

# THE EUNUCHS OF INDIA: AN ENDOCRINE EYE OPENER

Neha Anand  
Department Of Law

Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

**ABSTRACT:** *Hijras (Eunuchs) in India have virtually no safe space, not even in their families, where they are protected from prejudice and abuse. The PUCL(K) Report on Human Rights Violations against the Transgender Community has documented the kind of prejudice that hijras face in Bangalore. The report shows that this prejudice is translated into violence, often of a brutal nature, in public spaces, police stations, prisons and even in their homes. The main factor behind the violence is that society is not able to come to terms with the fact that hijras do not conform to the accepted gender divisions. In addition to this, most hijras have a lower middle-class background, which makes them susceptible to harassment by the police. The landmark judgement of NALSA vs Union of India recognised the various civil rights of transgender community. This paper attempt to explore the various dimensions of the eunuch's community, by discussing about their history, social recognition, legal status etc. This paper attempt to shed light on the status of transgender in India, the background of the court in understanding and recognising the status of eunuchs within the preview of Indian society and acknowledgement of their rights.*

**KEY WORDS:** *Eunuchs, Hinjara, Mugal, Government of India, Indian Constitution.*

## INTRODUCTION

The category of people whose gender identity does not adhere to biological sex and varies from regular men and women as categorised by society is commonly referred to as Eunuchs. These classes of individuals appear to dress like women who wear sarees, jewellery and makeup. In India, as the name given by the Apex Court of India, these classes are extensively recognized as Khuras, Chakkas, Hijara, Kinnar etc. and also third gender. In India, when a eunuch visits home during childbirth, married couples or some other auspicious occasion, it is deemed reasonable. Wear elegant and vibrant saris, ornaments, make up over the face and act like a woman in general. Eunuchs spend their entire lives without family support because, in their youth, their families disown and hand over to other groups that are transgender in general. Though most of the eunuchs seen today beg at traffic signals or during weddings, during the Mughal rule in Medieval India, they were a revered lot. The word "eunuch" is derived from the Greek word "Euneukhos," which literally means bed chamber attendant." Because of their emasculation, they were therefore put in charge of harems.

## DISCUSSION

### *Historical Background*

Indian mythology also provides a quick glance at both the reflections of the past, stipulating that transgender individuals many of whom are disrespected today were formerly greatly valued. We will also find examples of deities shifting gender in Hindu mythology, manifesting as an Incarnation of the opposite sex, etc. At different points and in several incarnations, Gods are also portrayed as both male and female. Eunuchs mostly in Mahabharata and Ramayana also trace their origins. The Mahabharata legend is "that Aravan, the son of Arjuna and

Nagakanya, offers Goddess Kali to be sacrificed to ensure the victory of the Pandavas in the war of Kurukshetra." The only condition he made for himself was to spend the last night of his married life. Krishna assumes the form of a beautiful woman named Mohini and marries him, because no woman was willing to marry one who was destined to be killed. Tamil Nadu's hijras regard Aravan as their progenitor and call themselves aravanis.' Another of the most important transgender characters found in Hindu mythology is the Mahabharata Shikhandi.

While leaving for the forest after being exiled from the kingdom for 14 years, Ramayana Rama gestures to his supporters and asks all "men and women" to return to the region. The hijras themselves do not appear to be supported by this path among his followers and continue to remain with him. Impressed with their devotion, on auspicious occasions such as childbirth and marriage, and also at inaugural events, Rama punishes them with the power to confer blessings on citizens. This set the course for the badhai tradition in which hijras sing blessings, dance and confer.

Eunuchs were typically servants or slaves during the Mughal period who were castrated to prove them trustworthy to the royals, they have physical access to the ruler where they could exert great power. They were normally assigned to perform domestic functions such as making the bed of the king, cutting his hair, bathing him, carrying him as a trusted servant in his toilet, or even relaying messages. In ancient times, eunuchs weren't really supposed to only have nobility, or allegiance to the army, or to their own kin, and were thus seen to be trustworthy. They could also be quickly replaced or killed without consequences because of their lower intelligence.

There were only high-status job opportunities available for eunuchs in India even during Mughal period, mostly as result of which poor families sometimes changed their offspring into a eunuch and had him work in the colonial palaces to establish a steady stream of income for the family to ensure a perfect lifestyle for them. Eunuchs were often workers by Mughal rulers as servants of female royalty in Imperial palaces, and also achieved high-status roles in society.

#### *Social recognition of Eunuchs*

It is quite true that there is a difference between social acceptance and self-perception. It should be remembered that the injustices of sexuality were being trapped in the web of the Corbett theory since ancient period, which defined a biological test and overlooked the psychological test. A biological deterministic view, such as that of Geddes and Thompson, suggests that "metabolic states are responsible for social, psychological and behavioural traits." The chromosomal configuration derives its intensity from this dominant biological identity.<sup>1</sup> On the other hand, across the narrow lanes of individualised sexual orientations, which seem to be too customised to pass through public previews, the latent psychological life tries hard to stagger. More specifically, this biological distinction is mostly used as an instrument to withhold the rights of members of society, rather than those in the male or female group.' Until the 1960s, the word "gender" was used to refer to the two "feminine" and "masculine" forms of society. In 1968, Robert Stoller started to use the word "sex" while writing about transsexuality in order to refer to the biological characteristics and the term "gender" that refer to a person's degree of femininity and masculinity. He was also the first to propose the "gender identity" concept. Transsexuals were not considered in social life until the 1990's. In 1992, the European Court of Human Rights ruled for the first time that 'a breach of Article 8 of the

European Convention on Human Rights had occurred in a case involving the identification of transsexuals.' Tamil Nadu launched a "transgender welfare policy" in 2008-2009 with reference to India, enabling them to access free sex reassignment surgery in the government hospital, free housing programme, different citizenship papers, admission to government colleges with full scholarship for higher studies, alternative livelihood sources through the creation of self-help groups and the initiation of income-gegege schemes. Furthermore, special privileges have been given for industries started by transgender, as per the Small Industries Policy.

### *Legal Provisions in India*

In 2013, the Ministry of Social Justice and Empowerment decided to submit an expert committee report which noted that "lack of recognition before the law is itself a violation of human rights, and this represent a major barrier to the realisation of other basic rights by transgender people." "Article 5 of the Constitution identifies the person entitled to be a citizen of India," the report noted. As a precondition of acquiring citizenship, every one of the conditions stated therein include a determined sex or gender identity. Although in legislation there is no articulate mention of transgender, leaving it to be interpreted as dependent on general clauses relating to their protection of human rights, there are some legal provisions that passively grant them rights. In addition, India has ratified its laws in accordance with most international treaties with regard to the broad scope of human rights, with regard to women, children, and persons with disabilities, the elderly and transgendered persons. In order to uphold and protect these rights, to ensure full equality and to counter discrimination, they provide authoritative guidelines on human rights and responsibilities to states.

Promoting international stability, peace and reverence for international law and the Treaty, Article 51 of the Indian constitution. It is accompanied by Article 253, which obliges the State, by giving effect to an international agreement, to establish legislation. When reading the two together, we understand that municipal courts in India will respect the rules and regulations of international law mostly in absence of opposite laws. Any international convention which is not incompatible with human rights and which is in accordance from its spirit must therefore be read into these clauses, such as Articles 14, 15, 19 and 21 of the Constitution. Article 14 provides that the State shall not deny equality before the law or equal protection of the law to any citizen. The article does not restrict the word "person" to male or female only. "Article 15 forbids discrimination on the basis of "sex" by the State with regard to access to stores, hotels or the use of goods, tanks and other public places; "Article 16 provides equal job opportunities irrespective of sex, but sadly, in spite of those articles, India still has discriminatory laws in violation of international human rights law." In addition, it must be remembered that, under Articles 15(2) and 15(4) of the Indian Constitution, transgender rights are also denied. Article 19(1)(a) lays down fundamental freedoms which constitute human rights, including the right to freedom of speech and expression of one's self-identified gender and the right to choose one's personal appearance, as fundamental rights granted to all the people of India. While members of the transgender community under it are guaranteed the values of privacy, autonomy, self-identity and personal integrity, and the state is obligated to uphold and accept these rights, there is in many cases a disassociation between their gender, their social name and their identification documents that dehumanises them and often denies them their civil and legal rights. Article 21 also specifies that no person shall be deprived of his or her life or personal liberty, except in compliance with the procedure laid down by statute, generally known as the 'right to life.' Somehow, however, we have refused to encourage people with alternative sexualities to live a life of respect and integrity and have forced them somewhere to

separate themselves from society by not giving those sufficient privileges, respect and recognition.<sup>2</sup>

### *Judicial Barrier*

While people of America is celebrating the US Supreme Court decision in *Obergefell v. Hodges*<sup>3</sup>, despite being the largest democracy in the world, are were still struggling with the status of LGBTQ. In 2009, when the Delhi High Court held section 377 of IPC unconstitutional, it was the time for the celebrations but the happiness is short lived as the Supreme Court in *Suresh Kumar vs. Naz Foundation*<sup>4</sup>, in 2013, set aside the decision of the High Court by stating "that this Court has merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of Section 377 IPC and found that the said section does not suffer from any constitutional infirmity." It was held that repealing or amending Section 377 should be the matter of Parliament, not the judiciary and dismissed the review petition against the verdict.<sup>5</sup>

This reinsertion of Section 377 resulted in major political debates, with numerous prominent figures participating in it, taking place across the country and impacting high-level individuals. "The Supreme Court in *NALSA vs. Union of India* granted constitutional recognition to the Transgender as Third Gender in April 2014, taking into account the domestic laws along with various case laws, stating "that they formed a separate community and that any discrimination against them is a violation of their constitutional rights. The Court does agree, however, that "Only homosexuals, lesbians and bisexuals will be included in the modern definition of transgender, further directing the government to treat them as a backward class socially and educationally and entitling them to quotas such as that for the Other Backward Classes, educational institutions and public appointments, etc. While the 2014 judgement acknowledges the "trauma, pain and agony that is experimental"<sup>6</sup>

As a result, while transgender people have been accepted in society, the basic truth is that, yes, they are granted quotas in government agencies and jobs, but the reality is that they've been still regarded with an outside part of society, they too are devoid of love and dignity.

### *The Transgender Persons (Protection Of Rights) Bill, 2016*

In order to protect the interests of transgender people and their acceptance in society as per the direction of the apex court, this bill covers a wide range aspects mostly with presentation of "The transgender person (protection of rights bill), 2016":-

A transgender individual must obtain an identity certificate as evidence of identity recognition as a transgender person and invoke rights under the Bill.

A transgender individual is identified by the Bill as those who are partly female or male; or a mix of female and male; or neither female nor male. In addition, the identity of the person must

<sup>2</sup> Swain S. Problems of third gender. In: Swain S, editor. Social Issues of India. New Delhi: New Vishal Publications; 2006. [Last Accessed on 2011 Aug 5]. pp. 57–9

<sup>3</sup> *Obergefell V. Hodges*, 83 U.S.L.W. 4592

<sup>4</sup> *Suresh Kumar Vs. Naz Foundation*, 1 SCC 1, (2014)

<sup>5</sup> . Mukherjee JB. Castration-A means of induction into the Hijirah group of the eunuch community in India: A critical study of 20 cases. *Am J Forensic Med Pathol.* 1980;1:61–6

<sup>6</sup> *NALSA Vs. Union Of India*, AIR 2014 SC 1863

not adhere to the sexual identity which includes Transmen, trans women, individuals with intersex differences and queers of gender.

In areas such as education, housing, and healthcare, the Bill forbids discrimination against a transgender individual. It guides the central and state governments in these areas to provide welfare schemes

Such a certificate will, upon the recommendation of the Screening Committee, be issued by the District Magistrate. A medical doctor, a psychologist or psychiatrist, a district health officer, a government official, and a transgender individual would be part of the committee.

Offences such as requiring a transgender person to beg, refusing access to a public location, physical and sexual assault, etc. will result in incarceration of up to 2 years and a fine.

### CONCLUSION

This paper introduces us to the life and the dilemma and social stigma of a eunuch in India that they face throughout their lifetime. Discrimination is so ingrained in a country like India whereby transgender people do not even have access to the basic necessities such as health care, schooling, jobs that can make them part of society. Various NGOs and communities have been working together to assist them in every way possible, but it is only made even more difficult by the risk attached to them. To protect and safeguard their rights, it is the need of the hour to make some strict rules.