

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**  
(Special Original Jurisdiction)

W.P. (C). No.

OF 2021

Queerythm and another

: Petitioners

National Medical Commission

and others

: Respondents

**INDEX**

Sl. No	Particulars	Page Numbers
1.	<b>Synopsis</b>	
2.	<b>Writ Petition</b>	
3.	<b>Affidavit</b>	
4.	<b>Exhibit.P1</b>	copy of the registration certificate dated 18.05.2017 issued by Registrar of Societies, Thiruvananthapuram of 1 <sup>st</sup> petitioner
5.	<b>Exhibit.P1 (a)</b>	English translation of the registration certificate dated 18.05.2017 issued by Registrar of Societies, Thiruvananthapuram of 1 <sup>st</sup> petitioner
6.	<b>Exhibit.P2</b>	copy of the registration certificate dated 25.04.2015 issued by District registrar and registrar of societies; Malappuram of 2 <sup>nd</sup> petitioner
7.	<b>Exhibit.P2 (a)</b>	English translation of registration certificate dated 25.04.2015 issued by District registrar and registrar of societies; Malappuram of 2 <sup>nd</sup> petitioner
8.	<b>Exhibit.P3.</b>	copy of the table prepared by the petitioner organizations in regard to the existing queer phobic medical textbooks
9.	<b>Exhibit.P4</b>	Copy of the relevant part of Volume1 of the curriculum dealing with "Forensic medicine including Toxicology " vide page 236, Module No. FM3.16 labels homosexuality and lesbianism under

		un-natural sexual offence, sexual perversion and paraphilia	
10.	<b>Exhibit.P5</b>	Copy of the relevant part of Volume two of the curriculum on "Psychiatry" vide page 215, Module No.FM3.17	
11.	<b>Exhibit P6</b>	Copy of the relevant part Shaw's Textbook of Gynecology,16 <sup>th</sup> edition	
12.	<b>Exhibit.P7</b>	copy of the relevant portions of the textbook Forensic Medicine and Toxicology authored by Dr. PC Ignatius	
13.	<b>Exhibit P8</b>	Copy of the relevant pages of the textbook GHAI Essential Pediatrics	
14.	<b>Exhibit P9</b>	copy of the relevant pages of the textbook Review of Forensic Medicine & Toxicology by Gautam Biswas	
15.	<b>Exhibit P10</b>	copy of the relevant pages of the textbook Forensic Medicine & Toxicology Principles and Practice by Krishnan Vij, 5th edition	
16.	<b>Exhibit P11</b>	copy of the relevant pages of the textbook Forensic medicine & Toxicology for MBBS by Anil Aggrawal, 1st edition	
17.	<b>Exhibit P12</b>	copy of the relevant pages of the textbook Essentials of Forensic Medicine & Toxicology by K S N Reddy, 33rd edition	
18.	<b>Exhibit P13</b>	Copy of email representation dated 09.06.2021 submitted by the petitioner before the 1st,2nd,3rd and 7th respondents	
19.	<b>Exhibit P14</b>	Copy of email representation dated 10.06.2021 submitted by the petitioner before the 4th, 5 <sup>th</sup> and 6th respondents	

Dated this the 24<sup>th</sup> day of August 2021

Counsel for the petitioners

**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**  
(Special Original Jurisdiction)

W.P. (C). No.

OF 2021

Queerythm and another

: Petitioners

National Medical Commission

and others

: Respondents

SYNOPSIS

**A. Brief Facts**

1. The subject matter of the writ petition is to expose the infringement on the fundamental and constitutional rights of the sexual minority group of Lesbian, Gay, Bi-sexual, Transgender commonly referred as LGBTQ community (hereinafter referred as Queer community for short). The Queer community is aggrieved by the discriminatory remarks and inhuman references used in the medical text books prescribed for Medical Courses in India which stereotypes the Queer community's sexual or gender identities as an offence, mental disorder or perversion. Such references are made in the text books despite the fact that the queer community's rights are recognized by the Supreme Court of India and decriminalized homosexual sex between consenting adults. Such remarks stereotyping the Queer community in an inhuman way infringes their right to have dignified life guaranteed under Article 21 of Constitution of India and also discriminates the queer community from the social order thereby violate Article 14 of Constitution of India. Hence the writ Petition.

2. The petitioners are registered non profit organizations and has been providing social welfare services in particular to the marginalized communities, including gender and sexual minorities.
3. The petitioner organizations on behalf of the queer community represented (Exhibit P13 and P14) before the respondents to revise the text books and to cure the disability committed against the queer community, but was not responded till this date.
4. Hence the writ petition

**B. Dates and events**

	Date	Event
1.	09.06.2021	Representation dated submitted by the petitioners before the 1st,2nd,3rd and 7th respondents
2.	10.06.2021	Representation dated submitted by the petitioners before the 4th, 5 <sup>th</sup> and 6th respondents

**C. Statutes Cited**

1. Constitution of India
2. Transgender Persons (Protection of Rights) Act, 2019
3. National Medical Commission Act,2019

**D. Judgments cited**

1. National Legal Service Authority vs Union Of India AIR 2014 SC 1863
2. Navtej Singh Johar v. Union of India (2018) 10 SCC 1

Dated this the 24<sup>th</sup> day of August 2021

Counsel for the petitioners

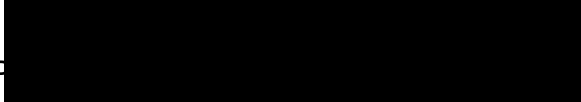
**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

(Special Original Jurisdiction)

W.P. (C). No.

OF 2021

**PETITIONERS:**

1. Queerythm,(Reg.No.TVM/TC/461/2017) (Non-Profit Organization)  
Queerythm LGBTIQ Community Kerala, Artline, PRRAP 110 (2) Kumbalapally  
lane, Aksharaveedhi, Pettah pin 695024, Thiruvananthapuram,  
Represented by its Secretary Syama S Prabha
2. Dhisha, (Reg. No. MPM/CA/294/2015), (Non-Profit Organization) Janasevana  
Kendram, Thokkampara, GRHS Road, Kottakkal, Malappuram – 676 503.,  
Represented by its President Dinu K,,   
Residing at DivyaNivas, Farook College P

**Vs.**

**RESPONDENTS:**

1. National Medical Commission,  
Pocket-14, Sector-8 ,Dwarka Phase-1, New Delhi- 110077  
Represented by its Chairman
2. Under - Graduate Medical Education Board,  
Pocket-14, Sector-8, Dwarka Phase-1, New Delhi- 110077  
Represented by its President
3. Union of India,  
Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi-110011  
Represented by its Principal Secretary
4. Kerala University of Health Sciences,  
Medical College P.O, Thrissur. Kerala 680596, Represented by its Registrar

5. Directorate of Medical Education  
Medical College P.O, Thiruvananthapuram-695011,  
Represented by its Director
  
6. State of Kerala  
Department of Health and Family Welfare Department, 6th Floor, Secretariat  
Annexe-II, Government Secretariat Thiruvananthapuram – 695001  
Represented by its Secretary
  
7. University Grants Commission (UGC),  
Bahadur Shah Zafar Marg, New Delhi-110002, Represented by its Secretary

**Writ Petition filed under Article 226 of the Constitution of India.**

Address for Service: - All notices and other processes on the petitioner and on the respondents may be served at their respective addresses furnished above. Petitioner may be served with such notices etc. at the address of their counsel- M/s **Legith T. Kottakkal** and **Dhanuja M.S** Advocates, B1, First Floor, MC Building, Valavi Road, Ernakulam, Kochi-682018.

**STATEMENT OF FACTS**

1. The petitioners are non profit organizations involved in the social welfare services in particular to the marginalized communities, including gender and sexual minorities. The subject matter of the writ petition is to expose the infringement on the fundamental and constitutional rights of the sexual minority group of Lesbian, Gay, Bi-sexual, Transgender commonly referred as LGBTQ community (hereinafter referred as Queer community for short). The Queer community is aggrieved by the discriminatory remarks and inhuman references used in the medical text books prescribed for Medical Courses in India which stereotypes the Queer community's sexual or gender identities as an offence, mental disorder or perversion. Such

references are made in the text books despite the fact that the queer community's rights are recognized by the Supreme Court of India and decriminalized homosexual sex between consenting adults. Such remarks stereotyping the Queer community in an inhuman way infringes their right to have dignified life guaranteed under Article 21 of Constitution of India and also discriminates the queer community from the social order thereby violate Article 14 of Constitution of India.

2. The 1<sup>st</sup> petitioner Queerthym and 2<sup>nd</sup> petitioner Dhish are non-profit organizations. Queerthym, the 1<sup>st</sup> petitioner herein is an organization completely run by the members of queer community and works for visibility, acceptance and empowerment of queer community. A true copy of the registration certificate dated 18.05.2017 issued by Registrar of Societies, Thiruvananthapuram is produced herewith and marked as **EXHIBIT P1**. English translation of Exhibit P1 is produced herewith and marked as **Exhibit P1 (a)**. The Petitioners herein is espousing a cause which has severe repercussions to the dignified life of the queer community.
3. The 2<sup>nd</sup> petitioner herein, is an organization, registered under the Societies Registration Act, 1860. The 2<sup>nd</sup> petitioner has been providing social welfare services in particular to the marginalized communities, including gender and sexual minorities, for the past seven years. The organization has members from queer community both in the executive committee and as volunteers. A true copy of the registration certificate dated 25.04.2015 issued by District registrar and registrar of societies; Malappuram is produced herewith and marked as **Exhibit P2**. English translation of Exhibit P2 is produced herewith and marked as **Exhibit P2 (a)**

4. It is respectfully submitted that the subject matter of the writ petition is to expose the pain and agony faced by the Queer community due to the references used in the medical text books prescribed for Medical Courses in India which stereotypes the Queer community's sexual or gender identities as an offence, mental disorder or perversion. The volunteers of the queer community who are engaged with the petitioners and are pursuing their UG medical education had expressed the pain and agony of studying the textbooks which stereotypes their sexual or gender identities as an offence, mental disorder or perversion. This writ petition is filed to seek remedy against the Queer Phobia contained in the medical text books.
5. It is respectfully submitted that during the internal meetings of the petitioner organizations the volunteers of the queer community who are pursuing their UG medical education had expressed the pain and agony of studying the textbooks which stereotypes their sexual or gender identities as an offence, mental disorder or perversion. Further in the on reach programs, while acting as resource persons for gender sensitization programme in the different medical colleges under the Kerela University of Health Sciences, (4th respondent university) the executive members of the petitioner organizations had occasions to interact with medical students from queer community. While so, the students had pointed out that the medical textbooks studied by them are highly queer phobic. They also pointed out the instances wherein they were victimized and bullied by peer groups for expressing their gender or sexual orientations. Due to this victimization and fear of being victimized students from the queer community pursuing medical education are unable to reveal their identity and come out before this honorable court.



6. It is respectfully submitted that the petitioner organizations are representing the pain and agony of a member of queer community who has to face while pursuing the medical course. Further the matter implies a public concern over the access of queer community members to a dignified health care facility. Petitioners therefore has the necessary *locus standi* to file this writ petition *inter alia* challenging the curriculum and contents of the medical textbooks.
7. The research wing of the petitioner organizations, thereupon, taking up the cause of the students, made a detailed research among the medical textbooks prescribed for studies and references under the 4<sup>th</sup>respondent herein. The petitioner organizations thereby came to understand that many text books under the 4<sup>th</sup>respondent university is perpetuating queer phobia, providing unscientific data and contains inhuman, derogatory remarks against the transgender community and sexual minorities. This directly amounts to a discriminatory social attitude and contributes to the stigmatisation faced by the gender and sexual minorities. A copy of the table prepared by the petitioner organizations in regard to the existing queer phobic medical textbooks are produced herewith and marked as **Exhibit P3.**
8. It is respectfully submitted that the Honorable Supreme Court of India has recognized Transgender as a Gender Identity in National Legal Service Authority vs Union Of India AIR 2014 SC 1863 and legalized consensual homosexuality between adults in Navtej Singh Johar v. Union of India (2018) 10 SCC 1. The parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred as Act 40 OF 2019) recognizing their rights and to provide for protection of rights of transgender persons and their welfare. The text books

mentioned above and the curriculum is not modified on the lines of the development of law and social changes.

9. It is submitted that the Medical Commission of India, the 1<sup>st</sup> respondent herein is the regulatory body for medical education in India, formed by the National Medical Commission Act, 2019 (hereinafter referred as Act 30 of 2019). The aforementioned textbooks are recommended as reference textbooks as per the revised UG curriculum for medical education by the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent herein is an autonomous body under the 1<sup>st</sup> respondent having been vested with the function under Section 24 of Act 30 of 2019 to determine standards of medical education at undergraduate level and oversee all aspects relating thereto, to develop competency based dynamic curriculum at undergraduate level. The 1<sup>st</sup> and 2<sup>nd</sup> respondents paid no attention to the law laid down by the Apex Court in above decisions and failed to revise the curriculum and text books in the lines of the decisions of Apex court.
10. It is respectfully submitted that the curriculum formulated by the 1<sup>st</sup> and 2<sup>nd</sup> respondent reveals the inhumane portrayal of the gender and sexual minorities. Volume one of the curriculum dealing with "Forensic medicine including Toxicology" vide page 236, Module No. FM3.16 labels homosexuality and lesbianism under un-natural sexual offence, sexual perversion and paraphilia. Further Module No. FM3.17 aims at describing and discussing transvestism as a sexual perversion. The true copy of the relevant portion of Volume 1 of the curriculum is produced as **EXHIBIT P4**.
11. Volume two of the curriculum on "Psychiatry" vide page 215, Module No. FM3.17 also categorizes transvestism as a sexual perversion. Further under the topic

“Psychosexual and gender identity disorders” homosexuality is taught as a Sexual Disorder and Transgenderism under Gender Identity Disorder. The true copy of the relevant portion of Volume 2 of the curriculum is produced as **EXHIBIT P5.**

12. A close perusal of the text books mentioned in the Exhibit P3 table reveals the amount of rage against the gender and sexual minorities. In Shaw’s Textbook of Gynecology, 16<sup>th</sup> edition under the title “Psychological sex” stipulates that Homosexuality, transvestism and transexuality are abnormal sexual behaviors. Transexuality is defined as a disturbance of gender identity. Further the textbook states that the people falling under the aforementioned identities are psychosexual patients and need careful handling and a lot of counseling before taking and accepting the individual’s decisions. A true copy of the relevant portions of the textbook is produced herewith and marked as **EXHIBIT P6.**

13. Forensic Medicine and Toxicology, vide Page no.315 states that Lesbianism is a perversion. The text book also stereotype that many lesbians are muscular in type possibly because of endocrine disturbances and are indifferent to opposite sex. Furthermore it degrades the lesbians by portraying that Lesbians as morbidly jealous of one another and, sometimes, may culminate in murder or suicide. Page no. 313 of the same textbook under the title “ Sodomomy” portrays Hijaras and Zenanas as habitual passive agents. Homosexuality is portrayed as a relationship which leads to sexual jealousy. Further to portray the Homosexuals as antisocial, the book states that among Homosexuals some are interested in Children (pedophilia). In Page No.316 under the title “Transvestism or Eonism”, Transvestism is labeled as a sexual perversion where sexual satisfaction is obtained by wearing clothes of the obtained sex. Further the textbook wrongfully states that

Transvestism may be associated with sadomasochism and sexual asphyxia. A true copy of the relevant portions of the textbook Forensic Medicine and Toxicology authored by Dr. PC Ignatius are produced herewith and marked as **EXHIBIT P7.**

14. The textbook on GHAI Essential Pediatrics vide Page no.536 classifies Intersex as a Disorder of Sex development. It states that Disorders of sex development (DSD) previously termed as intersex disorders, are rare but constitute a medical, social and psychological emergency. Page no.539 advocates for management of the intersex identities through parental counseling regarding decision about sex of rearing, timing of surgical correction and gonadectomy. In the same page under the title "Discussion about Gender of rearing" states that Gender assignment should depend upon the potential for future sexual and reproductive functions, anatomical status, feasibility of reconstructive surgery and social acceptance and norms. A true copy of the relevant pages of the textbook GHAI Essential Pediatrics are produced herewith and marked as **EXHIBIT P8.**

15. Review of Forensic Medicine & Toxicology by Gautam Biswas, 3rd edition categorizes homosexuality as a Sexual Offence. In Page no.391 under the title "Medico-legal aspects" it is wrongfully stated that Both active and passive partners are guilty of the offence under section 377 IPC even if the act has been committed with consent. Further the textbook states about the lesbian community that :

*"Many lesbians are masculine in type, possibly due to the endocrine disturbances and are indifferent towards men Lesbians are morbidly jealous of one another when rejected may commit Homicide, suicide or both .It is usually indulged by woman who have repulsion for men or who suffer from Nymphomania".*

A true copy of the relevant pages of the textbook Review of Forensic Medicine & Toxicology by Gautam Biswas is produced herewith and marked as **EXHIBIT P9.**

16. Textbook of Forensic Medicine & Toxicology Principles and Practice by Krishnan Vij, 5th edition vide Page no.320 reads thus:

*A homosexual component exists in everybody but it varies quantitatively in different individuals and also varies at different epochs of life. The condition may be due to arrested development of life. In hostels, prisons, Military Barracks etc this may be seen commonly where the boys or prisoners may act alternatively as passive agents for sexual gratification. There is a class of people of India known as eunuchs, whose main means of living is passive pederasty. They are therefore known as male prostitutes. Among them there are two groups – The Hijaras and the Zenanas. The Hijaras add to their tribe by recruiting boys and castrating them. On healing, the scar invaginates and their external genitals therefore look like those of females on a cursory observation. Being castrated before puberty they develop feminine characters owing to loss of influence of male hormones. Consequently they possess feminine voice, feminine type of distribution of fat and hair and develop some breasts. They dress like women, wear ornaments and adopt female tastes and habits. The Zenanas live separately and their genitals are intact.*

A true copy of the relevant pages of the textbook Forensic Medicine & Toxicology Principles and Practice by Krishnan Vij, 5th edition are produced herewith and marked as **EXHIBIT P10.**

17. Forensic medicine & Toxicology for MBBS by Anil Aggrawal, 1st edition states Hijras Zenanas as Male prostitutes.

*In India some eunuchs act as male prostitutes to earn livelihood. They act as passive agents in sodomy. They grow long hair, wear lipsticks and female ornaments, dress like women and develop mannerisms similar to women. They cannot offer vaginal intercourse. Mostly they would satisfy customers by auxiliary, intercrural or oral intercourse or masturbation.*

Further the book classifies Hijras as males who have been castrated, (Removal of testis) and emasculated before puberty. The text passes derogatory remark about this transgender community by stating that, they keep adding to their tribes by abducting young boys and castrating them .

*When the wound heals, the scar invaginates and comes to resemble those of females, although the depth is not that of normal vagina..Being castrated before puberty, female characteristics such as female voice, feminine distribution of fat and hair and development of breast are common. They intentionally wear feminine attire and behave in a feminine way in order to act as perfect female substitute for prostitution. But they are biological males., their buccal smears shows male sex chromatins . Zenana are males whose genitals are intact. They simply wear female attire and behave like females*

A true copy of the relevant pages of the textbook Forensic medicine & Toxicology for MBBS by Anil Aggrawal, 1st edition are produced herewith and marked as **EXHIBIT P11.**

18. Essentials of Forensic Medicine & Toxicology by K S N Reddy, 33rd edition vide page no. 427 states homosexuality as an Unnatural offence. Further the book

states that false charges may be made for black mail and men may be tricked into homosexual relationships by men disabusing as women. A true copy of the relevant pages of the textbook Essentials of Forensic Medicine & Toxicology by K S N Reddy, 33rd edition are produced herewith and marked as **EXHIBIT P12.**

19. It is respectfully submitted that in Navtej Singh Johar v. Union of India (2018) 10 SCC 1 the Hon'ble Supreme Court observed that the American psychiatrist association (APA) has declassified homosexuality as a mental illness in its 2nd edition of Diagnostic & Statistical Manual of Mental Disorders (DSM) published in 1973 and World Health Organization removed it from its 10th revision of International Classification of Diseases (ICD) in 1990.

20. It is respectfully submitted that the curriculum and text books mentioned from Exhibit P3 to P12 is hereinafter collectively referred as "medical texts" for sake of convenience and brevity. The medical texts are not revised by the 1<sup>st</sup> and 2<sup>nd</sup> respondent. They are bound to revise the curriculum and to make the medical text books upto date. The decisions of Supreme Court and the provisions of Act 40 of 2019 which recognizes the rights of queer community and recognition of transgender as third gender need to be taken into account while revising the medical text books. The necessity to expunge the adverse remarks made against the queer community is manifold

- a. The medical text remarks gives wrong impression and wrong message to the society at large and the stigma towards the queer community still continues and thereby the queer community is discriminated in social life.
- b. The medical textbooks are highly queer phobic.

- c. The medical students who are the doctors tomorrow are studying wrong information which is very fatal to the society.
- d. The remarks in the text books are derogatory and is against the law laid down by the Apex Court and the Act 40 of 2019.
- e. The students of queer community pursuing medical were victimized and bullied by peer groups for expressing their gender or sexual orientations.
- f. The remarks contained in the medical text books is perpetuating queer phobia, providing unscientific data and contains inhuman, derogatory remarks against the transgender community and sexual minorities. This directly amounts to a discriminatory social attitude and contributes to the stigmatization faced by the gender and sexual minorities.

21. Upon understanding the severe impact of the aforementioned textbooks on a very marginalized community. The petitioner organizations submitted a representation before the 1st, 2nd, 3rd and 7th respondents on 09.06.2021. A true copy of the representation is submitted herewith and marked as **EXHIBIT P13.** The petitioner organizations further submitted a representation before the 4th, 5<sup>th</sup> and 6th respondents on 10.06.2021. A true copy of the representation is submitted herewith and marked as **EXHIBIT P14.** However no response has been received till date.

22. It is respectfully submitted that the respondents 1 to 6 are bound to revise the remarks contained in the medical text books which is perpetuating queer phobia, providing unscientific data and contains inhuman, derogatory remarks against the



transgender community and sexual minorities. The derogatory marks in medical text books are in violation of Article 14, 17 and 21 of Constitution of India, contradictory to the decisions of Hon'ble Supreme Court of India and against the provisions of Act 40 of 2019.

23. It is respectfully submitted that due to the inaction on the part of the respondents 1 to 6 the petitioner has no other remedy other than to approach this Honorable Court and invoke its extraordinary original jurisdiction conferred under Article 226 of the Constitution of India on the following

**GROUNDS**

A. The medical text books is perpetuating queer phobia, providing unscientific data and contains inhuman, derogatory remarks against the transgender community and sexual minorities

- a. Violates Article 14, Article 17, Article 19, Article 21 of Queer Community,
- b. In violation of Article 51A (e) & (h) of Constitution of India,
- c. is against the provisions of Act 40 of 2019,
- d. against the law laid down by Hon'ble Supreme Court of India in National Legal Service Authority vs Union Of India AIR 2014 SC 1863 and Navtej Singh Johar v. Union of India (2018) 10 SCC 1
- e. in violation of Yogyakarta Principles and International Human Rights Principles and Conventions.

B. The petitioners are registered organizations who are committed to the defending of the rights of the queer community. The 1<sup>st</sup> petitioner

organization is completely run by members of the queer community and the 2<sup>nd</sup> petitioner has members from the queer community as volunteers and also state executive committee members. The petitioner organizations are representing the pain and agony of members of queer community who are pursuing the medical course. Further the matter implies a public concern over the access of queer community members to a dignified health care facility. Further many students from the queer community pursuing medical education are unable to reveal their identity and come out before this honorable court due to the social constraints. Petitioners therefore has the necessary *locus standi* to file this writ petition *inter alia* challenging the curriculum and contents of the medical textbooks.

**C.** The medical text books gives a false narration of true state of affairs of queer community and provides unscientific data and contains inhuman, derogatory remarks against the transgender community and sexual minorities. Such remarks creates a discriminatory attitude towards the queer community. The graveness of discrimination is such that even this discrimination is visible within the four walls of the class room. Due to the remarks in text books equal protection of law is not guaranteed to the queer community. Even the law laid down by Apex Court and Act 40 of 2019 is not adhered to its true form. This creates a class difference which is in violation of Article 14 of Constitution of India.

**D.** The students from queer community who are pursuing medical courses suffer this discrimination from the peer group itself. Such discrimination is a

form of untouchability. And untouchability is prohibited by Article 17 of Constitution of India.

**E.** The 1<sup>st</sup> and 2<sup>nd</sup> respondent who are responsible for the determination of curriculum of Medical Courses failed to protect the rights of queer community from such discrimination. Hence the acts of 1<sup>st</sup> and 2<sup>nd</sup> respondent in not revising the text books which makes derogatory marks against the queer community amounts to deprivation of fundamental rights of the queer community under Article 14,17 and 21 of Constitution of India.

**F.** Article 51 A (e) states that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women. Studying false remarks on queer community and propagating it through medical text books is against the spirit of Article 51 A (e) which embodies common brotherhood amongst all people of India.

**G.** Article 51 A (h)states that it shall be the duty of every citizen of India to develop the scientific temper, humanism and the spirit of inquiry and reform. The medical text books are against the principle embodied in Article 51A (h) of Constitution of India. The unrevised medical text books never help a citizen to become a responsible citizen.

**H.** The discrimination faced by the queer community is in violation of preambular concept of fraternity. Liberty, Equality and Fraternity are co-existing. The objective of Constitution of India is fraternity assuring the dignity

of the individual and the unity and integrity of the nation. Dr. Ambedkar in Constituent Assembly defined the word 'fraternity' that 'fraternity means a sense of common brotherhood of all Indians. The inhuman and discriminatory marks against the queer community in text books is not only unscientific but it breaches the common brotherhood among Indians. Members of Queer Community are citizens of India and are equally placed among all other Indians. The remarks in medical text books result in unequal treatment of members of Queer Community.

I. Gender identity, lies at the core of one's personal identity, gender expression and presentation and, therefore, it is protected under Article 19(1)(a) of the Constitution of India. The gender identity is recognised as a fundamental right in *National Legal Services Authority v Union of India*. Medical texts which treats the gender identity of the Queer Community as inhuman, and with adverse remark will send a wrong message to the public at large and will result in perpetual denial of the rights of the queer community. The remarks in medical text books against the queer community is violate of Article 19 (1) (a) of Constitution of India.

J. The Honorable Supreme Court of India in its landmark judgment in *National Legal Services Authority (Nalsa) Vs. Union Of India* has recognized Transgender as a Gender Identity. The apex court stated Gender identity as one of the most-fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person. The court opined that each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-

determination, dignity and freedom and no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. When the apex court have clearly stated Transgender as a third gender identity and affirmed their legal status. The court further observed that labeling the community as a sexual perversion or antisocial beings or a mental disorder is irrational, unscientific and discriminatory. In such circumstances the medical text books are to be revised in tune with the judgment. The 1<sup>st</sup> and 2<sup>nd</sup> respondent failed to adhere to the judgment of apex court.

**K.** Further the court directed that

*(3) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.*

*(5) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal*

*(8) Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.*

*(9) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life. (Paragraph 129)*

L. While the apex court clearly held the Hijara community as a third gender, medical text books portraying the Hijara community as male prostitutes, anti-social beings and men pretending to be women are discriminatory . The apex court has held in the aforementioned judgement that

*Article 21, as already indicated, protects one's right of self determination of the gender to which a person belongs. Determination of gender to which a person belongs is to be decided by the person concerned. In other words, gender identity is integral to the dignity of an individual and is at the core of "personal autonomy" and "self-determination".*  
**Hijras/Eunuchs, therefore, have to be considered as Third Gender, over and above binary genders** under our Constitution and the laws.(Paragraph 74)

*We, therefore, declare: (1) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature. (Paragraph 129)*

M. The Honorable Supreme Court in Navtej Singh Johar v. Union of India has legalized consensual homosexuality between adults in 2018. The apex court has opined that classifying sexual offenses as 'natural' and 'unnatural' is both absurd & legally invalid and instead rightly upheld the importance of mutual

consent in determining whether a sexual activity amounts to criminal offence or not. While the apex court has clearly accepted homosexuality as a sexual orientation based on the scientific as well as legal analysis, portraying the same as a sexual disorder or perversion is discriminatory.

The apex court held that

*vi) The right to live with dignity has been recognized as a human right on the international front and by number of precedents of this Court and, therefore, the constitutional courts must strive to protect the dignity of every individual, for without the right to dignity, every other right would be rendered meaningless. Dignity is an inseparable facet of every individual that invites reciprocative respect from others to every aspect of an individual which he/she perceives as an essential attribute of his/her individuality, be it an orientation or an optional expression of choice. The Constitution has ladened the judiciary with the very important duty to protect and ensure the right of every individual 160 including the right to express and choose without any impediments so as to enable an individual to fully realize his/her fundamental right to live with dignity (Paragraph 253)*

*(vii) Sexual orientation is one of the many biological phenomena which is natural and inherent in an individual and is controlled by neurological and biological factors. The science of sexuality has theorized that an individual exerts little or no control over who he/she gets attracted to. Any discrimination on the basis of one's sexual orientation would entail*

*a violation of the fundamental right of freedom of expression (Paragraph 253)*

*xiv) An examination of Section 377 IPC on the anvil of Article 14 of the Constitution reveals that the classification adopted under the said Section has no reasonable nexus with its object as other penal provisions such as Section 375 IPC and the POCSO Act already penalize non-consensual carnal intercourse. Per contra, Section 377 IPC in its present form 164 has resulted in an unwanted collateral effect whereby even consensual sexual acts, which are neither harmful to children nor women, by the LGBTs have been woefully targeted thereby resulting in discrimination and unequal treatment to the LGBT community and is, thus, violative of Article 14 of the Constitution. (Paragraph 253)*

*(xvii) Ergo, Section 377 IPC, so far as it penalizes any consensual sexual relationship between two adults, be it homosexuals (man and a man), heterosexuals (man and a woman) or lesbians (woman and a woman), cannot be regarded as constitutional (Paragraph 253)*

N. The Honorable Supreme Court in Navtej Singh Johar v. Union of India held that queer community are entitled to the protection of equal laws, and are entitled to be treated in society as human beings without any stigma being attached to any of them and declared that Section 377 insofar as it criminalises homosexual sex and transgender sex between consenting adults is unconstitutional. The remarks in medical text books which attaches criminal liability for homosexual activities is liable to be removed.



O. Further the Honorable Supreme Court in *Navtej Singh Johar v. Union of India* held that the State shall take all measures to ensure that the judgment is given wide publicity through the public media, which includes television, radio, print and online media at regular intervals, and initiate programs to reduce and finally eliminate the stigma associated with such persons. Above all, all government officials, including and in particular police officials, and other officers of the Union of India and the States, be given periodic sensitization and awareness training of the plight of such persons in the light of the observations contained in the judgment. The respondents 1 and 2 are apex body in medial education is concerned and respondent no. 4 is imparting medical education in state of Kerala through its affiliated colleges. The respondents are well within the meaning of "State" under Article 12 of Constitution of India and are statutory bodies having governmental functions. In spite of the above directions from Supreme Court of India the respondents failed to revise the medical text books.

P. It is respectfully submitted that in *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1 the Hon'ble Supreme Court observed that the American psychiatrist association (APA) has declassified homosexuality as a mental illness in its 2nd edition of Diagnostic & Statistical Manual of Mental Disorders (DSM) published in 1973 and World Health Organization removed it from its 10th revision of International Classification of Diseases (ICD) in 1990. DSM and ICD is the standard manual used by clinicians and researchers to diagnose and classify mental disorders. While the standard manuals declassified Homosexuality and Transgender identity from the mental disorders

perpetuating them as mental disorders through medical textbooks are irrational, unscientific and injustice.

Q. Homosexuality, bisexuality and other sexual orientations are equally natural and reflective of expression of choice and inclination founded on consent of two persons who are eligible in law to express such consent and it is neither a physical nor a mental illness, rather they are natural variations of expression and free thinking process and to teach the same as a sexual perversion or mental illness is offensive to individual dignity and decisional autonomy inherent in the personality of a person, a great discomfort to gender identity, destruction of the right to privacy which is a pivotal facet of Article 21 of the Constitution, unpalatable to the highly cherished idea of freedom and a trauma to the conception of expression of biological desire which revolves around the pattern of mosaic of true manifestation of identity.

R. It is a fact that Health care disparities exists in the nation especially with regard to the transgender and queer persons. Sexual and gender minority patients have experienced discrimination, stigmatization and even denial of health care due to pre conceived wrong knowledge about the queer community. The Honorable Supreme Court in NALSA judgment underlined that the Transgender people faces discrimination especially in the field of health care. It is therefore important to educate medical students to effectively access and manage patients without any prejudices and discrimination. Failing so the standard of medical education will deprecate.

S. Article 21 of the constitution of India guarantees Right to Health to all citizens. It is a fact that the physician-patient relationship plays a vital role in improving the health of the individuals. As aforementioned a significant proportion of medical students may have harmful pre-conceptions which may hinder their ability to provide patient-centered care to sexual and gender minority (SGM) patients. Patients may choose not to reveal their sexual identity or orientation which may affect the optimum care they have to receive. Further there are instances being reported where the members of queer community adopt self medication in order to escape from ill treatments at hospitals. The revising of medical education is therefore inevitable to provide better medical access to the Queer community.

T. The students pursuing medical education in India receive an outdated knowledge about the queer community in their medical education. However, the students who can afford the foreign education receive better, updated education. Therefore the outdated curriculum which is not at all gender sensitive directly affects the quality of medical education in the state.

U. The Transgender persons (Protection of Rights) Act, 2019 has been enacted pursuant to the judgments of the Apex Court. Section 3 of the Act provides prohibition against discrimination and that no person or establishment shall discriminate against a transgender person. The respondents are 1,2 and 4 are establishments defined under Section 2 (b) (i) of the Act 40 of 2019. Hence all respondents particularly respondents 1,2 and 4 are duty responsible to eliminate any form of discrimination to the queer community.

V. Section 13 stipulates that, every educational institution funded or recognized by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others. Here, the term Inclusive Education is defined under Section 2(d) and it means a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students. The remarks in the medical text books are against the provisions of Act 40 of 2019.

W. In Medical Council of India (Prevention and Prohibition of Ragging in Medical Colleges/Institutions) Regulations, 2009 serves as the anti ragging regulation of the medical colleges of the state. The following have been added after sub-clause 3.3 of in terms of notification published on 05.04.2018 in the Gazette of India.

“Any act of physical or mental abuse (including bullying and exclusion)targeted at another student (fresher or otherwise) on the ground of colour, race, religion, caste, ethnicity, *gender (including transgender), sexual orientation*, appearance, nationality, regional origins, linguistic identity, place of birth, place of residence or economic background.”

Here the medical textbooks in Exhibit P3 as written documents are causing much insult to the students of queer community and directly effecting the mental health and self confidence of the students. Further the institutions who

are obliged to take action on receiving a complaint of being harassed or bullied in terms of gender identity or sexual orientation are perpetuating queerphobia.

X. The International Covenant on Economic, Social and Cultural Rights mandates that the states parties to the convention shall recognize the rights of everyone to enjoy the benefits of scientific progress and its applications. Therefore the queer communities has the right to enjoy the benefit of the scientific progress which has accepted the sexual and gender diversities.

Y. Article 46 of the constitution of India directs the State to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. While the Transgender community is being declared as a Socially and educationally backward community by the apex court, the state is obliged to protect them from the social injustice and all forms of exploitation.

Z. The Yogyakarta Principles stands as the Principles on the application of international human rights law in relation to sexual orientation and gender identity and the Apex Court relied and quoted in National Legal Service Authority vs Union Of India AIR 2014 SC 1863 and Navtej Singh Johar v. Union of India (2018) 10 SCC 1. The medical text books are agisnt the norms guaranteed under Yogyakarta Principles.

AA. The 1<sup>st</sup> and 2<sup>nd</sup> respondent is being constituted based on the National Medical Commission Act, 2019. The act underlines that the 1st respondent was constituted to ensure high quality and updated medical education. The sub

clause 10 1 (a) stipulates that the function of the commission is to lay down policies for maintaining a high quality and high standards in medical education and make necessary regulations. The queer phobic contents in the medical textbooks are therefore against the very objective of the Act 30 of 2019.

BB. The 2nd respondent herein is an autonomous body consisted for the UG Medical programmes. The Section 24 of Act empowers the 2<sup>nd</sup> respondent to Develop competency based dynamic curriculum at undergraduate level in accordance with the regulations, to develop competency based dynamic curriculum for addressing the needs of primary health services, community medicine and family medicine to ensure healthcare in such areas. The unrevised medical text books are against the Act 30 of 2019. The 2<sup>nd</sup> respondent failed to revise the medical text books and the discrimination against the queer community continues. Hence the Medical text books are against the best interest of queer community and violates the rights of the queer community.

CC. The present curriculum for under graduate medical students are formulated by erstwhile Medical Council of India. By Act 30 of 2019 1<sup>st</sup> and 2<sup>nd</sup> respondent is duty responsible for the revision of medical text books. The 1<sup>st</sup> and 2<sup>nd</sup> respondents failed to revise the curriculum and text books which contains derogatory remarks against the queer Community. There is inaction by the respondents to act upon Exhibit P13 and P14 representations.

For these and other reasons that may be submitted at the time of hearing, it is most humbly prayed that this Honourable Court may be pleased to grant the following

**Reliefs**

- A. To issue a writ of Mandamus directing the respondents 1 and 2 to revise the Exhibit P4 to P12 text books and curriculum thereby remove the unscientific data and contains inhuman, derogatory remarks against the transgender community and sexual minorities;
- B. To issue a writ of mandamus directing the respondents 1 and 2 to consider Exhibit P13 and make revise the text books and curriculum in tune with law laid down by Hon'ble Supreme Court of India in National Legal Service Authority vs Union Of India AIR 2014 SC 1863and Navtej Singh Johar v. Union of India (2018) 10 SCC 1;
- C. To issue a writ of mandamus directing the respondents 4 to 6 to consider Exhibit P14 and take appropriate actions and revising the text books and curriculum in tune with law laid down by Hon'ble Supreme Court of India in National Legal Service Authority vs Union Of India AIR 2014 SC 1863and Navtej Singh Johar v. Union of India (2018) 10 SCC 1;
- D. Grant such other reliefs;

**INTERIM RELIEF**

For the reasons stated in the writ petition and accompanying affidavit it is humbly prayed that this Hon'ble Court may be pleased to direct the respondents to consider the Exhibit P13 and P14 and pass appropriate orders pending disposal of the above writ petition (c)

Dated this the 24<sup>th</sup> day of August 2021

Petitioners

Counsel for the petitioner



**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

(Special Original Jurisdiction)

W.P. (C). No.

OF 2021

Queerythm and another : Petitioners  
National Medical Commission

**and others : Respondents**

**Affidavit**

I, Dinu K,,  
P.O, Kozhik

1. I am the president of 2<sup>nd</sup> petitioner in the above writ petition. I am conversant with the facts of the case. I am swearing this affidavit on behalf of the 1<sup>st</sup> petitioner also.
2. I humbly submit that the statement of facts contained in the writ petition(civil) filed along with this affidavit are true and correct to the best of my knowledge, belief and information. The submissions of law made in the writ petition(civil) are on the basis of advice and I believe them to be correct and sustainable. Documents produced along with the writ petition are the copies of their originals. I have not filed any writ petition (civil) seeking same reliefs.
3. The subject matter of the writ petition is to expose the infringement on the fundamental and constitutional rights of the sexual minority group of Lesbian, Gay, Bi-sexual, Transgender commonly referred as LGBTQ community (hereinafter referred as Queer community for short). The Queer community is aggrieved by the discriminatory remarks and inhuman references used in the medical text books prescribed for Medical Courses in India which stereotypes the Queer community's sexual or gender identities as an offence, mental disorder or perversion. Such references are made in the text books despite the fact that the queer community's rights are recognized by the Supreme Court of India and decriminalized homosexual sex between consenting adults.
4. There is no authoritative pronouncement by the Supreme Court or the High Court on the questions raised in this writ petition with respect to the revision of medical text books

and that the result of the litigation shall not lead to any undue gain to ourselves or to anyone associated with us.

5. This Hon'ble Court may be pleased to grant interim relief prayed for as otherwise we will be put to irreparable injury and loss. If the writ petition is not allowed we will be put to irreparable injury and harm. In the interest of justice it is fit and proper that this Hon'ble Court may be pleased to allow the writ petition as prayed for.

Facts stated above are true and correct.

Dated this the 25<sup>th</sup> day of August 2021

Deponent- Dinu

Solemnly affirmed and signed before me by the deponent this the 25<sup>th</sup> day August 2021 at Ernakulam. Deponent is personally known to me.

Advocate

**English Translation of Exhibit P1**

**CERTIFICATE REGARDING THE REGISTRATION OF SOCIETIES**

The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (ACT XII OF 1955)

Sl. No. TVM/TC/461/2017

Year 2017

It is hereby certified that Queerythm is registered under The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (ACT XII OF 1955) on this the 18<sup>th</sup> day of May 2017 and I hereby affixed signature and issued the certificate.

Office Seal of Registrar of Society

Signature and Seal of  
Registrar of Societies

**English Translation of Exhibit P2**

**CERTIFICATE REGARDING THE REGISTRATION OF SOCIETIES**

The Societies Registration Act, 1860 (ACT XXI)

Sl. No. MPM/CA/294/2015

Year 2015

It is hereby certified that DHISHA is registered under The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (ACT XII OF 1955) on this the 25<sup>th</sup> day of April 2015 and I hereby affixed signature and issued the certificate.

Office Seal of District Registrar  
Date : 25-04-2015

Signature and Seal of  
District Registrar and of  
Registrar of Societies Malapuram

Presented on:

Sub: Public Interest Litigation

Seeking directions against the respondents 1 and 2 to consider Exhibit P13 and to revise the Exhibit P4 to P12 text books and curriculum thereby remove the unscientific data and contains inhuman, derogatory remarks against the transgender community and sexual minorities.

-----  
**BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**

(Special Original Jurisdiction)

W.P. (C). No. OF 2021

Queerythm and another : Petitioners

National Medical Commission  
and others : Respondents

**WRIT PETITION FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA**

**M/s. Legith T. Kottakkal (K/854/2010)**  
&  
**Dhanuja M.S (K/1519/2018)**  
**Counsel for Petitioner**