

A Theoretical Analysis of the Legal Status of Transgender: Bangladesh Perspective

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Abstract: In Bangladesh, the number of transgendered peoples are increasing day by day. These transgendered peoples are commonly known as 'Hijra' in the society. They are normally looked down because they are not treated as normal human beings in the society. They are brutally neglected by the society and the government as they don't have the approved gender identity. This hijra group of people are received recognition from the government of Bangladesh as 'Third gender'. But the government has not yet enacted any laws for the benefits of hijras to ensure their legal rights, sociological rights and political rights also. Recently many countries of the world have enacted some specific laws regarding the status of transgender community to protect their legal, social and political rights. In some Asian, South Asian and European countries the transgendered group are also acknowledged as the third gender group. Now-a-days most of the transgendered people of the world including Bangladesh are living critically and miserably because of their unsettled rights. They are also living in fair and detachment due to different types of superstitions and frustrations. This article has an assertion and provided some recommendations which may help to enact a separate law for hijras to protect their different rights like social, legal, political and others. This paper may also assist to bring some changes of the status of hisra community.

Key words: Transgender, human being, Hijra, legal, Political.

I. INTRODUCTION

Though the hijras are defamed, censured and cruelly ignored community in Bangladesh but they are also a segment of our society. The Constitution of Bangladesh has guaranteed some fundamental rights available for all the persons, in this sense the transgender have also the equal rights to everything. The Bangladeshi society is being stigmatized due to the discrimination of the rights and status of hijras. Most of the hijras are faced several problems like sexual harassment, unlawful penalties, mental abuse and health problem also. The word hijra is used as a unique term to identify individuals who presume themselves as a geminate gender and play some abnormal roles sociologically and culturally.¹ Bangladesh Constitution provides that the rights of any citizens shall not be discriminated by the state due to race, caste, religion, sex etc.² That's why recently the government of Bangladesh has taken a landmark decision to provide national identity card to hijras to identify them as either male or female. Besides the government, NGOs and other private organizations take various forms of initiatives for the benefits of the hijra community.

II. WHO ARE HIJRAS?

The term 'Hijra' is both Urdu and Hindi word. The word hijra is originated from the root of the Arabic 'hjr' which means 'living one's tribe'. It is also alternatively Romanized as hijira, hijara and hijrah etc. The term Hijra has occasionally been used into English as 'eunuch' or 'hermaphrodite' or 'gay' or 'LGBT'.³ Hijra is globally recognized as third sex. Physically and psychologically the hijras are repugnant and that's why they are considered as terrific community. Hijras are physically male but they are interested to introduce themselves as female, play roles like female genders and wear the clothes of women. Our society consider them as abnormal community due to their ambivalence behavior.⁴ Hijras are considered as third sex and they are neither men nor women. So it may be said that when a person is born with male physiology but behaves and wants to lead his life as same as woman then he is called hijra.

III. LEGAL STATUS OF HIJRAS IN BANGLADESH

There are many Treaties and Covenants are held in the world relating to the status of the third sex community. As a freedom and sovereign country Bangladesh is a signatory country of such many Covenants like International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights which may introduce the social, legal and political rights of the transgendered people. The Human Rights Commission of Bangladesh has played an important role to address the legal social status of the hijras. But still now the government of Bangladesh has not enacted any specific law for introducing the legal status of hijras. There are more than nine thousand hijras live in Bangladesh. But these group of hijras are often deprived from the rights of property, employment, health care, education and other fundamental rights guaranteed by the constitution on the ground of lack of enacting laws recognizing the status of hijras. They are only recognized as third gender or third sex persons in the country. In 2013, approximately nine thousand hijras have gotten a gender status as 'other' or 'third gender' in Bangladesh. Most of the hijras of Bangladesh are punished for homosexual crimes under section 377 of the Code of Criminal Procedure, 1898. But they are not homosexual or same sexual, they are hijra (third gender). Thus, they can't be treated as criminal under section 377 of the CrPC for their sexual activities.⁵ Therefore, Bangladesh government should enact law to protect the hijra's rights and status as well as to

provide the benefits of inheritance, employment, health, education and right to vote also.

IV. LEGAL STATUS OF HIJRAS IN OTHER COUNTRIES

In western countries, there are some laws and policies to protect and enhance the rights of transgender as citizens. But the countries of Asia-Pacific region are so far from the enactment of laws for the hijras to provide their separate gender identity and to promote their rights. Some Asian activists think that the right of homosexuality is an illegal imposition of western countries.⁶ That's why the community of hijra or transgender have been still living miserable life in the areas of Asia-Pacific. About 12 countries of Asia-Pacific have changed their perceptions regarding hijras and provided minor status for their identity. ⁷From the twelve countries Thailand is the most fast going country to recognize and promote hijra's rights. Hijras are commonly known as 'Kathoey' in Thailand. ⁸ From 2007 kathoeyes are legally permitted to change their original sex by surgery if they want. ⁹ The transgendered people are introduced as 'bakla' in Philippines and they have no positive recognition regarding their rights. The legal status of transgendered people commonly known as 'mak nyah' are more dangerous in Malaysia. There are differing and ignoring perceptions towards the hijra community in some countries of South Asia including Bangladesh, Pakistan and some other Muslim countries. But in India the activities of third genders are recognized culturally. In Nepal the attitudes about hijra or transgender are comparatively better than the others and this community are referred to as 'methis'. It is noted that some conservative countries especially Muslim countries are extremely against the hijra or transgendered community.

V. PROBLEMS OF HIJRA COMMUNITY IN BANGLADESH

Our Society can't consider hijras as normal human beings and can't see in the good eye also. As the hijra community are recognized as ignoring community so they are faced several critical problems in the society. These problems include the followings-

- a. They can't attend to any family programs, wedding and funerals etc.
- b. They are excluded from the inheritance.
- c. They can't get the basic human needs from the government.
- d. They face governmental and private discrimination in case of employment.
- e. They are not recognized to marry in same gender.
- f. They can't participate in the political issues.
- g. They can't exercise their right to vote as same as normal human beings.
- h. They can't take education properly.
- i. They receive inhuman behavior from the persons of the society.

- j. They are unable to use proper gender-segregated facilities.
- k. They can't get refugee or asylum status equally as like as other normal human beings get.

VI. POSITIVE STEPS OF BANGLADESH GOVERNMENT FOR HIJRA COMMUNITY

Recently the government of Bangladesh thinks positive regarding the rights and status of hijras. Thus, for the betterment of their life and to promote their legal rights and status the government takes some positive initiatives. The positive steps taken by the Bangladesh government are-

- i. The government has taken primarily a persuasive to recruit hijras as traffic police.
- ii. Some rehabilitation programs have been launched in different districts of the country.
- iii. The government has provided special stipend for hijra students.
- iv. The government has decided to provide proper training to improve their skills.
- v. The government ensures the old age allowance to the hijras.
- vi. The government has taken some steps to create better opportunity for the employment of hijras both in public and in private.
- vii. The government is trying to enact a specific law in favor of hijras to ensure the legal rights of hijras.¹⁰

VII. RECOMMENDATIONS

It is the responsibility of the state to provide equal rights for every citizen. As the hijras are recognized as third genders so the state should ensure equal rights for them also. To ensure their equal rights and to overcome the adverse reality of the hijra community the government of Bangladesh should take the following necessary measures-

1. The recognition of hijra as 'third gender' should be guaranteed by the Constitution.
2. Hijras should be consulted that what types of rights they want to recognize.
3. A hijra welfare Board should be established by the government for the benefits of hijras.
4. A separate law for hijra community should be enacted and enforced immediately.
5. Some provisions should be inserted in the Succession Acts of different religions so that hijras can inherit on their family property.
6. Separate educational institutions should be established for hijra community.
7. Quota should be reserved for hijras in different employment sectors to provide better job opportunities.
8. An exact database of transgendered group should be maintained by the government.

9. The positive aspects of hijra community should be highlighted by the government through media.
10. Free medical services should be implemented in government hospitals to avoid harassment.
11. Better accommodations should be ensured by the government for hijra community.
12. Government should ensure their right to vote.
13. To avoid sexual assault of hijras, provisions should be inserted in the Rape laws.
14. Government should give the opportunity to hijras to perform politically.
15. Positive impressions of the society should be increased in favor of the hijra community.

VIII. CONCLUSION

It is a good decision of the Bangladesh government to consider hijra as third gender. Now they have at least a separate sexual identity to the society. But still they have belonged in the unprivileged and marginalized groups. Our government is rapidly trying to promote and protect the different types of rights of all hijras by ensuring rights as citizen, right to equality before law, right to equal protection of law, right to equal protection against violence and discrimination, right to vote, right to education, right to livelihood and others. Besides the government, all the people of the society should change their mentality regarding hijra and they should behave positively with the hijras. They should

give the opportunity to the hijras to work with them. So it is said that to protect the legal and social rights of hijras we should help the government in every taken initiatives regarding them.

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