

Alternate Sexuality & The Indian State: A Study of the Hijra Community

*Dissertation submitted to Jawaharlal Nehru University
in partial fulfillment of the requirements
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MASTER OF PHILOSOPHY

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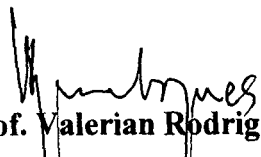
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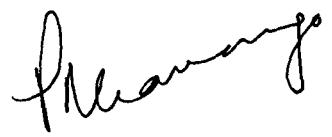
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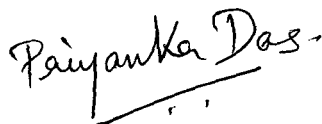
It is certified that the dissertation entitled 'Alternate Sexuality and the Indian State: A Study of the Hijra Community' submitted by Priyanka Das is in partial fulfillment of the requirements for the award of the degree of Master of Philosophy of this University.

This dissertation has not been submitted for the award of any other degree in this University or any other University and is her own work.

We recommend that this dissertation be placed before the examiners for evaluation.


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*In memory of my Grandfathers,
Late Ranjit Kumar Das & Late Nripendranath
Mahalanobis*

*Dedicated to my mother (Maa) Leena Das,
who means the entire world to me*

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All the omissions and commissions are mine.

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GLOSSARY¹

AC/DC: a man who is both a 'passive' and an 'active' partner in same sex intercourse.

Androgyne: is a person who does not fit cleanly into the typical gender roles of their society. Such people may identify as beyond gender, between genders, moving across genders, entirely genderless, or any or all of these. Androgyne identities include pangender, bigender, ambigender, non-gendered, agender, gender fluid or intergender.

Androgyny: is a term derived from the Greek words (*anér*, meaning man) and (*gyné*, meaning woman). It refers to the state of indeterminate gender or to the state of mixing of masculine and feminine characteristics. Physiological androgyny (e.g. intersex), dealing with physical traits, is distinct from behavioral androgyny which deals with personal and social anomalies in gender, and from psychological androgyny, which is a matter of gender identity.

Badhai hijra: a hijra who engages in the ritual practices of singing and dancing for newborns and newly-weds.

Berupia: a man who impersonates a hijra without formally inscribing any of the markers of hijra identity.

Bisexual: a person who has sexual and romantic attraction to both men and women.

Coming out [of the closet]: refers to the process by which a gay/lesbian/bisexual/transgender person acknowledges his/her sexual identity to himself/herself, and then proceeds to tell others about it. Coming out has many levels, starting from coming out to oneself, to one's family, friends, colleagues and the wider society. It is a process of affirming one's truly felt identity.

¹ This is a limited glossary of some sex and gender related terms which have been provided for clarity of meanings and help avoid confusions because this domain is enmeshed in immense terminological and definitional complexities.

Cross-dresser: is a person who wears the clothing of the opposite gender, i.e. other than the gender assigned at birth. A Cross-dresser may/ may not have any desire or intention of adopting other behaviors or practices common to that gender, and particularly does not wish to undergo medical procedures to facilitate physical changes.

Drag: is a term applied to clothing and make-up worn on special occasions for performing or entertaining as a hostess, stage artist or at an event. Drag can be theatrical, comic, or grotesque.

Drag king: is a person usually a female performance artist who dresses in masculine attire and personifies male gender stereotypes (like macho men) as part of their performance

Drag queen: is a person, usually a man, who dresses, and usually acts, like a woman often for the purpose of entertaining or performing. He usually imitates the female gender role, often exaggerating certain characteristics for comic, dramatic or satirical effect.

Gay: A man whose primary sexual and romantic attraction is to other men.

Gender dysphoria: also called gender identity disorder refers to the distress, unhappiness and discomfort experienced by one about his/her physical body not fully matching his/her gender identity.

Gender expression: means the external manifestations or the ways in which people externally communicate their gender identity to others through behavior, clothing, haircut, voice, and emphasizing, de-emphasizing, or changing their bodies' characteristics. Gender expression is not necessarily an indication of sexual orientation.

Gender identity: it is the gender with which a person identifies i.e, one perceives oneself to be a man, a woman, or in some less conventional way. It is not necessarily based on biological fact, either real or perceived, nor is it always based on sexual orientation.

Genderqueer: is a recent term used to signify gendered experiences that do not fit into binary concepts, and refers to a combination of gender identities and sexual orientations. It suggests nonconformity or mixing of gendered stereotypes, conjoining both genders challenges existing constructions and identities.

Gender role: is the set of roles, attitudes and behaviors assigned to females and males by society. Most cultures usually recognize two basic gender roles: masculine (having the qualities attributed to males) and feminine (having the qualities attributed to females).

Heteronormativity: is the belief that human beings fall into two distinct and complementary categories, male and female; that each gender has certain natural roles in life; and that heterosexuality is considered to be the only normal sexual orientation. It means that physical sex, gender identity, and gender roles should in any given person align to either all-male or all-female norms. The term was coined by Michael Warner in 1991 in his *Social Text* article, 'Introduction: Fear of a Queer Planet' (*Social Text*, 1991; 9 (4 [29]), pp. 3-17.)

Heterosexism: is an all-encompassing ideology which naturalizes male-female sexual relationship as the only permissible relationship in society. This ideology pervades different sites in society and becomes institutionalized as a structural bias against those with alternate sexuality in law, state and the wider society. It is most often fully internalized and is often difficult to detect and reverse.

Hijra: difficult to define; but the common understanding is that they are those who are physiologically incapable of producing offspring. They are of two kinds: born hijras (i.e. those who have dysfunctional genitalia) and those who undergo castration. They have their own form of social organization, customs, and traditions and thus form a parallel society.

Homosexuality: refers to sexual orientation or behavior which involves affective or romantic attraction between people of the same sex.

Intersex: is a term used to describe people born with external genitals, internal reproductive systems or chromosomes that are in-between of what is considered clearly male or female. There are many different intersex variations.

Jogin: a Hindu worshipper who dedicates her life to one of the forms of the Devi, Shiva or Vishnu; usually a jogin a is married to the goddess and wears female clothing.

Koti/kothi: a 'female identified' man who desires and engages in receptive (same sex) intercourse and adopts feminine manners and practices.

Kada-catla koti: a koti who wears male clothing, does not have an official kinship link with hijras, and does not have the nirvan operation.

Lesbian: a woman whose primary sexual and romantic attraction is to other women.

LGBT: an acronym standing for Lesbian, Gay, Bisexual, Transgender.

MSM: Men having sexual relations with other men. It is often used in medical literature and social science research to describe such men as a group for clinical study without considering issues of sexual self-identity.

Naran: anatomical woman.

Nati-chela: meaning grand chela in a hijra household.

Nirvan: implies spiritual rebirth; hijras use this term to connote the physical excision of male genitalia which liberates them from the life of impotence and they are reborn as true hijras

Nirvan sultan: a hijra who has undergone the nirvan operation

Panti: a man who is the penetrative (rather than receptive) partner in same-sex intercourse; hijras often refer to their husbands as pantis.

Rit: the formal marker of hijra kinship which signifies the allegiance of a hijra to a particular hijra house or lineage.

Queer: has traditionally meant strange or unusual, but is currently used to mean the lesbian, gay, bisexual, transgender and intersex communities. The term is used to refer to people whose sexual orientation and/or gender identity or gender expression does not conform to heteronormative societal norms. There has been a larger movement which sought to reclaim queer and wear it as a label of self-respect or pride.

Queer theory: is an anti-essentialist theory about sex and gender. It proposes that one's sexual identity and one's gender identity are partly or wholly socially constructed, and therefore individuals cannot really be described using terms like homosexual, heterosexual, man, or woman. It challenges the common practice of compartmentalizing the description of a person to fit into one particular category. Instead, queer theorists suggest complicating all identity categories and groups.

Sexual Identity: is the way one perceives one's sexuality or sexual nature/orientation.

Sexual minorities: refers to those people who are discriminated against due to their sexual identity/orientation or gender expression. This includes gays, lesbians, bisexuals, hijras, kotis, transgenders, etc.

Sexual Orientation: refers to the deep-seated direction of one's sexual attraction towards the same gender, different genders, or all genders.

Sex reassignment surgery (SRS): refers to the surgical procedures by which a person's physical appearance and function of their existing sexual characteristics are changed to that of the other sex. Other names for SRS are gender reassignment surgery, sex reconstruction surgery, genital reconstruction surgery, gender confirmation surgery, and more recently sex affirmation surgery.

Siva-Sati: a Hindu person possessed by Siva, the god of destruction; a member of the koti family defined by desire for men

Transgender: The precise definition for transgender remains in flux. It is a general term applied to a variety of individuals, behaviors, and groups involving tendencies that diverge from the normative gender role (woman or man) assigned at birth. Transgender is the state of one's gender identity (self-identification as woman, man, or neither) not matching one's assigned sex (identification by others as male or female based on physical/genetic sex). Transgender people could be heterosexual, homosexual, bisexual, pansexual, polysexual, or asexual. Originally, the term transgender was coined in the 1970s by Virginia Prince in the USA, as a contrast with the term transsexual, to refer to someone who does not desire surgical intervention to change sex, and/or who considers that they fall "between" genders, not identifying strictly to one gender or the other, identifying themselves as neither fully male, nor female.

Transphobia: is fear or hatred of transgender people; it is manifested in a number of ways, including violence, harassment, and discrimination.

Transsexual: refers to people who identify as, or desire to live and be accepted as, a member of the sex opposite to that assigned at birth. Many transsexual people have a wish to alter their bodies through sex reassignment therapy.

Transvestism: Magnus Hirschfeld coined the term transvestism from Latin *trans* meaning crossover and *vestere* meaning to dress or to wear. He used it to describe a group of people who habitually and voluntarily wore clothes of the opposite sex. Today a transvestite is understood as one who prefers cross-dressing and derives pleasure (sexual or otherwise) by wearing the clothes of the opposite sex.

Transvestic Fetishism: is a term used in the medical community to refer to one who has a fetish for wearing the clothing of the opposite gender.

Zenana: a male (koti) dancer who adopts feminine gestures and mannerisms; wears female clothing only when performing and has a kinship network distinct from that of hijras.

INTRODUCTION

This dissertation, entitled 'Alternate Sexuality and the Indian State: A Study of the Hijra Community', is primarily located in the broader domain of queer studies. Queer studies is an interdisciplinary field of study which explores the life, culture, problems and issues pertaining to the Lesbian-Gay-Bisexual-Transgender (hereafter LGBT) community. It is a relatively young field which started off as a trend in historical studies and literary theory to reclaim the lost voices of the LGBT community who have been systematically silenced and suppressed on account of their deviant sexuality. Gradually, it broadened its scope to include certain issues from biology, sociology, anthropology, medicine, philosophy, psychology, political science, ethics, etc. This field has also been theoretically enriched by theorizations of Michel Foucault, Andrew Jeffers, Judith Butler, Alan Bray, David Halperin, Audre Lorde, John Boswell, Eve Kosofsky Sedgwick and Judith Halberstam. Queer studies is not purely academic, apart from having an analytical angle, it also has an activist edge emphasizing advocacy, community service and involvement. Queer studies include the search for queer influences and themes in works of literature; unearthing queer figures and trends in history, analysis of political currents linking the oppression of women, racialized groups, and disadvantaged classes with that of queer people, etc. In a nutshell, queer studies examines the cultural, social and political implications of sexuality and gender from the perspective of those marginalized by the dominant sexual ethos.

Queer studies in India is relatively underdeveloped. Very few universities and research institutes have dedicated their time and energy to this field of knowledge. Yet there has been a perceptible change in the Indian academia; some interest in queer studies was stimulated in some major universities like Delhi, Pune and Hyderabad Central University, especially in the humanities and social science departments. Queer studies in India began by including queer content in mainstream texts, conducting and participating in seminars, conferences, workshops, symposiums on queer issues, etc. In cases it is taught as a part of some other courses, and not as a separate discipline. The English department of Jadavpur University (JU), Calcutta, for the first time introduced Queer Studies as an optional subject in the postgraduate course.

The burgeoning academic interest in India can be attributed to several factors. First, considerable amount of work done in this field by international universities has influenced their Indian counterparts. Second, the various social and political movements within India has liberalized the overall outlook of Indian, and reshaped the way in which social life is perceived. Third, the increasing momentum of LGBT movement has triggered academic interest. Fourth, the onslaught of HIV/AIDS has kindled interest in the study of alternate sexuality. Lastly, academic exchanges abroad and internet networking with their counterparts in the west has encouraged Indian academicians to initiative study and research in the country. The cumulative effect of all the above mentioned factors is that it has stimulated interest in this field.

Survey of Literature

Given that this domain of knowledge is interdisciplinary, varied and exhaustive literature is available on queer studies in general. Yet, much theorization has not been done in India on queer issues, as here it is a relatively nascent field. Particularly, scant material is available on the hijras. Whatever material exists are mostly anthropological accounts focusing on the hijras' role in traditional society, with an emphasis on conditions prior to modern Western or Asian influences. Thus, the study of hijras as an alternative sexuality is a relatively under-researched and under-theorized area. No direct work is available on the political role or participation of the hijras. Yet a lot of information in this area is scattered and from this dispersed bits of information an argument can be constructed.

Pioneering works of Michel Foucault (1979, 1980 & 1990) and Judith Butler (1990 & 1993) has been referred to and liberally used in the first chapter. This chapter which has attempted to place the existential dilemmas of the hijras in a theoretical framework, has found the works on queer theory, gender, sexualities and the body as extremely useful. Other theorizations by scholars like Sandy Stone (1991), Kate Bornstein (1995), Jane Sunderland (2004) and on the discourse of sexual difference have been referred to appropriately locate the hijra identity in a larger perspective. Books by Mary Douglas (1996), Avril Horner & Angela Keane (2000), Mariam Fraser & Monica Greco (Eds.2005) and Alan Petersen (2007) on the different nuances of the body have been very useful. A lot of concepts regarding sex, sexuality, gender

and gender roles in society etc got cleared by reading the works of Monique Wittig (1981, 1983, 1985 & 1992), B.Ortenr & Harriet Whitehead (Eds.1981) L. Daston & K. Park, (1995), Sabrina Petra Ramet (1996), Charlotte Suthrell (2004), R.W. Connell (2005), S.Seidman, N. Fischer and Chet Meeks (ed. 2006) and Radhika Chopra (2007). The debates on sexual dimorphism as raised in the work of Gilbert Herdt (ed.) replete with cross-cultural examples has been quite an eye-opener of sorts.

While anthropological works of Satish Kumar Sharma(1989), Serena Nanda (1998), Zia Jaffrey (1998), Gayatri Reddy (2006) offer ethnographic accounts about the hijra community right from their social organisation and kinship patterns to their castration ritual, religious affiliations, livelihood options, etc. Hijras and alternate sexuality has been discussed in a historical perspective in several articles like Kathryn M. Ringrose, (2007) Michael J. Sweet and Leonard Zwilling (1993) and others. For a political analysis of social exclusion by the state, works of Iris Marion Young (1989), Hobson, Barbara. Jane Lewis & Berte Siim. (ed.1993), Madan Sarup (1996), N. Yuval-Davis, (1997), Vinay Lal (1999). Rajesh Talwar(1999) and others have been referred to. Several articles from the Alternate Law Forum, the Lawyers' Collective and Combat Law have been elucidatory in analyzing the legal nuances of the hijras in India.

Apart from books and journals, internet resources and national dailies have been used to keep track of latest developments in India regarding the status of the hijras. Court judgments, PILs, petitions, government orders, Acts, and other government documents like reports of the NACO and UNAIDS, etc have been followed through newspapers or from ministry or department websites and/or from other authentic websites. To chronicle hijra activism, information has been collected from the respective organizational websites like ILGA, MSM & HIV, Naz India, INFOSEM, Sangama, etc.

Scope of Study

Though in the Indian academia much attention has been devoted to issues of gender, sufficient thought has not been spared for the process of gendering and the impact of such gendering (based on binary categorizations) on the life of those who transcend

the binary. Gender studies in India have not looked into the issues of those people who do not fit into either of the two conventional genders. Thus hijras have hardly been studied academically, and the study of hijras in fact, has been a victim of disciplinary exclusion. This dissertation attempts to draw light to the lives of the hijras who stand discriminated and marginalized because of such a gendering by the Indian state. The hijras by virtue of their anatomy, role, identity and sexuality subvert the sex-gender binary and since they do not fit into the binary they exist as sexual outcastes, utterly neglected by the Indian state. Thus, the ground for their exclusion is alternate sexuality.

Alternate sexuality means all forms of sexuality, sexual preferences, conduct and orientations which do not conform to the norms of the society. The norm of society is guided by the sex-gender binary and its offshoots heterosexism and heteronormativity. The sex-gender binary posits that there are only two sexes and genders, each naturally/ biologically and permanently determined, each exclusive of the meanings and characteristics of the other. This binary which emerged around the 19th century unquestioningly believed in the fundamental classification of humans as either male or female. Gilbert Herdt in his *Third Sex, Third Gender* rightly observed that Darwin and many other late Victorian social theorists including Freud, firmly believed that there were only two categories of 'normal' nature, male and female, whose essences and anatomies placed them in mutual opposition. Therefore, since then it has been ingrained in human psyche that it is 'natural' to belong to either of the two sexes and genders and deviant to opt out of the binary. Thus, the binary operating through a dichotomous logic of mutual exclusivity is oppressive and exclusionary. This binary in fact creates a new kind of have-nots – the sexual subalterns.

Yet this binary sex-gender paradigm is not natural, nor was it in existence since time immemorial, rather it is the invention of the 19th century. If viewed historically across cultures many examples of alternate sexuality would crop up, be it the *tritya prakriti* as mentioned in *Kamasutra*, or the sexual polymorphism of Greece, or the evidence of homo-eroticism as reflected in arts and sculptures. Thus, the dissertation departs from the conventional thinking of sex as natural/biological and gender as cultural; rather it is premised on the notion that the acceptance of the sex-gender binary as the only legitimate and scientific paradigm is perhaps, culturally

bound. It is not that sexual diversity and gender variance did not exist, but cultural machinations discarded these identities as unnatural, sinful or pathological. Dominant cultural forces relegated the unknown (i.e. those who transcend the binary) as unnatural, inverted and perverse. It is this unknown group, systematically silenced and rendered invisible by the collective force of state, society and culture is the object of my study.

This group is not a monolith but a heterogeneous category which includes gays, lesbians, eunuchs, transvestites, bisexuals, hermaphrodites, homosexuals, hijras, transsexuals or others like the intersexed, emasculated, impotent, transgendered, castrated, effeminate, or somehow sexually anomalous or dysfunctional. It is a group with multiple voices but overlapping concerns stemming from their shared experience of oppression, marginalization and neglect. This group has existed across time and cultures. Some cultures (though rare) allow multiple genders making gender mixing statuses available to individuals.

For instance, the Native American tribes like the Kaska of Yokon Territory, Klamath of southern Oregon, Mohave, Maricopa and Cocopa of Colorado river area accommodate gender variance. They have multiple genders like cross gender females, nadleehe, berdache, the Osage warrior, etc. Similarly, androgyny is part of the cultural imagination of the Bimin-Kuskusmin Of Papua New Guinea. They have two paramount ancestral figures: Afek with masculine attributes embodied in female form and Yomnok with feminine qualities embedded in male substance. Other examples of the third gender among the Bimin-Kuskusmin include the biis and kiimon sorcerers, kuutang utang forest spirits and kiir'kusem ancestral spirits. In Latin America, there are various names for people with alternate sexuality like – maricon, cochon, joto, marica, pajara, loca, frango, bicha, etc. In Brazil, the effeminized male prostitutes called travestis occupy a strikingly visible place in the social space and cultural imagery. Gender blending was also practiced by Mayans and some native cultures in Central Mexico. The Xanith in Oman, the Alyha and Hwame among the Mojave, the Mahu in Polynesia and the Kathoey in Thailand are other instances of gender blenders.

Similarly, one of the alternate sexualities found in the Indian subcontinent is that of the hijra. Hijras belong to the koti family which also includes zenanas, jogins,

siva-satis and kada-catla kotis, all differentiated on the basis of their sexuality, dress, kinship patterns, religion, respectability and the centrality of the body to their understanding of the self. The term hijra encapsulates a combination of a distinctive subculture, gender identity and sexual orientation. Hijras are individuals with a transgressive sexuality, they are neither men nor women, they live in a parallel society with their own community and kinship arrangement, who usually perform at others' liminal periods, beg or engage in prostitution to earn their livelihood. This dissertation attempts to showcase the hijras as an example of alternative sexuality because they through their very existence, battle the ideas of essentialized sexual dimorphism and the primacy of genitalia.

Thus, it is evident from these examples that the western dimorphic model is neither universally shared nor scientifically reliable when it comes to understanding alternative sexuality across cultures. All these examples also indicate that in some cultures alternate sexuality and gender variance flourished and it is only in the modern times that all sexual and gender multiplicity is arbitrarily reduced to absolute dichotomy because of the binary. This binary creates male and female as the innate structures in all forms of life, leading to ineluctable dualisms of male and female, masculine and feminine. It also propounds that heterosexuality is teleologically the necessary and the highest form of sexual evolution. This binary which is the basis of men and women's modes of consciousness, feeling, motivation, moralities, relationships, selves, spaces, styles, values, etc. is quite stifling for those who do not fit into the binary. This binary treats all variance as deviance and offers no space at all to any alternate category. This binary paradigm which is adhered to by the Indian state prompted me to examine the implications of this binary on the lives of the hijra community.

Research Objectives

As mentioned earlier, it was the problematic of the sex-gender binary, its exclusionary and oppressive nature stimulated researcher in me. My larger objective was to suggest that perhaps there is a politics of representation in the way the binary categories of sexuality and gender are created and the consequent lack of an ontology and epistemology for understanding otherness. My specific research aims were to uncover

the gendered face of the Indian state and the exclusions inherent in it by taking the hijra community as an example, to explore the linkages between gender and power, to analyze how the hijras are governed by the constrictive framework of heterosexism and patriarchy, to examine the legal status, problems, discriminations, human rights violations, deprivations, powerlessness of the hijra community. I intend to show how the state's dogged insistence on thinking in terms of binary categorizations of male/female, man/woman, heterosexual/homosexual, right/wrong has blinkered its vision. How they are stigmatized, neglected and marginalized by the Indian state, how they are silenced and ghettoized, how public spaces are inaccessible to them, how they are stereotyped by law, how they are pathologised by modern medicine, and how in the recent times they have come to claim political agency and are fighting for the recognition of their own distinctive identity – all these issues constitute the main contours of my study.

Hypothesis

The Indian state defines the personhood of its citizens as per the sex-gender binary because of which the hijras stand invisibilized and deprived. (Their transgressive sexuality and alternate gender position which is non-recognized by the Indian state forms the basis of their exclusion. The hijras are like non entities to the Indian state who are summarily deprived of all their citizenship entitlements be it rights, recognition or other privileges. The current efforts of the Indian state to be inclusive of the sexual minorities does not imply that it still has discarded the binary. The welfarist and inclusive moves of the state are more philanthropic in nature; and these initiatives are not flowing from any official recognition of multiple sexes and plural genders.

What follows from this hypothesis is that if the state subscribes to a non-mutually exclusive understanding of gender as a dual continuum then it truly acknowledges the identity, status and living culture of the hijra community. In this model of understanding, maleness and masculinity is not treated as opposite from femaleness or femininity rather there is a full continuum of bodily possibilities, where an individual can have any sexual characteristic and gender identity. This model is represented as under:

Male I-----I Female)

Methodology

The methodology for a complex topic like this has to be necessarily interdisciplinary. The research theme being dynamic and multifaceted deploys a combination of several methods and approaches. Such a situation is mostly true for social sciences, since the reality under investigation is usually dynamic, multilayered and dense. Hence, social science researches usually subscribe to methodological pluralism and an interdisciplinary approach. My work relies on both primary and secondary sources including newspapers, journals, electoral records, literary works, government publications, court verdicts, memoirs, reviews, web folios. The study is based on an analytical review of the existing literature to primarily bring to light the difficulties of being a sexual subaltern in India.

Since the dissertation attempts to discover different nuances of the hijra role, identity and status, due attention has been devoted to a host of explanatory variables. The work draws substantially from ethnographic and anthropological accounts to know about their socio-cultural universe and to explore how through the realms of expressive culture they seek to reinforce their sexual deviance. It also uses the historical approach to trace the decline in status and deprivations of the community down the ages. The study invokes the theories of the rights, representation, participation and citizenship to explain the interface between the Indian state and the hijra community. Additionally, it utilizes policy analysis to show how the hijras are systematically rendered invisible in state policies. A comparative perspective is employed to locate the nascent hijra activism in the overall LGBT movement.

Apart from analyzing the ethnographies, government documents and policies, I have accessed the data base of certain NGOs and civil society organisations to collect information about hijra activism by trying to establish contact with the community members, leaders and activists. I have visited the websites, portals and blogs maintained by these organisations and other activists to discuss their issues and concerns. I have interacted with some of them online to formulate my own

perspective on the issue at hand and also to collectively ponder on the achievements, dilemmas and hurdles of the movement.

Chapterisation

This dissertation is divided into four chapters. The first chapter titled 'Sex-Gender Binary Problematised: The Construction of Gendered Bodies' is theoretical in nature and it seeks to locate the hijras in a larger conceptual framework. First, it looks at the theories on the 'body' to examine the corporality of the hijra identity, then it examines and problematises the notions of 'sex' and 'gender' and explores whether all 'identity' is sexed and/or gendered and finally, it introduces the hijra identity as an example of alternate sexuality in the larger theoretical canvas.

In the second chapter, 'Mapping the Situation of the Hijra Community', attempts to understand who are the hijras. This chapter is descriptive in nature and compiles all strands of arguments on the hijra identity. It first explains the etymology of the term 'hijra', then looks into references of the hijra identity in classical texts, myths and legends, then proceeds to examine the hijra identity in a historical perspective, then analyzing the social organisation, religious affiliation, livelihood options and cultural role of the hijras in the Indian society.

The third chapter titled 'The Indian State and the Hijra Community: Shift from a Repressive to Inclusive Approach?' examines the interface between the state and the hijras. The chapter begins by exploring the state's perception of alternate sexuality, and then proceeds to highlight the repressive nature of the state through citizenship, law, media and medicine. The indifferent face of the Indian state is illustrated through instances of civil rights discrimination, human rights violation, violence and judicial apathy. The last portion of the chapter draws attention to the current inclusive avatar of the Indian state by highlighting the initiatives in the field of social policy, health, media depictions, legal reforms, etc.

The last chapter, 'Transcending the Binary: The Struggle for a Hijra Identity', is an analysis of hijra activism. It begins with a global perspective on transgender activism and then streamlines its focus on India, starting with organizational efforts, cultural and political initiatives, campaigns for legal reforms, sexual-health, civil

rights, political representation, etc. Then some space is devoted to the profiles of five hijra activists and leaders like Shabnam Mausi, Laxmi Narayan Tripathi, Sabeena Francis, Revathi and Rose. Finally, it touches upon the emerging conflictual trends and approaches, the dilemmas and cross cutting tendencies in the LGBT movement.

The conclusion attempts a relook at the chapters to see whether the hypothesis stands verified or not. It also includes a glossary of terms (included with the intention of help avoid terminological confusions) an appendix (which includes relevant Acts and other documents) and photographs of the hijra activists who have been profiled (to put flesh and blood into mere names on paper) in addition to a BBC documentary (in a CD format) on the hijras of India.

This dissertation attempts to understand the alternative sexuality of the hijras from a theoretical, socio-cultural, political and activist perspective. This is the order in which the chapters progress and the next chapter takes a look at the uniqueness of the hijra identity in a theoretical framework.

CHAPTER I

Sex-Gender Binary Problematised: The Construction of Gendered Bodies

This chapter intends to place the existential problem of the hijras within a theoretical framework. In the first section, the notion of the body is problematized to find out whether the body is gendered. Different studies on the 'body' have been invoked to show how it is a site of power politics and social exclusion. This chapter also deals with different forms of bodies like the 'altered', 'marked', 'disappearing', 'migrating', 'oscillating', 'erasing', 'transcending' to see which theoretical framework best explains the biological/corporeal reality of the hijras. It further explores the question of how gender offers a criterion for self identification. Such criterion is necessarily bipolar, and such a sex-gender binary paradigm fails to explain or acknowledge difference as embodied by the hijras. The chapter shows how sex, gender, sexuality and their inter-relation is brought into question while understanding the identity of the hijras.

Body: Negotiated and Contextualised

In this section, the notion of the 'body' is problematized to suggest that personhood is always gendered. The cultural construction of gender is shaped by a singular dichotomous logic of mutual exclusivity. Taking this as the premise, this chapter argues how the process of binary gendering affects the identity formation of the hijras. The objective of this chapter is to understand how culture shapes the understandings of sex and gender and how it offers or rejects space to certain groups of people. There is politics of representation in the way the body is categorized, labeled, regularized, marked and marginalized.

We seem to be locked in a world of regularities and archetypes. We are reluctant to acknowledge the different possibilities regarding sex, gender and sexuality. We tend to consider people with unusual gender, sex or sexuality as 'mistakes' of either nature or nurture. Since sexual dimorphism prevents us from recognizing sexual diversity and gender pluralities, I feel that there is an urgent need to question the ontology and epistemology for understanding otherness. The larger question is how and in what way and with what implications, the relations between identities and bodies are constituted: do identities mark bodies? Or bodies shape identities? In what ways are bodies and identities are co-produced? Is the body always

cultured or is the body a measure and demarcation point of culture, as the site of truth, authenticity and inevitability?

What is the body? Different philosophers have grappled with this question and have come up with interesting theories. Simply put, the body is the seat of needs and appetites, the locus of physiological processes and metabolisms i.e. it is the biological base of existence. The body marks the fault line between physical materiality, its representations and the cultural code these representations serve. There are three dimensions of corporeality: anatomical sex, gender identity and gender performance. The social body constrains the way the physical body is perceived. The physical experience of the body is always modified by the social categories through which it is known.

Philosophers have defined the 'body' in various ways – as something we have (the body as object), as something we are (the body as subject), and as something we become (the body as process and performativity). Since the late 1980s, discussions on 'the body' have been on the rise; now in fact the scholars assert the importance of developing 'embodied' theories. Contemporary work on the body suggests that bodies may be 'marked' without being fixed by an identity or defined by an essence.¹

According to Merleau-Ponty², the body is neither a subject nor an object, neither transcendental nor immanent; but it is phenomenological or a lived entity. Countering the body-spirit duality, he called the body to be the source of all experiences in the world; in fact he considers the body to be an entry point into the world. For him, knowledge of one's own body and knowledge of the world can be accessed only through the body. The body is not an object rather the condition through which it is possible to have relations with objects.³ Using Ponty's view, it can be inferred that body being the medium of all experiences, it is the embodied experience of the hijras which constructs their personhood.

¹ Mariam Fraser and Monica Greco (eds.) *Body: A Reader* (London: Routledge, 2005), pp. 4

² Maurice Merleau-Ponty (1908–1961) is a phenomenologist known for his theory of the body and his criticism of the dualism of body and spirit that reduces the body to a physical entity with its own natural laws.

³ Mariam Fraser and Monica Greco (eds.) *Body: A Reader* (London: Routledge, 2005), pp. 43

Foucault's treatment of power and its relation to the body and sexuality provides useful conceptual tools to analyse hijra personhood. One of Foucault's most fertile insights into the workings of power at the micro-political level is his identification of the body and sexuality as the direct locus of social control. In the first volume of *The History of Sexuality*, Foucault develops an anti-essentialist account of the sexual body without denying its materiality. At the heart of Foucault's *History of Sexuality* is an analysis of the production of the category of sex and its function in regimes of power aimed at controlling the sexual body. According to Foucault, power relations have an immediate hold upon the body, they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs, etc. He explored how new domains of knowledge and practices served to fabricate and regulate the body, to make it docile, useful and productive which he termed as 'bio-power'. Foucault believed that the micro-political operations of power produced socially appropriate bodies.

In addition to his anti-essentialist view of the body and sexuality, Foucault insists on the corporeal reality of bodies. He argues that this rich and complex reality is oversimplified by the biological category of sex which groups together in an 'artificial unity' a range of disparate and unrelated biological functions and bodily pleasures. Thus, in *The History of Sexuality*, Foucault explains that:

“... show how deployments of power are directly connected to the body - to bodies, functions, physiological processes, sensations, and pleasures; far from the body having to be effaced, what is needed is to make it visible through an analysis in which the biological and the historical are not consecutive to one another ... but are bound together in an increasingly complex fashion in accordance with the development of the modern technologies of power that take life as their objective. Hence I do not envisage a "history of mentalities" that would take account of bodies only through the manner in which they have been perceived and given meaning and value; but a "history of bodies" and the manner in which what is most material and most vital in them has been invested”⁴.

Using a Foucauldian approach, the body can be posited as an effect of socially and historically specific practices: an effect that is not of genetics but of relations of power. The body is in fact, anatomy overlaid by culture. The human body is always a

⁴ Michel Foucault *The History of Sexuality. Vol. 1: An Introduction*. Translated by R. Hurley, (Harmondsworth: Penguin, 1979), pp. 151-2.

signified body and as such, it cannot be understood as a 'neutral object' upon which science may construct true discourses. Such a notion of the body gives us a conceptual framework to understand the intersection of power, domination and sexual difference in the lived experience of human beings. In a similar Foucauldian strain, Hird and Germon argue that the intersexual body itself may prove to be a site to explore the power-knowledge truth of gender.⁵

Gille's Deleuze⁶ challenged the notion of the body as a bounded corporeality endowed with an origin, interiority and depth. For Deleuze, the body is not a unified entity, nor is it organized around a central governor; it is not defined by intentionality, biology or a psyche. It is not a property of the subject, nor is it an expression of subjectivity. It is not a locus of meaning. Indeed, a body is not to be deciphered or interpreted at all; instead the convergences between bodies are to be surveyed and mapped. Deleuze is a cartographer who situates all bodies on the same flat ontological plane and he sought to understand the body in terms of what it can do. A body is not a thing, but a becoming, a series of processes, movements, intensities and flows. It is a mobile assemblage of connections which might be extended but which might equally be severed.

The Deleuzian notion is fascinating and holds emancipatory potential for the alternate sexuality group, because the emphasis is not on what the body is but what the body can do. In an altogether different strand, Susan Bordo insists that it is important to be grounded. She argues that we can never escape the materiality of the body; the body signifies our finitude, our physical locatedness in history and culture. Insisting on the physical corporeality of human existence is for her, coterminous with recognizing the way we are not only shaped by history and culture but also limited by this locatedness. 'Our materiality impinges on us – shapes, constrains and empowers us'⁷. Her theoretical perspective in fact points at the corporeal limitations the hijras and other sexually ambivalent people encounter. The route to empowerment therefore

⁵ Sharon E. Preves, 'Sexing the Intersexed: An Analysis of Sociocultural Responses to Intersexuality', *Signs*, Vol. 27, No. 2 (Winter, 2002), pp. 523-556. Accessed at <http://www.jstor.org/stable/3175791>, as on 05/06/2009

⁶ Mariam Fraser and Monica Greco (eds.) *Body: A Reader* (London: Routledge, 2005), pp. 44-45

⁷ S. Bordo, *Twilight Zone: The Hidden Life of Cultural Images from Plato to O.J.* (Berkeley: University of California Press, 1997), p. 182.

is not through disembodiment, or through anatomical changes, but by accepting bodily variance.

Apart from these philosophical theorizations on the body, a sociological perspective suggests that the body is subject to endless alteration by an array of circumstances – both organic and inorganic – including congenital and acquired illnesses, technology, terror and the process of ageing. This section briefly touches upon the different forms of bodies.

Janet Price and Margrit Shildrick⁸ draw attention to different forms of body like ‘altered’, ‘marked’, ‘disappearing’, etc to explain the shifting realities of corporeality. ‘Altered’ bodies suggest the notion of alterity, of a corporeal otherness that is alien to us or alterations that may befall upon our own bodies. Whereas the notion of the ‘marked’ body signals the fact that the bodies are eminently cultural signs bearing the traces of ritual and mythic identities. The ‘disappearing’ body refers to the final erasure of gender and race as culturally organised system of differentiation. In ‘bio-engineered body’, components are designed to duplicate the functions of material body parts.

Etkins and King⁹ illustrate four modes of body transgenering: ‘migrating’, ‘oscillating’, ‘erasing’ and ‘transcending’. ‘Migrating’ bodies are those which move from one side of the binary divide to the other on a permanent basis. Thus ‘migrating’ body undertakes a one way journey. ‘Oscillating’ bodies are those which move backwards and forwards over the gender border and between male and female polarities, only temporarily resting on one side or the other. This typology of the body as ‘oscillating’ best exemplifies the case of the hijras. ‘Erasing’ bodies are those in which the male/female bodies seek to expunge their maleness/femaleness and to eliminate in themselves the existence of the binary divide. The hijra anatomy in a way approximates the ‘erasing’ body as well, because a hijra through castration tries to erase masculinity. Lastly, ‘transcending’ bodies are those which move beyond gender

⁸ Price, Janet and Margrit Shildrick (eds.) *Feminist Theory and the Body A Reader* (London: Routledge, 1999), pp. 5-17.

⁹ Kathryn Backett-Milburn & Linda Mckie (eds.), *Constructing Gendered Bodies* (Houndmills: Palgrave Macmillan, 2001), pp. 179-203.

into a third space. The 'transcending' body is one which goes beyond the accepted discourses of gender. It is in a way a gender freed and de-gendered body.

Having looked at the representative works in the domain of body scholarship, this chapter moves on to see how bodies become 'marked' as male and female, to investigate the corporeal stylization of gender and to discover what role sex plays in the constitution of the self. The main argument of the chapter is that the gendered body is constructed through a series of exclusions, denials and absences. In this context, the work of Judith Butler has proved to be very useful. The crux of her argument in *Gender Trouble* is that the natural-seeming coherence of the categories of sex, gender, and sexuality is culturally constructed through the repetition of stylized acts in time. These stylized bodily acts, in their repetition, establish the appearance of an essential, ontological 'core' gender. This is the sense in which Butler famously theorized gender, along with sex and sexuality, as performative. Her theoretical enterprise in fact borrows from Foucault's concept of 'regulative discourses'. These discourses also called 'frameworks of intelligibility' or 'disciplinary regimes', decide in advance what possibilities of sex, gender, and sexuality are socially permitted to appear as coherent or 'natural'. Regulative discourse includes within it disciplinary techniques which, by coercing subjects to perform specific stylized actions, reinforce the 'core' gender, sex and sexuality in people.¹⁰

Hence for her, the body is limited by regulatory norms and especially by the norm of heterosexuality which 'ontologizes and fixes that gendered matrix in its place'.¹¹ Her perspective is neither a theory of cultural construction of gender, nor of materiality of sex, instead she writes of 'sex of materiality' in which 'materiality [is] the site at which a certain drama of sexual difference plays itself out'.¹² In other words, the body over which the question of normality is negotiated and confirmed is itself the product of precisely the discourse for whose legitimation it is constructed. Bodies are performative in the sense that they only appear on the scene of the discursive stage set up to constitute them. Outside such discursive formations, they are not perceptible, because their social existence is inextricably tied to the cultural

¹⁰ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), pp. 171–90.

¹¹ Judith Butler, *Bodies That Matter: On the Discursive Limits of Sex* (New York: Routledge, 1993), p. 49

¹² Ibid.

conventions which determine them, which either permit or delimit the readability of the body. Thus, the essence of her argument is that – with all its distinguishing traits be it gender, race, sexuality or modes of self-performance – the body is neither a noun nor a free-floating signifier. Yet in her analysis, the only ‘bodies that matter’ are those that can easily be categorized ‘within the productive constraints of certain highly gendered regulatory schemas’.¹³

Butler calls the gendered body as performative, because it has no ontological status apart from the various acts which constitute its reality. Yet the performance of gender is not a series of gestures and clothing that one consciously adopts, but it is the iteration and re-iteration of the language of gender. If the inner truth of gender is a fabrication or a fantasy instituted and inscribed on the surface of the bodies, then it seems that genders can be neither true nor false, but are only produced as the truth effects of a discourse of primary and stable identity. Esther Newton opines that the drag fully subverts the distinction between inner and outer psychic space and effectively mocks both the expressive model of gender and the notion of a true gender identity. Newton writes: “... [drag] is a double inversion that says, ‘appearance is an illusion’. Drag says ‘my “outside” appearance is feminine, but my essence “inside” [the body] is masculine.’ At the same time it symbolizes the opposite inversion; ‘my appearance, “outside” [my body, my gender] is masculine but my essence “inside” [myself] is feminine.’¹⁴

Now, specifically trying to locate the hijra body in the entire corpus of theorization on the body, the chapter discusses queer theories in detail. The hijra identity is labeled as deviant because they defy the norm of sexual dimorphism and because their bodies do not conform to any binary categorizations. Thus, the marking of their bodies is best analyzed from a queer perspective. Queer theorists challenge the idea that gender is a part of the essential self and examine the socially constructed nature of sexual acts and identities with a special focus on identities branded as perverted, non-normative and deviant. For instance, Butler’s notion of ‘gender trouble’ projects the body on the one hand, as the site of cultural appropriation and on the other, as the site for agency and authentic self expression. She argues that in the

¹³Ibid., p. xi.

¹⁴ Price, Janet and Margrit Shildrick (eds.) *Feminist Theory and the Body A Reader* (London: Routledge, 1999), p. 417.

process of the body's materialization, social constraints are reproduced, which can however be partly transcended because the social meanings can be re-contextualised within the particular individual's situation. There is a dialectical relation between the body-agent and the historically and socially constituted meanings that inform the individual's lived situation. This dialectic is effected through the medium of the ambiguous body which enables both discipline and transgression. Butler owes her theoretical legacy to Foucault, who by exposing the contingent and socially determined nature of sexuality freed the body from the regulatory fiction of heterosexuality. Thus, he opens up new realms of possibility, offering the hope of freedom.

Problematizing Sex, Gender and Sexuality

This section attempts to explore the sources and markers of identity for the hijras, be it corporeality, sexuality, gender identity or others. When it comes to the intermediate or deviant category the relation between sex and gender becomes unclear. The relation is not just ambivalent but the straight forward relationship which has so far been assumed unquestioningly is in itself problematic. Such a problem has been brought to light by the queer theorists. These theorists apply deconstructionist critical approaches on issues of sexual identity, challenge the validity and consistency of the heteronormative discourse; and argue that sexuality and gender is neither natural nor essential, but that all identities are performative.

Sex and gender are primordial markers of identity of an individual. After the birth of a baby, it is almost a universal practice across all cultures to ask regarding the sex of the infant. From then on, having ascertained the sex, the process of gendering begins. The ritualized gendering of an infant at birth serves as a mechanism of social organization of patrilineage: marriage, property and inheritance rights. Thus, identity is foregrounded on the notions of sex and gender. Reading of various theories reveal that gender, sex and sexuality are three threads which are so intertwined that it may be impossible to untangle them, particularly since each attempt at untangling reveals further knots beneath.

Two extremes of opinion prevail regarding the construction of one's identity. The biological determinists argue that there is a fixed core of traits belonging rigidly

to each sex, immutable and unaffected by societal constructions and those who do not fit into these descriptions are perceived as deviant and unnatural. Whereas, the social constructivists suggest that nothing is biologically determined and that all gender associated behaviour is brought about by social pressures. This line of reasoning is gaining prominence these days. Calling the sex-gender binary as a social construction is liberatory for the queer groups, because if a social construction, then there is a possibility of change.

The category of sex is normative; it is what Foucault called a 'regulatory ideal'. In this sense, sex functions not only as a norm, but is part of a regulatory practice that produces the bodies it governs, it is a kind of productive power, the power to produce – demarcate, circulate, differentiate – the bodies it controls. Sex is not simply what one has, or a static description of what one is: it is one of the norms which qualify the body for life within the domain of cultural intelligibility. For Foucault, sex or sexuality, is not an inherent quality of the body, but instead a way of fashioning the self "in the experience of the flesh", which is itself "constituted from and around certain forms of behaviour".¹⁵ Foucault explored how sex and sexual difference is constituted in discourse as 'true' features of bodily identity and subjectivity. He reasons that sexuality is constituted in society and history and is not biologically ordained. Sex-gender-sexuality are interlinked parts of a power discourse. Gender affects the operation of the sexual system and the sexual system has gender specific manifestations. Like gender, sexuality is political, it is organised into systems of power. Thus, Foucault's constructivist understanding elucidates sexuality as an effect of the discursive operations of power.

Foucault claims that the relationship between power and sexuality has been so far misrepresented as sexuality has been primarily viewed as an unruly natural force that power simply opposes, represses or constrains. Rather, the phenomenon of sexuality should be understood as constructed through the exercise of power relations. He clarifies: "[T]he notion of sex brought about a fundamental reversal; it made it possible to invert the representation of the relationships of power to sexuality, causing the latter to appear, not in its essential and positive relation to power, but as being

¹⁵ Michel. Foucault, *The History of Sexuality. Vol. 1: An Introduction*. Translated by R. Hurley, (Harmondsworth: Penguin, 1979), p. 36

rooted in a specific and irreducible urgency which power tries as best it can to dominate”¹⁶ In *The History of Sexuality* Foucault inverts the traditional understanding of the relationship between sexuality and sex. Sex has been understood as the root cause of the structure and meaning of desire and sexuality. For Foucault, the body does not respond to some form of essential sex, creating desires, pleasures and sexuality. It is sexuality invested by power relations that produces sex.

Drawing on Foucault's account of the historical construction of sexuality and the part played by the category of sex in this construction, feminists and queer theorists have re-conceptualized gender, not as the cultural meanings that are attached to a pre-given sex, but, in Judith Butler's formulation, “as the ... cultural means by which ‘sexed nature’ or ‘a natural sex’ is produced and established as...prior to culture”¹⁷. Following Foucault, she argues that the notion of a ‘natural’ sex that is prior to culture and socialization is implicated in the production and maintenance of gendered power relations because it naturalizes the regulatory idea of a supposedly natural heterosexuality and thus, reinforces the reproductive constraints on sexuality. She suggests that the apparent facticity of sex difference as it enters into the cultural constructions of gender categories as their natural foundation may itself be culturally constituted in significant ways. She explains that at some level of analysis it becomes difficult to distinguish between sex and gender:

What is sex anyway? ... Is it natural, anatomical, chromosomal or hormonal ... Does sex have a history? Does each sex have a different history or histories? Is there a history of how the duality of sex was established, a genealogy that might expose the binary options as variable construction ... perhaps this construct called sex is as culturally constructed as gender ... and that the distinction between sex and gender turns out to be no distinction at all.¹⁸

This implies that sex does not exist outside gender relations. Historical work has also lends support to the notion that ‘sex’ is a ‘social construction’. She questioned the ‘given-ness’ of sex:

¹⁶ Ibid., p. 155.

¹⁷ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), p. 7.

¹⁸ Ibid.

Originally intended to dispute the biology-is-destiny formulation, the distinction between sex and gender serves the argument that whatever biological intractability sex appears to have, gender is culturally constructed: hence gender is neither the casual result of sex nor as seemingly fixed as sex....If gender is the cultural meanings that the sexed body assumes, then a gender cannot be said to follow from a sex in any one way. Taken to its logical limit, the sex/gender distinction suggests a radical discontinuity between sexed bodies and culturally constructed genders....When the constructed status of gender is theorized as radically independent of sex, gender itself becomes a free floating artifice, with the consequence that man and masculine might just as easily signify a female body as a male one, and a woman and feminine a male body as easily as a female one.¹⁹

As is evident in the above passage, Butler not only unpacks the notion of gender and its relation with sex, she also problematises the notion of sex. She asks, gender is grafted on sex or is it gender which creates sex. She argues that if gender is the social construction of sex, and if there is no access to this sex except by means of its construction, then it appears that not only sex is absorbed by gender, but sex becomes something like a fiction, to which there is no direct access.

Like Butler, Gayle Rubin follows Foucault's rejection of libidinal or biological explanations of sexuality in order to think about the way in which sexual identities and behaviors are hierarchically organized through systems of sexual stratification. She in fact coined the phrase 'sex/gender system', by which she meant "the set of arrangements by which a society transforms biological sexuality into products of human activity, and in which these transformed sexual needs are satisfied".²⁰ She focused on the 'the political dimensions of erotic life' to demonstrate the way in which certain forms of sexual expression are valorized over others, licensing the persecution of those who fall outside the narrow frame of what constitutes sexual legitimacy. She refused to believe that 'sexuality is a derivation of gender'. She concedes that gender relations are an important context for the articulation of the sexual system, yet she argues that sex and gender are not synonymous, and hence the rubric of gender cannot account for sexuality in its entirety. Rubin's critical interest in

¹⁹ Ibid., pp. 9-10.

²⁰ Gayle Rubin, 'The Traffic in Women: Notes on the Political Economy of Sex', in Rayna Reiter (ed.), *Towards an Anthropology of Women*, New York, Monthly Review Press, 1975.

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sexual variation that exceeds any hetero-homo differentiation demands 'an autonomous theory and politics specific to sexuality'.²¹

Rubin decouples sexuality from sex and gender, despite acknowledging marginal intersections between the three. She does this in order to claim that the distinction between biological sex and gender is systematized; i.e. the norms are so naturalized that the formation of gender identity within the system is nearly seamless. Instead of the natural and intuitive seamlessness of the relationship between sex and gender, Rubin argues that every society has a specific mechanism to convert sex to gender. She calls sexuality 'a neutral term which refers to the domain and indicates that oppression is not inevitable in that domain, but is the product of the specific social relations which organize it'. Sexuality, in the sex/gender system is in fact, a by-product of system-produced gender. She therefore exposed the system which mystified sex and gender and argued for a separate theory of sexuality as a stand-alone system that cannot be reduced to biological sex and/or gender roles. Sexual oppression according to Rubin cuts across other kinds of oppression and privilege. It is a multilayered and simultaneous oppression.

Sexuality is gendered in fundamental ways and gender divisions are sustained by normative heterosexuality. The practices through which bodies are gendered centres on the heterosexual matrix, and it links the binary divide of gender with normative heterosexuality. Gender serves as a regulatory mechanism of heterosexuality and heterosexuality is the regulatory mechanism of reproduction. Gender is a way in which social practice is ordered. In gender processes, the everyday conduct of life is organized in relation to a reproductive arena, defined by the bodily structures and processes of human reproduction.

The Problematic of the Binary

As seen in the above section, feminist and other scholars like Butler 1990; Feinberg 1996; Herdt 1996; Kessler and McKenna 1978; Stone 1991, etc. have critiqued the complex relationship between sex and gender are. All of them have challenged the biological binary of sex and argued for the fluidity of gender, locating new

²¹ Gayle Rubin, 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality' in Carole S. Vance (ed.) *Pleasure and Danger: Exploring Female Sexuality* (London, Pandora, 1992), pp. 33-35.

intersections of sex and gender. Stephanie S. Turner points out that the strategic trajectory begun by the feminists, gays and lesbians, transpersons, and queer theorists with regard to questions of sexual and gender identity offers an intellectual foundation which permits the people with alternate sexuality and different gender identity to resist being reduced to the normative categories of sex and gender. As a result, they are better able to establish their identities on their own terms.²² The ambiguous and/or third genders refuse to be collapsed into the system of metonymic gender representations wherein certain body parts signify and indicate gender and thus challenge the hegemony of such a binary. Thus, in my opinion, identities which evade categorization, resist description and regulation and are in fact an affront to heteronormativity.

Gilbert Herdt in his scathing critique of sexual dimorphism in *Third Sex, Third Gender*, opines that since the late 19th century sexual nature has been divided along the lines of sex and gender, culminating in the ineluctable dualisms of male and female, masculine and feminine. Sexology is the child of 19th century Darwinian tradition. Sexology propounds: male and female are the innate structures in all forms of life and; heterosexuality is the teleologically necessary and the highest form of sexual evolution. Many assume without reflection the naturalism of sexual dimorphism. Thus, sexual dimorphism operates as a hidden ideology; it is a one dimensional ideology which relegates the unknown to the residual category of deviant. The intermediate is often considered unnatural, inverted and perverse. This has led to a reductionist worldview of sexual dimorphism.

Usually biological factors are believed to be the most basic and primary of causes; these factors often tend to be interpreted as fixed and beliefs such as these reiterate the sex-gender binary. Kessler and McKenna explain that biology associates sex with sexual reproduction; and sexual reproduction is associated with a consistent and predictable dimorphism. However, since sex is not only a matter of form but also a matter of function, an individual's outward sexual appearance (i.e., genitals) may

²² Stephanie S. Turner, 'Intersex Identities: Locating New Intersections of Sex and Gender Source', *Gender and Society*, Vol. 13, No. 4, Aug., 1999, pp. 457-479. Accessed at <http://www.jstor.org/stable/190309>, as on 05/06/2009.

differ from his or her inward sexual functioning or gender identification.²³ Such a situation as in the case of the hijras complicates the dimorphic model. The case of the hijras exemplifies the inconsistencies between sex as biological and gender as the socially mandated range of signs and acts indicative of sex.

The contradictions which arise in the understanding of the intermediate identities in the paradigm of a heterosexual/homosexual binary are best explained in the interpretive framework of queer theory. The categories of sex and gender have come under the shadow of radical doubt because of queer theorization and have become objects of an effort to re-theorize the nature of social subjectivity. Gender is a social and symbolic arena of ongoing contestation over specific identities, behaviours, rights, obligations and sexualities. In gender identity research, Freud began the trend of assuming a biological essence whereby the cultural factors informing sex assignments and development were generally ignored. Gender identity is not entirely a social construction and sexual variations are not merely an illusion of culture. In certain cultures, what counts is not an anatomical sex as an objective fact but the cultural meaning of sex assignment in the symbolic world and its treatment of the person. Sex-gender dichotomy can never be of a pure physical reality for its meaning invokes particular social realities.

These days gender is increasingly being viewed as a process of structuring subjectivities rather than being seen as a structure of fixed relations. Similarly, sex identity which was earlier considered to be 'natural' is now being argued as cultural. Gender lies at the intersection of culture and biology. It operates at a personal, interactional and institutional level. Gender is a combination of multifaceted, polysemic and often elusive complexity - neither monolithic nor fixed, nor stable and immutable. Thus constructions of gender through cultural representations are complex, having polyvalent signifiers without a singular or fixed referent. It is generally recognized that cultural concepts of gender are articulated with some cultural reckoning of 'biological' sex dimorphism as their natural foundation and

²³ Kessler, Suzanne, *Lessons from the Intersexed* (New Brunswick, New Jersey: Rutgers University Press, 1998), pp. 42-80.

other gender differences like – moral, psychological and social are inferred from that foundation. Gender images that deviate from that foundational logic are considered anomalous or pathological. This binary is the basis of men and women’s modes of consciousness, feeling, motivation, moralities, relationships, selves, spaces, styles, values, etc.

By analogy, gender constructions may be imagined as multiple layers of variably etched transparencies aligned in particular situations so as to reveal multidimensional patterns of lines and shapes that constitute culturally particular, socially contextualized figurations of gendered possibilities articulated with other dimensions of situated identities, inscribing shifting patterns in fluid ‘open textured’ sets of potential gender arrangements.²⁴ Particular gender constructions are therefore crystallized in their contexts of social embeddedness. Seen in a post structuralist perspective, gender identities are fractured and shifting, because multiple discourses intersect in any individual life.

Kulick argues for a re-theorization of gender differences grounded ‘not so much on sex as on sexuality’ where ‘sex’ refers to the anatomy or genitals and ‘sexuality’ refers to ‘the role the genitals perform in sexual encounters’²⁵. In such an explanation gender is understood as the workings of sex, where sex is an obligatory injunction for the body to become a cultural sign, to materialize itself in obedience to a historically delimited possibility, and to do this not once or twice but as a sustained and repeated corporeal project. Gender ought not to be construed as a stable identity or locus of agency from which various acts follow; rather gender is produced through the stylization of the body. Since gender reality is created through sustained social performances, the very notions of an essential sex and a true abiding masculinity and femininity are also constituted. Such a construction conceals the possibilities for varying gender configurations outside the restricting frames of masculinist domination and compulsory heterosexuality. According to Wittig, gender not only

²⁴ On the notion of “open textured”, see Friedrich Waismann, in Rom Harre (ed.) *How I See Philosophy* (Garden City: Anchor Books, 1968), p.199.

²⁵ Kulick, D., ‘The Gender of Brazilian Transgendered Prostitutes’, *American Anthropologist*. 99 (3), 1997, pp. 574-85.

designates persons, qualifying them as it were, but it constitutes a conceptual episteme by which binary gender is universalized.

Speaking against the binary, Ruth Hubbard explains that both males and females can be more or less feminine or masculine. The degree of our masculinity and femininity is not fixed for life, but changes over time and in different social situations. She says, "As we construct our persona and revise it at different times, we allow ourselves more or less leeway in the way we express gender"²⁶. Taking this line of thinking a step further, the queer theorists argue for an increased fluidity, considering sex as a vast continuum of personality possibilities, and unhooking gender from genitals.

Kate Bornstein, another transgender theorist, contemplates about the inherent oppression of a binary gender system that forces everyone to conform to one of only two gender options. She talks of this oppression as gender terrorism by which she meant that being attached to fixed gender roles creates a form of bondage. She suggests that anything which limits our reach, our grasp, the way we do things, limits our potential is oppressive and this sex-gender binary is limiting and therefore oppressive. She says that the system of having only men and women has limited humankind. As a solution she proposes gender fluidity, gender freedom, and talks about outlawing gender.

In her book *Gender Outlaw*, she advocates breaking out of society's rigid gender roles and identities to discover and express the full potential of individuals. She talks about relegating the genders man and woman to two of many, rather than the only two to choose from. She calls gender freedom as the ability to move fluidly between a variety of different gender roles and identities, having a greater spectrum of characteristics and behaviors to choose from, and not just being slotted into a certain range of characteristics. She further explains that when not nailed down to any gender, one can open up, perform the function of any gender, create the effect of any

²⁶ Ruth Hubbard, 'Gender and Genitals: Constructs of Sex and Gender', *Social Text*, No. 46/47, *Science Wars* Spring - Summer, 1996, pp. 157-165. Accessed at <http://www.jstor.org/stable/466851>, as on 15/04/2009.

gender, and experience the experience of any gender. But if one performs, creates or experiences depending on the performance, creation and experience that are allowed by one's gender, then it's going to be on a limited basis.

Anne Fausto-Sterling too found the sex/gender dualism limiting. According to her, when the term 'gender' is placed in a dichotomy it necessarily excludes biology. Thinking critically about biology, in her opinion, remains impossible because of the real/constructed divide (sometimes formulated as a division between nature and culture) which maps the knowledge of the real onto the domain of science by equating the constructed with the cultural. Dichotomous formulations, in her view, conspire to make a socio-cultural analysis of the body seem impossible.

She in fact, considered an alternative model of gender containing five sexes: male, female, merm, ferm, and herm. She says that human beings come in a wide assortment of sexual identities and characteristics than mere genitals can distinguish. Rather than flattening the diversity of human sexes into two diametrically opposed camps, sex and gender are best conceptualized as points in a multidimensional space. She argues, biologically speaking, there are many gradations running from female to male; and depending on how one calls the shots, one can argue that along that spectrum lie at least five sexes and perhaps even more.

Herms are the so-called true hermaphrodites, who possess one testis and one ovary (the sperm- and egg-producing vessels, or gonads); while merms are the male pseudohermaphrodites, who have testes and some aspects of the female genitalia but no ovaries; and the fermes are the female pseudohermaphrodites, who have ovaries and some aspects of the male genitalia but lack testes. Each of these categories is in itself complex; the percentage of male and female characteristics can vary enormously among members of the same subgroup. She calls sex a vast and infinitely malleable continuum that defies the constraints of even five categories. In her work, *Sexing the Body*, she sets out to convince readers of the need for theories that allow for a good deal of human variation and which integrate the analytical powers of the biological and the social into the systematic analysis of human development.

Identity: Gendered/Sexed?

The questions raised in this section are: is there a way to link the materiality of the body to the performativity of gender? How does the category of sex figure within such a relationship? Is gender a permanent and inescapable status or are there sub-structural ideas which lie at the bottom of gender categories related to wider motifs within society? How far does gender help in self categorization? To what extent do regulatory practices of gender formation and division constitute identity? To what extent is 'identity' a normative ideal rather than a descriptive feature of experience? And how do regulatory practices that govern gender also govern culturally intelligible notions of identity?

Butler argues:

One might be tempted to say that identity categories are insufficient because every subject position is the site of converging relations of power that are not univocal. But such a formulation underestimates the radical challenge to the subject that such converging relations imply. For there is no self-identical subject who houses or bears these relations, no site at which these relations converge. This converging and inter-articulation is the contemporary fate of the subject. In other words, the subject as a self-identical entity is no more. It is in this sense that the temporary totalization performed by identity categories is a necessary error.²⁷

She claims that gender identity precedes personal identity because in her view, 'persons' only become intelligible through becoming gendered in conformity with recognizable standards of gender intelligibility. The idea that gender is only incidental to being a 'person' is premised upon a traditional view that conceives of gender as the straightforward expression of a body's sex. On this view, sexual identity is a function of the physical substance of the body. For Butler, gender is a fictive construction produced through compulsory ordering of attributes into coherent gender sequences such that one's gender appears as a given, natural and immutable state of one's sex. Persons who fail to conform to cultural norms of gender identity are discontinuous genders. Butler argues that gender identity is to be understood as a verb – as

²⁷ Judith Butler, *Bodies That Matter: On the Discursive Limits of Sex* (New York: Routledge, 1993), pp. 229-30.

performative. Identity is a verb because it is realized through repeated acts – reiterations – of cultural norms that function as signifiers of gender.

Butler argues that norms of gender identity are constructed and stabilized within a cultural hegemony which understands gender and sex within the paradigm of heterosexual reproductive biology. Her account of gender identity is one in which subjectivity is understood as the effect of the subject-positions articulated in discourse. The cultural matrix through which gender identity has become intelligible requires that certain kinds of 'identities' cannot 'exist' i.e. those in which gender does not follow from sex and those in which the practices of desire do not 'follow' from either sex or gender. Thus, by calling identity as performative she describes the mechanisms by which particular subjectivities are formed through the submission of bodies to discursive practices. Performativity means that which brings into being or enacts what it names. Performativity is not a singular or deliberative 'act'; rather it is the reiterative and citational practice by which discourse produces the effects that it names.

Rosalind C. Morris explains that when theorists of gender performativity call all gender a form of drag, what they mean is that the western system of compulsory heterosexuality is a set of imitations. What is being imitated is the ideal of binary difference, a difference that not only prescribes social roles but is also supposed to determine sexual desires. She further says that cases of third genders and/or institutionalized transvestism are examples of performativity that underlies the entire logic of binary sexuality.²⁸

Alternate Sexuality: Identifying Identities

So long, the chapter looked critically at the foregrounding of identity on gender and sex, the problems that arise therein. It is commonly understood that identity is affirmed through the concepts of sex, gender and sexuality. Using Butler's terminology, 'intelligible' genders are those who in some sense institute and maintain relations of coherence and continuity among sex, gender, sexual practice and desire;

²⁸ Rosalind C. Morris, 'All Made Up: Performance Theory and the New Anthropology of Sex and Gender', *Annual Review of Anthropology*, Vol. 24 (1995), pp. 567-592. Accessed at <http://www.jstor.org/stable/2155950> Accessed: 15/04/2009 02:08

whereas the 'discontinuous' genders are those who fail to conform to the gendered norms of cultural intelligibility.

A closer look at identity however, is possible only when the social universe around the self/body/subject is factored in. Considering sexuality to be the only baseline of difference does not result in a complete understanding of sexual/gender difference. Only by analyzing the radically different desires, choices and the lived experiences of these individuals i.e. – “engaging the body in the gender ...[and] locating it within a multiplicity of differences”²⁹ – can one begin to understand the various and at times conflicting axes that construct identity for these individuals. The questions raised in this section are:

This section would explore the different nuances of identity among the alternate sexuality group. The group is heterogeneous which includes gays, lesbians, eunuchs, transvestites, bisexuals, hermaphrodites, homosexuals, transsexuals and others. Very often due to the dominant binary representation of sexuality and gender, this group is labeled as 'queer'. This labeling itself is indicative of the process of otherisation that exists in society. Construction of identity for this group is not so simple because either there is sexual ambiguity or gender variance or differential preferences. These aspects in fact challenge the heterosexist paradigm and the identity of such people cannot easily be foregrounded on either sex/gender. To illustrate this point, I draw upon the examples of Herculine Barbin (hermaphrodite) and the hijras.

The classification and meaning of hermaphroditism is very challenging. Foucault in *History of Sexuality* noted that for a long time hermaphrodites were criminals, or crime's offspring, since their anatomical disposition, their very being, confounded the law that distinguished the sexes and prescribed their union. They were regarded as biologically aberrant, usually in genetic or hormonal development. Sexual dimorphism emphasizes reproduction rather than cultural roles or personal desires as the focus of sexuality and gender. Such a world view offers no space whatsoever for the deviant or the different and very often the difference becomes a crime or an object of social abomination.

²⁹ Lawrence Cohen, 'The Pleasures of Castration: The Postoperative Status of Hijras, Jankhas, and Academics,' in P. Abramson and S. Pinkerton (ed.), *Sexual Nature, Sexual Culture*, (Chicago: University of Chicago Press, 1995), p. 295.

Elisabeth Bronfen aptly points out that since we link notions of an intact, integrated and stable self identity to images of a consistent, invulnerable and omnipotent body, hence narratives and representations which revolve around the fallibility and fragility of the body tend to produce anxiety.³⁰ This point is exemplified in the case study of Barbin. The memoirs of Herculine Barbin, a nineteenth century hermaphrodite, is regarded as a classic case study of intersexuality. Foucault used it for exploding the regulative categories of sex. Notions of sex, gender and subjecthood is positioned at the literal interstices of medical, legal, political and philosophical discourses.

Ursula Tidd talks about two conflicting models of hermaphroditism. The first model is associated with the Hippocratic theoretical tradition which conceptualized hermaphrodites as being absolutely sexually intermediate on a sexual spectrum along which unambiguous male, intersexual and female bodies were produced according to the distribution of maternal and paternal seed and the position of the foetus in the womb. The second model, rooted in the Aristotlean notions of sexual difference, viewed the hermaphrodite as possessing a body with doubled genitalia, the result of an inadequate resolution between male and female principles.³¹

According to Daston and Parks, these two models had quite different effects on prevailing notions of sex and gender; while the Hippocratic model permitted a spectrum of sexual bodies and behaviour, which posed a major threat to the social order based on the heterosexual matrix. The Aristotlean model, on the other hand, offered an explanation of hermaphroditism as a local disorder of bodily morphology, which left the existing binary notions of sex intact.³²

Barbin's story revealed that the hermaphrodite posed a variety of dilemmas for the political regime of heterosexuality at the level of the production of intersexed bodies, sexual orientation, lifestyle and citizenship. Barbin was perceived as an interloper on two sequential counts: first, as a lesbian who aspired to perform the

³⁰ Avril Horner & Angela Keane (eds.) *Body Matters: Feminism, Textuality, Corporeality* (Manchester: Manchester University Press, 2000), 109-122.

³¹ *Ibid.*, p. 76.

³² L. Daston and K. Park, (1995) 'The Hermaphrodite and the Orders of Nature: Sexual Ambiguity in Early Modern France', *GLQ*, 1 (4), 419-38.

sexual behaviour of a heterosexual man. Second, as a heterosexual man whose gender history is female i.e. he was deemed to be at variance with his anatomy. As a testimonial autobiography of a hermaphrodite, Barbin's text dramatized his/her precarious subjecthood and exploded the habitual metaphors through which sex and subjectivity are represented and understood. Anxiety over sexual identity and potency was implicit in her/his writings. S/he writes, "...I may be no better, but at least I am different. Whether nature did well or ill in breaking the mould in which she formed me, is a question which can only be resolved after the reading of my book".³³

Barbin's confessions concerning her/his intersexuality served not only to facilitate society's disciplinary gaze, which decreed the parameters of acceptable bodily morphology which eventually drove him/her to bodily annihilation in suicide. Barbin discovered through his/her painful corporeal history that there could be no peaceful resting place for identity like his/her other than in death, when the ambiguous body is annihilated.

Foucault's commentary on Barbin's case attempted to displace the binary of male/female; instead he constructed a binary of sexual non identity and monosexuality. According to him, Herculine is not an 'identity', but the sexual impossibility of an identity. This is because the male and female anatomical elements are jointly distributed in and on this body; and Herculine is not categorizable within the gender binary as it stands. Rosalind C. Morris quite crisply explains that Herculine Barbin (who was assigned an exclusively male identity after having lived as a female) seemed to condense the history of modern western sexuality (as outlined by Foucault) in his/her very being.³⁴ Foucault through this case study proved that the perception of sex identity presumes a regulatory discourse in which the surface of the bodies are differentially marked and signified.

Similarly, images of androgyny are usually an epistemological puzzle for societies in which a cultural dichotomy of male and female seem 'natural' and in

³³ Michel Foucault, *Herculine Barbin, Being the Recently Discovered Memoirs of a Nineteenth Century French Hermaphrodite*. Translated by R McDougall (New York: Pantheon Books, 1980), p.17.

³⁴ Rosalind C. Morris, 'All Made Up: Performance Theory and the New Anthropology of Sex and Gender', *Annual Review of Anthropology*, Vol. 24, 1995, pp. 567-592. Accessed at <http://www.jstor.org/stable/2155950>, as on 15/04/2009.

which a duality of gender is firmly inscribed in culture, nature and society. In androgynous imagery, maleness and femaleness are dissembled, transmuted and reinscribed in imaginative ways that interweave, outreach and undercut the ordinary perceptions. The notion of androgyny evokes a relaxation of the rigidities of the gender stereotypes, opening of gender boundaries and fusion of gender attributes. The androgyny is seen as marginal, liminal and abnormal. But such imageries are not easily reconciled in any culture given the dominance of the sex-gender binary paradigm.

Here it would be appropriate to briefly refer to the case of the hijras and their identity formation.³⁵ The hijras effectively challenge Western conceptions of immutable gender. Yet understanding their identity is no mean task. There is in fact a disjunction between their socio-cultural definition as neither men nor women and the experienced gender identity of many hijras as women. According to Reddy, among the hijras, bodily practice is an important axis of difference because sex/gender performativity is considered to be the salient marker of difference than anatomy.³⁶ Based on her field work in Hyderabad, she argues that the act of penetration in sexual intercourse and doing 'gendered' work serve as central axes around which hijras configure their identity. The gender system among them is divided into *pantis* (penetrative, "masculine" men), *kotis* (receptive, "effeminate" men) and *naran* (women).³⁷ She however clarifies that though performative aspects of bodily praxis is important in theorizations of gender difference, the criteria of difference in identity configuration and their salience in an individual's life can vary depending on the temporal, spatial, and life historical positioning of the actors.

A 'real hijra' is believed to be like an ascetic or sannyasi – completely free of sexual desire. Many of them undergo a complete emasculation – the nirvan operation wherein the penis and the testes are excised and subsequently they are believed to be endowed with the power to confer fertility on newly weds. Their conferral of

³⁵ Here I do not describe who are hijras, as I have taken up the question in considerable detail in the next chapter.

³⁶ For this line of reasoning, see D. Kulick, 'The Gender of Brazilian Transgendered Prostitutes', *American Anthropologist* 99 (3), 1997, p. 574-85.

³⁷ *Pantis*, *kotis* and *naran* are self-referential terms of the hijras in Telegu.

blessings is in fact a ritual function. Thus, it can be seen that their ritual identity is based on their anatomy.

Hijras' enactment of gender identity includes the performance of women's tasks, employing various methods of beautification, etc. The realization of the hijra identity depends on the performance/enactment of femininity or female role playing, i.e. consciously female attributes are incorporated to construct the hijra identity. An active component of their gender building involves erasing of masculinity. Apart from undergoing the nirvana operation and ingesting dozens of hormonal substances, they try to erase vestiges of masculinity by plucking out facial hair. To augment femininity, they grow long hair, bleach their faces, and use additive methods of beautification like makeup and jewelry to approximate a female appearance. They unhesitatingly ingest hormones to sculpt female bodies. Apart from the desire for breasts, the corporeal symbol of femininity for hijras is the vagina, and they undergo repeated operations to construct a vagina after their nirvana operation. Perhaps the single most important marker of Hijra identity and femininity/beauty is their clothing. Umberto Eco had rightly asserted "[I] speak through my clothes".³⁸ Eco's statement could be applied to the hijras' emphatic use of clothing style. To echo Roland Barthes, there is an identifiable difference between 'intentional' and 'innocent' signification. Hijra's intentional choice of an 'unnatural' sartorial style appears to signify difference from the 'innocent' mode of mainstream society.

Despite all these accoutrements of femininity, hijras unequivocally think of themselves neither as men nor as women. The flamboyant and markedly hijra practices of hand-clapping and flashing of their genitals, draw attention to their sexual ambiguity and gender liminality as opposed to their femininity, so it becomes difficult to interpret their identity as either merely one of reinscribing gender norms, or purely as subverting gender. The act of lifting their sarees is potentially empowering for the hijras. The absence of genitalia signals a paradoxical inversion of power in favour of hijras, both by exposing the mutilation of the body and by implicitly incorporating a potential curse. This action simultaneously mocks the male power and the procreative imperative and hence is the source of their power.

³⁸ U. Eco, *A Theory of Semiotics* (Bloomington: Indian University Press, 1975), p. 57.

Reddy raises pertinent questions regarding the hijra identity: is their gendered performance a parodic subversion, or is it merely a resignification of normative gender ideals and practices? Hijras clearly express an overwhelming desire for the accoutrements of femininity. Does this imply that hijras are merely reinscribing given, normative patterns of gender ascription and aspiration? Again the hijras appear to perceive their identities as outside the binary frame of gendered reference. Given hijras' realization of the constructed nature of their (gendered) identities, does this in itself constitute their performance as parody and therefore as potentially subversive? What needs to be clarified is that are the hijras the primary agents of gender subversion/case of alternative sexuality or are they reinscribing gendered categories through their sexuality (i.e. desires, preferences, orientation and practices)? She further says, that hijra instantiations of ambiguity allow us to move beyond the aporia of the structure/agency debate undergirding many sociological and feminist analyses and to capture the other markers of identity other than gender like religion, kinship and class. All these axes put together constitutes hijras' sense of self and their relationship to wider society.

In conclusion it can be said that the chapter is a critique of the sex-gender binary and the way it forms marked bodies and exclusionary identities. The alternative to this binary is the hijra identity. They have an alternative form of human existence outside the realm of mainstream gendered roles, a form of life beyond the two stereotypical gender categories and dualistic gender coding. Since the hijras operate within the restrictive framework of dimorphism or are governed by the constrictive framework of heterosexism and patriarchy, they are oppressed and marginalized by the state and society. And it is against this oppression, hijra activism has developed to claim their identity as a legitimate and not deviant identity. Before moving on to an analysis of their peripheralisation by the state and discrimination by the society, it is important to understand who the hijras are. This question is explored from multiple angles in the following chapter in an attempt to comprehensively understand the life, condition and role of the hijras.

CHAPTER II

Mapping the Situation of the Hijra Community

Who are the hijras? Is it a subculture, an identity, a role, a biological defect, a sexual preference, a middle sex, site markers of non-binary gender systems, symbols of a liminal space between men and women or an institutionalized third gender? This chapter seeks answers to all these questions by unpacking the category “hijra” and tries to reach the core of their identity. It also takes a close look at their history, society, culture and religion.

Who are the Hijras?

The term ‘hijra’ does not offer any easy resolutions and is often linked to a variety of meanings: intersexed, emasculated, impotent, transgendered, castrated, effeminate, or somehow sexually anomalous or dysfunctional. None of these identities accurately describe the hijra gender. The definition of the hijra role is based on sexual impotence and sometimes on the ascribed physical condition of intersexuality; but the definitional problem arises due to the fact that the hijra status could be ascriptive or achieved through the castration ritual. In fact, most hijras are not born as hermaphrodites, rather most join the community, so it translates into a matter of sexual preference. Most hijras are not born but are ‘made’ so by castration. It is here that the question arises: is being a hijra a matter of sexual preference? It is here that sex, gender, sexuality and orientation gets entangled in a complex web.

In an attempt to sort this definitional confusion Sharma has categorized the hijras into three: the castrated males and the true hermaphrodites (who are neither male nor female but an element of both); those who are intersexed (impotent men who have their sexual organs removed) and the normal men born with the usual genitalia who may or may not be castrated but choose to dress as women. Thus, there is a psychological as well as physical basis to the hijra identity. The psychological basis is the desire to transgress/cross over and the physical basis is the possession of ambiguous genitalia.

They are an in-between gender; incomplete men; they are not men in their physiology, sexual capacities, feelings and preferences. They are man minus maleness

but in their appearance and behaviour they are man plus woman.¹ They are at the threshold of the sex and gender boundary and so their identity is shrouded in mysticism - the being neither nor or the being both at the same time.

Different scholars have come up with their own understanding of hijras. Nanda Serena has depicted them as an institutionalized third gender, as neither men nor women. Whereas, A.P. Sinha has described hijras as sexual inverters or sexual abusers. Scholars like Bhimbhai, 1901; Faridi, 1899; Ibbetson, Maclagen & Rose, 1911 have argued that hijras kidnap small boys for the purposes of sodomy or prostitution.

While G. Morris Carstairs (1957) has opined that the hijra role is primarily a form of institutionalized homosexuality developed in response to tendencies towards latent homosexuality in the Indian national character. The sole motivation for recruitment to the community, in his opinion, is for the satisfaction of the individual's homosexual urges.

This explanation gets substantiated by certain hijra narratives like that of Kamaladevi, who said, "We hijras are born as boys, but then we get spoiled and have sexual desires only for men."² Similarly, Sita remarked, "There is no room for homosexuals in this society. And none of us can envisage a life where we are forced to marry females and have children by them. So the only way out is to cut off our manhood and become *hijras*. This is the only community which will accept us and let us live our lives the way we want to. By not being heterosexuals, we are already damned. As a *hijra*, at least we are not the sole target of the derision and ridicule that society heaps on us. We can endure it as a community."³ Yet another example is that of Meera, a muslim man with two wives and six children, who after almost twenty years of marriage joined the hijra community.⁴

¹ Wendy O'Flaherty says, "As eunuchs, hijras are man minus man, yet in their outward appearance they are man plus woman". in *Women, Androgynes, and Other Mystical Beasts* (Chicago/London: The University of Chicago Press, 1982), p. 297.

² Kamaladevi is a hijra prostitute interviewed by Serena Nanda in chap 5.

³ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Belmont, Calif.: Wadsworth Publishing Co., 1990), p. 119

⁴ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Belmont, Calif.: Wadsworth Publishing Co., 1990), p. 117.

Several other hijra narratives mention the act of 'spoiling' (reference to homosex) which serves as the point of origin for their subsequent choice to become hijras.⁵ Many subscribed to the theory of spoiling as the source of weakness in their body (particularly the male sexual organ). In this context, spoiled means two things: the first is that the pleasure they begin to take pleasure in sexual intercourse as a passive recipient with a man. Such desires inhibit the desire to marry and raise a family. The second and more definitive meaning refers to the impotence that is believed to result from frequent passive homosexual activity.

Serena Nanda counters the explanation (hijra identity as a manifestation of homosexuality) by arguing that it is sexual impotence which is the baseline for a hijra identity. The hijras have often compared themselves with bullocks. She reasons that it is widely believed in India that a man may become impotent through engaging in homosexual relations in the receiver role in anal intercourse; and it is such passive homosexuals who become impotent may identify themselves as hijras. Yet the identification is not due to sexual preference/orientation but because of their impotence.

Reddy portrays the hijras not simply through the lens of gender and sexual difference, because she argues that that is not how they understand themselves. She situates them in the multi-faceted matrix of class, caste, religious and regional identities. Sex work, birth, religion, religiosity, language, class, economic power, anatomy, nirvana, obedience to a guru, political patronage, each of these determines the contours of the community. Reddy's analysis is significant because she examines the embeddedness of sexuality within other arenas of everyday life. She refuses to take an essentialized view of the hijras as third sexed individuals. Instead, she favours an "analysis which locates the body within a multiplicity of differences, ... [thereby] defer [ring] efforts to read the etiology of the sexed body in terms of the primacy of either cultural system or political economy or to reduce it to biology or psychology

⁵ In Reddy's book, we find that several hijras like Munira, Nagalakshmi, Kajal, Lekha and others testified to the act of 'spoiling'.

[alone]”⁶ thus, the hijra identity is not only about biology or anatomy but culture,” says Arvind Kumar, editor of San Jose, CA-based *India Currents* magazine.⁷

Vinay Lal aptly encapsulates the ambivalences of the hijra identities. He says that it is incorrect to describe the hijras as hermaphrodites as it ignores the fact that some are both and some are neither, while many hijras are disinclined in any case to accept this distinction. He further says that they are born men, but they disavow the male sex; they often indulge in homosexual behaviour, but they contemptuously dismiss homosexuals as not their kind; and while construing themselves as women, they cannot experience the cycles of menstruation, pregnancy, birth, lactation, or menopause, which characterize the biological and cultural lives of women. In his own words, “... hijras may well be both male and female, nonmale and nonfemale; and it is just as possible that they may be neither male nor nonmale, neither female nor nonfemale.”⁸ In a similar vein, Kira Hall called them ‘deficiently masculine and incompletely feminine. They are neither and both’.⁹

In trying to define the hijras, it is also important to clarify who they are not. Hijras are not transsexuals because they don’t attempt to ‘pass’ as the opposite sex (they are unmistakably visible as hijras), and engage in behaviors which is contrary to both men and women. A hijra is not a jankha, a kothi, or a zenana. A jankha is a man who acts and dresses like a woman i.e. impersonates a woman. But mere impersonation of women is not being a hijra. The kothis are not hijras. Kothis are regarded as feminine males or men/boys who take a feminine role in sexual intercourse with men, but they do not live in the kind of intentional communities like the hijras. Zenanas do not physically emasculate themselves and so have no ritual power; they are mostly dancers.

⁶ Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006), p. 33.

⁷ ‘Why are Indian eunuchs warned about unsafe sex?’ July 15, 1994. Accessed at <http://www.straightdope.com/columns/read/1041/why-are-indian-eunuchs-warned-about-unsafe-sex>, as on 12.03.09.

⁸ Vinay Lal, ‘Not This, Not That: The Hijras of India and the Cultural Politics of Sexuality’, *Social Text*, No. 61, Out Front: Lesbians, Gays, and the Struggle for Workplace Rights, Winter, 1999, pp. 119-140. Accessed at <http://links.jstor.org/sici?sici=0164-2472%28199924%290%3A61%3C119%3ANTNTTH%3E2.0.CO%3B2-7>, as on 12.03.09.

⁹ Kira Hall & Vertnica O’Donovon. “Shifting Gender Positions Among Hindi Speaking Hijras”, In Victoria Bergvall, Janet Bing, and Alice Freed (eds.), *Rethinking Language and Gender Research: Theory and Practice*. London: Longman, 1996, pp. 228-266.

Thus, it is apparent that the hijra community is not homogenous; the hijra role is the symbolic reference point for people with different temperaments, personalities, sexual needs, gender identities, cross-gender behaviours. Serena Nanda calls the hijra role a 'magnet' for individuals who have different motivations, gender identities, personality constellations and cross gender behaviour. This means that one cannot assume there is any one psychological or behavioral constellation or series of life events which is the cause of becoming a hijra. The hijra role and identity elude standard taxonomies and instead offer alternatives to the limited possibilities of lived reality.

Etymology of the term 'hijra'

The term word *hijra* (alternately romanised as *hijira*, *hijda*, *hijada*, *hijara*, *hijrah*) has a pronunciation between that of *heejra* and *heejda*; the IPA notation is /hi:dʒɑː/ seems to have its origin in Islamic vocabulary and linguists guess that the word has travelled to India with Muslim rulers. An older name for hijras is *kinnar*, which is used by some hijra groups as a more respectable and formal term. An abusive slang for hijra in Hindi is *chakka*.

In Urdu, the word *hich*, designated something without a proper place (in this case: in the scheme of two sexes; *hich - gah* means nowhere). The modern word *hijra* probably derived from *hich*. The term *hijra* in this context is to be distinguished from an Arabic word of the same transliteration. The last consonant in the South Asian term is not pronounced like the English 'r' or the Arabic *ra* or *Ray*. The Arabic word means migration and is used in reference to various historic travels, such as the prophet Muhammad's journey from Mecca to Medina in 622 CE to set up the first Islamic state.

A number of terms across the culturally and linguistically diverse Indian subcontinent represent similar sex/gender categories. While these are rough synonyms, they may be better understood as separate identities due to regional cultural differences. Hijras are called *aravanni*, *aravani*, or *aravani* in Tamil Nadu, while they are called *khusra* in Urdu and Punjabi, *pavaiyaa* in Gujarati, *kojja* in

Telegu and *pottai* in Tamil. With the advent of the British in India, these names got translated into the term 'eunuch'.

Eunuchs mean castrated males. The English word eunuch is from the Greek *eune* (bed) and *ekhein* (to keep), effectively meaning the bed keeper. However, scholars and gender activists are of the opinion that the term eunuch is not an appropriate translation of the word hijra. This is because eunuchs refer to men who were intentionally castrated, particularly in order to serve as guardians in the royal harem, which did not exist in India before the Turkish presence in the 9th century. Moreover, not all hijras are castrated, thus the non castrated hijras are not eunuchs. Thus, recent scholarship avoids using this term. No English translation will be accurate as these identities have no exact match in the modern Western taxonomy of gender and sexual orientation. These days, the LGBT¹⁰ historians or human rights activists call the hijras as transgender.

References in Classical Texts, Myths and Legends

The Hindu cultural system and gender ideology acknowledges multiple genders, gender overlap, gender transformations and alternative genders in myth, ritual and human experience. Gender is treated as a fluid affair because Indian mythology contains numerous examples of androgynies, impersonators of the opposite sex and individuals who undergo sex changes, both among deities and humans. According to Hindu belief, all individuals contain within themselves both male and female principles, i.e. is androgyny. While the Tantric school views the Supreme Being as one complete sex containing male and female sexual organs; i.e. it regards hermaphroditism as the ideal. Hinduism idealizes the notion of hermaphroditism because to be neither male nor female is to transcend sexuality and advance on the path to salvation. In fact, alternate sexuality and gender transgression is deeply embedded in the Indian cultural system.

¹⁰ LGBT is an initialism referring collectively to lesbian, gay, bisexual, and transgender people. The term is in use since the 1990s. In modern usage, the term LGBT is intended to emphasize a diversity of sexuality and gender identity based cultures and is sometimes used to refer to anyone who is non heterosexual. As of 2005, the acronym has become mainstream as a self-designation and has been adopted by the majority of LGBT community centers and LGBT media in most English speaking countries.

Ancient Hinduism usually refers to alternate sexuality as *tritiya prakriti*, *kliba*, *napumsaka*, etc. The Sanskrit word *kliba* is a catchall term that was coined to indicate a man who was sexually dysfunctional (or in ours, sexually challenged), including someone who was sterile, impotent, castrated, a transvestite, a man who had oral sex with other men, who had anal sex, a man with mutilated or defective sexual organs, a man who produced only female children, or/and even a hermaphrodite. The *Kamasutra* does not use the term *kliba*, but instead speaks of a ‘third nature’ or *tritiya prakriti*.

Indologists have roughly translated these conditions as the third sex. The acceptance of the category of a third sex has been a part of the Indian worldview for nearly three thousand years. The concept took form during the late Vedic period (eighth to sixth centuries B.C.E.) on the basis of observed male gender-role nonconformity. Men who were impotent, did not impregnate women, were effeminate, or transvestite, were regarded as *napumsaka*, literally not-a-male, or unmale. Such unmales usually took to traditionally female occupations: singers, dancers, and later, prostitutes. The adoption of *napumsaka* as the technical term for the third grammatical gender circa the sixth century B.C.E may be regarded as signaling the acceptance of the unmale as a true third sex. Four categories of the third sex have been enumerated by Nanda: male eunuch – waterless, or with desiccated testicles; “testicle voided”, i.e. the castrated; hermaphrodite and “not woman” or female eunuch who don’t menstruate.¹¹

While in the Indian medical tradition, the main criterion for membership in alternative sex/gender categories is the lack or the non-exercise of procreative or generative capacity, and not sexual practices or desires per se.¹² For instance, in the *Caraka Samhita*, gender and sexual variance is attributed to biological causes. The fault is not placed upon the individual in question, but rather upon the parents. The masculine female, alternatively called *narisandha*, *sandha*, or *sandhi* in Sanskrit, was also thought to be suffering from a disease of the female organs (*yoniroga*). This was

¹¹ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Belmont, Calif.: Wadsworth Publishing Co., 1990), p. 21-22.

¹² On the Indian medical literature see Michael J. Sweet and Leonard Zwilling, ‘The First Medicalization: The Taxonomy and Etiology of Queerness in Classical Indian Medicine’, *Journal of the History of Sexuality* 3, 1993, p. 590-607. On the criteria for membership in the third-sex categories see pp. 592-94.

due to reversed coital positions during conception or due to embryonic damage.¹³ Effeminate males, hermaphrodites, fellators, and the impotent were believed to be similarly afflicted resulting in infertility and the inability to procreate.



Figure 1. The Ardhanarishvar form of Shiva¹⁴

Dual-gender figures in Hinduism provide legitimacy to the hijra identity. In Vishnu-Mohini we find the divine transsexual and in Shiva-Ardhanarishvara the divine hermaphrodite. Such mythological and religious role models act as a supportive conceptual paradigm for the hijras to accept their corporeality and alternate gender identity. For instance, the Ardhanarishvara form of Shiva does not simply combine the masculine power of aggression and the feminine power of devotion but triumphs over these two opposites to be a super god. Likewise the hijras claim that they are not just neutered males but are renouncers of sexuality, who have risen above the conflicts of beings neither male nor female, and therefore they have the power to curse and bless beyond the ordinary mortal.

¹³ Ibid.

¹⁴ Source: <http://www.shaivam.org/siddhanta/maardh.html>

They also identify with Vishnu as he had transformed himself into Mohini (a beautiful damsel). In another legend, it is believed that Krishna takes on the form of a female to destroy the demon Araka. It is said that Araka's strength emanated from his chastity and Krishna turned into a woman and married him to eventually kill him. Hijras believe that Krishna later proclaimed that there would be more like this avatar of his – neither men nor women who would have the power to bless and curse. Citing this legend, hijras trace their lineage to acquire legitimacy for their traditional *badhai* performance.

They draw legitimacy from Arjuna in Mahabharata who was in disguise as a hijra dance teacher named Brhannala in the court of King Virata. The hijras explain that Arjuna's Brhannala incarnation was because of a curse and similarly their life is a curse as well. Reddy further writes that the mythical heroes like – Arjuna as Brhannala, Ardhanarisvara form of Shiva, Shikhandi, Vishnu as Mohini serve as important figures which imply their asexuality, but also refer to their dancing and singing, and the power to bless.¹⁵

They trace their powers from a myth from Ramayana. It is said that when Rama, when banished from the kingdom for 14 years he turned around to his followers and asks all the men and women to go back. When he returned from exile, he found that the hijras who were neither men nor women alone did not feel bound by this direction and kept waiting for Rama. Impressed with their devotion, Rama sanctioned them the power to confer blessings on people on important occasions like childbirth and marriage.

Certain Hindu rituals and practices involve male transvestism as a form of devotion. There is a particular sect of Vishnu worshippers – the Sakhibhava who do not worship Krishna directly. By worshipping Krishna's consort Radha, Krishna is

¹⁵ Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006), pp. 92-93.

worshipped indirectly. Followers of this sect imitate feminine behaviour, simulate menstruation, some even castrate themselves to approximate a female identification with Radha – all in order to propitiate Krishna.¹⁶ Few sects like this, imitate women to bring out the feminine within the self. Some even consider transvestism a tool to transcend one's own sex as a prerequisite to achieving salvation.

Some other references to gender blenders or crossers are there like Samba/Sambali, rituals of Jagannatha temple, Puri (where Balabhadra is seduced by a transvestite) and many others show that sexually ambiguous figures in the Indian myths and legends have been given some purposive role and hence they are powerful symbols of the divine or the power of generativity. Thus it is quite apparent that Hindu mythology, folklore and iconography lend legitimacy to the hijra construction of identity and notion of the self.

The third sex is not explicitly treated as a distinct class of persons in Buddhist literature, yet a number of recognized third sex types are discussed, some of whom are defined in terms of their sexual, specifically homosexual behavior and not on the basis of their possession or non-possession of certain external characteristics.¹⁷ The Buddhist position closely approximates the Brahmanical view that the sexes are distinguished on the basis of the primary and secondary sexual characteristics.

The Jains also used such terms as *trtuya* (third) and *trairasika* (third heap, after an archaic Jain heresy) to refer to persons of the third sex. The Jains are to be credited for their comprehensive take on alternate sexuality. Jains differentiate between what they call the 'biological sex' or *dravyalinga* (material sexual mark) and the 'psychological gender' or the *bhavalinga* (mental sexual mark). They maintained the separation of sexuality and sexual choice from the biological sex and gender and identified the third-sex sexuality as primarily hyperlibidinal and bisexual. This in fact, foreshadows the complex typologies of modern sexological theory, which attempts to explain alternate sexuality with categories such as gender role, sexual identity, sexual orientation, and genetic and morphologic sex which does not always provide

¹⁶ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Belmont, Calif.: Wadsworth Publishing Co., 1990), p. 21.

¹⁷ Leonard Zwilling, 'Homosexuality as Seen in Indian Buddhist Texts', in Jose Cabezon (ed.), *Buddhism, Sexuality, and Gender* (Albany, NY, 1992), pp. 204-6.

satisfactory explanations. They went beyond the mere citation of sexual behavior as a marker of sex in the case of the third-sex subtypes, and instead looked at an underlying sexuality motivating the sexual behavior of all the sexes.¹⁸ The most significant innovation of Jain thought was that sexuality and sexual object choice were separate from biological sex and gender role. This made bisexuality, homosexuality and heterosexuality a possibility for both males and females, and the third sex was characterized as bisexual and highly libidinous. The most probable explanation for their acknowledgment of multiple possibilities for sexuality (regardless of biological sex or gender) is that they subscribed to the philosophical tenet of 'non-onesidedness' (anekantavada), which upholds a multifaceted and situationally determined view of reality.¹⁹

Persons inexplicit with regard to their sex finds mention in *Tolkappiyam* which refers to persons 'where the maleness is dormant', which, according to the commentators signifies hermaphrodites with a clearly effeminate character. There are other references in literature, like in a Sanskrit play there is a third sex character named Sukumarika.²⁰ In the play, she is accused of being sexually insatiable because it is argued that being a third sex, she has certain advantages which abet her sexual appetite. For instance, she has no breasts to get in the way of a tight embrace, no monthly period to interrupt the enjoyment of passion and no pregnancy to mar her beauty. This play also hints at the popular notion of the hyper-libidinousness of third sex individuals.

Sudhir Kakar opines that Hindus are more tolerant of 'deviance or eccentricity' than Westerners because the latter treat sexual variance as 'anti-social or psychopathological, requiring "correction" or "cure"'. According to him, as per the Hindu view, the status of hijra is the working out of a particular *svadharma*, the spiritual life task of the individual who is traveling on the path to *moksha*, final

¹⁸ While such a conception of sexuality most probably does not belong to the oldest strata of Jain doctrine it is certainly quite old, and is accepted by both major sectarian divisions. Thus, this view antedates their schism in the early centuries of the present era.

¹⁹ For a summary of the Jain sources that treat conception and embryology see Walther Schubring & Wolfgang Beurlen, *The Doctrine of the Jainas Described after the Oldest Sources* (New Delhi: Motilal Banarsidass Publ., 1962), pp. 141-42.

²⁰ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Belmont, Calif.: Wadsworth Publishing Co., 1990), p. 22.

release from the cycles of human existence.²¹ Thus, certain aspects of religion allow institutionalized gender variance to exist. Thus, all these references hint at the unique Indian ability to tolerate and embrace contradictions and variation at the social, cultural and personality levels, this explains how hijras were accommodated and accorded a distinctive status.

Hijra Identity in a Historical Perspective

In trying to trace the hijra identity in a historical perspective, Reddy rightly observed that there are varied historical and cultural representations of the hijras, but each representation whether ancient, medieval, colonial or contemporary literature reflects its own particular ideological agenda and framing premise. A third gender has existed in the subcontinent from the earliest records, and was clearly acknowledged in Vedic culture, throughout the history of Hinduism, as well as in the royal courts of Islamic rulers. Third natured individuals, transposed genders, sexual masquerades and same sex procreation abound in Hindu mythological, folkloric, epic and Vedic/Puranic literatures.²²

It is commonly known that hijras were employed and valued under the reign of Muslim rulers. The most prominent example of a hijra of the sultanate period is Malik Kafur (1296 - 1316), a hijra slave who became a general in the army of Alauddin Khilji, the ruler of the Delhi sultanate from 1296 to 1316 A.D. It is believed that Alauddin Khilji fell in love with the effeminate beauty of Malik Kafur, castrated and converted him to Islam.²³ Mention of hijras is therefore found in accounts of slave trade. Among the Muslim rulers, it was a common practice to gift hijras.

The Mughals valued the hijras because they were strong and manly enough to guard the women; yet as gender neutral, non testicated individuals hijras were

²¹ Sudhir Kakar, *A Psycho-Analytic Study of Childhood and Society in India* (Oxford: OUP, 1981), p. 39.

²² Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006), p. 19.

²³ John McLeod, *The history of India* (U.K.: Greenwood Press, 2002), p. 36. The same indication is also found in Ruth Vanita and Saleem Kidwai, *Same-Sex Love in India: Readings from Literature and History* (NY: Palgrave, 2001), p. 132.

incapable of impregnating women and directly perpetuating their lineage.²⁴ They were appointed to high offices because their lack of progeny guaranteed their honesty and loyalty. Their significance can be gauged from the existence of sacred societies of hijras at the tomb of the Prophet Muhammad in Madina and at the Ka'ba in Mecca. prominent position in the royal household and in the political hierarchy of the court. Thus, under the Mughal rule, the hijras retained their status and significance. For instance, Akbar built a mosque in Lohamandi, Agra at the request of a saintly hijra, Yatim Shah, whose grave lay buried there. An Urs is held at the mosque in the honour of Yatim Shah annually, a week after the festival of Shabe-Barat.

The Muslim rulers employed hijras called mukhannathun, who wore a combination of male and female clothes, as servants and guards in the private realm of their women. Hijras in the imperial palaces were organized in a hierarchy with Khwaja Sara being the senior or chief hijra directing junior hijras below him. Such was their importance that the word Khwaja Sara became a title for the administrative officers of the harem. They were employed for their strength, asexuality and trustworthiness. They were mainly valued for being the intermediaries between men and women and for guarding the sacred private realm of the women. They served as messengers, watchmen, attendants, and guards for palaces. In many ethnographies and hijra narratives, they recount their glorious past as guards of sacred boundaries. Gradually they rose in power, acquired political importance, got incorporated in the king's court of advisers, and later were involved in many court intrigues and politics. Since being a hijra entitled one to a number of high-status jobs it prompted the poor families to castrate one of their sons to secure a position in the imperial. This practice of castration was then therefore banned throughout the empire in 1668 by Aurangzeb, but the practice continued covertly.

The advent of the British in India spelled trouble for the gender variant. The Europeans could not comprehend and were in fact repulsed by the veneration accorded to the hijras. The British being homophobic rendered all forms of alternate sexuality as criminal. Hijras find a place in several compendia and glossaries of castes and tribes of India. While caste was the primary social category in the colonial

²⁴ Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006), p. 23.

imagination, hijras were not just any one of the several hundred castes and tribes of India. Rather they were classified and registered along with other 'criminal castes' a new category of being in the discourse and polity of colonial India. Following the promulgation of the Criminal Tribes Act of 1871, which called for the 'registration, surveillance and control of certain tribes and eunuchs', hijras were officially included under the rubric of dangerous outlaws.

Prior to the British arrival, the hijras enjoyed titles to property, exclusive begging rights in merchant areas and other highly paid socio-religious functions. Preston mentions that the British were in general intolerant of such variance, and they tried to rid society of the menace of the hijras. For example, they tried to curtail the land grants and begging rights of hijras, even though the latter had proof of legal title from prior native rulers.²⁵ The British were in fact aghast at the societal and state support to the hijras, whom they called 'abominations' and 'wretches'; they considered their very existence to be 'a breach of public decency'.²⁶ They revoked their land grants and turned the hijras' land titles into life grants, which were later never renewed. Thus colonial influence was directly proportional to the declining status of the hijras in Indian society. The apprehension that hijras kidnap children and force them to be castrated and become hijra is a colonial hangover.

Social Universe of the Hijras

They have their own social universe with own social categories, kinship affinities, idiomatic terminology, rules of membership, rituals, lifestyle, etc. Hijra social organisation is unique because it is both traditional and ritualistic. The hijra community operates through a complex network. The community is divided into seven houses, each headed by a '*nayak*' (also *naik*) who appoints gurus or spiritual leaders to train their chelas and to protect them. The seven houses are: Laskarwallah, Chaklawallah, Lalanwallah, Bendi Bazaar, Poonawallah, Ballakwallah and Adipur. Different hijra houses have their own territorial boundary within which they have the sole right to perform and earn money. These are also called hijra lineages. These lineages are important because they confer a sense of kinship and identity with each

²⁵ Preston, Laurence W., 'A Right to Exist: Eunuchs and the State in Nineteenth-Century India', *Modern Asian Studies*, 21 (2), 1987, pp. 371-87.

²⁶ *Ibid.*

house having its own history and rules of behavior. Each house within a region has a leader called a *naik*. These houses are a structural principle of organisation; they do not have a spatial dimension. They are more like clans. Apart from these houses they live in communes called hijra households.²⁷

The hijra household is a commune kind of arrangement of five or more chelas (disciples), supervised by a guru. A hijra household functions both as a residential and an economic unit. Hijra social networks enable economic opportunities as these networks are the foundations of their geographic mobility. The network of fictive kin enable the hijras to move from place to place as that provides them with a welcoming environment. They are a close knit community and have fictive kinship bonds²⁸ like sisterhood, family like relations (milk mothers) and marriage-like arrangements. Through a web of fictive kinship, a chela automatically acquires the relatives of her guru; this in turn expands the chela's social, emotional and economic ties. The hijra mother-daughter bond or hijra sisterhood are examples of a new form of caring. The hijra social organisation is often described by sociologists and anthropologists as a caste like group. This is because they are organised around a traditional occupation and have their own rules and customs and also because the organisation is built around the themes of hierarchy, respect, reciprocity, etc. Moreover, like caste panchayats, hijras have an arbitration council (where *naiks* represent their own house) for initiation of a new recruit, conferring of titles, arbitration of disputes, meting out punishments for infraction of community rules, etc.

Reddy points out that hijras have established alternative modes of relationship (akin to Pierre Bourdieu's notion of 'practical kinship') which accommodates non *rit* individuals within their fold. For instance, the genealogical relations like that of the milk mothers or blood sisters (through rituals like mothers suckling their daughters or sisters sharing their blood with one another). Among hijras kinship is yet another way

²⁷ Here, one needs to distinguish between houses and households. The former refers to symbolic descent groups, while the latter are communal living groups. Members of the same house can however, live in different households.

²⁸ A point to be noted is that hijras foster mainly female kinship ties and also refer to themselves as the feminine gender.

in which social relations are inscribed onto the body – through blood, milk and other (bodily) ‘traumas of becoming’.

The *guru-chela parampara* forms the lynchpin of the hijra household and their social network. Initiation into the community occurs only under the sponsorship of a guru. Usually initiation into the community takes the form of participatory socialization, but coercion is applied when the new recruit offers resistance. There is community pressure on those joining the community to get emasculated because first, it leads to commitment and involvement in the community permanently and second it enhance the earning potential be it begging, *badhia* or sex-work. Becoming a hijra is a process of socialization into a hijra family where through a guru-chela relationship one learns the traits of femininity, singing, dancing, and other activities which enables one to earn a livelihood. The *guru* imparts the necessary training, skills and knowledge of hijra customs and traditions. *Chelas* are expected to turn their earnings over to the guru who manages the funds for household upkeep. The *chelas* also perform all the household chores. In return, the guru takes care of the chelas’ needs for protection, food, clothing, shelter and pocket allowance. One of the *guru’s* chief responsibilities is to oversee the chela’s nirvana operation. The *guru* gives permission for the act, care for her and finally host the feast to announce the *chela’s* newly acquired status as a nirvana sultan.

The *guru-chela parampara* is a multi-dimensional reciprocal relationship which entails responsibilities and obligations, rights and benefits for both parties. Without a *guru* a hijra suffers from humiliation and without *chelas*, *gurus* cannot acquire respect. By acquiring *chelas*, *gurus* perpetuate the hijra lineage; *chelas* are significant markers of *guru’s* status both in terms of respect and seniority. Thus, becoming a *guru* is the route to upward mobility within the hijra community.

People with alternate sexuality voluntarily leave their families of birth, renounce male sexuality, and assume a female identity, name, and dress to join the hijra community. They join this group as their deviant existence is accepted in the commune; hijra kinship offers them a sense of belonging and the opportunity for self expression. Yet what is sad is that this freedom comes with a price, the price of conformity to the community rules. The community is strictly hierarchical and as we all know, hierarchy of any kind is exploitative. Hijras are aware of their fragility, they

know that they can endure the stigma of their existence collectively, and so they tenaciously cling on to their gurus, discounting all the obligations inherent in such relationships. There is an element of emotional and economic dependence. Thus for the hijras, staying cut off from the group is hardly freedom and Nanda calls it 'social suicide'. For the *badhai* hijras, group membership is absolutely vital for their survival. They have to learn singing, dancing and other modes of entertainment and all of this can be learnt by drawing upon the knowledge and resource base of the hijra family. Besides, *badhai* hijras cannot afford to be solitary because they rely on their numbers to threaten and cajole their patrons into parting with money.

Hijras idealize marriage but a marital bond for them is a complex problem. One, it conflicts with the hijra ideal of asexual identity. Second, it disrupts/affects the *guru-chela* relation. It in a way distances them from the group/affinal bond. Lastly, what is sad is that the emotional need driving the marital bond is met with the harsh realities of compromise, domestic violence, infidelity, exploitation, etc. There is a gap between their expectation and reality. They desire a romantic and loving relationship, but they receive licentiousness, insensitivity and abuse. Reddy rightly observes the irony of the hijra marital bond; the hijras resent the *pantis* for their domination and lack of commitment, but are emotionally helpless and end up pouring their hearts out for their *pantis*. The abuse, violence and the constant fear of abandonment in the marital bond is indicative of the one-sidedness of the relation and is reflective of the emotional vulnerability of the hijras. Reddy calls their marital bond – '[an] architecture of conflicting desires'.²⁹

It is pointless viewing the hijra kinship patterns through the lens of mainstream kinship structures, they do not simply reflect the societal structures, they defy the traditional kinship arrangements based on heteronormativity; their kinship is built on the non centrality of marriage, and they subverts gender roles. Hijra kinship arrangements question the very foundational imperative of mainstream kinship alignments. They negate procreative ability as the only route to found a family. They prove that relations can be emotionally satisfying even if not guided by heteronormativity.

²⁹ Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006), p. 185.

Initiation Ritual: Making of the Differently Gendered Body

The most common question regarding membership in the hijra community is that whether the recruitment is voluntary or forced? Though most ethnographers have said that of the hijras they had encountered almost all had joined the group voluntarily. No anthropological or ethnographic account mentions of any racket of kidnapping and forced castration though. Yet there are a few stray cases of forced castrations. So the doubt persists and no conclusive opinion can be offered. This section instead focuses on the castration ritual which the hijras willingly adopt and how it impacts their identity and status.

The operation is a traditional ceremony, for which written records date its existence to the 19th century, and oral history dates its existence even earlier. The operation is performed exclusively within the hijra domain. The nirvan operation is actually a narrative of how an individual gradually commits to a transformed identity, creatively fashioning her life form various cultural and traditional resources. In the past being nirvan was a requirement for every non-hermaphrodite hijra to be able to work as servant and guard in the Muslim harems. Therefore, traditional hijras still see the operation as an important feature to legitimize one as a true hijra. Thus, though expected in the hijra subculture, not all hijras undergo emasculation; also the percentage of hijras that are eunuchs is unknown.

The process of becoming a hijra is a gradual one. An individual may at a young age exhibit a variety of cross gender behaviour which might be accompanied by physical sexual ambiguity. Such behavioural characteristics elicit responses from the society, like sanctions from parents and teachers, teasing of peers, sexual advances from the older boys and men. These responses combined with gradual realization of the desires of the self (like cross dressing, having sexual relations with men) usually motivates the individual into informal interactions with the hijras. These informal interactions pave the way for the formal joining of the hijra community.

On joining the group, one learns to live a non-male gender identity through participatory socialization. Complete initiation involves a religious ritual that includes a crude form of genital reassignment surgery where both the penis and testes are removed. Hijras call this operation nirvan meaning rebirth or liberation from the finite

human consciousness and the dawn of a higher consciousness. The nirvan operation transforms an incomplete personhood into a transcendent one; it elevates the hijra beyond the vilified state to a realm of asexual sacredness.

Emasculation is believed to be the source of ritual power of the hijras and it is a powerful marker of the authenticity of a hijra identity. It is only after the emasculation operation that hijras become vehicles of the goddess's (Bahuchara/Bhedraj/Murgi Mata) power. The operation transforms an ordinary impotent male to a hijra. It is believed that through the operation, the former impotent male person dies and a new person endowed with sacred power (*shakti*) is reborn. The operation is the proof of a hijra's impotence/asexuality, and at the same time is the source of ritual power and sacred legitimacy. The ritual comprises of three stages: first preparatory stage, second liminal stage and a third ceremonial stage celebrating the birth of a real hijra.

In the preparatory stage, the *dai-ma* and the hijra seek the blessings of the goddess through a puja. This time is used by the potential nirvan to decide for sure, summon courage and test their desire and commitment. In the second luminal stage, the actual operation takes place. The operation is both illegal and life threatening. It is done in absolute secrecy by the *dai-ma*. The penis and the scrotum are tightly tied with a string and the prospective nirvan chants the name of the Mata to go into a state of trance. Then the *dai-ma* makes two opposite diagonal opposite cuts; the penis and the testicles are separated from the body, and a small stick is put into the urethra to keep it open. The organs are buried under a tree. The blood is allowed to gush out, which is believed to drain out masculinity.

The period after the operation is critical and this intervening time is considered to be a tug of war between Bahuchara Mata (who gives life) and her sister Chamundeshwari (who takes life). The nirvan is kept under a 40 day recovery period. No stitches are made on the wound, which is healed through repeated application of hot sesame oil. After this period, the nirvan is dressed like a bride and made to perform a puja and some more rituals. This puja frees the nirvan from the curse of impotence and she is believed to be reborn as a hijra, who can invoke the Mata and act as a vehicle of her divine power.

However, in some lineages, the procedure is not considered complete until the nirvan has been made to sit on a grinding stone and pushed down until he bleeds from the anus. The drops of blood are taken to signify the first menstruation, and only then is the initiation believed to be complete. Nowadays, some hijras may undergo a vaginoplasty which is safer and allows sexual fulfillment through vaginal intercourse, but such cases are rare. And in fact, many hijras prefer (as mentioned in Nanda's book) operations by *dai-ma* than by doctors as the latter try to stop the blood flow. In the hijra circle such operations are believed to be ritually less effective.

The power of the hijra is believed to emanate from the renunciation of sex and the repression of sexual desire. Thus the power of emasculation originates from creative asceticism. The operation transforms impotence into generativity. The hijras draw legitimacy for their emasculation from Shiva's act of cutting off his phallus/linga resulting in the cult of fertility worship. O' Flaherty aptly comments that the linga becomes the source of universal fertility as soon as it ceased to be a source of individual fertility. Similarly, hijras through emasculation derive the ritual power to bless the newly-weds and the new-borns with fertility. Hijras through the nirvan operation emulate the creative asceticism of Shiva.

Nanda comments that, hijras through their emasculation transform their liability into a source of creative power that enables them to confer blessings of fertility on others. The identification with the powers of generativity is clearly associated with the ritual importance of hijras on occasions when reproduction is manifest at the birth of a child or imminent like weddings.³⁰

Religious Affiliation of the Hijras

The hijras have their own version of the Mother Goddess named the Bedhraj Mata or the Bahuchara Mata or the Murgi Mata. In connection with the worship of this goddess, they undergo an operation in which their genitals are removed; this proclaims their asexuality and defines their hijra personhood. Every hijra household has a small shrine dedicated to Bahuchara Mata. It is in her name that the hijras

³⁰ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Belmont, Calif.: Wadsworth Publishing Co., 1990), pp. 30-1.

shower blessings of fertility and prosperity to the new borns and newly-weds. The goddess is especially worshiped before and after the *nirvan* operation, for post operation recovery. Hijras believe that they are vehicles of her power and the nirvan operation is believed to make hijras the conduits of the goddess. The hijras by sacrificing their potential reproductive capacity to the Goddess derive the power to confer fertility. In Bahuchara's temple, hijras work as temple servants, blessing worshippers and narrating stories of the deity.



Figure 2. Bahuchara Mata: Hijra Goddess³¹

Reddy during her field work in Hyderabad observed interesting religious affiliations of the hijras. Reddy talks about hijras' supralocality, their ability to cross borders of gender, religion and the nation that allow their Muslim positionality.³² They used Hindu mythology and iconography to legitimize their identity and yet many proclaim themselves to be Muslims. She discovered that members who had been circumcised (usually Muslims) had more prestige in the hijra community and they were called *sunnat*. All adhered to the practice of the *namaz*, though most did not go to the mosques, but some of them even went to Hajj. Yet there were others like the *jogins* who were fully Hindus. Thus, it appears that hijras draw freely from the

³¹ Source: <http://www.ultrabrown.com/posts/eunuch-devi>

³² Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006), p. 120.

cumulative and social backgrounds of those who join the community. The community is in fact characterized by religious and communal syncretism.

There are many versions of the legend regarding Bahuchara Mata. Reddy writes about it as narrated to her by the hijras: once upon a time, there was a prince who was married off to an extremely beautiful goddess, but the marriage was never consummated. Every night the prince would wander off somewhere, and one day the goddess followed him and discovered that he was enjoying himself with other men. She got angry and said that people like him should be reborn as neither men nor women and so saying she cut off his genitalia. However, conceding that it was not entirely the prince's fault she said that if castrated men worshipped her at that point she would help them recover quickly and bless them with her power.³³

Another version of the legend of the goddess as documented by Nanda is: Bahuchara was a beautiful maiden in a party of travelers passing through the forests of Gujarat. The party was attacked by thieves and fearing that there was a danger to her modesty, she cut off one of her breasts. This act caused instant death and led to her deification and it also led to the practice of self mutilation and sexual abstinence by the devotees to secure her favour.³⁴

There is another legend explaining the attachment of the hijras to the deity. It is said that once a king prayed to the goddess for a son and the wish was granted. The son Jetho was however impotent. One night she appeared in Jetho's dream and commanded him to cut off his genitals, dress in female clothing and become her servant. It is believed that since then impotent men get a call from the goddess to get emasculated. There is also a popular belief in Gujarat that anyone resisting such a call invokes the curse of the goddess to be born impotent for seven future births.

In Tamil Nadu each year in the month of April/May (chaitra month of Saka Samvat), hijras or aravanis (meaning brides of the god Lord Aravaan) celebrate a religious festival. The aravani temple is located in the village Koovagam in the Ulundurpet taluk of the Villupuram district, and is devoted to the deity Koothandavar.

³³ Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006), pp. 108-109.

³⁴ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Belmont, Calif.: Wadsworth Publishing Co., 1990), p. 25.

During the festival, the aravanis re-enact a story from the Mahabharatha: the mythical wedding of Lord Krishna (who had assumed the form of a woman: Mohini) and Lord Aravaan, son of Arjuna, followed by Aravaan's subsequent sacrifice.

As the epic goes, in the battle of Kurukshetra, the Pandavas had to sacrifice one warrior to gain a tactical edge over their warring cousins. Their war council selected Aravaan, one of Arjuna's sons. He agreed to die for the holy cause of defeating the Kaurava cousins, but he expressed a wish to marry first. Aravaan's last wish posed a huge problem, for no one would knowingly let their daughter marry a man who would die in battle the very next day. To solve the problem, Lord Krishna assumed the form of Mohini and married Aravaan. It appears that this man-woman context appealed to the eunuch community, and they deified Aravaan.

The hijras see themselves as Mohini, and on the festival day the priest at Aravanan's temple marries them off to the diety. They tie a *mangalsutra* to symbolize their marriage to Aravaan. The next day, the *mangalsutra* is pulled off to signify their widowhood. They then mourn Aravaan's death through ritualistic dances and by breaking their bangles. An annual beauty pageant is also held, as well as various health and HIV/AIDS seminars. Hijras from all over the country travel to this festival. The festivities also include contests like painting, singing, dancing, elocution, etc. A personal subjective experience of the hijras in this festival is shown in the documentary India's Ladyboys, by BBC Three.

Hijra Roles: Ritual Performers, Ascetics, Sex-Workers

The hijras in India perform a third-gender role which is institutionalized through tradition. The hijra role is deeply rooted in Indian culture and it accommodates a variety of temperaments, personalities, sexual needs, gender identities, cross-gender behaviours, etc. According to Nanda, the hijra role succeeds as a symbolic reference point because of the significant place accorded to alternative gender roles and gender transformations in Indian mythology and traditional culture.

Their traditional occupation is that of performing after the birth of a child, at weddings, and at temple festivals, and this is how they legitimate themselves to themselves and to the larger society. Hijras bless childbirths, weddings,

housewarmings and other auspicious occasions. At the news of a wedding or birth of a male child in the neighborhood, a troupe of hijras inevitably show up unannounced and uninvited to bless the event by singing, drumming, and dancing. The ostensible purpose of the performance is a ritual entreaty for fertility on behalf of the bridegroom or newborn son. They are believed to possess occult powers, and their blessings and curses are both considered potent. The belief in the hijras' ability to confer blessings in the name of Mother Goddess is a 'double edged sword'.³⁵ The hijras can bless fertility but they can also curse with infertility. They claim that they possess the power of making their words (blessings/curse) come true because of their alternative gender role. They draw a parallel with Shiva, when he cut off his phallus and threw it on earth, he extended his sexual power to the universe; similarly, the emasculated hijra has the power to bless others with fertility.

As ritual performers, they partake in such rites which they themselves are incapable of experiencing like marriage and birth. This particular dimension Reddy explains by quoting Hildebeitel who says, "when eunuchs dance and sing at births and weddings, they mark by their presence the ambiguity of those moments where the non differentiation of the male and the female is most filled with promise and uncertainty: in the mystery that surrounds the sexual identity of the still unborn child, and in that which anticipates the re-union of the male and female in marital sex".³⁶

Hijras while performing at the birth of an infant usually examine the infant's genitals because they believe they have a legitimate claim on the intersexed infants. While during marriage ceremonies, they make fun of the groom through their wedding songs. Nanda writes that the *badhai* performances involve sexually suggestive parody of feminine behaviour and their verbal play functions as a kind of ritual of reversal; i.e. in India the groom occupies a higher status and the through such performances they are humbled through fun and mirth. Hijra performances are most often burlesques of female behaviour. Much of the fun of the performance derives from the incongruities between their behaviour and that of women whom they imitate.

³⁵ Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Belmont, Calif.: Wadsworth Publishing Co., 1990), p. 6.

³⁶ Alf Hildebeitel, 'Siva, the Goddess, and the Disguises of the Pandavas and Draupadi', *History of Religions*, Vol. 2, No. 1/2, 1980, pp. 147-174. Accessed at <http://www.jstor.org/stable/1062340>, as on 12.12.08.

The performances are exaggerations are caricatures of the feminine behaviour. Jaffrey observes that though they were regarded outcastes, through their performance they are able, through a comedy of manners, to transcend the barriers of rank, caste and class, and reduce everyone to ridiculous equals. He calls them the shadows and critics of society.³⁷

Their dancing and behavior is usually sexually suggestive with a deliberate attempt to perturb the party's decorum, with the implication that if appropriate recompense is not forthcoming they will escalate their outrageousness to more shocking extremes. If the hosts are stingy or refuse to pay, the hijras retaliate by exposing their genital areas, loudly ridiculing the family to the neighbors, or cursing the hosts. They are considered to be a nuisance, even extortionists, and yet they are deemed lucky; they were not paid to perform, but to leave everyone in peace.

Nanda observes that the sexual ambiguity of the hijras as impotent men represents a loss of virility which evokes fear and results in remuneration for the hijras in lieu of their *badhai* performances. The fear is so intense that in parts of north India, even today it is believed that hijras should not see or touch a new bride, believing that the hijras' infertility will contaminate the bride and diminish her reproductive potential.

Begging is a steady source of income and it is consistent with and even reinforces the hijra self image as religious mendicants. Earlier in certain princely states the hijras had begging rights, but now they have to use ingenious methods to demand money from the public. Hijras are often encountered on streets, trains, and other public places begging money, especially from young men. If refused, the hijra may attempt to embarrass the man into giving money, using obscene gestures, profane language, and even sexual advances. Nobody wants to be accosted by one of them - be nudged with their elbows, stroked on the cheek, taunted, cursed and flashed. Their style of begging is very aggressive. The ultimate weapon they unveil to extract money from the people is by lifting their petticoats, exposing their genitals and cursing. Hall argues that the hijras reclaim the space normally unavailable to them through the use

³⁷ Zia Jaffrey, *The Invisibles: A Tale of the Eunuchs of India* (New York: Pantheon, 1996), p. 19.

of insult. They are usually shameless because they have no dignity or social position to maintain; instead, they exploit their shamelessness for financial gain.³⁸

Yet what needs to be analyzed is whether fear is the only factor which sustain this ritual role; or is it the difference, the crudeness, the embarrassment/discomfort of nakedness or display of private parts, or is it the power of subversion, the realization of what impotence or loss of virility is like.

Family planning has affected their traditional occupation. Since families are having fewer children it has definitely reduced the scope of their earnings. Moreover, in modern India, hijras' presence at weddings and baptismal ceremonials is only barely tolerated. Nowadays they also dance at college functions and stag parties. But with increasing urbanization, education and westernization, the status of hijras as traditional ritual figures like hijras has become less compelling. Modernization of Indian society has curtailed the traditional occupation of the hijras; and this in turn is increasing their dependence on prostitution. Since the society offers no opportunity structure (hijras are not even employed as domestic help) to them, they resort to prostitution.

This section seeks to uncover a series of disjunctions which exist between the cultural definition of the hijra role and the real-life complexities. For instance, one disjunction is between the cultural definition of hijras as asexual ascetics and sex-work as a practical livelihood option for them. Their role as prostitutes goes totally against their traditional notion as ascetics/sannyasis. But in many cases, prostitution is not a choice for the hijras but a compulsion. Like in south India, hijras do not have any cultural role as ritual performers and so most earn their living through prostitution. Hijra testimonies reveal that their clients were often heterosexual men who could not afford a female prostitute. The rest were closet gays for whom hijras were the only source of release for pent-up frustrations. As sex-workers they are extremely vulnerable to AIDS, abuse, harassment and sexual violence.

³⁸ Kira Hall & Veronica O'Donovan, 'Shifting Gender Positions Among Hindi Speaking Hijras', In Victoria Bergvall, Janet Bing, and Alice Freed (eds.), *Rethinking Language and Gender Research: Theory and Practice* (London: Longman, 1996), pp. 228-266.

The traditional minded hijras deride the hijra prostitutes as they tarnish the ritual status of the hijras in society. This is indicative of a strong sexual hierarchy operating in the community. The tension between asceticism and eroticism or *tapas/kama* is played out in the life of hijras and is manifested in the form of sexual hierarchy between the *badhai* and the *kandra* hijras. This tension in Hinduism is however reconciled through the *ashrama* system in the Vedas. This understanding is extrapolated to resolve the conflict and instead view the *kandra* and *badhai* as two successive phases in the life course of the hijras.

In conclusion, it can be said that the hijras exist as sexual outcasts on the margins of society. They are extremely vulnerable to public mockery and repulsion. Their marginalization is so intense that they themselves internalize the idea that they are inferior human beings, and the sense of stigma forces them to leave their families. This marginalization does not just happen. It is done by all of us 'normal' people. As children, we indoctrinate the belief that all hijras are evil, that they kidnap kids and are harbingers of everything bad. This is the belief that we carry with us as adults and teach to the next generation. This way, generation by generation, the hijras remain outcasts, shunned by society. This shunning is not because there is anything wrong with the hijras themselves. It is more because the society finds it hard to accept 'otherness' and is willing to cling to the stifling laws and beliefs. Given a chance, they will surely do well in any vocation and contribute positively to the society. But only if they are given a chance. Thus, an important question to ponder over is who are the deviants – those who refuse to accept human diversity or those who are trying to preserve their own existential reality against the onslaught of social intolerance.

The hijra world may be stigmatized by the mainstream, a deviant world which is outside the bounds of respectability. But the hijras have successfully carved out their alternative sexuality by constructing their own social universe, community network, economic security and own religio-cultural system. This chapter explained what it implies to be a sexual minority and how the community is distinct in terms of their social organisation, religiosity, performativity, etc. This chapter outlined the nature of interaction between the hijras and the society. The next chapter attempts a deeper insight into the extent of their discrimination, exploitation and exclusion by

examining the challenges and problems that the hijras face in dealing with the state machinery.

CHAPTER III

*Indian State & the Hijra Community: Shift from a
Repressive To Inclusive Approach*

This chapter is a critical appraisal of the state and its apparatus with regard to its approach towards the hijra community. The first section of the chapter shows how the state marginalizes, ignores and ultimately erases the very existence of the hijras. The state attitude is examined under the subsections: repression of the hijra identity, indifference to their plight and unresponsiveness to their pleas. This chapter analyses the repressive character of the state by undertaking an examination of several institutions like the police, judiciary, census, laws and other departments. The root cause behind this attitude of the state is its adherence to heteronormativity and the sex-gender binary. Through gender enumeration, the state ignores the hijras which turns them into an oppressed minority. The state's construction of gendered identities is inherently biased in favour of a heterosexist framework and thus it excludes the hijras. The main argument of the chapter is to show sexual dimorphism operates as an ideology through different institutions to stigmatize a section of the populace as deviants. The chapter also traces the shift of the Indian state towards the hijras; a shift from a repressive to an inclusive one. The second section of the chapter examines the state's current welfarist approach, its recognition of alternate sexuality and its claim to inclusiveness. The conclusion of the chapter examines the substantiveness of the change and the extent to which this new inclusive face of the Indian state is emancipatory.

State's Perception of Alternate Sexuality

The Indian state is not just a sovereign demarcated territory, but also a set of cultural institutions that generate gendered ideologies, establish administrative policies and procedures and enforce them through direct and indirect violence. Though India is a liberal, democratic country, it denies free sexual and/or gender expression. The Indian state is particularly conservative (though small changes are discernible recently) and harbours a heteronormative bias. This chapter begins with the analysis of this bias because both the different faces of the Indian state (repressive, indifferent, even perhaps the inclusive) is guided by it.

Heteronormativity is the belief that human beings fall into two distinct and complementary categories, 'male' and 'female'. Flowing from this premise are other

beliefs like sexual dimorphism and heterosexuality. As a concept it is descriptive of a dichotomous system of categorization that directly links social behavior and self identity with one's genitalia. This implies that there are strictly defined concepts of maleness and femaleness, and mutually exclusive gender identity and role. Thus, heteronormativity expects physical sex, gender identity, and gender roles in any given person to be aligned to either male or female norms. The concept of heteronormativity seeks to make visible the underlying norms of the 'normal' society. These norms usually include: dress and mannerisms, choice of occupation, choice of hobbies, and the gender of one's mate (heterosexuality).

The problem with heteronormativity is that it distorts discourse by stigmatizing alternative concepts of both sexuality and gender, making certain types of self-expression difficult or impossible. The Indian state by nurturing a heteronormative bias offers a binary choice of male and female for one's gender identity, this in turn precludes any possible choice about one's gender role and sexual identity. Heteronormativity results in invisibilization because relations which have no reproductive mandate or which are non procreative is either suppressed or removed from public view. This position is exclusionary and is akin to a policy of social cleansing.

The state is guided by the ideology of sexual dimorphism and heterosexism which establishes the male-female sexual relationship as the only valid/ possible lifestyle and renders invalid the lives and culture of those who do not fit in. This ideology pervades not only all dominant societal institutions such as the family, the medical establishment, popular culture, public spaces, workspaces and household spaces, but also the state apparatus like legislature, judiciary, police, bureaucracy, etc. Heteronormativity reinforces the notion that sexuality that includes sex, gender, sexual orientation and sexual behaviour are all determined at some point through some natural, genetic intervention during our birth. Since this belief is internalized, one learns to in strict binaries of male and female and the separate social roles associated with both.

The state is in fact, steadfast in denying acceptance to the group whose sexual behaviour is different from the certified norm, and being a minority has made them susceptible to harassment in all spheres of life. From education to employment to

even something as basic as walking on the roads without attracting disgusted or fearful stares is denied to them. The state thus considers the people with alternate sexuality (hijras included) as abnormal, diseased, or immoral. The state response ranges from intolerance, pity, shunning, violence, and attempts to 'normalize' them through medical means. The official agencies adhere to a strict sex-gender binary which classifies people into 'male' and 'female' genders only. Since the state apparatus operates in a heterosexist/heteronormative framework, people with alternate sexuality or gender ambiguity face hurdles in accessing their rights and privileges, such as child custody, inheritance, medical aid, etc. Thus, it is sexual dimorphism, heteronormativity and heterosexism which make the Indian state repressive, indifferent and unresponsive.

The Repressive State

This section maps the conceptual landscape of social politics that follows the markings of sexuality based exclusion. It seeks to unveil how the realities of the non-normative experiences – i.e., gender identities, sexual practices, alternate sexual identities, etc contest the embedded nature of heterosexism in the state and its apparatus, law, medical practice, culture, and society.

Sexuality is no longer considered as personal/private; rather it is regarded as the site of power politics. Social institutions condition sexual attitudes in a big way, social mores police sexuality, while the state specifies what kind of sexuality is legal. The state through its legal mechanisms creates inequalities between normal and abnormal sexuality. The state is called repressive because it not only subscribes to but also actively reinforces the sex-gender binary, resulting in the oppression, exclusion and marginalization of the hijras. The state is apprehensive of alternate sexuality because it haunts the boundaries of the legitimately constituted sexual subject, fearing that its threatening presence would expose the grounding of the legitimate subject as based on erasures and exclusions. The state fears that the hijra identity (as a successful case of alternate sexuality) would challenge the legitimate sexual subject, disrupt the stability of society and perpetuate a crisis in any claim to a universal

sexual and cultural truth.¹ It is the fear of social upheaval and chaos, the loss of all social order. State's obsession with binaries has led to a stigmatization and delegitimization of the hijras and other sexually diverse people.

Pre-colonial repression of alternate sexuality occurred in local, limited time/spaces and coexisted with their acceptance elsewhere; today repression is temporally eternalized and territorially generalized through inscription in national laws, by the Indian state. Where pre-colonial deviant sexuality was punished, sanctions did not necessarily include permanent exile; today they are materially exiled through permanent deprivation of citizenship.

Hijras: The Invisible Citizens?

This section explores the relation between sexuality and citizenship, how the Indian state negates the existence of hijras as legal citizens. Sexuality based patterns of exclusion and inclusion in relation to democracy, citizenship and states policies have been analyzed in this section. Citizenship is chosen as the first example of state's attempt to repress hijra identity because citizenship is a legal status, a formal identity, an expression of one's membership in a political community. It promises protection from arbitrary rule and participation in political decision making it functions as a universal yardstick against which marginalized groups can stake their claim and measure progress towards full inclusion.

The specific circumstances of one's life/birth or life choices form the enabling or debilitating context which determines the extent to which one can enjoy one's citizenship rights. For the hijras, their birth or conscious identification with a transgressive sexuality forms the basis of their exclusion. Given this ground of discrimination, hijras are demanding recognition of their alternate sexual identity. They have also been struggling to end state's denial of citizenship rights on the ground of their deviant sexuality. Like the feminists, the transgender activists have argued that sexuality is not private or biological but the site of power politics.

¹ Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (Delhi: Permanent Black, 2005), pp. 22-45

Sexuality is not personal but is intersected by law, religion, nationality; it is linked to public privileges (like health and human rights) and persecutions. Sexuality is political (as Iris Marion Young proclaimed) because power differentials of the state extends to the private domain. Sexuality is in fact, embedded within the interstitial layers of concepts, such as citizenship, representation, participation, empowerment, decision making, etc.

The hijras suffer from dual existential realities. On the one hand they are invisible to the state, whereas, on the other hand, they are hyper visible in the society, where they are under constant surveillance and are often ridiculed for their alternate sexuality. It is true that hijras are generally visible, 'out' and part of an organized community unlike other sexuality minorities who still remain closeted. But this presumed cultural status can barely conceal the stark reality of the hijra existence in Indian cities where their transgressive sexuality, which is violative of heterosexist norms of society, is circumscribed by experiences of shame, dishonor and violence. Hijra invisibilization means that they are not seen by the Indian state when money or resources are allocated or when policies are being formulated and hence their interests and problems are routinely ignored by the state. Invisibilization is oppressive because as Charles Taylor opined that lack of recognition is a kind of exclusion. Non recognition not only inflicts harm on groups and individuals but also is a form of oppression because it implies exclusion and marginalization from full participation in the community. Hijra invisibilization in fact leads to a democratic deficit i.e. the systematic under-representation of hijra community and their exclusion from effective participation and control over the political agenda.

The Constitution gives rights on the basis of citizenship and not on the grounds of gender. But the state subscribes to the two gender model which ignores their identity and reduces them to half/non citizens. Thus, alternative sexuality and gender non-conformity adversely affects their ability to access basic civil rights otherwise available to all other citizens. 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 the binaries of 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 in one stroke of several rights that Indian citizens take for granted.

The state needs to grant all people have the right to sexual well being, including a right to self affirming and enjoyable sexuality, and not discriminate among its citizens on the basis of sexuality. The state by adhering to the sex-gender binary creates a hierarchy among its citizens, relegating the hijras to a second class status. Hijras are now demanding a reconfiguring of citizenship and allied rights and privileges. For example, transgender activist, Sunil Gupta says, “There is no reason why 10 per cent people like me should be treated like second class citizens. We are tax payers and voters and we need our equal rights. No matter how people look at us, but in the eyes of law we are also citizens.”² They have referred to contemporary debates on citizenship and rights have questioned the idea that the citizen can enjoy rights independent of the contexts to which she/he belongs. A significant terrain of contestation opened up in the 1980s in citizenship theory, with multiculturalism, plurality, diversity and the difference having become significant terms of reference for re-theorizing citizenship.

Differentiated citizenship seeks to accommodate the needs of specific cultural groups. The term differentiated citizenship was first used by Iris Marion Young.³ Young foregrounded the new concept of differentiated citizenship because she considered equal treatment for all groups a false universalism as it excluded those who did not comply with the dominant norms and perpetuated de-facto discrimination. Her aim was inclusion in the public sphere as equals. The concept advocates the incorporation of members of certain cultural groups not only as individuals but also as members of groups, their rights depending in part on this group membership catering to their special needs. Thus, group differentiated citizenship allowed group differences to be affirmed and institutional mechanisms were so developed that the voices of oppressed groups would be heard and represented in the political arena. She advocated the right of the different oppressed groups to propose policies based on their own interests and even veto those general policies which

² ‘Gay Pride Parade to Celebrate Alternative Sexuality’, June 29, 2008. Accessed at <http://ibulive.in.com/news/gay-pride-parade-to-celebrate-alternative-sexuality/67976-3.html?from=search-relatedstories>, as on 12.02.09.

³ Iris Marion Young, ‘Polity and Group Difference: A Critique of the Ideal of Universal Citizenship’, 1989.

adversely affect them. Differentiated citizenship rests on the notion of social differentiation without exclusion, i.e. a politics of difference built on mutual recognition and acceptance of difference. This line of argument is being used by the hijras to justly claim their identity from the state which has so long repressed their identity.

Taking the cause of the sexual subalterns a step forward is the concept of sexual citizenship. Sexual citizenship, like gendered citizenship challenges the traditional disembodied construction of citizenship and the public-private divide that underpins it. Jeffrey Weeks⁴ identified the components of 'sexual citizenship': first, the demand for control over bodies, feelings and relationships, second, the demand for access to information, representation, and space (i.e. improving access to clubs, cinemas, and other places where relationships can be formed); and third, the demand for choice over identities, lifestyles and gender experiences. Yuval-Davis has argued for a multi-tiered construct of citizenship, which recognizes that individuals are not bounded by group identity and these boundaries are continually being recast.⁵

Reclaiming one's identity from the state through citizenship is important because it is a legal strategy and a powerful discursive resource for individuals to fight discrimination and human rights violation. When the state ignores the different needs, claims and situations, the subjectivities and identities of citizens it perpetuates exclusion.

Hijras as Victims of Law

The laws in India like the IPC are inconsistent with the country's ancient cultural past which did not penalize people with alternative sexualities. The law in the present time is however, used to punish sexual deviance and it props a culture of violence and intolerance towards the sexual minorities. Some of these laws have colonial origins like the Criminal Tribes Act of 1871, Section 377 of the IPC. It was part of the colonial project to view Indians as sexually perverse, uncivilized and undeserving of freedom. This colonial encounter has left an egregious legacy of stigmatizing sex and criminalizing sexual diversity as deviance. Thus, the intolerance of sexual diversity

⁴ Jeffrey Weeks, 'The Sexual Citizen', *Theory, Culture & Society*, Vol. 15, No. 3, 1998, pp. 35-52.

⁵ Yuval-Davis, N., *Gender and Nation* (London: Sage 1997), pp. 3-25.

and repression of hijra and other alternate sexual identity is inherited from the British sex-gender binary model.

The colonial perception of alternate sexuality was negative. The British were not just intolerant but were hostile to sexual/gender deviance; they regarded the hijras as the scum, the flotsam and the jetsam of Indian life, of no more regard than the beasts of the field. This colonial hostility to the hijra identity is reflected in the 1897 amendment to the Criminal Tribes Act of 1871, subtitled: An Act for the Registration of Criminal Tribes and Eunuchs⁶. This Act in one stroke equates all criminal tribes with hijras thereby criminalizing their existence. The sexual non-conformity of the hijra earned severe strictures and penalties from the colonial administration. Being a hijra was itself a criminal enterprise, with surveillance being an everyday reality. The surveillance mechanism criminalized the quotidian reality of a hijra's existence by making its manifest sign, i.e. cross-dressing, a criminal offence. The police, inflicting violence through and outside law, thus became an overt and overwhelming presence in the lives of hijras as well as of the former criminal tribes.

As per the law, any hijra who appeared “dressed or ornamented like a woman in a public street ... or who dances or plays music or takes part in any public exhibition, in a public street ... [could] be arrested without warrant and punished with imprisonment of up to two years or with a fine or both.” Under the provisions of this statute, a eunuch (as the British called the hijras) meant, “... all members of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent.” Under this law, the local government was required to keep a register of the names and residences of all hijras who were “reasonably suspected of kidnapping or castrating children or committing offences under Section 377 of the Indian Penal Code”. The law also decreed hijras as incapable of acting as a guardian, making a gift, drawing up a will or adopting a son. If any hijra had in his charge a boy under the age of 16 years within his control or residing in his house, he could be punished with imprisonment of up to two years or fine or both.

⁶ Extracts from the Act is provided in the Appendix II.

The law that was used the most to threaten and routinely harass the hijras was Section 377 of the IPC.⁷ This Section is a colonial relic (reflective of the homophobia and erotophobia of the British), drafted in 1860 by Lord Macaulay. It was actually a part of the colonial project of regulating and controlling the Indian subject. Section 377 of the IPC reads:

“ Of unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature, with any man, woman or animal shall be punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine”.

The section criminalizes all non-procreative sex and is the de-facto justification for the persecution and harassment of all those whose sexual expressions might qualify as sexual or gender deviance. It denied the right to alternate sexuality and instead criminalized sexual expression by homosexuals, bisexuals and transgendered. This section provided the legitimacy for the police to arrest, blackmail, sexually abuse, and "out" any individual with alternate sexuality. The problem with the law was that it legitimized the culture of violence and intolerance towards people with alternate sexuality. It was a powerful weapon in the hands of police and goondas to harass, abuse, extort and torture the hijras and other sexual subalterns routinely. This law formed the structural basis for the widespread stigma, discrimination, marginalization and prejudice against the hijras and other with alternate sexuality in our society.

The Immoral Traffic Prevention Act (ITPA) of 1956 (amended in 1986)⁸, criminalizes brothel-keeping, trafficking, pimping and soliciting; but, in reality targets and intimidates the hijra sex-worker population. Immoral Traffic Prevention Act (ITPA) is based on the erroneous premise that there is no such thing as voluntary sex work and punishes mostly poor people whose livelihood is based on sex work. Sex work and trafficking are not synonymous. Whereas trafficking is coercive and exploitative, sex work can be a conscious choice of an individual as a means of livelihood. The ambiguity of Indian laws denies sex workers (hijras included) their legal rights, making them vulnerable to extortion of all kinds and pushing them to the

⁷ It was only on 02.07.09 that the Section was read down decriminalizing homosexuality. The campaign for its repeal and its impact on the community and how the latest verdict of the Delhi HC is a historic win for the hijra and other transgender activists is dealt in greater detail in the next chapter. The analysis of the implications of this law is based on the study of events till 20.07.09.

⁸ The entire Act can be accessed from <http://socialwelfare.delhigovt.nic.in/immoraltraffact.htm>

margins of society. This law has become a tool to harass, abuse, extort and torture the sex workers (including hijras) across India. IPTA violates their sexual rights and expose them to organised violence, public stigma and discrimination. Currently, the Indian Government is proposing to amend ITPA by seeking to penalize clients of sex workers.

Legal lapses and constitutional silences affect the status of the hijra community in a big way. For instance, the constitution of India specifies certain prohibited grounds of discrimination such as race, caste, creed, religion, sex, etc, but it does not specifically prohibit sexual orientation or nature of sexuality. This silence turns sexual subalterns as subjects worthy of harassment, humiliation and discrimination. These legal lacunae make them invisible when it comes to being right holders. Thus the condition of the hijras according to the law of the land is one of enforced invisibility; enforced because it is deliberate, and this invisibility translates into powerlessness. Law does not recognize their alternate sexuality, so they are non entities in the eyes of law. Such a situation perpetuates identity crisis for them. There are different types of recognition that the sexual subalterns seek, one is for the state /condition they are in (like hermaphrodites, intersexual, transsexual, sexual ambiguity, gender identity dysphoria, etc) and the other is the recognition for the in-between condition (especially for hijras, transsexuals, etc) and another for their transformed identity (i.e. the post SRS condition).

There is no legal framework in place to deal with these situations as Indian laws do not legalize voluntary castration, neither does it have provisions to recognize the new achieved identity after the sex-change operation. Thus, there is legal process to inculcate a better understanding of the principles of social construction in understanding gender, sex and sexual orientation. It is completely silent on these issues. Indian law does not endorse the right to sexual autonomy, it offers no legal protection to the sexual subalterns, and neither does it permit individuals to identify with a particular gender identity or sexual orientation. For example, Priya Babu has 'eunuch' on her passport, 'female' on her ration card and 'TG' or transgender on her *patta* (land) document. In 2004, she filed a writ petition in her battle seeking the third gender status for transgenders. "Without a Government Order, we cannot move forward in our attempt to procure ration cards for every transgender. Our existence is

as good as denied without the GO,” Priya complains.⁹ Elsewhere in Mumbai, Neha has been doing the rounds of the local municipality office for more than a year to get her name changed from Dinesh to Neha in her ration card.¹⁰

Thus, this section demonstrates how the systematic discrimination and violence that the hijras face is in fact legitimized by the Indian legal system. Their victimization by law include routine extortion, harassment, abuse, illegal detention, and rape, all of which are perpetrated by the police under the cover of legitimacy provided by the criminal law framework. Underpinning intimidation by organs of the state is an insidious and pervasive culture of silence and intolerance practiced by different sections and institutions of society. Thus, lack of legal recognition of the transgender/ 'alternative sexuality phenomenon perpetuates basic denial, discrimination and phobia.

Media: Creating Stereotypes

The Indian media is guided by heteronormative bias and so is responsible for stereotyping the hijras. This section analyses the various ways in which popular cinema encodes alternative sexualities and desires as it is rooted in a heterosexist and dimorphic framework. The Indian media has typecast the hijras in negative shades or in a comic vein. They are usually depicted in drag roles and as background entertainers for comic relief. They are usually portrayed as objects of derisive comedy or disgust. Hijra roles gained popularity in films because of the fun derived from impersonating female roles and cross-dressing. Many actors used to cross-dress with deliberate crudity so that they are not mistaken for a woman but a hijra in an attempt to evoke laughter. Later the trend emerged of using real hijras in song and dance sequence for the *badhai* performance. This trend started with the film *Kunwaara Baap* in 1974. Since then, hijras have been shown in song and dance sequences for fun, mirth and entertainment. We find such depictions of hijras in films like *Amar Akbar Anthony* (1977), *Lawaaris* (directed by Prakash Mehra 1981), *Soorma Bhopali* (directed by Jagdeep 1988), *Hum Apke Hain Kaun* (directed by Sooraj Barjatya,

⁹Divya Trivedi, 'Cry Inclusive', *Business Line*, November 16, 2007. Accessed at <http://www.thehindubusinessline.com/life/2007/11/16/stories/2007111650060300.htm>, 12.12.08.

¹⁰ Ibid.

1994), *Nayak* (directed by S. Shankar 2001), *Bride & Prejudice* (Gurinder Chadha, 2004) and a host of other films. Comic roles apart, they are at times painted in negative shades (like gang leaders, pimps, etc.), as heartless, cruel beings either involved in crime or sex trade. A particularly insensitive portrayal of the hijras was in the film *Sadak* (dir. Mahesh Bhatt, 1991) where the hijra is a villain, played by Sadashiv Amrapurkar shown as brothel owner Maharani.

In all these films, hijras are shown as primary markers of sexual otherness. Thus, their on-screen representation is symbolic of sexual and gender transgression and other non-heteronormative genders or sexualities. But they merely fix the hijras as a symbol of sexual deviance and ignore their subjectivities. The depictions are reflective of mainstream mentality regarding the hijras. The media glamourises heterosexual relationships, but alternate sexuality has remained a despicable act in the eyes of the media.

The state is held responsible for media projections because no government till date has issued any directive to the media (Press Council of India, All India Radio and Doordarshan) to ensure sympathetic portrayals. Media is a powerful tool and it could be utilized to spread sensitivity and non-discriminatory attitude towards the sexual subalterns. The state is guilty of not exploiting the media resources to promote inclusion. The media with state acquiescence panders to the mainstream view regarding alternate sexuality. The state supports the media in its marginal and stereotypical representation of the hijras. This way the state reinforces the sex-gender binary and represses the identity of the hijras.

Medical Regimentation: Erasing Alternate Sexuality

Foucault rightly called medicine and psychiatry to be the new forms of discipline¹¹ because the medical fraternity has taken the onus upon itself to regulate and manage all cases of alternate or ambiguous sexuality. The extent of their medical regimentation can be gauged from the fact that a sizeable section of the population is assigned a gender identity at birth by the doctors. Although there is no conclusive

¹¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan (New York: Random House, 1979)

frequency data on the prevalence of intersex, rough estimates based on a review of recent medical literature suggest that approximately 1 or 2 per 2,000 children are born with bodies considered appropriate for sex assignment surgery¹² and that nearly 2 percent are born with chromosomes or other non-genital features that could be considered intersexed.¹³ These estimates vary on the way the parameters are analyzed.¹⁴ All these estimates hold true for the American context, but such patterns strongly hint at such possibilities in India as well. The only reason why such concrete data have not been unearthed in India is that enough social science research has not been done on medicine and its social impact.

Medical regulation of sex, sexuality and gender has resulted in a host of pathological and criminological perspectives colouring all discussions on alternative sexuality issues. The problem with the medical regulation of intersexuals is that instead of finding the true sex, they are guided by considerations like what may be the best sex for an individual, i.e. the sex deemed most appropriate, not just physically but in terms of the psychological and social environment. Thus, the methods developed to correct gender-transgression or sexual ambiguity in hermaphrodites or intersexuals has resulted in a form of 'medico-colonization' of the differently gendered/sexed body. The primary concern of the medical fraternity seems to be the swift assignment of a genitally appropriate gender for an infant. Families typically remain marginal in the decision-making process regarding evaluation and treatment, while the medical team retains nearly exclusive control over the situation.

¹² Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* (NY: Basic Books, 2000)

¹³ Blackless et al., 'How Sexually Dimorphic Are We?', *American Journal of Human Biology*, 12, 2000, pp. 151-166.

¹⁴ Additional estimates note the frequency of intersex as comprising approximately 1-4 percent of all births (Edgerton 1964; Fiedler 1978; Money 1989). These estimates vary widely, depending on one's definition of intersex (Dreger 1998c; Kessler 1998). For example, some low estimates reflect acceptance of the traditional definition of true hermaphroditism, which accounts only for the rare occurrence of mixed gonadal tissue (i.e., the presence of ovarian and testicular tissue in the same body). Other researchers include children born with pseudo hermaphroditism, which typically presents in a child with internal gonads that are consistent with the karyotype (typically XX or XY) and external genitals that are incongruent with internal gonads and chromosomes. Finally, other researchers may also include chromosomal variations such as those found in Turner's syndrome (45, XO) and Klinefelter's syndrome (e.g., 47, XXY). Blackless et al. 2000 suggest that the total frequency of nongenital intersex (intersex chromosomes or nongenital body parts) is much higher than 1 in 2000 and that working with a more inclusive definition of intersex would yield frequency estimates closer to 1 or 2 per 100.

The attitude of the Indian medical establishment has colonial origins. It has therefore borrowed the western bio-medical stance of viewing the 'hermaphroditic people' as freaks or 'aberrant cases' needing medicalization and correction. They have turned people with sexual ambiguity into "pathologised others". Such patients are usually either a source of curiosity or a tool for experimentation. Moreover, the Indian Council for Medical Research (ICMR) nor the Medical Council of India (MCI) has formulated any guidelines to be followed in SRS (Sex Reconstructive Surgery); the council is in fact silent on the issue of transsexuality and other gender identity disorders. Surgical correction of inter sex infants often involve considerations of convenience and expediency by the medical fraternity¹⁵, which may not be the right thing to do. Such surgeries are usually arbitrary gender reassignments based on what it was easiest for the surgeons to do.

Current scientific research strongly suggests neurobiological origins for gender ambiguity. Scientific evidence points out that certain brain-structures in the hypothalamus (the BSTc region) determine each person's core gender feelings and innate gender identity. These structures are 'hard-wired' prenatally in the lower brain centers and central nervous system (CNS) during the early stages of pregnancy, during a hormonally-modulated imprinting process in the central nervous system (CNS). William Reiner¹⁶ quite crisply explains:

"In the end it is only the children themselves who can and must identify who and what they are. It is for us as clinicians and researchers to listen and to learn. Clinical decisions must ultimately be based not on anatomical predictions, nor on the 'correctness' of sexual function, for this is neither a question of morality nor of social consequence, but on that path most appropriate to the likeliest psychosexual developmental pattern of the child. In other words, the organ that appears to be critical to psychosexual development and adaptation is not the external genitalia, but the brain."

¹⁵ Medical literature explains that it is convenient to construct a vagina (vaginoplasty) than a penis (penectomy) and so most SRS are usually attempts to make infants females as that is the easier thing to do.

¹⁶ William Reiner, M.D., *To Be Male or Female--That is the Question*, 151 Arch Pediatr. Adolesc. Med., 1997, p. 225.

The basic perceptual mechanisms involved are therefore hard-wired, and cannot be changed by psychiatric means. Thus, scientific evidence suggests that gender identity is fixed, immutable and irreversible by any known medical or psychological means.

The state has no comprehensive policy on reconstructive surgeries; the fate of the sexually ambiguous infants is left to the discretion of the medical fraternity. This lapse or rather thoughtlessness on the part of the state is another case of hijra invisibilization. When the doctors decide the sex of the infants, it comes close to conferring a biological identity, which is problematic. This is because a life choice is being made for an infant without his/her knowledge or consent. Any wrong decision could result in creation of transsexuals or gender identity dysphoria. Sex-change operations for infants are desirable only if it imperils the life of the infant (like the cases of congenital adrenal hyperplasia¹⁷) or else it is best left to the person when he/she as an adult takes a conscious/informed decision to alter one's sex. As of now, these surgeries are only reflective of the heteronormative bias of the medical establishment and their adherence to the strict sex/gender binary. Thus it is through the medical discourse, as well as the powerful, unwritten codes inscribed in the daily functioning of institutions such as the family, religious institutions, and popular culture, that social intolerance is produced. Hijras and transgender activists therefore demand a de-pathologisation of their identity, they argue that instead of seeing intersexed genitals as aberrant, they should be viewed as one variety of genital possibilities.

The Indifferent State

This portion analyses the areas where the state does not actively or directly deny the hijra identity, and how this silence of the state ignores the predicament of the hijras. What motivates such silence is simple indifference, neglect and thoughtlessness regarding the hijra community and their problems. This section calls the state indifferent because it turns a deaf ear to their pleas, ignores cases of violence, discrimination and human rights violations.

¹⁷ Some rare cases of intersexuality do require medical intervention. This is especially true of salt-wasting forms of congenital adrenal hyperplasia (CAH) or when infants have difficulty voiding urine or feces (Diamond and Sigmundson 1997b; Kessler 1998; Wilson and Reiner 1998).

Civil Rights Overlooked: A Case of Discrimination

Indian state does not allow sexual autonomy. Sexual autonomy primarily means the freedom to seek sexual fulfillment and freedom from sexual coercion. Sexual autonomy would imply that both the private and public aspects of one's sexual or gender identity is protected as a legitimate choice of sexual self-determination.¹ Using sexual autonomy as a conceptual framework aids the examination of the problems of exclusion of the hijras. This section outlines how the hijras have been targets of focused discrimination, social ostracism, and economic boycotts.

Discrimination of hijras is at all levels, beginning from familial rejection, to ridicule in the neighbourhood, schools, etc. This discrimination is extended to the public and civil spheres and is intensified at the state level. There is a total lack of institutional support or policy packages for the hijras. Institutionally they experience discrimination as they cannot express themselves in their own terms.

They are ridiculed in public spaces – bus/train, public toilets, cinema halls, public parks, markets, places of worship and hospitals. They face huge barriers in getting accommodation. They are forced to live in slums or in the city outskirts. When they walk along the streets, people snigger. If they try to strike up a conversation, people shrink away in horror. Even if a hijra has money, she¹⁸ cannot eat at a good restaurant, visit the theater or enter a boutique.

Most rights including right to education, employment, housing, economic opportunities, health, mobility, etc. are denied to hijras on grounds of their sexuality. When hijras try to access certain rights like ration cards, passports, voter-id cards, they encounter insurmountable difficulties. And in most cases, their hijra identity is not affirmed because the fixing of sex at birth as the sex for all subsequent legal transactions means that in the legal lexicon the hijra has no identity. They are usually given these rights under a fake or superimposed identity as either males or females; it is fake or superimposed because they are arbitrarily named as male or female without

¹⁸ Here I have used a feminine pronoun to refer to them as the hijras refer to themselves using female kinship terms.

seeking the consent of the hijra. Thus, the Indian state and society cannot think beyond the sex-gender binary.

They discriminated against in almost all areas of civil life like inheritance, marriage, adoption, tax-exemption, insurance, banking, employment, etc. As our laws recognize only heterosexual marriages¹⁹, their right to marriage and family is denied. For instance, one hijra (Janaki) wanted a LIC policy in her name, which was refused to her. Janaki, says she was surprised when the company turned down her request for insurance cover.²⁰ She alleges that her request was rejected because of the ambiguity about her gender. Similarly, most of them are denied bank accounts, driving license and old age pension.

Hijras face discrimination by the medical establishment as well. They hardly visit the doctor for minor ailments because of the hostility of the medical fraternity. The prejudice is specifically encountered when they go in for treatment for STD's/HIV/AIDS and when they go in for sex reassignment surgery. The hijras are treated with contempt or disregard as if they were a despised underclass and their lives cheap and dispensable. Hijra ethnographies inform that even during medical emergencies they faced discrimination by the hospital authorities when instead of attending to them; the staff debated whether to admit them to the men's or women's ward.

The PUCL(K) Report on Human Rights Violations Against the Transgender Community has documented the kind of prejudice that hijras face in Bangalore. From this report, the general plight of the hijras across the country can be inferred. The report shows that this prejudice is translated into violence, often of a brutal nature, in public spaces, police stations, prisons and even in their homes. Harassment by the police includes physical, sexual and verbal abuse and humiliation of the hijras, illegal detention and arrests, custodial torture and sexual assault. Prisons are also places where anyone who is seen as not being 'masculine enough' is harassed and often

¹⁹ The recent Delhi HC verdict dated July 2, 2009 has legalized consensual gay sex and has not said anything on non-heterosexual marriages.

²⁰ 'Can hijras get insurance?', BBC News, September 3, 2004. Accessed at http://news.bbc.co.uk/2/hi/south_asia/3621898.stm, as on 20.06.2009.

physically and sexually abused. Even as commercial sex workers, hijras are the most vulnerable group as they are placed right at the bottom of the hierarchy of sex workers. This results in their having little bargaining power and being unable to ensure that their customers practice safe sex. They are also at risk of violence both from customers and the police.

Thus, it is established beyond doubt that they are deprived of their true civil rights; they are a community which is discriminated by nature, society and state.

Human Rights: Denied and Violated

Upendra Baxi, in the foreword to the PUCL(K) report, quite aptly remarked: “The dominant discourse on human rights in India has yet to come to terms with the production/reproduction of absolute human rightlessness of transgender communities.... At stake is the human right to be different, the right to recognition of different pathways of sexuality, a right to immunity from the oppressive and repressive labelling of despised sexuality. Such a human right does not exist in India.”²¹

This insightful statement encapsulates the human rights condition of the hijras in the country. Sexuality is very often viewed even in liberal and radical circles as a frivolous, bourgeois issue. In such a context, fight for sexual subalterns like the hijras is seen implicitly as something deviant and unnatural that is at best defended as an individual freedom but not a matter of priority for the human rights movement.

Society looks at alternate sexuality with disgust and hatred and values them as less than human beings. So their right to life, liberty, security and dignity is routinely ignored, it is still not considered worthwhile to respect the human rights of the hijras community. It is felt quite acceptable to violate the human rights of people whom the mainstream society has never really considered as human beings worthy of the same

²¹ *Human Rights Violations against the Transgender Community: A PUCL(K) Report*, Jan, 2004. Accessed at <http://www.pucl.org/Topics/Gender/2004/transgender.htm>, as on 14.11.08.

respect as 'normal individuals'. It appears that all their rights are contingent on their sexual status or sexual conduct.

There are allegations that the police harasses, threatens, blackmails and extorts money and sex from the hijras. These instances are gross violations of the dignity (dignity being intrinsic to human rights) of the hijras. Police harassment includes arbitrary arrests, cruel interrogations, and illegal detentions. Police and prison authorities rebuke, torture, humiliate and at times demand sexual favours from them. The police in fact violate all canons of civility. This maltreatment by the police is a serious human right violation but the Indian state turns a blind eye to all this. The attitude of the police is reflective of the heteronormative bias and state indifference to these human rights violation proves the state's connivance in reinforcing the binary even at the cost of their plight.

Talwar points out that India is not yet a signatory to the Optional Protocol 1 of the ICCPR, which makes it impossible for individual complaints to be made to it by the hijras or on behalf of them; complaints of human rights violation can be made only through the institutional channels like the Human Rights Committee.²² The problem is that the Committee in India is ignorant or unwilling to appraise itself of the plight of the hijras and hence no action is taken to prevent the human rights violation of the hijras in the country. Thus, it will not be incorrect to say that the maltreatment of the hijras has the acquiescence of the state.

Violence: The Unheard Voices

Violence (especially of sexual nature) is a constant and pervasive theme in all the hijra narratives and ethnographies. It is the sexuality of the hijra which is usually targeted for torturing and humiliating them. Sexual abuse and violence are the most systematic tools of dehumanizing and degrading an individual. These tools are employed by the state apparatus (like the police) and societal institutions to punish the hijras for their sexual deviance. The sexual nature of the violence is considered an apt punishment for their transgressive sexuality. Since this non-conformative, yet highly

²² Rajesh Talwar, *Third Sex and Human Rights* (New Delhi: Gyan Publishing, 1999), pp. 85-87.

visible sexuality of hijras is regarded as deeply threatening to the conventional social order, a punishment centering on a targeting of sexuality is deemed most effective.

They encounter violence in all walks of life: from the family when their sexual unconformity is discovered, from peers and friends in the locality and in school for being sissy and unmanly, from the police, from the local rowdies/ruffians/goondas, from their gurus for violating hijra customs, from their clients (i.e. the hijra sex workers get beaten up if they demand more money or safe sex), from their partners/pantis (i.e. domestic violence), and perhaps this list runs even longer. Indeed, such violence has been normalized as a part of the daily existence of the hijras. All these forms of violence are in fact reflective of social intolerance of alternate sexuality.

The police usually degrade hijras by asking them sexual questions, molest them, strip them, and in some cases rape them. Often during interrogation and while in detention hijras are subjected to inhuman sexual acts. For instance, Revati²³ says, "Hijras are stripped, their private parts are probed with sticks on the pretext of determining their sexual identity ... And if the police are not convinced, hijras are raped."²⁴ These are violations of the integrity and privacy of the very sexual being of the person. Thus, a liberal democratic country like India offers no space in which the hijras can move about free from violence or the threat of it. Their freedoms be it of self expression, or movement, or occupation and allied liberties are impinged upon.

The all-encompassing nature of the violence, has its roots in both state and civil society. The source of such violence is clearly the prejudice about hijras' 'deviant' sexuality and gender identity which transgresses society's binary division of gender into male and female – indicating that what appears as random and arbitrary violence is in fact part of a methodical policing for the preservation of the mainstream, heterosexist, society. Such violence is thus the necessary outcome of compulsory heterosexuality embedded as a normative value in popular culture, law, state and medical practice.

²³ Hijra activist, see profile in next chapter

²⁴ As mentioned in *Human Rights Violations against the Transgender Community: A PUCL(K) Report*, Jan, 2004. Accessed at <http://www.pucl.org/Topics/Gender/2004/transgender.htm>, as on 14.11.08.

Judicial Apathy

In February 2003, a lower court in Madhya Pradesh struck down the election of Kamala Jaan²⁵ as the mayor of the Municipal Corporation of Katni), saying that it disagreed about the winner's sex. The court's logic was that a hijra was a man and thus was not entitled to contest for the seat or occupy a seat reserved for women under the quota system. This judgement affected the political status of hijras throughout the country. The court verdict came despite a direction from the Election Commission (E.C.) in September 1994 that hijras can be registered in the electoral roles either as male or female depending on their statement at the time of enrolment.²⁶

Lawyers, however challenged the verdict, by saying she figured as a woman in the electoral rolls and no one had raised any objection to that at the time of her election²⁷. Thus she was later reinstated temporarily but the legal battle continues. Similarly, the election of Asha Rani, the mayor of Gorakhpur was annulled by the court on the ground that she was not biologically female. "Asha Devi alias Amarnath was not a female but a male and since the post of the mayor was reserved for a female, Asha Devi was not eligible for the seat," special judge A N Upadhyaya said²⁸. The judgment was passed on an election petition filed by Samajwadi Party candidate, Anju Chowdhary, who had lost to Asha Devi by over 60,000 votes in the contest, held on November 25, 2000. These decisions essentially imply that the judiciary discounts "hijra" as a legal identity and also that for all political offices/positions they are to be regarded as males.

Recently there was another PIL²⁹ (by a hijra) before the Supreme Court demanding a constitutional compensation package, akin to that for scheduled castes

²⁵ Ms Jaan made headlines four years ago when she became the first hijra in India to be elected to the post of mayor, in the city of Katni.

²⁶ This direction was given by the E.C. after Shabnam Mausi, wrote to the Chief Election Commissioner enquiring about which category hijras were classified under.

²⁷ 'Eunuch reinstated in India mayor row', September 27, 2002. Accessed at http://news.bbc.co.uk/2/hi/south_asia/2285380.stm, as on 12.03.09.

²⁸ 'Court unseats eunuch mayor of Gorakhpur', May 13, 2003. Accessed at <http://www.rediff.com/news/2003/may/13up.htm>, as on 12.03.09.

²⁹ 'Hijras demand quota on medical grounds', Jan 20, 2009. Accessed at http://timesofindia.indiatimes.com/India/Hijras_for_quota_on_medical_grounds/articleshow/4008926.cms, as on 12.03.09.

and scheduled tribes, to end the centuries-old gender discrimination against them. The ground cited was that his group was 'medically unfit to lead normal life'. The petition (prepared by advocate Vishwanath Chaturvedi) argued that the hijras, are reduced to begging in the streets, and never got the fruits of the constitutional promises like equality, liberty, dignity, democratic socialism, etc. The PIL was a plea to the judiciary to come to their rescue and end their poverty, illiteracy and inequality of opportunity.

The PIL petitioner also had a grievance against the Election Commission for not providing for a gender category in the nomination forms for candidates from the hijra society. "The EC had always treated 'kinnars' arbitrarily as male or female without having any reasonable classification or medical certificate from the candidates," the petition stated. It also demanded that constituencies be reserved exclusively for their representation in local bodies, legislative assemblies and in the Parliament. Lastly, it sought a direction from the apex court to the human resource development ministry to conduct a special education programme for hijras and the government to announce special rehabilitation packages for them. This petition is interesting in the sense that it cites a disability argument. This is also indicative of the fact that the hijras are trying all possible routes to access their citizenship rights. But the apex court is mired in concerns of heteronormativity and did not offer any judicial help to the hijras; their pleas were turned down on several excuses.

In another instance, the Supreme Court dismissed a lawsuit by a hijra from Rajasthan who demanded 'a life better than those of animals' for the community and asked the petitioner to approach the union government for the purpose.³⁰ The plight of the hijra community in the country was brought to light by this PIL by Sonam Singh from Ajmer. The PIL demanded recognition, acceptance and sought educational, social, economic and political rehabilitation, including reservation of seats in Parliament, state assemblies and legislative councils. It also pleaded for the creation of a National Kinner Ayog or Commission.

³⁰ 'Transgenders get sympathy from SC but no relief', Feb 17, 2009. Accessed at <http://qmediawatch.wordpress.com/2009/02/20/transgenders-get-sympathy-from-sc-but-no-relief/>, as on 12.03.09.

Sonam's counsel, Santosh Kumar Tripathi, explained the plight of the transgender community, whose interests have been neglected by successive governments. The petition observed: "It is only a hijra who knows the difficulty of surviving in society in a respectful and gracious manner. I alone know the pain and humiliation that I face day in and day out despite the fact that hijras never harm others in the society and only pray for the well being of the society".³¹ Tripathi further stated that the country even lacked a record of the hijra population and that the Election Commission of India never bothered to decide what gender should be attributed to them.

Seeking the apex court's intervention "to protect their dignity as human being as envisaged in the constitution", Tripathi alleged that "the government has left hijras at the mercy of god and even animals are in a better position". The petition further noted, "Ninety nine percent of hijras are either illiterate or semi-literate, having no source of income, except begging. More than 1.5 millions hijras are physically challenged and neglected by their families and are bound to die a bitter death". The counsel also said, "In the past 60 years not a single question has been raised in Parliament with regard to development of the group (hijras). They are also paying tax but there is no employment for them ...".³² The petition made the plea that the neglect of hijras was violative of various constitutional provisions like Articles 14, 15, 16, 38, 39, 46 and 47.

In response to all these demands and grievances, the bench comprising Chief Justice K.G. Balakrishnan and Justice P. Sathasivam rejected Sonam Singh's plea to form an all-India panel for hijras on the lines of those for Dalits, tribals, minorities and women to look into the issue of their welfare in a systematic and comprehensive way, by saying that, "We cannot give directions on your prayers", and advised the community to approach the government first.³³

Thus, we see that the otherwise active judiciary which always acts as the guardian of the weak and vulnerable, did not answer the call of the hijras. The court in all the PILs put forth mere excuses and shied away from taking the responsibility on itself to recognize the hijras and direct the government for their upliftment and welfare. On the

³¹ Ibid.

³² Ibid.

³³ Ibid.

face of it, it appears that the judiciary is disinterested and indifferent, but actually this judicial attitude is guided by heteronormativity and the sex-gender binary.

Winds of Change: Inclusive State

The above mentioned repressive, indifferent, unresponsive character of the state is undergoing a change, a change towards tolerance of alternate sexuality, a change away from a sex-gender binary towards plurality of sexes and genders; in a nutshell a change towards being an inclusive state. The hitherto neglected sexual subalterns are now being recognized and the state is attempting to give them a slice of development. The state of late has taken several initiatives to promote inclusion of the hijras. This change from the top has been emulated by other institutions like the media, medical establishment and others. In all, if all these changes are substantive and not mere tokenism then the change can well be called a paradigm shift.

What triggered a rethinking in the official circles was their high vulnerability to HIV/AIDS. The categorization of men who have sex with men (MSM) as a group vulnerable to the risk of HIV infection by the National AIDS Control Authority (NACO)³⁴ has consequently resulted in government funding for intervention projects. Since the hijra community figured as one of the high risk HIV vulnerable groups (7.41% of the total population), the state has scaled up 'MSM and HIV' - specific programmes and interventions.³⁵ The hijra community now receives focused interventions to help them protect against this deadly disease. Some of the initiatives include spreading awareness, educating them about safe sex through films and documentaries, promoting condom usage, free distribution of AIDS related information and condoms. The centre also proposed the idea of peer educators i.e. selecting a hijra to campaign for safe sex. This way the state hoped to disseminate information better and help stop the spread of the disease.

³⁴ NACO is the nodal organisation for formulation of policy and implementation of programs for prevention and control of HIV/AIDS. For further information on NACO, NACP II & III see <http://www.nacoonline.org/NACO/>

³⁵ Report titled "National AIDS Control Programme in India: Scaling-up HIV-related interventions for men who have sex with men, transgendered people and *Hijras*- Inputs from regional and national consultations". Sep, 2006. Accessed at http://data.unaids.org/pub/Speech/2006/20060923_sp_pmane_en.pdf, as on 20.06.2009.

Under NACP-II³⁶ (National AIDS Control Project), 3% (30 out of 965) of the targeted interventions focused exclusively on MSM or hijras. Under NACP-III³⁷, 184 targeted interventions (covering 70% of the total population) were planned exclusively for MSM / hijras (up from 30 under NACP-II), and another 235 composite interventions were to address MSM / hijras. The National AIDS Control Organisation (NACO) has allocated Rs.12-18 lakh (equivalent of approx. US\$ 30,000) for each exclusive targeted intervention, annually. NACP-III plan has estimated most-at-risk MSM population of around 2.35 million (including 0.24 million male / transgendered sex workers). NACP-III aims to achieve coverage of 80% of MSM and hijra populations by 2011. At least 10% of targeted interventions will have 'exclusive community ownership by 2011. However, what constitutes "universal access," specifically for MSM / hijras needs to be articulated in the national target setting. An exhaustive list of requisite "prevention, care, support and treatment services" relevant to MSM / hijras also needs to be prepared.

The stride taken by NACO has resulted in significant changes in the legal sphere as well. NACO has stated in its policy, "The Government will review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups."³⁸ Thus, the government is formulating 'suitable changes in laws like IPTA and other anti-hijra laws (like outlawing voluntary castration, Registration of Criminal Tribes and Eunuchs, 1871 and others) whether civil or criminal. In 2005, the centre introduced/proposed the category 'E' in passport forms for hijras, however this option is available on the official website (www.passport.nic.in) and not on the actual form. This again is a small step in affirming their identity.

³⁶ NACP-II was launched in 1999 with the aim of reducing the spread of HIV infection and strengthening the capacity of Central and state governments, civil society and the private sector to respond to AIDS prevention on a long-term basis.

³⁷ NACP - III launched on July 6, 2007 is a project financed by the IDA (US\$ 250 million) to curb the spread and mitigate the impact of HIV and AIDS in the country. The Government of India (GOI) has embarked on the ambitious goal of halting and reversing the HIV/AIDS epidemic by 2011, ahead of the 2015 target of the 6th Millennium Development Goal. NACP III is also supported by a GBP 102 million Grant from DFID(British Department for International Development), a USD 214 million Grant from the Global Fund against AIDS, TB and Malaria (GFATM) and a USD 50 million Grant from USAID.

³⁸ National AIDS Control Program, 'National AIDS Prevention and Control Policy'. Accessed at <http://www.naco.nic.in/nacp/ctrlpol.htm>, as on 12.03.09.

A particularly momentous change is the recent Delhi HC verdict decriminalizing homosexuality arguing that it is violative of Articles 21, 14 and 15 of the Constitution. This is a landmark judgement because it read down the provisions of an archaic, 149 year old colonial era law. The verdict guided by the ideal of inclusiveness sought to end the ostracization and discrimination of the deviant or the different. This judgement is particularly relevant for the homosexuals but it has far reaching consequences for the hijra community as well. Now even they can stake a claim to decriminalization of their existence and affirm their identity. Moreover, legal recognition held the promise of reduced harassment by the police and other authorities and one could hope that legalizing alternate sexuality could pave the way for gradual social recognition as well. Judicial decriminalization of the hijra identity thus results in privacy (whatever their sexual conduct and preference is a personal matter, which does not warrant undue state intervention), equality (non discrimination on grounds of sexual orientation) and above all human dignity (respect for the intrinsic worth that inheres in every human being no matter how different)

Subtle and appreciable changes are taking place in terms of how the hijras are depicted by the media. From mid to late 90s, they have been presented in cameo roles where they challenge conventional roles using characters in ordinary human settings. For e.g., Mani Rathnam's *Bombay* (1995) has portrayed hijras in a sympathetic light. Kalpana Lajmi empathised with a hijra forced to live within the mainstream through her film *Darimiyaan*. In *Dayraa: The Square Circle*, a film by Amol Palekar in 1996-97 there is a sensitive portrayal of the hijras, the hijra is presented as a rescuer and bestower of wise words. *Tamanna*³⁹, (movie by Mahesh Bhatt, 1997) crosses boundaries that have never been traversed before in Indian cinema because no director has explored the possibility of making a feature film focusing on the collective and cloistered community. The movie evokes compassion rather than jeers. The film is about a hijra played by Paresh Rawal and explores various issues that many hijras face in reality. The film based in 1975 in the town of Mahim, Bombay is about an abandon girl, *Tamanna*, who is raised by a hijra, Tiku, and the problems that arise. In

³⁹ Review of the movie *Tamanna* by Nishma Hindocha in her article "Hijras in Indian Cinema". Accessed at , <http://media.opencultures.net/queer/data/indian/eunuchsinbollywood.html>, as on 07.07.2009.

2005, a fiction feature film titled *Shabnam Mausi* was made on the life of a hijra politician of the same name (see *Shabnam Mausi*). In addition to numerous other themes, the 2008 movie *Welcome to Sajjanpur* by Shyam Benegal explores the role of hijras in Indian society and politics. Even in commercial cinema, the depiction of the hijras are changing like in *Jodhaa Akbar* (directed by Ashutosh Gowariker, 2008) a hijra was shown as the trusted lieutenant of the female lead. Apart from films, some documentaries like *Between the Lines: India's Third Gender*⁴⁰ by Thomas Wartmann, 2005 and Micheal Yorke's *Hijras: India's Third Gender* (1991) have tried to understand the community and portrayed them in a positive light.

Bihar: A Small Initiative

Bihar has taken a unique step to optimally utilize the skills of the hijras in the state for mutual benefit. Since 2006, hijras have been employed by the state government as tax collectors. The idea behind the decision: hijras would sing loudly and demand debt repayment, outside the defaulter's premises which would embarrass the debtor and result in quick repayment. The hijras would get a commission of 4% of any taxes collected, in lieu of their services. This turned out to be one of the most effective tax recovery methods ever used in India. This idea worked so well that it got reported in BBC news as, "... Tax authorities in one Indian state are attempting to persuade debtors to paying their bills — by serenading them with a delegation of singing hijras."⁴¹ Saira, one of the hijras said, "We are collecting taxes for the municipal corporation, collecting money from those who have not paid their taxes for years."⁴² They reasoned, "... Tax payment is necessary. When the corporation won't have any money how will they look after the people?"⁴³

⁴⁰ Additional information: Camera (color, DV-to-35mm), Thomas Riedelsheimer; editor, Riedelsheimer; music, Nils Kacirek, Prakash S. Desai, Om Prakash Chauhan; sound (Dolby Surround), Narayanan Therar, Hans Weiss. Reviewed at Turin Gay & Lesbian Film Festival (competing). April 21, 2006. Running time: 97 MIN. (Hindi, English dialogue).

⁴¹ 'Singing tax-collecting aravani', BBC News, November 6, 2006. Accessed at http://www.thewe.cc/weplanet/news/asia/india/singing_aravani_tax_collectors.htm, as on 20.06.2009.

⁴² Ibid.

⁴³ Ibid.

The revenue department of the state government was satisfied with the collection. The authorities were confident that the persuasive skills of the hijras could be put to good use and the hijras did not disappoint them; rather this turned out to be one of the most effective tax recovery mechanisms.

Tamil Nadu: Efforts at Mainstreaming the Margin

Tamil Nadu has been taking small steps to recognize transgenders, in fact it is the only state in the country where the hijras enjoy certain rights and privileges. The state has the largest hijra population in the country.⁴⁴ Tamil Nadu's innovative schemes are aimed at reducing the stigma of being a hijra or an aravani as called in the state. It is no tokenism, rather political and cinematic support coupled with out-of-the-box welfare schemes are targeted at mainstreaming the hijra community. The state government is planning to undertake an assessment and survey of the transgenders in the state to apprise themselves of the problems of the community, survey are being conducted to identify poor transgenders to be covered under schemes, and to monitor how effective the schemes have been.

Tamil Nadu has taken the initiative to provide special ration cards, admission to transgenders in government colleges, and now it has decided to pay for sex-change surgery.⁴⁵ State sponsored sex-change is rare anywhere in the world, except for Cuba and Brazil. Sex change scheme does not fit into the traditional idea of affirmative action. The scheme announced in the state pays only for genital surgery and not for hair transplant, voice change or hormone-pills.

The state government has passed a government order on 'Rehabilitation of Aravanis'.⁴⁶ The order promises social welfare and legalization of SRS (Sex Reconstruction Surgery) in government hospitals. The order also talks about taking serious action against government officials discriminating against the transgenders; assures priority/favourable treatment to them in government hospitals and offices on a

⁴⁴ In India there is 50000 to 1.2 million population of hijras (approx), a substantial number resides in Tamil Nadu, but no reliable statistics (state level or otherwise) is available as there is no census count for the hijras.

⁴⁵ Vinay Sitapati, 'Sex change for free', *The Indian Express*, March 14, 2009.

⁴⁶ Government Order on 'Rehabilitation of Aravanis'. Accessed at http://www.tn.gov.in/gorders/social/sw_e_199_2006.htm, as on 12.03.09.

humanitarian basis. The order even has provisions for disciplinary action against schools and colleges denying admission to transgenders on the basis of their sexuality; this proviso for a sanction against discrimination will lead to a sensitive approach of the state machinery towards the hijras. An overall sensitization programme is on the agenda to enable a smooth mainstreaming of them in the society.

Recently, the state government has allotted Rs 1 crore for a group housing project for the community. This was done with the intention of solving their housing problems. Their stigmatized identity never allowed them space in any good colony or rent any apartment. With this group housing project, they will have a colony of their own. Another bold step taken by the government was to give house site pattas to 58 transgenders. The land was given to them through the District Backwards Class Welfare Department.

The Chennai Municipal Corporation set aside Rs 45 lakh for a project to build three public toilets for transgenders.⁴⁷ Officials have already identified areas with a considerable transgender population in south and central Chennai. The first will be built in Saidapet. This project however triggered protest because some transgender activists viewed separate toilets as isolating and not mainstreaming the community. They feared this separation would perpetuate and intensify discrimination. "I don't agree with this, we want to mingle with the mainstream. We don't want to be separated like this", said Aasha Bharathi, president of the Tamil Nadu Aravanigal Association.⁴⁸ She thinks, "Using separate toilets will open the way for discrimination. We want to be considered as females. In our hearts, we are women."⁴⁹ However, Rose Venkatesan, India's first transgender TV host called it a good start. "One of the basic needs is toilets. It is a big problem, because not everyone has undergone a sex change. This is a good idea, but in the long run I see a society where there is no difference and all use the same toilets."⁵⁰ The state needs to factor in their viewpoint and/or at least understand their being before announcing schemes for them. Many hijras consider themselves to be as women and don't prefer a separate identity.

⁴⁷ 'Chennai move on separate toilets for transgenders sparks off debate', *Indian Express*, March 8, 2009.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

This creates a paradox: targeted government measures, by identifying transgenders goes against their fluid identity.

Tamil Nadu has also set up a Transgender Welfare Board with a budget of 50 lakh rupees per year to offer various forms of aid. In Dec 2008, the state government decided to give the hijras identity cards, which would enable them to get official assistances extended by the welfare board recently instituted for their benefit. To ensure that the benefits reach the desired recipients, the state government, in Feb 2009, set up a committee to screen Thirunangaigal (transgenders) for eligibility to become members of the recently set up welfare board. The committee comprises of a psychologist, doctors and government representatives. So far, around 100 transgenders have registered with the Social Welfare Department seeking eligibility.

The Board aims to help prevent violence against or within the community, promote education, provide skill-based training and loans to encourage micro-entrepreneurship, offer legal services and counselling, conduct financial literacy programmes and so on. The board is also considering measures like pension for the ageing hijras and other financial assistance. Through the board, the hijras can avail aid for starting business ventures, house site pattas, educational assistance, and job opportunities.

The Tamil Nadu AIDS Initiative, Voluntary Health Services (TAI-VHS), has brought 20,000 transgenders and marginalised women together, in a newly-formed federation that aims to empower the community and make them self-reliant. Kanimozhi (a prominent political leader of the state) and Tamil Nadu Social Welfare Board Chairperson Salma formally inaugurated the federation. Transgender and marginalised women from 14 districts participated in the federation. The main focus of the federation is health. It intends to improve access of the hijras to quality health services, open more community clinics, spread awareness campaigns, etc.

Such innovative initiative prompt the question - why is Tamil Nadu so progressive when it comes to transgender rights? The answer probably lay in the sensitivity of the political elite of the state. The hijras are mostly concentrated in the north western districts where PMK has a stronghold and this party is favourable to their rights. Dalit Panthers have also supported the cause of the transgenders as many belonged to dalit

castes. So the political climate has always been favourable to their cause. The political elite of the state perhaps perceives the hijra community as a potential vote bank. The hijras constitute quite a number in the state, and if they are won over by any party, it could prove invaluable in the electoral number game. Thus, the hijras are viewed as a potential force in the society.

There is no coherence in the different steps being taken by the centre and the state governments. Even the activists are divided on several fundamental issues like identity, gendering process, disability, rights, etc. Most of the steps though well intentioned are more in the nature of philanthropic interventions and are not part of an overarching policy. The moves are not only disparate but are also in the nature of concessions to some demands. The primary reason for these disjunctions is that the Indian state lacks an informed perspective or understanding about the community. This is reason why some of the initiatives are met with fierce criticism and has led to debates, differences and dilemmas in the hijra movement.

All the winds of change though welcome, are not stemming from an understanding of their problems in totality. The state apparatus is largely apathetic and ignorant of this community. This chapter grappled with the process of gendering by the Indian state. The apprehension in all these steps towards inclusion is that in the process of extending welfare benefits does the Indian state impose a gender identity on them and to what extent it is desirable and the implications of such state imposed identities. The changes though well intentioned still cannot be called a paradigm shift because the state has not thought out a comprehensive policy for the sexual subalterns including the hijras, which has factored in all the dimensions (complex, multi-layered and fluid) of their identity and their demands for recognition. Thus, the Indian state still has to go a long way to become a sexual democracy which guarantees the basic human right to sexual autonomy.

CHAPTER IV

Transcending the Binary: The Struggle for a Hijra Identity

This chapter would chronicle the developments in hijra and/or transgender activism. It highlights how the hijra community (as dissident gendered subjects) has responded to their invisibilization by the state and how the hijras claimed their agency, how they are fighting for their group rights, their distinct identity, political representation, greater participation, empowerment, etc. This section documents their current condition in terms of their awareness, political consciousness, demands, political groupings, parties and leadership. In a nutshell, this chapter is about what initiatives (socio-cultural, legal, political, health, etc) the hijras have taken for their emancipation and mainstreaming. The previous chapter was more about their grievances, a grim presentation of their neglect, isolation, marginalization and development; in contrast this chapter is about their struggle to improve their own condition by harnessing resources, strengths and leadership from within the community. A section is devoted to the conflicts, coalitions and dilemmas that have emerged in the course of their movement. This chapter would also include the profile of certain hijras who have carved a niche for themselves in the mainstream, like Shabnam Mausi, Laxmi Narayan Tripathi, Revathi and others.

Transgender Activism in a Global Perspective

This section provides an overview of the global scenario; it deals with the origin of LGBT activism and explores the current trends of the LGBT movement. It first talks about international organisations like the UN, Amnesty International, Human Rights Watch, etc. and then moves on to region specific (Europe, US and the Asian continent) and issue specific (health, research and academic) LGBT activism. Lastly, it analyses the LGBT movement in India.

The transgender movement views gender and sex as improperly imposed on the individuals by the state and society and so the movement is directed against the “sexual identity gatekeepers”¹ of the society. Transgender activists consider the bipolar system of sex/gender oppositions as oppressive and demands recognition of multiple sexual and gender identities. They aim to deactivate the sex/gender system of

¹ A term used by Bolin

binary opposites and the identification of gender role and identity with biology and sexual orientation. The lesbian, gay, bisexual, transgender and intersex community is increasingly defining itself as a global one, building a rainbow coalition to fight for equality and a life of dignity.

The history of LGBT activism is long, varied and chequered. One incident that catalysed the movement and drew global media attention to the movement was the Stonewall riots.² On 28 June 1969, police had raided Stonewall Inn, a small bar in New York City's Greenwich Village, which the gay men and lesbians frequented. The violent clashes and confrontations between police and demonstrators at the Stonewall Inn served as a catalyst for today's strong queer movement. Ever since the Stonewall incident the last week of June is commemorated by celebrations of gender and sexual diversity. Since then, every year the week leading up to June 29 is remembered by sexual minorities and those with alternative sexual proclivities across the world as the 'Rainbow Pride Week'.

Though the LGBT movement did not originate from this incident, rather the movement in the US was the culmination of legacies of other movements like civil rights, black power, anti-war, and women's movements of the mid to late 1960s. Yet the incident is significant as it was the first expression of a radical, militant stance of the LGBT community. Since then pride parades have become significant events in most North American cities and in many European and Asian cities as well. These pride marches in some cities are red-letter events on the international social calendar. Parades and marches are carnivalesque in character and festive in mood, but the purpose is to render a community visible, display messages of political protest, lobbying for glbtq³ rights celebrate alternate sexuality, and affirm their sense of unity.

There are mammoth celebrations in cities such as New York, San Francisco, Los Angeles, and Toronto, and now these pride parades are also held in Paris, Sao Paulo, Tel Aviv, New Zealand, Japan, South Africa, Thailand and India. The LGBT community in India has held marches since the release of Deepa Mehta's beleaguered

² Matzner, Andrew, 'Stonewall Riots', in Claude J. Summers (ed.), *glbtq: An Encyclopedia of Gay, Lesbian, Bisexual, Transgender, and Queer Culture*, 2004. Accessed at www.glbtq.com/social-sciences/stonewallriots.html, as on 12.03.09.

³ GLBTQ is another expression to denote the sexual subaltern. It stands for Gay-Lesbian-Bisexual-Transgender-Queer.

Fire in 1998. Nowadays, the major metropolitan cities co-ordinate the parades and marches to make a visible impact on the otherwise aloof and indifferent Indian society. At the heart of pride marches in India is the struggle for gender/sexual rights, right to self-determination and protests against police harassment. These parades are central to transgender activism because they serve as vehicles for both political expression and a celebration of their difference.

These initiatives apart some organizations have come forward to support the cause of the transgender community. For instance, in 1991, Amnesty International for the first time came out with a policy to support the rights of people imprisoned because of their sexual orientation or because of engaging in homosexual activity in private. The Human Rights Watch also devotes part of its energies monitoring the status of LGBT condition and reporting cases of violation of human rights of the LGBT community. There are also seminars, conferences and symposiums to mobilize international opinion on such issues. One such conference in 2006, led to the adoption of the *Declaration of Montréal*⁴ demanding human rights in relation to sexual orientation and gender identity at the International Conference on LGBT Human Rights. On 26 March 2007, the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*⁵ was published as a charter of LGBT rights by a global group of human rights experts. These principles recognize that sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse. It also views critically the policing of sexuality, which remains a potent force behind continuing gender-based violence and gender inequality. It has also influenced the proposed UN Declaration on LGBT rights in 2008.

⁴ The Declaration of Montreal on Lesbian, Gay, Bisexual, and Transgender Human Rights is a document adopted in Montreal, Quebec, Canada, on July 29, 2006, by the International Conference on LGBT Human Rights which formed part of the first World Outgames. It encompasses all aspects of Human Rights, from the guarantee of fundamental freedoms to the prevention of discrimination against LGBT people in healthcare, education and immigration. The Declaration of Montreal is meant to be an advocacy tool, to be used according to national and local circumstances. For further information visit: <http://www.declarationofmontreal.org/declaration/>. The Preamble to the Declaration is provided in Appendix III.

⁵ It is a set of international principles relating to sexual orientation and gender identity, intended to address documented evidence of abuse of rights of lesbian, gay, bisexual, and transgender (LGBT) people. For an overview of the principles see the Appendix IV.

The *United Nations Declaration on Sexual Orientation and Gender Identity*⁶ is a declaration which condemns violence, harassment, discrimination, exclusion, stigmatization, and prejudice based on sexual orientation and gender identity. It also condemns killings and executions, torture, arbitrary arrest and deprivation of economic, social and cultural rights on those grounds. This declaration is significant because it is a breakthrough of sorts, breaking the taboo against speaking about LGBT rights in the United Nations. So far, 67 (which includes every member of the European Union) member countries of the United Nations have signed the declaration.

Globally different organisations have sprung up to articulate the rights, demands and grievances of the LGBT community. For example, ILGA-Europe⁷ is the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) for the European region. It works towards creating a world freed from any form of discrimination on the grounds of sexual orientation, gender identity or gender expression; a world where the human rights of all are respected and everyone can live in equality and freedom. It endeavours to promote the right to equality and freedom from discrimination, strengthen the capacity of European human rights organisations fighting against sexual orientation, gender identity and gender expression discrimination. The modus operandi includes lobbying, advocacy, educating and informing the European and international institutions, media and civil society, campaigning and networking, the exchange of best practice, the dissemination of information and capacity-building programmes.

Over the years ILGA-Europe has been engaged in extensive activities aimed at promoting LGBT rights through the principal European institutions. It lobbied for the inclusion of sexual orientation discrimination in the anti-discrimination provisions of the Treaty of Amsterdam, also proposed the inclusion of sexual orientation in Protocol 12 to the European Convention on Human Rights and the EU Charter of

⁶ Text of the Declaration is provided in Appendix V.

⁷ ILGA was founded in 1978, while ILGA-Europe was established as a separate region of the ILGA in 1996. It is a non-governmental umbrella organisation which represents its members, principally organisations of lesbian, gay, bisexual and transgender persons, at the European level. Its membership comprises 222 organisations from throughout Europe. It enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe and receives financial support from the European Commission. It is also a member of the Platform of European Social NGOs. For detailed information on the organisation visit: www.ilga-europe.org/europe/about_us/executive_board

Fundamental Rights; sought full recognition of the rights of LGBT families in the Freedom of Movement Directive, etc. The European Commission proposed a new anti-discrimination directive on 2 July 2008, which prohibits inter alia discrimination on the grounds of sexual orientation as well. This proposed directive needs to be adopted unanimously by all EU Member States to become EU law. Since then it is campaigning hard to call on all member states to support this proposal and ensure that the Commission's proposal becomes EU law.⁸ The organisation also believes that trade unions can play a significant role in promoting LGBT equality in work places and thus is striving to end discrimination based on sexual orientation and/or gender identity expression in employment.

LGBT activism in US is varied and vibrant. Sexual acts between persons of the same sex have been legal in the US since 2003, pursuant to the US Supreme Court ruling in *Lawrence v Texas*⁹. Six states namely Massachusetts, Connecticut, Iowa, Vermont, Maine, New Hampshire have legalized same-sex marriage. The most visible LGBT-specific political issue in the United States in the 2000s is government recognition of same-sex relationships. So far 20 states have outlawed discrimination based on sexual orientation, and 13 states have outlaw discrimination based on gender identity or expression. *President Bill Clinton's Executive Order 13087*¹⁰ (1998) prohibits discrimination based on sexual orientation in the competitive service of the federal civilian workforce. Several states have reformed their state civil rights code (or experienced court decisions) to include sexual orientation and gender identity. The *International Bill of Gender Rights* adopted by the International Conference on Transgender Law and Employment Policy in Texas, United States, in 1995 lays down that all human beings have the right to define and express their own gender identity; secure and retain employment and receive just compensation; control and change one's own body; enjoy competent medical and professional care; form committed, loving relationships and enter into marital contracts; and conceive, bear and adopt children and exercise parental capacity. Moreover, President Barack Obama's

⁸ The full text of the proposed directive can be found at:

<http://ec.europa.eu/employmentsocial/fundamentalrights/pdf/pubst/poldoc/proppdir42608en.pdf>.

⁹ Full text with links to citations from Supreme Court opinions, U.S. Constitution, U.S. Code, and C.F.R. can be accessed at <http://www.law.cornell.edu/supct/html/02-102.ZS.html>.

¹⁰ For the text of the Executive Order see:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1998_register&docid=fr02jn98-135.pdf

promise to 'bring the 'full spectrum of equal rights to LGBT Americans',¹¹ is expected to propel transgender activism ahead. Australia too is gradually offering a congenial environment to the LGBT community.

LGBT activism in the Asian continent is still nascent compared to the western world. Yet many institutions either educational, or in the form of NGOs or research organisations have sprung up. For instance, TEAM-HK (Transgender Equality and Acceptance Movement) is a group based in Hong Kong, active since November 2002, working to support transgenders and to bring about social and legal changes in Hong Kong for the LGBT community. While, Srikandi Sejati Foundation is a Jakarta based initiative to provide social services to transgendered persons. There is also the GAHUM Philippines, a Cebu-based organisation aimed at the defense of human rights of Filipino sexual minorities, while the Sexual Diversity Fund provides services and advocacy for sexual and gender minorities in Thailand. Whereas, Trans-Net Japan is a support organization for people with gender identity disorders, transsexuals and transgendered people. Then there is the Malaysian Support and Resource Group for trans-persons, Blue Diamond Society and a host of other organisation working for sexual minority groups. Asia-Pacific Network for Sex Workers (APNSW) is also involved in transgender activism though it basically works for making sex work safe for sex workers in Asia and the Pacific. This is because a considerable section of the transgender population in the region indulges in sex work for their livelihood.

W-PATH (World Professional Association for Transgender Health) formerly the Harry Benjamin International Gender Dysphoria Association, WAS. (World Association of Sexual Health) and others focus on the health and medical issues of the transgenders. Moreover, there are different support networks for the sexual subalterns like the Turner's Syndrome¹² Society (founded in Minneapolis in 1987, is the first-known support group for persons with atypical sex differentiation), the U.S. based K.

¹¹ 'Lesbian, Gay, Bisexual, And Transgender Pride Month, 2009' Presidential Proclamation, White House, June 1, 2009. Accessed at <http://biwriters.livejournal.com/82405.html>, as on 11.07.09.

¹² Turner's syndrome is the most common form of "female" chromosomal variation where the typical karyotype is 45, XO, meaning that one sex chromosome is missing. Individuals with Turner's syndrome typically develop unambiguous female genitalia yet have under-developed breasts, uteruses, and vaginas. Some have testicular tissue and primitive gonadal "streak" tissue. They commonly do not develop secondary sex characteristic.

S. & Associates (founded in 1989 for those suffering from Klinefelter's syndrome¹³), Intersex Society of North America or ISNA (founded in 1993 by intersex activist and scholar Cheryl Chase), the Ambiguous Genitalia Support Network or the AGSN (is an organization that fosters pen pal relationships among parents of intersexed children founded in 1995), the Hermaphrodite Education and Listening Post or the HELP¹⁴ (set up in 1996), etc. The MSMGF¹⁵ is another global forum on MSM and HIV. In fact, it is the only global HIV/AIDS advocacy network which specifically focuses on the prevention, care and treatment needs of MSM and is uniquely positioned to make significant structural-level contributions in the global fight against HIV/AIDS. It works towards providing equitable access to HIV prevention, care, treatment services and support services. The organisation has been working to decrease stigma, discrimination, and violence against MSM. It supports research on MSM and HIV its broad-based dissemination. Its goal is to strengthen regional, sub-regional, and national networks of MSM around the world linked to an organizationally robust MSMGF. MSMGF supports strategy development, advocacy / educational tools to better equip policy-makers, funders, and practitioners in their work to expand access to services worldwide for MSM.

Research based initiatives usually focus on developing a theoretically informed perspective to guide policy makers in creating an enabling and empowering environment for the LGBT group. The Southeast Asian Consortium on Gender, Sexuality, and Health is part of the Centre for Health Policy Studies at Mahidol University, Thailand, which strives to enhance knowledge, build capacity, and promote understanding in the field of gender, sexuality and health in Southeast Asia and China. While IFAS (International Foundation for Androgynous Studies), Society for the Scientific Study of Sexuality (SSSS) and others are working towards the

¹³ Klinefelter's syndrome is a type of chromosomal variation in which a "male" child has a karyotype with more than one X chromosome, such as a 47, XXY (or 48, XXYY, 48, XXXY, or 49, XXXXY). Genital ambiguity is not present, but testes may be small and firm, and breast development (gynecomastia) is common. Secondary sex characteristic development is limited, and these men are almost always sterile (Money 1968; Money and Ehrhardt 1972; Glanze, Anderson, and Anderson 1996; Grumbach and Conte 1998).

¹⁴ Information about the these organisations is taken from: Sexing the Intersexed: An Analysis of Sociocultural Responses to Intersexuality Author(s): Sharon E. Preves Source: Signs, Vol. 27, No. 2 (Winter, 2002), pp. 523-556 Published by: The University of Chicago Press Stable URL: <http://www.jstor.org/stable/3175791> Accessed: 05/06/2009 04:10

¹⁵ For detailed information on the organisation visit: <http://www.msmandhiv.org/activities.htm>:

advancement of knowledge about sexuality. *Sexual Science* and *Journal of Sex Research* are publications of the SSSS which disseminates information and exchanges views on sexuality, gender, etc. GLBT Education: Middle East and Asia is a good initiative given the conservative milieu in which it was started. It is a website offering extensive information on sexual and gender minorities. Centre LGS is a critical, interdisciplinary, international research centre, advancing research and scholarship that is theoretically informed and policy relevant. It involves a grouping of three UK Universities (Kent, Keele and Westminster), but is primarily based at the University of Kent. Academic efforts are directed towards the exploration of the relationship between gender and sexuality, on the one hand, and law, governance and normativity, on the other. There is the Trans-Academic, an international discussion group where transgender academics, activists and others exchange views and information. Though not strictly research and academic in orientation, the Yahoo group for transgenders in Asia¹⁶ is an open forum to share views, support each other and to celebrate a vibrant space/culture/movement. It invites all like hijras, *jogtas*, *jogappas*, *parvathis*, *shiva shakthis*, *kinnars*, *kotis*, transsexuals, transvestites, drag queens, drag kings, cross-dressers and other transgender people in South Asia (India, Pakistan, Sri Lanka, Bangladesh, Maldives, Nepal, Tibet) and diaspora. Moreover, many emerging economies of the global South are experiencing transgender activism, LGBT mobilization and sexual identity politics raising fundamental questions of citizenship and human rights.

In recent years, India has witnessed a growing activism of various NGOs and civil societal institutions for mainstreaming the sexuality minority groups. Such efforts include advocating the rights of lesbian, gay, bisexual and transgender groups (henceforth LGBTs), campaigning against discriminatory laws, seeking public petition for withdrawal of such laws, etc. The usual response to this activism is that such efforts of mainstreaming pose a threat to the socio-cultural integrity and moral fabric of Indian nation. The issue is sensitive because the sexual subalterns challenge the public/private boundary and the authority of the State. The following section deals exclusively with the organizational efforts in India directed towards mainstreaming the sexual subalterns.

¹⁶ <http://groups.yahoo.com/group/transgenders/>

Organizational Efforts in India

Some unorganized initial efforts to bring forth the issues of sexual subalterns in India can be traced back to 1990 when India's first exclusive gay magazine, *Bombay Dost* was published by an 'out' gay journalist Ashok Row Kavi. But it was the onslaught of the AIDS epidemic in Indian subcontinent in the 1990s which influenced LGBT mobilization and paved the path for the LGBT movement in the country. Prior to the 1990s, there were sporadic and individual efforts, but it was the awareness of the AIDS epidemic that catapulted the disparate forces working for the welfare of the sexual subalterns to get their act organised. Thus, a large part of transgender mobilization in India took place in response to HIV epidemic. Consequently, many NGOs sprung up which worked with the LGBT community.

Gradually, the hijra community began to mobilize itself through the formation of a collective. Hijras in a tactical move have allied with the wider community of sexual minorities to campaign for their rights. This way they can strengthen the movement by harnessing the collective resources of the sexual subaltern network. Thus, hijras participate with equal fervor in gay pride parades to show solidarity with the gays and lesbians. Since some of their concerns are overlapping it is pragmatic to fight a collective battle for rights, recognition and protection.

In 1991, a human rights activist group, AIDS Bhedbhav Virodhi Andolan (Anti-AIDS Discrimination Movement) known as ABVA published its first report *Less than Gay: A Citizens' Report on the Status of Homosexuality in India*. Through this report, the ABVA advocated the civil rights of LGBTs to include same sex marriage, parenting, decriminalization of homosexuality and repeal of IPC 377, amendments in Special Marriage Act and AIDS Prevention Bill of 1989, and providing a positive homosexuality education in school.¹⁷ In 1991, with the initiative of an Indian HIV/AIDS activist in London, Shivananda Khan, the Naz Project came

¹⁷ 'Less Than Gay: A Citizens' Report on the Status of Homosexuality in India' (New Delhi: ABVA [AIDS Bhedbhav Virodhi Andolan], 1991), pp. 92–93.

up to address the sexual health needs of transgender South Asian communities in London.

In 1994, ABVA first challenged the constitutional validity of Section 377 IPC in Delhi High Court. Through its petition, ABVA argued for supplying of condoms to jail inmates and instructing the authorities to refrain from segregating prisoners with homosexual orientation or those suffering from HIV/AIDS. The petition argued that Section 377 should be repealed because it violates the right to privacy and discriminates against people with a particular sexual orientation. The All-India Eunuchs' Welfare Association was also formed in 1993-94 as a HIV/AIDS awareness group to combat health problems within their communities. The same year (1994) Ashok Kavi established his own NGO, Humsafar Trust to work with LGBT groups in Mumbai. The Trust worked for the sexual health rights of the group, distributed condoms, medicines, organised workshops, carried out sensitization programmes for doctors, etc. Acknowledging the inadequacy of the initiatives, Anil Kadam of the Humsafar Trust said, "These are baby steps compared to foreign countries, where a certificate indicating change in gender is provided within 24 hours of SRS, along with psychiatric and legal help."¹⁸

The NAZ Project (in association with its local organizer, the Humsafar Trust, Mumbai) in 1994, sponsored the first national conference for gay-identified men and MSMs in South Asia. The objective of this conference was to explore "issues of sexual health, sexuality and sexual behavior amidst emerging gay-identities in South Asia" and provide sexual health prevention services for gay-identified men and MSMs.¹⁹ The year 1994 was significant for the movement, as apart from the above mentioned efforts, the Naz Project established Naz Foundation (India) Trust²⁰ in New Delhi was founded in 1994 with the mission of implementing HIV/AIDS prevention programs among LGBT communities, and acting as a technical and financial support providing agency for local NGOs. In 1996, Naz Project evolved into two separate organizations, one continuing the work of Naz Project in London (and was thus

¹⁸ Divya Trivedi, 'Cry Inclusive', *Business Line*, November 16, 2007. Accessed at <http://www.thehindubusinessline.com/life/2007/11/16/stories/2007111650060300.htm>, 12.12.08.

¹⁹ NAZ Project-Humsafar Trust, 'Emerging Gay Identities in South Asia: Implications for HIV/AIDS and Sexual Health', *Conference Report*, Bombay/London: The Naz Project, 1995.

²⁰ For further information on the organisation and its activities visit: <http://www.nazindia.org/about.htm>

named Naz Project London), the other, Naz Foundation International (NFI) with a specific agenda to work with MSM population in South Asia. Over the years, NFI has played a key role in Indian subcontinent to develop local MSM community-based organizations to provide HIV prevention, care and support services and help create peer-networks.

Since 1996, NFI has developed or assisted in the development of some important MSM/LGBT organizations in India such as Bharosa Trust (Lucknow), Gelaya Trust (Bangalore), Manas Bangla (Kolkata), Mirthrudu (Hyderabad), Mitr (New Delhi), Marup Ploi (Imphal), Pratyay Gender Trust (Kolkata), Sahodaran (Chennai), Udaan Trust (Mumbai/Pune) and others. In addition, NFI supports NIPASHA, a national network of MSM HIV-positive groups Snehasudha (Andhra Pradesh), Naya Zindagi (Goa), Spandana (Karnataka), Love Life Society (New Delhi) and Alaigal (Tamil Nadu)²¹.

Thamilmnadu Aravanigal Association (THAA) came into existence in 1998, and as the name suggests, it is totally governed by the aravanis (as the hijras are called in the state) and is wholly dedicated to the needs (medical, legal, educational, economic, etc) of the community. The website says, “[t]he word Tamil was spelt as Thamir not just as as mere exercise in phonetics, but to also derive the abbreviation as THAA. THAA in Tamil means ‘give’”²², symbolic of the demand for fundamental and human rights denied since ages. It networks and lobbies with government departments, quasi-government agencies, NGOs and CBOs for allocation of funds and enabling legislations directed the upliftment of the hijra community.

The NGO Dai Welfare Society works exclusively for the hijra community (started in 1999 by Lata Guru) is co-funded by the Mumbai District AIDS Control Society and the NACO (National AIDS Control Organisation). The organization works with the hijra community in Mumbai to raise wariness of HIV/AIDS, prevention and care & support. In this endaeavour, it receives funding from MDACs, AVERT Society and FHI - Bill Gates project. It organizes advocacy meetings with local leaders and the police, campaigns for the inclusion of the word transgender in the Constitution, and fighting for the equal rights of the hijras especially in matters of

²¹ Naz Foundational International. *Annual Report 2005–06*, London: NFI, 2007. pp. 24–25.

²² <http://www.infosem.org/thaa.htm>

education and employment. The organisation has provided a plot of land to the hijras for a housing society of their own. It also has a programme to provide employment and to set up an ashram for aged hijras who are too feeble to earn their livelihood. However, despite all its initiatives the Dai Welfare Society feels (from their first hand interaction with the community) that it is crucial that the seven main *nayaks* of the hijra community agree on the process of mainstreaming the hijras, because only then any meaningful change can be ushered in.

Sangama²³ is a human rights organization set up in 1999 for individuals oppressed and marginalized due to their sexual preference be it hijras, *kothis*, doubledeckers, *jogappas*, lesbians, bisexuals, homosexuals, gays, or female-to-male/male-to-female transsexuals and other transgenders. The organisation aims to bring sexuality, sexual preference and gender identity into the realm of public discourse and link it to gender, human rights development and other social movements. They campaign for changes in the existing laws, which discriminate against the sexual subalterns, including sex workers and People Living with HIV/AIDS (PLHA). It campaigns actively for their rights, respect, dignity and empowerment.

National Campaign for Sexuality Rights (NCSR) is a nation-wide campaign working for sexual and other rights of the sexual subalterns in India. The campaign is collective effort of groups, movements, individuals and organizations to raises issues related to their concerns on different platforms local, national and international levels (e.g., World Social Forum, Karnataka Social Forum, Bangalore Social Forum, International Womens Day, May Day, Human Rights Day, World AIDS Day, National Womens Conference etc...). It has worked specifically on the repeal of Section 377 of the IPC and against police atrocities.

Infosem²⁴ (formed in Nov, 2003) stands for the India Network For Sexual Minorities; it is a collective national effort by the sexual minorities to end discrimination and ensure equality for themselves in all spheres of life. INFOSEM is a loose confederation of organization serving lesbian, gay, bisexual, transgender,

²³ Further details can be accessed from: <http://sangama.org/>

²⁴ <http://www.infosem.org/> is a comprehensive website with information on NGOs and CBOs working for the LGBT community.

intersexed and other sexual minorities. The idea behind such a national network was to work collectively and build synergies to achieve common goals like advocacy of sexual health rights, legal recognition for the transgender status, lobbying for favourable legislations, etc. Another advantage of such a network is that it helps emerging grassroots groups by providing inputs and training in setting up and managing health, social, and legal issues faced by LGBT communities in the area.

Dumdum Swikriti Society²⁵ is another NGO working in West Bengal to empower the sexual subalterns. They specialize in providing counselling, organising various cultural programmes, exhibitions and sensitization workshops, advocacy, community building, sexual health, support services on sexuality & related issues, human rights, referral for legal problems etc. They publish the magazine, *Swikriti Patrika*, where renowned people present their views on sexuality and gender to build . Its operational are includes Kolkata, North 24 parganas, South 24 parganas, Malda, Murshidabad, Nadia, Midnapore, etc of West Bengal.

SAATHII is the group for Solidarity and Action Against The HIV Infection in India. It specializes on health issues for vulnerable populations like MSM / transgender people / hijras, women, children, adolescents, youth, PLWHA. It works for the reduction of the spread of HIV/AIDS in India and tries to ensure that people living with HIV/AIDS receive un-stigmatized, affordable and quality care, support and treatment. It aims at building the capacities of individuals and organizations working on HIV/AIDS, thus this organisation is more in the nature of a capacity builder. It is a sizeable organisation and its operational area includes Andhra Pradesh, Karnataka, Manipur, Maharashtra, Orissa, Tamil Nadu, West Bengal, etc.

Sudar Foundation is engaged in advocacy and awareness drives for the rights of the transgender community. After a protracted struggle it was able to obtain land from the state government in Natarajapuram, near Chengulpet in Tamil Nadu, to build houses for the community. It has also initiated an Aravani self-help group called the Meena-Mangai; this group which has received a grant of Rs. 25,000 from the government for developing survival skills and imparting vocational training in reiki,

²⁵ <http://www.infosem.org/swikriti.htm>

yoga, beautician courses, tailoring, embroidery, aromatherapy and ayurveda among others.

On the whole, almost all these NGOs, CBOs and networks work as support groups and facilitators to enable the sexual subalterns to access their citizenship rights. Program strategies of most organisations include conducting transgender film festivals, chat rooms, advertising, reporting, networking, pride parades, conducting public rallies, offering legal assistance, and efforts to establish linkages with other social movements, formulating targeted interventions, community mobilization, fund raising, needs assessments, advocacy, research and training, etc. They usually emphasize a lot on health issues because they are truly vulnerable to the AIDS epidemic. The medical/health initiatives include varied measure which can be broadly classified as preventive services, care, support, and treatment services. These organisations offer community outreach activities, free condom and water based lubricant distribution, opening of crisis intervention services, drop-in-center facilities, providing information to people on HIV/AIDS, hormonal therapy and SRS surgeries, offering counseling and psychosocial support, providing HIV testing facilities, offering STD referral services, enabling access to non-judgmental sexual health services, etc. this over emphasis on the sexual health rights of the NGOs has been critiqued as donor driven agendas or lop-sided, top down enterprise which is nothing more than supplying safe sex services. Another area of work is to create legal safe havens for CBOs / NGOs, advocacy activities as many times they are perceived to be on the wrong side of the law because of their association with sexual subalterns.

Thus as is evident from the above mentioned organizational endeavours, the LGBT movement in the country is not merely a discourse of sexual identity/orientation and gender identity but is interlinked with the discourses of human rights, sexual rights, gender equality, social justice, etc. It is linked to other social movements and it actively courts alliances for a larger struggle for equality, justice and freedom.'

Modes of Activism

Hijra activism emerged as a reaction to the broad societal marginalization experienced by the community. It aims at the mobilization, organization representation,

participation and empowerment of the community; it also seeks to challenge the different ways in which sexuality is criminalized. The hijras has successfully used the language of human rights, be it in demanding decriminalization of sodomy, anti-discrimination at workplace, or civil rights like that of marriage, adoption, inheritance, or fundamental rights like right to life, privacy, equality, human dignity etc. The underlying premise of the movement is that since some people have diverse sexual lives, this should not be the cause of their discrimination, oppression and marginalization. Their activism not just the normal behavior of the social but the very idea of normal behavior, they in fact call attention to the 'norm' in 'normal'. The activism aims at mainstreaming the community. Mainstreaming here means what Jody Dean called creating 'reflective solidarity'²⁶, i.e. strengthening bonds of solidarity with strangers. It involves a two-fold strategy to accept and tolerate difference and to create mutual recognition and respect that transcends difference.²⁷

Cultural Initiatives

Cultural initiatives taken by the hijras themselves or their support groups refer to a politics of carnival, transgression, and parody. This section outlines the different steps taken to further the cause of the hijras in the cultural arena. Sensitization of the mainstream society regarding the issues, dilemmas, problems, grievances and difficulties of the hijra community can be best carried out through cultural means like literature, theatre, music, cinema, documentaries and similar mediums.

For instance, the Sudar Foundation works in tandem with Kannadi Kalai Kuzhu, a theater group formed and run by the aravanis in Tamil Nadu. This is because the foundation believes that cultural expression is an effective way of expressing the being, the dilemmas, conflicts and emotions of the hijra identity and other sexual subalterns. So far there have been two plays: *Manasin Azhaippu* (The Call of the Heart) and *Unsettling Memories* (The life of Aravanis - a glimpse).

²⁶ Jody Dean has actually talked of three kinds of solidarity namely, affectional, conventional and reflective solidarity in the book *Solidarity of Strangers*.

²⁷ Berengere Marques-Pereira & Birte Siim, 'Representation, Agency and Empowerment' in Barbara Hobson, Jane Lewis & Birte Siim (eds.) *Contested Concepts in Gender and Social Politics* (Aldershot: Edward Elgar, 2002). pp. 170-194.

Sakhiri²⁸ was a performance Alliance Francaise de Bangalore in 2005 that used several art mediums to question conventional notions of the society. It showcased the dance of hijras against the background of psychedelic play of light on a video screen, to the accompaniment of a spiralling Hindustani alap and strains of guitar. It was a unique fusion which spoke most eloquently of the creative possibilities of all transgressions — be it of gender or of artistic expression. The performance included personal narratives by sexuality minorities Revathi (a hijra writer) read her own poem in Tamil which was simultaneously a narrative of rejection and a plea for acceptance and access to basic rights. The performances drew attention to the angst, anxieties and dilemmas of the sexual subalterns, the pangs of change, the hurt of rejection and stigmatization, and how they defy the norms logic of the 'rational' world. Similarly, the *Tirunangaigal* (Transgender) Festival, 2008²⁹ was an attempt to portray the trauma of being a transgender and the discrimination, humiliation, pain, stigmatization and sufferings their lives entailed. The purpose of all the performances was to sensitize the society and to elicit an empathetic response towards them.

Yet another attempt at sensitizing the society was the film/documentary *XX WHY*. It is a 50-minute film directed by B. Manjula and produced by the Centre for Media and Cultural Studies (CMCS) of the Tata Institute for Social Sciences. The film is on Sree Nandu, a transgender, and it captures the journey of the protagonist from a female to a male transgender. In the director's own words, "It is an honest look at Sree Nandu's transformation from a tomboy to a self-proclaimed man. He genuinely believes that he is a man trapped in a woman's body. The accompanying trauma, ostracization and search for acceptance intrigued the researcher in me and that was when I decided to turn it into a film"³⁰. There are several other documentaries like *Bombay Eunuch* (2001), *The Hijras: India's Third Gender* (2001), *India's Ladyboys* (2003), *Between the Lines: India's Third Gender* (2005), *Middle sexes*, a HBO documentary (2005), *The Hijras of India* BBC radio documentary, and also some programmes on the National Geographic have occasionally dealt with the issues

²⁸ S. Bageshree. 'Pushing Boundaries', *The Hindu*, Mar 25, 2005.

²⁹ The festival was a joint initiative of the Tamil Nadu AIDS Initiative (TAI) and Tamil Nadu Aravanigal and Nalinda Pengal Kootamaippu (Federation of Transgender and Neglected Women of Tamil Nadu).

³⁰ Saraswathy Nagarajan, 'Quest for identity, space', *The Hindu*, 26 Dec, 2008.

of hijras. All these documentaries answer the curiosity of the mainstream society, clarify the misconceptions of the society and convey the plight of their condition.

Thus, the hijras are also participating in community-led inter-personal communication sessions to learn how to negotiate with the mainstream. From living on the fringes of society, they are now working towards 'mainstreaming' themselves. They are taking cultural initiative (as mentioned above) to showcase their hidden talents with the hope of being accepted as citizens in their own rights.

Political Initiatives

The hijras have taken considerable political initiatives to empower themselves. Instead of looking at the state for their welfare, they have taken the onus on themselves to improve their lot. The hijras have actually proved that citizenship and political agency/participation is delinked. On the one hand, the hijras are invisible citizens of the Indian state, deprived of most basic rights and entitlements due to an Indian citizen, on the other hand they have proved their political agency by occupying important political positions in the country. They have used the route of politics to articulate their demands, to make their presence felt, and to shake the Indian state out of slumber so that it takes notice of these invisible citizens. Their successful political role has proved that one does not need genitals for politics. Increasing numbers across India have carved an unlikely niche in politics; they are popular because they stand as independents and are seen by disillusioned voters as a good way of snubbing the existing political elite. Many transgender activists prefer the political route for emancipation of the hijras because they consider politics to be an appropriate platform to intensify the fight for the cause of the hijras.

Hijras as serious political candidates have won the imagination of the common masses of the country because they come across as selfless, honest candidates. By explicitly highlighting their inability to reproduce they project themselves as perfect antidotes to the rampant corruption and nepotism of Indian politics. Hijras are running for offices at the local, state and national office. Through politics, hijras are actually transforming themselves in the public imaginary from objects of ridicule and repositories of shame to active and responsible citizens of the modern nation-state. It is precisely the lack of genitals that allows hijras to be "neutralists" – the term they

adopted when urging the president of India to invite them, as people beyond the in-group fighting typical of men and women to form a government in Gonda district of U.P.³¹. It is their embodied state that not only constructs their authenticity as “real” hijras, but also provides them with a transcendent morality as people beyond the factional politics of men and women.³²

Hijras were granted voting rights as late as 1994 and five years later, Shabnam Mausai was India's first hijra MLA in 1999. Shabnam declared that her victory was a reaction of the people against the apathy of the politicians towards their grievances, problems and concerns. Various hijra welfare groups in India have described the victory as a great morale booster. Then Kamla Jaan was elected as the mayor of Katni in 2000 and she was India's first hijra mayor. The BBC News, South Asia reported, “For two and a half years, Kamla Jaan has run the city of Katni with an iron hand. She sank wells, fixed the drains and renovated the bus station.”³³ The same year (2000) Asha Devi was elected mayor of Gorakhpur, U.P. Their electoral victory is linked to their hijra identity which conveys the message that are more likely to serve the people rather than their own interests, as they have no family or own interests. “We have no family to feed. Unlike our politicians we are not here to make money. We want to serve our people who feed us,” Asha Devi tells voters.³⁴ While another hijra, Meenabai, became the president of the Sehora town municipality, the oldest civic body in the state of Madhya Pradesh. In 2004, in Gujarat, two hijras, Sanjude Nayak and Sonia Ajmeri, contested from the twin constituencies of Ahmedabad and Gandhinagar respectively.³⁵ In the 2009 Lok Sabha elections, Daya Rani Kinnar contested against BJP chief Rajnath Singh from Ghaziabad constituency. Kinnar, a popular figure in Ghaziabad was confident of the electoral contest, she confessed, “I don't mind taking on all the political heavyweights. I was born in Ghaziabad and people know me. I don't have children. I will work only for people. I am going to give

³¹ Livia, Anna, and Kira Hall, “‘It’s a Girl!’ Bringing Performativity Back to Linguistics” in Anna Livia and Kira Hall (eds.), *Queerly Phrased: Language, Gender, and Sexuality* (New York: Oxford University Press, 1997), pp. 3-18.

³² Reddy, Gayatri, *With Respect to Sex: Negotiating Hijra Identity in South India* (New Delhi: Yoda Press, 2006), pp. 223-232.

³³ ‘India's first eunuch mayor unseated’, August 29, 2002. Accessed at http://news.bbc.co.uk/2/hi/south_asia/2224164.stm, as on 12.03.09.

³⁴ *Ibid.*

³⁵ Radha Sharma, ‘Eunuchs ‘Third Force’ in Ahmedabad battle’, Mar 26, 2004. Accessed at <http://timesofindia.indiatimes.com/articleshow/584723.cms>, as on 12.03.09.

a tough fight to Rajnath Singh, who is an outsider. The sitting MP did nothing for the constituency,” Kinnar said³⁶. She is banking on the electorate’s disenchantment with politicians, she remarked, “I am just like a ‘no-vote option’ button on electronic voting machines.”³⁷ Their electoral success has even prompted the mainstream political parties like Congress and BJP to actively court the hijras as the new ‘sexual’ minority. For instance, Uma Bharati in an interview commented that her party is open to the idea of fielding hijras as candidates for elections³⁸.

The hijras have even launched a national political party with membership open to all sexes. The party named ‘Jeeti Jitayi Party’ (literally meaning the party has already won, has the election symbol of a bangle) was the brainchild of Shabnam Mausli. She observed, “Intellectuals, traders, advocates and doctors who desire ‘a clean atmosphere in politics’ could join the party.”³⁹ This new move is expected to provide a new lease of life for one of India's most disadvantaged and downtrodden groups. Hijras believed that they would rule the world in *kaliyug*. According to them, this was what Lord Rama had decreed thousands of years ago when he blessed them. And now that they are active in politics, they feel that such a time has come. Thus, the hijras in India are in the process of evolving their own brand of queer politics.

Campaigns

This section would provide an overview of all the issues that the hijras have fought for ranging from legal reforms, to state recognition, to political representation and enabling legislations to sexual health rights.

Demands for Political Representation

The hijras demands sensitivity, humane treatment, fair, just and non-discriminatory approach from the state machinery. Since the state is blind to all their pleas and

³⁶ ‘Eunuch to take on BJP chief Rajnath Singh in Ghaziabad’, February 22, 2009. Accessed at <http://www.hindustantimes.com/StoryPage/StoryPage.aspx?id=87fad220-f5fd-4a72-9b05-12ad2dc98ae8>, as on 12.03.09.

³⁷ Ibid.

³⁸ ‘Voting in a Gender-Bender’, *The Indian Express*, Feb 28, 2000.

³⁹ ‘Eunuchs boosted by voter disillusion’, 14 February, 2002. Accessed at http://news.bbc.co.uk/2/hi/south_asia/1820200.stm, as on 12.03.09.

demands, they have turned to politics. Some of them even got elected to important political positions, but then some faced legal hurdles in retaining their offices on the ground of their alternate sexuality. To protest against this unjust adherence to a sex-gender binary which obliterates their existence, they are demanding political representation, a chance to participate in the political decision making process. Their rationale behind political representation is that politicization leads to mobilization of the community and is a direct route to empowerment. It is through politicization that they can demand their due from the Indian state, claim the emerging spaces in Indian society, proclaim their visibility and proudly affirm their identity. They have demanded the creation of a National Kinner Ayog or Commission, a constitutional compensation package akin to that for scheduled castes and scheduled tribes to end the sexual-identity based discrimination against them, reservation of constituencies, and seats (which they have nicknamed as Shikhandi seats) in local bodies, legislative assemblies and in the Parliament.

Campaign for Legal Reforms

One of the key areas of hijra activism has been legal reforms, because many a times they suffer discrimination as they are invisible to law, while there are times when some laws stigmatise their identity as illegal. Some such laws against which the hijras and their support groups (NGOs) have fought a protracted battle are Section 377 of IPC, IPTA, and others.

Section 377 bears heavily upon the hijras and the hijra welfare groups because “it’s often used to extort, blackmail, it’s used by police to harass,” says a researcher with Alternative Law Forum Siddharth Narrain.⁴⁰ Thus, this section is used to threaten the hijras as and when fancied by the police, its provisions were grossly misused by the police as many a times the hijras were forced to have sex with policemen. There is a social stigma against sexual subalterns (including hijras) in our country and this particular law firms up this taboo and amounted to legal discrimination against the sexual minorities. Moreover, the activists and NGOs engaged in combating AIDS

⁴⁰Rohini Mohan, ‘No Fear for Being Queer’, CNN-IBN, May 30, 2007. Accessed at <http://ibnlive.in.com/news/no-fear-for-being-queer--special/41652-3.html?from=search-relatedstories>, as on 12.03.09.

could be considered to be engaging in illegal activities, because of this law. Many activists and lawyers campaigning against Section 377 of IPC opined that testing the constitutionality of the section would need consideration of three inter-related issues that of consent (including the question of male rape), confidentiality/privacy and the right to health as superceding a provision of law.

The activists argue that the section is repugnant on a number of counts; for instance, it does not distinguish between consensual and coercive sex. Then the definition of 'unnatural offences' is obsolete, it invites questions such as what is 'the order of nature'? It denies people a right to their sexuality; and serves to legislate into being a new morality, a morality that condemns many forms of sex between two consenting adults including oral sex and anal sex and other kinds of sex, which the judges might decide, fall within the definition of 'carnal intercourse against the order of nature'.

In 1994 the AIDS Bhedbhav Virodhi Andolan (ABVA) filed a public interest litigation in the Delhi High Court. The petition challenged the constitutional validity of Section 377, arguing that the section violated Articles 14-15 (right to equality before law, equal protection of laws and protection against discrimination), Article 19 (right to freedom of speech and expression), and Article 21 (right to life and liberty, which encompasses the right to privacy) of the Constitution of India. Then the movement to repeal Section 377 was continued by the Naz Foundation India Trust which filed a public interest litigation⁴¹ in the Delhi High Court in 2001. It proposed the Delhi High Court to 'read down' Section 377 rather than repeal the entire section. Naz asked the Court to officially circumscribe and limit (read down) the acts the section criminalizes so as to remove all consensual sexual activities between adults if done in private.⁴²

The foundation put forth many arguments against the Section: it violates right to life and liberty, privacy and equality, impedes effective control of AIDS, imposes traditional gender stereotypes of natural sexual roles for men and women upon sexual

⁴¹ In the High Court of Delhi. *In the matter of Naz Foundation Vs Govt of NCT of Delhi and five others*. Lawyers Collective HIV/AIDS Unit, New Delhi; Extraordinary Original Writ Jurisdiction, *Civil Writ Petition No. 7455* of 2001.

⁴² The Lawyers Collective, <http://www.lawyerscollective.org/lc-hiv-aids/index.htm>

minorities, and provides moral and legal sanction for the continued social discrimination of sexual minorities⁴³.

Towards early January 2003, Delhi High Court ordered the Indian government to respond within a month and clarify its stand on the PIL filed by NAZ Foundation.⁴⁴ Then the Government was undecided on its position, with the law and health ministry favouring the amendment of Section 377 of the IPC, while the home ministry opposed such a move. The government (Ministry of Home Affairs) in its affidavit submitted to the Delhi High Court responded that, “the basic thrust in the argument of pro-gay activists is the perceived violation of fundamental liberty guaranteed in Article 19 of the Constitution of India. However, there is no violation of fundamental liberty as long as any act of homosexuality/lesbianism is practiced between two consenting adults in privacy as in the case of heterosexuality”.⁴⁵ The Affidavit further said that in India, the Section 377 was basically used to punish sexual abuse to children and to compliment lacunae in rape laws. For example, in the entire history of statute from 1860 to 2002, there were only 30 reported cases under Section 377 that came before various High Courts and the Supreme Court since 1830. The large majority of prosecutions were due to non-consensual acts of sodomy, with only 4 cases where consensual acts of sodomy have been brought to court, 3 of which are prior to 1940 (pre-independence India). In addition, 50 percent of total cases consist of sexual assaults committed on minors, whereas only 5 out of 30 being on adults⁴⁶.

Receiving such response from the home ministry, the Delhi High Court in 2003, refused to consider the petition stating that the petitioners had no *locus standi* in the matter. The court argued that since nobody had been prosecuted in the recent past under this section it seemed unlikely that the section could be struck down as illegal, especially in the absence of a petitioner with standing. The court therefore dismissed the case on the grounds that the petition did not prove evidence of people who had actually suffered bodily harm from Section 377 or that the law had been used against a homosexual in a discriminatory manner, for example in the form of a FIR. The court

⁴³ Ibid.

⁴⁴ ‘India Court: Govt. Must Clarify Stand on Gay Relations’, June 6, 2007. Accessed at <http://www.sodomylaws.org/world/india/innews17.htm>, as on 12.03.09.

⁴⁵ Shamona Khanna, *Gay Rights*, in Bina Fernandez (ed), *Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India* (Mumbai: India Center for Human Rights and Law, 2002), p. 58.

⁴⁶ Chief Justice Badar Durrez Ahmed, In the High Court of Delhi. *Civil Writ Petition No. 7455 of September 2, 2004*. Lawyers Collective HIV/AIDS Unit, New Delhi; 2001.

further clarified, “Just for the sake of testing the legislation, a petition cannot be filed... the court does not express opinion when nobody is really aggrieved by the action which is impugned and does not examine merely academically the impugned action of the legislature or the executive. In view of the above, we feel that an academic challenge to the constitutionality of a legislative provision cannot be entertained. Hence, the petition is dismissed.”⁴⁷

Naz Foundation continued its fight for the cause of the sexual subalterns and filed a Special Leave Petition with the Supreme Court of India on the limited question of whether the Court could dismiss the petition on ground that it was purely ‘academic’ and there was no ‘cause of action’. The Supreme Court in its ruling on February 3, 2006 referred the case back to Delhi High Court contending that the Court had erred in rejecting the original petition that Naz Foundation had no *locus standi* and asked the High Court to reconsider the case on merit.⁴⁸ Even the NACO on behalf of the respondents agreed in its Affidavit dated July 17, 2007 that “enforcement of section 377 can adversely contribute to pushing the infection underground, make risky sexual practices go unnoticed and unaddressed. The fear of harassment by law enforcement agencies leads to sex being hurried, leaving partners without the option to consider or negotiate safer sex practices”.⁴⁹ Subsequently, there was a significant intervention in the case by a Delhi-based coalition of LGBT, women’s and human rights activists called ‘Voices Against 377’, which supported the demand to ‘read down’ section 377 to exclude adult consensual sex from within its purview.

Eventually, in a historic judgement delivered on 2 Jul 2009, the Delhi High Court overturned the 150 year old section, legalizing consensual homosexual activities between adults. In a 105-page judgement, a bench of Chief Justice Ajit Prakash Shah and Justice S. Muralidhar said that if not amended, section 377 of the IPC would violate Article 21 of the Indian constitution, which states that every citizen has equal opportunity of life and is equal before law. The bench said, “If there is one

⁴⁷ *AIDS-India e-Forum*. Lawyers Collective HIV/AIDS Unit, New Delhi, Update on Legal Challenge to Section 377 IPC., Nov 6, 2008. Accessed at <http://health.groups.yahoo.com/group/AIDS-INDIA/message/5408>, as on 12.03.09.

⁴⁸ In the High Court of Delhi. *Reply Affidavit on Behalf of Respondents 4 and 5, Civil Writ Petition No. 7455 of 2001*. Lawyers Collective HIV/AIDS Unit, New Delhi; July 17, 2006.

⁴⁹ ‘Hateful Anti-gay Law Must Go: Indian Govt. Agency’, June 6, 2007. Accessed at <http://health.groups.yahoo.com/group/AIDS-INDIA/message/6322>, as on 12.03.09.

constitutional tenet that can be said to be underlying theme of the Indian Constitution, it is that of 'inclusiveness'. ... The inclusiveness that Indian society traditionally displayed ... is manifest in recognizing a role in society for everyone. Those perceived by the majority as 'deviants' or 'different' are not on that score excluded or ostracized. Where society can display inclusiveness and understanding, such persons can be assured of a life of dignity and non-discrimination. This was the 'spirit behind the Resolution' of which Nehru spoke so passionately. In our view, Indian Constitutional law does not permit the statutory criminal law to be held captive by the popular misconceptions of who the LGBTs are. It cannot be forgotten that discrimination is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual."⁵⁰ This was indeed a big victory for the sexual subalterns and their support organisations. This fight is a classic example of how changes are hard won, especially when attempted by disempowered or marginal populations.

However, there have been protests against the verdict from religious quarters and conservative sections of the society on the ground that legalizing such activities would affect the institution of marriage and destroy the moral fabric of the society and that homosexuality was against the socio-cultural ethos of the country. Legalizing homosexuality in other countries was rendered possible because of different social, economic, constitutional and cultural background. A special leave petition (SLP) challenging the Delhi High Court judgment was filed. The counsel even pleaded for a stay of the operation of the judgment, to which the CJI said that an interim order could be considered only after hearing the parties concerned. Consequently, the Supreme Court Bench comprising of Chief Justice K.G. Balakrishnan and Justice P. Sathasivam has issued a notice to Naz Foundation and other respondents to be heard on July 20.⁵¹

Apart from this protracted legal battle against Section 377, hijras have dedicated their energies to legalize voluntary castration. That too would decriminalize the hijra community and enable them to access the medical personnel for the

⁵⁰ Naz Foundation v. NCT of Delhi, Delhi High Court. <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>. Retrieved on 2009-07-02. Portions of the court proceedings have been included in the Appendix VI.

⁵¹ 'Supreme Court notice to Centre on Section 377', *The Hindu*, Jul 10, 2009.

operation which would ensure greater hygiene and safety measures. Sex Reassignment Surgery (SRS) plays a very important role in the life of a hijra. But technically, it is illegal in India because under Section 320 of the Indian Penal Code (IPC) emasculating (castrating) someone is causing him 'grievous hurt' for which one can be punished. And under Section 322 of IPC even 'voluntarily actions causing grievous hurt' is a punishable offence. Therefore even if one voluntarily chooses to emasculate oneself the doctor will be liable to punishment under this provision and the person undergoing the emasculation could also be punished for 'abetting', aiding in this offence.

Such criminalization of emasculation inhibits the access of the hijras to safe and sanitised medical facilities for castration. As a result most hijras all over the country are compelled to follow crude and unsafe ways of castration. Many hijra activist call such a law to be a direct violation of the right to health care, which has been held by the Supreme Court to constitute an important element of the fundamental right to life. Thus activists and supports claim "[A]cknowledging sex-reassignment respects the rights of the individual concerned ... acknowledging the sex-reassignment assists the individuals to integrate into society. In their re-assigned sex, they are more likely to live comfortably in society and to contribute to it".⁵² Thus, they demand de-criminalisation and legalization of voluntary castration and are campaigning actively for comprehensive, efficient, accessible and affordable sex reassignment surgeries. Their activism has yielded fruit as the state government of Tamil Nadu in a radical step has promised legalization of SRS and has even decided to pay for it.⁵³

Yet another legal campaign fought by the hijra activists is against the Immoral Trafficking Prevention Act, 1986 and the amendments proposed by the government in 2006.⁵⁴ The root of the problem with the ITPA is that traffickers are seldom identified, much less prosecuted. Rather the law is used by the police as an instrument to harass and detain the sex workers across the country. The recent amendments to ITPA do not alter its fundamental quasi-abolitionist character. The law remains as

⁵² <http://www.lawyerscollective.org/hiv-aids/publications/articles-transgender-law>

⁵³ Vinay Sitapati, 'Sex change for free', *The Indian Express*, March 14, 2009.

⁵⁴ The Immoral Traffic (Prevention) Amendment Bill, 2006 was introduced in the Lok Sabha on May 22, 2006. The Bill has been referred to the Parliamentary Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi) and finally the ITPA, 2008 was formulated.

punitive as ever. It continues to stigmatize sex workers, by punishing people who live off their income, which although aimed at middle-men, pimps and traffickers, targets basically the husbands, lovers, partners and children of sex workers, thus depriving sex workers of their only means of support and family.

The current amendments to ITPA, instead of recognizing and addressing the issues of arbitrary police raids, seizure of money and material belongings, physical assault, torture and rape and other human rights violation of sex workers by police personnel, propose inter alia, the lowering of the rank of the special police officer dealing with offences under ITPA from inspector to sub-inspector. This amendment is likely to worsen the situation, resulting in greater abuse of powers by the police. The amendments should have focused on increasing police accountability to ensure that sex workers rights are guaranteed, instead coercive strategies are used which would limit access to social support systems and health care services for sex workers.⁵⁵ Moreover, forced testing for HIV/ AIDS, although not permitted under the National AIDS Control and Prevention Policy, continues to be allowed under ITPA, through a clause that enables magistrates to order mandatory testing for sex workers. This clause is a total violation of the right to privacy of a person under Article 21 of the Constitution.⁵⁶ Thus, it is apparent that the amended ITPA instead of aiding the sexual subaltern lowers their self worth and dignity; for the hijra sex worker, amended ITPA or not, the state still remains an adversary.

Campaign for Civil Rights

The root cause of their deprivation of basic civil rights is that the law recognizes sexual identity purely on the basis of the biological definition of the sex that one is born in. officially, the sex of a person is determined at birth in accordance with stated biological criteria and without any considerations of the person's psychological sex. Such a gender enumeration by the state causes disparity between the appearance and the official identification of hijras, leading to innumerable legal and social problems.

⁵⁵'Wrecktifying ITPA', October 2002. Accessed at <http://www.lawyerscollective.org/hiv-aids/publications/articles-wrecktifying-itpa>, as on 12.03.09.

⁵⁶ Ibid.

The above described invisibility and silence which surrounds the existence of the sexual subalterns produces its own order of oppression, creating in many the impression that they are the only ones 'cursed' with such identity in the world. Thus, the combined operation of the various societal institutions and mechanisms which bear down upon the affected person constructs a mindset wherein the person begins to think of himself as dirty, worthless, unclean and vulgar. There is an enormous erosion of self-esteem, which is perpetuated by the way the civil society operates, initiating a process of self-abuse, depression and self-rejection.

To end this the hijra activists are campaigning for a new equality bill which confers each individual the right to decide their gender expression and identity, including transsexuals, transgenders, transvestites and hijras. This includes the demand for hijras to be considered female as well as a third sex. Apart from this they are striving towards a comprehensive civil rights legislation which would offer the hijras the same protection and rights now guaranteed to others on the basis of sex, caste, creed and colour. They are also demanding that the Constitution should be amended to include sexual orientation/gender identity as a ground of non-discrimination. They argue that there is a need for a special legal protection against this form of discrimination inflicted by both state and civil society which is very akin to the offence of practicing untouchability. Some have in fact proposed to expand the purview of the Protection of Civil Rights Act, 1955 to include the discrimination based on sexual identity and gender expression. Many activists argue, "This Act by restricting the definition of civil rights overlooks various other realities. Sources of discrimination in the Indian society are not only limited to fear of 'untouchables' but also extend, inter alia, to homophobia, transphobia, patriarchal and hetero-normative codes of sexuality and gender; and basic lack of tolerance and patience for any alternative behaviour".⁵⁷ The hijra activists are trying new ways to assure equal civil and human rights to the hijras who are discriminated due to their gender, sexual orientation, trade and habits.

⁵⁷Alok Gupta, 'Transgender Law and Civil Rights', April 2002. Accessed at www.lawyerscollective.org/hiv-aids/.../articles-transgender-law, as on 12.03.09.

Campaign for Sexual Health Rights

The sexual subaltern has become the focus of increasing concern globally since the AIDS crisis perforated the sexual environment. This section overlaps with the section on legal reforms and civil rights. This because one, their discrimination by society and invisibilization by law is due to their sexual identity, orientation, habits etc; and two, the sexual health of the hijras and their vulnerability to AIDS has been used as a reason to campaign for their civil rights and legal reforms.

Activists are demanding community based sexual health promotion programme which includes outreach (for condoms and lubricants), targeted interventions for the hijras, professional psycho-sexual advice, information, and counseling, better knowledge dissemination to generate awareness, subsidized medicines, unbiased medical aid including STI treatments, other supportive services, etc. Above all, hijra activists demand a sensitization and training programme for the doctors, because it is mainly the prejudice of the medical establishment which hinders their access to health facilities. They have also demanded for a comprehensive sex-education program as part of the school curricula which alters the heterosexist bias in education and fosters a liberal outlook with regard to matters of sexuality, including orientation, identity and behavior of all sexualities.

Thus, the hijra activists are following a two-pronged approach: one, is to demand for such facilities which reach their (hijra) doorstep and two, to remove the bias of the medical fraternity so that the hijras can access the health facilities without hesitation or fear of ridicule.

Profiles

This section draws small life sketches of a few hijra who have made it big in their lives. It includes the struggles and achievements of Laxmi, Sabeena, Revathi, Rose and Shabnam Mausii. Yet I would like to clarify at the outset that the profiles are not based on an empirical survey, rather major portions have been constructed from newspapers and journals. However, the only touch of authenticity is that some

information about their lives have been obtained through my online interactions with them on their blogs and social networking sites.⁵⁸

Laxminarayan Tripathi: Bharatnatyam Dancer and Activist

This section narrates the journey of Laxmi Narayan Tripathi from a confused boy to a hijra icon, confident about her sexuality and identity. It briefly touches upon her transformation and focuses more on how she has attained the iconic status and how she is working towards the upliftment of the hijra community. Sonia Falerio aptly calls her an inspiring example of a sexual outcaste turned hero⁵⁹. Laxmi is a Bharatanatyam dancer and the owner of nine dance schools called Lucky Chance Dance Academy. When she was in the second standard, Laxmi was enthralled by Bharatanatyam, its costumes, make-up and jewellery which made her pursue the dance form.

From childhood Laxmi displayed affinity for the female sex and identity. She was unlike other kids and preferred playing with dolls, donning make-up and dancing. Despite her deviance, she received full support of her family. She completed her education and continued her creative pursuits. Later she got initiated into the hijra community and now she is actively fighting for hijra rights. Laxmi today is a known face in the media; she has special appearances in films, she has choreographed and acted in Inder Kumar's *Aashiq* and a music video. She appears in an episode of Lonely Planet's *Six Degrees* and in the documentary *Between the Lines on the Third Gender*, and in a BBC feature titled the *Hijras of India*. Recently, she also appeared in the TV game show *Dus Ka Dum* on Sony Entertainment Television. This media attention actually helps her further the hijra cause.

⁵⁸ I got in touch with these hijra personalities on their blogs and sites like MySpace.com, LinkedIn, Facebook, etc. I usually introduced myself, commented on their achievements, signed up as their fans to befriend them.

⁵⁹ *The Dying of The Evening Stars VI*, by Sonia Faleiro. Published in Tehelka, October 28, 2005.

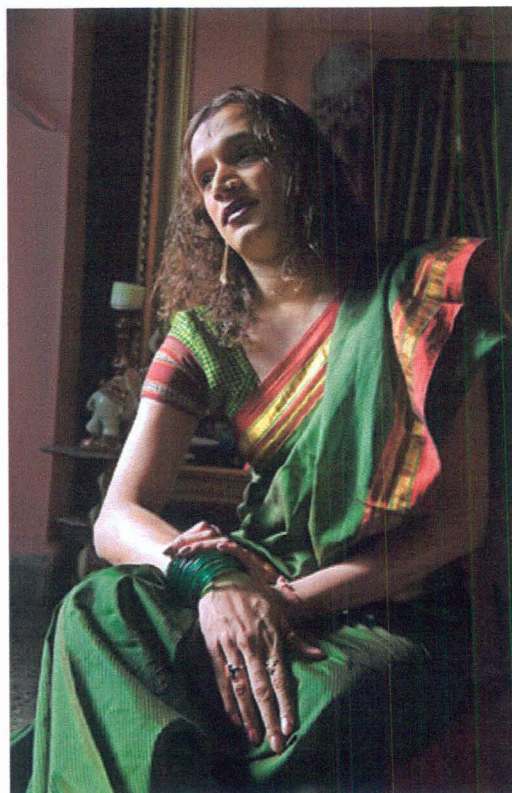


Figure 1. Laxmi Narayan Tripathi⁶⁰

In 2002, Laxmi became president of the NGO, Dai Welfare Society, which is the first registered organisation for hijras in South Asia. As part of the organisation she was involved in legal advocacy, campaigning, organizing meetings, rallies for their basic entitlements. In 2006 she started Astitva,⁶¹ working for the support, welfare, development and upliftment of sexual minorities. She through this organisation is involved in advocacy, communication and capacity building to ensure their economic betterment, to facilitate their access to care, support, medical treatment, education, etc. The NGO concentrates on health systems reform, HIV, human rights and law, access to care and support, community mobilization, education outside school settings, home and community-based care, psychological support against stigma and discrimination.

She is concerned about the spread of AIDS among the hijras, she remarks, “[H]ijras are on the verge of extinction, dying like flies.”⁶² She has the distinction of

⁶⁰ Photo: Shaidul Alam Source: <http://www.myspace.com/laxmihijra>

⁶¹ The official website of the organisation is http://www.ngogateway.org/user_homepage/index.php?id=599. The website is still under construction and much information is still not available on the website.

⁶² Ibid.

being the only openly transgender person to represent the United Nations' Civil Society Task Force on HIV/AIDS. She was there to fight for the hijra community, who have been deprived of their basic rights and are not being treated as human beings. Laxmi remarked, "I am raising the main issues of sex workers and sexual minorities who are treated with total disrespect. I am trying to bring the attention of the whole world to the issue of sexual minority."⁶³ She further opined, "I want that people should be more humane, they should consider each other as human being, and to respect them just to consider them as transgender."⁶⁴ She explained that throughout the global South, sexual subalterns are forced to beg for basic services and health care or are forced into sex work because there is no political will to recognize their fundamental rights. She further observed that transgender communities are often afraid to assert their rights because they know that authorities would not back them up. "It is now up to the UN to wake people up so that we are recognized as human beings," she said⁶⁵.

Laxmi believes that it is important to promote interaction of the hijras with the societal mainstream as that could reduced the stigma attached to the hijra identity. According to Laxmi, societal interaction would clarify misconceptions about the hijras like they are promiscuous, hyperlibidinous, criminals, etc. It is only through interaction that the mainstream can understand the existential dilemmas of the hijras, which she feels will result in recognition and respect for the community. Yet all her achievements did not mean that she escaped social ostracism and is often called names like "slutty, bitchy, and sexy";⁶⁶ or that she is media savvy, running after publicity and working to make money, etc. Yet all of this does not daunt her indomitable spirit. The fact that she is comfortable and proud about her identity can be gauged from the fact that she wants to be reborn as a transgender (as mentioned in the BBC feature on The Hijras of India). She is confident of doing something

⁶³ 'Indian Eunuch Fights For Respect At UN AIDS Meets'. Accessed at <http://www.india-server.com/news/indian-eunuch-fights-for-respect-at-un-1865.html>, as on 12.03.09.

⁶⁴ Jha, Lalit K., 'Eunuch from India fights for respect at UN AIDS meets', June 13, 2008. Accessed at <http://qmediawatch.wordpress.com/2008/06/13/eunuch-from-india-fights-for-respect-at-un-aids-meets/>, as on 12.03.09.

⁶⁵ Ibid.

⁶⁶ Ibid.

worthwhile for her community because she proudly remarked, “I shall perish, but not my name”.⁶⁷

Sabeena Francis: Hijra Activist

The profile of Sabeena Francis is a narrative of angst turned into passionate activism. She bears no resemblance to the image of a hijra we have in our minds. She has successfully affirmed her identity (with due support from her family) and after initiation into the hijra group she has successfully avoided the traditional occupations of hijras. Thus, Bagashree S. aptly called her ‘a fine example of defying stereotypes’.⁶⁸ She is an articulate activist of the hijra community and her mission is to help the hijras get out of the traditional roles they are trapped in. Her efforts are targeted towards persuading the society to look at them as ‘normal humans with normal aspirations’. She emphatically says, “We are not aliens.”⁶⁹

After she passed her 12th, the realization dawned on Sabeena that she was ‘different’, and it was then she joined the hijra community. She explains, “A hijra is confused in her growing up years. Nobody understands her. People only believe what they see and not how anyone feels inside. And when you meet someone else like your own self, you say with relief, ‘They are my people!’ And they, in turn, tell you, ‘We were like you once upon a time’.”⁷⁰

She was initiated into activism by the Maharashtra bureaucrat G.R. Khairnar⁷¹. He made her a “rescue officer” of a rehabilitation programme to come to the aid of young girls trapped in brothels. There she started conducting HIV and AIDS awareness workshops, and it was then she realized that her community needed her to help prevent the spread of this deadly disease. Thus, Sabeena acquired an analytical-activist edge and academic interest from her past experiences. This academic interest motivated her to the cult worship of Aravan among hijras in Tamil Nadu. That was when she migrated from Bombay to Tamil Nadu.

⁶⁷ “The Hijras of India”, BBC News, First broadcast February 2007. Source: http://news.bbc.co.uk/2/hi/programmes/documentary_archive/6386171.stm

⁶⁸ Bagashree S. ‘We are no aliens’, *The Hindu*, Jan 12, 2004.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Popularly known as Mumbai’s ‘one man demolition army’. For more details about him, see: <http://timesofindia.indiatimes.com/G-R-Khairnar/articleshow/30881132.cms>



Figure 2. Sabeena Francis, Hijra Activist⁷²

She had a lot of grievances against the state, society and system at large and she channeled this anger of hers into activism. She rues, “Nobody even knows for sure how many hijras are there in our country, since they are simply categorized as ‘female’ in the census.”⁷³ Though they are estimated to number over one crore, there are no official figures available. She is dismayed by the total apathy and inaction of the state towards the hijras. She explains that the state neglect is because they are not politically organised and so their (hijra) issues are conveniently ignored by the state. She reasons, “Even the Anglo Indians, who are less in number when compared to us, have reservation in education and employment”.⁷⁴ Thus she realized that only organisation and mobilization of the community members can lead to the upliftment of the community. She feels that it is time the government woke up to the needs of this much-maligned minority group, by providing reservation in education and employment and by amending laws on marriage, adoption, and property ownership to give them legitimate space in society. In the meantime, Sabeena was successful in shirking off the gender identity imposition by the state by fighting hard to get a passport under the ‘female’ category. “All my documents slotted me as ‘male’. But

⁷² Source: <http://www.hindu.com/mp/2004/01/12/stories/2004011201840300.htm>

⁷³ Bagashree S. ‘We are no aliens’, *The Hindu*, Jan 12, 2004.

⁷⁴ Francis P. Barclay, ‘Their cup of woe overflows’, Nov 7, 2008. Accessed at <http://www.merineews.com/catFull.jsp?articleID=14667>, as on 12.07.09.

the officials granted me a passport as 'female' because I filed an affidavit saying I had joined the hijra community."⁷⁵

Sabeena was instrumental in the establishment of the South India Aravani Rights and Rehabilitation Centre (SIARRC) — an initiative financially and technically supported by the NGO, New Entity for Social Action (NESA)⁷⁶. NESA is a coalition of about 42 groups with shared values and perspectives. The network includes Non-governmental Organizations, Community Based Organizations and other Civil Society Organizations in South India all working towards the end of providing a life of dignity to the vulnerable sections of the society. It is a rights-based network organisation that works through individual partners, network members with an integrated sectoral approach by decentralized power and programmes towards building a just-based civil society. However, it is a broad based network and caters to the needs of not just aravanis, but also the dalits, adivasis, women, oppressed and marginalized communities.

SIARRC, its sub group works for the hijra cause specifically. It helps aravanis (as hijras are called in Tamil Nadu) through workshops, awareness camps, income-generation programmes, and so on. It imparts training on human rights, HIV/AIDS awareness and other such issues. SIARRC in association with the NESA have conducted successful campaigns to secure ration cards, identity cards, voting cards and free housing for Aravanis in south India. For instance, SIARRC has been successful to get 58 house pattas for Aravannis in patta no. 68/14 in Kollu Kadai village in Srirangam taluk in Tiruchirapally district. SIARRC has also been demanding steps for their economic emancipation. "We hope that economic initiatives will free eunuchs from prostitution and begging," says the trustee, R. Jeeva⁷⁷. In 2006, SIARRC worked for the legalization of the third gender identity. P Mohana, Managing Trustee, South India Aravanigal Rights and Rehabilitation Centre (SIARRC) observed, "With the growing number of problems and discrimination being faced by them (aravanis), they need an independent identity (third gender)"⁷⁸. Moreover, Sabeena through her organisation has campaigned for the legalization of

⁷⁵ Bagashree S. 'We are no aliens', *The Hindu*, Jan 12, 2004.

⁷⁶ For greater details on the organisation visit: <http://nesaindia.org/index.html>

⁷⁷ 'They want benefits of Govt. schemes', *The Hindu*, Mar 30, 2004.

⁷⁸ 'Magical Story Abt Hijra', Oct 26, 2006. Accessed at <http://prasadpc.blogspot.com/2006/10/magical-story-abt-hijra.html>, as on 12.03.09.

sex change. Her efforts bore fruit when the state government passed a government order on 'Rehabilitation of Aravanis'⁷⁹ which promises legalization of SRS.

Revathi: Hijra Writer and Activist

This profile is distinctly different from the above two; it highlights the trials and tribulations, success and dilemmas, pathos and pain of a hijra existence. Revathi's life has been a roller coaster ride of ups and downs. She personifies resilience and tenacity; she has coped with disturbing situations and now has emerged as a true winner. Her profile is different because unlike Laxmi and Sabeena, she had to cope with the pain of familial rejection. Unlike Laxmi and Sabeena who were empowered through organizational links, her alliance with an NGO left her emotionally bankrupt and jobless forcing her into sex work. Her life brings to light the hardships of a hijra identity.

When she was in the ninth grade, she fell in love with a fellow male student and dropped out of school. Her parents then forced her to work as a cleaner on the lorry. Her femininity earned her rebuke and rejection. Unable to carry on with that existence, she first left for Delhi where she joined the hijra community. Later, she migrated to Mumbai, where economic compulsions drove her to sex work. When her family came to know of her decision her brother had beaten her almost to unconsciousness with a cricket bat. She had then been dragged to the local temple where her long hair was tonsured. She sighs, "Their blows did not hurt as much as losing my hair did."⁸⁰

Revathi's favourite chela was Famila, led into activism. She campaigned hard for hijra rights especially in health and legal issues. While representing the hijras in a social meet at Kolkata, Revathi spoke about the grievances and aspirations of the community, "We too want to go to restaurants, visit cinema halls and parks, ... We also want to educate ourselves and improve our prospects. We want to enjoy the privileges of being an Indian, and I believe that in time we will achieve our dream. Hijras have already won elections and entered the field of politics. Movies are being

⁷⁹ Government Order on 'Rehabilitation of Aravanis'. Accessed at http://www.tn.gov.in/gorders/social/sw_e_199_2006.htm, as on 12.03.09.

⁸⁰ Sonia Falerio, "Middle Sex", April 14, 2007. Source: <http://soniafaleiro.blogspot.com/2007/04/middle-sex.html>

made about us, and people are trying to understand our predicament. In the world's largest democracy...maybe there's hope for us yet."⁸¹ Arvind Narain, an activist with Bangalore's Alternative Law Forum, who worked closely with Revathi on the anthology *Because I Have a Voice* (Yoda Press, Rs 295), for which she contributed a piece, testified, "Revathi is one of the most ethical activists I have met. Her work is excellent."⁸²

At Sangama, the NGO for which Revathi worked, she fell in love with and married a colleague. Their relationship soured within the year. She confides, "He lost interest. He spoke of feminism in public, but at home I was to play the role of the subservient woman, while he was not answerable to anyone."⁸³ Unable to continue working with him, Revathi quit her job, but accepted Sangama's offer to write *Unarvum Uruvamum* before quitting. She as a writer has spent a year traveling across Tamil Nadu inscribing 37 profiles of hijras for her debut book *Unarvum Uruvamum* ("Feelings of the Entire Body", Sangama/Adayalam, Rs 65).

Her soured relationship with Sangama affected her prospects of employment in other NGOs and after months of barren searching; she was compelled to return to sex work. She cries, "I've come back to where I started."⁸⁴ She says, "I spoke out about police violence, and now I'll be their first target. The society still does not accept me, and since, I tried to integrate into the mainstream, now hijras taunt me, 'Look at you. You've returned to the streets'"⁸⁵. She rues, "Sometimes I fear my head will burst with the horror of my protest. This is not who I am. I'm a writer, an activist. See that part of me. Not this body I must sell because society won't give me a chance."⁸⁶ She laments about the compulsions of her dual existence, as a sex worker and an activist-writer.

⁸¹ "Eunuchs – India's Third Gender. Source: <http://www.thingsasian.com/stories-photos/2022>

⁸² Sonia Falerio, "Middle Sex", April 14, 2007. Source: <http://soniafaleiro.blogspot.com/2007/04/middle-sex.html>

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

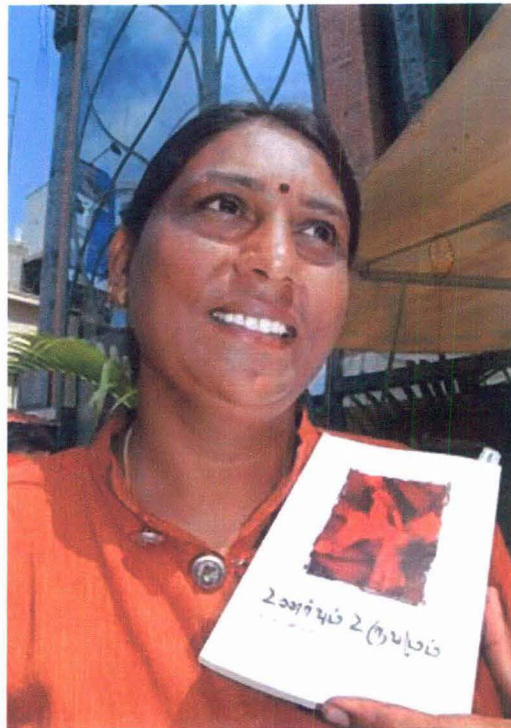


Figure 3. Revathi (hijra writer) with her book *Unarvum Uruvamum*⁸⁷

Yet life sprung a surprise, things suddenly started looking up. Her literary potential got recognized when the Penguin publishing house commissioned her autobiography, and she also managed a job as a community consultant with the Karnataka Health Promotion Trust. Thus, Revathi is a hijra activist with a difference. She used her literary skill to convey the sorrows and sufferings of a hijra existence. She has also been invited to several cultural functions like Sakhiri and others (mentioned earlier) and it is hoped that she would be able to sensitize the society and bridge the gap between the mainstream and the hijra community.

Rose Venkatesan: Transgender TV Host

This profile is about India's first transgender television host and is more about her achievements and upcoming activities, than about her life's journey. She is the face of the transgender community in India. She through her shows and media engagements is working towards the removal of misconceptions of the mainstream regarding the sexual subalterns.

⁸⁷ Photo: S. Radhakrishnan Source: <http://soniafaleiro.blogspot.com/2006/06/gunny-bag-dreams-no-more.html>

Rose is/was Ramesh Venkatesan an American-educated former Web site designer with a master's degree in biomedical engineering. Her parents were enraged with her announcement of being a transgender. Her mother still finds it hard to accept her in feminine clothing. She however confessed that the US was no less hostile, where she had spent three years studying at Louisiana Tech University. "There, people are 'too homophobic and trans-phobic'," she says.⁸⁸

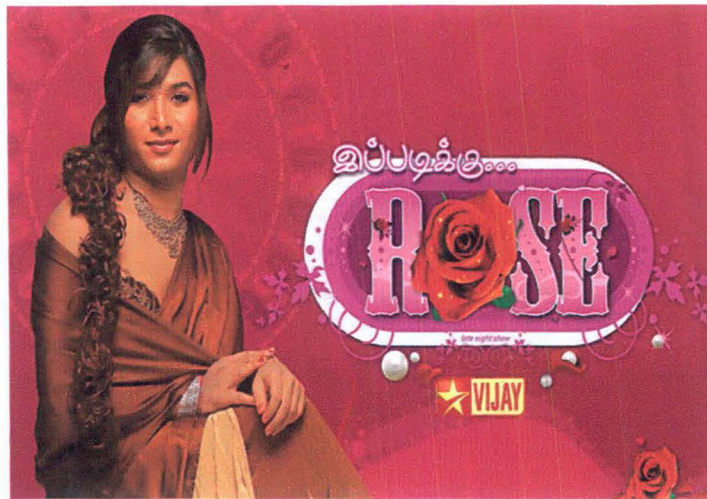


Figure 4. Rose Venkatesan in her chat show *Ipadiku Rose*⁸⁹

She explains the irony of the Indian transgender community, who once held a distinctive status, but is now denigrated, degraded and discriminated. She says, "We have a god who was born of intercourse between two men. The British didn't like that. They wanted to cleanse this country of what they viewed as evil. They even destroyed a lot of cultural artwork that depicted homosexuality, untraditional sexual acts, and sexuality in general. They imposed the modern idea of rigid heterosexuality."⁹⁰ While colonial rule may have suppressed the multiple gender expressions of its day, Venkatesan seeks to reclaim the inclusive voice of popular media. "I wanted to use the media, because it was using the media that we were first ostracized," she said.⁹¹

⁸⁸Page, Jeremy, 'Transsexual host breaks taboo' November 3, 2007. Accessed at <http://www.timesonline.co.uk/tol/news/world/asia/article2796668.ece>, as on 12.03.09.

⁸⁹ Source: http://www.india-forums.com/forum_posts.asp?TID=878474

⁹⁰ Ibid.

⁹¹ Ibid.

Her first step into the world of media was through a talk show *Ipadiku Rose* on Vijay TV. Her media presence has earned her the name of Oprah of South India. The show's director, Anthony Thirunelveli, said "the half-hour talk show had been conceived as a program suitable for family viewing but would discuss issues of sex and sexuality, confronting 'hush, hush, under the carpet subjects'." ⁹² The first nine episodes dealt with divorce, sex and relationships among the mostly young employees in India's call centers, and sexual harassment. But as the show progresses, the themes were broadened, starting from suicide rate among Tamil-educated students who have to cope with English in college to physical abuse of children in schools in the name of reprimand, and about the lives of men serving prison terms, etc.



Figure 5. Rose's new show *Ithu Rose Neram*⁹³

Rose hosted the show with the objective of propelling downtrodden groups of transsexuals, or hijras, into the mainstream. She asserts, "I want to break social stereotypes about transgender people through my TV show ... People will be curious about me. I know curiosity is not acceptance, but it is a start". ⁹⁴ The show was expected to remove the stigma from their identity and to sensitize the larger society. If the TV ratings are to be believed, Rose has been able to stimulate interest among the

⁹² Tackling a Society's Boundaries, on TV and in a Family. Source: http://www.nytimes.com/2008/02/20/world/asia/20chennai.html?pagewanted=2&_r=1

⁹³ Source: <http://weeksupdate.com/2009/07/rose-venkatesan-indias-first.html>

⁹⁴ 'A Transgender TV Debut'. Accessed at http://www.washingtonpost.com/wp-dyn/content/article/2007/12/08/AR2007120801358_2.html, as on 12.03.09.

Amar Akbar Anthony, Kunwara Baap and Janta Ka Hawaldar. Gradually she drifted away from traditional hijra roles and had moved to Madhya Pradesh to engage in social work. It was then that she contested for the State Legislative Elections in 1999 and won. Shabnam Mausi is bitter about the way eunuchs have been treated by people and the government. She remarks, “The Indian Government has done nothing for eunuchs. They have worked for the betterment of backward classes and poor people. Nothing for eunuchs, who are always treated as objects of humiliation ... I have grown up being called a *hijra*. That word was like a thorn, which kept piercing me.”⁹⁷ In hindsight she observes, “But now, people respect me.”⁹⁸



Figure 6. Shabnam Mausi with Ashutosh Rana (actor who portrayed her on-screen)⁹⁹

Shabnam Mausi was elected from the Sohagpur constituency in Madhya Pradesh’s Shahdol district. She explains, “The political scenario in MP was bad --- ministers did not help the society at all. So people thought “*Nar ko dekh liya, nari ko dekh liya, ab hijre ko dekh lenge* [We saw men and women, now let’s see what a eunuch can do].”¹⁰⁰ She further observes that people expected difference from her,

⁹⁷Kulkarni, Ronjita, ‘Meet Shabnam Mausi’. Accessed at <http://www.rediff.com/entertai/2002/mar/04shab.htm>, as on 13.07.09.

⁹⁸ Ibid.

⁹⁹ Source: <http://www.hindu.com/mp/2005/04/18/stories/2005041800940200.htm>

¹⁰⁰ Ibid.

er entry into politics was hailed as “Shabnam Mausī aayi hai, nayī roshni layī hai”¹⁰¹ [Shabnam Mausī has come with a new light]. Shabnam Mausī is the first hijra to be elected to public office. She worked as an elected as a member of the Mādhyā Pradesh State Legislative Assembly from 1999 to 2003. Thus, for the first time that a hijra became a representative of those very people (mainstream) who refused even to acknowledge the social status of the community. The wave started by Shabnam Mausī, reached many states where hijras got elected as Mayor, first in Katni and then in Gorakhpur. One hijra named Sonia Ajmeri even contested for the lower house against the then Deputy Prime Minister Lal Krishna Advani.

She declared her victory as a reaction against the apathy of the leaders and the indifference of the politicians towards the grievances of the people. The Shahdol district from which she won, is the stronghold of the Rajputs and her constituency Shohagpur has been the home turf for Congress. Political analysis of her victory reveals that she won votes from all across the spectrum. The upper castes voted for her as they were fed up with lack of development. Whereas, the dalits hailed her victory as their own because it enabled them to subvert social hegemony, they proudly proclaimed that they defeated the thakurs with a hijra.

As a member of the Legislative Assembly her agenda was to fight corruption, unemployment, poverty, and hunger in her constituency. She effectively used her position in the Legislative Assembly to speak out against discrimination of hijras as well as to raise awareness on HIV/AIDS. In 2003, Hijras in Madhya Pradesh have announced establishing their own political party called ‘Jeeti Jitayi Party’ (JJP), which literally means ‘party that has already won’. The party’s eight-page election manifesto outlines how it is different from mainstream political parties. Shabnam Mausī however failed to get elected in the consecutive election. Although she is no longer in public office, Shabnam Mausī continues to participate actively in AIDS/HIV with NGOs and gender activists in India.

Her success story prompted filmmaker Yogesh Bhardwaj make a film on her. In 2005, a feature film titled *Shabnam Mausī* was made on her life where the role of Shabnam Mausī was played by Ashutosh Rana. She notes, “I feel good that a film is

¹⁰¹ This same tag line was used in the film *Shabnam Mausī*

being made on me ... People have always looked down on eunuchs. We have never got sympathy. If my story benefits even one eunuch, I will be very happy".¹⁰² Thus, the profile of Shabnam Mausi shows how from a life of anonymity she has travelled far and long to be involved in the politics of the country, how she has contributed to the society in her own way and how she triggered a political revolution of sorts by inspiring other hijras to important public offices of the country.

From the analysis of the emerging trends of hijra activism, one thing is obvious that the movement for the rights of peoples of marginalized genders and sexualities is not monolithic; there are many voices and articulations, often in conflict and dialogue with each other and other movements. Out of these multiple voice, one is that of the hijras. Yet the hijras are not uniform in their aspirations and inclinations; their identity revolves around their individual subjective identification; this fluidity of identity and consequent changing subject positions has led to dilemmas in the transgender movement.

The transgender movement globally is undergoing a process of boundary construction and identity negotiation, this is evident from the contests over membership and naming, these debates are part of an ongoing project of delineating the 'we' whose rights and freedoms are at stake in the movements. The conflict between a politics of identity-building and identity-blurring has erupted in the course of transgender movement.

Two different political impulses and two different forms of organizing can be seen as two routes to emancipation. The logic and political utility of deconstructing collective categories vie with that of shoring them up. Identity based activism mobilizes members on the ground of shared oppression and the denial of the freedoms and opportunities. Yet this impulse to build a collective identity with distinct group boundaries has been met by a directly opposing logic, to take apart the identity categories and blur group boundaries. This alternative angle, influenced by academic post modern thinking, holds that sexual identities are historical and social products, not natural or intra-psychic ones. Since socially produced binaries (gay/straight,

¹⁰²Kulkarni, Ronjita, 'Meet Shabnam Mausi'. Accessed at <http://www.rediff.com/entertai/2002/mar/04shab.htm>, as on 13.07.09.

man/woman) are the basis of oppression it is necessary to disrupt fixed-essentialized categories.

This dilemma is being faced in the Indian transgender movement as well. Despite the tactical advantage of a cross-cutting alliance of the sexual subaltern on the whole, hijra activists are campaigning to consider hijras separately from the overarching LGBT group because of their unique social and cultural status. They argue that operational/activist experience bears testimony to the fact that separate targeted interventions yield better results. They however do not discount importance of joint political advocacy by all sexual subalterns. The sexual subaltern group is not a homogenous monolith; there are different needs and concerns. This diversity inherent in LGBT community has fostered the thinking to offer services customized to suit needs of various sub-sections of LGBT community.

However, one needs to understand that both have their respective merits and drawbacks. Identity politics offers a strong politics on a weak, exclusionary basis, exclusionary because identity-based social movements erect artificial boundaries and borders. On the other hand, post-structuralism offers a thin politics as it problematises the very notion of a collective in whose name a movement acts. Thus, sexuality-based politics contains the predicament of identity politics; it is as liberating and sensible to demolish a collective identity as it is to establish one.

CONCLUDING REFLECTIONS

The research embarked upon an analysis of the interface between the Indian state and the hijra community and in due course what emerged were fascinating nuances of identity, state operation, agency of the hijras and diverse trends in activism. These nuances when analyzed indicated many complexities and contradictions. Hence, unlike a conventional research it would be extremely difficult on my part to offer a conclusion. Instead, I present certain reflections on the subject which aims at a conclusion but is in no way conclusive.

I began working with the hypothesis that the state subscribes to binary categorizations of male/female and man/woman which invisibilizes the hijras and deprives them of their basic citizenship entitlements. Thus, it is the binary which is problematic – it ignores, oppresses, marginalizes, deprives and excludes. Consequently what is implied is that if the state believed in a non-mutually exclusive understanding of sex-gender as a dual continuum then it would acknowledge the identity, status and living culture of the hijra community.

On examination of the facts, theories and ethnographies, it can be said that the hypothesis stands partially validated. This is because the problematic is related to hijra identity. What proved most daunting is to unpack the category of 'hijra' and reach the core of their self-definition. They cannot be simplistically defined as neither men nor women, because that is what appears to us (an externalist perspective) but many hijras may not go with such an explanation. It is here that the question of their identity becomes nebulous, entangled with complexities of biology/anatomy, sexual preference, gender, sex, sexuality and orientation. This complexity of identity is unresolved by the state and its apparatus and it arbitrarily regards them as male or female. This same complexity pervades the state's current welfarist moves as well as the campaigns, movement and struggle by the hijra activists. It is this underlying complexity which hinders me from offering a full proof conclusion.

This dissertation looked at the different facets of the hijra role and identity. The first chapter is a theoretical exposition of the hijra identity. It actually showcases the hijra identity as an example of alternate sexuality, taking clues from the larger theoretical canvas. It explored the notion of the 'body' to understand the corporeality

of the hijra identity. The analysis revealed that perhaps there is a politics of representation in which the hijra body is categorized, labeled, regularized, marked and marginalized. The chapter examined and problematized the notions of 'sex' and 'gender' from a queer perspective and found that for an intermediate identity like the hijra, the markings of sex, gender and sexuality are unclear. It also explored the inter-linkages between sex, gender and sexuality and its influence on the self categorization of the hijras and argued how the foregrounding of identity on gender and sex is problematic. The chapter shows how the hijra identity is in fact an epistemological puzzle, because a dichotomy of male and female gender is firmly inscribed in the culture, society and state of India. Thus, it is the binary paradigm which offers no space to the hijra identity. The chapter critiques sex-gender binary and the way it forms marked bodies and exclusionary identities. To this extent, the hypothesis stands testified. Yet certain ambiguities remain: is it the desire to be a hijra (an identity) which leads to the marking of their body (castration) or is it their corporeality (anatomical defect) which confers them the identity of the hijra? Whether the hijra identity is truly subversive of the binary or is it still governed by it? Do they really want to defy the binary or are we trying to portray them as an alternative sexuality when in reality they are trying to reinscribe the gendered categories through their sexuality, desires, preferences, orientation and practices. These are the unresolved strands of their identity, which is not just complex, but fluid and multi-layered as well and which precludes any possibility of offering a conclusion.

The second chapter grappled with hijra identity from a socio-cultural-historical perspective. It was relatively easy to sketch their traditional social organisation, their distinctive kinship patterns, initiation rituals, religious rites and practices, cultural role, economic adaptation, and to trace this distinctive identity in classical literature and history. What remained elusive was to define this identity. If one is to say that the hijra identity is biological/anatomical, cultural, preferential (a sexual choice), liminal or merely a sexual orientation, it would be both correct and incorrect at the same time. There is a grain of truth in all these explanations, but none of these explanations is satisfactory in defining the hijras. Neither is the hijra identity a summation of all these explanations, it is all of this plus something more. The hijras are not men, they consciously try to approximate feminine attire, behaviour and role and at times see themselves as women, and at times declare themselves as an

institutionalized third gender. There are other contradictions of the hijra identity as well. For instance, on the one hand they have their own social universe, a parallel society of sorts and on the other, they want to relinquish this distinctiveness and integrate with the mainstream. Similarly, their kinship structures are non procreative and yet they idealize marriage. This naturally raises the question: are they a parallel society which can disrupt social institutions like family or marriage or are their social networks mere imitations of the normative kinship arrangements? Despite these cross-cutting arguments, what this chapter still proved is that the society marginalizes and ostracizes the hijras on the basis of their alternative identity and non-conformity to the binary. Whether they are fully transcending the binary or are a misfit in the binary, it is their deviance from the binary which deprives them. Thus, the oppressive and discriminatory nature of the binary is proved.

Having explored the hijra identity theoretically and then investigating the social implications of being a hijra, the third chapter moves on to examine the implications of being a sexual subaltern. It delved deeper into the nuances of negotiating with the state with a hijra identity, what disadvantages, deprivations and discriminations the hijra identity entailed. The first half of the third chapter which analyzed the Indian state to be oppressive and indifferent, testifies the hypothesis. Examples described in the chapter proved that the state adheres to a binary sex-gender paradigm and that the Indian state offered no recognition to alternate sexuality. The hijras are invisible to law and state, since the state is politically structured to acknowledge only two sexes, thus hijras are reduced to legal non entities, and half/non citizens. Thus, the Indian state here is being discriminatory when it fails to extend similar benefits to the hijras on the ground of their alternative sexuality.

The workings of the other state apparatuses like the media, medical fraternity, civil law, police and others all reiterate the hypothesis. Media creates stereotypes of hijras especially in cinematic depictions where the hijra is always the symbol of sexual deviance and most often it is this transgression which is mocked at. The medical fraternity goes a step further, far from acknowledging the hijra identity; it brands the identity as pathological. They have in fact developed technologies and procedures to 'correct' the deviance. Therefore, through the medical discourse the state inscribes the code of intolerance towards alternate sexuality. The state's

discriminatory attitude towards the hijras is most pronounced in the field of law. The hijras are invisible in civil laws; and hence they are either deprived from their basic entitlements like access to public spaces, education, employment, housing, etc; or face insurmountable difficulties in inheritance, marriage, adoption, etc. Yet this invisibility ironically turns to visibility in criminal law, making them soft targets for the police. The police in fact uses many provisions of criminal law like obscenity, public decency, ITPA, etc to pick on the hijras and harass them. The Indian state, on the one hand, uses civil law to divest the hijras of their rights and on the other, uses the criminal law to intimidate them. Moreover, the state's repressive and indifferent attitude is understood from the instances of police atrocities, violence and human rights violation and the judiciary's cold response towards all of it. Thus, all the above mentioned instances bring to light the heteronormative bias of the state and its agencies.

The problem arises in second half of the chapter when it portrays the current inclusive avatar of the Indian state by highlighting the initiatives in the field of social policy, health, media depictions, legal reforms, etc. What causes the confusion is that the motive behind these state moves remains unclear. Whether the state is acknowledging the hijra identity as a human variation and conferring legitimacy to this different identity or is indulging in mere tokenism is unclear. There are also instances of state initiative triggering fierce debates and conflicts in the LGBT movement. For instance, the decision of a separate public toilet in Chennai was lauded by some as a step towards tolerance of alternate sexuality and rebuked by others as further perpetrating isolation and peripheralisation. Also quite surprisingly, some hijras have spoken against the recent Delhi High Court verdict legalizing consensual sex among same sex adults, arguing that they (hijras) are a curse of nature and they do not choose to be so; and the court by legalizing same sex is going against nature and social institutions like marriage and family. Thus, as these examples point out the ambivalences and contradictions are stemming from the fluidity and complexity of the hijra identity. This complexity prevents a conclusive analysis of the shift in the state's approach. To understand whether the state has progressed from a binary paradigm to a mutually non-exclusive dual continuum of sexual identity stays ambiguous.

The last chapter is a response of the hijra community to their exclusion and discrimination by the state. This chapter to a very great extent verifies the hypothesis as their demands be it legal, political, civil, sexual, cultural, etc is directed at challenging the binary. This therefore is indicative of the fact that the sex-gender binary is the source of all oppression, intolerance, prejudice and inequity. While, this is true mostly, yet there are emerging trends in the global queer movement which questions the hypothesis. This is because all the constituents of the LGBT community do not necessarily believe that transgressing the binary or moving away from dichotomies, conflicts and oppositions does offer any 'space of possibility' or is in any way emancipatory. Activists globally are divided on the issue of identity construction. The LGBT movement speaks in multiple voices and often in conflicting terms. This is because negotiations are still on in deciding the 'we' in the LGBT community. Differences are emerging because all the members of the LGBT community are not uniform in their aspirations and inclinations. Each of their identification revolves around their individual subjectivity. Thus, the fluidity of identity and consequent changing subject positions has led to dilemmas in the global transgender movement. Yet this alliance building is necessary, it is tactical and pragmatic to join forces than wage a lone battle for recognition and fair distribution (of goods like rights, benefits, etc) from the state. Hijra activism has inherited conflictual trends and cross-cutting tendencies from the global movement. Hijra activism is still nascent and these inconsistencies I presume will be resolved when the movement matures and develops its own informed perspective.

Thus, so far I have outlined to what extent the chapters of the dissertation validate the hypothesis; in hindsight I would like to speculate on the future directions of the study. Given the complexity and dynamic nature of the theme there is immense scope for further research. Moreover, much work has not been done on the Indian queer community, whatever little work exists, it is on homosexuality. Research on the hijra community has been negligible. Apart from the works of Nanda, Reddy, Jaffrey, and Hall, I am not aware of any academic work on the hijras. The works of Nanda and Reddy are ethnographic, while Jaffrey's work is in the form of a travelogue and Hall's work is from a linguistic perspective. This apart some articles on their legal status and human rights have been written from time to time. So the hijra community remains unanalyzed from a host of perspectives like political, philosophical, cross-cultural,

economic, legal and medical, to mention a few. This dissertation throws light on some of these aspects but it is not exhaustive. I would suggest a few ideas which struck me while researching this topic, but which I could not work on as they were beyond the scope of this dissertation.

One, there is a need for indigenous theorization on sexuality. So far all have tried to apply western concepts and queer theorization to understand something like the hijras who are peculiar to the Indian subcontinent alone. This has created certain contradictions and confusions like drawing parallels between transsexuals and hijras or homosexuals and hijras. Such contradictions are bound to happen when the western conceptual framework is used to understand Indian social reality. To avoid this, it would be fruitful to develop indigenous concepts. I have a hunch this can be developed as the traditional Indian knowledge system still remains untapped. The Jains have a different take on sexuality and our scriptures have a lot of information stored. Accessing all of it and developing an Indian theoretical perspective on sexuality, its transgressive character, its roles and mores, its psychological, biological and social dimensions is a fascinating area of work.

Second, as I have mentioned in my third chapter enough research has not been done on medicine and its social impact, specifically on the medical regulation of bodies. There is no data available on the number of inter-sexual or hermaphrodites born in this country, the number of genital reconstruction surgeries undertaken, etc. The lack of these facts and figures fuel controversies like hijras are not born, but are forcibly castrated. If voluntary castration is legalized and proper medical records maintained then truth regarding these matters can be unveiled.

Third, a philosophical kind of work can be pursued which tries to explore the nuances of the hijra self and personhood. Is their self gendered, if yes then (corporeality apart) what are the markers of gender. I feel perhaps the notion of their self is not unencumbered rather their self is foregrounded on gender. The question which can be explored is that whether it is the social image of their self which is gendered or is it their true self which is gendered; and developing a thematic for new individualism.

Concluding Reflections

While reading their ethnographies what attracted my attention the most was the *badhai* performance. Two different thoughts crossed my mind, one is that such performances symbolized an extreme case of alienation; i.e. they performed at other's liminal period when they themselves are biologically incapable of such experiences. Secondly, *badhai* songs and dance can be analyzed from a performative angle as well as from a semiotic perspective.

Some of the above mentioned issues warrant academic attention and I hope that this humble attempt by me will contribute in building a corpus of knowledge about the hijras. My research tried to argue that a celebration of multiple, composite identities and a non dichotomous arrangement of genders and sexes could be more liberating for, the hijras. This line of thinking can view their deviance as difference and in fact offer them the respect they deserve. So far, most writings have presented them as a unique sub-cultural group; very few have tried to look at them beyond the lens of the cultural role ascribed to them by society. Their lives and condition needs to be studied to understand their problems and dilemmas so that information and perspective furnished by such studies is fruitfully used to offer them a better life.

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APPENDIX

Appendix - I

Ardhanarishwara Sthotra

Her body is fair like the campa flower;
His body is like camphor.
She has elaborately braided hair decked with pearls;
And he has matted hair.

Her body is sprinkled with musk-vermillion powder;
His body is smeared with funeral pyre ash.
She has the power of sexual desire;
And He is adverse to it.

From Her you hear the movement of tinkling anklets and bracelets,
His lotus feet have glistening anklets of snakes.
She is adorned with golden armlets,
And He has armlets of snakes.

Her eyes are like large blue lotuses,
His eyes are like the red lotus.
Her eyes are even,
His eyes are uneven.

She is wearing a garland of mandar flowers in Her hair,
He is wearing a garland of skulls around His neck.
She is wearing silks of divine quality;
And He is clad only by the sky.

Her hair is dark like the monsoon clouds;
His matted locks flash with the luster of lightning.
She is Lord of All;

He is Lord of All.

Hers is the dance that creates differentiation;

His is the dance that destroys everything.

I bow to the Mother of the Universe.

I bow to the Father of the Universe.

Her earrings sparkle with radiant, precious stones;

His earrings are hissing snakes.

He embraces Her;

And She embraces Him.

I bow to Shiva!

Source: <http://www.myspace.com/laxmihijra>

Appendix – II

Extracts from Act No. XXVII of 1871 for the Registration of Criminal Tribes and Eunuchs (Part II) Eunuchs

24. The local government shall cause the following registers to be made and kept by such officers as, from time, it appoints in this behalf:
- (a) a register of the names and residences of all eunuchs residing in any town or place to which the Local Government specially extends this Part of this Act, who are reasonably suspected of kidnapping and castrating children or of committing offences under Section 377 of the Indian Penal Code, or of abetting the commission of any of the said offences; and
 - (b) a register of the property of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

The term 'eunuch' shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent.

25. Any person deeming himself aggrieved by any entry made or proposed to be made in such register, either when the register is first made or subsequently may complain to the said officer, who shall enter such person's name, or erase it or retain it as he sees fit.

Every order for erasure of such person's name shall state the grounds on which such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have the power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise.

26. Any eunuch so registered who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place, or who dances or plays music, or takes part

in any public exhibition, in a public street or place or for hire in a public house, may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

27. Any eunuch so registered who has in his charges, or keeps in the house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

28. The Magistrate may direct that any such boy shall be returned to his parents or guardians, if they cannot be discovered, the Magistrate may make such arrangements as he thinks necessary for the maintenance and of such boy, and may direct that the whole or any part of a fine inflicted under Section 27 may be employed in defraying the cost of such arrangements.

The Local Government may direct out of what local or municipal fund so much of the cost of such arrangements as is not met by the fine imposed, shall be defrayed.

29. No eunuch so registered shall be capable:

- (a) Of being or acting as guardian to any minor,
- (b) Of making a gift, or
- (c) Of making a will, or
- (d) Of adopting a son.

30. Any officer authorized by the Local Government in this behalf may, from time to time, require any eunuch so registered to furnish information as to all property, whether movable or immovable, or of which he is possessed or entitled, or which is held in trust for him.

Any such eunuch intentionally omitting to furnish such information, or furnishing, as true information on the subject which he knows, or has reason to believe, to be false, shall be deemed to have committed an offense under Section 176 or 177 of the Indian Penal Code, as the case may be.

31. The Local Government may, with the previous sanction of the Governor General in Council, make rules for the making and keeping up and charge of registers made under this Part of the Act.

Source: Rajesh Talwar, *Third Sex and Human Rights* (New Delhi: Gyan Publishing, 1999) pp.118-

Appendix - III

Preamble to the Declaration of Montréal

‘All human beings are born free and equal in dignity and rights’. This famous first sentence of the Universal Declaration of Human Rights, adopted almost sixty years ago by the General Assembly of the United Nations, still contains in a nutshell our political agenda, as lesbian, gay, bisexual, transgender, transsexual, transitioned and intersexual persons.

The world has gradually accepted that individual human beings have different sexes, racial or ethnic origins, and religions, and that these differences must be respected and not be used as reasons for discrimination. But most countries still do not accept two other aspects of human diversity: that people have different sexual orientations and different gender identities; that two women or two men can fall in love with each other; and that a person's identity, as female or male or neither, is not always determined by the type of body into which they were born.

Refusal to accept and respect these differences means that oppression of LGBT people is still a daily reality in most parts of the world. In some countries, discrimination and violence against LGBT people are getting worse. But more and more, brave individuals and groups are standing up for LGBT human rights in every region of the world. In particular, LGBT individuals and groups in Asia, Africa, Latin America and Eastern Europe no longer accept prejudice and discrimination, and are becoming increasingly impatient to achieve freedom and equality. But progress is very uneven and is not automatic. Worldwide, we are seeing advances and setbacks.

Progress in realizing LGBT human rights demands multi-layered change in all parts of the world: rights must be secured, laws changed, new policies designed and implemented, and institutional practices adapted. LGBT individuals and groups are the prime agents of change. But we will only win if we enlist others as allies in our

struggle. The purpose of this declaration is to list and explain the changes that we need, and build an agenda for global action.

Source: <http://www.declarationofmontreal.org/declaration>

Appendix – IV

The Yogyakarta Principles - An Overview

Preamble: The Preamble acknowledges human rights violations based on sexual orientation and gender identity, establishes the relevant legal framework, and provides definitions of key terms.

- **Rights to Universal Enjoyment of Human Rights, Non-Discrimination and Recognition before the Law:** Principles 1 to 3 set out the principles of the universality of human rights and their application to all persons without discrimination, as well as the right of all people to recognition before the law.
- **Rights to Human and Personal Security:** Principles 4 to 11 address fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention.
- **Economic, Social and Cultural Rights:** Principles 12 to 18 set out the importance of non-discrimination in the enjoyment of economic, social and cultural rights, including employment, accommodation, social security, education and health.
- **Rights to Expression, Opinion and Association:** Principles 19 to 21 emphasize the importance of the freedom to express oneself, one's identity and one's sexuality, without State interference based on sexual orientation or gender identity, including the rights to participate peaceably in public assemblies and events and otherwise associate in community with others.
- **Freedom of Movement and Asylum:** Principles 22 and 23 highlight the rights of persons to seek asylum from persecution based on sexual orientation or gender identity.
- **Rights of Participation in Cultural and Family Life:** Principles 24 to 26 address the rights of persons to participate in family life, public affairs and the cultural life of their community, without discrimination based on sexual orientation or gender identity.

- Rights of Human Rights Defenders: Principle 27 recognizes the right to defend and promote human rights without discrimination based on sexual orientation and gender identity, and the obligation of States to ensure the protection of human rights defenders working in these areas.
- Rights of Redress and Accountability: Principles 28 and 29 affirm the importance of holding rights violators accountable, and ensuring appropriate redress for those who face rights violations.
- Additional Recommendations: The Principles set out 16 additional recommendations to national human rights institutions, professional bodies, funders, NGOs, the High Commissioner for Human Rights, UN agencies, treaty bodies, Special Procedures, and others.

Source: http://www.yogyakartaprinciples.org/principles_en_overview.htm

Appendix – V

UN Declaration on Sexual Orientation and Gender Identity

We reaffirm that everyone is entitled to the enjoyment of human rights 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, as set out in Article 2 of the Universal Declaration of Human Rights and Article 2 of the International Covenants on Civil and Political, Economic, Social and Cultural Rights, as well as in article 26 of the International Covenant on Civil and Political Rights;

We reaffirm the principle of non-discrimination which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity;

We are deeply concerned by violations of human rights and fundamental freedoms based on sexual orientation or gender identity;

We are also disturbed that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity, and that these practices undermine the integrity and dignity of those subjected to these abuses;

We condemn the human rights violations based on sexual orientation or gender identity wherever they occur, in particular the use of the death penalty on this ground, extrajudicial, summary or arbitrary executions, the practice of torture and other cruel, inhuman and degrading treatment or punishment, arbitrary arrest or detention and deprivation of economic, social and cultural rights, including the right to health;

We recall the statement in 2006 before the Human Rights Council by fifty four countries requesting the President of the Council to provide an opportunity, at an appropriate future session of the Council, for discussing these violations;

We commend the attention paid to these issues by special procedures of the Human Rights Council and treaty bodies and encourage them to continue to integrate consideration of human rights violations based on sexual orientation or gender identity within their relevant mandates;

We welcome the adoption of Resolution AG/RES. 2435 (XXXVIII-O/08) on 'Human Rights, Sexual Orientation, and Gender Identity' by the General Assembly of the Organization of American States during its 38th session in 3 June 2008;

We call upon all States and relevant international human rights mechanisms to commit to promote and protect human rights of all persons, regardless of sexual orientation and gender identity;

We urge States to take all the necessary measures, in particular legislative or administrative, to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention.

We urge States to ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice;

We urge States to ensure adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work on issues of human rights and sexual orientation and gender identity.

Source: <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/821.html>

Appendix – VI

Extracts of the Delhi High Court Proceedings, 2nd July, 2009 Naz Foundation (Petitioner) Versus Government of NCT of Delhi and Others (Respondents)¹

AJIT PRAKASH SHAH, CHIEF JUSTICE:

1. This writ petition has been preferred by Naz Foundation, a Non Governmental Organisation (NGO) as a Public Interest Litigation to challenge the constitutional validity of Section 377 of the Indian Penal Code, 1860 (IPC), which criminally penalizes what is described as “unnatural offences”, to the extent the said provision criminalizes consensual sexual acts between adults in private. The challenge is founded on the plea that Section 377 IPC, on account of it covering sexual acts between consenting adults in private infringes the fundamental rights guaranteed under Articles 14, 15, 19 & 21 of the Constitution of India. Limiting their plea, the petitioners submit that Section 377 IPC should apply only to non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors. The Union of India is impleaded as respondent No.5 through Ministry of Home

Affairs and Ministry of Health & Family Welfare. Respondent No.4 is the National Aids Control Organisation (hereinafter referred to as “NACO”) a body formed under the aegis of Ministry of Health & Family Welfare, Government of India. NACO is charged with formulating and implementing policies for the prevention of HIV/AIDS in India. Respondent No.3 is the Delhi State Aids Control Society. Respondent No.2 is the Commissioner of Police, Delhi. Respondents No.6 to 8 are individuals and NGOs, who were permitted to intervene on their request. The writ petition was dismissed by this Court in 2004 on the ground that there is no cause of action in favour of the petitioner and that such a petition cannot be entertained to examine the

¹ Since the judgement is lengthy (105 page) only portions which have implication for the hijras and that too from the petitioner's point of view has been included in the appendix. The respondents' side and the verdict have already been dealt in detail in chap 4.

academic challenge to the constitutionality of the legislation. The Supreme Court vide order dated 03.02.2006 in Civil Appeal No.952/2006 set aside the said order of this Court observing that the matter does require consideration and is not of a nature which could have been dismissed on the aforesaid ground. The matter was remitted to this Court for fresh decision.

THE CHALLENGE

6. The petitioner NGO has been working in the field of HIV/AIDS Intervention and prevention. This necessarily involves interaction with such sections of society as are vulnerable to contracting HIV/AIDS and which include gay community or individuals described as “men who have sex with men” (MSM) ... The petitioner claims to have been impelled to bring this litigation in public interest on the ground that HIV/AIDS prevention efforts were found to be severely impaired by discriminatory attitudes exhibited by state agencies towards gay community, MSM or trans-gendered individuals, under the cover of enforcement of Section 377 IPC, as a result of which basic fundamental human rights of such individuals/groups (in minority) stood denied and they were subjected to abuse, harassment, assault from public and public authorities.

7. ... By criminalizing private, consensual same-sex conduct, Section 377 IPC serves as the weapon for police abuse; detaining and questioning, extortion, harassment, forced sex, payment of hush money; and perpetuates negative and discriminatory beliefs towards same-sex relations and sexuality minorities; which consequently drive the activities of gay men and MSM, as well as sexuality minorities underground thereby crippling HIV/AIDS prevention efforts. Section 377 IPC thus creates a class of vulnerable people that is continually victimized and directly affected by the provision.

RESPONSES OF OTHER RESPONDENTS

19. ‘Voices against Section 377 IPC’ (hereinafter referred to as ‘respondent No.8’) is a coalition of 12 organisations that represent child rights, women's rights, human rights, health concerns as well as the rights of same sex desiring people including those who identify as Lesbian, Gay, Bisexual, Transgenders, *Hijra* and *Kothi* persons

(which are referred to in the affidavit as 'LGBT'). It has been submitted on its behalf that organisations that constitute respondent No.8 are involved in diverse areas of public and social importance and that in the course of their work they have repeatedly come across gross violation of basic human rights of "LGBT" persons, both as a direct and indirect consequence of the enforcement of Section 377 IPC. It relies upon its report titled 'Rights for All : Ending Discrimination under Section 377' published in 2004 to create awareness about negative impact of this law on society in general and Lesbian, Gay, Bisexual and Transgenders people in particular.

21. To illustrate the magnitude and range of exploitation and harsh and cruel treatment experienced as a direct consequence of Section 377 IPC, respondent No.8 has placed on record material in the form of affidavits, FIRs, judgments and orders with objectively documented instances of exploitation, violence, rape and torture suffered by LGBT persons...

22. Then there is a reference to 'Bangalore incident, 2004' bringing out instances of custodial torture of LGBT persons. The victim of the torture was a *hijra* (eunuch) from Bangalore, who was at a public place dressed in female clothing. The person was subjected to gang rape, forced to have oral and anal sex by a group of hooligans. He was later taken to police station where he was stripped naked, handcuffed to the window, grossly abused and tortured merely because of his sexual identity. Reference was made to a judgment of the High Court of Madras reported as *Jayalakshmi v. The State of Tamil Nadu*, (2007) 4 MLJ 849, in which an eunuch had committed suicide due to the harassment and torture at the hands of the police officers... The respondent No.8 contends that a section of society has been thus criminalised and stigmatized to a point where individuals are forced to deny the core of their identity and vital dimensions of their personality.

Source: <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>.

