

Original Article

# (Not) Hiring Hijras: A Qualitative Study of the Right to Work Being Violated for Hijras

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**Abstract:** *The population of transgender people in India was estimated by the 2011 census at 4,90,000 (Nagarajan 2014). The Hijras are a highly visible subsection of transgender people. Talwar (1999), in his book, noted what is now common knowledge about them: ‘...hijras are still regarded as performers ... [they] earn their living through begging... Prostitution is fairly widespread within the community.’ The research question was structured as “Is the continuance of the traditional occupations of Hijras a neglect of their human rights? If so, what causes this?” qualitative techniques were adopted to understand about human rights and their violations. As the population of Hijras specifically is undetermined, non-probability sampling techniques were used, and semi-structured interviews were conducted. These generated qualitative data, which, along with the literature reviewed, were subjected to content and narrative analysis. This paper explores the drawbacks of the methodology and recommendations to overcome them. The major finding of this study was that two factors were largely responsible for Hijras continuing with traditional occupations: social exclusion and government inaction. Consequently, the right to work was being violated by the Hijras.*

**Keywords:** *Human Rights, Hijras, Right To Work, Social Exclusion, Content Analysis, Narrative Analysis.*

## I. INTRODUCTION

A small section of the male population in India grew up feeling like they were females, or “not males”, stuck in the wrong body. Denounced by their families and larger society for feeling this way, they resorted to some traditional occupations for a living. They are a common sight in large cities across India, dressed in women’s attire (Nanda and Bowker, 1996). But one rarely finds them outside this pigeonhole. Is it possible for Hijras to find regular employment? In other words, what is the status of their right to work?

One of the rights recognised universally and in India is the right to work. The Universal Declaration of Human Rights in Article 23.1 states that “Everyone has the right to work, to free choice of employment... and to protection against unemployment.” The International Covenant on Economic, Social and Cultural Rights in Part III, Article 6.1 states that “the right to work ... includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...”

The Indian Constitution refers to the right to work in Articles 16, 39 and 41. Article 16 (Ind. Const. art. XXVI) states that “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ... discriminated against in respect of, any employment or office under the State.” Articles 39 and 41 fall under the purview of the Directive Principles of State Policy. Article 39 (Ind. Const. art. XXXIX) states that “The State shall ... direct its policy towards securing- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood...” Article 41 (Ind. Const. art. XL) urges the State to “make effective provision for securing the right to work... in cases of unemployment ... and other cases of undeserved want.”

Examples of Hijras employed in the public or private sector are few and far between C Anu was hired as a stenographer in a High Court in Karnataka (D’Souza, 2012). Rose, a Hijra in Tamil Nadu, hosted a talk show on Vijay TV interviewing celebrities. But the vast majority of Hijras still remain unemployed– has their right to work been violated? Are there “cases of undeserved want” that the Indian Constitution refers to? This paper tries to answer these questions.

## II. LITERATURE REVIEW

### A) *Human Rights Violations: Reports of Discrimination, Violence and Prejudice*

With the ancient wisdom of the third sex forgotten and a heteronormative society set up by the British, India grew to loathe the third sex. Their continued marginalised position leaves them vulnerable to abuse and exploitation, even from the police. The gender non-conformity of and the stereotypes surrounding the Hijras subject them to very real violence apart from



extreme ostracisation. The testimonies contained in the PUCL-K (2003) report are disturbing accounts of violence meted out to the Hijras by both ordinary citizens and police officers. The widespread maltreatment of Hijras blatantly violates many of their human rights, apart from having a deep psychological impact on them.

### **B) Social Exclusion and the Right to Work**

A reading of the literature on Hijras (Giddens, A., & Sutton, P.: Poverty, Social Exclusion and Welfare. In Sociology (6th ed.)) immediately reveals that they are subjected to all types of social exclusion. Most Hijras are runaways who left home due to chronic abuse. Despite their high risk for sexually transmitted infections – HIV prevalence of 68% and syphilis prevalence of 57% – Hijras lack access to healthcare services (Chakrapani, 2010). Those who undergo castration usually do so under unsafe, unhygienic conditions. Hijras are seldom able to educate themselves adequately. Some, despite doing so, may never find private or public sector employment. The limitations placed on employment opportunities force Hijras to take up sex work or begging as a means of livelihood (Ministry of Social Justice and Empowerment [MSJE], 2013).

### **C) Beyond Reports and Judgements: (lack of) Ground Action to Address Rights Violations**

The MSJE report (2013) aimed to “suggest appropriate, workable solutions to the...problems being faced by the transgender people.” In the NALSA v. Union of India judgement (2014), Hijras, under the umbrella term of transgender people, were guaranteed their fundamental rights and given the right to their own gender identity. Moreover, the judgement also directed the State to treat transgender people as a socially and economically backward class [SEBC] and take affirmative action for their advancement.

Following the judgement, various reports surfaced in Karnataka about the state government adopting the recommended measures. A pension scheme, ‘Mythri’ for transgender people, was announced (Mitra, 2014), and a subcommittee was set up to frame a policy for transgender welfare (Bageshree, 2014a). The final draft of the policy was ready in September 2014 (Bageshree, 2014b). It was reportedly sent to the Cabinet for approval, following its vetting by the Health and Education departments of the state. The trail of affirmative action goes cold here. The Health Minister, UT Khader, mentioned it a year later in August 2015. Once again, the policy was said to be under legal review, and assurances were made that the Health Department would “ensure gender minorities’ access to social entitlements and will support them to exercise their constitutional rights” (David, 2015). As the community waits with bated breath for the transgender welfare policy to be implemented (Bajoria, 2015), the stark reality is that government delays and inaction are further worsening the problems faced by Hijras and other transgender people. As the NALSA v. Union of India judgement (2014) stated, the right to equal opportunity of employment under Article 14 of the Constitution remains violated for the Hijras.

## **III. METHODOLOGY**

### **A) Objectives**

The objectives of this study were:

1. To analyse the socio-cultural identity of the Hijras and their employment opportunities.
2. To identify factors that violate the right to work for Hijras.

### **B) Research Question**

The research questions that guided this study were:

1. Is the continuance of the traditional occupations of Hijras a neglect of their human rights?
2. If so, what this causes?

### **C) Tools for Data Collection and Analysis**

The researcher conducted semi-structured interviews with members of the Hijra community to collect data. Semi-structured interviews are comparatively more open in nature than structured interviews. This technique was chosen because of the sensitive nature of the information to be collected.

Semi-structured interviews were conducted with three participants with their informed consent. Each interview was treated as a narrative and subjected to narrative analysis. According to Cortazzi (as cited in Marvasti, 2004), narratives can be analysed based on their content. The material gathered on Hijras was subjected to content analysis (“The Ten Steps of Content Analysis”, n.d.). The material was thoroughly read, and the themes within were explained.

### **D) Sampling**

The opportunistic sampling method, along with purposive sampling and snowball technique, was used for this study. The sample size thus generated was 3.

### **E) Discussion**

The major drawback of the methodology employed in this study is the lack of use of quantitative methods of research. The scope of the study is too limited to do a quantitative measurement of the population.

This study can be conducted on a larger scale by employing more researchers. Pending an official survey of the transgender population in India or Karnataka, any research into the Hijras must undertake a quantitative study of their actual number. While it is vital to maintain the qualitative nature of the investigation into rights violations for the Hijras, supporting research with accurate facts and figures would make the study more encompassing.

### **F) Participants**

The sample selected for the interviews consisted of three members of the Hijra community. RP01 is a 23-year-old Hijra who lives with other Hijras. She holds a Bachelor's degree in Economics. RP02 is a 19-year-old Hijra who lives with her parents. She is educated up to the 7th grade. RP03 is a 30-year-old Hijra who lives away from her family. She holds a Master's degree in Commerce. All three participants resort to begging as a means of livelihood.

## **IV. RESULTS AND DISCUSSION**

The themes that emerged from the content and narrative analysis were further interpreted to answer the research question.

### **A) Imposition and Continuance of Heteronormativity**

Two laws enacted during the time of British rule, which remain in force in the present, reflect the heteronormative thinking of the British that Indians adopted: The Criminal Tribes Act [CTA], 1871 and Section 377 of the Indian Penal Code. The CTA deemed Hijras an inherently criminal tribe who were born to commit crimes. Under the CTA, all Hijras had to register themselves and were pre-emptively arrested if they were found in certain areas. Section 36A, a provision introduced by the Karnataka government, reflects the procedure prescribed by the CTA.

Section 377, which outlaws all penile-non-vaginal intercourse, was and still is interpreted to denote the sexual activities of the Hijras. Hijras are presumed to engage in sexual activities that go against the 'natural order' and are arrested without evidence under this provision. Even Hijras who do not engage in sex work can be arrested under suspicion of breaking this law. One may argue that Section 377 is not wielded wantonly and has not led to the prosecution of those arrested. But the very existence of a law, independent of its exercise, which criminalises a natural act between consenting adults reflects the view of society that anything which does not fit the norm is inherently criminal. The arrival of the British and their cultural imperialism pushed the Hijras to the lowest rungs of society, erasing the respect they had before the arrival of colonial rule.

### **B) Social Discrimination and Exclusion**

Hijras face immense discrimination from almost all of society: the family, the education system, employers, the medical establishment, the media and the government.

When the child's gender does not conform to the sex assigned at birth, families either disown the child or seek to 'cure' the child. Countless Hijras narrate tales of running away from home to find/join others like them or being thrown out by family members. Efforts to 'cure' transgender children include physical, emotional and sexual abuse (such as corrective rape). Unawareness of variations in gender leads families to believe that being transgender is an illness to be stamped out.

Schools and colleges are no safe place for Hijras either. They are targeted and bullied for their non-normative, non-gender-conforming behaviour. They are deemed effeminate men and subjected to ridicule and abuse. This maltreatment is meted out to them by peers and teachers alike. For most Hijras, the experience becomes so torturous that they drop out of school. The lack of education schemes for transgender children limits the education and employment opportunities for the Hijras.

Employment of Hijras by the private or public sector is rare. Despite securing employment, many Hijras continue to be subject to harassment and ridicule at their workplace. If their gender identity becomes public, employers become reluctant to continue employing them. For most Hijras, however, employment is a distant dream. They either do not have sufficient formal education to gain employment, or the stigma attached to their identity becomes a hindrance to finding willing employers, or both. Deprived of employment, Hijras are forced to continue their traditional activities to earn a livelihood.

There is no free provision of sex reassignment surgery [SRS] for those who seek to align their sexual identity with their gender identity. Hijras are mostly born biologically male (some are intersexed) and fall into two categories: those who feel that they are women and those who feel that they are neither men nor women. Without access to SRS, most Hijras undergo castration. Medical intervention in case of injury or sexual abuse is also denied to them because of their gender identity and engagement in sex work. With the prevalence of HIV on the rise among Hijras, lack of access to healthcare can turn fatal.

The media, an important tool for imparting awareness, has not played a role in highlighting the plight of the Hijras. As a reflection of societal attitudes, media is essential to understand the perception of Hijras. Cases involving Hijras are usually sensationalised. The Hijra victims are usually blamed for the crime. Film and television portrayals of Hijras as objects of ridicule both reflect and further, the thinking that Hijras are to be shamed for who they are.

The articles of the Constitution that deal with Fundamental Rights and Directive Principles of State Policy do not make gender-specific statements. Existing employment schemes and other welfare schemes also do not limit their provisions to just men and women. However, the legislature has failed to guarantee the rights of and empower the Hijras and other transgender people. For instance, Hijras are denied voter IDs and ration cards, i.e. a civil identity, simply because they do not fall into the categories of Male and Female. The government fails to recognise Hijras as citizens of the country with equal rights while law enforcement agencies freely interpret legal provisions to denote Hijras. This conflicting position has left Hijras at a great disadvantage. They are deprived of their rights and are not even guaranteed their right to redress. Their low socio-economic status, which technically falls under the purview of existing welfare schemes, is ignored, and they are forced to lead lives of poverty.

### **C) Government Inaction, A Cause for Frustration**

#### ***RP02, in her interview, expressed anger at the lack of welfare initiatives from the government.***

RP02: ...within the government – take the police, for instance, they look at us one way, and others in a different way... For us, if the government provides jobs, why would we go for sex work or from shop to shop [asking for money]? If the government takes action and provides us jobs within the area where we live, we will earn a good name ... If we want to take this [up] as a case, they do not register it. Even if we are not at fault, we are blamed. This is why I am annoyed.

#### ***RP03 spoke of waiting for the government to take the initiative.***

RP03: [If they decide] we are also human beings, let us have a life, a chance as well then it would be good. We are waiting, that is all.

#### ***RP01 described the low odds of finding government employment.***

RP01: We all have the desire [to work], but no one supports us. Government has made promises, but one [person] in a hundred gets [work]. We have no opportunity to work.

The narratives collected had similar events: discovery of feelings that they were different, familial objection and disowning, discrimination and mockery in public, harassment in private spaces, lack of opportunities for education and/or employment and lack of redressal from the government. While a lot of the emergent themes are in common with the themes in the literature, one theme that stood out as different is the theme of government inaction.

Despite years of campaigning by activists, not much has changed for the Hijras. The Supreme Court judgement in the case of NALSA v. Union of India is yet to be implemented. Instances of government initiatives to help transgender people and Hijras are limited to some states like Tamil Nadu. In the local context, i.e. the state of Karnataka and the city of Bangalore, Hijras' rights remain violated and neglected. These facts reflect the accuracy of the Hijras' feeling that the government disregards their existence. The Hijras have no formal identity, no civil rights and no measures to address these issues despite promises and court rulings to the government to do so. While the Karnataka government released a welfare policy for transgender people, it remains to be 'approved', let alone implemented. I interpret this as an empty promise. Even if the welfare schemes for transgender people are implemented, questions loom about how accessible the provisions will be in reality and whether other violations of their rights that stem from legal provisions will be addressed. The Hijras' dissatisfaction (to say the least) seems to echo my own doubts about affirmative action from the government.

## **V. CONCLUSION**

The researcher undertook this study to find out if the reason behind Hijras not finding employment outside their traditional occupations is a violation of the right to work. I was able to establish a causal link between social exclusion, government delays and inaction and the right to work remaining unfulfilled for the Hijras.

The objectives of the study, which were to analyse the socio-cultural identity of and employment opportunities for the Hijras and to identify, if any, factors that violate the right to work for Hijras, were achieved. The obtained results and discussion show that, while prejudice against the Hijras is deeply rooted in society and even impedes effective governance, it is a social phenomenon vulnerable to change. This knowledge can be used to increase awareness about the plight of the Hijras and give them an equal opportunity to participate in society and seek gainful employment freely.

More research needs to be undertaken to work on the mitigation of these factors and the inclusion of Hijras in mainstream society. The nature of this study was subjective and interpretative. There needs to be a quantitative study of actual

education levels and employment rates among Hijras. Such enumeration will show that the Hijras, while a minority, are nevertheless a marginalised group. Supporting qualitative findings with numerical data strengthens the case for their empowerment.

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## Appendix

### List of organisations working for securing the rights of the hijras

#### 1. Swabhava

Swabhava is a charitable trust that provides support services for lesbian, gay, bisexual, transgender (LGBT), intersex and other queer people in Bangalore. Website: <http://swabhava.org/>

#### 2. Sangama

Sangama is a human rights organisation that, among other activities for sexual minorities (including Hijras), campaigns for changes in existing laws which discriminate against sexual minorities. Website: <http://sangama.org/>

#### 3. Alternative Law Forum

ALF is a lawyers' collective that provides legal services to marginalised groups, including but not limited to sexual minorities. Website: <http://altlawforum.org/about/>

#### **4. Ondede**

Ondede is an NGO that partners with other community-based organisations and social movements to interact with state actors in order to promote the rights of children, women and sexual minorities. Website: <https://www.facebook.com/Ondede-Dignity-Voice-Sexuality-1421467274812188/timeline/>