

FROM BEING A EUNUCH (HIJRA) TO A THIRD GENDER IN INDIA: A SOCIO-LEGAL STUDY ON GENDER DISABILITY OF EUNUCHS

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Abstract This paper will focus on the inequalities faced by the third gender (hijras) in India due to their disability, which is not even considered under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Their Disability is the core reason that people from third gender have faced discrimination in society since the British period. This paper also traces the transition phase of the third-gender in Indian history from being a hijra to a criminal and then to a thirdgender. A primary aim of this paper is to discuss the disability of the third gender which is the main cause of the plight being faced by them even presently. The researcher also highlights the fact that the disability faced by hijras is different from the physical and/or mental disability described in the Disability Act of India, and therefore, their medical conditions must be included in the Disability Act. The article concludes with a series of concrete steps that the Indian government should take to help ensure that the hijras are brought back into the mainstream of the society and to help obviate their longterm suffering and humiliation.

Keywords

transgender,
gender dysphoria,
hijra,
third gender,
disability

1 Introduction

The hijra community is a minority group that comprises an integral part of our Indian society. Hijra or Kinner or napunsaka (napunsaka in English means impotent) are the terms that are used for eunuchs in India (presently, they have been included under the transgender group and may be called 'transgender' also). 'Transgender' is an umbrella term that is used for all transexual people. But for the purpose of this research paper, the researcher uses the term 'hijra' throughout in place of transgender. The English term 'eunuch' is different from 'hijras'. Eunuchs are the people who are intentionally castrated to serve in the harem of the royal family (Doniger, 2003, pp. 18-37), while hijra's are the people that suffer from *hermaphroditism* (Lal, 1999, pp. 119-140). *Hermaphroditism* is a disorder *related to sexual development* (Smith, 2019). Truehermaphroditism, sometimes referred to as ovotesticular syndrome, is an inter-sex condition in which an individual is born with both ovarian and testicular tissue. Commonly, one or both gonads is an ovotestis containing both types of tissue. Hijras are people who are physically men but have a feminine identity, take on feminine roles, and dress up like women. They do not conform to the traditional notions of the male or female gender but combine or move between the two (Mal, 2018). Hijras choose their own gender identity. Hijras have a very long history in India and in ancient India, they were treated equally to others. Over time, however, they lost their position or status in society and are now marginalized (Mishra, 2016). Gender discrimination is a modern issue that was not prevalent in ancient India (Mahapatra, 2018). Discrimination only started after the rule of the British Government. However, the important thing that the British government failed to understand about the hijra community was the nature of their disability itself i.e., their hermaphrodite condition, which makes them different inherently from other genders. Whereas hijras once enjoyed a respected position in our society, society started treating them like criminals and forced them to beg on the streets over time. In some cases, they were even forced to become prostitutes for their livelihood.

The transition of the hijra community from one that was respected to one now perceived as criminalistic has a long history in itself which originated with the Bhoorah murder case. The British government's codification of Indian law for uniform application was a remarkable achievement. However, as remarkable as that was, the same government enacted other laws which proved highly detrimental and changed

the plight of many Indians for the worse. One such enactment was the Criminal Tribes Act of 1871 which was later repealed on August 31, 1952.

The Hindus believed, as confirmed in their mythological stories, that Lord Shri Ram, after his return to Ayodhya after completing 14 years in exile, made a vow to the hijras that their blessings would always bear fruit. This mythological belief has reinstated the high status of the hijras in the Indian society that they previously enjoyed. Since then, blessings from hijras in events like childbirth and marriage are considered auspicious (Mishra, 2019). Before the invasion of the British Government, the hijra community enjoyed a respectable position in our society.

In 2014, the Honourable Supreme Court of India in *National Legal Services Authority vs Union of India*, (2014) 5 SCC 438, declared that the hijra community will be considered to be a third gender for the first time after the Bhoorah case. This judgment has given gender identification to the hijra community after a long battle, which they fought not only to secure their gender identity but also to reclaim their proper position in society. The judgment not only resolved their identity crisis but also was the catalyst that drove the Indian Government to understand the need for the passage of a particular law to protect both their rights and identity. But questions still persist, including what was the need for this judgment? If every person has his own identity, then why was this community given a separate gender identification? What was their identification before this judgment?

Social transformation is important for every society because every society is dynamic in nature. Due to the constant changes in society, people must learn to adapt with a positive outlook. If we study the status of the eunuchs (hijras or third gender henceforth) in Indian history, we will find that sometime after the Bhoorah murder case (*Government v. Ali Buksh*, DNA NWP 2 (1852): pp. 1314–6), their public image drastically changed from one that was viewed very positively to one that lacked any identity, and was nearly invisible. Additionally, their very existence as human beings came into question as a consequence of the Penal Law drafted by the British Government, which we will trace to the present date.

To better understand the status and position of the third-gender communities, we have to travel back in history. Only a historical retrospective can help us appreciate the genesis of the miseries of the hijra communities in the present-day Indian society and their transition from being a hijra to a third gender. The transition of the hijras can be classified from the ancient Hindu period to post-independence India.

2 Ancient Hindu Period

In ancient Vedic literature, the sex or gender of the human being was divided into three categories according to Prakriti (it's a Sanskrit term that means nature): '1) pums-prakriti (in English pums-prakriti means male), 2) stri-prakriti (in English stri-prakriti means female) and 3) tritya-prakriti (in English tritya-prakriti means third sex)' (Wilhelm, 2008, p. 16). Third-sex people were also known as the "neutral gender and the members of this sex are called napunsak (English term for napunsak is impotent), or those who do not engage in procreation (Wilhelm, 2008, p. 17)." Even in ancient Vedic culture, people belonging to the third sex were allowed to live freely according to their gender identity. An example of this can be found in the Mahabharata story of Arjuna as Brihannala (Wilhelm, 2008, p. 23). Another example from Mahabratha is Shikhandi, who was neither a man nor a woman. Shikhandi was the eldest child of King Drupad. Shikhandi was the cause of the death of Bhishma (Pandey, 2020).

In Sanskrit terminology, *kliba* is used to refer to the third sex which means "a man who does not act the way a man should act, a man who fails to be a man, a defective male, a male suffering from distortion and Lacanian lack. It is a catch for all the terms that the traditional Hindus coined to indicate a man who is in their term sexually dysfunctional (or in ours, sexually challenged), including someone who was sterile, impotent, castrated, a transvestite, a man who had oral sex with other men, who had anal sex, a man with mutilated or defective sexual organs, a man who produced only female children, or, finally, a hermaphrodite" (Doniger, 2003, pp. 18-37). One can even find reference to the third nature in *Kamasutra* as well (Doniger, 2003, pp. 18-37).

A reference to the third gender can even be found in Vedic astrology, which divides the nine planets into three genders. "The Sun, Jupiter, and Mars are assigned to the masculine gender; the Moon, Venus, and Rahu are assigned to the feminine gender; and Mercury, Saturn, and Ketu are assigned to the third or neutral gender (Wilhelm, 2008, p. 32)."

We can find another reference to hijras in the epic Ramayana, where Lord Rama, after returning to his kingdom, sanctions the hijras with the power to bestow blessings on people on auspicious occasions such as childbirth and marriage, as well as at inaugural functions which sets the stage for the custom of 'badhai' meaning congratulations, in which hijras sing, dance, and bestow blessings. These matters also have been discussed in the case of National Legal Services Authority vs. Union of India (UOI) and Ors., MANU/SC/0309/2014.

Another example of hermaphroditism exists in ancient mythology i.e., Sri Ardhanarisvara (Wilhelm, 2008, p. 120). It was chronicled in "Brahmanda Purana that Lord Siva assumed his hermaphrodite form of Sri Ardhanarisvara after duly worshipping his shakti through meditation and yoga. The Kurma Purana relates how Siva's original form of Rudra was also hermaphrodite. When Siva was generated from Lord Brahma's anger at the beginning of creation, he appeared in a very fierce half-male, a half-female form known as Rudra. Brahma requested Rudra to divide himself in two and thus he became Siva and Parvati (Wilhelm, 2008, p. 120)". Even Lord Sri Ayyappa is very much known and worshipped by third-sex people in India. Lord Ayyappa was born from the union of the female avatar of Vishnu (i.e., Mohini) and Shiva and is mostly worshipped by third-sex peoples in Kerala (Wilhelm, 2008, p. 380).

Additional references to the third sex or neutral gender may also be found in many Vedic texts of India for example, Charaka Samhita, an ancient Vedic medical text, Sushruta Samhita, Narada-smriti, Garuda Purana, Kama sutra, and in Vishnu Purana.

3 Mughal Period

Eunuchs were always treated well in the Mughal era. Some eunuchs were even placed in high administrative positions. The status and positions enjoyed by the eunuchs during the Mughal period can be ascertained from the autobiography of Emperor Jahangir (Rao, 2018) i.e., *Jahangirnama* or *Tuzk-e-Jahangir*. The status of eunuchs was also discussed in *Storia Do Mogor or Mogul India*, written by the Venetian historian Niccolao Manucci, who visited the Mughal court during the reign of Shah Jahan (Rao, 2018). Eunuchs played an important role during the Mughal dynasty. They were the protectors of the harem. The book *Jahangirnama* (Rao, 2018) also describes the important role played by the eunuchs in the Mughal dynasty as does the book of Gayatri Reddy, which was published in 2006 by Yoda Press, “With Respect to Sex: Negotiating Hijra Identity in South India”.

The term *kliba*, which was used by the Hindus in the ancient texts, is different from the term eunuch. Eunuchs are those people who are intentionally castrated to serve in the harem of the royal family (Doniger, 2003, pp. 18-37). Since one cannot find such a concept in ancient Hindu texts, it follows that it was only later during the British Empire that they lost their position (Michelraj, 2015).

4 British Period (Bhoorah Murder Case)

Before the arrival of the British, most of the eunuchs earned their livings by dancing and playing music. The conditions of the eunuchs became vexed during the British period.

The decisive turning point for the third gender came in the aftermath of the famous Bhoorah murder case. On August 17, 1852, a eunuch named Bhoorah was found brutally murdered in northern India’s Mainpuri district. During the trial surrounding her death, the British judges considered eunuchs as cross-dressers, beggars, and unnatural prostitutes (Hinchy, 2019, p. 1). Bhoorah was both a eunuch and a guru. She lived with her two disciples, Dullah and Mathee. She also had a male lover named Ali Buksh, whom she ditched for another man before her murder. Ali Buksh forced Bhoorah to reconcile with him on August 17. The neighbors saw the couple arguing on the street before entering their house. After a period of time, Dullah ran out of the home, shouting that Ali Buksh had murdered Bhoorah. There were two

suspects in the murder trial, Ali Buksh and Dullah, but “the British judges were convinced that Ali Buksh had killed Bhoorah due to the severance of their infamous connection” (Hinchy, 2019, p.1). While the victim was a eunuch, the trial judge criminalized the entire hijras as cross-dressers, beggars and unnatural prostitutes (Hinchy, 2019, p. 1). According to Dr. Hinchy, Bhoorah was a victim of crime but her death was interpreted as evidence of the criminality and immorality of the eunuchs collectively (Biswas, 2019). The British considered eunuchs ungovernable. They had an image of “filth, disease, contagion, and contamination” and were portrayed as people who were “addicted to sex with men”. Colonial officials considered them not only a danger to public morals but also a threat to colonial political authority (Biswas, 2019). A campaign was begun after Bhoorah's death aimed at reducing the number of eunuchs to gradually cause their “extinction”. For the British administration, eunuchs were the habitual sodomites, beggars, an obscene presence in public space, and the kidnappers and castrators of children. In 1865, the North Western Province declared to reduce the eunuch population. They launched an anti-eunuch campaign that had the explicit goal of ‘extirpating’ or ‘exterminating’ the hijra community. The Criminal Tribes Act (CTA) of 1871 was enacted specifically to extinguish the hijra community. Part II of the CTA targeted the hijra community by declaring them as criminal tribes. The CTA required the police to register the personal details of hijra, specifically those who were suspected of sodomy, kidnapping, and castration, thus legally defining a eunuch as a criminal and sexually deviant person. The CTA was very strict and gave immense power to the police for surveillance and to arrest the hijras on the spot. Hijras were not allowed to wear female clothes or to perform in public places. Children were forcibly taken out from many of the houses registered in the name of hijras in order to stop them from becoming hijras or their disciples. The hijra community thus remained vexed from the inception of the Bhoorah case until the judgment of 2018. Even though the CTA was repealed in August 1952, the conditions of the hijra community worsened with time due to the derogatory and insulting remarks made by the British.

Before the enactment of the CTA, Section 377 of the Indian Penal Code (Code), 1860 criminalized all penile-non-vaginal sexual acts between individuals, including anal sex and oral sex. At the Code's inception, transgenders were also typically associated with the proscribed sexual practices. A case in point is the judgment of the Hon'ble Allahabad High Court *Queen Empress v. Khairati (1884) ILR 6 All 204*, where a transgender person was arrested and prosecuted under Section 377 of the

Code, based only under a suspicion that he was a habitual sodomite. He was later acquitted on appeal. The Sessions Judge on appeal stated as follows:

“This case relates to a person named Khairati, over whom the police seem to have exercised some sort of supervision, whether strictly regular or not, as a eunuch. The man is not a eunuch in the literal sense, but he was called for by the police when on a visit to his village and was found singing dressed as a woman among the women of a certain family. Having been subjected to examination by the Civil Surgeon (and a subordinate medical man), he is shown to have the characteristic mark of a habitual catamite—the distortion of the orifice of the anus into the shape of a trumpet and also to be affected with syphilis in the same region in a manner which distinctly points to unnatural intercourse within the last few months?”.

This excerpt substantiates that there was no gender discrimination before British colonial rule. In both ancient Hindu mythology and in the Mughal period, the hijra community was well placed in the society and was looked upon with respect. The infamous case of Bhoorah dramatically altered the plight of the entire hijra community. After the Bhoorah judgment the community's perception of Hijras changed for the worse. The gender that earlier held respect in the eyes of the public, was now considered to be amongst the rank of the prostitutes and beggars.

5 Post - Independent India

Though the CTA was repealed on August 31, 1952 (Kulshrestha, 2021), the hijra community continued to suffer until 2014, not only because of the beliefs introduced by the British government but also by the stigma associated with their past. To restore the hijras' image in the society, many organizations came forward and it was through their struggle and effort that in 2014, after the landmark judgment in the case of *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, (NALSA judgment'), that the hijras came to be recognised as the Third Gender because they neither considered themselves as males nor females. However, the struggle for them did not end there. Even after this landmark judgment, the hijras failed to be recognized in India's penal law. The penal code drafted by the British considered only two categories of people, that is, men and women as either criminals or victims. The British government legislated gender discrimination as between the male, female and the third gender. The British attitude towards the hijras was a primary reason that

the hijra community lost their identity. In fact, Section 10 of the Indian Penal Code remains silent about the third gender even after the NALSA judgment. The court, in its NALSA judgment, discussed both the importance of gender identity and the rich history of the hijra in our Indian society. The Hon'ble court also considered the judgment passed in the *National Human Rights Commission vs. State of Arunachal Pradesh (AIR 1996 SC 1234)*, wherein the Hon'ble court observed that: "We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws." The State's duty is to provide justice to every citizen of India. The true meaning of social justice can be achieved only when every person is treated equally.

The NALSA judgment helped the hijra community to regain their lost identity which they had before the colonial empire. Although the judgment helped restore their lost gender in the society, the existing law nevertheless requires significant reform. Hijras are amongst the most vulnerable group in the society and they have suffered immensely in the past. Post-independence, India needs a gender-neutral penal code where every gender is given equal respect and rights.

It is clear from the foregoing discussion that the third gender is not an alien concept in India. It has existed in our society since the inception of mankind. Even some of the ancient societies from other countries have recognized the third gender roles like 'berdache' (Haralambos, 2019, p. 102). A berdache is a person who is usually a man but dresses and acts like a woman. Several North American Indian tribes consisted of berdaches. Even some tribes like those of the Potock of East Africa allocated a third category to hermaphrodites' people (Haralambos, 2019, p. 102). Ancient Hindu text provides a brief description of the third gender. It was only the British government that precipitated suffering in the hijra community; suffering that has continued to the present. They essentially lost their identity with the British enactment of the CTA. Section 377 of Indian Penal Code also tempered their identity. Nonetheless, soon after the judgment in the case between *Navej Singh Johar and Ors. vs. Union of India (UOI) and Ors, MANU/SC/0947/2018*, the Indian government no longer criminalized sodomy. There are many misconceptions about sodomy. Sodomy is associated with homosexual relationships, which are not of modern origin. Indeed, one can find its roots in ancient Hindu mythology like Kama Sutra, which was written by Sage Vatsyayana (Mitta, 2009). Kama Sutra is considered

to be one of the classic books where an entire chapter is devoted to the subject of homosexuality. According to Sage Vatsyayana, a homosexual sex is a kind of art and one should enjoy it. In his book, he not only described oral sex between men but also categorized men who desire other men as 'third nature', (Mitta, 2009), which has already been discussed above in detail. Sodomy prevails throughout the world. In India, it is particularly practiced by the hijras (Modi, 1940, p. 348). Sodomy is related to a homosexual sex but can be found in heterosexual sex also (Chatterjee, 2021).

Enactment of the Transgender Persons (Protection of Rights) Act 2019 in India was another positive development not only for the hijra community but also for the broader transgender community. It is important to acknowledge and appreciate the fact that although India's government is making its best efforts to bring the hijra community into the mainstream of society, the harms and indignities the hijra have long suffered will take many years to heal.

To better understand this subject it is also imperative to understand the disability of the hijras. Their disability is the fundamental issue at the heart of why they are still unprivileged and underdeveloped. The psychological void that the third gender community suffers from needs to be filled, something that is possible only when we collectively achieve a better understanding of the nature of the disability of the third gender group and their importance as human beings. While all human beings may theoretically be equal in the eyes of law the harsh reality is that in life all persons are not equal as the rule of law cannot control the minds and hearts of the public to which the laws apply. Try though it may, the law very often fails to be effective as a remedy against the prejudices some hold regarding other groups that are different from them. Further, the law cannot be the same for unequal persons. To treat unequal persons, the law should be different. It must be malleable. The disability of the hijras is one of the issues which makes them different from others. Since the nature of their disability is different from other people the law should provide a legal remedy for them, too.

Lastly, the hijras have the same rights to privacy and to their anatomy as other persons do. These rights must be protected. Also, one should not get confused with the terms 'gender identity and 'sexual orientation'. In simple layman language, sexual orientation means sexual attraction towards others and gender identity pertains to who are you - i.e., male, female, genderqueer, etc.

6 Disability of Third Gender

In the case of *Bhagwan Dass & Anr Vs Punjab State Electricity Board, (2008) 1 SCC 579* the Hon'ble Court held that '*The disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.*'

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act henceforward), was enacted in India to bring persons with disability into the mainstream of society. Although disability is also one of the grounds of discrimination that affects the life of the disabled person, the disability of the third gender was not considered to be a ground of discrimination under Articles 14, 15 and 16 of the Indian Constitution before enactment of the PWD Act (Kothari, 2012, p. xxi). Before the PWD Act, only the mental disability was considered to be a disability under the Mental Health Act of 1987. The PWD Act is considered to be an equality law because for the first time in Indian history both the social and economic rights of a disabled person have been legislatively addressed.

Importantly, there is no universally, internationally recognized legal definition of disability. The definition varies from country to country. Section 2(i) of the PWD Act defines 'Disability' as:

- i. blindness;
- ii. low vision;
- iii. leprosy-cured;
- iv. hearing impairment;
- v. locomotor disability;

- vi. mental retardation;
- vii. mental illness;

Presently, only those seven grounds listed above are considered as disabilities. Even the definition which is provided in the PWD Act is not exhaustive, which means that in the future it should be amended to encompass many other grounds that the PWD Act as currently written fails to include, such as epilepsy and congenital deficits, to name only a couple. Even Justice Shah once said that “the definition of disability as given in 1995 Act needs to be widened to protect the rights of people suffering from human immunodeficiency virus (HIV), leprosy and internal organ failure” (Kothari, 2012, p. 53). In many cases, the Indian judiciary has considered other forms of disability apart from those which are listed under section 2(i), like heart diseases and HIV (Kothari, 2012, pp. 53-55).

Referring back to the hijra community, many hold the view that they are not disabled as their situation or disability is not categorised under the definition of disability as per the Act. But, one thing that we as a society and lawmakers fail to understand is that their medical condition i.e., hermaphrodite (as discussed above hermaphroditism in humans represents a disorder of sexual differentiation and is an extremely rare condition with a prevalence ranging from 0.05 to 0.06 percent) (Mondal, 2020), is the predicate reason that they were treated as criminals by the British. This medical condition has led them to be marginalized in society over a long period of time. Unfortunately, society has branded the hijra community as outcasts, and that stigma continues presently. It is important to understand and accept the fact that they are different from other genders only because of their medical condition. Other transgenders, for example gays and lesbians, are physically fit, indicating that their genitals are developed. There is no ambiguity related to their genitals. In contrast, with hijras, their genitals are ambiguous because of their medical condition. They are females in male bodies. Their appearance is also different in comparison to other transgenders. The 2011 census, calculated third-gender populations separately for the first time. The official count for the third-gender was 4.9 lakhs (Nagarajan, 2014). However, it is likely that this number was understated because many third-genders do not want to come forward because of the social stigma attached by doing so. Because third-gender people have been subjected to years of discrimination leading to social, economic, and skill deficits, the time is long past due for India to include their medical condition under the PWD Act.

In recent landmark cases, United States federal courts ruled for the first time that transgender people are not categorically barred from seeking relief from discrimination under the Americans with Disabilities Act of 1990 ('ADA'). In *Blatt - vs. Cabela's Retail, Inc.*, No. 5:14-cv-04822, 2017 WL 2178123 (Szemanski, 2020) and in *Doe -vs- Mass. Dep't of Corr.*, No. 1:17-CV-12255, 2018 WL 2994403 (Szemanski, 2020), the federal courts held that gender dysphoria, the clinically significant distress that some transgender people suffer, constitutes a protected disability under ADA. Despite these favorable rulings, not all transgenders will benefit by the courts' holdings. Only those transgenders who are suffering from gender dysphoria will be treated as disabled. People with gender dysphoria often experience significant distress which sometimes leads to serious medical conditions. It is also argued in various cases that the failure to include gender dysphoria under the ADA is in violation of the Equality Act. According to the American Psychiatric Association (APA), gender dysphoria means "a conflict between a person's physical or assigned gender and the gender with which he/she/they identify (Szemanski, 2020)".

Like the ADA, India's government should also include a hijra's medical condition under the PWD Act because it is a fact that due to their medical condition, psychologically they experience significant suffering as a result of the social and legal stigma they endure.

Hijras are likewise socially and economically challenged because of the stigmas associated with them. They are discriminated against in every area of their lives (Mondal, 2020). One example of this is that although the judiciary has granted the hijras as the third-gender in 2014 after the NALSA case, they have yet to be accepted in the mainstream of the society. For example, there are no separate, private lavatories for the third gender or third sex. Lavatories can be found only for male, female or handicapped people. Additionally, at present the Disability Act fails to include the third-gender in it. Yet another example is that there are no separate jail cells for the hijras. When a hijra is arrested, the police typically place them in an all-male prison, where they face a high probability of sexual assault or rape. A hijra can face similar harassment and threats even in all-female prisons. A research project conducted by the National Human Rights Commission in 2018 found that in India 92 percent of transgenders were deprived of their rights (Chauhan, 2018). 96 percent of transgender people were forced to take low-paying, mostly undignified work for their livelihood, such as in the sex trade, where it was found that they were often

exploited and physically abused by their clients. Other research has confirmed that there are insufficient legal and social policies in place for the betterment of the hijras (Mondal, 2020).

For all of these reasons, there is a compelling need for the Indian government to not only amend the definition of 'disability' in the PWD Act but also to classify 'genital abnormality' as a disability under Section 2(i) because of the physiological stress associated with their medical conditions.

As the foregoing discussion demonstrates, the hijras clearly are different from other transgenders, and because of their medical condition and stigma associated with them, the Indian government must also take necessary steps to provide them equal protection pursuant to Article 14 of the Constitution of India. Their right to life with dignity will be protected if their medical condition is recognized as a disability under the PWD Act and correlatively their rights under Articles 15 and 19 will also be protected.

7 Conclusion and Suggestions

We may conclude that in India the third gender is not a new concept. The hijra community has an important role in our society. They too have their own identity, and rights which are granted to them by the Indian government. Many have the misconception that there are only two sexes and genders. This mistaken notion has caused the hijra community untold pain and suffering. Unfortunately, the general public has insufficient knowledge regarding the hermaphrodite condition. The British colonial government made the same mistake. Ignorance of the hijra community's medical condition led it to declare the entire hijra community as criminals under the CTA simply because of their different appearances and acts.

While the Indian government is striving to restore the hijra community's lost identity, stripped away because of the earlier beliefs, significant work remains to be done. Even many liberal and literate people consider hijras to be prostitutes or sex workers. These prejudicial views have forced the hijras into the sex trade in order to earn money to make ends meet. Prejudices formed during British colonial rule have continued to the present. Better public awareness can help break this pernicious cycle of ignorance and misunderstanding. There is a need for psychological

transformation on the part of both the general public and the hijra community. Psychological transformation can be achieved only when the public understands the kernel of the problems related to the hijra community. Enacting legislation is only part of the solution. Unfortunately, however, passing new laws will do little to change longstanding prejudices. This is where the media and NGOs can play an important role in changing the minds and hearts of the general public. Our schools should educate students about the three genders. Students should be taught about the struggle the hijra community faced to secure their legal status. Education has the ability to empower people to change their thought process. Laxmi Narayan Tripathi provides just one of many examples of how education can transform the life of a hijra. She was responsible for initiating the fight for gender identity in India for the hijra community and it was because of her efforts that in 2014, the Honorable Supreme Court of India recognized the hijra community as the 'third gender'. There is a need to educate the general public about different genders. Even today, in many parts of the world, discussing sex and genders is considered taboo. It is also important for the general public to understand the differences between sex and gender. These two terms are different.

The government can also create separate schools and colleges for third genders so that the stigma surrounding them does not hamper their right to education. Receiving the appropriate education and training from an early age will help the hijra to better cope with the prejudicial and stereotypical attitudes toward them they are likely to encounter in society. Education will help change their behavior towards themselves and towards society.

On a positive note, the Indian Government is planning to amend the Indian Penal Code through The Criminal Law (Amendment) Bill of 2019. Many changes are being suggested to enhance the rights of hijras. If this Bill gets passed, then any crime against the third gender will be considered as an offense under the Indian Penal Code as well; section 375 will become gender-neutral. If enacted, this amendment will be a boon for not only the hijra community but for other transgenders as well.

Gender disability is another equally important part of the equation impacting the hijra community. To help bring the hijra community into the mainstream of the society, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 needs to be amended to include the hijras under

the Act because of their disability of identification and for the social stigma which they face in the society. Like any other person, they have a legal right to equal protection under the Indian Constitution.

There is a need for gender-neutral washrooms in schools, colleges, workplaces, or any public place so that a third-gender person can easily access them without any hesitation. There must be separate cells in prisons for the thirdgender.

The Researcher would like to conclude her paper by stating that every human being has a right to his/her/ own identity as well as respect from the society. No one should be discriminated against based on his/her/ gender or his/her/appearance.

"I am what I am, so take me as I am"

Johann Wolfgang von Goethe

References

- Biswas, S. (2019, May 31). How Britain tried to 'erase' India's third gender. BBC. Retrieved from <https://www.bbc.com/news/world-asia-india-48442934> (Jul. 27, 2021).
- Chatterjee, P. (2021). Forensic analysis in homosexual rape cases: need of gender-neutral rape laws in India. *Army Institute of law journal*, 14, 232- 244.
- Chauhan, N. (2018, Aug. 13). Left alone: Just 2% of trans people stay with parents. *Times of India*. Retrieved from <https://timesofindia.indiatimes.com/india/left-alone-just-2-of-trans-people-stay-with-parents/articleshow/65380226.cms> (Jun. 24, 2022).
- Doniger, W. (2003). The Kamasutra: It Isn't All about Sex. *The Kenyon Review*, 25, 18-37.
- Haralambos, M. (2019). *Sociology: Themes and Perspective*. UK: HarperCollins Publishers.
- Hinchy, J. (2019). *Governing Gender and Sexuality in Colonial India the Hijra, c.1850–1900*. New York: Cambridge University Press.
- Kothari, J. (2012). *The future of disability law in India*. New Delhi: Oxford University Press.
- Lal, V. (1999). Not This, Not That: The Hijras of India and the cultural politics of sexuality. *Social Text*, 61(4), 119-140.
- Mahapatra, A. (2018). Gender equality and ancient Indian culture: A study. *International Journal of Humanities and Social Science Invention (IJHSSI)*, 7(8), 22-26.
- Mal, S. (2018). The hijras of India: A marginal community with paradox sexual identity. *Indian Journal of Social Psychiatry*, 34(1), 79-85. doi: 10.4103/ijsp.ijsp_21_17.
- Michelraj, M. (2015). Historical Evolution of Transgender Community in India. *Asian Review of Social Sciences (ARSS)*, 4(1), 17–19. doi:10.51983/arss-2015.4.1.1304.
- Mishra, A. (2016). Third Gender Rights: The Battle for Equality. *Christ University Law Journal*, 5(2), 9-21. doi:10.12728/culj.9.2.
- Mishra, M. (2019, June 07). Know when and why did eunuchs get blessings from Lord Rama?. *Amarujala*. Retrieved from <https://www.amarujala.com/photo-gallery/spirituality/religion/know-how-and-when-lord-rama-blessed-to-hijras?pageId=2> (May 24, 2022).

- Mitta, M. (2009, June 27). Ancient India didn't think homosexuality was against nature. Times of India. Retrieved from <http://timesofindia.indiatimes.com/india/Ancient-India-didnt-think-homosexuality-was-against-nature/articleshow/4708206> (May 12, 2022).
- Modi, RBJP. (1940). A textbook of medical jurisprudence and toxicology, 6th ed. Bombay: Butter Worth & Co. (India) Ltd.
- Mondal, B., Das, S., Ray, D., & Banerjee, D. (2020). "Their Untold Stories...": Lived Experiences of Being a Transgender (Hijra), A Qualitative Study From India. *Journal of Psychosexual Health*, 2(2), 165–173.
- Nagarajan, R. (2014, May 30). First count of third gender in census: 4.9 lakh. Times of India. Retrieved from <https://timesofindia.indiatimes.com/india/first-count-of-third-gender-in-census-4-9-lakh/articleshow/35741613.cms> (Jun. 7 2022).
- Pandey, K. (2020, April 28). The back story of Shikhandi in Mahabharat and why Bhishma vow of celibacy cost him his life. Times now. Retrieved from <https://www.timesnownews.com/spiritual/religion/article/the-back-story-of-shikhandi-in-mahabharat-and-why-bhishma-vow-of-celibacy-cost-him-his-life/583870> (Jul. 7, 2021).
- Rao, A. (2018, October 26). On the contrasting conditions of eunuchs under Emperor Jahangir and his successor Shah Jahan. The *Mcb* Blog. Retrieved from <https://themchblog.wordpress.com/2018/10/26/on-the-contrasting-conditions-of-eunuchs-under-emperor-jahangir-and-his-successor-shah-jahan/> (Jul. 7, 2021).
- Smith, Y. (2019, June 6). Hermaphroditism (Intersex). News Medical. Retrieved from [https://www.news-medical.net/health/Hermaphroditism-\(Intersex\).aspx](https://www.news-medical.net/health/Hermaphroditism-(Intersex).aspx) (Jun. 7, 2022).
- Szemanski, A. (2020). When Trans Rights Are Disability Rights: The Promises and Perils of Seeking Gender Dysphoria Coverage Under the Americans with Disabilities Act. *Harvard Journal of Law & Gender*, 43(1), 137.
- Wilhelm, AD. (2008). *Tritiya-Prakriti: People of the Third Sex Understanding Homosexuality, Transgender Identity, and Intersex Conditions Through Hinduism*. Philadelphia: Xlibris Corporation.

