

**LEGAL AND SOCIAL STATUS OF EUNUCHS AND ITS
IMPACTS ON FAMILY LIFE IN PAKISTAN**

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APPROVAL SHEET

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LIFE IN PAKISTAN**

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**Accepted by the Faculty of Shariah and Law, International Islamic University Islamabad
(IIUI) in partial fulfillment of the requirements for the award of the Degree of LL.M**

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DECLARATION

I, Rizwana Gul, hereby declare that this thesis is original and has not been presented in any other Institute. I, more over declare that any secondary information used hereby has been fully acknowledged.

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CHAPTER 1

1.1 INTRODUCTION

Legal and social status of eunuchs and its impacts on family life in Pakistan is chosen for this research, not because of any special interest in gender issues but because of inquisitiveness that began when on September, 2012 Supreme Court of Pakistan announced that eunuchs was to be registered as a third sex.¹ Decision made by Supreme Court of Pakistan was highly endorsed among the eunuch community.

My personal interest got deepened as to why such an unconventional group was being recognized in a way which is not yet conceivable in the West.

The behavior and personal attire of eunuchs in Pakistan is more tilted towards the female lifestyles.² They could be seen with similar makeup fashion, lipstick dark blushers as women, artificial smile on their face, adorn themselves in extremely open and colorful attire, hideous parody of women, move in unnatural style wearing heels carrying hand bags mostly roam at busy places, i.e. markets, signals for their earnings shouting with male voices and the clap with their palms meeting cross way is their identity, they prey on any passerby and the passerby will part them with a cash. Such person if we find around is called a hijra in our language.

Eunuchs in Pakistan are unable to lead a normal life, most of them are close to men but they still prefer to be identified as females instead of men due to their inclination towards women and that's the reason they want to lead a life of women. Sociologists

¹ Ahmad Shah Azami, "Eunuchs enjoy equal rights in Pakistan, rules SC," Dawn, September 25, 2012, 1.

² Izza Khalid, "The unwanted gender," The News, February 4, 2015, 3.

define eunuchs as man minus maleness, male plus women or male with dominant features of women or women with dominant male orientation in her sex.³

Eunuch's legal and social status has to be addressed so that many of us ignorant to the basic individual rights must know where they do stand in the society. These studies identified lacks discussion on legal and social status of eunuchs and its impacts on family life in Pakistan.

The meaning of the term eunuch has varied and their issues are still a topic of sometimes heated discussion. Although doctors and activists debate exactly what conditions qualify as to be called eunuch and over here I am using the word eunuch in its wide sense includes those sexually abnormal individuals whose gonads or external or internal sexual anatomy does not fix in male or female norm.⁴

Scholars in variety of disciplines have published books and articles but none has examined significant role that law can play in lighting up lives of those individuals who are suffering from inter sex condition or other form of sexual abnormality.

The significance of my research is that it will depict the true picture of eunuchs. It will high light their anatomy and what our religion Islam says about them along with this what history holds for them and what their problems are. It will also portray their legal and social status in Pakistan and what impacts they hold on family life of Pakistan.

³James M. Henslin, *Essentials of Sociology* (Lincoln: Cengage Learning: 1992), 199.

⁴Keith L. Moore, *Essentials Clinical Anatomy* (Ontario: Lippincott Williams & Wilkins: 2014), 202.

1.2 RESEARCH STATEMENT

Islam treats the Eunuchs as equal members of society, and considers them as a Sign from Creator. The people who are born eunuchs are not to be blamed or shunned by society, as it is Allah who has created them the way they are, as a test for the rest of mankind. Islam demands that we be extra polite and tolerant to these physically and mentally challenged slaves of Allah, for the eunuchs there are separate laws in Islam. In Pakistan unfortunately they do not enjoy equal rights and are shunned to periphery of society due to biased and prejudiced attitude of people towards them. This research aims at studying their status from religious, legal, historical and biological perspective. It also tries to study their familial life and the reasons of their unacceptability from their own family and society.

1.3 SIGNIFICANCE OF RESEARCH

There has been wide media interest over eunuchs and their problems over the past decade. Stories about eunuchs have been the focus of dozens of books, documentaries and movies. Similarly eunuchs once been marginalized have now become central theme of many books and articles in a variety of disciplines, including psychology, history, anthropology medical ethics and law. In legal circle eunuch's is now becoming the most debated topic and in the past ten years more than hundred articles and books have included discussion on eunuchs and their problems . Most of the publications do not focus on their legal and social status and many such issues have direct effect on society. It is this gap that I want to address through this research i.e. Eunuch's legal and social status has to be addressed so that the state and eunuchs perspective pertaining to their basic individual rights could be understood thoroughly.

The selection of my research topic is motivated by the decision of supreme court of Pakistan that announced that eunuchs were to be registered as a 'third sex'.⁵

The aim of my research is to grasp the understanding of the processes that led to the decision of the Supreme Court of Pakistan. The objective is to explore the complexity that revolves around the impact of the decision on eunuchs and their family settings. While the decision made by Supreme Court of Pakistan was highly endorsed among the eunuch community, Also, I want to explore the understanding and perceptions of such a decision in a strictly Islamic country.

Eunuchs are ostracized and marginalized in our society. This research is an attempt to make them acceptable as respected human beings in bias and intolerant society; it also aims at deepening the insight, and broadening the vision of society by giving them a chance to look at these unfortunate human beings living on the periphery as who they actually are not as how they are commonly perceived.

1.4 HYPOTHESIS

Throughout the world, sexual minorities i.e. eunuchs/ "hijras" continue to suffer from various forms of prejudice and discrimination at the hands of the state and the society at large even in countries where they are legally recognized and their rights are guaranteed by law. In Pakistan, their harrowing plight remains unknown to the heterosexual majority who remain by and large, not just indifferent but even relentlessly hostile to them.

After the independence of Pakistan, laws were made to maintain not only the law and order situation but also this legislation helped in guarantying the rights and duties of

⁵Ahmad Shah Azami, "Eunuchs enjoy equal rights in Pakistan, rules SC," Dawn, September 25, 2012, 1.

the people. Most of the issues have been solved by proper legislation but eunuchs have been never addressed by the legislators. Since Eunuchs are not protected by the law therefore they do not enjoy social status in Pakistan. They are not only disowned by the society but also by their families. Gender-rights activists and some human rights groups have only recently begun to raise their voice for them to help them gain their due status in society. The question however still remains far from being answered whether this newly born struggle towards their rights will ensure a better future for them in which they can have protection of their rights and equal opportunities to ensure a respectable living for them.

1.5 LITERATURE REVIEW

Some concerned books related to the topic are as under;

1.5.1 EUNUCHS AND SACRED BOUNDARIES IN ISLAMIC SOCIETY WRITTEN BY SHAUN MARMON (Oxford University Press, 1995)

This is thought provoking work by Shaun Marmon who has described eunuchs in different style, explaining them as category of those people who are suffering from sexual ambiguity. He has expressed his views openly on eunuchs where his central focus is on the sacred society of eunuchs who guarded the Prophet SAW tomb for over more than six centuries. And till present day many of them are performing this honor. The author believes that sacred eunuchs are representatives of an Islamic rituals, social order gender and time

1.5.2 EUNUCH, CALIPHS AND SULTANS WRITTEN BY DAVID AYALON

(The Hebrew University Press, 1999)

This book covers the era beginning from Islam up to the 17th century and deals mainly with eunuchs. It is not wholly history of eunuchs but connected to the powers of eunuchs trusted upon them in military, economically and socially. The main focus of the author is eunuchs during the three areas. They were usually up bringers of young mamluks. Other discussion is upon castration, so called sexual life their marriages and day to day life.

1.5.3 THE TRUTH ABOUT ME WRITTEN BY A.REVATHI AND

V.GEETHA (Penguin Global, 2011)

It is an autobiography of eunuch who fought against violence and persecution with in home and outside society. The experiences that author came across where people ridiculed him. Striving hard to live with a dignity and tried to live decently. He was born boy but he felt like he is a girl he has discussed psychological problems that how he was plagued due to his condition.

1.5.4 FIXING SEX WRITTEN BY KATRINA KARKAZIS (Duke University press, 2008)

This book explains that what measurement should be taken when a baby is born with both male and female genitalia this complicated condition confronts for instance that girl can have XY chromosomes; it also explains treatment to such infants born with abnormality and how to normalize such child with surgery. Over past decades medical doctors have come across many challenges of such ambiguous situation, and how they

fix it. The author showed picture of such contemporary controversies from the multiple perspectives.

1.6 RESEARCH METHODOLOGY

This research is primarily qualitative. I have used primary and secondary data in order to ascertain the difficulties faced by the eunuch's community, and how they understand their life within a conservative and Islamic country such as Pakistan. I decided to engage with them via interviews and observations and for this, I considered it important to design a semi-structured list of questions, that addressed issues related to their social status, what things shape their life, their interests, the means of income and the their understandings of how they are perceived. In addition the prime focus while engaging with them was to understand the impact of Supreme Court's decision on their daily life. The purpose of a semi-structured interview was to gain a deep insight into issues as addressed. Most of the questions were opening ended so that I develop a space to engage in conversations with them. Similarly I used observation techniques to explore and understand their daily routine tasks. This technique also served me to understand the perception about eunuchs from two dimensions i.e. from the people's perspective and also how eunuchs understand and experience the people's perspective towards them.

Also the primary data collection method included arranging meeting and engaging with discussions with industry experts and with scholars of shariah and law.

In addition, I used a variety of secondary data sources such as books and journals concerned with law, and law digests for relevant case laws related to eunuchs and to illustrate the concerned points. Also I used secondary data sources to understand the

western and Shariah's explanation of eunuchs in western literature and in Islam i.e. I have in my research cited verses from the holy Quran and Sunnah.

1.7 DEFINATION OF EUNUCH

A person whose gender does not fix with his/her assigned gender role is a eunuch.⁶ This term is applicable to variety of individuals whose behaviors involved tendencies varying from conventional gender roles. This term is also applicable to those people who are born to one sex but they think they belong to opposite sex. From childhood to their adultery they don't accept to what they are born with and rejects their gender. It is state of gender complexity not fixing to one's own assigned gender. Those born with abnormal gentiles also fall in this category where it is difficult to determine whether it is male or female.⁷

Those who have undergone castration process are also eunuchs. Eunuchs do not implies to any specific sexual orientation they may be identified as heterosexual, bisexual or asexual.⁸

There is no precise definition for eunuchs it remains in flux but includes some;

"Person whose identity does not conform to conventional notions of male or female gender roles but moves between these"⁹

"People who are born to sex usually at birth but they feel that this is false or incomplete description of them"¹⁰

⁶Julia M. O'Brien, *The Oxford Encyclopedia of the Bible and Gender Studies* (New York: Oxford University press, 2014), 404.

⁷ Ibid.

⁸Germaine Greer, *the Female Eunuch* (HarperCollins: 2009), 16.

⁹ David Aylon, *Eunuchs, Caliphs and Sultans: A Study in Power Relationships* (Magnes: Hebrew University, 1999),12

¹⁰ Ibid.

1.7.1 LEGAL DEFINITION OF EUNUCH

A male whose organs of generation have been disorganized or removed that he is rendered incapable of reproducing his species is known as a eunuch.¹¹

1.7.2 MEDICAL DEFINATION OF EUNUCH

A male who doesn't have testes or external genitals specially one castrated before puberty. So that male secondary sex characteristics fail to develop.¹² Male who is not born with testicles or his testicles has been removed; secondary sex characters fails to develop and symptoms such as feminine voice and absence of facial hairs can result from the low level male hormones in the blood.¹³

1.7.3 DEFINITION OF EUNUCH OF SUB-CONTINENT

A female impersonator in the Indian subcontinent who may have partial surgical sex reassignment. They belong to organization which is traditional i.e. part caste and part cult.¹⁴

1.8 EUNUCH UNDER ISLAMIC JURISPRUDENCE

In Islam "dimorphic gender classification" includes, general rule male and females.¹⁵ In Islam religious rules of conduct whether moral or legal are gender based. All Muslims must be content with what Allah has created in them and must not alter their primary and natural characteristics.

¹¹ John Bevier, *Law Dictionary Adapted to the Constitution of the United States* (New York: 1856), 111.

¹² Mosby, *Mosby's Medical Dictionary* (Elsevier: 2009), 24.

¹³ J. C Sigen, *Siegen's Medical Dictionary* (Oxford University Press: 2012), 55.

¹⁴ Kumkum Roy, *Historical Dictionary of Ancient India* (Scarecrow press: 2009), 45.

¹⁵ AbulazizSachedina, *Islamic Biomedical Ethics* (New York Oxford University Press: 2009), 191.

The Quran declares;

لِلَّهِ مُلْكُ السَّمَوَاتِ وَالْأَرْضِ ۖ يَخْلُقُ مَا يَشَاءُ ۗ يَهَبُ لِمَن يَشَاءُ
إِنثًا وَيَهَبُ لِمَن يَشَاءُ الذَّكَورَ ﴿٤٩﴾

To Allah belongs the dominion of the heavens and the earth; He creates what he wills. He gives to whom He wills female [children], and He gives to whom He wills males.¹⁶

أَوْ يُزَوِّجُهُمْ ذُكْرَانًا وَإِنثًا ۖ وَيَجْعَلُ مَن يَشَاءُ عَقِيمًا ۗ إِنَّهُ عَلِيمٌ
قَدِيرٌ ﴿٥٠﴾

Or He makes them [both] males and females, and He renders whom He wills barren. Indeed, He is Knowing and Competent.¹⁷

Following is the explanation /tafsir of above ayah:

That is, if the people who are involved in disbelief and polytheism do not believe even after the admonition, they may not, for the truth is the truth. The kingdom of the earth and heavens has not been entrusted to the so-called kings and despots and chiefs of the world nor has any prophet, saint, god or goddess any share in it, but its Master is One Allah alone. His rebel can neither succeed by his own power, nor can any of the beings whom the people look upon as owners of divine powers by their own folly, come to their rescue and aid.

¹⁶The Quran 42:49.

¹⁷The Quran 42:50.

This is a manifest proof of Allah's Sovereignty being absolute. No man, whether he be posing as owner of the highest worldly authority, or regarded as owner of great spiritual powers, has ever been able to produce children for himself according to his own choice and desire, not to speak of providing children for others. The one whom Allah made barren could not have children through any medicine, any treatment, any amulet or charm. The one whom Allah gave only daughters could not get a single son by any device, and the one whom Allah gave only sons could not have a single daughter by any means. In this matter everyone is absolutely helpless. Even after seeing all this if someone posed to be all-powerful in God's kingdom, or regarded another as a possessor of the powers, it would be his own shortsightedness for which he himself will suffer, and the truth will not change at all.¹⁸

The Quran do recognizes those who are born with abnormality or handicapped and Sunnah categorizes this category born with physical abnormality. While depicting women's code of ethics for social encounter with opposite sex, The Quran order them to guard their Chastity from all males except those with in law full family circle.

¹⁸Isma'ilAbiFidalbnKathir ,Tafsir al-Qur'an al-Azim (Riyad: Maktabat al-Riyad al-Hadithah: 1986), 6, 48.

وَقُلِ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا
 يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى
 جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ
 أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ
 إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا
 مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوْ
 الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ وَلَا يَضْرِبْنَ
 بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ وَتُوبُوا إِلَى اللَّهِ جَمِيعًا
 أَيُّهَا الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ ﴿٣١﴾

And tell the believing women to reduce some of their vision and guard their private parts and not expose their adornment except that which necessarily appears thereof and to wrap [a portion of their headcovers over their chests and not expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, *or those male attendants having no physical desire*, or children who are not yet aware of the private aspects of women. And let them not stamp their feet to make known what they conceal of their

adornment. And turn to Allah in repentance, all of you, O believers that you might succeed.¹⁹

Explanation of following ayahs is as given;

Tell believing women to lower their gaze, away from what is not lawful for them to look at, and to guard their private parts, from what is not lawful for them to do with them, and not to display their And adornment except for what is apparent, namely, the face and the hands, which may be seen by a stranger, when there is no danger of either or both falling into temptation — this being one of two opinions. The second of these is that even this is forbidden because there is a presumption that these parts will cause temptation — and this is the preferred opinion, if one must settle this topic with a definitive opinion and let them draw their veils over their bosoms, that is, let them cover up their heads, necks and chests with veils, and not reveal their, hidden, adornment, namely, all that is other than the face and the hands, except to their husbands (bu'ūl is the plural form of ba'l, 'male spouse') or their fathers, or their husbands' fathers, or their sons, or their husbands' sons, or their brothers, or their brothers' sons, or their sisters' sons, or their women, or what their right hands own, all of whom are permitted to look thereat, except for the part from the navel down to the knees, which is unlawful for any other than their husbands to see; 'their women', however, excludes disbelieving women, for it is not permitted for Muslim women to reveal themselves to these; 'what their right hands own' comprises slaves; or such men who are dependent, on what food may be left over, not (ghayri, read as an adjective, or read ghayra as an exceptive) possessing any sexual desire, not those men who are in [sexual] need of women, so for example those whose male member cannot become erect; or children who are not yet aware of women's private parts, in the

¹⁹The Quran, 24:31.

context of sexual intercourse, and so to these they may reveal themselves except for that part from the navel to the knees. And do not let them thump with their feet to make known their hidden ornaments, as in a rattling anklet and the like. And rally to God in repentance, O believers, repenting of the occasions on which you may have looked at what is forbidden to look at of such parts and otherwise, so that you might be prosperous, so that you might be saved from such sinful acts when your repentance thereof is accepted.²⁰

In the following verses of Quran and in the interpretation "Male attendant's free of sexual desires" are categorized as ghayruli al ibrah.

According to some learned critics ghayruli al ibrah, were those ineffective men with no feelings or desire for women.²¹ Intersex on other hand was given recognition in the Sunnah where the Prophet SAW to a question answered as to determination of the sex of a child born with two opposite sex organs the deciding factor in such case would be by looking at the organ from which it urinates.²²

Narated By 'Aisha, Ummul Mu'minin : A mukhannath (eunuch) used to enter upon the wives of Prophet (P.B.U.H). They (the people) counted him among those who were free of physical needs. One day the Prophet (P.B.U.H)entered upon us when he was with one of his wives, and was describing the qualities of a woman, saying: When she comes forward, she comes forward with four (folds in her stomach), and when she goes backward, she goes backward with eight (folds in her stomach). The

²⁰Maulana Muhammad Khalid Saif, Al-misbah-al-munir, Tafsir-ibne-kasir (Beirut: 2007)6,448

²¹ Muhammad Ahmad al Qurtubi, al- jami li ahkma al Quran (Beirut: ihya-al – Arab: 1998) 12,234.

²² Abu Dawud, Book 41, hadith Number: 4910

Prophet (P.B.U.H)said: Do I not see that this (man) knows what here lies. Then they (the wives) observed veil from him.²³

1.9 CLASSIFICATION OF EUNUCHS UNDER TRADITIONAL MUSLIM JURISTS

According to traditional Muslim jurists these abnormal genders are classified such as effeminate men mukhannath and the second hermaphrodite khuntha.

1.9.1 MUKHANNAT

Mukhannath literally means a man whose voice resembles with woman's voice.²⁴

Technically jurists defines mukhannath as;

To Hanblis and Hanafis there are two types of mukhannath one who has tender effeminate voice and does not possess any desires for women and also they show no anti-social behavior they are free to enter women quarter as well. The other kind though physically is same but morally they are corrupt and therefore forbidden from interaction with women.²⁵

To Shafis and Malikisthey characterizes mukhannath as those who has effeminate features in looking, thinking, talking and judgement, thus as long as he does not possess sexual feelings towards women they are regarded as acceptable type of mukhannath who can have social encounter with women.²⁶

²³ AbuDawud, Book 027, Hadith Number: 4095.

²⁴ Muhammad ibnMukrimibnMnzur, Lisan al – Arab (Beirut: Dar Sadir: 1985), 2, 145.

²⁵ Muhammad IbnAbiAshal al –Sarakkshi al- Mabsut (Beirut; Dar al- Marifah, 1986), 12,382.

²⁶ Muhammad al- Khatibal_ Shirbini, Mughni al-Muthtaj (Beirut; Dar al_ fikr: 1986), 234, 4.

The jurists has formulated set of different laws for the mukhnnath of erotic type based on tradition of Holy Prophet SAW, "God cursed the males who appear like females and the females who appear like males."²⁷

Islamic tradition does not rebuke mukhnnath as it features. Stressing this Ibn-Hajar maintained that the Prophetic criticism is limited to those who intentionally changes their norm of their born genders. It does not include those who are inborn with behavioral abnormality and suffers from sexual and psychological disorder. They need to be supported and should be adjusted to their assigned gender roles.²⁸

On the other hand erotic mukhnnath are subjected to several legal restrictions which includes;

- a) He is prohibited from homosexuality and if he commits homosexuality he would be subjected to Islamic punishments.
- b) He is not precede Muslim prayers because he lacks moral virtues.
- c) He is not allowed to mix with women.
- d) According to some Maliki's he is not encouraged to work at slaughter houses and at cooking jobs.
- e) He is not regarded as credible witness for the testifying before the court of law.²⁹

In Islamic tradition, erotic foppish is morally so repugnant that if a person calls a normal Muslim a Mukhnnath, he will be punished and will be charged libel by flogging amounting to 20 lashes at the order of the judge.³⁰

²⁷Fazlul Karim, *M ishkat al- Masibah* (Delhi; Islamic book service: 1994), 1,613.

²⁸ Ahmad Ibn Ali IbnHajar, *Fath Al_ Bari* (Beirut; Ihya al_ Turath al_ Arabi: 1985), 10,332.

²⁹Shirbini, *al- Mushni al- Mutaj* (Beirut al; Maqtab al- Islami: 1988), 3,128.

1.9.2 KHUNTHA

Khuntha is an individual who has an intersex condition or by birth his gender stands ambiguous i.e. difficult to determine whether he is born male or female.

IbnQudamah defines khuntha as "a person with both male and female opening in place of sexual organ from which it urinates"³¹

Classical jurists divide khuntha in to two sub categories;

- a) non problematic hermaphrodite (Khunthaghayrmuskil)
- b) problematic hermaphrodite (Khunthamushkil)

1.10 CLASSIFICATION OF EUNUCHS BY CLASSICAL JURISTS

Eunuchs have been discussed and identified in every age and era but here classical jurists has identified and classified them as under;

1.10.1 NON-PROBLEMATIC HERMAPHRODITE (KHUNTHA GHAYR MUSHKIL)

Khunthaghayrmuskil or non-problematic hermaphrodite is person who has both male and female genitals which can be assigned with any of the sex whichever is dominant function. For example if she shows female signs such as urinates from female sexual organ having uterus, ovaries would be regarded as female and if he shows male bio-physical characters would be classified as man.³²

³⁰ This held to be a ruling base on a Prophetic tradition. See Muhammad ibn `Isa al-Tirmidhi, *Sunan al-Tirmidhi* (Beirut: al-Maktab al Islami: 1988), 4:62. See also IbnQudamah, *ibid*, 10:202; al-Shibini, *al-Mughni al-Muhtaj*, 3:369; SahnunIbnSa`id, *al-Mudawwanah al-Kubra* (Beirut: Dar Sadir, n.d), 16: 216.

³¹ Muhammad Ali al-Bar, "Mushkilat al-Khunthabayn al-Tibbwa al-Fiqh", *Majallat al-Majama (al-Fiqhi al-Islami*: 2007), 6, 354.

³² Mansur IbnYunus al- Bahuti, *kahshshaf al Qina* (Beirut: Dar al-Fikr: 1982), 2,594.

1.10.2 PROBLEMATIC HERMAPHRODITE (KHUNTHA MUSHKIL)

Problematic hermaphrodite or khunthamushkil is a person who cannot be assigned to any of the sexes for example if he continues to urinate from both male and female organ.³³ Modern technology in medical science has solved many such issues specifically people with intersex condition of second type. Instead of the composition of sex chromosomes medical criteria goes beyond sex determination that's the reason medical science is capable to differentiate between real male and female hermaphrodite.

1.11 CASTRATED EUNUCHS

Depending on the degree of the desire for transsexuals to achieve sex-change, there are two levels of medical intervention, namely hormonal and surgical. In tandem with other measures in terms of social support and legal measure, the process of "sexual transitioning,"³⁴ may start with hormonal therapy in the form of pills or injection and other hormonal replacements to enhance normally transsexuals' feminine desires. To proceed with this therapy, the candidate would be advised to undergo some psychological counseling in view of the reverse implications that hormonal changes may entail at least six month prior to resorting to it.³⁵ The process in the case of male-to-female transsexuals involves the use of estrogen therapy which helps "suppress the physical male characteristics and encourages physical female characteristics. Electrolysis of facial and bodily hair is still necessary, however, as estrogen does not halt hair growth."³⁶ But in the case of female-to-male transsexuals, it requires

³³ Muhammad Ibn Muhammad -Hattab, *Mawahib al-jalil* (Beirut: Dar al -Fikr: 1978), 6,430.

³⁴ <http://www.faqs.org/health/topics/64/Sex-changesurgery> accessed April 2, 2015

³⁵ Ibid.

³⁶ Ibid.

“androgens which does lower the pitch in voice.”³⁷ Some transsexuals stop at this stage without proceeding to more drastic measures like surgery. For instance, in Pakistan, according to one study out of 73 transsexuals only six have undergone sex change surgery while in another research out of 50 transsexuals, 23 of them have done so.³⁸ However, in the case of those desiring to transform further, a sex change surgery will be the option today.

Sex reassignment surgery (SRS) or gender reassignment surgery (GRS), is a surgical measure through which “the physical transitioning of a transsexual or transgendered male-to-female or female-to-male” can be achieved.³⁹ Medically SRS “entails removing the genitalia of one sex and constructing genital organs of the opposite sex.” Male -to- female operation of this description continues to gain currency and if carried out professionally is able to bring to the transgender “orgasm, or at least a reasonable degree of erogenous sensitivity.”⁴⁰ The essential distinction of this process is that unlike sex-hormonal therapy which is resorted to largely by transsexuals “a man or woman feeling entrapped in a body of the opposite gender, called gender dysphoria.” It has purely medicinal value as it provides treatment for “newborns with intersex deformities” as well.⁴¹ To the medical profession, ironically, “technical consideration in both cases favors successful conversion to a female rather than a male gender.” Newborns with ambiguous sex organs will almost always be assigned the female gender, unless their penis is at least an inch long. Whatever their chromosomes, they are much more likely to be socially well adjusted as females, even

³⁷<http://www.srsmiami.com> accessed April 2,2015

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹<http://www.faqs.org/health/topics/64/Sex-changesurgery> accessed April2,2015

if they cannot have children.”⁴²In the case of psychological transsexuals, as opposed to in-born people with sexual abnormality, the procedure of sex surgery is undertaken under strict conditions. The reason is twofold, namely, the irreversible nature of the change and the need for preparedness to cope with psychological and physiological adaptation to changed gender identity. That is why a doctor before agreeing to accept the candidate requires the certification by two certified psychiatrists or psychologists that he/she is appropriate for SRS.⁴³ Thereafter, the SRS process begins with the surgeon subjecting the candidate to various lab tests, for HIV, obesity, or other venereal diseases. Once satisfied, then he/she briefs the candidate about health implications of such a choice and gets his consent for the treatment.⁴⁴At the surgery stage, as a matter of anatomical variation, the process somewhat differ from one gender type to another. In the case of male-to-female SRS, the procedures are as follows:⁴⁵

1. Discontinuation of hormone therapy for duration of three weeks prior to the surgery which otherwise increases the risk of excessive bleeding during the surgery;
2. Removing the penile muscle and tissue, the testicles, and reshaping external genitalia to appear female and natural.
3. Creating a vagina, deep enough to allow satisfactory intercourse for those who desire intercourse. To do so, there are two most favored procedures. First, “it involves using the inverted skin of the penis to line the newly created vaginal cavity.

An incision is made from the base to the head of the penis, and the skin is peeled away from the shaft while remaining attached to the torso.” To preserve sexual

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ This section has been adopted from the above web-page with minimal adaptation, see Ibid.

stimulation, "a portion of the penis head (the glands) with its nerve supply intact is formed into a clitoris. "Second, it involves "using what are called "full thickness" skin grafts. These grafts are obtained from hairless portions of the sides or flanks and the penile skin is then used to create the labia minora and the scrotum skin to create the labia majora. The width and depth of the vagina are usually greater than with the inverted penile skin, and the new vagina has less of a tendency to shrink over time."⁴⁶To prevent the vagina from closing, "a balloon-type device called a vaginal stent is inserted and remains in place for the length of the hospital stay, which averages around six days with complete bed rest."⁴⁷

Post-surgery attendance to the patient ranges between six to twenty four months. The transgendered individual must observe regular check-up schedules to be monitored by her physician. If major complications, such as shrinking of the vagina results the sex surgery will have to be repeated. In order to enhance her femininity, the transgendered person may opt for further medical procedures, such as breast enhancement techniques (saline filled breast implant), returning to female hormone regiment, cosmetic thyroid cartilage reduction (tracheal shaving), Crisco thyroid approximation(toning feminine voice) or even laser assisted voice adjustment (LAVA) known as endoscopic surgery and other surgical procedures for reshaping of the chin and cheeks, forehead contouring, and rib removal. But it is mandatory that she must go for follow-up medical check-ups annually.⁴⁸

In the case of female-to-male surgery, on the other hand, the success rate of sex reassignment surgery thus far has not been encouraging. This is "due to the difficulty

⁴⁶However, another procedure involves using a piece of the recto sigmoid colon instead of skin grafts, or inverted penile tissue. This technique allows for the creation of a deep and lubricated vagina, but is a more invasive and dangerous procedure and rarely the technique of choice. See *ibid*

⁴⁷*Ibid.*

⁴⁸<http://www.fags.org/health/topics/64/Sex-change-surgery.html>

of building a functioning penis from the much smaller clitoral tissue available in the female genitals.”⁴⁹In consequence, “in some instances, simply removing the breasts adequately satisfies the female-to-male transsexual. Others use a prosthetic penis that is either glued or strapped on, while yet others choose to undergo a phallic plastid (plastic surgery to attach a penis).”⁵⁰

The phallic plastid known as penis construction involves the following procedures.⁵¹

1. It begins less than a year after the uterus and ovaries are removed.
2. It involves constructing a tube-shaped structure from the abdomen or upper thigh skin of the candidate and attaching it over the clitoris to preserve as much sexual stimulation as possible. It should be noted that the truth of the matter is that the constructed penis as such though can be used for sexual intercourse is not perfect. To top it all, this kind of surgery “often creates unsatisfactory urination ability.”⁵²

1.12 POSITION OF ISLAM ON MEDICAL INTERVENTION TO CORRECT SEX ABNORMALITY

Modern jurists while validating the case of hermaphrodite disputed its legitimacy in the case of effeminate individuals mainly because in the former case it is regarded as a legitimate medical reason but in the latter it is considered as cosmetic impelled with malice of defying God`s ethic-legal imperatives.

Accordingly, jurists have a consensus that sex change mechanisms to restore malformation in the case of a hermaphrodite cannot be disputed as it is legally sanctioned by Islamic law. For instance, the Sunnah ordains Muslims to seek medical

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

treatment," God has not created ailments except that He has anticipated by His will a cure for it."⁵³

And, "O Servants of God seek medical treatment for your ailments."⁵⁴

The Prophet also commanded the removal of the harms and their after effects when he said: "Harm shall neither be inflicted nor reciprocated."⁵⁵

Accordingly, since such a person has no ulterior motive of hiding his real identity but recovering it by such an action provides further moral reason for the legitimacy of seeking medical help to that effect.⁵⁶ However, the debate rages over the validity of medical treatment for transsexuals. There are supporters and opponents, the gist of whose arguments we present here. The opponents, being the majority, represented by official bodies of Sunni jurists affiliated with the Assemblies of Fiqh Academies argued against it on the basis of the following grounds:

1- It amounts to tampering with one's God-made nature in consonance with the primordial evil handiwork of Satan.⁵⁷

2- Its ultimate objective is to alter one's social sexual role from the one created by God to that of the opposite one, hence, ultra-virus of the Prophetic prohibition on effeminacy and masculinity as we referred earlier on.⁵⁸

⁵³ Muhammad ibn Yazid Ibn Majah, Sunnan Ibn Majah (Beirut: Dar Ihya al-Turath al-Arabi, n.d) , 2:252.

⁵⁴ Ibid.

⁵⁵ Ibid, 2:60.

⁵⁶ Muhammad Shafi'i Miftah Bushiah, Jirahat al-Dhukurahwa al-Unuthah fi Daw' al-Tibbwa al-Fiqh al-Islami (Beirut: Dar al-Falah, n.d) , 471-472.

⁵⁷ Al-Nisa: 119. See also Muhammad al-Shanqiti, Ahkam al-Jirahah al-Tibbiyyah (Riyad: Maktabah al-Shabah, n.d), 135.

⁵⁸ Ibn Hajar, Fath al-Bari, 10: 333; and Muhammad Khalid Mansur, al-Ahkam al-Tibbiyyah al-Mu'alliaqah bi al-Nisa fi al-Fiqh al-Islami (Beirut: Dar al-Nafa'is, n.d), 204.

3- It is mostly done with the intention of hiding one's true identity thus is a kind of deceit which is haram by virtue of the Prophet's saying, "anyone who plays deceit does not belong to our community;"⁵⁹

4- Since its surgery involves de-capacitating one organ with the intention of replacing it with a cosmetic one, it is akin to castration which was prohibited by the Prophet when he forbade his companions from doing so.⁶⁰

5- It is not only unnecessary from medical point of view, as it is resorted not for medical reason/lawful reason but cosmetic motivation, it also entails post-surgery or hormonal therapy complications, thus is prohibited in Islam by virtue of the Prophetic edict on unlawfulness of self-inflicted injuries on one's inviolable person . To top it all, the person doing it finds it hard to be socially accepted by the rest of the Muslim communities, thus placing him under unbearable psychological stresses of unwarranted type.⁶¹

The proponents, Shi'ah/mamiyyah and some Sunni jurists, however, are of the view that the regulated use of sex-change medical intervention can be tolerated because: first, although being unlawful, it will become permissible on account of dire need of transsexuals by virtue of a well-known legal maxim, "necessity overrides prohibition."⁶² Secondly, it does not amount to tampering with one's God created innate nature but is a remedy/treatment for a transsexual's psychic –pathological condition.⁶³

⁵⁹IbnMajah ,SunanIbnMajah, 2:23, see also Bushiah, *Jirahat al-Dhukurahwa al-Unutha*, 480.

⁶⁰Muhammad ibnIsma'il al-Bukhari, *Sahih al-Bukhari* (Beirut: Dar al-Fikr, n.d), 936; al-Qurtubi, *al-Jami' li Ahkam al-Qur'an*, 5:391; al-Shanqiti, *Ahkam al-Jirahah al-Tibbiyyah*, 136.

⁶¹Ibid. see also Bushiah, *Jirahat al-Dhukurahwa al-Unutha* 489-490; FawazSalih, "Jirahat al-KhunuthahwaTaghyir al-Jins fi alQanun al-Suri," *MajallahJami'ah Damascus*, 2003, 19:2, 58.

⁶²Faisal Mawlawi, www.malawi.net accessed on April 2, 2015.

⁶³ Ibid.

For instance, one anonymous medical doctor protagonist strongly believes that transsexual tendency is biological in nature and a sickness when she said: “the psycho-sociological theories attributing transsexual tendencies to social factors and family upbringing are mere myths.” To her, instead it is a biologically mandated phenomenon, namely, these individuals’ sex brain region is responsible for generating sexual feelings which are contrary to their anatomical makeup. As a matter of fact these abnormalities in a fetus develop due to some hormonal abnormalities which affect its genes and consequently its sex brain cells before birth. Accordingly, after the birth such a child starts to display the feelings of reverse gender from the age of three. Therefore, to her, this is a kind of inborn defect with which a child is born and no other remedies can work for him/her except a sex-change medical intervention. This should, indeed, be allowed in Islam as: firstly, it does not amount to changing ones inborn nature but restoration of something amiss in him/her. It is analogous to the lawfulness of undergoing surgery to replace one’s a malfunctioned organ, which in no way is regarded as tampering with one’s nature. Secondly, the jurists who oppose it have not adequately pondered over the ensuing immoral consequences of their verdict for transsexuals, namely, who out of no legitimate outlet would express their aberrant feelings by way of homosexuality or lesbianism?⁶⁴

Niya of Shi’ahImamiyyah representing his sect’s position echoes the same by maintaining that unlike the Sunni jurist who by classifying sex reassignment at the behest of transsexuals as tampering with one’s God- created nature, the Imamiyyah holds the contrary. To us this is a kind or treatment for gender-dualism sickness and as such does not amount to altering one’s primordial nature but seeking medication which is lawful in Islam. That is why Khumayni issued a verdict on the treatment of

⁶⁴http://www.amjaonline.com/ar_f_details.php?fid=22813 accessed April4, 2015.

transsexualism by way of hormonal therapy. Practically 700 sex change operation takes place annually in Iran.⁶⁵

Lastly, Mawlawi, one of the chief proponents of this group disputed the understanding of textual evidences adduced by majority to oppose the permissibility of sex reassignment. To him, the Prophet's prohibition of men resembling women and vice versa has no bearing on this issue. The reason is that to construe the prophetic tradition in a sense that it prohibits all forms of effeminate resemblance on the part of a mukhannath is not correct. This is evident from the context of the hadith as some noted classical jurists like IbnHajar tried to construct. For instance, he held that if the mukhannath was unable to correct his effeminate voice and speech, he must be medically treated.

Accordingly, it is clear that the hadith in question does not cover a transsexual of anatomical type who is intrinsically engineered to feel to be the other sex. As such this kind of condition is nothing but an illness which needs to be healed and not touted, cursed and condemned.⁶⁶

Nevertheless, the opponents disagreed by saying: first, the maxim, 'necessities render prohibited permissible when the urgency is to save human life or limbs. Hence, the case of transsexual does not qualify as such as it does not fulfill the requirement of being a condition of extreme necessity (darurahmulji`ah) which is intended by the maxim; secondly, the contention that sex- change does not come within the purport of

⁶⁵Muhammad Mahdi KarimiNia,n.d., Taghyir al-Jins fi al-Fiqh al-Shi'i,http://www.iqna.ir/fa/news_detail.php?ProdID=586808 accessed April4,2015

It is to be noted that Imam Khumayni reportedly did not distinguish between psychological and biological transsexuals as he predicated his fatwa (verdict), 47 years ago, on the caveat, "a woman feeling trapped in the body of man or vice versa." See Anonym, 'AmalyatTaghyir al-Jins fi Iran, <http://www.frqan.com/videos/video.php?id=230> accessed April4, 2015.

⁶⁶ Ibid.

prohibition in the hadith on “resemblance” to the opposite sex is not valid. Because according to IbnHajar the ratio legis of the Prophetic injunction was to prohibit the alteration of a thing from its original state. Thus, sex change affects such a transformation and thus, is covered by the law in question.⁶⁷Thirdly, al-Qaradawi argued that in Islam not every feeling can be allowed to manifest itself into outward actions particularly if it is impelled by vain desires.⁶⁸

Lastly, The Fatwa Committee of the Assembly of Muslim Jurists of America challenges the biological imperative argument. It, among other things, considers the hermaphrodites also as transsexuals but born with “a congenital deformity in the reproductive organs” whose legal status is clear in Islamic law. The second category consists of those who were born anatomically as males or females but “transformed themselves into females or males via hormone replacement or surgery.” However, such medical intervention in their case from the genetic point of view does not transform them into totally different genders (their genotypes remain as before i.e., xx or xy). For instance, an effeminate male transgender can only have a new reproductive organ with no ovary and uterus to have a baby. Thus, for all practical purposes, he would be treated as a hermaphrodite after transition entailing complicated legal issues if he had children prior to that.⁶⁹To top it all, to the majority of the jurists, changing one’s sex entails change in one’s legal personality and

⁶⁷Omar HasanKasule, Islamic Medical Ethics with Special Reference to Maqasid al Shari’at, <http://i-epistemology.net/medicine/813-islamicmedical-ethics-with-special-reference-to-maqasid-al-shariat.html> accessed on April4, 2015.

⁶⁸Yusuf al-Qaradawi, ‘AmaliyyatTaghyir al-Jins, http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=75&version=1&template_id=105&parent_id=16 accessed April4 , 2015.

⁶⁹ The Fatwa of the Permanent Fatwa Committee of the Assembly of Muslim Jurists of America, http://www.amjaonline.com/en_f_details.php?fid=21701 accessed April5, 2015, the same view was upheld by the Conference of Rulers in Malaysia in 1983 and Conference of Jurists in Al Azhar in 1988. See Anonymous, Gender Identity and Islam <http://www.safraproject.org/spi-genderidentity.htm> accessed April5, 2015.

consequently is a matter of serious implications for a Muslim in terms of marriage, inheritance, socialization, and most importantly one's acts of worship. A trans gender's marriage is invalid as he or she is not a real male or female. The portion of his/her inheritance, would either be reduced or increased which will be ultra-virus of God's variant limits of shares based on gender and so forth.⁷⁰

1.13 Critical Appraisal

The foregoing juridical divide at macro-level represents a tension between idealism and pragmatism. The opponents are carried by idealisms of adhering to non-negotiable principles of preserving one's primordial nature, avoiding infliction of unnecessary harms to one's person, thwarting moral deviation on account of reversing one's role contrary to one's anatomical gender nature. The supporters on the other hand, while agreeing with the above, by and large, invoked the principle of necessity to counter balance the legal prohibition with the predicament faced by the transsexuals.

A non-partisan evaluation of the above, in the case of psychological transsexuals, would lead us to submit the following:

- 1- Sex- change medical procedure whether by way of hormonal therapy or surgery undoubtedly entails altering one's nature, changing one's born-gender role and involving a painful experience if it obtains via surgery. It is thus, prohibited according to majority but justifiable by their opponents. However, since such a change is not real as argued by the opponents, one may retort by saying that it does not worth trying it. To top it all, transsexuals' ordeal of reintegration to

⁷⁰Ahmad Muhammad Sa'd, *Taghyir al-Jins Bayn al-Hazrwa al-Ibahab*(Egypt: Dar al-Nahdah al-Arabiyyah, n.d), 84-89; <http://forums.understandingislam.com/showthread.php?10039-Sex-Change-and-Islam&p=150455&viewfull=1>, accessed April5, 2015.

society would make it all the more unnecessary as is evident from the reality on the ground in Muslim majority countries like Pakistan, Iran and Malaysia.

For instance, according to Bahram Mir Jalali, a famous sex-reassignment surgeon in Iran, in spite of religious legitimacy of sex-change mechanism and procedural facilities in Iran, the next of kin of transgender find it hard to accept them back once they have changed their gender status.⁷¹ The scenario is gloomier in the Sunni world.

In Malaysia even transvestite, men impersonating woman, are not tolerated. In April 15, 2011, a famous local singer by the name of Kajol was nabbed by anti-vice officers from Kelantan Islamic Affairs Department for indecently dressing in public during a performance in the state.⁷²

Sex change for male transsexual Muslims is not a happy option at all in the Muslim world.

2. Nevertheless the supporters score a point, on consideration of undesirable consequences of denying transsexuals the option for sex reassignment. For instance, in Iran homosexuality carries capital punishment, thus legalizing sex change is a savior for those feeling the other way. In the Sunni world, such as Malaysia, however, according to Khartini Slamah, a transsexual and activist, the situation is not promising when she says: "We are all in a dilemma. We are Muslims. They (religious authorities) say this is not allowed, but they never tell us what the options are. I felt like its being used to oppress. But I know that religion, Islam is so

⁷¹ Anonymous, 'Amalyat Taghyir al-Jins fi Iran, <http://www.fqan.com/videos/video.php?id=230>, accessed April 5, 2015.

⁷² <http://thestar.com.my>, accessed April 5, 2015.

flexible....”⁷³She also says that we are not gay men or transvestites as the society has “located us.”⁷⁴

A question arises, Can they be allowed sex reassignment in order to save them from vice? We believe that given the socio-cultural conditions in this part of the Sunni world, an affirmative answer may not solve their problems. The reason being that the apparently altered sex orientation may help their problem of sexuality but not their reintegration into the socio-cultural structure. This is especially so when they cannot lawfully be married as they are not regarded as real women. Accordingly, the only outlet open for them to fulfill their carnal desire is sex- industry or homosexuality, both of which have no legitimacy within the moral paradigm of Islam. However, we were unable to appraise the Iranian experience though unhelpful for easing the problem of transgender in a predominantly Sunni society like Pakistan.

All in all, the juridical work of Muslim jurists on transsexuals demonstrates a desperate attempt to reconcile the accepted norms with the need of the third sex. For biologically abnormal humans, they have tried to work out culturally defined mechanisms of sex reassignment and thus solving the problem of their crisis of personhood. In this way, they have resolved the problem of non-problematic hermaphrodite once and for all. As for the problematic hermaphrodites, they have formulated an interim solution pending the disclosure of their real personhood. Accordingly, the medical science today can solve this dilemma with more certainty which was not possible then.

⁷³Liau Y-Sing, Malaysia's Muslim transsexual's battle sex change woes, September 3, 2007, <http://thestar.com.my>, accessed April 5, 2015.

⁷⁴Ibid.

1.14 HISTORICAL BACK GROUND OF EUNUCHS

Historically the presence of eunuch has been visible in many cultural contexts. The existence of eunuchs can be traced since 9th century BC. The word eunuch has its origin from Greek which means “keeper of the bed” castrated men were in popular demand to guard royal women quarters. This practice started in China where at the end of Ming dynasty there were as many as 70,000 eunuchs in grand place itself.⁷⁵

1.14.1 ROOT HISTORY OF EUNUCHS OF SOUTH ASIA.

In South Asia people with a wide range of gender-related identities, cultures and experiences exist; for instance the hijra. They have been known, for example, as in Philippines bakla, in Oman xaniths and in South Asia hijra, kothi, jogtas or shiv – shaktis⁷⁶. Significantly eunuchs/hijras exists in Pakistan, India, Bangladesh, Nepal and other parts of South Asia. These communities across South Asia have similar cultures and habits, but are not totally same.

1.15 EXISTENCE OF HIJRA IN HISTORY

The transgender people have been found in different religion along with previous historical period. But mostly the Hindu religion and the Mughal Era have played vital role to develop the contemporary role of the hijra and their public perception.⁷⁷

1.15.1 CHRISTIANITY

The word eunuch can be found in the Christianity religion as bible says;

⁷⁵Mary M Anderson, *The Palace eunuchs of Imperial China* (Prometheus books: 1999), 41.

⁷⁶Khan et al, *Living on the extreme margin; Social Exclusion of the Transgender Population (Hijra) in Bangladesh, health population and nutrition.* (JB Johnson: 2009), 441-451.

⁷⁷David Avalon, *Eunuchs Caliphs and Sultans* (Hebrew University Press: 1999), 38.

“For there are eunuchs, who have been so from birth, and there are eunuchs who have been made eunuchs by men, and there are eunuchs who have made themselves eunuchs for the sake of the kingdom of heaven. Let the one who is able to receive this receive it.”⁷⁸

According to Christianity religion Jesus has categorized eunuchs in to three types as

- a) born eunuchs
- b) made eunuchs by others
- c) voluntary eunuchs

further explanation of them is such as that those born are by birth physically abnormal, the second type are castrated one and third type is considered that they serve God better.

1.15.2 HINDUISM

In traditional Hinduism several references exist to third gender and sexual ambiguity among human as well as among Gods. Thus, it is believed that intersexuality is not unusual and all people in corporate both male and female principles.⁷⁹Hindu mythology contains various examples of androgynies and individuals who undergo sex changes both among deities and human. Thus hijra received religious justification and power from this ritual although some interpretations were contested. However there is some example which shows the prestige of hijra religion. The God Ram, who is a popular character in Hinduism, acknowledged and blessed intersexual, Shiva,a deity who contains both male and female components and also related to symbols of fertility and eroticism which represent shiva united with his female creative power;

⁷⁸ Mathew 19:12.

⁷⁹Nanda, Serena, Neither Man nor Woman: The Hijras of India (Wadsworth: 1999), 11.

Similarly Arjun who rejected to have sexual intercourse with minor deity was cursed by her to be neither man nor a women and he used to entertain people with music and dance.⁸⁰ Vishnu and Krishna, who are often transformed with female and male characteristics to protect from demons and have no distinct signing and sexual classification, The culture of singing and dancing in weddings and births legitimizes today's role of hijra. The endowment was given by various deities e.g. mother Goddess, Bahuchara Mata) who allowed hijra to be the medium of power.

1.15.3 ISLAM

The view of eunuchs in Islam varies which provided various way of life according to different characteristics. Islam acknowledges persons who are born biologically indistinct and provides them with the same rights as men and women. Sometimes, it is mentioned in religion of considering either male or female gender; on the other hand, men who do castration are considered by the religious norm as non –Muslim. In addition, effeminates and cross dressers are not allowed to enter in to the hose holds and prescribed women to practice veil in front of them.⁸¹ Nevertheless, due to the inability to reproduce and subsequent lack of successors the eunuch which impacts honesty, were given high position as guards in mosques. The role of eunuchs also found at the Prophet Mohammad SAW tomb in Medina and spread to the Kaba in Mecca, the symbolic center of Islam. So, eunuchs can be seen as both prohibited and respected in Islam.

⁸⁰ ibid

⁸¹ Muhammad al- Khatibal _Shirbini, Mughni al-M uthtaj (Beirut; Dar al _ fikr, 1986), 232.

1.16E UNUCHS IN MUGHAL ERA (1526-1858)

During the Mughal era eunuchs were slaves who were castrated and not emasculated. The role of eunuchs during the past era was they were kept mostly to guard the royal women quarters. They were also found in Islamic courts who wore male clothes and turbans, and being person of trust, they were able to influence state decisions and also received large amount of money to have been closest to the Kings and Queens.⁸² Thus eunuchs often mention the role of their prestige in that period. However often sympathetically treated by general public as though eunuchs are predecessors to today's hijra.

1.16.1 THE BRITISH PERIOD (1765-1947)

In the beginning of the British period in Indian Sub- Continent eunuchs used to receive protections and benefits by some Indian states through entry into the hijra community. Moreover, the benefits included the provision of land, rights of food and smaller amount of money from agricultural households in specific area which were eventually removed through British legislation as because the land was not inherited through blood relations.⁸³

In the early 19th century there was a tendency by hijra to show their genitals if people refused to give alms it also claimed that there were artificial eunuchs who were taken away and castrated to be included in hijra community . The British attempted to criminalize these practices but it was unsuccessful because it was the only way to earn money for eunuchs and people developed tolerance towards these practices.⁸⁴

⁸²Hahn, S.C, Striving to survive," Human Security of the Hijra of Pakistan", (Hague; International Institute of Social Studies: 2010), 67.

⁸³ ibid

⁸⁴ ibid

Later in 1871 eunuchs were included as dangerous outlaws in the Criminal Tribes Act. This included all hijras who were involved in kidnapping and castrating children and who dressed like women and danced at public places. The punishment for such activities was up to two years of imprisonment and fine or both.

1.16.2 PRE-INDEPENDENCE HISTORY

Pre-Independence history influences legal and social status of eunuchs in Pakistan today. Although the power to bless and curse today is believed to come from Allah but it originates from Hindu mythology and provides justification for the cultural function of eunuch that has evolved and secure status of eunuchs. It is difficult to determine to what extent eunuchs influences people's perception. The attitude of Islam towards eunuchs likely impacts the legal, social and economic status of eunuch today. Pre partition history influences the vulnerable situation of eunuch in this contemporary world.

1.17 EUNUCH OF INDO PAK SUB-CONTINENT

In the Indo Pak Sub- Continent eunuchs have been reserved and avoided. While on the one hand their curse and blessings are considered potent, in Indo Pak sub - continent eunuchs live mostly within their own communities and within their own cultural contexts, leading the most challenging lives characterized by discrimination. Usually they live in groups of four or five disciples (chelas) supervised by a teacher (guru).⁸⁵ The guru imparts dancing, singing and other such skills to his chelas to make them able for earning their own living. The chelas give their money to guru who uses it to maintain the household. They impersonate many aspects of the female role for example they dress like women, imitate their gait, gestures, voice, facial expressions

⁸⁵ Nanda, Serena, *Neither Man nor Woman: "The Hijras of India"* (Wadsworth: 1999), 22.

and language, but do not desire to be reckoned as man. They take up feminine names and use feminine kinship like sister, mother, aunt etc. Their major sources of income include singing dancing on marriages birth celebration's, begging for alms and sex work. However there is small educated speaking class who does not have to go through the same hardships due to their economic and social status. Usually they become designers, work at fashion industry or makeup artists, interior decorators and hair stylistsetc.

1.18 CROSS CULTURAL COMPARISION OF INDO PAK EUNUCH

Eunuchs of Indo Pak possess higher social reputation due to endowment of some specific social roles. In India eunuchs has been considered as spiritually powerful entities as they are able of cursing and blessing as well.⁸⁶

During the regime of Mughal era eunuchs had been given the responsibility to guard women quarters. Interesting aspect of the eunuchs of Indo Pak Sub-Continent that distinct them from the west is their attire and appearance. Till recently eunuchs at west were much rare in public. On the other hand eunuchs of Indo – Pak sub-continent live in groups and bands. In west cases of eunuchs were mostly known through the reports of medical doctors and in such cases were such abnormality had been observed they were made under take psychological therapy to assign them with dominant sex. It's now recent practice that social help groups have been originated to provide the eunuchs with spiritual care and support.

On the contrary eunuchs in India are better in terms of legal and social status as compared to Pakistan. They have handsome income and much sounder social life at India tan in Pakistan.

⁸⁶ Ibid

As the historical phenomenon has put this community from a prestigious position to a vulnerable situation in the society, in contemporary world their traditional occupations are not respected like they were in the ancient Hindu religion, rather, they are called for performances for the sake of entertainment. Therefore, the cultural role of the community has changed over time and to survive in the society the eunuchs have found more occupations that have now become their traditional occupations, for example, other than singing and dancing they collect money in markets from shopkeepers. Poverty and lack of alternative livelihoods lead many of them to work as sex workers and few as beggars.⁸⁷ As a Muslim country, both religion and indigenous cultures are strong in Pakistan and thus eunuchs are carrying Indian sub- continent culture in this context by carrying out the traditional occupations.

1.19 EUNUCHS/HIJRAS ROLE IN SOUTH ASIAN POLITICS

In India eunuchs have come across many victories in politics starting with the election of Shobha Nehru in 1988 for the city council seat at Hisar, Haryana.⁸⁸ On the other hand Pakistan has yet not seen any eunuch elected at government despite of the fact that from eunuch community there is much political activism.

In May 2013 during Pakistan general elections eunuchs in Pakistan were given opportunity to run election for the first time in history. Sanam Fakir, a 32 year old eunuch, ran as an independent candidate for Sukhar division.⁸⁹ Indians election committee denied many cases where unless they identify themselves as either male or female and similarly Pakistan election committee in 2008 refused such cases.

⁸⁷ Jami Humaira, Condition and status of Hijra, Transgender, Transvestites etc. In Pakistan (National Institute of Psychology, Quaid-i-Azam University Pakistan: 2009), 141.

⁸⁸ <http://www.bbc.co.uk/news/world-south-asia-15398473> ,accessed 25th ,February, 2014.

⁸⁹ Ibid

CHAPTER 2

2.1 ANATOMY OF EUNUCH

When a new born baby is born he cannot leave the hospital until the paper work is completed and the birth certificate being given to parents which bears the decree of either male (m) or female (f). But if it happens where an abnormal baby with intersex condition is born with both male and female organ the doctors will determine through use of modern medical technology as to what gender be given to the baby. The doctors through x-rays and ultra sound will examine whether baby has uterus, if no uterus is found than determination is on gonads.⁹⁰

In short genetics, hormones, gonads or at least chromosomes (XX=female, XY=male) and various other tests will determine the gender of child.⁹¹

2.1.1 EUNUCHS ARE BORN OR MADE

Eunuch in Pakistan is translated as “hijra” a man who removes his genitals to become a eunuch. Anthropologists are of the view that many of eunuchs come from sexually complicated and ambiguous background. They are either born with intersex condition or may be born as male or female but at puberty they fail to develop fully.

The cultural category of eunuchs seems to be bridge between gender and sexual non conformity condition such as those born with abnormal sexual anatomy, impotency, infertility, homosexuality and others.

⁹⁰J. C Sigen, *Siegen's Medical Dictionary* (Oxford University Press: 2012), 174.

⁹¹Katrina Karkazis, *Fixing Sex*, (Duke University Press: 2009), 28.

Crude surgery is done by experienced nurses whose training is based solely on experience; eunuchs call this surgery nirban which they consider is transformation from one life to another.⁹²

In Pakistan castration is legally unlawful and is banned and that's the reason it takes place in absolute secrecy and isolation.

Many of research articles and documentaries reported that eunuchs are made with force castration. The method adopted is extremely painful, un-hygienic, unscientific and dangerous for health can cause death as well.

2.2 SYNDROME DISORDER

There are many medical conditions which are cause of sexual disorder, a child born with such a confuse state might have any of syndrome disorder for example;

2.2.1 KLINEFELTER'S SYNDROME

Klinefelter syndrome or Klinefelter's syndrome (KS) also known as XXY or XXY, is the set of symptoms that result from two or more X chromosome in males. The primary feature is sterility. Often symptoms may be subtle and many people do not realize they are affected. Sometimes symptoms are more prominent and may include weaker muscles, greater height, poor coordination, less body hair, smaller genitals, breast growth, and less interest in sex. Often it is only at puberty that these symptoms are noticed. Intelligence is usually normal; however, reading difficulties and problems with speech are more common. Symptoms are typically more severe if three or more X chromosomes are present.⁹³

⁹²Nanda, Serena, *Neither Man nor Woman, "the Hijras of India"* (Wadsworth: 1999), 76.

⁹³Aylstock M, Graham, *Klinefelter syndrome and its variants, "an update and review for the primary pediatrician,"* (York university press: 1998), 12,639.

2.2.2 TURNER'S SYNDROME

Turner syndrome (TS) is a condition in which a female is partly or completely missing an X chromosome. Signs and symptoms vary among those affected. Often there is a short and webbed neck, low-set ears, low hairline at the back of the neck, short stature, and swollen hands and feet at birth. Typically they are without menstrual periods, do not develop breasts, and are unable to have children.⁹⁴

2.2.3 CONGENITAL ADRENAL HYPERPLASIA

Congenital adrenal hyperplasia (CAH) are any of several autosomal recessive diseases resulting from mutations of genes for enzymes mediating the biochemical steps of production of cortisol from cholesterol by the adrenal glands steroid genesis. Most of these conditions involve excessive or deficient production of sex steroids and can alter development of primary or secondary sex characteristics in some affected infants, children, or adults.⁹⁵

2.2.4 ANDROGEN INSENSITIVITY SYNDROME

Androgen insensitivity syndrome (AIS) is a condition that results in the partial or complete inability of the cell to respond to androgens. The unresponsiveness of the cell to the presence of androgenic hormones can impair or prevent the masculinization of male genitalia in the developing fetus, as well as the development of male secondary sexual characteristics at puberty, but does not significantly impair female genital or sexual development. As such, the insensitivity to androgens is clinically significant only when it occurs in genetic males (i.e. individuals with a Y-chromosome, or more specifically, an SRY gene). Clinical phenotypes in these

⁹⁴Hovatta O, *Annals of Medicine*, "Pregnancies in women with Turner's syndrome," (Oxford university press: 2000), 106.

⁹⁵Alfred M Root, "The Adrenogenital Syndrome", (*The New England Journal of Medicine*: 1963), 268.

individuals range from a normal male habitus with mild spermatogenic defect or reduced secondary terminal hair, to a full female habitus, despite the presence of a Y-chromosome.⁹⁶

2.2.5 HYPOSPADIAS

It refers to a birth defect of the urethra in the male where the urinary opening is not at the correct location on the head of the penis. It is the second most common birth abnormality in boys, affecting approximately 1 of every 300. In approximately 90% of cases the opening "meatus" is on or near the head of the penis "glans", referred to as distal hypospadias, while the remainder have proximal hypospadias with a meatus near or within the scrotum. Shiny tissue seen extending from the meatus to the tip of the glans that should have made the urinary channel, is referred to as the "urethral plate". The combination of hypospadias and an undescended testicle sometimes indicates a disorder of sexual differentiation, and so additional testing may be recommended.⁹⁷

2.3 PORTRAYAL OF EUNUCH IDENTITY

Gender is pivotal in determining our identity and when it is determine who we are they interpret everything according to that perspective. Sex is biological factor and gender is the psychological and social unit.⁹⁸ Yet, there are various circumstances where the biological aspects are contradictory with social and psychological aspects of gender. Such situations dominate the anatomy in identifying and influencing gender role. Thus people may swerves from any of the normal pattern about

⁹⁶Jones RE, Lopez, Sexual differentiation, "Human reproductive biology", (Elsevier Academic Press: 2006), 127-148.

⁹⁷H-R Weidman, Atlas of Clinical Syndromes, "A Visual aid to diagnosis", (Mosby-year book: 1992), 288.

⁹⁸Kessler and Mckena, Gender, "an ethno methodological approach" (The university of Chicago press: 1978), 16.

sex/gender is considered to be abnormal. An individual who is labeled as such starts finding outlets for expressing abnormal behavior, urges or inclinations as family, friends and society try to find the ways to stop it forcibly. This lead in formation of small organized support groups where they may get acceptance and recognition for their identities and behaviors. Such type of small groups can be found all over the different with different names or titles.

The Quran recognizes that some men are “without the defining skill of males”⁹⁹

Eunuch is categorized in to three types by Muslim Scholars;¹⁰⁰

1. Biologically and the physical appearance of one which is closer to the males than to the females; such eunuch will be considered a male.
2. Biologically and bodily appearance of one who is closer to the females than to the males; such a eunuch will be considered a female.
3. One whose gender is difficult to ascertain and they are termed as “khunsamushkil” in Islamic jurisprudence.

2.4 EUNUCHS IN PAKISTAN

Eunuchs are confused kind of gender in Pakistan. Men pretends to be like women. The word hijra is often used as an abuse to a man who is effeminate, infertile, ineffective and whimsical.¹⁰¹ In Pakistan they are also called khusras, khwajasara or hijras¹⁰².

⁹⁹ The Quran; 24:31.

¹⁰⁰ Mohammad Ali al-Bar, *Mushkilat al - khunthabayan al-Tibbwa al- Fiqh*, (Beirut; Dar al_ fikr: 2007), 6,354.

¹⁰¹ https://sdpi.org/policy_outreach/event_details386-2014html accessed December 12,2014.

¹⁰² Ibid.

2.4.1 EUNUCHS DEFINE THEMSELVE

There are different definitions of eunuchs in different dictionaries but eunuchs themselves define their selves as under;

2.4.2 REAL HIJRA

Those hijras who have no sign of genitals or a small part to urinate.

2.4.3 MALE HIJRA

These are those hijras who have non erectable phallus. They don't prefer surgery. Some says their status in hijra community is small size bust.

2.4.4 FEMALE HIJRA

These are hijras who are close enough to women but on the hand they possess masculine traits as well. The first two types are predominant categories at hijra community; the third type is very rare at hijras community. Many have pointed out these three types but some are still hidden from the front line.

Some other types are labeled as cross dressers and transgender, homosexual and bisexual and Hermaphrodite or intersexes.

2.4.5 HERMAPHRODITE OR INTERSEXES

They are born eunuchs and are born with actual sexual deformity.¹⁰³ They might have no reproductive organ or might have double reproductive organ they can be treated medically and can be assigned with one of the dominant gender role.

¹⁰³Husain, S.A.M, Hidden Gender, "A Book on Socio-Economic status of hijra community of Bangladesh," (Herbew university press: 2005), 65.

2.4.6 CROSS DRESSER OR TRANSGENDER

They are also known as "zanany" they are those who has voluntarily changed their sex they are not born eunuchs they under goes castration they believe that they have female soul which makes them to act like a female.¹⁰⁴

2.4.7 HOMOSEXUAL AND BISEXUAL

They are normal men but for the fulfillment of sexual desires they disguises and join eunuch community they also fall under the category of eunuchs.¹⁰⁵

Among eunuchs those who are born eunuchs are considered the most respectable class with in the eunuch community other than cross dressers and zanany. Most of them goes castration those who are not born with sexual deformity and earn their earnings by way of collecting alms, dancing and singing. Some of them indulge in prostitution and criminal activities for making more money. Most of them don't disclose their identity. Their identity is shrouded in myths and false portrayals. Most of them portray women hood but still many of them are reluctant to mention their gender. Pakistan being patriarchal society many eunuchs too try to identify themselves as males. People believe that due to this grave handicap, Allah has granted them effective blessings.

The transformation of the Pakistani society, in the last few decades, has curtailed opportunities for khwaja sara to practice traditional occupations, and has increased dependence on prostitution and beggary. Society's deep rooted conventional perception of gender non-conformity itself is the basic denial of their citizen ship rights.

¹⁰⁴ ibid

¹⁰⁵ ibid

Whereas there is no safety net in the form of family, society or state; harassment, abuse and sexual violence are the stark realities of khwaja sara's day to day.

In Pakistan eunuchs could be categorized either in hijragiri or in sex work,¹⁰⁶ hijragiri is considered as collecting money through blessings new born by singing and dancing called bachanachano.¹⁰⁷ Usually hijra wear feminine dress and to earn money through bacchonachano they claim that since they are deprived of conceiving children, their blessing for children has more importance in the eyes of the divine. Another traditional work is collecting money from the shops in the markets called bazar tola. In the sex work hijra usually dress up as women to attract men. Mostly hijra live and work under a guru who is a senior hijra and is called mother of group hijra.¹⁰⁸ The hijra who are under this guru are called chella that mean child.¹⁰⁹ Guru and chella relationship always go through some disciplines and rules in their community. Usually guru doesn't earn money but the chella hand in their income to the guru. In return the guru takes care of them. These days, many eunuchs also live independently apart from the guru but have consistent relationship with their community.¹¹⁰

2.5 POSTION OF EUNUCHS IN PAKISTAN

Pakistan is one of those countries where the tradition of eunuchs is prevailing. More than 6000 approximately registered eunuchs in Pakistan.¹¹¹ Most of them live their lives by begging. They usually move around in form of groups numbering five to ten members and approaches shops etc. for alms. It is mostly believe in Pakistan that the

¹⁰⁶ Khan et al, "Not to stigmatize but to humanize sexual lives of transgender in Bangladesh," (LGBT Health Research: 1999), 4.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ www.nadra.gov.pk assessed April 26, 2014.

curse and blessing of eunuch is very effective that's the reason people give them alms out of fear being cursed.

Many eunuchs learn to sing and dance and then perform at small family functions and this way they earn some portion of their earnings although they are not respected people but people enjoy their performances at functions.

Eunuch's lives in large groups in particular areas where normally no one tries to go and it is almost out of question to live in their localities due to their abnormal behavior and suspicious activities.

2.6 CURRENT STATUS OF EUNUCH OF PAKISTAN

In Pakistan eunuchs have no protected place, they are not even protected in their families they are victim of injustice and abuse. Human rights activists quiet often documented the kind of injustice and abuse done to them. Such reports show that injustice is translated in to violence often of a ruthless and vicious nature being done to them at public places, police station, prisons and even at their homes.¹¹² Main factor behind this violence is that the families in the first place and society in the second place is not able to come to terms with the fact that eunuchs don't conform to the accepted gender division.

Furthermore eunuchs are mostly from lower middle class background which makes this easy for police enforce torture and torment on them. Due to the reason of being very weak and miser eunuch's community is one of the most cursed and disempowered groups in Pakistan.¹¹³ Everyday violence that eunuchs come across is

¹¹²NabihaMeher Shaikh, Hijras, "The Third Gender," Dawn News, June 24, 2008, 4.

¹¹³Ibid.

enforced by the institutions such as family, media and medical establishments have given legitimacy by the law enforcing agencies.

In Pakistan eunuchs faces many type of societal and state violence for example rape in jails, harassment at police stations and public place, torture at homes abuses, torments and almost every type of brutality has been done to them.

The media is showing altogether wrong side of eunuchs they must according to Islam define them and give awareness instead of this media is projecting them as criminal group of society that is to be ignored at every coast that is all inhuman and against the true essence of humanity.

Eunuch community is also weaved in a society which cannot be ignored and avoided. Only those odd beggars who live on pavement across the road envy the deviant existence of eunuch's colony. Although those odd beggars still have a little social acceptance as compared to eunuchs but still many of them are involved in crimes and prostitution and many of them too are converting to become eunuchs.

2.7 MODREN PRACTICE

In the modern world eunuchs of Sub-Continent are the most popular type of third sex. Australia comes in second place which is making significant progress in recognizing eunuch's rights. It has become way too easy for applying for passport that reflects a third gender neither male nor female. Government of Australia no longer looks for a proof of gender reassignment surgery.

In 2005 India has started included third gender passport where label "E" has been given.

Bangladesh has given third gender identity in 2006 using the term "other" for eunuchs.

In 2007 at Nepal third gender emerged as a strong faction the government has ordered their rights to be given but there is still denial of almost every right of eunuch. Nepal's 2007 Supreme Court decision on sexual and gender rights movement is taken as an example of effective grass roots human activism.¹¹⁴

United Nations has worked too for this segment of people; the highest human rights office at UN has recognized gender issues and has documented it properly. Transgender, intersex, or eunuchs face a lot of problems while applying for jobs, opening bank account or while travelling without official recognition it's impossible for them to survive and compete in society.

¹¹⁴<http://www.bbc.co.uk/world/news> , accessed 6th March 2014.

CHAPTER 3

LEGAL AND SOCIAL STATUS OF EUNUCHS

3.1 STATUS OF EUNUCHS

In history eunuchs had performed different type of jobs mostly retained jobs on higher positions at palaces. During the ancient era a common usage was prevent where slaves were made to undergo castration to make them loyal, they were than used for domestic purposes for giving baths to their masters making their bed cutting their hairs and nails and relaying massages as a trusted servant.

Eunuchs were not eligible for the military and aristocracy jobs nor were their families eligible for higher position jobs. They were considered as trust worthy and least interested in higher ranked jobs or making one's own private dynasty.¹¹⁵

Because of the reason that they had low social status they were replaced and killed without any hurdle. They were also used to guard women quarters with no doubt due to the trust entrusted in them by their masters.

During the Mughal era higher status jobs become available for eunuchs. This resulted in an alarming situation where poor families started converting their sons to become eunuchs so that they get jobs at royal palace and further get luxurious life style and also a healthy source of revenue for the whole family. Mughal emperor's mostly appointed eunuchs for their queens to guard their quarters and serve them as well. They also attained high status positions in society they were organized in such a way that a senior eunuch directed junior eunuchs. They were highly respected and valued because of their trustworthiness as they were allowed to live with their women. Hence

¹¹⁵ David Ayalon, *Eunuchs, Caliphs and Sultans*, (The Herbew University Press, 1999), 34.

they enjoyed prestigious status during Mughal era performing duties of messenger, watchmen, attendants and quiet often worked as advisors at Kings Court.

3.2 LEGAL STATUS OF EUNUCH WORLD OVER

Eunuchs rights were recognized in renowned judgment i.e. Christine Goodwin vs. The United Kingdom. It said that a test of biological factors could no longer be used to deny recognition legally to the change of gender that a transsexual had undergone.¹¹⁶

Attorney General vs. the Family Court at New Zealand the court held this decision that for the purpose of marriage transsexual people should be given recognition in their re assigned sex.¹¹⁷

At Australia Gender Identity and Sexual Orientation Bill, has not only been debated but is amended as well at State Assembly in year 2000. It lays down a complete and explained definition of gender identity and has also discussed cultural and social factors.

The International Bill of Gender Rights which was adopted in 1995, says that one can freely express ones gender identity.

It was year 1983 when Malaysian government fixed ban on sex change operations except for those who are born with gender abnormality. Also cross dressers were restricted and discouraged.

In 1988 at Egypt the highest Sunni Islamic Authority Al Azhar gave a fatwa on surgery operations that it is allowed to treat an intersexes condition patient in order to

¹¹⁶ Application no.28957/95 Eur. Ct.H.R. Decided July 11, 2002.

¹¹⁷ E.Law Murdoch University Electric Journal of Law, Vol: 8, Number: IISSN 1321-8247, March 2001.

know whether the person to be fit in male or female gender and this treatment must be considered as an obligatory need to assign a person with a gender.

In India a hijra movement has been started where they are trying to improve their living and fight for their rights they are taking active part in Indian politics an organization named Sangama is working on rights of eunuchs. It was December 2002; eunuchs formed an organization called Vivdah.¹¹⁸

Indian eunuchs have demanded their rights for housing, employment, travel concession they want to be recognized as women. They have also demanded amendment of section 377 of IPC.

At Bangalore eunuch's community organized a festival for themselves where different sports and cultural events took place.

Identity has been allotted to eunuchs of India by Indian election commission where they can mark their gender as "other" on ballot forms. The recognition in form of expressing their gender is first step towards their official recognition. In history of India, 1994 they were given right to vote for the first time. Government of India has accepted the fact that there is variety of gender in their society which has led in recognition of rights of eunuchs.

In March 2008 the Tamil Nadu government gave recognition to the rights of eunuchs and added the word "T" on certain government forms.

¹¹⁸PreetiSharma, "HistoricalBackground and Legal Status of third Gender in Indian Society,"(JRESS:2012), 14.

3.3 EUNUCH UNDER CRIMINAL TRIBES ACT, 1871 AND PAKISTAN PENAL CODE PPC

It can be drawn from the history of modern law in Colonial Pakistan that violence and cruelty against eunuch's community has occurred. Criminal tribes Act, 1871 which was an extra ordinary legislation on which Pakistan Penal Code is based. An offence to be proved against accused has to be proved in court of law.

Some of communities and tribes are considered criminals by birth where crimes are being passed from generation to generations where some communities are considered unclean from birth.

Relation between sexual non conformity and criminality was made more explained in 1897 amendment to the Criminal tribe's act 1871. Which was given subtitled, as "**an act for the Registration of Criminal Tribes and Eunuchs.**"¹¹⁹

Under this law local administrative bodies are required to keep the record of eunuchs their names and addresses to be noted down who were suspected tooinvolved in kidnapping or castrating children on committing offences under section 377 of PPC, any eunuch registered could be arrested without any warrant and punished with imprisonment up to two years or with fine or with both. This law also says that eunuchs are not capable of making a gift or will, adopting a son and cannot act in capacity of a guardian.

Pakistan recognizes only two genders male or female in respect of civil law they don't have proper rights this means that eunuchs don't have right to marry, claim health benefits or employment. They are facing a lot of legal challenges. Most of the laws enforcing agencies miss use the law and threats the eunuch's community.

¹¹⁹ Criminal tribes act 1871, part II.

Section 377 of the PPC, discourages “carnal intercourse against the order of nature with any man, woman or animal” even if it’s done voluntarily. It criminalizes such forms of sexual acts which are against nature.¹²⁰

Law originated from the colonial ideas has this perception that eunuchs are engaged in carnal intercourse against the order of the nature, which results in arrest and police harassment.

Traffic Prevention Act ITCPA of 1956 amended in 1986, whose main objective is to criminalize trafficking, soliciting, brothel keeping pimping and castration it in reality targets the visible figure of sex workers allowing police to arrest transgender sex worker.

So we can summarize the real position of eunuchs in Pakistan as follows;

- a) Constitution of Pakistan does not consider them as third gender; they are deprived of social, civil and political rights.
- b) They do not have right to vote up till recently
- c) They are not at all recognized as citizens of Pakistan and thus they are deprived of protection and rights available to citizens.
- d) They face discrimination which ends in brutality, mostly at public places, prisons and police stations.
- e) The Pakistani media presents eunuchs as ridiculous jokers that’s why people considers them as someone to be joked upon.
- f) Eunuchs in Pakistan are treated with contempt by the society. The family of eunuchs disowns them when they come to know about their sexuality.
- g) Eunuchs in Pakistan find hard to get good education.

¹²⁰Pakistan Penal Code 1860, section: 377.

- h) They are not given jobs which results in performance of immoral activities.

3.4 LEGAL STATUS OF EUNUCH UNDER PAKISTAN PENAL CODE PPC

One of the most significant and powerful institution that encodes, institutionalizes and enforces discrimination against eunuchs in Pakistan is the state itself. Pakistan legal system is confused and mingled shape of Islamic and colonial views. It makes discrimination of structural feature of transgender community.

There are various acts and provisions that are misused against eunuchs by the police for extortion of money and abuse. For instance:

3.4.1 SECTION 141

An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is "To commit any mischief or criminal trespass" or other offense.¹²¹

This article is used against eunuchs where mostly they roam here and there in shape of group which comprises of five to seven persons. so they constitute an unlawful assembly and can be found guilty of criminal trespass or mischief.

3.4.2 SECTION 268

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must

¹²¹ Ibid, Section: 141.

necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.¹²²

This article is also used against eunuchs where they are commonly caught under public nuisance and they also are sometimes guilty of causing annoyance.

3.4.3 SECTION 269

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.¹²³

This is one another article which is used against eunuchs where most of them are suffering from AIDS or any virulent disease. They indulge in sex business which is itself a crime and a result spread disease as well.

3.4.4 SECTION 290

Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine which may extend to six hundred rupees.¹²⁴

Eunuchs are found of dancing and singing they don't matter place and time they mostly cause's public nuisance which is punishable under this very article.

3.4.5 SECTION 294

Prohibit any "obscene" public acts, songs, music or poems.¹²⁵

¹²² Ibid, section: 268.

¹²³ Ibid, section: 269.

¹²⁴ Ibid, section: 290.

¹²⁵ Ibid, section: 294.

3.4.6 SECTION 371A

Whoever sells, lets to hire, or otherwise disposes of any person with intent that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person shall at any time be employed or used for any such, purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.¹²⁶

Pakistan being an Islamic republic prohibits prostitution and all other illicit physical relationships. Eunuchs earn most of the money by means of prostitution and illicit relationship they therefore are sentenced to punishment under this article.

3.4.7 SECTION 377

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section¹²⁷.

Criminalizing very existence of the khawaja sara these laws invite unwarranted authority of police to their already miserable lives Oppression inflicted by the police was a major concern that was expressed by the khawaja sara community. The various forms in which this oppression takes place include extortion, physical and verbal abuse, and illegal detention. It is extremely difficult to trace the number and pervasiveness of such incidents as there are no police records.

¹²⁶ Ibid, section: 371A.

¹²⁷ Ibid, section: 377.

In addition to this, civil law ignores their right to citizenship and equality. Absence to fulfill this requirement deprives them from various rights including their right to franchise, right to property, right of education, employment, and health facilities and so on. Such denial adds to the seclusion of this community from the fabric of Pakistani civil society.

3.5 LEGISLATION FOR EUNUCHS IN PAKISTAN

In Pakistan no constructive, legislative steps has been taken for eunuchs up to recent except the historical decision of justice Ifikhar Muhammad Chaudry, where he guaranteed their fundamental rights and directed Nadra for issuance of identity cards with special clause mentioning their gender. The court ruling primarily deals with the issue of the Khawaja sara community regarding harassment and illegal police detention. It has also issued orders to guarantee health care and their right to inheritances, which are sometimes, denied by their families who have rejected them due to their gender non-conformity. The court has also asked provincial governments to provide progress reports on what steps they are taking to improve the current situation of transgender community. The civil aspect of law totally ignores their demands of citizenship and equality in rights by making identification on the basis of sex within the binaries of male and female, a crucial requirement. Absence to fulfill this requirement deprives them from various rights including their right to vote right to own property, right to education, employment, health facilities and so on. Such denial adds to the seclusion of this community from the fabric of Pakistani civil society.

3.6 POSITION OF EUNUCH IN THE JURISPRUDENTIAL CONTEXT OF PERSON

In jurisprudence person means right and duty bearing units. Persons are of two types' natural person and artificial person. Every human being falls in category of natural person.¹²⁸

So, all human beings have a legal personality. But in reality we find that eunuchs even though they are human beings and natural person, they are not assigned any legal personality.

In ancient system not all human beings were granted legal personality. For example slaves in ancient times were considered as a movable property of their masters and had no legal personality or rights. Persons who would renounce the world and become monk were considered civilly dead and were considered to be without legal personality.

In modern times however, legal personality is granted to all human beings but it is strange that eunuchs are not assigned any legal personality.

In Black's law dictionary person is defined as individual human beings.¹²⁹ According to the definition of person enumerated in the oxford dictionary eunuch must be considered as person.

¹²⁸ Sir John Salmond, Jurisprudence, (PLD: 2001), 127.

¹²⁹ Black's law dictionary, (St Paul west:1991), 1142.

3.7 PERSON DEFINED BY PPC PAKISAN PENAL CODE AND THE GENRAL CLAUSES ACT

Pakistan penal code and the general clauses act define person as follows, person includes company or an association or body of individuals irrespective of this that it is incorporated or not. So it means that person includes an individual. So even by this definition eunuchs are persons

To award punishments the law or the courts sometimes consider the eunuchs as males and sometimes as females. At that time they are considered as person but not for conferring civil rights.

Section 8 of PPC if interpreted it would mean that offence can be committed only by a male or a female. It can be charged of any offence under the sections of PPC. So in the interest of justice, it is important to interpret the word "he" in PPC, section 8 to include third gender too.

Logically argued that a eunuch is neither a male nor a female so how the eunuch can be charged if any offence under the sections of PPC. So in the interest of justice, it is important to interpret the word "he" in PPC. If this be done there will be no need for the courts to treat eunuchs sometimes as male and sometimes as females.

3.8 CONSTITUTION OF PAKISTAN AND POSITION OF EUNUCH

Constitution of Pakistan has protected every segment of society by giving basic fundamental rights. On 25th September, 2012 Chief Justice Ifikhar Muhammad Chaudry have ensured that under constitution of Pakistan article 184(3) eunuchs are entitled to both immovable and movable property, right to vote, right to inherit property, security of life and property be given, right to get education, participation in

jobs, they should be respected like other citizens of Pakistan.¹³⁰ Furthermore he directed NADRA to register them and appointed focal person on their behalf on provincial and federal level. And law enforcing agencies were directed to ensure they get their rights under article 184(3) of constitution.¹³¹

3.9 SUPREME COURT DECISION ON EUNUCHS

Pakistan's Supreme Court held a ruling that all eunuchs has to be registered by the government administrative bodies main objective behind this verdict is to recognize their rights and to be considered as part of the society.¹³² This ruling was followed by a petition by Dr. Aslam Khaki who believed in saving their lives from shame.

Supreme Court's monumental verdict, delivered on September, 2012 a watershed decision on affirming Khawaja Sara's rights in Pakistan. The court not only ordered a survey of Khawaja Sara's citizens of Pakistan, but also instructed National Database and Registration Authority (NADRA) to issue new computerized National Identity Cards (CNIC) to them indicating their status rather than classifying them as men/women.¹³³ With these new CNICs their gender identity will be acknowledged and they would be able to benefit from Benazir Income Support Program (BISP) and other government welfare schemes. The court ruling primarily deals with the issue of the Khawaja Sara community regarding harassment and illegal police detention. It has also passed a decree to ensure health rights and rights of inheritance which are always denied by their families due to their Intersex condition or gender abnormality.¹³⁴ The court has also ordered provincial government and local administrative bodies that

¹³⁰ Constitutional petition No.43 of 2009, decided on 25th September, 2012, PLD, 2013, Supreme Court, 188.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

what measurements they have taken to improve the living of eunuchs community. It has been over four years since the apex court gave its verdict, but even after repeated protests from the Khawaja sara community no special steps in terms of their rights to be guaranteed has taken place.

3.10 REGISTRARTION OF EUNUCHS BY NADRA

The registration for identity is done at the age of 18 and it is done on the basis of birth certificate and there can be no changes made to it. There are almost 6000 eunuchs so far registered at national data base registration authority.¹³⁵

The registration of eunuchs is an important step taken by government where they can have record of eunuchs which is helpful for the development purpose and along with this a ratio of eunuchs is obtained as well and police can suspect those eunuchs who are indulged in criminal or immoral activities.

Recently eunuchs have been given equal rights on the basis of equality. They have now right of vote and can also contest in election. A eunuch named Aslam has contested in election against a renowned political figure and he was given 7000 votes.¹³⁶ There is no strict prohibition on eunuchs they can enjoy their equal rights the only bar on them is cultural and social within the society.

In Pakistan there is no legal cover given to the transgender where they can alter their sex and legal documents been given in the light of reassigned sex?

There are some cases where eunuchs undergo castration with the help of another eunuch it is sometimes done forcefully and sometimes voluntarily. This type of

¹³⁵ www.nadra.gov.pk assessed April 26, 2014.

¹³⁶ Samira Shackle, Politicians of the third gender: "the she male candidates of Pakistan" New statesman, May 7 2013,9

castration causes serious injuries and hurt which is threat to a person life as well and therefore it is punishable under section 322/335 of PPC.

3.11 SOCIAL STATUS OF EUNUCHS

Eunuchs are the most cursed segment of the society they live their lives with immense pressure from the society no matter what they do they are cursed for their doings they don't have any type of status weather moral or social.¹³⁷ Due to their abnormality they are not accepted by the society. They mostly belong to weak background so this makes them even more denied segment of the society.

They are of no use to society this is another reason that they don't have any social status. They are not having jobs or doing anything fruit full for them in first place and for the society for the second place.

We can say that eunuchs don't enjoy any social status because of many reasons few of them are stated below;

- a) They are not given acceptance by the family therefore becomes burden for the society as well.
- b) They are not doing any jobs and are useless therefore of no use to society.
- c) They mostly are indulged in criminal and immoral activities that are why society curses them.
- d) They are not ready for taking any responsibility this makes them refused by the society.
- e) They ridicule themselves and ultimately society ridicules them in return.

¹³⁷Rehan N Chaudhary, Socio-sexual Behaviour of Hijras of Lahore,(J Pak Med Association: 2009), 59

3.12 SOCIAL ORGANIZATION INTO HIJRA COMMUNITY

Hijra community is divided into different social levels. There are mainly the following four groups¹³⁸:

1. Hijras from medium group sing and dance in the squares and in the markets, serve in homes, even work as chefs. In some cities in India hijras own public baths.
2. Low group do some dirty work in houses, deal with criminal matters, beg alms from passers-by, passengers in trains, lead customers to prostitutes.
3. Special groups of hijra dance at exhibitions, presentations, celebrations in colleges.
4. There are the hijras of high rank i.e. musicians, officers, employees.

3.13 SOCIO CULTURAL PERSPECTIVE

In socio cultural perspective eunuchs has been denied and rejected to jobs so they live their lives by means of singing and dancing, strategies for their livelihood has been transferred from their past generation to their societies.¹³⁹ As compared to other eunuchs all around the world eunuchs of Pakistan their source of income is low and is limited to lower middle class of the bucolic areas. As compared to other groups of people eunuchs are capable of diversifying their ways of living. Rejection to accept eunuchs as normal human has debarred eunuchs from obtaining new ways of sources of income. These socially ostracized people have grown in to the culture of potential style and adaptive mechanism of livelihood. This is true at large for then typical eunuch community of Pakistan.

¹³⁸ Ali S, "Khawajasaraon Ki Dunya", Nawa-e-Waqt, Sunday April 6, 2005, 7.

¹³⁹ <http://www.reuters.com/article/idUSDEL3025420061110>, accessed april12, 2014.

3.14 ADAPTATION OF EUNUCH WITH IN SOCIETY

Eunuchs have to adapt themselves in society in several styles. They live isolated from the rest of the society.¹⁴⁰ But they have to come up and mix up inside the society for several reasons for example they go to markets and public places in group and mostly beg for money and they also usually search for homes where boys have been born they dance and collect money this way, they also goes to marriage functions where they dance and sing to earn money. They have no option but has to come out and interact with main stream society. Inside the eunuch community they live altogether differently where they speak different languages and for them their impression is very important.¹⁴¹ They at their community are different than what seems and is shown to the society where they talk and live altogether differently.

Eunuchs are stigmatized segment of our society. Their future is insecure to the rest of the society. They are not able to join any kind of job, they are unable to lead a normal married life like other humans, they don't have ability to reproduce and live in a family I short with knowing all this they lead very hard life. Their dual roles inside and outside their community has made their lives even harder.

They have although learned that how to live inside and outside their community but their adaptation within the society is not acceptable to rest of the society. It's though harsh fact but the society do not take them as part of themselves.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

3.15 FAMILY LIFE OF EUNUCHS

Family is an institution which plays a crucial role in marginalization of eunuchs.¹⁴² Intolerance of gender non conformity in terms of identity, attitudes, behavior results in suffering by family members. There are many examples where the child is suffering from gender non conformity family instead of understanding the problem of child and protecting the mental condition of their child they inflict torture on their child and beats him and banishes from the house. Gesturing in freakish manner eunuchs these days are found everywhere on streets knocking doors of cars and houses and beg. They are increasing in number day by day causing public nuisance. They are much notorious where they without invitation enters functions and don't leave until and unless they are not paid.¹⁴³ They have their own languages where they make sure that their customs are guarded.

If their family life is peeped in one gets nothing significant information but contradictory statements. Experts say that there is one in hundred genuine born eunuchs.

It is seen where the parents are rich they don't hand over their physical abnormal child and treat the abnormality of their child and give basic education they are cured somehow by their families but if the parents are not financially strong they give away their child to them because they think that the child is of no significance and burden on the family and can't stand the sneers of their relations.

¹⁴²Renate Syed, Pakistan's Hijras Feminine Soul, Masculine Body, Neue Zürcher Zeitung, Zurich, Switzerland, Oct 22, 2002 ,9

¹⁴³ Ibid.

Coming to their family life they are shunned off mostly by their own real families inside their community they live under one guru.¹⁴⁴ If they come across any fight among themselves they don't use physical force and solve the matter in simpler way. They lead very hard life where they don't get any affection from their own families and the society as well. They are disowned on every level and that's the reason they have got no social and legal recognition.

3.16 MARRIAGE OF EUNUCHS

Sexual abnormality is just like other physical abnormality or handicap. Eunuchs are given equal rights and other social duties in Islam like other humans. However marriage is not possible in their case, but if still taking some one in marital tie must inform his / her prospective spouse about their condition.¹⁴⁵

Prophet Muhammad (SAW) himself expressly acknowledged that some people by nature are incapable of heterosexuality, thus being natural eunuchs, consider the following hadith.

"Whoever is able to perform coitus should get married, for it helps him lower his gaze and use his private parts in the best way." And should he get married who does not have the ability to consummate a marriage".¹⁴⁶

"Whoever is not able to perform coitus should abstain."¹⁴⁷

Narrated Abdullah: We were with the Prophet, peace be upon him, as young men and we did not feel any passion. And the Messenger of God, peace be upon him, said to

¹⁴⁴ Ibid.

¹⁴⁵ Muhammad ibnMukrimIbnManzur, Lisan al-Arab,(Beirut: Dar Sadir,n.d), 2,145

¹⁴⁶ SahihBukhari, Marriage, (India:KitabBhavan :1984) 1123.

¹⁴⁷ SahihBukhari, Marriage,(India: KitabBhavan :1984) 1148.

us: "O young men! Whoever among you is able to perform coitus, he should get married, and whoever is not able, should abstain, because for him it is a harm."¹⁴⁸

3.16.1 EUNUCHS FUNERAL

The burial prayer of a eunuch believer is exactly the same as any other believer with respect to his/her category.¹⁴⁹

- a) Eunuch with biological and physical appearance of male, will be buried according to the funeral prayers of a male.
- b) The organs and the appearance of one who is closer to the females will be buried according to the funeral prayers of a female.

3.17 EUNUCH UNDER MUSLIM FAMILY LAW OF PAKISTAN

Muslim Family laws of Pakistan deals precisely with laws relating to succession, registration of marriage, polygamy, divorce, dissolution of marriage and maintenance. There is no separate section for eunuchs in family laws of Pakistan. Under Constitution of Pakistan and PPC homosexuality is forbidden they cannot therefore legally wed.¹⁵⁰

Those who are born with sexual deformity are not denied in Islam but a specific gender role shall be assigned in such case and shall be considered him/her this way.¹⁵¹ And after determining their gender they are treated and given same rights as other male and female enjoy. This is also the very basic reason that Muslim family laws are ascribed according to Islam. So we can say that under MFLO 1961 there is no legal

¹⁴⁸ Ibid.

¹⁴⁹ Anwar al Qadri, *Islamic Jurisprudence in the Modern World*, (Adam publishers: 1953), 434-435.

¹⁵⁰ Saira Tufail, *Third Gender and their Status in Pakistan*, Dawn, Nov2, 2006, 11.

¹⁵¹ Muhammad ibn Isma'il al-Bukhari, *Sahih al-Bukhari* (Beirut: Dar al-Fikr, n.d), 936.

status of eunuchs. But the person given specific gender role will be treated same as other male or female of Pakistan.

3.18 IDENTIFICATION OF IMPACTS ON FAMILY LIFE IN PAKISTAN

Eunuchs intimately are linked to adverse impacts on family life in Pakistan. It includes social stigma, prejudice, discrimination, social by cot and alienation from family and friends. Combination of these factors is detrimental to worst situation of family life. Other impacts are discussed as below;

- A) Denial from the family in first place and society in second place has made them most Un-wanted creature. This behavior is wrong their existence cannot be ignored since they are also part of the family and society.
- B) Acceptance is one another factor if the families accept them society will ultimately accept them and this way a better society will emerge
- C) Everyone living being has rights it includes humans, animals and plants then why not their rights to be recognized. If rights are given eunuchs and their families will be safe from many sufferings.
- D) Eunuchs are considered socio economic burden if basic education facilities, grooming and jobs be given they can also emerge as normal citizens of Pakistan.
- E) Awareness programs should be launch on every level if a child is born with abnormal genitals he /she must be assigned to dominant sex by the doctor many of the families don't know that its curable abnormality like other abnormalities.
- F) Condemnation of eunuch society should be made on every level there should be communities removed from the society those who are born eunuchs should

be assigned specific gender role and those who made themselves eunuchs should be punished to stop this culture which will be beneficial for the families as well.

- G) A child if born abnormal eunuchs claim them and parents give away such child to them this practice should be discouraged such child is given away not to come across any embracement in the family, such child should be treated medically and this practice must be shun off to lead a better family life.
- H) There must be strong condemnation of so called illiterate mullas who teach Islam in wrong way they mostly give this message to society⁶ that such child is fruit of their sins. Such type of education should be discouraged and a child must not be considered sinful better life should be given for better family life.
- I) Families should not quit their responsibilities towards an abnormal child if responsibilities are fulfilled it will result a better family life which will ultimately lead to better society.
- J) Lack of communication is this one another reason which is detrimental in making the family life worst, parents should talk openly about the problems of their kids to identify their problem in the beginning and seek assistance of the medical doctor in this regard

Hence we can say that impacts on family life in Pakistan are although adverse but with few basic steps it can give rise to new and better family life of Pakistan all we need is to educate ourselves and just not to quit our responsibilities and by following the path of Islam one cannot face any failure in any aspect of life.

3.19 INHERITANCE RIGHTS OF EUNUCHS UNDER ISLAMIC LAW

The rights of eunuchs in property distribution are also in accordance with the category i.e.¹⁵²

- a) Eunuch with biological and physical appearance of male will receive his inheritance according to the prescribed share of a male heir.
- b) The organs and the appearance of one who is closer to the females will receive her inheritance according to the prescribed share of a female heir.
- c) However, 'Khunsa Mushkil' in Islamic Jurisprudence will neither be given property share neither according to the prescribed share of the male heirs (2 times), nor the female heirs (1 time), but rather exactly in between the two: i.e. 1½ times.

3.20 RIGHTS OF EUNUCHS UNDER ISLAMIC LAW

Islam treats every human being equally irrespective of any ones cast creed and color, if someone is suffering from any type of abnormality it does not effects his equality or the rights that he possess. Eunuchs are also human beings and they must not be shunned by their families and society. Allah is the creator of whole universe and of those who are born with any type of abnormality it is a sign and test for whole mankind, so that man may realize his countless bounties bestowed to us. We should be grateful to Allah for whatever way he has created us.¹⁵³

Islam is a complete religion for whole of humanity it does not look down to any one not even to eunuchs as their creation and state is from Allah not from them. Infact Islam demands to be more careful, kind and patient to these abnormal slaves of Allah.

¹⁵² Anwar al Qadri, Islamic Jurisprudence in the Modern World, (Adam publishers: 1953), 434-435.

¹⁵³ Shaun Marmon, Eunuchs and Sacred Boundaries in Islamic Society, (Oxford: 1995), 122.

Islam has defined laws for every one in every capacity. Similarly those close to men in terms of nature and form are to be considered as men and those who are relatively closer to female are to be considered as female. And ultimately laws will be implemented in such a way. But there are some among such eunuchs who are neither like men nor like women for them Islamic law determine mid-way. As for instance in inheritance distribution a eunuch who cannot be determined whether closer to man or women will get 1.5 times the distribution rather than 1.0 for woman and 2.0 for male.

Allah says in the Holy Quran,

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ
لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَنْفُسُكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣﴾

“O mankind, we created you from one man and one woman, and then divided you into nations and tribes so that you may recognize one another. Indeed, the most honorable amongst you in the sight of Allah is he who is most pious (God Fearing) of you. Surely Allah is All-Knowing, All-Wise”.¹⁵⁴

Islam has given the criteria of goodness and honorability. It does not deal with a person gender but one who is most pious and chastise is honorable in front of Allah. If eunuch is God fearing and pious he will be rewarded same as other pious Muslims.

The position and status of the eunuchs in Islam applies to those who are born eunuchs not to those who has altered their selves to get closer to that sex other than that to which they are born. Prophet Saw particularly cursed those men who talks, walks, behave like women and likewise cursed those women following men in her attire and

¹⁵⁴ The Quran, 49:13

other activities. Similarly Prophet Saw cursed female impersonators who are males and male impersonators who are females.

3.21 EUNUCH HOOD SOCIO ECONOMIC NECESSITY

In Pakistan eunuchs earn for their lives by way of begging, singing, prostitution and dancing. Mostly work as entertainers and extract money from people through such means.

Conventionally eunuchs are gathered to perform on songs at the domestic functions they perform on the birth of new child as well their blessings and curse are given a lot importance due to the adopted conventions.¹⁵⁵ They are regular collector of the alms from public places and markets if they refuse to hand over the alms sometimes little extortion also take place. Besides all this eunuchs also work on sex business. They often sell their bodies to other people involved in sex business on very cheap prices.¹⁵⁶

Their demand is getting low these days; hatred for them has been developed these days. Such declining popularity of them is making them suffer a lot and they have no choice left but to get involved in criminal and immoral activities. Through dancing and singing they were able to earn more.

3.22 SILVER LINING

Well said that with “every cloud there is a single lining”

Around the world great amount of awareness has been made though things culture and social norms go against eunuchs but great amount of work has been done

¹⁵⁵Rehan N, Chaudhary, Socio-sexual Behavior of Hijras of Lahore,(J Pak Med Association: 2009)4.

¹⁵⁶ Ibid.

specifically in back word countries like Pakistan. They are not the same as they were in the past though the amount of hatred for them within the society has not lessened but through social media they have earned a lot of benefits for their community and with such awareness their problems are being highlighted and is getting focus which need to be solved. We live in such a society where taking their names under the very label was considered sinful but with time it becomes open and free to be discussed which is very meaning full in the aspect of awareness and education, this problem need to be addressed that with birth of such child medical doctor should assign the dominant gender and with such assistance the child can be cured along with this it is also highlighted that there is no in between sex in Islam a person must be fixed in male or female gender. With such awareness ultimately the cross dressers will be discouraged, families and society will flourish in result.

3.23 REASONS FOR BECOMING EUNUCH

My research on eunuchs has revealed various reasons for joining and becoming eunuch. Many of them take dancing as their passion, make over like women and sexual interest in men has made them join eunuch community. Besides this many youngsters has joined this community due to joblessness and easy and short way of earning money.

Some eunuchs has inclination towards acting and dressing like women. Some cases were traced where they got harsh treatment from their families made them to join eunuchs. Sexual abuse and homosexual activities is one another reason traced for becoming eunuch. Some were traced with physical and psychological problems.

Boys with womanish and feminist looks got attention from men inside schools or employment ultimately lead them to join this community.

Some of them claimed that they are born eunuchs, some of them claimed that their parents handed them over due to shame and embracement, some of them were sold by the parents due to poverty other are sold by the kidnapers. Some of them fell prey by often watching their activities eunuchs are considered mysterious they show themselves to young boys like this way so that their curiosity becomes greater they seek pleasure in this way and ultimately they join this community this way.

3.24 GENERAL ATTITUDE TOWARDS EUNUCH COMMUNITY

Like other parts of the world the in Pakistan too attitude toward eunuch community is discriminatory. They are denied of jobs because of their abnormality and also deprived to get education because of the people general attitude toward them. They are denied of health assistance. Those who are victim of gender identity problem under goes castration without any medical aid and doctor's prescription by means of very dangerous and pain full process which may lead to death some times.¹⁵⁷

By and large people avoid interacting with them due to their vulgar appearance and jokes. People gives alms because they fear Allah and are afraid of their curse.¹⁵⁸

My research result made me to say that fifty % of people meet them once in a year, twenty eight % meet them once in a month and twelve % meet them once in a wee. Six % meet them every day and two % meet them in their life. Talking about eunuchs inside family is considered one of the bad stead. People believe those born with sexual abnormality should be given to eunuch community.

¹⁵⁷<http://www.iusti.org/asiapacific.html>. accessed April15, 2014.

¹⁵⁸ A. Revanthi ,A Story Of Eunuch, (Penguin:2010),105.

In comparatively big cities the number of becoming eunuchs is increasing people do not like them to live in their localities they don't even want their children can even see this creature of the earth.

People who are born eunuchs are more positive in their attitude and thinking than those who have become eunuchs themselves.

My findings has also made me to say that those who are born eunuchs must be cured and compensated than those who have become eunuchs , these made should be punished so that the fashion of becoming eunuch is discouraged and youth should be lead on the right directions. Those eunuchs who are from financially strong back ground get their hormonal therapies from doctors and fix their gender and those who are from week background relay on self-remedy and remain embedded in quagmire for their whole life.

3.25 A QUEST FOR SECURED LIFE FOR EUNUCHS

Eunuchs are trying to fix their survival in Pakistani society somehow where there is a lot of pressure on society from so called extremist Mullas and Qazis. They are striving hard and working on the formula of Darwin's which is "survival for the fittest" here I have several findings where they are striving hard for the following basic rights;

- a) They are struggling to get basic education facility.
- b) Trying to get employment.
- c) Claiming for housing facilities.
- d) Ensuring medical facilities.
- e) Claiming rights to property from their families.
- f) Claiming social and legal acceptance on every level.

Important point to be noted here that all eunuchs want to access following rights on the condition of their rituals, ethnicity and working with in their community.

CHAPTER 4

REVIEW, CONCLUSION AND RECOMANDATIONS

4.1 REVIEW

Eunuchs are not acknowledged in our society like they should be, they are forced into a profession such as prostitution, on the mere fact that they are not regarded as either gender, but are somewhere in the middle and because of their sad fate, to be born in a society which will not only ridicule such a being, but in fact use and abuse its mere existence, and take away any right that they ought to have. The concept of eunuchs has been developed since ever on the traces of historical evidence. However, now we can observe their presence in our country as well. Although, they are instituted in a vast number and majority in India, many of them now exist in the poor places of Pakistan. They are considered as appalling people and not really valued by the populace and there are many incidents, which demonstrate or depict such discrimination and oppression against them. Eunuchs have been emerged in the society as a matter of ignorance. Their families and relatives choose to disown some of them and so they tend to indulge themselves in activities as such, offering money so they can make a way of life. All of these factors depict that the eunuchs have been deprived off their rights and how they have been assaulted.

The treatment given to eunuch's is uncalled for, and the customs we laugh at, and ridicule with all our might, are created indirectly, by us, who cannot accept a person who is nor here, nor there in gender, and so create discrimination and prejudice with a being, who may be as bad or as good as the next person, but is never given a chance to prove it.

Some of them were questioned, were helped, were given the chance to tell their stories, to rise above the disgust of the life they lead and still try to live life normally, but what about the ones who remain unattended in a large number? Who belong to small or deprived families? Whose parents have enforced them into this to earn for them? Do all of them obtain identification? No, it is just a few in the lot and the afflictions of the rest carry on.

It is not just up to eunuchs to fight for their rights, but it is also up to each individual to regard them as human beings worthy like any other human being, and to not ridicule or mock them, but to give them a chance, so with acceptance in society they can no longer be destitute and poor, but be educated and worthy to work, and leave the customs behind them, and it is every person's responsibility to strive for change where it is needed, for the first step, always starts with us.

4.2 CONCLUSION

Very few of us have knowledge about eunuchs. No one knows what reality behind their feminist out-look is. Most of them are suffering from psychological problem or sexually handicapped which is beyond their control we being humans hate some people without knowing them but we still hate them this stands true for eunuchs.

We should feel the sufferings of eunuchs their denial from their families in first place and society in second place makes them a burden and nothing else their condition is from God but their sufferings is from us we being human should abridge a state of trust among them and society at large.

Their lives can be productive for their families and society as well if we lessen their sufferings they can also play vital role at society at large. If following things are taken care of;

4.2.1 HEALTH CARE

There is disgraceful attitude in the hospitals as well. They are not considered in any of the gender even by doctors this need to be addressed. Eunuchs should be treated equally and free medical assistance should be given. By giving basic health care many virulent diseases like HIV, AIDS can be cured as most of eunuchs suffer from many virulent diseases.¹⁵⁹ There are many such instances where they undergo castration which is done with no medical assistance that leads to deaths some times. Most of them are unable to afford private clinic bills and at Government hospital they are not treated. They must be given psychological treatment to cure their mental health along with this those who are born should be treated and assign with dominant gender, hence accepted as other handicap human beings. This acceptance at family and society level will lead society to flourish.

4.2.2 EDUCATION FOR ALL

At schools they are ridiculed and nobody likes to sit or interact with them even the parents of other child too are reluctant to leave their child to be friends with such a child. Also teachers at the school keeps humiliating and taunt full attitude towards such students and they are deprived of their basic education this way which make them illiterate and they are therefore unable to get prestigious job.¹⁶⁰

¹⁵⁹<http://www.NationalAidsControlProgramIslamabad>, accessed June 12, 2014.

¹⁶⁰Talal Raza Eunuchs,"a neglected chapter of our society" The News, March 24, 2012.6.

4.2.3 REJECTION

Rejection on every level at family at school at friends and at society makes them isolated which turn them psychologically suffer and this rejection leads them to join their community. Mostly parents banish them from their houses so they have no choice left but to join rest of the community.¹⁶¹ They are rejected by the families and society which results in the disturbance of the society.

4.2.4 OPERTUNITY OF JOBS

They must be given opportunity of jobs so that they can get some status in the society and must not be considered as burden on family and society. There is social discrimination in terms of jobs which is main reason that they are involved in criminal activities. They are unable to get proper documentation, education and employment which is main factor in deteriorating their image and society as well.

4.2.5 DERISIVE MEDIA

On media eunuchs are presented as object of entertainment and ridicule. as far as their real life is concerned there is nothing significant shown and conveyed to the audiences. They are shown criminal, evil and lurid creatures of the society.¹⁶² It is mostly observed that they are labeled as Khusra, Khawaja Sara or with other names by the media.¹⁶³

¹⁶¹ Ibid.

¹⁶² Transgender: Pakistan's Open Secret, Directed by Sharmeen Obaid Chinoy (2013; Karachi: sharmeen obaid films) dvd.

¹⁶³ Ibid.

4.3 RECOMMENDATIONS AND SUGGESTIONS

- a) Eunuchs are humans too therefore they should be treated equally.
- b) Effected family should treat medically their child psychological problem they must also
- c) Take information and update their knowledge about the eunuchs this awareness will lessen the sufferings of their child and them as well.
- d) If a child is behaving in an abnormal way he should be given medical treatment to avoid worst situation in future.
- e) Parents should keep a close eye over their children company and on their activities as well.
- f) Government and local bodies who are assigned administrative duties should give free treatment to effected families.
- g) Government should give stipend to the poor effected families.
- h) Government should enroll eunuchs in jobs so that they are considered useful for their families and society at large instead useless, with such status they will automatically avoid immoral activities.
- i) A child born with gender disorder must be treated immediately by the doctor to assign the dominant sex of the child.
- j) Parents should take notice of each and every happening taking place in the surrounding of their child.
- k) Parents should take notice of every person giving undue affection without any reason.
- l) Parents should keep check on their children as to what sort of activities they are doing on internet and what type of channels they are watching on television.

- m) AIDS awareness programs should be building up by the Government especially for the effected segment.
- n) Strict law and punishments should be given on auto- castration.
- o) Those who has castrated should be medically examined and after that should be given strict punishment so that castration is discouraged.

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