Understanding Construction of Technologies of (Trans)gender in India Shaped By Mechanisms of Security, Surveillance and Welfare

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UNDERSTANDING CONSTRUCTION OF TECHNOLOGIES OF (TRANS) GENDER IN INDIA SHAPED BY MECHANISMS OF SECURITY, SURVEILLANCE AND WELFARE

—Kaushal Bodwal*

Through this paper, I aim to understand how the notion of surveillance as it functions in state welfare contributes to the construction of transgender identity. By looking critically at welfare mechanisms not only as failures in proper implementation but also as inscribing technologies of security on bodies through surveillance techniques, I try to question the value of state legibility by focusing largely on its relation to the security apparatus. This security apparatus does not simply function through the law but through a host of institutions, particularly psychology and medicine, which allow the state to regulate and employ dominant understandings of gender and transgender selves in the governing processes. In doing so, I rely on transgender narratives of engagement with these fields. I reflect on how the state has dealt with the question of transgender persons more recently through an analysis of the third gender category in NALSA v Union of India, and its transposition to Transgender Persons (Protection of Rights) Act, 2019.

I. INTRODUCTION

I am writing this paper amidst the lockdown and growing surveillance imposed in light of the COVID-19 pandemic. While it is clear that the luxury of a safe home is only available to a more privileged section of the population, for many—such as women, queer, trans and homeless people, the ostensibly 'safe space' of the home can be the site of violence and abuse, which has only increased during the lockdown. As I write this paper, I remember all those going through a heightened sense of precarity in this moment. While this precarity may seem exceptional, it has always existed for some people, especially trans individuals. This paper is about those trans persons who have been living precarious life; and exploring their selfhood through their stories is a small step to render them more humane.

The paper aims to understand how the notion of surveillance as it functions in the provision of state welfare constructs the transgender identity. By looking critically at welfare mechanisms not only as failures in proper implementation but also as inscribing technologies of security on bodies through surveillance techniques, I try to question the value of state legibility by focusing largely on its relation to the security apparatus. James C. Scott writes of modern states as having a detailed map of their subjects by focusing on the metric of "translating" the knowledge about subjects.[1] This is done through techniques like "[the] creation of permanent last names, the standardization of weights and measures, the establishment of cadastral surveys and population registers, the invention of freehold tenure, the standardization of language and legal discourse, the design of cities, and the organization of transportation" which are all comprehended into legibility.[2] State legibility is basically a simplification process for the state to know more about the subject and thereby govern not just the flesh and blood i.e. the present but also lay down foundations for governance/cultivation of future subjects. This security apparatus does not simply function through the law but through a host of institutions, particularly psychology and medicine, which allow the state to regulate and employ dominant understandings of gender and transgender bodies in the governing processes. In doing so, I rely on transgender narratives of engagement with these fields, collected through 5 extensive interviews in the months of March and April 2020.

I also reflect on how the state has dealt with the question of transgender persons through an analysis of the transposition of the third gender category from *National Legal Services Authority v Union of India*[3] ('NALSA') to the Transgender Persons (Protection of Rights) Act, 2019. Here, it becomes clear that laws of welfare inevitably cultivate populations that fit into the state's cri-

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[1] JC Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press 1998).

[2] ibid.

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

terion of legibility and allows governance through the technology of security, as Foucault conceptualises it.[4] I draw parallels with the idea of technology of gender by Teresa De Lauretes to contextualise how this happens in the case of transgender persons in India.[5] I also point out ambiguous conceptions of 'need' and 'desire' as perceived by the state. These perceptions have translated into processes of normativity that extraneously define transgender identities. I end by questioning the assumed value of state welfare for transgender persons and suggesting pathways that will allow individuals to self-identify as they choose without having to be excluded from citizenship rights and benefits.

II. BACKGROUND

Surveillance mechanisms rely on an apparatus of security that only becomes visible during exceptional situations (for example, a pandemic, dealing with a foreign threat, etc.) However, surveillance is not simply about keeping track of populations for welfare purposes but also cultivating populations that are governable and can be regulated. Historical analysis into state relations with marginalised groups makes it clear how these technologies of security are all too common when it comes to 'deviant' populations, such as trans persons. These security systems are central to governance and juridico-legal systems of bifurcating the prohibited and the permitted. In the words of Foucault, "security is the way of making the old armatures of law and discipline function in addition to the specific mechanisms of security."[6]

Two laws, across different time periods, which operate through such logic are The Criminal Tribes Act of 1871[7] ('CT Act') and the contemporary Transgender (Protection of Rights) Act of 2019 ('TG Act'). They differ in important ways in bringing individuals under surveillance, viz. in the manner in which they regulate and discipline individuals who do not align with their ideologies. While the common ways of security can be traced in both, the TG Act is a representation of modern technology of security, which is notably missing in the CT Act.[8] However, both of these laws carry aspects of security

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[4] Michel Foucault, *Security, Territory and Population: Lectures at the College De France, 1977-1978* (St Martins Press 2009).

[5] Teresa De Lauretes, *Technologies of Gender: Essays on Theory, Film and Fiction* (Indiana University Press 2001).

[6] Foucault (n 4).

[7] I compare the colonial law that governed (or legitimised) an extermination campaign to the more recent law passed by the postcolonial Indian state to show similar techniques of power that have governed the transgender people in India.

[8] By the phrase 'modern technology of security' I refer to the aspects of construction of gender 'representations'in Teresa De Lauretis (n 5) work on "technology of gender." She writes of gender not as a representation through the referent of an entity but as a representation of relations through certain technologies of which language has been fundamental. The issue of using the term 'transgender' also has a huge impact on the people who otherwise might characterise the referents of being one. Therefore, I acknowledge that the usage of the term

as their foundational objective and betray the dispens ability of queer bodies in the eyes of the state.

The CT Act was a colonial legislation which deemed 'Eunuchs' - colonial parlance used for hijra/transgender/gender non-conforming individuals in India - as being "obscene, criminals, professional sodomites," and suspects of "kidnapping" and "castrating" children. Through the very act of their existence, they could be arrested without warrant, charged under non-bailable offences, and imprisoned for up to 2 years. The Act required 'Eunuchs' to be registered and brought under the surveillance of the state while simultaneously criminalising their existence; thereby essentially expunging them from visibility and securing Victorian morality from being challenged by these 'deviances'.[9]

The Rules for the TG Act, notified in 2020, move past security mechanisms of exclusion and elimination into turning certain populations into biopolitical projects. Such a project is in-line with how gender as a category has been governed historically by employing monolithic understandings based on biological reductionism.[10] Often taken to be fundamentally related to biological sex, these understandings of gender rely on the superiority of bio-medical epistemes.[11] One can think of these biomedical epistemes that are instrumental in assigning gender as external and being forced onto bodies whose lived experiences defies them. Therefore, any trans subject inevitably harbours inside them the techniques of modern biomedical episteme i.e. chromosomes and hormones that had no role to play in their "being" and yet are used to define them. With the sanctity given to biomedical episteme, these modern technologies of gender not only partake, but are fundamental in the creation of gender representations. Consequently, we witness a new legal system, governed by these epistemes of

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transgender in Indian context erases the peculiar histories of multiple social relations vis-a-vis these multiple gender identities. And I use the term Transgender in the way it has been used by the NALSA, a blanket term used to signify the people "whose gender identity, gender expression, or behaviour does not conform to their biological sex". *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

[9] Jessica Hinchy, *Governing Gender and Sexuality in Colonial India: The Hijra, c.1850-1900* (Cambridge University Press 2019); Michel Foucault, *The History of Sexuality Volume I: An Introduction* (Pantheon Books 1978). Michel Foucault refers to Victorian morality which suppressed sexuality while creating more profound distinctions between evil and good. Thus, a body which engages in these deviant practices has to be criminalised in order to save the moral premise of the above distinction.

[10] While factors (such as language) other than this concept of biology go into forming that monolithic understanding of gender, I prioritise this for its relation with bio-medicine and the way in which popular conceptions use it as an ultimate explanation.

[11] One of the major biomedical epistemes to classify gender was reproduction. Anything not able to reproduce the biological or social hitherto would be considered as a disease. Moreover, the Criminals Tribes Act while categorising "Eunuchs" as criminals were their representation of being "filthy, disease, contagion, and contamination." Jessica Hinchy (n 9) writes that by the 1870s colonial physicians were called to "diagnose" the impotency in order to make the subject eligible for criminality.

modern medicine, through a state apparatus that tends to dictate the lives, lived experiences and futures for many trans persons in India.

To make sense of this, I use the idea of 'technology of gender' by De Lauretis and repurpose it as 'technology of (trans)gender' in the Indian context. De Lauretis defines technology of gender as "the proposal where gender as representation and as self-representation, is product of various social technologies."[12] These various social technologies include media, literature, cinema, law, medicine, politics, religion, and social norms. Technology of gender is the process of forming gender identities through these different institutional and non-institutional modes. To put it differently, these spheres do not depict notions of gender that already 'reside' in individual bodies; but rather, it is they who 'cultivate' the gender identity. Gender, therefore, is an effect of these social technologies and does not precede it. We can understand the representation of gender in terms of its very construction such that the construction then becomes the representation. Especially in the understanding of law, this construction reaches the level of truth which stands against the narratives of its very making. In order to understand this construction of representation, the colonial instrument of Criminals Tribes Act 1871 is pertinent. As I mentioned earlier, Part II of CTA was brought in "to solve the eunuch problem." The population of hijra was discovered and thereby brought under the classificatory regime as one of the distinctions in the list covered under CTA. This was made in order to show the said population was incommensurable to the metropolitan sexuality of British India. Hijras by virtue of their social location exposed the existence of hybridisation, of being part of the social and cultural link to nature is to be found in such hybrids. The colonial archives regarding the hijra populace have a "multivocal character" which can be noticed in the short biographical accounts of hijras in police records. They were written on account of the knowledge bureaucrats of North Western Province had of hijras but also sometimes hijras themselves. This became the source of information regarding multiple types of labour carried out by hijras in addition to performance and *badhai*[13]. What colonial legality did was to attack this multitude of hijrahood through the combination of various legal and extra-legal instruments what Hinchy calls "contextual assemblages of practices and discourses."[14] In the discovery of hijras, colonials made the social and cultural dispositions of these groups into an essentialising and stabilising way to understand their identity. This provided a new discourse of the (trans)gender through the association with prostitution, performing and collecting *badhai*. This meant understanding them as deviating from the 'respectable' of the social like reproduction, household formation and conjugality. In terms of causal explanation, the locus of

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[12]   De Lauretes (n 5).

[13]   *Badhai* is referred to as a ceremonial ritual of blessing during the auspicious inaugural occasions like childbirth and weddings.

[14]   Hinchy (n 9).

it was found in nature thereby providing a basis for the biological abnormal which of course was also a moral judgement.[15]

Modern medicine, with the legitimacy it has in our society, has the major role to play in the institutionalisation of gender.[16] This is not to say that traditional kinship setups of gender do not enforce rules and regulations, but only that they have been displaced by medicine as a hegemonic force. This displacement can be seen in the representation of gender relations and identities belonging to nosologies[17] preceding biomedical formations of truth regarding these representations. This happens in a way that reduces all the parallel nosological formations to the level of symbolic order. In the case of modern technology of (trans)gender, medical institutionalisation happens through technological innovation in the field of endocrinology and plastic surgery.[18] Simultaneously, psychiatry also plays a key role in cultivating certain ideas about the transgender self.[19] As this paper will argue, these histories of medicine and psychology are critical to understand the shape taken by policy and legal frameworks, which choose certain forms of transhood as legitimate based on medical conceptions.

While groups now classified as transgenders have had some acceptance and recognition throughout history from various systems, they have always occupied an ambiguous position in society. A formal recognition of transgender persons came as late as 2014 when the Supreme Court decided to grant them the status of 'third gender' under the 'Other Backward Classes' category. In the light of this, Tiruchi Siva, Member of Parliament introduced a private member's Bill in the Upper House namely the Rights of Transgender Persons Bill, 2014. Rajya Sabha passed the Bill later to be kept on halt by the Lok Sabha. BJP government in 2016 introduced the Transgender Persons (Protection of Rights) Bill 2016 which was considered an antithesis of the previous 2014 version of the Bill and the NALSA verdict.[20] It curtailed the very Right to self-identify. Amidst a lot of criticism and protests, the Bill was sent for the Standing Committee recommendations. The recommendations of the

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[15] ibid.

[16] Anne Fausto-Sterling, *Myths of Gender: Biological Theories About Women and Men* (2nd edn, Basic Books 1992).

[17] Nosology is the branch of medical science that deals with the classification of diseases. In this essay I use it in a sense in which most anthropologists of medicine use it to understand nosology as the entire set of beliefs, axioms and epistemes of a medico-ontological worldview.

[18] Aren Aizura, *Mobile Subjects: Transnational Imaginaries of Gender Reassignment* (Duke University Press 2018).

[19] Bernice Hausman, *Changing Sex: Transsexualism, Technology, and the Idea of Gender* (Duke University Press 1995).

[20] Vijayta Lalwani 'Explainer: Despite criticism, the Transgender Persons Bill was Jsust Passed. What's Next?' (*Scroll.in,* 27 November 2019) <https://scroll.in/article/944943/explainer-despite-criticism-the-transgender-persons-bill-was-just-passed-whats-next> accessed 31 August 2022.

Standing committee[21] were ignored by the government and it introduced a newer version of the Bill which lapsed due to dissolution of Lok Sabha in 2018. This Bill, reintroduced in 2019, was passed by Lok Sabha amidst protests due to the revocation of the special status of the state of Jammu and Kashmir. Soon passed by Rajya Sabha, it became a law. Since then, the definitions of transgender in the legislative hall have been the point of discontent for the transgender persons (along with other discriminatory provisions of the Act).[22]

Gayatri Reddy argues that that the figure hijra is not just a gendered or sexual category but is shaped by "a range of other axes" including kinship, religion, class, caste and hierarchies of respect.[23] Just to take one example, to become the member of the kinship houses of hijras one has to "put the rit"[24] which is a custom representing the belonging in the becoming of hijra (ibid.). The *rit* is one of the technologies used in the assigning of gender category. The category that is produced by the recent legislation is grounded in the matrix of normativity that has its causal explanations in the morphological and anatomical selves of the individual. These morphological and anatomical technologies provide for directing the terms of transgender identities and legitimisation of the trans self as 'self-identificatory other' in the binary order of the social. The binary gaze of the heteronormative disallows the eye to look into the varied, uneasy, non-legal, non-medical categories of desired selves.

The technology of security is a key factor in constructing a governable society. We can understand the technology of security in three aspects here: paternalism, documentation and criminalisation. State paternalism is an act of state in public policy, motivated by a claim that the target individuals would be better off/protected from harm, with such intervention. The TG Act, rightly called "Protection of Rights Act" flags to the paternalistic idea of state where the security apparatus seems to have taken a new turn of protecting the subjects and thereby controlling the proliferation of such subjects. The question then "who are these people?" is intimately connected with "what kind of people they are?". Consequently, this idea of kind is suggestive of the "quantifying spirit" of modern identification apparatus that demands classification based on

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[21] Ministry of Social Justice and Empowerment, *The Transgender Persons (Protection of Rights) Bill* (Standing Committee on Social Justice and Empowerment 2016-2017, 2016).
      The Committee recommended various changes some of which are (a) that a transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. (b) that in cl 2(d) the word 'rehabilitation' be replaced with the word 'housing'. (c) that there should be graded punishment for different offences and those involving physical and sexual assault must be met with higher punishment.

[22] Lalwani (n 20).

[23] Gayatri Reddy, *With Respect to Sex: Negotitating Hijra Identity in South India* (University of Chicago Press 2005).

[24] ibid. Reddy wrote of *rit*as a symbolic kinship link to the house of hijra. It is a process that "involves a specific ritual involving the elders of the particular house, the aspiring hijra, and her guru, or immediate superior."

specific bodily characteristics. This constitutes the second part of the security apparatus i.e. documentation. Databases created through these devices effectively arrest the beings or subject positions through a process of normation.[25] This allows the state to create an 'ideal subject' from the otherwise bifurcated categories of the permitted and prohibited. Such technologies include both legal and extra-legal institutional and non-institutional mechanisms. By applying Foucault's concept of power-knowledge, it becomes clear that (state) power not only employs existing knowledge in service of its goals, but also generates knowledge (of people, groups, systems) by giving it shape, primarily through law.[26] Such processes of power create different kinds of subjects and exist in large part 'because' of the law. For example, the provision of bringing all the individuals identifying as transgender under the category of OBC for affirmative action erases the multi-layered understandings of personhood especially in a society of caste hierarchy. Such an umbrella classification ignores the host of different subjectivities and expressions that emerge having different experiences of caste hierarchy. One of the fundamental methods the State deploys in documenting is to establish definitions so as to make sense of individuals in classificatory paradigms in the service of state legibility. Legibility here means the tendency of states to attempt to provide order to societal complexity.[27] What then becomes important is to make the multitudes of transgender selves readable to the language of state for the benefit of these individuals without diluting law and order. This process is then either carried by self-application, let's say for the Identity Cards; or used as a colonial tool of census collection. In another example of such practice, censuses carried out by the postcolonial states ascribed religions to indigenous people in the Indian subcontinent,[28] which included denying their own complex religious and spiritual beliefs and imposing a definition of faith that was not organic and inherent to them. As a result of such legal and administrative categories, the state created new subjects who were indigenous but also Hindu, or indigenous but also Christian. These processes are evident in both the CT Act and the TG Act. The former was based, under a larger colonial project to eliminate Victorian deviances, on the bifurcation of those who are allowed to be and those who are not; while the recent TG Act uses medical reports from government hospitals in creating a subject population.

The third and the most important aspect of the security apparatus is criminalisation. The TG Act engages in two kinds of criminalisation- implicit and explicit. The implicit aspect refers to the social sanctioning against modes of kinship and sociality practised by most transgender persons thereby protecting the traditional forms of family, individuals related to blood or as

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[25]   Michel Foucault, *Abnormal: Lectures at the College De France 1974-1975* (Verso 2003).

[26]   Foucault (n 4).

[27]   Scott (n 1).

[28]   RB Bhagat, 'Census Enumeration, Religious Identity and Communal Polarization in India' (2013) 14(4) Asian Ethnicity 436.

sanctioned by law.[29] The explicit aspect of it is to make transgender persons available for the rehabilitation centre in the guise of protection or other similar ideologies.[30] Herein, the operation of a rehabilitation centre does not actually amount to the containment of such gendered violence or any form of real protection. Instead, it paves the way for new institutional forms of violence which control the body and its mobility through sanitised forms of confinement demanded by the progressive liberal ethos.

III. AGAINST THE NORMAL MEDICO-LEGAL SELF

What does it mean to not be the gender ascribed to you? What does it mean to practice a gender that is not expected of you? Gender as a category has played a substantial role in academic writing, motivated by a larger project of deconstructing the 'normal' of gender and sex. While the notion of human (both in terms of bodies and souls) has been theorised by philosophy for centuries, it was only through biology that a particular conception of the human self as a normal 'reproducing' member of the species got stabilised with the greatest legitimisation.[31] Reproduction, consequently, became the major paradigm to conceptualise gender and sex. This made the anatomy of a human being's reproductive system the template to define the idea of the self.[32] While certain functions of the human body were held as being of paramount importance, others were obscured; as Foucault notes, the languages of all the "deviances" were restricted by the triple edict of modern puritanism viz. "taboo, nonexistence and silence."[33] Taboo ranges from using the terminology of certain identities as a form of slurs to the ghettoisation of their households along with forced silencing through a juridico-legal apparatus, among others. The CT Act and the recently repealed Section 377 of the Indian Penal Code are examples of the latter. Although taboo has worked effectively to neutralise deviance, it was not enough to establish absolute truth and silence resistance. This, in turn, required bio-medicine to pathologise the bodies of these genders and sexual selves by making 'normal' and 'pathological' watertight categories. As the normative of reproduction sets rules for an individual to be a 'normal' man or woman, anything that disobeys the rule set by the said normative is rendered pathological. This has largely succeeded despite little empirical support even from the evidentiary protocols of modern medical nosology.[34]

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[29] The Transgender Persons (Protection of Rights) Act, 2019, s 12 (1).

[30] ibid, s 12 (3).

[31] Maurizio Meloni, *Impressionable Biologies: From the Archaeology of Plasticity to the Sociology of Epigenetics* (Routledge 2019).

[32] Georgiann Davis, *Contesting Intersex: The Dubious Diagnosis* (NYU Press 2015).

[33] Michel Foucault, *Security, Territory and Population: Lectures at the College De France, 1977-1978* (St Martins Press 2009).

[34] Georges Canguilhem, *On the Normal and the Pathological* (D Reidel Publishing Company 1978).

A. Am I sick, doctor?

While speaking to Rani, a trans woman in Delhi, I was reminded of anthropological debates regarding how different medical nosologies intersect and overlap, and of their social implications. Rani explained how her parents wanted to navigate her journey of transitioning via all the nosologies available to them through their belief systems, including the bio-medical. Rani was thus encouraged to consult with doctors affiliated with the Ministry of AYUSH. AYUSH in contemporary India is the ministry that stands as the bastion of alternate nosologies, albeit perhaps as a cheap bargain due to its drive for cultural and financial capital. This drive has led to the dilution of their own understanding and belief systems through integrating ideas and requirements emerging out of bio-medicine. In AYUSH, Rani was made to feel guilty for even considering transitioning, with doctors suggesting that she take some five-grain flour to 'cure' her sickness. Rani's experience is not to suggest that parents of trans individuals hold stringently traditional positions justified through non-Western categories, but that there exists a wide, although mutually incommensurable, variety of nosologies that are preferred for both epistemic and pragmatic reasons. In practice, however, this apparent incommensurability has been dealt with by using modern medicine as a template for an ''integrative medicine'' due to its institutional legitimacy and near universal consensus around it.[35] Therefore, both institutional and non-institutional alternate nosologies are available, alongside modern biomedicine with its appeal, as routes to consider for many parents to deal with their children's gender or sexual identities as possible cures.

Sujatha writes that the facets of 'medical pluralism' in South Asia, defined by anthropologists as the existence of multiple systems of medicine before biomedical science, exist on three levels, namely institutional, at the level of physicians, and of people. This is to say that the healing or curing involves various subject positions, in and through, a hospital,[36] the doctor, and the patient. Across biomedical and homeopathic nosologies, the vocabulary used in speaking about sexuality as illness reflects the social existence of illness, presented through questions like *"kya taqleef hai?"* (what is the problem?).[37] Doctors delve into a more holistic overlap of social factors, which may range from the patient's diet to who they recently fought with and any familial problems; all of which could have led to the core disease to be treated. The language of self-diagnosis also includes the social in explaining the pain or the *"beemari"* (sickness). Rani's experience suggests that her doctor's idea of conversion therapy still predominantly relies on the traditional understandings of

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[35] V Sujatha, 'Beyond Medical Pluralism: Medicine, Power and Social Legitimacy in India' in Sanjay Srivastava, Yasmeen Arif and Janaki Abraham (eds), *Critical Themes in Indian Sociology* (Sage Publications India 2019).

[36] ibid.

[37] Veena Das, *Affliction: Health, Disease, Poverty* (Fordham Univ Press 2015).

"*tritiya prakriti*" and "*ardhnarishwar.*"[38] Naraindas points out that for the middle class, the language of self-diagnosis or a medical complaint has become more allopathic over time.[39] This is happening in a context where the state as the legitimising force for any medical institution in the country gives primacy to modern bio-medical nosology. As a result, the social existence of medicine has continued to involve multiple languages and therefore multiple ways of curing and living with "diseases" of sexuality and gender.

On the other hand, India has also witnessed a recent form of traditionalism which is a conflict between modern medicine and its alternatives. Here, attempts are made to establish bridges between modernity and antiquity, and the putative status of modern science is employed to validate non-modern medicines.[40] One of the major attempts that emerge out of "elective affinity" between the modern biomedical and traditional forms of cure is the institutionalisation of the ministry of AYUSH. Bryan Turner's notion of elective affinity refers to the dilution of tension between two opposing nosologies and forming of affinity at the merging point of cultural codes and medical practice. It's the cosmopolitan form that is constituted by constant feedback loops regarding the validation of knowledge from one form of medicine to the other. All of this was also happening in the age of global capital exchange and where the export of herbs constituted the major part of state policy. Another model that emerged along with this is the pharmaceutical industry for pluralistic medicine. It's important to note that AYUSH is "co-located with biomedicine in the National Rural Health Mission (NRHM)" which in itself represents a culture whose sense of cure is layered with the varied relations of power and culture. No matter what kind of affinity is built regarding the cure of certain diseases, the normative understanding of what constitutes a diseased state and the normal state, especially in situations of gender diagnosis, directs the practitioners in their therapeutic goals.

In the arena of gender and sexuality, this neo-traditionalism is used both in favour of and against transgender groups. Rani told me that one of the child psychologists she was visiting in Delhi often gave her examples of the mythological figure 'Shikhandi' from Mahabharata, and stressed the philosophy of karma with reference to the grief she was giving to her parents owing to her desire to transition. She was also encouraged to follow yoga practices and spiritual gurus who claimed to cure homosexuality and other gender/sexual "abnormalities." It is important to note here I believe, that the Bhartiya Janata Party (BJP) government with its politico-religious ideology has played

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[38] Gayatri Reddy, *With Respect to Sex: Negotitating Hijra Identity in South India* (University of Chicago Press 2005). 'Tritiya Prakriti' and 'Ardhnarishwar' are category of analysis among scholarship informed by Hinduism used to refer to transgender, homosexuals and intersex conditions.

[39] H Naraindas, 'Of Spineless Babies and Folic Acid: Evidence and Efficacy in Biomedicine and Ayurvedic Medicine' (2006) 62(11) Social Science and Medicine 2658, 2669.

[40] Sujatha (n 35).

a pivotal role in bringing the conservative approaches back in the debates of medical nosologies. This has led to a resurgence of competing claims for intellectual supremacy between science and non-science. This has resulted in the many distinct ideas competing for manoeuvring their legitimising effects in the discursive space of science and medicine. For example, one can note a certain demonisation and vilification of rationalists in the country leading to murders of persons such as Govind Pansare, M. M. Kalburgi or Gauri Lankesh. On the other hand, there is also a discursive separation of the "Western" episteme in culture, science and other settings despite the politico-economic dominance of "Western" originated nation-state and capitalism. Finally, like AYUSH ministry, there are attempts made to justify alternative nosologies through scientific template. The extent of this claim of legitimacy has reached the higher performances of biomedical sciences: the surgery. Recently, the Centre, in a Notification, allowed the post-graduate practitioners of Ayurveda to be trained for surgical procedures in the light of which a nationwide strike was observed by the Indian Medical Association.[41]

IV. GENDER IN MEDICAL NARRATIVES

In the colonial perspective, Hinchy describes how the *hijras* "embodied sexual disorder" in agenda of establishing patrilineal order of succession and reproductive order.[42] For the maintenance of both, the monogamous sexual conjugality was not only necessary but also central to domestic life. Hijra sexuality was considered a threat to the establishment of this order and therefore was marked with "unnatural" notions of sexuality by ignoring a lot of sexual practices in their everyday lives, for instance, asexual asceticism. This mark of unnaturality associated keenly with prostitution and contamination of the colonial binary order rendered a particular notion of personhood to be established in understanding such lives. The East India Company's prohibition of sodomy made unnatural sex an "unnatural crime." This led to the criminalising of the personhood of hijras. Here, one can see that the state power held a unidirectional and asymmetrical power to define the units in the population. The medical jurisprudence manual of physician Norman Chevers describes the "lengthy account" of anatomical and morphological expressions of a hijra.[43] The key narratives of these physicians have commentary on body hair, age of castration, and depth of voice, wherein basically a kind of deep entanglement of "genitalia, body appearance and dress" is identified.[44] The description of these

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[41] 'Govt Authorises Post-Grad Ayurveda Practitioners to be Trained to Perform Surgical Procedures' *Indian Express* (22 November 2020) <https://indianexpress.com/article/india/ayurveda-doctors-surgery-7061292/> accessed 30 March 2023.

[42] Jessica Hinchy, *Governing Gender and Sexuality in Colonial India: The Hijra, c.1850-1900* (Cambridge University Press 2019).

[43] Norman Chevers, *A manual of Medical Jurisprudence for India* (Thacker Spink and Co. 1870).

[44] Hinchy (n 42) 56.

bodies in the medical narratives of colonial times suggests not only distress to the order of things but strangely also an interpolation of new sexuality onto the bodies that were more than just sexed beings.

The study of narratives of medical illness reveals an interesting history of defining selfhood. It has moved from using narratological qualities to politico-economic conditions pertinent to the understanding of the development of diseases, from modern to postmodern development of illness narratives as analytical categories. A modern reading would accept the authorised medico-scientific narrative while in a post-modern reading patients reclaim power as creators and narrators of their own distinctive stories.[45] Subjectivity of this new 'patient' is very well summarised as "a new attention to hierarchy, violence, and subtle modes of internalized anxieties that link subjection and subjectivity".[46] This also denotes that the national and the global politico-economic processes feed into "the most intimate forms of everyday experience".[47] The anthropology of such narratives shows transgender selfhoods haunting colonial methods of legibility and regulation due to their defiance of the 'normal body' available and enforced during the colonial period. For example, the language of "dirt, contamination and contagion" strengthened the narrative of the British officials regarding hijras as "filth" or disease spreading beings across the Indian subcontinent.[48]

In the cultivation of colonial subjectivity, biomedical science opened up new avenues for defining sexuality. Biology played a significant role in defining the natural human subject as a heterosexual whose gender identity is based on their physical characteristics. All other instances that did not adhere to this definition were marked as pathological, disorderly, and dangerous. This was rooted in the eugenic urges within the subfields of biology that regarded heterosexual reproductivity as axiomatic. Meloni explains that modern medicine tried to find answers to the disorders inside the body.[49] This inward-looking approach developed simultaneously with a modern genetic view of the body and the nucleotide sequence of DNA, became the truth and the defining characteristic of one's subjectivity. These have more recently evolved into the uncertain science of DNA profiling, with severe repercussions for criminal procedures and the rights of marginalised groups.[50]

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[45] Veena Das, *Affliction: Health, Disease, Poverty* (Fordham University Press 2015).

[46] ibid.

[47] Mary-Jo DelVecchio Good and others (eds), Postcolonial Disorders (Berkeley: University of California Press 2008).

[48] Hinchy (n 42) 8.

[49] Maurizio Meloni, *Impressionable Biologies: From the Archaeology of Plasticity to the Sociology of Epigenetics* (Routledge 2019).

[50] Sobhana K Nair, 'DNA Bill can be Misused for Caste-Based Profiling, Says Panel Draft Report' *The Hindu* (New Delhi, 24 August 2020) <https://www.thehindu.com/news/national/dna-bill-can-be-misused-for-caste-based-profiling-says-panel-draft-report/article32429334.ece> accessed 31 August 2022.

With this, yet another subject of pathology was constructed: the inter-sex. Intersex has been defined as the condition where a person is born with characteristics (chromosomal-XX and XY, gonadal and genital-external and internal) that do not fit the typical alignments of male or female bodies.[51] Fausto-Sterling writes that "until six weeks of development, XX and XY embryos are anatomically identical" where development of "undifferentiated gonads" takes place.[52] While plasticity of the human genome produces a vari-ety of phenotypes, only "proper" chromosomal, gonadal, hormonal and genital alignment qualifies as normal.[53] This normal heterosexual alignment considers only two kinds of bodies as normal, first the male body (with XY chromo-somes, testes, primarily androgen, and penis) and the female body (with XX chromosome, ovaries, primarily estrogen and vulva and internal genitalia).

Since endocrinology lacked accurate information of hormonal production and various factors of interference in the process, it resorted to homophobic procedures to assign the "true sex". Here homophobia through technologies of sex classification tried to contain any expression that would amount to con-tamination of the 'natural' reproduction. Traces of this process still exist in the medical and social psyche. This worked hand-in-gloves with the field of bod-ily aesthetics, particularly the development of plastic surgery which relied on a politics of authenticity and "passing" as other sex. The discourse of trans-sexualism demands the authenticity of the "other sex" in both social and bio-logical variables, due to which the accepted category of transgender finds surgical transitioning relatively easier than a gender non-binary person seeking medical care. Rani told me about a psychologist in Delhi who collected some blood samples to verify her intersexuality before starting the therapy. Pushing the narrative of intersex bodies as "nature's mistake" and medical surgery as a correctional method to maintain the true authority of the sacred (the heter-osexual bodies, and implicitly God[54]) has been the top priority of biomedical sciences. A trained sexologist told Rani that *"being gay is okay, but surgury toh kudrat k ek hi laaf hai"*(being gay is okay but medical transitioning is against nature) when no intersex traits were found on her blood samples. While this experience did not dictate her journey, another respondent, Tara, a trans woman from Gurgaon, Haryana added that in her experience, some people tended to perceive doctors with immense authority: "*doctor to bhagwan hota hai*" (a doctor is like a god), which reflects how multiple expressions of trans selves get restricted because of the authority of biomedical nosology.

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[51] Georgiann Davis, *Contesting Intersex: The Dubious Diagnosis* (NYU Press 2015); Morgan Holmes, 'Re-Membering a Queer Body' (1994) 6 UnderCurrents 11,13.

[52] Anne Fausto-Sterling, *Myths of Gender: Biological Theories About Women And Men* (2nd edn, Basic Books 1992).

[53] Meloni (n 49).

[54] The Bible, Genesis 1:27: "So God created man in his own image, in the image of God he created him; male and female, he created them." The above-mentioned quote from the Bible leaves no pretence that heterosexuality brings one closest to the divine.

V. TECHNOLOGY AS MOBILITY

Developments in technology have immediate repercussions for the subjectivity of transgender persons. Apart from biological and social authenticity, national and transnational travel has also become an important point of trans subjectivity.[55] Tara told me how her journey of thinking about a medical transition became a question of her living with her family. She told me, as did Rani, of talks in her family about resources required for a medical transition in Bangkok, a city claimed to have the best technology for sex reassignment surgery. But Tara decided not to undergo surgery in Thailand as not only would it have been a huge expense, but also they would have had to return home where the medical experts might lack sufficient knowledge of her medical record in case any post-surgery complications emerged. Instead, she left home for Mumbai to pursue a degree in Mass Communication, while undergoing medical transition on her own in the new city. Living in an unfamiliar city like Mumbai on her own while transitioning deteriorated her mental health. On the verge of breakdown, one morning she had to ask her family to book her a flight back home. She returned with many apprehensions about her journey to transition. Both her parents are medical professionals, which made her access to surgery in Delhi easier. These technologies are not as easily available to those without financial resources or social capital. Both international and intranational migration, in combination with transitioning technologies, have offered the possibility of social mobility to those characterised as sexual deviants in their homes. Aizura writes that "the metronormative migration plot dictates that migrating from rural spaces to urban ones, or migrating transnationally, can offer the possibility of self-fulfilment and the freedom to be who you are: by moving, trans people can find bearable and worthwhile lives in which their gender identity or sexuality (or both) is accepted, even celebrated."[56] Vani, another transwoman, told me about the aspirations of leaving the violent household and joining a gharana of Hijras in Telangana which drew her out of her biological home into a city-based, ghettoised locality for transgenders. She had a violent and abusive elder stepbrother—the ideal male of the household, who got into the Indian Air Force and married within his caste on the will of his parents, all of which provided him more legitimacy to abuse her on the account of her femininity. Her mobility was not driven by desires to transition but rather to escape the violence at home. She started having conversations with the trans women begging at red light areas to move with them. They declined her offer initially but were open to conversations later. The matriarch used to ask her, *"kya milega tujhe ismein"*(what will you get in this?), but she insisted that she wanted to. One night when she ran away from an abusive relative's home, she reached an infamous locality of the city where the matriarch found her unconscious in the morning. She took her in but was

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[55]   Aren Aizura, *Mobile Subjects: Transnational Imaginaries of Gender Reassignment* (Duke University Press 2018).

[56]   ibid.

hesitant as Vani was still below 18 years. She arranged for Vani to appear as a "private candidate" in the senior secondary examination so she wouldn't lose an education year. She completed 12th grade with good marks and worked in the 'numaish' as a sales worker selling crockery. The journey of her being a "mobile subject" included very little engagement with modern medical technology per se for reassignment but her social being as a transwoman brings out this layered picture of multiple trans selves.[57] (As for Vani, the act of moving was not to get gender reassignment surgery, but to escape the violence at her biological home, describing the immense mobility non-normative beings incorporate inside themselves which affects each and every social interaction they enter.).

To "invent oneself" one has to be bourgeoisie, wealthy, and informed by the discourse of "true transgender" from medical chambers of modern nosology.[58] Vani shared concerns about her inability to not get any surgery as she belonged to a lower-class household. Despite earning a little in real estate, she had to take a heavy loan to help her biological mother's deteriorating health. She said that she wanted to get surgery but at her age, it would involve many complications which aggravated her worries, in addition to loan repayment.

Transgender bodies are evidently the site of biopolitics through technological tools. As the narratives brought forth by my respondents show, this search for 'authenticity' must be dropped in favour of recognising multiple bodies and subjectivities. This is more urgent when biomedical nosology and capitalism together produce an aspirational technological self which is amenable to governance. For example, the notion of hairless skin and choices in the kinds of the body in sex reassignment surgeries are not just an applied branch of science helping people out but rather constituting the technologies of existence in such kinds of bodies. There is an implicit understanding of what gender means even when trans-ness subverts certain underlying connotations of its experience. Therefore, the reassignment surgeries recuperate new, but similar, ways of constituting gender in the trans bodies through its medical legitimisation. Failing to achieve this body and selfhood can result in being categorised as monstrous, ugly, and lacking the supposed transgender authenticity.

VI. DETERMINING THE SELF: NALSA AND TG ACT

In the NALSA judgement, Justice K.S. Radhakrishnan mentions that the expression of the subject in Articles 15, 16, 19 and 21 in the Constitution of India is "gender neutral" and states that gender identity is the "core of one's personal self," which is based on self-identification and not on medical and

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[57] ibid.
[58] Michel Foucault, *Security, Territory and Population: Lectures at the College de France, 1977-1978* (St Martins Press 2009).

surgical procedures.[59] This judgement states this position multiple times while granting the status of "third gender" to people identifying as transgender. It's important to note here that the category of the third gender also implies the legibility informed with heterosexual normativity which even after recognition of the self-identification practice of personhood, doesn't allow the heterogeneity to become part of transgender personhood. It also declares that central and state governments have to frame laws for safeguarding the rights of transgender persons.[60] On the basis of this declaration, the parliament passed the TG Act in 2019. The Act however, violates the judgement by making it mandatory by law to get a medical surgery in order to obtain the certificate of (bio-political) "other sex" i.e. male or female.[61] It also ignores the important guidelines for medical transitioning, HIV serosurveillance centres[62] and other mental and physiological healthcare encouraged by NALSA. Additionally, it betrays the lack of concern for accessibility to biomedical tools of transition; for example on account of factors such as caste or income levels, thus continuing the treatment of aspirations of bodily autonomy and self-identification as matters of privilege. Instead of integrating the principle of self-identification, it furthers a legal system influenced by colonial biopolitics, that homogenises trans subjectivity through a uni-dimensional criterion. In order to be identified as a "man" or "woman" one would need to undergo surgery and would need to appear before the District Magistrate, a representative of the state to get the legal status of their identity approved. This threatens to erase historical and contemporary subjectivities of trans-ness existing in the country.

The TG Act defines transgender persons as a "person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone sex reassignment surgery, hormone therapy, laser therapy, or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner, hijra, aravani and jogta*." This is a laudable attempt at broadening the scope of the legal definition of trans personhood and covering multiple identities.

However, this is nothing but a smokescreen because while not explicitly erasing the representations of these identities, the Act does so by dismissing the social relations and expressions of these identities. It uses the language of bio-medicine to create a buffer, an acceptable population, derived from within the biomedical quadrants that range from genderqueer to intersex; bringing into existence a population that is allowed to be, pathologising all other

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[59]   *National Legal Services Authority* (n 3) [82].
[60]   ibid.
[61]   The Transgender Persons (Protection of Rights) Act 2019, ch 3.
[62]   Serosurveillance programmes/centres are the sites where individuals are tested for HIV sero-positive, AIDS and other STDs in selected populations.

identities. By virtue of laying down the instructions/rules to be a transgender person, the Act pathologises all those who do not follow these instruction/rules.

In this project of construction of a population, transgender persons occupy a key position, not just because the law has been named after them, but also because the medicalised 'technologies'[63] within them do not conform to the normative representations[64] recognised by the law. Psychological and medical transitioning is one among many technologies of gender leveraged by trans persons to express their identities. It is not necessary for transhood to be expressed through this technology of transition. There exists an ambiguity between what is desired and what is demanded. As is evident through the CT Act and the TG Act, when the state frames a welfare policy it deploys security mechanisms that use one of these technologies of gender, treating it as an 'imperative trait' of defining that population. In doing so, it restricts the materialisation of other technologies of gender which de facto become a threat to the classificatory process. Despite having a broader definition of transgender, Section 5 of Chapter 3 of the TG Act stipulates that a person can make an application to the District Magistrate seeking a certificate of identity as transgender with "prescribed" documents which includes among other things, a "report of psychologist of a hospital of appropriate government." This suggests that technology in the form of a medical report has been given primacy over all other technologies of trans-personhood. This is what leads to the creation of a transgender population through selected technologies, ignoring the blurred status of demands and desires.

VII. CONCLUSION

Hari, a trans man, told me about an incident where a person decided to come out as a trans man after giving birth, and went through medical transitioning through Hormone Replacement Therapy (HRT) and top surgery. Will the law and bureaucratic process recognise him as a man, and permit necessary changes in legal documentation to enable such recognition? If legal recognition is possible, will the trans man's marriage stand null and void? Will the trans man continue to receive maternity benefits, if he was doing so earlier? If the couple decides to get a divorce, who will have legal custody of the child? As it stands, the TG Act and related legislation cannot comprehend such expressions of transhood and remains silent on their access to civil rights.

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[63]   Here I refer to the representations of the technology within a human biological body namely genetic, hormonal, and gonadal representations.

[64]   I make this distinction here to refer to the category of transgender persons having both the referents of their identity in two of the important spheres of life the social and the biological. While non-binary persons and intersex carries a loaded referents of the social and the biological respectively, this not to say that either of the representations of such categories do not overlap.

NALSA recognises the need to treat the transgender person under detention "with humanity," acknowledging rampant atrocities and rights violations. It goes on to say that any detainee should be provided

> *adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired.*[65]

All my interviewees emphasised the need to sensitise medical professionals, particularly in the fields of endocrinology, gynaecology, plastic surgery and psychology. Such sensitisation must cover the legal rights of the subject, humane treatment, and critically, the social needs of transgender persons. This process of sensitisation can begin with the dissemination of the NALSA judgement, workshops with medical professionals, and provision of no-cost HRT, sexual and reproductive health facilities, and sex reassignment therapies for anyone with the desire to transition.

Reproductive health services must be extended to include biological processes beyond the heterosexual binary. Hari reminds me that many trans men menstruate, even after surgery and HRT. Similarly, pregnancy, abortions and adoptions also exist beyond the binary. The state must adopt empowering solutions to concerns raised by transgender communities, such as instituting a family sensitisation board to address the issue of violent homes, rather than admitting survivors to rehab centres as currently stipulated in the TG Act. Legality of the TG Act stands challenged in the court of law, but for further policy welfare,[66] the state must consult representatives from trans collectives to account for their criticisms, concerns, needs and desires.

With the parallels between technologies of gender and security, the distinction of desired and needed has to be channelised in policy making. As there is no consensus on medical transitioning within the community as desired or needed, any public policy has to treat this as a choice to be exercised by individuals. Most critically, access to welfare programmes, public services, civil rights, and indeed legibility to the state cannot be contingent on such technologies.

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[65] *National Legal Services Authority* (n 3) [25].

[66] There have been two petitions challenging the constitutionality of the TG Act one filed by Swati Bidhan Baruah, a transgender advocate and the other by transgender activists such as Grace Banu and Vyjayanti Vasanti Mogli.

Transgender personhood is always in making and becoming, defying strict categorisations due to the lived reality of trans-ness. Therefore, to have these fixed subjectivities of (trans) gender in defining this population would do nothing but harm to these evolving categories.

In the last 3 years of my engagement with queer theory and trans studies as a genderqueer/non-binary activist, particularly with regards to the TG Act in India, an evolving language of understanding trans subjectivity has been provided by transgender communities. This paper is an effort to capture and expand that understanding. It is evident that legibility to the state brings advantages such as rights and protections, public services, and other benefits. As it stands, the TG Act demands a trade-off between self-identification and access to such protections. Instead, policy frameworks should encourage an ecosystem that allows transgender people to adopt fluid and multiple identities while also granting full citizenship and associated civil rights.

Note: All the names are changed to maintain the anonymity of respondents.