

Status of Eunuchs in India

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***Abstract---** 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.*

***Index Terms:** Eunuchs, Hijara, Mugal, Government of India, Indian Constitution*

I. INTRODUCTION

Eunuchs is generally referred to the group of people who's are those persons whose gender identity doesn't match with biological sex and differ from normal men and women as categorise by the society. These group of people tends to dress like females wear sarees, jewellery and makeup. In India these groups are generally addressed as Khuras, Chakkas, Hijara, Kinnar etc. and also third gender as the name given by the Apex Court of India. In India it is considered auspicious when a eunuchs visit home during child birth, marriages or any other auspicious occasion. They generally wear beautiful and colourful saris, ornaments, make up over the face and behave like female. Eunuchs spends their whole life without family support because their family disown in their childhood and hand over to other community which are transgender community in general. Though most of the eunuchs seen today are begging at traffic signals or during weddings, they were a respected lot during the Mughal rule in the Medieval India. The word "eunuch" is derived from the Greek word "Euneukhos" which literally means bed chamber attendant." Hence, they were put in charge of harems due to their emasculation.

II. HISTORY

Indian Mythology often offers brief look at the reflections of the past, stipulate that the transgender persons who are often disrespected today were once appreciated to a great extent. Often in Hindu mythology we can find the examples of deities changing gender, manifesting as an Avatar of opposite sex etc. Gods are often represented as both male and female at different points and in various incarnations. Eunuchs often trace their origins in the Mahabharata and Ramayana. 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". Shikhandi from Mahabharata is another the most powerful transgender figure found in the

Hindu mythology.

In Ramayana 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”.

During the Mughal era Eunuchs were usually servants or slaves who were castrated to make them reliable to the royals, they have a physical access to the ruler where they could exercise great influence. They were generally appointed to do the domestic functions such as making the king’s bed, cutting his hair, bathing him, carrying him in his toilet or even relaying messages as a trusted servant. Eunuchs in ancient times were not supposed to have the aristocracy, nor loyalties to the military, nor to a family of their own and were thus seen trustworthy. 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 period number of high-status job openings were only available for eunuchs, as a result the poor families often converted their offspring’s into a eunuch and had him work in the imperial palaces to create a steady source of revenue for the family in order to ensure a comfortable lifestyle for them. Eunuchs were frequently employed in Imperial palaces by Mughal rulers as servants for female royalty, and often attained high-status positions in society.

III. SOCIAL RECOGNITION OF EUNUCHES

It is very true that there is distinction between social recognition and self-perception it is to be noted that since time immemorial, the injustices of sexuality have been caught in the web of the Corbett principle, which set forth a biological test and ignored the psychological test. A biological determinist view like that of Geddes and Thompson argues that “the social, psychological and behavioural traits are caused by metabolic states. This dominant biological identity derives its power from the chromosomal make up.¹ On the other hand, the dormant psychological existence tries hard to stagger through the narrow lanes of individualized sexual orientations, which seem to be too personalized to travel through public previews. More specifically, this biological difference is used primarily as a tool to withhold the rights of the members of the society, other than those who fall within the category of males or females”. Until the 1960s, the term “gender” was used to refer to the two types in the society which are “feminine” and “masculine”. In 1968, Robert Stoller, while writing on trans-sexuality began using the term “sex” in order to refer to the biological traits and the term “gender” which refer to the degree of femininity and masculinity by a person. In fact he was the first to introduce the concept of “gender identity”. Till 1990’s, transsexuals were not considered in the social existence. It was for the first time, in 1992, that the European Court of Human Rights concluded that “there had been a violation of Article 8 of the European Convention on Human Rights, in a case concerning the recognition of transsexuals”. With reference to India, in 2008-2009, Tamil Nadu introduced a “transgender welfare policy, enabling them to access free Sex Reassignment Surgery in the government

¹ <http://www.Assembly.Tn.Gov.In/Budget/Budgetspeech2008-2009.Pdf>, Visited On 09th December 2019.

hospital, free housing programme, various citizenship documents, admission in government colleges with full scholarship for higher studies, alternative sources of livelihood through formation of self-help groups and initiating income-generation programmes". In addition, as per the Small Industries Policy, special privileges have been provided for industries started by transgender's.

IV. LAWS IN INDIA

The Ministry of Social Justice and Empowerment in 2013 submitted an Expert Committee Report which observed that "lack of recognition before the law is itself a human rights violation and this presents a major barrier to the transgender in realizing other basic rights". The report noted, "Article 5 of the Constitution, identifies the person who is entitled to be citizens of India. None of the conditions specified therein require a determinate sex or gender identity as a pre-condition of acquiring citizenship." Though there is no articulate mention of transgender in legislation, leaving them dependent on general clauses relating to their human rights protection are interpreted, there are some legal provisions which passively provide rights to them. Further, India has ratified their laws in accordance with most of the international treaties with reference to the broad purview of human rights, be it be with regard to women, children, disabled, elderly or transgender. These provide authoritative guidance on the human rights and the obligations to states, in order to promote and protect these rights, ensuring full equality and addressing discrimination.

Article 51 of the Indian constitution, promote international security, peace and respect for international law and treaty. It is supplemented by Article 253, which obligate the state to create legislations by giving effect to international agreement. While reading the two together, we understand that in the absence of a contrary legislation, municipal courts in India will respect the rules and regulations of international law. Therefore, any international convention not inconsistent with the Fundamental Rights and in harmony with its spirit must be read into these provisions, for example, "Articles 14, 15, 19 and 21 of the constitution. Article 14 states that the state shall not deny to "any person" equality before the law or equal protection of the law. The article does not limit the term "person" to just male or female". "Article 15 prohibits discrimination by the state on ground of "sex" with regard to access to shops, hotels or use of well, tanks and other public places"; "Article 16 guarantees equal opportunity for employment irrespective of sex, but unfortunately, despite these articles, India still has discriminatory laws that contravene international human rights law". Further, it is to be noted that the transgender are still denied rights under articles 15(2) and 15(4) of the Indian constitution. Article 19(1) (a) provide basic freedoms, which constitute human rights, are granted as basic rights to all the citizens of India including, right to freedom of speech and expression of his self-identified gender and the right to choose one's personal appearance. Though the values of privacy, autonomy, self-identity and personal integrity are guaranteed to the members of the transgender community under it and the state is obligated to protect and recognize these rights, but in many cases, there exists a disassociation between their gender, their social name and their identification documents which dehumanizes them and also denies them their civil and legal status. Article 21 also states that no person shall be deprived of life or personal liberty except according to procedure established by law commonly understood as "Right to life". However, somehow we have failed in letting the people with alternate sexualities live a life with respect and dignity and have somewhere force them to isolate from the society by not providing the adequate rights, respect and recognition to them.

V. JUDICIAL ROADBLOCK

While people of America is celebrating the US Supreme Court decision in Obergefell v. Hodges², 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 Foundation³, 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.

This re insertion of Section 377 resulted in great political debates including various prominent personality taking part in it, which are being held across the country and influencing people of high offices. In April, 2014, taking the domestic laws into consideration along with various case laws, the Supreme Court in NALSA vs. Union of India ⁴did grant constitutional recognition to the Transgender’s as Third Gender stating “that they did form a distinct group and any discrimination towards them is violation of their constitutional rights”.⁵ However, the Court acknowledge that, “The modern definition of transgender, would include only the gay, lesbian and bisexual, further directing the government to treat them as a socially and educationally backward class and entitling them to quotas like those for the Other Backward Classes, in educational institutions and for public appointments etc.” Though 2014 judgment does acknowledge the “trauma, pain and agony which is experienced by the transgender community but it stopped from going any further by building a degree of disassociation with the wider meaning of the expression transgender”.

As a result, although the transgender have been given the recognition in the society but the ground reality is that, yes they are given the quotas in government institutions and jobs but the reality is they are still treated as an outside member of the society they are still deprived of the love and dignity.

VI. THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016

With the Introduction of “The transgender person (protection of rights bill), 2016” in order to protect the rights of the transgender and their recognition in the society the as per the direction of the apex court, this bill focuses on the following aspects: -

- A transgender person must obtain a certificate of identity as proof of recognition of identity as a transgender person and to invoke rights under the Bill

- The Bill defines a transgender person as one who is partly female or male; or a combination of female and male; or neither female nor male. In addition, the person’s gender must not match the gender assigned at birth and includes

² Obergefell V. Hodges, 83 U.S.L.W. 4592

³ Suresh Kumar Vs. Naz Foundation, 1 SCC 1, (2014)

⁴ NALSA Vs. Union Of India, AIR 2014 SC 1863

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3354843/>, VISITED ON 09th, December 2019.

trans-men, trans-women, persons with intersex variations and gender-queers

- The Bill prohibits discrimination against a transgender person in areas such as education, employment, and healthcare. It directs the central and state governments to provide welfare schemes in these areas
- Such a certificate would be granted by the District Magistrate on the recommendation of a Screening Committee. The committee would comprise a medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person
- Offences such as compelling a transgender person to beg, denial of access to a public place, physical and sexual abuse, etc. would attract up to 2 years' imprisonment and a fine

VII. CONCLUSION

This paper introduces us to the life of a eunuchs in India and the problem and social stigma that they face during their lifetime. In a country like India the discrimination is so rooted that even the basic necessities like healthcare, education, employment that can make them a part of society is not even available to the transgender communities. Various NGO's and societies have been working together in order to help them in any way possible but the social stigma attached with them just make it more difficult. It's the need of the hour to make some stringent law's to protect and safeguard their interest.

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