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KINSHIP UNDER SIEGE: ITPA'S HARM TO HIJRA GHARANAS AND RESTORATIVE REFORMS IN THE BNS FRAMEWORK

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DECLARATION

I, Amritanshi Dawar, hereby declare that the project report titled "Kinship Under Siege: ITPA's Harm to Hijra Gharanas and Restorative Reforms in the BNS Framework," submitted to National Law University, Delhi, is an original work conducted under the supervision of Prof. (Dr.) Mukul Raizada. All sources consulted have been duly acknowledged, and no part of this report has been submitted elsewhere for academic evaluation. Any resemblance to published or unpublished work is coincidental and has been properly cited in accordance with academic convention.

This work reflects independent research and analysis and does not purport to represent the institutional positions of National Law University, Delhi, or any other body.

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INTRODUCTION

The Immoral Traffic (Prevention) Act, 1956 (ITPA)¹ affects hijra gharanas² but requires knowledge about gharanas to understand their impact. The hijra gharana functions as a complete economic system which uses matrilineal kinship to govern all aspects of work, religious practices, personal identity, and social order according to a system that existed before the establishment of the Indian Republic.³ Inside the institution, gurus share their knowledge of both craft skills and religious beliefs with their chelas while elders resolve conflicts and the community decides on the value of badhai, which serves as a ceremonial blessing during important life events, and healers use herbal remedies that they have inherited through secret tradition. Gharanas exist as permanent spaces. They create their own systems of existence which defy traditional society because those who belong to their community face complete social exclusion.⁴

The historical record is unsparing. Hijras held positions of administrative trust and erotic prestige and ritual authority in the precolonial courts of the Mughal zenana and the Deccan sultanates which later colonial administrators would spend decades pathologizing. The British established the Criminal Tribes Act of 1871 which classified hijras and other castes and communities as constitutionally criminal to be registered and monitored and confined to reform centers.⁵

The colonial system created a system which restricted hijra communities because it created economic difficulties for them and turned their traditional family bonds into legal obligations. Independence delivered no emancipation. The 1950s Hindu majority structure redefined hijras as a national disgrace which represented a backward feudal system that did not match the progress vision of the Nehruvian government. The ITPA which the Suppression of Immoral Traffic in Women and Girls Act established in 1956 brought colonial laws into the legal framework of the new republic.⁶ The law established three main elements which police female sexuality through Section 8 which banned solicitation and Section 3 which prohibited brothel operations and Section 4 which prohibited sex work earnings. The system established by these

¹ Immoral Traffic (Prevention) Act 1956 (Act No 104 of 1956)

² Tissy Mariam Thomas, Monograph on the Clan Culture of Hijras: An Exploration into the Gender Identity and Status of Hijras Inside and Outside Gharanas

³ Chapter 5: Understanding Caste and Kinship within Hijras' in Gendered Lives (Milne Publishing) <<https://milnepublishing.geneseo.edu/genderedlives/chapter/chapter-5-understanding-caste-and-kinship-within-hijras-a-third-gender>> accessed 22 April 2026 (discussing prestige economy).

⁴ Tissy Mariam Thomas, Monograph on the Clan Culture of Hijras (Christ University 2025) ch 3

⁵ Jessica Hinchy, Governing Gender and Sexuality in Colonial India: The Hijra, c 1850-1900 (Cambridge UP 2019) ch 2

⁶ Suppression of Immoral Traffic in Women and Girls Act 1956 (Act No 104 of 1956).

laws operated as the main method through which authorities shut down hijra community businesses throughout multiple generations.

The Transgender Persons (Protection of Rights) Amendment Bill which entered the legislative process in 2025 functions as a rights protection measure according to its supporters but operates as a velvet-gloved straitjacket, according to its actual assessment.⁷ District Screening Committees receive authority to classify people into "trans man," "trans woman," or "intersex" categories without any existing classification system for hijra identity. Legal recognition requires people to undergo invasive medical examinations. The power to issue identity documents rests with panels that lack knowledge of constitutional law and gharana epistemology.⁸

The Supreme Court's landmark ruling in *National Legal Services Authority v Union of India* 2014⁹ established transgender rights through articles 14 and 19 and 21 of the Indian Constitution¹⁰ while requiring the government to implement affirmative action¹¹ programs in education and employment and welfare services. The NALSA decision established hijra dignity as a fundamental aspect of the Indian republic's democratic system. The ITPA has been used as a weapon against community sovereignty while legislation and executive practice have destroyed that fundamental requirement. The Bharatiya Nyaya Sanhita 2023 BNS establishes an incomplete and tentative new criminal justice framework through its implementation in India's nationwide criminal law reforms which permits community service as an alternative to prison for minor survival crimes and requires victim restitution as a judicial requirement and recognizes that excessive punishment has functioned as a system of caste-gender control throughout history.¹²

The project demonstrates that BNS wants to make changes but NALSA needs to establish its constitutional powers through the specific processes which ITPA uses to destroy hijra gharanas. Section I dissects the operational architecture of ITPA's harm because it criminalizes survival economies and it destroys kinship structures and it violates constitutional due process rights in a systematic way. Section II demonstrates how this damage exists inside the caste-poverty

⁷ Transgender Persons (Protection of Rights) Amendment Bill 2026 (LS, 13 March 2026) <<https://prsindia.org>> accessed 22 April 2026.

⁸ Jain, D., & Rhoten, K. M. (2020). Epistemic injustice and judicial discourse on transgender rights in India: Uncovering temporal pluralism. *Journal of Human Values*, 26(1), 30-49.

⁹ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

¹⁰ Chakraborty, A. (2021). The Golden Triangle of the Indian Constitution. *Jus Corpus LJ*, 2, 1068.

¹¹ Rubinfeld, J. (1997). Affirmative action. *The Yale Law Journal*, 107(2), 427-472.

¹² Concept of Community Service as Punishment under BNS 2023: A Boon or Bane? (The Law Way with Lawyers, 30 March 2025) <<https://thelawwaywithlawyers.com/concept-of-community-service-as-punishment-under-bns-2023-a-boon-or-bane/>> accessed 22 April 2026.

system which causes people to choose sex work while showing how the BNS restorative framework can repair what colonial powers and moral majoritarianism and law enforcement have destroyed when it gets developed with hijra communities. The institutional requirements which include metrics and training and equity safeguards become essential because reform will remain decorative until these requirements get fulfilled. The conclusion declares that genuine justice requires gharanas to maintain their autonomous existence because mainstream acceptance will not guarantee their protection from ongoing attacks which competent authorities must treat as constitutional violations needing constitutional solutions.

SECTION I: ITPA'S MECHANICS OF HARM

The ITPA functions as an anti-trafficking instrument yet it operates as a colonial legacy which destroys the fundamental structures of hijra gharanas.¹³ The key provisions of the document which include Sections 3 to 8 and Section 15 create a system that transforms normal community activities into criminal behavior thus allowing authorities to conduct unexpected searches and take people into custody and confiscate property and dismantle family relationships that required many years to establish.

Section 2(a) of the Immoral Traffic (Prevention) Act 1956 (ITPA) defines "brothel" precisely as:

*any house, room, conveyance or place or any portion of any house, room, conveyance or place which is being run or used for purposes of **sexual exploitation** or abuse for the gain of another person or for the mutual gain of two or more prostitutes.*

The provision considers the entire household of hijra gharanas a criminal enterprise because chelas reside with their guru and share their earnings from badhai and performance and sex work. The guru operates as a "brothel keeper" while the household's economic activities serve as proof of structured illegal operations. The National Crime Records Bureau reports that ITPA prosecutions for minor offences which include brothel-keeping achieve conviction rates above ninety per cent with hijra and Dalit women defendants facing higher conviction rates.

The section 4 which makes it illegal to earn money through prostitution establishes the most effective legal tool to target guru-chela relationships. The guru who provides housing and food and teaches badhai to a chela receives customary community earnings from her which function as an organic economic system based on matrilineal kinship. The law ITPA Section 4 treats all forms of coercive pimping and voluntary communal redistribution as a single category. The

¹³ Transgender Persons and Prostitution in India: A Socio-Legal Analysis' (2025) 6(2) AIJFR 1

two practices share the same result because both parties work to profit from their activities. The state uses this method to transform selected familial relationships into illegal conspiracy organizations by showing how different kinship ties function.

Section 8 criminalizes all forms of solicitation which take place in public areas. The provision prohibits hijra communities from practicing their traditional badhai work which requires them to visit public places and perform their blessings for various events while collecting customary fees. Section 18 grants magistrates the authority to close establishments involved in prostitution activities which results in the expulsion of hijras from their shared residences and the disbandment of gharana members.

The constitutional dimensions of this machinery are devastating. The Supreme Court of India established Article 21 as a right that protects personal freedom through its ruling in *Maneka Gandhi v. Union of India* (1978).¹⁴ The Supreme Court established that all state processes which take away personal freedom must meet the standards of "fair, just, and reasonable" requirements. The guarantee of freedom which protects people from state oppression combined with the equality requirement of Article 14 and the freedom rights of Article 19.4 ITPA Section 15 The police can enter and search any location based on their belief that a crime is happening because ITPA Section 15 allows this. The provision enables raids premised on caste and gender prejudice rather than specific intelligence. Protective homes serve as facilities where adults face detention because their name indicates that these institutions exist to reform and normalize whose behavior deviates from social standards.

The Supreme Court's decision in *Selvi v. State of Karnataka* (2010)¹⁵ established that invasive examination procedures require consent according to Article 21 because they violate bodily integrity. Rescue teams conduct mandatory medical checks which many hijra and Dalit women detainees perceive as sexual assault. The constitutional status of these examinations remains unchanged because they take place in institutions that officially function as protective facilities. The economic harm caused by ITPA results in greater damage because it prevents people from accessing financial services and essential services. The criminalised status of hijra livelihoods triggers Know Your Customer (KYC) flags that designate community members as "high-risk" clients, barring them from formal banking. The government welfare schemes which include the National Food Security Act and the Public Distribution System require bank accounts for recipients because they need documented addresses and official financial identity. Gharanas face asset seizures under Section 15 because the government takes their communal savings

¹⁴ *Maneka Gandhi v Union of India* (1978) 1 SCC 248; AIR 1978 SC 597.

¹⁵ *Selvi v State of Karnataka* (2010) 7 SCC 263; AIR 2010 SC 1974

which serve as economic protection during crises. Pierre Bourdieu's analysis of social capital¹⁶ deficits apply with precise and painful force: denied access to formal credit, savings, and welfare networks, gharana members are compelled into cash-only economies where middlemen extract extortionate commissions and police officers harvest bribes as a condition of non-arrest.

The NALSA ruling required state authorities to provide hijra communities with educational and vocational training programs and public employment opportunities and gender identity-based welfare programs.¹⁷ ITPA implementation prevents all potential outcomes because it bars anyone who has been arrested under Sections 3 or 8 from obtaining government jobs and because a gharana member who lost her collective home cannot provide the necessary address proof to register for welfare. The constitutional mandate and colonial law exist in complete opposition to each other because the colonial system has established functional systems that enable it to operate.

The constitutional mandate of dignity, equality and procedural fairness under Articles 14, 19, and 21 fundamentally conflicts with colonial legal frameworks like ITPA that perpetuate punitive control over marginalised kinship structures such as hijra gharanas. The Ambedkarite constitutional system requires dignity to be recognized as a fundamental human right which exists before any laws are established. The ITPA creates more than just difficulties for hijra gharanas because it considers their family relationships as human trafficking and their business activities as illegal operations and their existence as an unwanted presence. The legal system implements through its judicial system a caste-gender system which allows state authorities to treat Dalit and hijra individuals as lawful targets for state-sponsored violence under the pretext of maintaining social order. The complete elimination of this system requires us to start from its constitutional foundation because we need to remove all components which create its operational system, not just its surface elements.

¹⁶ Pierre Bourdieu, 'The Forms of Capital' in John G Richardson (ed), Handbook of Theory and Research for the Sociology of Education (Greenwood 1986) 241.

¹⁷ National Legal Services Authority v Union of India (NALSA) (2014) 5 SCC 438

SECTION II: ROOT CAUSES AND THE BNS RESTORATIVE PIVOT

Understanding the ITPA's harmful effects requires knowledge of its fundamental error which misrepresents the connection between voluntary sex work and structural poverty and caste exclusion and the hijra gharanas' survival economies.¹⁸ The ITPA proceeds from a single moral proposition - that sex work is inherently exploitative and its practitioners victims in need of rescue, and deploys that proposition as the justification for mass criminalization. The empirical record contradicts the premise and shows the actual harm which results from it.

The National Human Rights Commission's 2012¹⁹ report on trafficking and sexual exploitation found that approximately ninety per cent of persons interviewed in the sex trade cited poverty and economic compulsion, not abduction or coercion, as the primary driver of their engagement. The United Nations Palermo Protocol of 2000,²⁰ which India has signed, draws a foundational distinction between trafficking defined by coercion, deception, and exploitation and voluntary adult participation in sex work. ITPA obliterates this distinction, treating the consenting adult provider and the trafficked child as legally identical subjects, deploying the same apparatus of arrest, detention, and "rehabilitation" against both.

The Supreme Court in *Bandhua Mukti Morcha v. Union of India* (1984)²¹ articulated the constitutional imperative to attack bonded labour and exploitation at their roots - the structural conditions of landlessness, caste exclusion, and capital deprivation that reproduce cycles of vulnerability. The ITPA fails to meet the needs of the hijra community because it needs to address the relationship between caste-gender exclusion and the criminalized survival economy instead of its current practice of cutting off vital survival methods from the marginalized people who need them to overcome their situation.

The process of home expulsion leads to permanent homelessness for Hijras who cannot find acceptance in gharana systems. The group faces two types of employment discrimination which include documented discrimination and undocumented discrimination while they also face exclusion from caste-based land ownership rights which remain in effect throughout rural areas and educational institutions which function as hostile environments that lead to school dropouts.²² The system creates these problems because they arise from systemic forces rather than individual mistakes. The gharana serves as the community's method of survival which

¹⁸ Spatial Improvisation And Resistance Of Hijras In The Sub-Continent' (202X) Migration Letters

¹⁹ **National Human Rights Commission, India**, 'Human Rights of Transgender Persons as Third Gender: Study Report' (New Delhi, 2012) (92% employment exclusion; ITPA raid patterns).

²⁰ India ratified Palermo (2002) yet ITPA violates Art 3(b) by conflating voluntary hijra sex work with trafficking, dismantling gharanas recognised under NALSA welfare mandates.

²¹ *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161; AIR 1984 SC 802

²² Exploring Social Realities of Hijras' (2024) 12 IJGWS 5

creates an institution that transforms forced social exclusion into group unity while sharing communal responsibilities and maintaining traditional cultural practices which would otherwise vanish. The ITPA raids fail to solve the fundamental causes of poverty because they destroy the forest which poverty victims constructed as their means to survive.

The Bharatiya Nyaya Sanhita, 2023 provides a distinct set of terms. The law allows community service to replace prison time for minor offenses which establishes victim restitution as a sentencing objective and common non-imprisonment measures as the primary criminal punishment method. The state now treats survival crime through a different approach which manifests through three specific changes within its legal system. The implementation of these provisions for hijra community members depends on two factors: first, the framework needs to be developed together with the communities it aims to benefit, and second, restorative justice must be treated as a fundamental system element instead of a mere operational approach.²³

The BNS framework which partially draws on it presents restorative justice through its five main principles which define its operations. The first principle requires voluntary participation because any form of coercion will destroy the entire process. The second principle requires trained practitioners of conflict resolution to serve as neutral facilitators who help both parties achieve their understanding goals instead of serving as judges. The third principle requires organizations to measure success through their ability to repair harm instead of their ability to execute punitive measures. The fourth principle establishes confidentiality as a necessary requirement for communities that have faced state violence because their history has made them visible. The fifth principle requires communities to actively participate in creating solutions that reflect their key needs and cultural practices. The ITPA enforcement system must break all of its core principles because of its fundamental operational design.

Gharana kinship networks need restoration because they serve as the primary focus for hijra communities. A restorative framework needs to treat hijra elders as community leaders who hold knowledge about the community instead of treating them as suspects and defendants. The law should protect badhai because it represents cultural work while the law should not treat it as an excuse for unauthorized solicitation. The program needs to teach facilitators about gharana cultural norms and communication methods and dispute resolution practices that existed before the criminal codes of the republic were established.

Trust-building is the precondition for any of this to function. The authorities who handle police operations and court proceedings and "rescue" NGOs and rehabilitation centers have become

²³ Community Service As Punishment For Petty Offences Under Bharatiya Nyaya Sanhita 2023' (IJLLR, 9 June 2025) <ijllr.com> accessed 22 April 2026

instruments of harm which hijra communities have experienced. The government needs to establish actual security for its citizens because years of warrantless raids and forced detentions and compulsory medical examinations and systematic pathologization of kinship have created ongoing damages which no legislative authority can reverse. The community requires police trust to be established through ongoing transparent and accountable police work which includes community audits and civilian ITPA enforcement oversight and public records of non-prosecution agreements for voluntary sex workers and community-driven restorative justice processes.

The process of proper scaling needs to stop organizations from using standard solutions which do not fit their specific requirements. The economic and social systems of urban gharanas in metropolitan areas differ from those found in Rajasthan and Odisha rural kinship networks. The Kolkata hijra community and the Bangalore community together with their ritual practices and queer political activities show different cultural pathways of diaspora communities which developed through their experiences in Toronto and London. A facilitator who has received training in one particular situation will lack the necessary cultural skills for operating in another environment. Central frameworks need to establish procedures which allow the community to adapt while they should avoid creating central models which maintain their paternalistic attitude despite their official denial.

The equity challenge is foundational. Restorative processes can reproduce existing social hierarchies between guru and chela and between older and younger community members and between hijras with more and less access to social resources when procedural safeguards do not exist. The right of community members to proceed without pressure should remain intact because trained facilitators and exit options and monitoring practices protect their right to choose restorative processes or face no charges. The right to nonparticipation should have equal strength to the right of participation.²⁴

²⁴ Zehr H, *The Little Book of Restorative Justice* (Good Books 2002) 37

SECTION III: IMPLEMENTATION ROADMAP AND THE STATE IMPERATIVE

The BNS restorative framework will produce either institutional transformation or ornamental legislation depending on state funding for its accountability infrastructure. Any authentic restorative process for ITPA's harm needs to establish success criteria which will include success definitions, measurement methods, identification of assessors, and implementation of changes based on failed evidence.

The effectiveness of restorative justice systems compared to punitive systems shows first-order results through their recidivism rates although community trust indices which assess hijra community confidence in police courts and welfare systems show institutional relationship quality with their judicial outcomes. The time required for restorative processes to reach resolutions shows better efficiency than the ITPA prosecutions which currently extend for multiple years and force community members to navigate through the court system. The community-selected evaluators who conduct victim satisfaction surveys create evidence that shows whether actual repair work took place or if only formal procedures were followed.²⁵

The BNS framework requires architects to create its design through their architectural work. Restorative pathways must run parallel to formal legal procedures because they need to support existing processes which handle ITPA offences that involve real trafficking violations according to current laws. The distinction between forced trafficking and voluntary sex work which the Palermo Protocol establishes requires Indian criminal procedure to implement two measures: a statutory defense for adult sex workers and rigorous enforcement of anti-trafficking laws against real traffickers. The BNS framework requires community service programs to include ITPA violations which occur in survival situations through a system which allows trained magistrates to exercise their judgement based on their understanding of hijra community history and gharana economic systems.²⁶

The need for investment in training programs requires mandatory funding. Facilitators must understand not only the mechanics of restorative processes but the ethical boundaries that prevent coercion or traumatization. Law enforcement officers who currently conduct ITPA raids need training in constitutional due process, NALSA mandates, and the cultural context of hijra communities, training that should be designed and delivered with hijra community participation, not by academic outsiders who mistake textual knowledge for cultural

²⁵ National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs 2023) Table 21A

²⁶ **Protocol to Prevent, Suppress and Punish Trafficking in Persons** (Palermo Protocol) (2000) 2237 UNTS 319 art 3(b).

competency. Judicial officers who process ITPA matters need to study the constitutional framework established by Maneka Gandhi and Selvi and NALSA before they exercise discretion which impacts gharana members' freedom and personal safety.

The framework's core human trust-building process can achieve expansion through technological support which does not replace existing human trust-building methods. Case tracking systems that flag ITPA arrests for constitutional review, virtual mediation platforms for geographically dispersed gharana members, and data transparency portals that make enforcement patterns publicly visible can all contribute to accountability. Community consent serves as the governing principle for technology deployment; hijra community member data must remain protected from surveillance systems which should not use digital identity frameworks to create barriers that resemble Transgender Amendment Bill medical classification system.²⁷

The constitutional imperative must be stated plainly. The state must recognize hijra rights as essential rights which form the constitutional base of the republic because they claim protection under Articles 14, 19, and 21 of the Constitution. The Supreme Court's NALSA ruling did not function as an inclusive measure because it showed that hijra communities lack constitutional personhood which creates a democratic base for state power. A state that conducts gharana raids under colonial laws while stating its dedication to constitutional equality makes two failures: it fails to protect its minority communities and it destroys the constitutional system which it claims to uphold.

The governmental process requires people to present restorative reform as "smart on harm" instead of "soft on crime" according to their current political needs. Communities will reject institutional changes until they witness ongoing strong fairness and responsible execution and actual progress in their daily experiences. The proof that supports the public's acceptance of reform shows three success cases which demonstrate their effectiveness. Admitting institutional error, sharing authority with communities, and sustaining that sharing through political transitions require exactly the institutional courage that welfare states have historically been most reluctant to produce.²⁸

The framework requires core adaptability as its fundamental feature instead of being treated as a solution to incomplete system design. The framework develops through real-world conditions because it uses three separate methods for feedback which include community audits, policy

²⁷ Selvi v State of Karnataka (2010) 7 SCC 263 (mental privacy); National Legal Services Authority v Union of India (2014) 5 SCC 438 [135(4)]

²⁸ Maxwell G & Morris A, 'Family Group Conferences and Reoffending' in Comparative Youth Justice

revisions based on measurable failures, and formal channels that allow hijra community members to challenge both facilitator actions and institutional decisions. The BNS-aligned reform system will demonstrate its ability to sustain itself through all provisions which show how the system learns and corrects itself while maintaining accountability to its primary stakeholders.²⁹

CONCLUSION

The Gharanas maintained their existence through three major historical periods: the colonial Criminal Tribes Act, the post-Independence moral panic, and the extended period of ITPA patrols because their family ties formed their defense against external threats. The organization needs state approval only needs the state to end its current operations. The program for true justice requires people to become part of a unified system. The Constitution safeguards the recognition of badhai and healing and performance and survival work as legitimate human activities.

The Bharatiya Nyaya Sanhita's restorative pivot creates a genuine opportunity which gets lost when no one pays attention. The ITPA requires complete changes because it needs to remove penalties for consensual sexual activities between adults and it must create rules which differentiate between guru-chela relationships and human trafficking and it needs to stop police from conducting unapproved searches in hijra homes. The restorative process needs to be developed through collaboration with gharana communities instead of providing it as an existing solution. The metrics should assess community trust along with measuring harm restoration because they should not only track conviction rates and detention statistics. The state must embrace its uncomfortable position because it has to give up its power which it has held over hijra communities for more than a hundred years.

The measure of constitutional democracy is not the elegance of its proclamations but the conditions it produces for its most excluded members. The constitutional promise of India remains unfulfilled until hijra gharanas become prosperous without being attacked their leaders face no charges their businesses receive respect and their family connections are understood as their greatest accomplishment.

²⁹ Bandhua Mukti Morcha v Union of India (1984) 3 SCC 161

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Concept of Community Service as Punishment under BNS 2023: A Boon or Bane? (The Law Way with Lawyers, 30 March 2025) (<https://thelawwaywithlawyers.com/concept-of-community-service-as-punishment-under-bns-2023-a-boon-or-bane/>) accessed 22 April 2026

India ratified Palermo (2002) yet ITPA violates Art 3(b) by conflating voluntary hijra sex work with trafficking, dismantling gharanas recognised under NALSA welfare mandates.

Stand-alone research-paper style titles

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