

HUMAN RIGHTS OF THE INDIAN TRANSGENDER

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The transgender community in India is economically and socially marginalized. They are underprivileged and subjected to a number of atrocities and cruel practices. Their rights are hardly enforced and implemented. They live in obscurity and survive anonymously. The epitome of their plight is the fact that "transgender" is rampantly used as a cuss word in India. This shows the level of insensitivity and lack of empathy towards the transgender that is prevalent in India.

This article elucidates the life of a transgender in India. It explores the world of the transgender through a socio-legal perspective. The article brings to light the medical condition of the transgender. It also gives the narrative of the life of a transgender in India, the hierarchy of the Gurus and Chelas in the hijra community, their castration ceremonies and the consequent chain of prostitution.

After this brief introduction into the life of the transgender in India, the article explores the Human Rights of the transgender through a social perspective and legal outlook. It also elucidates the provisions of the Rights of Transgender Persons Bill, 2014. In conclusion, the article proposes certain measures through which the situation of the transgender can be improved in India considering the conservative nature of the Indian Society.

INTRODUCTION

Humans are scared of what they do not understand. As a child, I was scared of them. The way they spoke, the way they looked; I was terrified of them. As they begged at the traffic signals, clapping their hands, raising their voices, I wondered who they were. Their unusual appearance intrigued me. As time passed, my memories of the fear faded away while the curiosity as to who they were remained. We rarely converse about the transgender. We are unaware of the facts of their existence, the irony of their identity and the melancholy of the lives they live.

The Indian transgender is socially and economically marginalized. At a very tender age, they are turned out of their families, left to fend on their own with no means and no hope for survival. They are labeled *hijra*[1]. Away from their families, their homes, leading a life of obscurity, their voices are hardly heard. The veil of social traditions and customs keeps their reality hidden and their voices unheard.

A change is long due in the perception of the transgender. Who are they? What are they? Where do they live? How

do they survive? These questions arise in all of our minds; while some of us choose to ignore them, very few of us bother to find the answers to them. In a bid to find answers to these perpetually ignored questions, one must begin the journey at the very origin of their lives.

Klinefelter Syndrome:

The biological condition of a hijra is the result of a chromosomal disorder called the "Klinefelter Syndrome". The normal chromosomal configuration of a female is XX while that of a male is XY. In layman's terms, the X chromosome corresponds to female hormones and female reproductive system and the Y chromosome corresponds to male hormones and male reproductive system. When two X chromosomes are present, the formation of the female reproductive system is initiated. The X chromosome is dominant whereas the Y chromosome is recessive. However, when Y chromosome is present with the X chromosome, it initiates the formation of the male reproductive system. The function of the Y chromosome is mainly the formation of the male reproductive system. It is dominant in this aspect. However, in all other aspects including hormonal secretions, amount of genetic contributions etc. the X chromosome is dominant.

In Klinefelter Syndrome, the chromosomal configuration of the person affected is XXY[2]. As a result, the person has both male and female characteristics. The presence of the Y chromosome initiates the formation of the male reproductive system. However, since spermatogenesis is absent, the person is sterile. Due to the presence of two X chromosomes, feminine characteristics such as formation of breasts, long hair and facial features etc. are observed. Their voices are affected as well. Thus, they show both male and female characteristics.

There is no cure to this condition. The life expectancy of a person suffering from this disease is normal. As opposed to common view, this condition is rather widespread and occurs in 1:500 to 1:1000 male births[3].

In a nutshell, Klinefelter Syndrome causes the emergence of both male and female characteristics in the person affected. This condition is generally discovered at puberty. There is no cure for this syndrome.

In general, our society does not acknowledge a transgender. They are deprived of education. As a result of this, they do get a means to earn a livelihood and are pulled into begging and prostitution. When I was interning at Youth for Unity and Voluntary Action (YUVA), I got the chance to meet Uma[4], a volunteer, from an organization called "Humsafer". She told me her story and provided a glimpse into the life of a *hijra*. This is her story:

"I was in class sixth when I got to know of it. I knew something was wrong with my body. I knew I was different. I was at school that day. Everything was normal until then. I went to the boys' washroom in the break. There were other boys there as well. They started

giggling and whispering as they saw me. My body was not the same as theirs' and they knew it. Soon they started touching me and before I knew it, I was stripped of my clothes and forced out of the washroom. I stood there in the corridor, naked, while they all stared at me. They were amused of the body. My secret was now out in the open for everyone to see. Soon the teachers came to my rescue, dressed me up and sent me back home. That day, my parents disowned me. They drove me out of the house. They could not tolerate such a disgrace in the family. 'How can we face the society?' they asked. And there I was, a young child 13 years in age, without a home, without an identity. Then my *Guru* found me. *She* taught me everything; how to cook, how to dress, how to put on make-up, how to beg etc. When I grew older, she taught me how to please the clients. That was the first time that I was put into prostitution. I was earning."

"We have certain ceremonies before we are allowed to enter into prostitution. One of these ceremonies is the castration ceremony. In this ceremony, the *hijra* finally becomes a woman. Our *Guru* takes us to the *doctor* who conducts the ceremony in the presence of the Goddess. The Goddess keeps an eye over us while the ceremony is conducted. After the ceremony, the *hijra* cannot walk for three to four weeks. In this period, no one is allowed to see *her*. This is because *she* is undergoing a transformation into a woman. Finally after this, *she* can begin her journey into the world of prostitution."

"After a certain age, we cannot continue with prostitution. Then we continue begging on the streets. We also bless newborn babies in the neighborhood and check to see if any baby is like us. If so, we take the baby with us."

"We live our lives in a closely knit community. We have a *Guru* who teaches us everything and acts as our protector. We are *her* Chelas. We also have our Chelas. A hierarchy is thus formed. We stay like a family. We have only each other to rely upon. The society has cast us out. Our families have disowned us. Where are we to go? What are we to do? When a *hijra* dies, a procession is taken out at midnight and *her* body is spat upon so as to wish that *she* is never reborn as a *hijra* again."

This is not just Uma's story. Every *hijra* has a similar tale to tell. Imagine their plight wherein they are confused about their very existence, their identity. Their chance to gain access to education is snatched away. They hardly get any opportunity to do decent work and are forced into begging and prostitution. They live in inhuman conditions and are subjected to barbaric practices. If the law does not provide for them, who will? They are the underprivileged, the marginalized, and the ones who are never spoken of. If the justice delivery mechanism does not provide justice to them, who will? As the torchbearers of law and justice, it is our duty to ensure that their rights are not compromised.

This issue cannot be given a one-dimensional approach wherein only the legal aspect of the social aspect is considered. This is because their condition is a combined result of both societal traditions and misconceptions and the futility of the legal mechanisms in enforcement of their rights. Therefore, while considering each violation of their rights, the social cause of the situation must be taken into account as well. Furthermore, even if the legal mechanism is strengthened in order to enforce their rights, without the means to provide social acceptance to them, any attempt made in this direction would prove to be futile. In any case, the very origin of the problem lies in the social elimination that they face. Hence, in order to give them acceptance, the general perception of the society towards them needs to be changed. In spite of this, the fact that this is not an exclusively social or exclusively legal issue continues to be true. This is a complex socio-legal issue wherein the social and legal aspects go hand in hand. An analysis of the law must be complemented with an analysis of the social condition. Only then can a reasonable inference be drawn from the situation.

The Preamble to the Universal Declaration of Human Rights states that all human beings shall enjoy freedom from fear. Are the *hijras* free from the fear of social elimination? Unfortunately, they still live away from the society in obscurity. While we continue to ignore their plight, the orthodox society continues to push them to the verge of exclusion. Their representation is nil. Their livelihood is in question. Their existence is in question. Article 1[5] of the UN Declaration of Human Rights endows equality in terms of rights and dignity to every human being. However, when a transgender is driven out of *her* home in early childhood, is it not a violation of *her* dignity? While we speak of advancements in technology and ideology of the society, we continue to hold such orthodox beliefs and continue to act upon those beliefs. Family is the basic and fundamental unit of the society. If at this very stratum, dignity and rights are violated, how would the society retain them?

When the practices of forced prostitution and begging are considered in light of Article 4[6] of the UN Declaration of Human Rights, the clear violation of right to life and liberty is inferred. Right to life includes the right to pursue a career of one's own choice. However, due to lack of education, a *hijra* is not given the choice to pursue a career of choice.

In terms of right to personal liberty, when a person is marginalized, driven out of his home, forced to the fringes of the society to live a life of obscurity anonymously, this right is violated in the most brutal sense. It is an irony that the society which calls itself modern fails to give education to a young transgender, that the nation which calls itself developing fails to give an opportunity to them to develop themselves.

When they are forced to undergo a castration ceremony without any anesthesia in the absence of a qualified

doctor and not provided any medical care after the castration, the right to security of person is grossly violated. However, their helplessness is evident from the fact that they continue to subject themselves to such torture in order to gain acceptance in the society. They compromise on their very existence in order to gain acceptance in the society.

In the light of Article 5[7], the fact that the transgender is forced to live in inhuman conditions without access to proper sanitation and basic facilities is only the tip of the iceberg of the tortures and barbaric practices that they are subjected to. The society continues to shun them. They are treated as outcasts. Their very presence is despised and their existence is questioned. The general behavior of the people towards them is degrading and full of hatred. Furthermore, the brutal practice of castration that is prevalent in the *hijra* community is the epitome of the cruelty to which they are subjected. Their entire lives reflect the pitiless nature of the society and their helplessness.

Under Article 25 (1)[8], the right to a basic standard of living is ensured and the importance of access to proper housing, food, medical care and social services is highlighted. However in the present scenario, none of these are implemented as the *hijras* continue to form small communities away from the main centre of habitation. They do not have proper houses or accommodation facilities. Another aspect in this regard is that of spread of STDs (Sexually Transmitted Diseases) due to prostitution. As the *hijras* are exposed to prostitution, they are at a threat of contacting a STD. The access to proper medical facilities in this regard is very limited. Secondly, the scope of periodic medical checkups does not extend to the *hijra* community owing to the lack of awareness and means. Hence, this is one of the foremost arenas which need implementation at the earliest.

Under Article 26[9], the right to education of every human being is highlighted. However, the irony is that most of the *hijras* drop out of school at a very early age. This is not because the parents are economically backward and unable to afford their education. However, this is because the parents disown their children. After this, the social stigma attached to their existence makes it very difficult to continue education and it is a rather preposterous proposition that a young child would continue his education on his own after he is driven out of the society. Secondly, upon adulthood, gaining recognition in the society itself is impossible on the very onset. Therefore, the concept of adult education too is invalid in this case.

Education is a very efficient tool of empowerment. It has been used to build nations. It is the foundation of development. It is the only means with which the empowerment of the *hijras* can take place. With education, one is made efficient. It is the means to gain employment and in turn, a life of dignity. Hence,

education is the very first step in the process of upliftment of the *hijras*.

Article 27 (1)[10] is grossly violated when the *hijras* are isolated and treated as untouchables. They are not allowed to participate in the functioning of the society. For instance, what is the political representation of the *hijra* community? Their representation is nil. Secondly, they are not given the opportunity to participate in the cultural life of the society. As a result, they remain cocooned in their own small, inclusive community, away from the conventional society.

In conclusion, the sorry state of affairs with respect to the rights of the transgender is explicitly evident in the society. Their rights are hardly spoken of. They are pushed into a different world of their own, away from our society.

In the light of all of these facts, one is forced to think why does the society marginalize these people in this way? This is because *humans are afraid of what they do not understand*. The awareness about the condition of the transgender is almost absent. This lack of awareness contributed to the marginalization of the transgender. Of course, the longstanding and prevalent social customs and cultural traditions too contribute to this. An amalgamation of this confusion and the longstanding beliefs has created the present state of affairs.

A change is long due. This change can be brought about by fulfilling certain objectives as follows:

1. Acceptance in the Society
2. Education
3. Employment

The initiation of this change would be through the spread of awareness in the society. The acceptance of *hijras* in the society needs to be promoted. Without the combined effort of the entire society, gaining this acceptance would not be possible.

Secondly, education would serve as a tool to empower the *hijra* community. Without education, skill development and proper facilities, gaining employment is almost impossible. With the help of education, the chance of getting employment gets increased exponentially.

With regards to employment, the major hurdle in this aspect is the lack of acceptance in the society towards the *hijras*. Hence, after the first two objectives are met, the possibility of gaining employment would increase manifold.

Upon achieving these three objectives, the conditions of the *hijra* community would improve considerably. This is, however, a long process. Without the initiative of the government and law making agencies, this would not be possible. One of the foremost steps in this direction is the *Rights of Transgender Persons Bill, 2014*. The most important propositions of the Bill were as follows:

1. The Clauses 21 and 22 of Chapter V aim to reserve 2% of seats in primary, secondary and

higher education institutions funded by the government, and in government jobs.

2. Clause 24 for Chapter V mandates formation of special employment exchanges for transgender people.
3. The Clause 11 of Chapter II specifies the right of a transgender child to a home and imposes conditions for foster care.
4. The Chapter VII details the formation of national and state-levels commission for transgender people. The Chapter VIII details the formation of special transgender rights courts.

In 2016, the Bill was proposed in the Lok Sabha. While the bill has still not been passed, efforts are still continuing in the said direction. The passing of this bill would contribute greatly to the upliftment of the transgender persons.

In conclusion, while the *hijra* community continues to survive in obscurity, it is the duty of the society and the law enforcing agencies alike to ensure that their rights are realized. The development of a nation is not complete unless it ensures inclusive growth. In order to ensure inclusive growth, every stratum of the society must be provided an opportunity to realize its full potential. It is a tragedy that even in the most advanced and modern times, we continue to let such a form of untouchability thrive within our society even today. We must ensure the survival of the marginalized and underprivileged in order to ensure inclusive growth and the realization of rights of each and every individual.

[1] Hindi for “transgender”.

[2] "Klinefelter Syndrome (KS): Overview". nichd.nih.gov. Eunice Kennedy Shriver National Institute of Child Health and Human Development. 2013-11-15. Retrieved 2 January 2017.

[3] "How many people are affected by or at risk for Klinefelter syndrome (KS)?". Eunice Kennedy Shriver National Institute of Child Health and Human Development. 2012-11-30. Retrieved 2 January 2017.

[4] Name changed on request.

[5] "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

[6] "Everyone has the right to life, liberty and security of person."

[7] "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

[8] "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

[9] 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and

higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

[10] "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."

References

- "Klinefelter Syndrome (KS): Overview". nichd.nih.gov. Eunice Kennedy Shriver National Institute of Child Health and Human Development. 2013-11-15. Retrieved 2 January 2017.
- ¹ "How many people are affected by or at risk for Klinefelter syndrome (KS)?". Eunice Kennedy Shriver National Institute of Child Health and Human Development. 2012-11-30. Retrieved 2 January 2017.
- Rights of Transgender Persons Bill, 2014. No. 49 of 2014. Retrieved 10 January 2017.
- United Nations Declaration of Human Rights. Retrieved 24 December 2016.
- Interviews of volunteers from "Humasafer" organization between 9 December 2016 to 12 December 2016.
- "Forced to the Fringes" Youth for Unity and Voluntary Action (YUVA) Publication. Retrieved 15 December 2016.