

## Hermaphrodites (Hijras) in Bangladesh : A Marginalized Community Searching for Legal and Social Recognition

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### Abstract

*'Hermaphrodite' a group of people, does not fall under the category of male or female human being, are ignored by family, under estimated by society and discriminated by state. This is a very common and cruel picture of hermaphrodite life in Bangladesh. Most of the time we see them ornamented but we do not think that there are a lot of pains, sufferings and deprivation which surround their lives. For living they lived collectively in separate community and earned their livelihood by sex business, compelling people to give them money and sometimes entertaining people in various ceremonies and festivals. This creates a mistaken public perception about this group of people. As human beings and citizens of the State, they are entitled to equal rights and protection. In this paper, I try to trace some major problems faced by this group of people and point out what should be done to improve their existing position.*

**Keywords :** *Hermaphrodite, Hijra, Livelihood, Deprivation.*

### 1.0 Introduction

"We are hermaphrodites. We can't sit, eat even we can't go toilet either. Are we not human?" (Robin, 2012)

Though it is a dialogue of a film, it is the daily soap of hermaphrodite lives in our country. Our social and legal system always thinks about the two main sexes, i.e. male and female. In reality, there is another 'third sex' who is neither man nor woman but human. In South-Asia people of this 'third sex' is commonly known as 'Hijra'. The Urdu word 'Hijra' is derived from the Arabic root 'Hjr' which means 'leaving one's tribe'. The English terminology of 'Hijra' is 'Hermaphrodite' or 'Eunuch'. (Chatterji, 2012)

Hijras have a long tradition in this subcontinent. They are not only coupled with Hinduism but also accepted in Muslim culture. In India, Hijras are particularly associated with the worship of Bahuchara Mata, a version of the Mother Goddess, for whose sake they undergo emasculation. In returns, the Goddess gives them the power to bless people with fertility.

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There, they had been traditionally looked at spiritually powerful entities capable of blessing as well as cursing. Besides this, during Mughal times, hijras or eunuchs, guarded the ladies of the harem. For their infertility, hijras were considered as persons of unselfishness and trust and played an influential role in State decisions and received large amount of money to have been closest to kings and queens (Nanda, 1999, p.2). Now these are only prestigious past. The existing socio-economic condition of Hijra community in Bangladesh is miserable description. Though they born as human being, they have no place in their family, hatred by other people, isolated from our society and ignored by our legal system. But as human beings they are also entitled to have equal human rights and dignity.

## **2.0 Objectives of this paper**

- a) The main objectives of this paper are-
- b) To focus on the reasons for which Hijras live in separate community;
- c) To picture the livelihood of Hijra community;
- d) To draw attention to the problems faced by Hijras under our social and legal systems;
- e) To make some recommendations necessary for the recognition of Hijras in our social and legal systems.

## **3.0 Methodology of the Study**

In this study required information are collected from different secondary sources including books, articles, newspapers, online resources, film, documents of relevant National Laws and International Instruments. The articles and newspapers highlighted the real scenario of Hijras in our society and provided valuable information needed for this manuscript. Relevant documents of National Laws and International Instruments revealed rights of Hijras. As no field work has been undertaken, the method of the research is purely descriptive in nature.

## **4.0 Defining the term 'Hermaphrodite (Hijra)'**

Generally, the term 'Hijra or Hermaphrodite' means people with ambiguous genitalia. Before defining this term, it is necessary to define some other connected terms like transgender, transsexual, transvestite, eunuch etc.

The term 'Transgender' means people whose gender identity does not match to their birth-assigned sex and/or the stereotypes associated with that sex.

'Transgender' is an umbrella term under which transsexual, transvestite, eunuch and other similar terms reside (Bettencourt, 2009).

'Transsexual' is one whose sex at birth is opposite to their gender identity; i.e. one who was born with male parts but is actually female (MTF or Male-To-Female; a transwoman) or one who was born with female parts but is actually male (FTM or Female-To-Male; a transman) (Bettencourt, 2009).

'Transvestite' is one who wears clothing intended for the 'opposite' gender for sexual satisfaction (Bettencourt, 2009).

'Eunuch' is castrated male. (Hossain, 2012)

Medical science states that hermaphrodite 'males' are those born with testicles only and some sexual characteristics of a genetically born female but no ovaries. On the other hand, hermaphrodite 'females' are those born with ovaries and with some sexual characteristics of the male sex but no testicles (Human Rights Defense, 2012).

Adnan Hossain, one of the researchers on transgender issue in Bangladesh, mentions in his research paper that Hijras of Bangladesh define themselves as people who are neither male nor female and incapable of sexual sensation. According to them Hijras are of three types.

In first category, there are Hijras who have no trace of genitalia except for a tiny hole for urination and they can be both flat-chested as well as big-breasted. They are called 'RealHijra'. In second category, there are Hijras with a tiny non-erectile phallus. More often than not, they go for a surgery as having that phallic additive trimmed skyrockets the status of 'Male Hijra' in the Hijra community. In third category, there are some Hijra who look like women having female genitalia. But they do not menstruate and may also possess masculine traits. They are called 'Female Hijra'. The first two types are the most predominant and the last type is a rarity in the Hijra community of Bangladesh (Hossain, 2012).

### **5.0 Why people are become Hermaphrodites?**

One medical research indicates that fluctuations or imbalances in hormones or the use of certain medicines during pregnancy may cause hermaphroditic condition. Other research says that brain structure is related with this identity (National Center for Transgender Equality, 2009).

Again many Hijras come from other sexually ambiguous backgrounds; they may be born intersexes, be born male or female and fail to develop fully at puberty, or be males who choose to live as Hijras ever undergoing the castration

procedure (Human Rights Defence, 2012). The symptoms of hermaphrodite may be shown at any stage of life of a person due to hormonal imbalance on inflections, though very often it is shown in early stage of life.

## **6.0 Hijras in Bangladesh**

There is no authentic statistics on how many hijras are living in Bangladesh. Surveys conducted by various NGOs mention that there are almost half a million of hijras living in Bangladesh whereas Government says that the number is only 10,000. Unlike other countries in the subcontinent, here hijras live in a group mostly in the urban areas where they form their own society. Each group is led by a senior hijra called 'Guru'.

## **7.0 Why they live in a separate community?**

After leaving family, whether willingly or not, when a Hijra becomes shelter less, is taken into the Hijra community by other Hijras and the newly joined Hijra is trained to dance, sing and use musical instruments by the Guru and other senior Hijras. However, there are two main reasons which put them to live in a separate community, namely-

- Family reason and
- Socio-economic reason.

### **7.1 Family reason**

When parents understand that their child's gender identity does not correspond to its sex at birth, they become very nervous. They try to hide the matter and in most of the cases they do not take their child to any physical consultant in fare of privacy. Even they do not give same affection, attention and opportunities to their unfortunate child which they give to their normal child. In addition to this, other family members also misbehave with that unfortunate member. And if any adult member of the family becomes hermaphrodite, he/she has lost admissibility in the family. Being isolated from the family the hermaphrodite person suffers from depression which creates suicidal tendency, makeshim/her arrogant. Sometimes the family throws him/her and sometimes the hermaphrodite person willingly goes out of the family and joins to the hermaphrodite community which is known in our society as Hijra community.

### **7.2 Socio-economic reason**

Hijra people are also secluded from our society. Most of the people of our society make negative facial expression about them. Very often they become the victims of both physically and mentally harassment and torture. There is a myth in our

society that a child becomes Hijra because of any sin committed by the parents and a family having a Hijra child becomes the subject-matter of fun and laugh by others. Due to this social non-cooperation tends a family separate their unfortunate family member.

Being isolated from family and society, Hijras become helpless both psychologically and economically. So, to maintain livelihood and share pain as well as sufferings, they live collectively in a separate community.

### **8.0 Livelihood of Hijras**

Traditionally Hijras earned money for their livelihood by entertaining people. They are hired to sing and dance at wedding ceremonies and to celebrate the birth of baby. But with the spread of entertainment media at present this source of income is curtailed. Now they collect money from shopkeepers and sometimes from passersby by some kind of mild extortion. For example, if anyone (especially male) refuses to give them money, they embarrass the person by using slang language or threatening to open their private parts of body in front of him. Many of them are involved in sex business. Only a very few members of them are employed in different jobs.

### **9.0 Problems faced by Hijras**

A Hijra's deprivation starts when it is traced by other family members that he/she is a Hijra and this deprivation and humiliation continues to their community life. Some major problems faced by them are discussed below:

#### **9.1 Unemployment problem**

We see that Hijras' livelihood is mostly depended on begging and prostitution. The main reason is that they are deprived of education. They do not get friendly environment in school. The peers usually bully them and do not take them with their collective activities like group study, sports, cultural activity etc. Even the teachers ridicule them before fellow classmates. This adverse environment discourages these people to continue study which later reflects on their deprivation of job opportunities. Only a nominal number of Hijras are employed in our country. But there they also deprived of equal rights and opportunities. The employers hesitate to employ Hijra at work and most of the time they are teased by their fellow workmates (Mahmud, 2010)

#### **9.2 Exclusion from Inheritance**

Another reason for economic crisis of Hijras is their exclusion from inheritance. Though Dayabhaga School of Hindu Law excludes Hijras from inheritance, Muslim Law does not so exclude (Moniruzzaman, 2006, p. 140-141 & Mulla,

1990, p. 152-153). But in reality, most of the Hijras do not get inheritance as they have impoverished connection to their family so long as their parents alive. After their parents' death, other family members do not maintain any relationship with them.

### 9.3 Health Care Problem

One more serious problem of hermaphrodite people is their health care. There is no organization with a physical establishment to gratify to the needs of this community. As a large number of Hijras are engaged in sex business many of them have been suffered by STDs (Sexually Transmitted Diseases) like syphilis and HIV/AIDS. Doctors also neglect hijras considering them as sex workers. In government hospitals they need to stand in a queue to see a doctor where they have to face a dilemma, whether they should stand in the gents or ladies line or both of them sometimes do not allow them enter their line. There are two organizations named CARE and BONDHU (having some DIGs) running for HIV and STD preventive programs for the Hijras but none of these organizations have any data as to the number of Hijras living in the areas where they are working. Though the organizations have a statistical list of the number of the Hijras securing medical services from them, many of the enlisted beneficiaries do not exist in reality and most of the beneficiaries denied being benefited (Hossain, 2012). Again, according to the rules of the community, many male Hijras undergo ritual castration at puberty. Many of them try getting this operation done in the hands of quack doctors and die (Arney, 2000).

### 9.4 Other Problems

Hijras are not allowed to use public toilets and restrooms. If they try to use these, most of the time they are tortured and harassed by others. Another place of humiliation for Hijras' is public transport. They are not easily allowed to get into public transport. When any of them get into the bus or other transport most of the people make negative face expression towards them and hesitate to sit beside them and sometimes they are misbehaved.

Nonetheless, Hijras who are engage in sex work are often exploited by clients and even by law enforcing agents. They are often forced to have sex free of charge with these agents or to give a portion of their earnings. They rarely report any incidents to police because of fare of any more harassments (Bandyopadhyay, 2011, p. 34).

The deprivation and humiliation of Hijra community does not end with death. They are buried in accordance to their religious background they come from. But this is done secretly because they want to avoid any sort of possible conflicts regarding whether or not to treat the dead body as male or female (Farhana, 2009).

## 10.0 Development in Hijras' issue in Bangladesh

Though our Hijra community is deprived and discriminated from decade to decade, their history of movement in Bangladesh broadly starts from last few years. There are some community organizations named- Badhon Hijra Shongho, Shustho Jibon, Shomporker Noya Shetu, Shocheton Shilpi Shongho etc. are working to protect Hijras' interests (Preetha, 2011). Besides some NGOs named the Family Health International, Banhdu Social Welfare Society (BSWS) in collaboration with other organization namely CARE, Marie Stops Healthcare and other organizations are also working to facilitate the Hijras with healthcare supports (Mahmud, 2010).

In our 2008 National Parliament Election hermaphrodite people were allowed to cast ballots for the first time (Charman, 2008). But their right to vote is also subject to discrimination as they had to cast their vote either as male or female that is to say, they are not allowed to vote with their original identity as a 'Third Gender' on the basis of their biological uniqueness (Parveen, 2008). In 2011, a group of senior Government officials have undertaken a pilot project titled 'Integration of the Transgender (Hijra) Population into Mainstream Society' which is the first attempt by any government administration in Bangladesh to address the hardships faced by this minority community. The main objects of the project are-

- a) To take necessary steps to create mass awareness about the transgender population;
- b) To give skills development training to 30 Hijras and provide employment opportunities for them;
- c) To establish a trust/foundation for the welfare of the transgender community (Preetha, 2011)

Under this project 32 Hijras have already been trained and employed. The Social Welfare Ministry, Vocational Education Centre, Social Service Programme, Persona Institution, Bangladesh Chalachchitra Sangsad and several other organizations joined the program. On October 21, 2011 a rally was organized by the project with hundreds of Hijras, civil society and the Government officials was held in Dhaka seeking legal rights and social recognition as 'third gender' outside men and women. The trainer of the project admits that Hijras are very quick learners and potential as they have both feminine and masculine attributes (Preetha, 2011)

Moreover, the project has also been organizing seminars, advertising campaigns, talk shows on TV channels, articles in major newspapers in order to

raise mass awareness and to bring the Hijra community into the mainstream society.

Another program titled 'Livelihood development of the hijra population' was implementing by the Social Welfare Ministry in Dhaka, Chittagong, Dinajpur, Patuakhali, Khulna, Bogra and Sylhet with allocation of taka 72.17 lac. Under this program, Hijra population completed professional training according to their choice and Hijra children got TK. 300 per month for primary level, 450 taka for secondary level, 600 taka for higher secondary level and 1000 taka for post graduate level study. One more pilot program has been designed to start in another 14 districts from July 2013-2014 fiscal year. According to news in daily Ittefaq (8 June, 2013), under this program, Hijra children aged above 5 years were stipend and those above 18 years achieved training aimed at skill development on different professions.

Finally, on 11th November 2013 Hijras acquired their legal recognition when the Government officially recognized them as 'third gender' to bring them in the mainstream of the society. This recognition allows them to choose the option of being recognized as 'third gender' in public document like passport, NID card, driving license etc.

### **11.0 Position of Hermaphrodite People in South-Asia**

In South-Asia Hijras are struggling hard for a long time for their legal rights by State recognition and their movement become successful in India, Pakistan and Nepal. In India, Shabnam Mansi became India's first Hijra MLA in 1999 and another Hijra, Kamal Jaan, was elected as Mayor of Katni while another, Meenabai, became the president of the Sehora town municipality, the oldest civic body in the state of Madhya Pradesh (Farhana, 2009)

In 2005, the Indian's third gender citizens were allowed to register for passports as 'eunuchs' denoted by an 'E'. In 2009, an 'E' designation was added to voter registration documents and in 2011, the Unique Identification Authority of India allowed 'transgender' as a third gender option in their new government citizen ID number system (Gordon, 2012). In 2009, the Delhi High Court ruled that sex among consenting adults of the same sex is no crime. The court repealed section 377 of the Indian Penal Code (IPC) emphasizing that homosexual's equal right as other citizens are guaranteed under the constitution. The bench also said that the judgment would hold till parliament amended the law (Bowen, 2011). Some public hospitals in Mumbai and Delhi are offering sex reassignment surgery at nominal rate which is free in Tamil Nadu. The Government of Tamil Nadu has also issued new ration cards for third gender alone with the establishment of a 'welfare Board' to promote the equality and security through welfare schemes which are considering by other States of India (Bandyopadhyay, 2011).

After the raped of eight hijra wedding dancers near Islamabad in 2009, a case was filed in the country's Supreme Court by a lawyer named Muhammed Aslam Khaki asking to recognize hijras as third gender. On November, 14, 2011, the Supreme Court presided over by Chief Justice Iftikher Mohammad Chowdhury, has issued a direction saying that transgender should be given equal basic rights as all citizens and ordered the Government to conduct a census of hijras living in the country and register them as voters (Mohanty, 2014).

On December 27, 2007, by a decision in *Pant v. Nepal*, the Supreme Court of Nepal legally recognized hermaphrodites and ordered the Government to issue citizenship ID cards which allowed 'third gender' or 'other' to be listed and in 2011, Nepal census was the world's first to allow people to register as a gender other than male or female (Gordon, 2012).

## 12.0 Legal obligation of Bangladesh towards hijras

It is true that there is no especial law for the protection of Hijras and the Penal Code 1860 admits only male and female as a 'person' but the Government cannot remain silence in respect of its legal duty towards this class of people as it is the constitutional and international obligations of Bangladesh to ensure rights of such people.

Article 28(1) of our constitution states, "The State shall not discriminate against any citizen on grounds of religion, race, caste, sex or place of birth." And Article 29 (2) states, "No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic." Article 32 ensured right to life of every person and according to judicial decision right to life includes everything necessary to make a human life meaningful and live with dignity (Chowdhury, 2014, p.197). So it is the constitutional duty of Bangladesh to provide fundamental rights to Hijras equally like other citizens of the country.

Moreover, Article 2 of the Universal Declaration of Human Rights states, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (United Nations resolution 217A(III), 1948)

Article 2(1) of the International Covenant on Civil and Political Rights states, "Each State party to the present covenant undertakes to respect and to ensure.....without distinction of any kind..... birth or other status" (United Nations resolution 220A (XXI), 1966)

Article 2 (2) of the International Covenant on Economic and Social Rights states,

“These State parties to the present covenant undertake to guarantee .....without discrimination of any kind ..... birth or other status” (United Nations resolution 220A (XXI), 1966)

Bangladesh has ratified all these international treaties of human rights alone with the Covenant of Elimination of Racial Discrimination and also elected member of United Nations Human Right Council in 2006, 2009 and 2012. According to these treaties it is the international obligation of the state to ensure the rights given in these documents equally without making any discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status though Bangladesh has rejected to abolish section 377 of the Penal Code on the ground of its strong social tradition and cultural values (National Human Rights Commission of Bangladesh [NHRC], 2012).

In 2009 Bangladesh established the National Human Rights Commission (NHRC) in consonance with Bangladesh’s commitment to International human rights law. One of the mandates of NHRC is to ensure the rights of transgender people, hijras or people living with HIV (NHRC, 2012).

### **13.0 Recommendations**

Hijras are deprived of fundamental rights which they deserve as citizens of the country. Government has already delegate the duty of monitoring Hijras’ rights to the NHRC and recognized them as ‘third gender’. Certainly these are very positive attempts of the Govt. but not enough to improve the existing condition of Hijras. The following steps should be taken by the concern authority to improve the existing position of Hijras living in Bangladesh:

- Govt. should set up special schools to provide Hijras with at least free primary education alone with vocational training to make them eligible for jobs and ensure every sphere of educational institution safe and friendly for them. Besides, to encourage them to complete their education, Govt. should provide them stipend and free educational equipment;
- Government should ensure job facilities according to their qualifications and keep quota in different job sectors for them. To make them self-dependent by business, Micro-credit must be introduced for them;
- Free medical services must be introduced to all public hospitals and health care center for Hijras suffering from HIV and STD. Moreover, hormonal treatment for grown up hermaphrodite to stop them to be a permanent hermaphrodite and sex reaffirmation/reassignment surgery for those willing to transition should also be introduced;

- Existing laws should be reformed to enable Hijras to get proper legal remedy as third gender like other two genders. In addition to this, special law must be enacted to guard them from violence and discrimination of different types and to ensure proper legal protection;
- Right may be violated not only in absence of relevant law but also the abuse or improper use of existing laws. So it must be ensured that no Hijra should be victim of harassment by any law enforcing agent.
- NGOs' should not confine their programs only to HIV/STD issues of this community. Besides Government, they have to focus and work on the issues of housing, health, education and employment of this community;
- Positive impression must be created in general people towards Hijras by mass media which is very essential for their social inclusion.;
- A 'National Hermaphrodite Center' must be set up for monitoring how far the Hijra community can realize their rights and to add this community in different sensitive issues and to set up rehabilitation center for shelter less Hijras. For this an immediate survey must be launched to find out the accurate number of Hijras living within various Hijra community in Bangladesh;
- Along with Government, our Judiciary can play an effective role to protect interests of this group and stop violence against them like our neighboring country India, Pakistan and Nepal.

#### **14.0 Conclusion**

Bangladesh is a sham based society where family honor is given very high importance. In our society it is hoped that a person is either male or female. If the gender is otherwise that is Hijra the family does not accept it in fair of family honor and social pressure. So only Government efforts are not sufficient to change the existing situation of Hijras. They need love and cooperation together with rights which they deserved. So we, the general people, have to change our mistaken perception about Hijra community and take them as a part of our society. Hijras have potentials. If State along with the general people gives them these opportunities, they will be able to lead a life with dignity and contribute in our national development.

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