

THE SILENT SCREAMS OF VOICELESS- 'THE HIJRAS'

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ABSTRACT

Every human life regard it has its own domain to exist on this world and at the same time their dominance turns to be as a vulnerability for other lives too. One such being the transgender community. The gender is an inclusive term which also include the 'hijras' or 'transgender.' Sex, whether only assigned by birth or of one's own choices. Humanity comes into life only when a human look upon other human with respect and dignity. The fact that the pace of our travel has withered out the empathy and sympathy. There is no time for human lives to look by our side, as to who is the fellow human travelling with a compassionate look on them. If such humanity is found to be withering out then often the saviour is 'law.' Despite law taking several initiatives still life with dignity is many a times a day dream for transgender community.

This paper analyzes about the different terminologies use to refer the transgender people. Also, the landmark judgment recognized them as 'third gender.' The trauma undergoing by the transgender persons by falling victims of discrimination. A race to trace the reasons why the community faces vulnerability and unnoticeability. The various provisions of 'The Transgender Persons (Protection of Rights) Act, 2019' and figured out the misses and flaws of the said Act. Furthermore the paper analyze on the nuances of the Act being real or still holds to be a day dream brought to reality only in the statute book.

Keywords: Hijras, Transgender, Transpeople, Transsexuals, Third Gender, Identity, Discrimination, Rights, Protection, Struggle, Manacles, Transgender community, Vulnerable, TGC, Day Dream

INTRODUCTION

“Have you not heard his silent steps?

He comes, comes, ever comes.

Every moment and every age,

Every day and every night

He comes, comes, ever comes.

In the rainy gloom of July nights on the thundering chariot of clouds,

He comes, comes, ever comes.

In sorrow after sorrow it is his steps that press upon my heart,

And it is the golden touch of his feet that makes my joy to shine.”ⁱ

The toughest species on this entire universe is the human species. Right from the moment human kind started to exist, there is always a struggle to ensure their existence. This is generally a commonality which is with all the lives. We are fighters and strugglers, right from the day of coming in to life and till the day of us perishing. We need to ensure our presence by leaving our traces left behind. At times and some occasions or many a times makes us to forget equity and equality. This dominance in every species has left very many unwelcomely residues left behind. Many of which still needs to be figured out. Many of which needs a long await, for their exposures. In this fast world, time has started ruling each one of our lives.

Any journey in lives has its own unexpected twist and turns and the impact it makes on our lives is where the recognition of other dwells. The core requirement of humanity is being eventually gone unseen in many. The trace to figure out the reasons for us being so, has resulted in many groups were being regarded as the vulnerable and the unidentified. Many a time the cries are going unnoticed that even when it is a scream, there are no ears to listen to. One such being the voice of Hijras.

TERMINOLOGIES OF HIJRAS

Hijras is a term given to eunuchs, intersex people, and transgender people in the Indian subcontinent.ⁱⁱ They are also referred to as Aravani, Jagappa or Chakka, Kinnear etc. The word

‘Hijra’ is a Hindustani word. It is generally forming the meaning as ‘Eunuch.’ However in general Hijras are born male, only a few having been born with interest variations.ⁱⁱⁱ Serena Nanda, an anthropologist who's studied the hijra in great detail, titled her book on them ‘Neither Male or Female.’ That is because it is the most basic thing to understand about them: they are not men or women, and they do not want to be either.^{iv}

Transgender community is recorded way back from Ramayana and Mahabharata. Transgenders includes and known in India by various names such as hijras, eunuchs, aravanis, thirunangai, kothi, jagtas,/jogappas, shiv shakti’s etc. Even otherwise the problem of transgender being a biological and psychological the issue be existing since the times human beings are known to exist. No individual is having any control over the gender of a person at birth, even parents have no control. However, in the present-day time when human rights are cherished throughout the world, this exploited and discriminated class cannot be ignored if the society is to really progress in the present-day time.^v

Hijras are mainly classified into five gender categories. These are^{vi}:

1. Khusra: A genuine Hijra with sexual deformity (hermaphrodite or intersexed)
2. Aqua: A cross-dresser or transvestites and transsexual
3. Zananay: An impotent male, homosexuals, or bisexuals
4. Khoja/Chhinni: A castrated Hijra through the removal of penis, testicles, and scrotum
5. Chhibri: A biological fit female with fake Hijra identity.

THE IDENTITY OF TRANSPEOPLES- REAL OR PSEUDO

No society is static. Changes develop gradually over the years practically in every sphere brought about by evolution in environmental, economic, and political circumstances, national and global as well as in religious and moral ideas. They may occur slowly or rapidly. Therefore, when the behaviour of people has moved away from the law with a sufficient degree of permanence, tensions arise with varying results. Then the law may be expanded to take account of the development or it may be disregarded until it becomes dead letter, or it may be repealed and a new law substituted. In these ways, evolution gives direction to future developments.^{vii}

There are so many discriminations which the humankind face and Hijras are no exception for that. Right from the moment of them identifying their gender, their lives are prone to attacks. There is no route for them to escape from these manacles. They are harassed verbally, physically, sexually, and mentally, in private and the public spaces. All these had led a trauma and humiliation and many has gone to their extremes of branding their own selves as 'worthless and unfit' to live in society. Their voices were refused to be heard many a times by their family members itself and it sounds very simple but the trauma they undergo is wordless.

Though hijra community has wide range of people with different identities they claim for, the persistent discrimination and de-socializing them would have led to and had an impact on their psychological imbalances. Various studies have done to analyze the socio-psychological behavior of hijras.^{viii}

In NALSA vs UOI, the Supreme Court issued a landmark ruling recognizing transexuals as a third gender, and upholding their rights to equality (Article 14), non-discrimination (Article 15), expression (Article 19(1)(a)) and autonomy (Article 21). Justice Radhakrishnan defines "transgender" as an "umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex". National Legal Services Authority v. Union of India case is a step forwards that recognizes the constitutional and other legal rights of transgender community and their gender identification as well as sexual orientation. The case is a milestone in the expounding of recognition of transgender as a person before the law and equal protection of the laws. The expression 'person' under Article 14 means and includes male, female, and transgender community (TGC)^{ix}.

THE LONG AWAITING

It was not a day or two, but decade to decades the transgender people were running from pillar to post for their protections and rights. It was a late dawn but a confident dawn, that their day dreams which was engrafted to reality in the statute book on 05-12-2019 and the said same came into force on 10-01-2020 as 'The Transgender Persons (Protection of Rights) Act, 2019'. The main purpose of passing of the Act is to protect the rights of the transgender persons and to give life to the welfare measures easily available to them. The Act provides for IX Chapters concerning about prohibiting discrimination, recognizing their identity, ensuring the education

and health and provides for the establishment of National Council for Transgender Persons. Some of the noticeable provisions of the Act include as follows:

1. Section 3 which highlights on the prohibition of discrimination in the matters related to occupation, employment, education, medical services, movement, residence, tenancy, public place etc. The non-discrimination of transgender persons in employment by the establishments and it has the obligation to do the same and furthermore grievance redressal mechanism to ensure the compliance of the Act is provided under Section 9, 10 and 11 respectively.
2. The right to self-perceived gender identity is provided under Section 4.
3. The application and issuance of gender identity certificate is provided under Section 5 and 6 respectively.
4. The change in gender, transgender person undergone surgery and their rights and entitlements are dealt under Section 7.
5. The government's role in social inclusions of transgender persons is said under Section 8.
6. Section 12 deals with the non-discriminatory enjoyment of the right to residence of transgender persons.
7. Inclusive education, vocational training and self-employment, and health facilities to transgender persons are provided under Section 13,14 and 15 respectively.
8. The commendable initiative of the Act being the establishment of National Council for Transgender Persons is enshrined under Section 16 and their functions is emphasized under Section 17 and the grants made by the Central Government is provided under Section 19 accordingly.
9. The offences of compelling transgender person to indulge in forced labour or denying them right to passage to public place or forcing them to leave residence or endangering their lives are fetching penalties as provided under Section 18.
10. The Act not to be in derogation of any other Law and the protection of action taken in good faith are provided under Section 20 and 21 respectively.
11. Section 22 highlights for the power of appropriate government to make rules.
12. The Central Government power to remove any difficulties is dealt under Section 23.

In furtherance of Section 22 of ‘The Transgender Persons (Protection of Rights) Act, 2019’, the Central Government has made ‘The Transgender Persons (Protection of Rights) Rules, 2020’ on 25-09-2020.

STRUGGLE- THE INVISIBLE MANACLE

Intersexuality itself is old news. Hermaphrodites, for instance, are often featured in stories about human origins. Early biblical scholars believed Adam began life as hermaphrodite and later divided into two people----- a male and a female--- after falling from grace. According to Plato there once were three sexes---male, female, and hermaphrodite---but the third sex was lost with time^x.

Many Indians believe that hijras have the power to bless or curse, and hijras trade off this uneasy ambivalence.^{xi} The way society approach the transgender people is always with both extremes. One side the trans people are coming up with an accelerated social status and at the same time there are also many instances wherein they fall as victims of social tabooing.

The concept of dominance of one group over the other or upper suppressing the lower or one gender dominating the other gender, though has eventually deteriorated through legal interventions or social organizations. At the same time, it cannot be absolutely denied that the predatory sprits of human kind have not been evacuated out of human minds. Where the basic concept of calling as human, a human is being treating the fellow human with humanity is often put to question. Despite strong statutes, precedents, various initiatives taken by the Government, still the group has gone unidentified for varied reasons like:

1. Lowest status in the social hierarchy
2. Denial of job opportunities
3. Education disabilities
4. Civic disabilities
5. Denial of personal identity
6. Denial of matrimonial rights
7. Economic disabilities
8. Protection from prison torture
9. Rights for authenticated census estimation
10. Property rights

SUGGESTIONS AND CONCLUSION

“An individual’s sexuality cannot be put into boxes or compartmentalized;

It should rather be viewed as fluid, granting the individual

The freedom to ascertain her own desires and proclivities”^{xii}

Sex is simply a biological distinction between male and female. It is basically a difference in chromosome and its primary relevance is to reproduction. But the concept of gender is a cultural definition with its corresponding emphasis on attitudes and behavior. In other words, gender is a cultural bag which determines each sex must be socially and culturally different.^{xiii}

Though the Act has many appreciable initiatives to take earnest efforts in the protection of transgender persons still the Act has its own flaws and misses. The term ‘transgender persons’ used under the Act is not apparently shown as an inclusive terminology. Moreover, the Act does not clearly provide for all the rights which it clearly claims for to assure the transgender person’s protection. The punishment provided for by the Act is not sufficient to encounter serious offences. It can be concluded by proposing the following suggestions:

1. Sex education to be made compulsive in such a way it is not appear to be but made to be.
2. Social inclusiveness of transpeople must be in all the spheres of every one’s mentality.
3. The taboo of looking at the transpeople must be derooted.
4. Students must be encouraged by standing in protecting the transgender persons from all forms of discriminations.
5. Community participation must be there to eradicate the perpetrators of crime against transgenders.
6. The mentality of society must be changed to respect their ways of life.
7. Medias must come forward more actively in exposing the productive sides of the transgender community.
8. The parental homes should be made as their best place, even if the whole world is against them.
9. The government must make more programmes for ensuing the protection of the transgender’s rights.

ENDNOTES

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- ⁱ Rabindranath Tagore Gitanjali – Song offerings, Number 45.
- ⁱⁱ “India recognizes transgender people as third gender”- The Guardian 15 April 2014
- ⁱⁱⁱ “Among thirty of my informants, only one to have been born intersexed”-Nanda 1991.
- ^{iv} <https://www.vox.com/2014/4/16/5618610/hijras-ruling>
- ^v ‘Law of Extra-Marital and Live-in relations with Surrogacy and Transgenders’, Ayesha Gupa-2022 pg98
- ^{vi} <https://www.indjsp.org/article.asp?issn=0971-9962;year=2018;volume=34;issue=1;spage=79;epage=85;aulast=Ma>
- ^{vii} ‘Gender Justice’, Prof. (Dr). Nirmal Kanti Chakrabarti and Prof. (Dr).Mrs. Shanthi Chakrabarty- 2018, pg. 463,464
- ^{viii} http://indianmentalhealth.com/pdf/2018/vol5-issue3/Original_research_article_81-87.pdf
- ^{ix} http://www.academia.edu/8833934/CONSTITUTUIONAL_AND_LEGAL_STATUS_OF_TRANSGENDERS_1
- ^x “The Social Construction of Difference and Inequality, Race, Class, Gender and Sexuality”, Edited by Tracy.E.Ore: pg 115 (2000 edition)
- ^{xi} <http://www.nytimes.com/2018/02/17/style/India-third-gender-hijras-transgender.html>
- ^{xii} Navtej Singh Johar and others VS Union of India
- ^{xiii} ‘Contemporary Sociology’-An introduction to concepts and Theories, M.Francis Abraham-2018, pg166,167