

## **Perception of Eunuchs Towards the Entitlement of Their Legal Protection by Supreme Court of Pakistan.**

### ***Abstract***

*The main objective of the research was to explore the perception of Eunuchs regarding the legal protection of their rights that Supreme Court has given to them. Research technique used was qualitative in nature. By using convenient sampling technique 12 eunuchs and 3 gurus from Dhok Khaba and Murree road Rawalpindi were included in the study in order to get their perspective regarding the decision. The tool used for the study was semi-structured interviews guideline and interviews were conducted. The Supreme Court of Pakistan in its landmark decision has given Eunuchs the basic human rights, like health, education; identification and security, to name a few. The Action of the Supreme Court of Pakistan has resulted in a verdict that make it obligatory for the Government to entrust the basic human rights to this marginalized section of the society. Result of the study was based on thematic analyses of the interviews conducted. The study has revealed that the eunuchs have very low social status in the society. Their deprivation is grounded in their non-recognition as a separate gendered human being beyond the male-female dichotomy. Majority of them have to face rejection from their families and are discriminated right from the beginning. The research has indicated that in fact, after Supreme Court Action there has been some change in the society's attitude towards them, yet they still face difficulties in getting access to these facilities. Eunuchs as citizens, and a part of society's diversity, have citizenship rights that need to be protected.*

***Key words:*** Eunuchs, Gurus, Supreme Court Decision, Basic human rights, Pakistan

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#### **Dr. Rukhsana Hassan**

Assistant Professor,

Head Department of Gender Studies, Fatima Jinnah Women University, The Mall,  
Rawalpindi, Pakistan.

Email: [drukhsanahassan@gmail.com](mailto:drukhsanahassan@gmail.com)

#### **Ms. Maryam Ijaz**

Lecturer, Department of Gender Studies Fatima Jinnah Women University, The Mall,  
Rawalpindi, Pakistan.

## INTRODUCTION

Sex is biologically determined, whereas gender refers to the socio-cultural construction of man and woman based on roles and characteristics assigned to them. The Eunuchs, or the *third gender* refers to individuals who do not fall in the category of males or females, and whose gender roles are not defined yet (Schultz & Robart, 2001). As they do not conform to conventional notions of male or female gender but combine or move between the two, and are usually understood as others therefore their vulnerabilities, frustrations, and insecurities have been historically overlooked by mainstream societies, similarly the social deprivation and harassments they face have never received attention in development sectors. It is estimated that there are around 80,000 eunuchs in Pakistan but the official documents card denotes their identity as men. According to the census carried out by Social Welfare Department about transvestites in Pakistan, 1500 registrations in Punjab and about 800 in Sindh. Bindiya Rana utilized eight volunteers, managed to get 900 *Khawaja Sirahs* in their district to fill out the government registration forms. According to Bindiya Rana, there are over 16,000 transvestites in Karachi and over 0.4 million throughout Pakistan (Ashraf, 2010). Talbott (2006) research has examined that Eunuchs have recorded history of more than 4,000 years and the ratio of eunuchs is increasing all over the world. Eunuchs are those people who have ambiguous genital organs, or infertile men. According to Talbott (2006) there are two types of eunuchs, i.e., those who are born with ambiguous genitalia and second are the castrated young men.

The term third gender or sex refers to individuals who are categorized by their will or social consensus as neither men nor women. There are different names used to acknowledge third gender. The third gender is known as "*hijra*", "*khusra*" and "*Khawajasirah*" in Pakistan, India and Bangladesh. *Hijra* is a Hindi /Urdu term translated in English as "Eunuch". There are also known as "*Kinner*" in India (Nanda, 1999). Eunuchs are neither complete men nor complete women, therefore they are also not considered as complete human being. It's hard to attribute any gender identity and to assign them gender role accordingly. As describe by Nanda (1999) they are "*man minus maleness*" and "*man plus woman*" means that they are men but lack masculinity and they are men with feminine behavior. And because of inability to reproduce, they have separate identity that doesn't fit into either category as a result they are being categorized differently. According to Chang (1965) the word 'eunuchs' has been derived from Greek "*keeper of the bed*" because castrated men were appointed to guard palaces. They were considered non-threatening enough to hold sensitive positions in the palaces of sultans and Mughal emperors as courtiers and guardians of the palaces. Third genders, (eunuchs) have an ancient community in the Indian subcontinent with members scattered all over the region. The history of

*Hijras* in the sub-continent dated back to Mughal era where they were referred to as *Khawajasarah*. *Khawajasarah* were eunuchs or hermaphrodites who were employed by Mughal rulers as care takers of the women quarters. They were powerful in courts, state affairs and as confidantes of rulers. They were highly valued for their strength, for protection of female loyalty and trust worthiness. They used to serve as messenger, watchmen, attendants and guards. Due to availability of high status jobs for eunuchs, it became a norm for the poor families to convert one of their sons into a eunuch so that he can work in Imperial palaces and have chance to earn a better income for the family. This practice of castration was banned throughout the Empire in 1668 by Aurangzeb. They lost their status with the desolation of Mughal era. Gradually, with no other job opportunities, they end up begging and as a result they were considered as social outcastes (Tufail, 2006).

Third gender refers to different sexual minorities which all comes under this term. It include intersex (hermaphrodite), transvestite (Cross dresser), and transgender (transsexual). In Islam also, the division of gender is in four groups: man, woman, *Khunsa* (hermaphrodite), *Mukhannas* (Transvestite or cross dresser), and *Mukhannis* (transgender or transsexual). Intersex includes those individuals who have genetic, hormonal, and physical features of both male and female. They could be male with female features, females with male features or no clearly defined sexual features at all (Organization Intersex International [OII], 2003). Nanda (1999) has stated that their acceptance in Hindu society is more due to their religion Hinduism particularly because many Hindu deities are linked to the *hijras* such as *Arjun*, *Vishnu*, and *Shiva*. According to Jaffrey (1996), the Ancient Indian religious text (*Kama Sutra*) also informs the reader about the prevalence of third sex (*tritiyapraktiri*).

According to article “Intersexuality and Muslims” (2010), males hermaphrodite are those individuals who have male sex organ but at certain stage of development they started to physically appear as female like growth of breast and having female characteristics. Similarly, female hermaphrodite who have female sex organ but at certain age or during development, her behavior and appearance eventually started to look like a man like growing of mustache and beard on her face and thickness of vocal cord. In Islam those hermaphrodites who have both male and female genital organs are referred to as *Khansa Mushkil*, (Muheet Burhani Book 32 Hadees 454). In case the child (*khunsamushkil*) at the age of puberty shows the signs of man, like growth of beard then according to *Shari'a* that person will be considered as man. And if the child at puberty shows the signs of woman like growth of breast than she will be considered as woman (*Mukhallis Az Badaye us Sanaye Book 6 Hadees 418*). If the child at age puberty shows signs of both woman and man e.g. growth of breast and

beard than at this condition s/he'll also be taken under *Khunsa Mushkil* category. According to Zafar (2004) in Pakistan there is only 1% hermaphrodite (real hijras), whereas around 99% of Hermaphrodites are genetically male. These males consider themselves as females and are attracted toward masculine men. They usually have the relationship with males and play feminine role in this relationship (Tufail, 2006).

Marginalization is a multi-layered and complex concept. Leonard (1984) defined the social marginality as “being outside the productive activity or social reproductive activity”. By marginalizing means, there is the loss of a person's potential for social and economic contribution. It is a social process by which larger part of the people exclude the individual or smaller number of people from the normal function of the society and the medium of natural selection where only fittest or apparent completion matters (Marshall, 1998). Generally, conformity is defined as an effort to uphold a standard set by a social group. Simply means that the smaller group must have to try hard, to achieve a certain level of acceptance or conformity by the society. It is a direct outcome of our social values and prejudice. These values express themselves in many subtle but all-pervading ways through the legislative framework that governs our society.

Marginalization is often the unintended outcome of policies formulated to achieve stated objectives and few official policies are formulated with the intention to "marginalize" specific sections of society. It creates the imbalance between the mainstream and marginal groups (Friedman, 2006). Mullaly (2007) is of the opinion that because of the non-conformity to values of larger group various ethnic groups, religious minorities, homosexuals, transgender and aboriginal communities have to face issues like, fewer opportunities for survival, i.e., right to education, employment, and freedom of expression. The situation becomes sever when the prevailing structural inequalities and unjust policies directly linked to those marginalized groups are not into consideration. It is a well-known fact that the marginalization of individuals with different attachments of disabilities is prevalent today (Leslie, 2003) despite the presence of number of human rights treaties. Marginalization is a conduit that lead individuals and groups to social exclusion.

Beall and Piron (2005) define ‘social exclusion’ as “a process and a state that prevents individuals or groups from full participation in social, economic and political life and from asserting their rights. It derives from exclusionary relationships based on power.” Thus, the excluder rejects social relations denying access to resources and services, violating citizenship rights to particular individual and groups. Social aspects of exclusion refer to limited or no access to social, educational, legal and health services, resulting from ruptured social protection and social cohesion, such as kinship, family, neighborhood, and the community. Cultural aspects of social

exclusion refer to subordination of certain norms, behaviors, cultural practices, and lifestyles. Political aspects of exclusion include deprivation of citizens' rights, restricted access to organizations, voter rights, legislations, constitutions, and decision-making in policy. Economic aspects of social exclusion include barriers to employment opportunities, constraints access to commodities and livelihood opportunities such income, housing, land and working conditions. Social exclusion approach leads to understand various aspects of the life of third gender and mechanism of being excluded from the normal social life

Human rights are the fundamental rights of every human being, regardless of culture and societal norms. Articles 1,2,3,5,6,7 and 16 of the Universal Declaration of the Human Rights (UDHR) address, respectively, the rights to equality; freedom from discrimination; life, liberty and personal security; freedom from torture and degrading treatment; recognition as the person before the law; equality before the law; and the rights to marry and have a family. Some groups, specifically, some minority communities like transgender, as well as people with sexual deformity are in many places and circumstances denied their claim to the full set of human rights (Marks, 2006). Pakistan is one of those societies in which they are facing multiple forms of oppression including sexual, social, cultural and political issues.

*Hijras* are one of the most neglected groups in our society. On April 25, 2011 the Chief Justice directed NADRA to issue National Identity Card to third gender as a specific category of *Khawaja Siras*. This is first step towards providing them individual identity and dignity and also recognizing them as human and citizen of Pakistan. They can enjoy full citizen rights and can take part in the normal social life. In order to achieve the full realization of the rights as a fundamental component of the human rights, a broader understanding of the rights based approach must be adopted. A right based approach to third gender community is critical to the improvement of their life. This approach requires state to directly intervene in order to fulfill the right to manage and utilize their potential for the betterment of the society also.

## **Objectives**

- To find out the legal protection Supreme Court has given to eunuchs.
- To explore the perception of eunuchs about their Supreme Court Action

## METHODOLOGY

The research design was qualitative, and the instrument used to get information was in-depth interviews from eunuchs and their *gurus*. Sample size for semi-structured interviews was fifteen. Twelve interviews were conducted from eunuchs and three from *gurus*. Convenient sampling technique was used for data collection. The criterion for the selection of sample was based on the awareness of eunuchs about their legal protection and rights. Primary data was collected from two different areas of Rawalpindi city. Semi-structured interviews and content analysis of Supreme Court document of eunuchs' rights were used as the research instruments. After pretesting of the tool some of the questions were rephrased and modified. The interview guideline contained 32 questions. Twenty four questions were asked from eunuchs and 8 from their *gurus*.

Thematic analysis was used to analyze the data collected through interviews. Emerging themes and subthemes were identified as they appeared in textual data transcribed from the interviews. The categorization process included identification of salient themes, recurring ideas, meanings and language, and logical relationships. The research design, research process, and concepts used in this study can be used for comparative studies in other settings. Methods and theoretical propositions used in the research process can also guide similar studies. The focus of the study was to explore the perception of Eunuchs towards Supreme Court Action, i.e., what they perceive and what changes are expected from this decision in their lives. Therefore, in order to find out about Eunuchs' perception interviews were conducted from the both eunuchs/*Gurus*.

Supreme Court of Pakistan took a Suo-Motto action in Jan. 2009, on the report of Police abuse and manhandling of Eunuchs in Taxila city, while they were performing at the wedding party. The Action of the Supreme Court of Pakistan resulted in a verdict that has specified the legal rights of this marginalized section of the society. As per the decision of the Supreme Court of Pakistan, following basic human rights should be entrusted upon eunuchs.

### **Registration and identity cards of Eunuchs**

*The Supreme Court has ordered its advocate Generals to arrange a survey of all provinces through Secretaries Social Welfare Department and put up facts and figures of eunuchs, register their names and from where they are. The court also ordered provincial government that in future no deformed child be handed over to the *gurus**

**Financial support**

*The court ordered to the federal and provincial governments to support them financially through Benazir income support program and Bait-ul-Mal. Supreme Court also ordered that the government should use the services of eunuchs to recover the money from bank loan debtor as practiced in India for recovery of loans.*

**Education and jobs**

*The court has also ordered to that eunuchs should be facilitated to get education (primary, middle, matriculation or higher level) and respectable jobs. They are also denied the right to employment, as they have no quota in employment opportunities.*

**Provide sexual security**

*The court has ordered to direct the In-charge Officers in each Tehsil and District headquarters to provide security to eunuchs from those people who misuse them and take advantage of their sexual weakness. Supreme Court Order to protect eunuchs from the police violence and harassment*

**Health facility**

*The court has ordered to provide them free of cost health facilities, particularly to the persons who are suffering from serious diseases which are not curable and can cause epidemics in the society like hepatitis, HIV etc.*

**Inheritance right**

*The court has recognized the status of the eunuchs as a respectable citizen and gives them right of moveable and immovable property left by their parents/elders. Their legal and Islamic right to property and inheritance is negated as they are not given such inheritance from their parents.*

**Vocational training**

The court also ordered to address the vocational training for eunuchs.

## Forced castration

*The court has also ordered to take serious action against castration.*

The interviews were conducted to find out the perception of eunuchs and their gurus towards their legal protection that Supreme Court of Pakistan had given them. The thematic analysis of the interviews has revealed that all the respondents, including the *Gurus*, introduced themselves by female names, which were pseudonyms, indicating that they are not willing to disclose their identity as Eunuchs. This signifies the biased and discriminatory attitude which they have to face from the society. The women names are used to hide their identity. According to the respondents majority of the eunuchs are illiterate but those belonging to middle and upper income group have the opportunity to get education. While lower socio economic families do not support their third gender financially that is why illiteracy ratio among them is high. Apart from it the parents are not willing to send them to schools because of fear of they been ridiculed. Regarding professional association all respondent answered that they earned their living through dancing, singing, begging and prostitution because they do not have an alternate source of employment.

Eunuchs usually refer to themselves as female and dress as women. *"We embody a woman's soul caught in a man's body."* This shows that they believe that their physical appearances are like men but their actions are like women. Transgender people view themselves as women born in a man's body. But in reality *"Hamara dono me shumar nahi hota"* (we are not counted as men or women). Their upbringing and socialization emphasize or lead them to adopt feminine ways of life. They want to look like women and are attracted towards males for their sexual satisfaction. Most of the respondents were in the *hijras* community from 5-10 years. This negates the general perception that they are given to *hijra* community at birth. All of them were aware about their parents. They said that every individual knows about his/her parent but not living with them is a separate issue. As one of the respondent said *"Our parents feel embarrassed for us to be called khusra,"* This indicate the general attitude of the society towards them. According to all of them, they are deprived of their rights as human beings and their basic human rights are violated in almost all aspects of their lives. For example they are put in male wards in hospitals and jails, their wards are not separate. In the public transport system, they are denied a place in the female section. Similarly, they do not have the right to vote, national cards, driving license, employment, education and health benefits.

All of the respondents were grateful to the Chief Justice of Pakistan and appreciated his commitment to improve the status of eunuchs as a community. They were of the

opinion that before the action of Chief Justice, no one else has given any consideration to their rights. In Pakistan history 2009 was the best year for them that somebody has thought about eunuchs. But they are disappointed that Supreme Court Action is not implemented in the society properly. Some respondent said that they had made their national identity cards that show them as a third gender and have registered themselves. They all believe that although Constitution of Pakistan talks about equality irrespective of gender but at the same time Constitution does not treat them equally. They are considered and perceived as sub human in society. Basically because of the low literacy level amongst eunuchs is high that is why Supreme Court has ordered for them free education. But according to respondents this free education for them has not yet started in any area. With respect to right to inherit property majority of the respondents were from low socio-economic group and their family had no substantial property to inherit. A few respondents who had property they did access court for asking their inheritance right. According to them law is not always biased towards them as in law word “person” is used and they are the people that is why law is obliged to help them, so they were satisfied with law. According to them law is always helpful for them and are highly satisfied with laws but police treats them in a humiliating way. They are hopeful that Chief Justice Action will be implemented in the society. They believe that although the first step has been taken but it will take years for the change of the attitude in general. They believe that after getting job their situation will automatically get improved, society attitudes will change.

After the decision of the Supreme Court of Pakistan, although they got the entitlement to health facilities, in fact they were able to avail this facility in very few hospitals. Still, all of the respondents expressed their gratification that the implementation of the decision of the Supreme Court of Pakistan has been started. According to respondent guru “*people are recognizing that we are also human beings.*” But at the same time they do not get separate beds in the hospitals and wards in the jail till yet. There is a need of separate wards for them only then their gender will be recognized in a real manner. Many cases came in front that eunuchs do not get wards in hospitals because medical staff was not certain regarding their placement in either male / female ward. This shows the attitude of state and society towards them.

## **DISCUSSION**

The socially-deprived lives of Eunuchs demonstrate that gender has been inadequately taken into consideration in the broader framework of social exclusion. Gender is included in the social and cultural dimensions of social exclusion. Available literature on social exclusion has analyzed gender inequality as the basis of

exclusion and has primarily focused on women. Many government and non-government sectors have taken a gender-sensitive approach in their organizational culture to reduce physical, sexual, organizational and gender-based harassments. Nevertheless, gender is considered from a deficit perspective of male and female. In most cases, gender is meant as a woman's issue, and gender-based harassment means abuses committed by men against women. Gender-equality policies of most organizations primarily focus on interest of female staff and do not recognize the transgender people. The study has indicated that Eunuchs are treated as sub human in society as they do not fit in societal division of genders. It has revealed that most deprivations in the lives of Eunuchs are grounded in non-recognition of a Eunuchs as a separate gendered human being beyond the male-female dichotomy. This has prevented them from positioning themselves in the greater society with human potential and dignity. Eunuchs have to face extreme discrimination in health, housing, education, employment and law. Eunuchs families have discriminatory attitude as compare to other children. They started to live with people of their own gender because of family's indifferent attitude. Their literacy level among eunuchs is low because there is no separate education system for them. According to one of the respondent *"Our people don't like to go to male colleges because they get teased, so we need separate schools, too."* The research has indicated that people belonging to upper socio economic class are more concerned about raising their sexually deformed children in a normal way as a result they make efforts to educate them.

The findings of the study also indicated that mostly eunuchs are not only denied entry to schools and in the hospitals, but also refused to rent or purchased properties. According to respondent *"We want separate residential colonies because, generally, people don't want us in their neighborhoods,"* because most of the respondents think that all society members have derogatory attitude towards them. Eunuchs face discrimination in health. As one of the respondent said *"We cannot visit good doctors or private hospitals, but when we go to government hospitals they mock and shout at us.* Pakistan's transgender community is one of the most marginalized communities of the country as harassed by police, ridiculed, pitied as out casted people of Allah and often rejected by their own families. Supreme Court has given them hope for their rights to be respected. According to respondent guru *"we are just fighting for our rights; this Pakistan belongs to us also."* They all appreciated Chief Justice Action *"It's good for eunuchs because no one respects them."* They believed that because of Supreme Court's action they may be able to get jobs, which will provide them the opportunity to leave their disrespectful profession. They believed that the Chief justice's decision will give them a whole new identity, as a recognized minority. At the same time they were not very hopeful about the implementation of Supreme Court decision.

## **CONCLUSION**

Although the scope of the research is quite broad however some conclusions have been drawn based on the research and knowledge gained as a result of it. The main objective of the research was to find out perception of eunuchs towards their legal protection that Supreme Court has given to them. The findings have indicated that eunuchs are not considered sexually normal in societal division that is why they are discriminated and marginalized. Eunuchs usually are not accepted by their parents and society. Males and females are considered members of the society but eunuchs are completely ignored. Respondents believed that they do not think that Supreme Court Action will be fully implemented in the society and can change the existing inequalities especially the society's attitude that is really disheartening towards them. According to eunuchs they did not try to claim the community and society about their rights after Supreme Court's decision because this seems useless to them. Supreme Court of Pakistan has taken a major decision in order to bring this marginalized section of the society in the mainstream so that they may be able to consider themselves as productive and equal member of the society.

The decision has given them the identity of their own without being categorized as men or women. In fact, eunuch community praised the decision and believed that the decision will eventually enabled to gain all the basic rights of citizenship, like registration, national identity cards, free health, castration and education etc. Although, they were apprehensive about the full implementation of the decision, still they were hopeful that the decision is an encouraging developments and hoped that will lead to an improvement in the societal status of eunuchs. The respondents also specifically mentioned the change in the attitude of the police and society in general, towards them. This research was able to disseminate & increased the knowledge about the topic but also has cleared certain concepts that contribute to the reasons of biased attitudes towards eunuchs by various sections of the society

## **RECOMMENDATIONS**

Government is taking various steps to upgrade the status of the eunuchs. Now that the Supreme Court has tried to raise the status of that community, the government has the responsibility to protect their rights. But there is need of more their rights.

1. The media should educate the society about eunuchs' rights. As it is needed to change the mind sets of the people and the civil society regarding eunuchs.

2. Public awareness regarding treating Eunuchs as individuals having rights, through media and educational institutions, so that they may become productive members of the society.
3. There is need of researches that question about eunuchs names. As their existing names show their identity as female having male physical structure.
4. Civil society and NGOs should formulate ways to cater to the psychological issues related affecting eunuchs.
5. Civil society and NGOs should collaborate to develop programs to create awareness about AIDS to the hijras.
6. Academics can also play a part in changing society's mindset regarding eunuchs.

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