

Legal Opinion

Justice Krishna Narayan
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Facts:

This book contains explicit photographs of castrated eunuchs' urinary organs etc. While the avowed intent of the book is dissemination of information of a purely educative nature, it is felt that a legal opinion may be in order about whether such photographs can be published in a book that is intended for sale to the general public and meant for family readership, with the objective to create awareness about this class among the general public.

Query:

The moot point raised in law is “Does the matter arouse prurient interest designed to titillate or otherwise present it in an obscene and offending manner?”

Findings:

It is a privilege to have witnessed the attempt of Dr Piyush Saxena to address a heretofore untouched

aspect of human life. A journey of a thousand miles begins with a single step. This is probably the first time that such material and photographs have been made available to the public to obtain knowledge about a subject that arouses much curiosity but has hardly any information available.

No one belongs to the class of eunuchs by her parents' choice. It is generally a physical defect or malformation at birth. All parents are at risk of having a baby with a birth defect, regardless of age, caste, creed, income or residence. Children with the following birth defects are fairly common:

1. Congenital malformations or dysmorphology-

These are physical defects present in a baby at birth, irrespective of whether the defect is caused by a genetic factor or by prenatal events that are not genetic. In a malformation, the development of a structure is arrested, delayed or misdirected early in embryonic life and the detrimental effect is permanent. Congenital malformations can involve many different organs including the brain, heart, lungs, liver, bones, intestinal tract and even complete body parts, such as hands or legs.

2. Congenital anomalies- A congenital anomaly may be viewed as a physical, metabolic or anatomic deviation from the normal pattern of development that is apparent at birth or detected during the first year of life. Under this definition, Mendelian genetic disorders (e.g., phenylketonuria), chromosomal abnormalities (e.g., Down syndrome), tumours,

infections (e.g., rubella, toxoplasmosis, herpes virus, cytomegalovirus, HIV and syphilis), exposure to teratogenic agents (e.g., cocaine, tobacco or alcohol), maternal disease (e.g., maternally transmitted autoantibodies, phenylketonuria) and pure bad luck or accident (e.g., a twisted umbilical cord) can all contribute to the development of a congenital anomaly.

3. **Congenital deformations-** These include a broad range of physical abnormalities existing from birth, although some, such as scoliosis, may not manifest until later in life. The most common are craniofacial deformities, such as cleft lip or palate and skeletal deformities, such as clubfoot or spina bifida. Congenital abnormalities are best thought of as chronic illnesses.

4. **Ambiguous genitalia** - Ambiguous genitalia is a birth defect where the outer genitals do not have the typical appearance of either a boy or a girl. Eunuchs are nothing but children born with deformity or the partial or total absence of so-called sex organs. They have no penis, vagina or uterus or only rudimentary ones. This is a congenital deformity and nobody knows about this at birth or in some cases even up to puberty when outward physical characteristics are female but with the presence of primary amenorrhea (no menses). Being devoid of sex is in itself a malady which only the victim can realise. To add insult to injury is the social stigma attached to them throughout recorded history.

The author asked me, “Which one of these four is the most dreadful?” this is akin to posing a question regarding whether it is better to be deaf than dumb? I have no credible answer, since it is impossible to quantify the suffering and anguish borne by those who are afflicted by such conditions. I leave it to the readers to draw their own conclusions.

It is impossible to find a physically perfect individual. There are always some discrepancies in vision, hearing, respiration, digestion etc. Even in a so-called ‘normal’ human, all these activities are often not at ‘normal’ levels, e.g. normal eyesight is an abnormality and rather rare.

People are generally sympathetic towards such people. We can find jobs for the vision impaired and call such people ‘differently abled’ but sexual disability does not receive equal consideration or compassion. Why despise the eunuch then? Parents disown them under social pressure and society itself ridicules them as *hijra*, *chakka*, *ali*, *mamu*, *nau number*, *6 number*, *gud* etc. Eunuchs have no progeny to share their weakness much less the misery. The stigma of a barren woman is not unknown and the ostracism faced by eunuchs is far greater.

There is an order of the High Court, Delhi, about Section 377 IPC, validating the rights of homosexual people. That right has been denied to eunuchs until now, simply because their disability was attempted to be concealed and they don’t have a voice to raise their issues. It is time that we brought them into the mainstream of life.

Argument:

Article 19 of the Indian Constitution provides: Protection of certain rights regarding freedom of speech etc.

(1) (a) All citizens shall have the right to freedom of speech and expression (subject to certain conditions).

The opinion needs to take into account, the target readers of the book and their level of understanding of the subject matter under consideration, as also the probable consequences of the material contained therein. The intention of this book, as may be discerned from the general content and language, is not to appeal to any base instincts and extraction of stray material, viewed in isolation is insufficient for attributing any interests contrary to the admitted intent of provision of material of an informative and educational nature. In this book, the material in question (photographs) is relevant to the description of the subject matter and necessary for gaining a thorough understanding of eunuchs, their physiology and their lifestyle. They have to be seen in context of the entire passage and not in isolation.

There may be an impression that the field covered, being related to sex, might be obscene in nature. However, exactly the reverse is true. Eunuchs are devoid of sex organs and the objective of the book does not comprise even corrupt, what to say of lascivious, prurient, deprave or even indecent, much less obscene intentions. All these basically revolve around sex or the excitement of lust. The book deals with the absence (or lack) of sex. It may evoke sympathy for the person concerned but not lust. There is a difference between sexual organs like penis and vagina and urinary organs

like urethra. Though the alimentary, genital and urinary systems are physically close in location, they are independent and it is only in males that the urinary and genital systems are parts of the same organ in the end.

Opinion:

Many schools now impart sex education from std. VII onwards. A few illustrations by way of explanation of the subject matter or to provide better information will be more for education and not for depravity.

Therefore, on viewing the book and its contents as a whole, "The subject matter referred to above falls under the exception of Section 292 (2) (a) of the Indian Penal code 1872, along with Section 4 of The Indecent Representation Of Women (Prohibition) Act, 1986." The publication of this book is therefore justified as being for public good on the ground that such books and the photographs in question are in the interest of science and learning.



Krishna Narayan
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