



# From Colonial Castaways to Current Tribulation: Tragedy of Indian *Hijra*

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## ABSTRACT

Despite their hallowed status in Hindu mythology and magnificent past in the Mughal Empire, hijras experience significant harassment and discrimination due to their gender orientation and style of life. This article analyses the current human rights situation of hijras (eunuchs) in India against the background of the Criminal Tribes Act (CTA) in 1871. This article argues that the British colonial construct/imposition of masculinity on Indian hijras by classifying them as 'criminal tribes' have adversely impacted their lives not only in British India but also in Contemporary India. To support the main argument, the article also contextualizes gender theories in the light of hijra's bodies.

## Keywords

Colonial; Hijra; India; Transgender, Third gender

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## INTRODUCTION

Despite their religiously sanctioned sacred position in Hindu mythology and glorious past in the Mughal period, India's third gender, *hijras* (eunuch), face severe harassment and discrimination at multiple intersections of the society; primarily due to their gender orientation (multiple identities) and way of life (Mukhopadhyay & Chowdhury, 2009). The vast majority of hijras identify as members of a third gender, meaning they are neither male nor female and are not transitioning. They are of a different gender and spend most of their lives as prostitutes or beggars. They are virtually invariably barred from job and education in South Asian society, except for the roles they play in religious ceremonies. They are frequently the targets of physical and emotional abuse, as well as social exclusion, harassment by law enforcement, and denial of medical care in healthcare facilities (Khan et al., 2009; Rhude, 2018; Sifat & Shafi, 2021; Al-Mamun et al., 2022).

The United Nations Human Rights Council has, in the past, voiced its deep concern regarding the commission of acts of violence and discrimination against individuals on the basis of their sexual orientation and gender identity (Human Rights Council resolution, 2011). Nevertheless, hijras have recently been granted some of the rights and liberties to which they were previously denied access. By the end of the year 2014, the governments of India, Nepal, and Bangladesh have all formally acknowledged individuals of third genders as citizens entitled to equal rights. In April 2014, the Supreme Court of India ruled that transgender people should be treated as a third category of gender and as a socially and economically 'backward' class, entitled to proportional access and representation in education and jobs (National Legal Services Authority (NALSA) Vs. Union of India, 2014). In 2018, Indian Supreme Court decriminalized homosexuality, repealing a 157-year-old colonial law Section 377 criminalized non-procreative sexualities (Navtej Singh Johar & Ors. Versus Union of India thr. Secretary Ministry of Law and Justice, 2018).

Throughout history, it has been used to target transgender people, especially hijras, among other groups of people. However, on more positive note, The Transgender Persons (Protection of Rights) Act, 2019 has provided much needed legal protection. The Bill prohibits discrimination in accessing social services, employment, education and health care. In addition, the Bill has provisions for offences and penalties conducted against transgender persons. Interestingly, the bill covers *hijras* under the purview of transgenders. The Bill defines a transgender person as one whose gender does not match the gender assigned at birth. It includes trans-men and trans-women, persons with intersex variations, gender-queers, and persons with socio-

cultural identities, such as kinnar and *hijra* ([The Transgender Persons \(Protection of Rights\) Act, 2019, 2019](#)).

Transgenders are genetically, biologically, and physiologically men who may or may not have undergone sex-change procedures or self-inflicted castration. In general, transgenders are genetically, biologically, and physiologically men. They are also known as eunuchs, transgenders, transsexuals, and transvestites in the English language. In India, they are referred to as *hijras*, *kothis*, *kinner*, *shiv shakti*, and *panthis* in the vernacular ([Mukhopadhyay & Chowdhury, 2009](#); [Bevilacqua, 2022](#)). In most cases, Indian hijras are considered to be of a "third gender," which is neither male nor female. According to [Saxena et al. \(2015\)](#), physiological males who have a feminine gender identity and embrace feminine gender norms are referred to as eunuchs. The word *hijra* is Urdu, derived from the Arabic root *hjr* in its sense of 'leaving one's tribe' ([Mal, 2015](#); [Sinha, 2016](#); [Roy, 2020](#)). *Hijras* are celebrated in sacred Hindu texts such as the Mahabharata and the Kama Sutra. Regarded as auspicious, they are invited to bestow blessings at births and dance at weddings ([Nanda, 1998](#); [Pamment, 2010, 2019](#)).

Historically, pre-colonial India exhibited a culture that was open to sexual fluidity. This culture can be traced back to the Jain religious literary tradition of the 5th century ([Benton, 2001](#)), Sanskrit texts such as the Vatsyayana Kamasutram (8th BCE) ([Mukherjee & Singh, 2016](#); [Sanyal & Maiti, 2018](#); [Chakraborty, 2022](#)), the Sufist tradition of erotic poetry known as Rheski (13th CE); and the Mughal erotic canon (17th CE). Hijras were traditionally influential persons who were in charge of the collection of taxes and charges in the courts of the Sultanate and Mughal empires ([Arondekar, 2009](#)). Members of the *hijras* community have enjoyed influential positions in the Mughal courts ([Hinchy, 2014](#)). During the Mughal rule (1526–1857) in India, *hijras* were part of Mughal nobility; they were court dancers, military officials, and were assigned influential positions in social and political arena. *Hijras* were considered trustworthy and fiercely loyal and had free access to all spaces and sections of population, thereby playing a crucial role in the politics of empire building in the Mughal era-until the British rule in India.

In 1871, the British named all *hijras* criminals and directed colonial authorities to arrest them on sight. This decision was based on Christian notions about gender that were prevalent during that time. The *hijra* community in the Indian subcontinent will be affected more profoundly and for a longer period of time as a result of this. Still prevalent in South Asian culture today is a stigma that dates back nearly two centuries to British colonial rule ([Rhude, 2018](#)). Officials from the United Kingdom believed that hijras were both a threat to 'colonial political authority' and a menace to 'public

morals.' After a rebellion in 1857 challenged the power of the British colonial administration, Section 377 of the Indian Penal Code, which was enacted in 1861, was used as a political instrument to punish hijras as a means of reasserting colonial control.

In later years, the Criminal Tribes Act (hence referred to as CTA), which was Act 27 of 1871, designated them as a 'criminal caste.' Although the hijras have been a part of South Asia for thousands of years, their identity has always been at conflict with the Western understanding of gender and morality. All non-heteronormative behaviors were labeled as pathological thanks to colonial rule's imposition of body policing and its subsequent medicalization (Hunter, 2019). As this study argues, the colonial authority exercised control over hijras by building information about them as 'deviant' and 'disorderly,' with the intention of criminalizing them as a group. This had deeper ramifications for their generations to come.

### THE COLONIAL CONSTRUCT OF HIJRA BODIES

Considered an 'opprobrium upon colonial rule', *hijras* were classified as 'criminal caste' under the CTA (Act 27) of 1871, which intended to surveillance and control of certain tribes and eunuchs. Under this act, the term eunuch was deemed to include "all persons of the male sex who admit themselves, or on medical inspection clearly appear to be impotent." This category included individuals who:

- a.) "are reasonably suspected of kidnapping or castrating children, or of committing offenses under section 377 of the Indian Penal Code, or of abetting the commission of any of the said offense;
- b.) "appear, dressed or ornamented like a women, in a public street or place; or in any other place, with the intention of being seen from a public street or place", or
- c.) "dance or play music, or take part in any public exhibition, in a public street or lace or for hire in a private house" (Narain, 2008; Hinchy, 2014, 2019a, p. 108).

Forensic medical research was depended upon by colonial legislation like as the Indian Penal Code, which was passed in 1861, and the Criminal Tribes Act, which was passed in 1871, in order to give 'rational' proof relating fluid sexuality and criminal conduct to justify court proceedings. In the 1860s, British colonial officials labeled *hijras* families and *kothas* as settings in which children were 'corrupted' sexually (Morcom, 2013; Hinchy, 2019b). This marked the beginning of the larger history of the marginalization and criminalization of certain indigenous domestic formations (vagrants, unemployed, prostitutes, and *hijras*) by the colonial government and the upper echelons of Indian society in the nineteenth century. These indigenous domestic formations include vagrants, unemployed, prostitutes, and *hijras* (Tolen, 1991). An idea of 'dangerous class', firmly entrenched in Victorian thought (Cohen, 1997; Locker, 2008) was implemented upon these 'ungovernable' sections of the Indian population. The

idea that criminality runs in families was deeply ingrained in this conception of criminality that was being constructed. Most significantly, this knowledge further legitimized the moral judgment of these criminal subjects, which in turn legitimized their subsequent subjection.

According to Foucault (1995), the suppression and stifling of sexuality are the means by which bodies are brought under disciplinary control. As hereditary castes, their bodies and their labor were to be regulated, surveilled, and controlled, to transform them into 'docile bodies' (Foucault, 1995). In the colonial accounts, the regularity with which the British concerned themselves with the hijras body (Agrawal, 1997) is noteworthy. This signifies not only the binary sex/gender frame of reference within which colonial officials were operating, but also the naturalization of sexual difference and the centrality of the deficient body in such constructions of identity (Agrawal, 1997).

Sexual prescriptions along the lines of race, class, and gender have frequently been the crux of colonial ideologies, as was pointed out by a number of different academics in reference to the politics of European colonial power (Ballhatchet, 1980; Nandy, 1989; Manderson & Jolly, 1997). Mobility and ambulatory practices became 'new' criminal offenses as a direct result of the CTA, which was one of the first effects of the legislation. The colonial enterprise would subsequently use them to launch an entirely new line of work centered on the concept of racial and sexual 'othering' (Rana, 2011). Nigam (1990) has contended that the category of criminal tribes was a 'colonial stereotype' fashioned to justify the punitive 'disciplining and policing' of sections of the population that were unwilling to accept the new moral order that the British sought to impose on rural society.

As a result of disagreements among colonial officials on the proper categorization of specific Indian social roles, the parameters of the internally heterogeneous colonial category of eunuch were constantly revised throughout the course of the nineteenth century. Evidence suggests that intersexuality<sup>1</sup>, impotence<sup>2</sup>, emasculation<sup>3</sup>, and transvestism characterize *hijra's* identity (Hinchy, 2014). On the other hand, Carstairs (1956) suggested that the hijras role is largely a sort of institutionalized ho-

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<sup>1</sup> People who have bodies that the established medical community is unable to definitively classify as either male or female are considered to have intersexuality (Aragon & Gangamma, 2008).

<sup>2</sup> Being impotent is a necessary prerequisite for a hijra, but it is not a sufficient condition for the status. Hijras are males who are unable to procreate for whatever reason, and the only way for them to become hijras is to have their genitalia amputated.

<sup>3</sup> Emasculation is the *dharm* (religious obligation) of *hijras*, and the surrender of male sexuality through the surgical removal of the organ of male sexuality is at the core of the formation of the Hijra social identity. Emasculation is also known as emasculation, emasculation, and emasculation (Nanda, 1998, p. 15).

mosexuality. Some Indian scholars also suggests that majority of *hijras* are involved into homosexual prostitution (Shah, 1961; Ranade, 1983; Nanda, 1984, 1986). It was their 'sexual practices' and 'public presence' that irked British rulers (Doniger, 2018).

In spite of this, colonialism gave the impression that marginal locations and people were strange and barbaric. This was in contrast to the cultured and enlightened heart of the empire, which was the scene of colonial aggression against *hijras* bodies. It was a widely held belief among European sexologists in the 19th century that working men and women, Africans, Asians, and Jews were unusually sensuous and more likely to indulge in 'uncivilized', 'degenerate', and 'sexual activities' (Mottier, 2008, p. 7; Rana, 2011). '*Hijras*', people who were considered to be criminals, could only be found living on the outskirts of the empire, also known as 'spaces of abjection' (Kristeva, 1982). The criminalization of *hijras* is another possibility that arises from this scenario. The Criminal Tribes Act (CTA) was replaced in Independent India in 1952 by a different piece of law called the Habitual Offenders Act (Singh, 1965), which carried the colonial biases against so-called 'criminal tribes'. The implementation of the Civil Rights Act (CTA) and, later, the Act of 1952, reveals how the law creates identities and then seeks to exert control over them, but it also demonstrates that the legislation can become a vehicle for the prejudices of the general public (Hunter, 2019).

### HIJRA'S BODIES AND THEIR GENDER TROUBLE

From the mid-nineteenth century, the European bourgeois self-differentiated its disciplined habits of the working class and those 'others' of Africa, Asia and the Pacific. In this context, theories were often imbued with social Darwinist precepts which justified colonialism by attributions of primitive promiscuity of animalist lust to racial others (Stoler, 1995). For British colonialist what does not fit into their male/female binary or European normative gender framework become social outcast and criminal as this is what has happened with India's third gender/*hijras*. Foucault (1990) conducted an in-depth investigation into the various power structures and how sexuality manifested itself within them. In their criticism of the concept of binary sex with fixed qualities, which gender theorists say is a creation of western discourses, these ideas are echoed by gender theorists.

Butler (2006) brought the attention of society on 'gender trouble' disrupting the binary view of sex, gender, and sexuality. She has argued that gender is reinforced by societal norms and creates illusion of binary sex. Garland-Thomson (2011) affirms that genders which do not conform to culturally instituted norms are incoherent, discontinuous and misfit bodies. Such dissent against Western gender-sex binary system is also echoed by Preciado (2020). Fundamental to British colonial constructions of

power and subjectivity was the homology they drew between sexual and political dominance; their masculinity legitimized their colonization, which in turn proved their superior masculine prowess and the dominance of (British) masculinity over (Indian) femininity (Nandy, 1989).

Colonial power is often naturalized as an instinct notion of a repressed, sublimated and projected sexual impulse. In Said's *Orientalism* (1979), the Orient is portrayed as passive and female, prone to the masculine penetration of the West, ready to be taken over by the Western cultural, intellectual and military superiority into the submission, without any resistance. Ironically, *hijra's* bodies were in clear defiance against the Colonial hegemonic-heteronormativity (Marchia & Sommer, 2019), thus, they were bound to face the negative consequence.

One of the most well-known and widely recognized examples of people who identify as a third gender are the *hijras* in India (Nanda, 1998). Recent years have seen a resurgence of interest and debate over the *hijras* as a third gender in the public sphere across South Asia, with countries including India, Pakistan, Nepal, and Bangladesh all recognizing a third gender in their own legal systems (Dutta, 2014; F. A. Khan, 2014; Knight et al., 2015; Sifat & Shafi, 2021). However, there is no general agreement among academics about how to explain the existence of a third gender. On the one hand, a third gender is qualified as a culturally available role for individuals whose intrinsic tendencies do not allow them to fit into the binary framework. On the other hand, those whose innate tendencies do not allow them to fit into the binary framework are considered to be transgender.

There is an increased focus on the social construction of gender as a character trait in and of itself (Weston, 1993; Morris, 1995; Boellstorff, 2007). The fundamental social categories of gender have been called into question by Nanda (1998). She considers the Western civilization, which "vigorously strives to resolve sexual paradoxes and ambiguities through denial and exclusion", to be fundamentally distinct from the Indian society. Some scholars have questioned a culture's inability (thus disrespecting diversity) to accommodate so called misfit/unfit bodies in the mainstream society (Kmec et al., 2010; Garland-Thomson, 2011; Santos & Santos, 2018; Bass et al., 2022). To a great extent, *hijras* were dehumanized and pushed to the margins of the society as a consequence of being considered misfit in British social-colonial construct (Hinchy, 2019c; Goel, 2020). Therefore, CTA was not just an attempt to extinct a community, but also, British rejection of Indian sensualism. British attempts to discipline masculinity and erase the misfit bodies of third gender through CTA had several impacts upon *hijras* perceptions in postcolonial India (Hinchy, 2014).



The colonial state marginalized hijras by establishing a 'legal panopticon' that was geared at limiting gender norms. The CTA had special implications on the hijras' way of life and status within Indian society. The stigmatization of the community was a long-lasting result of these police actions, which may still be witnessed in contemporary India. Because they are outsiders to society, hijras have a difficult time gaining access to jobs, healthcare, and the legal system. The CTA was also used as a model in other British colonies, each of which received its own version of Section 377 along with the repercussions that this provision had on the local perspective about sexuality (Hunter, 2019).

Ironically, *hijras'* vulnerabilities, frustrations, and hazards have been historically overlooked by mainstream society. The *hijras* claim that mainstream society fails to understand their culture, gender, mentality, and sexuality (Mal, 2015; C. Sinha, 2019). India's *hijras* find themselves at the intersections of multiple discriminations and exclusions based on their multiple identities. In contemporary India, due to their social locations in hierarchies of power and privilege, they suffer discrimination as LGBTQ people, people of color and as disabled people (Rhude, 2018; C. Sinha, 2019; Mount, 2022).

### **HIJRAS: NAVIGATING THROUGH SOCIAL EXCLUSION IN INDIAN SOCIETY:**

Usually violence from family members have driven children into not only conventional *hijras* communities that adopt them, but also perpetuate begging and sex work as a way of life (V. Roy, 2015; Rhude, 2018). Most of the transgender drop out of mainstream schools at a very early age because of the prejudice they face from the people around them thus with no education, prospects to find good job in future disappear (Wilkinson et al., 2018; Horton, 2020, 2022). This situation ultimately pushes them to the margins of the society (UNESCO, 2012; Rhude, 2018). Most of *hijras* end up garbage picking, begging and in prostitution.

According to a report published by the United Nations, transgender and gender non-conforming people face discrimination at every turn, including in their childhood homes, in educational institutions that claim to provide shelter and education, in workplaces that are hostile and exclusive, in places like grocery stores and hotel front desks, medical offices and emergency rooms, in front of judges, and at the hands of landlords, police officers, health care workers, and other service providers (United Nations Development Programme, 2013). This UN report is equally applicable in Indian context where *hijras* have long been discriminated against in jobs, housing, education and health care (Busby, 1997; Nanda, 2007; Chowdhury & Tripathy, 2016; indug, 2018; Mount, 2022). They are often unable to obtain identity documents because their gen-



der identity and appearance does not correspond to their sex at birth. As a result, many cannot find housing, education, or legal employment.

The effective loss of basic citizenship rights – coupled with widespread social prejudice against people who violate norms for “masculinity” and “femininity” – leaves them economically marginalized and exposed to police abuse. A continued lack of acceptance and opportunity has often prevented *hijras* to take advantage of 2014 law permitting a formal change of identity (Murray, 2016; Sinha 2019). Within India’s LGBT+ community, the *hijras* maintain their own somewhat secretive subculture, often their life stories involve, sex trade, exploitation, cruel and dangerous castrations, being cast out and constantly humiliation (Gettleman et al., 2018; C. Sinha, 2019; Mount, 2022). They are susceptible to daily acts of aggression and discrimination, which can have a snowball effect over time. Some of the effects are readily apparent, such as the outbreak of the HIV (human immunodeficiency virus) epidemic in the community of *hijras*.

When *Hijras* attempt to gain access to standard medical care, they frequently face systemic prejudice. This includes being treated with disdain and having medical attention denied to you. Because of mistrust and a fear of being shamed, they only infrequently utilize traditional health-care delivery systems (Mukhopadhyay & Chowdhury, 2009). Transgender, intersex, lesbian, and bisexual women have been referred to as “victims of abuses and mistreatment by health service providers” in previous statements made by the UN Committee on the Elimination of Discrimination against Women (2017). The existence of harmful preconceptions puts the lives of trans individuals, including *hijras*, in jeopardy. Among these preconceptions are the false notions that gender diversity is abnormal, unethical, or pathological (Balzer et al., 2012, p. 14). Transgender persons, just like other victims of gender-based violence, are regularly dehumanized and made to feel responsible for their own maltreatment.

The United Nations Committee against Torture's Special Rapporteur on Torture (2016) has brought attention to the correlation between transphobia and torture. Some instances of discrimination against *hijras* would be interesting to know. One such incidence of police violence/dehumanization against Indian *hijras* is given below:

“On 20 October 2008 at 11 A.M. the police caught five *hijras* near a traffic signal in the Girinagar police station and took them to the police station. The Assistant Commissioner of Police, H.T Ramesh, beat one of them with his lathi, broke her bangles and made her bleed. Another *hijra* was forced to clean the floor of the police station. The police then charged them with false cases under section 341 [wrongful restraint] and 384 [extortion] of the Indian Penal Code...The police asked offensive questions and taunted the crisis intervention team who went to the police station to assist: “Take off all your clothes; let me

see what you've got there? Are you a man or woman?" ([Global Commission on HIV and Law, 2012, p. 51](#)).

Such incidences frequently occurs and many of them goes unreported. On the other hand, in 2006, the Department of Social Welfare in Tamil Nadu, India, passed a landmark order protecting the rights of hijras to attend schools and college. In 2008, Tamil Nadu became the first Indian state to recognize 'transgender' on official documents, as an option for *hijras* on ration cards. In addition, in 2006, the Department of Social Welfare in Tamil Nadu, India, passed a landmark order protecting the rights of *hijras* ([Harrington, 2008](#)). This was essential due to the fact that ration cards can also serve as forms of identification, such as when opening a bank account. Following this, the government of Tamil Nadu established a Transgender Welfare Board and enacted rules regarding education, health, employment, and housing for the transgender community ([Govindan, 2009](#)).

In 2017, India's first transgender school opened which is run by six transgenders. It is a positive sign of change. In the wake of Indian Supreme Court's ruling in April 2014; Government-set quotas were provided to increase access to job and educational opportunities for third sex citizens – an estimated half a million-two million (McCarthy, April 18, 2014:12 PM ET). In 2015, first *hijra* mayor was elected. Ironically, apart from sporadic socio-economic progress of some members of hijra community, situation of majority of *hijras* remain miserable. The Transgender Health and Safety Act of 2019 has not been of much assistance thus far. The measure continued to require transgender people to have surgery in order to receive a new gender certificate and also needed them to go through the process of getting certified as a transgender person by going through a district magistrate and a district screening committee.

This colonial-era hangover from IPC 1861 and CTA's reliance on forensic medical science to give the rationale for obtaining a gender certificate is absurd. In addition, there is no provision for an appeal or review in Bill 2019, in the event that a person is against the decision that the district magistrate has made ([C. Sinha, 2019](#)). The measure is notable for the complete absence of any reference to a 'reservation' for transgender people. According to Aher, a member of the hijra community, "there is no explicit statement on how the government will assure employment, education, and skill-building of the transgender community" ([C. Sinha, 2019](#)). According to [Sinha's argument \(2019\)](#), the transgender individuals (Protection of Rights) bill does not acknowledge the non-blood familial structures that exist within the community. In spite of legislative protection surrounding gender and sexuality identification knowledge, the hijra community continues to dwell on the outskirts of society. And the

Covid-19 health pandemic has even made their plights worse (Baumgart & Farooqi, 2020; Ahmed & Sifat, 2021; Pandya & Redcay, 2022).

British colonial classification of Indian *hijras* by classifying them as 'criminal tribes' and 'dangerous class' have adversely impacted their lives not only in British India, but also in contemporary India (Nigam, 1990; Tolen, 1991; Agrawal, 1997; Rana, 2011; Hinchy, 2014; Hunter, 2019). While a *hijra* is legally accepted within a society, however, this is doubtful that their socio-cultural accommodation in a Caste driven Indian society-would be possible? It could be indeed challenging for *hijras* to evade intolerance and discrimination in Indian society which started in British raj which has criminalized *hijras*. Integration of *hijras* into the mainstream Indian community-on equal footing- remain to be seen.

## CONCLUSION

British colonialism has played a major negative part in criminalizing and dehumanizing the third gender of India. CTA Act, unseated *hijras* from their sacred position into being a criminal during the British raj in India. However, this colonial legacy and with its entrenched colonality percolated in the Independent India deeply affecting the socio-economic position of *hijras*, even if they were decriminalized by the Indian court. Their human rights situation is even more complicated due to multiple forms of exclusion. Many transgender persons, particularly *hijras*, are compelled to live on the outside of society because of the milieu in which gender variance is derided.

Despite the fact that international human rights standards acknowledge the diversity of humanity and explicitly protect the rights of members of marginalized groups like transgender people, India has failed to respect, protect, and promote the rights of transgender people, particularly members of the *hijras* community. Although law has been passed by Supreme Court of India has recognized their human rights, however, their actualization is doubtful. Society needs to go beyond the gender male/female binary framework accommodating trans people in mainstream society. No amount of 'welfare' would help *hijras* community without a sea change in people's attitude. In addition, without awareness programs and public policies supporting third gender people, they would continue to face discrimination and social exclusion in accessing their human rights.

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