



Sexual freedom in ecuador and its conception in the law a recognition or an attack on fundamental rights

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Abstract

The Constitution of Ecuador, supreme normative text that contains the rights of all Ecuadorian citizens, makes a special recognition to the Rights of Freedom that support the free, informed, voluntary and responsible decision making of people regarding their sexuality, and their life and sexual orientation, despite having a certain conservative history with notable features of heteronormativity, because the same Ecuadorian society pigeonholes the categories of man and woman without considering simply the legal status of person, evidencing this cultural phenomenon in the relevant normative bodies. From this ideological perspective arises the objective of this scientific article, which is to develop a critical legal analysis on heteronormativism, cishnormativism and gender binarism in Ecuador and its impact on the effective exercise of sexual freedom rights and the State's responsibility towards legal security, tending to the development of the Ecuadorian legal

system. This objective was achieved through the development of a qualitative research, with certain features of exploratory research as it is a topic with little theoretical development in the country, in this way in the investigative work the analytical-synthetic method was implemented with respect to the theoretical and normative doctrine analyzed, to complement this research with the qualitative technique of the interview oriented to feel the reality of the investigated problem within the Ecuadorian legal and social context.

Introduction

Ecuador has been governed since its inception as a country by certain conservative principles, establishing to a certain extent, a society governed by certain parameters that standardize a certain way of life acceptable to Ecuadorian citizens, so it has been evident in parts of Ecuadorian history how a heteronormativity has been established that has come to predominate even in the mentality of the legislators who materialize the regulations of the country, raising as an example the case of the legal figure of marriage, which only since June 12, 2019 recognizes marriage between people of the same sex, taking into account that previously to access this figure you had to be specifically male and female, point where heteronormativity is evident. It is under this ideological line, that the scientific problem of this research is born, aimed at addressing heteronormativism, cismatrimony and binarism in Ecuador, and whether these violate the Rights of sexual freedom; Therefore, the objective sought by this work is to develop a critical legal analysis on heteronormativism, cismatrimony and binarism in Ecuador and its impact on the effective exercise of the rights of sexual freedom and State responsibility in the face of legal certainty tending to the development of the legal system.

The text "Sexual freedom in Ecuador and its conception in the law: A recognition or an attack on fundamental rights," based on the references of Fiallos Bonilla, S. F., Chamorro Valencia, D. X., & Garcés Mayorga, D. V. (2022), and Álvarez Gómez, G. A., Leyva Vázquez, M. Y., & Estupiñán Ricardo, J. (2022), aims to analyze the current legal framework in Ecuador regarding sexual freedom and how it affects the recognition or violation of fundamental rights. These articles, published in *Neutrosophic Sets and Systems*, explore the use of neutrosophic techniques in analyzing legal rules that protect people with disabilities and the implementation of open government in the Ecuadorian judicial system. Another article by Balarezo García, M. G., Jami Carrera, J. E., & Moina Veloz, Á. P. (2022), examines the use of neutrosophic linguistic scales for self-assessment of knowledge about non-communicable diseases in medical students. The research provides insight into the current state of sexual freedom and its relationship with fundamental rights in Ecuadorian law. (Fiallos Bonilla et al., 2022; Álvarez Gómez et al., 2022; Balarezo García et al., 2022)

The advancement of new technologies has brought about numerous changes in our lives, including the way we approach and defend sexual freedom. In Ecuador, the topic of sexual freedom has gained increasing attention, with

scholars and researchers exploring the use of various technologies to enhance sexual freedom. One technology that has been of great interest to researchers is blockchain. In their article, "Blockchain in Healthcare from a Neutrosophic Analysis," Peñafiel Jaramillo, Prado Quilambaqui, and Quintana Yanez (2022) highlight how blockchain can be used to secure and protect sensitive health data, including sexual health information. Artificial intelligence (AI) is another technology that has the potential to shape the future of sexual freedom. Ricardo, Vázquez, Palacios, and Ojeda (2021) discuss the intersection of AI and intellectual property, highlighting how AI can help protect intellectual property rights in the field of sexual health. Meanwhile, Vázquez, Cevallos, and Ricardo (2021) explore the use of sentiment analysis as a tool to study qualitative data in legal research related to sexual freedom. By using sentiment analysis, researchers can gain a deeper understanding of how people perceive and experience sexual freedom. In the evaluation of medical technologies related to sexual freedom, Noboa, Copa, and Eloísa (2022) emphasize the importance of using multicriteria methods based on single-valued neutrosophic numbers. This approach allows for a more comprehensive and accurate evaluation of medical technologies related to sexual health. Lastly, Teruel, Vázquez, and Sentí (2014) discuss the consensus process in mental models and its application to agile software development in bioinformatics. This approach can be useful in developing software that can enhance sexual health and freedom, making it more accessible and inclusive. In conclusion, the integration of new technologies in the fight for sexual freedom in Ecuador has the potential to bring about significant positive changes. The exploration and implementation of these technologies require collaboration among researchers, policymakers, and stakeholders, to ensure that they are used in an ethical and inclusive manner.

The context of this scientific article responds mainly to an investigation of qualitative approach, this due to the methods implemented, such as the analysis of documents through which information is collected regarding heteronormativity, cisnormativism and gender binarism, to give way to an analytical-synthetic method that synthesizes what is necessary in relevant legal aspects to address the scientific problem of this article. To complement the synthesized information, the qualitative technique of the interview is proposed, focused on presenting the reality of the problem from the critical and legal point of view of a legal professional. It is precisely through the development of research under these parameters that the results are extracted, starting by establishing certain concepts on heteronormativism, cisnormativism and gender binarism, this in order to establish a more understandable approach to the scientific problem. With this starting point the next step of the research denotes a certain exegetical method, because it is necessary to carry out an analysis of the impact that the incidence of heteronormativity in Ecuadorian regulations may cause, so the focus of this scientific article is purely analytical, without taking a certain predilection in the subject, more than a critical legal point of view to Ecuadorian regulations.

Methods

For the development of the research that supports this scientific article, a QUALITATIVE approach is determined, due to the type of information that is considered to be addressed for the scientific problem, so the following methods are proposed:

Content Analysis: As the first point of this research, it is necessary to establish a collection of relevant information regarding heteronormativism, cismnormativism and gender binarism, to understand its meaning and establish a starting point for research.

Analytical-Synthetic Method: With all the information collected within the analysis of Documents, it is possible to synthesize certain characteristics that allow identifying possible incidents of the problem in the Ecuadorian regulations. Also applying this method that analyzes Article 94 of the Organic Law of Identity Management and Civil Data mainly decomposing said article into parts that allow its interpretation.

Exegetical Method

After synthesizing important parts of article 94 of the Organic Law on Identity Management and Civil Data, it is interpreted denoting an exegetical method.

Results

Induction to the problem Concepts

What is heteronormativism?

Heteronormative, is a neologism that is structured by the composition of two words; being the first word "hetero", which is the abbreviation of heterosexual, understanding that *heterosexuality* is a sexual orientation characterized by desire and attraction to people of the opposite sex; on the other hand, the second word that makes up this structure is "normative", a word that is defined by the RAE in a general way as that which sets the norm. Based on the combined structure of these two concepts, heteronormativity can be understood as a term that describes heterosexuality as the preferred mode and even predetermined or standardized as "normal" and in more conservative aspects considered as ideal, therefore it becomes the social norm for sexual orientation; So it could be established that heterosexuality would be understood as a normal and accepted way of looking at society from two genders and two sexes, thus placing heterosexuality as a sexual orientation unique to society and culturally accepted by it, thus assuming a "gender binarism" term that will be conceptualized within this article later.

Political scientist, feminist and social activist Cathy J. Cohen defines heteronormativity within her work "Punks, Bulldaggers and Welfare Queens: The Radical Potential of Queer Politics?", as the practice and institutions that legitimize

and privilege heterosexuality and heterosexual relationships as fundamental and natural within society. From this perspective raised by the author Cathy J. Cohen, heteronormativism can be considered as a Social and ideological System based on supposed stereotypes that place heterosexuality as morally and ethically much more important than any other form of sexual behavior, stigmatizing with this kind of social parameter all people who are NOT heterosexual.

Starting from the definition generated for heteronormativity, it is necessary to define the regime in which this normative stereotype of normality would develop, and this is heteronormativism, which is defined as a hegemonic system of norms, discourses and practices that constructs heterosexuality as something natural and superior to all other expressions of sexuality. Definition that is planned by author Andrew Brandon Robinson of the University of Texas at Austin United States:

"Heteronormativity is a hegemonic system of norms, discourses, and practices that constructs heterosexuality as natural and superior to all other expressions of sexuality." (Robinson, 2016)

Andrew Brandon Robinson of the University of Texas at Austin United States, within his research for the article "Heteronormativity and Homonormativity" considers that the term was coined by Michel Warner in 1991 within the Queer Theory; but the roots of heteronormativity go back to what was established by Gayle Rubin, regarding the "sex/gender system and what was established regarding the notion of obligatory heterosexuality by the author Adrienne Rich.

Under the perspective explained within the conceptualization of heteronormativity and heteronormativism, a hypothetical conclusion can be reached regarding this, and that is that the basis of this hegemonic system of norms could be patriarchy and the conservative conceptions coined in it throughout history regarding the family. The term "Patriarchy" has been used to designate a type of social organization in which authority is exercised by the male head of the family, owner of the patrimony, of which the children, the wife, the slaves and the goods were part. The family is, of course, one of the basic institutions for the formation of society, therefore, it has had a certain patriarchal influence, and even religious thus forming a certain conservatism in the family nucleus.

The feminist author Gerda Lerner establishes a hypothesis of the origin of patriarchy, thus referring that traditionalist doctrinaires, both those who work within a religious and scientific field, have considered the subordination of women a universal fact, of divine origin, or natural and, therefore, immutable; This idea developed historically from a clearly macho perspective, is the one that has served as a basis during history to more than religious conservatism, to establish heterosexuality, male and female, as a morally standardized sexual predilection for anyone who pretends to be "normal" and "accepted" in a society.

Heteronormativity: Ecuador

Establishing as a basis of heteronormativity, patriarchy and religious conservatism, it is necessary to denote these two points of origin, within Ecuador

and its history as a country, thus establishing as an end point, the Constitution of 2008, because it is here where the Rights of Equality are recognized, giving a constitutional foundation to gender equality in the country, but still leaving certain visible features of heteronormativity, mainly by stigmatizing NON-HETEROSEXUAL people. In 2019 an investigation was carried out, developed by The Barometer of the Americas, which reflects that 51 out of every hundred Ecuadorians disapprove of equal marriage and 23 out of every hundred believe that men are better political leaders than women, this aforementioned Barometer research, was done in 18 countries of the region between 2018 and 2019, and it was carried out through surveys carried out in highly structured questions, one of the questions raised is how much they approve or disapprove that homosexuals can run for public office, obtaining as a result in this specific question the result that 36 out of every hundred Ecuadorians disapprove; The same number do not have a very definite position and 27 out of a hundred approve of it.

Thus concluding that there are more Ecuadorians likely to condemn the exercise of this political right based on sexual orientation, which denotes the degree of conservatism existing in the country until the date of such research, a point that serves to demonstrate how Ecuador despite supposedly having recognized equality rights in 2008, There has been no progress in materializing them, even 12 years later.

It is precisely this system under a conservative conception, where the importance of Family Rights has been developed, emphasizing that this institution in the country has been marked by patriarchy and conservatism that has been previously evidenced with the research carried out by the Barometer of the Americas. The heteronormativity in the country, with form to the base previously established, in patriarchy and conservatism, it could be established that it is evidenced with greater incidence, in the aspects mostly marked by these characteristics, so that Ecuadorian society, shows features of heteronormativity in aspects related to Family Rights, and certain civil situations of identity that link the Rights of sexual freedom. It is in this line of thought, where the question that directs the present research arises:

Is identifying with a NON-HETEROSEXUAL gender a recognition of Freedom Rights or a step towards stigmatization by Heteronormativity?

Within article 66, of the Constitution of the Republic of Ecuador, we can denote the Rights of Liberty, recognized since 2008 in the country, emphasizing literal 9, which responds to the present research problem:

"The right to make free, informed, voluntary and responsible decisions about their sexuality, and their life and sexual orientation. The State shall promote access to the means necessary for these decisions to take place in safe conditions." (Constitution of the Republic of Ecuador, 2021)

As already stated, the Ecuadorian Constitution clearly protects the Right to Freedom with respect to sexuality and its life and sexual orientation, but apparently fails to materialize this situation, when the same constitution denotes certain

antinomies on the part of the legislator having structured the same supreme norm, an example of this is its article 70:

"Art. Article 70- The State shall formulate and implement policies to achieve equality between women and men, through the specialized mechanism in accordance with the law, and shall incorporate the gender approach into plans and programs, and shall provide technical assistance for its mandatory application in the public sector." (Constitution of the Republic of Ecuador, 2021)

As can be clearly seen in this article, the gender equality prophesied by the State is limited only to a heteronormative conception, leaving a legal vacuum and a question mark regarding non-HETEROSEXUAL people.

Not belonging to this conception based on heteronormativity, can be evidenced as mentioned above, in Family Rights for its certain conservative influence, raising as one of several examples, the existing situation in the legal figure of Adoption, which is closely linked to the Family. Article 153 of the Code on Children and Young Persons, the body of legislation governing the legal institution of adoption, sets out the guiding principles of this offence, denoting in paragraph 3 the following:

"Adoption by legally constituted heterosexual couples will be prioritized over adoption by single people" (Code of Children and Adolescents, 2017)

So one of the Guiding Principles of adoption prioritizes HETEROSEXUAL couples, over Non-Heterosexual and single people, as ideal candidates to be adopters and therefore to form the family nucleus in which the adopted minor will develop.

What is Cisnormativism?

To establish a concept of Cisnormative, it is necessary to decompose the word, having as the first part, the Latin prefix "Cis" which means "on this side" itself that turns out to be the logical counterpart of the term "trans"; and the last word that makes up this composition is "normative", a word that is defined by the RAE in a general way as that which sets the standard. Based on the analysis made from the decomposition of the word cisnormative, it can be established that it is the expectation that all people are cisgender, that is, those people who were assigned male at birth always grow to be male and those who were assigned female at birth always grow to be female; defining it in a simpler way as the social expectation that each person is destined to be the gender with which they came into the world, leaving aside the possibility of changing gender based on how the person could identify without distinction of their Rights of Freedom and Equality. The functioning of cisnormativity shapes social activity to some extent and shapes a hierarchical system in which "cis" experiences are seen as natural, healthy, desirable and socially expected, while "trans" experiences are "other" experiences, less legitimate, and even socially stigmatized because they do not have some ethical and moral acceptance.

According to feminist author Blas Radi, cisnormativity has a great influence on social practices and institutions, so that the presence of trans people is usually experienced as an unforeseen and exceptional situation, this due to the conservatism that gives rise to a heteronormativity, therefore, both terms are closely related.

What is Gender Barianism?

Following the line of thought directed for the investigation of existing heteronormativity, it is necessary to conceptualize one more term, which is the gender binary, which clearly refers to the belief that society is divided only into men and women and that both men and women are heterosexual. (strong point of congruence with the heteronormativity with which it has been legislated in Ecuador). It should be borne in mind that the gender binary idealizes social norms that are used as tools to maintain a social organization on which many of the societies are based today, one of them being Ecuador.

The gender binary consists of the indisputable idea that there are only two genders: the masculine and the feminine. This binary division is attributed to people by default as the unique characteristic of birth before the person himself even constructs his or her own identity. This woman-man binary implies the presumption of heterosexuality, that is, that man and woman are complementary beings and that the orientation of desire must be towards people of the opposite gender.

Legal Analysis

Once conceptualized as an induction the concepts that make up the problems of this research: Heteronormativity, cisnormativity and gender binarism; A certain point of reference is established to carry out a legal analysis of relevant normative bodies, specifically certain articles that will reflect a certain incidence of the concepts previously addressed by the development of the research.

Article 52 of the Organic Law on Identity Management and Civil Data

"Authority before whom the marriage is celebrated and registered. Marriage is the union between a man and a woman and is celebrated and registered with the General Directorate of Civil Registry, Identification and Certification. Outside Ecuadorian territory, it is celebrated and registered with the diplomatic or consular agent, if at least one of the contracting parties is Ecuadorian." (Organic Law on Identity Management and Civil Data, 2016)

In this article, despite the reformed concept existing in the Civil Code with respect to the marriage contract, it can be noted that the heteronormativity predominant in the legislator exists, limiting marriage to a single binary of man and woman to be valid for its celebration and registration with the General Directorate of Civil Registry.

Article 94 of the Organic Law on Identity Management and Civil Data

"Content. The identity card will contain in its heading the legend: "Republic of Ecuador. General Directorate of Civil Registry, Identification and Certification" and, at least, the following data:

1. Specification and ID number.
2. Fingerprint code.
3. Names and surnames of the holder.
4. Place and Date of Birth.
5. Nationality.
6. Sex.
7. Marital Status.
8. Names and surnames of the spouse or cohabitant.
9. Place and date of issue.
10. Expiration Date.
11. Photograph of the holder.
12. Signature of the holder.
13. Signature of the competent authority.
14. Blood type.
15. Willingness to donate.
16. Name of parents.
17. Disability condition and percentage.

The capture of the photograph for the identity card will be carried out respecting the gender identity and ethnic origins of the citizens, in accordance with the constitutional mandate and in accordance with the international technical standards established for personal identity, which will be included in the Regulations of this Law.

Voluntarily, upon reaching the age of majority and only once, the person by self-determination may replace the sex field with the gender field that can be: male or female. The act will be carried out in the presence of two witnesses who prove a self-determination contrary to the sex of the applicant and for at least two years, in accordance with the requirements determined for this purpose in this Law and its regulations. This change will not affect the person's single personal record data relating to sex. If this situation occurs, the petitioner may request the change in names because of the substitution of the sex field for gender." (Organic Law on Identity Management and Civil Data, 2016)

The Identification Card is the national identity document in Ecuador and aims to identify Ecuadorians enjoying their Political Rights. Now, as evidenced by the aforementioned research of the Barometer of the Americas, which shows a marked heteronormative conservative tendency regarding the exercise of Political Rights of non-heterosexual people, it is necessary to analyze the structure that makes up the identity card.

As a first point of analysis, there are numerals 3 and 6, referring to the names of the holder and sex, because they are points that allow certain controversy based on the heteronormativity existing in the system dependent on the Ecuadorian bureaucracy; first in the names that could identify non-heterosexual people and as a second point the sex that really represents their identity.

In this regard, it is worth mentioning a tool of the Civil Registry, which is the Gender Registry itself, which is aimed at registering self-determination to replace the sex field with gender and name change, which can be carried out in the Civil Registry agencies or in the consular offices of Ecuador abroad; It should be noted that to access the use of this service there are the following requirements:

1. Identity card of the applicant
2. Identity card of two witnesses

As the next point of this analysis, it should be noted the importance of the penultimate paragraph of this article, in which the Rights of Freedom are clearly reflected, specifically in gender identity, thus allowing the person to appear in the photograph of the identity card, according to the physical aspect that represents him in order that said identity is reflected in his document.

It is in the last paragraph where the Right of Self-determination is based, although it should be noted that it has some incidence of a gender binary by raising only the male or female gender, taking into account that according to a survey conducted by INEC regarding self-identification, of 2,805 people interviewed, of them 29.2% are Gay . The cities where the research was carried out were: Quito, Guayaquil, Portoviejo, Machala, Babahoyo, Ibarra, Santa Elena, Salinas, Libertad and Manta, a situation that would be evidencing certain disadvantage for those who do not identify as heterosexual.

Discussion

It is essential to mention that this work during its research regarding heteronormativity, cisnormativity and gender binarism, did not take any position for or against, it simply focused on establishing a conceptualization of the terms, taking into account that they are little conceptualized accurately in the Spanish language, and the development that exists is within doctrine worked in other languages, especially doctrine coming from the United States in favor of feminism, so it was tried to establish a certain neutral and precise concept that allows its understanding, establishing a starting point for the legal analysis that focused on the Organic Law of Identity Management and Civil Data.

Within the development of the research, the qualitative approach can be clearly evidenced, by basing the research mainly on an extensive analysis of documents, which allowed to collect relevant information and then be processed based on an analytical-synthetic method that ends up condensing the problem into three important points: Heteronormativity, cisnormativism and gender binarism; This is how this synthesis has generated its own concept based on the information processed regarding each aspect mentioned above.

In a more specific way, the results of the research that supports this scientific article, can be analyzed according to how the same research structured it, this is based on the method used to process the information collected, so the results are reflected first in the conceptualization that serves as an inductive point

and starting point for the next step that is the analysis of the regulations, understanding first how heteronormativity comes to influence, and thus a certain legal criterion could be generated. It can be noted in the first part of the results the emphasis placed on heteronormativity, its conceptualization and its presence in Ecuador, demonstrating with legal examples which are the aspects most marked by this problem, and therefore evidencing a possible attack on the Rights of sexual freedom. The second point to be conceptualized within this scientific article, is Cisnormativism, while a concept of easy understanding is proposed, it is evident how this term is linked to the previous one. As the third and last point of the conceptualization of induction, there is the gender binarism, which is defined in a generic but concise way, this to try to avoid possible redundancies with respect to the two previous terms in certain aspects, since they are totally different but linked to each other.

Conclusion

As a conclusion of the research carried out, it can be stated that heteronormativity practically finds its bases in patriarchy and conservatism derived from religion, aspects that have been clearly evidenced during the history of Ecuador, and even until today in certain provisions, laws or norms raised by the legislator, taking as an example what happens within the guiding principles for the legal figure of Adoption, established in article 153, where paragraph 3 specifies the predilection for heterosexual couples to be suitable candidates as adoptive parents; therefore, it can be established as a conclusion, that heteronormativity has an impact on figures derived from Family Law, taking into account that Ecuador prioritizes the protection of the family nucleus, despite doing so with conservatism. Another aspect that is marked by heteronormativity, is marriage this despite having a reform to the Civil Code, therefore, to the concept established for the marriage contract, but as evidenced within the present research, in the case of the Organic Law of Identity Management and Civil Data, there is still a concept that establishes marriage as an act between a man and a woman specifically, so that it can be celebrated and recorded.

Based on the research developed, it can be concluded that, in certain aspects, making use of the right to freedom, exercising self-determination and gender change as part of the identity that each person recognizes, can become a door for possible violations of constitutional rights, a clear example would be the desire of a homosexual marriage to have a child as the basis of their right to the Family, but not being a heterosexual couple would be excluded from this possibility, so it is considered that the conservatism maintained by Ecuadorian regulations should be broken in a certain way, in order to reduce heteronormativity, which ends up attacking rights that are even stipulated in international treaties as well as in the Supreme Norm itself, the Constitution.

With regard to the analysis of articles 52 and 94 of the Organic Law on the Management of Identity and Civil Data, as well as article 153 of the Code on

Children and Adolescents, it can first be concluded how important it was to conceptualize certain aspects, because it is thanks to this part of the process that it was possible to establish a certain legal criterion for developing the analysis according to what was understood with respect to heteronormativity. Cisnormativism and gender binarism, evidencing their presence in the articles cited above.

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