

Human rights and legal status of eunuchs sociology essay



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Eunuchs are addressed by many names: hijra, kinnar, transsexuals, the third sex, or the other sex. The very first image that comes to our mind when we think of eunuchs is that of a man-body clad shabbily in a sari. The face caked in whitish powder and cheeks circled with cheap rouge, bright red lips, and dark kohl-eyed people – and the ludicrously odd travesty of womanhood clapping clamorously in a busy market hustling for five or ten rupees.

Eunuchs in India are deprived of normal rights as our law codes recognize only two sexes: male and female. Eunuchs are generally dressed as females, adopt feminine names and referred to as “ she” and “ her”. They are still fighting for their rights to education, jobs, voting and above all, social acceptance.

Eunuchs live in their own communities – a separate world of their own. They have their own Gods, they follow their own laws and everyone who belongs to this world has to abide by these laws. Among these ostracized eunuchs, many of them are castrated, few are genetically born hermaphrodite, that is, they have genitals of both sexes, and few are transvestites, that is, a female mind trapped in male body or vice versa.

History of eunuchs is eons old. In earlier times, they were appointed as guards of kings’ harems to avoid the sexual relationships with royal queens. This sexual perversion still exists in society and they are forced to live their lives in isolation. Now the survival instincts drive them to unsafe and insecure corners of sex trade, extortion and crime.

The American Heritage Dictionary defines Eunuch as " a castrated man employed as harem attendant or a man or a boy whose testis are non-functioning or have been removed.

There are three categories of Eunuchs:

People who are born with deformed genitalia,

Hermaphrodites, that is, people who have both male and female sex-organs,

Homosexual cross-dressers

Some males who undergo castration to be accepted in Eunuch community.

EUNUCH IS NOT A MALE

A Eunuch is not a male because of the following:-

They have imperfect or absent male sex-organ

They do not have sexual desire for women as men usually have,

They have female names, walk like female, dress like female and behave like female.

EUNUCHS ARE NOT FEMALE

Eunuchs are not female because :-

They do not have female reproductive organs, and

They cannot bear children.

Eunuchs belong to a separate category of sex, that is third sex. But the problem is that the third sex is not recognized by law or the Indian society. So the Eunuchs or the ‘Hizras’ have no legal identity.

Since the law recognized only two sex- categories, that is male and female, let us find out how sex is determined. Sex is typically determined at birth by focusing on external genitalia. This is problematic in two particular cases

Where the sexual organ is ambiguous, and

Where the external genitals do not correspond to chromosomal sex.

For example, individuals with Androgen Insensitivity syndrome (AIS) have male XY chromosome but female external genitalia. The point to be noted is that determining sex by only looking at external sex-organs is an erroneous inquiry because it ignores other significant biological sex characteristics, including reproductive sex glands, internal sexual organs, hormones and secondary sexual features.

In North America, it is estimated that at least 80, 000 men are castrated each year as a result of prostate cancer. Similar is the position in India. The question arises as to which category they belong now. External genitals always determine sex in India. So loss of testis would mean loss of maleness or male identity. Going by the strict definition of male, one who has lost his testis will lose his legal status as male. But he is also not a female. So in which category we should put him now?

So the problem is:-

The classification or the mode of determination of sex is dominated by majority view, and

the majority view of determining sex is not a perfect one,

the third sex is not at all recognized by the legal system, and

This lack of recognition serves to isolate the transgender community specially the eunuchs in matter of civil rights.

Are Hijras born or made?

The term hijra is often translated as “ eunuch” and the archetypal hijra is raised as a man and undergoes ritual removal of the genitals to become a hijra. However, anthropologist Serena Nanda explains that many hijras come from other sexually ambiguous backgrounds. They may be born intersexed, be born male or female and fail to develop fully at puberty, or be males who choose to live as hijras without ever undergoing the castration procedure.

The cultural category “ hijra” appears to be a magnet for a variety of sexual and gender conditions: ambiguous sexual anatomy, impotence, infertility, homosexuality, and others, which may not have an analogue in Western cultures. Nanda writes that the crude surgery is done by ‘ dais’ (country nurses) whose ‘ training’ is based solely on experience. The eunuchs call this ‘ operation’ nirbaan meaning ‘ mukti’ because the act suggests a ‘ transition’ of the person from one ‘ life’ to another. Indian legal statutes do not permit such forced castration of males and therefore, there is absolute secrecy around the act of ‘ nirbaan.’ The operation is always conducted between

three and four before the crack of dawn, while it is still dark, and no one else

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but the dai-maa and her assistant is present for this 'ceremonial' ritual. The whole act is given the colour of a religious ritual like the acceptance of deeksha for a better life in the next birth purely in order to veil the essential barbarity and brutality of the custom and make it seem both acceptable and 'natural.'

In 1990, Dr. B. V. Subramaniam of the Surat Medical College wrote a paper based on his research on the making of a eunuch. The study reported that most eunuchs in India were the result of forced castration. The method adopted for the surgery is crude, unscientific, threatening to the health of the patient and done in the most unhygienic conditions. The genitals of a normally born male baby are slashed off with a knife dipped in boiling oil. After dressing the wound, a nail with a string attached is tied to the waist and drilled into the stump, which would, with medication and time, begin to look somewhat like a female crotch.

In cases of castration, Subramaniam's paper says that breasts develop because the seat of the male hormones – testicles – has been removed. When the female hormones take over, the growth of secondary sexual characteristics, such as growth of facial hair, is restricted. So, also the regular change in voice. Castrated or not, eunuchs are sexually active. As they cannot form intimate relations within the parameters of either acceptable or aberrant behaviour due to lack of takers, they take to prostitution. Because of their indiscriminate sexual lives, Subramaniam warns that they are possible carriers of the HIV virus.

POSITION OF EUNUCH IN THE JURISPRUDENTIAL CONTEXT OF 'PERSON'

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In Jurisprudence, “ person” means right and duty bearing units. Persons are of two types-Natural person and Artificial person. All human beings are Natural persons. So, all human beings have a legal personality. But in reality we find that eunuchs even though they are human beings and natural person, they are not assigned any legal personality.

In ancient system not all human beings were granted legal personality. For example slaves in ancient times were considered as a movable property of their masters and had no legal personality or rights. Persons who would renounce the world and become monks were considered civilly dead and were considered to be without legal personality.

In modern times however, legal personality is granted to al human beings but it is strange that eunuchs are not assigned any legal personality.

In Oxford dictionary “ person” is defined as individual human beings. So as per the definition of person enumerated in the Oxford Dictionary, eunuch must be considered as person.

The Indian Penal Code and the General Clauses Act define “ person” as following-

“ Person shall include any company, or association or body of individuals, whether incorporated or not”. It means that person includes an individual. So even by this definition eunuchs are persons

To award punishment, the law or the courts sometimes consider the eunuchs as males and sometimes as females. At that time they are considered as person but not for conferring civil rights. If section 8 of the IPC is interpreted, <https://assignbuster.com/human-rights-and-legal-status-of-eunuchs-sociology-essay/>

it would mean that offence can be committed only by a male or a female. It can be logically argued that a eunuch is neither a male nor a female so how the eunuch can be charged of any offence under the sections of IPC. So in the interest of justice, it is important to interpret the word ' he' in IPC, section 8 to included third sex too. If this is done there will be no need for the courts to treat eunuchs sometimes as male and sometimes as females.

POSITION OF EUNUCHS IN INDIA:

India is the only country where the tradition of eunuchs is prevalent today. There are about 1 million eunuchs in India. Most of the eunuchs in India live by begging. They normally come out in groups of about five to ten and spread out in streets approaching small shops and restaurants for alms. Normally people give them small alms out of fear of being cursed. It is widely believed in India that the curse of a " hijra" is very effective; same with their blessings.

Groups of eunuchs learn some music and dancing based on Hindi movie songs and offer to dance at small family functions like naming ceremonies of newborn children, weddings and other village functions. Though eunuchs are not very respected people enjoy them perform and give them alms.

Eunuchs normally live in large groups in particular localities. Other people normally do not dare to go and live along with them due to their abnormal behavior and social stigma. These localities generally consist of shanties, about fifty to hundred of them all grouped in closely.

Eunuchs in India trace their origin to myths in Ramayana and Mahabharata.

The story goes that, at the time of banishment of Lord Rama from the <https://assignbuster.com/human-rights-and-legal-status-of-eunuchs-sociology-essay/>

kingdom, Lord Rama was impressed with the devotion of Eunuchs and granted them power to confer blessings on people on auspicious occasions like childbirth and marriage and also at inaugural functions. But the reality is completely different from mythology.

REAL AND PRESENT POSITION OF EUNUCH IN INDIA:

Hijras (Eunuchs) in India have virtually no safe spaces, not even in their families, where they are protected from prejudice and abuse. The PUCL(K) Report on Human Rights Violations against the Transgender Community has documented the kind of prejudice that hijras face in Bangalore. The report shows that this prejudice is translated into violence, often of a brutal nature, in public spaces, police stations, prisons and even in their homes. The main factor behind the violence is that society is not able to come to terms with the fact that hijras do not conform to the accepted gender divisions. In addition to this, most hijras have a lower middle-class background, which makes them susceptible to harassment by the police. The discrimination based on their class and gender makes the hijra community one of the most disempowered groups in Indian society. The systematic violence that hijras face is reinforced by the institutions such as the family, media and the medical establishments and is given legitimacy by the legal system. The hijras face many sorts of state and societal harassments such as:

Harassment by the police in public places

Harassment at home

Police entrapment

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Abuse/harassment at police stations

Rape in jails

The media, instead of helping their cause, has hampered it almost irreversibly by projecting them either as a dark and sinister group of people with criminal instincts, to be avoided at all costs, or as the laughing stock in films, and rarely with empathy and humanity. The hijra community is a close-knit one, their ways and habitat kept secret from even the closest of neighbours who nurse more hatred than fear for them but prefer not to show it. Only the odd beggar who sleeps on the pavement across the road from a hijra colony seems to envy their deviant existence. They appear to care little for social acceptance but have enough sensitivity (though their manner does not reveal this) to hate being ridiculed by ‘straight’ people. Many of them have turned to crime and prostitution.

The roots of contemporary violence against the hijra community can in fact be traced back to the historical form that modern law in colonial India has taken. It took the form of the enactment of the Criminal Tribes Act, 1871 which was an extraordinary legislation that even departed from the principles on which the Indian Penal Code was based. To establish an offence under the India Penal Code, the accusations against the accused has to be proved beyond reasonable doubt in court of law. But certain tribes and communities were perceived to be criminals by birth, with criminality being passed on from generation to generation. It fitted in well with the hierarchical Indian social order, in which some communities were perceived as unclean and polluted from birth.

The link between criminality and sexual non-conformity was made more explicit in the 1897 amendment to the Criminal Tribes Act on 1871, which was sub-titled, ' An act for the Registration of Criminal Tribes and Eunuchs'. Under this law, the local government was required to keep a register of the names and residences of all eunuchs who were “ reasonably suspected of kidnapping or castrating children or committing offences under Section 377 of the Indian Penal Code”. Any eunuch so registered could be arrested without warrant and punished with imprisonment of up to two years or with a fine or both. The law also decreed eunuchs as incapable of acting as a guardian, making a gift, drawing up a will or adopting a son.

Regarding Civil law they are also not spared here. The hijra community is deprived of several rights under civil law because Indian law recognizes only two sexes. This means that hijras do not have the rights to vote, marry and own a ration card, a passport or a driving license or claim employment and health benefits. In north and central India, hijras, who have contested and won elections to local and State bodies, are now facing legal challenges. In February 2003, the Madhya Pradesh High Court struck down the election of Kamala Jaan as the Mayor of the Municipal Corporation of Katni. The court's logic was that since Kamala Jaan was not a woman, she could not contest the seat, which was reserved for women. Lawyer Pratul Shandilya, who is arguing Kamala Jaan's case, said: “ I have already filed the Special Leave Petition (SLP) before the Supreme Court, and the court has also granted leave in the petition.”

The High Court verdict came despite a direction from the Election

Commission (E. C.) in September 1994 that hijras can be registered in the <https://assignbuster.com/human-rights-and-legal-status-of-eunuchs-sociology-essay/>

electoral roles either as male or female depending on their statement at the time of enrolment. This direction was given by the E. C. after Shabnam, a hijra candidate from the Sihagpur Assembly constituency in Madhya Pradesh, wrote to the Chief Election Commissioner enquiring about which category hijras were classified under.

The law that is used most to threaten the hijra and kothi communities, as well as the homosexual community in India, is Section 377 of the IPC, which criminalizes “carnal intercourse against the order of nature with any man, woman or animal” even if it is voluntary. In effect, it criminalizes certain kinds of sexual acts that are perceived to be ‘unnatural’. The law, which has its origin in colonial ideas of morality, in effect presumes that a hijra or a homosexual person is engaging in ‘carnal intercourse against the order of nature’, thus making this entire lot of marginalized communities vulnerable to police harassment and arrest. The Immoral Traffic Prevention Act (ITPA) of 1956 (amended in 1986), whose stated objective is to criminalize brothel-keeping, trafficking, pimping and soliciting, in reality targets the visible figure of the sex worker and enables the police to arrest and intimidate the transgender sex-worker population. So we can summarize the real position of eunuchs in India as follows:-

Constitution of India does not consider them as third gender; they are deprived of social, civil and political rights.

They do not have right to vote, do not have rations cards.

They are not at all recognized as citizens of India and thus they are deprived of protection and rights available to a citizen.

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They face prejudice and sometimes this prejudice is translated into violence, often of brutal nature, in public places, prisons, police stations etc.

The entertainment industry in India portrays them as butt of ridicule.

Children learn about the eunuchs through the movies and the only thing they learn is that Eunuchs are something to be joked upon.

Eunuchs in India are treated with contempt by the society. The family of Eunuchs disowns them when they come to know about their sexuality.

Eunuchs in India find hard to get good education.

Most public and private companies use several excuses to deny employment to the Eunuchs. The end result is that they are forced into prostitution.

Sometimes people who scoff at the eunuchs during the daylight approach them at night for perverted sex. They end up having various sexually transmitted disease including AIDS.

SILVER LINING

With every single thing going against the Eunuchs; a notable amount of awareness has also been seen all over the world. Around the world, countries are beginning to recognize the rights of transgender people. In a landmark judgment (Christine Goodwin vs. the United Kingdom, 2002) the European Court of Human Rights declared that the U. K. government's failure to alter the birth certificates of transsexual people or to allow them to marry in their new gender role was a breach of the European Convention on Human Rights. It said that a test of biological factors could no longer be used to deny

recognition legally to the change of gender that a transsexual had undergone. In New Zealand, in *New Zealand Attorney General vs. the Family Court at Otahuhu* (1994), the court upheld the principle that for purposes of marriage, transsexual people should be legally recognized in their re-assigned sex.

Of late the Indian hijra community has begun to mobilize themselves through the formation of a collective. Sangama, an organization working with hijras, kothis and sex workers in Bangalore, has played an important role by helping them organize and fight for their rights. Its services include organizing a drop-in centre for hijras and kothis, conducting a series of public rallies and marches, using legal assistance in case of police harassment, and establishing links with other social movements.

The organizations of the hijra community can be seen as constituting a larger movement of sexual minority groups in India. They are challenging the constitutional validity of Section 377 and are organizing a campaign questioning the government's stand that the law should remain. The discrimination and violence that hijras face show that it is high time that both the government and the human rights movement in the country begin to take this issue with the seriousness it deserves.

SUGGESTIONS

India has to travel a long way towards granting full constitutional rights to Eunuchs, Gays, Transvestites and Homosexual individuals.

The traditions of India are full of deep rooted prejudices against Eunuchs in general. In India Gays, Transvestites and Homosexuals are seen living along <https://assignbuster.com/human-rights-and-legal-status-of-eunuchs-sociology-essay/>

with Eunuchs and find themselves safe there. This is because of the deep rooted social stigma against them.

Of late the election commission of India has allowed the Eunuchs to fill the election form by stating “ Other” in the slot where one has to fill either “ male” or “ female”. This is of course a very small step in the right direction and lot more need to be done.

Eunuchs are natural persons and they have a legal entity. It is high time that law and judiciary should recognize them as third sex.

Comprehensive Civil Rights legislation should be enacted to provided eunuchs the same protection and rights guaranteed to others.

Law should be made to punish the person, who discriminate people on the basis of their gender identity.

In Voter’s Identity card, one category of Eunuch can be added other than male and female.

Right to marry is the fundamental right of the people so laws must be made regarding the marriages of eunuchs.

The Press Council of India and other watch dog institution of various popular media should issue guidelines to ensure sensitive and respectful treatment of issues relating to Eunuchs.

We people can make a difference. Eunuchs are victims of biasness not only from the side of Government but also from the side of people. So we must

accept them and our attitude towards them must be positive. We must realize that law alone cannot reverse the centuries old history and tradition of ruthless discrimination against the Eunuchs. We must accept them as ‘one of us’

Without economic empowerment the emancipation of an exploited community is a distant dream. Suitable vocational training may be provided to them with a view to integrating them into the mainstream of society in appropriate jobs.

Millions of such souls in our country lead lifeless lives. The government has taken few steps to bridge this gap. In passports, ration cards, and other utility forms O (for other sex) or E (for Eunuch) has been added under the ‘sex’ category. But still, a lot needs to be done. This can only be achieved once we change our mindset and by spreading awareness to every stratum of the society. It’s high time to think seriously about the oppressed lives eunuchs live in India. It’s not about what we can give to them. It’s about the respect, love and status they actually deserve as human beings.

Easier said than done but it will surely be a very noble thing to adopt a eunuch as a child.