

The complexities of the genderscape in India

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When you meet a human being, the first decision you make is 'male' or 'female'? and you are accustomed to make the distinction with unhesitating certainty.¹

THE past three years have witnessed some of the most significant developments in the Indian genderscape – especially marked is a triangulation of developments ridden with contradictions. Notwithstanding the deliberations of the Verma Committee and the enactment of a new and comprehensive law on sexual assault, and despite vociferous demands by feminist groups and an important concluding observation by the CEDAW committee in July 2014,² marital rape contin-

ues to be lawful, with ruling party parliamentarians going on record to state that criminalizing marital rape will erode the sanctity of the sacrament of marriage in India. This is the first slant.

On the second side, we have the reversal by the Supreme Court of the judgment of the Delhi High Court decriminalizing homosexuality and consensual non-heterosexual conduct.³ On the third side, the base as it were, from 2013 to 2015, we have seen a striking recognition by the state – the executive, the judiciary and the legislature in that order – of the rights of transgender persons in the country.

2. Committee on the Elimination of Discrimination Against Women, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India.' Advance Unedited Version, CEDAW/C/IND/CO/4-5, 18 July 2014, para 10 (b).

3. *Suresh Kumar Koushal and Others v. NAZ Foundation*, AIR 2014 SC 563.

1. S. Freud, 'Femininity' cf. Andrew Sharpe, *Transgender Jurisprudence: Dysphoric Bodies of Law*. Cavendish Publishing, London, 2002 (1964), p. 157.

This third aspect in fact has implications for our understanding of the first two; the disruption within a heterosexual, patriarchal society and polity is in fact triggered by this development. I will therefore focus on this aspect of inequality.

A critical index of inequality and asymmetries in power, gender has long been the focus of policy, enabling legislation and social research. Within this entire body of work, however, in inequality discourse as a whole especially in India, gender is taken as a fixed category organized on the male-female binary, with gender inequality understood as male-female disparities across different fields/areas of social, economic and political life. This despite the fact that sex/gender is nowhere officially, legally or constitutionally defined as male and female. It has been *presumed* to be binary, a presumption that straddles the law and especially (quantitative) social research.

For example, legislations have elaborated on the entitlements of men as distinct from women and on special protections, reservations and affirmative action for women; policy and databases have focused likewise on elaborating 'sex/gender' in binary terms, in an attempt to aggregate measures of inequality or identify sources of discrimination. There has been some recognition in social research of the complex and intersectional character of gender orders, especially that gender orders are constantly constituted and reconstituted in multiple configurations with distinct patterns of hegemony among different masculinities and femininities.⁴ However, in India, this recognition has not pushed the boundaries of the gender

4. Raewyn Connell, 'Transsexual Women and Feminist Thought: Toward New Understanding and New Politics', *Signs* 37(4), Summer 2012, p. 865.

binary, except in the fields of gender, sexuality and queer studies.

The Constitution of India, in Article 15, lists 'sex' as a ground of non-discrimination, and jurisprudence and constitutional conversations have deliberated on whether 'man includes woman.' Therefore, while the constitutional category of sex has not been defined in terms of the immutable binary of male-female, the silence has not necessarily meant a positive and affirming recognition of other gender identities, leave alone the acknowledgement of multiple gender practices and gender transitions or that gender identities may shift or change during ones lifetimes.

Sexual identities and practices of embodiment that go beyond male-female have had a historical presence on the Indian subcontinent.⁵ Transgender persons have also had a presence recognized and regulated by law in India – especially in the case of 'eunuchs' or *hijras*, that is.⁶ Importantly, the recognition was of stigmatized, criminalized practices of embodiment that were repressed by the state through mandatory registration, restrictions on mobility, obstruction of livelihoods based on performance, forced removal of children from transgender parents, arbitrary arrests, and the criminalization of 'emasculatation'. The transgender subaltern speaks powerfully through the repressive frame of the law – trapped and subjugated by heterosexual patriarchal power.

Already in 1919, it was known that 'eunuchs' were both 'males in

5. Leonard Zwilling and Michael J. Sweet, 'The Evolution of Third-Sex Constructs in Ancient India: A Study in Ambiguity', in Julia Leslie and Mary McGee (eds.), *Invented Identities: The Interplay of Gender, Religion and Politics in India*. Oxford University Press, New Delhi, 2000, pp. 99-132.

6. Andhra Pradesh (Telangana Area) Eunuchs Act, F 1329.

female dress' and those who had undergone 'emasculatation' – a surgical sex reassignment procedure. This, together with the punishment of imprisonment for 'abetting' in emasculatation, signalled the process of transition from one to the other, and the recognition that a transgender person is one who could be located at any point in this transition. This read with Section 377, Indian Penal Code, which criminalized unnatural offences – defined as 'carnal intercourse against the order of nature' – completed the violent appropriation of life of the transgender person by the state with impunity. Women were unequal to men – although the specificities of this inequality varied across and between caste, class, tribe, region, community, and disability and in relation to the state. Transgender persons were *more* unequal – an inequality which was constituted through a divestment of recognition and equal citizenship. And violence is constitutive of gender orders.⁷

In a sharp departure from identity discourses, pertinently for our purposes as we shall see, Connell argues persuasively that the major issues in transsexual women's lives are about 'the nature of transition, the labouring transsexual body, workplace relations, poverty, and the functioning of state organizations including police, health policy, family services, education and child care.'⁸

What are hijra worlds in India like? Revathi's autobiography⁹ speaks eloquently about her life as someone who was 'born a male but wanted to live [her] life as a woman.'¹⁰ Hailing from a small village in Tamil Nadu, she speaks

7. Raewyn Connell, 'Meeting at the Edge of Fear: Theory on a World Scale', *Feminist Theory* 16 (1), 2015, pp. 49-66.

8. Raewyn Connell, 'Transsexual Women and Feminist Thought', op. cit., fn 4, p. 864.

of her life as a boy, as a person in transition, and as a hijra – of personhood, identity, dignity, poverty, education, discrimination, work, dress, gait, conduct, speech, likes, dislikes, affections and sexual desire. She tells us the untold story of the violence of the gender order as experienced by a hijra, and through this sets out a treatise on inequality that is rooted both in her personal experience as also in her practice of politics, tracing her path to self realization and reflecting on the dilemmas, contradictions, possibilities and impossibilities strewn along the way.

Her love for ‘female work’ and girls’ games led to her being teased for being a ‘girl boy’ very early on in school when she was still her parents’ youngest son Doraisamy. The punitive corrective measures too started early on, with teachers caning her for ‘not being brave like a boy.’ But, she behaved like a girl because that is the only way she knew – she did not know how to be a boy, and could not be a boy just because others asked her to. When she played female parts in plays, she was not playing a part; she was being her true self. When she donned her male clothes again, she felt she was going into disguise leaving her real self behind. As she came of age, more confusion – was it right for her to feel desire for other boys? Was she the only one who felt this way? Were there others like her? Where would she find them? As she got to Class 10, she says, ‘I experienced changes in my body and in my being. I experienced a growing sense of irrepressible femaleness, which haunted me day in and day

out. A woman trapped in a man’s body was how I thought of myself.’¹¹

Deeply troubled by her alienation from her own body and her self she sought out people like herself, people who could understand where she was coming from, learnt a whole new cultural vocabulary, and took on a female name that gave her a sense of rootedness she lacked at home. Returning home, getting battered by intolerant brothers, finding no support or sympathy, she runs away again and yet again – never fully able to sever her affection for her family, and never able to live within its codes.

Her community of belonging was not easy to negotiate either, although she found love and understanding there. Being vulnerable and stigmatized, even though there were spheres of conviviality, they were stalked by violence and extreme harassment on the streets – rape, molestation, sexual humiliation, physical attacks by men, known and unknown: ‘At such moments, I felt despair, and wondered that people could be this way... God has made us this way, I thought, we have no work of our own, our parents do not understand us and this world looks upon us with distaste... Above all, we wanted to live as human beings do, with dignity.’¹²

Alongside the violence that marred her life, Revathi provides a fascinating account of the sub-cultures of the hijra world and the diversities therein – between Delhi, Mumbai, Bangalore – the joys, rituals, dress codes, hierarchies, relations of power, regulation of mobility between one house and another by the *jamaat* of the community, and affections that built the bonds within this community. There were different livelihoods as well – asking money from shops,

11. A. Revathi, *ibid.*, chapter 2.

12. A. Revathi, *ibid.*, chapter 4.

going for *badhaai*, sex work. But theirs were working class livelihoods on the fringes of society that marked the community apart, creating a playing field that was far from equal – hunting grounds preyed upon by ‘ordinary’ people capable of extraordinary inhumanity in search of over the edge violent satiation every day – with no protective umbrella of civil and political rights and no presence in human rights discourse.

Being someone who values independence and freedom, Revathi moves from place to place, one guru to another, one livelihood to another, disliking sex work intensely, craving for sexual happiness but finding she had no option but to treat sexual experience as work. And this epitomizes the experience of the community. As Geetha observes, ‘The most poignant aspect of hijra lives [is] that their being is sexualized, condemned on that account and then they are forced to seek a living within the framework of an economy that both pays ... and stigmatizes what they pay for!’¹³ Revathi faces betrayal and dispossession from a father she supports through sex work, rejection from a male comrade in the struggle for the rights of sexual minorities who she loves and marries, returns to sex work after a spell of transgender activism only to quit yet again.

Through it all, however, although alcohol is a frequent escape, she finds comfort and solace in the hijra community: ‘Only a *pottai* knows another’s feelings, pain, loss, anguish... We are, in a sense, like a flock of crows. We stick together.’¹⁴ And so she sets about talking to others like her, recording their stories of hurt and pain, of the humiliation and social hatred they

13. V. Geetha, personal communication, 30 April 2015.

14. A. Revathi, *op cit.*, chapter 9.

9. A. Revathi, *The Truth About Me: A Hijra Life Story* (translated from the Tamil by V. Geetha). Penguin, New Delhi, 2010. All quotations are from the e-book, hence no page numbers are provided.

10. A. Revathi, Preface, *ibid.*

suffer – writing about them and about herself in an attempt to impress upon the world that ‘we hijras do have the right to live in this society.’¹⁵

And then, as if answering her call and that of others like her, there is recognition by the Indian state that transgender persons have rights.

Destabilizing the fixity of gender, acknowledging the possibility of transitions and recognizing that gender is assigned, not ascribed – essentially speaking to the ‘ontoformative character of gender’¹⁶ – are, curiously enough, three documents representing three arms of government – the legislature, the executive and the judiciary. Together, in conversation and ‘complex co-construction,’¹⁷ they complicate the category of ‘sex’ contained in Article 15 of the Constitution of India in a rare legislative consensus: the Report of the Expert Committee on the Issues Relating to Transgender Persons constituted by the Government of India;¹⁸ the judgement of the Supreme Court of India on transgender rights; and the Rights of Transgender Persons Bill, 2014, a private member’s bill passed unanimously in the Rajya Sabha in 2015.¹⁹

Drawing on the report of the Expert Committee, the Supreme Court of India in 2014 declared famously that, ‘Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates

the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex... [T]he moral failure lies in the society’s unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.’²⁰

Rather than beginning with the transgender person, the expert committee declares in the opening sentence that ‘it is necessary to establish a basic understanding of what gender is and how and who it is determined by.’²¹ It goes on to elaborate on the concept of gender, underscoring the centrality of transition to gender formation and gender practices:

‘[W]e first need to understand that none of us are born with a gender, but gender is assigned to each one of us based on the kind of primary sexual characteristics or external genitalia that we are born with. Thus an infant born with genitalia looking like a “vagina” is assigned gender female at birth and an infant born with genitalia looking like a “penis” is assigned gender male at birth. This basic idea of “gender as assigned” is expressed through the two terms – person assigned gender female at birth (PAGFB) and person assigned gender male at birth (PAGMB). So ... rather than simply using the terms “male” and “female”, which imply gender to be inborn, the terms PAGFB and PAGMB would be used.’²²

The Rights of Transgender Persons Bill interweaves with this pro-

cess set into motion by the executive and the judiciary and shifts the normative terms of discourse completely. The statement of objects and reasons states: ‘Transgender persons are sidelined and treated as untouchables. The denial of social justice leads to the denial of economic and political justice. They suffer from poor access to education, healthcare, legal aid, employment and lack of social acceptance. Measures towards sensitization of school administrations, curbing of stigma, discrimination and violence against transgender persons are also mostly absent. They are discriminated against in access to medical services and most hospitals lack adequate skills or provisions to meet their special health needs. The State should seriously address the problems being faced by transgenders such as fear, shame, *gender dysphoria*, social pressure, depression, suicidal tendencies, social stigma, etc. and any assistance for *Sex Reassignment Surgery* for declaring one’s gender.’²³

The sections of the bill then go on to elaborate on each of these areas – proposing the setting up of national and state commissions for transgender persons and special transgender rights courts to redress grievances of transgender persons. The most eloquent shift, and one that captures the texture of the transformation at the conceptual level, is in the practice of *Nirvaanam* (described by Revathi) which leaps from ‘emasculatation’ (a punishable offence in the Eunuchs Act cited earlier) to ‘sex reassignment surgery’ (articulated as a proactive remedial measure in the bill).

Still at a nascent stage, the official deliberations around the rights of transgender persons, and the sharp departure these deliberations repre-

15. A. Revathi, Preface, op.cit.

16. Raewyn Connell, ‘Transsexual Women and Feminist Thought’, op. cit., fn 4, p. 866.

17. Ibid., p. 867.

18. Report of the Expert Committee on the Issues Relating to Transgender Persons. Ministry of Social Justice and Empowerment, Government of India, January 2014.

19. Bill No. XLIX Of 2014, The Rights of Transgender Persons Bill, 2014, passed by the Rajya Sabha on 24 April 2015, the first private member’s bill to be passed in 45 years.

20. Supreme Court of India in *National Legal Services Authority vs Union of India and Others*, AIR 2014 SC 1863. Para 1 (emphasis added).

21. Report of the Expert Committee on the Issues Relating to Transgender Persons, Ministry of Social Justice and Empowerment, Government of India, January 2014, p. 6 (emphasis added).

22. Ibid. (emphasis added).

23. Bill No. XLIX of 2014, The Rights of Transgender Persons Bill, 2014, Statement of Objects and Reasons (emphasis added).

sent from the earlier construction of the 'eunuch' in law, demonstrate to us the ways in which we may historicize law as a site of cultural production.²⁴ A cursory glance at the sematic field of 'transgender' in these legal texts opens out to view the far-reaching implications of this new construction that spill out of the boundaries of the 'transgender body' – to inform our understanding of 'law' itself and the categories through which we comprehend our social world. The way in which the definition of gender in the new bill disrupts the multi-sited, standard androcentric legal construction of gender is in fact evidence of Sharpe's observation that dysphoria is not a trait of the transgender body, but rather a trait of the law and its ideological/political foundations.

Sex/gender is no longer fixed and binary. Gender identities, gender based inequalities, gendered violence and the sexual division of labour, for instance, do not refer any more merely to the historical disadvantage women suffer in relation to men – in cumulative terms in contexts of caste, colonialism and structural discrimination – although this remains an important component. Nor can this rupture be contained by adding 'other' to male and female in databases and censuses. This may also be seen as rupturing virulently patriarchal and misogynist statecraft, and is in a sense the state speaking against itself.

Because of its imbrication in statecraft at this moment of violent and exclusionary nationalism and rule of caste, heightened forms of violence against women, the strident rise of the neo-liberal economy and its constitutive colonization, the emergence of new official sensibilities on the gender order need to be celebrated while

being situated in this larger political economy of disempowerment. We can scarcely forget that '[i]n the gender order as a whole, gendered embodiment establishes relations between changing bodies and changing structures of gender relations'²⁵ – what are the ways in which the concentration of hijras in sex work renders them more vulnerable despite increased recognition of their gender practice in this violently deregulated global economy?

Similarly, the new law recognizes the right of transgender persons to sex reassignment surgery. Revathi's account of her experience of undergoing nirvaanam in a small hospital in Tamil Nadu is deeply disturbing for at least two reasons – the obvious trauma of surgical intervention and the existence of unregulated medical facilities that thrive on providing services to the poorest and most vulnerable from the community. In a context where medical tourism and unethical medical practices continue to enjoy immunity from prosecution (as witnessed, for instance, in the debates on surrogacy in India), what might the implications of this 'opening out' be for transgender persons who opt for surgical reassignment?

Finally, how might the recognition of gender transition by law inform our attempts to understand gender inequality afresh? Taking note necessarily means reformulating categories, principles and concepts on which official knowledge is organized – a deschooling, not just of society but also importantly, of the social sciences. What are the methodological implications of the redefinition of gender as a category for social research in general in India – we are not speaking here of feminist research alone, but all research that relies on or draws on gender differentials and classifications.

24. Andrew Sharpe, *Transgender Jurisprudence: Dysphoric Bodies of Law*. Cavendish Publishing, London, 2002.

25. Raewyn Connell, *Transsexual Women and Feminist Thought*, op.cit., fn 4, p. 866.