

Criminalisation of Transgender Community in India during Colonial Rule

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Abstract

The transgender community lives in our society as aliens. They find themselves isolated from main stream society because society is not ready to accept them as its main part. They are socially deprived and in most cases, they are forced to leave their own family or hide the gender identity because of their ambiguous gender. But in Indian culture transgender or eunuch is significantly present since very early times. A eunuch is worshipped as a god in Hinduism and Hindu seeks blessings even today from a transgender. This research paper attempts to investigate that when and how the status and position of transgender in Indian society and politics have been changed and how had they been criminalised in the colonial period. This criminalisation led transgender to the most marginalised class in Indian society. This research paper will try to find out the reasons for the continuing marginalised conditions of this community in the post-independence period.

Keywords: Transgender, Third Gender, *Hijra*, Criminal Tribes Act (1871), Gender Identity.

Introduction

'Transgender' is an umbrella term used for people whose gender identity is ambiguous and/or gender expression differs from the sex they were assigned with at birth. In India, the transgender community comprises of *hijras*, *eunuchs*, *kothis*, *aravanis*, *jogappas*, *shiv-shaktis*, *khusras*, *pavaiyas* etc. Chhukka is used for them as a derogatory remark. Their population, according to the census of India, 2011 was 487,803.¹ This was the first time when transgender was considered as separate sex from male or female. Before the census of 2011, transgender or people with ambiguous identities were enumerated under the 'male' category. This census mentions the third category as 'other' with 'male' and 'female' categories. But the actual number of transgender in India is bigger than this number. People hide their identity of being transgender and call themselves as men or women to avoid themselves treating as a social stigma. According to surveys carried out by 'Salvation of Oppressed Eunuch,' a Non-Government Organisation working for the social and political rights of transgender, the population of transgender on March 1, 2011, was around 19 lakhs.²

In India, transgender issues are ignored and very less academic interest is found in studying, debating, and understanding them. But not a single significant work from a historical perspective can be found about this marginalised community.³ In history writing they are completely ignored. They hold a significant role in Indian culture but at present, this community is forced to live separately from mainstream society. Colonial rule and British policies changed their social status drastically. The proposed research paper is an attempt to investigate the role of the 'Criminal Tribes Act, 1871' in the Indian society and changing the mind set of common people about transgender.

Transgender in Indian Culture

Transgender has a rich cultural presence in Hindu mythology, folklore, epics and Vedic and Puranic literature. In Valmiki *Ramayana*, when Lord Ram was going for his fourteen-year exile, he addressed his followers and asked all the men and women to go back to their homes. They wanted to go with lord Ram but returned to Ayodhya to obey him. But Lord Ram, while returning to Ayodhya after completing his voyage, found *hijras* on the same place where the followers were told to go back to the city. When Lord Ram asked them the reason then they replied that he did not say anything to them as he addressed to all the men and women and they are neither of these. So they stood and waited there for fourteen

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years. Hearing this lord Ram was so much impressed that he embraced them with the boon to bless people on the auspicious occasions. Till today *hijras* go to the auspicious occasions such as marriages, childbirth etc. and bless the people. Another epic Mahabharata also refers to several transgenders. For instance, Arjun became a eunuch as Brihannala for a year during his exile. Another character was Shikhandi, the first daughter of Drupad. She was a transgender who was born as a girl but practicing like a boy and played a vital role in the famous Mahabharata war. Other Brahmanical texts refer to *Kinnar*, neither male nor female, as a kind of god of music and dance.⁴ Thus, Hindu mythology is full of stories of transgender and accept this third gender as a significant part of its culture.

Even Jainism and Buddhism also recognised three genders. Although the Buddha, the founder of Buddhism, did not say anything about the status of transgender. But not a single law prohibits them to serve as a Buddhist monk or nun. Present Dalai Lama, the fourteenth Dalai Lama, has condemned any kind of discrimination against LGBTQ people.⁵ Many transgender characters are popular in Indian history. In the medieval period too transgenders are actively engaged in political activities. Malik Kafur, Mubarak Shah Khalji (a bisexual) and Malik Sarwar are the popular names who ruled various kingdoms or took eminent part in administration and warfare. During Mughal rule, transgender rose to well-known positions as political advisors, administrators, generals as well as guardians of *harems*. Hindu kingdoms of western India also witness to their presence in royal palaces as well as royal courts. They were physically strong and considered to be women. Thus, they were used to protect royal ladies or *harem*. They were in a large number and associated with many tasks such as to entertain, guard and teach moral values to princes and princesses. Some of them were so loyal that they had direct access to emperors.⁶

Criminalising Transgender during Colonial Period

In the early British period, transgenders were benefited by some Indian states by the provision of land and rights of food and through entry into the '*hijra* community'.⁷ Eunuchs lived fairly secured lives working as domestic 'girls' in the homes of wealthy people and by performing during numerous ritual ceremonies.⁸ But contemporary writings indicate the changing social status of transgender in India. In *A compendium of castes and tribes found in India* (1885), Kitts classified *hijra* as a professional group with a category of 'dancers and singers'.⁹ For colonial ethnographers, the binary sex/gender model was the dominant conceptual framework to define the biological status of transgender. Thus, *the hijra* community at that time comprises two types of people who could not reproduce. The first was 'males born with congenital malformation'. There are three opinions which tell about such malformed children that how they become a member of *the hijra* community. These are- by handing over by the parents, the *hijras* from the neighbourhood claim them and the children themselves join the community when they

grow up. The second group of people is impotent men.¹⁰ In both the cases, members of *the hijra* community are male. In the other words, *hijras* are some kind of male and they are neither female nor something else. Gradually, this colonial perception was accepted by the common people i.e. Indians.

Transgenders were not living normal lives during colonial rule. Further, the colonial rule attached criminality with the transgender. 'Criminal Tribes Act, 1871' was enacted by the colonial government which criminalised the activities of transgender including cross-dressing. This act made compulsory for all the eunuchs to be registered under the act. This act was amended in 1897 and was subtitled as 'An Act for Criminal Tribes and Eunuch.' This amended act made criminalisation of transgender even more explicit.¹¹ After this act being a eunuch was itself a criminal occurrence.

All homosexual behaviour became illegal by the Criminal Law Act, 1885 in the United Kingdom. This law was not alone of its kind. During this period similar laws were enacted throughout Europe. Cross-dressers (transgender) were associated with, in the public mind, homosexual subculture. Transgenders were ambiguous in their physical appearance and were used for cross-dressing. Thus, they became an easy target of the law of 1885.¹² It means that it was the time to criminalise homosexual behaviour in Europe which affected the United Kingdom as well as its colony India too.

The 'Criminal Tribes Act, 1871' affected Indian society and it was successful to impose the colonial mind set about transgender on Indians. The colonial government treated transgender as criminals and deprived them of any kind of patronage they were getting in the royal court. In independent India, this act was repealed in 1952 but the image of transgender established by colonial ethnographers continued and this continuity made this community the most marginalised class of our society. They have committed no mistake but suffer from one or other biological problems. They are forced to work as beggars or sex workers. They are ubiquitous in the country and are not united as a pressure group, so, they are unable to raise their voice at a broad level and many times they are deprived of their rights, legal as well as fundamental. They are used as a commodity in our society.

Transgender in Contemporary Time

The marginalisation of transgender does not mean that they are not participating in cultural activities. Various Dargah/Khankah are also traditionally related to transgender. For example, in Ajmer, every year, a large number of eunuchs assemble from all over India to offer their prayers to 'Khwaja Gharib Nawaz' during the annual function known as 'Urs'. In Mehrauli, south Delhi, *Hijron ka Khankah* of the Lodhi period is located. *Hijras* were being buried here. This *khankah* is owned and maintained by the *hijras* of 'Turkman Gate'. Most of the population of transgender lives in a group called *the hijra* community. They are being taught and guarded by *Nāyaks* and *Gurus*.¹³

Nowadays (in the last few years) some remarkable steps have been taken by various institutions in favour of this marginalised community. The Supreme Court of India declared that transgender is 'socially and economically backward class' with entitlement to a reservation in education and job.¹⁴ A separate category 'others' for the third gender has been included in the forms of the census of India (2011), Voter Identity Card (2009), passport etc. Providing a separate category to transgender helped them to find out their identity. Some state governments are also taking steps for the welfare of the transgender community. For example, 'State Policy for Transgender in Kerala 2015', 'Transgender welfare Board' (2008) and inducting them in the police department in Tamilnadu etc. Many Non-Government Organisations (NGOs) and transgender activists are working throughout the country. They fight for the political and social rights of transgender. For this, these NGOs have moved to court several times and achieved some remarkable success to give them deserving rights by the court.¹⁵ Although government and some government organisations have taken some remarkable steps for the welfare of transgender, but to think about them, it took near six decades after independence and adopting a great constitution which gives civil and natural rights as 'Fundamental Rights' without any discrimination based on sex etc.

Aim of the Study

Transgender is a deprived class in our society. They are socially and economically marginalised for no reason but only for their gender ambiguity which is due to disorder in hormones or chromosomes. Many NGOs and government institutions are paving the way to bring them into mainstream society but lacking in the right position in history writings makes its acceptability challenging by society. This paper attempts to find out the reason for the transformation in the social status of transgender. Further, it aims to draw scholarly attention towards the history writing on transgender for the upliftment of this most marginalised community of our society.

Conclusion

Transgender is an eminent part of our Indian culture since very early times. They were getting respect and privilege in society and politics before the colonial rule. 'Criminal Tribes Act, 1871' was a turning point in the status of this community in our society. This was the result of the colonial mind set which they established in the late nineteenth and early twentieth centuries. They first criminalised this community and then forced them to do undignified works for their survival. In the post-independence period, transgender did not get much attention from politicians, social workers as well as scholars. The transgender community has no 'written history' based on scientific study or modern historiography. As being a significant part of Indian culture, transgender, the most 'boycotted and deprived' community, deserves and needs serious scholarly attention, especially by historians to become a part of mainstream society.

Endnotes

1. Enumeration of transgender in the 2011 census was held under the category 'Other.' This data was given by Minister of State for Social Justice and Empowerment in the Lok Sabha. Retrieved on August 20, 2019, from <https://pib.gov.in/PressReleaseFramePage.aspx?PRID=1575534>
2. Saxena, P. (2011). *Life of a Eunuch: An Investigative and Empathetic Study of Transgendered People in India, a Socially and Psychologically Victimised Community*. Navi Mumbai: SHANTA Publishing House. P. 48.
3. Report of the ICSSR sponsored national seminar on Transgender People: Stigma, Violence and Discrimination. Organised by the Department of History, Tagore Arts College, Government of Puducherry on 29-30 Oct. 2015.
4. Apsarā and gandharva are also gods of music and dance who are female and male respectively while kinnar is neither male nor female and represents neutral gender.
5. LGBTQ is a common word used for Lesbian, Gay, Bisexual, Transgender and Queer respectively. The fourteenth Dalai Lama does not allow discrimination against LGBTQ and supports same-sex marriages and advocates their natural right.
6. Rafeek, M. (2015, December). Transgender and human rights – current situation and potential options of development in India. In *The Rights, 1 II (10)*, 1-7. Retrieved October 13, 2019, from https://www.academia.edu/30657645/TRANSGENER_AND_HUMAN_RIGHTS_CURRENT_SITUATION_AND_POTENTIAL_OPTIONS_OF_DEVELOPMENT_IN_INDIA_Delegation_to_the_1st_International_Congress_on_Human_Rights_and_Duties
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8. Saxena, P. op. cit., P. 49-50.
9. Kitts, E. J. (1885). *A Compendium of the Castes and Tribes found in India: Compiled from the 1881 Census Reports for the Various Provinces, Excluding Burmah and Native States of the Empire*. Byculla: Education Society Press. P. 50.
10. Agrawal, A. (1997). Gendered Bodies: The case of the 'Third Gender' in India. In *Contribution to Indian Sociology*, 31 (2), 273-297. P. 281-284. Retrieved October 15, 2019, from <http://cis.sagepub.com/cgi/content/abstract/31/2/273>
11. Saxena, P. op. cit., P. 46.
12. Whittle, S. (2010, June 2). A brief history of transgender issues. In *The Guardian, Society section online*. Retrieved October 25, 2019, from https://www.academia.edu/36783767/A_Brief_History_of_Transgender_issues

13. *Nayak is head of a eunuch gharana and Guru is local heads of eunuchs.*
14. *ICSSR sponsored national seminar on "Transgender People: Stigma, Violence and Discrimination". 29-30 Oct. 2015.*
15. *For instance NAZ Foundation vs. NCT Delhi (2009), 160 DLT 277; writ petition by NALSA (National Legal Services Authority, the Poojya Mata Nasib Kaur Ji Women Welfare Society and Lakshmi Narayan Tripathy in National Legal Services Authority v. Union of India- WP (Civil) No. 400 of 2012; writ petition by Lakshmi Narayan Tripathy in the Supreme Court- (civil) P-400, 2013 etc.*