

**THE MAJOR INTERNATIONAL HUMAN RIGHTS
INSTRUMENTS AND RIGHTS OF HERMOPHRODITES
IN PAKISTANI SOCIETY**

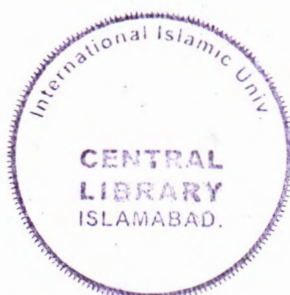


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" " " - Islamic Law.
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Dedication

I dedicate my thesis to my dearly parents whose brought up inculcated in my personality the very respect for Human Rights for all human beings including Eunuchs which instigated me to carry out this research work on Rights of Eunuchs.



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FINAL APPROVAL

It is certified that we have read the dissertation submitted by Mr. Akbar Azam Rajar, Registration No. 8-FSL/MSHRL/S10 on "The Major International Human Rights Instruments and Rights of Hermaphrodites in Pakistani Society" in Department of Law, Faculty of Shariah. & Law. We have evaluated the dissertation, and found it up-to the requirements in its scope, and quality by the International Islamic University, Islamabad, for award of M. Phil/M.S. degree in Human Rights Law.

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Disclaimer

This thesis is a part of the author's study programme of M.S/M.phil (Human Rights law) at the International Islamic University Islamabad. The views / arguments furnished therein may be considered as that of the author's and not necessarily those of the University.

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Glossary

Allah	Arabic word for God. Name used by Muslims for God.
Guru	Senior member/head of a Eunuch group.
Eunuch	Term used for genitally indistinct persons (Transgender/Hijra/Khwajasra)
Zanana/ Zananay	Gender dysphoric male, who does not wish to be emasculated.
Wadai	Reward money or money paid to them as charity.
Nirban	Castrated Eunuch
Mukhnath	A word used for Eunuch in the column of gender in CNIC
Khusra	An urdu word used for Eunuch/transgender

Abstract

The Eunuchs are the most degraded, ostracized and neglected category amongst the disadvantaged citizens in Pakistan based on gender issues. Eunuchs from the human rights perspective are also the disadvantaged group of citizens in Pakistan. The status of Eunuchs with respect to human rights is deplorable if compared with men and women. The issue of application and recognition of human rights to Eunuchs is therefore of great significance and importance for human rights law and principles of state policy in Pakistan. This thesis looks into the status of Eunuchs human rights in Human Rights Law, Pakistani Law and Islamic Law. The thesis also looks into as to what is the position of Eunuchs in Pakistani society. The assessment of Human Rights Law, Pakistani Law, Islamic Law and The Supreme Court's decision on the rights of Eunuchs with reference to position and status of Eunuchs may lead to certain issues of incompatibility among the International Human Rights Law, Islamic Law and Pakistan's Law. The thesis also explores the possible reconciliation for resolution of certain issue of incompatibility between International Human Rights Law and Islamic Law on the issue of human rights of Eunuchs. The thesis also explores the issues in application of human rights to Eunuchs. The thesis acknowledges the possibility of application of rights to Eunuchs irrespective of certain incompatibilities between Islamic and Human Rights Laws. Policy intervention can enable the extension of human rights to Eunuchs. The methodology adopted in the instant thesis is mainly qualitative, analytical and critical. Interviews with Eunuchs have been conducted and the empirical evidence has been evaluated. The born Eunuchs with respect to human rights are covered under the Islamic Law and Pakistani Law but the fake and castrated Eunuchs are not recognized under the Islamic and Pakistani Law. However, extension of human rights to fake and castrated Eunuchs is

possible through policy intervention in terms of an appropriate mechanism of rehabilitation of fake and castrated Eunuchs by the state.

Introduction

Thesis Statement

The Rights of Eunuchs in major International Human Rights Instruments and Pakistani society.

Background

The violation of human rights with any member of society either by an individual or at state level, irrespective of gender, should be punishable by the laws at national and international level. The drive for equal status for men and women faces many problems in Pakistan. The realization of equal status to Eunuchs at par with men and women faces even many more problems in Pakistan. The social issues of Eunuchs are very complex. No substantial research work is available with specific view of the human rights of the Eunuchs in Pakistan. Some work in the shape of books/ studies (which has been elaborated in Literature review) is available but the same is not focused on human rights of Eunuchs. This research work ventures to reveal the human rights of Eunuchs under international and national law and their treatment in Pakistani society. While research on the human rights of Eunuchs under international and national law, a compatibility issue between Islamic and international law emerges as in Islam only two genders are recognizable i.e. men and women. On the other hand, international human rights law recognizes multiple genders. This research work also addresses the issue of compatibility between International human rights law and Islamic Law.

It is important to know as to what are the reasons due to which the Eunuchs have not been able to acquire the status which they deserve under international human rights law. To know the reasons, it is important to know as to what are Eunuchs and their kinds.

What causes Eunuchs to be isolated from the mainstream society? Who is responsible for degraded conditions of Eunuchs and for not extending the equal rights to Eunuchs in Pakistani society?

On the face of social structure of Pakistani society, the recognition of equal status of women at par with men in Pakistan has not been fully resolved. The situation gets even worse when comes to Eunuchs in extension of human rights at par with men and women. The Eunuchs are neglected and unprivileged group of people in Pakistan as elaborated in the succeeding chapters of this thesis. A study of the present conditions of Eunuchs reveals that they neither enjoy any social and cultural respect at par with males and females nor are they extended human rights in Pakistani society. Due to non-recognition of Eunuchs in Pakistan, they face problems in getting education in the schools and colleges which affects their right to educate. Due to lack of education their vulnerability deteriorates in the society. Thus they are compelled to indulge in degraded professions. Moreover, their mal-treatment by the society aggravates their situation and as a result they feel excluded from the mainstream society. At the institutional level Eunuchs also face so much discrimination. No proper facilitation at schools, police stations and hospitals is ensured to Eunuchs, rather they are discriminated. Families don't accept the Eunuchs. In some instances they are even handed over to Eunuch community on their birth (These facts have been elaborated with evidence in the succeeding chapters).

Significance of Research

The Eunuchs are also subject of the international human rights law. Marginalization of this un-privileged group of people in Pakistani society is a grave challenge to the implementation of the international human rights law. Sizeable research work especially in South Asia on human right of Eunuchs is not available. The literature available in

shape of only general books and studies in Pakistan are not focused on human rights of Eunuchs. In India and Nepal some research work on Eunuchs is available. The research on the rights of Eunuchs and the reasons for their degradation in Pakistani society is, therefore, a matter of significance. The instant research is significant as it may also contribute to the issue of rights of Eunuchs in Pakistani society and may pave the way for legal framework for ensuring extension of maximum human rights to the Eunuchs.

Framing of Issues

This research aims at determining as to whether the Eunuchs enjoy the treatment in consonance with human rights as ensured to them in the international human rights law and national laws by the state in Pakistan. The thesis will investigate the following issues:

- What is meant by Eunuchs? Or what is the standard definition of Eunuch?
How many kinds of Eunuchs are there?
- What is the historical perspective of Eunuchs in general and in the sub-continent, in particular? Or what rights and status were enjoyed by the Eunuchs in the past?
- What is meant by discrimination against Eunuch?
- What is social and legal status of Eunuchs in Pakistan?
- What rights are guaranteed for Eunuchs in the international human rights law?
- What rights are extended to Eunuchs by the Constitution of Pakistan?
- What are the rights of Eunuchs in Islamic law?

- Whether international human rights law and Islamic law are compatible with each other in the area of Eunuch rights?
- Has Supreme court's decision contributed to the rights of Eunuchs in Pakistan?

Structure of the thesis

The thesis has been divided into four chapters. To determine the legal and social status of Eunuchs in Pakistani society, it is imperative to know the basic information about Eunuchs. The first chapter of this thesis, therefore, aims at finding the basic information of Eunuchs including, Eunuchs definition, kinds, their historical perspective, the difficulties they face in their day to day life, their social activities, reasons for departure from families, and their treatment by family and other social agents. The chapter will discuss that Islam only recognizes two genders men and women and that the castration is not allowed in Pakistan as not permissible under Islamic Law. In this chapter, some of the legendary figures of Eunuch community have also been discussed with their achievements to lay foundation for paving the way for an argument that why can't Eunuchs enjoy the same status in modern times. Through this chapter, the possibility of positive and progressive role of Eunuchs has been envisioned as alternate to stereotyped roles of Eunuchs in the society. This chapter shall contribute to the main questions of thesis in terms of provision of basic information and understanding about Eunuchs.

Chapter two discusses if treatment of Eunuchs in Pakistani society fulfills the criterion of Pakistan's constitution and international human rights law and whether the state of Pakistan stands in contradiction with international instruments on human rights in extension of equal rights to Eunuchs. In this chapter, the international instruments on human rights and the Constitution of Pakistan have been compared with existing

conditions of Eunuchs as detailed in chapter 1 in terms of their treatment in Pakistani society on the yardstick set by the international human rights instruments. The emerging conflict between Islamic law and international human rights law in recognizing the Eunuchs as third gender has also been highlighted.

The ideal situation i.e. the treatment of Eunuchs at par with the other two genders, as laid down by the major international human rights instruments has been also compared with the existing conditions of Eunuchs in Pakistani society in terms of opportunities, challenges, realities and limitations. Through this comparison, the main question of the thesis as to what rights are extended to Eunuchs in Pakistani society.

Chapter 3 discusses different major forms of discriminations by family and general society with Eunuch community at different phases of their lives in Pakistan. It has been explained as to how each discriminatory treatment of either family or society perturbs the lives of Eunuch community and compels them to join Eunuch community, isolated from the mainstream. This chapter also includes description of different modes and forms of discrimination at the family, society, media and institutional level carried out on Eunuchs in Pakistan. The chapter also focuses on some forms of institutional discriminations against Eunuchs and society's silence on that. Media's role and its impact, on the social status of Eunuchs in Pakistani society, has also been elucidated.

The contents of the chapter shall address the helplessness of the Eunuchs in terms of basic facilities and human rights guaranteed to the citizens of Pakistan under constitution of Pakistan and various international human rights Instruments. The chapter shall pave foundation for determining if the state of Pakistan is in compatibility with international human rights law in treatment of Eunuchs which is the main question of the thesis.

Chapter four contains the conclusion of the whole discussion.

Methodology

The instant research work is qualitative, analytical and critical in nature. The various instruments of international human rights law, 1973 Constitution of Pakistan and Islamic Law have been compared with the conditions and treatment of Eunuchs in Pakistani Society in analytical manner. Interviews with some Eunuchs have also been conducted. The empirical evidence has been evaluated in order to analyze if the treatment of Eunuchs in Pakistani society is in consonance with the various instruments of international human rights law and 1973 Constitution of Pakistan.

Literature review

From human rights perspective very limited work has been done on the rights of Eunuchs in the neighboring countries. However in Pakistan research on human right specific work with respect to Eunuchs rights is almost non-existent. M/s Ayesha Huda wrote an Essay on "Accepting Third Gender" published in South Asia in September 2007. The essay mainly focuses on the rights of Eunuchs in countries falling in the region of South Asia. She depicts some of the positive developments which have taken place in Pakistan, India and Bangladesh.¹ She criticizes the role of electronic media to portray the Eunuch community as objects of ridicule.² The essay briefly mentions about the discrimination with Eunuchs but it does not cover all the aspects of Eunuch life for example, their problems in day to day life, the institutional discrimination they are subjected to etc. Moreover, the publication doesn't base any kind of discrimination with Eunuchs on any legal instrument.

¹ Ayesha Huda, Accepting the Third Gender, the Southasia September, 2007 p 02. Available at <http://ayeshahoda.wordpress.com/2010/03/29/accepting-the-third-gender/>, (last visited 12-12-2011).

² Ibid.

Humaira Jami, Research Associate at National Institute of Psychology Quaid-i-Azam University Islamabad has written a research paper on Condition and Status of Eunuchs in Pakistan. She has laid emphasize upon psychological impacts on human beings with sexual ambiguities. She has differentiated between sex and gender. She has included Transvestites, Eunuchs, Bi-sexuals, Homosexuals, Eunuchs, Intersex and Transgenders in the Eunuch community. As per her stance the bi-sexuals and homosexuals disguise as Eunuchs to cover their deviant behaviors.³ She finds that born Eunuchs are as much as 1%. Humaira Jami's research paper also discusses social and religious background for Muslim Eunuchs as to why do they identify as male in their registration documents. Her research paper provides economic, social, psychological, and cultural causes behind joining of the Eunuchs community by real, Nirban (castrated), and fake Eunuchs.⁴ Through research paper, Miss Humaira Jami gives a brief historical-cum-cultural account of the origin and heydays of the Eunuch community during Mughal Era. While giving a religious account, Miss Humaira Jami, affirms that Islam guarantees equal rights for all but in Islam only two genders are defined males and females. Therefore, on birth of a child with any sexual deformity, the assignment of sex is given based on the appearance of the sexual organ. In case of complicated organs, an attempt is made to assign any sex. However, failing which female sex is assigned to that child to keep sexual deformity in cover.

She argues that it appears that Eunuchs are granted equal legal rights and obligations in the society but the hindrances faced by the Eunuchs are only cultural, attitudinal and

³ Humaira Jami, *Condition and Status of Eunuchs (Transgender, Transvestites etc.) in Pakistan*, National Institute of Psychology Quaid-i-Azam University Islamabad, p 06. Available at <http://bangkok2005.anu.edu.au/papers/Jami.pdf> (Last visited 3-02-2012).

⁴ Ibid.

social.⁵ She goes on to prove some of the common acts of Eunuchs i.e. Auto-castration and homosexuality as punishable under law.⁶ Although, she has tried mainly to focus on status of Eunuchs and also on the unwarranted discrimination of Eunuchs at the hands of other two genders, yet she has not been able to prove the discrimination as illegal based on any instrument at national and international level.

Mr. Muhammad Ahmed Abdullah, a senior Instructor at the Department of Community Health Sciences of Shifa College of Medicine, has written a research paper on “Is social exclusion pushing the Pakistani Eunuchs towards commercial sex work? a qualitative study” which has been published in November 2012. Mr. Abdullah has laid emphasis upon a point that social exclusion restricts the Eunuchs to indulge into sex trade for sustenance which puts their life on stake.⁷ His work reveals that Eunuchs are major players for spreading HIV and other Sexually Transmitted Infections. While proving the social seclusion to be the cause for trade in sex by the Eunuchs, Mr. Abdullah refers quotes of Hilary Silver and S.M. Miller that poverty does not only pertain to the absence of physical or monetary assets but rather includes deprivation from basic amenities essential for performing a socially viable and productive role in the community.⁸ Although, Mr. Abdullah has brought many domestic and social areas of the life of Eunuchs under consideration, yet his major focus has remained on the connection between social exclusion of Eunuchs and their indulgence into commercial sex work. Perhaps due to limitation of the topic, he has not tried to prove if social seclusion is against any legal instrument or otherwise.

⁵ Ibid, p.no 12.

⁶ Ibid, p.no 13.

⁷ Muhammad Ahmed Abdullah, Is social exclusion pushing the Pakistani Eunuchs (Transgenders) towards commercial sex work? a qualitative study, Shifa College of Medicine, Islamabad, November, 2012 p 01. Available at <http://www.biomedcentral.com/1472-698X/12/32> (Last visited 3-02-2011).

⁸ Ibid, p. no 06.

Mr. Saif Ur Rehman Rana has written a research book on Eunuchs/khusras/ in Pakistan. The book written in Urdu is titled as "Darmiyane" (Tr. in between). It was published in 2002. He has uncovered almost all possible areas of the life of Eunuchs in Pakistan. He has given a holistic account of all type events in Eunuchs' life, difficulties faced by them, their kinds, their language, their impact on society and vice versa, social discrimination against them, their family structure and activities in their social, personal and domestic affairs, their economic sustenance, their limited possible professions, their involvement in religious, criminal and political activities, their history and their legal, constitutional and social status in Pakistan. Rana has declared a Eunuch as a legal subject in Pakistan.⁹

Like many other writers, Rana, has too failed to carry out a legal analysis of Eunuch's rights and social and cultural perception of the people towards them, which are illegal both under national and international laws. He has proved certain deviant activities of Eunuchs, whose repercussions on society are negative, as legally objectionable. On the other hand, the society which seems directly responsible for degradation of Eunuch community has not been proved as legally wrong by Rana in light of national and international legal instruments.

M/s Nabila Mehar Shaikh, a graduate form York University has written a human rights specific article based on her interactions with and research on Eunuchs.¹⁰ She has mainly focused on violation of human rights with this community. She has briefly discussed about discriminating attitude of society towards Eunuchs and its impacts on their life. She has also briefly traced history of Eunuchs to Mughal rule and Hindu deities such as

⁹ Saif Ur Rehman, *Darmiyane*, (Lahore: Asif Javed, 2002), p 286.

¹⁰ Nabila Mehar Shaikh, p 01. Available at

<http://changingupakistan.wordpress.com/2008/06/24/Eunuchs-the-third-gender-nabiha-meher-shaikh/>(Last Visited 3-02-2012).

Arjun, Vishnu, and Shiva.¹¹ As per her understanding, technically Eunuchs are allowed to vote and contest elections but Eunuchs are often denied basic education and work opportunities¹², they are even not allowed in restaurants no matter they have enough money to eat and they are rejected by most families.¹³

Shaikh's study is relevant to this proposed study as it takes into account the human rights dimensions of Eunuch's life. While Shaikh looks at the circumstances that affect human rights of the Eunuch community, she does not carry out an analysis of social and cultural responses to Eunuchs with particular reference to legal obligations. This study seeks to address the issue by examining these aspects.

M/s Soniya Caroline Hahm has presented a research paper on 'Striving to Survive: Human Security of the Eunuch of Pakistan' which was published in November 2010. She has pre-dominantly focused on security of Eunuch community in Pakistan. She has discussed it from three perspectives i.e. community security, economic security and personal security. She has mainly worked on the causes of Eunuch insecurity, how Eunuch community overcomes it, how being a member of Eunuch community increases or decreases human security and what steps government of Pakistan is taking to alleviate the insecurities, that Eunuch community is facing.¹⁴ She gives a description of different legal instruments codified by UN but she determines them not to be relevant as they do

¹¹ Ibid p.no 02.

¹² Ibid p.no 01.

¹³ Ibid.

¹⁴ Sonya Caroline Hahm, *Striving to Survive: Human Security of the Eunuch of Pakistan*, Graduate School of Development Studies, The Hague, The Netherlands, November 2010 p 13. Available at [12](http://www.google.com.pk/search?hl=en&client=firefox-a&hs=ya5&rls=org.mozilla%3Aen-US%3Aofficial&channel=np&q=Supreme+court+of+Pakistan++decision+on+hermaphrodites&oq=Supreme+court+of+Pakistan++decision+on+hermaphrodites&aq=f&aqi=&aql=undefined&gs_sm=e&gs_upl=463411020710115111101010121221164811.1.214, The Hague, The Netherlands, November 2010 (Last visited 3-02-2011).</p></div><div data-bbox=)

not specifically deal with Eunuchs.¹⁵ Soniya does not realize that although no Eunuch-specific instrument has been enacted by the UN for protection or security of Eunuchs, yet those instruments do extend protection to all human beings irrespective of caste, religion, nationality, language, sex etc. Thus application of all such instruments, forming international human rights regime, is extended to all human beings including Eunuchs. She has also not proved injustices with Eunuch community as beyond legal framework based on any legal instrument.

M/s Shoma A. Chatterji wrote a human rights specific essay on 'Human rights violation in India' which was published in 2008.¹⁶ Chatterji's essay is relevant to this proposed study as it has taken into account the elements of human rights of Eunuchs with respect to International Instruments on Human rights and media's responsibility for wrong portrayal of Eunuchs. She refers some articles of UDHR and ICCPR for state responsibility to protect its citizens from torture.¹⁷ She like other mentioned works as mentioned above also does not prove society as wrong on the basis of any national and international instruments except at one place where she has referred the above International instruments for state responsibility to protect its citizens including Eunuchs from torture.

M/s Saira Tufail has written an article on Eunuchs of Pakistan which was published in November 2006. She tries to prove that Eunuchs are disable human beings in Pakistan as they fulfill definitional criterion of disability.¹⁸ She has also given a comprehensive account of discrimination with Eunuch community in Pakistan. But she has not proved

¹⁵ Ibid p.no 13

¹⁶ Shoma A. Chatterji, Eunuchs of India - Deprived of Human Rights. Available at <http://www.humanrightsdefence.org/eunuchs-of-india-deprived-of-human-rights.html>(last visited 11/12/2012).

¹⁷ Ibid p.no 03

¹⁸ Sara Tufail, "Third Gender and Their Status in Pakistan". Available at <http://www.chowrangi.com/third-gender-and-their-status-in-pakistan.html> (Last visited 16-03- 2013).

discrimination of Eunuchs at the hands of other two genders as legally wrong based on any legal instrument at the national and international level.¹⁹ She has described the family structure of Eunuch community and distribution of earnings among the Guru (Chief member in a household of Eunuchs like parent figure) and Chelas (disciples). Unlike other works, the instant study tries to prove that Eunuchs are disable human beings.

Dr. Sharful Islam Khan, Associate Scientist and Medical Anthropologist, Social and Behavioral Sciences Unit, Public Health Sciences Division, ICDDR, Dhaka Bangladesh has written a research paper on “Living on the Extreme Margin: Social Exclusion of the Transgender Population (Eunuch) in Bangladesh”. The research has been published in Journal of Health, Population and Nutrition.²⁰ The findings of the research reveal that Eunuchs are on the margins of social, cultural and political exclusion having no reasonable space where a Eunuch can lead a dignified life.²¹ The research also exposes the historical perspective of the Eunuch community in different parts of the world.²² The research work too depicts the various problems the Eunuchs face from childhood to old age in their day to day life. Like most of other writers, Dr. Khan’s research does not discuss the treatment of Eunuchs under International human rights law.

¹⁹ Ibid p no 02

²⁰ Dr. Sharful Islam Khan, Associate Scientist and Medical Anthropologist, Living on the Extreme Margin: Social Exclusion of the Transgender Population(*Eunuch*) in Bangladesh, Dhaka Bangladesh, p 05. Available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2928103/> (Last visited 15-03-2013).

²¹ Ibid.

²² Ibid, pg no. 02.

Chapter # 01

Eunuchs: Historical Perspective, Features and Kinds

Introduction

After evaluation of the literature already available on the topic, it is mandatory to ascertain the basic information in order to base the findings on the thesis questions. This chapter aims to focus at ascertaining the basic information about Eunuchs in Pakistan including their kinds, their salient features, difference among all types of Eunuchs and the privileges enjoyed by Eunuchs in past. The basic information including kinds, salient features and history is important for basis for further investigations into the main questions of the thesis. This chapter will also discuss reasons and causes, leading the individuals to embrace the Eunuchs community. The legal position in Islamic law on the acceptance of Eunuchs and castration will also be discussed. The prominent role of Eunuchs in past will be highlighted to realize the possibility of productive role of Eunuchs for the society. The history of Eunuchs will be traced starting from Greek mythology. Eunuchs' role in past during the reign of Mughals will be contrasted with that of their present deteriorating status in the society. The basic information about the Eunuchs may help to determine the status of Eunuchs in Pakistani society. The chapter may also be of assistance to determine in subsequent chapters as to whether the state of Pakistan has ensured the human rights to Eunuchs or otherwise.

Salient features

Between 1.7 to 4% population of the world at the time of birth don't have accurate primary and secondary sexual characteristics.²³ Their sexual characteristics are neither apparently male nor female.²⁴ The real Eunuchs, are very rear in the society and in the Eunuchs community.²⁵ Real male type of Eunuchs do not possess the fully developed male reproductive organ instead they have either very small penis or partially developed penis for urinating.²⁶ In some cases they also have both male and female partially developed organs. Real female type of Eunuchs have a small hole to urinate instead of fully developed vagina.²⁷ In some cases they also have both male and female partially developed organs. According to Doctors this biological happening is due to complications in parental genes or due to disorder in marital relationship between parents.²⁸ Most of these individuals join Eunuchs' community due to primarily unacceptable attitude of their family members²⁹ and secondly at times due to Eunuchs' indoctrination.³⁰ At times parents due to feeling of shy also leave such children in Eunuch community. The major pushing reason of their joining Eunuchs' community is society's hostile attitude³¹ and the pulling reasons being indoctrination by the real hijra³² and the

²³ Kate Haas, Who Will make Room for the intersexd? *American Journal Of Law And Medicines*, Volume 30, 1 p 40-41 . Available at <http://www.cirp.org/libraray/legal/USA/hass1/> (Last visited:05-04-2014).

²⁴ Ibid.

²⁵ Humaira Jami supra n, 31. p 5-6.

²⁶ Saif Ur Rehman supra n, 30. p 33.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ayesha Huda supra n, 1. p 02.

³⁰ Saif Ur Rehman supra n, 35. p 40.

³¹ Muhammad Ahmed Abdullah supra n, 7. p 06.

³² Saif Ur Rehman supra n, 35. p 40.

safe and acceptable accommodation to them by the real Eunuchs.³³ Sexual abuse of such children in childhood also leads towards interest and curiosity in homosexual activities.³⁴

The real kind of Eunuchs happens to be pride of being the natural Eunuchs. They mostly portray themselves to be blessed with natural powers for being effective in their curse.³⁵

People also have faith in a superstition regarding Eunuchs that because of this disability Allah almighty has given them specific power of effective blessings and curses.³⁶ People fear that some divine rage may occur if they do not accept the Eunuch's demands.³⁷

Usually if people decline their demand for alms or wadai (Reward money or money paid to them as charity), the Eunuchs will call names to them and will curse that may Allah make them and their child a Eunuch.³⁸ Real kind of Eunuchs happens to claim not to be involved in any socially or religiously deviant practice in the society.³⁹ Because of lack of other opportunities for earning their livelihood due to social limitations, they mostly engage in dancing, singing, and begging.⁴⁰ They live in families consisting Eunuchs for formation of their own groups due to their discrimination at the hands of males and females.⁴¹ They for the sake of addition in their community attract the normal human beings to join their community by getting their organs castrated.⁴² They also claim the ownership of any newly born Eunuchs from the parents.⁴³ There is a general perception

³³ Muhammad Ahmed Abdullah supra n, 40. p 06.

³⁴ Humaira Jami supra n, 34. p 08.

³⁵ Saif Ur Rehman supra n, 41. p 188.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Humaira Jami supra n, 43. p 6.

⁴¹ Muhammad Ahmed Abdullah supra n, 42. p 7.

⁴² Saif Ur Rehman supra n, 44 p 40.

⁴³ Humaira Jami supra n, 49. p 6.

that they visit home of newly born child besides wadai to also determine the gender of child so as to ensure claiming the possession of that child in case he / she is Eunuch.⁴⁴

The castrated type of Eunuchs are held in greater esteem by the real Eunuchs because they sacrifice their manhood for being Eunuchs⁴⁵ which in most of cases is based on the motivation or indoctrination at the hands of Eunuchs.⁴⁶ For castration, specific ceremony is arranged by the Eunuchs' community, wherein, the dances, gathering of Eunuchs and lavish dinner are always attractive exhibits.⁴⁷ Mostly, the operation is carried out by the expert Eunuchs but in case complications occur the services of doctors are also obtained.⁴⁸ However, at times such operation is carried out by the doctors.⁴⁹ The operation by Guru sometimes turns fatal.⁵⁰ The person who gets his genitals castrated is warmly welcome by the Eunuchs community⁵¹ and the members of Eunuchs community invite him in his honor at their places for feasts.⁵²

The fake type of Eunuchs is ever increasing in Pakistan⁵³. This type is mostly held responsible by real Eunuchs for well founded bad repute of Eunuchs in the society.⁵⁴ In Eunuchs community their source of income is mainly begging, dancing, singing and

⁴⁴ Ibid.

⁴⁵ Saif Ur Rehman supra n, 51. p 34.

⁴⁶ Ibid, p.no 40.

⁴⁷ Ibid, p.no 45.

⁴⁸ Ibid.

⁴⁹ Ibid, p.no 44.

⁵⁰ Ibid, p.no 42.

⁵¹ Ibid, p.no 34.

⁵² Ibid, p.no 45.

⁵³ Ibid.

⁵⁴ Ibid.

prostitution⁵⁵, in modern times some members of this type of Eunuchs also tend to indulge into show biz, fashion designing and boutique business.⁵⁶

Islam only recognizes two sex i.e men and women. There is no place in Islam for castration and disguising as Eunuchs. The surgeries for castration are not permissible in Pakistan as Islam does not allow castration.⁵⁷ Islam does not recognize castrated Eunuchs morally as well as legally. Morally because castrated Eunuch has potential to spread indecency and immorality in the Islamic society. legally, Islamic Criminal Law prohibits castration because it is an offence of *Itlafa-i-udw*⁵⁸ and *Itlaf-Isalahiyyat-i-udw*.⁵⁹ The detailed discussion on legality of Eunuchs by choice or by castration may follow in the subsequent chapters.

Eunuchs lead their life in a marginalized way.⁶⁰ Children are indoctrinated that the Eunuchs are full of evil and they often kidnap children.⁶¹ With domination of males and females, Eunuchs are regarded as abnormality which only needs to be dragged under carpet. Their entire life is spent with insecurity, threat and violence.⁶² The above odd life patterns of various phases of life with respect to eunuchs and the maltreatment of the society and state against them stands in contradiction with the Supreme court Judgment.⁶³

⁵⁵ Sonya Caroline Hahm supra n, 15. p 37.

⁵⁶ Sara Tufail supra n, 19.

⁵⁷ Sahi Bukhari, 1986, pg. 8.

⁵⁸ Section 334 of Pakistan Penal Code-PPC.

⁵⁹ Section 335 of Pakistan Penal Code-PPC.

⁶⁰ Abhishek Kumar Jha, Are they not Humans? Eunuchs: Citizens without rights, National University of Study and Research in Law, Ranchi India, p.no 6. Available at <http://ssn.com/abstract=19902556> (Visited:05-04-2014).

⁶¹ Ibid.

⁶² Ibid.

⁶³ Constitution Petition No. 43/2009.

Different Kinds of Eunuchs

The available literature on Eunuchs indicates that Eunuchs are found in the following two types⁶⁴:

1. Male and female Eunuchs by birth (Also termed as real Eunuchs)
2. Castrated and fake Eunuchs⁶⁵

The brief description and causes of each is given below:

1) Male and Female Eunuchs by birth (Also termed as real Eunuchs)

Description

Medical science states that 'male' Eunuch are those born with testicles only and some sexual characteristics of a genetically born female, but no ovaries.⁶⁶ Whereas, 'female' Eunuchs are born with ovaries and with some sexual characteristics of the male sex but no testicles.⁶⁷ These kinds of Eunuchs are natural who happen to be male/female Eunuchs by birth due to biological reasons. They happen to be reproductively infertile.

Cause:

There are two viable sexualities allowed by the human genome. This is generally considered the provenience of the curious combination of two grossly mismatched DNA polymers affectionately known as the X and Y chromosomes. One particular segment of the Y chromosome, known as the Sex-Determining Region (SRY) gene, is responsible for starting the cascade of developmental changes, resulting in the expression of other Y genes that radiate from the testes. Lack of this gene ultimately results in a lack of male sexual development, a decidedly feminine body-type, and other problems, and is

⁶⁴ Saif Ur Rehman supra n , 9. p 33-34.

⁶⁵ Ibid

⁶⁶ Shoma A. Chatterji supra n, 17. p 03.

⁶⁷ Ibid.

relatively rare. Translocation of the SRY gene onto a female X results in male-like development, albeit with considerable variance, and sterility as a result of non-existent reproductive genes, and occurs in less than 1 in 20,000 individuals.⁶⁸

2. Castrated and Fake Eunuchs

Description

The castrated Eunuchs are also called as Nirdban (Persian word meaning ‘sacrificing man’).⁶⁹ This type of hermaphrodites comprises those men who get their genitals castrated to become Eunuchs. They after castration happen to be infertile. The fake type of Eunuchs comprises men and women who join Eunuch community for the sake of easy money, homosexuality, and due to psychological influence of the opposite sex. They are often called Zananay. They are the only type of Eunuchs who can be reproductively fertile.

Causes

My preliminary analysis of 15 Eunuchs’ interviews revealed varied reasons behind becoming Eunuch or joining Eunuch community. The detail is as under:

- (i) The individuals get their genitals castrated due to indoctrination at the hands of Eunuchs.⁷⁰
- (ii) In modern times due to dearness, unemployment and poverty, the youth also join the Eunuch community for having access to easy money by dancing, begging, singing and prostitution as apparently Eunuchs seem to be doing.

⁶⁸ Mein schatz, “Commentary on current affairs, politics, and strenuous life” (2010):01. Available at <http://sagamorejournal.wordpress.com/2010/04/14/a-third-gender/> (Last visited 12-04-2013).

⁶⁹ Humaira Jami supra n, 3. p 05.

⁷⁰ Saif Ur Rehman supra n, 24. p 40.

- (iii) Many contended that their interest in dancing, make up like women or sexual interests in men attracted them to the Eunuch community as their deviant interests were acceptable, appreciated and groomed only in Eunuch community.
- (iv) In some cases, unduly harsh treatment of the families prompted the children to join Eunuch community as they found it as safe heaven.
- (v) Some contended that they experienced psychological problems due to identity problem and thus they got their organs castrated.
- (vi) Sexual abuse in childhood also leads towards interest and curiosity in homosexual activities.⁷¹

Eunuchs in Historical Perspective

Mesopotamia and Byzantium Empires

In Mesopotamia civilization, there are traceable references of the people who are neither man nor women in the Mesopotamian mythology.⁷² In Sumerian (In Mesopotamia) civilization there are also references of the people who were neither man nor women.⁷³ During the Byzantium empire the Eunuchs enjoyed the most powerful status to the extent that even crusaders were amazed and horrified of the power and glorified positions occupied by the Eunuchs in government, church and great estates at that time.⁷⁴ Prostitution in Eunuchs was also in vogue during that period, though clergy disapproved

⁷¹ Humaira Jami supra n, 29. p 5-6.

⁷² Bikash Thapa, Case of Sunil Babu Panta: An initiative to recognise third gender in Nepal, Khatimandu school of law, p.no 02. Available at <http://ssrn.com/abstract=1299010> (last visited: 05-04-2014).

⁷³ Ibid.

⁷⁴ The Eastern Roman Empire after the fall of the Western Empire in A.D 476.

it.⁷⁵ In Byzantium some of the positions of power were reserved for Eunuchs such as guards, warriors etc.⁷⁶

Greek Mythology

As per Greek mythology hermaphrodites or hermaphroditus was a god of effeminate men. He was numbered amongst the winged love-gods known as **Eros**. Hermaphrodites was a son of Hermes and Aphrodite, the gods of male and female sexuality.⁷⁷

As per a myth, god was at one point of time handsome who exerted the love of a Naiad fairy named Salmakis. Salmakis begged before god, unity with him forever. The god as result of her pray, merged their (Both) souls into one. In Greek painting Hermaphrodites was depicted as a youth with wings and features of both men and women i.e. usually female thighs, breasts, style of hair, and male genitalia.⁷⁸

Hindu Scriptures

Eunuchs in India relate their history based on the religion they profess.⁷⁹ Hindu Eunuchs claim their legitimization in Hindu society due to the deity Ram's blessings.⁸⁰ The Ramayana epic reads that before his sojourn into the wilderness, Ram directed all men and women (those who were present there to see him off) to go back to their village.⁸¹ As

⁷⁵ Shaun Togher, *The Eunuchs in Byzantine History and Society*, (270 Park Square, Milton Park, Abingdon, Oxon OX14 4RN: Routledge, 2008), p.13.

⁷⁶ Ibid.

⁷⁷ Imtiaz Ahmed Wani, "True Hermaphroditism: Review Article" *The Internet Journal of Pediatrics and Neonatology* ISSN: 1528-8374 9, no 1(2008):2. Available at , <http://archive.ispub.com/journal/the-internet-journal-of-pediatrics-and-neonatology/volume-9-number-1/true-hermaphroditism-review-article.html#sthash.cStgFDkB.dpbs> (Last visited 8-4-2013).

⁷⁸ Ibid.

⁷⁹ Ujwala Sunil Shinde, "Gender justice and status of eunuch" *International Journal of Humanities and Social Science Invention* , no.1(2012): 2. Availabe at [http://www.ijhssi.org/papers/v1\(1\)/Version-2/A110106.pdf](http://www.ijhssi.org/papers/v1(1)/Version-2/A110106.pdf) accessed (Lat visited 8-04-2013).

⁸⁰ Ibid.

⁸¹ Ibid.

Eunuchs were neither men nor women, they stayed at the place of departure of Ram till he came back after years.⁸² Ram, seeing their devotion, blessed and pledged them that they will rule in the last age of mankind.⁸³ Some other works of Hindu literature, like the Mahabharata epic, too speak on transformation of male characters into female characters. Ramayana remains main and basic origin myth. Eunuchs description is also found in ancient Hindu scriptures. Eunuchs have been well known for deep effect of their prays and curses mostly due to their link to Sufi saints and shrines.⁸⁴ The Eunuchs' ability to bless or curse is also linked with Hinduism.⁸⁵

Ottomon Empire

There existed Eunuchs in the times of Ottoman Empire. The Harem of the Ottoman Sultan also included the Hijas. The Eunuchs in Ottoman empire were white and black. The white Eunuchs served the kings like in Topkapi Palace and high officials and were in government only. Whereas, the black Eunuchs served in the harems to the daughters and siblings of the Sultan under the Kizlar Agha, the Chief Black Eunuch who was also called as master of Girls. Kizlar Agha, the Chief Black Eunuch was the third highest-ranking officer of the empire. The Eunuchs in Ottoman Empire enjoyed also great respect and power in the government and harems.⁸⁶

Mughal rule

Mughals, Muslim rulers of Sub-continent employed Eunuchs to protect the harems and served as guards to females of the Kings.⁸⁷ Eunuchs also played a role in the imperial courts' administrative affairs and often had high positions during that era.⁸⁸ Kings gave

⁸² Sharda, whether eunich are recognized as legal entity in India, Chanakya national Law University , Patna Gaiandhi maidan Patna-1 (Bihar), p 5. Available at <http://ssrn.com/abstract=1299010> (last visited: 05-04-2014).

⁸³ Ujwala Sunil Shinde supra n, 78. p 2.

⁸⁴ Ayesha Huda supra n, 38 p 2.

⁸⁵ Soniya Caroline Hahm supra n, 63. p 13.

⁸⁶ www.theottomans.org/english/family/harem4.asp

⁸⁷ Humaira Jami supra n, 52. p 5.

⁸⁸ Ibid.

Eunuchs a place in the rulers' courts during the Mughal reign. The importance given to Eunuchs by Mughals is not only obvious from history and its authentic references but also from characters in literary works about that period.⁸⁹

In the Indian subcontinent some Eunuchs played the role of advisors in the houses of the nobility and were used as a medium of communication between men and women.⁹⁰ A minority of them were also engaged in prostitution and providing entertainment at various kinds of social events. If compared, the role of Eunuchs in the past was much more prominent than in present as in our society the Eunuchs are understood and recognized with only negative characteristics.⁹¹ People don't pay any heed as to what these Eunuchs are and what difficulties do they have to face during their lives.⁹²

Our ancestors appear to have had a lot better understanding and a more tolerant and accommodating attitude towards the Eunuchs.⁹³ Their new unprivileged status of social exclusion has deprived them of their inherent rights to live like males and females and to earn their livelihood in an honourable and respectable manner. Today, the only career paths open to them are begging, singing and dancing at social events such as weddings, birth ceremonies, etc. sex workers.⁹⁴ Even educated hermaphrodites, from well-bred families claim to have been thrown out by their families and find it difficult to find employment in careers of their choice.⁹⁵

⁸⁹ Ibid.

⁹⁰ Ayesha Huda supra n, 83. p 2.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Humaira Jami supra n, 85. p 7.

⁹⁵ Muhammad Ahmed Abdullah , supra n, 50. p 06.

Malik Kafur, A Eunuch General In Alaudin Khilji's Army

Malik Kafur, an Indian Eunuch slave, obtained the position of a general in the army of Alauddin Khilji. Alauddin Khilji made him his senior commander in his army after he became muslim.⁹⁶ He led the Alaudin Khilji's army against the kingdoms of Yadava, the Kakatiya, and the Pandyan. He won immense riches for the sultanate. The invasion of Pandyan by Malik Kafur was an unprecedented achievement that any Muslim invasion could ever reach in India. In Deccan Kafur was so much successful that Aluaddin turned up to be a puppet in his hands.⁹⁷

Conclusion

The chapter provided the basic information about Eunuchs. The chapter also reveals the kinds of Eunuchs in Pakistan and their salient features. The chapter surfaces that Islam only recognizes two genders men and women and that the castration is not allowed in Pakistan as not permissible under Islamic Law. The chapter also proves that the Eunuchs enjoyed more privileges and powerful status in the past. The past glories of Eunuchs described in this chapter may help in proving that why Eunuchs cannot play any other social roles than the stereotyped roles of Eunuchs in Pakistani society. Moreover, the chapter proves that Eunuchs enjoyed religious sanctity in the Greek mythology and Hindu scriptures. During the Mughal rule, the Eunuchs were successful leaders and were able to influence the national level decisions as they were considered trustworthy during that era.

⁹⁶ Pragati Sen, "Complete Biography of Malik Kafur",
<http://www.preservearticles.com/2012031026316/complete-biography-of-malik-kafur.html>.

⁹⁷ Ibid.

The basic information/description about Eunuchs creates a link between this chapter and the next chapter which aims at describing the Eunuchs rights in international human rights law and Pakistan's Constitution. Given the historical background of Eunuchs status in the past in this chapter, the rights of Eunuchs in international human rights law in the next chapter on one hand creates a coherent link between the two chapters. And linking of these two chapters may pave the way to determine as to whether the Eunuchs enjoy equal rights in Pakistani society under international human rights law and constitution of Pakistan, 1973 on the other hand.

Chapter # 02

Eunuchs Rights in International Human Rights Law and Pakistan's Constitution

Introduction

Based on the basic information on Eunuchs in Pakistan in the earlier chapters it is apparent that Pakistani society comprises three genders i.e. men, women and Eunuchs with varied population distributions. The total number of actual population of the eunuchs may not be available due to the reason that many of the eunuchs are not registered as eunuchs and are registered as men or women. Moreover, many men and women have also disguised as eunuchs to earn easy money. It has to be ascertained in this chapter as to what are the standard criteria set by International Human Rights Law for extension of rights to Eunuchs. In this chapter, the international instruments of Human Rights and Constitution of Pakistan shall be examined to determine the mechanism the states are to form for establishment of discrimination free societies. The emerging conflict on extension of human rights to Eunuchs between Islamic Law and International Human Rights Law with specific reference to Pakistani society shall be elaborated. In this chapter the issues in connection with Eunuchs' rights to inheritance shall be discussed briefly. The chapter shall discuss the decision of Supreme Court of Pakistan on Eunuchs. The potential contribution of the decision of Supreme Court of Pakistan for the rights of eunuchs shall be highlighted in this chapter. This chapter shall help in understanding legality of the various forms of discrimination with Eunuch community to be discussed in succeeding chapter. The discussion will be followed by a conclusion.

International Human Rights Standards in Relation to Rights

The UN Charter, which is considered as one of the strong steps in formation of human rights regime, protects the rights of human beings in terms of Article 55 (c) which says “Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.⁹⁸ This article condemns all kinds of discriminations based on sex and other factors as mentioned. Furthermore, Article 56 of the Charter also confirms and necessitates the protection of all human beings by the respective states in these words, “All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.⁹⁹ The analysis of this article will surface the reality that all the member states are under obligation to take joint and separate actions for achievement of an ideal situation as envisioned in article 55.

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The preamble of Universal Declaration of Human Rights, constituting a part of international customary law, starts with “**Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world**”¹⁰⁰. Article 1 of the Declaration also provides that “**All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood**”.¹⁰¹ This article of the Declaration is binding force on all the states and people. Article 2 of the Declaration goes a step further and like UN Charter condemns the discrimination against any human being on the basis of sex and other factors in these words:

⁹⁸ Article 55(c) of the U.N charter.

⁹⁹ Article 55 of The U.N Charter.

¹⁰⁰ Preamble of Universal Declaration on Human Rights.

¹⁰¹ Article 1 of Universal Decalaration On Human Rights.

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”.¹⁰²

The International Covenant on Civil and Political Rights (ICCPR) in its article 2(1) of part II categorically emphasizes upon the Member states to ensure extension of rights to all without any discrimination in these words:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹⁰³

Article 6(1) of the ICCPR, states: "Every human being has the inherent right to life. Law shall protect this right. No one shall be arbitrarily deprived of his life".¹⁰⁴ Article 4 of the ICCPR states that this right cannot be waived "even in times of public emergency threatening the life of the nation". Unlawful and extra judicial killings of Eunuchs clearly contravene the right to life¹⁰⁵. Article 26 of the ICCPR also condemns the discrimination on the pretext of sex in this tune:

¹⁰² Article 2 of the Universal Declaration On Human Rights.

¹⁰³ Article 2(1) Part II of International Covenant on Civil and Political Rights.

¹⁰⁴ Article 6(1) International Covenant on Civil and Political Rights, Shoma A. Chatterji, supra n, p 02.

¹⁰⁵ Article 4 International Covenant on Civil and Political Rights, Shoma A. Chatterji, supra n, p 02.

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹⁰⁶

It turns with crystal clear that ICCPR, like UDHR and UN Charter also recognizes the rights of all human beings irrespective of any sexual discrimination. The ICESCR in its article 2(2) of Part II also protects all the rights to human beings enshrined in that instrument in the following words:

“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹⁰⁷

The Convention Against Torture (CAT) vide Article 1(1)¹⁰⁸ defines term torture as:

“Any Act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind,

¹⁰⁶ Article 26 of International Covenant on Civil and Political Rights.

¹⁰⁷ Article 2(2) Part II of International Covenant on Economic Social and Cultural Rights.

¹⁰⁸ Article 1 of Convention Against Torture.

when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”

Article 2 (1)¹⁰⁹ of CAT lays down **“1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”**. Article 4¹¹⁰ of CAT prescribes:

“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature”

Convention On the Rights of the Child vide Article 2(1)¹¹¹ mandates state parties:

“To respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Article 7(1)¹¹² of Convention On the Rights of the Child lays down:

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality

¹⁰⁹ Article 1 of Convention Against Torture.

¹¹⁰ Article 1 of Convention Against Torture.

¹¹¹ Article 2 of Convention On the Rights of the Child.

¹¹² Article 7 of Convention On the Rights of the Child.

and as far as possible, the right to know and be cared for by his or her parents.”

Article 9(1)¹¹³ of Convention on the Rights of the Child mandates:

“State parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

Article 19(1)¹¹⁴ of Convention on the Rights of the Child says:

“State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”

The above extracts from the major international human rights instruments, to most of which Pakistan is a party, reject all forms of discrimination on the basis of sex. Even if Pakistan is not party to any of the above mentioned instruments, Pakistan can’t flatly deny jurisdiction of the same as they are part of Customary International Law. The above instruments also mandate the state parties to form a mechanism which can play a role to counter all type of discriminations on the basis of sex or any other unjustifiable reasons. Pakistan as the state is under international obligation to remove all kinds of

¹¹³ Article 9 of Convention On the Rights of the Child.

¹¹⁴ Article 19 of Convention On the Rights of the Child.

discriminations against any human being including Eunuchs. In additions to all the above, 1973 constitution of Pakistan (hereinafter mentioned as Constitution in this chapter) also emphasizes upon non-discrimination against any human being on the basis of sex.

Eunuchs and the Constitution of Pakistan

Article 25(2) of "Fundamental Rights" says "There shall be no discrimination on the basis of sex".¹¹⁵ Whereas, the discrimination with Eunuchs in Pakistan all levels is based on sex.

All human rights instruments protect the rights of human beings including Eunuchs, no instrument has yet been enacted which pre-dominantly protects the rights of Eunuchs. The rights of human beings of any nationality cannot and should not be reduced/curtailed or limited owing to gender related issues. While, depriving Eunuchs from employment, inheritance, and other fundamental rights, Pakistani society and state stands contrary to the basic principles established by the human rights instruments on which human rights regime is erected at the international level. The international instruments forming the international human rights law protect human rights of all human beings including the Eunuchs.

Pakistan has no doubt constitutional and international human rights obligation to protect and promote the rights of all without discriminations. The same has to be subject to Islamic Law as under its Constitution, the state religion of Pakistan is Islam. Moreover constitution obligates Pakistan to give preference to Islamic Law. Such preference or the tilted approach to Islamic Law at times creates a situation where there is room for emerging conflict between Islamic Law and International Human Rights Law on certain

¹¹⁵ Article 25(2) chapter 1 part II of Constitution of Pakistan.

human rights issues. Extension of Human Rights to Eunuchs is a specific such area where there exists potential for conflict between Islamic law and International Human Rights Law.

The Issue of Compatibility Between Islam and Human Rights Law and Eunuchs Right Of Inheritance

The issue of compatibility between universality of human rights and Islamic Law is very sensitive and jurisprudentially complex. In spite of the re-affirmation of the universality of human rights in the UN World Conference in 1993, the principle of universality has persisted to be questioned by political leaders and intellectuals in the economically successful societies of South-East Asia¹¹⁶ with reference to "Asian values". The relation between Islamic Law and universality of Human Rights is likely to be complex and also controversial to some extent when comes to rights of Eunuchs under Islamic Jurisprudence and the Constitution of Pakistan sex/ gender is recognized as male and female.¹¹⁷ This is the point where International Human rights Law does not stand in compatibility with Islamic law as in Islamic law only two genders/sex i.e. male and female are recognized, whereas International Human Rights Law recognizes various other genders including Eunuchs. International Human Rights Law even goes up to the acceptance of homosexuals. This incompatibility does not bar extension of rights to Eunuchs by Islam as it endows equal rights and opportunities for all human beings.¹¹⁸

¹¹⁶ Michael Freeman, *Human Rights and Real Cultures: Towards a Dialogue on 'Asian Values'*, Netherlands Quarterly of Human Rights, vol 16/1, 25-39, 1998, Netherlands Institute of Human Rights(SIM), Netherlands, p 25.

¹¹⁷ Major Acts, 1987, Humaira Jami supra n, 92. p 10.

¹¹⁸ Humaira Jami supra n, 115. p 09.

As per Islamic law, children born Eunuchs are mostly brought up as men or women depending upon appearance of their genitals.¹¹⁹ In case the shape of their genitals is difficult (Termed as Khunsa e Mushkil), which makes it difficult to assign any sex, still assignment of sex is necessary on shape of genitals or urinating system. If the sexual characteristics of a child are not recognizable, it is better preferred to assign female sex¹²⁰ to maintain privacy of the child. In Islam the share of men and women in inheritance is different. Thus the inheritance of Eunuch child is based on his/her gender. In simple terms if the child's gender is female, it may be extended the share that of females are entitled to. Similarly if the child is male, it may be extended share that of males are entitled to.

Islam only protects born Eunuchs in such a way that their gender is determined according to their urinating system. Islamic law, however, doesn't recognize and encourage castrated and fake Eunuchs.¹²¹ Castration is also an offence of *Itlafa-i-udw*¹²² and *Itlaf-Isalahiyyat-i-udw*.¹²³ Castration may not even be allowed by International Law because firstly, it is against human dignity and secondly it poses serious risks to human health, likely to affect the right to health. Castration aims at encouraging Eunuchs in singing, dancing and most likely to prostitution which is morally and legally prohibited in an Islamic society. While, these occupations may be allowed by international human rights law, they are prohibited under Islamic law. This leads to a tension between the two. The tension could not be resolved. According to Pakistan constitution Islam is the state

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Surah Al- Nisa Ayat No [4:119], Al- Quran.

¹²² Section 334 of Pakistan Penal Code-PPC.

¹²³ Section 335 of Pakistan Penal Code-PPC.

religion of the country; no law in conflict with Islam, could be introduced. However, the state may make certain law and policy program as mentioned below:

- (i) Ensure all human rights for born Eunuchs
- (ii) Ensure medical help for born Eunuchs if possible in order for them to become normal human being male or female
- (iii) Rehabilitate castrated Eunuchs in society through policy measures
- (iv) Ban castration by law

Mostly Eunuchs don't remain with families due to society's unacceptable behaviour with them. They are mostly not given any share in inheritance after death of the parents.¹²⁴ Being human beings it is their right to enjoy right to inheritance.¹²⁵ There however exist some isolated events wherein Eunuchs were given property in inheritance by departing parents.¹²⁶ Eunuchs are human beings therefore they require all those material things which a male or female person does to lead the life. One born Eunuch of Hafizabad came to know about death of his father after one and half years.¹²⁷ When he visited home he was neglected by his three brothers and two sisters.¹²⁸ He was not even given any share in inheritance as his brothers and sisters believed that he did not need any property.¹²⁹ Against this discrimination mostly Eunuchs don't protest and resort to any court of law.¹³⁰

The situation worsens when on death of any Eunuch or Guru relatives come to claim for inheritance because as per Eunuchs, the family does not accept a Eunuch child due to

¹²⁴ Saif Ur Rehman supra n, 54. p 192.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid, p.no 193.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

which Eunuchs embrace Eunuch community, thus the family members don't have any right on the property of the Eunuch/Guru who dies.¹³¹ In Faisalabad an incident occurred wherein a Guru died whose relatives occupied property of Guru.¹³² The Guru was a real Eunuch who being thrown out of his house by parents, joined Eunuch community.¹³³ He reached a position of Guru after death of his Guru and made a lot of property. His brothers never visited him during his life time. The chelas resorted to court wherein while interrogation the Judge asked blood relatives if they ever gave anything to the deceased during his life time.¹³⁴ Finally the Judge ordered chelas to take control of the property and remarked that Eunuch community is already miserable therefore they may not be disturbed.¹³⁵ The relatives of the deceased filed a petition for appeal which was also rejected.¹³⁶

Supreme Court Decision on Rights of Eunuchs

The instant research work also surfaces apparent contributions of Supreme Court decision for Eunuchs in Pakistan. The Supreme Court in the petition filed by Mr. Mohammad Aslam Khaki and another versus SSP (Operation) Rawalpindi and others directed NADRA to mention the gender of Eunuch as "Mukhanath" in CNIC of a Eunuch.¹³⁷ The august court also emphasized upon extension of the rights of Eunuchs in Pakistan. The NADRA after the decision of the Supreme Court is in practice to mention "Mukhanath" against the gender in CNIC of Eunuch in compliance to the directive of the august apex court. The Supreme Court also emphasized upon extension of the right to inheritance to

¹³¹ Ibid.

¹³² Ibid, p.no 194.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Constitution Petition No. 43/2009

the Eunuchs in Pakistan¹³⁸. The apex court also underlined determining the total number of Eunuchs in Pakistan¹³⁹. The august court held that the Eunuchs in Pakistan have equal rights as all citizens of Pakistan including the right of family inheritance which cannot be denied by anyone. The Court ordered that eunuchs be given all rights in all fields of life including education and employment. The court ordered that the eunuchs be engaged in any suitable tasks like in India in Bihar the eunuchs have been engaged in collection of taxes etc. The court directed to the concerned to take steps for betterment and welfare of the eunuchs in Pakistan as laid in constitution of Pakistan. The court also directed for registration of the votes of eunuchs in the voters lists. The august court also ordered that the copy of decision may be sent to all federal and provincial governments for strict implementation of the directives of the august court¹⁴⁰.

The Supreme Court decision has contributed to the rights of Eunuchs in a way that they have a separate identity after the said decision in the social fabric of Pakistan. Due to emphasize on the rights of Eunuchs in the society by the Supreme Court of Pakistan, the issue of rights of Eunuchs has been exposed at the national and international levels. Various NGO's have been attracted to this vulnerable segment of the society in Pakistan. Consequent upon the decision by the Supreme Court, some of the organizations under the Federal government have also started advertising job opportunities for Eunuchs in Pakistan. Apparently, it seems that the extension of job opportunities to Eunuchs in Pakistan shall pave the way for obtaining the education by the Eunuchs in Pakistan keeping in view opening of chances of their education's applicability for the state in

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

Pakistan. The court otherwise has given clear directions for registration and accommodation of the eunuchs children in schools.

There is a possible apprehension regarding extension of right of family inheritance to eunuchs in Pakistan as all laws in the country have to be in consonance with Islamic Law. Islam recognizes only two genders i.e male and female, thus recognizing Eunuchs as a separate gender as "Mukhanath" by Supreme Court of Pakistan seems to attract some complications over the issue of rights of inheritance as per Islamic Law since Islamic Law on family inheritance prescribes share for men and women only.

Conclusion

From this chapter we conclude that both the International Human Rights Regime through its international human rights instruments and Constitution of Pakistan do recognize application of rights to Eunuchs but at certain points there is always potential for incompatibility between international human rights law and Constitution of Pakistan as the state of Pakistan is obliged to prefer Islamic Law under its constitution. It is concluded from this chapter that although, the decision of the Supreme Court's decision in CP-43/2009 contributes to the rights of Eunuchs yet it seems to attract some contradictions with the Islamic Law on the issue of Inheritance. The chapter concludes that in Pakistan the right to inheritance to Eunuchs is based on the assignment of gender to Eunuch at the time of birth. This chapter also reveals that the castration is not allowed by Islamic law¹⁴¹ (because it is an offence *Itlafi-i-udw*¹⁴² and *Itlaf-Isalahiyyat-i-udw*¹⁴³) and international human rights law because it is against human dignity and it also poses serious risks to human health, likely to affect the right to health. According to Pakistan

¹⁴¹ Surah Al- Nisa Ayat No [4:119], Al- Quran

¹⁴² Section 334 of Pakistan Penal Code-PPC

¹⁴³ Section 335 of Pakistan Penal Code-PPC

constitution, Islam is the state religion of the country; no law in conflict with Islam, could be introduced. However, the state may make certain law and policy program:

- (i) Ensure all human rights for born Eunuchs
- (ii) Ensure medical help for born Eunuchs if possible in order for them to become normal human being male or female
- (iii) Rehabilitate castrated Eunuchs in society through policy measures
- (iv) Ban castration by law

From this chapter it can be concluded that the state of Pakistan is in need to implement International Human Rights Law at many junctures to extend the rights to Eunuchs within the National and International framework of human rights. From this chapter we draw the conclusion that Pakistani state needs to frame a mechanism to guarantee basic rights to Eunuchs. Pakistani state is in urgent need to uphold the respectable status of Eunuchs and basic norms established through UDHR. Pakistan as a member state (Signatory) is required to implement application of all rights enshrined through ICCPR to Eunuchs being human beings and even to develop Eunuch community in as much as to be considered as equal to males and females with respect to rights. This chapter also surfaces that Pakistani state in line with ICESCR has obligations to provide basic rights enshrined therein for Eunuchs. Pakistani society has to adhere to its constitutional provisions regarding extension of fundamental rights to all human beings without any discrimination based on the sex. The above all obligations which Pakistani state is obliged to fulfill are subject Pakistan's 1973 Constitution and Islamic law. The Islam and International Human Rights Law on recognition of Eunuchs stand incompatible. Islam recognizes only two genders i.e. male and female. Whereas, International Human Rights

Law accepting many genders even goes up to recognize homosexual. Given the background of all legal framework of human rights law in this chapter, the study of different major forms of discrimination with Eunuchs in the next chapter may be well linked.

Chapter # 03

Major Discriminations Against Eunuch In Pakistan

Introduction

The discrimination with the Eunuchs is against the International Human Rights Law and Constitution of Pakistan as discussed in the previous chapter. In this chapter different major forms of discriminations from family to general society with Eunuch community at different phases of their lives in Pakistan will be elaborated. It shall also be defined as to how each discriminatory treatment perturbs the lives of Eunuch community and constrain them to join the Eunuch community. In this chapter description of different modes of discrimination will be discussed on Eunuchs in Pakistan and its impact on Eunuchs in terms of dignity, education, family, health and employment. Forms of different institutional discriminations against Eunuchs will be elucidated in this chapter. Media's Role and its impact on the lives and their social status in Pakistani society will also be explained in this chapter. The emerging conflict between international human rights law and Islamic law and constitution of Pakistan on certain human rights law perspective will also be highlighted.

Through this chapter the main question of thesis "What is the legal and social status of Eunuchs in Pakistani society with regard to International Human Rights Law, and Legal frame work at the national level". The chapter will end with a conclusion.

Defining the word “Discrimination”

The culmination of different meanings of the word “Discrimination” leads to the following two standard definitions¹⁴⁴:

- 1) The unjust or prejudicial treatment of different categories of people or things especially on the grounds of race, age or sex
- 2) Recognition and understanding of the difference between one thing and another.

Non Acceptance by Family/Parents

Eunuchs are not accepted by parents and family¹⁴⁵, but surprisingly the family remains a serious concern for the Eunuchs as there have been various instances in the Eunuch community wherein Eunuchs send money, earned through whatever source, to their families.¹⁴⁶ Many a times, real Eunuchs are even handed over to Eunuch community by parents themselves.¹⁴⁷ The birth of a Eunuch child in our society is considered a matter of shame and embarrassment.¹⁴⁸ Even if in childhood the custody of real Eunuchs is possessed by parents, the Eunuchs mostly leave homes in the later span of their life due to unwarranted criticism at the hands of family members¹⁴⁹, friends at schools and in neighborhood and teachers.¹⁵⁰ The family members consider Eunuchs as cause of their disgrace and stigmatization for the whole family,¹⁵¹ which makes them undignified in the society. On deviant behavior of Eunuchs, family members even subject such children to

¹⁴⁴ Advanced Oxford Learners dictionary.

¹⁴⁵ Sonya Caroline Hahm supra n, 63. p 36.

¹⁴⁶ Ibid..

¹⁴⁷ Humaira Jami supra n, 116. p8.

¹⁴⁸ Ibid.

¹⁴⁹ Dr. Sharful Islam Khan supra n, 22. p 05.

¹⁵⁰ Ms. Gulnaz Nisar Bhutta, The Third Sex On the Fringes of Society, Islamabad p.no.04 also available at http://www.lead.org.pk/hr/attachments/Compendium/01_Civil_Political_Rights/The_Third_Sex.pdf (Last visited 15-03-2013)

¹⁵¹ Muhammad Ahmed Abdullah supra n, 93. p 03.

corporeal and psychological punishments.¹⁵² The family in such cases fails to understand the psychological and physiological realities attached with the Eunuchs with their ambivalent gender. The said treatment of eunuchs in Pakistan is in contradiction the decision of Supreme court of Pakistan.¹⁵³

Family, as an institution, plays a pivotal role in ostracizing Eunuchs.¹⁵⁴ Prejudice to gender non-conformity in terms of attitudes, identity, and behavior results in violent and unbearable attempts by family members for correcting the traits of their child.¹⁵⁵ There are not many examples for families to follow for recognition of the gender identity and behavior of their own children.¹⁵⁶ Therefore, instead of protecting a child from mental and physical torture met out to them by the society, the family humiliates them and beats them, in most cases, they are thrown out of their houses.¹⁵⁷ At times, they are even subjected to sexual abuse by close relatives.¹⁵⁸ After the incident of such maltreatment they are offered material incentives for not disclosing it before any one and Eunuchs in most cases do not disclose it because of family fear.¹⁵⁹ If Eunuchs protest or inform anyone or seek support from any one, they are punished and held responsible for it by families and society¹⁶⁰, therefore in most cases they don't seek support from any one.¹⁶¹ In such situation their movement is restricted due to social pressures, thus their right to move freely in society is derogated. The movie BOL is a live example of that. Such situation causes the Eunuchs to be ignored of their right to the dignified treatment by

¹⁵² Ibid.

¹⁵³ Constitution Petition No. 43/2009

¹⁵⁴ Ms. Gulnaz Nisar Bhutta supra n, 144. p 04.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Dr. Sharful Islam Khan supra n, 143. p 10.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

themselves weird among other students, they don't want to continue their education¹⁷² and mostly drop out from schools.¹⁷³ The parents on the other hand, insist them to continue at schools without any realization of the treatment they are faced with at the hands of teachers and children at schools.¹⁷⁴ Such children decide to continue at schools but mostly abscond from classes to avoid maltreatment at schools.¹⁷⁵ Such children fall victim to sexual abuse out of schools during school time by people.¹⁷⁶ Eunuchs who always remain on hunt for charming such children to their society also don't miss this chance.¹⁷⁷ At an average they have first sexual encounter at the age between 8-12 years and that also with force.¹⁷⁸ In Eunuch community they see several souls like them in whose company they don't feel different, thus they believe that they have reached the people similar to them¹⁷⁹, though their life in that society is also not even safe.

The problem only intensifies when Eunuch children leave their houses due to discrimination by family members, friends in neighborhood and at schools, and by the society at large.¹⁸⁰ Once Eunuch children leave home, later or sooner they resort to Eunuch society¹⁸¹ wherein they mostly embrace to life-long prostitution¹⁸² due to non-existence of opportunities in other conventional professions due lack of education and other reasons mentioned above. The prostitution (Homosexuality) is strictly forbidden in

¹⁷² Dr. Sharful Islam Khan supra n, 158. p 06.

¹⁷³ Muhammad Ahmed Abdullah supra n, 145. p 03.

¹⁷⁴ Ibid.

¹⁷⁵ Sonya Caroline Hahm supra n, 161. p 36.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid p.no 04.

¹⁷⁸ Dr. Sharful Islam Khan supra n, 164. p 09.

¹⁷⁹ Sonya Caroline Hahm supra n, 167. p 36.

¹⁸⁰ Ms. Gulnaz Nisar Bhutta supra n, 163. p 06.

¹⁸¹ Sonya Caroline Hahm supra n, 171. p 48.

¹⁸² Ibid.

Islam.¹⁸³ The discrimination with the Eunuch children at schools, neighborhood and homes bears problems for Eunuch in terms of family life, employment, health, education and dignity and the same causes infringement of their many non-derogatory rights. The position of Eunuchs would have been different had parents, family members and society understood their sexual deformity and had not discriminated them.¹⁸⁴ The above mentioned treatment of eunuchs in society, is in contradiction with the decision of Supreme court of Pakistan.¹⁸⁵

Institutional Discrimination at hospitals and other offices

Often Eunuchs face discrimination in hospitals¹⁸⁶ as the doctors and other nursing staff laugh at them¹⁸⁷, this is why most of Eunuchs don't resort to medical treatment at general hospitals.¹⁸⁸ More so they are also denied health and psychological assistance.¹⁸⁹ The medical establishment discriminates the Eunuchs whether they go for simple ailments or they resort to hospitals for treatment of any sexually transmitted disease.¹⁹⁰ To avoid insulting treatment, they resort to self-medication or call doctors at their homes in presence of their Guru in case of any emergency.¹⁹¹

The Nirban Eunuchs become Eunuchs by a surgery called castration which is carried out in most cases by the senior Eunuchs. Although conversion of Nirban Eunuch by surgery is not allowed in Islam¹⁹², yet unfortunately in Pakistan most of the Eunuchs undergo these surgeries in extremely dangerous and unsanitary conditions, at the hands of senior

¹⁸³ Quran (7:80-84), Sahi Bukhari, 1986, p 121-122, Abu Dawud (4448-4462)

¹⁸⁴ Sonya Caroline Hahm supra n, p 48.

¹⁸⁵ Constitution Petition No. 43/2009

¹⁸⁶ Ibid, p.no 04.

¹⁸⁷ Ibid.

¹⁸⁸ Muhammad Ahmed Abdullah supra n, 165. p 05.

¹⁸⁹ Humaira Jami supra n, 141. p12.

¹⁹⁰ Ms. Gulnaz Nisar Bhutta supra n, 172. p 04.

¹⁹¹ Saif Ur Rehman Rana supra n, 122. p 258.

¹⁹² Sahi Bukhari, 1986, pg. 8.

Itlaf-Isalahiyat-i-udw.²¹² However, for curing a disease such operations can be advised by the doctors.²¹³

Islam has strictly forbidden homosexuality.²¹⁴ In Islam men or women who are in similitude of each other have been cursed.²¹⁵ Every time it is action that has been cursed or condemned or declared punishable and if the same action is carried out by members of the other two genders it is equally punishable. It is misfortune that mostly in Islamic society the above injunctions are misinterpreted when comes to rights of Eunuchs because they are treated as symptoms of disrespect and hatred based on the disposition that Islam curses them. But it is the men or women, who are in similitude of each other, have been cursed²¹⁶ not all the Eunuchs have been cursed.

Discrimination By general public

General public discriminates Eunuchs in Pakistan to the extent that people attribute the term Eunuch with an abuse to a man who is whimsical and ineffective.²¹⁷ Contrary to that, Eunuchs can do all other things except their disability/inability to bear children. The society in Pakistan has secluded Eunuchs from mainstream activities.²¹⁸ Their role in the society has been limited to only dancing, begging, prostitution and other cheap works as society at large does not afford their any other productive role for development and progress.²¹⁹ They are virtually not allowed to educate.²²⁰ They can not even move in the

²¹² Section 335 of Pakistan Penal Code-PPC

²¹³ Humaira Jami supra n, 194. p 11.

²¹⁴ Al Quran (7:80-84), Sahi Bukhari, 1986, p 121-122, Abu Dawud (4448-4462).

²¹⁵ Sahi Bukhari, 1986, pp. 513-514.

²¹⁶ Ibid.

²¹⁷ Humaira Jami supra n, 203. p 03.

²¹⁸ Ms. Gulnaz Nisar Bhutta supra n, 181. p 08.

²¹⁹ Ibid.

²²⁰ Ibid.

society freely like males and females which is against their right to appear in public without shame.

Due to social and economic limitations, Eunuchs are constrained to specific professions whose adoption does not endow them any respectable position in the society.²²¹ Their homes are places of insecurity.²²² Often miscreants rush into their houses without any permission and subject them with sexual harassment.²²³ Violent people even do not refrain from kidnapping Eunuchs.²²⁴ At times after sexual assault some of Eunuchs are even killed.²²⁵ On resorting to police by guru or other friends of deceased, the police do not take the matter seriously.²²⁶

Islam does not allow homosexuality.²²⁷ Due to exclusion of Eunuchs especially in terms of employment, they in most of cases make prostitution (homosexuality) as also their profession for their sustenance.²²⁸ All Eunuchs are not prostitutes.²²⁹ They can have other professions but they face antipathy at the hands of other colleagues, they thus prefer prostitution, as many like them are already in that profession. As commercial sex workers they are placed at the bottom in the hierarchy of sex workers.²³⁰ They as sex workers face extreme and brutal sort of violence at the hands of police and their customers, at police

²²¹ Ibid, p.no 02.

²²² Ibid.

²²³ Sonya Caroline Hahm supra n, 189. p 46.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Al Quran (7:80-84), Sahi Bukhari, 1986, p 121-122, Abu Dawud (4448-4462)

²²⁸ Ms. Gulnaz Nisar Bhutta supra n, 208. p 04.

²²⁹ Ferrari, "Divinity, tradition and prostitution among the Eunuchs. Being a non-gender specific in 21st century South Asia," *Trickster*, 30-03-2013. Available at http://trickster.lettere.unipd.it/archivio/3_prostituzione/numero/rubriche/sguardi/ferrari_Eunuch/ferrari_Eunuch_eng.html

²³⁰ Smarak Swain supra n, 156. p 58.

stations and even at their homes.²³¹ Adoption of sex profession by Eunuchs is mostly not intentional but due to largely lack of employment opportunities and social compulsions.²³² The major factor behind this treatment is that the society does not understand the fact that they do not conform to the accepted gender divisions in the society.²³³ Most of the Eunuchs hail either from poor or middle class segment of society which makes them vulnerable to harassment by police and general public.²³⁴ Their gender based discrimination makes the Eunuch community as the most disempowered social circle in the society.²³⁵ The above mentioned treatment of eunuchs in society, is in contradiction with the decision of Supreme court of Pakistan.²³⁶

Discrimination by Media

The media has undermined Eunuchs as it has obstructed it almost irreversibly by showing them as a evil group of people with criminal intuitions or as the objects for laughter in movies, dramas, or different comedy shows.²³⁷ The media has not depicted anything that shows their problems except in a Pakistani movie "BOL". The media mostly describes their pessimistic perspective of life.²³⁸ So far the real life problems of the Eunuch community are concerned, there is mostly a profound silence in media.²³⁹ While depicting a Eunuch, the media, follows discriminatory attitude towards Eunuchs.²⁴⁰ Mr. Javed Chaudary is a senior journalist who mostly writes in daily Express under the caption "Zero Point." His article on "Khusra e Azam" appeared on 25th November 2010

²³¹ Ibid.

²³² Ms. Gulnaz Nisar Bhutta supra n, 218. p 02.

²³³ Smarak Swain supra n, 220. p 58.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Constitution Petition No. 43/2009

²³⁷ Shoma A. Chatterji supra n, 103: p 2

²³⁸ Ibid.

²³⁹ Ms. Gulnaz Nisar Bhutta supra n, 222. p 08.

²⁴⁰ Ibid.

wherein he has commented on the Eunuch beauty contest in Thailand. He has portrayed Eunuch community as the ones who cannot do anything and has related them to our politicians and other members of civil society for sake of criticism on them. This article is an ideal example of social discrimination with Eunuch community at the hands of media.²⁴¹ On GEO TV in Khabar Nak program many times, Eunuchs are shown as a laughing stock.

Discrimination in Employment

In Pakistan the Eunuch community faces the worst form of discrimination in terms of employment. The Eunuchs are denied quota in employment²⁴² either in Govt or private sectors.²⁴³ The right of entry to respectable job depends upon educational requirements of an individual.²⁴⁴ The unemployment and under-employment patterns in a particular country, results into a hard competition among the candidates.²⁴⁵ During my interviews and after reviewing the available literature on the Eunuchs, it has been found that most of the Eunuchs are not educated. However, only few have higher degrees. They are not virtually allowed to adopt the professions of their choice.²⁴⁶ They also can not get jobs due to lack of education.²⁴⁷ Even if they are able to somehow manage to get some jobs, they are kicked of their jobs on the grounds that they destroy working environment.²⁴⁸ In certain cases Eunuchs were abused verbally, physically, and sexually at the places of their jobs for that even they were not able to get justice. Thus, their choice has to be

²⁴¹ Javed Chudary, "Khusra e Azam", Daily Express, Nov. 25, 2010

²⁴² Humaira Jami supra n, 207. p 14.

²⁴³ Smarak Swain supra n 220. P 58.

²⁴⁴ Sonya Caroline Hahn supra n, 213. p 42.

²⁴⁵ Ibid, p.no29

²⁴⁶ Smarak Swain supra n, 232. p 58.

²⁴⁷ Dr. Sharful Islam Khan supra n, 170. p 06.

²⁴⁸ Ibid.

limited to begging, dancing, singing, sex work or cheap jobs etc²⁴⁹ as society at large considers them inferior beings due to their gender and also due to their involvement with prostitution, though all Eunuchs are not prostitutes.²⁵⁰ However, presently a few Eunuchs have made their ways to show biz fashion designing etc.²⁵¹ For survival, the human beings have to depend upon some economic or income resource. There are various sources of income in Pakistan, but to Eunuch community the ways open, are mostly limited to sex work, dancing, singing, begging etc²⁵² due to social discrimination. Discrimination can also result in segregation from the job market or certain jobs.²⁵³ Now due to modernization, the Eunuchs have to excessively be constrained to begging and sex work²⁵⁴ as the other ways of income have minimized due to media progress.

There are very few Eunuchs who are educated. Whereas, the crucial factors to get employment in Pakistan include age, education, gender, skills, health, commitment, approach and religious beliefs.²⁵⁵ The factors i.e. gender, education and skills supplement to economic and social vulnerabilities of Eunuchs.²⁵⁶ When competition in job market leads to economic insecurity it can result in unemployment and under-employment which reduce well-being, dignity²⁵⁷ of the people generally. Even for those Eunuchs who are educated and who manage to overcome the difficult obstacles in getting education, it's not easy even for them to find a job and be treated with respect in the society.²⁵⁸ The Eunuchs

²⁴⁹ Ms. Gulnaz Nisar Bhutta supra n, 228. p 02.

²⁵⁰ Fabrizio Ferrari supra n 219.

²⁵¹ Ms. Gulnaz Nisar Bhutta supra n, 238. p 02.

²⁵² Muhammad Ahmed Abdullah supra n , 179.p 02.

²⁵³ Sonya Caroline Hahm supra n, 29, Dr. Sharful Islam Khan supra n, 242. p 06.

²⁵⁴ Ms. Gulnaz Nisar Bhutta supra n, 240. p 02.

²⁵⁵ Sonya Caroline Hahm supra n, 242. p 28-29.

²⁵⁶ Ms. Gulnaz Nisar Bhutta supra n, 243. p 06.

²⁵⁷ Sonya Caroline Hahm supra n, 244 .p 28.

²⁵⁸ Ms. Gulnaz Nisar Bhutta supra n, 245. p 06.

who don't want to indulge into sex work and try to do some other cheap jobs like cooking etc, they also face problem of being paid lower than even the minimum wages.²⁵⁹

In government departments quota has been prescribed for women, minorities and for disable candidates. For various recruitments disable candidates are encouraged. Disabled Peoples' International (DPI) defines disability as follows: "Disability is a functional limitation within the individual caused by physical, intellectual, emotional, or sensory impairments".²⁶⁰ Although Eunuchs fulfill the requirements for being considered for recruitments as disable, yet due to social discrimination they are not able to make their way to government service. The Supreme Court of Pakistan has directed formulation of the mechanism to treat the eunuchs, the way the disable people are dealt when comes to employment.²⁶¹

Discrimination In Right Of Inheritance

Under Islamic Jurisprudence and the Constitution of Pakistan sex/ gender is recognized as male and female.²⁶² Islam endows equal rights and opportunities for all human beings.²⁶³ In Islam the share of men and women in inheritance is different. Thus the inheritance of Eunuch child is based on his/her gender. In simple terms if the child's gender is female, it may be extended the share that of females are entitled to. Similarly if the child is male, it may be extended share that of males are entitled to.

²⁵⁹ Ibid, p.no 43.

²⁶⁰ <http://www.chowrangi.com/third-gender-and-their-status-in-pakistan.html>, visited:11/11/2012

²⁶¹ Constitution Petition No. 43/2009

²⁶² Major Acts, 1987, Humaira Jami supra n, 231.p10.

²⁶³ Humaira Jami supra n, 250. p 09.

Mostly Eunuchs don't remain with families due to society's unacceptable behaviour with them. They are mostly not given any share in inheritance after death of the parents.²⁶⁴ Being human beings it is their right to enjoy right to inheritance.²⁶⁵ There, however, exist some isolated events wherein Eunuchs were given property in inheritance by departing parents.²⁶⁶ Eunuchs are human beings therefore they require all those material things which a male or female person wants to lead the life. One born Eunuch of Hafizabad came to know about death of his father after one and half years.²⁶⁷ When he visited home he was neglected by his three brothers and two sisters.²⁶⁸ He was not even given any share in inheritance as his brothers and sisters believed that he did not need any property.²⁶⁹ Against this discrimination mostly Eunuchs don't protest and resort to any court of law.²⁷⁰

The situation worsens when on death of any Eunuch or Guru relatives come to claim for inheritance because as per Eunuchs, the family does not accept a Eunuch child due to which Eunuchs embrace Eunuch community, thus the family members don't have any right on the property of the Eunuch/Guru who dies.²⁷¹ In Faisalabad an incident occurred wherein a Guru died whose relatives occupied property of Guru.²⁷² The Guru was a real Eunuch who being thrown out of his house by parents, joined Eunuch community.²⁷³ He reached a position of Guru after death of his Guru and made a lot of property. His brothers never visited him during his life time. The chelas resorted to court wherein while

²⁶⁴ Saif Ur Rehman Rana supra n, 188. p 192.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid, p.no 193.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid, p.no 194.

²⁷³ Ibid.

interrogation the Judge asked blood relatives if they ever gave anything to the deceased during his life time.²⁷⁴ Finally the Judge ordered chelas to take control of the property. The judge also remarked that Eunuch community is already miserable, therefore, they may not be disturbed.²⁷⁵ The relatives of the deceased filed a petition for appeal which was also rejected.²⁷⁶ Moreover, the Supreme Court of Pakistan has also directed to extend right of family inheritance to eunuchs in Pakistan.²⁷⁷

Conclusion

We can conclude that Eunuchs are not accepted in families and they are also subjected to physical punishments by their families due to deviant attitudes which is against the International Human Rights Law, Constitution of Pakistan and Islamic Law. Some schools even do not allow education of Eunuch children from their schools and that in schools Eunuchs cannot get education due to social barricades i.e. discrimination by teachers and students. Sometimes, in schools teachers and senior students and in homes relatives subject Eunuchs with sexual abuse at very tender age. This chapter also surfaces that Eunuchs are only exposed to limited professions i.e. begging, dancing, singing and sex work due to various reasons as discussed above and that the police discriminates Eunuchs. Eunuchs are also subjected to institutional discrimination at hospitals, police stations and other government offices. From this chapter we also find that Eunuchs are also discriminated as commercial sex workers since they are placed at the bottom in the hierarchy of sex workers, though Islam does not allow prostitution. This chapter also reveals that Eunuchs are discriminated based on religious misinterpretation. Media instead of working for their cause also discriminates Eunuchs through different modes of

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ Constitution Petition No. 43/2009

Media. Eunuchs don't enjoy any respectable place in the society which is why they resort to Eunuch localities much separate from the ordinary society. From this chapter, we know that the Eunuchs are deprived of their basic right of employment and right to development at par with the other two genders. Eunuchs' rights to privacy, life, employment, respect, dignity, education, health and equal treatment e.tc under International Human Rights Law, Constitution of Pakistan are not protected in Pakistani society. The Eunuchs in most cases are not extended the right of inheritance in contradiction with the decision of Supreme Court of Pakistan.²⁷⁸ The above all clearly lead to a conclusion that the legal and social status of eunuchs in Pakistani society is very vulnerable which is not in line with the International Human Rights Law and the Constitution of Pakistan.

²⁷⁸ Ibid.

Chapter # 04

Conclusion & Recommendations

Introduction

This chapter comprises concluding discussion or sum-up of all the chapters. Through this chapter the main questions of thesis along with findings thereof will be discussed with arguments. The responsibilities of the state in treatment of Eunuchs shall be discussed. The remedies/policy guidelines/recommendations for doing away with the discrimination with Eunuchs may be visualized in this chapter.

Findings And Discussion

This brief research based on some interviews and available literature has surfaced some realities regarding rights of Eunuchs in Pakistan society with respect to Islamic law, Constitution of Pakistan and International Human Rights Law. Eunuchs are found in two types (i) Born male and female (ii) Fake and castrated Eunuchs.²⁷⁹ The fake and castrated Eunuchs are not recognized in Islamic society because in Islam changing one's sex is not allowed.²⁸⁰ Moreover, castration is not legally allowed because, Islamic Criminal Law prohibits castration because it is an offence of *Itlafe-i-udw*²⁸¹ and *Itlaf-Isalahiyyat-i-udw*.²⁸² However, for curing a disease such operations can be advised by the doctors.²⁸³ The thesis also reveals that the eunuchs enjoyed far better and privileged status in past than in present time. In certain cases, the eunuchs lead dignified life of warriors and political influence at state and harem level.

²⁷⁹ Saif Ur Rehman supra n, 252. p 33-34.

²⁸⁰ Sahi Bukhari, 1986, pg. 8 and also Surah Al- Nisa [4:119]

²⁸¹ Section 334 of Pakistan Penal Code-PPC

²⁸² Section 335 of Pakistan Penal Code-PPC

²⁸³ Humaira Jami supra n, 194. p 11.

The thesis also depicts that the Eunuchs are not accepted in families and they are also subjected to physical punishments by their families due to deviant attitudes.²⁸⁴ Often, real Eunuchs are handed over to Eunuchs by parents themselves out of shame²⁸⁵ as the birth of a Eunuch child in our society is treated as a matter of shame and embarrassment for families.²⁸⁶ They are virtually not allowed to educate.²⁸⁷ They can not even move in the society freely like males and females which is against their right to appear in public without shame. The family members consider Eunuchs as cause of their dishonor thus undesirable for the whole family,²⁸⁸ which makes them undignified in the society Schools often do not allow education of Eunuch children in their schools and that in schools Eunuchs cannot get education due to social barricades i.e. discrimination by teachers and students.²⁸⁹ Eunuchs are also subjected to institutional discrimination at hospitals²⁹⁰, police stations²⁹¹ and other government offices.²⁹² In Pakistan the Eunuch community faces the worst form of discrimination in terms of employment. The Eunuchs are denied quota in employment²⁹³ either in Govt. or private sectors.²⁹⁴ Media instead of working for their cause also discriminates Eunuchs through different modes of Media.²⁹⁵

The thesis also reveals that the international human rights regime through its international human rights instruments and Constitution of Pakistan recognize application of rights to Eunuchs. The state of Pakistan is in need to implement international human rights law at

²⁸⁴ Muhammad Ahmed Abdullah supra n, 241.p 03.

²⁸⁵ Humaira Jami supra n, 276. p 8.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Muhammad Ahmed Abdullah supra n, 281.p 03.

²⁸⁹ Sonya Caroline Hahm supra n, 246. p 41.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Humaira Jami supra n, 282. p 14.

²⁹⁴ Smarak Swain supra n 235. p 58.

²⁹⁵ Shoma A. Chatterji supra n 226.

many junctures to extend the rights to Eunuchs within the National and international framework of human rights. Pakistani state needs to frame a mechanism to guarantee basic rights to Eunuchs. Pakistani state is in urgent need to uphold the respectable status of Eunuchs and basic norms established through UDHR. Pakistan as a member state (Signatory) is required to implement application of all rights enshrined through ICCPR to Eunuchs being human beings and even to develop Eunuch community in as much as to be considered as equal to males and females with respect to rights. Pakistani state in line with ICESCR has obligations to provide basic rights enshrined therein for Eunuchs. Moreover all the international human rights instruments need to be implemented in Pakistan with reference to rights of Eunuchs. Pakistani society has to adhere to its constitutional provisions regarding extension of fundamental rights to all human beings without any discrimination based on the sex. The above all actions at the state level have to be subject to Islamic Law.

The instant research works also illustrates that Pakistani society is Islamic and under Pakistan's 1973's Constitution all the laws in the country have to be in conformity with Islamic law. Under Islamic Jurisprudence and the Constitution of Pakistan sex/ gender is recognized as male and female only.²⁹⁶ Here international human rights Law contradicts with Islamic law and constitution of Pakistan as Islam only recognizes two genders / sex i.e. male and female. Whereas, international human rights law recognizes various other genders including Eunuchs. International human rights law goes up to recognition/acceptance of homosexuals: Islam only recognizes born Eunuchs in such a way that their gender is determined according to their urinating system. Islamic law,

²⁹⁶ Major Acts, 1987, Humaira Jami supra n, 276. p 10.

however, doesn't recognize castrated Eunuchs.²⁹⁷ In Islam castration is an offence of *Itlafa-i-udw*²⁹⁸ and *Itlaf-Isalahiyyat-i-udw*.²⁹⁹ Castration may not even be allowed by international law because firstly, it is against human dignity and secondly it poses serious risks to human health, likely to affect the right to health. Castration aims at encouraging Eunuchs in singing, dancing and most likely to prostitution which is prohibited in an Islamic society. While, these occupations may be allowed by international human rights law, they are prohibited under Islamic law. This leads to a tension between the two. The tension could not be resolved. According to Pakistan constitution Islam is the state religion of the country; no law in conflict with Islam, could be introduced. However, the state may make certain law and policy program:

- (v) Ensure all human rights for born Eunuchs
- (vi) Ensure medical help for born Eunuchs if possible in order for them to become normal human being male or female
- (vii) Rehabilitate castrated Eunuchs in society through policy measures
- (viii) Ban castration by law

Having said this, the incompatibility between Islamic Law and Human Rights Law does not bar extension of rights to Eunuchs by Islamic and International laws or Pakistani.

The instant research work also surfaces apparent contributions of Supreme Court decision for Eunuchs in Pakistan. The Supreme Court in the petition filed by Mr. Mohammad Aslam Khaki and another versus SSP (Operation) Rawalpindi and others directed NADRA to mention the gender of Eunuch as "Mukhanath" in CNIC of a

²⁹⁷ Surah Al- Nisa Ayat No [4:119], Al- Quran

²⁹⁸ Section 334 of Pakistan Penal Code-PPC

²⁹⁹ Section 335 of Pakistan Penal Code-PPC

Eunuch.³⁰⁰ The august court also emphasized upon extension of the rights of Eunuchs in Pakistan. The NADRA after the decision of the Supreme Court is in practice to mention "Mukhanath" against the gender in CNIC of Eunuch in compliance to the directive of the august apex court. The Supreme Court also emphasized upon extension of the right to inheritance to the Eunuchs in Pakistan³⁰¹. The apex court also underlined determining the total number of Eunuchs in Pakistan³⁰². The august court held that the Eunuchs in Pakistan have equal rights as all citizens of Pakistan including the right of family inheritance which cannot be denied by anyone. The Court ordered that eunuchs be given all rights in all fields of life including education and employment. The court ordered that the eunuchs be engaged in any suitable tasks like in India in Bihar the eunuchs have been engaged in collection of taxes etc. The court directed to the concerned to take steps for betterment and welfare of the eunuchs in Pakistan as laid in constitution of Pakistan. The court also directed for registration of the votes of eunuchs in the voters lists. The august court also ordered that the copy of decision may be sent to all federal and provincial governments for strict implementation of the directives of the august court³⁰³.

The Supreme Court decision has contributed to the rights of Eunuchs in a way that they have a separate identity after the said decision in the social fabric of Pakistan. Due to emphasize on the rights of Eunuchs in the society by the Supreme Court of Pakistan, the issue of rights of Eunuchs has been exposed at the national and international levels. Various NGO's have been attracted to this vulnerable segment of the society in Pakistan. Consequent upon the decision by the Supreme Court, some of the organizations under the Federal government have also started advertising job opportunities for Eunuchs in

³⁰⁰ Constitution Petition No. 43/2009

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

Pakistan. Apparently, it seems that the extension of job opportunities to Eunuchs in Pakistan shall pave the way for obtaining the education by the Eunuchs in Pakistan keeping in view opening of chances of their education's applicability for the state in Pakistan. The court otherwise has given clear directions for registration and accommodation of the eunuchs children in schools.

There is a possible apprehension regarding extension of right of family inheritance to eunuchs in Pakistan as all laws in the country have to be in consonance with Islamic Law. Islam recognizes only two genders i.e male and female, thus recognizing Eunuchs as a separate gender as "Mukhanath" by Supreme Court of Pakistan seems to attract some complications over the issue of rights of inheritance as per Islamic Law since Islamic Law on family inheritance prescribes share for men and women only.

Recommendations

At the national level there happens an urgent need of law making wherein the following laws may be enacted:

- (i) That all human rights for Eunuchs may be ensured ;
- (ii) That medical help for born Eunuchs may be ensured if possible in order for them to become normal human being male or female
- (iii) That the real Eunuchs may be treated as disable citizens having the same rights as disable citizens for sake of employment purpose;
- (iv) That education of Eunuchs may be made compulsory and discrimination with Eunuch children in schools by other children or teacher may be made punishable;

- (v) Specific educational stipends may be exclusively extended to Eunuchs to pursue their education;
- (vi) That a survey may be conducted to determine the actual number of Eunuchs in Pakistani society at the district level with the help of NADRA;
- (vii) Based on the number of Eunuchs in society, a percentage of seats may be fixed as reserved quota for Eunuchs in Government departments with certain relaxations in recruitment rules for various posts and for private sector law may prevail compelling heads of different private organizations to ensure a specific number of Eunuchs as employees;
- (viii) That discrimination of Eunuchs at hospitals and other government or private offices may be made as punishable;
- (ix) That a law may be enacted specifically declaring castration as punishable under law;
- (x) Fake Eunuchs on medical examination may be punished under specific law;
- (xi) That a programme for rehabilitation of nirban and fake Eunuchs may be launched;
- (xii) The Government initially may fix monthly stipend at the district level for Eunuchs till majority of Eunuchs are educated so as to avoid Eunuchs to adapt wrong and unwanted profession for sake of money only;
- (xiii) Deliberate instigation of children to join Eunuch community at the hands of Eunuchs may be made as punishable under law;

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