Intersexuality: Beyond Medico-Legal Understanding

A Dissertation Submitted to the University of Hyderabad in Partial Fulfilment of the Requirements for the Award of

MASTER OF PHILOSOPHY

IN

SOCIOLOGY

BY

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JUNE 2019

DECLARATION

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I hereby declare that the research embodied in the present dissertation entitled, **'Intersexuality: Beyond Medico-Legal Understanding'** is carried out under the supervision of **Prof. Pushpesh Kumar**, Department of Sociology, School of Social Sciences, University of Hyderabad, Hyderabad, for the award of Master of Philosophy, is an original work of mine and to the best of my knowledge no part of this dissertation has been submitted for the award of any research degree or diploma at any university. I also declare that this is a bonafide research work which is free from plagiarism. I hereby agree that my dissertation can be deposited in Shodhganga/INFLIBNET.

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This is to certify that **Abhijeet Mishra** (Reg. No. 17SSHL05) has carried out the research work in the present dissertation entitled, **'Intersexuality: Beyond Medico-Legal Understanding'** in partial fulfilment of the requirements for the award of the degree of Master of Philosophy in Sociology, under the supervision of **Prof. Pushpesh Kumar,** in Department of Sociology of University of Hyderabad. This dissertation is an independent work and has not been submitted for the award of any degree of this or any other University.
Further, the student has passed the following coursework requirement for the M.Phil:

Course Code	Course Name	Credits	Result
SL701	Advanced Sociological Theories	4	Pass
SL702	Advanced Research Methods	4	Pass
SL 725	Dissertation Related Course	4	Pass
	Dissertation	12	Submitted

A Conference Paper has also been presented before the submission of thesis:

Mishra, A (2017) Sexuality: Confusions and Formations. UGC National Seminar on Emerging Forms of Vulnerabilities; Dialogues, Discourses and Debates. Department of Psychology, University of Delhi, Delhi.

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Acknowledgment

I would like to express the deepest appreciation to my supervisor Prof. Pushpesh Kumar, whose experience, understanding and support has strengthened the outcome of this work. I would also like to thank Prof. Sujata Patel and Prof. Aparna Rayaprol whose coursework papers helped me to engage with the "sociological imaginations". In addition, I express my gratitude to the Indira Gandhi Memorial Library of the University of Hyderabad which provided me with necessary literatures to transcend my research and academic work.

To strengthen the empirical position of my research, I am very thankful to the archival material at the Nehru Memorial Museum and Library, New Delhi, National Archive of India, New Delhi and Uttar Pradesh Regional State Archive, Allahabad. These institutions helped me to access the necessary material required for the research work. Along with it, I also thank the BB Dixit Library at All India Institute of Medical Science for helping me with the research literature. More specifically, I also thank the Sociology Department of the University of Hyderabad for their feedback on writing. I express my gratitude to my family and friends who also motivated me to achieve the best.

Date: 30th June, 2019.

Place: Hyderabad

INTRODUCTION

The "One Percent" that Carved a Name[1]

The Tale of Pinki:

The story of Pinki Pramanik emerged as a challenge to the very understanding of "male and female" in rape laws. Pinki, an intersex athlete, was charged for rape of a female athlete. The question that comes up is, being an intersex, was she capable of performing "penetration"? Although a medical board of doctors considered her incapable of rape, the state police proceeded with the arrest and the media, on shaming her. The Judgment notes,

> "Relying heavily on the medical report which mentions disorder of sexual development (for short DSD) and male pseudohermaphroditism (for short MPH), Sri Grover (her lawyer) points out that the petitioner is a victim of intersex variation in which the petitioner has under-developed features of both male and female genitalia. The offence of rape being connected to sexual intercourse in the ordinary course of nature, the petitioner being incapable of performing such sexual intercourse cannot be fastened with the charge of rape."

The High Court of Calcutta although dismissed the charges against her, the series of events leading up to the same reflected an invasion of privacy and challenge to her subjectivity as a female. What is

[1] The "One Percent" refers to rough estimates of the intersex population. The phrase "carved a name" has been taken from Rubin (2012) and it signifies the struggle of medicine to identify and classify intersexuality.

also important is to note how the invasion of privacy also rested on bypassing her consent for such tests. As she mentions in an interview[2],

> "I did not want to undergo a gender test because it is humiliating. But they forcefully subjected me to it against my wishes. I was taken to a hospital and given an injection to make me fall asleep. When I awoke, I found my hands and feet tied to the bed and all my clothes removed…. I am not male. I have always been female. As a child, I used to look very sweet. I was a normal girl, like any other, and I wore clothes like that (*pointing to my salwar kameez*). But now I only wear these clothes (*pointing to her track-pants and polo shirt*)."

This narrative also asks complex questions about what determines the "True sex" of the body. Socially, it is determined by glancing at the genitalia. But what would happen if a newborn has both the vagina and penis present? What would happen if a new born has a penis with ovaries instead of testes? What would happen if someone with a vagina and ovaries genotypically has XY chromosomes? If you look at it from the vantage point of standardized medicine, it is a rare[3] "deviation" from the "normal". As Sterling (2000) argues, it is a rupture in the thesis of sexual dimorphism. The Intersex also challenges the relation between sex and gender and emphasizes on the complex corporeality of the body, giving rise to gender. This corporeality is, however, not similar to the "normal sex". In crude terms, the Intersex is a distortion in the organization of bodies into the two sex system.

What is Intersexuality?

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[2]*Mitra, D (July 30, 2012). "I Am A Female, And Once Loved A Man". Outlook India (Magazine).* Retrieved on June 07, 2019.

3 Intersex births are rare, ranging from 1 to 10 per 1000 births, although it is contested heavily. For details, see Sterling (2000). There are no official statistics in the country on intersex births.

In cytogenetics,[4] the genotype (genetic base of body), along with the environment, determines and shapes the phenotype (physical and morphological traits) of an individual. We all remember from middle school how we were "heteronormatively"[5] made to realize that men are XY and women are XX in terms of chromosomes, from where stems our "true" sex. But what does determine the "true" sex of the body? Sterling (2000) argues that sex is a complex concoction of genitals, endocrine system, chromosomes, cognition and gonads. Medicine establishes that all of these markers of sex have to be typically in relation with one another. As Karkazis (2008) puts it, any "congenital conditions in which chromosomal, gonadal, or anatomical sex development is atypical" can be termed as Intersexuality. The conventional understanding that the "Y" chromosome is the identifier of male sex development has also been challenged and current researches in sex biology identify SRY[6], as the indicator of it. However, cases like Androgen Insensitivity Syndrom and Congenital Adrenal Hyperplasia destabilized the idea of taking chromosomes (SRY) as the true markers of sexual differences, because the development of sex is atypical not because of the absence of SRY (on Y chromosome), but due to problems with the androgen receptor and steroid secreting enzyme respectively.

The Intersex has largely remained a contested umbrella term with a variety of conditions under it. Apart from genital malformations, Intersex also encapsulates atypical gonadal and chromosal conditions. For instance, Androgen Insensitivity Syndrome (AIS) is caused by the "blocking of

4 A branch of science that studies chromosomes, their functions and inheritance.

5 Richardson (2013) in "Sex Itself", traces how the gendered nature of X and Y chromosomes are a subset to heterosexism in science. She also historicizes the biology of sex determination and identifies that not the chromosomes, but the activation of "SRY" gene enables the formation of sex organs.

6 Ibid.

androgen receptors" (Davis, 2014) during gestation in an XY foetus. Cogenital Adrenal Hyperplasia occurs in XX children born with masculinized genitalia due to malfunction in "enzymes making steroid hormone" (Sterling, 2000) and Swyer Syndrome (Davis, 2014) is the presence of both testes and uterus. The inclusion of Hypospadias, Turner (XO) and Klinfilter Syndrome (XXY) in Intersex has rather remained contested. What is important to note is the role of chromosomes' non-malleability in the organization of the Intersex. But the majority of chromosomes derived from intersex conditions, such as Triple X (XXX), Klinfilter or Turner Syndromes (Richardson, 2013) remain undiagnosed for entire lifetimes.

Becoming the "Sex": John Money, Western Medicine and an Underlying Theory of Gender

One of the landmark studies that impacted the understanding of Intersexuality was the work of John Money at the Johns Hopkins University. He propounded the idea of "optimal gender of rearing" which requires intersex corrective surgery within eighteen months of birth. Money, in his doctoral dissertation at Harvard University, wrote *Hermaphroditism: An Inquiry into the Nature of a Human Paradox,* wherein, he used the cases of ten "hermaphrodites" to understand the idea of gender. It is important to note that the word "gender" was never used before him in academic literature. Although it did not denote the meaning of gender that we use, it is his epistemological frame to understand gender that gave rise to the clinical management of the hermaphrodite. His work is also important for the fact that he put forward the idea of "gender", which has been appropriated by sociologists Stoler and Ann Oakley, and further by the feminists of second wave. Money's work is not just important for the fact that it set in motion an analysis of Gender, but also manufactures it through surgeries on intersex children, solely dominating the paradigm of medical management of intersex births-as Karkazis calls it, "a consensus rarely encountered in science" (2008: 62).

John Money and his colleagues Ehrhardt and Hampsons created an important turning point in the history of the hermaphrodite. It was a point when medical science was ready to "discipline" the hermaphrodite. Earlier, intersex was just an object of theory, but with the work of John Money, hermaphrodites became a subject of heteronormativity, with genitalia medically engineered to juxtapose with its performative gender. Money writes in 1981, "Except for some types of hermaphrodite or intersex, people are born with the genital morphology of male or female" refuting to see sexes beyond the dimorphism: Fausto-Sterling sees it as an inherent strategy of medical science to diminish the "hermaphrodite" and categorize the same as a form of disorder, under the influence of heteronormativity and social phobia to the non-normative sex. It is also evident from the Money's view of seeing gender as inevitable, as he writes, "The totality (of gender) includes work and play, legal status, education, manners, etiquette, and grooming. It includes, indeed, all of one's very identity and role as boy or girl, man or woman, for male-female dimorphism perfuses an influence far beyond the narrow confines of the sex organs" Here the essentialism is not of sex, but of gender also, which requires everybody to be sexed, dimorphically.

Intersexuality in India

There are no official statistics on intersex births in India, apart from Kerala[7], where one can register a birth or death as intersex, a practice which started in 2012. What is more complex about intersexuality in India is that it is seen in relation, and as a part of, "Hijra" or transgender community. This I shall demonstrate by historically looking at colonial India and the legal system that emerged during that period. However, the transgender movement does have better visibility as compared to the intersex movement. Hence, the transgenders were first enumerated in the Indian

7 See: https://timesofindia.indiatimes.com/city/kochi/Kerala-shows-the-way-with-intersex-registry/articleshow/36507471.cms; Retreived on 10 Januay, 2018.

Census of 2011. However, one of the headers in the Census of Transgenders is: Children (0-6 years)[8]. It is rather questionable if a child of age 0-6 could assert their identity as a transgender during the census. Further, in the cases of children under the age 6, the parents would be responding on their behalf, and under what circumstances would a parent identify their child as "transgender" in the census? This reflects the fact that intersexuality is subsumed under the wider term of transgender, but I argue that both the communities, while resisting heteronormativity, focus on different sets of goals. Arguably, one can say that this estimate is of intersex births, confused to be transgender. Similar tendencies to define the intersex under the category of transgender reflect in the Transgender (Protection of Rights) Bill of 2018. I, however, understand that the intersex and transgender identities do have a strong relationship, but not all intersex persons embody a transgender self, hence such categorizing can create confusion and a misrepresentation of the queer subjectivity.

In many medical monographs, doctors reflect on how intersex births are approached in India. I argue that this approach reflects the global practices on intersex, which has been interlinked due to coloniality and hegemonic knowledge production in medicine. Surgical correction is a complex decision that is undertaken by both doctors and parents (Bajpai, 2000). However, they argue that the decision making of "sex assignment" is exercised by the parents by invoking the rhetoric of the "best interest" of the child. But the intersex community resists such decisions and recommend them to be not taken before puberty, unless a medical urgency occurs. Although there are very few studies on how the decision on sex-assignment in India is undertaken, a report published by the Times of India, indicates it to be influenced by the patriarchal bend. In a tertiary care hospital in

8 Census of India (2011) https://www.census2011.co.in/transgender.php

Lucknow, majority of the parent were found to be inclined towards a male sex assignment. As one of the doctors explains,

> "Around 75% of children with DSD are actually females with undeveloped or underdeveloped genitals. Some of them have a vagina and ovaries as well along with a fleshy mass which gives the appearance of a penis. But when parents are informed they do not want the child to be a girl" (Times of India, 2017)[9]

The Erroneous Tale of Pinki and Santhi:

The popular stories of Pinki and Santhi show the apathy towards the Intersex. As already discussed, Pinki Pramanik, a Congenital Adernal Hyperplasia patient, has been under heavy medico-legal scrutiny due to her intersexual anatomy of enlarged clitoris that resembled a "phallus", and hence, she was charged of sexual assault by her live-in partner. Pinki's case reflects how the medico-legal jurisprudence invaded her body. Despite growing up as a female, she, in popular media, was paraded as a male. Not that her story reflects the insensitivity of the law enforcement agency towards intersex, but also, how her "lived experience" as a female was negated to establish "the reality of the body" (Foucault, 1980). Santhi had a similar story of abjection. She failed the "Gender Test" and the Indian Olympic Association (IOA) declared her to be "not possess(ing) any characteristics of a woman[10]", which in this case is the presence of an XX chromosome. P. Mitra (2014) writes,

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9 http://timesofindia.indiatimes.com/articleshow/57447122.cmsutm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Accessed on January 11, 2019)

10 'Indian's Soundarajan likely to lose medal', Anthony Caruso, Universal Sports, December 18, 2006. http://preview.universalsports.com/news-blogs/article/newsid=277801.html

> "Santhi's grandfather introduced Santhi to sports. Sports in rural India are often looked at as a stepping stone for social upward mobility. The lure of a potential job at a governmental institution under a sports quota10 often motivates athletes from economically underprivileged backgrounds to train hard in order to do well in sports. And for Santhi, success helped her attain a new identity, respect among friends and, more importantly, social acceptance. By 2005, Santhi began to represent the nation, a dream that she cherished from the very beginning. And then, in December 2006, she ran the last formal race of her career – the 800 metres final at the Asian Games in Doha – and won a silver medal. Soon after, Santhi's sexual identity was questioned and she was summoned by a medical board that declared that clinically and genetically she was male. At the time, the IAAF's policy indicated that:
>
> If there is any 'suspicion' or if there is a challenge then the athlete concerned can be asked to attend a medical evaluation before a panel comprising a gynaecologist, endocrinologist, psychologist, internal medicine specialist, expert on gender/transgender issues. (IAAF Medical and Anti-Doping Commission, 2006)" (P, 385)

Intersexuality as a Colonial Category:

Modernity has been heavily contested as a product of the west, and colonially extraverted knowledge (Houtondji, 1989) and the coloniality of power (Quijano, 1991) as its by-products. Lugones (2007) argues that coloniality's gender system was invariably different for both the colonized and colonizer, but the latter took over the former by the organization and control of knowledge and power. Following Quijano's coloniality of power, Lugones deduces, "Biological dimorphism,

heterosexualism, and patriarchy are all characteristic of what I (she) call(s) the light side of the colonial/modern organization of gender". As coloniality permeates new geographies, new identities emerge. Standardization and "objectification" become what Lugones calls as the "cognitive need of capitalism" (capitalism is an important aspect for Quijano for the reach of coloniality of power to new territories). Subsequently, Intersexuality is established as a colonial category for the following reasons; firstly, until the World War I, reproduction was heavily emphasized and hence, the presence of functional gametes became a norm for identifying "sexed" bodies. Secondly, she argues with Paula Gunn Allen (1986/1992), that prior to colonialism, the Intersex was an accepted third sex/gender categories in many tribal societies. But the classificatory agenda of modernity and it's coloniality of power coalesced local identities into the western conceptions of sex. As she argues, corrective surgeries were not part of many cultures, and the idea of sexual dimorphism it serves is build upon the Eurocentric exploitation of power. Lugones, brings examples from Allen (1986/1992), of the North American Indians and Yoruba (Oyéronké Oyewùmí, 1997) to empirically support her idea that the colonial sex/gender system displaced the organization of gender in their society.

A Note on Theory:

Intersexuality, as an ontological category, not just disrupts the binary of sex, but also disturbs the binary of nature/culture. In challenging the sex/gender relational system, it questions if our bodies are shaped by the nature or culture or both. All the variables of sex (chromosome, gonads, hormones, genitalia) freely float against the variations of intersexuality, with none being able to establish itself as the "true" determinant of sex. And hence, the bodies need to be "sexed" through corrective surgeries for them to "matter". As sociologist Bryan S Turner (1984) suggest, birth makes one a part of nature, but is not an "ultimate guarantee of cultural membership of society".

Juxtaposing Turner (1984) and Butler (1990), I argue that corrective surgeries on the intersex is a politics of "sexing the body", to extend cultural membership to its 'natural being'. I follow Turner (1984) to establish that out bodies are ambiguously a part of both nature and culture. As Foucault argues, body is the site and product of politics/power relationship (Turner, 2007), "the body as an object of power is produced in order to be controlled, identified and reproduced" (p36). This bio-power of Foucault splits into two: the first that "standardizes the body's functions" (Sterling, 2000, p7) and the second as "the bio-politics of population", the "organization of body in the interest of population" (Turner, 2007). With this, medicalization legitimizes itself to regulate the body by surgically organizing the sex. With this, the "true sex" is a product of the exercise of medical and cultural practices (Turner, 2007) on "docile bodies" (Foucault, 1980).

With Sterling (2000), I put forth the idea that sex is not a purely stable category (as with Gender[11]) and it shifts with the scientific paradigms, with which I reiterate Germon (2007) that the "conceptual framework of dimorphic sexual difference is an interpretation of natural properties rather than facts of nature" (p10) I argue, with Richardson (2013) and Harding (1993) objectivity employed in the "interpretation" of these "natural properties" is a "weak objectivity" which rests on heterosexist subjectivity from one's vantage point.

A Note on Methodology:

Beyond metaphysical certainties lies Foucault's genealogy. As it moves, it creates new layers of truth, simultaneously refuting the depth as a "superficial secret" (Foucault, 1967). Genealogy records (Dreyfus and Rabinow, 1982) "imposed interpretations" (p108) and unsettles the "unchanging truth" (p109). In Discipline and Punish (1975), Foucault argues that a genealogist unveils the political/power flux under which a body operates, and simultaneously becomes a "productive and

11 See Germon (2007)

subjected body" (cited in Dreyfus and Rabinow, 1982; p112). With this, I seek to demonstrate how intersexuality unsettles our rudimental understanding of sex and gender, simultaneously trying to demonstrate how this understanding emerged. My overarching genealogical perspective is empirically supported by three sets of empirical evidences: archives, textual analysis of medical monographs and law archives.

As I have previously established from Quijano and Lugones (2007), Intersexuality can be argued as a colonial category juxtaposed and enmeshed with the colonized's culture. And, as argued by Foucault, the "political technology of the body" is governed by medicine and law, I try to explore how intersexuality has been shaped and abjected by these forces. With the archives, I seek to understand "what constituted the colonial commonsense" (Stoler, 2009; p3). In doing so, I try to understand the politics of how the ontological essence shifted with the imperial order and got organized by race. In doing so, I purposively look at the governing of "sexual deviance" through the Criminal Tribes Act, 1871. For this, I visited the National Archive of India, New Delhi, Uttar Pradesh State Archive and the Regional Archive at Allahabad. Due to constraints of time, many archival sources could not be visited and hence, I do not claim that I represent the shifts in the politics of the British Raj with different geographies. This exercise helped to trace how the intersexuality was enmeshed, embedded or carved out of the Hijra community and in doing so, I seek to trace the history of Intersexuality. The medical monographs I retrieved are from the "Indian Medical Gazette" from 1865 till 1945. Although, this was a rather popular journal, I do not claim that this journal is enough to articulate the history of intersexuality and hence it can be deemed as a limitation of my writing. I substitute its textual analysis with the numerous published census of caste and tribes of India, along with, "The Registers of Eunuchs" and the rules that framed these registers. For Law Archives, I mostly rely on the National Archive of India and Manupatra Online.

Chapter 2

Entanglements of Intersexuality and the Colonial Discourse on Eunuchs

As argued by many, the colonial authority redefined the organization of the sex/gender system (Connell, 2014)[12] in the colonized world. Colonial modernity reshaped the institutions (Lugones, 2008) with a simultaneous standardizing (Palese, 2013) of bodily subjectivity. Lugones[13] (2007) argues that intersexuality, also, has a colonial context. She writes (2007:2), "Biological dimorphism, heterosexual patriarchy are all characteristic of what I call the "light" side of the colonial/modern organization of gender. Hegemonically these are written large over the meaning of gender". Such an approach is important in understanding the historical discourse of intersexuality, which is largely hidden in colonial archives. Arondkear (2009) argues that there is scarce official documentation of events of sexual subversion in the colonial archives, but this does not undermine, firstly, the "frequency" of these events and secondly, the existence of medico-legal jurisprudence in the colonial state supported by a strong interconnection between the institutions of medicine and law (Arondekar, 2009). A rather frequent iteration of this medico-legal jurisprudence lies in the cases of sodomy and the criminalization of eunuchs. The former was criminalized specifically through the Indian Penal Code, 1860 and the latter, through the Criminal Tribes Act of 1871. These laws set forth a governance of sexual subversion based on the evidence produced through medical science,

[12] Connell, Raewyn. 2014. 'Rethinking gender from the South,' *Feminist Studies* 40 (3): 518-539 (Connell (2014) sees colonialism as a gendered act which disrupts the gender organization of the colonized world.)

[13] Lugones, M. (2008). The Coloniality of Gender. *Worlds & Knowledges Otherwise*, *2* (Spring), 1-17. Lugones builds on Quijano's Coloniality of Power to see how coloniality refracts identities and produces new gendered and raced identities.

giving rise to a complex medico-legal jurisprudence over the bodies of the "sodomizer" and "eunuchs". Arnold (2000) argues that medicine "alone was justification of British Rule" (136), and hence medicine can be seen as a strong institution of control, as also argued by Michel Foucault in "The Herculine Barbin" (1980) and "The Birth of a Clinic" (1975).

Along with the official documents of colonial India, knowledge in medical science also becomes an important source to trace the history of intersexuality. Mitra and Satish (2014) consider medical textbooks as an important source of authority on medical jurisprudence over rape laws in India. The colonial administration relied on this "knowledge" to establish control. However, they concluded these medical practices to be "unscientific", "invasive" and heterosexist. For their analysis, they also rely on the first book to be written on medical jurisprudence by Norman Cherves in 1856. The book dictates a standard set of rules to gather evidence on numerous events of crime, including rape and sodomy. Such textbooks and medical journals are a crucial set of material to understand intersexuality in colonial India. Also, it can be argued that many models for the treatment of intersexuality were transported to India from the west[14], as it has been argued by Michel Foucault in *The Birth of a Clinic (1973)*, Sandra Harding in *Whose Science, Whose Knowledge?* (1991) and Anne-Fausto Sterling in *Sexing the Body* (2006), since medicine exercised an authority in identifying the objective truth about the body since early 19th century, glancing at the identity of intersex through colonial and heterosexist medical knowledge is rather crucial. In doing so, the archival materials are necessary to understand the colonial epistemology of the construction of intersex as a eunuch and then later, a congenital malformation. Outlining the limitations of such archival sources, Stoler

[14] Chelliah S. (1920). Notes on a Case of "Hypospadias Perinealis". *The Indian medical gazette*, *55*(4), 123–123; an Indian medical practitioner on intersexuality cites Franciszek Neugebauer (1856-1914) while working on the case of Hypospadias.

(2009) emphasizes on the "need to understand the institution that it (archive document) served", along with understanding its epistemological or methodological imperatives (Arondekar, 2009). The medico-legal jurisprudence over deviant bodies was fed by the constant criminalization of the eunuchs, as both sodomizers and habitual offenders. It is important to also notice that these events are rooted in the context of expanding colonial power in the various institutions.

In this chapter, along with historicizing the colonial discourse on intersexuality (then hermaphrodite) and the criminalization of eunuch; I demonstrate how the history of intersexuality is entangled yet hidden in the colonial history of medico-legal jurisprudence[15] over the bodies of eunuchs. Further, I also trace the shifts in the nature and meaning of intersexuality by shifting knowledge in colonial medicine. I establish this by relying on the following: one; articles in the Indian Medical Gazette, a medical journal since 1866, where I found 10 articles on intersexuality between 1866 and 1950; two, the Medical Textbook of Norman Cherves from 1856 and Dictionary by Lyon from 1891 ; three, The Register of Eunuchs for the United Provinces under the Criminal Tribes Act of 1871 from the Uttar Pradesh Regional State Archive ; and four; numerous other official documents and reports from the National Archive of India.

Born Eunuch vs Made Eunuch by Man:

[15]In History of Sexuality (1970), Foucault argues that knowledge/power controls sexual identities. Such governance over bodies is possible through institutions and disciplines by disciplining the body along with simultaneous emergence of scientific disciplines. I argue that medico-legal policing (disciplining) utilizes knowledge from medical science in legal cases of criminalization of eunuchs. under the Criminal Tribes Act of 1871 and Indian Penal Code of 1860. The law exercises its authority based on the evidence produced by medical knowledge.

The politics of exclusion of the "hermaphrodite" in colonial India has an underlying western assumption of the binary of sex/gender. Hence, in an attempt to historicize gender and its linkages to the "coloniality of power" (by Anibal Quijano), she explicates the violence-laden dark side of gender. She further writes "The gender system is heterosexualist, as heterosexuality permeates racialized patriarchal control over production, including knowledge production, and over collective authority." This heterosexist ideology led to the embedding of sporadic discontinuous identities.[16] She highlights that sexual dimorphism is an important light side "characteristic" of the colonial/modern gender system. Corrective surgery on intersex births, she argues, is a product of the idea of sexual dimorphism. This idea justifies surgery as a means to maintain the system of "biological dimorphism", which further provides meaning to the gender assigned. Gender is embodied by the materiality of the body's sex. The hermaphrodite was deciphered as a "naturally born eunuch". This identity has a colonial context, and can be argued as more or less discontinuous. Subsequently, the "naturally born eunuch" was erased from official accounts pertaining to Hijras. A rather frequent and important mention of 'hermaphrodite' can be traced in the medical journals. With time, the hermaphrodite was probed into because of the constant battle between the 'true' and 'pseudo' hermaphrodite.

I argue that the epistemological frame of medicine and law simultaneously evolved, and often embroiled the categories of "eunuch" and "hermaphrodite" together. With the strengthening of western medicine in India the "hermaphrodite" was later taken out from the Hijra identity and established as a distinct category failing to congenitally conform to the binaries of sex. The Eunuch or Hijra can be argued as an Indian variant of the third gender. While the identity of

[16] For instance the Men who have Sex with Men (MSM) emerged during the HIV/AIDS movement in India. Similarly, Dutta (2012) argues that Kothi is a discontinuous identity.

"hermaphrodite" developed parallel to the criminalized category of "eunuch" or "hijra", the latter had a more continuous history as compared to the former (Dutta, 2012).

During the 1860s, the colonial distinction of "eunuch by birth" or naturally born (by Dr J.B. Wright) eunuch and "made eunuchs" got circulated in medical journals. Norman Cherves (1856), in his book of *Medical Jurisprudence of India,* explicates a clear distinction between them. He writes,

> "Dr. J. B. Wright, then of Jeypore, describes a class of " naturally born " eunuchs called Khojas [Hijrahs ?] In them "the urine is voided painlessly through a minute aperture just above the symphysis pubis, in the abdominal mesial line. This orifice is, in many cases, surmounted by a small organ similar in appearance and position (?) to the female clitoris or to a miniature penis." Their pelves are described as being very wide. These people are in great request as the custodians of zenanas. It would appear, from the above account, that these persons suffer from congenital deficiency of the anterior wall of through bladder and of the symphysis pubis, with more or less imperfect development of the genitals." (Cited in Cherves (1856:500)

In the writing of Cherves (1870), one can notice many efforts to classify and understand the eunuch as a phenomenon such as "eunuch by birth" and "made eunuch by man". I presume the "eunuch by birth" refers to a hermaphrodite. This is because many scholars[17] consider congenital malformation as an important reason for becoming a part of the Hijra Gharana. Cherves (1870) has his own

[17] For instance, Reddy (2005) and Preston (1987)

classification. Firstly, there are the eunuchs born "naturally so, by having the two sexes full and distinct, one over the other, or one within the other, or only in part, or a confused medley of both". Secondly, there is the Hijra born impotent, having a feminine body and "beardless face". Finally, there are the Hijras for art and dance, many of whom identified emasculation as an important desire. What is complicated here is the assumption that a hermaphrodite as a eunuch.

A rather complex politics of policing the bodies of Hijras in colonial India can be observed with the Criminal Tribes Act of 1871 (Reddy, 2005; Hinchy, 2012; Nanda, 1990). Initially the act was limited to the territories of North-Western Provinces, Punjab and Awadh. The Criminal Tribes Act- Act XXVII of 1871[18] was a little later promulgated in the entire colonial India. The act institutionalized the colonial categories of dangerous and criminal outlaws, who were mandated to be registered and controlled. Under this act came the infamous "Registers of the Eunuch" and of their property under every province. It was maintained by the Commissioner of each district. The act vested the power to criminalize and arrest the eunuchs who "(a) "are reasonably suspected of kidnapping or castrating children, or of committing offenses under section 377 of the Indian Penal Code, or of abetting the commission of any of the said offenses"; (b) "appear, 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 (c) "dance or play music, or take part in any public exhibition, in a public street or place or for hire in a private house" (Collection of Acts Passed by the Governor-General of India in Council of the Year 1871)" (Cited in Reddy, 2005). But before we dwell deep into the politics classification

[18] W. Strokes (11-1871) Legislative. The Criminal Tribes Act; 1871 (Act 27 of 1871). National Archive of India. Digital. File No. 44-127

of eunuch, it is important to ascertain how the institutionalization of the Criminal Tribes Act of 1871 criminalized not just the Hijras, but intersex persons also. The "Hermaphrodite" was registered due to the fraught categorization of the same as a eunuch.

Hinchy (2019) argues that colonial governance saw the Hijras as an"ungovernable and disorderly population" (37) and hence a rather frequent and systematic control was enforced on deviant sexualities under the rhetoric of public morality. Castration was a common practice in the Hijra community. Many of them voluntarily undergo the process. But, the British concluded that the network of Gharanas kidnapped and castrated children. As Hinchy (2019) highlights the "child rescue of mission" of the British was to prevent them ending up in Hijra or prostitution houses. But as Hinchy (2014) also argues the actual "welfare and agency" of the children were of less importance to them. The agenda was less to prevent the sexualization of children and more to prevent the increase of the Hijra population or to erase them. Apprehension to the preliminary causes of deaths due to emasculation, kidnapping and abduction of children with and without ambiguous genitalia is observed in the medical jurisprudence literature of Norman Cherves (1870). He quotes the Inspector General of Police of North West Province and writes,

> "Mr. Maine, Inspector-General of Police, N.W.P., has urged that rigorous measures should be adopted in regard to eunuchs in Behar, Oude, and the North-Western Provinces; and Major Carnell has, I believe, recommended that, with a view to extirpating this atrocious evil, all eunuchs should be registered. Registration of such extraordinary births should be made compulsory under strict penal provisions, and the owning of an unregistered eunuch should be made criminal." (p 499)

Hinchy (2014), by studying the colonial intervention in Hijra Gharanas and prostitution households, exposes the colonial agenda of "Rescuing Boys from a life of infamy". She demonstrates that the colonial rhetoric of seeing the "Hijra as kidnappers" is inaccurate as people often willingly joined the Gharanas (Households). But, one important aspect of recruitment into the Hijra gharanas was "genital "deformity" in the child". The larger question that looms here is if all the cases of "genital deformation", referring to intersex, were recruited in the Gharanas? If yes, were they also castrated? Certainly, it is difficult to establish this, but it is important to recall that hermaphrodites were also seen as "wretched" and "deformed" sexualities in colonial India. Further, albeit hermaphrodites were confused as "natural eunuchs" or "born eunuchs" by some, the institution of modern medicine soon cleared this confusion out and constructed the hermaphrodite as a distinct medical puzzle. However, this too informs us that before the encounter with medicine, the hermaphrodite was categorized as a eunuch and hence criminalized.

The Entangled History of Eunuchs and Hermaphrodites:

Acknowledging the inevitability of intersex births in the colonial period, questions emerge as to how these births were dealt with? What anxieties surrounded the parents who had children with ambiguous genitalia? Also acknowledging the lack of prosthetic surgery before modern medicine, it is safe to assume that surgical procedures were not usually employed to manage such cases. Albeit the limited archival material on it, Reddy (2005) and Preston (1987) argue that "congenital malformation" was a factor in becoming eunuch. Also, Norman Cherves (1856) and Hinchy (2019) mention that the British saw the eunuchs as kidnappers of children in general. including hermaphrodite children. But the British had concerns against this practice, as F. Barrow (1871) in the Criminal Tribes Act of 1871 expressed resents in giving eunuchs the custody of "born eunuchs

although his letter is rather silent on what or who he considered as "born eunuchs". W. Crooke in *Tribes and Castes of North-Western Provinces and Oudh Volume 2* (1896) writes that the children with deformed genitalia were often given to eunuchs by their parents or were raised as eunuchs. As he writes,

> "The class of eunuchs (Hijra or Khasua): In spite of the operations of the Criminal Tribes Act (XXVII of 1871) these people are still found in considerable numbers throughout the Province; but under the rigid supervision to which they are now exposed their numbers are gradually decreasing. Formerly when a deformed boy was born in a family the Hijras of the neighbourhood used to beset the parents and endeavour to obtain possession of him. This practice has now, of course, ceased." (495)

What is obvious by now is that the "hermaphrodite" children were either given to eunuchs or raised as one; by the parents. However, many evidences suggest contrary to it. For instance, the medical journal has numerous[19] cases when intersex persons were raised as conforming to either of the genders. The only fact that one can ascertain is that congenital malformation or the presence of ambiguous genitalia was an important factor to be a eunuch but, it was not the sole identity of

[19] Moriarty M. D. (1879). Calculus, Vesical, in a Hermaphrodite: Lithotomy: Recovery. *The Indian medical gazette*, *14*(12), 335. /Mantell A. A. (1866). An Hermaphrodite?. *The Indian medical gazette*, *1*(1), /Chelliah S. (1920). Notes on a Case of "Hypospadias Perinealis". *The Indian medical gazette*, *55*(4), 123–124./ Narain S. (1904). A Case of Hermaphrodite. *The Indian medical gazette*, *39*(12), 476. / Gupta A. (1931). A Case of Pseudo-Hermaphrodism. *The Indian medical gazette*, *66*(5), 263–264.

hermaphrodites as many others grew with cis-gender affiliations. Complexity arises when colonial accounts classify all the hermaphrodites as "natural" or "born eunuch".

To historicize the position of intersex persons in colonial India, it becomes imperative to look at the very criminalization of "eunuchs" under the Criminal Tribes Act (Nigam. 1990; Reddy, 2005; Hinchy, 2012; Nanda, 1990). Since; "hermaphrodites" were classified as "eunuchs" by the end of 19th century, I presumed investigating the archival sources with regards to the act will also shed light on the "hermaphrodites". It can be argued that the administrators enforced a colonial gender system through the Criminal Tribes Act by, and hence criminalizing the eunuchs and sodomizers through the evidence produced by legal and medical jurisprudence. The fraught classification of the hermaphrodite as "eunuch by birth" subsumed it under the gamut of deviant sexualities. Outside, the Criminal Tribes Act of 1871 was to prevent kidnapping and emasculation, but in the inside it aimed to organize and control deviant sexualities.

The Register of (Born) Eunuchs:

Under the Criminal Tribes Act of 1871, registration of eunuchs was made mandatory and hence a Register of Eunuchs, along with details of their property, was maintained in every province where the act was promulgated. The Home Department in 1872[20] notified the rules for maintaining the register under section 31 of the XXVII Act of 1871. Accordingly, the Magistrate of the district was entrusted with the charge to maintain the registers. Any name in the register was not to be removed until the death of the eunuch. Within the registers, a specific column on the age of emasculation interrogated when the eunuch was castrated. The column is rather interesting because many

[20] Home Department (1872, March). Rules for the Making and Keeping up and Charge of Register of Eunuchs and of their Property. (Progs., Nos.72-73,December 1872) National Archive of India. New Delhi.

eunuchs declared themselves to be eunuch by birth and hermaphrodites, while others mention a rough date of emasculation. When these archives are seen in relation to the writings in medical journals, dictionaries and census reports of tribes and caste, the category of "eunuch by birth" becomes a rather prominent identity and as Reddy (2005) argues, if congenital malformation was an important reason to be a Hijra, can it not be said that these eunuchs by birth are the intersex individuals? *The List of Eunuch in the District of Mozaffernuggur* [21](now Muzzafarnagar, Uttar Pradesh) mentions, along with many other castrated eunuchs, a fifteen year old Hermaphrodite, "Chimmun". Chimmun belonged originally to Hyderabad and earned by begging and dancing. The register concludes that "there is no suspicion against "him"". The use of the term "him" reflects the heterosexist colonial understanding of eunuchs as embodiments of failed masculinity (Hinchy, 2014). The register also mentions another eunuch who was a hermaphrodite, Pearee, 40 year of age. It reads, "It is turned out that Pearee Eunuch was born hermaphrodite at Peelebheet in Bareily district, in childhood he went out from his house and about ten years he had served under Bukhshish Alee Mirkhtar at Mozzufurnuggur" and concluded him to be harmless due to his old age and hence incapability of kidnapping and emasculating children. The classification of "eunuch by birth" also surfaces in the "Register of Eunuch in the District of Boolundshehur"[22], where a 54 year old eunuch "Gyanoo", and a 47 year old "Ghoonie" were declared to be born as eunuch. I found roughly 6-7 hermaphrodites or eunuch by birth in some 40 registrations across Mirzapur, Boolundshehur and Meerut. In some cases, under the age of emasculation, "not known" was also

[21] Short, W.A. (1873) List Of Eunuchs In The District Of Muzaffarnagar, By Superintendent Of Police, Muzaffarnagar, January, In Uttar Pradesh State Archive(UPSA/A/Com/29/8).

[22] Willock, H. D. 1873. "Letter from Magistrate of Boolundshahur to Commissioner of the Division, Meerut". Uttar Pradesh State Archive (UPSA/ A/ Com/29/8)

marked as a response. Hence, majority of the entrees in the registers were of the emasculated eunuchs, followed by eunuchs by birth or hermaphrodites and a few respondents marked as "not known".

Who are the Born Eunuchs and Hermaphrodites?

Although, Hinchy (2017) sees the inclusion of these (two) hermaphrodites in the register as complicated, and wonders if it was as an outcome of translation from a local language, with the writings of Crooke (1896)[23], it is well established that the colonizers had discovered birth with ambiguous genitalia as a prime reason for recruitment as a eunuch. A similar argument is made by Serena Nanda (1991) and Gayatri Reddy (2006). The colonial state, for a superior understanding of sexual deviations, had already institutionalized medico-legal jurisprudence and it can be argued that clear definitions did exist around the 1890s on the meanings and identification of eunuchs, sodomy and hermaphrodites. For instance, Isidore Bernadotte Lyon's "A Textbook for Medical Jurisprudence for India" in 1889, defined sodomy as a practice among both men and eunuchs. Further, eunuchs were seen by him as someone "whose genitals were completely cut away" (68). Also, he writes, "certain organs of one sex have been found accompanied by certain organs of the other sex" in hermaphrodite (26), further creating a different category for hypospadias, similar to the understanding of present day medicine. In cases of doubtful sex, he suggested to look for indications of sexual desire and bodily appearances. He envisaged a plethora of observations to confirm the identity of a hermaphrodite individual into the binary of sexes. Further, in the Indian

[23] Crooke, W (1896) The Tribes And Castes Of The North-western Provinces And Oudh (Calcutta: Office Of The Superintendent Of Government Printing, India

Medical Gazette; in 1879, Surgeon Moriarity[24] concluded to have observed a hermaphrodite; referred from the police, as he writes:

> "During the last eighteen months I have seen three or four so-called hermaphrodites all who were young people. In each case the parents, though knowing there was something wrong, looked on the individual as a female. This indeed was evident from the name and dress of the unfortunate. One of the parties was brought by the Police on suspicion of having being made an eunuch by some."

It certainly pushes the fact that the colonial state was in regular touch with the medical surgeons and this could have had an impact on segregating the two categories of eunuchs and hermaphrodites. Also, the Act XXVII of 1871 had an inherent agenda to prevent both sodomy and abduction, and castration of children to make eunuchs, as also noted by Crooke (1896) In the Tribes and Castes of North-Western Provinces and Oudh Volume 2 (1896).

Hence, it can be argued that firstly, the Registers of Eunuch had also contained testimonies of hermaphrodites and secondly, hermaphrodites, at least some of them, grew up as eunuchs or at least joined the community of Hijras in India. In the book on Medical Jurisprudence, Cherves (1856) establishes "born eunuch" as a different category of hermaphrodites. He cites, "Dr. Taylor alludes (p. 856) to a case of Dr. Lever's, in which a healthy woman had three children, who were the subjects of sexual malformation. Here the point of interest would have been to ascertain the condition of the father." Although this could be in relation to Hypospadias, a condition of the penis; often fixed with surgery. But, further he writes,

[24] Moriarty M. D. (1879). Calculus, Vesical, in a Hermaphrodite: Lithotomy: Recovery. *The Indian medical gazette*, *14*(12), 335.

> "Dr. J. B. Wright, then of Jeypore, describes a class of " naturally born" eunuchs called Khojas [Hijrahs ?] In them " the urine is voided painlessly through a minute aperture just above the symphysis pubis, in the abdominal mesial line. This orifice is, in many cases, surmounted by a small organ similar in appearance and position (?) to the female clitoris or to a miniature penis." Their pelves are described as being very wide. These people are in great request as the custodians of zenanas. It would appear, from the above account, that these persons suffer from congenital deficiency of the anterior wall of the bladder and of the symphysis pubis, with more or less imperfect development of the genitals. In Europe, however, such cases are of very rare occurrence, and it would be difficult to imagine that a class of such unfortunates "could be collected, except by a search throughout the whole population of India." (500)

Although, as earlier argued that these dictionaries are sexist, racist and unscientific. Cherves mistakes the hermaphrodite as the "transgender" or "eunuch". Although the current intersex movement identifies that while many intersex persons end up as transgender or gender fluid, many others choose to identify themselves in "cis-gender" categories (Davis, 2014). But; in colonial idea such choices were exercised by the state than the citizens. One can argue that during this time, intersex children were not tested to mandatorily fit into the gender system but were rather identified as eunuchs. As argued by Hinchy (2019) the colonial agenda was the erasure of embodied differences and this the British executed I argue, through firstly pushing the hermaphrodite to become a

eunuch through the criminalization of eunuchs using child rescue missions (Hinchy, 2019) and secondly, through modern medicine, as I will later demonstrate, aimed to understand and "fix the sex" of the intersex children.

Hermaphrodites and the Medical Men:

The earliest record of examination of hermaphrodites appears in The Indian Medical Gazette in 1866. On January 1, 1866, an article surfaced on the Indian Medical Gazette written by a Civil Assistant Surgeon in Bengal titled "An Hermaphrodite?"[25]. The case mentioned was of an individual with the appearance of a woman; who was incarcerated. She was thought to be a girl by her parents, although the surgeon found the presence of a non-functional penis, testis and a "rudimentary vagina" in her. She felt no desire for sexual intercourse, and she never menstruated. The case was puzzling for the surgeon himself. Later, In the December of 1879, Matthew D Moriarty, Officiating Civil Surgeon, Mozuffernuggur, published his account of the lithotomy (a surgery to remove stone in the uterus) he carried on an "Hermaphrodite". He writes,

> "During the last eighteen months I have seen three or four so-called hermaphrodites all were young people. In each case the parents, though knowing there was something wrong, looked on the individual as a female. This indeed was evident from the name and dress of the un-fortunate. One of the parties was brought by the Police on suspicion of having been made an eunuch by some one. - Another formed the subject of legal proceedings, and some men were punished for having enticed her (or ?) away as a married woman. " Darmee," aged 6 years, was brought to the Charitable Dispensary on

[25] Mantell A. A. (1866). An Hermaphrodite?. *The Indian medical gazette*, *1*(1), 3.

> the 11th August last. The mother stated that the child had suffered from irritation of the bladder, pain, for the last fifteen months, and had been very bad for the last fortnight. The child evidently Was in great pain. On examination, Darmee was found to be a hermaphrodite. The corpora cavernosa formed a rudimentary penis about an inch or so long; on either side the ununited halves of the scrotum looked like labia : in each, but best marked in the right, could be felt a rudimentary testis. Some three-fourths of an inch below the little penis was the urethral orifice, and below this again was a little cul-de sac. Altogether, I must say the parts looked uncommonly like those of a girl with a small mons veneris and a huge clitoris."

The hermaphrodites were not subjected to intervention. They were seen as demystifying objects and disembodied sexual subjects. Methodologically the surgeon relied on observation. Emphasis was also on understanding the sexual desire to understand orientation or gender. It was the time in the modern history of medicine that a medical condition was not decoded but still was criminalized partially through law (I assume some hermaphrodites did end up becoming eunuchs). Although, as Russel (1916) argues usually intersexed children were given to the Hijras by their parents, in this event we see that the intersexed person was raised as a female by the parents. There is limited archival material available on this case and importantly on how decisions regarding sex-assignment were made during the late 19th century, or if an intersex child was not raised as a eunuch. In the case reported by Matthew D Moriarty, the surgery was performed because of the pain due to stone, and not to assign a single sex on the body.

In September; 1904, Saroop Narain, an Assistant Civil Surgeon from Karui (now in Jharkhand) wrote to the Editor of Indian Medical Gazette[26], describing his observation of a "hermaphrodite"; he found in an inmate in a male prison. He describes his subject as "comparatively rare". He establishes his observation on the basis of physical examination, interrogation on menstruation/seminal discharge and inheritance from parents. Further he examined the presence of a penis, labia minora and labia majora. These medical case reports reflect that such cases were judged on primarily three kinds of observations; firstly, the physiological features were examined, to gauge the presence of secondary sex characteristics, development of sex organs, menstruation or seminal fluid etc. Secondly; there were efforts to understand sexual desire, if any, for any sex through mere interrogation with the subject; thirdly, observations were made regarding the presence of, if; any, similar cases of "maldevelopment" in the family especially the parents. The cases of hermaphrodites were too complex to be ascertain a mandatory single sex and hence no such attempts were made yet by the civil surgeons.

As Fausto-Sterling (2006), Dreger (1999) and Karkazis (2008) observe, relying on Thomas Kuhn, the aetiology of Hermaphroditism shifted with shifts in the technological paradigm. Their bodies were a complex intermix of male and female sexual features and so were the genitals, which led the early medical professionals into the continuing debate of true vs pseudo-hermaphroditism (Fausto-Sterling, 2006). Such attempts reflect the "corrective" gaze of modern medicine. In the Indian Medical Gazette also, debates attempting to understand the 'true' sex of the body can be traced from the 1930s. The nature of cases became more complex and so, reliance on histology and a better understanding of hormones grew. In the Maternity Hospital, Bangalore, doctors; using microscopic cell examination, concluded,

[26] Narain S. (1904). A Case of Hermaphrodite. *The Indian medical gazette*, *39*(12), 476.

> "The occurrence of true hermaphroditism in man is rare. The presence of well-marked mammaa and the vagina are indicative of the feminine type, but the histological evidence revealed by the microscopic examination point to the masculine type. The case reported here is in all probability an instance of the combination of male and female characters, i.e., a true hermaphrodite. Unfortunately the patient did not consent to an abdominal section to find out whether the two rounded swellings inside the pelvis were ovarian in character. The presumption that they are ovarian in nature is justified by the well-marked secondary sexual characteristics and the periodic strong desire to mate."

Evidence of early surgical procedures or the corrective intervention for the "hermaphrodite" can be traced to 1931. It is rather important because the hermaphrodite (those who chose to be a eunuch) was not only defined as a criminal by law and (hence checked through registration), but also as a medical deformity which is to be corrected by the authority of medicine. In 1932[27], A. K. Dutt Gupta, an Assistant Surgeon at the Medical College, Calcutta encountered an interesting case of pseudo-hermaphroditism. As he noted,

> "The patient, aged 15 years, was admitted in the wards of Sir Frank Connor for rapidly enlarging breasts. The parents had noticed that the child had a small and peculiarly shaped penis and one testicle only. They did not think much was

[27] Gupta A. (1931). A Case of Pseudo-Hermaphrodism. *The Indian medical gazette*, *66*(5), 263–264.

> wrong, but this rapid development of the breasts during the last year and a half, before which there was no abnormality made them nervous about the child being a hermaphrodite. On examination: The breasts looked more shapely and more developed than those of a girl of the same age. On the right side there was an accessory nipple. The feel was that of a real female breast….The most peculiar thing was a depression in the perineum, in front of the anus, exactly in the position of the vagina, covered with ordinary skin. It would admit the tip of the index finger fairly tightly. On pressing, the finger would go in for half inch as if into a cavity. On rectal examination no sign of uterus or prostate could be felt. The child's voice was more of the feminine character. There was no sign of beard or moustache. There was an occasional white discharge from the penis like thin semen, but never blood."

As a form of corrective intervention, the doctor chose to remove the breasts, with a hope to make the person grow as a male. However, further corrective intervention on this case was not possible due to limited technological advancement, which was established only after the 1950s in the west. But; after the growth of medical sciences, the entangled categories of eunuch and hermaphrodites were more clearly distinguishable. This clarity was an outcome of knowledge production in medicine, and its concoction with law and police. Further, with more knowledge on hermaphrodites, their subjectivity was more likely to be represented, but unfortunately with heteronormative medical science, such subjectivity was overshadowed by normative stereotypes and mandatory gendering.

Nelly Oudshoorn (1990) in "Beyond the Natural Body" identifies how the medical rhetoric of sex hormones was invoked to redefine and integrate the notions of reproductive female bodies, although, with the rise of endocrinology, the individual could now be classified from virile to

masculine, and hence the descriptiveness of the biological model of sex was rather enlarged. But, it can be argued that categories like virile or hypermasculinity were seen and constructed in relation to the biological sex. What is importance of hormones in the history of intersexuality; is how they transformed from endocrine secretions to a drug or supplement to both treat the intersexuality and establish the true sex of the intersexed body. Fausto-Sterling (2000) argues that the rising understanding of hormones as a determinant of sex emerged during the1910s to 1940s. Such debates also started to surface in the Indian Medical Gazette[28].

It is important to note that by the 1920s, a shift emerges in how cases of hermaphroditism were dealt with. Doctors did not just stop at observations; rather they were more focused on identifying the true sex of the body. In a case report by M. Mukherji (1940) from the Campbell Hospital at Calcutta, the doctor easily concludes "On these findings of an external examination alone, the sex of the child could hardly remain a matter for doubt, though it seems that the bulky labia and the big clitoris were responsible in veiling the true sex of this child. To the thirteenth year of her life she was considered to be a "boy" with hypospadias and deft scrotum."(225).

But after the 1940s, with the advancement in endocrinology, histopathological investigations and clinical research, with the superior quality of staining, microscopes and X-Rays and allied instruments, the "true sex" was supposed to be easily established and hormonal and psycho-therapies were likely to be employed in the cases of sexual ambiguity.

Colonial Politics of Exclusion and Erasure:

[28] A. P. Pillay's (1943). The Role of Hormones in Sex Disorders in the Male and W. Kirloskar's (1949) Article on the Treatment of Female Genital Disorders with Steroid Hormones.

Stoler (1989) argues that the "colonial politics of exclusion" was built on a "related notion that the boundaries separating colonizer from colonized were self-evident and easily drawn" (p635). It hence led to the construction of various social and legal categories in the colonies. As she argues "Ultimately inclusion or exclusion required regulating the sexual, conjugal and domestic life of both Europeans in the colonies and their colonized subjects". The "sexual" was subject to erroneous regulations, as demonstrated in the case of the eunuchs and the hermaphrodites. But in cases of the intersex, the identity was rather non-static and was an intermix of social, legal and medical discourses. Initially, Cherves (1856) categorizes a hermaphrodite as a "born eunuch". He presents a very partial understanding of Hijra or eunuch here. This could be largely false also, as many medical case notes demonstrate the histories of hermaphrodites who did not grow as eunuch. Further, the hermaphrodite who became a hijra was subject to the draconian Criminal Tribes Act. Further, medicine took on the high-agenda to determine the true identity of a hermaphrodite and essentially, their true sex. Hence, the hermaphrodite came to be regulated by multiple axes of institutional power. Lugones (2007) provides a framework to decipher how gender and race blends together in the exercise of the coloniality of power. Colonial racism is rather evident when J.B. Wright writes, "In Europe, however, such cases are of very rare occurrence, and it would be difficult to imagine that a class of such unfortunates could be collected, except by a search throughout the whole population of India".

The colonial politics of exclusion is complemented by the colonial policies of erasure of official documentation on non-normative sexual categories. Such practices reflect well in the census of Tribe and Castes, wherein the identities of the hermaphrodite and eunuchs were distorted. Adding to this, In 1921, in a regular census of the Punjab Hill Station, Simla, Dalhousie and Murree, L. Middleton, an Indian Civil Servant, formulates the rules of census data collection. "Column Number 5" read: "Males/Females", and the rules mentioned, "eunuch and hermaphrodites should be

returned as males". The above record; itself is an anecdotal evidence of the fact that there had been many institutional mechanisms to subsume the deviant sexualities under heteronormative gender categories. Queer scholars see that the politics of enumeration in the census as posing limitations in capturing the diverse queer subjectivity. Hinchy (2014) highlights that such attempts were to justify the eunuchs and hermaphrodites as "failed masculinities" and hence it reflects an "embodied difference", a boundary, which Stoler (1989) identifies as an important practice in the colonial politics of exclusion.

Chapter 3

Theorizing Intersexuality: Medicalization, Gender and Science

> *"When people say that knowledge is "universally true," we must understand that it is like railroads, which are found everywhere in the world but only to a limited extent. To shift to claiming that locomotives can move beyond their narrow and expensive rails is another matter. Yet magicians try to dazzle us with "universal laws" which they claim to be valid even in the gaps between the networks."*
>
> *(Latour 1988: 226)*

The above extract from Latour (1988) constitutes a response to the idea that sex is universal. Sex is rather political, and so is its assignment on bodies that are not "sexed". In medicine, a set of defined and identified characteristics in terms of external genitalia and chromosomes provided the frame to standardize biological dimorphism (Dreger, Alice Domurat, 1998), but many would disagree and argue that bodies are comparatively complex and hence, our sexuality. In the last chapter, three set of themes were explored; firstly, the historically pertinent colonial practice of subsuming intersex subjectivities under that of "Hijra"; secondly, a complex and critical scrutiny of intersexuality by medicine resulting in its classification as a "disorder". The entire colonial agenda did reflect on the social construction of Gender, and thus pathologised the intersex. Thirdly, intersexuality emerges as a challenge to the contemporary theories of gender binary and sexual dimorphism. In light of the observations regarding the above themes, this chapter investigates how social theory can contribute to understand intersexuality theoretically. In doing so, I evaluate the rise of the Medicalization thesis, so as to understand the Medicalization of sex and intersex. Along with it, I look into 'common sense', knowledge production and heterosexist institutions which complicate the social position of intersex. I further move to critically evaluate the theory of gender in light of the intersex movement.

The medical model of intersex management sees the body as pathological (Preves, 2002). Such a problematic perception emanates from the theorizing of the biological foundation of sex as an "objective truth" to which the rhetoric of "natural" provides a social meaning. In contrast, the intersex's ambiguous genitalia are taken as a deviance from the biological and hence also from the normal. Preves (2003) sees it as a "complex set of linear and casual assumption of sexual identity development". For medicine, a set of defined and identified characteristics, in terms of external genitalia and chromosomes, helped to identify the standard male and female bodies (Dreger, Alice Domurat, 1998), but in real, our bodies and sexualities are way too complex to be strictly compartmentalized into binary medical categories.

These themes are in their own ways complex and subject to debates. Further, to theorize intersexuality is to venture into territories of both theoretical and methodological complexities. Albeit intersexuality has been delved into in numerous ways such as Karkazis's (2007) anthropological study on 'Medicalization of Intersex' in which she provides empirical evidence by interviewing medical professionals in the US; a similar work is done by Davis in Dubious Doubt (2014). Amato's work (2016) is on 'Representation of Interex Lives in North America'. Further, Rubin's (2017) provides a really important critique of the biomedicalization of Intersex, and Germon (2007) critically ahistoricizes gender from the vantage point of Intersexuality. Fausto-Fausto-Sterling's (2000) emphasis is on breaking the two-sex system by integrating intersex bodies in it. She writes from the position of both a biologist and a social activist and draws from a number of empirical cases and medical reports. Intersex and Queer activists, along with academicians like

Rosario (2007)[29] and Fausto-Fausto-Sterling (2000), argue that there have been fundamental flaws with how knowledge about the sexes has been produced from homophobic research questions, models and hypotheses. Although the formulation of research problems seems to be relying on the objectivity of science, Harding (1991) argues that modern science's objectivity does not have the ability to weed out the social biases in the very practice of framing a hypothesis, and hence heterosexism is deeply embedded throughout the research process. For instance, Fausto-Fausto-Sterling asserts that intersex bodies were studied with a curative and corrective approach, rather than questioning the rigidity of the two-sex system. Despite the growing canon of literature on Intersex, a major gap remains in understanding the local histories and sociologies of gender systems and how they weave intersex individuals in it.

Intersexuality and Challenges to the Common Sense:

"Intersexuality is more than an empirical surprise; it is a cultural challenge", argues Geertz (1975). As he acknowledges the panic it creates in the biological community, he posits the idea that intersexuality challenges the everyday common sense and "the network of practical and moral concepts woven about those supposedly most rooted of root realities: maleness and femaleness". In this constant battle of the intersexual with the "common sense", the individual often succumbs to the gender binary to embrace "normalcy". Geertz aims to point out that the intersex body not only battles heteronormative institutions, but also the 'common sense' that is embedded in the very institutions. The common sense shares meanings with everyday practices, while the binary logic embedded in these practices is challenged by intersexuality. This common sense that excludes

29 Vernon A. Rosario, "The History of Aphallia and the Intersexual Challenge to Sex/Gender," in A Companion to Lesbian, Gay, Bisexual, Transgender, and Queer Studies, ed. George E. Haggerty and Molly McGarry (London: Blackwell, 2007), 262–81.

intersexuality from its very purview is produced and reproduced through various heteronormative enactments, gendered spaces and fraught pedagogies. For instance, in science education, intersexuality as a concept is taught with respect to animals and plants but not humans (Kumashiro, 2004).

Although, for sociologists, the common sense is a distinct knowledge emanating from practical experiences, it is not taken to be equivalent to rigorous theoretical explanations (Geertz, 1975). Similarly, the epistemological framework of science aims to carve out the 'objective truth' and contrast it against common sense. But Harding (1993) and many other feminist scholars who are into science studies argue that modern science fails to eradicate "sexist ideology" from the scientific hypothesis itself and hence, the entire agenda of finding the objective truth rests on contradictory grounds. For instance, Sarah Richardson in 'Sex Itself' (2013) demonstrates how heterosexism ingrained in the scientific community gets reflected in the gendered meanings associated to phenomena like sex determination, endocrinology and intersexuality.

Turning up the Medical Gaze:

Sexuality and gender can be seen inextricably intertwined and influenced by shifts in science and technology (Cipolla, Gupta, Rubin and Willey, 2017). Science, specifically medicine and biology, plays a certain role in the organization of gender and sexuality in the society. By the mid eighteenth and nineteenth centuries, biology became an organized discipline and its authority over the body, and specifically on the "ambiguous bodies", started to escalate. Soon, as Fausto-Sterling argues, these ambiguous (intersex) bodies were clinically used to not just unfold sex-differences (example, Saint-Hiaire), but also to give rise to the concept of gender, as Keseller (1990), Rosario (2007) and Rubin (2012) argue. Intersexuality in nature, along with the same in humans, had always been an interesting "object" for science, as Richardson (2013) writes,

> "They (embryologists) were fascinated by the diversity of forms of sexual dimorphism and intersexuality in nature. Cases of hermaphrodites (possessing both male and female reproductive organs), freemartins (male-female twins in which the female has been androgenized in utero), and gynandromorphs (variants, often in insect species, that exhibit typical morphological features of both sexes) appeared regularly in the scientific literature and were presented as holding the key to unraveling the biology of sex. In the late nineteenth century, the scientific problem of sex was also broadly defined. "Sex" covered such diverse phenomena as sex determination, sexual dimorphism, the role of gametes in fertilization, the clinical and agricultural control and prediction of sex, explanations for the varying sex ratios in different species, and the exist- ence of what we today call "intersexes.". Researchers had not yet drawn a definitive line between processes of sex determination (the initial cause of sex) and sexual development (the ensuing processes and systems of sexual development over the organism's life course), and they believed that sex was a continuous (spectrum) rather than a discontinuous (binary) trait.4" (Richardson, 2013; p24)

Fausto-Fausto-Sterling calls the post 1930s as the "Age of Conversion", where the intersex bodies were now transformed to fit the gender system through surgical and endocrinal procedures. This reflects the shift in the global epistemological position of modern medicine on dealing with cases of Intersex management. However, a standard model for intersex case management evolved only later, after the work of John Money. These medical interventions were performed by keeping in mind what Katz (1995) calls the idea of "heterosexuality", which asserts that a single sex is necessary for every single body.

Many anthropologists, queer and feminist scholars critique the epistemological foundations of modern science and medicine from which the theory and practice of medical intervention on Intersex emanates. With the progress in the philosophy of science and the works of Thomas Kuhn and Paul K Feyerabend, scientific methods and observations were no longer considered to be the ultimate truth, and by the end of the 1970s, as Fox Keller puts it forward, the feminist critique of science threw light on how the knowledge is situated (proposed by Donna Haraway), and influenced by the sexist gender ideologies of their time. Heteronormativity operates on a binary distinction between male/female, X/Y and the biology of sex, and with this underlying ideology, constructed the "truths" about the sex of the body. Feminist scholars conclude that scientific objectivity is fraught and constructed with andocentric and heterosexist biases which are reflected in scientific hypotheses and researches, as pointed out by Sarah Richardson (2013) and Sandra Harding (1993). The two-sex system knowledge developed in modern science was in a reciprocal relationship with the heteronormative societies it emerged from and hence, with what Giddens calls as Double Hermeneutics, this knowledge from biology started to interact with the institutions of family, law, education and science. Fausto-Fausto-Sterling, along with Fox Keller, in their capacity as biologist and feminist activist, argued that scientific truths are not constructed in a vacuum, rather they are related to their socio-political and economic context and similarly, as Harding asserts, such truths are socially accepted because they are contextually derived from the same. Similarly, feminists assert that culture, in relation to biology, science and technology moulds the body and hence some feminists consider even sex as not a pure biological category. I decipher that the aim of these scientific paradigms to study the body's sex is to develop what Foucault calls as "a society of normalization".

A Review of Medicalization of Sex:

Medical jurisprudence has now certainly emerged as a very common feature of modern societies. From erectile dysfunction to baldness or short stature or the obsession of taking selfies, every shade of variation somewhere now has a medical name and a diagnosis attached to it. This transformation of what could largely be a non-medical problem, to a medical illness or disorder, is what has been theorized as medicalization. Peter Conrad (2007) surmises that "medicalization transforms aspects of everyday life into pathologies, narrowing the range of what is considered acceptable". The medicalization thesis in sociology (Conrad, 1972, 2009; Ballard and Elston, 2005) sets in motion an analysis of what Conrad (2007) terms as "overmedicalization", that I see, has the tendency to somewhere medicalize even a simple population behaviour or variation into a pathological condition. This brings into focus the underlying politics of the essentialism of "standardized" and "ideal bodies". With the "engines of medicalization" which are obviously driven by social actors, social structures and social movements (Jenkins and Short, 2016), individuals now become a site of abnormality, and hence the medical intervention, rather than questioning the rigidity of the social structure and relations.

As Conrad describes, although medicalization "cuts across" many dimensions of life, it primarily manifests on the "deviances" along with "normal life functions" (Conrad, 2007:6). The underlying agenda is to widen social control, "the power to have a particular set of (medical) definition realized in both spirit and practice." (2007:8) Simultaneously, medicalization leads to the parallel thriving of a specialized (bio)medical market. In the case of intersex, it refers to the emergence of an array of surgeries and biomedical therapies. In India also, metropolitan cities have numerous paediatric surgeons and cosmetologists who offer many biomedical hormonal therapies. The medical market is supported by the political economy of prints and advertisements (Conrad, 2007). For instance, Hodges (2006) argues that advertisements and books supported the "boom of contraception". Madhuri Sharma (2008) argues that medical wisdom was circulated among the public through

advertisements and literature. The politics of pathologisation of the many deviances becomes both an underlying agenda and a tool to appease the "customers". Gupta (2000) demonstrates that these medical advertisements developed a taboo around sexuality, masturbation and sodomy. For instance, an advertisement in Indian Review in 1928, cited in Hodges (2006:131), gives instructions to prevent the birth of hermaphrodite children,

> "Do you want healthy strong handsome and virtuous children? Do you want a boy or girl at your will? Do you want children at intervals of five or six years? If so carefully observe the instructions contained in this book. It also explains why twins and hermaphrodites are born (with illustrations), it contains detailed anti-conceptional [sic] information gathered together from European, Unani, Ayurvedic and other sources. The wonderful process of the birth of an embryo in the womb is revealed and its evolution is described (with twelve illustrations) from stage to stage from shape to shape from the dawn of life (when it is invisible to the naked eye) till the baby sees the light. *They will be special value to parents and married persons. These real facts are more entrancing than anything that poets have ever dreamed"*… [italics in original]

Historians trace medicalization in India to the nineteenth century. This was supported by the rise in print culture. Many historians trace the alternative medical systems in India from around the early twentieth century (Gupta, 2000; Hodges, 2008). Although these Indigenous Systems of Medicine (ISMs) acted as the counter-system to western biomedicine, they played an active role in the fashioning and standardization of sexuality in India. Abraham & Sujatha (2009) describe the presence of ISMs in the third world, against the state sponsored biomedical healthcare, as medical

pluralism. Their framework is to not valorise these systems, but rather understand how their popularity and efficacy is centred around the culture from which they emanate, and so how the British Raj took its help to penetrate into its complex culture. Charu Gupta(2000) mentions that there was an extensive control on the sexualities of men and women. Medical discourse established masturbation as unhealthy and this discourse was not just similar to the masturbation taboo in the west, but to the Brahmacharya ideology of Hindu philosophy. Various texts elucidate the influence of Hindu philosophy on Ayurveda and some consider it as the reason why Ayurveda failed to establish itself as an empiricist science. During the British Raj (and even till now) a number of magazines, local newspapers and weeklies started to construct a medical discourse on sex in the public. Now, there are medications for not just sexual dysfunctions and venereal diseases, but also for something that could be a variation in population. Advertisements like these certainly reflect the effort of the medical market to create a new consumer base with a new set of aspirations and anxieties related to the sexuality of their body, a new set of desires to be more masculine or feminine.

It can be argued that both western and alternative medical systems have contributed to the medicalization of the sexuality. Here, it is important to understand how a public discourse on health and sexuality has been subtly constructed through advertisements in public magazines. I identify two sets of categories of advertisements in the context of sexuality medicalization; firstly, there are advertisements pertaining to the enhancement of the body, with respect to sexual prowess for men and beautification for women. Secondly, there are those advertisements pertaining to the corrective agenda, for instance curing sexual dysfunction, virility and other "medical" conditions related to sex or aids for reproduction. The intersex I locate fall under both the former and the latter. They were seen as an object to fix and enhance. Fixing denotes a rise in the politics of corrective surgery; and enhancement is achieved through hormonal therapies.

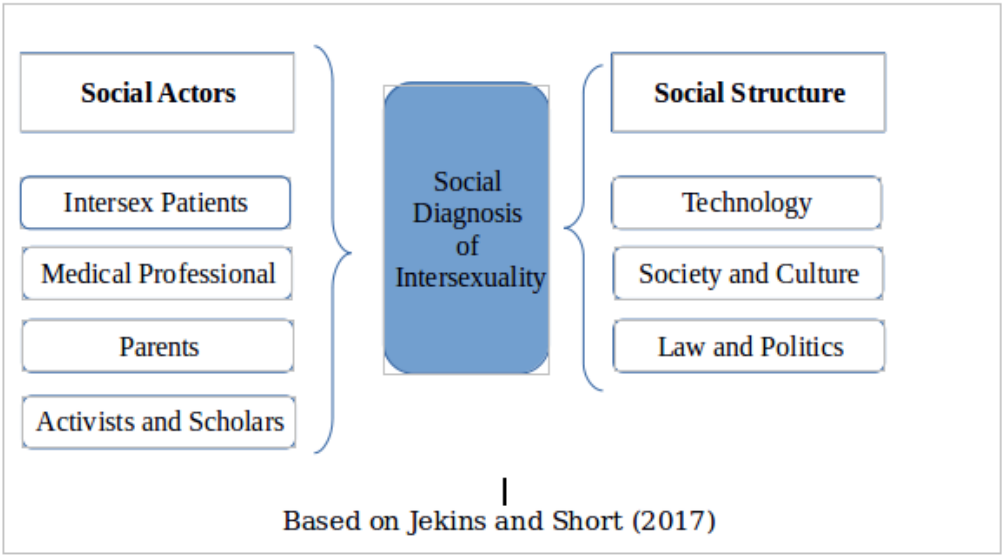
Medicalization, Resistance and Theory of Social Diagnosis:

Medicalization cannot be understood as a uni-dimensional phenomenon; instead it is shaped by the social structure and often, identities constructed through the process are demedicalized through the intervention of social actors. Social actors do not always passively accept the forces of medicalization; rather, the processes of medicalization and demedicalization are shaped by their constant engagement with social forces. What constitutes the social forces can be elucidated through the work of Jenkins and Short (2017). They explain the relationship of medicalization with the theory of social diagnosis. The theory of social diagnosis explores how social actors, activism and the politics of diagnosis shape the process of medicalization. This is important in light of the canons of intersex movements across the globe as a response to the seeing of intersexuality as a disorder to be diagnosed.

The classificatory project of modern medicine has conglomerated "individual symptoms" to a pattern, which leads to the formation of diagnoses (Jutel, 2011). The nature and meaning of these diagnoses shift with the context. Shifting diagnosis was facilitated through the epistemological shifts in science and advancement in technology. In the biology of sexes, though Thomas Laqueur (1990) holds politics and epistemological changes responsible for the switch from one-sex model to the two-sex model, there lie much evidence to the contrary. The homophobic social context and heterosexist sciences helped in strengthening the binaried sex model and subsequently legitimizing corrective intervention on the intersex in search of what Foucault calls "normalization". Evidence for the same stems from two important streams of works; firstly, Nelly Oudshoorn's "Beyond the Nature: An Archaeology of Sex Hormones" (1992) depicts how "homosexuals" were used to deduce "truths" about sex endocrinology; and secondly; the works of Fausto-Fausto-Sterling (2000) and Sarah Richardson (2012), which depict how intersex persons were envisioned as the objects for

knowing the truth about a body's sex, by labelling them as nature's mistakes or disorders to be diagnosed and "fixed". Both the works suggest how the endocrine and chromosomal markers of sex were deduced through the pathologization of intersex. The entire force of correction leaned on changing the intersex rather than the heteronormative knowledge system.

In the sociology of diagnosis, there lies three important aspects that help us to understand the medicalization of Intersexuality. Firstly, as Jenkins and Short (2017) assert, "extra-medical social structures shape diagnosis". This refers to the complex blend of the socio-cultural system of heteronormative ideologies on sex, gender and sexuality, supported by the (re)reproduction of similar practices in law, education and knowledge systems. An interesting example is can be located in India, where historically, Intersex subjectivities were enmeshed with the identity of eunuchs or Hijra. Within this context, the Indian Transgender (Rights) Bill 2018, includes intersex in the definition of transgender. It is certainly clear that many intersex persons refuse to identify with the umbrella term of transgender, and so, the inclusion of intersex in the definition of transgender is a serious theoretical flaw. Secondly, in addition to medical professionals (Davis, 2014), numerous other social actors (Jekins and Short, 2017) such as scholars, activists and parents "shape" the diagnostic structure. Thirdly, Jekins and Short (2017)argue that the engagement of social actors (medical professionals, parents, patients or activists) with the social structure, fabricated by law, politics, culture and technology, invites, resists or contributes to the meaning of the diagnosis.



Based on Jekins and Short (2017)

The "Alter Ego of Gender Fluidity": Cytogenetics of Sex

The initial schizophrenia over the complexity of intersex bodies was understood by studying the tissues of ovaries and testes. Historian Alice Dreger calls it the "age of Gonads" (cited in Fausto Fausto-Sterling, 1993). Due to the limited technology of that time, the notions of "true" sex rested on the study of the gonads of the intersex. After this, the paradigm shifted to endocrinology and the metabolic theory of sex by the early twentieth century (Richardson, 2013). By the 1950s, the cytogenetics of sex started to hold ground and "it entered human biomedicine with revelations of cases of human males with extra X chromosomes (XXY) and females with only one X (XO) in the 1950s" (Richardson, 2013:2).

Richardson (2013) dubs sex chromosomes as the "alter ego of gender fluidity", as hormonal and surgical therapy earlier could alter phenotypic differences, but the genetic base remained untouched. During the initial days of discovery and debate on the sex chromosomes, the notions of "maleness" and "femaleness" were central to this cytogenetic revolution, as she concludes,

> "The X and Y intrigued cell biologists principally because of their ease of identification and their curious behaviour during cell division. In the early years of the twentieth century, these special features helped to reveal a new and broadly explanatory physical theory of heredity known today as the chromosomal theory of inheritance. Sex was both central and incidental to this effort. "Maleness" and "femaleness," like Mendel's smooth and wrinkled peas, were salient biological characters used to test, confi rm, and evangelize a new theory of inheritance, physically instantiated in the squiggly, paired bodies in the nucleus of the cell. The "sex chromosomes," like Mendel's peas, became the mnemonic touchstones of the new chromosome theory." (52)

And apart from unfolding the complexities of human heredity, cytogenetics provides an epistemological frame for a scientific benchmark of human sex. Chromosomes influenced intersexuality in three ways. Firstly, it outlined a territory which is not malleable by any hormonal or surgical intervention and hence, the chromosomes were seen as a true marker of the body's sex. Secondly, chromosomes facilitated a robust classification of the intersex spectrum "disorders", beyond the earlier reliance on phenotype and gonads. This led to a canon of intersex disorders clubbed under a heavily contested term: "disorder of sex development". And thirdly, chromosomes prompted and justified the surgical assignment of the alleged "true sex". Hence, a practice of chromosome test became institutionalized in intersex case management. In sports, it became a routine practice to sex test the athletes.

Temporality, Surgery and Intersex Management:

Elizabeth Freeman, in her book "Time Binds: Queer Temporalities, Queer Histories (2010), tries to understand the politics of time in the contemporary form of biopolitic agenda. Her idea of "chrononormativity" elucidates the domination of temporal frames of life courses in the organization of bodies, embodiments and social meanings. Using Freeman and Bourdieu, Emily Grabham (2012), argues that surgeries on intersex infants are "heavily influenced by the idea of time". The frames of "normal life course development" are the common rhetoric invoked to justify surgery. In many psychological studies on life-course development, time is used to decide the appropriate and "normal" behaviour across the age course. Time hence embodies a social meaning. For instance, many linear theories of sexuality (Cass, 1978) argue that sexuality develops linearly after or during adolescence, but in response to it, many theorists argue that sexuality is a "living phenomenon" and is always in the process of redefinition.

John Money and the Invention of Gender:

The medical management of intersex is built upon the theory of Gender of John Money and Anke Eherhadt of 1955, which says that the gender of a child can be modified by medicine and psychology. The theory asserts that the gender identity can develop within the first eighteen months of birth, drawing its analogy with language. This theory became the base of the practice in the medical sciences to "manufacture the sex", a critique of which first emerged in the work of Keseller (1990), wherein she empirically projects how the medical practitioners surgically construct an appropriate sex from "ambiguous genitilia". Money proposed that the gender of rearing, or "gender role" as he called it, determines the sex of the body. It might sound similar to Butler's theory of performativity and her idea that "gender precedes sex" (Rubin, 2017; p35), but what is important to note is that Bulter's performativity is not temporally limited to the first eighteen months of birth as Money's is. Further, for Money, the pre-discursive nature of sex is malleable when juxtaposed against the "optimal gender" of rearing.

One Percent of Non-Performativity: Gendering (Inter) Sex

What we do not know about gender as an analytical, ontological or discursive category is the "dark history" of John Money's empirically and theoretically flawed "gender role", a justification for institutionalizing the practice of surgical intervention on intersex. In 'Bodies That Matter', Butler (1993) elucidates the need of "sexing" the body for them to "matter", and this ushers in its practice on the intersex, relying on Money's theory of "manufacturing sex" (Kessler, 1990). An outcome of this is, as Foucault calls it, normalization (Dreyfus and Rabinow, 1982), standardization (Morland, 2005) and the sexed body (Butler, 1990). For Money, the "optimal gender" of the hermaphrodite is a "blank". As he writes,

> "The first step was to abandon the unitary definition of sex as male or female, and to formulate a list of five prenatally determined variables of sex that

> hermaphroditic data had shown could be independent of one another, namely, chromosomal sex, gonadal sex, internal and external morphological sex, and hormonal sex (prenatal and pubertal), to which was added a sixth postnatal determinant, the sex of assignment and rearing . . . The seventh place at the end of this list was an unnamed blank that craved a name. After several burnings of the midnight oil I arrived at the term, gender role, conceptualized jointly as private in imagery and ideation, and public in manifestation and expression." (Cited in Rubin, 2017, pp33)

The complex concoction of sex/gender in the knowledge system has become rather fundamental to sociality. As Rubin (2017) clearly puts it, "Based on an epistemological paradigm that opposes nature to culture, the dominant reiteration of the sex/gender distinction accords to sex a status so foundational as to make subjectivity itself seem unimaginable in absence of the dimorphic schema of sex" (10), and subsequently concludes that intersex subjectivity disrupts this inherent logic of sex, and hence discursively becomes the "intersex", both in relation and opposition to these "normative conceptions" of "embodiments". Although the majority of feminist theory has remained silent on how Money's work on Intersex has led to the development of the ontology of gender (Rubin, 2017), as Germon (2007) argues, Money's "gender role" theory remained indispensable for the development of the concept of gender in the late twentieth century.

In Sociology, Ann Oakley's 'Sex, Gender and Society' (1972) remain important as she conceives gender as "the matter of the culture", drawing from Stoller and Money (Germon, 2007). Oakley's work translated into the popular understanding of sex as biological and gender as the social. Drawing from Money's work, Oakley accepted the bodies of intersex as "abnormal" and committed

the "discursive mistake" of seeing intersex as a Pandora's box for understanding gender. She concluded individuals to be what Germon calls as "monosexual"[30] as she writes,

> "The development of this sense is essentially the same for both biologically normal and abnormal individuals, but the study of the biologically abnormal can tell us a great deal about the relative parts played by biology and social rearing: there are a multitude of ways in which it can illuminate the debate about the origin of sex differences." (Oakley, 1972; pp159)

Later, in 1990, feminist theory that has been influenced heavily by Butler's poststructuralist analysis (1990), concluded sex as "a priori", "pre-discursive" and an outcome of gender. However, in the concept of "performativity", there have been questions on the presence or absence of an agency (Salih, 2002). Further, Namaste (2009) also criticized her for an "epistemic violence" on the transsexual; as Bettcher (2016) writes, "Anglo American Feminism has for the past twenty years asked "The Transgender Question"—that is, it has asked questions about trans people's lives in order to answer its own epistemological questions, rather than investigate questions posed in collaboration with actual trans people to produce knowledge that improves the life of trans people" (2016:12). Vernon A Rosario (2007) charges Butler for misinterpreting facts and politically using cases of intersex to advance her theories, and concludes,

30 See Gender: A Genealogy of an Idea (2007) and Jennifer Germon, "Kinsey and the Politics of Bisexual Authenticity," Journal of Bisexuality 8, no. 3/4 (2008): 245–260. Germon considers monosexuality beyond the idea of heteronormativity, as at a somatic level, intersexed defy the idea of "one body-one sex". This idea radiates the sexes that are "constantly elided from the "real" and from the present" (Germon, 2007:8).

> "Her article, unfortunately, simplified intersex and misrepresented most of her sources. She claimed, erroneously, that Cheryl Chase argues that "there is no reason to make a sex assignment at all."84 Butler also unfairly portrayed Milton Diamond as a simplistic Y chromosome determinist who argues that any infant with a Y chromosome be assigned or reassigned male.85 Most ironically for an article entitled "Doing Justice to Someone," Butler persistently referred to David Reimer as "John/Joan" for the sake of her discourse theory argument that "he is the human in its anonymity . . . [H]e is the anonymous – and critical – condition of the human as it speaks itself at the limits of what we think we know." Only in a footnote did she note that "John/Joan no longer operates with a pseudonym," yet she never names David Reimer.86 In a subsequent revision of the essay in Undoing Gender (2004), Butler has replaced Reimer's name throughout without, however, altering her conclusion on anonymity or correcting misrepresentations of the biomedical literature. She still sees in the intersex condition an opportunity for destabilizing biological notions of sex and gender." (Rosario, 2007 in Haggerty and McGarry (2007:275-276)

Intersexuality requires the contemporary theory of gender to be revisited. Firstly, Intersexuality as an ontological category misbalances the binary of sex. And since sex is a priori to gender, the biological deterministic theory of gender is also questioned by intersexuality. It is because the intersex bodies are what Butler (1993:2) calls "culturally unintelligible". Their bodies resent to be categorized in the heteronormative structuring of the institutions. Hence, can it not press the need for gender to be fluid and beyond the binary? As Geertz (1975) argues, much of intersexual subjectivity is shaped and practiced in a heteronormative sociality. However, the politics of surgery depicts how the need of "gender" promotes a medical violence on intersex infants. Further, the problem lies with the

gendered nature of spaces wherein the intersex bodies struggle to adjust. In medicine, the rhetoric of gender has historically been a motive for corrective surgeries. Its invention further justified surgeries to make the body culturally acceptable.

Decolonial theories offer an explanation to understand how colonialism promoted the two-sex model. They argue that colonial modernity ushered the practice of standardization of bodies. Different societies had different sets of responses to cases of "hermaphrodite" births (Thomson and Armato, 2012), but the coloniality of many societies created an overarching medical jurisprudence to support the gender binary. This led to an endeavour in knowledge production on intersex management. John Money later institutionalized a nearly uniform practice of intersex surgeries on infants. What is important here is to understand how coloniality established a uniform rubric of gendered institutions across the globe and interlinked them to justify and (re)produce a heteronormative identity. Thomson and Armato (2012) argue that any societies before colonialism had models beyond the two-gender system. A similar argument is made by Nanda (1994) and Zwilling and Sweet (1993) within the context of India. They argue that pre-colonial societies had more than two genders. The third gender has been considered as very "natural" and a blend of both the genders. Nanda (1990: 373) mentions that after the practice of castration, the Hijras were seen to be representing a "divine power". Greetz (1975) argues that the Navaho society also considered the "hermaphrodites" as divine embodiments. Pre-colonial societies tended to accept intersexuality without compartmentalizing it under the binary of sex or gender (Lugones, 2007). Thomson and Armato (2012:47) argue that societies with a "colonial past" tend to see intersexuality as a disorder that requires corrective action. This, they argue, is due to the "embodiment" of colonial medical practices by these colonized societies. Hence, the politics of medically manufacturing sex emerges in the medical discourse on intersexuality. This constitutes the reflections of heteronormativity in the

society. Medicine acts as an institution to heteronormatively sex the body and hence the "normal" is (re)produced through discursive medical practices. As Geertz (1975: 5-6) writes,

> "Gender in human beings is not a purely dichotomous variable. It is not an evenly continuous one either.... But about 2 or 3 percent of human beings are markedly intersexual, a number of them to the point where both sorts of external genitalia appear, or where developed breasts occur in an individual with male genitalia, and so on. This raises certain problems for biological science, problems with respect to which a good deal of headway is right now being made. But it raises, also, certain problems for common sense, for the network of practical and moral concepts woven about those supposedly most rooted of root realities: maleness and femaleness."

Geertz (1975) points attention towards the panic intersexuality causes to the modern social system. Intersex bewilders common sense, along with challenging heteronormativity. In doing so, it throws into question the binary of sex and notions of masculine and feminine embedded within the gender system. The notions of masculinity and femininity have also been seen to be influenced by the coloniality of power (Lugones, 2008). As she writes,

> "...This gender system congeals as Europe advances the colonial project(s). It begins to take shape during the Spanish and Portuguese colonial adventures and becomes full blown in late modernity. The gender system has a "light" and a "dark" side. The light side constructs gender and gender relations hegemonically. It only orders the lives of white bourgeois men and women, and it constitutes the modern/colonial meaning of "men" and "women." Sexual purity and passivity are crucial characteristics of the white bourgeois females who reproduce the class,

> and the colonial, and racial standing of bourgeois, white men.... The gender system is heterosexualist, as heterosexuality permeates racialized patriarchal control over production, including knowledge production, and over collective authority..."

With the heterosexist colonial knowledge system, Intersexuality was classified by the British as "eunuch by birth". Subsequently, one can observe that medicine started a medical violence on intersex infants by using this knowledge system. Ian Morland (2005) argues that this constitutes a "discursive injustice" on intersex infants. The colonial/modern gender system needs to revisit its binaried constitution. With the rise of queer politics in India, the notions of gender can be argued to be redefining (Dutta and Roy, 2014). Such redefining must seek to decolonise gender and understand it as an evolving or fluid variable to encompass the subjectivity of the intersex and the queer.

The feminist project of critiquing biologism and its subsequent relation to sex-gender has been received differently in intersex studies. Fausto-Sterling (2000), a biologist and a feminist, argues that "sexual difference" is complex and so is the constitution of sex. As I have already discussed, sex is beyond the materialized genitalia and is a complex blend of hormones, chromosomes, gonads, genes and even, as argued by some, cognition. However, it is true that the sex is discovered and interpreted from these markers, to travel back to the "prediscursive sex" (Fausto-Sterling, 2000). Such ideas are also reflected in Grosz's (1994) understanding of human sexuality, on how it is organized by biological "instincts", subsequently rejected the nature/culture divide. As a psychiatrist, Vernon Rosario (2007) concludes that gender identity is a complex interplay of biology and sociality, and altercations in any could lead to an intermittent feeling of something as "wrong", as he was informed by the testimonies of ISNA (Intersex Society of North America). Butler (1990) and

Kessler (1998) see no "meaningful distinction" (Preves, 2002) between sex and gender. In cases of intersex, the practice to predict gender on the basis of biological sex has received criticism from intersex activists[31]. Ellen Hyun-Ju Lee (1994) argues that the physicians portray themselves as the one who can decipher the true sex and try to demonstrate that this underlying true sex is yet to be discovered by them. This systemic practice of corrective surgeries on intersex infants stems from the growth in sexual medicalization. This subsequently has ushered in the critique of the "genitalization of sexuality" (Chacchioni and Tiefer, 2012). Kessler (1990:25-26) writes,

> "The lay conception of human anatomy and physiology assumes a concordance among clearly dimorphic gender markers-chromo-somes, genitals, gonads, hormones-but physicians understand that concordance and dimorphism do not always exist. Their under-standing of biology's complexity, however, does not inform their understanding of gender's complexity.... Thus, cases of intersexuality, instead of illustrat-ing nature's failure to ordain gender in these isolated "unfortunate" instances, illustrate physicians' and Western society's failure of imagination-the failure to imagine that each of these management decisions is a moment when a specific instance of biological "sex" is transformed into a culturally constructed gender."

[31] Soma, B (2017) Lonely in a Crowd. The Hindu. https://www.thehindu.com/society/gender-activist-gopi-shankar-on-the-struggles-faced-by-the-lgbtqia-community-in-india/article17951264.ece (Accessed on 20th June, 2019); Also see Manasa Rao (2013) https://www.thenewsminute.com/article/ban-sex-reassignment-surgeries-intersex-infants-madras-hc-tells-tn-govt-100565 (Accessed on 20th June, 2019);

What is argued by Intersex activists is to devise a patient-centred model of intersex management with the cessation of non-consensual practice (Bakhru, 2019). However, Karkazis (2008) argues that despite a patient-centred model, the ideological bias around intersexuality needs to be attended to. Bakhru (2019) argues that the Decolonial model will seek to eradicate the "colonial legacy of biopolitics". This certainly refers to the heavily criticized classification of the Disorder of Sex Development, which signifies intersexuality as a scar of something undefined. Along with this, our focus shifts to changing the language and developing more acceptable local terminologies other than DSD.

Chapter 4

Intersexuality and Legal Troubles

On April 22, 2019, the Madras High Court, Tamil Nadu gave an important judgment[32] in the case, Arun Kumar vs. The Inspector General of Registration, Chennai. Although the case was in relation to the marriage registration of a transwoman, the judgment did cover the politics of non-consensual gender assignment surgeries on intersex infants. The judgment observed,

> "Increasingly, concerns are being raised by intersex people, their caregivers, medical professionals and human rights bodies that these interventions often take place without the informed consent of the children involved and/or without even seeking the informed consent of their parents..... Parents often consent to medical intervention for their children in circumstances where full information is lacking and without any discussion…"

Criticizing the politics of consent in intersex surgeries, the Madras High Court directed the state to enforce a ban on such invasive procedures. However, this recent directive is not enough to ensure intersex rights. In this chapter, I demonstrate how the idea of "legal sex" was negotiated and often necessitated in the heteronormative colonial law. In doing so, I identify the tendency to often confuse the intersex and transgender, inviting the need to both define and decolonize these identities. However, often the principles of justice and equality are invoked to emphasize on the "lived sex"[33] to legally account for the complex subjectivity of intersex. I start with acknowledging

[32] Arun Kumar vs Inspector General, High Court of Madras (2019) https://indiankanoon.org/doc/188806075/ Accessed on 20th June 2019

[33] Lived Sex for intersex individuals is rooted in the ambiguousness of the body's corporeality.

how the queer movement and resistance shaped legal jurisprudence by challenging the discursive identities and practices in law; however, the colonial nature of laws becomes a huge impediment in the exercise of intersex civil rights. Later, I demonstrate how the shifting legal activism and jurisprudence are putting forth an emphasis on the lived gender to enable access to opportunities for intersex persons.

Queer movements and Intersexuality:

Kumar (2017) traces the queer movement and queer visibility since the 1980s. He identifies the Diasporas and the AIDS movement to have influenced it, and also talks about the growing "global governance" on sexual minorities. As he writes (2017),

> "The processes of identitarian politics, or what is called 'sexual identity', under global governance and benevolence resulted in heightened visibility for 'consciously chosen' western identities such as gay, lesbian, and bisexual as well as indigenous transgender identities like hijra, kothis, panthi, jogata, shivakami and a host of others across India. These all constituted the 'sexually marginalized publics' who were mobilized primarily around the legal battle of reading down section 377 of the Indian Penal Code which criminalizes homosexuality (Narrain and Bhan, 2005)."

With political engagement develops a sense of community, wherein people under multiple axes of domination collectively offer resistance to the heteronormativity in society and law. For instance, in 1992, AIDS Bedbhav Virodhi Andolan staged a demonstration against the harassment of gay persons by the police (Ibid.). These movements were facilitated by the rise of grassroots

organizations and NGOs[34]. With political engagement emerges the queer subaltern perspective which engages with legal jurisprudence to revisit the notions that organize the lives of the subaltern queer. To give an example, the NALSA (2014)[35] judgment created more visibility of queer politics and hence, facilitated the grassroots queer engagement of non- mainstream identities like kothi, panthi, jogata, shivakami etc. (Kumar, 2017). However, Narrain and Gupta (2011) argue that a queer perspective which is blind to class and caste hierarchies is rather incomplete. Hence, Narrain (2011) argues that the vision of queer politics should also be to challenge the inequalities permeated through caste, class and gender. Arguing from an Intersectional perspective, it can be said that queer lives are structured and placed into hierarchies by these variables.

Narrain and Gupta (2011) in 'Law like Love: Queer Perspectives on Law' outline the importance of redefining and re-scripting colonial practices through law. The queer perspective on law simultaneously revisits the processes of law and the reading of legal history. It creates ambivalence in the practice of legal jurisprudence through a "political engagement[36]" (Narrain & Gupta, 2011: xiii). His emphasis is on the Indian Penal Code and Criminal Tribes Act. These acts have scarred the history of alternative sexualities and prevented their inclusion by providing enabling legal backdrop. However, as with majority of such laws imposed during the colonial era, Narrain and Gupta (2011)

[34] Naz Foundation, Lawyers Collective, Transgender Hijra Samiti, PUCL etc. Kumar (2017) demonstrates the shifts in queer politics in Hyderabad by the rising global governance of NGOs and civil societies.

[35] *National Legal Services Authority (NALSA) v. Union of India and Others* (2012) WP(C) 400/2012.

[36] For instance, Naz Foundation, IGLA Asia and many other grassroots activists created a contentious political environment required for the repealing of section 377 of Indian Penal Code, 1860.

point towards the scare analysis of queer legal history. They argue that even rarer is to find how the queer community responded to the colonial law that problematized their existence.

Confronting the Legal Sex: Glancing at Sex through Medicine

The contemporary intersex movement in South Asia seeks to de-medicalize intersex births. This practice can be argued to be having colonial roots and hence, the vision of the intersex movement is to decolonize it. However, this also requires an understanding of how the variables of caste and class impact the politics of surgeries. Julia A Greenberg in "Intersexuality and the Laws: Why Sex Matters" (2012) argues that if the intersex corrective surgery is mitigated, it will confront intersex adults with the problem to identify a "legal sex", an agenda she argues that the state might press. This may be problematic for the intersex persons who do not conform to a "legal sex". Although she argues that in the West the legal sex has been of less importance since the last few decades, in India we observe many laws, such as the Hindu Marriage Act, Hindu Succession Act and other family laws which are gendered in nature mandating a legal sex. The laws have specific categories of male and female that may compel the intersex person to conform to the binary for their legal rights. This situation may lead to the legal system determining the "legal sex" of the body. Hence, for birth certificate, marriage and other citizenship documents, the iteration of sex could be mandatory. This may constitute a problem for the intersex persons, and importantly to those who do not seek to fit in a heteronormative sex.

What is important is to look also at how social policies often use the idea of sex to identify a beneficiary. This adds to the canon of problems including housing, education and social security benefits. Greenberg (2011) also argues that the prisons might perpetuate more gendered violence on intersex persons. Cruz (2010) argues that the legal sex is often analogous to the medically determined sex. Hence, the idea of the legal sex often is rooted in "biomedical fact". Rather, the

focus should be on the "lived sex" or the sex embodied, which was practiced through the course of one's life. Embodied sex refers to the ambiguity of intersex genitalia in the absence of any corrective surgery, through which the intersex individuals exercise their own consent and develop a gender or queer identity. Cruz(2010, 222), arguing for the "disestablishment of sex" suggests making all "sex distinctions" in law as "unconstitutional"; he writes(222),

> "…instead relying on medicine alone is that it might not give courts the resources to start building a true doctrine of gender autonomy. Medicalization encourages a delegation of authority over gender not to individuals, but to medical professionals, a class that has largely maintained itself as gatekeepers over, hence deniers of, access to various gender confirming treatments. Gender autonomy would instead vest primary authority for determining the gendered directions of our lives to us individually…"

Same-sex marriage has not been seen as equal to heterosexual marriages. This has been largely due to the heterosexist nature of the Hindu Marriage Act, 1955 and other similar legislations. This situation is rather complex for intersex persons. Although the Madras High Court[37] (2019) has argued that the definition of Bride in Section 5 of the Hindu Marriage Act shall include transwoman and intersex women, this expression can also be argued to be reinforcing a heteronormative identity over the intersex persons. What is more complex is the registration of births, which creates anxiety among the family, in cases of intersex births. The complexity emanates from the need for a "sex" in legal procedures, as in one of the cases where the Justice of Madras High Court writes,

> "All these years, the courts have been called upon to deal with the laws relating to males and females and adjudicate upon the issues without there being any legal

[37] Arun Kumar vs Inspector General, High Court of Madras (2019) https://indiankanoon.org/doc/188806075/ Accessed on 20th June 2019

> definition for these terms. But, the Courts in India have been successful in enforcing the laws relating to the terms such as "male" and "female", "man" and "woman" and "son" and "daughter". All these statutory laws and the customary laws have recognized only male sex and female sex and accordingly applied both civil laws as well as penal laws. But, unfortunately, from the time immemorial, there is a third sex and the people belonging to the third sex have not been recognized and treated as normal human beings with dignity." Nangai vs. Superintendent of Police (Judgment of Madras High Court, 2014).

Sex/Gender becomes a crucial object in the practice of law. The body needs to be sexed to constitute a legal subject. This is an essentialism of sex that can be traced through numerous marriage, family and criminal laws relating to women. Sex is often seen as an absolute variable that is static. The root of the idea of this static sex rests in the medical models of biological dimorphism. But the project of justice not always accounts sex in medicalized terms. Rather, this scripts either the rise of medical jurisprudence to justify the true sex, or the disestablishment of sex to ensure the primacy of lived experience in defining the gender of the body. But gender is never undermined. It is rather evoked to justify the lived experience and it often constitutes the root of "legal sex" also. The search for a legal sex yields double pronged results, wherein often the legal sex undermines intersex subjectivity, but at times it defines the subjectivity of intersex by invoking the lived experience. This is observed in many legal cases that I shall demonstrate here. Garland and Travis (2018) demonstrate how the intersex movement has led to a ban on intersex infant surgery in Malta, Australia and Germany, which has fared well in institutionalizing inclusive practices. However, in many countries he observes how the law organizes the binary of sex through legislations. The legal sex is built through an "alignment" with the medically discernable sex and hence, the law exercises heteronormativity and problematizing intersex existence. He says that the "silence of law" on

intersexuality depicts a "striking power imbalance between intersex people, their families and the medical profession" (3). He writes,

> "law is often seen as a tool of empowerment giving centrality to the voice, desires or best interests of the child.18 Law is capable of levelling the playing field; and therefore the gradual legal recognition of intersex potentially indicates a shift in power and knowledge whereby intersex individuals can be framed in both medical and legal terms.19 Yet it is unclear how far, if at all, increasing juridicial responses to intersex are actually challenging this dominant medical narrative." (2018:3)

Legal Sex Troubles:

A very crucial case of judicial activism in intersex disorder is that of Faizan Siddiqui vs Sashastra Seema Bal[38] (SSB, a paramilitary border force) in the High Court of Delhi. Her case pertained to her rejection for the post of Constable. The SSB had cited her as an XY genotype and hence, with "congenital malformation". However, the High Court of Delhi overruled the decision of the SSB and recommended them to offer her the job. What is important is to notice how the judgment had acknowledged that sex is to be constituted at multiple levels and that, despite having an XY genotype, she psychologically and socially grew up as a woman. This case presents two manifolds of problems for intersex subjectivity; firstly, the rhetorical practice of "sex test" is embedded in institutions like defense services and sports. Secondly, this practice underplays the invasion of an individual's privacy, and an undermining of their subjectivity. As the judgment notes,

[38] Faizan Siddiqui vs Sashastra Seema Bal. High Court of Delhi. 2011. Accessed on Manupatra Law Archive MANU/DE/2299/2011

> "It is unfortunate that all doctors of the CPMF who have been involved in reporting the petitioner's medical fitness in the organisation have used expressions 'pseudohermophroditism', 'true hermaphrodite' and 'postoperative sequelea' as synonyms and interchangeable without paying any heed at all to the petitioner's medical condition or her fitness. The views of the treating expert find no place in the consideration."

This lets us evaluate how the culture of labeling a medical condition operates in the medical institution. It is rather degenerative of an individual's privacy and dignity. However, the medical community, while highlighting her condition of intersexuality, neglected the fact that an intersex person is "fit" to work. The case is rather empowering for the intersex community as the discourse of establishing the "legal sex" through medicalization was absent in the case. The judgment focused on her self-defined "psychological" gender. Similar is the judgment in the case in the High Court of Madras, G. Nagalakshmi vs. Director General of Police[39]. The case reflects how the access to defense and civil jobs is limited for intersex persons due to mandatory "medical tests". Although the tests are instrumentalized to assess the fitness of the candidate, they dive into the realms of privacy, and the private territories of sex. The most problematic event is how her identity of intersex was being collated with the "transsexual". She was labeled a transwoman with the genotype of the male. The judge observed,

> "Yes. It is yet another case, where a human being born as a female, brought up as a female, educated as a female, recognised as a female and appointed as a female Constable was at last misbranded as a transsexual on the ground that subsequent

[39] G. Nagalakshmi vs Director General of Police, High Court of Madras. (2014) (Manupatra Law Archive MANU/TN/2160/2014)

medical examination revealed that she is not a woman, but she has X-Y Chromosome"

But, not only in cases of medical jurisprudence do we observe the conflation of intersex and transgender identity, but also in certain judgments, where this confusion is reflected. I have already, in earlier chapters, established how this entanglement is colonial in nature, wherein all intersex subjectivity was subsumed under the category of the "natural eunuch". For instance, in Ganga Kumari vs. State of Rajasthan (2017), although the judge upheld her lived experience of the female gender against claims of her being a "transgender"[40], the judgment reflects a constant assumption of the intersex as a transgender. Hence, these distinct embodiments are collated and misinterpreted[41]. Although this judgment exemplifies that gender assumes primacy in negotiations of access to work

[40] In Ganga Kumari vs. State of Rajasthan (2017), the state police recruitment board had labeled her as a "transgender", because of her having an XY genotype. "When the petitioner was called for medical test, it transpired that the petitioner is a 'Hermaphrodite' - commonly known as 'unisex' of 'transgender'. Such being the medical report, the respondents took their hand off and instead of permitting her to join, they pushed her file in dormancy. The petitioner claims to have roamed from pillar to post in anxiety…" (Accessed on Manupatra Law Archives S.B. Civil Writ Petition No. 14006/2016, High Court of Rajasthan)

[41]The Judge writes, " The petitioner being transgender or 'Hermaphrodite' is also a citizen of India as discussed above and hence Part-III of the Constitution equally Conveys fundamental rights to her and the same are protected." (Accessed on Manupatra Law Archives S.B. Civil Writ Petition No. 14006/2016, High Court of Rajasthan)

and employment, gender is invoked only after accepting that sex is constant[42] and static. The law however falls short in critiquing the biological dimorphism of sex that is deeply embedded in every system, especially in the public, civil and defense services. Gender although assumes authority in defining the subjectivity of the body, this does not create ambivalence in the authority of sex.

Another complicated legal challenge to intersex subjectivity is offered by the current Transgender Rights Bill[43]. Just as the law, the definition of transgender in the bill leaves much room for interpretation. It not only amalgamates the transgender (persons having dissonance with the gender assigned at birth) and transsexual (persons seeking or have undergone medical intervention for changes in the sex they were born with), but also gender-queers (persons who reject gender categories and believe in the fluidity of gender) and regional terminologies such as aravani (in Tamil Nadu), jogta (in Karnataka and Maharashtra) and kinner. A rather surprising inclusion in this definition is of persons with intersex (children who are born with deformed genitalia) variations. Although a few persons with intersex variations adopt transgenderism, many others are subjected to unwarranted surgeries at birth or voluntarily accept either male of female gender categories. Instead

[42] The Judge notes, "While aspects of biological sex are the same across different cultures/aspects of gender may not be." (Accessed on Manupatra Law Archives S.B. Civil Writ Petition No. 14006/2016, High Court of Rajasthan) This is a rather problematic understanding since I have already demonstrated (Based on Lugones, 2007, 2008; Geertz, 1975) that the sex model has now been perceived as beyond the binary.

[43] The Transgender Persons (Protection of Rights) Bill, 2016 (2019) PRS Legislative. https://www.prsindia.org/billtrack/transgender-persons-protection-rights-bill-2016 (Accessed on 20th June 2019)

of such ambiguous legislations for the intersex, what is important is to legislate against the practice of intersex genital mutilation.

Intersexualization and Sex/Gender Distinction:

The cases above are of specific diagnoses under the intersex spectrum. Here, the cases of Faizan Siddiqui, Ganga Kumari and Pinki Pramanic are of Androgen Insensitivity syndrome. This is an important intersex condition which is established only after the analysis of chromosomes. Hence, it establishes how the diagnosis of intersex has expanded with technological shifts. Richardson (2013) also investigates how the increase in cytogenetic research destabilized the gendered nature of X and Y chromosomes. She deciphers that the actual determinacy of sex is in the in/activation of certain chromosomes. The cases of Androgen Insensitivity Syndrome (referred as AIS) reflect how intersexuality is not a problem unless detected through a chromosome test and hence, many cases of intersexuality emerge from those fields where sex tests have become a fashion: sports, civil and defense services. As Rubin (2007:274) argues,

> "However, the mainstream intersex support groups centered around particular diagnoses (such as androgen insensitivity syndrome, hypospadias, or congenital adrenal hyperplasia) have intensely debated if not completely rejected the intersex label because the affected individuals feel their gender identity is either male or female and they do not want to be perceived as gender intermediates."

However, in the legal cases of intersexuality, the main emphasis lies on the distinction between sex and gender. Gender is assumed as the social lived experience and the sex is considered as a biological trait. Such an assumption bypasses the corporeality of intersex subjectivity. The cases of AIS rupture the biologically deterministic relation between the chromosomal sex and gender. The

science of the XX and XY is challenged with these cases. However, this difference between sex and gender is an outcome of a heteronormative understanding, wherein a separate ontology of intersex is created to subsume the difference. Cohen (1995) argues that the distinction between sex and gender would yield an "indubitable and ambiguous biological difference" (278). He argues that not only is the embodied sex socially constructed, but they are also rooted in "bodies' corporeality". Hence, he argues for the theory of gender to be rooted in this "lived experience" (Ibid.) of the corporeality, as a result of which he chooses to collapse sex and gender.

This argument is also supported by the writing of Rosario (2008), in which his emphasis lies on the corporeality, rather than sex or gender labels. In intersex births, he argues, the limit of the body's corporeality decides its gendering, and the actual realization of the self. It is important to see that the intersex lived experience does not pertain to the binary of gender or sex, but the corporeality of the body. To be socially acceptable, the bodies need to be sexed (and hence gendered), but in intersex, the need for "gendering" calls for "sexing" the body and hence, the surgery becomes a mandate for gender itself. Although the society draws a difference between sex and gender on biological and social terms respectively, this perspective is rather inaccurate in the case of intersex individuals who see sex and gender blend in complex ways to define their intersex subjectivity.

Chapter 5

Conclusion

"Do we really need a true sex?", rhetorically asks Foucault in "*Herculine Barbin: being the recently discovered memoirs of a nineteenth-century French hermaphrodite*" in 1980. However, Foucault had already discovered an "affirmative" response to this question from the modern "western societies". To him, this practice was instead a provocative, unsettled, medical quest of "reductive oversimplification". He argues that the encounter of the "hermaphrodite" with medicine simply meant overriding free choice in the quest of "deciphering the true sex that was hidden beneath ambiguous appearances (of the genitalia)." Intersexuality has a long history of abjection, before it transformed from the "modern" intersex to a heavily contested spectrum of "disorder of sex development" (DSD). Its nature and meaning is rather on a shifting terrain, influenced by the scientific "paradigm/s"[44]. This journey had local variations juxtaposed against colonial contestations. But ultimately, it was to be shaped by the "structures of science" and the "superstructures" of law and the government (Foucault, 1980).

This writing has dealt with three aspects of intersexuality; firstly, its constant entanglement and collation with the identity of "eunuch". As I have already argued, the British government had categorized intersex infants as "Congenital eunuchs" or "eunuchs by birth". This is a rather problematic way to define intersex subjectivity. Such classification was facilitated by 1) heterosexist knowledge production in medicine and science 2) the existence of the growing authority of medicine, leading to the medicalization of intersex subjectivity and 3) the presence of a web of heterosexist laws that facilitated the (re)production of heteronormativity through invoking the need

[44] I deduce this from the writings of Davis (2013), Karkazis (2008) and Sterling (1990). They rely on Thomas Kuhn's theory of "paradigm shift" in the Structures of Scientific Revolution (1976).

of a legal sex. What is important is to note that this politics started since the colonial era and it still misinterprets intersex desires. However, medicalization is not a constant variable and its intensity varies and shifts with resistance movements and other structures which can be called as "extra-medical social structures". Beck (2007) also points towards the shifting biological understanding which came with the shifts in technology. It has also been observed that law and governance often invokes medicalization to determine the legal sex of bodies. This authority of medicine is taken as pre-discursive and has been seen as a product of modernity. In court cases, the medicalized legal sex is often contested with the lived experiences of gender to bargain access to resources. The gender of socialization often assumes primacy over the medically determined sex, as has been demonstrated already.

Apart from (bio)medical enhancements, medicalization also tends to alter, fix or cure the body that it considers ambiguous. In the recent book, "Nothing to Fix: Medicalization of Gender Orientation and Sexual Identity", Arvind Narrain and Vinay Chandran (2016) point towards the homophobic and curative medical understanding of LGBTQI. They build their argument from a number of empirical cases from India to understand how medical texts and healthcare practices medicalize alternative sexual identities, especially the intersex. It is somewhere important to see that medicine, psychiatry and biology hold a good authority over establishing the truths about the body and its sex; historically, this can be seen with the rise of modernist science. It is also important to see that technology often lies at the very centre of queer sexualities, for instance, sex-reassignment surgery, hormonal therapies or even the heavy reliance on internet dating applications. If we see historically, medicine, biology and later psychiatry, had assumed a greater authority over ambiguous bodies (the modern Intersex and Disorder of Sex Development post 2006 consensus statement) (Fausto-Sterling, 2000; Kessler, 1990) and other homosexual bodies (Rosario, 2008). Queer Feminist scholars, queer/intersex activists and feminist critiques of science establish that these medical

interventions and truths were influenced by a homophobic society. Further, some critique emerges from the work of Thomas Kuhn (1976), who sees that truths about body and sex are established with a paradigm (Marinucci, 2010), for instance in 1890, gonads were seen as the determinant of true sex, which later was changed to the observation of secondary characteristics and later with the problematic assessment of chromosomes.

The first chapter is an account of the fraught colonial understanding and classification of hermaphrodites. What is important is to note that my analysis only scrutinizes institutional records and medical journals and hence, the perspective from the lived experiences of the "hermaphrodite" is rather absent. This can be argued as a shortcoming of my work. However, the archives present an important aspect of the life of a hermaphrodite, before they were medicalized intensely. I surmise that the heterosexist and colonial laws although did not mandate on the need for a "legal sex", exercised the politics of "othering" by criminalizing deviant sexualities through numerous legislations.

I assume that in many societies, before colonial medicine, hermaphrodites were accepted without any surgical intervention[45]. However, very little empirical records exist on how pre-colonial hermaphrodite births were dealt with. Although, Zwilling and Sweet (2001) argue that, in ancient India, the idea of the "third sex" did exist and was taken as natural. But, such ideas were re-scripted by the colonial modernity. The Indian society had close linkages with its colonizers and hence, institutions were fashioned along the lines of "Victorian masculinity". For the hermaphrodites, it can be argued that many such individuals did wilfully embody the Hijra identity, but at times, they were given to the Hijras as infants by their parents because of their hermaphrodite bodies also. However, many colonial reports also surmise that the Hijra community asserted their control over

[45] See Lugones (2007; 2008)

hermaphrodite infants. Altogether, it would be safe to assume that the hermaphrodite had linkages with the hijra identity. I argue that this constituted an indigenous gender system in India. However, the colonial authority redefined these systems. They understood the Hijra as an innate criminal and hence, the agenda of colonial morality was perpetuated on them. This led to disturbances in how the Hijra households were run. Here, the law was used to "discipline" the unruly population. But Hinchy (2019) argues that the Hijra households survived the suppression of the colonial authority.

However, the colonial knowledge system dominated over the Indian social system and hence produced many discontinuous and ahistorical classifications. One such important classification reflects in the history of hermaphrodites in colonial India. Hermaphrodites were seen as a natural embodiment of eunuchs until colonial medicine established them as hermaphrodites and then intersex. Many colonial archives reflect the classification of eunuchs as eunuch by birth and made eunuch by man. What is important to note is that this classification was not just in quest of knowledge, but also to inject public morality in the "eunuchs" and prevent them from forcefully castrating children. Hence, the colonial state institutionalized the Indian Penal Code (1860) and the Criminal Tribes Act (1871).

The latter had led to the maintaining of a register for eunuchs and their properties by the district commissioner. Glancing at these registers, one can identify that hermaphrodites was an important group in it. They were subjected to regulations of the Criminal Tribes Act because of unscientific classifications. But this discontinuous category was soon replaced by scientific investigations on the hermaphrodite. For instance, the colonial state had well knit webs of governance, which aimed to produce and circulate knowledge. Of these, medical knowledge has been of comparatively more importance and exercised greater authority over defining the body. This has also been argued by

many feminist science studies scholars[46]. The close knit webs of jurisdiction over the hermaphrodite body led to the rise of medico-legal jurisprudence. This led to the production of many writings on medical jurisprudence, many of which also focused on developing the category of "born" or "congenital eunuch". With the Criminal Tribes Act, the knowledge on such classification was extended by the Census and Registers of Caste and Tribes of India. The "born eunuch" made it to the list, and was seen as a distinct category from the Hijra.

As the colonial medical system strengthened, it also contributed to the knowledge production on hermaphrodites through publication of cases in medical journals. The earliest case I found is from 1861. Surprisingly, the medical case referred the subject as "hermaphrodite" and not as eunuch. This was certainly the time when the truth about hermaphrodite's sex was deciphered from observations of external genitalia and questioning about their desires. This was due to limited medical technology and until 1951, not many cases of corrective surgeries were conducted. However, most of the cases reflected in medical journals exemplified the quest of medicine to identify the true sex underneath their genital ambiguity. This was facilitated by the histological inspection of Gonads and sex hormones.

Nelly Oudshoorn (1990) and Sarah Richardson (2013) demonstrate how the truths about the body were constructed by the politics of othering of hermaphrodites. Their body served as an unruly site of disciplining, which simultaneously interpreted the idea of the "normal" from the "unnatural". Stoler (1989) argues that the colonial politics rests on the practice of creating boundaries between the colonized and colonizer. This was achieved by creating the hermaphrodite as a born deviant sexuality under the classification of eunuchs. Hence, one can argue that the understanding of the hermaphrodite is both social and technological context-specific. The agenda of modern medicine

[46] Harding (1990); Sterling (1990) etc.

has also been argued to be to standardize the subjectivities and population variations through medical authority. In sociology, this is seen under the theory of (bio)medicalization. I argue that medicalization is shaped by the "extra medical structures" and that de(medicalization) is a phenomenon which is influenced by the social actors also. I argue that in law, biological dimorphism and the essentialism of binary complicate the assimilation of intersex persons. The law invokes the legal sex by the practice of medicalization. However, many judgments on intersexuality signify the use of authority of the lived experience of gender in defining the subjectivity of the person. I have already demonstrated this through the case of Faizan Siddiqui vs SSB, Pinki Pramanic and Santhi Soundarajan. This has been achieved by creating a distinction between the sex and the gender. Although this distinction takes gender as a culturally variant phenomenon, the nature of sex is considered as static. In Intersexuality, the lived experience is constituted by the limits of bodily corporeality.

Further, many scholars, as I have already outlined in chapter 3, see ambiguity in the distinction between sex and gender. They argue that gender and sex blend in complex manners to constitute the intersex subjectivity. However, this does not hold ground for the entire intersex community, wherein some seek to reject the intersex label also. Eckert (2017) argues that this creation of boundary between the binaries of gender and sex produces "abject" bodies that cannot be constituted in either. It is important to see that the distinction lies not between the ambiguous genitalia and binary of sex, but the abjection is produced by the lack of any connection between the ambiguous genitalia and the binaries of sex and gender. The intersex breaks the continuum and linearity between sex and gender and separates itself from the binary. This process of biomedicine, of creating the binary as normal is an outcome of intersexualization, because Eckert argues that no ontological intersex existed before biomedicine mandated biological dimorphism. As she writes, "It is not the fact of male and female that produces a third—the intersexualized body—but the very processes of

intersexualization that produce white hegemonic heteronormative maleness/masculinity and femaleness/femininity as natural and normal. Intersexualization, I suggest, is at the core of the process of the construction of a dichotomously sex(ualiz)ed-gendered society" (2017: 10).

This biological dimorphism germinates the need for gender and hence, establishes a link between the two ontological categories. However, this linkage between sex and gender necessitates the need for intersex surgeries. The rhetoric of in the "best interest" of the child is also embedded in the practice of surgery. The practice of corrective surgery is built on the work of John Money, who invented the concept of 'optimal gender of rearing' which can be achieved through corrective sex assignment surgeries within the first 18 months of birth of the infant. What is important to question here is that, under what situation did Money's work lead to the emergence of a paradigm in intersex case management? Firstly, Karkazis (2008) accepts that his paradigm was supported by the similar psychological study of Ellis and Hampton Young. Secondly, his work is an outcome of his inherent belief in the dualism and dichotomy, as noticed by Terry Goldie (2014), and hence, his work fitted in the binary conceptions of nature vs. nurture, male vs. female and so on, a paradigm that had been very prominent in the social sciences. As she writes, "Money's belief in the inevitability of the gender binary convinced him of the necessity of coming to an early decision about the gender of an intersex child, particularly one that resolves the confusion of the parents: "Thus they can transfer their confidence eventually to the child, as well as conveying it, in discussion, to others in the community" (1969e, 213)." (Goldie, 2014:45)

Further, his conception pacified the social "normophilia", the demand for a standardized modernity, of presenting bodies with a socially accepted biology: one sex in a body (Sterling, 2000); and hence, surgeries were both attractive and justifiable in keeping the larger heteronormative goal of the society intact. Fourthly, medical science had been advancing in determining the alleged "true

sex" of the body and with the rise of transsexual surgeries during his time, advanced surgical procedures also complemented the idea of "giving sex" to a body.

However, the Intersex Society of North America (INSA) has argued for a drift away from the theoretical debates on gender (Rosario, 2008) and focus on the optimal management of intersex births. This has, although, not been achieved in many countries. Still, we misinterpret the intersex as eunuch and languish in clinics to find the 'true sex' for the birth certificate. It is also important to note that the intersex movement is also a movement for privacy and self-determination. This movement identifies the individual to be the locus of identity construction rather than the doctors or the "extra medical social actors" who decide on the matter by evoking the rhetoric of the "best interest". With time, the intersex spectrum has continued to broaden and it encompasses the demands of numerous other clinical conditions. For instance, the Androgen Insensitivity Syndrome, Congenital Adrenal Hyperplasia and Hypospadias patients often reject the intersex movement and affirm to gender binaries. This, hence, creates many different aspirations within the intersex movement. To restore the human rights of intersex persons, a strong system for the sensitization of medical and legal institutions is rather necessary. What is required for this is the desexualization of laws and medical practices. Davis (2016) interprets Foucault's "Medical Gaze" to ascertain that the medical providers are actors of heteronormativity, but she also suggests that these medical men must be reflexive to understand the power they hold and how they can exercise it differently to produce a different set of choices for intersex persons. Along with it, to prevent the evading of citizenship by intersex persons, the gendered notions of citizenship (and its documents) need to be rectified.

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