LGBTQI+ in the Swedish Asylum Process

A Critical Discourse Analysis of Swedish Immigration guidelines for assessing LGBTQI+ asylum seeker

Abstract

This thesis analyses how sexual orientation, gender and gender identity is understood and portrayed within the legal guidelines provided for immigration officials who assess claims related to sexual orientation and gender identity in the Swedish asylum process. The analysis conducted is using critical discourse analysis to see if the guidelines include a white hetero-cis-normative bias in the understanding of sexual orientation, gender, and gender identity, and how this may indicate to an institutional bias against LGBTQI+ persons in the Swedish asylum process. To do so this thesis primarily use Queer theory. The results show that there is some level of an institutional bias against LGBTQI+ asylum seeker in the Swedish asylum process based on white hetero-cis-normative understandings of sexual orientation, gender, and gender identity. These findings are manifested in the forms of Western superiority, stereotypical assumptions about LGBTQI+ persons, as well as binary understandings of gender. The findings of this thesis contribute to research in the queer migration fields, more so to fields with regards of how sexual and gender identities are understood and represented in the asylum process.

Key Words: Queer theory, Hetero-cis-normativity, Gender binary, Queer Asylum, Sweden

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1. Introduction

1.1. Introduction to the topic

Lesbian, gay, bisexual, transgender, queer, and intersex persons (LGBTQI+) worldwide continue to face human rights violations because of their sexual orientation, gender identity, gender expression or gender characteristics. The persecution of persons belonging to the LGBTQI+ community is not a new phenomenon in the 20th century. However, the increase of asylum claims because of sexual orientation, gender identity, or gender expression is rather new (UNHCR, 2008, p. 4). In the past decade, debates about the asylum process concerning LGBTQI+ rights in Sweden have increased in the public discourse. Organisations such as the Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Rights (RFSL), claim that the Swedish Migration Agency reject and deport LGBTQI+ asylum applicants to their home countries where the applicant's life may be at risk due to the criminalisation of same-sexual relations, belonging to, or expression of gender identity (Westerlund, et al., 2015 *Author's translation*). Hence, RFSL argues that it is a necessity for the Swedish Migration Agency to review the LGBTQI+ asylum process in order to make it legally safe and just for persons seeking asylum because of sexual orientation, gender identity or gender expression, but also to increase the knowledge about LGBTQI+ issues among the employees working with such claims at the Swedish Migration Agency (Ibid). Moreover, in an interview with Radio Sweden in 2019, lawyer Joakim Lundqvist criticised the Swedish LGBTQI+ asylum process arguing that the assessment of LGBTQI+ asylum claims deviates from all other asylum assessments in Sweden. Due to the fact that LGBTQI+ applicants firstly are assessed on how believable their sexual affiliations are by asking specific and personal questions about e.g. their "gay-awakening" and are later assessed on whether or not they are in need of protection because of persecution. Hence, Lundqvist claimed that there is an institutional bias against LGBTQI asylum seekers based on stereotypical assumptions (Lundqvist, 2019).

This thesis will analyse the legal guidelines provided by the Swedish Migration Agency how to assess applicants seeking asylum on the basis of sexual orientation, gender identity, or gender expression (SR 38/2015) and whether or not there is a white hetero-cis-normative bias in the understanding of sexual orientation, gender identity, and gender.

1.2.   Aim and Research Question

The aim of this thesis is to analyse and understand whether or not there is an institutional bias against LGBTQ+ asylum claimants in the Swedish asylum process by evaluating whether or not the legal guidelines include a white hetero-cis-normative bias in the understanding of gender, sexual orientation and gender identity. Therefore, the research questions posed within this thesis is as follows:

- *How is sexual orientation, gender identity, and gender understood and portrayed within the legal guidelines on how to assess LGBTQI+ claimants in the Swedish asylum process?*
- *In what ways does these illustrations and understandings further marginalise LGBTQI+ asylum seekers in Sweden?*

To answer the questions and achieve the aim, this thesis uses Critical Discourse Analysis to apply a Queer theoretical lens to the guidelines.

1.3.   Thesis Outline

The following content of this thesis is, firstly, a section with definition to key terms will be provided in order for the reader to get a better understanding of this thesis. Secondly, the background of the research topic presents a brief historical overview of LGBTQI+ rights in Sweden, followed by a short presentation of Sweden's asylum law as well as the LGBTQI+ asylum process. The next section cover previous research relevant to the topic of this thesis as well as a motivation of this thesis. The studies reviewed in this section are all relevant to the field of international migration and ethnic relations as they are sampled from the fields of political science and social science. Thirdly, the theoretical background is presented which includes the choice of theory and relevant concepts which will be used in the analysis. Fourthly, the methodological framework is outlined which includes the method and material used to answer the research questions. The next section presents the analysis of the chosen material with a discussion of the findings. Finally, the last section draws the conclusion of the analysis its findings and discussion of their limitations, but also the thesis' contribution to possible future research.

2. Definitions and Terminology

The purpose of this section is to define key terms which may be used throughout this paper and other relevant literature for the readers to become familiar with the terms and therefore get a better understanding of what will be discussed and analysed in this thesis. Also, due to the fact that within discussions of LGBTQI+ topics there may be an assumption that readers are familiar with the usage of these terms. This may be because of the assumption that those seeking knowledge within topics relating to LGBTQI+ already have knowledge and previous experience of such discussions and concepts. It should also be noted that these terms may not be uniformly defined throughout the literature and are fluid as their meanings have evolved during time and most likely will continue to evolve and change in the future in order to adapt to changing cultural, social, and political conditions. For such reasons it is also of importance to not assume that these terms are universal as cultural understandings of these terms and concepts differs around the world, thus, in this paper they will be based in a Western understanding.

LGBTQI+

Within this thesis the acronym LGBTQI+ is used, and is an umbrella term for lesbian, gay, bisexual, trans, queer and intersex people (RFSL,a, 2019). Thus, the acronym is used with awareness that it does not do justice for the wide range of complex identities and experiences that exist within this community. It should be noticed that the acronym may reduce a complex sense of self in form of a letter, meanwhile some do not even get a letter within the acronym. Hence, the use of + after the LGBQTI attempts to include and rectify some of these discussions.

Sexual orientation

Sexual orientation is defined as "each person's capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender" and may refer to bisexual, homosexual, pansexual etc. (International Commission of Jurists (ICJ), 2007, p. 6).

Gender identity, gender expression and gender characteristics

The understanding as one's individual and internal experience of gender which may or may not correspond with the sex assigned at birth. It may also involve gender expression in forms of e.g. mannerisms, dress, freely chosen, modification of bodily appearance or function by medical, surgical or other means, gender identity is what you feel and think about yourself (International Commission of Jurists (ICJ), 2007, p. 4).

Transgender, cis-gender and non-binary

Trans is an umbrella term referring to a person's who does not identify with the sex assigned to them at birth and therefore also refers to gender identity and/or gender expression (RFSL). Meanwhile, cisgender mean that a person's judicial sex assigned at birth match with their gender identity (RFSL,a, 2019). Moreover, a non-binary person is someone who identify themselves as "between, beyond, with both or neither of the gender categories of woman/man" (Ibid.). Non-binary may also be used as an umbrella term for different gender identities that do not fit within the binary understandings of gender, for example intergender or genderqueer (Ibid.). It should be noted that the definition of non-binary is not universal and the same for everyone who identifies with it.

Intersex

Intersex is an umbrella term used for a variety of experiences in which a person is born with, or develops, a reproductive or sexual anatomy that does not fit the typical definitions of female or male (RFSL,a, 2019). An intersex person may be born in-between female and male genitals, for example, a girl may be born with a noticeably large clitoris or lacking a vaginal opening. However, intersex anatomy does not necessarily have to be an inborn condition as it can also become more visible when the person reaches the age of puberty, it may even show as infertility (Intersex Society of North America, n.d.). An intersex person may identify as female, male, or neither, and this has nothing to do with how they define their sexuality as an intersex variation is mainly about one's physical body concerning hormone levels, chromosomes, and inner and outer genitalia (RFSL,a, 2019). Although, intersex variation may be important for some intersex persons' identity, it may not be as important for others. It should be noted that intersex is not same as trans as trans is about one's gender identity and/or gender expression breaking the norms around gender, however, some intersex people are trans i.e. feel that the gender they have been assigned does not correspond with their gender identity (RFSL, b, 2020).

3. Background

Queer migration is complex and difficult to summarise from a historical perspective due to the fact that a lot of queer history is erased. According to Luibhéid queer migrants can in several ways be seen as "impossible subjects" to study with "unrepresentable histories that exceed existing categories" (2008, p. 171). In order provide the reader with a contextual explanation of how the group has been marginalised in the past, and to get a better understanding of the LGBTQI+ asylum process in Sweden, this section aims to give a brief historical overview of LGBTQ+ rights in Sweden as well as an overview of Sweden's asylum law, and the asylum process concerning LGBTQI+ asylum seekers.

LGBTQI+ Rights in Sweden

LGBTQI+ rights have undergone dramatic transformations in Sweden since the 1980s. The journey, however, has not been a linear towards acceptance and equality for the LGBTQI+ community in Sweden. In 1944, homosexuality was decriminalised in Sweden, although, it was still considered a mental illness and was therefore not socially accepted in the Swedish society (RFSL, c, 2020). It was not until 1979 when the National Board of Health and Welfare ceased to classify homosexuality as an illness. Thus, it should be noted that Sweden was the first country in the world to do so (Ministry of Employment, 2018). During the following years, several Acts came into force for LGBTQI+ persons equal rights, treatment, inclusion, and visibility. For example, discrimination on the grounds of sexual orientation was made unlawful in 1978, and in 2011 the Swedish constitution was extended to include protection against discrimination linked to sexual orientation. And up until 2013 it was a requirement for trans persons to undergo a sterilisation in order for them to judicially and/or biological correct the sex assigned at birth to fit their gender identity (Ministry of Employment, 2018).

Sweden's asylum law

Sweden's legislation relating to immigration, refugees and asylum seekers is found in the legal document called the 2005 Aliens Act (Lukac & Eriksson, 2019). As well as the temporary aliens act which was introduced in 2016 as a response to the so-called 'Refugee Crisis', with the purpose to reduce the massive increase of incoming asylum-seekers to Sweden and was to be applied for three years (Parusel, 2016).

Furthermore, Sweden has signed the 1951 UN Convention Relating to the Status of Refugees which means amongst other things that each asylum application must be examined

individually, but also that the definition of a refugee in the Swedish Aliens Act is based on the definition in the refugee convention (Swedish Migration Agency, a, 2020). The definition of a refugee in the Aliens Act is the following:

> "An alien who is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group, and is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection in that country" (Sweden: Aliens Act (SFS 2005: 716), 2006, p. chp. 4 §1).

Hence, if a person seeks protection in Sweden because they have a well-founded fear of persecution on the basis of their sexuality, gender or gender identity they are entitled to protection (Swedish Migration Agency, b, 2020).

LGBTQI+ asylum process

As stated previously, each asylum application is examined and investigated individually in Sweden. The asylum investigation consists of several interviews where the asylum seeker is required to state why they are in need of protection and why they cannot return to their home country by including details about their risk of persecution and potential consequences if they were to return to their home country (Lukac & Eriksson, 2019) (Swedish Migration Agency, c, 2017). To give the claimant an accurate and just asylum investigation the Swedish Migration agency provides the claimant with an interpreter and public counsel alongside with the case official (Swedish Migration Agency, b, 2020). If the reason for seeking asylum is due to persecution because of one's sexual orientation, gender expression or gender identity, it is of importance to inform the Migration Agency as early as possible as not all public councils have LGBTQI+ competency and may lack knowledge about LGBTQI+ issues which may affect the investigation process negatively (RFSL, c, 2020). However, it is up to the asylum seeker to request a representative with special knowledge on LGBTQI+ people and issues according to the Swedish Migration Agency (2020).

Moreover, the Swedish migration agency has created a national legal guideline (SR 38/2015) which holds recommendations on how to assess an asylum applicant seeking protection related to sexual orientation, gender, and gender identity (Swedish Migration Agency, d, 2015). In the interview the case official asks personal questions about the asylum seeker's

thoughts and feelings about their sexual orientation, gender expression or gender identity, relationships with family, friends, and the community in which the person lived (Swedish Migration Agency, c, 2017).

4. Previous Research

According to Lewis and Naples (2014), previous research concerning queer migration is fairly new due to the fact that feminist and queer migration studies emerged in the 1990's and challenged traditional heteronormative assumptions within academic and activist discourses on migration (p. 912). Multiple different research on LGBTQI+ rights in the asylum process mainly concern western asylum law and policy, and their impacts on queer migrants' vulnerability and deportability. Shuman and Bohmer (2014) observe how the LGBTQI+ asylum process produces cultural silences, invisibilities, and hyper visibilities which plays a significant role in creating the appearance of justice by enacting violence on marginalised groups (p. 941). When explaining 'cultural silences' the authors' refer to anthropologist Renato Rosaldo's (1986) discussion which explains that the political asylum process further marginalise LGBTQI+ migrants as it produces additional complicities and silences due to power imbalances between case officials and asylum applicants. Such power imbalances can be shown through failures of translation, cultural misalignments because of different perspectives on e.g. sexuality and gender (Ibid, 2014, p, 940). Shuman and Bohmer (2014) also points out the fallacy of the supposed neutral and objective position of immigration officials who do not recognise how their insistence on disclosure can create cultural silences in the context of inquiries that can resemble inquisitions in the asylum process.

Continuously, Lewis (2014) explores how practices of credibility assessment in the political asylum process produce women and sexual minorities as deportable subjects (p. 959). She examines how the intersection of gender, sexuality, race and class in queer asylum claims influence the perceived credibility of gay and lesbian applicants by looking into recent queer migration studies where the social construction of migrant illegality consider the role of sexuality and gender. She argues that there has been a lack of attention to the ways gender and sexuality, along with race, class, nationality, and geopolitical location render particular migrants legally vulnerable to deportation (Ibid, 2014)**.** Lewis (2014) further explains that the threat of deportation structures the experiences of the vast majority of LGBTQI+ refugees and asylum seekers, more than any other group of asylum seekers (p. 959-960). This is seen through culture of disbelief against male homosexual asylum seekers in the United Kingdom

which force them to take the desperate action of providing pornographic evidence to immigration officials in order to grant asylum which then negatively affect other queer migrants, especially queer female migrants of colour (Ibid, 2014). It should also be noted that to grant a political asylum for an LGBTQI+ asylum seeker the applicant must prove that they have a well-founded fear of persecution, but also that they are members of 'a particular social group', and this mostly depends on the personal narrative of the applicant according to Lewis (2014, p. 961). In the credibility assessment the LGBTQ+ asylum applicant are expected to fit into the western stereotypes of e.g. male homosexual behaviour based on visibility, consumption and an identity in the public sphere in order to get the possibility to grant asylum which is not expected for other asylum claims (Ibid, 2014). However, what Lewis means is that this is contradictory as the LGBTQ+ person seeking protection for not being able to live e.g. openly gay in their country of origin because of cultural and social norms where homosexuality is not the normative or even where it is illegal to be homosexual (2014, p. 962).

Additionally, Spijkerboer (2018) explores the dichotomy of the 'good' and 'bad' Europe, how European state authorities on the one hand put themselves on a pedestal by advocating egalitarianism, progress relating to e.g. human rights and LGBTQI+ rights. Simultaneously as the authorities are 'protective' of the state, especially in the context of non-European immigration, they are therefore being characterised for restriction, oppression, and exclusion when it comes to non-European migrants (Spijkerboer, 2018, p. 222). The illustration that LGBTQI+ rights is a powerful symbol of Europe also function to distinguish the modern West from the 'orthodox' East which is typecast as homophobic and is part in the construction of the dichotomy between East and West according to Spijkerboer (Ibid., p. 222). Meaning that the European asylum law and its process upholds the European/non-European dichotomy in the way that non-European asylum claimants are characterised as Othered subjects who applies to European constructed human rights norms because non-Europeans states lack such human rights norms. According to Spijkerboer (2018, p. 223), this strategic process of European stereotypes constructed by European state authorities gives asylum seekers, especially women and LGBTQI+ persons, the opportunity to exploit this dichotomy by illustrating their country of origins as violent and for breaching human rights which upholds the European stereotypes of non-European states and consequently maintains the European/non-European dichotomy.

4.1. Motivation

Despite of the increased discussions on LGBTQI+ issues in the discourse of international human rights, there is a gap in the discussion of the relationship between LGBTQI+ rights and queer migration in terms of the representation and understandings of gender identity, sexual orientation and gender in asylum policy. The absence of sexual orientation, gender identity and gender in scholarship and studies on migration is apparent as most migration studies focus on issues relating to deportability, immigration, citizenship, and its impact. These are important issues to discuss, however, the intersections of race, gender, sexuality, economy, etc. in regards of queer migration studies are limited and there is an absence of intersectionality in the analyses. This thesis will shed some light on current understandings of the topic, but it will still provide knowledge in its own right. It should be noted that this thesis does not aim to find a definitive answer to the questions asked, rather it aims to further engage the studies on the intersection of sexuality, gender identity and migration. By drawing on theoretical and methodological insights of scholars from across the humanities, social and political sciences, and law this thesis look into how hetero-cis-normative understanding of sexual orientation and gender identity, and binary understandings of gender in the legal guidelines further marginalize LGBTQI+ persons in need of protection in Sweden.

5. Theoretical Background

To analyse representations and understandings of gender, gender identity and sexual orientation within the context of white hetero-cis-normativity is complex and requires some form of intersectionality. Therefore, this thesis uses the lens of Queer theory as a focus point of theory. This chapter begins by presenting Orientalism and Queer theory, followed by the concepts of hetero-cis-normativity, stereotypes, and finishes with Derrida's concept of 'absence and presence'.

Orientalism

Within Edward Said's theories on Orientalism, he explains how the notions of the 'Orient' and 'Occident' was created by the Western (the occident) colonial world in order to subjugate and control the East (the orient) (Said, 1978). The West would systematically paint themselves as more civilised and therefore superior compared to the uncivilised 'other'. Said, continues to explain that "the relationship between Occident and Orient is a relationship of

power, domination, of varying degrees of a complex hegemony" (1978, p. 5). Hence, by perpetuating this myth of the orient would justify the Western colonial rule over the so-called other. Thus, Orientalism promotes ideas of 'us vs them' which also is be applicable within queer migration studies and can be seen in e.g. 'Gender, Sexuality, Asylum and European Human Rights' (Spijkerboer, 2018) where the author examines the dichotomy between the idealised European self and the demonised notion of the non-European other.

Queer Theory

The term 'queer' have historically been used as word of abuse to silence, suppress, and shame identities positioned outside of perceived social boundaries. Meaning that Queer was defined against what was considered 'normal' in the society (Gedro & Mizzi, 2014). Queer theory emerged in the 1990s out of liberal ideas of equality building on feminist theories, lesbian and gay studies questioning categorisations of identity, and power among and between these identities (Dustin & Held, 2018) (Watson, 2005). It is a theory descendent from post-structural ideas around identity, sexuality and the role of the symbolic highly influenced by theorists such as Jacque Lacan, Jacques Derrida, and Michel Foucault (Watson, 2005). Queer theory mean that binaries of male/female, masculine/feminine, heterosexual/homosexual are cultural and social constructions (Valocchi, 2005). Watson explains that Queer theory takes up the link between discourse and identity by drawing on Turner's explanation of a discourse as "a set of rules for the constitution of conceptual objects and the production of statements about those objects" (Turner, 2000, p. 51, in Watson, 2005, p. 70). Hence, Queer theory argues that sexuality is constructed from social, cultural, and historical process rather than being natural or inherent, but also that sexuality is the discursive and performative production of the interrelation between power and knowledge which also regulates it (Dustin & Held, 2018, p. 7). Moreover, the idea that sexuality is a social, cultural and historical construct within Queer theory acknowledges the fluidity of sexuality and that the realm of the sexual could be re-assigned depending on context (Watson, 2005). Furthermore, Queer theory attempts to problematize and destabilize normative and binary understandings of sexuality and fixed identity categories that stereotype and harm those who are in marginalised positions, such as LGBTQI+ people (Kulick, 1996) (Gedro & Mizzi, 2014). Hence, it challenges the conception that heterosexuality is 'natural' and queer is 'unnatural' and 'abnormal' by explaining that such assumptions are built on negative stereotypes (Kulick, 1996). However, criticism of queer theory have pointed to its predominant focus on literary texts, its lack of attention to the institutional and material contexts of discursive power, and

the critical deconstruction of identity or group empowerment categories according to Valocchi (2005). Although, as argued by Watson, the strengths of queer theorizing lies in its potential application to relational fields, as a framework for understanding the constitution of identities" (2005, p. 79). It is also suitable as a method to disturb the heteronormative assumptions about gender, sex and sexuality in which LGBTQI+ persons are rendered as problematical against the heterosexual and cis-gender norms (Watson, 2005). Therefore, is the use of a Queer theoretical lens within the context of this research not only appropriate due to it being suitable with the ontology of the constructivist worldview, the attempt to destabilise and problematise normative and binary understandings of sexuality and gender, it is also a contribution to Queer migration studies considering the aim and research questions of this thesis.

Hetero-cis-normativity

Queer theory introduces the concept of heteronormativity which is the hierarchical system of prejudicial norms that affect all individuals and institutions in the society as a whole and the understanding of sexuality to heterosexuality as the dominant sexuality (Gedro & Mizzi, 2014). This concept allows scholars within queer migration studies to untangle connections among power, knowledge, and queer migrant identities as it highlights how normalising regimes produce heterogenous, marginalised groups (Luibhéid, 2008, p. 171). Moreover, Worthen explores the framework of hetero-cis-normativity which is a perspective that adds another dimension as it "locates prejudices within a nexus of both gender and sexuality biases" (2016, pp. 34-35). She explains that hetero-cis-normativity is not only about prejudices based on cisgender assumptions such as transphobia, but it also represents an aversion to anything that goes against the conventions that uphold a binary understanding of gender (Worthen, 2016, p. 32). By using the concept of hetero-cis-normative rather than heteronormativity within the context of this thesis research is more appropriate due to the fact that it adds another dimension in terms of cis-gender normativity.

Stereotypes

According to McGarty, Yzerbyt and Spears (2002), stereotypes are psychological representations of characteristics of people that belong to particular groups, as well as they are timesaving aids to explanations and impressions of social groups held by people. Therefore, stereotyping is the process of categorisation by a social group of another social group in which differences and similarities between groups are identified (Ibid.). Moreover, the

problem and danger with stereotypes is that it treats people as group members and thus ignore individual experiences as well as it is used as a tool to create tensions between what is considered the norm and what is not (Ibid.). Furthermore, Morgan (2006, p. 152), explains that a homosexual is someone who do not only have homosexual sex, but who also has a visible identity that conforms stereotypical white norms which are based on "upper-class white male norms of behaviour" and thus marginalises LGBTQI+ persons of colour due to the intersection of racialised and sexual stereotypes. She further explains that this sexual stereotyping are later adopted in the asylum process when investigating sexual orientation asylum cases by analysing whether or not the asylum claimant conforms wester homosexual stereotypes rather than weighing the merits of the individual asylum claim (Ibid., 2006, p, 153).

Presence and absence

Within the analysis of the guidelines the theories of 'presence' and 'absence', which is most closely related with Jacques Derrida, is used as a theoretical tool. Lichtman (1998, p. 214), brings up Derrida and Porete's discussion about the contradiction that "a presence that also an absence, an absence that is also a presence", suggesting that the unsaid could also be studied and observed as it provides knowledge of what might be ignored, excluded and unsaid in the society as a whole. Therefore, can this theory be used along with Queer theory to uncover white hetero-cis-normative power choices in how certain sexualities and gender identities may be omitted in the guidelines.

6. Methodological Framework

This section provides with background of how this research was conducted. The research design aims to analyse the legal guidelines provided by the Swedish Migration Agency on how to assess LGBTQI+ claimants in Sweden. This is achieved through a Critical Discourse Analysis (CDA) where power relations and imbalances are considered. This chapter begins with a presentation of the chosen method and worldview of this research study. Followed by a description of the chosen material, its strengths and weaknesses. Additionally, a discussion of the chosen data analysis method is presented. The chapters finalise with by presenting a framework for the analysis used for this thesis research.

6.1. Qualitative Method

Given the nature of the research question of this thesis which searches for white hetero-cis-normative biases and understandings of gender identity, sexual orientation, and gender within the guidelines, this thesis employs a qualitative research design. Qualitative research design is suitable for this thesis as such methods seeks for a deeper understanding of a social phenomenon in the context which they arise through which a quantitative research does not allow as such methods merely focus on correlation between variables and may conceal or overlook the cultural and social construction of the variables (Silverman a, 2001). Additionally, Silverman explains that qualitative research allows for "contextual sensitivity" meaning that "qualitative researchers can look at how an apparently stable phenomenon is actually put together by its participants" (2014, p. 18). Thus, within this context it allows me to search for biased understandings of sexuality, gender identity and gender within the legal guidelines. However, qualitative research methods can be criticised for having "a tendency towards an anecdotal approach to the use of data in relation to conclusions or explanations" which questions the validity of the research (Silverman a, 2001, p. 34). Despite the critique of the qualitative research method it allows the researcher to be flexible and innovative which gives the researcher the possibility for changes during the conduct of the study (Ibid., p. 26).

For this thesis, my ontological approach is based on the idea that the world and our understandings of reality is constantly changing. By choosing a qualitative method and focus on a social phenomenon, I adapt a constructivist approach as its ontological point of view recognises social phenomena as a product of our own making, rather than naturally occurring (Moses & Knutsen, 2012, p. 9). Constructivists are less concerned to find an absolute truth as opposed to naturalists, rather "constructivists embrace the particular and use their knowledge to expand our moral sympathies and political understandings" according to Moses & Knutsen (Ibid., 2012, p. 11). The constructivist approach recognizes that individual and social characteristics such as age, gender, race, culture, language and era influence our perceptions of the world (Ibid., 2012). Additionally, the epistemology of constructivism is about how we obtain the knowledge of the social world and due to the fact that constructivists mean that knowledge is intersubjective, it is of great importance to be careful and critical in how one obtain the knowledge of the social world (Moses & Knutsen, 2012, p. 194). Moreover, the methodology of constructivism analyses and identifies socially constructed patterns and regularities of the world by focusing on social and contextual influences as well as human agency (Ibid., 2012). Creswell explains that constructivists recognise that their personal

backgrounds shape their interpretation, and how they position themselves in the research (Creswell, 2009). Thus, I acknowledge that there will be a certain perception imposed onto the research of this thesis due to my own personal background and understandings of the world. There is the potential for bias on my part that might impact the outcome of the study, and that potential bias could be me being critical towards institutions that direct or indirect excludes minority groups, such as the Swedish Migration Agency making decisions on persons' sexual and gender identities, and their personal experiences. Making this a challenging research of being objective and transparent when interpreting and analysing the legal guidelines on how to assess persons seeking asylum on the basis of sexual and/or gender identity. Nonetheless, my personal critical standpoint towards the Swedish Migration Agency may also have helped me in the analysis of the material considering the nature of the aim and research question of this thesis.

Furthermore, as this research aims to analyse how sexuality, gender identity and gender is understood and represented in the guidelines on the assessment of LGBTQI+ persons in the Swedish asylum process the constructivist approach seemed like a more suitable perspective. Due to the fact that this phenomenon is a social product of actors, interactions and institutions in the sense that the asylum is constructed from laws and policies which is a product of humans rather than naturally occurring in the world. The choice of a constructivist approach within this thesis is also due to its applicability to the Queer Theory understanding of sexuality, gender and identity. As well as it embraces identities, institutions, behaviour and social practices, and therefore, a great variety of elements within the social spectrum. Henceforth, this thesis will aim to analyse and illustrate how these social constructs are portrayed and understood within the material being studied through the theoretical lens of Queer theory.

6.2. Data Selection

This qualitative research uses textual data as a method for data collection. The advantages of textual data are its availability and accessibility due to it being secondary data and therefore already existing, as well as it allows the researcher to a close and rich analysis (Silverman b, 2014). Textual data collection is suitable as a method within this research due to the research questions and aim of this study. Thus, this research will primarily focus on one single document provided by the Swedish Migration Agency. The purpose of this document is to "support for inquiry and the assessment of the forthcoming risk for persons claiming

protection due to assigned or actual sexual orientation, gender identity or gender expression" [1]
Author's translation (Swedish Migration Agency, d, 2015, p. 1). This document was selected as the aim with this research is to analyse whether there is an institutional bias against LGBTQI+ asylum seekers in Sweden by evaluating how the legal guidelines provided by Swedish Migration Agency understands and portrays gender, sexual orientation, and gender identity. Rather than focusing on several independent court cases or conducting interviews with LGBTQI+ persons who somehow have partaken in the asylum process in Sweden, I focus on a larger scale to show an institutional bias against LGBTQI+ persons based on a white hetero-cis-normative understanding of gender, sexual orientation and gender identity in the asylum process. Thus, the document provided to immigration officials by the Swedish Migration Agency may be considered as the foundation to how LGBTQI+ claimants are assessed in Sweden.

Furthermore, the limitations in only looking at this particular document is that documents are not "representations of organisational routines, decision-making processes, or professional diagnoses" (Atkinson & Coffey, 2004, p. 58 as cited in Silverman b, 2014, p. 285). Rather, documents "construct particular kinds of representations using their own conventions (Ibid.). This means that we cannot learn how an organisation works or functions day by day from merely looking at documents (Ibid.). Neither can documents be treated as firm evidence of what they report no matter how 'official' they are (Ibid.). However, by recognising documents of their existences as social constructions allows us to the necessity to treat them very seriously indeed as we have to approach documents for what they are and what they are used to accomplish (Ibid.). Another limitation of the selected document is that it is written in the native language which means that I am required to translate it from Swedish to English in order to conduct the research analysis and due to the fact that English is not my mother-tongue some things may get lost in translation.

6.3. Data Analysis

In order to conduct the research and to fulfil the aim of this thesis Critical Discourse Analysis (CDA) is used. CDA is a form of Discourse Analysis and is multidisciplinary due to its nature and focus on the relationship between texts and its social context, and is particularly concerned with themes like power, gender, race and class (Short & Le, 2009) (Silverman b,

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[1] Detta rättsliga ställningstagande ska ge stöd för utredning och bedömning av den framåtsyftande risken för personer som åberopar skyddsskäl på grund av faktisk eller tillskriven sexuell läggning, könsöverskridande identitet eller könsuttryck.

2014). It is a qualitative analytical approach to critically describe, interpret, and explain the ways in which discourses construct, preserve, and legitimise social inequalities (Mullet, 2018, p. 116). Similarly, to discourse analysis (DA) does CDA examines the ways in which language creates and regulates social and psychological phenomena, however, the difference is that CDA highlights the role of language as a power resource according to Mullet (2018). Moreover, Van Dijk (1993, p. 252), explains that "CDA should deal primarily with the discourse dimensions of power abuse and the injustice and inequality that result from it". CDA is fundamentally critical social research with the aim to better understand how societies function and constructs both equality and inequality in the society, and particularly how to end or mitigate these inequalities (Short & Le, 2009).

To understand CDA it is of importance to understand what the terms 'discourse' entails and why it is important to be 'critical'. Firstly, discourse' is a term with various definitions. One of the founders of CDA, Norman Fairclough, draws on a key insight of Michel Foucault that:

"discourse is in an active relation to reality, that language signifies reality in the sense of constructing meanings for it, rather than that discourse is in a passive relation to reality, with language merely referring to objects which are taken to be given in reality" (Fairclough, 1992a, p. 41-2 as cited in Locke, 2004, p. 6-7).

This explanation of 'discourse' can be rewritten as "Discourse(s) make the world meaningful" (Locke, 2004, p. 7). Additionally, in the words of James Gee in Locke "Discourses include much more than language" (Gee 1996, p. viii as cited in Locke, 2004, p. 7). Hence, discourses are social products of social histories, and therefore are ways of behaving, interacting, valuing, thinking, believing, speaking and often reading and writing that are accepted as representations of particular roles or types of people by specific groups of people (Locke, 2004). Meaning that discourse(s) is a way of making sense of the world. Secondly, what differs Discourse Analysis (DA) and Critical Discourse Analysis (CDA) is the term 'critical'. However, the term should simply not be seen as an adjectival derivative of the noun 'criticism', although criticism occurs in various CDA discussions (Short & Le, 2009, p. 7). The term 'critical' is instead associated with studying power relations in CDA due to the fact that CDA analysts' intentions are to demonstrate inequities embedded in the society by uncovering power relationships (Ibid.).

Continuously, Locke explains that CDA views a current social order as historically situated and therefore socially constructed. He further explains that this social order and processes as constituted and sustained by certain pervasive constructions often referred to as discourses (Locke, 2004, p. 1). CDA views power in society as an inevitable effect of a way specific discursive constructions privilege some people more than others (Ibid.). CDA also mean that human subjectivity is at least partly inscribed or constructed by discourse, and thus discourse as manifested in the multiple ways people act (Ibid.). This means that CDA share the ontological views with constructivism, hence, CDA is an appropriate method of analysis for this research thesis. As well as it can be used to understand and solve problems with the use of any theory or method that may be relevant (Mullet, 2018, p. 117). Moreover, in the words of Van Dijk (1993, p. 250), "critical discourse analysts want to know what structures, strategies or other properties of text, talk, verbal interaction or communicative events play a role in these modes of reproduction" in which the modes of reproductions may involve power relations. Therefore, CDA is a suitable analysis method as this thesis aims to critically analyse the discourse within the legal document concerning the assessment of LGBTQI+ persons in the Swedish asylum process by looking into the representation and understandings of sexual orientation, gender and gender identity, and whether these understandings are based on a white hetero-cis-normative bias through the theoretical lens of Queer theory.

Some criticism against CDA is that concepts and analytical models are vague, that texts and data are randomly selected and limited in length which leads to concerns over representativeness of the selected texts, as well as there are limitations and difficulties in drawing conclusions (Sriwimon & Zilli, 2017, p. 137). However, such criticism can be overcome by "discussing text production and consumption, and how they affect the pattern of ideologies found in the textual analysis" (Ibid.). As well as to give sufficient details about the material by being truthful and transparent which then gives the data credibility, but also to make comprehensive and systematic analysis of the data (Ibid.).

There are at least five requirements that needs to be fulfilled in order for CDA to "effectively realise its aims", and to justify the use of CDA according to Van Dijk (2005, p. 353). The first requirement according to Van Dijk is that research using CDA "has to be 'better' than other research in order to be accepted" (Ibid.). The second requirement is that the CDA research primarily addresses political and social issues, rather than on current paradigms (Ibid.). Which this thesis does as it is analysing a document associated with the Swedish Migration Agency, and focus on immigration, which is a current debate within the socio-

political discourse. Hence, the most appropriate and effective form of research for this thesis is CDA.

Van Dijk explains that the third requirement is that "empirically adequate critical analysis of social problems is usually multidisciplinary" (Ibid.). A multidisciplinary critical analysis of social problems is apparent within this thesis research and is presented in the theoretical framework and is apparent within the discussion of Queer theory as well as the presented concepts. In addition to this, there is an interdisciplinary discussion within Queer theory as it questions the hetero-cis-normative understanding of gender and sexuality by problematising the relationship that exists between sexual and gender identities. Furthermore, the fourth requirement states that "rather than merely describe discourse structures, it tries to explain them in terms of properties of social interaction and especially social structure" (Ibid.). The analysis of a single document does not allow a justified picture of how it is used in social interaction, it does however give information of the social structure within the document as the document is a product of cultural, political and social structure. Therefore, by analysing the product (the guidelines), I can garner knowledge about the structure in which it was created.

The final requirement to conduct critical research on discourse is that "CDA focuses on the ways discourse structures enact, confirm, legitimate, reproduce, or challenge relations of power and dominance in society" (Ibid.). Within this thesis the focus is on whether or not a white hetero-cis-normative discourse is reproduced within in a text document with a political structure which has power over immigrants applying for asylum. Hence, CDA allows researchers to discuss and feature notions such as 'power', 'dominance', 'hegemony', 'ideology', 'class', 'gender', 'race', 'discrimination', 'institutions', and 'social structure' (Ibid, p. 354). These are some of the topics which are featured directly or indirectly within this thesis.

To analyse discourse critically requires the researcher to focus on general patterns and choices of vocabulary, cohesion, and structure of the text. Therefore, by looking thoroughly through the theoretical lens of Queer theory and by going through each chapter of the legal guidelines the research followed a particular order. Each part of the guidelines was looked at with help of the guiding theories and concepts discussed in the theoretical background as a framework. Therefore, the framework for the analysis is the following:

Firstly, in order to ascertain the level in which a white hetero-cis-normative bias there is in the understanding of sexual orientation and gender identity within the guidelines I will be looking at the stereotypes used in using the theory and concept of orientalism and hetero-cis-

normativity. Thereafter, with the help of Derrida's absence and presence, sexual and gender identities that are not mentioned within the guidelines will be acknowledged as having been overlooked within this research. This will later be discussed as to how this fits in to the institutional bias against LGBTQI+ person in the Swedish asylum process which is based on white hetero-cis-normative understandings of sexual orientation, gender and gender identity. Finally, the document will be looked at in which ways gender is discussed and used within the guidelines, this will then be analysed and discussed.

7.   Analysis

To answer the research questions of this study, this analytical section is divided into three parts in relation to the theories and concepts presented. The analysis begins with findings of white hetero-cis-normative biases in forms of Western superiority and stereotypical understandings of the 'other', and the Swedish Migration Agency's presumed understandings of sexual orientations and gender identity in other cultures. The second part looks into examples of hetero-cis-normativity in form of stereotypical assumptions of sexual orientation, gender identity, and gender as well as 'absence' and 'presence'. The third part will look at binary understandings of gender within the guidelines as well as it will include an analytical discussion of how these findings illustrate an institutional bias against LGBTQI+ persons in the Swedish asylum process.

7.1. Orientalism and 'Western Superiority'

Firstly, there are several examples of discourse which points to a 'Western superiority' understanding of sexual orientation and gender identity within the guidelines provided by the Swedish Migration Agency. One example being in the section which explains the areas of the guidelines which are to be applicated that states that "in many cultures sexuality and questions concerning gender identity is taboo and associated with stigma which may result in difficulties to talk about for the asylum seeker"[2] *Author's translation* (Swedish Migration Agency, d, 2015, p. 3). This statement further pushes the narrative of the West being superior by suggesting that in this case Sweden progressed in terms of human rights and LGBTQI+ rights compared to the so-called 'other', the non-Europeans. As well as it is expected for the asylum seekers to be ashamed of and stigmatise their own sexual orientation and/or gender identity, and therefore to portray their country of origin as being a place of cruelty, violence and human rights violations. Thus, as explained by Spijkerboer, it makes sense for the asylum seekers to represent the situation in their country of origin as being so bad that the only way to protect their fundamental human rights is to enable them no to return by granting asylum (2018, p. 223). Hence, this statement promotes the dichotomy of 'the Occident vs the Orient' which emerges from the ideas of the West being more progressed and liberated when it comes to the understandings of sexuality orientation and gender identity in the society, thus further push the 'us vs them' mentality. On the other hand, asylum seekers would not grant asylum if

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[2] I många kulturer är sexualitet och frågor kring könsidentitet tabubelagt och förknippat med stigma vilket kan göra att den sökande kan ha svårt att prata om sådana skäl.

they did not portray their communities and societies as 'safe' which makes this statement and the LGBTQI+ asylum process very complex.

Continuously, this statement also promotes ideas of it being easier for LGBTQI+ persons in the West to acknowledge their sexual or gender identities merely on the basis of the West being more progressed and liberated when it comes to LGBTQI+ rights which devalues LGBTQI+ experience in the West as it strips away the complexity of human agency. This also presupposes that LGBTQI+ persons in West have shared experiences in the journey of self-realisation and that this understanding of self-realisation is easy and linear, which pushes binary and stereotypical assumptions based on white hetero-cis-normativity that either you know or you do not know. Meanwhile, in reality the journey of the realisation of one's sexual and/or gender identity might be more complex than that.

Another quote within the guidelines is regarding the interview of the investigation when the asylum seeker is asked to talk about their experiences, and why they consider themselves as being in need of protection. The guidelines advise the investigation official to use how the asylum seeker describes themselves as a starting point. Thus, the quote follows:

> "How an asylum seeker describes themselves depends on e.g. the person's social or cultural background, gender, ethnicity, or age. Therefore, some persons may feel ashamed of their sexual orientation or gender identity which may entail that the person in question do not identify as e.g. homosexual or as a trans person" [3] *Author's translation* (Swedish Migration Agency, d, 2015, p. 4).

This statement also pushes ideas of Western superiority, suggesting that Sweden is more progressed and liberated and therefore it being easier for LGBTQI+ persons in Sweden to embrace their sexual orientation or gender identity. Hence, it indirectly indicates that internalised homophobia does not occur within persons raised in Sweden, as if there are no forms of transphobia or homophobia in the Swedish society or culture. This also relates to explanation of when the claimant may be asked questions about their childhood where the guidelines explain that:

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[3] Hur en sökande beskriver sig själv påverkas dock till exempel av sökandes sociala eller kulturella bakgrund, kön, etnicitet eller ålder. Vissa personer kan också känna skam över sin läggning eller könstillhörighet vilket kan medföra att personen in själv identifierar sig som t.ex. homosexuell eller transperson

"In some cases, the asylum claimant may describe a sense of feeling different than others early in life. This might have led to a feeling of stigmatisation when growing up when the claimant began to realise that the community perceive the person as not fitting into the norms of how men and women are expected to live and behave, which may result in not being accepted by their community, or even their own family" [4] *Author's translation* (Swedish Migration Agency, d, 2015, p. 5).

From this quote one can understand that the Swedish Migration Agency indirectly expect the asylum seeker to "feel different", to experience internalised homophobia, and know that they are e.g. homosexual from a young age. And therefore, feel ashamed and be stigmatised in their community and/or family. Thus, it also pushes ideas that self-realisation for LGBTQI+ persons is a linear journey which diminishes the complexity of the human being. As well as it points to Western Superiority in terms that internalised homophobia only occur in non-European cultures.

As illustrated there are multiple instances of white hetero-cis-normative bias found within the guidelines where the Migration Agency portray Sweden as more progressed and liberated by putting Sweden on a pedestal and therefore being superior which points to Edward Said's theories on Orientalism. This shows how the West systematically would illustrate themselves as more civilised and superiors compared to the so-called 'other' as explained by Said (1978). Which then promotes the mentality of 'us vs them', as well as it relates to Spijkerboer's discussion on the European/Non-European dichotomy which functions to legitimise European dominance and exclusion of the non-Europeans (the other). On another note, this thesis does not aim to answer whether or not this portrayal, biased understanding of asylum seekers' cultures and societies, and assumptions of their experiences and understandings of gender, sexual and gender identities are on purpose. However, the given fact that a Western superiority way of thinking is found within the guidelines somehow suggest that this way of thinking played some part in the creation of the guidelines.

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[4] I en del fall kan den sökande beskriva en känsla av att vara annorlunda än andra redan tidigt i livet. Detta kan ha lett till en känsla av stigmatisering under uppväxten när sökanden börjat förstå att omgivningen uppfattar att personen in följer normen för hur män och kvinnor förväntas bete sig och att omgivningen, och kanske även den egna familjen, därför inte accepterar sökanden.

7.2. Absence and presence

By using Jacques Derrida's and Marguerite Porete's discussion on the theories of 'absence' and 'presence' allows me to observe terms, and sexual and gender identities which are not acknowledged and overlooked within the guidelines. The omittance of sexual and gender identities within the guidelines is as what can be described as an absence which can also be a presence according to Derrida and Porete, and this absence provides us with knowledge of what might be ignored and excluded not only in the guidelines but the society as a whole (Lichtman, 1998, p. 214).

The first example of an absence which also is a presence is find in Section 2. in the guidelines called "the guidelines application area" [5] *Author's translation* (Swedish Migration Agency, d, 2015, p. 2), includes a section of terminology and what sexual orientation, gender identity and gender expression refers to. The definition of sexual orientation works in accordance with the preparatory writings of the 2005 Aliens act, and includes homo-, bi-, and heterosexual orientations (Ibid.). The omittance of certain sexual orientations such as asexuality and pansexuality which also fits under the acronym and umbrella term of LGBTQI+ points to the theories of 'absence' and 'presence' by suggesting that the absence of certain sexual orientations in the guidelines may be excluded and overlooked in the society as a whole. This exclusion then perpetuates the hierarchical system of hetero-cis-normativity which maintain the binary discourse of heterosexuality and homosexuality in the society.

Additionally, this demonstrates the power relationship between discourse and identity explained in Queer theory (Watson, 2005). The discourse on sexual and gender identities within the guidelines set the rules of how these identities are understood by the immigration officials, and public councils which also means that the decision-makers' understanding of sexual and gender identities is vital in the decision making process. Hence, the absence of certain sexual and gender identities points to an uneven power relationship between the immigration officials and public councils, and the asylum seeker. As explained by Shuman and Bohmer (2014), the political asylum process further marginalise LGBTQI+ migrants as it produces additional complicities and silences due to this uneven power relationship between case officials and asylum applicants. More so for the already marginalised LGBTQI+ asylum seeker of colour than for any other not only because of the intersections of race, and sexual and gender identities, but also for the discursive regulation and omittance of LGBTQI+ persons within the legal guidelines and the Swedish asylum process. And thus, power

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[5] Ställningstagandets tillämpningsområde

imbalance can be shown through cultural misalignments, or failures of translations according to Shuman and Bohmer (2014, p. 940).

Moreover, the section which defines transgender identity and gender expression explains that the term sex refers to "not only biological gender but also so-called social gender"[6] *Author's translation* (Swedish Migration Agency, d, 2015, p. 2). Where the latter refers to "social, or cultural determined, stereotypical assumptions of how men and women should behave"[7] *Author's translation* (Ibid., p. 2). However, the use of 'biological sex' within the guidelines indirectly indicates that there are only two genders, male and female which upholds the binary understandings of gender that exists in the hierarchical hetero-cis-normative society. Thus, it excludes for instance intersexual persons, who may be born in-between female and male reproductive anatomical systems, and may or may not identify with the gender assigned at birth and thus stereotypes as explained by the Intersex Society of North America (ISNA) (n.d.). This is also the case for non-binary persons who identify themselves as between, beyond, with both or neither of the anatomical reproductive systems of males and females, and therefore the constructed stereotypical identities of male and female which comes along with the gender that was assigned to them at birth. On the other hand, intersexual persons are mentioned in the guidelines when referring to gender expression which according to the guidelines refers to "the way a person express their gender through e.g. clothes, body language, and voice"[8] *Author's translation* (Swedish Migration Agency, d, 2015, p. 2). This illustrates that the guidelines do in fact recognise intersexual persons. However, as mentioned earlier the use of 'biological sex' indirectly suggest that there are only male/female genders and therefore upholds the binary understanding of gender that exists in the society which promotes hetero-cis-normativity and that anatomical reproductive system that deviates from the norm are seen as 'abnormal' or 'unnatural' which then produce marginalised groups. Thus, the absence of the term 'juridical sex assigned at birth' which instead suggest that the so-called female/male gender and the stereotypes that come with them was assigned to the person at birth by recognising that there are more identities in the understanding of gender.

As discussed by Derrida and Porete of an absent presence, the omittance of certain gender identities within the guidelines can be studied and observed as it provides knowledge of what might be excluded in the Swedish society as a whole (Lichtman, 1998). This also refers to the fact that even though the term 'heterosexual' is present, there is no mention of the

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[6] Förutom biologiskt kön även s.k. socialt kön
[7] Socialt eller kulturellt bestämda, stereotypa, föreställningar om hur män respektive kvinnor ska bete sig
[8] Det sätt på vilket en person uttrycker sitt kön, t.ex. genom kläder kroppsspråk och röst

term 'cisgender' in the guidelines. If the asylum process then assess claimants on the basis of them being transgender, it seems like the term 'cisgender' should be included as necessary terminology in the guidelines. Consequently, this points to a hetero-cis-normative discourse in the guidelines where those who do not identify with the gender assigned at birth and the constructed identities of female/male stereotypes that comes with the assigned gender at birth do not fit into norms of this hetero-cis-normative hierarchical society therefore are seen as 'abnormal' and 'unnatural´.

Accordingly, the omittance of certain sexual and gender identities in the guidelines shows that there are multiple instance of hetero-cis-normative understandings of sexual orientation, gender identity and gender which upholds the binary understandings of heterosexuality/homosexuality as well as female/male in the Swedish society. Thus, pointing to Jacques Derrida's and Marguerite Porete's discussion of an absence which can also be a presence, indicates that the unsaid or omitted in discourse provides us with knowledge that it may be ignored and underrepresented in the society (Lichtman, 1998). In addition to this, it is somewhat problematic that the guidelines lack of complete and inclusive definitions concerning all sexual and gender identities. This is because if the asylum claimant do not let the Swedish Migration Agency know early in the asylum process that they seek protection because of their sexual orientation and/or gender identity the claimant may not get assigned with a public council with LGBTQI+ competency and therefore may lack knowledge about LGBTQI+ issues (RFSL, c, 2020). If this is the case, and the public council only have the guidelines as their foundation of knowledge about sexual and gender identities, and LGBTQI+ issues, the guidelines are scarce resource for the public council. Thus, the asylum investigation may affect the LGBTQI+ negatively.

7.3. Binary understandings of Gender

Queer theory and the concept of hetero-cis-normativity which explains how the binary understandings of gender, male/female, are social constructs, in order to maintain the hierarchical system of prejudicial norms that affect all individuals and institutions in the entire society's understanding of sexual orientation, gender identity and gender (Valocchi, 2005) (Gedro & Mizzi, 2014). By using this theory and concept allows me to observe and analyse binary understandings of gender within the guidelines. The first example is found in section 2 in the guidelines and the definitions of what transgender identity, and gender expression entails and the term 'biological sex' is mentioned. However, as this example already is explored and analysed in the section of absence and presence I will not explore it further.

There are several occasions in the document that points to a binary understanding of gender. In section "4.1.1. Particular Social Group (PSG)" [9] *Author's translation* (Swedish Migration Agency, d, 2015, p. 4). The guidelines describes that whether or not homo-, and bisexual persons should be considered as belonging to a PSG can quite easily be revealed by the country in questions' legislation as well as the preparatory documents which indicates situations in which the persecution is based on sexual orientation and therefore it can often be revealed that "he or she" belongs to a PSG (Ibid., p. 4). The use of 'he or she' in this explanation indicates that the guidelines have a binary understanding of gender which then excludes other gender identities such as non-binary persons who identifies themselves as "between, beyond, with both or neither of the gender categorisations of woman/man" (RFSL,a, 2019). The use of 'he or she' is used several times in the guidelines, other examples of this use can be found in section "4.4. Forthcoming risk assessment" [10] *Author's translation* (Swedish Migration Agency, d, 2015, p. 8). Another particular place where the binary understanding of gender and 'he or she' is used is in section 3.1. in the annex of the guideline. This section is an attachment which include the definition of a refugee that can be found in chapter 4. 1§ of the 2005 Swedish Aliens Act and states that a refugee is a person who,

> "is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group" (Sweden: Aliens Act (SFS 2005: 716), 2006).

The use of 'he or she' in not only the guidelines on how to assess LGBTQI+ persons in the Swedish asylum process, but also the 2005 Swedish Aliens Act indicates that not only the Swedish Migration Agency, but the Swedish Government have a binary understanding of gender may suggest that a binary understanding of gender is a part of the Swedish society as a whole. This points to Worthens explanation that hetero-cis-normativity not only is about prejudices based on heterosexual and cisgender assumptions such as homophobia and transphobia, but that it also represents hostility to anything that goes against the hierarchical system that uphold a binary understanding of gender in the society (2016). This then indicates that in some level there is a form of institutional bias against LGBTQI+ persons in the Swedish asylum process based on white hetero-cis-normative understanding of sexual

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[9] Särskild samhällsgrupp
[10] Framåtsyftande bedömning

orientation, gender identity and gender and thus further marginalise LGBTQI+ asylum seekers in Sweden. This discourse of a hetero-cis-normative understanding of gender within the guidelines then points to that queer identities are perceived as going against the norm of what gender is, and therefore are seen as 'unnatural' and 'abnormal. Thus, there is a power imbalance between the LGBTQI+ asylum seekers and the immigration officials, not only on the basis of the immigration official's interpretation of the Swedish asylum policy. Also, on the basis of how the immigration officials understand sexual and gender identities. Hence, the intersection of these power imbalances may further marginalise and regulate the LGBTQI+ asylum seeker in the Swedish asylum process.

8.   Conclusion

In conclusion this thesis analysed how the guidelines provided by the Swedish Migration Agency on how to assess persons seeking asylum for reasons of sexual orientation, gender identity, or gender expression understands and portray sexual orientation, gender identity and gender. As well as how these understandings points to an institutional bias against LGBTQI+ persons in the Swedish asylum process and therefore further marginalise LGBTQI+ asylum seekers in Sweden. Hence, to conduct this research the textual document of the guidelines provided by the Swedish Migration Agency on how to assess LGBTQI+ asylum seekers was selected as the material to be analysed through the theoretical lens of Queer theory and with the use of critical discourse analysis. Additionally, this research applied a constructivist approach as both critical discourse analysis and Queer theory share this worldview.

The finding of this thesis shows some levels of an institutional bias against LGBTQI+ persons in the Swedish asylum process. This study showcased examples within the text of the guidelines of a portrayal of Western superiority by using elements of Edward Said's theory on Orientalism. As well as illustrating examples of stereotypes of LGBTQI+ persons within the document with help of the concept of hetero-cis-normativity. The findings also used theories on absence and presence to present ways in which omittance or acknowledgement of certain terms are founded in white hetero-cis-normative understandings of sexual orientation, gender identity, and gender. In addition to this, to portray binary understandings of gender the findings used the Queer theory and the concept of hetero-cis-normativity, and the findings showed that a binary understanding of gender occurred multiple times in the guidelines. From these findings I could illustrate how there is some level of institutional bias against LGBTQI+ asylum seekers in Sweden which further marginalise this already vulnerable group.

The limitations had its limitations. For example, although the findings points to levels of an institutional bias against LGBTQI+ persons in the asylum process based on white hetero-cis-normative understandings of sexual orientation, gender identity and gender, the research does not involve how the material analysed is used by the Swedish Migration Agency. As well as, due to the guidelines are written in Swedish it required me to translate it to English in order to conduct this research thesis which means that some things may have got lost in translation as English is not my mother-tongue.

Finally, due to findings of this thesis indicates to a white hetero-cis-normative understandings of sexual orientation, gender, and gender identity within the guidelines which then further marginalise LGBTQI+ asylum seekers in Sweden. This study sets basis for further research and examination of how LGBTQI+ persons are assessed in the asylum process, and how understandings of sexual orientation, gender identity, and gender may further marginalise the LGBTQI+ asylum seeker. For the context of this thesis, this study contributes to the how the guidelines can be examined and improved by the Swedish Migration Agency. As well as it shows that training regarding knowledge about LGBTQI+ issues, sexuality and gender identities should needs to be improved and included for all officials working at the Swedish Migration Agency.

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