

Numerous sources that are derived from Jin’s own narratives reaffirm her enduring sense of female gender since early childhood, her strong feeling of having been “trapped in the wrong body,” and her determination to become a woman ever since the age of six, though she was raised in a conservative and disciplined military family as well as an ethnic Korean family with the tradition of valuing boys over girls. She confesses that even as a small boy, she knew that “something was wrong.” She says, “I so envied my sister. I felt I should be her.” Further, while she joined the army at the age of nine, the repeated stylization of the body under military disciplines did not weaken her pre-existing female gender identity. As she recalls, while in the army, she “struggled with grenades and machine guns,” as those things were not right for her. Like many other transgender people who consider their sense of gendered self as “ontologically inescapable and inalienable” (p. 10), she kept living in the imaginary female gender throughout her adolescence. Her own account, along with those of many other transgender individuals, has largely subverted the common belief in

¹³ See <http://www.nbcnews.com/video/rock-center/46957311>

social, familial and cultural construction of gender over any other known factors. The study on her has inspired my doctoral dissertation, with more information from similar stories of other queer subjects. As a celebrity who is not afraid to share with the public her past stories, she has convinced poorly informed audience members that it is feasible and plausible for a human being with an innate gender “trapped into the wrong body,” and that it is inhumane to raise that person following the “wrong” gender against the subject’s will. This is also to say that gender conforming parenting style does not necessarily help to create or facilitate the “right” gender; conversely, gender non-conforming parenting style is not necessarily the cause of gender dysphoria.

The mother of three adopted children, Jin Xing has offered advice on the art of parenting and child education on many occasions, including TV interviews, her own talk shows and public talks, such as the *I Make My Decisions for My Own Life* talk (*wo de rensheng wo zuozhu*) on May 25, 2012, as part of the inspirational *A Different Life* (*rensheng da butong*) talk series in Shanghai. The talk series are sponsored by the *Shen Bao*, formerly transliterated as *Shun Pao*, and known to foreign expatriates as *Shanghai News*, one of the oldest newspapers in China acclaimed for the formation of public opinion since its foundation. She sticks to traditional Chinese values on descendants’ filial loyalty, and yet disapproves of modern Chinese families that prioritize passing examinations and obtaining great grades. Her advice, which has greatly challenged traditional Chinese “spoon-feeding” style of child education, receives overwhelming reception from audience members and Internet users. Having sent her eldest son to a boarding school in England, she has also expressed in public her appreciation of the outcome as demonstrated in her son resulting from an educational concept that values etiquette, integrity and athletic performance over mere grades. In this sense, as a successful mother, Jin Xing has vigorously contested the wide spread belief by many people out there that LGBT individuals cannot make great parents. Ironically, these non-LGBT parents are seeking advice on child education from a transgender mother. This could have been unimaginable prior to Jin Xing in the PRC. Not only is Jin a model mother, her husband, Heinz Gerd Oidtmann, is seen as a model father and a model husband, a kind, loving gentleman with infinite compassion and patience for their children, according to Jin. She claims in numerous TV interviews, “I have never worshipped any man, but I worship my husband.”¹⁴ As of January 2015, they have been in a loving relationship for over ten years, raising children together. They have established a model for many men and women in the PRC who seek advice on maintaining a fulfilling relationship or marriage. Besides, they have given much hope and confidence for LGBT individuals who have been struggling to discover their special someone.

Jin Xing has advanced our knowledge about the transgender population in all its complexity. Not only some clinicians, if not most, have received transgender sensitivity and awareness training, audience members have come to the realization that transgender people are as “normal” as everyone else. She is changing societal attitudes towards members of the LGBT community in the present-day Chinese society. More significantly, as a TV personality and a web celebrity running talk shows and *weibo*, she is using modern media and technologies to help to promote

¹⁴ See <http://v.ifeng.com/documentary/figure/201205/7418e7ef-1635-4a8b-83b7-ee74a19ccdd3.shtml>

awareness of transgender issues and sense of communal allies other members of the community are seeking. Jin Xing is not only a “normal” woman, but has become a model woman, a model wife and mother that her fans look up to, which may be seen from the full attendance of every public talk she delivers on numerous topics in womanhood, wifehood and motherhood, as well as transgender womanhood. Yet Jin Xing should not be the only vehicle for the Chinese nationals, including academics, to receive transgender education. In fact, during the course of my fieldwork in Beijing, I have realized that many gender-queer individuals have developed their own gender theory to make sense of themselves, even though none of them has heard of the existence of gender studies. The story of Jin calls for establishment of gender studies in school education as well as mass education, to facilitate a deeper understanding of the pluralism of genders and of the discursive objects. Further to this, more attention should be paid to queer theory and transgender studies, which challenge our most fundamental assumptions about the relationship between bodies, desire, and identity. Jin Xing’s inner gendered self in relation to her multi-faceted gender roles has provided an example of member experiences demonstrating the complex incoherencies between biological or chromosomal sex, gender identity, social gender expression in terms of the experiences of feeling or being perceived as masculine and feminine, which supports queer theorists’ belief that there is an interval between the gender role and the true self, and that only through destabilizing identity categories can we identify the sexed subject. I call this particular approach to conducting transgender education by a transgender celebrity “homeopathic” mass education for a number of reasons. Based on the “like cures like” philosophy, homeopathy entails the use of a substance that causes the symptoms of a disease in healthy people to cure similar symptoms in sick people. The way Jin Xing has been educating the masses in such a traditionally prudish society about transgenderism is very similar in nature to homeopathy in terms of strategy. Firstly, the process is a power game where one discursively disadvantaged celebrity utilizes mass media, especially TV network, as her platform as well as her own cyber media, such as *weibo* to combat the collective opposing forces from a society that has accumulated in their minds social, political and filial exclusion, hostility and ignorance for centuries. As I state in a lecture on transgender studies that I have taught at Simon Fraser University, “One celebrity is more effective than 100 lectures like this,” Jin Xing has largely achieved the goal that academics and activists have failed to in the PRC. Secondly, while most transgender people experience high level of bullying and harassment, the caustic, mocking, aggressive and fearless Jin Xing is not easily intimidated by transphobia or hostility; on the contrary, she creates in her harsh, radical and sometimes foul language “anti-transphobia,” a phobia for those who attack her in the cyber world to defeat transphobia. As I have noted in her *weibo*, one asks her in a hostile manner, “Jin Xing, are you on earth a man or a woman?” Jin responds, “I am a human!” Thirdly, her right-to-the-point scathing criticism of social evils as well as celebrities in scandals, which is oftentimes perceived by people as “poisonous,” sarcastic and malicious, has twisted the stigmatized image of transgender individuals formed in people’s minds over the years. In this regard, it is “like cures like” in applying a toxic substance—brutality—to fight other symptoms of society caused by the same toxic substance. While transgenderism has always been associated with morbidity in the Chinese society, the renowned Chinese poet, Yu Jian, refers to Jin Xing as “mentally the healthiest person in China” (Jin, 2005, 182). This dramatic twist of long formed biased public opinion has proved to be more effective in raising awareness than other forms of transgender education.

Among other Chinese celebrities who support Jin Xing, Li Yinhe, a sociologist and one of the best-known advocates for LGBT rights in the PRC, says, “She is still discriminated against by society, but she is very brave in facing it. She has a good family and successful career; her achievements have made her an icon” (Branigan, 2012). Interestingly, not long ago, Li revealed in her personal *sina* blog that she herself had been in a gratifying relationship with a transgender man for 17 years. She took the opportunity to educate her readers about the differences between lesbianism and transgenderism, claiming that her partner of 17 years was a biologically female, but in fact a male identified, heterosexual transgender man. Her confession caused a media whirlwind in the PRC. Like Jin Xing, she has also played a pivotal role in mass education on transgenderism in the PRC. The difference is that she is a renowned scholar associated with a transgender man, while Jin Xing is a member of the transgender community who is able to provide the best first person account.

Interviews

During my most recent fieldtrip to Beijing in November and December, 2017, I conducted large scale surveys anonymously regarding nonconforming gender identities together with a local not-for-profit LGBT organization at a university in Beijing. The surveys consisted of multiple choice and short answer questions testing participants’ awareness of sense of gendered self and the gender behaviours of others around them. We all agreed, when collecting and analyzing data at the end of the surveys, that the results of the surveys would not be as useful as we had liked them to be. First of all, we found that even the surveys were conducted anonymously, internalized homophobia or transphobia precluded participants from answering the questions more truthfully. Second, participants are not fully or correctly informed about many terminologies, and so may not answer questions in the manner we had hoped for. As such, I believe that qualitative interviews are more effective and constructive to my research, because statistics from large samples are often not as useful as data collected from each individual through in-depth interviews and real-life observations.

Interviewees, a total of 23, are divided into three categories: The first contains a number of engaging celebrities in the PRC who are or who have significant connections with LGBT individuals. The second includes individuals who serve as observers of the transgender community with a loved one manifesting transgender desires. The third includes medical professionals who have had patients for sex change operations or for consultations. Most of these interviewees were found at a conference on transgenderism and the Jin Xing phenomenon that I co-organized and hosted in Beijing in December 2016. For protect their privacy, I have used pseudonyms and distorted their backgrounds to hide their identities. My interview questions are—

- Do you think that transgender and homosexual are two interchangeable terms? If not, how would you distinguish one from the other and where did you acquire this knowledge in the first place?
- Many media critics believe that Jin Xing became a national celebrity because of her “poison tongue” (*dushe*, razor-sharp tongue) when she served as a judge

for a reality TV dancing competition, coupled with her transgender status. Do you agree and why?

- How would you comment on the celebrification of Jin Xing in the PRC, a relatively conservative and prudish society not known for openness and tolerance to transgender people?
- What about the complexity of gender have you learned from Jin Xing?

These three questions are quite broad and allow for my interviewees to talk at length and explore in-depth potentiality while developing subareas under the same topic.

Chen Xiaosong (pseudonym), a renowned TV actor, claims to be a good friend of Jin Xing. As a crew member of the film, *Farewell My Concubine*, he also worked with Leslie Cheung, the Hong Kong super star who played Cheng Dieyi, one of the two protagonists in the film. He believes that the film's depiction of Dieyi's sexuality echoes the prevailing conception of gayness by the Chinese in general.

Most Chinese people around me still do not distinguish gays from transgender people, including Jin Xing herself before she realized that she was actually a trans woman, rather than a gay man. In fact, Farewell My Concubine is labeled by many film critics and audience members as a "gay" epic film, because they believe that Dieyi is gay, and his romantic friendship with Duan Xiaolou is a gay relationship. (Interview, 2016)

Self-identified as gay and staying semi-closeted, Chen appears to be fully informed about the subtle differences between gayness and transgenderism. He says—

If Dieyi was a real person, he would probably be considered to be homosexual, because he is a man by nature and he loves Xiaolou. What is the definition of homosexuality? The widely known definition of it is one is sexually attracted to someone of the same sex. So Dieyi falls into this definition; there is no doubt of it. But if you consider the fact that he impersonates female characters on stage and behaves likes a woman off stage, and loves Xiaolou as a woman does, maybe he is not gay. Perhaps he is transgendered. I personally think that gay men are those who are consistently conscious of their male gender and do not necessary fantasize about being associated with the feminine. (Interview, 2016)

About Jin Xing's success, he has much to say, being a close friend of her—

Jin Xing was known only to people in certain circles (modern dance and other forms of performance arts) when she was a dancer, certainly not as famous as she is today. I think that she became famous to a wider audience as a judge for So You Think You Can Dance for her harsh criticism of the contestants. You know that in China it is not common to be that straightforward because people in general hate to say anything to offend anyone or embarrass them. But she is so different, shocking everyone with her bluntness. And most of the time she is downright objective. Her transgender status contributes to it for sure, making her a cynosure to every TV audience member and every social media user. With the new information technology developing so fast in China, her name became known to every household overnight. (Interview, 2016)

Chen emphasizes that the success of Jin Xing cannot be replicated, because "Jin Xing

is just Jin Xing.”

I don't think that Jin Xing's success on TV means China has totally accepted the LGBT communities or Chinese government authorities are more open-minded and liberal. I think that Jin Xing's success is due to a combination of factors—including but not limited to her transgender status, her character, her eloquence, her sense of justice and integrity, her unique experiences in the army and overseas, her courage to expose her private life to the public... Just too many! I don't feel that transgender people are better treated now in China because of her or based on her success. But I do feel that she has changed many, many people's poorly informed or negative assumptions of transgender people. In this regard, Jin Xing has been a mile stone in China's LGBT movements. Many LGBT members thank her for what she has been doing, though China still has a long way to go. (Interview, 2016)

Jiang Hai, born in 1961, was first exposed to the gay subculture in Germany when he studied in Europe in the 1980s. Although he is self-identified as 100% heterosexual and married, he claims that his five-year old son prefers to wear girls' skirts and expresses the interest to become a girl. While he respects Jin Xing's courage to receive the sex change operation and to openly talk about her transformation to the public, he is deeply worried about his son's "gender alternative" behaviours. He is certainly aware of the difference between gayness and transgenderism, and sighs that he would have his son growing into a gay man rather than becoming a transgender woman into his adulthood—

I do know that gay men are not the same as transgender women. When I was studying in Europe, I saw all kinds of people of sexual minorities during their parade or other movements. Some gay men, especially in the West, looked so masculine, so "normal," that you could hardly tell they were gay! Others could be so obvious. Those people believed that they were women, not men, and wished to be treated as women, just like Jin Xing. It seemed it was a lot easier to be the former than the latter because the former was not obvious to the public if they didn't tell you, and could still have a regular life. The latter would have much more to go through in their life. (Interview, 2016)

Attempting to find out what triggers his son's non-conforming gendered behaviours, Jiang ascribes his son's "rebellion" to the influence of Jin Xing on TV, while in the meantime, acknowledges Jin Xing's contribution to increase transgender awareness in China. He says—

I respect Jin Xing and admire her talent and courage, but I'm deeply concerned that how many kids in this country might be influenced by her story. For example, my son watches TV too much and sometimes when he sees Jin Xing, he says he wants to become her. And he is only five years old! I know that we should learn to accept that, but if you know how much Jin Xing has gone through, you just hope that your kid will not be following her path. And you hope that your kid can change his mind someday and grow just like other boys. This is nothing wrong, and I'm not being prudish or something. I'm just a father who loves my son. I'm not saying that Jin Xing is an instigator. On the contrary, she has promoted transgender awareness in the country and made millions of people realize transgender people are as normal as you and me. They can get married and adopt kids, too. They care raise children in a healthy

environment. In fact, I think Jin Xing makes a better mother than my wife! (Interview, 2016)

My co-host of the Beijing transgender conference who goes by the English name, Natalie, who runs a plastic surgery clinic, claims to be a big fan of Jin Xing. She was proactive in initiating and sponsoring the conference at her clinic. Interestingly, many of her friends are also big fans of Jin Xing. She talks at length about the status of sex change operations in Beijing, medical professional's general attitude towards transgenderism, and her impression of those post-operative patients who come to her clinic for cosmetic procedures.

I think that Jin Xing has pushed the transgender communities to the forefront, enabling us to get to know more about the transgender population. Since she became a national celebrity, we have received more and more post-operative transgender women coming to our clinic for cosmetic procedures. We used to believe that China did not have as many transgender people as in the West. Now we find that where there are human beings, there are transgender people! We constantly have patients who have completed their sex reassignment surgery but need more touch-up. These patients just want to erase their male attributes as much as possible. Medical doctors who do not specialize in sex reassignment surgeries, receptionists, and nurses are used to them. No more panic. No more surprise. So in a sense, Jin Xing has done a good job in promoting the awareness. You know, in the past, even medical doctors would be shocked to see a transgender patient, as if they were seeing a dinosaur! So in this regard, we are making progress, partially thanks to Jin Xing.

However, I do feel that even medical professionals in Beijing may not have as much knowledge about transgenderism as an educated individual in the West. We are still poorly informed about nonmainstream genders and sexualities. For example, even Dr. Chen Huanran (a renowned plastic surgeon specializing in sex reassignment surgeries) believes that gender identity disorder is caused by the lack of masculinity in the environment where the patient grows up. Jin Xing has proved this to be untrue. She has talked a lot on TV about her childhood—growing up in a military family with one sister, joining the army at the age of nine. There seemed to be lots of masculinity around her back then, but at the age of 5 or 6, she wished the lightning could turn him into a girl.

Currently in China, we have no access to contemporary gender and sexuality scholarship, and what we can find online is all Chinese texts, either out-of-date information translated from old English sources or uninformed monologues. I think that our only source of information regarding transgenderism is from Jin Xing, who has lectured to and educated us with her unique experiences, insights and thoughts on the specificity and complexity of gender. (Interview, 2016)

Having watched almost all video clips of Jin Xing available online, I tend to agree that Jin Xing has filled the lacunae in public transgender awareness education in the PRC, while this should have been done by public schools, universities, mainstream communities and mainstream media. Non-governmental LGBT activism does exist in Mainland China and is reportedly growing very fast, but is dominated by gay movement while lesbians and other sexual minorities are still marginalized (Hou, 2014). Besides, LGBT movement in Mainland China lacks top down support from

government authorities (Shen and Pelzer, 2016), and family pressure is pushing many LGBT members to receive “conversion therapy”—a costly treatment offered by clinics using electric shock and cold shower to turn LGBT members “straight” (Zaugg, 2017).

Among the guest speakers at our transgender conference in Beijing, Xie Lizhu (pseudonym), born in 1957, retired from Beijing Normal University and founded one of the first not-for-profit gender studies workshop in the PRC—Gender Window, with a little funding offered by the Embassies of the Netherlands and Sweden. Albeit an LGBT activist who has pushed LGBT awareness very hard through her workshop and playback theatre, she acknowledges that Jin Xing has done so much that they have failed to—

We have tried hard to promote LGBT rights in China, but not very effectively largely because none of us is a celebrity and so no one really pays any attention to us. Also, we do not have any official support, and in China, you know, media are controlled by the government, government research grant for this field is hard to get, and public gatherings involving a large number of audience members need to be approved by the police department. Even the LGBT film festival here has been raided by the police requested to move out of the fifth ring road. Jin Xing has the power and platform we don't have. She is doing what we have done but inadequately. She is famous to every household, is the most talked about and most celebrated talk show host, and has the wisdom and courage in getting her messages spread. (Interview, 2016)

As a transgender celebrity, Jin Xing teaches audience members that transgenderism is not the same as gayness, a common knowledge to many people, if not most, in Western societies owing to the widespread LGBT campaigns from New York to London to Paris to Toronto. Her narrative shares with the Chinese public the common confusion about identities during her early years when she first went to New York to study modern dance. She often asked herself, “Who am I?,” in searching of a sexual identity and making sense of herself. So she went to gay bars, and met gay friends, but realized that she was not gay (Rahman, 2016). As a matter of fact, when I first heard about Jin Xing, my friends from the literature and theatre circles in Beijing, including Lin Fanyin, described her as “a gay man who has completed sex change operation to become a woman.” Now Lin, among others, has figured about what transgenderism means, and will not mix them together. As shown on TV, Jin has transitioned well into a woman, and is treated and perceived as such by friends, associates, audience members and fans.

Wei Zheng, a graduate student of psychology at Beijing Normal University, has been accepted into a university in the U.S. to pursue a doctoral degree, focusing on LGBT studies. He agrees that even nowadays, many people in China still include transgender people into the “gay” category—

If Jin Xing herself was once confused about her identity and even went to gay bars to find others like her, you can imagine how the public has misperceived transgender people. University students are better informed than their parents and grandparents, because we browse the Internet a lot more than the older generations and information spreads very fast. I think that Jin Xing as a household name has taught the older generations what they have misunderstood—within the community of sexual

minorities, there are different categories and maybe there are overlapped areas between categories, and so we don't want to make definite distinctions. My grandmother has now become a fan of Jin Xing, though in the very beginning when I told her that she used to be a man, my grandmother was shocked. But as she has seen quite a few episodes of her talk show, she has totally accepted her as a normal, authentic woman. (Interview, 2016)

Jin's story also contests the prevailing theory of social construction of gender to some extent, since, according to her account on many occasions including the Davos 2017 World Economic Forum, she has firmly believed since she was a 5-year old boy that she is a girl trapped in the wrong body. Her military upbringing was not one surrounded by or overwhelming femininity. She also trained to be a male dancer, not as a ballerina. This confirms the assumption that there could be a "core" gender prior to the social construction of gender. And yet she challenges socially constructed beliefs about gendered patterns. As in an NBC interview together with her German husband Heinz Gerd Oidtmann, Jin Xing confesses that she "carries on" her "male attitudes" into her womanhood, and that people tend to look for masculinity in her, knowing her past manhood. She praises that possessing both male and female qualities is a "gift." Her husband also acknowledges that he still sees "male traces" in her just like everyone else that carries both "male and female attitudes" (2012).

Daisy Liu (pseudonym), a former track and field athlete who is now happily married to a German husband with a 5-year old daughter, has been a big fan of Jin Xing and claims that she has not missed any show with Jin Xing in it. She particularly likes Jin Xing talking about genders. Being a former athlete who happens to be female, she is perceived by people around her as a woman who carries "masculine qualities," and is sometimes suspected to be a butch lesbian. She believes that Jin Xing not only has made sense of herself, but has also made sense of her.

What I have learned from Jin Xing is that being a woman and behaving as a woman are not the same. Is Jin Xing a pure woman? Yes, she loves the role of a wife and a mother. She loves beautiful clothing, jewelries, purses, and shoes. She loves being treated as a lady. So she seems to be a woman to her bones, maybe she is more feminine than I am in some sense. I'm not even as much into qipao (also known as cheongsam, a body-hugging one-piece Chinese dress for women) or jewelries as she is! But if you watch her shows, she can be so harsh, so tough, so sarcastic, and even bitchy, and sometimes self-mocking, you can hardly find any other female hosts like that! Because women in general tend to hold themselves back in public. That's why drag queens are so popular when hosting a night club event, because they are thick-skinned and can sing themselves over. (Interview, 2017)

Furthermore, Jin Xing's celebrification has contributed to the demystification and de-demonization of transgender people perceived on traditional terms. While a traditional society would likely question transgender people's capability of handling a relationship and raising children healthily, in her sold-out public talk in Shanghai, *I'm In Control of My Life (wo de rensheng wo zuo zhu)*, Jin, who was respected as a role model by the audience, not only shares her experiences and tips on building healthy relationships and marriages, but also offers her philosophy and ideas on raising three children in a healthy environment (2012).

Sarah Wong, an undergraduate student from Beijing Jiaotong University, observes that there is so much bias against LGBT members mostly because the Chinese people tend to perceive them through the lens of Confucian doctrines on marriage, family, procreation and parenting.

I was raised by my mother alone. Many people would question how healthy or unhealthy it could be to raise a child as a single mother, let alone a single mother who is a transgender woman like Jin Xing (Jin Xing adopted three children before she met her German husband). In China, it seems to be every woman's trajectory to marry a man, to get pregnant and give birth, and to raise a child and be a mother. People prefer to have their own children, and if they have to adopt a child, they prefer not to tell them that they were adopted. Ironically, Jin Xing has totally subverted the traditional belief, as so many audience members come to her for tips on child education. In this sense, she has normalized transgenderism, letting us know that she is morally, emotionally, and ethically equal, if not superior to, to everyone else. (Interview, 2016)

I also want to add that Jin Xing's courage and language to fight prejudice and hostility towards transgender people has been an integral part of her success. Her weibo, a Chinese equivalent to Twitter, has over 20 million followers. Not all the posts are friendly, and some can be very abusive. I have seen a rude post questioning her, "Hey, are you a man or a woman?" Jin Xing replies, "I'm a human."

Conclusion:

Bullying, systemic discrimination and familial disapproval of LGBT members, especially transgender people in the PRC, remain common nationwide. Very few academic programs in women's and gender studies are offered in higher education, and the silence of national and local governments to LGBT issues has hindered transgender awareness education from being implemented top down. The transgender celebrity, Jin Xing, has filled the lacunae. The celebrification of Jin also serves as the process of educating audience members and Internet users through dramatically shifting social and cultural attitudes towards transgender individuals. In this process, I have observed that transphobia, interrogation, acceptance, normalization and iconization of Jin are mediated through Jin's vigorous and aggressive self-personification.

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Sexuality and the body in web-based social networks

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Abstract:

Since early ages, the sexuality has been linked to the body. However, with the emergence of social networks it became texting based and released different identities and sexual fantasies. So, in what way did the virtual world contribute to the change of the representation of the body's sexual function from gender perspectives?

Following a diachronic and synchronic analysis of the virtual practices in different blogs and dating websites, we noticed that women consider the virtual world a way of rebellion and empowerment against men because women's sexuality is still a debating question in the real world.

Indeed, the absence of the body in digital transgresses the rules of the sexuality, allowing the redefinition the sexed roles and break the traditional identity constructions based on gender.

Key-words: Sexuality, Gender, Social networks, Body's sexual function, Virtual practices.

In an era where everything goes digital, web-based mediated encounters have involved humans into new forms of social conduct. For individuals, these new forms of sociability have enabled the simultaneous disclosure of one's identity on the one hand, and the stepwise uncovering of the other's, on the other hand. As such, they have given rise to occasions of intimacy to millions of strangers by breaking down the line holding the private and the public spheres apart.

As a matter of fact, the cyberspace is a place where the individual is constantly wrenched out of his/her perishable flesh and plunged into an immaterial existence that benefits more the 'soul' at the expense of the body¹. The cyberspace enables people to extend their personalities by making possible the sharing of attitudes, tastes, and interests, all online. More than that, the cyberspace allows its users to better understand themselves, and to make all sorts of emotional and phantasmagoric projections. It also makes possible the exploration of the individual's identity, his intimacy as well as that of others.

The externalization of individual features entails new processes of self-exposure, ones that go from traditional exposure governed by classic photographic conventions² (pictures of holidays, weddings, etc.), to downright and playful exhibitionism (thus they might constitute a break with standards of decency). From text to image then, the body remains an object that is at once present and absent when it comes to web-based interaction. What is witnessed here, as a result, is some new type of visualization and verbalization of bodies. The latter both explains the influence the imaginary can have on reality and which ushers to a powerful culture of the imaginary on the rise³. Considering this context, we entertain the hypothesis that, in the contemporary world, these processes fall within the new attempts of people to give free course to their sexualities that have been, for quite a long time, impeded by the very norms that govern their world.

The embracement of the virtual calls for serious reconsideration of the longstanding (and larger) normative frameworks. It calls, in addition, for rethinking of where of the boundary between the public and the private lies. Virtuality, in short, invites the re-questioning of the relationship between sexuality and the body. Admittedly, the latter has metamorphosized from a purely physical reality to a hidden fictive figure liberating the interplays of identities and sexual

¹ Le Breton D. (2001), *La délivrance du corps*, Revue des Sciences Sociales, n° 28, nouve@ux mondes?

² Granjon F. (2012), "Dévoilements numérique et demandes de reconnaissance", in J.Marquet & C.Janssen (éds), *lien social et internet dans l'espace privé*, Louvain-la-Neuve, Academia-Bruylant, p53.

³Järvinen-Tassopoulos, J. (2006), *Transmis, transporté, transcrit : le corps érotisé*, *Sociétés*, vol. n° 94, no. 4, pp. 105-110. available on: <http://www.cairn.info/revue-societes-2006-4-page-105.html>

fantasies. Given this, sexuality should not be understood as controlled only by physiologically conditioned impulses, dependent for their realization on the presence of the body in the first place; rather, sexuality is managed more through the technological devices that create the very images and experiences in the virtual world⁴. The visual erotic experience aims to transmit bodily sensations while at the same time preserve the physical distance that holds between bodies in the real world. A legitimate question in this regards is the following: what motivates a person to push to the background, if not to oblivion, a hitherto essential element of sexuality, namely, the body? Why is it that people seek more freedom for their impulses in the virtual world? Venturing further, can it be said that the virtual constitutes an outlet to a sort of phantasm that is non-normative?

The present article has as its objective the study of discourse on sexual identity, with the latter regarded as the most intimate of the intimate and vehicled by and in the digital world. To reach this goal, the it seeks to deconstruct, with the aim of grasping the significance of, the ways in which discourse practices are at once a challenge to, and an instrument in the service of, gender. A Legitimate pursuit then becomes one of understanding the extent to which the digital arena could be considered a time–space of resistance and subversion, and this quite apart from its ‘phantasmatic’ mission. The article is also a study of the ways the evolution of representations has affected the body in its sexuality dimension and, consequently, the virtual practices of the construction of masculine and feminine identities. In short then, studying sexuality in the digital elucidates its new relationships with the body. It is an attempt to understand the meanings individuals give to the bodies, the connections they entertain with them, and the changes they bring to those connections.

Sexuality and the *making* of bodies

Being a social construct, the representation of the body is closely linked to the social conditions of its owner. Briefly speaking, two important views are relevant here. The first considers the body a reflection of social structures that define its ‘bodiliness’. The second holds the opposite view; it is bodiliness that defines social conditions.

According to Le Breton (2008), French sociologist and anthropologist, the social representation of the body is different in each and every culture; this explains the different relationships humans have with their bodies. This latter view is supported by other scholars in the

⁴ Ibid.

19th century, like Marx and Villermé, who maintain that the body changes along social class and status. For them, it is social factors that shape it. Those in the opposite camp reject such view view. For example, Simmel argues that human beings choose how to mould their bodies and, as such, are responsible for the production of their qualities⁵.

There is a third way, however. Combining the two perspectives above, it can be said that the making of one's body places him/her under the inescapable obligation to conform to the normative expectations of society; but, at the same time, one continuously seeks fulfillment of one's desires and narcissistic fantasies. Out of the conflict between these two demands emerge virtual identities that do away with the physical body altogether, since they give birth to an electronic body which, in Le Breton's view (2001), attains perfection. Unconcerned by sex, age, or social membership, the electronic body moves in space and time without the perishable flesh constraining its movement. In this sense, according to Leary (1996), the cyberspace releases human being from "l'esclavage du corps"—enslavement *by* the body. Also for Leary, physical encounters are rendered unnecessary given that, in social networks, one witnesses a plurality of selves and a disengaging freedom to the body that enables it to disappear at any time. Whether in mundane or institutional context, people make it their choice to appear or disappear by maintaining a fuzzy boundary line between what to disclose and what not to disclose.

In short, the invasion of the digital, and especially social networks, succeeded in alternating one's understanding of one's body and, by implication, one's understanding of sexuality. The outcome is what Andrieu (2010) refers to as a transcorporation⁶ that results in the co-habitation of the biological body and the electronic one. The digital likewise calls into question the form of sexuality that, from time immemorial, was based solely on the biological body. As Le Breton (2006) puts it, "the placement of the body on-line, or signs that represent it, enables the virtualization of sexuality"⁷ (translation the author's). Nonetheless, a pertinent concern in this regard is to inquire whether social networks are a technological progress that enhances gender processes, or whether they subvert the latter's classic forms which, being time-honored, have reinforced inequalities based on gender.

⁵ Le Breton D. (2008), *La sociologie du corps*, Paris, PUF, Coll " Que sais-je?", p18.

⁶ Andrieu B. (2010), *Se "transcorporer". Vers une autotransformation de l'humain?*, La pensée de midi (n° 30), p 36.

⁷ Le Breton D. (2006), *La sexualité en l'absence du corps de l'autre : la cybersexualité* , Champ psychosomatique (n° 43), p. 25.

Sexuality through the prism of social networks

Social networks have launched people into a world where interaction and the sharing of intimacy are prioritized. Hence, cyberspace liberates its users from the old frameworks of sexual morality by offering a quite distinct form of sexuality, itself virtualized or established on a virtual relationship. More than ever, today's new communication technologies displace the centrality of one's 'flesh', in its relationships with the other, by extracting eroticism out of the body⁸. Such displacement has transformed sexuality into a text, an image, and an icon that, together with the sensory apparatus, excite the other's body without coming to touching it, or even seeing it sometimes⁹.

In fact, social networks have become a distinct place where individuals give free reign to their fantasies and disclose themselves to their partners with no fear of judgment. This form of self-disclosure nonetheless retains to itself a degree of concealment since the social network user can make known his/her desires without making known his/her identity. The virtualization of sexuality has thus resulted in obliterating the body by converting it into 'octets and bites'; and this in order to quench the distinctive sexual needs of social networkers, their curiosities, and sometimes even their urge to experiment. Hence, cypersexuality –or virtual sexuality– provides an environment that is admittedly fictive but considerably real as far as its function of stimulation, always real and pushing forward, can go. For instance, even in the absence of the body, a social networker is still able to sexually stimulate his/her partner by as simple a thing as self-caressing. A physical operation that previously and mandatorily required the physical presence of the body has thus become visual, auditory, or even just textual. Even if digital in nature, virtual social relations are then real in an important sense, for they still secure real sensations for a physically absent body.

Clearly, view has consequences for the way sexuality should be approached. Tackling the issue in the age of social networks necessarily requires serious reconsideration of the place the body-entity occupies in cybersexuality as well as its future. This entity, which for a very long time was the determining factor of sexual relations, social, ethnic, and religious membership has now become erased, so to speak, in a place where physical sexual encounters translate more and more to mental sexuality. The new form of sexuality undeniably re-questions the representations of the functions of the body and its effect on gender identity construction and gender social relations.

⁸ Le Breton D. (1999), *L'adieu au corps*, Paris, Métailié, p. 162.

⁹ Le Breton D. (2006), *La sexualité en l'absence du corps de l'autre : la cybersexualité* , Champ psychosomatique (n° 43), p. 24.

Methodology

The present article focuses on communication practices in the virtual world to study the way virtuality –and social networks more precisely– contributes to the changing representations of the body and the way these affect gender. Examining the why in the telematic construction of the body and sexual relations requires zooming in on subjects' practices in in the virtual world, specifically in such places as blogs and dating places. Being a world on its own, virtual practices are both synchronic and diachronic; hence, their study can only be achieved by using both synchronic and diachronic analytical methods appropriate for their examination.

Methodologically, such focus entailed the collection of a data corpus that include narratives, social networks and chat sites histories, data in users' profiles, comments users leave on publications in blogs; side by side with interviews conducted with clients of dating websites. For the latter, two websites were chosen: (www.skout.ma) and (www.tinder.ma). The techniques used to collect the corpus deserve some comments.

First, it is apparent, given the data collection sources, that a decision was made to opt for participant-observation as a researcher technique in order to promote a synergetic relationship with the field. It allowed the researcher a decent degree of familiarity with the research site in a way that enabled her to become integrated in the daily lives of her respondents for the period of the study. Participant-observation was a means used to grant the researcher access to the social realities of the web-users studied in an attempt to grasp social experience in its full force. At a ore concrete level, it was used as collection technique to gather data, both in the shape of discursive practices of web-users in chat rooms and in their responses in semi-structured interviews.

Second, concerning the interview, both thematic analysis and structural analysis were used. The choice of these approaches was justified by the fact that they allowed the researcher to engage participants' points of view by focusing on the meaning(s) interviewees themselves gave their practices. In turn, the study of participants' own points of views has its justification in that fact that the meaning, even significance, of discursive practices is not self-evident in an abstract sense. It is only in the intersection of context and discourse that meaning is reconstituted. The analysis in this article focuses on just such reconstitution.

Third, and following the implications of the methodological logic chosen, the investigation of virtual relationships involved the researcher in taking active part in them in order to fully appreciate their distinctive character. As it turned out, it appeared crucial, for such goal to be

achieved, to create personal online personal profiles, and engage in conversations therein in the hope of being well positioned in the research field. To that end, two false accounts were created, one for a female character and another for a male participant. Stepping in the shoes of a man and a woman was neither done for its own sake, nor for the sake of fun; but it was a serious attempt to try and experience, albeit in a vicarious way, what the respondents themselves experience. While keeping a reasonable degree of objectivity, the profiles were equally a window through which to see web-users' expectations from, and their reactions to, gender differences. Active participation was a technique to interact with other social networkers and web-users and tap on the different facts and meanings they give to their social actions and realities. At a larger order then, a participative approach allowed an optimal positioning of the researcher vis-à-vis the issues of concern to the people she studied.

Analysis and discussion

The analysis of the data corpus on the social representation of the body and its sexual functions in social networks –particularly in dating websites– made it possible to highlight some points that are central to the purposes of the present article. Three points are detailed below with a discussion of their import to the understanding of sexuality and the body in the on-line world.

Social networks: a place for temptation and seduction

The need to communicate –or to feel the chemistry with a partner– and the quest for a partner that satisfies one's desires, are among the major objectives that social networkers expect of virtual relationships. Indeed, users of social networks during chat seek to open discussions with partners that are likely to help them to forget their daily worries and shed the cares of the world. As one of the interviewees expressed it,

Chatting gives me the opportunity to escape the stress of everyday life and to create my own space of personal fulfillment either through discussions with my friends or the sharing of my desires and wishes in dating websites.

It can be noticed then that relationships of the kind the virtual world offers its inhabitants are for some of them the expression of a craving to socialize while avoiding the face-to-face

requirement of socialization. For them, the body becomes an optional given and an anthropological necessity they had rather do without.

The cyberspace is an attractive arena thanks to the multitude as well as diversity of its users. It is first and foremost a meeting-place based on the common interests of members of its community who share in a type of socialization that is both active and expressive. Understandably, the new ways of socialization are facilitated by instantaneous sharing of information and life experiences. Between the desire to meet the other and the constraints of everyday life, the remarks of one of the interviewees attest to the ease with which social networkers can forge relationships with the other no matter what their selection criteria of that other are.

In real life, it's very hard to find someone who matches my criteria. Looking for the right person would take a lot of my time and energy. With social networking, and more precisely dating websites, the search is made easier and the choice is very large. I can start chatting with whomever I want, whenever I want, and about almost anything without being too much in a dither about my social image.

The realization that the cyberspace is a place for a sort of socialization that allows its users self-fulfillment while seeking partners makes it an obligatory task to question, even rethink, the notion of seduction. The motive for such rethinking is that in real life, seduction is guided by totally different motivations. According to Feinberg (1996), seduction is the expression of specific needs—sexual interest in the other, gauge of attraction, or simply a pastime. It is based on signals such as body gestures and facial expressions. In the virtual world however, the signals of seduction are transformed into photos and text. It is for this reason that some authors maintain that the new textual nature of seduction has made it a much easier and a more playful task than is the case in face-to-face encounters (Whitty 2003). It simply leaves out models of beauty that are stereotypically ideal (Levine 2000). As conveyed by the words of one of the interviewees,

In social networks, all the standards can be transgressed even those established by society. I even take the liberty sometimes to flirt with a man instead of seducing him. I want to reverse the roles so that I can feel what men feel.

The statement above bespeaks a willingness to disrupt traditional social roles as regards the operation of seduction. Women seek *online* to break with the established social order by taking the initiative to actively flirt with men who, at the same time, merely seduce and wait for the opposite sex to take the first step. With that in mind, cyberspace then affects the ways people communicate

with and entice the partner. More likely than not, gender differences would go unnoticed as long as identities are virtual and, as a consequence, unbinding.

The disengagement and the protection of the body

Social networks remove dangers which might traditionally constitute a hurdle in the way of initiating social relations between men and women (Parks et Roberts, 1998). Among these, the danger that ensues from body contact is paramount. Online, relationships with the other verge on the angelic and sexuality is more and more danger-free. A state is created where the physical body gives way to a virtual one immune against criticism, harassment, or even sexually transmitted infections (STIs).

One of the interviewees said that she opted for cybersexuality as a means to preserve her physical virginity for her future husband. Cybersexuality becomes an alternative source of pleasure, and a harmless one for that matter, as long as there is no face-to-face meeting or contact. Against the claims of that interviewee, other respondents claim that their choice of cybersexuality is not driven by a desire to preserve virginity but, quite the opposite, it is a preventive method against STIs at a time risks of infection in due to body contact are quite high. This last view tallies with Le Breton's (2001), for whom cyberspace is a privileged site of STI-risk-free experimentation where everyone is in a quest for their own preferences, even for their own selves in the telematic mirror that tells them more each time they look at it.

One a more specific level, and for some social networkers, the recourse to cybersexuality is more of a means to overcome their handicaps that, in real life, deny them intimate relationships and, hence, exclude them from the game of seduction. Persons with a disability try, in the virtual world, to break away with the stereotypic social representations that usually equate 'ability' with 'normality'. Their task is facilitated given that the remoteness of the body in the virtual world entails a remoteness of the gaze of the other. Their attempts represent thus a successful escape from any negative social representation. Interestingly, such analysis supports other studies' conclusion to the effect that disabled web-users succeed, through social networks, in introducing new possibilities to their affective and sexual life (see for example (Céline Pireau, 2012)¹⁰.

¹⁰Pireau C. (2012), " La mise à distance des corps dans le cadre des rencontres médiatisées par internet: un élément facilitateur pour les personnes en situation de handicap physique", in J.Marquet & C.Janssen (eds), *lien social et internet dans l'espace privé*, Louvain-la-Neuve, Academia-Bruylant, p 105.

In all, the above statements indicate that, for networkers, behind the purposeful obliterating of the body hides a desire to protect it. In the absence of the body, in other words, virtual sexuality opens new horizons for a type of seduction that is based solely on the power of imagination. For it allows the enjoyment of sex relations and the prevention of any risk normally concomitant with them.

The enhancement of self-esteem

In social networks, the other marks their presence symbolically through pictures and icons sent, and texts written. The other is therefore paradoxically visible and invisible at the same time. The possibility to alternate between these two states allows social networks users to parameterize both their visibility and their identity traits by purposefully hiding on aspect and exhibiting another of their real identity. Relatedly, most of the respondents interviewed claim that online chat represents a veil which offers the possibility to publically show oneself while hiding personal information. This is possible, the claim goes, thanks to the ability to create an *online* narrative identity.

This latter works as a mask that is likely to boost self-confidence and, in doing so, arrests the working of normative processes normally related to gender representations. In the words of one of the interviewees,

My goal has never been dating per se. For me dating websites are more of a place that gives me the opportunity to discuss and talk about issues I cannot talk about in real life, and to make men suffer for as they make me suffer in real life. I like to seduce them, but, once they are hooked, I find great pleasure in having the upper hand.

Also, another interviewee adds,

Dating websites enabled me to regain confidence in myself, in my physical appearance, and in my ability to seduce even though I'm aware that many surfers are interested only in sexual contacts. For me, what is important was to check and gauge how attractive I am.

For some male interviewees, Dating websites allow them to evaluate their ability for, and success in, attracting female profiles. For others however, cyberspace is more a means where to

boost self-esteem and overcome shyness. This is corroborated by many studies on media and social ease (Caplan, 2003; Joinson, 2004; McKenna, Green & Gleason, 2002; Whitty, 2007; Whitty & Carr, 2006). The pure result is that cyberspace and the communicative practices within it are disrupting the paradigms of personal relationships with the other as well as with oneself.

Conclusion

The embracement of new communication technologies and social networks has undeniably resulted in changing social practices as well as socio-cultural representations, due to the fact that the traditional modes of thought are themselves changing by those technologies. A new community, called virtual, is in the process reshaping people's conception of social ties and their relationship with the body.

Being a social construct, the body is at the same time a personal construction whose owner can remodel at one's will, and in accordance with one's desires. Thus the body becomes an *alter ego*, a double in the "quest for provisional incarnation in order a leave behind a significant imprint of the self" (Le Breton, 1999) (translation's the author). This means, in other words, that the exploration of the self cannot be fully realized without stepping out of oneself in order to acquire an identity ephemeral in character, both of gender and of person (and both of which are malleable today). This preference for externalization causes social networker, who are in-and-out-body addicts, to see it as only an optional item, even a disappearing optional item for that matter. As for sexuality, which has for a long time been a synonymous with the body, it was accommodated to a textual mode that gives more freedom to sexual fantasies and identity processes. The stimulations this new sexuality provides help in the telematic construction of the body of the other. It is then necessarily a mental construction of the desired body. This way, the body finds itself inhabiting a virtual dimension that is nonetheless all the more real in its production of real bodily feelings in a virtual partner.

Following the trends indentified above, it can clearly be seen that, with the new social networks, different person have different reasons that motivate them to go online. The relationship of these motivations to their bodies is equally different. Some users 'narrativize' their bodies to evaluate its attractiveness to others and, consequently, develop their self-esteem together with self-confidence. Other users, on the other hand, rely on online relations to preserve and protect their biological bodies.

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Sodomy Laws, Same-Sex Marriage, and Human Rights in Contemporary India

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Abstract

Several erstwhile British colonies have retained sodomy laws even after their independence from the British Empire, for example, section 377 of the Indian Penal Code (IPC). The constitutionality of these laws have been often challenged. For example, the Delhi High Court in 2009 ruled that the use of section 377 to criminalize acts of consenting adults in private is a violation of the fundamental rights guaranteed by the Constitution of India and treating innocent people as unapprehended felons is by itself a violation of human rights. However, judicial decisions on such matters have been inconsistent, for example, the Supreme Court of India in 2013 set aside this landmark judgment and referred the matter to the parliament.

In the meantime, several jurisdictions have already given recognition to same-sex marriage as a result of popular vote, legislative action, or due to court orders. Activists and members of civil society following these developments have asked the question if decriminalization of homosexuality will inevitably lead to legal recognition of same-sex marriage. Also, popular support for decriminalization of homosexuality does not mean societies like India are currently ready to accept legal recognition of same-sex marriage. Further, we can also question if restricting marriage to only a couple, as opposed to relationships among multiple partners, is by itself a violation of constitutional rights, and this was actually mentioned in the oral hearings for *Obergefell v. Hodges*, the landmark case of the Supreme Court of United States that legalized same sex marriage nationwide.

While decriminalization of homosexuality and legal recognition of same sex marriage are two different issues, in this paper we examine the arguments based on biology, tradition, or religious freedom that have been used to justify differential treatment of gays and lesbians and make recommendations for the way forward.

Key words:

sodomy, same-sex marriage, sexual orientation, human rights, IPC 377

Sodomy Laws, Same-Sex Marriage, and Human Rights

Background:

In 2011, during the International Human Rights Day program in Geneva, Switzerland, US Secretary of State Hillary Clinton categorically stated that LGBT rights are human rights. In 2006, a distinguished group of international human rights experts outlined a set of principles relating to sexual orientation and gender identity (SOGI), which are now known as the Yogyakarta Principles. However, not all national or international conventions have given due importance to LGBT issues. The sustainable development goals (SDGs) adopted by the United Nations in August 2015 lacks explicit language to address how sexual orientation and gender identity relates to development (Mills, E.). While some countries like Brazil, Canada, and South Africa have specific constitutional provisions to protect discrimination on the grounds of sexual orientation and some nations like Netherlands and Romania have laws that prohibit discrimination based on sexual orientation, such legal protection does not exist in other jurisdictions (Human Rights Library). LGBT activists in India have undertaken a long legal struggle to fight against section 377 of Indian Penal Code (IPC), which is used to criminalize homosexual behavior. Recently, Indian society has also seen discussions and debates about same-sex marriage while the curative petition against section 377 is still pending with the Supreme Court.

Some of the key points in these debates are the importance of tradition and culture, the challenges in differentiating science from pseudoscience, the demarcation of roles of judiciary and legislature, the applicability of international law and relevance of foreign court judgments to our society. In this paper, I analyze the issue of criminalization of homosexuality and the issue of of same-sex marriage from the perspective of human rights.

Methods:

This paper is based on review of existing literature on the topic as well as personal insights gained about the topic though my work with Nirangal, an organization that works for human rights for marginalized communities. My current work has given me an opportunity to meet several eminent activists and community representatives from diverse backgrounds.

Review of Literature:

Like several other erstwhile British colonies, India retained sodomy laws, even after independence from the British Empire. Technically, IPC 377 criminalizes sexual intercourse against the order of nature. In practice, it is used to harass and discriminate against gay, lesbian, and transgender

communities (Lawyer's Collective). Even if arrests for breaking the law are very rare, treating innocent people as unapprehended felons is by itself a violation of human rights as observed by the Delhi High Court in deciding *Naz v. Government of NCT* in 2009. The judgment clearly stated that the use of section 377 to criminalize acts of consenting adults in private is a violation of the fundamental rights guaranteed by the Constitution of India. However, the Supreme Court of India in 2013 set aside this landmark judgment and ruled that judicial intervention is not required and the parliament is free to legislate on this matter. The Supreme Court dismissed review petitions, including one by the Government of India. However, it heard the curative petitions on the judgment in open court and has now referred them to a five-member constitutional bench.

While in India, there is still a debate about decriminalizing homosexuality, many others jurisdictions have not only accepted the right of individuals to engage in homosexual behavior but have also recognized same-sex marriage. Some have legalized same-sex marriage through a popular vote or through legislative action, while in others the legal recognition has come through judicial intervention. LGBT activists, other human rights activists, lawmakers, and civil society in India have been keenly following these developments. This has sparked a debate if decriminalization of homosexuality will inevitably lead to legal recognition of same-sex marriage. While there is popular support for decriminalization of homosexuality, or at least there is no strong opposition to it, the same cannot be said about recognition of same-sex marriage in India right now. This is demonstrated by the fact that the government of India welcomed the Delhi High Court judgment and even filed a review petition against the Supreme Court judgment of 2013 upholding the constitutionality of Section 377. Several political parties promised to repeal or amend Section 377 in their election manifestoes. Although, as of 2017, the current government has neither taken a clear stand in this issue, nor done anything to decriminalize homosexuality, in 2016, well-known Indian politician Sashi Tharoor from the Congress party tried to introduce a private member bill to amend Section 377 for the second time. However, no well-known politician in India has openly supported same-sex marriage.

Among the activist circles, there is a question about the need for state recognition of marriage and if restricting marriage to only a couple, as opposed to relationships among multiple partners, is by itself a violation of constitutional rights. If we allow couples to file income tax jointly, is there a rational basis for denying other alternative families similar facilities? *Lawrence v. Texas* was a landmark decision of the Supreme Court of United States that invalidated sodomy laws throughout the nation. Justice O'Connor held the opinion: "Moral disapproval of this group, like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal

Protection Clause” (The Right That Dares to Speak Its Name, 2009, p. 42). Justice Antonin Scalia dissented, accusing the judges who wrote the majority opinion of yielding to a homosexual agenda. He further argued that if the same principles are used to analyze state laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity, they would prove to be unsustainable. In 2015, the Supreme Court of United States legalized same-sex marriage throughout the nation by its decision on Obergefell v. Hodges. The question of polygamy was mentioned in the debates on this case, but the Court has not found the ban on polygamy unconstitutional.

All modern democratic societies, including India, have several constitutional safeguards to protect the fundamental rights of its people. The preamble to the Constitution of India guarantees everyone justice, liberty, and equality. So, the fact that a certain law or tradition has existed unchallenged over a period of time is not a valid argument for it to be allowed to continue if it infringes on fundamental rights. Slavery, racism, caste system, and several other inhuman practices could have been easily justified on the basis of tradition and established social norms. However, they were challenged because they are unconstitutional. Supreme Court of The United States observed that "history and traditions ... are the starting point but not in all cases the ending point" in identifying the rights that need to be protected by the court (The Future of the Court, PBS). The history of jurisprudence is replete with judgements in which the courts have expanded the definition of constitutional rights and shielded the citizens from the oppression and injustice perpetuated by elected governments. The Delhi High Court’s reading of “sexual orientation” into “sex” in the Constitution of India is in accordance with this global trend. In doing so, the court was not creating the new right but expanding the scope of coverage of the existing rights to individuals who were hitherto denied it.

Often states have tried to defend obviously unjust laws by using pseudoscience. The oral arguments made by the Assistant Attorney General of Virginia defending the state's antimiscegenation laws in the United States Supreme Court hearing on Loving v. Virginia relied heavily on a volume written by Dr. Albert I. Gordon, a Jewish rabbi, which was presented as a “definitive book on intermarriage” (Encyclopedia Virginia). However, the government attorneys selectively quoted from the work and ignored other studies that came to very different conclusions, including one undertaken by UNESCO. In a very interesting development, Additional Solicitor General of India told the Delhi High Court in the course of arguments on Naz v. Government of NCT that repealing 377 will lead to “spread of AIDS” while the National AIDS Control Organization (NACO) had submitted evidence to the contrary (The Right That Dares to Speak Its Name, 2009, p. 18) . Often

the judges might not have the time to peer through volumes of material submitted to them to determine the scientific truth. While there is “near unanimous medical and psychiatric opinion that homosexuality is not a disease or a disorder and is just another expression of human sexuality” pseudoscience is often used to defend sodomy laws (p. 37).

Worldwide, judicial intervention has played a key role in the advancement of human rights, including LGBT rights. In the oral arguments on *Obergefell v. Hodges* there was a discussion about how appropriate it is for the courts to decide on the issue of same-sex marriage. Lawyer Mary L. Bonauto rightly observed, “it's not about the Court versus the States. It's about the individual making the choice to marry and with whom to marry, or the government” (Oral Arguments, p. 27). A modern democracy works on a system of checks and balances and it is the responsibility of the court to protect the constitutional rights of its citizens. The LGBT community in India feels let down by the Supreme Court judgment on *Suresh Kumar Kousal Vs Naz*, but the fact that the court has referred the curative petitions to a five-member constitution bench gives us a ray of hope.

While the traditions, customs, and systems of law might vary from country to country, human rights are universal. In the arguments on *Naz Vs Government of NCT*, Justice A P Shaw asked why can't international law treaties which India has ratified be used to interpret Constitutional guarantees ((*The Right That Dares to Speak Its Name*, 2009, p. 73). The Supreme Court judgment on *Suresh Kumar Kousal Vs Naz* dismisses the arguments about international developments on LGBT issues. However, India is a signatory to the Universal Declaration of Human Rights and is bound to protect human rights for all its citizens, including gay, lesbian, and transgender persons.

While writing her opinion for *Lawrence v. Texas*, Justice O'Connor argued that a law denying same-sex couple the right to marry might pass the rational scrutiny as long as it was designed to "preserve the traditional institution of marriage" and not just homophobia of the state authorities (Wikipedia). Justice Kennedy explained the scope of the judgment:

The present case does not involve minors. It does not involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. It does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter (Wikipedia).

While the Delhi High Court judgement on Naz Vs Government of NCT was also only about decriminalization, one of the reasons Suresh Kumar Kousal appealed against it was that he believed it would lead to “a spate of gay marriages across the country” (The Right That Dares to Speak Its Name, 2009, p. 133). While it is true that the principles on which sodomy laws are struck down can and have been used to make a case for same-sex marriage, the issues are not exactly the same. The Supreme Court of India in its judgement on NALSA vs Union of India has mentioned that there should not be any discrimination based on sexual orientation or gender identity. It has also specifically stated that transgender persons should have the right to marriage. Further it has upheld the rights of individuals to self-identify their gender. However, the judges maintain that they wish to express no opinion on the constitutionality of Section IPC 377 as another division bench has spoken about it. This has raised a question that while it would be legal for a non-heterosexual couple to marry, it might not be legal for them to have sexual intercourse because that might be deemed to be “against the order of nature”. We hope the judgment on Suresh Kumar Kousal v. Naz would be overturned when it is examined by the constitutional bench of the Supreme Court.

Results:

From the review of literature and my experience as an activist, I would like to make the following observations:

1. The protection of constitutional rights cannot be limited to what was historically and traditionally followed.
2. LGBT rights are not new rights; they are an integral aspect of human rights.
3. Pseudoscience has often been used as a tool to defend laws that are evidently racist, homophobic, or transphobic. However, courts often have a tough time dealing with it merely because of the volume of literature presented to them.
4. Judicial intervention is often required to protect the constitutional rights of citizens.
5. Human rights are universal and should not vary from jurisdiction to jurisdiction. LGBT rights being an integral part of human rights should be upheld throughout the world.
6. Sodomy laws violate human rights and have no place in modern democratic societies.
7. States should not have the authority to restrict marriage based on race, caste, gender or other protected characteristics. However, there is also a need for debate on the role of state in marriages and the definition of marriage.

I would like to make the following recommendations:

1. Universities, government departments, non-governmental organizations (NGOs), and activists need to undertake more studies on SOGI issues from the perspective of human rights.
2. We need to take steps to avoid getting swayed by pseudoscience especially when it comes to issues like gender and sexuality in which strong personal biases exist even among qualified scholars.
3. There is no one ultimate understanding of human rights. We need to continue to have debates and discussions on issues like the changing definition of marriage in our society. Universities should promote a culture of openness and scientific inquiry and serve as birthplace of ideas for a better society.

Conclusions:

The issue of decriminalization of homosexuality is not necessarily the same as the question of legal recognition of same sex marriage. However, what is common to both the debates is the attempts to justify differential treatment of gays and lesbians based on arguments about biology, tradition, or religious freedom. When we have accepted that restricting a person's right to marry or be in a relationship based on a person's race or caste is a violation of human rights, there is no rational basis for not applying the same argument when it comes to sexual orientation and gender identity (SOGI). The right to privacy, liberty, and equality should be protected for everyone. LGBT rights are human rights.

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