

GENDER JUSTICE AND STATUS OF EUNUCH

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I. INTRODUCTION

The English word eunuch is from the Greek eune ("bed") and ekhein ("to keep"), effectively "bed keeper". The most common group that actually embraces the term "eunuch" are the contemporary voluntary eunuchs, who number 7,000 to 10,000 in North America, with many more around the world.¹ Many of these are males who have a Male-to-Eunuch Gender Dysphoria. While they are born with male genitalia, their brain tells them that they are not male, but neither are they female. They seek castration to align their bodies with their brain sex. A second large group of the contemporary eunuchs have a Body Integrity Identity Disorder. This occurs when the brain does not accept the presence of some specific body part. According to the two main diagnostic systems used in the Indian medical establishment, transsexualism is defined as a 'gender identity disorder'. The doctors usually prescribe a sexual reassignment surgery (SRS), which currently resorts to hormone therapy and surgical reconstruction and may include electrolysis, speech therapy and counselling. Surgical construction could include the removal of male sex organs and the construction of female ones. Since government hospitals and qualified private practitioners do not usually perform SRS, many hijras go to quacks, thus placing themselves at serious risk. Neither the Indian Council for Medical Research (ICMR) nor the Medical Council of India (MCI) have formulated any guidelines to be followed in SRS. The attitude of the medical establishment has only reinforced the low sense of self-worth that many hijras have at various moments in their lives.

1.1. Historical aspects

Around the world, eunuchs were used for different tasks. Some of them were occupying higher and respected positions at imperial palace. The ancient period servants or slaves were castrated to make them reliable servants of a royal court where physical access to the ruler could exercise great influence. They used to do domestic functions such as making the ruler's bed, bathing him, cutting his hair, carrying him in his toilet or even relaying messages as a trusted servant. Eunuchs were generally not supposed to have loyalties to the military, the aristocracy, nor to a family of their own having neither offspring nor in-laws, at the very least, and were thus seen as more trustworthy and less interested in establishing a private 'dynasty'. Due to their low social status, they could also be easily replaced or killed without repercussion. They were also used in harems or janankhana i.e. among the ladies of the family to guard them and serve them without any doubt.

In India during the period of Mughal Royalty number of high-status job openings were available for eunuchs, as a result the poor families often converted one of their sons into a eunuch and had him work in the imperial palaces to create a steady source of revenue for the family and ensure a comfortable lifestyle for the son. Eunuchs were frequently employed in Imperial palaces by Mughal rulers as servants for female royalty, and often attained high-status positions in society. Eunuchs in Imperial palaces were organized in a hierarchy, often with a senior or chief eunuch (Urdu: "Khawaja Saras") directing junior eunuchs below him. Eunuchs were highly valued for their strength, ability to provide protection for ladies' palaces and trustworthiness, allowing eunuchs

¹ Johnson, Thomas W, et al. (2007). "Eunuchs in contemporary society: Characterizing men who are voluntarily castrated" (Part I). *Journal of Sexual Medicine*, vol. 4, pp. 930–945
Brett, Michelle A, et al. (2007). "Eunuchs in contemporary society: Expectations, consequences, and adjustments to" (Part II). *Journal of Sexual Medicine*, vol. 4, pp. 946–955
Roberts, Lesley F, et al. (2008). "A passion for castration: Characterizing men who are fascinated with castration, but have not been castrated." *Journal of Sexual Medicine*, vol. 5, pp. 1669–1680

to live amongst women with fewer worries. This enabled eunuchs to serve as messengers, watchmen, attendants and guards for palaces. Often, eunuchs also doubled as part of the King's court of advisers.²

1.2. Myths of Mahabharata and Ramayana

Hijras trace their origins to myths in the Ramayana and the Mahabharata. Rama, while leaving for the forest upon being banished from the kingdom for 14 years, turns around to his followers and asks all the 'men and women' to return to the city. Among his followers the hijras alone do not feel bound by this direction and decide to stay with him. Impressed with their devotion, Rama sanctions them the power to confer blessings on people on auspicious occasions like childbirth and marriage, and also at inaugural functions. This set the stage for the custom of badhai in which hijras sing, dance and confer blessings.

The legend in the Mahabharata is that Aravan, the son of Arjuna and Nagakanya, offers to be sacrificed to Goddess Kali to ensure the victory of the Pandavas in the Kurukshetra war. The only condition that he made was to spend the last night of his life in matrimony. Since no woman was willing to marry one who was doomed to be killed, Krishna assumes the form of a beautiful woman called Mohini and marries him. The hijras of Tamil Nadu consider Aravan their progenitor and call themselves aravanis.

HIJRA i.e. eunuch which are associated with a deity and with certain rituals and festivals – notably the devotees of Yellammadevi, or jogappas, who are not castrated³ and the Ali of southern India, of whom at least some are.

II. SOCIETAL APPROACH

Hijras i.e. Eunuchs in India have virtually no safe place. They are prejudiced and abused in their families also, where they are expected to be protected from prejudice and abuse. The recently released 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 places, 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 discrimination based on their class and gender makes the hijra community one of the most disempowered groups in Indian society.

Hijra, a Hindi and Urdu term traditionally translated into English as "eunuch", actually refers to what modern Westerners would call male-to-female transgender people and homosexuals or third sex. Some of them undergo ritual castration, but the majority does not. They typically live in the margins of society, face discrimination⁴ and earn their living in various ways, e.g., by coming uninvited at weddings, births, new shop openings and other major family events and singing until they are paid or given gifts to go away.⁵ The ceremony is supposed to bring good luck and fertility, while the curse of an unappeased hijra is feared by many.

² "Akbar-Birbal Anecdotes".

http://www.columbia.edu/itc/mealac/pritchett/00urduhindilinks/txt_akbar_birbal.html. Retrieved 2008-11-02.

"Ghilmans and Eunuchs". <http://www.bharatvani.org/books/mssmi/ch9.htm>. Retrieved 2008-11-02.

³ "The *Yellamma cult of India*". *Kamat.com*. <http://www.kamat.com/kalranga/people/yellamma/yellamma.htm>. Retrieved 2010-11-06.

Mystery of the Threshold: "Ali" of Southern India. *Web.archive.org*. 2006-11-25. Archived from [the original](#) on 2006-11-25. <http://web.archive.org/web/20061125041736/http://www.uni-koeln.de/phil-fak/indologie/kolam/kolam1/alieng.html>. Retrieved 2010-11-06.

⁴ *Ravaging the Vulnerable: Abuses Against Persons at High Risk of HIV Infection in Bangladesh*, *Human Rights Watch*, August 2003. [Report online](#).

See also: Peoples Union of Civil Liberties (Karnataka) Report on Human Rights Violations Against the Transgender Community, released in September 2003. Reported in *Being a Eunuch*, By Siddarth Narrain, for Frontline, 14 October 2003.

⁵ *Eunuchs 'cut off man's penis'*. By Baldev Chauhan, BBC correspondent in Himachal Pradesh. BBC News. Thursday, 24 July 2003.

Other sources of income for the hijra are begging and prostitution. The begging is accompanied by singing and dancing and the hijras usually get the money easily. Some Indian provincial officials have used the assistance of hijras to collect taxes in the same fashion; they knock on the doors of shopkeepers, while dancing and singing, and embarrass them into paying.⁶

However, the human rights movement in India has begun to take notice of the concerns of the community only recently. Legal scholar Upendra Baxi, in the foreword to the PUCL(K) report, says: "The dominant discourse on human rights in India has yet to come to terms with the production/reproduction of absolute human rightlessness of transgender communities.... At stake is the human right to be different, the right to recognition of different pathways of sexuality, a right to immunity from the oppressive and repressive labelling of despised sexuality. Such a human right does not exist in India."

According to the PUCL(K) report, violence is a widespread and everyday reality for hijra and kothi sex workers in Bangalore. Owing to the intolerance they face from their families, hijras and kothis often use public spaces like parks and toilets to entertain sexual partners, lovers and sometimes even clients. The lack of protection or privacy afforded by their own accommodation, makes them vulnerable to violence, inflicted largely by the police.

III. POLICE TORTURE AND LEGAL HASSLES

The harassment and surveillance by the police manytimes extends into the privacy of their homes. The place with the most scope for abuse is the police station where the police, on a regular basis, violate all canons of civilised behaviour by physically, sexually and verbally abusing and humiliating hijras and kothis. (Kothi is a term used to describe male homosexuals who take on the female role; they are largely from a non-English-speaking lower middle-class background. Many kothis marry owing to family pressure but continue to have same sex relationships. There is a symbolic relationship between kothis and hijras, which has been strengthened because of the lack of other support systems for kothis in cities and smaller towns.)

The media is also not far behind in spreading misconceptions about hijras. In December 2002, Chandini, a hijra from Bangalore, died of severe burns in her home. The hijra community alleged that her husband, who had a long-standing relationship with her, had murdered her for money, and demanded that an impartial probe be held. The police refused and stuck to their version that it was a case of suicide. The local newspapers, including Police News, portrayed the incident as an exciting romantic tryst between two strangers, in which the unsuspecting man discovered the true sexual identity of the wily hijra. In most of the news papers including English news papers, they are eager to make incidents regarding hijra as a hot story and overlooking the truth describe them (hijra) as a race apart, freaks of the underworld, half-man half-woman, almost devilish in their customs and practices. This kind of focus again keeps them at the margin of the society.

Prisons are also places where anyone who is seen as not being 'masculine enough' is harassed and often physically and sexually abused. According to the PUCL(K) report, the deeply sexual nature of the violence indicates that the sexuality of the hijra becomes the target of prurient curiosity, which could in its extreme form manifest itself as brutal violence. Sexual abuse and violence, apart from being the most systematic tool for dehumanising an individual, can be understood as a punishment for not conforming to the gender roles laid down by society.

Unfortunately our laws too instead of providing them safety are used as weapons to torture them. The Criminal Tribes Act, 1871, amended in the year 1897 and subtitled as "An Act for the Registration of Criminal Tribes and Eunuchs,". With this wonderful amendment police got new ideas and reasons to torture and hijra community got new reasons to be away from main stream. By the title "An Act for the Registration of Criminal Tribes and Eunuchs," eunuchs who are not criminals either by birth or by vocation were equated with all criminal tribes. Under this law, the local government was required to keep a register of the names and residences of all eunuchs who were "reasonably suspected of kidnappings or castrating children or committing offences under Section 377 of the Indian Penal Code." Section 377 of the Indian Penal Code is another weapon in the hands of police which criminalizes "carnal intercourse against the order of nature with any man, woman or animal," even if it is voluntary. The law, which is traced back to colonial ideas of morality, in effect, presumes that a hijra or a homosexual is engaging in "carnal intercourse against the order of nature". This again makes these communities vulnerable to police harassment, arrest and torture by the police at any given time and place under any excuse.

They are also targeted under 'The Immoral Traffic Prevention Act (ITPA) of 1956 (amended in 1986)', whose stated objective is to criminalise brothel-keeping, trafficking, pimping and soliciting, in reality targets the

⁶ "Dancing eunuchs taxing red-faced shopkeepers. Reuters. November 10, 2006". Reuters.com. <http://www.reuters.com/article/idUSDEL3025420061110>. Retrieved 2010-11-06.

visible figure of the sex worker and enables the police to arrest and intimidate the transgender sex-worker population.

The story of torture does not end up here police also make it a point that all eunuchs must pay hafta to the police or there is a risk of being beaten up. They are rarely employed in regular jobs, though many would like to lead normal lives. They fight among themselves for clothes and money when the time to share the booty comes. The law also decreed eunuchs as incapable of acting as a guardian, making a gift, drawing up a will or adopting a son.

These incidents suddenly bring to our notice the futility of Article 3 of the Universal Declaration of Human Rights, Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, states: "Every human being has the inherent right to life. Law shall protect this right. No one shall be arbitrarily deprived of his life". Article 4 of the ICCPR states that this right cannot be waived "even in times of public emergency threatening the life of the nation". Unlawful and extra judicial killings clearly contravene the right to life. And India is obliged not only to respect that right in principle, but also to ensure it is not violated in practice.

IV. STATUS OF EUNUCH

In a landmark judgment *Christine Goodwin vs. the United Kingdom*⁷, rights of transgender people are recognized. It said that a test of biological factors could no longer be used to deny recognition legally to the change of gender that a transsexual had undergone. In New Zealand, in *New Zealand Attorney General vs. the Family Court at Otahuhu*⁸, the court upheld the principle that for purposes of marriage, transsexual people should be legally recognised in their re-assigned sex. In Australia, the Equal Opportunity (Gender Identity and Sexual Orientation) Bill, debated and amended in the State Assembly in 2000, has laid down a comprehensive definition of gender identity by incorporating various social and cultural factors that shape a person's gender and sexual identity. The International Bill of Gender Rights, adopted in 1995, provides for the right to define and express freely one's gender identity.

Pakistan's Supreme Court recently ruled that all hijras, transgender and eunuch community, will be registered by the government as part of a survey that aims to integrate them further into society. The ruling followed a petition by Islamic jurist Dr Mohammad Aslam Khaki, who said the purpose was to "save them from a life of shame.

In 1983 the Conference of Rulers in Malaysia decided that a ban of 'sex change operations' should be imposed on all Muslims, except for hermaphrodites. Also, 'cross-dressing' was prohibited. In 1988 Al Azhar, the highest Sunni Islamic authority in Egypt, gave a religious (legal) decision (fatwa) regarding surgical treatment of intersexuals stating that 'it is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so with the reason that it must be considered a treatment'. In India Recently, hijras have started to found organizations to improve their social condition and fight discrimination. There has even been a wave of hijra entering politics and being elected to high political positions.⁹ Sangama, an organisation working with hijras, kothis and sex workers in Bangalore, has played an important role by helping them organise and fight for their rights. In December 2002, hijras, kothis and other sexual minorities in Bangalore formed a collective called Vividha. Its charter of demands includes the repeal of Section 377 and the ITPA. It has also demanded that hijras be recognised as women, be given equal opportunities, with entitlement to housing, employment benefits and rail travel concession. In 2002, the hijra community in Bangalore organised 'Hijra Habba', a festival of sports and cultural events, which was covered extensively and positively by the media. In 2003, The organisations of the hijra community can be seen as constituting a larger movement of sexual minority groups in India. They are challenging the constitutional validity of Section 377 and are organising a campaign questioning the government's stand that the law should remain.

India's Election Commission has given transgenders an independent identity by letting them state their gender as 'other' on ballot forms. Thus far, transgenders have been forced to describe their gender as being either male or female. Their recognition as an independent group is the first step towards official recognition of a community that has so far remained on the margins of society. The recognition comes 15 years after the third sex was granted the right to vote in 1994. Besides the electoral rolls, the option to indicate the third sex as 'O' will also be available in other documents of the Commission, including IT-based forms and websites. Indian

⁷ *Application no.28957/95 Eur.Ct.H.R.decided July 11, 2002*

⁸ *E.Law Murdoch University Electronic Journal of Law Vol. 8 Number 1 ISSN 1321-8247 March 2001*

⁹ *From the Peoples Union of Civil Liberties (Karnataka) Report on Human Rights Violations Against the Transgender Community, released in September 2003.*

government finally accepted that there is a plurality of genders in our society, which is ultimately good for building a tolerant society. This decision has been welcomed by the prominent eunuch activist Laxmi Narayan Tripathi, Ashok Rao etc.

The Tamil Nadu government took the lead in recognising the rights of transgenders in March 2008, when the state civil supplies department added the option 'T' (third sex) in ration cards. Transgendered people were able to write 'E' for 'eunuch' on passports and on certain government forms, but had failed in their campaign for acceptance at the ballot box though some have even contested elections and entered the public arena.

Though this is brighter side there are some setbacks which they are facing with courage. Shabnum Mausai, a eunuch from Madhya Pradesh, contested and won assembly elections in 1998, from Shahdol. She had to list herself as 'F' (female) in the electoral rolls, with the only other option in the gender column being 'M' (male). Another member of the third gender became a successful mayor in Madhya Pradesh, but was identified as 'male' on the voters' list while winning the election on a seat reserved for women. Needless to say, the mayor's political career came to an abrupt end.¹⁰

In the case of , Kamla Jaan, she contested as an woman and won the elections to become the world's first eunuch mayor. Alka Jain, an advocate who lost the election, had challenged Kamla Jaan's gender. In her petition she said that Kamla alias Kamla Jaan was a eunuch and therefore was not born a girl. She also referred to several medical books to make her position clearer. According to Alka, Kamla had first registered herself in the electoral rolls as a male but had later changed the status of her gender. The additional sessions judge of a court in Katni in Madhya Pradesh has dismissed Kamla Jaan, the country's first eunuch mayor from her post. The court upheld a petitioner's plea that Kamla Jaan was not a woman and hence could not be elected from a constituency reserved for women. It is pertinent to note that Kamla Jaan has been mayor of Katni since January 2000. She has run the city with an iron hand for two-and-a-half years, during which she sunk wells, fixed drains and renovated the bus station.¹¹

Fired by setbacks like this, eunuchs are now considering forming their own party. This could offer a new lease of life for one of India's most disadvantaged and downtrodden classes.

V. SUGGESTIONS

In hospitals separate ward should be created, as while admitting the patient of third gender one has to mention to which gender the person belongs, and in which ward he is to be admitted male or female is the dilemma for hospital administration.

People don't consider them as human beings. People hesitate to eat with them, drink with them or shake their hands. More so they are also denied health and psychological/ psychotherapeutic assistance. Misconceptions amongst the people should be clarified.

Desperate and unemployed youth is attracted to hijra i.e. third gender community to earn the easy money. Ignorance toward psychological healing of problems in most of the low class families led their children to take shelter in the so-called safe haven of hijra community. Selling of children to hijra community due to poverty is yet another important reason for becoming hijra.

Compulsory quality education should be provided to this community so that they will not face humiliating treatment because of their social and economic status in the society. They become fashion designers, interior decorators, hair stylists' etc.

A great number of them turn to prostitution. Police officers and residents often beat, harass, rob and sexually abuse them. A general concept in society is established that "They pollute people's morality." The stigma attached to them since then has left them increasingly vulnerable to theft, attack and abuse in male-dominated and often-feudal society. To avoid this proper employment opportunity should be provided to them.

In a landmark decision in December, the Pakistan Supreme Court ordered that eunuchs be protected from police harassment, be eligible for a separate gender category on ID cards and be recognized under inheritance laws. In addition to the order for government recognition, Chief Justice Iftikhar Chaudhry also issued a warning that the hijras' rights of inheritance, which are often informally ignored, would be enforced. Such decisions of the court should be accepted open-heartedly. Third gender should be informed of their civil rights as other citizens. Police

¹⁰ Source: DNA, November 14, 2009

The Telegraph, November 14, 2009

AFP, November 13, 2009

BBC, November 13, 2009

¹¹ Source: BBC, www.ndtv.com , August 30, 2002

should be warned to cease harassment and intimidation. National data base machinery should add a third option under the "sex" column.

Some sociologists and legal experts have suggested that eligibility for new ID cards or other benefits might require a physical exam and test to avoid fake cases. Complex issues still need to be resolved, including inheritance, whether hijra merit special job or housing quotas, election registration and their gender status on ID cards. They should be actively involved for raising awareness about AIDS because it is reported most of them are HIV positive.

Third gender want to be declared eunuchs, if they are eunuch, then eunuch should be written instead of men according to their demand. When they are searched at the airport and their ID says male but wearing a dress of women, is disgusting and intolerable for them as well the authorities.

Parents should be very careful about the children showing deviant behavior. If a boy behaves in girlish manner, he should not be encouraged. Rather, should be taken to psychiatrist immediately for necessary treatment. Parents should have an active eye on the activities of their children reaching the age of adolescence. They should check the company their children keep.

Government should more actively approach to homosexuals and develop public awareness program to handle the issue. Moreover, there should be complete record of born third gender on district level. So that these third genders can either be provided financial help publicly to restrain them from falling in socially unacceptable activities or assigned them quota in employment.

VI. CONCLUSION

Eunuchs have no grudge against normal human beings because they accept their sexual identity as 'destiny'. We are in 21st century, but some part of our society is deprived of the rays of 21st century. It can be said that we are just developed in mechanics and technologies but as a person from within we are far from development. I am afraid of saying so because in previous centuries also some justice and attention was paid to them. We are just living longer life and not a quality life i.e. larger life or worth life. We are treating some people/part of the society in a way where the word human can be questioned. Isn't the quality of life more important than its quantity even for people marginalised by the mainstream as the lowest of society where the word 'human' is under question? The systematic violence that hijras face is reinforced by institutions such as the family, media and the medical establishment, and is given legitimacy by the legal system. The discrimination and violence that hijras face show that it is high time that both the government and the human rights movement in the country begin to take this issue with the seriousness it deserves.