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## A Critical Analysis of the Right to Equality of the Hermaphrodites in Bangladesh: Rights Based Approach

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### ABSTRACT

‘Right to equality’ is the crucial right of every human being, well-recognized in the international instruments and in the national constitutions of a plethora of countries including Bangladesh. Against that backdrop, Hermaphrodites, popularly known as ‘Hijras’, being born as human as well as being citizens of this country are franchised to the ‘right to equality, as they got sanctioned by the Government of Bangladesh in 2013. Notwithstanding that, it is regrettably perceived that the current status of the right to equality of the Hijra populace is not even close to a decent scenario, especially with regard to education, employment and inheritance; rather they are living a horrendous life in Bangladesh. The policy-makers do not seem to be concerned about their plight. Hence, the purpose of this paper is to traverse into the extent of actualization of the right to equality of this group with regard to education, employment, and inheritance, to discern the impediments in the way of materializing these rights, and to put forward a number of recommendations to ameliorate the scenario in order to place them with the common mass on the basis of proportionate equality regarding these rights. For this research, several research questions have been investigated. With a view to exploring the answers, qualitative approach has been adopted and secondary data have been accumulated from diverse sources including books, research articles, newspaper articles, published interviews, focused group discussions, questionnaires, internet sources etc.

**Keywords:** Equality, Proportionate equality, Hijra, Analysis, Human rights, and Mainstreaming.

### INTRODUCTION:

Throughout the ages, through a number of movements, various human rights transformed from mere natural rights to legal rights. Amid a plethora of human rights instruments which moulded the modern colloquy of human rights in the world, Universal Declaration of Human Rights (UDHR) is perceived as the ‘First global document of human rights’, adopted by United Nations in 1948 binding all member States of the United Nations (Wikipedia, 2022). Art.1 of this UDHR

states that ‘All human beings are born free and equal in dignity and rights’. Being a Member State of the United Nations, Bangladesh is also under the liability of UDHR (Rubel, n.d.) to equally safeguard the entitlements to all individuals devoid of any sort of discrimination. Though Bangladesh is a multi-ethnic, multi-religious, multi-lingual, multi-cultural as well as diverse state, it is evident that a man-made social system determining the gender of a human being based on gender behavior, characteristics, & sexuality prevails in Bang-

ladesh. Owing to this system, several groups fall short of the idealized notion of behavior, characteristics and sexuality, who often suffer from non-acceptance and other horrendous outcomes. The 'Hermaphrodites' (Hijra) is one of those groups; who statistically is only a meagre part of the sheer populace of Bangladesh. By various researches and newspaper reports, it is prominently evident that Hijras are despised, defamed, censured and underprivileged as well as exist as one of the most marginalized communities in Bangladesh who often do not get equal access in education and employment and often get deprived of the inheritance. 'Right to Education' is the integral part of human development, which creates employability, while 'Right to Employment' is crucial for survival in society whereas 'Right to Inheritance' is the religious right to family property by every individual. Not giving equal access to these rights or depriving hermaphrodites from these rights merely due to their identity is purely inhuman and need to be rectified (Khan and Habiba, 2021).

Though in 2013, the government of Bangladesh has adopted a landmark decision to cater national identity card to Hijras to recognize their right to self-identification as either male or female, yet Government did not specifically formulate any law or policy or practice rectifying the inhuman practices towards hermaphrodites. Apart of governmental endeavor, multiple NGOs and other organizations took a number of courses of actions for the elevation of the Hijra community in Bangladesh (Islam, 2019; Sema, 2019), they also lack specificity in their actions in respect of ensuring right to education, employment and inheritance of the hermaphrodites.

Hence, this research is intended to cover the 'Right to Equality' of the hermaphrodites/hijras only with regard to education, employment and inheritance because of their profound significance in their existence.

### **Objectives of the Study**

The objectives of the research are outlined as follows:

- 1) To bring clarity around the concept of 'Hermaphrodites/Hijra'
- 2) To explore the gap and challenges in the availability of the entitlements of the Hijras in respect of education, employment and inheritance

- 3) To suggest recommendations for better ensuring equal entitlement of the hermaphrodites to education, employment and inheritance.

### **Research Questions**

The research principally inquires the following questions:

- 1) What is the legal position of the 'Hermaphrodites/Hijra' and what are the grey areas regarding their State recognition?
- 2) Do they relish the entitlements equally with other binary genders in respect of education, employment and inheritance?
- 3) What are the impediments in the way of availing equal entitlements by the hermaphrodites with regard to education, employment and inheritance?
- 4) What are the ways by which their entitlements with regard to education, employment and inheritance can be better ensured?

### **METHODOLOGY:**

This research follows the content analysis method. It interprets as well as critically analyzes the key concepts and present status regarding entitlements of the 'Hermaphrodites/Hijra' in respect of education, employment, and inheritance. Necessary data have been collected from secondary sources like newspaper reports, journal articles and reference books, etc.

### **Conceptual Background**

#### **Historical Context of the Hermaphrodite/Hijra Community**

The 'Hermaphrodite' (Hijra) community has a long historical background. Historically and culturally, they are based in Hinduism (Harvard Divinity School, 2018) and they perform solely for Hindus. However, the hermaphrodites are not all Hindu themselves, many of them are Muslims and a few are Christians too (Ibid). It is a historical fact that some Hijras act in accordance with the faith and praxis of both Hinduism and Islam. For instance, some Hijras base on the Hindu goddess Bahuchara Mata while also adopt a Muslim name and observe Islamic traditions such as Ramadan (Ibid). Thus, some of them embraces multi-religiosity and do not limit themselves within one religion. It is discovered that for over 2000 years, people of non-binary gender expression have cast a significant footprint in Hindu society (Ibid). Their entity is clearly

evident in Hindu holy texts like the Ramayana and the Mahabharata, as it is seen that Hindu hero Arjuna transforms into the third gender (Ibid). Further, throughout South Asian History, Hijra populace have been found as quite appreciated, as in the 15<sup>th</sup> to 19<sup>th</sup> centuries, Muslim rulers of the Mughal Empire were used to generously patronize the third gender community (Ibid) and under both Hindu as well as Muslim rulers, many of them were in empowered position (Ibid). It is claimed that Hijras are physically male with feminine expressions (Ibid). Many of them, who follow Hindu Goddess Bahuchara Mata, undergo a castration ceremony to remove their male organ with a view to express their respect through offering it to Goddess (Ibid). Thus, Hijras are perceived by many Hindus as having incredulous religious power including power to bless and curse due to their third gender nature as well as relinquishing their reproductive ability as an offering to the goddess. They assume participation in the births and marriages as their revered religious obligation, whether being invited or not and for such ritual, they receive payment by families voluntarily out of fear or by force. It is regretfully discovered that with regard to extorting respect and creating fear, Hijras are robust and even the police take an inactive role despite being informed by the people (Ibid). But this cultural authority did not sustain much after encountering with colonialism, as the British authority, grounded on Christian beliefs were disgusted by third gender people and declared all Hijras as criminals in 1871 (Ibid), and hence, instructed concerned authorities to arrest them wherever they are seen. Hijras, owing to their cardinal reverent functions for Hindus, carried over without much intervention. Despite that, a huge detriment was caused to the Hijra community due to 200 years (approx.) of stigmatization by the British hegemony. Notwithstanding the fact that shortly after independence from British reigns, the 1871 law has been repealed; Hijras are still often looked down upon almost everywhere. After independence, they spread into India and Pakistan and eventually in Bangladesh after 1971 as per the situational crisis of the time. Even in a democratic republic country like Bangladesh, they are not availing their equal entitlement to employment and education like other binary genders and they are often confined to their customary characters. Consequently, they cannot

get out of the vicious cycle of poverty which compels them to be involved in begging and prostitution with a view to survive.

### **Defining ‘Hermaphrodite/Hijra’**

Generally, the binary gendered identity-male and female- exist in Bangladesh. Hijras claim their identity as ‘Third gender’ as they perceive themselves outside of this binary system. The term ‘Third Gender’ has a broad meaning which includes transsexual, transvestite, intersex and eunuch, implies those whose gender identity or gender expression after reaching puberty is something different from their born gender-hood. In Bangladesh, it is found that only ‘Hijras’ who were born as male, but subsequently developed feminine gender identity (Eunuch) were only recognized (Dhaka Tribune, 2015). Several scholars attempted to define the term ‘Hijra’. One scholar mentioned that the term ‘Hijra’ has a Samitic Arabic root through Urdu-Hindustani word which means ‘Leaving one’s tribe’ and it has been carried off into Hindi (Sarker & Pervin, 2020). Further, Sinha defined Hijras mainly as homosexuals who join the society specifically to satisfy their sexual desires (Sinha, 1967) while Freeman in 1979 translated them as transvestite type prostitutes (Nanda, 1999). However, Nanda rightly points out the term Hijra as “eunuch” and never as homosexual (Ibid). Again, Safa pointed out that in respect of social exclusion, a Hijra is traditionally described as neither men nor women, senses such mainstream pressure to an extreme level (Safa, 2016). Hence, it is comprehensible that to define the ‘Hijra phenomenon’ is quite perplexing due to the varied construction of the idea and lack of a singular accepted definition.

### **Constitutional Position of the Hermaphrodite/Hijra Community in Bangladesh**

The ‘Right to Equality’, the basic feature of the Constitution of Bangladesh, implies that all citizens will be catered rights to an equal extent irrespective of any ground of caste, race, religion, sex, and place of birth (Goel, 2019). As per the preamble of the Constitution of Bangladesh, it shall be a rudimentary object of the State to actualize a socialist society in which ‘equality and justice’ will be secured for all citizens through egalitarian undertakings (Islam, 2014). Article 27 of the Bangladesh Constitution propagates equality before law and equal protection of the law (Bangladesh,

n.d.). The term 'Equality before law' is one of the three foundations of the concept of 'Rule of law' by Sir A. V. Dicey, which calls to ensure that law must be governed in a justified and transparent manner to cater twin justice to all and prohibits the existence of any special prerogatives or discriminations in favor of any person. Further, 'Equal protection of law' is a culmination of the equality before law, directing that protection should be equally guaranteed to all within the same territorial hegemony by way of alike treatment in alike situations, both in the entitlements and duties conferred by the law. Whereas, article 28 forbids discrimination by the State on grounds of religion, race, caste, sex or place of birth (Ibid, article 28), clause 3 of this article clearly states that no citizen shall be subjected to any disability, liability, restriction or condition in accessing any place of public entertainment; or resort, or admission to any educational institution on grounds only of religion, race, caste, sex, or place of birth (Ibid)). To the contrast, article 28(4) contains 'Positive discriminations' by way of entangling distinctive measures for the betterment of any lagged-behind section of citizens to ensure 'de facto equality' in the society (Ibid). Furthermore, article 29 (2) states that there should not be any ineligibility or discrimination against citizens in respect of any employment or office in the service of the republic based on religion, race, caste, sex, or place of birth (Ibid, article 29). Additionally, article 29(3) made room for subsequent making of distinctive provisions for lagged-behind section of citizens with a view to ensuring their sufficient representation in the service of the republic (Ibid).

Therefore, it is evident from the above articles that the 'Hijra' community of Bangladesh is equally entitled to the 'Equality before Law' and 'Equal Protection of Law' and they must be free from any sort of discrimination in anywhere according to the constitutional context of Bangladesh.

### **Legal Status of the 'Hermaphrodite/Hijra Community' in Bangladesh**

On 13 November 2013, Government of Bangladesh has catered 'State Recognition' to hijras, Consequently, Election Commission of Bangladesh amended the Voter List Act, 2009 as well as the Voter List

Rules, 2012 and included the third option 'Hijra' in 2019 (Dhaka Tribune, 2019).

### **The Position of Hermaphrodites in respect of Education, Employment and Inheritance**

The socio-cultural context of the 'Hijra Community' in Bangladesh is not satisfactory, rather it shows the inhuman life-time struggles and deprivation of the citizen rights due to their tag as 'Hijra'. According to the Department of Social Services, the population of the Hijra community in Bangladesh is about 10 thousand (Ibid), despite that the number is assumed as more than that. The existing literature reviews bring out a plethora of life stories of the 'Third Gender' populace. Among them, one remarkable project is 'Simulation Project for Integrating Youth through Community Engagement' (SPIYCE), an initiative of the 'Empowerment through Law of the Common People' (ELCOP) under Edward M. Kennedy Center for Public Service and the Arts (EMK) Small Grant 2019 where eight transgender people have been interviewed by some trained students (ELCOP, 2019). The focused thematic areas under the SPIYCE were disintegration from mainstream society, identity crisis, economic rights and livelihood and religious liberty (Ibid). The findings of the field visit conducted under this project demonstrate that the exclusion and discrimination get initiated when they commence to display the characteristics of so-called opposite gender. The transgendered people do not get recognition by the school, religious institutions, hospitals, friends, neighbor, and even family. The societies compel them to leave the mainstream society and to reside in a separate and marginalized community. From the words of Nilasha, Konok, Latifa, Tithi, Tisha, Meghna, Shammii, Mahi, it is apparent that they are being deprived of their entitlements, especially with regard to identity, economic rights (right to work, inheritance rights), freedom of profession, family life, freedom from torture, cruel, inhuman or degrading treatment (jus cogens), equal legal safety, education, opportunity and so on. They get deprived of their right to inheritance as well as any decent employment. This vulnerable situation exposes them to extreme economic hardship and forces them to be involved with indecent means of livelihood such as begging, extortion and so forth. Further, it is reported that most hijras come from lower



or lower-middle class families (Human Rights Watch, 2020). The reason behind may be that the economic strength and the sensitized familial feelings save the Hijra children and family members from the societal pressures. In another write-up, it is reported that the Hijra society is a great length away from enjoying civil rights either as a human or as a resident of Bangladesh. They face lack of opportunities and lots of embarrassment and unbearable harassment to access formal education, medical treatment, and employment (Safa, 2016). Further, a research in different areas of Dhaka city was conducted by Safa in 2016 which portray a vivid picture of socio-cultural position of hijra in Bangladesh and relate with the government schemes which improved the social identity of Hijra commu-

nities with the assistance of a structured questionnaire applying survey method. The study was concentrated in Dhaka city, as Dhaka city is perceived as more open and most hijra communities leave rural areas for urban areas for getting more social acceptance and economic gain. Thus, Hijra people are higher in urban areas contrasted to the rural areas of Bangladesh (Ibid). Due to the lack of available journals and publications on socioeconomic status of Hijra community and limitation of the researcher, the researcher used data of another researcher (Islam, 2019). The research of Islam showed that, maximum number of the Hijra people (63%) fell in the age group 20-30 whereas 16.3%, 14.8%, 4.4% and 1.5% fell in the <20, 30-40, 40-50 and 50+ age group respectively (Ibid).

**Table 1:** Age Level of Hijra Population.

Age	Hijra population
50+	1.5%
40-50	4.4%
30-40	14.8%
20-30	63%
<20	16.3%

In case of highest educational level, 13.3% hijra people were Illiterate, whereas 86.7% came under the literate group (Ibid).

**Table 2:** Educational Level of Hijra Population.

Educational Level	Hijra Population
Literate	86.7%
Illiterate	13.3%

In the literate group, 60% possessed the secondary education and a 14.8% and 11.9% Hijra people could sign and accessed primary education (Ibid).

**Table 3:** Tiers of Education of Hijra Population.

Tiers of Education	Hijra Population
Secondary Education (SSC)	60%
Signature and Primary Education	11.9%

In the research sample 71.9% of the hijra people in Dhaka City at various academic institutions confronted various problems such as harassment from their

friends, whereas 28.1% hijras of this sample did not confront any problem during the time of their academic study (Ibid).

**Table 4:** Problems in Educational Institutes of Hijra Population.

Problems in Educational Institutes	Hijra Population
Problems have been confronted during study	71.9%
No problem	28.1%

Again, among all the respondents, 100% of hijra people have been found as currently working (Ibid). Most of them were found to earn a living through the Tola/ raise subscription and only 6% of the Hijras were found to be actively performing in rituals for their

better livelihood (Ibid). It is found that on the strength of educational performance, only 14.1% Hijras got employment and 74.9% hijras earned around 5000 to 25000 Bangladeshi taka (Ibid), however, 2.2% Hijras were found to be earning more than 35000 taka (Ibid).

**Table 5:** Employment of Hijra Population.

Employment	Hijra Population	
In general	100%	6% (On rituals)
		Most on Raising Subscription
education basis	14.1%	

It is found that in their sample 87.4% Hijras of the Dhaka city had religion statuses as Muslim and only 12.6% were Hindu (Ibid).

**Table 6:** Religion of Hijra Population.

Religion	Hijra Population
Muslim	87.4%
Hindu	12.6%

Having a national ID card is vital for every citizen even for inheritance purpose. But it was found that

63% Hijras of Dhaka City did not have national ID card, only 37% Hijras had national ID card (Ibid).

**Table 7:** National ID Card of Hijra Population.

National ID Card	Hijra Population
Have ID Card	37%
No ID Card	63%

**Underlying Reasons of the Plight of the Hermaphrodites**

**Conventional Familial and Social Standards** (Sarker and Pervin, 2020)

Bangladeshi society, being a conservative one is reliant on the conventional familial and social standards where both family and the society fix the social and familial role of an individual as to male or female (Ibid). Furthermore, the familial reputation is set to be highly maintained through performing specific and socially defined gender roles in a manner consistent with the concept of family honour. The failure to orchestrate this specific and socially defined gender role by the Hijras brings forward disgrace and shame for them. This culture of shame essentially originates from the early childhood of Hijras from their own family.

**Struggling with Two Contradictory Lifestyles**

In another research, it was narrated that Hijras live two different life styles - one in the family where they

pretend as the biological gender e.g., men and another within themselves where they are women as per their feelings (Khan *et al.*, 2009). They have to struggle a lot to cope with such two contradictory lifestyles, which take a great toll on their mental as well as physical health (Ibid).

**Indifference about Sexual Behaviour**

Consequent to the struggle and paucity of family support, Hijras tend to grow indifferent regarding the secured sexual behavior and suffer from HIV or STIs in their lives (Jebin and Farhana, 2015).

As most of them do not get the mental support, rather get neglect- ted during this crisis from their family, most of them get compelled to leave the families and to start another horrible phase of their life by involving with the Hijra community, even though they want to stay with the families.

### **Lack of Economic Support**

The lack of family support and the lack of economic support lead them to take shelter of a Hijra 'Guru' and in return, some of them are forced to be involved in sex-trade (Sarker and Pervin, 2020). During this crisis, many of them get victimized and raped by the 'hijra guru'. If they do not obey 'Guru', they confront lots of obstacles. Failing to take a rent on a house on their own compels them to rely on 'Guru'.

### **Negative Societal Mindset**

Even if they have the affordability, conventional mindset and fear of the landlords towards 'Hijra' community, in most of the cases, do not allow renting room to the Hijras. Resultantly, they live in unsafe slums, parks or streets and face sexual harassment by the clients, goons, police etc. The matter of irony on top of that is they cannot even file the case of rape, as there is no specific law in the country dealing their cases and there is the prevalence of the culture of distrust towards them.

### **Religious Standpoint regarding Hermaphrodites/Hijra**

In Bangladesh, around 90% people follow Islam and others follow Hinduism, Christianity and Buddhism. As mentioned earlier, it is found that in Bangladesh 'Hijras' belong only to Islam and Hinduism, the discussion of this part is limited to these two religions only.

### **Islam**

When the Quran is studied to understand the Quran's approach towards the hijras, no mention of them is evident. This is somewhat intriguing because the holy Quran does not leave any important aspect or issue. There are verses such as, Yasin: 36, Fatir: 15, Zukhruf: 12, Zariyat: 49 (Arshad, 2019), wherein the Quran says that God created every species including human beings in pairs. This suggests that all the species have only two genders: male and female, which implies that there is no third among human beings or in any other species on earth. Now, the question pops up that whether the Quran ignores the Hijra community or not. In order to find out the answer, the practices of the Prophet (Sm) are crucial to be examined. The practices of the Prophet (Sm) demonstrate that he did not have any aversion towards Hijra people. In the Prophet's era, Hijras

were respected in the society and employed as domestic helps. However, the principles of moral and ethical behaviour were applicable on them like others. The Prophet (Sm) disapproved of immoral behaviour of them (Ibid). Further, Islam is believed to be complete and comprehensive code of human life by its followers. It has not kept any human problem untouched. Where the holy Quran has not directly spoken about anything else, these are solved by mutual agreement by Muztahid. Like other creations of almighty Allah, the hermaphrodites are also the best creation like all other human beings. Though, the Quran does not determine the specific way regarding distribution of the property among hermaphrodites, but like all other solutions given by Muztahid, it is also solved by 'Izma'. As the Quran says, "Allah is one who shapes you in wombs as He pleases" (The Quran, 3:6), that is, all physical traits including sexual characteristics and inclination of a human being, come with the pleasure and permission of Allah. Thus every child-male, female or even trans-gender has the equal right blessings of God and there is no justification for parents, courts or government to engage in gender-based ill treatment (Mahmud *et al.*, 2018). That implies that in Islam, Hijras are also entitled to the right to inheritance. But for that, they must first identify themselves as either male or female, as there is no mentioning as 'Hijra' or 'Third Gender' in the Islamic inheritance rules.

According to Fiqh or Islamic jurisprudence the one having both male and female multiplicative organs is called Khuntha or hermaphrodite or third gender (Uddin, 2017). All actions with regard to Islamic Law will be adopted to identify the gender of hermaphrodite. Once the gender is identified, it will be considered as that gender for all legal rulings, including inheritance. Certain symptoms are crucial to be analyzed to regulate the sex of hermaphrodite, the first of which is the organ it uses to urinate. If the male organ is used, he will be classified as a male and if female organ is used, she will be categorized as female. If the hermaphrodite urinates from both male and female organs, then the first one to release urine will determine the gender. The sex of the hermaphrodite can be determined by analyzing these symptoms immediately after birth (Ali, 2016). Khuntha or hermaphrodite will

be considered as a male or female in all cases by the determination in the aforementioned way (Uddin, 2000). If they are not classified as singular male or female identity, rather classified as having both male or female genital features where dominant sex cannot be determined, then the Khuntha or hermaphrodite will not be assigned as a specific gender due to their 'hermaphrodite difficulty' (Mahmud *et al.*, 2018). But in cases of hermaphrodite difficulty there are grey areas between the jurists (Ullah, 1940).

According to Imam Abu Hanifa and Muhammad, the general rule is that hermaphrodite or Khuntha difficulties will take the share as female-the lesser share (Ibid). On the other hand, there is a Hadith which even suggests that Hijras could be operated upon and treated to remove the disorder (Arshad, 2019). In the late 1980s, Mufti Muhammad Sayyid Tantawy of Egypt issued a fatwa supporting the right for mukhannathun (Arabic word for hijra) to get sex reassignment surgery (Wikipedia, 2022). This indicates that modern ulema also approve of sex-reassignment surgery to alter the sex of Mukhannath to free them of their psychological biological dilemma. This surgery paves the way for the hijras to easily access to their right to inheritance. It is apparent that in Bangladesh there is no specific law or policy regarding the inheritance of Hermaphrodites nor there is a facility for sex reassignment surgery, but Islamic principles of inheritance can be easily applicable in the country as per followers of different Imams (Mahmud *et al.*, 2018) which are not applied till now.

### **Hinduism**

The concept of Tiritiya Prakriti exists in Hinduism which quite literally matches with 'Hijra Community'; a being that is neither fully male nor fully female both in mind and body. Hindu mythology contains many stories of Hijras based on the belief that gender is a fluid concept portray Hijras continually transforming their identities (Mathur, 2018). This is seen mostly within the Hindu Gods who easily transitioned and merged genders. For instance, Lord Krishna, with a view to destroy a demon, assumed a beautiful female form to marry that demon (Ibid). Further, Lord Shiva, who was known to have merged with his female counterpart, Shakti to symbolise the union of the two, is greatly respected by the Hijra community (Ibid). Simultaneously, Hijras are also respected in Shiva

temples (Ibid). Now the question pops up 'What is the origin of this concept Tiritiya Prakriti?' The idea of trititiya prakriti originates from the story of creation by Brahma (the creator god) who planned to mould man and woman in the same body with both sets of reproductive organs (Ibid). As Brahma himself couldn't create them, Hijras are perceived as possessing an extraordinary power for easily transitioning from male to female, and hence they bestow their blessings on auspicious occasions (Ibid).

Further, the Hindu epics, Puranas and mythology mentioned the stories of the courageous activities of hermaphrodites in detail. In the ancient text of Mahabharata it has been described that, during the near end days of exile period of five sons of Pandu, their most talented warrior Arjun, took the name of Brihannala, transformed his identity as an eunuch to steer clear of being captured and Brihannala was a teacher of fine arts such as dance to princess Uttara, daughter of the King Virat of matsya kingdom (Bhattachariya, 2016). It is evident that these activities of Arjun have now become the custom of Hijras. Thus, Hindu Shastras demonstrate that they (hermaphrodite/hijras) have been provided with social status, respect and dignity. Besides religious sanction, Hijras were also socially recognized in Hindu society and held a special status, especially they were employed as trusted servants, informers or messengers of the King (Chowdhury, 2016).

Against the backdrop, the question now comes as to how they have been treated in case of inheriting property from the deceased person. Observing the rules of inheritance under Dayabhaga School, it is seen that as the Hijras are not categorized either male or female, they are excluded from receiving property (Wikipedia, 2022). Again as per Orthodox Hindu Law of inheritance, an heir will be excluded from inheritance due to blindness, deafness, dumbness and for want of any limb or organ, provided the defect is both congenital and incurable (Haque, 2014). It includes the case of congenital impotence also which is inherent and congenital to hermaphrodite people.

### **Initiatives towards 'Hermaphrodites/ Hijras' in Bangladesh**

To ameliorate the socio-legal status and to establish the de-facto equality of the 'Hijras' in Bangladesh, several



stakeholders are playing their role, e.g., government of Bangladesh, National Human Rights Commission (N-HRC), various National and International NGO's, United Nations Development Programme (UNDP), civil society, transgender groups (Bandhu & Badhon) etc.

### **Initiatives by Bangladesh Government**

Various initiatives have been adopted by the Government of Bangladesh with a view to enhancing the lives of the 'Hijras' in Bangladesh. In 2012, the Department of Social Welfare launched a small pilot program by which stipends will be offered to the hijra students and job readiness trainings will be catered to them (Islam, 2019). As of the 2015-16 fiscal years, it entangled all 64 districts and adopted measures to offer educational scholarships, job readiness trainings, and old age allowances (Ibid). Further, the government has primarily taken a measure to recruit Hijras as traffic police (Dhaka Tribune, 2015). Furthermore, a number of rehabilitation programs have been set in motion throughout the country. The government has adopted several initiatives to produce better opportunity for the employment of Hijras both in public and in private. The government is thriving to enact a specific law to carry out the legal rights of hijras (Islam, 2019). Also, government has adopted initiative to create a law by way of preparing a draft in order to ensure inheritance rights of the Hijras (Ibid). According to the Department of Social Welfare, through medical check-up, the work of ejaculation statistics is also being commenced and after this survey, ID card will be catered to the Hijras (Human Rights Watch 2016). On November 6, 2015, Bangladesh issued a bank lending notification citing that hijra will receive SME (Small and Medium Business) loan facility through NGOs or at private level (Sarker and Pervin, 2020), which is undoubtedly a major step in the economic empowerment of the hermaphrodites/Hijras. The program was set in motion in five districts of the country as a pilot program during the year 2012-13 and it has been effectuated in a total of 20 districts, including five new districts, in the next financial year, 2021 (Ibid). Apart of Government initiatives, the National Human Rights Commission of Bangladesh has in recent years taken up a handful of complaints filed by Hijras ranging from employment discrimination to police abuse to legal gender recognition issues (Ibid). Also, the 2014 Nat-

ional Commitment and Policies Instrument, a joint government-United Nations evaluation of 'Human Immunodeficiency Virus (HIV) and the law', shared that violence, stigma, and discrimination continue to plague Hijras' lives despite government's recognition of Hijras (Knight, 2018).

Further, in its 2015 Bangladesh progress report, 'The Joint United Nations Programme on HIV/AIDS' (UNAIDS) recommended regarding the translation by the government of the legal recognition of Hijra into government policy documents, programs and services (UNAIDS, 2015). Moreover, it is noteworthy that Bangladesh has declared a tax rebate for companies hiring transgender people to boost the government's social inclusion efforts for the marginalized group in the Muslim-majority South Asian country (Aljazeera, 2021). Analyzing the above information, it is evident that the initiatives taken by the Government of Bangladesh are not sufficient enough against the massive amount of discrimination and deprivation happening against the Hijras.

### **Initiatives by Non-Governmental Organizations**

Bandhu Social Welfare Society (Bandhu), the pioneer organization dealing with 'Gender and Sexual Minorities (GSM)' communities started its journey in 1996 to solve crucial yet unattended issues of GSM communities through a unified effort, as apparently, Bangladeshi society seems intolerant towards gender diversity and practices (Bandhu, 2022). Bandhu maintains 10 (ten) organizational values, among those 'Equality and human rights' is a dominant feature (Ibid). To achieve the goals, Bandhu works through 36 field offices in 22 districts in coordination of eight integrated departments which are managed from central office in Dhaka through collaborative mode (Ibid). Bandhu collaborates with other NGO's, such as, Bangladesh Legal Aid and Services Trust (BLAST), Badhan Hijra Sangstha etc and international NGO's, i.e., The Asian-Pacific Resource and Research Centre for Women (ARROW), Malaysia, Humsafar Trust, India; Blue Diamond Society, Nepal etc (Ibid).

Regarding actions, it is found that Bandhu operates within its own strategic plan for every 5 years. To achieve this, Bandhu structures and strategizes its response around three principal development pillars among

which, protection of human rights and access to justice is one. Till today, Bandhu successfully influenced many actions of various stake-holders. Among them, actions concerning facilitating right to education, employment and inheritance are as follows

- 1) Bangladesh Bureau of Statistics (BBS) considered counting the Hijra communities in the upcoming National Census and decided to entangle a session in their Training Manual for smooth data collection.
- 2) With the demand of incorporating the Trans-gender community by Bandhu, the review process of the curriculum under National Curriculum and Textbook Board (NCTB) is making progress through adding a “supplementary reading material instead of including a new chapter” (Bandhu, 2022).
- 3) The media became more responsive to Hijra community and telecasted different talk shows on their needs and concerns. The Bangladesh Television (BTV), the national television channel, enlisted Transgender artists focusing on their gender identities (Ibid), which paved the way towards their empowerment.
- 4) Faith Leaders are willing to work with the Hijra community, indicating a change in their inflexible views; they have taken initiative to teach the Quran to the community and emphasize positive aspects of these marginalized communities in prayer sessions e.g. Khutba before Jumma prayers (Ibid). This is a positive step towards right to religious education of the Hijras.
- 5) A GDP working group has been formed in Cox's Bazar involving multi-stakeholders that include UN organizations, CSOs, CBOs, to protect the rights of the Gender Diverse Population and address the stigma and discrimination they face at the local level (Ibid).
- 6) The local government bodies are willing to support Hijras and Transgender people among the host community at Teknaf in Cox's Bazar by organizing skill-building training sessions; they have expressed commitment to distribute sewing machines to each participant after the training (Bandhu, 2020).
- 7) A Policy brief on violation and harassment of ‘Third Gender’ was developed and shared with multi-level stakeholders in partnership with English daily Dhaka Tribune for further advocacy (Ibid).
- 8) Bandhu conducted several types of research through different activities (such as student fellowship, lawyers’ fellowship) that ultimately saw an increase in participation of mass people and helped design evidence based programs/interventions for the future (Ibid).
- 9) The Transgender and Hijras' access to and participation in different government schemes has increased, which include i.e. old-age allowance, education stipend, skill building training sessions to change their livelihood with the initial grant support that they receive from Dept. of Social Services (DSS) after the training (Ibid).
- 10) The participation of youth gender diverse community in many social activities has increased; their membership in different forums thus reflects their active citizenship. Besides it, Bandhu also established "Ain Alap" (Legal Talk), a legal helpline of Bandhu, in 2013 in order to cater gender diverse communities in Bangladesh with inclusive human rights support (Ibid, p.33) and it is continuing its Legal Service Unit since 2013 and during this period, Bandhu received a plethora of human rights violation complaints (Ibid). These complaints bring various questions regarding definition of their identity, property rights, and other human rights issues. Bandhu believes that a distinct law is crucial to address these issues in Bangladesh. In collaboration with Justice Watch Foundation (JWF), Bandhu started this initiative in 2019 and worked out a research and evidence collection process to get more information about some major issues (Ibid). Furthermore, Bandhu and JWF prepared a draft law, which includes identity definition, legal recognition, and issues of property rights of the transgender/hijra community (Ibid). Bandhu also initiated several dialogues with 120 of these community members in Dhaka, Barisal, and Khulna divisions and learned about violation of their human rights (Ibid). Based on the findings of the consultation, a policy brief was developed and shared through a roundtable, jointly organized by Bandhu and Dhaka Tribune (Ibid).

Not only conducting sessions, Bandhu also formed a platform called "Bandhu Panel Lawyers" in 2017 and currently, approximately 204 lawyers are affiliated with the panel, providing services to the transgender community on an ad hoc basis in 64 districts (Ibid). To enhance their knowledge of national and international human rights and laws concerning the Gender Diverse Population, different capacity-building initiatives i.e. training sessions were taken in 2020 (Ibid, p.30). Another non-profitable organization, Badhan Hijra Sangha (BHS) was established in 2001 which has emerged as a community based organization comprising transgender populace of Dhaka city to unite transgender-Hijra population all around the country, to build self-esteem and to increase mutual respect and health care and to increase access to the existing state services (Giving Way, 2016-2022). During 2001 to 2014, Badhan implemented 6 numbers of projects with the financial and technical assistance of various international donor agencies (Badhan, 2017).

### **Impediments**

There are a number of impediments in the implementation of the rights of the hermaphrodites/hijras in Bangladesh which are stated as follows:

- 1) There are various factors which play significant role in negating the right to equality of the 'Hijras'. Despite the initiatives of the government and the NGO's i.e., Bandhu, Badhan and other international organizations, the conventional socio-cultural mindset regarding sexual identity is a major impediment. In Bangladesh, the concept of self-identification is not yet recognized, though it is found that neighboring countries are quite far ahead in recognizing the right of self-identification. The concept of self-identification is also not out of confusions. According to Islamic notion, 'Right to self-identification' poses a duty upon 'Hijra Population' to identify dominant part of sexual organ whether male or female and accordingly using their 'Right to self-determination' (Ali, 2016), while hijras demand that they will decide their gender with whom they feel comfortable (Hussain, 2017), this demand may be contradictory with Islamic notion and policy-makers of Bangladesh cannot precisely decide as to which notion they should adopt.
- 2) Moreover, there is a lot of confusion regarding genuine identity of Hijras, as some rituals determined by the Hijra community need to be followed in order to be Hijras. The non-fulfillment of any of those rituals creates uncertainty regarding Hijra identity among Hijras even.
- 3) Further, politics of power is another playing factor. Often the majority attempts to finalize the approved socio-legal-cultural codes and cater less importance to issues regarding Hijras. Hence, the 'Hijras', the sexual minority gets cornered in getting recognition of their non-binary gender identity and entitlements.
- 4) The 'Hijra' people are often deprived in family property, whereas this issue can be solved by proper explanation of their religious laws. They can get inheritance under Islamic law, whereas Hindu Law does not permit them. Though Islamic law allowed them to inherit, in practice, they are being deprived from inheritance. Deprivation from family property makes them economically vulnerable and unable to fulfill their needs. When they are deprived from getting education; their right to employment also withers away. In one way, lack of education and in another way, the socio-cultural mindset of the employers towards 'Hijras', even though they are educated hinder them to be economically empowered through employment Even if they launch their own start-up, they get humiliation and get blocked from the mainstream community. Being excluded from regular employment and business, they are forced into extortion, begging, sex job etc to survive in this ruthless world.
- 5) The societal mindset does not leave the 'Hijras' in educational institutions as well. Teachers, students, guardians do not give equal access to the 'Hijra student freely, without bullying. Though, some educational opportunities have been created in Madrasa for 'Hijra' community, but these are not enough comparing to the needs.
- 6) Further, in a democratic country like Bangladesh, the 'Hijra' people have no presentation in parliament and public offices. Being out of power, it is quite difficult for them to empower the whole community. Bangladesh Government

could use article 28(4) of the constitution for the benefit of Hijra populace, as they are also backward community, however, the existing politics of power, lack of political will and force of major religious groups are the impediments in implementing this article.

- 7) To conduct research on needs and implementation, exact statistics is crucial point, whereas in Bangladesh, there is no exact statistics of 'Hijras' obtainable from any census.
- 8) The lack of political-will eventually create a lack of judicial activism towards 'Hijra' rights in Bangladesh.
- 9) Lack of funding is a great obstacle in the local NGO's. Lack of harmonization among stakeholders and consequential injustice due to overall injustice of the society are also obstacles in implementing 'right to equality' of the 'Hijras' with regard to education, employment and inheritance.
- 10) Overall, it can be said that despite State recognition as 'Hijra' (the word, 'Hijra' is itself not well-accepted by them), still Bangladesh does not possess any policy outlining the measures needed for the up scaling of the 'Hijra' community to ensure equality with other binary genders. It was found that even there is no clarity among policy-makers regarding the markers of qualification as a Hijra and there are a significant grey area regarding their State recognition. Despite the instances of scattered initiatives of governmental organization and non-governmental organization (International and national), the actions and policies are not yet harmonized and well-mingled.

#### **CONCLUSION AND RECOMMENDATIONS:**

The constitution of Bangladesh has pledged to promote, protect and fulfill the entitlements of all regardless of their sexual identity, hence it is very crucial to ensure the entitlements of the 'Hijras' with regard to education, employment and inheritance. To achieve that, government can adopt various special measures. Further, implementation of hijra rights is crucial for implementation of the mandate of the Bangladeshi government towards the SDGs or sustainable development goals of the United Nations (Dhaka Tribune,

2015). Furthermore, it is the moral duty of all citizens to be sensitized about the plight of the 'Hijra' community, because they are indispensable to the Bangladeshi society. Keeping them far from mainstream development would only thwart the holistic country development which is against the notion of 'Sustainable development'. Though Bangladesh government has taken a commendable decision by recognizing them, this recognition is in paper only. Still they are the underprivileged among the underprivileged and marginalized groups. To ameliorate their position, Government of Bangladesh should generate and actualize necessary laws, policies and programmers with the effect of facilitating their right to education, employment and inheritance. To ensure equality of the 'Third Gender' in respect of education, employment and inheritance in Bangladesh, the following recommendations have been suggested:

- 1) Government must adopt an accommodative definition of 'Hijra' on self-identification to minimize conceptual ambiguity.
- 2) Religious stakeholders must come forward breaking the silence and provide clarity on religious texts regarding 'Hijra' rights.
- 3) Initiatives for a proper census to obtain exact statistics of 'Hijra' population should be adopted.
- 4) Proper identification methods and technology should be adopted at their birth or afterwards by the government in association with other stakeholders to identify the sexual identity of the hermaphrodites.
- 5) Government must ensure a suitable policy regarding the 'Right to Education' (including vocational) to enhance their employability.
- 6) Quota system should be introduced to bring proportionate equality in educational institutes, in employment, etc.
- 7) Government must devise a policy to employ Hijras in respectable professions, thereby preventing their engagement in begging, prostitution, extortion, etc.
- 8) The government must establish A Welfare Board for the benefits of the 'Hijras' until their employment or economic condition is improved.
- 9) Specific law and policy should be adopted and properly implemented to safeguard their right to inheritance.



- 10) Enabling provisions should be inserted in the Succession Acts to empower Hijras by giving inheritance on their family property.
- 11) Politics of credit should be avoided and all stakeholders must work jointly to bring Hijra rights forefront and to create an egalitarian society, respectful of rights of every human being.

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#### CONFLICTS OF INTEREST:

I do declare that I have substantially participated in research work and in preparation of the manuscript and do not contain any material taken from other copyright sources and wherever such material has been included, proper citation is included in reference section without any conflict.

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