

Justice Krishna Narayan
(Retd. Judge, High Court)
SI - 1, Shastri Nagar
Ghaziabad 201002 U.P.

Legal Opinion¹

Facts:

This book contains explicit photographs of eunuchs' urethras 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.

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

Possibly no one belongs to this class by his or his parents' choice. It is generally a physical defect 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

¹ (Extract of the detailed legal opinion of a High Court Judge – for full details visit website)

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 effect is permanent. Congenital malformations can involve many different organs including the brain, heart, lungs, liver, bones, and intestinal tract. These defects can occur for many reasons including inherited (genetic) conditions, toxic exposure of the foetus (for example, to alcohol), birth injury and, in many cases, for unknown reasons.

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 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 for centuries or even earlier when they became a freak of nature.

The author asked me which one of these four is the most dreadful. I have no answer. I leave it to the readers to decide.

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. Why despise the eunuch then? They are imperfect in a particular area but that is not their fault. Parents disown them under societal pressure and society itself ridicules them as *hijra, chakka, ali, mamu, nau number, 6 number, gud, gandhu* etc. (see page _____). 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. We can find jobs for the vision impaired and call such people 'differently abled' but sexual disability does not receive equal consideration or compassion.

India is a welfare state and every citizen is entitled to a certain level of protection and right of progress. 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. If we cannot give them what nature has denied, we or the state should at least try to give them more opportunities in all walks of life. They are also human beings except that they are incompetent in procreation. Let us not despise or mock them. As the testimony of Salma (one of the 14 lakh eunuchs in India) concludes, a one rupee coin may save her from a cruel evening (see page _____).

I hope that this work will help the cause of eunuchs in general.

Argument:

Article 19 of the Indian Constitution provides

Protection of certain rights regarding freedom of speech etc

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

The opinion needs to take into consideration the target reader group of the book and their level of understanding of the subject matter, as also the probable consequences of the material contained therein, as evident in various case citations. 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 from this book, 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 should 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:

Most 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 and 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 book and the photographs in question are in the interest of science and learning.