



## **The Rights of the Hijras or Third Genders in Bangladesh: A Legal Analysis**

**Submitted by:**

Jannatul Fardous

ID: 192-38-331

Batch: 29<sup>th</sup>

Program: LL.M. (Final)

Department of Law

Daffodil International University

**Supervised by:**

Dr. Kudrat-E-Khuda Babu

Associate Professor

Department of Law

Daffodil International University



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Department of Law

Faculty of Humanities and Social Science

Daffodil International University

Dhaka, Bangladesh.

## Letter of Transmittal

Dr. Kudrat-E-Khuda Babu

Associate Professor

Department of Law

Daffodil International University

Dear Sir,

It's a great pleasure for me that I have been able to make research on "**The Rights of the Hijras or Third Genders in Bangladesh: A Legal Analysis**". During concluding this research I have given all of my best effort to form the useful research and by collecting all the relevant information from different sources that it can fulfill your expectation.

Therefore, I shall remain grateful to you if you pass through this research paper for your evaluation and I would be like that if any valuable recommendation is formed from your part in this matter.

I am always available for any further clarification of any part of this paper at your convenience.

Sincerely yours.

Name: Jannatul Fardous

ID: 192-38-331

Program: LL.M.(Final)

Batch-29th

Department of Law

Daffodil International University

## Letter of Approval

This is to certify that the work is done “**The Rights of the Hijras or Third Genders in Bangladesh: A Legal Analysis**” is a real work done by Jannatul Fardous, ID: 192-38-331, batch: 29<sup>th</sup>, Department of Law, Daffodil International University, done under my supervision in the partial fulfillment for the research, work is done for the fulfillment of course requirements of Law-812, 812 from the Department of law, Daffodil international University.



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Dr. Kudrat-E-Khuda Babu

Associate Professor

Department of Law

Daffodil International University

## **Declaration**

I, hereby, declare that the work, present in this research is performed by me under the supervision of Dr. Kudrat-E-Khuda Babu (Associate Professor, Department of Law, Daffodil International University). I also assure that this research or no part thereof is being submitted anywhere for the award of any degree.



Jannatul Fardous  
(Candidate)

## ACKNOWLEDGEMENT

It is a great pleasure for me to thank that person who supports me to complete this research like my family and teachers. To begin with, I would like to express my deep gratitude to my supervisor Dr. Kudrat-E-Khuda Babu (Associate Professor, Department of Law, Daffodil International University), who was a source of ideas, and provider of suggestions. A great thanks due to this well regarded teacher for supporting at the time of COVID-19 when the whole world is shuttered.

I also express my special gratitude to our honorable teacher Md. Abu Saleh who has taken our entire research related course.

## Dedication

Firstly I am showing very much respect and gratitude to my Allah. I would like to express my gratitude and love to my parents for their sacrifice and to provide me the opportunities for higher education. They are still guiding me being a good human being and motivated me to dedicate myself benefit of the country.

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## **List of Abbreviations**

FTM	Female to Male
MTF	Male to Female
UN	United Nations
STIs	Sexually Transmitted Infections
HIV	Human Immunodeficiency Virus
UDHR	Universal Declaration of Human Rights
NGOs	Non-Governmental Organizations
CBOs	Community-Based Organizations
EC	Election Commission
UNAIDS	Joint United Nations Programm on HIV/AIDS
US	United States
UNDP	United Nations Development Programme
LGBT	Lesbian, Gay, Bisexual, and Transgender
MOSW	Ministry of Social Welfare
HR	Human resources
GO	Governmental Organization
NSPS	National Social Protection Strategy
NHRC	National Human Rights Commission
DLLG	District Level lawyers Group
BSWS	Bandhu Social Welfare Society

# CHAPTER ONE

## **INTRODUCTION**

### **1.1 Background of the Study**

Nothing appears more natural, immutable, or desirable to us than the division of mortal humans into two biological genders, man and woman, and two sexes, male and female, without any reminder. The division of people into two genders occurs at birth, when the sex assignment is male or female, and this gender assignment is thought to be permanent. The idea of sex and gender as a system of two opposed and non-changeable kinds, male and female, masculine and feminine, is common sense as well as the most advanced social science. Most of us find it difficult to consider any alternative to this understanding of sex and gender, yet a cross-cultural viewpoint shows that certain societies have more than two genders. Alternate solution or third gender roles that are neither male nor female have already been recorded amongst Omanis of the Saudi Arabian Peninsula, various Native American tribes, Tahiti, New Guinea, and India's Hijras.<sup>1</sup>

Humans possessing amorphous sexual organs are called hijras or hermaphrodites. Hermaphroditism, often known as intersexism, is a medical disorder caused by a variety of natural causes. The word "intersexed" is used to describe a somatic state in which a hermaphroditic individual is said to have both male and feminine characteristics. Nonetheless, it's vital to expand on several other related, if not fluently separate, terminology such as transsexual, transvestite, and eunuch for the purpose of Abstract clarity. Gender dysphoria, often referred as transsexuality, is a condition in which an individual believes they are stuck in the physique of the incorrect sex. Surgical procedures are routinely used to change comparable people into the intended sexual identity. Transvestitism, on the other hand, is a condition in which a person tends to dress in the garments of the opposing sex and likewise. This represents their sexual preference instinct. Male Eunuchs have been castrated. When a guy suffers from gender dysphoria, his sex operation causes him to lose vitality. Alternatively, many intersexed persons who identify as womanlike are akin to transvestitic people, particularly individuals who prefer to appear as ladies. Eunuchs, like many hermaphroditic persons, feel sexual power as a result of their devitalization. As a result, there is a significant amount of imbrication within these terminologies. All of these gargonistic and conceptual differences, however, are laced with reductive and heterosexist subtleties, making them useless to the sexually diverse. They've coined the word "ambisexual" to encompass all of these distinct patterns. Hijra people of Bangladesh, on the other hand, consider themselves as persons none of whom are man nor woman. They think of themselves as persons who are unable to have sexual pleasure. Some also allege to lack both male and female genital area. The Hijra are thought to be "neither masculine nor feminine," with aspects of each. The Hijra are commonly thought to be intersexes, sterile males who struggle from masculinity, which

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<sup>1</sup> <http://www.bandhu-bd.org/third-gender-is-not-a-word-it-is-a-gender/>

involves the removal in whole or part of the genitals. They take on feminine characteristics. Hijras make a living by begging money and accepting remuneration for performing at weddings, births, and festivals.<sup>2</sup>

Hijra are most plainly "not men" in terms of their reported incapacity and absence of intention to participate in sexual acts as man and woman as a result of their innate intersexuality and subsequent castration. As a result, Hijra are unable to generate offspring, particularly sons, who are an important part of our culture's conception of a proper, manly role for guys.<sup>3</sup>

However, despite certain features of femininity conduct related to job, Hijra really aren't female. Appearing as females, keeping long hair, removing own mustache, proclaiming womanlike erraticism, adopting on women's names, and employing womanish associate phrases and a specific gendered lexicon are examples of these acts. Hijra, on the other hand, just aren't acknowledged females since they are unable to bear children, and their conduct, such as sexual aggression, is seen as obscene and in stark contrast to the anticipated modest demeanor of actual women in traditional duties as spouses, parents, and children. The entertainment value of Hijra shows stems from the contrast between themselves, masquerading as ladies, and the genuine ladies they copy. Even though they were raised in our culture, the Hijra are an alien group. They're unusual since in our culture, individuals are classified as masculine or womanly in each and every field. They don't, however, fit within either of those categories. They live on the periphery of societal structure. They can't continually mingle with the rest of society. They live inside their own neighborhoods. They don't have a regular private part, yet they do have sexual desires. They satisfy their desires in a variety of ways.<sup>4</sup>

## 1.2 Literature Review

This research paper is composed basically by taking assistance of journals and articles. This data can be from primary and secondary sources. As secondary sources prompt to several literature and journals. Looking through the web and talking university teacher's instructors and expert. Explicit reference of the material utilized are given in the commentary and concerned section. This literature review helps us to know the historical background, causes, risk factors, and consequences of Hijra life in Bangladesh.

'Hijras' are among the most poor and disadvantaged communities in Asia-Pacific nations, and the problems that impact them vary considerably from those that concern another gender identification minorities. Several Asian politicians have said that a right-based response to homosexuality is an unacceptable implantation of Western notions that contradicts Asian

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<sup>2</sup> [http://www.The\\_Third\\_Gender\\_and\\_Gender\\_Self\\_Identification\\_in\\_India\\_A\\_Review\\_Journal\\_of\\_Politics\\_and\\_Governance\\_Vol\\_3\\_No\\_4\\_October\\_-December\\_2014/](http://www.The_Third_Gender_and_Gender_Self_Identification_in_India_A_Review_Journal_of_Politics_and_Governance_Vol_3_No_4_October_-December_2014/)

<sup>3</sup> <https://www.coursehero.com/file/27797743/The-Hijras-of-India-Cultural-and-Individual-Dimensions-of-an-Institutionalized-Third-Gender-Rolepd/>

<sup>4</sup> [https://www.academia.edu/33247250/LIVELIHOOD\\_PATTERNS\\_OF\\_HIJRA\\_COMMUNITY\\_A\\_STUDY\\_ON\\_SHYAMPUR\\_AREA\\_IN\\_DHAKA\\_CITY](https://www.academia.edu/33247250/LIVELIHOOD_PATTERNS_OF_HIJRA_COMMUNITY_A_STUDY_ON_SHYAMPUR_AREA_IN_DHAKA_CITY)

traditions. Many Asian and Pacific Island traditions see sexual identity differently from Western societies, and there are few laws and policies in this area that protect and promote hijras' rights as a citizen with rights and access to benefits, even if they may find social recognition in their community. There is a wide diversity of ideas and beliefs regarding them and how they have been handled within Asia-12 Pacific's nations. They are much more quickly adopted in some civilizations than others.<sup>5</sup>

Thailand is by far the most developed nation in terms of gender equality, and it has a long tradition of acknowledging three gender rights, which are referred to as 'kathoeys.' In the Ching Mai Technology School, a dedicated bathroom including an entwined male and female emblem on the entrance was lately allotted for this group of individuals. Even gender reassignment surgery is less difficult in Thailand. It is claimed that elements such as the Buddhist ethical ideal of non-interventionism and a non-interventionist society influence to this sort of Thai mentality. Kathoeyes are asking for a new third sex to be included to passports as well as other legal documentation, and constitutional attempts began in 2007 to empower kathoeyes who have had gender reassignment surgery to correct their legal gender. There's also no official recognition of same-sex marriage, civil union, or domestic partnership benefit in the Philippines, where transgendered persons are referred to as 'bakla.' Conditions are far more tough in Malayasia for transgender folks, known as 'mak nyah.' Because crossover attire is banned in that country, these persons are frequently arrested and detained for imitating feminine clothing, mimicking women, or competing in beauty pageants. These persons are subjected to Sharia law as a result of their misdoings or violations of Islamic precepts. The Traditional muslim authority has the ability to conduct sweeps within the Muslim community in order to detect misconduct in violation of Islamic law, specifically section 21 of the Minor Offense Act of 1955.<sup>6</sup>

There seem to be various opinions about transgendered persons in South Asia as well. Hijras and their actions are traditionally tolerated in some regions of South Asia, such as India, where the federal govt has proposed to compensate funds for gender reassignment surgery for 'aravanis.' However, fundamental human rights can not be guaranteed. In Pakistan, there is also a sizable hijra clan. They are often impoverished and face a great deal of prejudice and abuse, particularly sexual mistreatment. They might also employ in the adult entertainment industry. In Pakistan, transgender persons were handed their first chance to run for election in 2013. Sanam Fakir, a 32-year-old hijra, contested for Sukkur in Pakistan's national election in May as an independent member. The third gender in Nepal is known as 'methis,' and the phenomena is comparably better. Nepal appears to be the region's foremost progressive nation, having sanctioned sexuality-related legislation and acknowledged transgendered people as citizens with full equality despite of gender or sexuality. Transgendered persons can now apply for permanent residency with a third gender identification, according to a

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<sup>5</sup>[https://www.academia.edu/61080733/Research\\_Proposal\\_on\\_The\\_Social\\_Status\\_of\\_Transgender\\_People\\_in\\_Bangladesh\\_Injustice\\_in\\_Every\\_Turn](https://www.academia.edu/61080733/Research_Proposal_on_The_Social_Status_of_Transgender_People_in_Bangladesh_Injustice_in_Every_Turn)

<sup>6</sup> [https://www.researchgate.net/profile/Lubna-Jebin/publication/322753151\\_The\\_Rights\\_of\\_Hijras\\_in\\_Bangladesh\\_An\\_Overview/links/5aaa7c690f7e9b8826710dc8/The-Rights-of-Hijras-in-Bangladesh-An-Overview](https://www.researchgate.net/profile/Lubna-Jebin/publication/322753151_The_Rights_of_Hijras_in_Bangladesh_An_Overview/links/5aaa7c690f7e9b8826710dc8/The-Rights-of-Hijras-in-Bangladesh-An-Overview)

Supreme Court decision to amend the Constitution.<sup>7</sup> A parliamentary panel has also been formed to examine the wedding procedure and make any necessary changes in light of the recent verdict. The fight seen between private and the public is evident nowhere more than in the case of different sexual and gender orientations. There have been a few notable cases that show that the area is starting to open up on such concerns. It should be recognized, therefore, that traditional and religious groups in some nations are quite powerful in defending the fort against the tide.<sup>8</sup>

### **1.3 Objective of the Study**

The study's goals and objectives are dual. To begin, this research will look at the financial and legal situation of the hijra group in developing nations, with a focus on Bangladesh. Second, it will assess the current state of the hijra group's fundamental rights in Bangladesh.

### **1.4 Significance of the Research**

Before conducting the research I tried to find out the basic loopholes of the Hijra community, the significance of my research is to contribute the society for recovering the gaps. The study will help to know about the Human and social rights of the Hijra community under national and international perspective. Hijra community are deprived for various reasons. I am confident that my work will provide them with fundamental life possibilities. It will also provide excellent chances for other scholars working in the field. This study might be extremely beneficial to law students in terms of expanding their understanding.

### **1.5 Research Question**

My research questions are as follows:

1. Is there any law to protect the rights of Hijras in Bangladesh?
2. What are actual reasons and consequences behind the violation of these rights?
3. Whether the government will be eradicated inhuman situation of Hijra community in Bangladesh by ensuring their rights?

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<sup>7</sup> [https://www.researchgate.net/profile/Lubna-Jebin/publication/322753151\\_The\\_Rights\\_of\\_Hijras\\_in\\_Bangladesh\\_An\\_Overview/links/5aaa7c690f7e9b8826710dc8/The-Rights-of-Hijras-in-Bangladesh-An-Overview](https://www.researchgate.net/profile/Lubna-Jebin/publication/322753151_The_Rights_of_Hijras_in_Bangladesh_An_Overview/links/5aaa7c690f7e9b8826710dc8/The-Rights-of-Hijras-in-Bangladesh-An-Overview)  
<sup>8</sup> [https://www.academia.edu/61080733/Research\\_Proposal\\_on\\_The\\_Social\\_Status\\_of\\_Transgender\\_People\\_in\\_Bangladesh\\_Injustice\\_in\\_Every\\_Turn](https://www.academia.edu/61080733/Research_Proposal_on_The_Social_Status_of_Transgender_People_in_Bangladesh_Injustice_in_Every_Turn)



## **1.6 Research Methodology**

In this research I have been used qualitative, analytical, doctrinal methodology and includes fact finding inquires of different kinds. It is primarily analytical based on primary and secondary sources. At first I visited several websites and read out several journal articles about human rights of the Hijra community and their lifestyle in Bangladesh. I also gathered information from newspaper articles. I also included statutory law, international law, and case laws etc. I shall use analytical method because of I use analytical theory and available information also make a critical evaluation of the material.

## **1.7 Limitations of the Research**

The paper's biggest limitation is its heavy reliance on scholarly articles and information obtained via the internet. Another drawback is the lack of data in regards to the research topic in terms of a normal situation. Because of this it cannot be said that this research is accurate or 100 percent authentic. There have another problem of time limitation, budget and lockdown situation for Covid 19. Actually, completing the study properly in a short time, with a limited budget, in this vital moment of Covid while suffering from Covid was far too tough.

## CHAPTER TWO

### **DEFINITION AND BASIC RIGHTS OF HIJRAS**

#### **2.1 Definition**

##### **2.1.1 Hijra**

The name Hijra, which is of Urdu origin and refers to the masculine looking gender, means hermaphrodite in its most basic sense. Eunuch is the most common translation. In our nation, Hijra refers to people who are physically real hermaphrodites, and a unique character differentiated a group of people from both males and females and assigned them a set of characteristics comparable to those used to describe other genders.<sup>9</sup>

##### **2.1.2 Sexual Perception**

The duality of biology is gender. Sexual perception refers to how someone view oneself anatomically, whether he's a man, a woman, or anywhere in between. If one is born womanish, but prefers to perceive their appearance as a man in all sincerest gratitude, their sexual identity is masculine. Regardless of whether or whether they've undergone surgery, we refer to them as transsexuals.<sup>10</sup>

##### **2.1.3 Gender Identity**

Gender is a dichotomy in terms of physical appearance and conduct. Gender identification refers to how you view yourself within social situations, whether as a male, a female, or a blend of the two. One may have a genitalia but choose to connect as a woman in public interactions, or one may have an uterus but choose to identify as a man in public interactions. One could wish to be flexible, relating as a man and a woman on times, or one could prefer to relate androgynously, without identifying as either.<sup>11</sup>

##### **2.1.4 Androgyny**

A person who appears and identifies as neither a guy nor a girl, displaying a hybrid or neutral gender.

##### **2.1.5 Transgenderism**

Person who lives as the gender exact reverse to their biological gender, such as a guy as a woman with penis.

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<sup>9</sup> <http://www.macmillandictionary.com/buzzword/entries/third-gender.html/>

<sup>10</sup> <http://www.gendertalk.com/transgenderism/>

<sup>11</sup> <https://e-bangla.blogspot.com/2011/12/third-gender-qualitative-study-of.html/>

### **2.1.6 Transsexual**

An person who is physically of one gender but feels she or he relates to the other. This idea is so powerful that a transsexual is preoccupied with the need to have his or her body, looks, and social standing changed to match his or her "due" gender.<sup>12</sup>

### **2.1.7 Transvestite**

A transvestite is an individual who prefers wearing clothing of the other gender, usually but not necessarily straight.

### **2.1.8 FTM (female to male)**

Although they were born as women, they consider themselves to be half or entirely male.

### **2.1.9 MTF (male to female)**

Although they were born as male, they consider themselves to be half or entirely female.

### **2.1.10 Intersex**

It's a mingling of features from both relationships in varying levels, including physical shape, reproductive organs, and sexual gusts, in one existing. It occurs as a result of a flaw in the embryonic development.<sup>13</sup>

### **2.1.11 Hermaphroditism**

This is a very uncommon kind of bisexuality where an individual possesses both male and female sexual organs. An ovary and a testicle, or twin ovotestis, are associated with the external genitalia of both relatives in this situation. The physical chromatin of sex might be masculine or feminine.

### **2.1.12 Prostitution**

Prostitution may be described as when a person sells his or her own body as a vocation for the entertainment or delight of others visitors for their monetary advantage, thereby prohibiting the essentialist conception of harlotry as the womanish sexual service via money.<sup>14</sup>

### **2.1.13 Homosexuality**

A wide term that refers to the occurrence of same-sex sexuality as a whole. Include any sexual wonders between people of the same gender, whether they are the consequence of knowing longing, latent yearning, or chance.

## **2.2 Reasons of Their Birth**

The first thing people ask when a newborn child makes the fragile and arduous journey from its mothers womb into the world outside is, "Is it a boy or a girl?" This topic, which is more

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<sup>12</sup> <http://www.gendertalk.com/transgenderism//>

<sup>13</sup> <https://www.homeobook.com/forensic-medicine-toxicology-a-comprehensive-study-1//>

<sup>14</sup> <http://www.e-bangla.blogspot.com/2011/12/third-gender-qualitative-study-of.html/>

significant to the household than stature or other physical characteristics, will have a greater impact on the person's life than just about any other single element, with the exception of race and poverty. Furthermore, psychologists have discovered that based on the kid's gender, the lad would be handled differently as a baby. For being calm, inactive, and content, it will be cooed at, cared over, softly handled, and grinned at if it is female. Following that, whether the kid will be offered a Barbie or a toy tractor, whether the kid will be cradled and fussed over after an accident or instructed to shrug it off, whether the child will be reprimanded or applauded for roistering us, and so on, will all be primarily determined by gender. By the time this same person enters adulthood, his or her personality (formed by gender-based encounters) has already been molded into uniquely macho or womanish patterns.<sup>15</sup>

In the meantime these disparate answers are merely a subset of a larger system of social relationships that is perpetuated by gender issues—or, more particularly, on the notion that men and women appear, act, and contribute differently to society. Despite the fact that gender occupations are ostensibly much loosened now than they have ever been in Western history, challenges of staying true to traditional gender ideals continue to breed stress, repression, and even lethal acts of aggression. Gender determines how one dresses, speaks, walks, and has coitus—or so our social norms would have us believe. Historically, gender roles have taken bizarre turns, such as restrictions on women wearing pants or even undergarments, because any sheet of garment that parted the woman's legs was viewed as an offensive symbol of the leg splitting that supported sexual activity. However, a more basic and lasting example of gender obsession may be found in the English vocabulary itself, which is one of several languages in which it is nearly impossible to address or refer to another human being without identifying their gender. As a result, moms are frequently asked in supermarkets, "Is it a boy or a girl?" even before interlocutor can exclaim, "He is so gorgeous!" or "She is so pretty!" It's worth noting that both the pronoun and the appropriate phrase are gender-dependent. Imagine the reaction of the admirer if the mom said, "Neither actually," or, "Both!" The issue of whether a kid is a boy or a girl is sometimes faced with a major delay in the operating theatre, in those first dizzying minutes after delivery. The physicians will quickly explain that the look of the infant's sexual organs can be a little perplexing hormonal imbalances, edema, and other factors. In reality, the physicians concede that the gender of the infant has yet to be determined. But be reassured, one's baby has a gender, and we'll find out what it is soon enough. This belief that there are only two types of gender is so deeply ingrained in our culture that even medical experts would be hesitant to dispute it. However, the mortal race has been producing infants whose gender was not so clear-cut since the beginning of time.<sup>16</sup>

That seems to be, they share similar similarities of one gender and some characteristics of the other, similar to the individuals seen above. The fact that our ultramodern civilization hardly accepts this truth is a cultural product, not physiological. That is, although existence has decided to grow intestines on individuals with male genitalia as well as wounds on bodies with chest hair and nuts; our community has decided to ignore this reality and label intersex

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<sup>15</sup> <https://www.quora.com/How-are-Hijras-different-from-other-people-Are-they-transsexuals-or-intersex-people-Why--their-blessings-considered-auspicious-are/>

<sup>16</sup> [https://www.en.wikipedia.org/wiki/Hijra\\_\(South\\_Asia\)/](https://www.en.wikipedia.org/wiki/Hijra_(South_Asia))

people as either flawed men or defective girls. The medical establishment has attempted to construct a single, gender specific classification parameters in order to support this attitude. Physicians happily stated in the 19th century that whether a person was male or female had nothing whatsoever to do with exterior looks or whether or not they menstruated — it was all decided by the testes, they maintained. That is, while all newborns are born as unisexual beings with neither penis nor vaginal canal, they acquire guts extremely quickly. These adrenal glands will have evolved into testicles in the male and ovaries in the female by the time they are born. As a result, everyone possessing testes can now be classified as male, and so on. The fundamental issue here was that unless the testicles could be found, it was impossible to tell if the ambiguously unsexed individual was womanish or merely a guy whose balls were still concealed almost inside him. Surgery was the sole option, which was still a risky treatment in those days. To make matters even more complicated, it turns out that some women do manage to be born without ovaries— but without any other external female organs (vagina, womb, fallopian tubes)— and develop into fairly unisex individuals. While some boys are birthed with organs that are completely unresponsive to their own hormones, others grow up to be exceedingly feminine.<sup>17</sup>

Doctors who viewed themselves as being entrusted with similarly pronouncing a person's real gender have long been concerned about such misunderstandings. They reasoned that failing to find a guy dressed in feminine-appearing flesh would lead to the fear of unbridled lustfulness at the monastery and military academy. They reasoned that the host's manly gonads would entice the unsuspecting genuine females around him. Worse still, this gender misunderstanding might easily lead to a slew of gay misbehavior. Imagine the relief and comfort when scientific progress provided the world with a biologically determined definition of macho and womanly. Mens have the XY chromosomes, whereas females have the XX. Therefore, if their gonads weren't plainly sensible, or if they were missing altogether, a simple towel sample would clear everything up. Individual mortal creatures, on the other hand, do not always follow the norm. That instance, some people are born as XXY and others as X. However, since our culture has long pretended that humans just occur in two sexuality types, man and woman, everyone who does not fit into this pattern has been compelled to adapt to one of the gender norms or another.<sup>18</sup>

Appearance similar have attempted to turn the tables on the game and exhibit themselves for fortune and fame on a few instances, but they have typically been compelled to conceal themselves away, as if they were perverts or social revolutionaries. This is unsurprising, considering that ladies who appeared or behaved like men were a nuisance to masculine property birthrights and other penile benefits. Males who dressed like women were also considered as authoritarians of homosexuality (since they were perhaps men wanting to have sex with other men or men wanting to have sex with other women who lusted for other womanish-looking humans), and thus a threat to society. But somehow, even after it has been acceptable to acknowledge that certain babies are born "different," physically or mentally, and to show sympathy and support to them and their families, children who are born

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<sup>17</sup> <http://www.encyclopedia.com/philosophy-and-religion/islam/islam/hijra/>

<sup>18</sup> <https://www.gwern.net/docs/rotten.com/library/sex/hermaphrodite/index.html>

alternatively shaped are not mentioned. Carrying a baby with genitals that aren't as expected brings with it a distinct sense of guilt. Note that, at least in our community, most families still decide to circumcise their male infant, regardless of how harsh or unnecessary it is, merely to escape the embarrassment of coping with private parts that distinguish from those of other children in the dressing room. If adults have a comparable empty headed dread of departing from the urological standard beforehand, the typical manlike genitalia, uncut afore, seems horrific to them. They're relieved and grateful when a surgeon comes in and promises them that he can make it all go down. With a flick of the miraculous scalpel, no one will ever guess. So goes the narrative. Other communities, on the other hand, joyfully embrace the notion that gender is non-dualistic, that it exists in at least three orders (manly, womanish, and other), if not an entire spectrum. Ancient times, the berdache (a guy who dressed like a woman but had a distinct identity apart from traditional women) thrived on every continent, in a wide range of ethnic communities. Through ultramodern India and Bangladesh, one can become masculine, feminine, or Hijra, despite the fact that so-called civilized nations have their own version of the other-gendered individual. Moreover, on occasion, cultures have attempted to create a third gender by Castration in the shape of the quasi-male or even nonbinary Eunuch. However, in current culture, the goal has been to transform someone whose identity is ambiguous (physical or emotional) into someone who can pass for either boy or girl - including on their wedding night. According to the circular reasoning, everyone is born either male or female, and those who do not plainly belong to one of the sexes must be surgically transformed to do so. In addition, this attitude is so deeply engrained that no newborn is permitted to leave the treatment center unless its documentation carries the designation (m) male or (f) female. Therefore, if the private parts are vague – that is, if there looks to both be penis and vagina (or neither) – the doctors will have to determine if the child has a womb or not using ultrasound or a rectal test. However, if no uterus is established, it's on to the gonads - particularly in their final months in the uterus. (The gonads are occasionally examined first, but only if they are sufficiently descended to be exposed, as with gonads.)<sup>19</sup>

However, as simple as this may appear (testes = boy, ovaries = girl), the reality is far more complex. The sexual identity of a fetus is influenced by genetics, hormones, and numerous "accidents" at birth. Although many people believe that the genitalia, or at the very least the chromosomes (XX = female, XY = male), are the ultimate session of mannishness or girlishness, there are a number of factors that might cause confusion. Kline felter's syndrome, for illustration, is a disorder in which a genetic man contains a single or maybe more additional X chromosomes (XXY, XXXY). Although the guy looks to be morphologically masculine, he is not a boy according to the XY = boy formula. Being infertile, such a person could not impregnate a woman. Turner's syndrome is a condition in which a person has one X chromosome but no Y, making them neither an XY male nor a XX female. Furthermore, the gonads deteriorate prior to birth. Although the person will be physically feminine in most ways, there will be no secondary sexual traits if hormone therapy is not used. Congenital adrenal hyperplasia (or adrenogenital syndrome): The adrenal glands create an excess of

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<sup>19</sup> <https://e-bangla.blogspot.com/2011/12/third-gender-qualitative-study-of.html>

androgens in the uterus in this genetically determined disease. Kids with unfeminine genitals will have both their genes (XX) and their gonads (ovarian) coded as feminine to variable degrees. They'll also have a higher chance of developing love relationships with women as adults, according to statistics. Androgen insensitivity syndrome (AIS, sometimes known as testicular feminization) is a condition in which an individual's testicles become sensitive to the hormone androgen. With AIS, a genetically male fetus (XY chromosomes) has inactive testosterone receptors and hence is delivered as a girl, at least externally. There really is no woman's reproductive stream, though.<sup>20</sup>

## 2.3 Living Situation

In society, the family is the smallest institution. Family members are usually blood relatives, although the Hijra family does not have any blood relatives. So their basic right to live with their family is being violated.

### 2.3.1 Hijra Family

Hijras identify seeing themselves as using gender neutral pronouns, and they wish if others will as well. They normally reside in a traditional village structure of five or more "chelas" (votaries), with a "guruma" overseeing them. Whenever a new chela joins a Hijra parents and teenagers, he takes on the guruma's surname as well as the guruma's house, one of seven fictive lineages that offer a feeling of affiliation and identity, each with its own history and geste laws. To allow her to make a living, he obtains instruction in singing, dancing, and other forms of activity. Hijras are the ones that run this sort of family The household is entirely cut off from the rest of civilization. Other families are led and governed by "Guruma," while others are led and regulated by "Chela." That system is recognized as Guruma, which means focused, and chela, which means strong.<sup>21</sup>

## 2.4 Education

Even now in 2021, Hijras are refused schooling only because of their 'gender.' Sadly, their current situation has devolved into economic hardship, ignorance, hatred, and derision. Hijras are still taking place in the shade of each and every essential right to equality and education being denied. The reality is that a large proportion of the population in our nation are denied access to education. But the fact that this country's Hijra population is completely excluded from this inheritance is a source of embarrassment. In Bangladesh, the Constitution's purpose is to ensure that every citizen's inherent rights are protected. Article 27 of Bangladesh's Constitution states that all people are legally equal and are subject to equal protection from the law. Bangladesh's Constitution further states that the government will not discriminate between citizens based on their religion, ethnicity, caste, or gender. Article 26 (1) of the 1948 Universal Declaration of Human Rights states, "Everyone has the right to education." "The child is entitled to receive education, which shall be free and compulsory at least in the

<sup>20</sup> <https://www.bodytr.com/rottenlibrary/sex/hermaphrodite/>

<sup>21</sup> [[https://www.google.com.bd/url?sa=t&rct=j&q=&escr=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjM2ZGcjsTQAhWFtY8KHXesDyoQFggaMAA&url=http%3A%2F%2Fwww.academia.edu%2F12150908%2FLet\\_Us\\_to\\_Live\\_Social\\_Exclusion\\_of\\_Hijra\\_Community/](https://www.google.com.bd/url?sa=t&rct=j&q=&escr=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjM2ZGcjsTQAhWFtY8KHXesDyoQFggaMAA&url=http%3A%2F%2Fwww.academia.edu%2F12150908%2FLet_Us_to_Live_Social_Exclusion_of_Hijra_Community/)]

elementary stages," stated the UN General Assembly in the 1959 Declaration of the Rights of the Child. It is also true that basic education in this nation is freely available. So acquiring an education up to the elementary level is possible; although, the opportunity is limited by the limits of public sphere. Even with this capability, Hijras continue to be denied their right to citizenship.<sup>22</sup>

## 2.5 Health

In Bangladesh, general public does not accept those who do not fit the traditionally masculine gender stereotype. Those who dwell outside of this range are subjected to a variety of afflictions and cruelty. Due to having unsecured coitus with several consumers, Hijra's defenselessness to sexually transmitted illnesses (STIs), including HIV, was revealed by domestic behavioral and serological monitoring in Bangladesh. Between many the most at-risk demographics, the hijra in Dhaka, the capital city, had the highest documented prevalence of active syphilis (10.4 percent). These discoveries necessitated immediate HIV treatment for them. Numerous non-governmental organizations (NGOs) and community-based organizations (CBOs) provide HIV therapies, largely through the distribution of condoms and lubricants, as well as the provision of STI treatment..<sup>23</sup>

## 2.6 Nutrition and Food security

Since the hijra community belong to the lowest earning people, so they live under poverty line. Individuals with resources have stored supplies and squatted down at residences as Bangladesh waits for the shock of COVID-19, with much of the country in lockdown. However, in a country where one out of every five people is poor, these safeguards are out of reach for many Peoples. Whereas the restrictions are intended to save lives, the shutdown has established a set of risks for some. People who identify as hijra, kothi, or transgender are particularly vulnerable to these attacks. Many residents in these areas live on the coast of poverty, relying only on their daily wages. However, many people would lose their primary source of earnings of the lockout, which includes alms-giving, spiritual rites, and prostitution. The difficulty is exacerbated by street closures. By a results are primarily to analyze the effect of COVID-19 on Bangladesh's third gender populations, 82 percent of respondents had not made "a single dime in the past two weeks" and 59 percent had not received any help from humanitarian organizations or their relatives. In average, people polled spent over a quarter of their salary on dwelling, according to the audit. Some people are terrified of homelessness, which is becoming increasingly likely for many people, considering that 86 percent of respondents had no funds and almost half owing loan installments. They could not get any basic necessities from the government or private NGOs and municipality. Nutrition is very much important for better standard of livelihood. More than 90% percent of the hijras are suffered from malnutrition. They have no way to overcome from malnutrition, though

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<sup>22</sup><https://observerbd.com/details.php?id=66143>

<sup>23</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2928103/>



some NGOs and governmental organization taken some initiative to protect them from the malnutrition.<sup>24</sup>

## **2.7 Opportunity for Savings**

Since the hijras are illiterate and as an indigenous group they cannot access to the bank where they saved any amount for future. They may save their money (coin) in a secret place of their room. They do not dare to go to the Bank for opening an account because of they don't have any actual residence or land property where they was settled. As typically the Guruma is the owner of the total property of the Hijra house. Also they has to give a huge percentage of their income to the Guruma for staying in the community they don't have money to save most of the time.

## **2.8 Shelter**

Most of the third gender people lost their last shelter because they don't have able to income much, so when they cannot give money to the areas powerful people they kick them out from their home. Also they cannot do their usual business as sex worker because of the authority. So they forced to live in the streets or parks even in the bad weathers.

## **2.9 Governance process**

Bangladesh is a less governance performing country. If the Government was taken any development program is rarely consulted taken into account or delay planning and implementing the program. These issues of the third gender people are not taken into consideration because of they had little to no access to the government planning of the development program. These people are not the structural of adjustment process carried by the government investigating and determined the huge amount of every year. One of the main reasons is our governmental authority or project authority is highly dishonest or corrupted.

## **2.10 Significant Occupation**

The Hijras customarily make their money by dancing during life-cycle ceremonies, such as the birth of a child—formerly primarily for male children, who are valued in Bangladesh, but now periodically for female children as well—and by serving the diety in her temple. The Hijras' attendance is required on these events since they are agents of the goddess's infertile powers, when they implore the diety to grant the newborn or the married pair with cheerfulness and reproduction.

## **2.11 Minor Occupation**

Currently, some Hijras work in business, while others participate in piracy.<sup>25</sup> Hijras are involved in whoredom and rely on prostitution for a livelihood. Some Hijras are now actively

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<sup>24</sup> <https://www.hrw.org/news/2020/05/08/bangladesh-should-support-hijra-trans-under-covid-19>

<sup>25</sup> <http://e-bangla.blogspot.com/2011/12/third-gender-qualitative-study-of.html>

seeking employment (two Hijras presently working in Bandhu social welfare society) In the Hijra universe, chelas' wages are shared with Guruma, but Guruma's gains are not shared with chela. The chelae's profits are fairly dispersed above all the others, but the Guruma's earnings are never shared. The revenues of the chelas are likewise divided by sector.

## **2.12 Voting rights**

For the first time in the state's history, transgender persons can officially vote as "hijras." Because there's no third insert for residents of this area, they were previously only registered as females or men on the national voter list. The Election Commission (EC) has introduced hijra to the voter registration form alongside the other two sexes categorization, man and woman. Five years after the government acknowledged hijras as a third gender, the Election Commission amended the Voter List Act 2009 and the Voter List Rules 2012 to include this third gender choice amid men and women in the voters list's gender identification area.<sup>26</sup>

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<sup>26</sup> <https://archive.dhakatribune.com/opinion/special/2019/04/19/members-of-the-third-gender-can-vote-as-hijra>

## CHAPTER THREE

### **HIJRA COMMUNITY AND RECOGNITION**

#### **3.1 Hijras Adaptation with in the Society**

Hijras must integrate to civilization in a variety of ways. They reside in separate neighborhoods. It is cut off from the rest of the population. However, they must leave the Hijras tribe and interact with the outside public for a range of reasons. For illustration, their primary source of income is in this direction: they typically go to a business in a group and collect tola (a couple of any item, primarily grocery), for which they do not pay, and entering money for dancing at a child's birth, a wedding party, or even sex trade, they must leave their neighborhood and repeatedly play an active role in that with mainstream consumers. The Hijra society, on the other hand, has a distinct way of life as well as a distinct tongue. As a result, their screen printing is critical to their success. When they're in their very own Hijra community, they play a distinct role, but when they're in full sight non-Hijras, they portray an entirely other role. Their communication styles are distinct. Because Hijras are a disadvantaged minority, their destiny is different from that of others. They are incapable of reproducing. They did not participate in any type of work. They are unable to marry like many other normal people. As a result, people live their lives recognizing all of this. It's a difficult task for everyone. Their dual acts have also made things difficult for them. They have a unique location in their community and a unique purpose in their community. They've learned certain manners and gestures for dealing with non-Hijra people as a result of this. However, their integration into the Hijra community is equally critical for individuals.<sup>27</sup>

##### **3.1.1 Story - 1**

"Tia is a 22-year-old chhinni Hijra. Strangers would often bother him when he was outside the Hijra community, he said. It was difficult for him to stay outside the Hijra area after people found out he was a Hijra. "When I go out for a job in a crowded location, folks who know I'm a Hijra always toast me," he says. It began when I was fifteen years old, during puberty. Since then, I've been known as Hijra. When I was seventeen, I joined the Hijra society. Guruma brought me here one day, and I've been living with this Hijra family ever since. I'm currently a member of the Hijra community. Now I make a living by receiving money from bazaar and identically collecting payment from the fathers of a newborn via performance. I'm now well ensconced in the Hijra community."<sup>28</sup>

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<sup>27</sup> <http://e-bangla.blogspot.com/2011/12/third-gender-qualitative-study-of.html>

<sup>28</sup> <https://www.theguardian.com/society/2014/apr/16/india-third-gender-claims-place-in-law/>

### 3.2 Hijras Adaptation with in the Hijra Community

Residence for Hijras inside the Hijra community is very important to them. In the Hijra neighborhood, no Hijra has lived from infancy. They usually moved to the Hijra neighborhood when they reached adolescence. Since after puberty, their identity is obvious to everybody. As a result, living in the brotherhood beyond puberty is exceedingly risky. They also visit the Hijra community. They had to master certain special norms and regulations after entering the Hijra community. The Hijra neighborhood operates on an entirely separate set of norms and regulations than Bengali culture. when A newbie from outside the Hijra neighborhood visits. Guruma even changes her name to something more attractive. Contra dance, singing, and claps were among the things he needed to master. He'd also have to master their own terminology, known as Ulti language. They had to learn to deal with gay programming that they had never encountered before entering the Hijra group. In other cases, the homosexual activity of Hijras is the source of their difficulties. The genuineness of Hijra performers is questioned by Bangladeshi audiences, expressing their ambivalence regarding the Hijras. The masculinity of the Hijras separates them from jenasas, or rehearsing effete homosexuals, who lack the holy abilities attributed to the Hijras but periodically mimic them for a living. As a result, Hijras assert that femininity is required since people may object to them when they perform or seek for charity They will be shunned and expelled as imposters if their genitals are not eliminated. Those 'guys who are guys and can have offspring' who enter their society just to actually make money or to have sexual intercourse with males are constantly mocked by Hijra elders. The similarities between 'fake' Hijras and phony hermits are obvious. Sexual endurance is attributed to the Hijra deity Bahuchara Mata by Hijras. The trainee promises not to enter into a relationship or wedding after being initiated into the group. According to Hijra elders, all Hijra homes close their doors at 9:00 p.m., implying that no sexual indoctrination takes place there. Hijras who engage in whoredom are not authorized to live among Hijras who make their living via traditional ritual acts in the metropolises where Hijra culture is greatest. Those who reside in these 'family' or respectable households are closely monitored to ensure that they do not interact with males. Hookers do inhabit homes alongside traditional Hijra players in locations more supplementary to the core of Hijra culture, such as most of South India, and may, in fact, join in comparable acts themselves anytime they get an opportunity to do so. Hijras who are sexually active claim that all Hijras ask to join in order to engage in sexual interactions with males. As Kamola, a particularly snitch, said "Why differently would we wear saris? Those who you see who are progressed now, when they were youthful they were just like me. Now they say they have not got the sexual feeling and they talk only for god and all, but tell you, that's all gibberish. In their youngish days, they also did this harlotry and it's only for the sexual felling that we join." Nearly all of the Hijra who most adamantly denied having sexual intercourse with males were mostly 40 years old. Hijra reported to be giving up sexual activity as they get older. Mothers whose sons are hitched are expected to give up sexual exertion in the Hindu artistic ideal; women whose sons are married are expected to give up sexual exertion in the Hindu spiritual ideal. In truth, not all individuals who behave in ways that signal vigorous sexual desire are active sexually interested. Among some of the Hijras, the transmission of tone as an anon-sexual person happens with age. Senior females may dress more

conservatively in public, wearing white instead of boldly colored saris, acting in a less sexually tempting manner, and taking on quare household locations that leave them outside.<sup>29</sup>

Though Hijra oldies are the most vocal in their condemnation of Hijra sexual connections, even young Hijras who have individual components or engage in harlotry recognize that such behavior is contrary to Hijra principles and diminishes their social position. Prostitution, according to Hijra sex workers, is an inevitable for them, as it is their only source of income. They blame the rise of Hijra harlotry to the Hijra's falling economic standing in India after the country's independence. The rajas and nabobs of the kingly kingdoms, who were key supporters of Hijra ceremonial acts at the time, abandoned their positions. Hijras further contend that, in ultramodern India, decreased family structure and the introduction of liberal ideology, which erode trust in their strength, lead to their poorer socioeconomic status, forcing them to resort to harlotry. The Hijra community's relationship between Guruma and Chela is a relatively new phenomenon for newcomers. As a result, the new explorer must be religious and obedient to Guruma. After a few months, the new Hijra had settled in very well with the existing Hijra community. If he is unable to acclimatize, he will seek refuge in a separate Hijra community. Among Hijras, this cycle has to be in motion.

### **3.2.1 Story - 2**

"I am priya a 30 years old akua Hijra. I joined the Hijras community when I was 19 years old. When I first came to this community it was very difficult form to adapt in the Hijra community. The uli language and special manner of the Hijras which made me delicate to stay in the Hijra neighborhood. When I first intimate with and intercourse. Before this Guruma I had a unique training session. In this training he ordered other obedient and faithful chela to fit a stick into my anus. For doing this I was stick after a many month. After that I never feel pain during anal interaction. Now I'm a part time sex worker. I had been raped by several occasions by the police man. I've some sexual illness because my customers didn't want to use condoms." <sup>30</sup>

### **3.3 The hijra's socioeconomic status and geographic location**

The hijra way of life in Bangladesh is notable for its lower-class status with in Bangladeshi capitalist context. The majority of those who attend the hijra gang come from a working-class background. hijra are not born in the middle class; rather, individuals born in the middle and upper classes are hesitant to join the hijra community. As furthermore, hijra populations in Dhaka tend to live in working-class neighborhoods. Numerous hijra have told stories over the years about their difficulties accessing middle/upper-class regions and neighborhoods in Dhaka. "We are poor, but even if we had wealth, we would never be allowed as renters in the middle-class neighborhood," Tinni once said. "Society does not appreciate the hijra," Rahela once said, voicing similar feelings. People from the working class are the only ones who

<sup>29</sup> [<http://www.dhakatribune.com/weekend/2014/mar/20/missed-opportunity-address-lgbtissues#sthash.IUE3ao4E.dpuf/>]

<sup>30</sup> [<http://newagebd.net/63304/hijras-demand-recognition-under-legal-framework/#sthash.8DTISf1f.dpb/>]

show us some courtesy and are somewhat tolerant of us. In actuality, hijra in Dhaka not only live in working-class areas, but they are also direct neighbors of blue collar workers. Whereas this entire society may treat the hijra as if it were a hijra, their immediate neighbors treat hijra as equal earthly creatures. In my opinion, the hijra and the middle class have little in common save for brief encounters in stores or at traffic signals, when the hijra may beg the middle classes for donations. Several hijra interlocutors constantly grumbled about how unpleasant the middle and higher classes were to them. The hijra isn't simply a physiologically abnormal hermaphrodite, as the term was widely used until recently, but also foul-smelling, ugly, turbulent, and brazen persons in the minds of the middle classes. Hijra are narratives generated as the abjected others in middle-class fantasy through their lower-class standing, along with accompanying pictorial representations of dirt, terrible odor, cheap and flashy cosmetics, and violence. As a result, hijra bodies are not only characterized as a 'failed' middle order, but also described in essentially class-specific terms in the normative ploy of gender relations, which is generically discussed in terms of the categories of men, women, and the hijra. In other words, when a middle-class individual is criticized as hijra by his rank peers, it isn't his transgressive identity declaration that is being mocked, but a precise sort of gender expression associated with the lower-class hijra.<sup>31</sup>

### **3.4 The hijra as a vulnerable population and the new sexual imagination**

The hijra was first addressed by non-governmental organizations in the late 1990s as component of a bigger effort to address various types of male to male sexuality. Two separate organizations were founded shortly with the sole purpose of focusing on the hijra. In 2001, the Bandhu Social Welfare Society, a 'males having coitus with males'-focused NGO, established Sustho Jibon, a program-based organization; and in the same year, Care International established Badhon, another hijra-focused NGO. The reason for creating separate NGOs for the hijra is that it was discovered that they were a distinct group with unique sexual medical requirements that separated them from other groups. The creation of a fresh dialogue linking hijra to sexual need has been one of the benefits of NGO involvement. While hijra are well-known in Bangladesh, they are rarely connected with any type of desire in popular culture. In contemporary Bangladesh, the rise of 'men having sex with men'-based NGOs and a growing interest among broad civil society to recognize and respond to different sexual orientations and gender, specifically in the area of the world wide HIV epidemic, has resulted in the emergence of a new civil debate on male to male sexualities. Hijra had regularly been portrayed via the prism of sexual sickness in this wonderful danger-based debate. The fact that hijra are now freely displayed as sensual is noteworthy since the mainstream public consensus formerly saw hijra as 'sexually handicapped' and far and beyond desire. This isn't to say that hijra have suddenly come out and declared themselves sexual, but the opposite of denial, which was once the trademark of hijra open exhibition, has sluggishly evolved. However, popular opinion of hijra asexuality has not undergone a

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<sup>31</sup> <https://www.tandfonline.com/doi/full/10.1080/13691058.2017.1317831>

fundamental shift, as this new imaginative typically built the hijra as subject of the perverted want of men who utilize hijra for sexual delectation rather to their own desired queries.<sup>32</sup>

### **3.5 International recognition**

In a 2002 judgment, the European Court of Human Rights ruled that the "conflict between social reality and law" that crops up when the government refuses to consider a person's gender identity represents "serious interference with private life," referring to the switchover between female and male genders rather than non-binary identities. The same may be said for persons who do not identify as gender or male. State push to choose either one appears to be exactly the type of meddling the court was trying to avoid.<sup>33</sup>

In 2009, India's Election Commission announced a groundbreaking move by allowing transgender people to mark their gender as "other" on voter registration papers. When the Supreme Court decided the government to repeal all laws discriminating on the ground of sexual preference in 2007, Nepal acknowledged a third gender.<sup>34</sup>

### **3.6 Hijra Pride and civil society**

A sequence of incidents planned by Bandhu in collusion with the Ministry of Social Welfare and UNAIDS in November 2014 to mark the one year of lawful recognition of the hijra as a third gender was a recent report of civilized society accompanied procedure utilizes on the predicament of the acknowledgement of the hijra as a third gender. The event, dubbed Hijra Pride, featured road parades and signs bearing messages such as "The days of shame, persecution, and terror are past, today that we've been recognized as third gender." 13 unique activities were planned, including hops, fashion displays, and a henna party (where people's hands were decorated with henna). The involvement of outlanders linked with embassies and sponsor groups was one of the Hijra Pride's most remarkable features. The pride event drew a lot of attention from across the world. Many individuals in the Global North were perplexed when the Government of Bangladesh, in a Muslim mature culture, fairly recognized the hijra as a third gender. For example, when the United Nations Office of the High Commissioner for Human Rights conducted its 'Universal Periodic Review of Bangladesh' in 2009 and 2013, the government either ignored or voted down civil society and other member states' concerns and guidelines regarding the violation of gender and sexually marginalized groups' rights in Bangladesh. Further to that, the government of Bangladesh has frequently questioned the legitimacy of lesbian, gay, bisexual, transgender, and intersex groups in Bangladesh at the United Nations, despite being instrumental in the recognition of the hijra as a third gender, which appears to be a mysterious paradox to foreign lesbian, gay, bisexual, transgender, and intersex groups. But, most importantly, the hijra do not evoke memories of an alternate sexuality. Consequently, neither the government nor the Bangladeshi people see the hijra through the perspective of lesbian, gay, bisexual, and transgender activism, or as part

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<sup>32</sup> <https://www.tandfonline.com/doi/full/10.1080/13691058.2017.1317831>

<sup>33</sup> <https://www.hrw.org/news/2020/09/08/transgender-third-gender-no-gender-part-ii>

<sup>34</sup> <https://www.bbc.com/news/world-asia-india-27031180>

of a global movement organized around sexual preference. A pride celebration in Bangladesh did not elicit any public outcry precisely because of this backdrop. In reality, the majority of Bangladeshis were unable to understand Hijra Pride due to cultural differences. The adoption of the notion and idiom of pride, on the other hand, is a deliberate choice that represents Bandhu's and its international funders' cosmopolitan objectives. Importantly, it enables for the representation and formation of foreign lesbian, gay, bisexual, and transgender bonds and solidarities, despite the fact that the pride event itself hides a long history of creative tolerance of gender variations groups in Bangladeshi culture. As a consequence of the lawful acknowledgment, it's as though hijra have walked to the streets of Dhaka for the first time, free of fear, smirch, and discrimination. Hijra Pride seeks to put the everyday battles of the hijra and their struggle to make ends meet in open spaces in the years leading up to legal recognition on the contrary. While there has been an outpouring of support for legal recognition from a wide range of civil society organizations, and conversations about disability have begun, it is necessary to consider how comparable legal recognition would impact the hijra in the medium to long term.<sup>35</sup>

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<sup>35</sup> <https://www.tandfonline.com/doi/full/10.1080/13691058.2017.1317831>



## CHAPTER FOUR

# **LEGAL AND SOCIAL STATUSES OF HIJRAS AND CASE LAWS**

### **4.1 Legal Status**

Bangladesh has ratified the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights of People of Different Sexualities. Bangladesh's National Human Rights Commission is well-positioned to resolve sexual and gender identity-related human rights problems. According to a poll conducted by the Department of Social Welfare, Bangladesh has 9,285 Hijras.<sup>36</sup>

Because there are no provisions in Bangladesh that recognize hijra status, these people are frequently denied basic citizenship rights such as land rights, inheritance, career, education, and health care. There have been recent examples of legislation aimed at alleviating this issue by acknowledging the constitutional basis of Hijras. Since 2011, the Bangladeshi government has given a "other" gender classification on passport applications, and in 2013, it granted the roughly 10,000 Hijras residing in the country a "third gender" designation.<sup>37</sup>

Bangladeshi lawmakers have enacted laws to protect Hijra's rights. What happened next, though, threw this promising move into jeopardy. Bangladesh lacks a regulation specifying the steps individuals must take to permanently change the name and gender on their government-issued documents from "man" to "hijra," and it's unclear who fits as a hijra. In the absence of such rules, governmental officials mandated to implement the hijra prohibition have relied on their own interpretations of what hijra implies. Bangladesh's cabinet acknowledged the legitimacy of a third gender hierarchy in its review on January 26, 2014, with a single-judgment "The Government of Bangladesh has recognized the Hijra community of Bangladesh as a Hijra sex." This judgment represents a crucial step toward safeguarding a variety of mortal rights for Bangladesh's hijras individuals, who, although being born as "male," identify as feminine afterward in life and wish to be honored as hijra or a third gender. This report examines the long-term consequences of the government's first attempt to enforce the "hijra" division through an employment program, focusing on the unintended but nonetheless damaging and rights-abusing consequences of the government's first attempt to enforce the "hijra" division through an employment program. The Ministry of Social Welfare urged hijras to apply for government jobs in December 2014, a big windfall for a community accustomed to begging, customary ceremonial acts, and sex labor, and who on hijra leaders (or "gurus") for safeguard.<sup>38</sup>

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<sup>36</sup> [https://www.researchgate.net/profile/Lubna-Jebin/publication/322753151\\_The\\_Rights\\_of\\_Hijras\\_in\\_Bangladesh\\_An\\_Overview/links/5aaa7c690f7e9b8826710dc8/The-Rights-of-Hijras-in-Bangladesh-An-Overview](https://www.researchgate.net/profile/Lubna-Jebin/publication/322753151_The_Rights_of_Hijras_in_Bangladesh_An_Overview/links/5aaa7c690f7e9b8826710dc8/The-Rights-of-Hijras-in-Bangladesh-An-Overview)

<sup>37</sup> <https://www.hrw.org/news/2016/12/23/bangladesh-gender-recognition-process-spurs-abuse>

<sup>38</sup> [https://www.hrw.org/sites/default/files/report\\_pdf/bangladesh1216\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/bangladesh1216_web.pdf)

### 4.1.1 Consequences of the Decision

Hijras seeking government jobs queued up for the first interview, initially praising this potentially powerful innovation. Stuff did not go well right away. Applicants told Human Rights Watch that, "during the earliest interviews, which took place in December 2014, they felt demoralized by inadequately Social Welfare Department public officials." Many people indicated they were tired of being asked inappropriate inquiries regarding their gender identity and sexual activity. This experience prompted some to shift their focus to a more masculine character presentation for the next step in the process, in the hopes of increasing their odds of landing the job. TurviA is a hijra who goes about her daily life best described as a female, said "(The government officers) had said that others would be spooked of me, so I changed myself. All in the expedients of getting the post." She decided to dress up as a guy after her interview in order to pass the physical examination. T. The health ministry then published a statement in January 2015 urging that "necessary steps are taken to identify authentic hijras by conducting a thorough medical check-up." In June 2015, the twelve hijras chosen from the first interviews were addressed to a government clinic for the required diagnostic testing. Doctors organized non-medical medical center workers, comparable to housekeeping, to touch the hijras' genitals while batches of crew and various patients witnessed and mocked — sometimes in secluded rooms, sometimes in public places — during these so-called "examinations." Clinic workers warned some of the hijras that they would have to back numerous times over the course of several weeks to undergo more testing.

Following the clinic abuses, images of the 12 hijras were leaked to internet and print media, confirming that the hijras were "actual men" who were defrauding the government. Former soliciting and sex work customers refused to catch up with the hijras after the vulnerability, according to some hijras. Publication of the photographs sparked additional teasing from the broader population and moneymaking hardness for most of those relating — even irregular moneymaking conditioning was impacted as former soliciting and sex work customers refused to keep up with the hijras regarding the vulnerability. Bangladesh's government took a significant step in establishing its acceptance of hijras, but it critically needs to develop a rights-based system for their recognition for the reasons listed below. Anything less puts hijras at risk of additional victimization.<sup>39</sup>

### 4.1.2 Sexual rights

The state contemporaneously continues to defend laws that penalize citizens for being homosexuals (while Hijras don't unfailingly ID as homosexuals, they're occasionally bedeviled as similar) with captivity confinement sentences varying from ten years to life.<sup>40</sup> Article 377A of the Criminal Penal Code of Bangladesh states: "Whoever has carnal intercourse against the order of nature with any man, woman or animal, shall be punished

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<sup>39</sup> <https://www.hrw.org/report/2016/12/23/i-want-live-my-head-held-high/abuses-bangladeshs-legal-recognition-hijras>

<sup>40</sup> <https://www.coursehero.com/file/91273274/Eng105-02docx/>

with (imprisonment for life), or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".<sup>41</sup>

In Bangladesh, there is no hate crime legislation that addresses crimes committed by perpetrators motivated by a victim's sex discrimination. There are no anti-discrimination laws that particularly protect racial minorities in Bangladesh, nor are there any laws that respect the diversity of gender identities. Though Hijras used to make a fortune by singing and dancing, many now rely on begging or running a brothel to augment their income.<sup>42</sup> The susceptibility of sex workers to police department's abuses is described in a research on Bangladeshi Hijras: Clients targeted the Hijra sex workers, who were robbed and battered by violent thugs but never got police assistance. They didn't report many incidences to the police because they were afraid of being harassed again. The law enforcement officers either molested a hijra prostitute or stole involved in prostitution revenue. In the sex trade, Hijra are not safer. They are compelled to have unsecured intercourse with clients, local powerful people, and the cops at no cost to them.<sup>43</sup>

### **4.1.3 Credit politics and the third gender as a prize**

One of the problems with the campaign for the lawful recognition of the hijra as a third gender was that just a few well-known hijra people were either actively participating in it or on the front lines of campaigning. Its not as if the hijra in Bangladesh didn't want acknowledgment or even legal birthrights; it was because what comparable recognition may entail for the hijra in the future, particularly for the hijra who were not affiliated with NGOs, remained an open question. Nonetheless, both the government and civil society saw lawful recognition as a panacea for mainstreaming. In this way, Hijra became a tool for both civil society and the government to use for their own personal advantage.<sup>44</sup>

Bangladesh's otherwise deteriorating democratic and political system took advantage of this legal legitimacy to proclaim a more progressive and pro-minority government. In an attempt to take parliamentary credit, one minister confirmed in an interview with an international press that her administration was essential in dealing with the hijra issue since previous governments had failed to do so. Civil society, in a similar vein, portrayed statutory standing as a legitimate result of a decade-long struggle. The government officials who launched a plan to mainstream the hijra boasted in the media that the hijra's legal recognition was a direct result of their sweats to advance the cause in Bangladesh, while Bandhu, the broadest NGO working on the sex education needs of men who have coitus with men, said in a press release that the hijra's lawful recognition was a direct result of their sweats to bring about social change in Bangladesh. A Bandhu agent hailed the legal recognition of the hijra as a third gender as a biggish victory by his mobilizing at a local meeting of the Worldwide Lesbian and Gay Alliance held in Taiwan in 2015. Joya Sikder, presumably the most well-known Bangladeshi hijra protester, who was also present in the Taiwanese assembly, immediately refuted Bandhu's claims, citing the Ministry of Social Welfare's termination of hijra jobs as

<sup>41</sup> [https://www.researchgate.net/publication/322753151\\_The\\_Rights\\_of\\_Hijras\\_in\\_Bangladesh\\_An\\_Overview](https://www.researchgate.net/publication/322753151_The_Rights_of_Hijras_in_Bangladesh_An_Overview)

<sup>42</sup> <https://www.scribd.com/document/375263139/Stenqvist-T-DP15-Final>

<sup>43</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2928103/>

<sup>44</sup> <https://www.tandfonline.com/doi/full/10.1080/13691058.2017.1317831>

an instance – of how and why the state lacked reasonable knowledge of the hijra even after mobilizing them.<sup>45</sup>

Although difficult, legal recognition of the hijra provided fresh incentive and opportunities for civil society organizations in Bangladesh to concentrate on the hijra. Previously, only certain NGOs had worked on the hijra; now, as a result of approved recognition, a new togetherness among wide civilised society to act on the hijra has emerged. The traditional laborers of the hijra are now pursued as outdated and potentially criminal as new commercial gain to transform the hijra into people capable of rights and status, evoking British social programs. An NGO is now working on a new design for legal commissions on gender and sexual nonages, with backing from the US government. State acceptance of the hijra, according to the design offer's description, "opens opportunities for deeper dialogue about gender and immorality." The prototype claims that it will "take advantage of the opportunities provided by the Government of Bangladesh's recognition of a "third gender" in 2013, working with transgendered people, particularly inside the hijra society, to seek right to schooling, health, and employment, as well as to assist with immigrant and gender demarcation." 12 In a sociospatial and class stratified society like Bangladesh, where hijra deserve the social and iconic value to debate rights tactics on their own, the propensity to utilize the hijra as a pawn in the larger battle for sexuality and racial justice is problematic.

Chaity, one of the 15 hijra fired from government jobs who is also researching on a hijra project for the United Nations Development Programme (UNDP), highlighted her/his experiences working with non-hijra middle-class people at the UNDP and elsewhere. Despite her/his depressing sweat evaporates to explain to her/his aged people associates how get to be a hijra and how one can be a hijra while possessing an operational penis, Chaity claimed that the UNDP's people in charge of hijra design claimed to be using the new authorised detail of the hijra as hormonally disrupted, and that the clarification for the prototype stems from such an awareness of the hijra. Chaity also stated that, her/his identity as a hijra was called into doubt when she/he had her/his reproductive organs biopsied, which her/his workplace associates saw as a hint that she/he was a false hijra. Despite general societies may see statutory standing as a diamond, it hides a concurrent rallying and connecting of a flipside of limitation and incapacity through which hijra have been interconnected as citizens with rights.<sup>46</sup>

## 4.2 Social Status

Although the Legislature has honored hijras as the "third gender," this recognition does not insure their social acceptability. They are unable to study in academies because their peers and schoolteachers do not respect them well; they are unable to obtain reasonable employment due to their lack of education; indeed, jobs that do not require education are not offered to hijras because bosses and other workers are unable to confirm their presence at workforce. They do not receive medical facilities since the physicians and personnel feel

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<sup>45</sup> <https://www.sistersforchange.org.uk/wp-content/uploads/2020/docs/01-SFC-DB-FILES/540-The-paradox-of-recognition-hijra-third-gender-and-sexual-rights-in-Bangladesh.pdf>

<sup>46</sup> [https://www.researchgate.net/publication/316896744\\_The\\_paradox\\_of\\_recognition\\_hijra\\_third\\_gender\\_and\\_sexual\\_rights\\_in\\_Bangladesh/](https://www.researchgate.net/publication/316896744_The_paradox_of_recognition_hijra_third_gender_and_sexual_rights_in_Bangladesh/)

uncomfortable serving them and occasionally abusing them. The most heartbreaking aspect is that they lack the possibility of living with their family. Parents, siblings, and other relatives are hesitant to reveal their true identities. As a result, individuals must also conceal their sexual identity and merge or quit their families. Both are really difficult alternatives to choose among. The hijras expressed their dissatisfaction with how they are exploited and mistreated in every aspect of their existence. They are shunned by the toddlers they wish to play with, reprimanded by the teachers, and ostracized by elder people in their homes and localities when they are nonage. The majority of the time, they're compelled to give up their womanly traits, which they don't have command over. When they're grownups, their families may demand them to settle down despite knowing about their sexual and mental disabilities. The hijras, who are commonly referred to as 'magyapola' (womanish boy) by their peers, are well aware that they will not be able to have a shared intimate desires with ladies if they married. As a result, they must leave their house. After giving up, they have the option of living with the hijra high priest and performing hijragiri, or they can live independently, which is, of course, quite difficult in this nation. And, no matter where they live or what they do, they are not immune to mental and sensual disturbances. A hijra snitch described how she was fired from a textile mill after her manager's forced coitus was exposed as if it was her sin. In clinics, the situation is essentially same. Physicians and staff treat them as though they are less than mortals, and are unwilling to service them even whether they can afford to pay the charges in the physicians' private rooms. Furthermore, the majority of physicians utilize awareness about their creative and social status, as they are treated considered social outcasts. If a hijra engages in coitus commerce, he or she may get a STI or HIV infection. They do not, however, have always had a build to obtain proper therapy. Sexual intercourse commerce is also dangerous for hijras. Their visitors ravish them and compel them to have dangerous coitus. As a result, they are commonly infested with STIs. They are regarded as if they are less than mortal creatures in every aspect of existence. The majority of hijra respondents stated that they do not want to be labeled as "transgendered," "transsexuals," or "third gender." To them, the word 'hijra' has no negative connotations. But society exempts them from being branded what they desire, preferring to name them what it loves.<sup>47</sup>

### **4.3 Case Law - 1**

In *Pant v Nepal*, the Nepalese Supreme Court declared in 2007 that the govt must create a legal reservation for all of those who consider as either manly or womanish. Importantly, the court stipulated that the capacity to obtain papers with a third gender be based on "self-feeling." Realizing that no other country had devised an identity-based legal recognition method for ambisexual individuals at the time, Nepal's LGBT campaigners were particularly actively pursuing.<sup>48</sup>

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<sup>47</sup> [https://www.researchgate.net/publication/322753151\\_The\\_Rights\\_of\\_Hijras\\_in\\_Bangladesh\\_An\\_Overview](https://www.researchgate.net/publication/322753151_The_Rights_of_Hijras_in_Bangladesh_An_Overview)

<sup>48</sup> <https://www.hrw.org/news/2018/06/06/south-asias-third-gender-court-judgments-set-example>

**Citation:**

Writ No. 914 Of 2007

**Court:**

Supreme Court, Division Bench

**Judges:**

Pawan Kumar Ojha J.

**Key Facts:**

The LGBTI community launched a lawsuit against Nepal's government for banning gender and sexual nonages. They alleged that gender nonages demanded access to basic benefits since they were unable to get residency cards due to their non-binary gender identity. They argued for the legal acknowledgment of LGBTI people.

**Issues:**

The Supreme Court meditated whether LGBTI individuality is the product of psychological abuse or develops organically. It also considered whether restricting LGBTI people of their fundamental rights results in separation and uneven treatment by the govt.

**Decision:**

The Nepalese Supreme Court declared LGBTI people to be equal citizens of the country, entitled to all constitutional rights, including non-discrimination and equivalency. The state was held liable for providing identity papers that represented a person's self-declared gender identity. Gender nonconformity and same-gender exposure, according to the Court, weren't results of internal abuses or emotional or mental diseases. Rather, it accepted LGBTI people for who they are. It declared that sexual encounters between two adults are a private matter and that LGBTI people have the same right to seclusion as everyone else. It further stated that same-gender relationships should not be penalized because they are "unnatural." Despite the fact that there have been no provisions restricting LGBTI people their indigenous rights, the Court suggested that sexual exposure and gender identification be included as banned baseds of demarcation in Nepal's Constitution. It also helped the Nepalese government organize a panel to look into concerns surrounding same-gender nuptials.

**Significance:**

This ruling was the earliest in Southern Asia to protect the LGBTI community's rights. The court differenced between gender and sex, as well as gender flexibility. It was the first time the term "third gender" was used. In Asia, Nepal can be seen as a beacon for LGBT rights.<sup>49</sup>

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<sup>49</sup> <https://translaw.clpr.org.in/case-law/sunil-babu-pant-ors-vs-nepal-government-ors/>

## 4.4 Case Law – 2

National Legal Services Authority (NALSA) v. Union of India, a landmark Supreme Court of India judgment from 2014, announced gender-bending people the "third gender," validated that the Constitution of India's basic rights will be fairly distributed to them, and provided an opportunity to self-identify as man, feminine, or third gender. However, this decision has been hailed as a giant step to gender equivalency in India. The court also ruled that since ambisexuals were viewed as members of the inferior socioeconomic strata, they will be denied entry to educational establishments and vocations.<sup>50</sup>

**Mode of Expression** - Non-verbal Expression

**Date of Decision** - April 15, 2014

**Outcome** - Declaratory Relief

**Case Number-** (2014) 5 SCC 438

**Region & Country** -India, Asia and Asia Pacific

**Judicial Body** - Supreme (court of final appeal)

**Type of Law** - Constitutional Law

**Themes** - Gender Expression

**Tags** - Gender Identity/Sexual Orientation

### Summary and conclusion of the case

The Indian Supreme court permitted an appeal on account of the transgender population in the regions, ruling that the freedom to voice oneself in non-binary gender was an important aspect of freedom of speech. It influenced the court to allow official status to the third gender, so that individuals might choose whether to live as men, women, or the third gender. It also outlined the steps that the government should do to eliminate the social blemish, boost transgender-specific wellness agendas, and provide them with equivalent legal protection. In rendering its ruling, the Court detailed the progressive justice of other nations, including as the United Kingdom, Australia, New Zealand, and the United States, in respect of transsexual people's initial rights. It states that India must abide by international human rights agreements and non-binding principles because the government lacks "suitable legislation guarding the rights of the members of the ambisexual community." As a result, the Court began to interpret the Indian Constitution in sphere of international human rights accords and doctrines. It was about Composition 14, which stipulates that "the State shall not deny to 'any person' equivalency before the law or the equal protection of the laws within the home of India." The Court held that the composition provides protection to 'any person' " ambisexual

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<sup>50</sup> <https://www.hrw.org/news/2018/06/06/south-asias-third-gender-court-judgments-set-example>

persons who are neither manly/ womanish fall within the expression 'person' and, hence, entitled to legal security of laws in all spheres of State exertion, involving employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.”

### **Data**

A writ case was filed with the Supreme Court of India in 2012 by the National Legal Services Authority, an Indian statutory organization established to provide legal services to neglected parts of society. A non-governmental organization identifying the Kinnar transgender community joined the solicitation, as did an individual who identified himself as a Hijra. The ambisexual community in South Asia is referred to as Hijra. Hermaphrodites, devitalized males, and non-castrated men are all included in this category. In most cases, The person generally don't have functioning reproductive system of either type. In South Asia, the term "ambisexual" is still used to indicate a broad range of gender non conformity. It's a catch-all word for those who don't detect with the sexuality they were assigned with, as well as those who don't detect with either gender. Hermaphrodites, pre-operative and post-operative transsexuals, and transvestites are all included. The request was for a legitimate protest of their gender identity other than that allocated at birth, claiming that non-recognition of their gender identification breaches Papers 14 and 21 of the Indian Constitution. The ambisexual group claims that their inability to articulate oneself in lines of a second gender prevents them from receiving equal legal and social protection. They additionally supplicated for procedural safeguards as a distant group, as well as the rights to exercise their self-identified sexual preference in government documents. The government's additional Public Prosecutor acknowledged that the situation depicted a severe societal concern. He made it Known that the state had already constituted an Expert Committee to examine various issues confronting the ambisexual population.

### **Decision Overview**

The Supreme Court of India's maturity opinion was delivered by Justice Radha Krishnan. After creating a literal backdrop of transgenders in India, the Supreme Court affirmatively recognized that gender identity and sexual exposure involve trans genders, and that “each person’s tone- defined sexual exposure and gender identity is integral to their personality and is one of the most introductory aspects of tone- determination, quality and freedom and no bone shall be forced to suffer medical procedures as a demand for legal recognition of their gender identity.” It also appertained to applicable transnational mortal rights norms, Yogyakarta Principles, in example, gives “Mortal beings of all sexual exposures and gender individualities are entitled to the full enjoyment of all mortal rights.” Furthermore, the Court discussed in detail the developmental justice of other nations, such as the United Kingdom, Australia, New Zealand, and the United States, with regards to feting the basic rights of transsexual people. it is vital for the government to adhere to transnational human rights agreements and non-binding norms Due to India's lack “suitable legislation guarding the rights of the members of the ambisexual community.” The Court also made headway in analyzing the Indian Constitution in light of international accords and ideas on human rights.



Under Composition 14, “the State shall not deny to ‘any person’ equivalency before the law or the equal protection of the laws within the home of India.” The Court ruled that the composition protects ‘any person.’“ ambisexual persons who are neither manly/ womanish fall within the expression ‘person’ and, hence, entitled to legal protection of laws in all spheres of State exertion, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.” (para. 54) It further decided that the ban of demarcation against any citizen, for example, on the basis of coitus, applies conversely to transsexuals under Articles 15 and 16. according to the Court, is a violation of the law. The use of the phrase 'sex,' in the papers “ is not just limited to natural coitus of manly or womanish, but intended to include people who consider themselves to be neither manly or womanish.” (para. 59) Composition 19 (1) (a) of the Constitution guarantees the right to freedom of expression, the Supreme Court ruled that it “ includes one’s right to expression of his tone- linked gender,” and disregarding licit exceptions under to Constitutional Article 19 (2), “ no restriction can be placed on one’s particular appearance or choice of dressing.” (para. 62) It was found that a transgender's personality “ could be expressed by the transgender’s geste and donation (and the government) cannot enjoin, circumscribe or intrude with a transgender’s expression of similar personality, which reflects that essential personality.” (para. 66) Incipiently, the Court appertained to Article 21 of the Constitution, which states “no person shall be deprived of his life or particular liberty except according to procedure established by law.” It was determined that this provision astronomically protects “those aspects of life, which go to make a person’s life meaningful,” includes the right to tone, which is the decision of a person's gender. Consequently, the Court held that “ Hijras/ Eunuchs, thus, have to be considered as third Gender, over and above double genders under our Constitution and the laws.” (para. 74)

Grounded on the anteceding analysis, According to the Supreme Court, inter alia, transgenders “piecemeal from double gender, be treated as ‘third gender’ for the purpose of securing their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.” (para. 129) It also instructed state governments to "give legal recognition to their gender identification as manly, womanly, or third gender." (para. 129)<sup>51</sup>

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<sup>51</sup> <https://globalfreedomofexpression.columbia.edu/cases/national-legal-services-authority-v-union-of-india/>

## CHAPTER FIVE

### **ACTION PLAN OF THE GOVERNMENT FOR THE HIJRA COMMUNITY**

Hijras or third gender are the slim band of community in Bangladesh, they've ignored from moment dateless. Every subject shall have the same rights but they're differenced by the family, socially, and economically. The government or state should be accountable for assuring their rights, and the government tries to evolve their livelihood. Creating a better life for hijra community by furnishing social protection and social development legislated the Social well-being rules 2013.

#### **5.1 Step taken by Government**

In recent years, the government of Bangladesh has taken a number of innovative steps to improve social security and expand communities with diverse gender identities. The Cabinet's decision in 2013 to commemorate the Hijra group and to include them in official identity documents and statistics was the first approach toward formal recognition. The Hijra community was the subject of a review announcement from the Ministry of Social Welfare (MSW) in 2014. The Voter List Act of 2009 was updated in 2018 to include 'Hijra' as a gender type in the designated application form, in addition to 'man' and 'woman.' Meanwhile, in 2013, the MSW offered many Hijra community livelihood projects.<sup>52</sup>

As part of an effort to rehabilitate gender individualities and provide them with new career opportunities, the government has decided to keep hijras as traffic police officers in the coming fiscal year. The government has adopted a variety of measures to improve the lives of the Hijra community. In the 2012-2013 fiscal year, a recovery program was launched in Dhaka, Chittagong, Bogra, Dinajpur, Patuakhali, Sylhet, and Khulna, among other districts. Approximately BDT 7,217,000 was budgeted for the initiative in the 2012-2013 budget year. 135 Hijra students received stipends as part of this advancement program, while 350 Hijras aged 18 and up received training to improve their skills. There were 485 recipients in all. Approximately BDT 40,731,600 was allotted for the 2013-14 budget year. A total of 14 new districts were added to the advancement program in 2013-2014. Dhaka, Chittagong, Bogra, Dinajpur, Patuakhali, Sylhet, Khulna, Rajbari, Netrokona, Gazipur, Chadpur, Lakhhipur, Brahmanbaria, Comilla, Jhinaidah, Kushtia, Pirojpur, Jaipurhat, Serajganj, Naogaon, and Faridpur are some of the areas of Bangladesh.<sup>53</sup>

Through these development activities, 1071 Hijras received old age allowances, while 762 students received stipends. A total of 950 Hijras over the age of 18 will be skilled and taught. Following training, each district received BDT per 10,000 per head as a recovery allotment. The total number of people who have benefited is 2903. Around BDT was allotted for the

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<sup>52</sup> [https://www.share-netbangladesh.org/from-recognition-to-realising-rights-legal-protection-of-gender-identity-in-bangladesh-law//](https://www.share-netbangladesh.org/from-recognition-to-realising-rights-legal-protection-of-gender-identity-in-bangladesh-law/)

<sup>53</sup> <https://www.dhakatribune.com/bangladesh/2015/05/19/hijras-to-be-recruited-as-traffic-police>

program in the 2014-15 fiscal year, and 1300, 789, and 900 persons were expected to accept the old age allowance, schooling, and HR-related training, respectively. After training, each district will get 10,000 taka/- (ten thousand) as a recovery entitlement, with a total of 360 persons benefiting. The total number of Hijras who will benefit will be 3349.<sup>54</sup>

While these steps demonstrate the government's willingness to work with the Hijra people and protect their indigenous rights, no further legislation or initiatives explicitly prohibiting discrimination based on gender identity have been enacted. This policy brief highlights the good steps taken to date to recognize multiple gender individualities, as well as the remaining problems, such as the procedure for obtaining identification papers and the legal and regulatory reforms needed to ensure gender identity isn't merely defined. The mission also emphasizes the importance of comparable changes as a first, critical step toward closing other legal gaps that prohibit these individuals from surviving with rank, protection, and freedom from discrimination.<sup>55</sup>

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<sup>54</sup> [https://www.researchgate.net/profile/Lubna-Jebin/publication/322753151\\_The\\_Rights\\_of\\_Hijras\\_in\\_Bangladesh\\_An\\_Overview/links/5aaa7c690f7e9b8826710dc8/The-Rights-of-Hijras-in-Bangladesh-An-Overview](https://www.researchgate.net/profile/Lubna-Jebin/publication/322753151_The_Rights_of_Hijras_in_Bangladesh_An_Overview/links/5aaa7c690f7e9b8826710dc8/The-Rights-of-Hijras-in-Bangladesh-An-Overview)

<sup>55</sup> <https://translaw.clpr.org.in/reports-and-policy-briefs/from-recognition-to-realising-rights-legal-protection-of-gender-identity-in-bangladesh-law-policy-brief-bangladesh/>

## CHAPTER SIX

### **RECOMMENDATIONS AND CONCLUSION**

#### **6.1 Recommendations**

##### **6.1.1 Acknowledgement as Individuals**

1. Must be acknowledged through constitution
2. Introduce National ID as Third Gender
3. Ensure Voter ID for all Hijra community
4. Reserve 5 quota for Hijra in the national parliament
5. Introduce third box in all official forms

##### **6.1.2 Ensure of Health Services**

1. Free treatment facility in all Govt. Hospitals
2. Initiatives to reduce harassment to get access from Govt. Hospitals
3. Incorporate sexual minority communities in the program of Maternity program
4. Introduce Special care program for Mental support of Hijra

##### **6.1.3 Program of Rehabilitation**

1. Allocate government land to the Hijra community, with an emphasis on the older Hijra.
2. Initiatives to create unique neighborhoods for Hijras in each division

##### **6.1.4 Inheritance property and legal support**

1. Specific laws and procedures to protect the rights of the Hijra
2. Incorporate Hijra into inheritance laws;
3. Create anti-discrimination legislation to defend the rights of the Hijra people and other minorities.
4. Effective actions to implement legislation in addition to the design of various policies

##### **6.1.5 Education Program**

1. Create a system of education that is free of prejudice in order to protect basic human rights.
2. Incorporate Hijra culture into the national curriculum at the basic and secondary levels, using accurate information and facts.
3. Include Hijra studies in many academies, such as sociology, anthropology, social welfare, journalism, public administration, and political science, among others.
4. Initiatives to provide every Hijra with formal, informal, and technical education

5. Provide opportunities for Hijra to pursue higher education at open universities.

#### **6.1.6 Role of Mass Media**

1. Increase the amount of media programs concentrating on and involving the Hijra community, and launch a campaign to prohibit the media from portraying the Hijra in a bad light.
2. Create a documentary, a video, and a research piece on the Hijra issue.

#### **6.1.7 Employment Opportunity**

1. Provide career opportunities and technical skill training.
2. Investigate new and innovative opportunities for the Hijra community, as well as effective techniques for including them in the program and improving their livelihood.

#### **6.1.8 Introduce Quota System to Bring Equality**

1. Create quota system to enroll Hijra in Educational institutes
2. Initiate quota for Hijra in Govt. services
3. Reserve seats for Hijra in Public Transport

#### **6.1.9 Awareness and Advocacy Programs**

1. Ongoing public awareness campaign
2. Establish specific programs with Hijra family members to assist them in treating their children in the same manner as others.
3. Educate the Hijra guru about society's culture, customs, and values so that society's attitudes toward the Hijra community might change.
4. Provide opportunities for the government and non-governmental organizations to promote improved livelihood possibilities.
5. Organize additional gender diversity awareness programs.
6. Assist non-governmental organizations (NGOs) and community-based organizations (CBOs) who are always working on capacity-building initiatives for the Hijra community.

#### **6.1.10 Others**

1. For suitable and successful measures, social approach and Hijra demographic data are required.
2. Efficient Social Safety scheme in all 64 districts of Bangladesh
3. More Hijra participation with the Ministry of Social Welfare is essential to build a favorable image..<sup>56</sup>

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<sup>56</sup> <https://www.bandhu-bd.org/third-gender-is-not-a-word-it-is-a-gender/>

4. They must be included in the National Social Protection Strategy (NSPS)
5. Increase the funds for the Ministry of Social Welfare's livelihood program.
6. Ensure that the funeral is performed as part of the rites following the death.
7. Initiatives to Preserve Hijra Culture's Thousand-Year History
8. As the basic freedoms of the hijra community, a private bill should be submitted to parliament.
9. A new policy or legislation must be adopted to protect transgender people's legal rights in the state.
10. Immediate action is required to provide equal educational opportunity, treatment, and employment, including the implementation of reservations in educational institutions, government agencies, and the legislature.
11. The NHRC will submit a request to the Minister of Health and Education to provide hijra children free entrance to the school.
12. Immediate actions to guarantee equitable property distribution, including property and inheritance laws for transgender people.
13. Provide housing for transgender individuals; allocate property to senior transgender people on a first-come, first-served basis.
14. Include sections in the textbooks that discuss the hijra and their native customs. Various textbooks and scientific databases should provide accurate information on their identities, existence, cultures, and customs.
15. At the Divisional level, prepare the District Level Lawyers Group (DLLG) of the BSWS on human rights so that they may continue to operate efficiently and provide better services to the community.
16. A precise description of the community by a good census is required in order to offer an enjoyable and safe space for TG and Hijra members to 'come-out.'
17. The NHRC will share a draft of the anti-discrimination bill with Advocate Tarana Halim in order for her to address the matter in parliament as soon as possible.
18. A healthy law should be enacted as quickly as possible, addressing each problem experienced by the TG group separately and aiming to rectify them.
19. The MOSW's Continuation of Livelihood program should be on board and expanded to 64 districts.
20. Transgender people's constitutional recognition must be created.
21. It is vital to provide new career options for transgender people. It is necessary to choose suitable work and build successful methods.

## 6.2 Conclusion

Our country's constitution pledges to develop, protect, and realize the rights of all individuals, regardless of sexual orientation. Recognizing the hijra group as a separate gender is a very positive step. However, this acknowledgement is written down. They are still the most disadvantaged of the underprivileged populations. It is necessary for the country to enact and implement laws, policies, and training programmes that facilitate hijras' rights as citizens, including the right to protection from harassment and discrimination, the right to equivalency under the law, the right to vote and participate in elections, the right to livelihood, the right to fair media representation, and a life of efficiency as a pleasant human being.<sup>57</sup>

Changes and improvements can be given at the academy level to promote biologically and gender diverse academics, as well as awareness initiatives created within school organizations to address anti-Hijra aggravation inside the institution environment. Early intervention, such as media bandwagons on ego and welcoming campaigns, is needed at the community level to alert the public about the stench suffered by representatives of the Hijra groups. At the national level, increased diversity, improved access to education, as well as more visibility of Hijras in government programs are necessary. These initiatives are required if the government wants to improve Hijra wellbeing and degrade inequalities in Bangladesh by 2030.<sup>58</sup>

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<sup>57</sup> [https://www.researchgate.net/publication/322753151\\_The\\_Rights\\_of\\_Hijras\\_in\\_Bangladesh\\_An\\_Overview](https://www.researchgate.net/publication/322753151_The_Rights_of_Hijras_in_Bangladesh_An_Overview)

<sup>58</sup> [https://www.researchgate.net/publication/350774664\\_Human\\_Rights\\_Violations\\_and\\_Associated\\_Factors\\_of\\_the\\_Hijras\\_in\\_Bangladesh\\_A\\_Cross\\_sectional\\_study](https://www.researchgate.net/publication/350774664_Human_Rights_Violations_and_Associated_Factors_of_the_Hijras_in_Bangladesh_A_Cross_sectional_study)

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