



Research Paper

Critical Analysis of Social Inclusion and Exclusion of Transgender in India

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Abstract:

In slang, the terms "transgender," "hijra," and "kinnar" all refer to the same thing. Since ancient times, they have been a part of Indian civilization and culture. For instance, the phrases *napunsaka*, *kliba*, *kinnara*, *kimpurush*, *ubhaylingi*, *eunuch*, *Pedi*, and *pandaka* in Sanskrit, Prakrit, and Tamil may be used to refer to non-heterosexual gender or transgender persons. The Vedas, history, puranas, dharma-shastra, kama-shastra, *naytya-shastra*, Ayurveda, Manusmriti, Jain agamas, and Buddhist pitakas all end up making use of these concepts. Shiv-Shaktis, Aravanis, Jogappas, Einochs, Hijras, etc. are members of the transgender group. The word "Hijra" comes from an Arabic phrase that means "impotent ones." People who identify as "neither man nor woman," "third gender and transgender," or "neither man nor woman" in the Indian context are referred to as "hijras." Kinnar is a Sanskrit word (In modern term). My research's primary goal is to provide a bird's-eye view of the worldwide LGBTQ+ movement while keeping this in mind. The Transgender Persons (Protection of Rights) Act, 2019, which was passed by India and became effective on January 10, 2020 following gazette notification by the Indian government, received presidential assent on December 5, 2019, and it now serves to protect rights that are essential to human existence. Even the Indian Supreme Court upheld their status as a third gender in its interpretation and ruled that governments must facilitate their inclusion in the workforce, in the classroom, and in society. This is the most innovative law that has protected transgender people's different rights, coupled with legislative protections for their identification cards, secure housing, and mainstreaming into society.

Keywords: Transgender Persons (Protection of Rights) Act, 2019, LGBTQ+, Transgender, Hijra, Kinnar, Non-heterosexual

Received 01 Oct., 2022; Revised 08 Oct., 2022; Accepted 11 Oct., 2022 © The author(s) 2022.

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I. Introduction:

The term "transgender" refers to a wide range of activities that exist between and beyond the categories of "male" and "female," as well as an identity dilemma. The word "transgender" in this essay refers to transgender identities, behaviours, and those expressed from alternative gender positions. In India, transgender people have existed since the thirteenth and fourteenth centuries. The roles and behaviours that Hijras view as uniquely male and female may vary based on the preferences of the person, however identification of Hijras remained ambiguous until 2011, since the Indian census and Indian electoral commission classed them as "others." However, following a protracted battle, the Indian Supreme Court's Justices K.S. Radhakrishnan and A.K. Sikri bench decided to recognize them in 2014. Both at home and in public settings, transgender people experience numerous sorts of gendered abuse, harassment, and discrimination. Consequently, the punishment for egregious crimes against transgender persons is far softer than the punishment for the same crimes against cisgender people. The new rule mandates that those who describe themselves transgender, intersex, or gender non-conforming must not be granted reservations and therefore must reside with their blood relatives, who are frequently the targets of physical and emotional abuse. The concepts of *tritiya*, *prakrti*, and *napunsaka* have also been discussed in literature from the Vedic and Puranic traditions. This condition has been termed *napunsaka*, which means "without the ability to reproduce." But as time went on, they encountered more challenges, including lack of education and job skills, because it is generally recognized as denigrating for parents to have transgender children, there is unemployment, vulnerability to emerging disorders like HIV, and low financial and social mobility. As a result, a culture of exclusion developed that forbade them from living with their

biological parents. Term for LGBT people Sexual orientation is the term that refers to a person's romance or sexuality predisposition either others of the same sex or a different sex. There are numerous stages of bisexuality, which ranging by being absolutely heterosexual (attraction to homosexual couples) to being utterly gay. Bisexuality is the terminology for both the attraction to both members of the same sex in addition to people of a different sex (attraction to people of the same sex). Gender identity is distinct from sexual orientation it relates to a person's internal, deeply felt sense of being male, female, something else, or in between. Each human has a gender identity, which for the great majority of people corresponds to their physical sex. On the other side, transgender people do not identify with the gender that has been assigned to them. The term "transgender" can also refer to anyone whose gender expression differs from the norm in society, even if not all gender nonconforming people identify as transgender. People who do not identify as heterosexual or whose gender does not conform to the gender norm are usually referred to as "lesbian, gay, bisexual, and transgender" (LGBT). In the LGBTQ acronym, the words "queer" and "questioning" are sometimes used. The term "queer," which was historically derogatorily used, is now more and more being specifically by younger Lgbtq youth, reclaimed as a positive social and political identity. It is occasionally used to refer to all LGBT people in general. Questioning is the method of deliberately exploring one's own sexual orientation and/or gender identity while dispelling preconceptions that one is heterosexual and/or gender conforming. In furthermore, irrespective of their sexual orientation, many youngsters may act and dress in ways that are more closely correlated with a different gender. These teenagers are typically labelled as LGBT and face some of the same risks of abuse as their classmates who identify as LGBT.

Objective of the Study: The primary goal of the study is to first determine the current position of transgender people in Indian culture through an analysis of the relevant laws and legal precedents. The second goal is to determine whether transgender people are excluded from Indian society as a whole and conduct a comparative analysis to support their inclusion. Thirdly, the Government of India's involvement and accountability in approving the Transgender Persons (Protection of Rights) Bill.

II. Literature Review:

The example of personification of Hijras and their struggles for equality, freedom of speech, and expression in relationship to their socioeconomic factors and multiple forms of exclusion in the Indian milieu have been the subject of numerous research projects completed all over the world. Many intellectuals in their respective jobs have outlined and articulated the nature of the issue. One of the best works on the Hijras, "Neither man nor woman: The Hijras of India," by Nanda Serena, underscores the tasks of the Hijras in reference to the mother goddess in order to accept feminism and cultivate a separate and spiritual character within society. We also gain a thorough understanding of who they are and how they choose to self-identify, which helps us comprehend the differences between transgender men versus transgender women. (Nanda, 1990). Hijras try to demonstrate the presence of gender variation in prehistoric times and within religious texts by citing figures with unclear gender status such as Arjuna, Amba, Sikhandin, and Rama in order to assert their true identity that has persisted throughout history. Through the recital of a fantastic story, Hijras may desire to clarify who they are and how they prefer to perceive themselves as a great man as well as a constant factor in ancient literature for their accomplishments (Simon Brodbeck, 2007).

III. Findings of the Study:

Transgender Individuals Seem to be Ostracized: The Social Exclusion Framework was used increasing mostly to attract attention to the issues and challenges that disadvantaged and marginalised groups face. The Upper House of the Indian Parliament last month adopted the Transgender Persons (Protection of Rights) Bill, and the president of the nation later signed it into law. One of the law aspects that transgender activists believe is unconstitutional is the establishment of five-member screening committees at the district level to certify a transgender person's gender. The Supreme Court's 2014 decision granting transgender individuals the ability to self-recognize their gender and this clause appear to be at odds with one another. In the case of National Legal Services Authority (NALSA) v. Union of India, the Supreme Court of India ruled on April 15, 2014, that transgender folks in India are the "third gender." Based on this course of action, transgender people are eligible for accommodations in the workplace and in educational institutions considering that they are presumed members of socially and economically disadvantaged classes and are obligated to equitable treatment under the Indian Constitution, the autonomy to public persona (need to choose whether they'll be gender, female, or a gender fluid), and most importantly, appreciation. The Transgender Persons (Protection of Rights) Act, has been enacted by the Parliament in August 2019. The legislation has caused a lot of controversy since it prevents transgender people from recognizing their gender without having sex reassignment surgery, even while it repeals other contentious provisions of the 2018 law, such as the criminalization of beggary. The District Magistrate and the district-level screening committee are mandated by statute to give a gender certificate to any

person who has had sex reassignment surgery. A person can only be classified as transgender and not as either male or female if sex reassignment surgery has not been done. Transgender people feel obligated to get surgery so because desire for free or affordable sex reassignment surgery has not been met. Furthermore, the provision for punishment for significant felonies against transgender individuals is far less stringent compared to those crimes committed against cisgender people. In moreover, the proposed law prevents the administration of permissions to transgender, intersex, and gender non-conforming people and necessitates that individuals dwell with their biological parents, who already are frequently the victims of physical and psychological abuse.

The Sociocultural Background of Transgender Folks: Hijras' socioeconomic conditions are regularly cited as one of the country's most marginalised groups. The Hijras had a close relationship with the mother goddess since they were predominantly descended from ancient Hindu literature, and they considered oneself as an ambiguous portrayal of Lord Shiva that embodies who they are.

Refusal to partake in Cultural or Social Organizations: Indians tolerate, accept, and tolerate a broad diversity of variances in cultures, beliefs, languages, and practises, while being estranged from their family and society as a whole. Indians tolerate, accept, and appreciate a broad range of cultural, religious, ethnic, and conventional deviations while being ostracized from their families and society as a whole. The public at large appears to have minimal awareness of and comprehension of same-sex relationships and persons whose gender identity and expression differ from their biological sex, despite the widespread acceptance and tolerance evident in Indian society. In India, instances of violations of human rights against communities that identify as sexual minorities are common, notably against transgender members of society. Most families find it difficult to accept it when a male child starts acting in ways that are considered feminine or inappropriate for his or her gender. Because of this, family members may harass, reprimand, or even injure their son or brother for acting or appearing feminine. Some parents may simply reject and evict their own children for defying gender norms and failing to execute the duties expected of a male child. There are many reasons for which parents might decide to do this, including the desire to avoid having more children and the desire to bring shame and disgrace to the family, lowering the likelihood that their son or daughter will marry a woman in the future and end their generation (if they have only one male child).

Incapability to engage in politics Civic, political, and administrative rights: The Criminal Tribes Act, 1871 was passed by the British in 1871, and it declared some tribes and societies to be "addicted to the systematic conduct of non-bailable offences." The Criminal Tribes Act, 1871 was passed by the British in 1871, restricting some tribes' and communities' civil and political rights because they were 'addicted to the systematic commission of non-bailable offences'. These societies and tribes were thought to be born criminals who handed their crime down through the generations. According to the terms of the enactment which was revised in 1897, "a eunuch [was] regarded to comprise all people of the male sex who acknowledge themselves or on medical inspection clearly exhibit male genitalia". The local administration must keep a log of the names and addresses of every sodomites who are "reasonably suspected of abduction or brutalising juveniles or of violent offenders under Section 377 of the Indian Penal Code. Additionally, "any such registered person who appears on a public street costumed or accessorised as a lady. The police reportedly harassed Hijras by threatening to file a criminal complaint under Sec. 377 IPC against anyone who plays music, dances, or participates in any public show in a public roadway (UNDP, 2010). Consensual same-sex relationships between adults that take place in private were declared inadmissible by the Delhi High Court in July 2009. Following that decision, objections to the judgement were raised in appeals before the Indian Supreme Court; the Indian government has not yet formally responded. Both gender-variant individuals and those who alter their sex sometimes face complicated legal challenges. Legalities including such gender recognition, same-sex marriage, child adoption, inheritance, wills, and trusts, immigration status, job discrimination, and access to both public and private health care can affect transgender persons.

Deficiency of Social Security and Restriction from the Workforce: TG/Hijras communities deal with a number of social security-related problems. Since the majority of Hijras flee their homes or are forcibly removed, they do not anticipate long-term support from their birth family. They thus have several difficulties, particularly when they are unable to earn owing to health issues, a lack of work prospects, or old age. A large percentage of transgender persons choose to work in sex, despite the dangers of contracting HIV and other diseases, or continue to do so for a variety of reasons, including a lack of alternative sources of income. There have been sporadic efforts lately to provide competent TG women with mainstream occupations, such as representatives for the Life Insurance Corporation of India. Lack of particular social welfare programmes and obstacles to using those that do exist. For socially and economically disadvantaged populations, social welfare departments offer a range of social welfare programmes. However, except from a few unusual instances when property has been given to Aravanis in Tamil Nadu, there are currently no special programmes accessible for Hijras. Recently, the Andhra Pradesh state government commanded the Minority Assistance Department to treat

"Hijras" as a minority and create welfare programmes for them. Even eligible persons are prevented from taking use of various programmes by the stringent and burdensome processes required for residence evidence, identification proof, and income certificate. Additionally, the majority of Hijras/TG populations are unaware of the social assistance programmes that are accessible to them.

Investigating one's self: Who am I?: The informants, who had been cut off from their families and schools, claimed that since they were feminine guys, they frequently heard comments about how different their attitudes, body language, and behaviour were from other boys'. The informants started to question if they were a hijra, a male, a female, or a feminine mind in a male body. Many hijra said to possess a feminine spirit imprisoned in a masculine body. According to one hijra, who used the metaphor "Uportolai nayeeka ar nichertolai nayok" (actress at the top and actor at the bottom), the hijra have breasts and penis that are both similar to those of men and women, indicating that they are a hybrid of both genders.

Where to go if you're living for leaving and staying: Often times, feminine attitudes cause pain to the body and the mind. The hijra informants claimed to lead dual lives as young feminine guys at home who alternated between being completely feminine with mental relaxation while with peers and appearing to be masculine when away from home. They chose to dress in feminine attire that was not allowed within the house. They were told not to act feminine in front of their family. Due to their "unwanted" and "abnormal feminine behaviours," their siblings' chances of marriage are now in doubt. They frequently missed out on family gatherings, weddings, and funerals because they were hijra.

Where and why should I work?: The hijra said they were unable to get employment in the mainstream because to their lack of education and "strange" non-conforming lifestyle, which was unsuitable for the workplace. "We are unable to get employment due to our feminine gesture. We are consistently fired from our jobs for "damaging" the workplace atmosphere. Some were hired but ultimately fired when their employers discovered their views toward women. Many hijra were verbally, physically, and sexually mistreated at work in certain situations, and they never got any justice. Because the bosses intended to "rescue the workplace from sexual filth," they rather lost their jobs.

Whom should I adore in a relationship? : Most hijra spoke of their romantic relationships with their male companions. In many circumstances, the attraction lasts as long as the guy treats and treats "her" like a lady. This temptation enables a hijra to shoulder the financial responsibility of "her" parik (male lover), with the ultimate goal of the parik remaining with "her." Most frequently, males continue to have sex while feigning affection for the hijra. Due to mandated fatherhood, male-female sexual and marital relationships are required in Bangladesh's heteronormative culture. According to sociocultural, religious, and political laws and practises, it is forbidden to have a family with a hijra who is considered to be neither male nor female and incapable of having children. Such romantic partnerships eventually end.

Where is the protection when it comes to sexual and physical harassment? : The majority of hijra recounted their first sexual encounters between the ages of 8 and 12. Most often, the initial sexual contact was formed with a male relative, neighbour, or house tutor. The majority of these occurrences used force and happened without protection, placing individuals at risk of STI and HIV transmission. In other instances, they received concrete rewards for keeping "it" a secret. After the first instance of such coercive sex, they felt humiliated and scared because they feared being exposed to the family. A male can start to worry about his feminine mind as a result of these reported recurring events since it deviates from cultural norms and practises.

Comments and Opinions: The study of the Hijras is one of the most fascinating topics for a researcher to pursue since it not only yields important information but also helps the researcher comprehend the community, which may help bring about changes in both Indian culture and the world environment. The following are some ideas for potential future research projects:

1. Research into the history and origins of the identity of the Hijras.
2. Additional study is required to understand the nature of their interaction with the mainstream.
3. The Hijras' transition from masculinity to feminism.
4. Emphasis on physiological issues and health risks.
5. To guarantee their rights and justice, appropriate legal laws are required.
6. Timely evaluations of current welfare programmes are necessary for successful outcomes.
7. Careful consideration of Hijras is required while developing policies and programmes for social development. greater comprehension and ongoing encouragement of Hijras' active engagement in society.

IV. Conclusion:

According to a study of the research, transgender persons are those whose identities defy conventional gender roles. Numerous studies on various topics have been conducted by academics in an effort to comprehend and explain the issues that the Hijras confront, and diverse points of view have been expressed in an effort to improve and provide justice for them. Numerous NGO and state governments around the nation have made attempts to empower and equalise the rights of Hijras in order to offer them with equality. As a result, policies like assistance programmes and transgender policies have been developed to prevent people from being exploited, denied, and socially excluded inside the country. Few developments and modifications may be noticed as a result of this work. Globalization and the Westernization process have altered people's way of life all across the world. There is a contemporary generous point of view that incorporates a modern measurement of tradition and culture. We observe teenagers who dye their hair, get tattoos, form live-in partnerships, and assess their calorie intake. People who copy their loved celebrities frequently modify their appearance and manner of speech. We have people who change their names, places of employment, faiths, political party affiliations, and even their nations. In addition to everything mentioned above, there are quite a few guys who dress as women in India who solicit alms or are occasionally seen yelling and fighting in stores. Many people, especially in India, may be seen aggressively pleading for money at traffic lights by yelling, applauding, and waving their hands. They condemn those who refuse to administer while blessing those who pay them money. Who are these individuals? Can we treat them like humans? How can they make a life in a culture that rejects them? How won't we accept them for who they are right now? These transgender women, also termed as hijras, are dressed in an Indian sari. Many people give them money solely to avoid seeing hijras and to avoid being touched or cursed by them; they believe that their touch may contaminate and that their curses may come true. Such individuals are even common in trains. In the current context, terms like "gender fluidity," "gender bending," "gender expression," and "gender identity" are often used. Gender Studies has expanded its platform for these new categories after controlling the binary concept of gender for thirty years. The study of various sexual experiences, gender expressions, and gender forms has expanded the field of gender studies in the twenty-first century.

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