HIJRAS: THE THIRD GENDERED PEOPLE

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Abstract:

Having the Opportunity to conduct a study, I thought to use my knowledge to understand the social circumstances and problems in my country. In order to prepare for the study, I looked into diverse issues regarding social problems and personality problems in India. I got interested in the issues around the hijra community, as they face a lot of social exclusion in that society. To be honest, compared to other social and personality problems around India, I was quite unaware about this community and had lack of knowledge regarding their vulnerable situation. There was only a small amount of studies that explored the problems around the hijra community. Nevertheless, the information from those few studies illustrated various aspects of the extreme marginalized situation of the hijra, the complexity of their gender identity, HIV risks and at the same times the negligence of their problems by the entire society and the state. However, these articles also showed that recently some NGOs and CBOs have started to acknowledge this community’s social needs, and to work from a human right’s perspective, as will be explained at the end of this chapter. Accordingly, all these circumstances have motivated me to learn more about their social situations. Therefore, I have chosen to study the issues the hijra community faces, not because of a special interest in gender issues, but because of my interest in understanding the social difficulties they are facing in their daily lives and find ways to prevent these.

Keywords: Transgender, Hijra, Personality, Adjustment

Introduction:

In India, the Hijra community has existed for more than four thousand years and is currently believed to number half a million. The word “Hijra” designates an alternative gender to the male-female binary; the term translates as Eunuch or Hermaphrodite. The hijras’ base their group’s third gender identity on an episode in the Ramayana where Rama is banished. In the story, Rama tells a tearful group of men and women, lamenting his banishment, to leave and return to the city. A group of people “who were not men and not women” did not know what to do and remained with him. Rama rewarded the hijras for their loyalty by giving them the power to bless “auspicious occasions such as marriage and childbirth through customary singing and dancing.
DEFINITION- Transgender:

The term ‘transgender’ has been derived from the Latin word ‘trans’ and the English word ‘gender. Different sorts of individuals come under this category. No particular form of sexual orientation is meant through the term transgender. The way they behave and act differs from the such people can be neither categorized as male nor female and this deviation is “unacceptable” to society’s vast majority. Trying to eke out a dignified living is even worse.

Problems at Issue:

The discussion and arguments on transgender groups have been studied in many different parts of the world where identity, discrimination, equal rights and their social supports are usually expressed in academic and social welfare world. In spite of this, the concept of transgender group is not widely spread and not discussed in India. Only the term ‘hijra community’ is very well known in this context as it has a significant history within Indian sub-continent countries and some part of South Asian countries (Bondyopadhyay and Ahmed, 2010). In the Indian sub-continent, the centuries old term ‘hijra’ is generally used to describe those men who are transvestites, inter sexed, eunuch and hermaphrodite (Chakrapani, 2010; Hahm, 2010). This group of people usually live or prefer to live in opposite gender role of their biological sex. The term ‘transgender’ was introduced more recently in the Indian sub-continent, and both terms are now often used interchangeably, although they do not mean exactly the same (Towle, R.B. and Morgan, 2006). ‘Transgender’ is often used as umbrella terms to signify individuals who denied binary gender constructions and present a blurring of culturally prevalent stereotypical gender roles (Chakrapani, 2010). And so, the multi-dimensional sexual identities, in South Asian countries, have been put into ‘transgender group’.

Before introducing the research aim I will present the hijra community, their Background and their historical existence.

Background of Transgender people (Hijra):

In Asia, people with a wide range of gender-related identities, cultures and experiences exist; for instance the hijra. Historically the presence of this community has been visible in many cultural contexts.

They have been known, for example as bakla in the Philippines, xaniths in Oman and hijra, kothi, jogappas, jogtas or shiv-shaktis in South Asia (Khan et al, 2009). Significantly hijra communities exist in India, Pakistan, Bangladesh, Nepal and other parts of South Asia. These hijra communities across South Asia have similar cultures and habits, but are not totally the same.
Who are the Hijra?

The exact meaning of hijra is quite hard to express in English, nevertheless, “the most widely used English translation of the word hijra, which is of Urdu origin, could be described as either ‘eunuch’ or ‘hermaphrodite’ (intersex) which are cannot as impotence that indicate the inability to function in the male sexual role” as stated by Nanda(1999). Following this meaning, ‘eunuch’ refers to an emasculated male whose genitals are ambiguously male-like at birth and have been previously assigned to the male sex, would be re-categorized as intersexed or hijra.

However, defining hijra and their sexual identity are a complexity among the mainstream society as well as for hijra themselves when they are exist in diverse social and gender roles. During the fieldwork of this study, hijra could be found in various ways which could fit with some provided definitions. These are illustrated below:

According to Chakrapani (2010), hijra are biologically males but refuse their masculine identity in due course of time to identify as ‘women’ or ‘not men’. As hijra usually identify themselves as ‘not men’ and prefer to have sex with men, thus, they are perceived by the society as homosexual.

Expressed by Hahm (2010), hijra are those who are by birth intersexed and can live as both male and female. On the other hand, hijra could be male who have undergone emasculation or wish to undergo emasculation and live as women.

Now, I will briefly explain the history of hijra in the Indian-subcontinent culture to understand the social environment of hijra in contemporary India.

Existence of Hijra in History:

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

Hinduism:

In traditional Hinduism, several references exist to a third gender and sexual ambiguity among human as well as among Gods. Thus, it is believed that intersexuality is not unusual and all people incorporate both male and female principles (Nanda, 1999). Hindu mythology contains various examples of androgynies and individual who undergo sex changes both among deities and human. Thus hijra received religious justification and power from this ritual although some interpretations were contested. However, there is some example which shows the prestige of hijra in religion; The God Ram, who is a popular characteristic in Hinduism, acknowledged and blessed intersexuals (Hahm, 2010); Shiva, a deity who contains both male and female components and also related to symbol of fertility and eroticism which represent Shiva united with his female creative power (Nanda, 1999); Arjuna, who rejected to have sexual intercourse with minor deity, was cursed by her to be neither man nor woman and he used to entertain people with performing through music and dancing (Husain, 2005); Vishnu and Krishna, who are often transformed with female and male characteristics to protect from demons and have no distinct sexual classification (Nanda, 1999).

The culture of singing and dancing in weddings and births legitimizes today’s role of Hijra. The endowment was given by various deities (e.g. Mother Goddess Bahuchara Mata) who allowed Hijra to be the medium of her power.
Islam:

The view of Hijra in Islam varies which provided various way of life according to different characteristics. According to Hahm (2010), Islam acknowledges persons who are born biologically indistinct and provides them with the same rights as men or women although the rights of men and women are different in Islam and it is not clear that which way they should have this right. Sometimes, It is mentioned in religion that the eunuchs are provided all the rights according to the condition of considering either male or female gender, on the other hand, men do castration are considered by the religious norm as non-Muslims which show quite unsympathetic toward eunuch in Islam (Husain, 2005). In addition, effeminates and cross dressers are not allowed to enter into the households and prescribed women to practice purda in front of them.

Eunuchs in Mughal Era (1526-1858):

The role of Hijra, though link to their sexual ambiguity, are commonly associated with ‘eunuchs’ in the Mughal Era by the general people and academics. According to Hahm (2010), in that era, eunuchs were slaves who were castrated and not emasculated. The importance of eunuchs in the past is, however often sympathetically treated by as general public as though eunuchs are the predecessors to today’s Hijra.

The British Period (1765-1947):

In the beginning of the British period in Indian sub-continent Hijra used to received protections and benefits included the provision of land, rights of food and smaller amount of money from agricultural households in specific area which were eventually removed through British legislation as because the land was not inherited through blood relations (Hahm, 2010).

The Hijras of India:

Image: 2 Patroness of the Hijra community in India

I hope to send “through the thickets of our separateness” the very human voices of individuals who seem, at first glance, very different from most people, exotic, perhaps even bizarre, but who share in our common humanity (Nanda 1999:xxi).

The hijras are a religious community of men who dress and act like women and whose culture centers on the worship of Bahuchara Mata, one of the many versions of the Mother Goddess worshiped throughout India.
There are many myths, legends, rituals, religious roles and themes in Hinduism which entertain the notion of “sexually ambiguous or dual gender manifestations” (Nanda 1999:20).

A true hijra is born intersex, that is, an individual displaying both male and female sexual characteristics and organs. While being intersex is rare, true hijras are also considered individuals that have had an emasculation operation, referred to as nirvana (cessation of rebirth) by hijras. During this operation, their genitals are removed to “become vehicles of the Mother Goddess’s power” (Nanda 1999:25). The emasculation ritual is considered a rite of passage for hijras as they are reborn from an impotent male into a hijra, an individual endowed with sakti (power).

The relationship between hijras, emasculation and Bahuchara Mata is told in the following legend of the origin of Bahuchara Mata’s worship.

**Image: 3 Goddess Bahuchara Mata**

Bahuchara was a pretty, young maiden in a party of travelers passing through the forest in Gujarat. The party was attacked by thieves, and, fearing that they would outrage her modesty, Bahuchara drew her dagger and cut off her breast, offering it to the outlaws in place of her virtue. This act, and her ensuing death, led to Bahuchara’s deification and the practice of self-mutilation and sexual abstinence by her devotees to secure her favour (Nanda 1999:25).

Hijras also refer to Indian epic literature in order to legitimize their existence and to gain respect in Indian society. From the Ramayana, hijras often allude to the following story.

**Hijras in the Ramayana**

In the time of the Ramayana, Rama fought with the demon Ravana and went to Sri Lanka to bring his wife, Sita, back to India. Before this, his father commanded Rama to leave Ayodhya [his native city] and go into the forest for 14 years. As he went, the whole city followed him because they loved him so. As Rama came to the banks of the river at the edge of the forest, he turned to the people and said, ‘Ladies and gents, please wipe your tears and go away.’ But those people who were not men and not women did not know what to do. So they stayed there because Rama did not ask them to go. They remained there 14 years and when Rama returned from Lanka he found those people there, all meditating. And so they were blessed by Rama (Nanda 1999:13).

Within the Mahabharata, hijras point to the following story involving Arjuna as the story of their origin.
Hijras in the Mahabharata

Yudhishthira, one of the Pandava brothers, is seduced by his enemies into a game of dice in which the stake is that the defeated party should go with his brothers into exile for 12 years and remain incognito for the 13th year. The Pandavas lose and go into exile as required. When the 13th year comes around, Yudhishthira asks Arjuna what disguise he will take up for the 13th year in order to remain undiscovered. Arjuna answers that he will hide himself in the guise of a eunuch and serve the ladies of the court. He describes how he will spend the year, wearing white conch shell bangles, braiding his hair like a woman, dressing in female attire, engaging in menial works in the inner apartments of the queens, and teaching the women of the court singing and dancing (Nanda 1999:30) [See Lal (1999) for more accounts on the mythic dimensions of hijra origin stories].

Prostitution has also become a means of supporting hijras even though it contravenes the cultural ideal of the hijra as a samnyasin and it goes against the wishes of the hijra Mother Goddess, who is herself celibate (Nanda 1999:53). Hijras who are forced into prostitution as a way to earn a living are not only looked down upon by Indian society in general, but by their own hijra community as well. As one of the most marginalized groups in Indian society, “whether as performers or as prostitutes, hijras have effectively adapted to the society that surrounds them” (Nanda 1999:54), and in effect, they have created a place for themselves and will continue to survive as they fight to legitimize their existence and to gain respect [Bakshi (2004) further explores the possibilities and limits of the gendered performances that hijras undertake, including ritualistic and religious aspects].

Chromosome:

“In the nucleus of each cell, the DNA molecule is packaged into thread-like structures called Chromosomes”

Each chromosome is made up of DNA tightly coiled many times around proteins called histones that support its structure. Chromosomes are not visible in the cell’s nucleus-not even under a microscope when the cell is not dividing. However, the DNA that makes up chromosomes becomes more tightly packed during cell division and is then visible under a microscope. Most of what researchers know about chromosomes was learned by observing chromosomes during cell division.

Each chromosome has a constriction point called the centromere, which divides the chromosome into two sections, or “arms.” The short arm of the chromosome is labeled the “p arm.” The long arm of the chromosome is labeled the “q arm.” The location of the centromere on each chromosome gives the chromosome its characteristic shape, and can be used to help describe the location of specific genes.

Image: 4 Human Chromosomes
DNA and histone proteins are packaged into structures called Chromosomes

Chromosomes are every organism as the future of their offspring depends on the normal division and separation of chromosomes.

**Chromosome and Transgender:**

Biologists tell us that sex is a complicated matter, much more complex than what we may have been taught in school. A person has XX chromosomes in generally considered female, while a person with XY chromosomes is generally considered male. However, there are also people who have XXY, XYY, and other variations of chromosomes; these genetic differences may or may not be visibly apparent or known to the person. Some people are born with XY chromosomes, but are unable to respond to testosterone and therefore develop bodies with a vagina and breasts.

A variation in gender may just be part of the natural order and there are more varieties than we generally realized. People with biological differences in gender may be considered intersex; they may or may not identify as transgender.

**RIGHTS OF TRANSGENDER PEOPLE:**

_Preamble to the Constitution mandates Justice - social, economic, and political equality of status._

Thus the first and foremost right that they are deserving of is the right to equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.

Article 21 ensures right to privacy and personal dignity to all the citizens.

Article 23 prohibits trafficking in human beings as beggars and other similar forms of forced labor and any contravention of these provisions shall be an offence punishable in accordance with law.

The Constitution provides for the fundamental right to equality, and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizen. But the third community (transgenders) continues to be ostracized. The Constitution affirms equality in all spheres but the moot question is whether it is being applied.

This phenomenon can be observed at the international level also, principally in the form of practice related to the United Nations-sponsored human rights treaties, as well as under the European Convention on Human Rights.
Rights. The development of this sexual orientation and gender identity-related human rights legal doctrine can be categorized as follows:

a) Non-discrimination
b) Protection of Privacy rights and
c) The ensuring of other general human rights protection to all, regardless of sexual orientation of gender identity

In the light of the Constitutional guarantees provided, there is no reason why Transgender Community should not get their basic rights, which include Right to Personal Liberty, Dignity, Freedom of Expression, Right to Education and Empowerment, Right against Violence, Discrimination and exploitation.

The Constitution endures persons in every generation and every generation can invoke its principles in their own search for greater freedom, therefore, it is the duty of judiciary to interpret the provisions of the Constitution in such a way so as to ensure a life of dignity for them.

As per the Constitution most of the protections under the Fundamental Rights Chapter are available to all persons with some rights being restricted to only citizens. Beyond this categorization the Constitution makes no further distinction among rights holders. Official identity papers provide civil personhood. Among the instruments by which the Indian state defines civil personhood, sexual (gender) identity is a crucial and unavoidable category. Identification on the basis of sex within male and female is a crucial component of civil identity as required by the Indian state.

The Indian state's policy of recognizing only two sexes and refusing to recognize hijras as women, or as a third sex (if a hijra wants it), has deprived them at a stroke of several rights that Indian citizens take for granted. These rights include the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on. Such deprivation secludes hijras from the very fabric of Indian civil society.

The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, penectomy and problems related to marriage and adoption.

In 1994, transgender persons got the voting right but the task of issuing them voter identity cards got caught up in the male or female question. Several of them were denied cards with sexual category of their choice.

The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social outcaste and many may end up begging and dancing. This is by all means human trafficking. They even engage themselves as sex workers for survival.

ACCESS TO JUSTICE:

One to four percent of the world population is intersexed, not fully male or female. After independence however they were denotified in 1952, though the century old stigma continues. This stigma reduces the transgender to individuals who are no considered human, thus devoid of all human rights. They suffer a whole lot of mental, physical and sexual oppression in the society. The health and well-being of transgender people suffers great harm by attitudes of intolerance and hatred toward diverse gender expression.

The laws that, in today's date, terrorize the transgender community are Section 377 of the Indian Penal Code, 1870 and the Immoral Traffic Prevention Act, 1986.
Immoral Traffic Prevention Act of 1956 (amended in 1986) is the chief instrument of the Indian state’s regulation of prostitution which mandates to prevent the traffic of women and children into prostitution. With the 1986 amendment, the title was modified to "Immoral Traffic Prevention Act," and it became gender neutral. The ambit of the Act now applied to both male and female sex workers and possibly also to those whose gender identity was indeterminate. It is with the 1986 amendment that both male and hijra sex workers became criminal subjects of the ITPA. This provided the legal basis for arrest and intimidation of the transgender sex workers population.

See 377 of the 1860 Code was drafted by Lord Macaulay. It comes under the Section titled 'Offences Affecting the Human Body' and provision provides the sanction for the prosecution of certain kinds of sexual acts deemed to be unnatural. It is important to note that regardless of consent these sexual acts are liable for prosecution provided they are seen as carnal intercourse against the order of nature, with man, woman, or animal and, thus satisfy the requirement of penetration. And to be a homosexual or a hijra is to draw the presumption that the hijra or the homosexual is engaging in "carnal intercourse against the order of nature."

Section 377 has been extensively used by the law enforcers to harass and exploit homosexuals and transgender persons. Various such incidents have come to light in the recent past. In Jayalakshmi v. State of Tamil Nadu, Pandian, a transgender, was arrested by the police on charges of theft. He was sexually abused in the police station which ultimately led him to immolate himself in the premises of the police station.

Similarly, policemen arrested Narayana, a transgender, In Bangalore on suspicion of theft without informing him of the grounds of arrest or extending any opportunity to him to defend himself. His diary was confiscated by the police and he was threatened with dire consequences if he did not assist in indentifying other transgenders he was acquainted with. Homosexuals have also been at the aggrieved end of financial extortion by the police in exchange for not revealing their identities to society.

Similarly, the Indian Council for Medical Research (ICMR) and Indian Medical Association (IMA) have not prescribed any guidelines for Sex Reassignment Surgery (SRS). This reticence on the part of the medical sphere has led many transgenders to approach quacks, putting themselves at grave risk.

From the numerous instances of abuse and violence against homosexuals and transgenders, it is evident that Section 377 has been grossly misused. It is equally obvious that a judicial move to address this concern was exigent in the face of a law enforcement framework so hostile that exploitation at the hands of the alleged protectors became a quotidian affair for sexual minorities in India.

With the advent of the contemporary epoch, the movement against the repressive and oppressive nature of Section 377 grew exponentially and it was finally on July 2, 2009 that for the first time any court in India pronounced that the oppression meted out to the transgender community and the homosexuals in the country is violative of Right to Equality under Article 14, Right against Discrimination under Article 15, and Right to Privacy and Personal Dignity under Article 21 of the Indian Constitution.

These rights are not only constitutionally guaranteed but are also implicit in the Universal Declaration of Human Rights and should therefore; enjoy a superior position to other rights. The judgment of the Delhi High Court reflects a sense of conscience and empathy towards the sexual minorities, emotions that were hitherto unknown. Section 377, in its criminalization of homosexual activity, was a repressive measure on the fundamental rights of the transgender community.

And when a transgender is treated like an unequal or is humiliated by the ordinary people, there are not a lot of redressal mechanisms that are available to him. Thus to put an end to all the inhuman behaviour towards the transgender community it is very important that reforms are made in the existing laws, the law officers are sensitized to adapt to a complete humanitarian approach while dealing with a person of transgender community and also the society should get rid of the century old bias and realize that transgender behavior is a normal and natural as their own feeling towards their sexual orientation.
All the laws of the land should be applied to them like any other person. They should be treated equally, respectfully and without any discrimination. They should not be discriminated against in exercising their right to apply for a job, access to a public place, right to property or their right to access to justice.

Thus it is very vital that the judicial officers and the police officers do not become the means to institutionalize or to enforce such discrimination. Rather, they should spread awareness in the societal area they work in and enlighten the laymen that the transgender are as human as them and deserve to be treated in the same manner. There should be a group of activists to whom any matter involving transgender rights as soon as it reaches the court can be referred to. This panel of activists should involve social workers dedicated to the cause of upliftment of the transgender community and also lawyers through with the law on the subject.

Shelter homes should also be made available for such transgenders who are facing violence and are in further risk of going through the same during the proceedings. The officials dealing with issues relating to transgenders should observe complete transparency during such events. One should always remember that being in the legal profession it is our first and foremost duty to fight for the rights of the people who can't fight for themselves. Thus establishment of a division under the local legal services authority in order to provide legal aid to the transgenders will adequately serve the purpose.

While reforms are needed and suggested in the existing laws for the realization of equal rights for the transgender community, the target cannot be achieved, if not fully but partially, if reforms take place in the implementation of such laws. And the State of Tamil Nadu has set an example of the above statement to the entire world. While it is the first State to constitute a Welfare Board for the transgender community, known as aravanis, with the official working staff along being the members of the transgender community; it has also taken affirmative action to achieve equality by reserving seats for third-gender students in government-owned art and science colleges and providing ration cards (identity documents) to third-gender people with the appropriate gender category. The state government was also giving subsidy to all those transgenders who wish to undergo surgical treatment for change of their sex.

India's transsexuals are also listed as 'others', distinct from males and females, on electoral rolls and voter identity cards since 2009. This identity of a third gender was a major step ahead in their struggle for political rights.

Another area of law which has to be seen with the glasses of welfare of transgenders is the juvenile justice system. Welfare and protective measures have to be implemented in the procedures and working of the Juvenile Justice system. The Juvenile Justice Act is more of a welfare legislation that penalizing one because it aims at proper upbringing of the delinquents by making the environment child friendly and informal. It is usually children with humiliating experiences in familial, economic or school life are found to be in conflict with law. Another factor that can be added to the list these humiliating experiences are the ones relating to the child's sexual orientation, which the Juvenile Justice System does not contemplate upon.

Adolescence is a confusing time during which the children learn the skills required to become healthy adults. They experience significant intellectual, emotional, and physical developments during this bridge to adulthood. This is equally true of the transgender adolescent, but they have the added disadvantage of coming of age in a society in which their identities are stigmatized and their families and schools often harass and victimize them. These children are often rejected, neglected, or abused by their guardians and choose a life on the streets rather than remain in hostile environments.

The members of the Juvenile Justice Board should be particularly compassionate towards a transgender juvenile and have a deeper understanding of his problems that led him into a delinquent act.
If the purpose of the juvenile justice system is to intervene in a troubled youth's life and guide them towards becoming contributing members of society, then the juvenile justice system must support transgenders in their youth in the exploration and expression of their sexual orientation and gender identity.

To bring about a change in the societal aspect it is necessary that we implement the seeds of equal treatment for transgenders in the minds of the new generation. A comprehensive gender and sexuality education should be provided to all children and youth, within and outside formal education systems, which includes discussions on sexual and gender diversity and sexual rights. This will not only ensure a better future outlook for the transgenders but also they will be able to earn self esteem and self respect which they deserve for the mere fact of being a human being.

To get any reform in any law that would affect the transgender community it is proposed that a few members of the transgender community be made a part of such commission so that the law does not remain a toothless piece of legislation and serves the purpose it was enacted or amended for.

It is of utmost importance that the transgender community is made free from violence and discrimination at all levels of the society. It is due to the discrimination they face since school that they never have enough confidence to continue studying and become eligible for all the white collar jobs. This mindset has to change if India truly wants to be the champion of human rights in the world. The surgery of sex reassignment should be given a legal status so that the transgenders do not risk their lives going through it in a secret unlawful manner. This record will also be helpful in accurately determining their census. There should also be a separate column in the sex determinant portion in all government and non-government forms.

Conclusion :

There is need for their social acceptance. They should be provided separate wards in all government hospitals. The authorities do not admit them in women's ward because women do not feel comfortable or free in their presence and in men's ward they face sexual abuse. Besides, there are no separate toilet facilities for them.

Some progressive measures are:

a) To sensitize the society with regard to their identity.

b) Support of civil society organization to advocate for their cause and efforts. For example, advocate for land/shelter, creation of separate public toilets, hospital wards, recognition of their right to vote as citizens, reservation seats in election, etc.

c) Support of Media - both print and electronic, to highlight their status and plight rather than portraying them in poor light.

d) Extend financial support for community based organizations run by transgender communities.

e) To generate awareness, so that the transgender is viewed and understood as a culture, community and a movement.

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