Chapter III
The Problematic Normativity of Family Jurisprudence: a queer-qualitative critique

Introduction
What is normative is what is given. In the chapter Non-thinking in the name of the normative from her book *Frames of War*, 162 Judith Butler focuses on the role of the ‘normative’ in our regular life, in our daily judgments and in the way the larger social and juridical systems and institutions are perceived. She contends that, the normative in the society is extended to all settings based on the tool of right and wrong or for and against—too often this ‘for and against’ of an issue is deployed by the society in order to preserve the status quo and to render thought unnecessary. Moral condemnation is non-thinking—and this kind of non-thinking purportedly leads to no thinking on problematic and complex—hence, such non-thinking entrenches the normative framework from where it is derived. 163

In the same chapter, Butler presents the (very blurry) difference between the acts of description and acts of prescription. The acts of description merely define and lay certain attributes to a certain thing or phenomenon, whereas sometimes such descriptions often transcend as the normative. The ways we define things or describe a phenomenon predetermine the judgment that follows and *de facto* consist of judgments themselves. She uses the example of ‘terrorist violence’, to enunciate her claim. The expression ‘terrorist violence’ itself doesn’t need any further inquiry as the description it carries is so well entrenched that it needs no further re-description. Hence, often our acts of descriptions transcend into acts of prescription. Though, the problem is not that the line between the two is very blur, the issue is that this blur difference is generally left unacknowledged and normative judgments are allowed to masquerade as descriptive ones. This prescriptive or normative thinking based on certain judgments that are taken as givens and that could be questioned with critical thinking. Butler contends that, in order to encourage thinking, judgments are not abandoned just because they are based on univocal sources of the normative; judgments are made on evaluations that are self-reflective, comparative and critical. She contends that, what is abandoned is rather the ease of security and sense of non-thinking reliance over the normative. Butler puts forth that the idea is not to dispense with the normative, but to let the normative thinking take on the

162 Supra note 1 at 136.
163 Id. at 138.
critical and comparative form so that it doesn’t rely any further on the blind-spots and gaps in the moral frameworks.\textsuperscript{164}

The above reasoning could be used to redefine the conception of ‘family’, ‘marriage’ and ‘kinship’ as understood. This mindless, non-thinking reproduction of the normative can be challenged by critical thinking. For the Queer, these categorisations have no natural or essential basis or characteristics. The essentialities of each of these categories change with the dominant cultures and hence, these identity categories are inscribed in multiple, conflicting and contested ways.\textsuperscript{165} Identity therefore becomes politically indeterminate and a product of an ongoing contestation over social meanings and definitions.\textsuperscript{166} Queerness is born out of the treatment of exclusion by the rigid structure of compulsory heteronormativity; in this way the queer refuses to assimilate in the compulsive sexual hegemony of the normative. Thus, in many ways being queer is a form of resistance to pursue the politics of defiance.

This thesis attempts to draw a queer critique of the theory and praxis of the Indian family jurisprudence. Queer as a methodology is productive for the researcher as it provides it with certain political vantage points to view the spaces inhabited by family jurisprudence. The rich epistemological locations of these vantage points help the researcher deconstruct the ideological assemblage of the state and the social that together build the structures of family jurisprudence. Hence, the researcher is already informed about the heteronormative nucleus of this structure and its disavowal of anything that doesn’t fit in this structure—the queer.

The schematic presentation of this Chapter is spread over three parallel and inter-connected sections, as discussed in brief here.

The section one problematizes the notion of family as a normative structure both in social as well as in the law. It attempts to deconstruct the history and praxis of ‘family’ with a queer-dialectical approach. It explains us the manners in which the institution of ‘family’ is deployed/used by the socio-legal assemblage in constructing and enforcing the monolithic ideological order of heteronormativity over its subjects and objects. In other words, it informs us—how through the space and institution of family, the law and the social jointly produce a body of juridical episteme—family jurisprudence. And, how family jurisprudence is then deployed further by the heteronormative forces of

\textsuperscript{164} Id. at 142.
\textsuperscript{165} See Althusser on the politics of dominant ideology of society, discussed in the subsequent sections in this Chapter.
\textsuperscript{166} See generally, Supra note 5.
the socio-legal assemblage to domesticate its subjects and to objurgate its abjects—the queer.

The section two problematizes the notions of ‘sex’ and ‘gender’ that defines the core of our family jurisprudence. It does a dual-deployment of philosophical-dialectics and queer narratives to theorise and re-read how sex and gender operate in our daily lives. The dialectical discourse lets us understand that the power of heteronormative ideology operates through the spaces of public/private (mainly the intimate spaces of family and kinship to public spaces such as neighbourhood, schools, workspaces, medical establishments, and state agencies). Further, in this section, the queer-narratives help us understand how sex/gender operate along with the multiple intersectionalities of sexuality, class, age, location, and education in these spaces and in/on the queer-lives. These narratives help us map the gender-journey of the queer through these multi-layered vulnerabilities as experienced vis-à-vis the normative structures of public/private. Finally, this section presents a set of concluding remarks to suggest certain ways to engage with the law, so that some constructive changes in its body and operation could be imagined and inflicted.

The section three reveals how ‘desire’ is constantly regulated/manipulated by the theory and praxis of family jurisprudence (the socio-legal assemblage) through its unrestricted operation in public/private spaces. It builds upon the philosophical dialectics of Freud and Foucault clubbed with the queer experiences that together inform us how science has historically and contemporaneously been deployed to regulate sexuality—a structural operation that reifies the ideology of heteronormativity through public/private spaces of family/parents, hospitals/doctors, mental asylums/psychiatrists. It then contemplates certain suggestive ways through which law could be re-imagined/re-deployed to produce substantial changes in the way medicine/psychiatry operate through its extensions of the public/private. Further, this section explains how marriage and child-care are historically and contemporaneously deployed to regulate adult and child sexuality by the heteronormative power of socio-legal assemblage which operates through public/private spaces of family, neighbourhood, schools, universities, workspaces, medicine, psychiatry, police, courts, and financial institutions. Finally, this section presents a set of concluding remarks to suggest certain meaningful ways to engage with the law, so that some constructive changes in its body and operation could be wrought.
1. The Normative Family

1.1. Family Jurisprudence: Understanding the Subject of the Critique
To begin this section, let me bring in, what Lloyd has to say on the role of jurisprudence and its epistemology. He writes in the first chapter of his book *Introduction to Jurisprudence* under the section, *Acquiring Social Knowledge*: “One of the jobs of jurisprudence is to supply an epistemology of law, a theory as to the possibility of genuine knowledge in the legal sphere.” But how is such knowledge acquired? What are its sources? Can its methodology be compared with that of the natural sciences or of, what have come to be called, the social sciences? Is objective knowledge possible or must it be distorted by our values and biases? What are the dialectics of power that constitute the body of family jurisprudence and define its orientation? In this section, we discuss this question, in detail.

At the outset, let me underscore the dynamic nature of law—that, our notions of the law, of the legal systems are never and have never been static. Law and the legal thought is a dynamic and an ongoing process of evolution. When we speak of jurisprudence, we mean by it a theory of law and, in its narrowest sense a theory that can be explained as the nature of a thing. This way, a theory of law could be conceptualised as the nature of law. If the legal theory or the nature of law, as one may like to name; is a process always in the becoming then our notions of what constitutes as law are never static. However, law that stands as on date is certain for all spheres of its operation on that date, until it is amended or repealed by the competent authority. As discussed further in this Chapter, law nonetheless has impacted the notion of family in the past, and law always has the potential to impact it in the future as well through its different temporal regulations on its (family’s) scope and meaning.

But, the power of the ‘normative’ is that it creates the ‘ought factor’ in the law, i.e., it gives law what is should or ought to be, as opposed to what it is. Then the quest in this section is to orient our thinking to understand the forces that shape the normative, as is applicable on us at a particular space and time in the form of ‘family jurisprudence’.

There are different views on the sources of jurisprudence or, on the issue of what constitutes the body of family jurisprudence, to be specific (the subject

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168 Id.
of critique in this project). There is an interesting fact about the Indian family jurisprudence, that it doesn’t define ‘family’ anywhere in its body but certainly carries a certain notion of ‘family’ in its theory and operation. From where does law derive its notions on understanding ‘family’? One of the explanations in response to this question is phenomenological. As Alfred Schutz offers in his book *The Phenomenology of the Social World* in the context of our social world: “It has a particular meaning and relevance structure for the human beings living, thinking, and acting therein. They have pre-selected and pre-interpreted this world by a series of common-sense constructs of the reality of daily life, and it is these thought objects which determine their behaviour, define the goal of their action, and the means available for obtaining them”.

Since, this study is a phenomenological enquiry of the family jurisprudence from the queer standpoint; I would first use phenomenology or experience to approach the epistemological vagaries of family jurisprudence. What is the social reality of family jurisprudence? What is the situatedness and the knowledge of family jurisprudence, when it is constructed or when it is operated? Much is already discussed at the beginning of this chapter, on ‘normativity’ and ‘restricted knowledge production’. It is also discussed in the discussions below that the notion of family is ‘a given’ to the law, *i.e.*, the notion of family was already there, law just brought it within its province; it is not that law has created the family. Though, a certain conception of family is given to us by the law through its various manifestations, the practice or a straight-jacket operation of the law ‘as is given’ is operated by its subjects and hardly do we reflect on the history of that law, on the power-struggles that created that law, the hermeneutic transitions in the language of that law, and what forces are transforming (or at least have the potential to challenge and change that law).

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171 See the Introduction to this chapter, where, I use Judith Butler to put forth the case of ‘normative’. Just as a brief, let me still get some important points here: Judith Butler focuses on the role of the ‘normative’ in our regular life, in our daily judgments and in the way the larger social and juridical systems and institutions are perceived. She contends that, the normative in the society is extended to all settings based on the tool of right and wrong or for and against—too often this ‘for and against’ of an issue is deployed by the society in order to preserve the status quo and to render thought unnecessary. See Supra note 1 at 138.

172 Law can be seen manifested in different forms, such as mainly, the law made by the Parliament, law as interpreted by the courts, customary law sanctioned by the Parliament, law as interpreted by a bureaucrat, e.g., a marriage registrar or the police.

173 Alex K. Gigeroff notes about this behavioral phenomena (of unquestionable obedience) in social practice in the context of criminal code of Canada. He notes, “We seldom realize what a potent social document the criminal code is. Usually a code is an inheritance from some previous generation, and like an inheritance it is nice to have, and nice to use, without asking many questions like how was it made, where did it come from? If we ever regarded this
As Lloyds suggests, “it must be borne in mind that beneath even the most apparently technical of rules there may lurk deeply held social or political philosophies.” So, does ‘family jurisprudence’ have a certain ideology behind it? To my understanding, ‘family jurisprudence’ (as seen through the queer lenses) signifies a site of the socio-legal assemblage that constitutes of a certain legal thinking and praxis produced by the dominant discourse of the heteronormative ideology.

As one can see through the methodological lenses, the queer is also located in the socio-legal assemblage that together builds upon a combined discourse of the public and private, the law and the social—which means that, for the vulnerable state of the queer under the hegemonic discursivity of heteronormativity, the social is not the soul culprit, but, the law equally contributes to this culpability.

Now, queer politics envisage changes in this given problematic socio-legal order. If law, as understood in the constitutional frame is a site of democratic contestations, then surely it has a transformative potential. This, way, the queer re-imagines change in the role of the law. What then could be re-imagined in the law? To my mind, the state must pull out of its current role as a contributor to the heteronormative discourse that reinforces the strength of the social to produce vulnerabilities for the queer. In other words, the law must have no business in reinforcing the structures of heteronormativity. Having said that, I am not suggesting that the law’s re-imagined role should be neutral but, that the law should actively engage with the social to radically neutralize its venomous potential which has historically been oppressive to the queer.

1.2. Family is a normative-given which precedes the law
The institution of family is a sex-based ghetto. Law doesn't define what ‘family’ is; but, it uses it as if it knows what it is. It seems that the understanding of a family is already a ‘given’ in the law and hence, the law doesn't take any role to define what it is. What is ‘given’ is understood to be already there, as if it is a norm that had existed before the law. Take the example of the Family Courts Act, 1984, whose object is to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs. Inheritance as something more tangible, like an elaborate piece of furniture we might be prompted to ask many more questions about it, such as, what is it, do we want it, what is its value, who made it, how old is it, how does it work, how useful is it to us, does it fit in with what we have in our house, does it fit in with the way we want to live? But we don't ask these questions. See Alex K. Gigeroff, “Phenomenology of Law” 7 Criminologica 8 (1970).

174 Supra note 167 at 57.
This Act though deals with matters relating to family but does not anywhere define what it means by ‘family’. It provides for the establishment of the institutions and mechanisms in place for the redress of family disputes and takes the notion of family as a coherent-given, as a well-established and accepted given. In fact, this is the same situation with the entire pile of family legislations, write from personal laws to secular family laws. Ironically, a very few statutes define what a family is meant within the narrow scope of the working of a specific Act. For example, one of such statute-specific meanings of family is provided by the Employees’ Pension Scheme, 1995\textsuperscript{175} which defines family as:

“Family means
(i) wife in the case of male member of the Employees’ Pension Fund;
(ii) husband in the case of a female member of the Employees’ Pension Fund; and
(iii) sons and daughters of a member of the Employees’ Pension Fund;

Explanation: The expression "sons" and "daughters" shall include children legally adopted by the member”\textsuperscript{176}

Other than this statute-specific definition of family, the Indian law hardly defines family anywhere. It is because, the law makers always already had a notion of ‘family’ in their minds while making these statutes. Such a gesture on the part of the law reifies that ‘family’ precedes the law. From where does the law get its notion of family? What does this preordained and already-given notion of family constitute off? How does this pre-fixed notion of family impact the queer? These three questions form the central inquiry for this chapter.

1.3. Family engenders a hierarchy in human-social relations
By and large, both in law and in the dominant culture in India, persons understood to be members of a family or kinship are considered to be related either by ‘consanguinity’ or by ‘marriage’; the idea of procreation has a primary role in describing the former whereas; the latter is a social institution that is erected to ascertain relationships in terms of legitimate over illegitimate, or licit over illicit and the like.\textsuperscript{177} These are the typologies based on which, a family or kinship is understood in the law. At the base of such typologies is ‘procreation’ that is an outcome of an out and out heterosexual form of intimacy. This makes ‘family’ a site of heterosexual imagery and all

\textsuperscript{175} This law is made by the Central Government in exercise of the powers conferred by the Section 6A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
\textsuperscript{176} Rule 2 (vii) of the Employees’ Provident Fund Scheme, 1995.
\textsuperscript{177} See generally, Supra note 5.
the members of this family are therefore entrusted with the sacred task of upholding the values that protect and reinforce family. The family therefore, acquires a normative structure, which makes it distinct from all other forms of relationships such as friendship, or incest. The power of its semiotics makes every family relation to follow a certain set of prescriptions, certain dominant structural norms to uphold what is constructed as ‘a family’. The social, medical and legal norms are created to ascertain the well-being of ‘the family’. Human behaviour is thus, not free; it is determined by the agents of the social and the legal. Thus, all human intimacies and relations falling outside the structure of the family are demonised, pathologised and penalised by the social and the legal. This makes ‘family’ a concentrated site of political structures that stands on the annihilation of all other forms of human endeavours and aspirations. Family as a political unit therefore thrives on the top of a hierarchy, a hierarchy of human relations. The top of this hierarchical ladder represents the acceptable, the legitimate and natural and thus, legal, whereas; all relations below that are considered to be pathologised, illegitimate, unnatural and thus, illegal. This creates the closet and family becomes the institution that enforces and re-enforces this closet in order to keep its structure intact and pure. As Foucault points out that the juridical systems of power produce the subjects they subsequently come to represent.\(^{178}\) Juridical notions of power appear to regulate political life in purely negative terms—\textit{i.e.}, through the limitation, prohibition, regulation, control and even protection of individuals related to that political structure through the contingent and retractable operation of choice.\(^{179}\)

Since, what is closeted, is never to be brought out in public; nonetheless, this closeted-ness forces individuals to fit into the normative structures. Anyone, who cannot fit into these structures of the norm are therefore subjected to ridicule and violence of the social, medical and the legal order. Thus, family becomes a site of violence and oppression within its own self, and the agents of law, science and society are therefore entrusted with the task of protecting this structure of family.

The normative structure of family operates on the sub-structure of certain categorised classes of persons and relations shared by these persons. The persons involved in the family thus, are accorded the status of the husband, the wife, children, and the parents. These statuses are loaded expressions that carry a set of typical roles in the form of certain rights and liabilities to be operated within the structure of family and outside it. In order to keep these persons constantly serve the notion of the family, certain privileges and sanctions are attached to each of these statuses, so that any confirmation or deviation is faced with the consequences of positive rewards or severe

\(^{178}\) See generally, \textit{Supra} note 68.
\(^{179}\) \textit{Supra} note 44 at 3.
detriments. Morality, pathology and legality are the tools of the society, science, and the law that are deployed to arrest any digression from the norm.

The language of the science, through medicine, psychiatry and psychology assign the deviant acts or bodily variations as abnormal, or the status of a medical or psychiatric condition or at its best a disorder or a disease. Such cursed acts such as any involvement in homo-erotic, extra-marital intimacies or, bodily differences such as intersex variations are directed to undergo counselling or hormonal or other chemical/surgical mutilation of the body, as these are seen as abnormal, unnatural or at best as a disorder (as against the already ‘given’ order). The presence or absence of law is used to produce, enforce and protect such an order and in this process of re-production, re-enforcement and, re-protection the law contributes its role in the nurturing of the hegemonic forms of normativity. There are thus, two queer typological categories produced by the law, a new nomenclature of taxonomic categories that is meant to catch these digressions from the normal are:

i. Acts or intimacies that are poly-amorous, homo-erotic or extra-marital in nature, which are addressed in the law through its various forms of penal sanctions. Such intimacies are forbidden and thus, discouraged by the law and under social norms and they thus, acquire the status of a queer category which has no place in the mainstream or what is accepted; and

ii. Persons born with certain bodily variations, who are not addressed in the law but are tacitly produced as a queer category by the mere silence of the law. In terms of science and medicine, such persons are pathologised under the categories of ‘intersex’ or “pseudo hermaphroditism” or “disorders of sexual development” etc. As the law presumes that all humans are either born as males or females, there cannot be any other category beyond this binary, and even if there are persons born with intersex variations, they have to be forced-fit in the binary. In addition, the persons who choose not to confirm to the binary gender norms, or sex-gender essentialisms are also treated as the other.

This project is about having to understand the queer lives through their experiences of doing bodies, and intimacies. In this Chapter, the second section deals with the second category—where we mainly deal with experiences of the queer doing its bodies. And, the third section deals with the first category—where we mainly deal with the experiences of the queer doing its intimacies.
2. Sex/Gender as the Basis of Family Jurisprudence: How is it Problematic?

What is sex, or gender? Who creates the notions of sex, and gender? How are they connected to the notions of desire? Why do we need them? Do these conceptions already have a certain order or ideology? How are these conceptions implicit and explicit in the family jurisprudence that we practice in India? How does this ideologically-ordered family jurisprudence impact the queer in India?

The presence of the queer is visible in the landscape of Indian family jurisprudence; not inside it, but outside it, or at its fringes. If family jurisprudence was free/neutral of/to the notions of sex, gender and desire, there would have been no ‘queer’ in and around the landscape of Indian family jurisprudence. The presence of the ‘queer’ assures us that the theory and practice of family jurisprudence is deeply imbued upon a certain ideologically ordered understanding of sex, gender and desire. In this section, I attempt to theorise that such ideologically ordered notions of sex, gender and desire are deployed by the family jurisprudence, through its constituting political instrumentalities of culture, reason (science) and law, and that such an ordering is inherently problematic. To work out this theorisation, I attempt to problematize our notions of family jurisprudence through the tools of philosophical argumentation and empirical data that depict the lived experiences of the queer vis-à-vis the normative.

What ideology are we talking about in the context of sex, gender and desire? Queer theorisation allows critical thinking to unpack the ideology of “heteronormativity” before us. Heteronormativity is the underlying ideology of the family jurisprudence that defines its theory and practice.\(^\text{180}\) The philosophical argumentation in this section shows us that the notions of sex, gender and desire are a certain orientation of the underlying ideology of heteronormativity. In fact, sex, gender and desire are the trusted agents of heteronormativity as they are deployed by their ideological master in the service of the family—the central institution of heteronormativity. In the previous section, I drew upon the historiography of family jurisprudence to show us that the notions of family precede the law, i.e., family is not the production of the law, at least in terms of its historiographic order. Though, I think, I may be misunderstood when I say this; so, let me restate. Historically, family precedes the law, but functionally, they may reify each other. This way, family was ‘a given’ to the law, i.e., the notions of family were already there, when law decided to regulate its further operation. It is not that the law has

not changed the notion of family to adopt it to its politics. Law has brought in new regulations to control the operation of family. But such changes, howsoever lengthy, impactful, and colourful are, as one might argue, they cannot be said to have had any positive impact on the lives of the queer. The queer was always outside or on the fringes and was never allowed an equal entry in the province of family jurisprudence. Now, whether the queer wants an entry into the province of the family jurisprudence? If so, in what forms and, to what degrees? These are purely political questions which are dealt in the next two chapters.

For now, the focus is to critically evaluate the essentialist links between sex and gender as engendered through the thinking and praxis of family jurisprudence. The following section problematizes the notions of ‘sex’ and ‘gender’ that defines the core of our family jurisprudence. Using a dialectical presentation of the queer epistemology as espoused mainly by Beauvoir, Sarte, Foucault, Wittig, and Butler, this section makes an attempt to deconstruct sex and gender and debunk the essentialist conflations between them.

2.1. Debunking the Politics of Essentialism in Sex and Gender: a philosophical discourse

For generations, the institution of family has been a site of control and domestication of the human through the tools of sex and gender. The distinction brought about initially, in the feminist studies was between sex and gender to contest the nature versus nurture debate. Sex was understood to be anything that is biological, and gender was understood to be culturally constructed. This was a feminist strategy to engender the thought that ‘culture is destiny’ as this nullifies the ‘biology is destiny’ argument. Later, in the 1990s the Queer theorists theorised ‘sex’ as a problematic category in itself just like gender. They pose the question, is sex merely a biological and a coherent category of identity? Can bodies exist without sex? For any identity to be coherent, it has to be reproduced each time in the same way, with the same accuracy, producing the same results, and if it fails to do so, it

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181 For example, the introduction of Section 494, Indian Penal Code, 1860 criminalised acts of bigamy, except those communities where it was already practiced. The introduction of divorce through the Hindu Marriage Act, 1955 brought new ways to dissolve a family. New property-rights for the wife, daughter, and illegitimate children have constantly, in different periods of time have impacted the scope and operation of family.

182 For instance, if marriage is a way through which a family could be created, it is to be noted that the institution of marriage only allows two persons of opposite sexes to marry and start a family, not anyway otherwise. This way, all relations that are not dyadic and heterosexual cannot and do not have any legal possibility of starting their own family. This particular instance and many likewise depict the unequal treatment of the family jurisprudence.
is not coherent. As a category, is sex coherent? Does sex exist without a society, i.e. is sex a cultural construct? Such questions take us to the very basic questions, what is sex, and who produces sex? For anything else, in the era of Sex Reassignment Surgery (SRS) we know that ‘sex’ is not an immutable category.

For all we know is that sex is an identity; and, in the Indian society, it has conventionally been a very important identity for survival. Applying Foucault, it could be said that, if it is an identity then it is also a site for the exercise of power. To be able to exercise power, certain bodies have to be powerful so that such power could be exercised over bodies that are less powerful. The feminists show us that the female sex has been oppressed by the male and the frames of society, law, science have always been at the service of the phallus. Whether it is a question of very basic civic amenities like public toilets, or it is about social institutions such as marriage or family, or it is about language—we know that the female has been at a receiving end. Queer theorists help us appreciate the other possibilities to this story. So, has it just been the ‘female’ who is at a receiving end; is that the end of the story? Or, is the territory of the phallus larger than what was thought; and, maybe the classes of the oppressed are not necessarily restricted to the females? Mere silence doesn’t guarantee absence. To address this issue, what if we question the legitimacy of the category of male/female? What constitutes a male or a female? The category of the intersex challenges the binary of the male/female. For generations science has taught us that, all species that sexually reproduce are supposed to be biologically female or male (except hermaphroditic species such as certain snails, mollusks, and fish that change their sex as they age). This thesis looks quite reductionist on its face as the story is far more complex than this.

Butler argues that Gender is not a radical act of one’s choice, rather gender is an “originating activity that is incessantly taking place” 183 a construct, a process, a project occurring in culture where it is impossible to be without (i.e., lacking or outside) gender.

Both Beauvoir and Butler argue that gender is a way of doing the body. As Butler puts in Gender Trouble, that the body doesn’t antedate or cause gender, but it is an effect of genders which can only be taken up within the existing cultural norms, laws and taboos which constrain that taking up or ‘choice’.184 According to Butler, through our sex we become our genders and there is no place outside genders which precedes this becoming. As viewed by psychoanalysis, gendered identities are circumscribed and socially

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184 Supra note 44 at 8-9.
constituted. Gender may be ‘chosen’ from only the options that are culturally available to the subject as the cultural milieu is set already before the arrival of the subject. This way, the subject/body follows (succeeds/comes after) the gendered structures.

Based on Gayle Rubin’s reading of psychoanalysis, as reconfiguring of kinship structures, leads Butler to suggest that tracing the history of gender may reveal its gradual release from the binary restrictions. In addition to the suggestion of tracing the history of gender, Butler suggests another method of subverting the binary gender structure: this is the usage of the post-modern relations of power. She illustrates the later suggestion with the example of Herculine Barbin, the nineteenth century French Hermaphrodite who challenges the binary norms of gender by her writings. Barbin was assigned female sex at birth and as she writes in her memoir, she was always attracted to girls. When she was working as a teacher in her late 20s in a Missionary School, her affair with another female colleague Sara circulated rumours, following which a devout Catholic Barbin confessed before the Bishop and seek permission for an examination from a Doctor. After, examination it was found that, though she has a small vagina, she also has a small penis and testicles inside her body. However, a later court judgment declared her a male. Her memoirs indicate that she was deeply regarded herself as punished and remorseful. She commits suicide at the age of 30 in her small apartment in Paris. As Butler identifies the phenomenon of recognition of gender’s instability causes ‘vertigo and terror’ in one’s mind of losing one’s sanctioned social place. She suggests that a body such as that of Barbin’s caused ‘vertigo and terror’ in the medical and social structures of the 19th century France.185

2.1.1. Deconstructing Beauvoir’s ambiguous expression “becoming of a woman”

Beauvoir’s famous formulation: “one is not born, but rather becomes a woman” in The Second Sex asserts a tussle between a natural and gendered identity. When Beauvoir says, one “becomes” a woman—does that mean, one chooses to become a woman (choice) or does it mean, that one is culturally assumed to accept the corporeality of a woman? Salih in her review of Butler’s article raises therefore: “if genders are in some sense chosen, then what happens to the definition of gender as a cultural interpretation of sex, that is what happens to the ways in which we are, as it were already culturally interpreted? How can gender be both a matter of choice and cultural construction?”186

185 See generally, Supra note 44 in 79-92.
If Beauvoir has successfully raised this ambiguity, then it would not be wrong to say that—body (nature/biological/sex) is somewhat caught in the dialectic of gender as a cultural assertion and gender as a choice. Then how do we catch hold of the body that pre-exists its cultural interpretation? Or is it, that the body (sex) is always the creation/product of gender? Remember here, that Monique Wittig considers the distinction between gender and sex anachronistic (misplaced in the chronology/time) and Foucault completely rejects the notion of ‘natural sex’ altogether; for him ‘sex’ has always been normative and has acted as a regulatory ideal. Also, remember, that Butler argues that ‘sex’ was always already ‘gender’. This way gender is always and, was always a cultural project that has assumed sex/nature within its ambit; in fact, the use of ‘nature as an argument’ is a politics of the structure of culture, so that it could be deployed to construct the category of a pre-existing given, an original category that exists in nature.  

2.1.2. In Sartrian terms, Beauvoir’s ‘becoming a gender’ makes a better sense
Jean Paul Sartre in Being and Nothingness: an Essay in Phenomenological Ontology extends the Cartesian model of Mind-Body Dualism in his own way. Rene Descartes’ theory of mind-body dualism tells us that the mind (consciousness) is different and independent from the body (material). Sartre extends the Cretesian model to another level. According to Sartre, the duality of consciousness as both ‘embodied’ reality and ‘transcended’ reality is intrinsic to personal identity and, an effort to locate personal identity exclusively in one or the other is a project in bad faith. Sartre argues that the body is coextensive with personal identity (it is a “perspective” that one lives), he also suggests that consciousness in some sense is also beyond the body. This is evident when he says, “my body is a point of departure which I am

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187 Id.
188 A brief on Des Cartes’ dualism: He believed that the world is made up of two types of substances: (1) Res extensia: the physical things, like the body, computers, chairs etc. which occupy space; (2) Res Cogitans: the thinking thing, like the mind. Rene Descartes’ theory of dualism is about taking the mind (the cogito, from the Latin verb cogitore, meaning to think) and the body as separate. He said that he could doubt everything except what he was thinking. Since, the mere act of doubting requires thinking, and there must be a thinker, he said that cogito ergo sum (I think therefore I am; also called the cogito). So, he said that though, he could doubt the existence of everything but because of the cogito he cannot doubt that his mind exists. Now, it is criticised more so because: (1) How can the mind be separate from the brain (the brain which is a part of the body, as it has a physical location in space) and if mind and brain are the same thing or are at least dependent on each other, then how can mind and body be two separate things; (2) Also, how is body as a seat of one’s lived experiences different from the impression those experiences that are captured by the mind? (3) If two things are separate because they possess two separate type of properties, then our minds are separate; (4) the masked man’s fallacy: e.g., if Lois Len believes that Superman can fly, but Lois Len doesn’t believe that Clark Kent (the Human Form of Superman) can fly. Now, it is an outcome of the limitation on Lois Len’s thinking.
and which at the same time I surpass”. Sartre’s theory constantly attempts to theorise that consciousness is both what is lived through the body and at the same time, what is possibly liveable through the body. If culture predates the existence of the body, then in reality, the body is enmeshed in cultural norms from its very existence; since, body also has a mind, that is well capable to imagine situations that are, though, not the living reality of the body, but could be the future in the course of its making. Sartre calls this living reality of the body as ‘consciousness that is embodied’, and the liveable imagination as the ‘consciousness that is transcendent’. This way, the duality of consciousness as both embodied and transcended is intrinsic to personal identity.

For Sartre, ‘consciousness that is transcendent’ is not merely a characteristic of surpassing the body (an imagination); but it is also, a characteristic that lives through the body. The body is not a static, self-identical phenomenon, but a mode of intentionality, a directional force and a mode of desire. For Sartre, the body is lived and experienced as the context and medium for all human strivings. Sartre is conscious that human life is not just about living the experiences of other humans (or that of the humans of the past generations), as a human mind, life is capable of being imagined in many futuristic situations (much of which may not relate to what is lived in the past or much of which may completely contradict and subvert the foundations of the past). For Sartre, human beings strive after possibilities not yet realised, human beings are to that extent beyond themselves (or they may be surpassing their bodies). Since, this imagination is a desire that carries the potential of being lived through the body, and also, that this imagination is an extension of the consciousness at its base, an element of corporeality of the body cannot be denied; for bodies reveal a corporeal living reality that is always in the state of becoming. As Sartre observes: “we can never apprehend this contingency as such in so far as our body is for us; for we are a choice and for us to be is to choose ourselves ... this inapprehensible body is precisely the necessity that there be a choice, that I do not exist all at once.”

Beauvoir’s claim on ‘one becomes a woman’ can be better understood in the Sartre’s frame of ‘consciousness’ and ‘body’. As Sartre observes in his Being and Nothingness “it would be best to say, using ‘exist’ as a transitive verb, that consciousness exists its body”. The transitive form of ‘exist’ fits well in Beauvoir’s use of “becoming a woman”. As Salih puts it in her “Sex, Gender Performativity and Matter of Bodies”, that “Beauvoir’s concept of becoming a

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190 Jean Paul Sartre, Being and Nothingness 328 (Routledge, 2nd Ed, 2003).
191 Id. at 329.
gender seems both a radicalisation and concretization of Sartrian formulation.”

Using the Sartrian frame of mind-body duality, it could be said that, consciousness could be materialised by the body, both in forms of (1) embodiment of the gender imposed by the culture at a particular space and time, and in terms of (2) disembodiment of that gender through the consciousness of one’s choice of gender or no-gender at another or at the same time and space. The movement from sex to gender is internal to embodied life, a sculpting of the original body into a cultural form. To mix Sartrian phraseology with Beauvoir’s, we might say that to ‘exist’ one’s body in culturally concrete terms means, at least partially to, become one’s gender.

2.1.3. Body as a situation: the cultural genealogy of sex and gender

Beauvoir claims the body to be a situation. Whether it is a cultural situation or an abstract/neutral situation, the issue is that body is always already located in space. What are the discursive elements that constitute this situation of the body? Is the discursive positionality of the body as a situation in the space is already restricted?

If body is a situation, let us presume that it is located at a neutral/abstract situation. If that is the case, then there is every possibility for the body to act freely, as there would be no pressure of any form of dominance, oppression, or expectations, sanctions on the body. This way, gender would not have existed as a norm or as a relation of marking a sexed body (male or female) into the domains of gender (the masculine and the feminine). But, if that was the case, there was no reason for us to study anything called sex or gender. A body would just be ‘any other body’; there was no need for marking a body as per a particular sex or its gender.

The other possibility of having ‘body as a situation’ is to understand body as a cultural situation. Since, the bodies are already located in a cultural space that makes its situation/location cultural. Now, if we accept the body as a cultural situation, then the notion of a natural body or a natural ‘sex’ or ‘gender’ would be increasingly suspect. If, body is a cultural situation, then there are at least two possibilities: (1) as a locus of cultural interpretations, the body is already located and defined within a social context; and (2) the body is also a situation of having to take up and interpret that set of received interpretations. This form of an understanding of the relationship of the ‘body’ vis-à-vis ‘gender’ is rooted in the Sartrian doctrine of ‘prereflective choice’

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192 Supra note 186 at 25.
193 Id. at 25.
194 Id. at 25.
works on a set of ‘quasi knowledge’. This way, the body becomes an intersectional-junction where, both the (1) culture, and (2) choice (that is already restricted by the available cultural interpretations) meet. The interesting point to note here is that, the choice is not a free choice, rather it is already laden by the prevailing cultural notions on the body. Within, this small restricted space of interpretation and reinterpretation, the body assumes a partial sense of autonomy (note that the body is still not in a state of real/complete autonomy, albeit, this could be a state of utopia, itself). Nonetheless, this sense of partial autonomy raises the prospects of the body being a site of a political discourse in its own right, no matter, howsoever this discourse could be a product of the cultural biases of its surrounding ecology.

Going by this way, body is a site of cultural determinations (both in terms of its ‘pre-given sex’ as well as in terms of the little autonomy that it has to interpret and reinterpret that ‘sex’), it is cultural. This way, the idea of a “natural body” or a ‘natural sex’ sounds increasingly suspect. This way both ‘gender’ and ‘sex’ seem to be thoroughly cultural affairs, to be decided by the time and space in which the body is located. As Beauvoir puts it, “the body of a woman is one of the essential elements in her situation in the world. But that body is not enough to define her as woman; there is no true living reality except as manifested by the conscious individual through activities and in the bosom of society.”  

2.1.4. Monique Wittig on the politics of a sexless society
Wittig has been a staunch radical when it comes to redefining the politics of feminism and lesbianism. Though, Wittig and Beauvoir come from divergent standpoints of the feminist literature; but they share a common theoretical base when it comes to seeing the naturalness of ‘sex’ with suspicion. It is so that for Beauvoir, “one is not born, one becomes a woman”; whereas, for Wittig, “they are seen as woman, therefore they are woman. But, before being seen that way, they first had to be made that way”. In crux, the category of ‘woman’is a political identity, that lacks naturalness and thus, such creation is an outcome of the politics of the hegemonic male oppression, is what Wittig verbosely puts forth in her works, as does Beauvoir tacitly through hers. The difference between Beauvoir and Wittig’s thesis is that, Wittig sees the valorisation of the binary sexes as an outcome of the heterosexual ideology, whereas, Beauvoir doesn’t mine it this deep. As Beauvoir puts across:

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196 Id.
“One is not born, but becomes a woman. No biological, psychological or economic fate determines the figure that the human female presents in society: it is civilization as a whole that produces this creature, intermediate between male and eunuch, which is described as feminine.”

Wittig echoes Beauvoir by taking her thesis to another level; for Wittig, lesbianism is the cause of revelation of this political category of woman, i.e., being lesbian, one challenges the societal authority and the political education that is disseminated by the category of woman. As she says, that, some feminists believe that the ‘woman’ predates oppression; whereas, for Wittig, it is the reverse of this order. She puts forth:

“the belief in mother right and in a “prehistory” when women created civilization (because of a biological predisposition) while the coarse and brutal men hunted (because of their biological predisposition) is symmetrical with the biologizing interpretation of history produced up to now by the class of men. It is still the same old finding in women, a biological explanation of their division, outside of social facts. For me this could never constitute a lesbian approach to women’s oppression, since, it assumes that the basis of society or the beginning of society lies in heterosexuality. Matriarchy is no less heterosexual than patriarchy: it is only the sex of the oppressor that changes.”

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198 Supra note 105 at 249.
199 It is the oppression that predates the woman, says Wittig. She invokes Colette Guillamin, on her deconstruction of the notions of ‘race’ and ‘sex’. As per Guillamin, there is nothing obvious about sex, or race, and their historical evolution can be traced and understood through the study of signs and their systems. The cause or origin of oppression is, in fact only a “mark” given by the oppressor, and this mark is what defines and marks a person as a ‘woman’. Thus, this mark does not predate oppression, it is the oppression that marks the body of the person as woman. Colette Guillamin shows that, before the socio-economic reality of black-slavery, the notion of “black” did not exist, hence, what is understood to be ‘race’ in the modern context is purely a construct, which lacks naturalness. As Danielle Juteau-Lee writes, in her Introduction to the abridged version of Colette Guillamin’s works: “Guillaumin argues that, paradoxically, ‘race’ exists and does not exist; although an imaginary formation and an ideological construct, it is real, a brutal and tangible reality. Both ‘race’ and ‘sex’ are empirically effective categories; they are political realities which also enter into legislation. Since they are operative, since they function to exploit and to kill, she suggests that they be kept and not be eradicated from our critical vocabulary. To ban these terms can unfortunately serve to hide the relationship which gives birth to them, and it will certainly not bring about the eradication of racism and sexism.” See Colette Guillamin, *Racism, Sexism, Power and Ideology: Critical Studies in Racism and Migration* 18 (Routledge, 1995).
200 Supra note 197 at 104.
Wittig’s disposition is based on the logic, that since, a woman is expected to be in love with a man, bear his children, be with him and look after his family, a lesbian is not a woman.201 As Andrea Dworkin documents in her collection of essays published as, *Letters from the War Zone*, she records the speech of a self-proclaimed lesbian separatist at an event called ‘Lesbainism as a Personal Politic’ held as a part of the New York City Lesbian Pride Week, 1977: “women and men are distinct species or races (the words are used interchangeably); men are biologically inferior to women; male violence is a biological inevitability; to eliminate it, one must eliminate the species/race itself.”202 Both Dworkin and Wittig critically respond to this widely applauded and accepted notion of an *Ubersmensch Woman* (Super-human Woman). In particular, Wittig sharply responds, “by admitting that there is a “natural” division between women and men, we naturalise history, we assume that men and women have always existed and will always exist. Not only do we naturalise history, but also consequently we naturalise the social phenomena which expresses our oppression, making change impossible.” She illustrates her point with the example of the child bearing act of a woman, putting it as a cultural phenomenon instead of accepting it as a natural phenomenon; she says,

“instead of seeing giving birth as a forced production, we see it as a “natural”, “biological” process, forgetting that in our societies births are planned (demography), forgetting that we ourselves are programmed to produce children, while this is the only social activity “short of war”203 that presents such a dander of death. Thus, as long as we will be “unable to abandon by will or impulse a lifelong and centuries old commitment to childbearing as the female creative act,”204 gaining control of the production of children will mean much more than the mere control of the material means of this production women will have to abstract themselves from the definition ‘woman’ which is imposed upon them.”

201 What is the social category of a ‘lesbian’? For Wittig, she is not a woman, as she says, “one feature of lesbian oppression consists precisely of making women out of reach for us, since, women belong to men. Thus, a lesbian has to be something else, a not-woman, a not-man, a product of society, not a product of nature, for there is no nature in society. To refuse to become a woman, does not mean that one has to become a man. But even if, she would like to with all her strength she cannot become a man. For becoming a man, would demand from a a woman, not only his external appearance but his consciousness as well.” See Id. at 105.


203 Ti-Grace Atkinson, Amazon Odyssey 15 (Link Books, 1974).

204 *Supra* note 202 at 111.

205 *Supra* note 197 at 104.
So, for Wittig, oppression-less society can be only created when heterosexuality is irradiated as a social system, as, it is heterosexuality that perpetuates oppression of the women by the man and which produces the doctrine of difference of sexes to justify its project of oppression. This hierarchy and system of oppression demands that humans remain politically marked in the dyadic arrangement of sexes. Wittig goes to the political history of sexual difference, the manner in which marking of bodies from one amongst the two sexes becomes a mandatory link to establish a socio-economic and political hierarchy. Wittig says, when a body is born in our society, the first question the Doctors, Parents, Caregivers ask is not what species of earlobes or nose the new-born has, but what typology of ‘sexual organs’ the body is born with, for the later, though a mere biological difference, determines the social, economic and political fate of that body. Wittig takes us through the genealogy of ‘sexual organs’. For she, sees a sign chain in the production of what we know as ‘sexual organs’. Only those organs of the body that assist in reproduction are referred and marked as ‘sexual’. She asks, why we do not mark our ears, or our backs as sexual organs; this is because they have no role in reproduction and continuing the human species. The organs, which have the capacity of taking the human progeny forward to the next generation in time and space, do have the biopolitical potential of being the most precious of all organs. Hence, the biological difference of sexual organs is rooted in the binary division of humans in only two sexes, male and female. This way, our notions on the binary of sexes (male and female) is based on the heterosexual mode of production. Thus, her call for a sexless society becomes an imperative change, much needed to do away the oppression based on sexes.

Wittig’s call for a sexless society doesn’t mean that Wittig denies the existence of biological differences in human bodies. Her politics stems from the valorisation and isolation of certain kinds of bodily distinctions over others.206 Who does this act of segregation and marking? If according to Wittig, it is the heteronormative psyche, that does it, then is Wittig not calling to substitute it with that of a homonormative structure? She knows that a replacement of the heteronormative with a homonormative order is equally disastrous politically, as any structure is a form of hierarchy. If the object of the politics of queer-feminism is to liberate the body from hierarchy and oppression, then it is certainly not possible with the re-enforcement of a new frame with essentially the same characters replacing the old. If the heterosexuality as a cultural frame works on the binary of sexes, as Wittig establishes, then postulating the cultural possibilities of liberation may lie in

206 Supra note 186 at 31.
the creation or induction of new cultural norms on sex that replaces the rigid structure of binary sexes with that of multiple sexes.

2.2. The Journey and Experience of Gender: is/are there any origin(s) or end(s)?

Beauvoir’s claim of ‘becoming a gender’ is not a linear progression from the original body (sex) to that of a cultural norm (gender) to that of a state of subversion of gender (non-gender). Remember that Foucault discards the notion of a ‘natural sex’; for him sex is always a regulatory norm, so it is for Butler as she inquires—who says that sex is always already gender?

As Salih and Butler put it, “gender is not traceable to a definable origin because it itself is an originating activity incessantly taking place. No longer is gender understood as a product of the cultural past and psychic relations long past, gender is a contemporary way of organising past and future cultural norms, a way of situating oneself in and through these norms, an active style of living one’s body in the world.”

So, is Gender not really a free choice? It is demonstrated in the previous sections that, gender could be, and (most likely) does predate the body, hence, when the body is born, it is always already gendered. If this is so, can we choose/change our genders at some other point in our lives? A liberationist would reply in affirmative. The question is, whether gender is a monolith or, is it an incessant project, a daily act of reconstruction and reinterpretation? Remember that Butler puts it as an incessant activity that no one owns as her own gender, at the same time it appears to be a practice that one indulges in without one’s willing, without one’s knowing. In fact, she says that the notion of gender itself challenges the very idea of authorship; perhaps, it is owned by a sociality that imposes gender over all of us. This way again, Butler reinforces the cultural origin and ownership of gender which predates the body; and, the body (or bodies) involuntarily assume gender as a pre-existing cultural norm and, this gives them a sense of psychic relief, a sense of a strong social station and place, and the fear of losing this place makes the mind jittery, the mind takes the body through a sense of vertigo and terror. This way, the Cartesian separation of mind and body doesn’t come along very well, rather it is an interactionist formulation

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207 Id. at 26.
208 See Judith Butler, *Undoing Gender* 1 (Routledge, 2004) where she writes: “If gender is a kind of doing, an incessant activity performed, in part, without one’s knowing and without one’s willing, it is not for that reason automatic or mechanical. On the contrary, it is a practice of improvisation within a scene of constraint. Moreover, one does not ‘do’ one’s gender alone. One is always “doing” with or for another, even if the other is only imaginary. What I call my “own” gender appears perhaps as something that I author, or indeed, own. But the terms that make up one’s gender are, from the start, outside oneself, beyond oneself in a sociality that has no single author (and that radically contests the notion of authorship itself).”
that suggests that the mind sometimes controls the body; and, in some cases
the mode of control is the fear of social sanction.

This section therefore, describes the journey of gender through the lived
experiences of the participants coming from multiple intersectionalities of
location, age, class, gender, sexuality and educational backgrounds. Each of
the stories of these participants vis-à-vis gender narrates their lived
experiences with the heteronormative structures of our society—be it private
domains such as the family, educational institutions, neighbourhoods or, be it
public institutions such as the police, medical/psychiatric fraternity or, the
judicial system—as apparatuses of the state. Each of these lived realities
help us plot the requisite points in a fictional ‘gender-graph’ that in my opinion
places us in a better position to understand the impact of family jurisprudence
in queer lives. Such mapping further enables us (as an academic community)
to re-imagine alternative ways of engaging with the law.

This sense of vertigo, fear of being judged, a certain readiness to respond
any remark on his gender was visible to me in Rajiv’s behaviour, when I saw
him at a public space in Kolkata for the first time. I didn’t know him till then;
and, to me, he was looking perfectly cis-gendered—a dusky, tall, well-built,
quite a masculine-appearing man, in his mid-thirties; clad in a black khadi
kurta walking over with jeans and chappals. It was later, when I told my
friend (who happened to be one of the organisers of that event) that my
research demands qualitative inputs based on queer-lived experiences and,
that I am ready to recruit; it was then, I was introduced to Rajiv, who after our
second meeting got agreed to join the study as a participant. In the course of
our interactions, as I became more comfortable with him, I realised his
hitherto veiled effeminacy. Who am I to judge, I said to myself? Like many of
such other interactions, this one also started on a largely informal note. In the
process of our interactions—I asked him, “so wahan, programme mein itne
mard kyon ban rahe the?” (why in that entire programme, you were trying to
pose so much as a man?) I could read a restrained yet obvious smile in his
face—and he responded, “thoda to karna padta hai na. Kyon thoda zyada ho
raha the kya?” (at least, one has to do a little, right? Why, was I doing it too
much?) I could realise, how suddenly, I triggered a sense of caution in Rajiv’s
behaviour, as he soon turned onto a feedback-mode. Now, as I am writing
down my field-observations, readying my thesis to share with the world; I find
it quite unethical to share my deepest of thoughts on this interview. I know, I
could be soon hunted by critics for judging my participant or making him feel
conscious of his body-language. But, I am also aware that, such moments
happen during qualitative study fieldworks; and, I am just sharing my
experiences here and, that I have a purpose of doing so. I am sure, if I do not

Rajiv’s case is based on my observations during the first phase of my Fieldwork in West
Bengal (mainly, Kolkata and its nearby towns) between August to October 2016.
share such moments, these are merely going to stay buried in my field notes, or maybe in my memory, as I grow old. It is as I can see the richness of emotions in Rajiv’s behaviour, his thinking, as both me and him unfolded in each other, layer by layer, as registered by me and my recorder, our own respective bytes of information. For me, it was partly a field of work, and partly a personal endeavour to bond with him. Maybe, for him, he was pouring his heart out; or maybe, preparing to see, if he could, or if he wanted to. The space of these interactions was a private room of a hotel, which his employer had hired for his Kolkata office-tour. The space of our first meeting (as I mentioned earlier) was an AIDS awareness programme. Yes, it was mostly a community event; and, we were mostly/all queer identified participants in that programme. Maybe, his body language, his behaviour changed as the space and medium of our communication changed, and so maybe did the appearance of his gendered self (to me). Was Rajiv conscious of the shifts between his masculine and feminine sides, or was there more beyond, that I couldn’t see—who knows? Was he choosing these shifts, or, was there a sense of compulsion in him that made him wear different genders? If not (or, if so) why a shift? What registered in my mind as masculine/feminine/nothing—his clothes, the stylization of his talking and walking or nothing (that I could see)? Was the shift conscious, manufactured, subliminal—or a manifestation of something else? Was he seeking to convey a certain meaning through his gender? When he responds—“thoda to karna padta hai” (one has to do at least a little) to my pokey query; was he telling me—this is how it has always been with him?

What all a person has to do to keep (be in) a gender, especially the new gender, when one transgresses the binary of male/female? In my second interview with Sourav (who also prefers to call himself Maya) at Serampore, West Bengal, he described to me his intentions to undergo hormone therapies and laser treatment for hair removal. He explains the financial burden that such treatments would place on his meagre savings. Here, is a piece of our conversation that sort of explains Sourav’s tryst with his gender-journey:

I (Interviewer): So, first, how do you define your gender?
R (Respondent): I am a transgender
I: Ok...you are a transgender... Do you or have you gone through any hormone treatment?
R: No, no changes...
I: And...are you thinking of changing anything in the future?
R: Yes, I am thinking...
I: Like?
R: I will take laser…I have been thinking about hormone therapy but have not been able to take a decision clearly.
I: So, you have not thought about hormone therapy clearly yet…Ok, and what is the cost of this process…I mean doing laser and the other therapies?
R: About Rs. 25,000-26,000—
I: This is just for hair removal?
R: Just the beard, not complete hair removal.
I: Ok….very costly…

Sourav, who comes from a very middle-class family had a lot of struggles at a very young age because of gender. He never wanted to keep the gender in which he is born (the male). So, he wanted to change that and in his acts of getting that change, he had to experience violence at the hands of his own biological family, his neighbourhood, and finally with the medical establishment. As translated from his Bangla narration, where he says: “I had feminine traits in me from the very beginning for which I had to hear slangs moga, chhakka, boudi, ladies. But no one was worried and thought of this as a phase….that it will get better. But this was not something to be fixed. In 1999, I fell in love and, in 2009 I kind of came out at home because by that time my femininity was forthcoming, I had long hair and I was in love with a man….and, not all relationships are the same and loving, a boyfriend is different from a friend so people at home started getting some hints… That’s why I told people at home that I like Tapas in a different way, and they saw me wearing sindoor and they started getting suspicious of my relationship and began taking me to doctors. I can show you some of the documents from the doctors…” Sourav’s ordeal with various Doctors, Psychiatrists, different Hospitals, Mental Asylums, in different cities continued for more than two years (between 2008-2011) at the instance of his parents who were concerned about their only son’s effeminate behaviour.

Gradually, his parents realised that there is nothing to fix in Sourav’s life; and, with the time, they are now okay with his gender. But, life is still not easy in terms of acceptance/tolerance of his self-identified gender-identity amongst his relatives and extended biological-family. As translated from Sourav’s narrative, where he says: “I don’t go to my relatives’ houses anymore…”

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210 Much of Sourav’s experiences with the Medical establishment is described/analysed in Section 3.3 of this Chapter.
because there is a conflict there. They expect me to show up just as I am but I witnessed a discomfort when I went for a sister’s wedding... It was her wedding but, no one was looking at her, people were staring at me, so this makes me a bit hesitant next time when such a family-gathering comes up. I am another human not a Martian, so why must you stare at me! That's why I avoid."

Today, Sourav is a confidant professional who is working from the last six years with the NGO sector on different kind of projects. But, working in NGOs at his kind of a level is quite vulnerable in terms of job security, as mostly NGOs hire workers like Sourav on a project-to-project basis; which means, once the project gets over, there is no job; or, in between if the funds in a project dry out, you are again jobless. Besides, for the last six years Sourav is working for an NGO that works mainly on Transgender issues, meaning thereby, that his work environment is already queer-friendly. But, that may not necessarily be the case with other employers. It is not that Sourav has not tried to get himself employed in other sectors; he did, but his gender non-conformity has proved to be a constant hurdle. As he himself narrates his tryst with the mainstream employers: "I tried a lot getting other jobs but there was always a tendency to get sexually abused in other spaces. I gave interviews in many different places, but the interview process would become somewhat different for me. Like, I would be asked to sing, or to change my tone. I gave an interview in a bank for the post of a receptionist and there I was asked to sing, so I asked will I have to sit at the reception and sing for people! I wanted to avoid this..." Now, he aspires to use his Transgender status (as in his legal identity status) for getting Government Jobs in the near future as he sees many such avenues opening up for the Transgender community post Supreme Court’s NALSA judgment.

The situation is such that post the NALSA judgment, the Government Sector is slowly opening its arms to the transgender persons, but, that’s not the case with the Private Sector, where hiring is still done on much arbitrary terms where, affirmative action and gender-based non-discrimination policies don’t apply. In such scenario, for a person like Sourav, the choices are really limited—either, keep working in much underpaid, high-retrenchment zones of queer friendly NGOs; or, compromise on your gendered-self and start a career in the Neo-liberal Private Sector.

For Sourav, getting an SRS seems like a distant dream at the moment, considering his responsibilities of care-giving to his old parents, besides the pressure of continuing to contribute to the family income. As translated from Sourav’s interview, where he shares the constraints of him getting SRS: “Now the pressure is that my parents are getting old and I have to take care of them. Even though I am entering that mental state that I want an SRS I still
can’t go ahead with it...If I enter this I will need to rest but I cannot stop working and if I become disabled even temporarily I will not be able to take care of my family. If I have to take long-term medication I will be drowsy or tired and I don’t know how my parents will take it.”

For Sourav, accessibility of hormone therapy/laser therapy/SRS (in terms of his financial abilities, education, location and class) is a challenge. However, the trials and tribulations of transgressing from the assigned-gender to the other, is also not easy for persons coming from the higher-middle class, better educational background, and a much cosmopolitan/urbanised location. The struggles may be lesser in degree but are manifold in their sheer nature and challenges that they pose. There are layers of complex unforeseen issues that uncover themselves before you, at different moments when one passes through the trajectory of gender-transition. So, for someone like Vihaan (born as a PAGFB) when he wanted to initiate Sex Reassignment Surgeries, he had multiple challenges to deal with, despite being privileged enough to have a relatively higher-middle class background, a paying-career, a fairly understanding family and a supportive bunch of friends. Vihaan, in his interview, shares with me the lived moments from his past, takes me through some of his moments of despair, freedom, containment, resentment, depression and, anxiety. His experiences show us what Beauvoir’s thesis speaks of the transition between sex and gender as not so a singular-linear path.

Vihaan tells us that it is also a path which is very complicated and in most of its part quite uncertain and thus, full of surprises. As Vihaan helps us plotting the original points in the graph of his gender-journey, through his interview; he says, “I always identified as a man, ever since I was a kid. I always felt something was not right. It was like I was stuck in the woman’s body. Just that I did not know what to call it back then. Because I didn’t know about it, I never heard about it weather this was a problem or this kind of thing existed coz I had never seen people like this and people don’t talk about it. But I always knew something was wrong, something was off. As usual, I was conventionally conditioned that there is a male way and there is a female way of doing things and I never fitted in the female way. I have two elder sisters. Everyone used to make fun or tease my parents saying that because you don’t have a son you are raising your youngest as a son but that was never the case. My parents used to try, actually force me to wear frocks and other dresses for girls. But I never liked them.” He further adds, “I identify as a straight transman. Because ever since I was a kid, I have only been interested in girls. And up until a point when I was in my teenage, people started using the term ‘lesbian’. I used to get very irritated, I used to get very angry, but I didn’t know why! In my head I used to keep thinking, but I do like girls, then why am I getting angry. But, the fact that later on I realized that I
would get angry because they are referring to me as a woman – ‘lesbian woman’. I was not mad at the fact that they are teasing me saying I like girls, because I do like girls, that’s a truth. But the fact that they are calling me as a woman… I would always say that’s extreme—there’s no two ways about it.”

Vihaan helps us plot some more points on his gender-graph when he narrates his experiences of trying to fit-in to the gender of his birth. He explained his experiences where he passed through moments of doubt, shock, fear of being judged, and best, when he started attempting to perform the female gender with full vigour and belief. For whom did he have to do it? As Butler would put it—that, the notion of gender itself challenges the very idea of authorship; perhaps, it is owned by a sociality that imposes gender over all of us. Being in the safe confines of a particular gender gives us a sense of psychic relief, a sense of a strong social station and place, and the fear of losing this place makes the mind jittery. So, Vihaan goes on his trajectory of gender, as he narrates: “I knew something was wrong but I thought, it would be easier for myself and for everyone else if I fought it and just stick to what was the norm in the society. Never have I ever been attracted to men. What I thought was that I might not be like other woman. Might be there will be one guy in my life who will come and I will be attracted to just him. And I would marry him. That’s what I thought. At least that’s what I wanted to believe. So, during my degree, I had a girlfriend during college. And she told me that as long as you walk like this, like a tomboy, only women will be attracted to you. So, you have to start walking like a girl. You have to be more feminine, you have to grow your hair, you have to put on makeup, you have to wear women’s clothes. Then only would men at least notice you. So, I was like ok, maybe what she says is right. So, I gave it a try because at least that was my way of ticking all the boxes to check that I have tried everything and it’s not working. So, I have to finally accept that I am a man. So, I did that. I grew my hair. My ex-girlfriend even taught me how to put makeup on. For at least two years I did that, I grew my hair, wore women’s clothes and I started getting attention from that. But I wanted to puke and die when men approached. It was a complete turn off. Compliments came my way but that didn’t mean anything. At the same time, I was more happy when someone caught my hand. I started doing that and then I started realizing that it’s not working. Then I started panicking that there is something wrong with me. For me, the last resort was marriage. So, I thought ok I will get married. So, once I start talking to a guy that I have to marry, might be, I start liking him, it will work out. So, I myself created a profile for myself on Bharat Matrimony and I started chatting with people who I thought had the same interest as me.” He said, he really hit it off with a guy through his online match-making endeavours; but, soon when that guy proposed an engagement followed with marriage, Vihaan panicked and directly said no to
him.\(^{211}\) Vihaan said, he had at least three serious romantic-sexual relations with women from the age of 13 until now, as he is dating his current girlfriend. He said, he had never had anything sexual with men ever, as he never felt attracted to men.

Vihaan talks about his ‘little community of love’,\(^{212}\) a small space that he was able to create with his girlfriend, against all the negative externalities. That space, probably never died, even when he lost her to marriage, not even when she (his ex-girlfriend) had two kids from that marriage, not even when, they decided to meet again. He says, “(I was 23) that’s when I went under depression. I was in a relationship with a woman who was 8 years older to me and she was married, she had kids and she was the only person I could talk to. She was my neighbour and then we lost touch after she got married. Once I became 22, we again got in touch and I think it was more of an emotional attachment for her; but, for me it was more intense, as she was the only person I could talk to about all of this. Both of us together were figuring this out, what this was. Because she knew no transgender, transsexual people in her life either. I was very depressed with the fact that if I come out and tell this to my family, they would abandon me. So, I wanted her to come with me. We both could just go away I didn’t have to face society or anyone. We both could live but she got married.”

Vihaan explains moments of feeling betrayed, followed with series of mental-breakdowns, states of depression, a failed suicide attempt, and his blatant coming out to his mom. As Vihan narrates, “She (his then girlfriend) was married by that time and she had kids. So, she was like I can’t leave my children and come although she was like not in love with her husband but she was like I can’t leave my kids, they haven’t done anything wrong. So, for me, the fact that I can’t turn anywhere and these are things that had been going on internally. Just the fact that I could bring myself to my mom and my sisters. So, I had a complete suicidal and depressed state trying to deal with this. I think for every trans person, first battle is having to accept it yourself and then telling it to other people. So, for me, the battle of accepting myself went on for quite long and then that I was one in love with her and she was married to someone—that broke me further. She was living with another man. So, all that added to that. So, I tried to kill myself, I cut my wrists and that’s when my mom came and asked me. Then that’s when I told her that I am not a girl. And that’s how I told her bluntly, I said I am not a girl, I don’t

\(^{211}\) All the interviews (including Vihaan’s) are with me on record.

feel like a girl, I have never felt like a girl and I don’t think I ever will. I was breaking down. My mom was like... nothing that she had ever expected because until then she believed I was in a relationship, I had something going on with this woman and that is the reason I am acting out like this.”

So, how’d Vihaan’s mom respond to this? For Vihaan, who comes from a fairly educated and urbanised (in fact an NRI), upper middle-class family background, the response of his mother was somewhat “stupid” (in his own words), though full of concern, but, laced with ignorance and worst the fear of losing her daughter\(^{213}\) to the unknown, when he came out about his self-identified gender.\(^{214}\) As he narrates, “She was very shocked but sad. The fact that I was going through so much pain and she did not know what she could do to help me. And she didn’t know anything about this. Up until then she hadn’t heard anything about this so she, like any other parent would do, took me to a doctor to see whether all my internal organs were fine; and, then an astrologer. So those were the stupid things that she did. So that was the blunder that she did in ignorance. It’s not that I could hate her for that, stay mad at her for because I understand. But it was the blunders that really aggravated my pain.” Young Vihaan was dealing with his family as well as with his troubling relationship at the same time. He worked for some time in Cochin and then took off for his Higher Studies at Stockholm. He reasons those moments, “I thought by this way, I will go away from my girlfriend also, breakup from her, away from family and start new. But the thing was that, only with time I realized that, where I go, the battle is within. So, unless I resolve whatever is within, no place or no new people are going to help. The battle is always within, so I have to be okay with who I am.”

Vihaan never thought of the prospects of getting his body changed through surgical interventions until this point of time. Gender was something that he was ready to bear with for his entire life as the way it was; with his minute moments of feeling depressed, irritated, and then again getting back to the same form and structure where he was living. He never thought of radically transforming this. But, here he plots some more points in his gender journey, some landmark, path-changing points—that would change his life and many of his circumstances forever. As he says, “Within one year or two, I started realising my depression never went. I realized, why am I still depressed? I have everything sorted out. I have a good job, I have a girlfriend, I have good friends—why am I still depressed? That’s when I realized, every month when

\(^{213}\) I use the female gender to denote the way his mother may have identified him at the time of his coming out.

\(^{214}\) I finally elected the expression “fear of the unknown” to explain Vihaan’s mother’s initial response; though, I wanted say that her thinking was homo/trans-phobic, which I think it was; but, I could also realize that his mom wasn’t aware of these typical jargons, at least at that point in time and space when these events happened to her.
I go through the menstrual cycle, I get suicidal every month. I spoke about it to my mom and girlfriend, they said if it’s something you need to do then you do that. Up until that point, I never thought that I would transition completely. I said ok fine—one thing at a time. At this point I just want to get rid of my… the things that I hated about my body was my breasts and the menstrual cycle. So, I thought, I need to get rid of that. I thought that’s enough. I don’t need to do the complete transition. These are the things that bother me the most so I will do that. So, I did that. I think in 2015, I went through both my surgeries. I did my mastectomy and I did my hysterectomy.”

Was it all done after the two surgeries? Was he transcended to that magic land that he thought he would? There is further, as he adds, “But again, when I did the surgeries, I realized I am not happy, that I am still depressed. So my mom said, what is it that you want? If you wanna do the whole thing, you have to. The thing is that, for me, it is not one decision that I made. That ok, I have to go through it. I always tried to feel how much I could push something and be fine with it. Like I thought if I did mastectomy and hysterectomy, I thought I would be fine with my life, I didn’t need to do anything because doing surgeries is a very difficult thing. It’s a lifelong commitment, doing hormones. Everyone thinks it’s very easy. One fine morning you get up and you think you want to become the opposite sex. It’s a lifelong commitment. I wanted to stay away from surgeries as much as possible. So, then I realised that this is not happening. Because as long as I do mastectomy and hysterectomy, people still see me as a girl. They know me as a woman, because all my IDs are as female. Once I went there, I realized I want to go through the whole process. Because once you start taking hormones, there is no turning back. You have to go through the whole identity thing. So, I wanted to change my name, my documents. Only once I came here, I started reading about NALSA. I started reading about the legalities of it. Up until then, I didn’t know anything about the system here, the laws.”

These are some of the various points that describe Vihaan’s gender-journey—as they came out of our interview. So, is the gender-journey over for Vihaan; of course not. At the time, when I interviewed him, he was going through the painful ordeal of legally getting his gender changed through a State Government’s Gazette Notification procedure; which though on paper looks as a very simple process—is actually a very tedious one indeed. Now, here, I document Vihaan’s gender-struggle with the Kerala State—the idea being, to theorise queer experiences vis-à-vis governmentality and legal-structure through Vihaan’s lived experiences.

So, while Vihaan was transitioning his body with surgical interventions, his Doctor suggested that he better start taking the male hormones. So, he did. As he narrates: “for me, two months into taking hormones and my voice
started changing. I started getting a beard, I shaved and stuff like that. So for me, the changes were quiet evident so I realized it is gonna be difficult for me, you know, going to the bank… because everywhere my IDs are female, I can’t travel… So, all that started becoming a little difficult for me. So, I thought, ok fine, I am going to start doing the whole legal change of my IDs. For that, I realized that I have to get the Gazette notification—Kerala Gazette.”

When Vihaan initiated SRS, he never realised that he would have to fight a year-long battle with different state departments/hospitals. In the process, he realised that he cannot book a Railway Ticket without having a valid ID Card? He also realised that, with his exiting ID cards (where he is assigned his birth-gender) he cannot apply for jobs (public/private); he cannot go to a bank and do a transaction with a female ID card and with beard on his face. While undergoing the process of legal-gender change, he realised that there is no all-in-one comprehensive law that would enable him to smoothly get his gender changed. In the process, he realised that the existing law has layers of multiple check-points—which is manned by the ignorant bureaucrats, whose de facto job is to misguide/discourage so that you never visit their office again feeling disgusted/humiliated. But, Vihaan was patient, he was ready to bounce back each time the colonial mindset of post-colonial state’s governmentality hit him with its conventional techniques of red-tapism—delaying, passing the buck, sitting on your file, or simply being ignorant to his pain.

Vihaan starts explaining me his initial experiences of facing the hazards of dealing with Kerala’s bureaucracy: “For getting a Kerala Gazette notification, first you need to submit the application. When I went to give the application at the Press office, they told me that in the application, there is not even a column to change your gender. There is name change, there is signature change, there is religion change, caste change—all that is there—but there is no gender change. That is not even a category. So, when I ask them for an application for this, there is no application itself! So that was the first problem. I said, but I need to change my gender as well. Then they told me that you take the name and signature change, because anyway I had to take my name and signature change, you just mention gender change on it. So, I had to write it down, that I have to change my gender. Then I asked them, what are the documents that you need? Because up until then, I had my documents, doctors saying that I have done all my surgeries—everything was there. So, he calls the Gazette person and they said no, you need a certificate from a government hospital saying that you have done these surgeries, from an urologist and a gynaecologist.”
Now, as per the NALSA judgment, an applicant for gender change doesn’t need to get its body/biology certified by anyone—be it a state/private Doctor, a magician, a psychiatrist, a priest, or a magistrate. But, they made Vihaan do that—and, not just once, but three times, at three different state-run hospitals, in addition to the multiple interrogative-meetings before a panel of Doctors from the state medical board—and, with each hospital’s multiple medical and non-medical staff. So, here goes Vihaan: “So, my mom told me that if they want the government hospital letter/certificate, since we have anyway done the surgeries why don’t we just go to the government hospital, explain to them and they will give the certificate. I went to a government hospital. That's when my whole experience started with people having absolutely no clue what this was. And you have to more than explain, you have to educate them. The thing is that you think you have come out to your family and friends and that's it. But you realise that you have to come out over and over again at least a 10-20 times every day when you go to these government offices. I went to the hospital and from the reception to the doctors, to the nurses—I had to keep telling my whole story. And you get weird questions because people have absolutely no knowledge about this. So, I spoke to them. But once I educated them, they were fine. I didn't face any kind of discrimination or any horrendous talk. But the gynaecologist obviously told me that no, you have to go through an ultrasound. So, I said that I have all my documents saying that I have done all my surgeries.”

Vihaan adds further: “So the gynaecologist told me that I had to go through an ultrasound to know that your internal organs and all that. So, I refused and said but I have all my documents. But she is like, it's by a private hospital, it's not a government hospital. So tomorrow if some problem happens, god-forbid some criminal activity happens... So, I was like, so you think that everyone is doing surgeries to do criminal activities? This is the mind-set of the doctors—that people who do SRS, they might do some criminal activity. This kind of stupidity you hear. So, she is like no, I am not saying that you will do it. So, I am like, then why say such a comment. So, she is like no, if tomorrow somebody comes and ask me on what basis without inspecting you give this letter I will get into a problem. I was like, I don't want to go through it because it was very humiliating when you have to walk through all pregnant women in an office, a male going and sitting there—this is just weird! So, my mum is like just leave it. If through this we get it, we will get it. See it as a last thing. Then I went, and I got it done. I got the ultrasound done and I got the certificate saying that no female internal organs or whatever. I showed the report to the doctor she said ok fine.”

After the Doctor at the first state hospital agreed to certify him; then, starts Vihaan’s tryst with the hospital’s bureaucracy, and, its inexperience of dealing such cases. As he adds to record: “But at this point, the government
hospital is not equipped to give such certificates. The Doctor told me that
they have never given certificates before; they don't have any template,
nothing. So, they are asking me, how should we give the certificate? At this
point, I go to the administrator office, give the application saying that I want
such a letter and they tell me that come after 3 days. I come after 3 days and
they are like the superintendent has not yet told us what to do with the letter.
I get very furious. I take the application and go to the doctors directly and tell
them that they are not doing anything about it. So, the doctors tell me that
they understand, they tell me that ok you do one thing. You go to the
administrative block, there is a surgeon's PA. You get her to type a certificate
and then we will sign it. So, there is no process at all. They have no template,
nothing. So, I myself go to the administrative block, sit with the PA, he sits
and types the letter in a format that I know, take a print out and then I go to
the surgeon. The surgeon signs it and gives it to me. They do same thing for
the gynaecologist because the gynaecologist does not have a PA or an
administrative office. So, I go to the surgeon's PA"

Vihaan did not know at this point of time that his ordeal just began and a
months-long battle was lying ahead of him now. After the state hospital
certified that he is fit for gender change, then started his tryst again with the
state's gazette department. As he says himself: "I had a template. Because a
lot of other trans people from other states have got it. So, I just followed the
same template, mentioned what the surgery was and that for social
purposes, this person can be considered as a male. So, this is what people
need to know. Then I got the certificates, gave it to the press office. They
accept my application, send it to the gazette. Once they send the application,
they said it takes two months for them to come back with a response whether
your this thing has passed or not. If you need any further documents they will
intimate you. So, for 2 months, I waited. After 2 months, I got a letter saying
that the certificates that you are submitted are not enough. You need a
certificate by the Medical Board Office. I said that I just gave you a
government hospital's certificate. They said no, but a medical board. I had no
cue what a medical board is. So, I went to Trivandrum where the Gazette is.
At that point only, I got Jijo (Dr. Jijo Kuriakose, a well-known Queer Activist
based in Kochi, Kerala) involved. So, both of us go there and we tell them
that why are you asking for a medical board certificate, I have already
given... This is not required but still I gave you a government medical
certificate. Then they show me a letter, a sample of a medical board
certificate in which there is a gynaecologist's sign, a urologist's sign. I noticed
this guy's name Aashique Koshi. So, at that point, we don't know who the
medical board is, how to put this, no process is set! That's when I realized
that there is no process set, that's why they are not telling us how to go about
it. They are just telling, get this letter and come. So, what I did, I took that
Vihaan’s interaction to the Kerala Government’s Gazette office exposed the ignorance of the bureaucrats about the Supreme Court’s directives in its NALSA judgment. Now, technically are the bureaucrats committing any omission on their part? Isn’t it the Kerala Government’s constitutional duty to have implemented the Supreme Court’s directives by this time when it’s been already three years past this verdict? In that state of legal vacuum, the bureaucrats in Kerala’s Gazette department directed Vihaan to follow what was previously followed in 2012 by the Kerala state in the case of Aashique Koshy (which were a set of executive acts followed post the Kerala High Court’s directives in the Aashique Koshy Case, which is a pre-NALSA judgment). In that case, the state government followed the “Biological Test” for gender-change determination and certification. The Supreme Court clearly through its verdict in NALSA case did away with the Biological Test and has made the applicant’s sense of self-identified gender as the sole parameter for gender-change certification. As Vihaan notes in the interview: “So I googled this guy’s name, thinking I might be able to contact him. When I googled, I came to know that this particular case is from 2011 where this guy, a transman, did all his surgeries in Bangkok. When he wanted to do a final set of his surgeries, he was stopped during the immigration at the airport, because obviously he looked different from his passport. His passport is female. They refused to let him go. So, at the Cochin Airport, they said, see if you are male and you are going, because obviously, you don’t look like a female. They told him, to change your passport, then only, we can let you go. Then he goes to the gazette, gives the application and they flatly refuse it saying, there is not even a law to change gender. So, you can’t get it. Then he goes to file a case at the high court and high court immediately rules in his favour. When he went to file a case with the high court, he produced this document to the court. It was not even a requirement from the Gazette. He produced this document to the court and the court ruled in his favour and that’s how this letter had reached

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216 See Supra note 8 at para 75-77 wherein, the Supreme Court states: “Article 21, as already indicated, protects one’s right of self-determination of the gender to which a person belongs. Determination of gender to which a person belongs is to be decided by the person concerned. In other words, gender identity is integral to the dignity of an individual and is at the core of "personal autonomy" and "self-determination"... As already indicated, we cannot accept the Corbett principle of "Biological Test", rather we prefer to follow the psyche of the person in determining sex and gender and prefer the "Psychological Test" instead of "Biological Test".”
the Gazette. So, it is not a process. They have just set the process themselves. So, since that court ruling, that letter has reached the gazette and obviously they got it done for this guy. They changed his gender. Since 2012, they have been sitting with this letter, whoever is coming for gender change they are saying you have to bring the same letter. I told them that that was in 2012. NALSA didn’t happen then.”

Of course, the government offices were not congenial, but, Vihaan’s experience shows that they were not even something close to cooperating or showing some basic empathy; they were rather spaces that were mostly discouraging, discriminatory, phobic and humiliating—a typical apathy of which government’s offices are well known. As Vihaan notes his experiences in the interview: “One thing that I would like to mention is that when we went to the gazette, the kind of aggression we felt from the officials there, either they didn’t give a shit, they didn’t even give us the time to explain things to them or want to listen to what we had to say. They just wanted to shoo us away like in any other government office. They were like, if you have a problem, go give a complaint. But we were like, you are the government office, where else do we go! They are telling us, go give a complaint to the government. Then they say, we haven’t got an order from the government under NALSA, so, therefore we can’t. It was just a standard response to shoo us away. Next, we went to the social justice department. Actually, before going to the gazette we had gone to the social justice department in Cochin because apart from the state, there is a district social justice department as well. So, we went there, and we met the manager there. We explained this to her and she tells us, actually she has been tasked to form the Transgender Social Justice Board in the district, but she doesn’t even know what to do about it. So that shows that the people who have been tasked to set up the transgender justice board, they are very unqualified. They don’t even have any knowledge. So, we were like, because you guys are not doing your job, we are suffering. We have not been getting our stuff done. So, she was like yeah, we have to convene with a lot of other officers and do something about it, but we haven’t got it yet because we don’t know what to do. I said, if you don’t know what to do, ask us, we will help you. She just took our numbers but till date, she has never called us. After that only, we went to the human rights office. So, then they told us to go to the gazette and see what they say. That’s when I went to the gazette and that’s when this whole episode happened.”

So, as per the directions of the Gazette office, Vihaan applied for a gender change certificate at the District Medical Board in Cochin. Now, he explains the state of apathy in the district Medical Office: “The medical board meeting was convened for March 29. So, I went on March 29. Up until then, none of us knew how the medical board meeting happens. We were called to this
nursing college auditorium. I go there. There are at least 200 physically challenged people in the audition, people with different conditions. I began wondering what am I doing here. So, my friend tells me that in this medical board meeting, physically challenged people come, under the government scheme. They can apply for getting a monthly pension which has been allotted to them. So, for them, in order to get that, they need a medical board certificate as well. Once they get that, they can apply for this pension scheme so that monthly they get a Thousand bucks. So, then I am like why am I here? I am a different category! I have come for gender change. So, like, there is just one medical board meeting--It is same for physically challenged and transgender people. There is no distinction there as well. As far as I know, I was the only one there who came for gender change requirement. Then the guy over there comes and gives me an application form and it's written—Physically Challenged Assessment Form. I said I am not physically challenged, I have come for gender change and I need a letter from the board of doctors. So, he looks at me and he says, 'you keep this' and goes away. Then we were waiting and because I came through the party influence, they called me immediately within just half an hour. I go, and he takes me to 2 doctors: a surgeon and an ENT guy. So, I go to the surgeon and tell him what my case is--that I need a gender change in order to get a gazette notification, so then only can I change my passport and all that. He didn't examine or anything, he just wanted to see my chest. So, he asked me, can you show me your chest? And this is in front of an auditorium where there are like 200 people. I said I can't open and show you now. I will just show you a picture. I had a picture on my phone, so I showed him the picture on my phone. And then he was like, 'oh this is a very lifelong commitment'. This, he is telling to another doctor--that it's a lifelong commitment, it's very expensive etc. So, he asked me how much did it cost and all that. Then he immediately took the physically challenged assessment form from my hand and started writing in that. At that moment, I am like shouldn't you be giving me a certificate, something on a plain letter at least, or on any other template. He's like, no this is enough. And he writes on that form that I have completed so and so surgeries as a female-to-male person, signs and then gives it to the ENT guy to sign on it. I was like, why is he giving it to the ENT guy?"

Now, with his freshly issued Gender-change certificate, Vihaan went to the Gazette Office, hoping that this time, his application for Gazette Notification would be accepted. To his surprise, the inhuman bureaucracy hits back again. As Vihaan puts forth: “With this letter, we went to the Gazette and we said this is what they (the medical examination board) gave us but this is not the same letter of the sample that they (the gazette) gave us. This is a physically challenged assessment, not the thing that he demanded. He said this is not the same letter, so we said this is what the medical board people gave us. What you are showing us is from 2012, now it is 2017. This is what
they give us. So, then they are trying to find fault with it. Immediately he is looking at it and says there is no DMO’s (District Medical Officer’s) sign here. If DMO’s sign seal is not here, how can we accept it without it? So, we took it and then again went to the District Medical Office. When we went there—the officer is a guy who has a little sense at least—he takes it and he says this is a physically challenged assessment form, who wrote and gave it to you? You should be getting a certificate. I said this is what I have been telling everybody. Then why did you guys put me through the whole ordeal of going and sitting around… He’s telling me, we should be giving you the certificate from here itself. You didn't even have to go anywhere. So, there is no process set. No one knows anything. Someone tells you to go here someone tells you to go there. It is the same thing.”

Vihaan was soon directed to get a fresh medical certificate of gender-change from a new Government Hospital in the Trivandrum District, as it seems that his case was transferred to the Trivandrum’s DMO without seeking his permission. As Vihaan narrates another repetition of the same hospital saga: “Now, this was Trivandrum. So, I went to that particular doctor. We went to the gynaecologist’s office. There are like 10 gynaecologists sitting there. I am explaining to her and she is asking me all weird questions. Obviously, all these doctors are looking at me like I am some weird specimen, some alien sitting there. I explain to her what it is like to have a gender identity problem and what transsexual or transgender human is. What I tell her and what she understood—I am just telling you the difference—she looks at another doctor who was asking her what is the requirement; what had happened. So, she tells her, this person was born female and wants to become a male. I said that’s not what I told you. It’s not like one day you wake up and try to or want to become a male. That’s not how easy it is. I just explained the whole thing. Your brain and your body have to be in an alignment, for some people it isn't. That's why you go through a surgery to align it. So that's how even doctors perceive it! Then she tells me that you have to go through an ultrasound. I said I have already done that task and I have my doctor’s reports. I already have a certificate from a government hospital. She said no, I have to see it, only then I can proceed. I said how many ultrasounds will you make me go through. It’s the whole same thing—ordeal of humiliation, taking me again through a ward full of pregnant women, all the para-medical staff gazing me like an alien, etc. She is like, no-no don't worry. I said OK, I will do it but don't treat me like a lab rat, at least sensitize your staff. So then, she was at least thoughtful enough. She came with me and she made me stand outside while she went inside and explained to everyone. Only after 5 minutes, she called me inside. By then, everyone is looking at me like, I don't know how do you say it... because she already explained to them, so you start looking at someone like a rare specimen coming in. Then they did the ultrasound and immediately gave me the report. Then, I tell her I need a certificate from you.
This hospital just like the other hospitals did not have a template, did not have an administration office where they can at least type and give it to me. She tells me to go to a café, type out the certificate, bring it and then she will sign it. So, I asked her don't you have a proper administration process for this? You are a hospital, don't you have a letterhead? She said, no, we don't have a letterhead, we don't have a template. You type and bring the certificate on a plain paper. So, the café is like 15 minutes from the hospital and she is planning to leave at that moment. So, both of us run. We run and go to the café. I type the certificate, the same template like I did earlier, get the certificate and run back. If I was late by 1 minute, she would have left. She was walking out. When we went back, she signed it and gave it.”

Laced with another freshly issued Government Hospital Gender-change certificate Vihaan moves to the Trivandrum DMO, where the Doctors don’t even look at his gender-change certificate, and gave him a certificate of Gender-change in the same old template (which is meant to certify the physically-challenged people). Anyway, with that Vihaan went to the Gazette Office once again. This time, he directly meets a superior officer. Another round of surprise! He was again verbally asked to go to another Government Hospital and was referred to another particular Gynaecologist. The patient Vihaan even went through this third round of medical humiliation. As he narrates: “I go to this doctor and he’s like what should I do, (sounding troubled) he is panicking! I said, you need to look at my reports. This guy has sent me here, I have done such and such surgeries. Once you give me your letter, I will go to the District Medical Office, the chairman will issue me a certificate, and with that, I can go to the gazette, get my notification and change my passport. I explained in very simple terms. He is still panicking, then he asks me to again go through an examination. I am like, what do you want to examine? I said I have done these surgeries and he is like wait…I was going to remove my t-shirt to show him my chest. So, he is like no, wait, let me call the nurse and he goes. At this point, there is no privacy. It’s like in a ward where I see 5-6 nurses coming, there is a sweeper walking by and all of them are standing there as if to see some show. I am like, what is this! You won't give anyone privacy? What? Some show is happening here, I asked. So, the doctor just went and sent everyone off. But he says I will have to make one nurse stand here so that tomorrow you shouldn't complain that I molested you. I am like, what the hell is he talking about? Is this how doctors talk? Then, I took my T-shirt off and I say, you see my chest--this is mastectomy. I showed him my laparoscopy marks, then I said that I don’t have any internal organs and you have the reports for that. Initially itself, I had told him that I have 1 more surgery to do, which I have to go abroad to do, which is the Phalloplasty. That’s why I want to change my passport. So, he asks me, what is Phalloplasty? This is the guy, the doctor who does not even know what Phalloplasty is! So then, I explained to him and then only I
should have my marks and all that. Then he is putting his gloves on. I am like, why are you putting your gloves? He is like, I just need to check. I said, I just told you that I haven't yet done the Phalloplasty, then what do you want to check? He is like, but I was told to examine (panic). I said, my dear doctor, if you just see my reports and give me a letter, you don't need to write that you have examined me. This, I tried to push. So, then he's like, ok-ok, but how will I write it for you? Do you have any format? Again, another hospital that has no template, no letterhead, nothing! So immediately, I show him previous template that I did. I told him, you just write it to me in this template. He takes it to his administrative office—there is no one who can do this. The doctor himself goes to an administration office, sits on a computer, takes half an hour to type this whole thing out and finally comes and gives it to me. By then, I had just lost it—the way this guy was talking to us. So, I was trying to educate him, telling him that you don't even have to go through this

Finally, laced with his third certificate from a Government Doctor in the last four months, Vihaan got himself his third certificate from the District Medical Board as well—all the quintessential perquisites needed by the unwritten law on getting one's gender-change a public notice through the Kerala Gazette. With all the ordeal of the last almost-one year, Vihaan was asked to pay Rupees Fifteen hundred as a fee (of which he was at least paid a receipt) to the Gazette Office. He currently is waiting for the Kerala Government to notify his gender change, so that he can apply to the other Government Departments (both Central and State) for his name and gender change in all his Identity Proof Documents (such as the Election Card, Driving Licence, etc.) and his Educational Certificates.

So, if we try to calculate Vihaan’s pain in terms of the material and immaterial loses that he has incurred/experienced in the last one year as a part of his gender-journey—something like this comes out (to speak the least)—Vihaan has been losing upon: (1) living under all sorts of legal vulnerabilities without an Identity Document in a liberal citizen-ised structure (e.g., loosing on his share of civic benefits as an identity-less citizen); (2) losing on a good job that he deserves to have got by now; (3) loosing on availing his rightful share of public services—like freedom of doing monetary transactions through banks or with online gateways, freedom of movement in public transport like the railways; (4) of course, losing his money that he has saved from his last job in running from pillar to post and on his living; (5) loosing on opportunities to go abroad—for an employment, or getting his Phalloplasty done, or on his personal fancies, and (6) most incalculable of all, living a life under constant mental harassment, anxiety and humiliation that he has been facing because of the stupid bureaucracy and political indifference of the state. As he himself puts his feelings in the interview: “this Gazette Notification is important for me because once I have it, only then I can apply for getting my name and gender
changed in my Educational Certificates, I can travel in railways only when I have an ID Card, and, only once I get all my essential IDs, I can start looking for jobs, as everywhere you are asked to produce your ID or educational certificates. Even if I have to go abroad, you have to attest your degree certificates from the Indian Embassy. So, I need to get that done. I can't attest the old one. My old one is already attested. On the basis of that only I had my job in Dubai. But if I have to do it again, it can't be my old name. So, all that I have to change if I have to go back abroad. The mental damage is the most. So, the thing is that I was very mentally prepared that I would never submit to bribery. I wouldn't pay anyone to get my certificate. That's something that I had a very ethical thing to do because I am not doing anything wrong. I am doing what is my right. I am fighting for it. I'm not going to bribe anyone into getting it. I didn't submit to bribery anywhere but going through these hospitals, having to do ultrasounds at 3 places was very humiliating. And, then apart from the travelling to Trivandrum and back so many times, I think close to 10,000. My mom was very... she was just helpless. She was sad seeing what I was going through mentally and the fact that she is helpless and she can't do anything to help me apart from just sitting and praying for me and telling me giving me emotional support telling me that it will work out. She was as frustrated as I was, seeing what I was going through emotionally and being mentally harassed everywhere I went. When I tell her, she feels bad because she was helpless that she couldn't do anything to help me. I have not been able to access my bank account. (In addition) For me, it has only been my ATM card that I have been using. I have not been able to do online transaction because mine is an NRI account. So, my phone number is my Dubai number and that has expired now. You get an OTP (One Time Password) when you do an online transaction—I don't get that number because my phone number has expired. I can't change it. But what I have understood now is that there is no process set with the Kerala government and it is just a bunch of transphobic, egoistic people sitting in positions and just telling whatever they feel like. And people who want to get it done should either bribe them.”

Just like Vihaan, for Jaya also, the gender-journey started with humiliation, ridicule, harassment both in private and public domains—just the main difference between them is in terms of class, education, location, and sex/gender. Unlike Vihaan, Jaya (assigned as gendered male at birth) was born in a very ordinary middle-class semi-urban household. As she says, she was effeminate in her mannerisms and behaviour from her childhood, which made her family a space of constant violence, tensions, and resistance from the very beginning. She said, “Since, my parents or my brothers were never sufficiently educated on gender issues initially, hence, they lacked the maturity to understand me as a person. As generally is the case in our society, being effeminate for a boy is never accepted or even tolerated, my
family was not an exception. They thought, they could change me or make me normal by battering me or by shaming me.”

I requested her to narrate some of her worst experiences of violence in the family; at which, she said, “the worst happened before I left my family in 2005. As I started wearing Sarree or Salvar in public, my family members, especially two of my elder brothers, probably because of embarrassment or out of the hope of reforming me, I don’t know; they used to whip me on a daily basis. The violence was increasing with the passing of each day when my colleagues, and friends at MANAS Bangla or in-general the community advised me to leave home.”

A heteronormative structure pervades through our workspaces as well; as the society in which we live is by and large heteronormative in its foundation, operation and impact. When Jaya started teaching with a local school, she was often humiliated on the pretext of her gender. She was effeminate and had long hair at that time. This prompted some parents and teachers to humiliate her in a faculty meeting and said, “mashtarmoshai hoye erakum lomba chul rakh le baccha ra ki shikhbe” (being a male-teacher if you keep such long hair then, what will the students learn from you). She said, this kind of cultural policing at that school led her to voluntarily leave that job and look for some other occupation. Was Jaya wearing her gender while she was teaching with that school? She used to wear men’s clothes until that point of time. Then, what provoked the parents and fellow colleagues: was it her long hair? Long enough to dislodge the loathing and anger of the parents/colleagues? Long enough to surpass the gendered parameters set for a male salaried teacher? The question is whose standards these are; and, why should the likes of Jaya pay for somebody else’s set standards? If Jaya was female; did she have to face the same tribulations? Oh no, the standards set for the hair-length of male and female teachers are different. So, what has hair-length got to do with Jaya’s abilities of discharging her duties as a teacher? Do the school’s expectations change with the change in the gender of the teacher? I think, these are the questions we need to ponder upon while we discuss the future of us as a democratic society, or as a constitutional enterprise.

That was 2005, when Jaya left that job giving up to the daily humiliation and bullying; and, it is 2017 as Maya is pondering upon leaving her job—reason, just the same. Maya feels outraged, sometimes disgusted and mostly isolated to work at a space, wherein most of her colleagues have stopped talking to her. Maya (assigned gender female) identifies mostly as a man; she comes from a middle-class Malayali family and works with a Cinema Theatre in Trissur as an outlet manager. She is a contractual employee; and, her job description demands that she ensures a smooth management at the
Cinema House’s Sales Counters. Naturally, she has to work in closed coordination in teams both below and above her in that hierarchised corporate space. Maya says, there are typical gendered demands of her office, of course, they were mostly unspoken, undisclosed and never written as a part of the work-contract to which she and her employer are bound. As she puts on record: “it is quite often, that I face exclusion from my colleagues. Nobody tells me directly on my face that, but, it is so apparent from their behaviour that my openness with sexuality or my relationship with a girl is a problem for them. And, this is one of the main reasons, why I sometimes feel like leaving Trissur and moving to Bangalore.”

According to Maya, her employer demands a female worker to behave typically as a female—in terms of dressing, body-language, and mannerisms. As I write this thesis, she is currently planning to relocate herself with her partner Shruthi to Bangalore, a city that is relatively big enough to offer her better and more job prospects (at least, that is what she tells me, that she thinks). It looks as if Maya’s hopes of living a better life are so much conditional on her migration to a bigger city. As Maya herself puts on record about what she looks up to (in the form of her relocation to Bangalore): “I have heard from my friends in the community that offices in Bangalore are more open on these issues. Well, I hope that at least, they will not treat a girl as a typical feminine employee.” How appropriate are Maya’s forecast about Bangalore’s SOGI inclusive workspaces; well, that’s for Maya to experience and share with us (if she happens to migrate to Bangalore someday). But, for now, her gender-journey certainly demands that she relocates herself to a bigger city, otherwise she may end up losing her and her mother’s daily bread and butter.

Jaya refers Aparna Di as Maa (mother, in Bangla). Aparna Di became the main caregiver for Jaya when her own biological family deserted her; she perhaps needed it the most, at that point of time in her life. Aparna Di’s relation with Jaya is widely acknowledged as a mother-daughter relation in the close knits of the Bengali queer circles. Aparna Di is born in an ordinary middle-class Bengali household of North Kolkata. Perhaps, Aparna Di’s assuming all the responsibilities for Jaya’s care-giving may have originated from her own personal experiences vis-à-vis violence in her biological-family (and community at large) because of her gender. She said, “my elder brother, my parents had all gotten used to seeing me cross-dress like that, so I think that could be the reason why they never reacted adversely.” So, you are saying that you were never disciplined or punished by your family for cross-dressing or behaving effeminate, asked the interviewer. She, said, “they were all quite used to seeing me behaving like that right from my early childhood, so that could be a reason why there was not much resistance. Maybe they had given up too early on their youngest kid. But because there is a lot of
general policing on what kind of clothes females should be wearing and what not. I remember, I was once whipped by my father when he saw me wearing my mother’s panties and from then onwards my little brain understood the fact that I can wear my mother’s clothes but not all her clothes. It is not that I stopped wearing her panties in future, I still used to but, I became a bit secretive about them." She says, “my parents had very rarely disciplined me for behaving effeminate, their methods of discipline ranged generally from verbal proscriptions to occasional whipping.”

Aparna Di further explains her experiences of gender vis-à-vis the larger community of her neighbourhood, her early-life experiences in being in relationship with patriarchal men. She narrates her moments of dealing with a subtle-ignorance of her gender, to the moments of understanding her body-psyche through the lenses of gender. She says, during her schooldays, she was not aware of what does gender and sexuality mean for her. She said, she was not also aware of the senses in which she understands them today but “I was very active sexually in my neighbourhood and gender-wise I was always a non-conformist”. She narrates the story of her first relationship with a young man when she was in the seventh-grade. She says, “The boy I was in love with at that time was 9 years older than me. I thought we used to really love each other. We had a very good emotional and erotic bonding. During that entire period of five or six years, I was in relationship with him. He used to make me feel like a girl and I was also contained of myself feeling like that. I never realised that gender could be so fluid. My boyfriend had very patriarchal set of notions, he used to pretend being monogamous and used to expect the same from me. It is now when I look back, I realise that how much he made me feel guilty for engaging in any erotic or emotional bonding with other boys at that time. I think it is because of his patriarchal tendencies I started believing all that what he pretended to practice is the norm and I was guilty of not following that.”

She says, “Otherwise I was an effeminate kid, right from the beginning but I had no clue at that time that I was born in the wrong sex.” She says, from the 10th standard and beyond she started reading more about non-confirming sexual and gender behaviours and that is when she started understanding herself better than before. She said, “during this time at the final years at school, I knew I was gay but never thought I would have to rebel against the family and eventually have to move out of home to buy my freedom. But yeah, once I did, I made it to here and I am very happy, I took that decision.”

Some of the later acts of self-affirmation of her sexuality were when she was doing her under-graduation and she came in touch with the then Counsel Club, the first organised LGBT support group in Kolkata. She says, she was one of the most vocal ones amongst the lot. She walked at the ’4th Kolkata
Pride March’ in 2002. She narrated a very traumatic experience, while she was at college. “I was 18 and was crossing the deserted Maidan in Central Kolkata late at night, some guys started following me. Before I could do anything, some of them caught hold of me and that night, I was raped by their whole gang. I cried for help, but there was nobody available in the vicinity,” she said. She further adds, “The first thing I did, after they left, was to go to the nearest government hospital for help. There, the nurses instead of helping me out made fun of me and my condition. Nobody was ready to believe me, that a boy could be raped. Later, on the next day I tried to register a case with the police, but there was again no help from them,” she said. When she was narrating this incident, she bore a unique calmness on her face, after she finished, she took a long sigh and said, “nothing has changed from the year 1999 when I was raped. The Government had an opportunity through the recommendations of the Justice Verma Committee on Reforms in Criminal Law, 2013 to make rape a gender-neutral offence. But they lost that chance.”

To my understanding, this narrative of institutional violence against a gender non-conforming person, raise some pertinent questions. Why was she raped by a gang of men at the deserted Maidan, in the late hours at night? Was she in a position to avert that scornful fate on that night, had she fitted herself well within the imagery of a normal non-effeminate boy, or if she was wise enough (in the opinion of many) to have never been there at that space during such timings? Was it her effeminateness that attracted the violating-attention of those men, or is it that Aparna Di invited the attention of those men by walking alone at Maidan post-midnight? Was it young Aparna Di’s lesson to never have walked alone at the deserted Maidan (or any such deserted place for that matter during such hours)? Did these men rape her just to satisfy their lust or did they implicitly convey all gender-nonconforming people to fall in line? What message did these men pass on to us when we hear the story of their act from Aparna Di? Can we ever contact these men to hear their side of the story? What exactly made them thrust themselves on her? As a reader, you may wish, but the Police never reported this incident when Aparna Di approached them next day?

After all that frantic madness displayed by those rapists, when young Aparna Di lurked herself walking under that pain and trauma with the hope that she would be treated with some reasonable care and medical attention at a state-run hospital: why did the medical staff make fun of her condition? Why she was not provided with the appropriate medical aid which she needed the most at that point in time? She said, nobody was ready to believe that a boy could be raped, and her narrative appeared funny to many in the hospital. Why was she turned away by the Police and no official case was registered? What if she was powerful enough to have had money, bureaucratic or
political connections, would then, the Police have registered a case? Who could be these men who raped her? Did the ineffective approach of the Police to lodge an official investigation in the matter further strengthen the will of these rapists? Would they have raped other people as well, before or after what they did with Aparna Di? We do not know? For we will never know, as nothing was recorded; these men were never brought to justice.

In the year 2002, when she was in the final year of her graduation, she had to leave home forever. The reason was that her parents were experiencing constant humiliation in the hands of her biological relatives because of her sexuality. She, said, “I walked on my first rainbow pride which was an annual event of the Kolkata’s small LGBT community back then. The participation in these community events used to be handful during those days. I remember, I was one of the core members organising the campaign and therefore my role in the entire pride walk was very visible and prominent. Many news channels, and newspapers reported the Kolkata Pride, and my photographs participating there, holding banners, shouting slogans was well captured in the media. My parents were embarrassed seeing me like that in the television. Though, internally I knew they supported me or at least accepted me for who I was but those were the days, my brother got newly wedded and there was huge pressure from the family of my sister-in-law. Her parents barged into our house one evening and badly humiliated my parents and brother. Obviously, I felt bad, because they were being humiliated in front of me and it was all happening because of me. I decided to leave home back then, owing to such circumstances and never returned back thereafter.”

She says, after the time she had left home, she never spoke to her parents or ever went back home. She said, “After my parents died, there was a dispute I had with my brother for the distribution of the family property. It is not that I wanted the family property, but I wanted to teach my brother a lesson. So, I fought for my rights and finally, my brother had to agree for an equal distribution of the entire property.”

With respect to the educational institutions, she had a lot more negative experiences to narrate. At her school, she says, she has met utter bullying by the other boys of her class, as it was an all-boy’s school. As she was always a good student, she secured a seat at one of the Kolkata’s finest colleges but her experiences over there were even horrible. She says, “I was more open and affirmative of my sexuality and gender at college and because I was already acknowledging and owning my conduct, I had to face a greater violence at college. The faculty especially never came to my help.” All this bullying finally made her leave her higher-education mid-way as she decided to drop out of University.
Aparna Di has been courageous enough to have opened up her gender and sexual affirmations publicly when she was at the college. Though, she used to still dress up in men’s clothing, she started putting some occasional female make-up over her face, lips and body which earned her quite a good visibility, she says. She continues, “until 2007, the time when I joined the Hijras in Bengal, I used to generally dress-up in men’s cloths, especially when I used to work for others.” For her, as she says, “even today dressing-up is not a problem for me, I was always comfortable in men’s cloths as I am comfortable in a Sarree. Why I wear Sarree now, (more often than before) is because I see a sense of respect that people give you when a woman is attired in Sarree. These are my reasons for wearing Sarree.”

Her gender could be said to have had on her life a mix of both some positive and some negative experiences. Before entering the Hijra cult, she had to face utter ostracism in her family, at her school and college and at public spaces. But it is later, when she entered the Hijra cult, the levels of violence reduced in forms and magnitude. Having said that, she also mentions during our interactions that, she had to face other forms of politics within the Hijra circles—mainly, based on hierarchical positionalities within her gharana. Of course, the otherintersectional grounds have had a constructive role in this entire process of change. Her strong educational base has helped her develop a profound understanding of the community and her leadership skills have gradually given her a commanding position in public life. She is the founding managing trustee of the Amite Trust and employs 15 co-workers and many volunteers under her guidance. She is a prominent leader of the Hijra community in Bengal and is one of their representatives at the newly constituted West Bengal Transgender Development Board by the State Government.

Next, I would discuss Sam’s narratives and my experiences of interacting/interviewing him between August, 2016 to April, 2017. Sam comes from a middle-class family, based in a small village called Sholop in Howrah district of West Bengal, and currently works at the Amitie Trust, Serampore, West Bengal; and, also happens to be Aparna Di’s partner. He is assigned female sex at birth. He identifies himself as a transman. As he says, “What I understand about myself is that my body and mind are completely different from each other. I think of myself as a masculine man, only my body is that of a female’s. I like driving cars, I like playing cricket. This has always been my wish. When my elder brother used to shave in my childhood I would sometimes take his things and try to shave on myself secretly. I didn’t have any hair growth. My brother would wear a vest; I too

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wanted to wear a vest inside. I would secretly do things which my brother used to do."

He has his own political reasons for not going for SRS, as he says: “However, I would say that this doesn't mean that I have ever felt that I would like to make any changes in my body, or that I would want to go for SRS. The reason behind that is, when I got together with Aparna I realised that when the struggle is all about this, if I do an SRS I again get into a male body. In that case I lose in my own struggle. It is not that I don’t support those who are going for SRS. I definitely support them. However, when I declare myself to be a transgender why should I change my body? Yes, if today my mind would have desperately felt that it is not being able to synchronise with the body, if the need to change would have been so fierce, then I would have definitely changed.”

He says, “When I was in class sixth, I was trying to figure out a few things about my identity and I realised that I was not like the other regular girls around me. This is all that I could realise when I was in class sixth. There was a big dilemma in my mind regarding this and I did not know who to talk to about this, whether I should tell my mother, or my elder sister. I could not talk about this at all and, I used to feel that I was the only one in the world who felt this way, maybe there was no one else. Slowly when I started growing up, there were bodily, physical changes that usually strike a girl of that age. I used to ask my mother about the changes that I saw in me. All through my years of growing up I had looked up to my elder brother. In my family I have my parents, elder brother and sister, and I am the youngest among them. It has been four years that my father has passed away. Both my elder siblings are married now. I live in the house with my mother and my elder brother.” He said, “When I was in class 9 these bodily changes started happening to me and I was still so ignorant about them, and so was my family. I belong to a small town.”

He narrates his stories of violence at school: “When I started menstruating and my breasts had started developing I used to ask a lot of questions to my mother. I asked her why these changes are happening in my body, when none of these happen to my elder brother. I was in class 9 then, studying in school, even then I was so ignorant. I did not know that these were the main areas of difference between girls and boys. Since, my childhood I was always made to wear boys’ clothes. All through my years of growing up I had looked up to my elder brother. I have heard that since I was born, this is how I was dressed. Both my parents preferred me to dress this way. I had got completely used to dressing like this. When I first joined school, there were separate uniforms for boys and girls. My mother was called one day when I was in preparatory and she was told that I had to be sent in the girls’ uniform,
otherwise I would be dropped out from school. This kind of a situation was created. After that I was informed at home that I had to wear the girls’ uniform. I could not understand much then but I still insisted that I not wear it, and continue to wear what I used to. Since, I was very young, this issue was considered in school and I was allowed to wear what I wanted. I was adamant that I would not wear girls’ uniforms. However, in class 9-10 I was forced to wear sari as the uniform. At home, my family explained to me that education was most important and these were not real issues. I don’t know whether they used to understand me or not, but this was the explanation that was given to me, that I did not really have a choice but to wear it. I too thought about it and realised that for me studies were very important, so somehow ignored the issue regarding the uniform and struggled as much as possible. It was a very critical situation.”

Sam further adds, “I want that whatever experiences I have gone through, people with such experiences at least get the space where they can come and express. If I would have ever known that such an organisation exists, if I would have got their phone number from somewhere, even if I could not tell people in my family, at least I could have come here after contacting them and found out that I was not the only one who felt this way, but there are so many like me. I would have realised that I was not sick, in that case why was taken to a psychiatrist? Now, I fight for the one cause that at least someone else’s life does not get hampered like mine did. I want to reach that level of struggle. This is why whenever we have sensitization programmes in schools or colleges I go myself and tell them that this is what had happened to me. I tell them that no one has to disclose one’s self at that moment but I give them my phone number and ask them to contact me whenever anyone wants. I have seen that many people have come up, we have got in touch over Facebook. Even if I do it for ten people, at least those ten lives have had a positive change. At least they would know that there are others like them.”

When Simon de Beauvoir says, that “one is not born, but rather becomes a woman”; Salih and Butler suggest that for Beauvoir gender is an incessant project, a daily act of reconstruction and interpretation, and this draws upon Sartre’s doctrine of “prerreflective choice”. Prerreflective choice is a tacit and spontaneous act which Sartre terms “quasi-knowledge”. Not wholly conscious, but nevertheless accessible to consciousness, it is the kind of choice we make and only later realise that we have made. Beauvoir and Butler seem to rely on this partly volitional and partly involuntary act, and through which gender is assumed.

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218 Supra note 186 at 26.
219 Id.
For Ratish’s sexual and gender preferences, he says, he was always very certain write from his childhood. He says, from the time he could remember, he always knew he wanted to dress up like other women in his locality; he also acknowledges that he was quite effeminate write from his schooldays and that was one of the reasons for him to be bullied at school. He says that, constant efforts on the part of his family to discipline his effeminateness and sanctioning him with physical violence and other psychological abuse, coupled with the bullying from his classmates has made him to believe that he must behave masculine as he is born as a male, whenever he is in a hetero-normative environment. Therefore, he plays two types of gender roles from at least the last ten years. He often goes for sex work at night on the streets of Kochi, wherein, he prefers to cross-dress. He changes his name from Ratish to Saya for his clients. When he returns to his regular work, he mostly changes back to the attire of a male but prefers to behave effeminate. When he goes back to his village to visit his family, wife and son, he prefers to behave more as a cis-gendered male. He acknowledges during the interview that he is compelled to live a dual-life, his role changes with the change in his surroundings and circumstances.

2.2.1. The Circular ruins of the Gender Binary: Can one choose to be genderless or, can one re-locate oneself outside Gender?

If gender acts through a pre-reflective sense of unambiguous social sanctions then it is oppressive, as it does not provide the body the option of opting out of gender. As Salih and Butler observe, “oppression is not a self-contained system that either confronts individuals as a theoretical object or generates them as its cultural pawns. It is a dialectical force that requires individual participation on a large scale in order to maintain its malignant life.” It appears from Beauvoir’s writings that gender norms can be constraining to the extent that it works on to subdue (overpower) gender freedom. The social constraints upon gender compliance and deviation are so great that most people feel deeply wounded if they are told that they exercise their manhood or womanhood improperly. In so far as social existence requires an unambiguous gender affinity, it is not possible to exist in a socially meaningful sense outside the established gender norms. The act of venturing outside the domains of gender creates a sense of dislocation in one’s already established seat of acceptability. Hence, in order to continue to remain socially existing one must remain within the confines of one’s gender

\(^{220}\) Based on my reading of Sarte, Beauvoir and Butler. See my analysis in sub-sections 2.1.1 to 2.1.3 of this Chapter.

\(^{221}\) Supra note 186 at 26.

\(^{222}\) Id.

\(^{223}\) Id.
that one has become. The dislocation from the seat of one’s gender is confronted with constraints of social sanctions.

How law can be helpful to counter these social sanctions and to enable the individual/group to exercise autonomy of choosing one’s gender? The juridical interventions created by the Supreme Court of India in the NALSA Case provide a fresh opportunity for individuals to leave one’s gender and appropriate and affirm one’s claim over the gender of one’s choice. So, if I am gendered female at birth, I could still legally choose the gender of my choice. Such juridical interventions undoubtedly empower an individual and reassures it to exercise its right to choose the gender as it pleases and to redo and undo it as many times as it pleases, again and again. If this is empowerment, then it entails a circular movement of the individual from one gender to another one. This way, one is never out of the circular ruins of the gender scheme (Binary/ternary or a multinary). So, is there a legal right to remain without a gender identity? As Salih and Butler put it, becoming a gender is an impulsive, yet a mindful process of interpreting a cultural reality laden with sanctions, taboos and prescriptions. The questions are—How is un-gendering possible? What are the ways to un-gendering? What is the new location of the ungendered body?

Most of the participants have preferred to stay gendered, except a very few of them. As the Supreme Court has ordered, that there can be three legal genders now—the male, female and the third gender; very similarly, most of the participants have placed themselves in any of these three domains. Amongst the few outsiders, Aparna Di has categorically said during her interview, that she doesn’t want herself to be referred as female as she doesn’t want to enter into another sexual category (now that of the female) after coming out of the male category (with immense struggle). Aparna Di is born as male; the name Arpan Bannerjee was given by her father. It was in the year 2007 she got herself castrated traditionally (in a traditional ceremony called Chivrana practiced amongst the Hijras) which in most of the cases, is a precondition before entering the order of the Hijra cult. So, what is the ontological location of the likes of Aparna Di in the gender’s map (of discrimination/violence)? Jassi, a staff from Amitie Trust, Serampore (in a different meeting) holds that: “gender is one of the visible most forms of one’s body, and often, it acquires a key-characteristic with which a common person on the street identifies you with.” He further adds, “for a moment, your sexual

224 Remember that the Supreme Court without mincing words declares that: "We, therefore, declare... (2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender." See Para 129, NALSA v. Union of India, MANU/SC/0309/2014.

225 Supra note 186 at 26.
orientation will not be visible to others; but, because of your dressing, your body-language, or simply because of you having a particular body, you are most likely to be identified with a certain gender”. Ri Di breaks it further with an illustration, when she narrates her own experiences as a PAGFB travelling in public transport on a daily basis—“dekh, jotoi toke chele-chele dekhte hok, kantu, jei shobshe prothome tor breasts gulo loke der chokhe pode, ebong tokhon tara bujhe jaye je tui ek jon mey manush” (see, how much so ever, you look like a man, the first thing that people notice are your breasts, and, that is enough for them to identify you with the female gender). Now, when one looks like a man or a woman, the discrimination may not be that much, but, if someone looks neither, then, the chances of discrimination are the highest. As Anis Da, in one of his conversations with me, points out that, “it is sometimes very difficult for trans persons to pass through public spaces, as the first thing that is visible is the body hair (in the case of PAGMBs) or the breasts (in the case of the PAGFBs), then, comes other identifying features like one’s dressing, or body language, etc.” So, howsoever, a transperson tries to pass, it is quite possible (at public spaces, especially) that people identify you with the binary markers of male/female. Though, Aparna Di says, she doesn’t want to tick any of the gender-boxes, for herself; she is also aware that mostly at public spaces, she is identified as a cis-woman. As when I asked her about experiences of living at her neighbourhood at Rishra (a semi-urban locale), she replied with a smile, “most of the people in my locality think that, I am some kind of a government official, and they all address me with respect as I look completely as a woman, and, I have never resented to it.” So, can a person not identify to any of the available-gender identities? Now, what to do if moreover all the essential state benefits/services are linked to whether one has a valid “Identity Card”? How a person cannot not afford to identify as either of the available-gender identities? As Wendy Brown points out, that these liberal rights tempt us, and in the process, we get ensnared in the terms of their domination and politics. She invokes Spivak to make her point—“(how we) cannot not want rights”226—which in turn become the reason for our own domination.227

227 Now, the one who doesn’t want to identify with any of the gender identities is nothing but a ‘subordinated person’ in the liberal socio-legal hierarchy. How long this “subordinated person” cannot not enjoy the benefits of the legal rights? After all, all that person has to do is to identify as any one out of the gender-categories of representation. Wendy Brown captures the almost inevitable story of a ‘subordinated person’ becoming the now ‘sovereign individual’. Brown deconstructs this assimilative tendency of the subordinated-subject with the temptation (liberalism’s snare) of passing as the now “sovereign individual”. The peril of this liberal snare is that, now such ‘sovereign individual’ has to wear the naturalised identity, as is decided by the liberal state (in the name of humanism), just to realise that such humanism routinely conceals its gendered, racial, and sexualised self. *Supra* note 14 at 430.
2.3. The Category of Intersex as a Threat to the Institution of Family

If one is born as a male or a female, what is the evidence to that? First, there is the common method of inspecting genitals, which generally occurs immediately after one is born. A new-born is usually pronounced a boy or girl based on the appearance of their genitals.228 Second, a chromosomal test could be performed, as had been done with female Olympic athletes in the late 1900s, to determine whether the individual is XX or XY.229 Third, one could check gonads: are there ovaries or testes?230 And finally, one could test the proportions of so-called sex hormones such as androgen, estrogen, and progestogen, to see whether the hormone profile is a typical female or male profile. The prevailing assumption in society, among ordinary people and medical experts, is that in 'normal' people, all of these correspond. That is, a person who is XX has a vagina and ovaries and has a higher ratio of estrogen and progestogen to androgen; she is female. A person who is XY has a penis and testes and has a higher proportion of androgen to estrogen and progestogen; he is male.231

When a person is born with intersex variation232 it is not clear whether the person should be regarded as a male or a female. Dr. Minu Bajpai of the Department of Paediatric Surgery, All India Institute of Medical Sciences, New Delhi writes:

“Disorders of Sex Development (DSD) have been previously known as Intersex disorders. There are misunderstandings attached with these conditions, mostly because of ignorance. These conditions are caused by genetic and endocrine imbalances in foetal life and children are born with genital appearances which do not conform to clearly male or female genital appearances. The infant may be often rejected by the parents and generally discriminated by the society. Corrective surgery is offered to these children to keep the best interest of the child.”233

229 Id.
230 Id.
231 Id.
232 Generally, the medical practice is to refer to intersex persons as “persons born with intersex conditions”, but I think the usage of the word “condition” quite pathologises the person and marks them with an identity that is considered abnormal (or puts them under the category of a medical disorder), hence, I would prefer using the term “variations” instead of “conditions”. See Chayanika Shah, Raj Merchant, et.al., No Outlaws in the Gender Galaxy 245 (Zubaan, Delhi, 2016).
At birth, it is sometimes difficult to determine whether the child is male or female. Sometimes that is because the person's genitals are ambiguous (such as when the penis is very small, or the clitoris is very large). Other times, the person's genitals seem to indicate that they are one sex, while their chromosomes and/or hormones indicate that they are the other sex. To describe the various intersex variations at birth, I would follow the categories given by Rebecca M. Jordan-Young, a Socio-medical Scientist and a Faculty at the Columbia University in her book *Brain Storm: the Flaws in the Science of Sex Differences*:

1. Genital ambiguity is most often caused by *congenital adrenal hypoplasia* (CAH). Genetic females (XX) with CAH are exposed in utero to high levels of androgens, which are overproduced by their adrenal glands. That results in masculine-looking genitals (usually a large clitoris, and sometimes a penis). Labia may be fused so they appear scrotum-like (without testes inside). Approximately 25% of CAH females are pronounced male at birth. CAH males, however, do not seem to differ significantly from males who were not exposed to high androgen levels in utero.

2. Androgen insensitivity syndrome (AIS) can cause genetic males (XY) to have external genitals that appear female, while their internal organs are male typical. They have testes that produce androgens, but they do not have receptors sensitive to the androgens and are not able to make use of them. AIS males are in a sense the inverse of CAH females: they are genetically male but unable to use, and so deprived of, androgen, whereas CAH females are exposed to atypically high levels of androgens. In genetic males with 5-alpha reductase deficiency (5-ARD), androgens are in the normal range for males, but the enzyme (5-alpha reductase) needed to develop male genitals is not present. Frequently, 5-ARD boys' genitals “masculinise” at puberty.

There are, additionally, chromosomal variations in humans beyond the XX and XY genotypes. For example, it is possible for a person to be XYY, XXY, or XXXY (all considered male); or XO (one X chromosome only) or XXX (both considered female). During cell division, chromosomes can break, resulting in loss, duplication, or inversion of the chromosome fragment. The

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234 Supra note 228 at 175.
fragment may also travel from the sex chromosome pairing and become attached to a different pair of chromosomes.\textsuperscript{237}

In the absence of any census, there is no exact number to figure out the population of the intersex persons in India. Also, in the absence of any medical or statutory registry for the number of intersex births in India, it is technically impossible to determine the number of such births across different hospitals. The register of births, a statutory register maintained to record all births in India under the Registration of Births and Deaths Act, 1969 classifies all births under the binary of male and female. There is no legal definition male or female under any Indian statute. It is widely considered that, if a child is born with intersex variations, generally the medical practice is to operate on the child to bring them in lines with the binary sexes. In a patriarchal society like ours, where the rate of female infanticide is very high and the official sex ratio figure as per the Census of 2011 was 933 females per 1000 males,\textsuperscript{238} it is highly possible that many so called “sex-correction surgeries” are carried over across India to either kill such infants or to correct them to become males.

As per a clinical study conducted by Shilpa Sharma and Devendra K. Gupta with the 356 cases of Male Genitoplasty conducted for Intersex disorders, between 1989 to 2007 at the Department of Paediatric Surgery, All India Institute of Medical Sciences, New Delhi, all the cases were between the age of 2.5 years to 22 years with a mean of 11.5 years.\textsuperscript{239}

In another clinical study conducted by Doctors Rajesh R. Joshi, Sudha Rao and Meena Desai based on 109 patients presenting with ambiguous genitalia over the past 10 years (year 1995 to 2004) to Paediatric Endocrine Service of the B. J. Wadia Hospital for Children, Parel, Mumbai reveals that in 63 out of 109 cases (57.8% of total cases) the patient was operated when they were less than one year of age.\textsuperscript{240} The study of Joshi, Rao and Desai also state that the doctors have employed clinical and investigative evaluation methods like hormonal and biochemical estimations, imaging studies, karyotype to determine the DSD in the child post-birth and to alter such condition they

\textsuperscript{237} Supra note 228 at 176.


have used invasive techniques like genitescopy, laproscopy, open exploration and biopsy of gonads.241

In a similar study conducted at the Department of Pediatrics Surgery, S.A.T. Hospital, Medical College, Thiruvananthapuram by R. Rajendran and S. Hariharan, 35 cases were studied between January 1986 to December 1991.242 It was found that most of them presented between 1 month and 2 years of age and only 2 presented in the new-born period. Sixteen were female pseudohermaphrodites. Eighteen out of 31 children were assigned female sex. One genetic female with congenital adrenal hyperplasia was assigned male sex.243 Rajendran and Hariharan conclude as a part of their study that Parents prefer the intersex children to be reared as male possibly because of the less social stigma attached to an impotent male than to sterile female, and because males are socially independent.244

In another recent study conducted by the Doctors at Postgraduate Institute of Medical Education and Research, Chandigarh, a total of 58 children were studied.245 Caretakers had reared 43 (74.1%) patients as males and 10 (17.2%) as females. The inability to determine gender in 5 (8.6%) neonates (age: 2-30 days) prompted a referral to the said Hospital. The mean age at presentation of 58 children with DSD was 31.3±9 months (range: 1 day to 144 months). There were 21 (36.2%) patients who presented in infancy of whom 7(12%) presented in the neonatal age group. The majority of the patients (87.9%) presented before 5 years of age.246 Genitalia were recorded as ambiguous in 28 (46XY karyotype was seen in 18) patients. The phallic length (mean 15.0mm) was recorded in 25 patients and the number of orifices was documented in 22. Thirteen had a single orifice and 9 had 2. Penoscrotal hypospadias and bifid scrotum were observed in 17 (29.3%) and 2 (3.4%) patients respectively. Cryptorchidism and perineal hypospadias were observed in 1 patient each. 1 or 2 gonads were palpable in 7 (12.1%) and 32 (55.2%) patients respectively. The Doctors observe that, a general preference for male gender in the Indian society at large which could explain the desire to rear majority of the patients as males.247

241 Id at 979.
243 Id. at 669.
244 Id. at 671.
246 Id. at 956.
247 Id. at 957.
In another case-study based research, Doctors Nerli, Kamath and Ravish at KLES Hospital, Belgaum studied three cases of children assigned female sex at birth. These three cases were genetically male bodies with XY chromosomes, but with severe hypospadias and small penis and were assigned as female at birth. The study notes:

“A detailed history including antenatal history was noted. A detailed physical examination was done. Careful measurement of the penis (stretched dorsal length and diameter), location of urethral meatus, presence of testes in the scrotum, development of scrotum, pubic hair, facial hair and the built was noted. Investigations including routine blood and urine examinations were carried out. Buccal smear for Barr bodies, abdominal ultrasonography for internal organs, hormone assays and genitourethrography were done in all. When gonads were not palpable then abdominal laparoscopy was done to note the *intra* abdominal gonads. Once the diagnosis of a genetic male was made, the parents were informed and counselled. Decision to bring up the children as males was made by the parents after a detailed discussion with psychiatrists, urologists, paediatricians and family physicians.

The children with their parents were informed regarding the need for genital reconstruction, reorientation of the child to male sex, need for multiple sessions of surgery, failure of surgery and eventual outcome. Social changes were advised, such as, changing over to a boy’s school, hair cut and a male name. Relocating the child to newer environment, change of residence, change of school was advised to reduce peer-pressure.

Correction of external genitalia was planned in stages. Children received four intramuscular injections of testosterone depot (100 mg/m$^2$every 2 weeks). Repair of hypospadias was done either in one or multiple stages. Orchiopexy for undescended testes was done simultaneously. The child and the family were provided with appropriate psychosocial support. Questions about gender and sexuality are extremely anxiety provoking and emotionally upsetting, hence the family was kept well

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informed and were involved in the entire decision making process. The psychosocial support was begun with a counselor who explained the etiology and genetics. A child psychiatrist or child psychologist was involved in giving emotional support to the family and facilitating communication between the family and the medical team.249

And this way, finally, all the three children’s sex was changed from female to male, with medical intervention. In all the three cases, the ages of the girls were 6 years, 11 years and 13 years, respectively, when the surgeries were conducted. The Doctors in this study pass their concluding remarks in this manner:

“Gender assignment or re-assignment poses some of the most emotive and contentious ethical dilemmas encountered in any area of medical practice. To the layperson this is straightforward, as overwhelming majority of the human race can be easily identified as male or female by virtue of their genital anatomy, secondary sexual characteristics and behavior. Arriving at a satisfactory scientific definition is more difficult as gender reflects the outcome of complex interactions occurring from the time of conception and extending throughout pre and postnatal life. Behavior and gender identity is perhaps the most complex and certainly the least well understood. It raises controversial issues about the relative importance of 'nature vs. nurture' and more specifically the concept of the male or female brain. The determinants of gender-related behavior patterns can be arbitrarily subdivided into neuroendocrine factors (principally the effects of testosterone on the brain) and sociocultural factors, which include rearing, interaction with siblings and peers and the culture to which the individual is exposed.”250

As in majority of the cases, the subjects are not just minors but are also very young to have understood the ramifications of such a surgery. This study indicates the ethical issues involved in such surgeries. With whose consent are these surgeries conduced? Dr. Minu Bajpai asks, “who is the best person to take a decision regarding nature of surgery: Parents or patients? Is the decision part of the parents’ desire duly fulfilled by doctors? What is the best age of such surgeries?”251 To which, I add: Are most of such sex-corrective

249 Id. at 42
250 Id. at 45.
251 Supra note 233.
surgeries directed to make the intersex child a male? And most basic, what is the need for such corrective surgery?

These aforesaid studies conducted by independent Medical professionals indicate and thus, enable this researcher to arrive at a few observations that are common to all these studies:

1. On the part of the Medical and psychiatric fraternity, and the social workers, there is a constant attempt to pathologise the persons born with intersex variations and to categorise them as a disorder—an abnormality that must be fixed on an urgent basis. A congenial or non-congenial sex variation is always seen more as a social problem than a medical urgency.

2. On the part of the parents of such children born with intersex variations, there is a recurrent desire to see a male child post-surgery in most of such cases. In the absence of any information on the background of these families, it is difficult to infer, whether this recurrent desire is a class-based limited phenomenon, or it cuts across all the class barriers and is thus, universal.

3. What looks problematic on the part of both the Medical Fraternity and the Parents and Families is their common presumption and faith on the Binary-Genders that stems from the biological binary of sexes, and anything that pervades this structure is a pathological (and a socially-undesirable) category that must be subjected to urgent correction.

4. The decision to undergo corrective therapy and surgeries are mostly taken at a stage when the child is either young or is an infant. Very few such reported cases document the adult intersex persons seeking medical aid to change the sex to which they are assigned at birth. The former raises serious ethical issues on the part of the practices followed in the doctors, psychiatrists and social workers.

5. Also, such studies are inadequate because they do not indicate those cases where the persons born with intersex variations and their families have accepted themselves the way they are and have not sought any medical intervention to correct anything in their bodies.

This indicates the politics and economy of the management, regulation and administration of sexes which is an important public policy of our times. While explaining his thesis of biopolitics, Foucault quotes Claude-Jacques Herbert, the French Economist who wrote during the Enlightenment years of the eighteenth century in his book, *Essai sur la police générale des grains*:

“States are not populated in accordance with the natural progression or propagation, but by virtue of their industry, their products, their different institutions. ... Men multiply like the
yields from the ground and in proportion to the advantages and resources they find in their labours.”

It looks as if the story fits squarely well in our contemporary times; the production of the human is managed by the institutions of our times, the hospital and the family act like the farmer who cultivates and very meticulously cuts out the unproductive plants from his fields to enhance the quality of his yield. The metaphor quite fits as human births have taken the status of human production.

Where does ‘sex’ come in the law? To answer this question, we need to understand that law lays down the norm just like any social code that regulates the behaviour of a society. Often, law empowers some in order to disempower the other and this is how, in Stychin’s thesis, the ‘queer’ is produced. That doesn’t mean that it is futile to have contestation within or without the law. We must also remember the language that the constitution gives us—law as a site of democratic contestations. But, all law is not the constitution, neither all of it is constitutional. This section thus, attempts to problematize the basis of the theory of family jurisprudence; the basis that relies on the presumption that all humans are either males or females. Accordingly, this presumption further forms the different roles for these supposed males and females, the roles that are more often informed by the dominant cultural ideology of a particular time and space. Consider the way, marriage has culturally informed the law that defines a family, that constructs the husband, or the wife, or the children (the idea of legitimacy and illegitimacy of children included), the parents, and in this process of “permissive heterosexualisation” it constructs the transgressive heterosexual intimacies (the adulterer, and the adulterated, the concubine, the prostitute, the incestuous, the bigamous, the polygamous or the biandrous or polyandrous) and the unspeakable lives (the gay, the asexual, the polymorphous, the pansexual, the bisexual, or the trans*, the intersex, et.al.).

The family laws divide all persons based on the category of ‘sex’. This invites the following questions in my understanding:

1. What constitutes ‘sex’ and where is ‘sex’ defined in the law?
2. Why only a binary of sexes—the male and the female?
3. What is “male” and ‘female’ under the law?
4. What is the relation between ‘sex’ and ‘gender’ under the law?
5. Does ‘gender’ play a role to define male and female under the law?
6. Whether ‘sex’ is extended to also include ‘gender’ as per the law?
7. Why are there only two genders, the man and the woman in the law?
8. What constitutes ‘gender’ and where is ‘gender’ defined in the law?

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252 See Claude-Jacques Herbert, Essai sur la police générale des grains 320-321 (1753) as quoted by Foucault in Supra note 68.
9. How does one become a man or a woman, or for that matter a eunuch or a transgender?

10. How does ‘sex’ transcend into defining certain sexual roles (may be gender roles) that also determines one’s patterns of desire (sexuality)?

11. Why should all persons have a ‘sex’?

We are concerned about the ‘sex’ because, if sex represents the materiality of the body, then there is an entire structure of economy that thrives on this materiality of the body—all this in turn produce some essentialist relations and certain functional roles for this bodily materiality (which we call sex)—which is thus, used to serve this structure of economy (i.e., production under the heteronormative structure). For example, the heterosexual family (family that is a constituting institution in the economy of the heteronormative structure) demands from a father, a mother, a son and a daughter, certain specific roles as per their sex. If ‘sex’ here, is defined by the materiality of the biology of one’s body, then the male members of the family always get a privileged positionality in a hetero-patriarchal structure and, in order to provide the males that space to dominate, the dominated-role is played by the male’s other, i.e. the female as a part of that binarised hetero-patriarchal structure. This is how the heteronormative structure conflates the biology of the body (sex) with that of the assigned social role of that biological body (gender). To sustain the economy of this binarised hetero-patriarchal structure, of course, any other form of body, other than the male and female has no space and role; as that other form of non-male-non-female body is seen as an obstruction in the re-production of this hetero-patriarchal economy. This makes all the non-binary bodily forms non-productive in this structure and hence, invisible. Since, the sex/gender-based binarised hegemony of male/female bodies signify production, this lets heterosexuality acquire the status of the norm, whose compulsory reinforcement on the bodies (and the body’s incessant response in terms of its uninterrupted performance to those assigned roles) further naturalises it as a monolithic social order—result, the entire social order gets imbued into heteronormative settings.

Critical studies show us how to question these ‘givens’. So, why do we take the binary of sexes (i.e., male and female) as a ‘given’? Why do we take the binary of genders (i.e., masculine and feminine/man and woman) as a ‘given’? Are ‘sex’ and ‘gender’ two separate categories of identities? If so, then why a male body does have to always perform masculine and female body has to always perform feminine? Why do we at all need ‘sex/gender’ at the first place? Of course, these givens are very powerful in their mere existence as they enable an entire structure of power and oppression to come alive. Butler asks, can we refer to a ‘given’ sex or a ‘given’ gender without first inquiring into how sex and/or gender is given, and, through what
means? And what is ‘sex’ anyway? Is it natural, anatomical, chromozomonal, hormonal? She invokes Foucault and asks, does sex have a history? Does each sex have a different history or histories? Is there a history of how the duality of sexes was established, a genealogy that might expose the binary options as a variable construction? Are the ostensibly natural facts of sex discursively produced by various scientific discourses in the service of other political and social interests?

In this section, my thrust is not merely to challenge the existing socio-legal structures of binary of sex, but to look beyond that and to question, what is male or female anyway? What one needs to have in order to become a man or a woman? What is the relation of the body with that of any performative script? How does sex decide the performative character of a body? Does one become a man by mere biology or is being a man a cultural process? Butler asks a very essential question here, “what is the relation of the materiality of the body with that of performativity of gender?”

Butler attempts to deconstruct the power displayed by essentialist arguments that link the purported gender roles with that of the materiality of the body or simply the biological differences based on the category of ‘sex’. So, is ‘sex’ a social construct? Or is it a simple outcome of the material/biological differences of the bodies? Do “discursive practices” have no role to play in the creation of the category called ‘sex’? Or is it that both the “materiality of the body” as well as the “discursive practices” have got a mutual role to play in the creation of the category called ‘sex’? She invokes Foucault to suggest that: “the category of ‘sex’ is, from the start normative; it is what Foucault has called ‘a regulatory ideal’. In this sense, ‘sex’, not only functions as a norm, but is part of a regulatory practice that produces the bodies it governs, that is, whose regulatory force is made clear as a kind of a productive power, the power to produce, demarcate, circulate, differentiate—the bodies it controls. Thus, sex is a regulatory ideal whose materialisation is compelled, and this materialisation takes place (or fails to take place) through certain highly regulated practices. In other words, ‘sex’ is an ideal construct which is forcibly materialized through time.” Butler argues, thus, that sex is therefore not a simple fact or a static condition of the body which is based only on some material/biological differences; but it is a process whereby regulatory norms compulsorily demand a certain performance of the body based on the category called ‘sex’.

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253 Supra note 44 at 9.
254 Id.
255 Supra note 24 at 1.
256 Id.
Why is this relation between materiality of the body problematic, thus, untenable and unstable *vis-à-vis* performativity of gender? The production of certain prescriptive, ideal gender roles take place through a process of iteration and compulsory reiteration of a normative frame. What if, there is a break in the production and reproduction of these normative pressures on the body? Or, what if the body refuses to follow or practice or perform these normative roles anymore? Butler, therefore contemplates that because of such possibilities of subversion by the bodies, such norms need to be enforced and re-enforced so that the compliance to such norms acquires the status of an absolute compulsion, something that gets etched in the psyche of the bodies as their naturalised destiny. But she considers the possibilities of subversion as a very tenable reaction to such repression. She says, that "this reiteration is necessary is itself a sign that the purported *materialisation* (of the body) is never quite complete, that bodies never quite comply with the norms by which their materialisation is impelled."\(^257\) She further adds, "Indeed, it is the instabilities, the possibilities for rematerialisation, opened up by this process that mark one domain by which the force of the regulatory law can be turned against itself to spawn rearticulations that call into question the hegemonic force of that very regulatory law."\(^258\) The link between the ‘materialisation of the body’ (or more specifically, the materialisation of the ‘sex’ in a body) is an act at the service to the heterosexual imperative. Through the ‘materialisation of the sex’ in a particular ‘sexed body’ the politics is to produce a set of naturalised norms that are based on ‘sex differences’. Butler says, “Sex is, this, not simply what one has, or a static description of what one is: it will be one of the norms by which the ‘one’ becomes viable at all, that which qualifies a body for life within the domain of cultural intelligibility.” It is that the regulatory norms of sex work in a performative fashion to constitute the materiality of sex of these bodies and that works to materialise the sexual difference of those bodies. What is even more interesting is to see the effect that is caused by the construction of the materiality of these bodies; the whole potential of the body to move, to all the express to be happy, to mourn; everything can be regulated by this construction of the materiality of sexual differences. So, this way, the ‘materiality of the body’ serves as a powerful tool that produces a larger impact over the bodies and for their generations that would follow. As Butler observes, “once ‘sex’ itself is understood in its normativity, the materiality of the body will not be thinkable apart from the materialisation of that regulatory norm.”\(^259\)

This section thus, explains that our understanding and practice of family (and the entire economy based on it) runs at the cost of a routine invisibilisation of

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\(^{257}\) Id.  
\(^{258}\) Id.  
\(^{259}\) Id at 2.
the other—the queer body (in this case the body marked as intersexed). This repetitive act of enforcing a regime of routine invisibilisation demonstrates the disruptive potential of the queer. Since, the intersexed body certainly poses a perpetual threat to the normal business of family jurisprudence—hence; it can never be allowed to become visible.

2.4. The Juridical Understanding of Sex/Gender in Family: Why is it Problematic to the Queer Politics?

At “Transforms”, a National Conference on Transgender Rights and the Law held at Indian Institute of Human Settlements, Bangalore, an extract from my field-diary reads:

On a misty December morning in Bangalore scores of transgender persons, activists, allies of the transgender movement across India had gathered to discuss the ways in which the law post the NALSA verdict impact the lives of the transgender persons. At the outset, one of the transgender activists questioned the court’s rationale behind the word third in “Third Gender”. She asked, if the Court is speaking of equal opportunities, then why does it refer the transgenders “a third category”? She continues, if there are already two genders, then who is first among the two? By acknowledging the presence of the already existing binary of male and female genders, is the court deliberately constructing a further hierarchy in the name of gender?260

On 15th April, 2014 the Supreme Court’s judgment in NALSA v. Union of India261 directed the Central and State Governments that:

1. “Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.

2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant

260 This was the two-day National Conference on Transgender Rights and the law organised by Centre for Law and Policy Research, Bangalore between 14th and 15th December, 2016 and the Transgender Activist quoted here is Dr. Akkai Padmashali, one of the most prominent leaders of the Transwomen Community and the co-founder of Ondede and Swatantra.

261 Supra note 8.
legal recognition of their gender identity such as male, female or as third gender.\textsuperscript{262}

After almost three years of this verdict, much of the Indian laws continue to believe that there are only two sexes: the male and the female. The entire structure of the Indian laws is based on the binary of these two sexes. What is male, female or what constitutes a male or a man, a female or a woman is not defined by the law. We also see that, there is a social structure that gives/allocates over the bodies certain social roles based on the biology (sex, as we call it) of these bodies. The law presumes that everyone is born either a male or a female, and so do the social frames that present the normative gender binary of male/female. How does this juridical politics of promulgating newer forms of “sexes” work? What gives Supreme Court, the authority to constitute newer forms of ‘sex/gender’? How stable and coherent are these sexual identities (new or old)? The judicial-proliferation of a new sexual identity further contributes to the existing hierarchal order of our already sex-based society; the same now enters as a legal norm. Anyone who falls outside this sex-based structure (both in terms of social and the legal) is an outcaste, a pariah.\textsuperscript{263} As observed by the Division Bench of the Supreme Court, that the “Indian Law, on the whole, only recognizes the paradigm of binary genders of male and female, based on a person’s sex assigned by birth, which permits gender system, including the law relating to marriage, adoption, inheritance, succession and taxation and welfare legislations.”\textsuperscript{264}

So, what does the law understand when it enforces upon us its rigid structures based on sex/gender? Now, of course, the statutes do not tell us what sex/gender means in either general or particular contexts. So, to understand them, we need to see how our judges have interpreted sex/gender as in its general or specific connotations. This section thus, is a compilation of such vital judicial approaches, followed with an analysis of the same through the queer lenses.

Consider the case of A v. B\textsuperscript{265} filed in the early 1950s before a single bench of the Bombay High Court; wherein, the husband files the suit against his wife for a declaration that their marriage is null and void, or in the alternative for a decree of divorce. The parties were married on 12\textsuperscript{th} May, 1950 at Bombay according to the Hindu Vedic rites. The plaintiff alleges that the defendant did not have vagina and uterus both at the time of marriage and also at the time of filing for the suit and therefore, she is impotent and incapable of having sexual intercourse with any male. Like most of the

\textsuperscript{262} Id. at para 129.
\textsuperscript{263} Supra note 5 at 140.
\textsuperscript{264} Supra note 8 at para 41.
\textsuperscript{265} MANU/MH/0130/1952 : AIR 1952 Bom 486.
marriages in the 1950s and even that of today, this one is also an arranged marriage, wherein the parents of the parties negotiate and fix the marriage, and the parties seldom have any idea of the sexuality/materiality of the body of each other. Thus, the plaintiff also alleges that the parents of the defendant played fraud and despite knowing the fact that their daughter had never menstruated, they got her married off.

On the other hand, the husband claims that a Hindu Marriage under the Bombay Hindu Divorce Act, 1947 is a contract and is hence dissoluble. It is clear before the court that she is incapable to consummate the marriage and in the language of the law is an impotent. Hence, the main question that the judge dealt with in this case is, whether, impotence of the wife can cause nullity of a Hindu marriage. After perusing a lot of Hindu scriptures, the judge comes to the conclusion that a Hindu Marriage is not just a sacrament, but is also a contract—hence, dissoluble. So, what did the judge found worthy in this case that he decreed the marriage null and void? Well, Justice Tendolkar after citing a lot of verses from the Hindu scriptures finally concluded by holding that:

"It is clear, therefore, that in order that two persons should be capable of getting married they must have the physical capacity at least to cohabit if not procreate children, and indeed in my opinion Manu VIII-226 which prescribes that an 'akanya' cannot get married clearly lays down that an impotent female cannot get married at all. This verse of Manu would be wide enough to include the illustration that I took of a male draped in female garb getting married to another male."266

The judge considered the respondent-wife to be Akanya instead of considering her a kanya.267 Akanya signified an impotent woman to the interpretative understanding of the judge.268 By impotency, the judge in this case meant the deficiency in woman's body—her not having a vagina. So, according to the court, having or not having a vagina decides whether a body is a female or not.

267 Id. at para 15, the judge says: "Mantras for the sacrament can only apply to kanyas, by which is meant girls who are Virgo intacta (whoso yoni is uncut)." Kulluka in his commentary points out that marriage with a virgo inacta is (religious) but marriage with a girl who is not a virgo intacta is not forbidden although it may be (not approved by religion). But the emphasis of Viramitrodaya obviously is not on whether the "yoni" (genital organ) is cut as on the fact that the woman must possess a "yoni," whether cut or uncut, and if she does not possess one, she cannot be considered to be a "kanya" and cannot be married." He used Manu VIII-226 who said that: "Nuptial texts are meant only for "kanyas" and not for those who are not kanyas because they are excluded from religious ceremonies."
268 Id at para 15.
This way, the biology of the body or the materiality of one's body decides one's sex. But, what the judge doesn't realise in this case is that the "biology of the body", i.e., 'sex' of/for that pleading woman is the only means of her social survival—her marriage. It is only through her being "a woman" that she can access the social privilege of being "a wife". In the Indian social context, especially that of the 1950s, a female body is socially conditioned to view marriage as an inalienable part of one's life-goals. A female body is not allowed to get educated, she is often not allowed to work in most social classes—reason, so that she is always made to stay dependant on her father for her survival (before her marriage) and later, on her husband (after her marriage)—the fear of the hetero-patriarchal structure is—what if, she becomes independent, autonomous—so, let's not take any chances by exposing her to the harsh public world—she is kept in the private forever. In this case, as the recorded facts indicate—the defendant woman was sixteen years of age when her family got her married off in an arranged family-brokered marriage. Marriage must have been her only means of survival—social and economic. When the husband filed a suit within a year of their marriage and pleaded to declare their marriage null and void, as he alleged that the woman (to whom he got married) did not have at the time of marriage either a vagina or uterus and she still has neither the vagina nor uterus and, therefore, she is impotent and incapable of having sexual intercourse with any male. As the fact was, the wife did not really have a vagina as a part of her body, so she did admit before the court that she had no vagina at the time of marriage and has not got one even now; but she further makes an attempt to add that she has been advised that a vagina can be created by a surgical operation. As regards the uterus, it is her case that she has underdeveloped uterus. She admits that she was at the time of marriage and still is incapable of having sexual intercourse and is unable to consummate the marriage.

The court said, having or not having a uterus is still okay—for not having one makes a body infertile (incapable to conceive). And, that she could still have the legal privilege of getting married and be called someone's wife (the socio-economic privilege). But, not having a vagina doesn't at all qualify her to be a woman. Alas, the court fails to see that for that body—having a vagina was her sole recourse to access her legal privilege (marriage); and, her social privilege (of being called someone's wife) depended completely on her having the legal privilege, at the first place. For her, that little organ was not just a mere biological indicator—for socially, it was always-already so severally loaded with meaning that it carried the material for her future survival in that society. That unfortunate body could be called a body with intersex variations—courtesy, our modern medical taxonomy that translates in the social taxonomy as a eunuch (a body of the last grade in the social
hierarchy). That body kept pleading before the court that her marriage was a sanskara (a sacrament) under the Hindu Law of marriage—and hence, cannot be a subject to dissolution. Little did she know that the law in the form of Bombay Hindu Divorce Act, 1947 had already sealed her future—disrobing her of her chances of social and bodily survival. The insensitive but lawful judiciary compared her body with that of the body of “a male draped in female garb”—as the judge said: “To take only an extreme case, if a Hindu male draped in a saree or a frock got married to another male, no system of law can conceivably uphold such a marriage.”

Let’s take some other instances. The Madhya Pradesh High Court in the case of Prabhulal v. Raj Kunwarbai, similarly carried forward the legacy of the Bombay High Court as was decided in A. v. B. In this case, the applicant-husband and the respondent-wife were married for seventeen years when they were each 13 years, and 3 years, respectively. It is the case of the husband that, later when it was discovered that the wife is not a woman, he deserted her. The wife filed for maintenance before the Trial Court, wherein, the Trial Court granted her maintenance of Rs. 350 per month and observed that the wife being eunuch still remains to be the legally wedded wife as the marriage is not void ab initio but is voidable at the determination of the competent court. This order of the Magistrate was confirmed at Revision by the Second Additional Sessions Judge, Shajapur who took the same view of the matter. Hence this appeal was filed by the husband.

The learned single bench of the High Court found merit in only one question, and that was: whether the wife who is admittedly not a woman but married to the applicant, can claim maintenance allowance under Section 125, Code of Criminal Procedure? The judges at all the three levels of the judicial hierarchy used the expression ‘eunuch’ or ‘a castrated man’ for the wife. The High Court quashed the lower court’s verdict that granted her maintenance on the ground that, her being a eunuch, the marriage was merely voidable but is valid until determined void by a competent court. The High Court found fault with this thought and set the standard of legal privilege (of being called someone’s wife) a few notches higher, as it declared: “before a person can be a ‘wife’, she has to be a woman. A male person can never be wife of another male person...There could be thus, no marriage much less a valid one between the applicant and the non-applicant.” So, what was the judge’s reasoning to reach-out this conclusion? The judge found shelter in the dictionary meaning of the word ‘wife’ which very much laid emphasis

269 Id. at para 36.
271 Id. at para 5.
272 Id. at para 4. He quoted two different English Dictionaries: (1) Oxford English Dictionary, the word ‘wife’ means : 1. A woman; formerly in general sense; in later use restricted to a
on a person being a ‘woman’ at the first place to be qualified to be called someone’s wife. In short, the road to ‘wife’ passed through the ‘woman’— corollary, if one was not a woman at the first place, how can she be someone’s wife?

This is again another case, where ‘not having a vagina’ was reified to mean that, the body is not that of a woman. The law once again reiterated that, to be a woman, one has to have a vagina. And, with this again, one’s bodily condition (biology) was used as the soul qualifier for one’s access to the legal and social privileges (of being called someone’s wife—the social privilege; and being able to claim maintenance from the husband—the legal privilege). Again, through this case, the juridical clarified the social that certain bodies are not qualified enough to have the privilege of being a subject to the province of family jurisprudence. The logic that the judge very clearly stated is—an intersexed body and a male’s body can never be legally aligned with another man through marriage—hence, it has to be a body with a vagina (the female) who can only be aligned legally through marriage with a man. Once, again, the materiality of a body (vagina) became the sole qualifying criterion to become a woman. Where does the judge get this definition of marriage? Well, that’s another story, for which the discussion in Section 3.4 of this chapter can be seen.

There is this one more case, where the body was forced to experience utter medicalisation by a joint operation of the social and the legal. The case is that of Ram Devi v. Raja Ram, wherein, the wife pleaded for maintenance from her husband, for which she fought a legal battle for more than decade before three different courts. The wife files for maintenance after facing utter cruelty at the hands of the husband; after being forced to live at her father’s house for 8 years, and after witnessing her husband’s remarriage. The husband contends that the marriage was void ab initio as there was no consummation of marriage, and that the wife is incapable of sexual intercourse as she didn’t have properly grown vagina and other sexual organs, also that she is barren/impotent/incapable of conceiving.

After two partially conflicting medical reports (one done by the wife privately claims that she is capable of sexual intercourse, and the other done by the husband claims that she is incapable of having sexual intercourse) the High Court ordered a third medical examination of the impotency of the wife, wherein, it was found that: “Labia Minora-Sloptic and replaced by reddish

woman of humble rank; 2. A woman joined to a man by marriage; a married woman; 3. The mistress of a household; the hostess or landlady of an inn; and, (2) the Chamber’s 20th Century Dictionary, the word ‘wife’ means, “a woman; the woman to whom one is married ; the mistress of a house, a hostess - now often in this sense ‘good wife’”.

white tissue. Vagina-Admits one finger length about three and half inches. Increase in size can be attempted by an operation with reasonable chances of success. Cervix and Uterus- Clinically absent except a nodule of the size of a pea.\textsuperscript{274}

The High Court forms these questions: firstly, whether the appellant is impotent; secondly, whether the extent of impotency is such which could result in making the marriage between the parties a nullity; and thirdly, whether the appellant is entitled to maintenance as claimed by her. The judge here differentiated between “total impotency” and “partial impotency” as two separate bodily conditions—and finally concluded that the wife is partially impotent as the medical report suggested that her vagina was still capable of admitting three and half inches of a human finger. With regard to the absence of other internal organs such as the uterus—the judge said, their mere absence makes the woman a barren woman—but, she still continues to be a woman—doesn’t matter even if her vagina doesn’t allow her to get her husband’s fully-grown penis. At the same time, judge also contends the medical possibility of the wife (as per the third medical examination) that she could undergo surgical operations to become a complete woman.\textsuperscript{275}

Now, the question in my understanding is, what if, the wife was totally impotent in the understanding of the court, i.e., what if the body didn’t have a vagina at the first place? Would she be still considered a woman? It is clear from this judgment that her vagina’s medically proven capability of admitting three and half inches of a human finger qualifies her body to be called as that of a woman. So, the humiliating experience of undergoing a “three and half inch finger-test” this time, the juridical clarified the social the accurate yardstick of when a body qualifies to be called a woman, and when not. How humane is that judgment, coming straight from the chronicles of our liberal-juridical machine—our courts? Aren’t you excited to uncover more of this, and some of that (its critique)?

Similar judicial instances where medical examinations were used by the courts to determine the sex of a body cannot be ignored. A few important ones that I could come across are: \textit{Ashok Kumar Sharma v. Smt. Kanta alias}  

\textsuperscript{274} Id. at para 7.  
\textsuperscript{275} Id. at para 20, the judge holds: “Dr. Nawal Kishore found that even though in her present physical condition sexual intercourse would be painful and difficult her physical deficiency could be set right by a surgical operation. Dr. Nawal Kishore has expressed the opinion that the increase in the size of vagina can be attempted by an operation with reasonable chances of success. She may be barren woman and may not be fit for producing children but it cannot be said that she is wholly incapable of having sexual intercourse with her husband. In any view of the matter whether she is wholly or partially impotent I consider that her marriage with the respondent cannot be treated as a nullity unless it is dissolved under the provisions of the Hindu Marriage Act.”
The most disturbing fact is our laws are deeply sex-based (especially on important inescapable matters such as, in family-related issues, sexual violence, domestic violence, _et al._) wherein, all bodies are expected to fit into the binary of male/female—this leads to a hierarchy-formation based simply upon the materiality of the body. The laws are so deeply sexed that the liberal-reasons of its existence (i.e., state’s duty to protect the life/body) is somewhere completely lost in translation—e.g., the law only provides to protect the woman from domestic violence; law’s episteme on intimate partner violence is merely limited to male-to-female violence; and, of course, emotions such as one’s sense of care, love and attachment are also only legally possible when the violator-victim relationship is dyadic and opposite-sexed. This way, the law chooses to ignore all other forms of violence by its seamless act of privileging only heteronormative violence. The law therefore, produces a hierarchy of the privileged, over the not-so privileged. A particular shape, size, length, and depth of the penis/vagina therefore is relied upon uninterruptedly by the heteronormative liberal-structures to determine whether the body is a worthy subject of the law or a mere abject of the law—the queer. The law therefore enforces and re-enforces its heteronormative ideology, wherein, the biology of the body solely determines the destiny of a person.

In 2014, a division bench of the Supreme Court delivered a historic verdict, in the case _NALSA v. Union of India_, wherein, the court declares:

i. Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.

ii. Transgender persons’ right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

iii. The Supreme Court directs the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

iv. Centre and State Governments are directed to operate separate H.I.V. Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues.

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278 MANU/WB/0640/2014.
279 _Supra_ note 8.
v. Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for S.R.S. for declaring one's gender is immoral and illegal;

vi. Centre and State Governments should take proper measures to provide medical care to T.Gs. in the hospitals and also provide them separate public toilets and other facilities.

vii. Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

viii. Centre and State Governments should take steps to create public awareness so that T.Gs. will feel that they are also part and parcel of the social life and be not treated as untouchables.

ix. Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

It was for the first time the Supreme Court recognised that there are gender expressions beyond the binary of male/female—it called them as transgenders. In one go, the court suddenly affirmed that all Fundamental Rights are also and equally meant for those persons as well who identify as transgender. Well, what is this new category? The court, in the Para 11 of the judgment, describes its illustrative and, non-exhaustive understanding of what includes as Transgender. It holds:

“11. Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex. TG may also takes in persons who do not identify with their sex assigned at birth, which include Hijras/Eunuchs who, in this writ petition, describe themselves as "third gender" and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation. Since Hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional "third gender". Among Hijras, there are emasculated (castrated, nirvana) men, non-emasculated men (not castrated/akva/akka) and inter-sexed persons (hermaphrodites). TG also includes persons who intend to undergo Sex Re-Assignment Surgery (SRS) or have undergone SRS to align their biological sex with their gender identity in order to become male or female. They are generally called transsexual persons. Further,
there are persons who like to cross-dress in clothing of opposite gender, i.e. transvestites. Resultantly, the term “transgender”, in contemporary usage, has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative and non-operative transsexual people, who strongly identify with the gender opposite to their biological sex; male and female.”

Following this powerful verdict of the Supreme Court, various state agencies are dragged into courts by this newly recognised category “the transgender”; and, in almost all the cases, the courts have ruled in their favour. For example, Nangai v. Superintendent of Police along with Jackuline Mary v. The Superintendent of Police, Karur and Ors., was decided within 2 days of the NALSA Judgment by Justice Nagamuthu of the Madras High Court. These cases dealt with these issues: (1) Whether the petitioner is a “female” and whether she is eligible for appointment as a “Woman Police Constable”? (2) Whether the termination of the petitioner from service on the ground that she is a Transgender is sustainable? The court held that the petitioner, Nangai though born with intersex variations (at least not typically a male or a female) should have the legal right to sustain and enforce the sex of her choice. In this case, she has expressed to continue as a female and the same should be respected and enforced by the state and law. The Delhi High Court in Shivani Bhat v. State of NCT of Delhi, The court dealt with the alleged illegal detention by the Police of the transgender-petitioner. The UP Police was directed by the court to not harass any person within the limits of the High Court. Following NALSA, the Delhi High Court upheld that everyone has the right to Gender identity and sexual orientation; and, these are fundamental to exercise one’s right of self-determination, dignity and freedom. These freedoms lie at the heart of personal autonomy and freedom of individuals. A transgender’s sense or experience of gender is integral to their core personality and sense of being. Insofar as, I understand the law, everyone has a fundamental right to be recognized in their chosen gender. They have the right to dignity and self-determination. Similar cases are reported in other jurisdictions as well on various matters, such as Ashish Kumar Misra v. Bharat Sarkar, where the Allahabad High Court affirms the right to food security for the transgenders under the Food Security Act, 2013. This was in response to a PIL that demanded inclusion of the names of transgenders in Ration Cards besides the males and females so that they

280 Id. at Para 11.
283 MANU/DE/2912/2015.
284 MANU/UP/0332/2015.
can equally access public distribution system. *K. Annapoornam v. The Secretary to Government, Personnel and Administrative Reform(s) Department and Ors.*,\(^{285}\) and *G. Nagalakshmi v. Director General of Police*,\(^{286}\) are about allowing Transgender persons to compete in Public Recruitment Exams. Most of these cases that have vindicated the Transgender Rights affirming NALSA verdict deal with employment and other economic issues. There are no cases as on date that deal with a transgender’s right to marriage or her right to form a family of her own with or without marriage. We just have the broader references made by the NALSA Court on the need to reform our family laws—what reforms, or how to reform are not dealt by that court at that instance. Of course, the legislature hasn’t done anything with these broader directions. Hence, family law remains to be another controversial arena which for sure will face major constitutional challenges on matters such as, the queer’s right to intimacy, family-making, etc. For now, the NALSA Court has set such remarkable directions to the state that it is obvious that most of it is “vulnerable to remain unimplemented”.\(^{287}\)

Who can legally marry and form a family and who can’t? For long now in India, Family Jurisprudence has already defined the perimeter of marriage and family. Though, post the NALSA verdict, the laws in various domains are slowly transforming, but, the family law remains the same old heteronormative, patriarchal piece of a larger quandary—the Indian laws in general. Sometimes, it appears to me that the Indian Family laws (I mean its makers and keepers) have no clue what it/they would do with a queer body and its desires, except oppressing them. What if, a dyad of queers approaches the state for registering their marriage? How would the state respond? Of course, the answer would be “a big no” as it happened in 1993 when Vinoda and Rekha went to the Registrar of Marriages in the town of Chandrapur, Maharashtra, and declared their intention to marry.\(^{288}\) What if a queer-body wishes to become a subject worthy of family law’s protection and shelter? Our family laws understand kinship that is created either through birth (either by blood ties or adoption) and/or by marriage, and, not by any alternative/other means, like friendship, contract, etc.

Now, what if the queer wants to involve the law to form its own kinship/family through the route of marriage? Let me refer to such queer bodies as ‘desiring


\(^{286}\) MANU/TN/2160/2014.


queers’, for the purposes of this discussion. Keeping in mind, the judgments of the likes of *A v. B, Ram Devi v. Raja Ram*, etc. as discussed above, we can see that the courts have very clearly stated that marriage is a union between two persons of opposite biological sexes (i.e., persons who visibly have a vagina/penis to demonstrate through medical examination, most likely). After all, these are cases that tell us the juridical fate of the marriages entered by persons with intersex variations—that marriages are not meant for intersexed bodies—it is always already reserved only for any two persons of *opposite biological sexes* (i.e., persons having a qualified visible vagina/penis, *e.g.*, having passed law’s 3.5 inches juridico-medical test).

Forthcoming, is my attempt to animate law’s response to this aforesaid question of the ‘desiring queers’ *i.e.*, what if the queer wants to involve the law to form its own kinship/family through the route of marriage? Based on my analysis in this section, I would imagine Law’s unhelpful answer in these three stipulated-situations:

i. **Law’s response to the ‘desiring queers’ in the First situation:** If a “desiring queer” with intersex-variations (who identifies itself with one particular sex out of the binary) expresses its desire before the law to recognise its socially-convened marriage (with a person of the opposite sex), law’s answer would be: well, you can always get married as long as you and your partner are both oppositely sexed. All you have to do is to allow the us to medically examine your biology/body, if you can prove to be of the opposite sex (*vis-à-vis* your spouse), you are legally married, or/and

ii. **Law’s response to the ‘desiring queers’ in the Second situation:** If you are biologically male/female (by meeting all our standards) and want to marry and form a family with a person of the same biological sex as yours, better forget it, or else, we would charge you with 377. Oh, by the way, if you thought you could run away with your partner ignoring your parent’s wishes—hang on, we would better charge you for kidnapping/abducting your partner; and/or

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289 I am using ‘desiring queers’ to mean those queer bodies who want to involve the law to form its own kinship/family through the route of marriage. The prefix “desiring” is fixed with “the queer”, so that the anti-assimilative/marriage politics of the latter is left sacrosanct.

290 Please note that the conversation presented herein is in between “the law” and the “desiring queer”—and, is not between ‘the social’ and the “desiring queer”. Also, in this conversation, let me confess my intended-sarcasm—as I put forth law’s response in these three stipulated-situations. I sincerely hope on good faith that it doesn’t breach the standards of academic writing.

291 Here, “you” signifies the “desiring-queer” in all the three stipulated situations.

292 Here, “us/our” signifies the “law/court/state” in all the three stipulated situations.
iii. Law’s response to the ‘desiring queers’ in the Third situation: If more than two bodies want to marry each other (a polyamorous relation)—all of your biological sex doesn’t even matter as marriage is meant for only two persons—though, be careful, if one of you is already married, you could land in jail for committing bigamy; or, if one of the other female parties (to such polyamorous alliance) happens to be a married female, we can charge all the male-partners (to such polyamorous alliance) for committing adultery.

If this is the response of the law to such desiring-queers—then, certainly the law is saying that, “as long as, marriage is the only way to form a family of one’s own—ο y e queer, just keep dreaming about it—for it will never be yours as long as we (the current family jurisprudence) are alive.” Now, how could the queer respond to this? In order to form a legal family of its own, the queer has to either ask for inclusion within the realm of family jurisprudence (e.g., by seeking the law to recognise same-sex marriages), if it is so keen on getting married; or, it could work towards transforming law into a site of real democratic contestations (by proliferating into jurisprudence’s domain with alternatives to marriage), so that marriage dies on its own.

But, these are very utopian conversations—mostly imbued in a certain imagined political frame. Isn’t it? As I could realise through my conversations with the queer-participants who responded to this study—the ontological position of the queer in the abstract-world of philosophy is rooted in reactionary politics; whereas, the ontology of the queer in the real-world in which we live is always already marked by intersectional realities of class, education, age, sex, gender, sexuality and location. Tell me, if any of us (while living in this real-world) are standing at a site of zero-culture?

As I could see, the body is always already cultured in certain pre-determined realities of its own—the social was already there ready to take on the body, when the body arrived.

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293 To my mind, same-sex marriage is not even a possibility for queer politics to consider, so, I will not engage in those discussions, here. As I understand, the object of any queer-research is to look for alternatives to the hegemonic (i.e., marriage, in the instant discussion), if at all, the researcher wants to be prescriptive through its research.

294 I discuss these possibilities of suggesting “alternatives to marriage” in the Chapter 4. Specially, see the discussions under Section 3 of that chapter titled “On the Methods of Engaging with the Law: Studying the Contract-cum-Status Model for regulating Queer Intimate Relationalities”.

295 Let me acknowledge my intellectual indebtedness to Sumita Di for bringing this question during our interview. I am glad, for she took me through her own dilemmas and thoughts on this.
Let me nuance it with an illustration. If we see the judicial test (in the cases of the likes of A v. B, Ram Devi v. Raja Ram, etc.) that is deployed to determine the maleness/femaleness of a body for the purposes of determining whether that body is capable of getting married or not—we could see at least, one common thread in all these cases. The common thread is the violence of law over the wife—as it is the ‘wife’ in all these cases who is pleading to save her marriage from getting annulled—reasons include: (1) she can’t afford to lose her social status of being called someone’s wife, as that is her only means of social survival; and, (2) she can’t afford to lose on the maintenance amount as well—as that is her only means of bodily survival. Also, the common thread is that, in all these cases (as the records suggest)—all these wives have bodies with intersex variations. Now, our laws on marriage provide that, if the marriage is not consummated then, such non-consummation is a ground that makes such marriages voidable at the instance of either party. This means that such intersexed wives are always living on marriage’s fence—give her one judicial kick and she falls off the other side of this fence. For a female body with intersexed variations, it is the courts that determine whether it is married or not—and, marital status determines her social and economic lifespan—devoid of the socio-legal mark of marriage, the already-vulnerable female body is subjected to further oppression and marginalisation. The law thus, generously contributes to this systemic saga of violence over the intersexed body. And, this is what has happened, if one sees the judgments in A v. B or in PrabhuLal v. Raj Kunwarbai. Given the power of such judicial determinations—the fate of such intersexed bodies is always already determined; as at any point of time during her marriage, she could be legally disrobed of her legal and social privileges. Perhaps, this is how law pushes an already-vulnerable intersexed body to further degrees of deeper vulnerabilities.

Why is marriage so precious a status for this intersexed woman—so, important that in all these cases she could be seen trying her best to keep herself in the marriage. She is doubly marginalised, first for being a woman, and second for being a body with intersexed variations. She is socially raised in a patriarchal frame that lets her get used to male control over her agency. Patriarchy doesn’t allow her any meaningful exposure to autonomy, education, public spaces, mobility, et.al. —result, for her, marriage becomes the sole source of her social and economic survival. How can she refuse marriage then? For such queer women perhaps, marriage is their bread and butter. But, the juridical arrangement of marriage is such that, she has no other way but to allow to get herself disrobed of all her chances of social and

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296 For example, see Section 25, Special Marriage Act, 1954 and Section 12, Hindu Marriage Act, 1955.
297 I use the phrase ‘Marriage’s fence’ to signify the liminal spaces between marriage and non-marriage.
economic survival. Perhaps, this demonstrates a classic gap between the two ontological sites of the queer—one, wherein the queer is situated in a utopian political discourse; and, the other, where the queer is situated in the real-life space, chequered with marks of multiple intersectionalities that incessantly marginalise and oppress her. Such a state of the social clearly shows that a body can’t afford to lose its assigned sex/gender.

But, how long can we escape theoretical discussions in a project like this? So, let’s have another one. Now, if A is born with intersex variations, B is born as a male, and C is born as a female; presume that all of them want to legally marry and legally establish their family. A has to get operated to medically acquire either male/female sex so that it can get married as per the existing laws (presuming two conditions: that, (1) there is a difference between A’s self-identified sex, and law’s presumption of A’s sex; and, (2) A wants to marry a person who identifies to a sex opposite to A’s own self-identified sex). If B or C want to get married with a person of their own sex—they can do so under the existing laws, as long as they are ready to change their biological sex (get SRS onto their bodies). These are the two options the law advertently or inadvertently leaves the queer bodies with, of course, this applies only if the queer is fascinated enough with the charm of getting married. Practically, we don’t know how the law would respond to these situations (now, even more so, post NALSA); but, theoretically, for a queer body to enter into the magical space of marriage/family (in the situations stated above) it has to get itself medically intervened, most probably get certified (labelled/re-labelled) by multiple medical practitioners, so that they fit into the biological male/female sexes. So, in short, family jurisprudence enforces a regime of mutilation/pathologisation/medicalisation over the queer body, if it wishes to seek the legal privilege of marriage/family. This way, the queer body naturally becomes the family jurisprudence’s ‘other’; and, in this act of becoming, marriage/family naturally acquires the status of a restrictive legal privilege—an exclusive club that runs on the law of permissiveness. Am I incorrect when I conceptualise these theoretical extensions?

If, I am not then, this means that the existing juridical notions that constitute ‘family’ is problematic as it refuses to fit with the scheme of the Constitution,

298 I am not considering the case where A, B or C could self-identify as the opposite-sex of their prospective-partner (without SRS), as we are yet to know, if NALSA could formally extend itself to this case—for, all other purposes, such a marriage would lawfully remain a same-sex marriage, which has no recognition in law. Well, in anyway, even if we presume that such a marriage is saved by NALSA, even then, the queer-politics could be deployed to accuse the liberal law of having extended its same-old regime of compulsory heterosexuality through its imposition of binary sexes.

299 Or, maybe I can use the expression “medically mutilated” instead of “medically intervened".
as it stands clarified by the Supreme Court through its NALSA verdict.\textsuperscript{300} This therefore, lets me submit for academic consideration at least—that family jurisprudence must be re-imagined/re-configured so that it looks beyond ‘marriage’ towards the other alternative ways of family making.\textsuperscript{301}

\textbf{2.5. Certain Conclusive and Suggestive Remarks-I}

Queer Theory is useful in unpacking heteronormativity for us in different structural epistemologies of our times. The first section attempts to outline the basis on which a queer-critique of the theory and praxis of the Indian family jurisprudence (which like many others, is one such structural episteme within Indian jurisprudence, in general) could be drawn. Discussions in this section tell us why family jurisprudence is problematic to the queer politics; and, perhaps, why a queer-critique of the same is much needed in the legal-academic discourse. Here, queer as a methodology is productive for the researcher as it provides certain political vantage points to view the spaces inhabited by family jurisprudence. The rich ontological locations of these vantage points help the researcher deconstruct the ideological assemblage of the state and the social that together build the structures of family jurisprudence. Hence, the researcher is already informed about the heteronormative nucleus of this structure and its disavowal of anything that doesn’t fit in this structure—the queer.

This second section of the chapter problematizes the notions of ‘sex’ and ‘gender’ that defines the core of our family jurisprudence. Using a dialectical presentation of the queer epistemology as espoused mainly by Beauvoir, Sartre, Foucault, Wittig, and Butler, this section makes an attempt to deconstruct sex and gender and debunk the essentialist conflations between them. At the same time, this section also uses the lived experiences gathered from the queer gender-journeys that come from multiple intersectional junctions of sex, gender, sexuality, class, location, age and educational backgrounds. So, with such dual-deployment of queer philosophy and queer narratives, this section makes an attempt to challenge the heteronormative social-state assemblage that defines the theory and praxis of family jurisprudence.

The queer philosophical dialectics help us theorise the problematic role of the heteronormative structures of family/kinship, and marriage that incessantly

\textsuperscript{300} This is to just restate that, the NALSA judgment merely re-affirms/clarifies what the queer body (transgender, in this case) always already had itself guaranteed under the Constitutional scheme.

\textsuperscript{301} In my understanding, what needs to be re-imagined/re-configured is law’s requirement that demands everyone to fit in the male/female bodily binary in a heterosexual matrix through its marriage package. In other words, the suggestion is to call for re-making the laws on family-formation in a marriage-neutral fashion.
operates through the categories of sex/gender. The queer philosophy also helps us understand that these heteronormative structures do not exist in isolation/abstract; they are a product of the socio-legal assemblage. This way, we understand that the heteronormative structures are owned by the powers of state/social and operate through the spaces of public/private (mainly the intimate spaces of family and kinship to public spaces such as neighbourhood, schools, workspaces, medical establishments, and state agencies). This makes it operational in both vertical and horizontal vectors. This ownership and operation is mandatorily re-enforced and reified through the thinking and praxis of family jurisprudence. Since, family jurisprudence is the prodigy of a monolithic ordering of heteronormative values it plays a key role in the unilateral enforcement of a heteronormative way of living and stylization—this produces the queer and with it, its politics of defiance.

Since, the queer by and large lives in these heteronormative structures and spaces, its lived experiences help us understand the impact of these structures and spaces on the queer lives. In this section, the queer-narratives help us understand how sex/gender operate in these spaces and in/on the queer-lives. It is well known that the queer lives are tough to negotiate in these harsh normative spaces and times. But, it was in the process of doing the initial fieldwork that I realised that the queer experiences are not just an isolated outcome of one’s queer sex/gender/desires—but, at the same time, there are layers and layers of vulnerabilities of multiple markers of class, age, location, educational background, employment that intersect with one’s queerness. These narratives help us map the gender-journey of the queer through these multi-layered vulnerabilities as experienced vis-à-vis the normative structures of public/private.

Below I present some of my concluding and suggestive remarks keeping in mind that the purpose of this study is to prescribe alternative ways of re-imagining the law and its role in the queer lives. If I may suggest, what needs to be kept in mind while reading these remarks is the reminder that the queer vulnerabilities are a product of the socio-legal assemblage—which means that the state and its law are very well culpable of creating these vulnerabilities into the queer lives. The philosophical dialectics and the queer experiences discussed in this section clearly demonstrate law’s role in enforcing the heteronormative order in our lives, right from our birth till death. Though, conventionally law has been shaped by the dominant discourses of heteronormativity; what we cannot forget is that, law is also a site of democratic contestations, especially, keeping in mind the constitutional frames to approach law and the idea of justice. With this note, here are a few of my concluding and suggestive remarks that are designed keeping in mind that the purpose of this project is to re-imagine change in our laws.
First, let's address the problems that arise out of a regime of imposition of the heteronormative body-language/dressing/stylization in both public/private spaces. Who does the imposition? Who is affected? And, how law can be engaged to imagine change? Let's briefly recall some of the queer experiences (discussed in this chapter) to understand how gender operates through dressing/body-language/stylization.

Why does Rajiv's body-language change automatically when he returns to the private from the public? Why Sourav has to listen to slangs like mauga, chakka, boudi, ladies in public spaces? Why Aparna Di or Jaya couldn't continue with their education at colleges? Why is Sourav made to feel alien at private family functions as if he is some Martian—and, why he has to avoid meeting his relatives? Why does Sourav want to clinically implant female breast—what makes him save money for this—what makes/compels him think that he wants to change his body? Why does Vihaan have to date a guy through an online matrimonial site? Why Jaya's long hair became the reason of her forced resignation from a teaching position at a school? Why is Sourav or Jaya not free to dress/use their choice of body-language even at their own intimate family spaces? Why do the schools impose a dress code strictly based on gender-difference? Why Sam was forced to wear saree all throughout her school life?

The absence of law legitimizes all these acts, both in public as well as in the private.

The discourse of body-language produces heteronormativity. This was all of us who are cis-gendered we contribute in the production of heteronormativity. The queer also produces heteronormativity, if it forces itself (or is forced) to perform a body-language, a stylization that is perceived cis-gendered. The intervention of the law is needed here. The idea is not to sanction/punish the cis-gendered, just because historically, the social and the legal (the private and the public) has punished/sanctioned the non-cis-gendered as opposed to its support/encouragement of the cis-gendered—the politics of this idea is not vengeance then. The idea of legal intervention is much-needed so that the law pulls out its share of contribution in strengthening heteronormativity through its formal/informal codes of body language, dressing, and all forms of stylizations. The intervention of the law is also needed so that, the law punishes/sanctions those who force/impose heteronormative dressing/stylization over persons in spaces and times public and
private, especially keeping in mind Supreme Court’s directives in the NALSA Case.

To re-imagine changes into the law in reality, laws on anti-discrimination and domestic violence are needed. The idea is to allow the free-flow of one’s autonomous choices in public/private spaces on matters of one’s gender without the fear of persecution or prosecution. To my mind, laws on anti-discrimination could be a useful tool to deal with gender-based discrimination at public spaces like formal/informal workspaces, public parks, streets, schools and universities, etc. At the moment, India lacks any such law both at the Union and at the State levels. So, this needs to be a fresh legislative attempt. Hence, a comprehensive legislation with a robust mechanism to address matters of discrimination based on gender and/or intersex-status is the need of our times.

At the same time, to check matters of sexual violence in all spaces public/private that imamate because of certain forms of gender non-conformity of the body, changes are needed into our criminal laws. Foremost, the Sexual Offences as defined under Sections 354, 302 354A, 303 354B, 304 354C, 305 354D, 375, 307 376C, 308 and 376D of the Indian Penal Code, 1860 needs to be made gender-neutral. At the same time, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 needs to be made gender-neutral.

To deal with instances of experiences of humiliation, battering, exclusion, desertion, et.al. from/within the family and extended kinship—I think, amendments in the Domestic Violence laws are needed. The existing legislation on Domestic Violence, i.e., Protection of Women from Domestic Violence Act, 2005 needs to be made gender-neutral.

We know how the state and the social have historically imposed heteronormativity not just through dressing/body-language/forms of

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302 This deals with acts of assault or criminal force to women with the intent to outrage her modesty.
303 This deals with acts of Sexual harassment of women.
304 This deals with acts of assault or criminal force to women with the intention to disrobe.
305 This deals with acts of Voyeurism against the women.
306 This deals with acts of Stalking of women.
307 This deals with acts of rape of women.
308 This deals with acts of sexual intercourse by a person in authority (also available only against men and for women).
309 This deals with acts of Gang Rape (also available only against men and for women).
stylizations—but, also through bodies. The socio-legal assemblage has historically demanded an exclusive production of binary-gendered bodies from the queer—all other productions by the body outside the monolithic binary of male/female genders are sanctioned through multiple ways (e.g. shaming, killing, raping, excommunicating, battering, forced medical surgeries, etc.) The laws operate in this sphere in different forms. To my mind, there are two major areas where the queer is most vulnerable: (1) in the case of bodies with intersectional variations and, (2) in the case of persons voluntarily undergoing SRS.

**In the case of bodies with intersectional variations:** The discussion held under section 2.3 of this chapter demonstrates a few glaring concerns: (1) On the part of the Medical and psychiatric fraternity, and the social workers, there is a constant attempt to pathologise the persons born with intersex variations and to categorise them as a disorder, an abnormality that must be fixed on an urgent basis. A congenial or non-congenial sex variation is always seen more as a social problem than a medical urgency; (2) On the part of the parents of such children born with intersex variations, there is a recurrent desire to see a male child post-surgery in most of such cases; (3) Most basic concern on the part of both the Medical Fraternity and the Parents and Families is their common presumption and faith on the Binary-Genders that stem from the biological binary of sexes, and anything that pervades this structure is a pathological category that must be subjected to urgent correction; (4) The decision to undergo corrective therapy and surgeries are mostly taken at a stage when the child is either young or is an infant. Very few such reported cases document the adult intersex persons seeking medical aid to change the sex to which they are assigned at birth. The former raises serious ethical issues on the part of the practices followed by the doctors, psychiatrists and social workers.

This indicates the politics and economy of the management, regulation and administration of sexes which is unfortunately an important public policy of our times. The NALSA Court clearly states that “...no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.”

This calls for an implementation of this judicial directive. These are a few suggestive remarks:

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310 *Supra* note 8 at para 20.
a. To my mind, first of all amendments are needed in the respective State Government-made rules under the Registration of Births and Deaths Act 1969 so that the category of sex also includes ‘intersex’ as a category. It is the state that needs to first pull out of its legal imposition of the male/female binary.

b. Secondly, laws on anti-discrimination and domestic violence, as discussed previously also equally apply to protect the interests of the persons with intersex variations in spaces public/private.

c. The professional bodies such as that of the Indian Medical Council, Indian Psychiatric Society, etc. need to pass appropriate resolutions to urgently stop such practices, happening in the name of parental consent or otherwise. Also, such professional bodies should also lay down provisions for registering complaints, undertaking investigation and enforce strict sanctions against its own members who are found to be engaged in such practices.

**In the case of persons voluntarily undergoing SRS:** We know through Vihaan’s experiences as to what kind of problems the queer has to experience while passing through the phases of transition. It is not an easy decision to make—mentally, financially, bodily and also psychologically. But, when one makes the choice to undergo SRS then, there are multiple phases in which the body undergoes a complete transition. It is also possible that the queer doesn’t want a complete bodily transition. After all the NALSA Court clearly states that “Self-identified gender can be either male or female or a third gender.”\(^{311}\) But, there are challenges that a person faces while undergoing SRS and after completing SRS from both the state and the social. The NALSA Court also addresses the concerns of persons who are/have undergone SRS and indirectly suggests the government to consider making comprehensive laws “for recognizing rights of transsexual persons, who have undergone either partial/complete SRS”\(^{312}\) while it contemplates the legislative protections available in countries including United Kingdom, Netherlands, Germany, Australia, Canada, Argentina, etc.

In this regard, a comprehensive law is needed for the protection of the rights of the persons pre/during/post SRS; such a law must address the following key concerns:

\(^{311}\) *Supra* note 8 at para 70.
\(^{312}\) *Supra* note 8 at para 35.
a. The state must prescribe appropriate procedures for a hassle-free incorporation of the legal recognition of persons in the self-identified gender through all its various forms of public/private identity (name/gender change in Identity Cards, Bank Accounts, School Records, Higher Education Certificates, etc.) irrespective of whether that person has undergone SRS or not;

b. The state should be legally made liable for providing state-sponsored SRS for anyone who desires without needing that person to produce any medical certificates of unfitness for such desired gender-change. After all, historically it is the law that has been enforcing the oppressive social structure of gender—now, it should be the state’s duty therefore to respect the desire of anyone who wants to undergo sex-transition;

c. the law also should make provisions to mandate employers to provide paid leave to the queer for pre and post SRS care, and then secure its employment just like maternity benefit laws;

d. The state must make provisions for the pre and post SRS care of the queer and monthly living allowance to the queer and its dependants to compensate the monitory loss caused due to any potential loss of pay from one’s employment during the periods of rest and recovery;

e. the law also should legally obligate employers and fellow colleagues not to discriminate against the queer employee/colleague in the pre/during/post SRS phases;

f. At the same time, general anti-discrimination laws must protect the queer pre/during/post SRS at all spaces public/private.

g. The state should provide queer-supportive counselling services for anyone who is undergoing gender dysphoria, along with its care-givers/parents/family members, etc.

iii. Many participants who have been living oppressed lives have said that going to Queer support groups have transformed their lives, helped them to resist oppression—the question is why the queer has to go to NGOs or support groups to realise its own self-worth? What if Naseer or Kishore were able to also access these queer support groups, probably they would not have normalised the

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313 Anyway, there is no implementation of the NALSA directive on this issue, but wherever there appears to be some legal reform, it mostly goes violating the letter and spirit of the NALSA. For example, take the current form of “performa for gender change” that one has to use while applying for a Gazette Notification from the State or Central agencies of Gazette Office—this form mandatorily imposes the requirement of SRS to make such application. See Department of Publication, Ministry of Housing and Urban Affairs, Government of India, “Specimen Performa regarding Change of Sex” available at: http://deptpub.nic.in/forms/Specimen%20Proforma%20regarding%20Change%20of%20Sex _1.pdf (last retrieved on 28th July, 2017).
heteronormative violence, oppression in their lives and in their surroundings. So, law is needed to educate children/their care-givers/masses/professions about human diversity in sex/gender/sexuality/etc. instead of silently normalising heteronormative values through education/mass-media.

Child care-givers should be queer friendly—training is needed at least for the school teachers, counsellors, so that the likes of Sam do not face the trouble of dealing things all by themselves. For example, when Sam was in his sixth standard, he had no idea of menstruation in his body—as he used to think he is a male, just like her brother, if her brother wasn’t menstruating.

At the same time, the state should as a matter of a policy (in furtherance of the NALSA directives) start training its staff to be sensitive to SOGI. A law on anti-discrimination should be in place so that the queer is not left helpless when someone in the public offices ridicules it, bullies it, discriminates against it.

iv. Why Sourav has to keep working underpaid for seven years under a constant fear of retrenchment in queer-friendly NGOs? Why is he not getting jobs outside in the mainstream workspaces despite being a graduate? Why all workspaces/employments are not queer-friendly? To my mind, a strong anti-discrimination law is needed to protect the rights of the queer to fair recruitment, fair treatment, and safety on matters relating to one’s employment/workspace both in spaces public/private and in sectors formal/informal. At the same time, a robust policy is needed to provide skill development, training and educational opportunities to the socially and educationally backward classes amongst the queer, so they could enable themselves to fairly compete with the mainstream.

3. THE FAMILY JURISPRUDENCE: A SITE FOR THE PRODUCTION OF COMPULSORY HETEROSEXUALITY

Under our discussions held in Section-1 of this Chapter, we realised that the heteronormative oppression/violence of family jurisprudence over the queer broadly manifests in two forms: (1) by its hegemonic imposition of the gender binary; and, (2) by its compulsory imposition of heterosexuality. The discussions held in Section-2 were designed to address the nature and form of oppression/violence that manifests through the first form (hegemonic
imposition of the gender binary), along with some concluding and suggestive pointers to mark the queer-agenda of structural transformation.

In this section, *i.e.*, Section-3 I would attempt to discuss almost in the same format, on how oppression/violence (of the socio-legal assemblage) manifest in the second form (through its compulsory imposition of heterosexuality). There are in total five subsections under this section. In subsections 3.1 and 3.2, I attempt to present a genealogical exposition of sexuality through a close reading of the writings of Freud and Foucault—aimed to mark the paths of transition of sexuality from a naturalised category to a constructed one. The discussions in subsection 3.3 address how science acts as an agent of heteronormativity and thus, as a site of oppression through its taxonomies of pathologised sexualities and desires. Then, subsection 3.4 attempts to read heteronormativity in the socio-legal design of the institution of marriage; and, how this design is engineered to regulate the adult’s sexuality. It ends with some conclusive and prescriptive remarks. Finally, the subsection 3.5 explores ways in which child’s sexuality is regulated through the always already designed cultures of private/public that operate through its tools of education/discipline/control/guilt/fear/regret. It ends with some conclusive and suggestive remarks designed as prescriptive pointers for the optimistic seekers of liberal-legal change.

### 3.1. Sexuality as an outcome of Repression: an analysis of Freud

According to Sigmund Freud, the dominant tendency on the part of civilization is to restrict sexual life, and this is what significantly causes repression in the unconscious mind that gets manifested through the occasional instincts and causes neurosis. A neurosis is the indicator for the behavioural and psychosomatic symptoms that is caused due to repression. For Freud, neurosis is a state when the ego suppresses the *id* in the wake of the living external realities of the mundane society and its culture. Freud classifies the human mind into three states: (1) the conscious, (2) the unconscious, and (3) the pre-conscious. The conscious mind works when we are not sleeping, when our activities are determined by reason and the external circumstances in our surroundings. Hence, the conscious state of human mind works, according to Freud, at the instance of the lived or perceived realities of culture, social norms, law, and morality of the day. The conscious is often referred as the tip of the iceberg. The preconscious mind is not conscious at a given moment, but is visible and accessible to the conscious mind. On the other hand, the unconscious mind is like the major portion of our mind as compared with the metaphor of an iceberg by Freud. The unconscious mind stores all the disturbing experiences which we consciously would never like to bring into our realisation as they could be daunting and hindering in the pursuance of our daily life. According to Freud, the unconscious mind is mainly filled up of all the repressive thoughts,
feelings, emotions, drives and instincts that in the usual course of our public lives cannot be brought forth as they could be unacceptable to the society in which we live in. As an illustration, for a husband having an extra-marital relation could be a secret that in his conscious mind, he would never like to acknowledge or allow it to be manifested. He has to do this because, of the social norms that oblige him to comply with the monogamous institution of marriage, of which he is a part. Hence, for Freud, such a secret part of the husband’s life and all the emotions, instincts surrounding this secret life have the potential to cause guilt in the conscious sense, therefore, such secret instincts and experiences are best qualified to form a part of a repressed state, which he called the unconscious. He says that our dreams are not accidental; it is a reflection of what is otherwise repressed in our unconscious mind. The purpose of psychoanalysis is to reveal the otherwise hidden unconscious mind of a person, so that it could help that person to cope up with life.

The psychoanalytic theory of personality developed by Freud suggests that, our personalities are an outcome of the conflicts among the three fundamental structures of human mind, viz., (1) the ego, (2) the id, and (3) the superego. The ego represents conscious state of the human mind, where each individual has a coherent organisation of the mental process. It is also an agency that supervises the process of thinking and helps manage the conscious. The id on the other hand is the agent of the unconscious which represents our deep instinctual, emotional drives that are mainly an outcome of our repressive self. The superego represents what we want to be, or what we should be doing in a certain set of circumstances, but the id often unconsciously intervenes with the superego and finally doesn’t allow us to act in the way we ought to, as per the dictate of our superego. The ego therefore, more than often leads us to draw a compromise between our id and superego and this is what defines our personality, in Freudian terms.

For the purposes of this study, it is important that we understand the role of repression in the formulation of our personality, in Freudian terms. It looks as if for Freud, the causation of the human personality is quite a structured phenomenon. Repression refers to the ego’s efforts to subconsciously keep anxious thoughts and impulses out of our awareness and keep them buried and hidden. By repressing certain thoughts and impulses, the Ego is attempting to avoid facing and dealing with them. We are usually not even aware that it is taking place. Repression can be both a protective function, keeping us within acceptable social bounds, but can also be harmful when too much of it results in psychological dysfunction—Freud called both conditions as neurosis. For Freud, much of what is repressed is mostly connected with sexuality. As discussed above, neurosis is a psychosomatic state when the ego is completely run by the superego and the repressed
instincts of the id are not valued by the ego. As Freud discusses in his book *Civilization and its Discontents*:

“The symptoms of neurosis, as we have learnt, are essentially substitutive gratifications for unfulfilled sexual wishes. In the course of our analytic work we have found to our surprise that perhaps every neurosis masks a certain amount of unconscious sense of guilt, which in its turn reinforces the symptoms by exploiting them as punishment. One is now inclined to suggest the following statement as a possible formulation: when an instinctual trend undergoes repression, its libidinal elements are transformed into symptoms and its aggressive components into a sense of guilt. Even if this statement is only accurate as an approximation it merits our interest.”

It appears from Freud’s understanding of repression that, circumstances external to the mind, such as the law, culture, religion, literature etc. condition the human mind in a way that we start suppressing what those instincts which are not accepted in the society, thus, it leads to the phenomenon called repression, as referred by Freud. Repression is not always a good thing, as too much of such suppression, could cause psychosomatic conditions, such as neurosis. Freud considers three sources of unhappiness, namely, the superior force of nature, the feebleness of our bodies, and inadequacy of our methods of regulating human relations in the family, the community and the state. Out of these three, his main concern was the third one, the lack of our methods of regulating human relations. He raises through his writings, the way culture has prohibited vast forms of human sexualities, through its inter-generational operation of the economy of taboos.

315 Id. at 43.
316 Freud critiques the culture of taboo very sharply as an intrusion on human virtues of liberation and sexual autonomy, he writes: “Even the earliest phase of it, the totemic, brought in its train the prohibition against incestuous object-choice, perhaps the most maiming wound ever inflicted throughout the ages on the erotic life of man. Further limitations are laid on it by taboos, laws and customs, which touch men as well as women. ... Culture behaves towards sexuality in this respect like a tribe or a section of the population which has gained the upper hand and is exploiting the rest to its own advantage. Fear of a revolt among the oppressed then becomes a motive for even stricter regulations. ...Where sexually mature persons are concerned, object-choice is further narrowed down to the opposite sex and most of the extragenital forms of satisfaction are interdicted as perversions. The standard which declares itself in these prohibitions is that of a sexual life identical for all; it pays no heed to the disparities in the inborn and acquired sexual constitutions of individuals and cuts off a considerable number of them from sexual enjoyment, thus becoming a cause of grievous
Freud considers repression to be a harmful state and calls us to liberate ourselves but not completely but to the extent that our existence in the society remains unhindered. He saw that a greater degree of happiness is possible to bring forth to human psyche, if the curbs in the forms of social and cultural norms were abolished or greatly relaxed.

3.2. On the Genealogy of Sexuality: an analysis of Foucault’s response to Freud

Now, this structured approach of Freud on repression and its impact on human psyche and at large on the mental health of the society was seen with suspicion by Foucault in his seminal work *The History of Sexuality-I*. Foucault, doesn’t reject the conception of repression as proposed by Freud, but Foucault’s main objection against repression appears to be coming from the assumption that historians often make by taking repression as an unchallenged starting point to view the historicity of discourses on sexuality. As Foucault points in the first chapter of this book:

“Let there be no misunderstanding: I do not claim that sex has not been prohibited or barred or masked or misapprehended since the classical age; nor do I even assert that it has suffered these things any less from that period on than before. I do not maintain that prohibition of sex is a ruse; but it is a ruse to make prohibition into the basic and constitutive element from which one would be able to write the history of what has been said concerning sex starting from the modern epoch.”

Foucault’s work is a historiography on the development of the discourses on sexuality. Foucault sees power relations working in direct or tacit mode in all our endeavours on sex. The anatomical category of ‘sex’ is linked with sex as a drive, as an act; this way, for Foucault, sex is directly linked with sexuality, as both are political expressions having a rich genealogy of discourses, as opposed to being a natural instinct, so presumed by many including Freud.
He narrates through his powerful writing on how history and biology are bound together in a complex fashion and how they are run by the modern technologies of power.\textsuperscript{319}

Foucault doesn’t deny the effects of repression on the individual and social psyche owing to the regressive and restrictive laws whose purpose is to establish “an order” in the society. The Hegalian precepts on order are very clear, as order cannot exist without there being disorder; hence, the life of order, the business and agenda of our society in establishing that order works on the politics of defining blur forms of disorder, and punishing those who are found not to practice them. What he submits through his historiography of sexuality is that, owing to repression by the social and moral prohibitions there has always been an incitement to talk about sex, there has always been a will to knowledge about sex, in whatever quantum or nature that may have been, but these discussions surrounding sex have formulated the politico-cultural notions on human sexuality; no matter, howsoever inadequate and falsifying one may find them. He argues that sex has always been part of the political education of every generation, and much of this epistemology on sex constituting what we know as sexuality owes much of its creation and validation to the trans-generational norm surrounding the “secrecy over anything sexual”.\textsuperscript{320} As he says, “what is particular to the modern societies, in fact, is not that they consigned sex to a shadow existence, but that they dedicated themselves to speaking of it \textit{ad infinitum}, while exploiting it \textit{as a secret}.”\textsuperscript{321} Foucault sees interplay of power-dynamics in each core of human interaction and relations; since, sex is an outcome of a privileged political discourse, even the voice of silence has to be included in this game of interpretations to cull out the tits and bits of power-play in every smallest core of human relations.

So, what is the category of ‘sex’ as per Foucault? In the Foucaultian literature, is there any distinction between ‘sex’ and ‘sexuality’? With my

\textsuperscript{319} Years after writing \textit{The History of Sexuality}, Foucault summarizes during an interview the purpose of his book, he said, “a history of how various forms of circumscription were brought into effect within the field of sexuality (forms of sexuality that are permitted or forbidden, normal or abnormal, male or female, adult or child).” See Colin Gordon (ed.), \textit{Power/Knowledge: selected interviews and other writings 1972-1977} Michel Foucault Translated by Colin Gordon, Leo Marshall, John Mepham, \textit{et.al.} 184-185 (Pantheon Books, 1980).

\textsuperscript{320} Foucault delightfully says, “What is this force that so long reduced it to silence and has only recently relixed its hold somewhat allowing us to question it perhaps, but always in the context of and through its repression? What is this patience or eagerness to constitute it as the secret, the omnipotent cause, the hidden meaning, the unremitting fear? In reality, this question so often repeated nowadays, is but the recent form of a considerable affirmation and a secular prescription: there is where the truth is, go see if you can uncover it.” \textit{Supra} note 68 at 78-79.

\textsuperscript{321} Id. at 35.
reading of Foucault, I believe that, the category of ‘sex’ as understood by the radical feminists or by the contemporary queer theorists is not what Foucault is concerned with. For him, ‘sex’ conveys the mere act of doing anything sexual.

He partially attempted to dispel the nineteenth century Freudian notions on repression, by historically and philosophically interpreting the socio-political institutions of the West, primary among them being the Religion, Marriage, Government, Family, Schools, Hospitals, and Prisons. He largely brings forth the discursive elements from the domains of the religion and science, as he sees them as two of the most popular and influencing streams of episteme. Both the epistemic streams prescribed a certain hierarchy, a structure and an order based on the binaries of exclusion/inclusion, acceptable/unacceptable, natural/unnatural, human/demonic, etc. Foucault emphasises in *The History of Sexuality-I*, the manner in which Christianity has, in order to impose sanctions over sexual freedom has indeed generated an entire epistemology to decipher what is forbidden and what is permitted in sex. He points out that, “at the heart of the Christian penitence there is the confessional, and so the admission of guilt, the examination of conscience and arising from that the production of the whole body of knowledge and discourse on sex which engendered a range of effects on both theory (for example, the vast analysis of concupiscence in the seventeenth century) and practice (a pedagogy of sexuality, subsequently laicised and medicalised)”.

Foucault’s argument against the theory of repression is based on the veritable discursive explosion that he notes across the (1) spheres of religion, first (a timeline that he draws between the fifteenth to the nineteenth century) and latter, (2) in the spheres of science (post the eighteenth century). He founds that this sexed discourse was both at the institutional and formal levels (like family, churches, schools, courts, etc.) as well at the illicit levels in the shadows of the institutional relics of society. Regarding the first, he says, “there was a steady proliferation of discourses concerned with sex—specific discourses, different from one another both by their form and by their object: a discursive ferment that gathered momentum from the eighteenth century onward.”

He depicted meticulously, how the confession manuals used by the priests had mentions of explicit sexual acts that they used to ask the confessors as a part of the catholic ritual of reconciliations with one’s sins. Amongst many other sins, sex-related sins or sins of the flesh were given special importance by the pastoral order. Foucault notes substantial changes in the church manuals on confessions of the flesh around the eighteenth century. Before this, the pastor’s main object used to concentrate on the “act” of illicit sex, whereas, now, the focus of confession shifted to “insinuations of

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322 Supra note 319 at 186.
323 Supra note 68 at 18.
the flesh: thoughts, desires, voluptuous imaginings, delectations, combined movements of the body and the soul; henceforth, all this had to enter, in detail, into the process of confession and guidance... everything had to be told.”324 As Foucault further notes, “a twofold evolution tended to make the flesh into the root of all evil, shifting the most important moment of transgression from the act itself to the stirrings”.325 Foucault quotes from the writings of Paulo Segneri, an Italian Jesuit missionary from his work, *L'Instruction du penitent*: “examine diligently, therefore all the faculties of your soul: memory, understanding and will. Examine with precession all your senses as well ... Examine, moreover all your thoughts, every word you speak, and all your actions. Examine even unto your dreams, to know if, once awakened, you did not give them your consent. And finally, do not think that in so sensitive and perilous, a matter as this, there is anything trivial or insignificant.”326 Perhaps the project of the church was to catch the rot at its inception and to further traumatize and terrorize such sinners with the pastoral technologies of guilt and penance. Foucault is cautious enough, when he critiques Freud’s analysis of repression, he doesn’t discard the importance and the influence it has had in the making of the discursive limits on sexuality. The pastoral endeavor of confessions was an example of such power-play; a force that had been diligently performing the duties of a perfect guilt-lying machine. The major impact of this road-blocking power was felt most in the censoring of language; the language that was used in the making of the popular culture, and the literary pieces of that time. There was an unwritten policing of statements; as Foucault presents, “areas were thus established, if not of utter silence, at least of tact and discretion: between parents and children, for instance, or teachers and pupils, or masters and domestic servants. This almost certainly constituted a whole restrictive economy, one that was incorporated into the politics of language and speech—spontaneous on the one hand and concerted on the other—which accompanied the social redistributions of the classical period.”327

Such powerful technology of censoring and manipulating the discourses on sex, entered into language making it undergo a series of modifications, re-orientations, and realignments of ‘desire’ itself. Desire, being an outcome of the rules of prohibition, has always been a tool for the manipulation of pleasure. For there is nothing called ‘sex’ or ‘sexual’ in the abstract; devoid of the cultural moorings of society there is no possibility for constructing the politically loaded notions on sexuality. Pleasure that may have been once free was now restricted, policed and disparaged by the conjoint operation of the technologies of morality, language, and now science. By the middle of the

324 *Id.* at 19.
325 *Id.*
327 *Supra* note 68 at 18.
eighteenth century, “morality” was not the only producer of such censorship and proliferation; it was joined by “rationality” through the means of science—medicine and psychiatry. Again, there was a redeployment of sexuality, just that the terms and conditions, this time were somewhat different. Morality which runs on the technology of guilt now had another companion in the form of science that runs on the technology of rationality. Alas, it will be a subject of later realisation that “rationality” was always already manipulated and politically maneuvered. These new centers of the eighteenth and the nineteenth century started undertaking human sexuality as their new subject, and this produced further discourses on sex. As Foucault sums it up:

“First there was medicine, via the nervous disorders; next psychiatry, when it set out to discover the etiology of mental illness, focusing its gaze, first on excess, then onanism, then frustration, then “frauds against procreation” but when it annexed the whole of the sexual perversions as its own province; criminal justice, too, which had long been concerned with sexuality, particularly in the form of “heinous” crimes and crimes against nature, but which, toward the middle of the nineteenth century, broadened its jurisdiction to include petty offences, minor indecencies, insignificant perversions; and lastly all those social controls, cropping up at the end of the last century, which screened the sexuality of couples, parents and children, dangerous and endangered adolescents—undertaking to protect, separate, and forewarn, signaling perils everywhere, awakening people’s attention, calling for diagnosis, piling up reports, organizing therapies. These sites radiated discourses aimed at sex, intensifying people’s awareness of it as a constant danger, and this in turn created a further incentive to talk about it.”

The notion of ‘perversion’ in the medieval pastoral order was mainly restricted to acts that were understood to be deviations from the matrimonial order or deviations from what were understood to be the natural order of desire, e.g., adultery, incest, and bestiality, sodomy; but the birth of modern science introduced a new tool of ‘pathologisation’ with which, now the focus was on hitherto new forms of sexualities, like homosexuality, onanism, children’s sexuality, sexuality between parents and children, variety of sexual fetishes like domination, bondage, etc. “This new persecution of the peripheral sexualities entailed an incorporation of perversions and a new specification of individuals,” says Foucault. The hitherto “sodomite” was now the past, for the new medical category called the ‘homosexual’ was

328 Supra note 68 at 30-31.
329 Id. 42-43.
Homosexuality was now a new category of perverse desires. As Arvind puts it with a clear note, that “there is a shift from looking at homosexuals as people who knowingly commit sin to people who because of their medical condition are prone to this kind of perverse behavior. What follows is the “discovery” that homosexuals are to be treated and not punished for their behavior.” This new shift brought in by the early modern medical developments brought the notion of normal/abnormal, healthy/curable as the new category of the ‘medically pervert’ was created, of which homosexuality was a sub-category. As Foucault presents, “the nineteenth century homosexual became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, within an indiscrete anatomy and possibly a mysterious physiology…The sodomite was a temporary aberration; the homosexual was a species.” The next section of this chapter takes this ‘exposition on sexuality’ further by extending our discussions on the contributions of science in its acts of normalising heterosexuality and pathologising homosexuality—the politics of protecting the heteronormative family.

3.3. Science at the service of Heteronormativity: the politics of Protecting the Family through the tool of Pathologisation

With the Nineteenth century pathologisation became the new mantra of sexuality discourse. During this period, there was certainly a new discourse building upon the sexually abnormal vis-à-vis the sexually normal. Jeffrey Weeks in his article Questions of Identity notes that, there were two major impacting moments in this emergent discourse. The first being the impact of Charles Darwin’s Origin of Species which had already hinted at the applicability of the theory of natural selections to humans; with Darwin’s Descent of Man, and Selection in Relation to Sex another element was added: the claim that sexual selection (the struggle for the existence following the theory of the survival of the fittest) so that survival depended upon sexual selection, and the ultimate test of biological success lay in reproduction. As Weeks writes, “biology became the privileged road into the mysteries of nature, and its findings were backed up by the evidence of natural history in all its wondrous peculiarity and order.”

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330 As Foucault notes, “the sodomite had been a temporary aberration; the homosexual was now a species.” Id. at 43.
332 Supra note 68 at 43.
334 See Charles Darwin, Descent of Man, and Selection in Relation to Sex, (John Murray, 1871).
335 Supra note 333 at 33.
According to Weeks, the second impacting moment proved to be the voluminous works of Richard von Krafft-Ebing’s *Psychopathia Sexualis* which founded new ways of medically constructing sexuality based on heterosexuality as the normal constant and all other sexual behaviors being its perversity. Ebling described his book as a medico-juridical text; for he claims that, “the importance of the subject for the welfare of society, especially forensically, demands, however, that it should be examined scientifically.” Ebing’s work became very popular at his days, especially amongst practitioners of medicine and law. Weeks notes that, such popularity encouraged many others to work on the development of this emergent discourse; and between 1898 and 1908 there were 1000 publications on homosexuality alone.

Twenty years before Ebing, it was Carl Westphal’s famous article in 1870 titled *Contrary Sexual Sensations* which is considered as the first medical paper which discussed what we now know as homosexuality. He discussed the cases of two of his patients, one lesbian and one male transvestite, through the analysis of which, he was convinced that homosexuality is caused inborn and are symptoms of a psychopathic or neuropathic state, that could be cured. Foucault considers that Westphal’s work can stand as the date of birth of the ‘homosexual’; less by a type of sexual relations than by a certain quality of sexual sensibility, a certain way of intervening the masculine and the feminine in oneself.

The paradox of such proliferation of discourses on sexuality is that, before the English Translation of Ebing’s work, there was no term in English vocabulary that marks any person by the name homosexual. Of course, such proliferation of discourses refutes Freud’s claim of ‘absence of sexual discourse’ and sustains Foucault’s claim of ‘proliferation of sexual discourse’.

David M. Halperin, in his book *One Hundred Years of Homosexuality* published in 1990 credited Charles Gilbert Chaddock for introducing the word ‘homosexual’ to the English Language in the year 1892. Chaddock was the official translator of Krafft-Ebing’s foundational work *Psychopathia Sexualis*

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336 See the preface to the republished copy of the first edition, 1894 of Richard von Krafft-Ebing, *Psychopathia Sexualis* Translated by Charles Gilbert Chaddock (Forgotten Books, 2012) available at: https://archive.org/stream/PsychopathiaSexualis1000006945/Psychopathia_Sexualis_10000 06945#page/n7/mode/1up (last accessed on 23rd December, 2016).

337 Supra note 333 at 34.

338 Carl Westphal, *Archiv fur Neurologie* (1870) taken from Supra note 68 at 43.

339 Supra note 68 at 43.

which was originally written and published partly in German and in Latin in the year 1886. For Ebing, sexual perversion constituted all acts that did not result in procreation, as the purpose of desire for him solely was procreation. For generations to come, his work remained as one of the pioneering and most influential medico-juridical texts to pathologise sexual behavior. According to Ebing’s theory, homosexuality was the result of some developmental problems at the embryonic and fetal stages that cause sexual inversion in the brain. As Halperin notes, before 1892 there was no homosexuality, and so was heterosexuality. Halperin notes:

“The comparatively recent genesis of heterosexuality—strictly speaking, a twentieth-century affair—should provide a clue to the profundity of the cultural issues over which, hitherto, I have been so lightly skating. How is it possible that until the year 1900 there was not a precise, value-free, scientific term available to speakers of the English language for designating what we would now regard, in retrospect, as the mode of sexual behavior favored by the vast majority of people in our culture? Any answer to that question—which, in its broadest dimensions, I shall leave for the intellectual heirs of Michel Foucault to settle—must direct our attention to the inescapable historicity of even the most innocent, unassuming, and seemingly objective of cultural representations. Although a blandly descriptive, rigorously clinical term like “homosexuality” would appear to be unobjectionable as a taxonomic device, it carries with it a heavy complement of ideological baggage and has, in fact, proved a significant obstacle to understanding the distinctive features of sexual life in the ancient world. It may well be that homosexuality properly speaking has no history of its own much before the beginning of our century.”

Ebing’s work was grounded in the currents of the age of enlightenment where pursuing pleasure was restricted in terms of both its quantum and quality by the reigns of morality and logic. Alas, logic only entail results based on the certain premises; in this case, the premises were the eighteenth-century standards of Victorian morality, which is why the same of Ebing’s logic doesn’t work in the contemporaneous circumstances. In the 238 cases, that


342 As Ebing notes, “The propagation of the human species is not committed to accident or to the caprice of the individual, but made secure in a natural instinct, which, with all-conquering force and might, demands fulfillment... In coarse, sensual love, in the lustful impulse to satisfy this natural instinct, man stands on a level with the animal; but it is given to him to raise himself to a height where this natural instinct no longer makes him a slave: higher, nobler feelings are awakened, which, notwithstanding their sensual origin, expand into a world of beauty, sublimity, and morality.” Supra note 336 at 1.
Ebing studied on human sexual behavior he marked them in distinct pathological categories of perversion and abnormality. He produced a catalogue of such sexual deviances from acquired sexual inversion to zoophilia, sadism to necrophilia, masturbation to fetishism, acquired homosexuality to congenital homosexuality, melancholia to hysteria, pederasty to incest. Such a treatment of sexuality encouraged clinicalisation of these conditions resulting in suppression of desires, and if caught manifesting, then stigmatization. In fact, he advocated for a constant surveillance of the sexual delinquent, for what if he starts preying again after the prison term gets over. He argued that justice will not be done to the larger interests of peace, safety and the moral order of the society, if the sexual delinquent is merely dealt through penal provisions of the law; therefore, he demanded a continued psycho-pathological treatment of the criminal, otherwise, without which, justice remains forever undone.\textsuperscript{343}

By the time Freud started his work on sexuality in the latter half of the nineteenth century, there was already a significant and impactful knowledge ready to serve the body of socio-political and medical order of those days; these included J.L. Casper and J.J. Moreau, to Cesare Lombroso and Auguste Forel, Valentine Magnan and Benjamin Tarnowsky.\textsuperscript{344} In his \textit{Three Essays on the Theory of Sexuality}, published in 1905, Freud developed the tool of psychoanalysis and reinforced the concept of repression. Freud mainly picked up on the effects of this rampant and random pathologisation of the sexual behavior and in many ways, he advocated for the development of a culture of liberated sexuality. In one of his responses to a tensed Mother of a Gay son, he assures her that homosexuality is nothing to be ashamed of and, it is neither a degradation, vice nor an illness.\textsuperscript{345} However, here he adds, “we consider it to be a variation of the sexual function produced by a certain arrest of sexual development”.\textsuperscript{346}

Despite of such an assuring response by Freud, his approach for homosexuality is disputed and considered ambivalent; sexologists, psychiatrists and other medical professionals have vacillated between condemning homosexuality as a disease and calling homosexual desire normal.\textsuperscript{347} It is ambivalent and ambiguous as, on the one hand, Freud seems to have a clear opinion that being homosexual is not an illness, but he also adds, “we consider it to be a variation of the sexual function produced by a

\textsuperscript{343} Id. at 379.
\textsuperscript{344} Supra note 333 at 34.
\textsuperscript{345} Jeffrey Weeks, \textit{Sexuality} 69 (Routledge, 1986).
certain arrest of sexual development.” Jeffery Weeks in his book *Sexuality* notes that, some of Freud’s students and followers picked upon the last part of his statement that, “…produced by a certain arrest of sexual development”, and considered homosexuality to be a pathological condition that can be cured.\(^{348}\) Sandor Rado and Irving Bieber some of Freud’s followers who laid down the foundations of reparative therapies; these are designed to change the sexual orientation of the patient.\(^{349}\)

But for the development of pathological discourse on sexuality, Freud mainly acknowledged nine writers: Krafft Ebing, Albert Moll, P.J. Mocbius, Havelock Ellis, Albert Schrenck Notzing, Leopold Lowenfeld, Albert Eulenberg, Iwan Bolch and Magnus Hirschfeldt.\(^{350}\) These early modern-day curious scientists, sexologists, psychologists no doubt had a firm passion to develop new medico-juristic episteme on human sexuality, but they did not have their works completely detached from the wider currents of their time.

The common denominator of all these studies is the naturalized state of heterosexuality which was taken as the normal condition of life, and all else that fell outside it was tried to be captured within the powerful catalogue of perversion through the machinery of science, law and language. As Weeks sums it up, “the negative side of this classificatory enthusiasm was a sharp reinforcement of the normal… the debates over the causes of the perversions and the eager descriptions of even the most outrageous examples inevitably worked to emphasize their pathology, their relationship to degeneracy, madness and sickness and helped to reinforce the normality of heterosexual relationships.”\(^{351}\) The impact of heterosexualisation of the standards of normality were not just defining ‘sexuality’, but were equally and connectedly linking it to ‘gender’ as well. The discovery of ‘the homosexual’ defined the abnormal because the psychiatrists identified ‘heterosexuality’ to be normal. Being heterosexual entailed the binary of genders, male and female, and the cross-sexual intimacy between the male and female; anything beyond this arrangement was abnormal and thus, unacceptable. This has only strengthened the institutions and culture of heterosexuality, which has not just normalized it, but naturalized it as well. This gives rise to the politics of ‘compulsory heterosexuality’ that anyone not appearing to be practicing it, is abnormal, and by extension unnatural. Weeks notes that, such a biased approach makes sexology preachy.\(^{352}\)

\(^{348}\) Supra note 345 at 71.
\(^{349}\) See Stephen Halpert, “If I ain’t Broke, Don’t fix it: Ethical Consideration Regarding Conversion Therapies” 5 Int. J. of Sexuality & Gender Studies (2000) 19.
\(^{351}\) Supra note 345 at 76.
\(^{352}\) Weeks argues, “sexology has never been straightforwardly outside or against relations of power; it has been deeply involved in them. Sexology, then is not simply descriptive. It is at
These interventions on the part of medicine and psychiatry, translated into a negative social change in the nineteenth and first half of the twentieth century, as sexual perversions (including the desire for the same-sex or homosexuality, as it was termed) was seen as illness, a disorder, that could be cured, fixed and restored back to normal. This treatment-model has its roots in the researches produced by the psychiatric fraternity that had worked for years by now and which already had seeped into the domain of medicine. Homosexuality transcended from a mere diagnostic label to a medical category that could be cured.

The International Classification of Mental and Behaviour Disorders-10 (ICD-10) prepared by the World Health Organisation (WHO) is currently the most broadly used classification of diseases in the world, along with country-specific systems like the Diagnostic and Statistical Manual of Mental Disorders, fifth edition followed in the USA or the Australian Classification of Health Interventions in Australia or the Canadian Classification of Health Interventions is a system used in Canada.

With the growing political pressure of the Gay movement in the United States, the APA passed resolutions in 1971 calling to remove homosexuality from its manual of mental disorders. Some psychiatrists who fiercely opposed their action subsequently circulated a petition calling for a vote on the issue by the Association's membership. That vote was held in 1974, and the Board's decision was ratified. Subsequently, a new diagnosis, ego-dystonic homosexuality, was created for the DSM's third edition in 1980. Ego dystonic homosexuality was indicated by: (1) a persistent lack of heterosexual arousal, which the patient experienced as interfering with initiation or maintenance of wanted heterosexual relationships, and (2) persistent distress from a sustained pattern of unwanted homosexual arousal. In the year 1986, in the revised version of the DSM-3, the APA removed ego-dystonic homosexuality from its list of mental disorders.

Whereas, the WHO took time to carry on changes in its manuals. It was 1992, when homosexuality was declassified by the WHO in its ICD-10 (which is currently in use, though should be very soon replaced by ICD-11), though,

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354 Id.
what remains still is category of ‘egodystonic sexual orientation’. This system of classification follows the distinction between ego syntonic and ego dystonic condition. In ego dystonic condition, the gender identity or sexual orientation is not in doubt, but the individual wishes it were different and seeks treatment. In such a case, WHO prescribes treatment for such individuals; though, the potential scope of such supposed treatments is neither prescribed nor directed by the WHO. On the other hand, the category of being egosyntonic is when an individual is both aware and has accepted the sexual orientation or gender identity of hers; in such cases treatments are not warranted, as this is not a disorder specified in the ICD-10. The language used in the manual is ‘sexual orientation’ an expression that is gender neutral, and thus, includes all forms of ego dystonic sexual orientations (e.g., heterosexuality, homosexuality, bisexuality, etc.).

It is not enough to just declassify homosexuality as a mental disorder, but the retention of egodystonic sexual orientation is equally problematic. Arvind presents, the following two reasons, for it being problematic: Firstly, in the absence of any parameters for the determination of whether the patient is ego syntonic or dystonic, the Doctor may presume the patient to be dystonic; secondly, since, being syntonic or dystonic depends upon the individual concerned, hence, it is relative and may vary based on social and cultural factors such as the pressure to get married or the need to confirm to certain culturally appropriate sexual practices.

It is not just this single category of ‘egodystonic sexual orientation’ that is considered problematic; there are other pathological categories based on sexual behaviour and gender identity. The WHO is currently in the process of replacing the ICD-10 with a newer version of ICD-11 for which it is inviting health professionals to make their submissions and representations. It is

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356 Id.
357 Supra note 330 at 84.
358 See categories F64 for Gender Identity Disorders (Transsexualism, Dual-role transvestism, Gender identity disorder of childhood, other gender identity disorders and a catch-all category called, “gender identity disorder, unspecified”); F65 for Disorders of Sexual Preference (Fetishism, Fetishistic Transvestism, Exibitionism, Voyeurism, Pedophilia, Sadomasichism, Multiple disorders of sexual preference, and the catch-all categories of Other disorders of sexual preference, and Disorders of Sexual Preference, unspecified) of ICD-10. Supra note 355.
hoped that attempts to de-pathologise sexual behaviour, at least the ones based on sexual orientation and gender will be made.

In the absence of any indigenous classification system developed by the Indian Psychiatric and Medical Fraternity, the obvious recourse is the WHO’s ICD manuals which has historically been followed since its inception in 1949 by the Indian healthcare professionals. There are very few studies conducted to gauge the level of awareness amongst the Indian Doctors and psychiatrists about their knowledge of the WHO’s prescriptions on treating egodystonic sexual orientation. In the absence of specific studies, it is difficult to suggest, any statistical data in this case. But based on some of the available studies and the interviews conducted by me, as a part of this research, we can draw some qualitative results. It is widely believed that therapies (that go by the name aversion or conversion therapies are all a part of behavioural therapies)\textsuperscript{360} are prescribed and conducted over the so called ‘patients’ by the medical and psychiatric fraternity. In aversion therapy for homosexuality, the ‘patient’ is shown same-sex nude images. When the patient feels aroused at the images, an electric shock is administered through electrodes attached to the wrist. Then, the patient is shown nude images of the ‘desired’ gender. No shock is administered at this time. The objective of the therapy is fairly simple: to help the ‘patient’ associate same-sex desire with pain. The therapist hopes that the person will eventually associate pleasure with cross-gender attraction and thereby become ‘normal’.\textsuperscript{361} Other therapies co-exist with behaviour therapy. Due to the belief that homosexuality is often seen alongside schizophrenia, many homosexuals speak of being provided psychiatric drugs used routinely to treat schizophrenia or epilepsy in order to ‘cure’ their homosexual desires. Male homosexuals who are effeminate have spoken of being given hormone injections or medication to increase their ‘masculine’ behaviour.\textsuperscript{362}

As discussed aforesaid, in the Indian scenario, a few questions are left completely unanswered. To my mind, these are those main areas:

i. Are there any studies that have recorded the number of persons who have either voluntarily or under forced/pressured circumstances sought treatment at a Mental Health unit in India to treat homosexuality? Surely, we would never know if there is a fixed number.

ii. Are there any studies that comprehensively describe the treatments that were/are administered to these persons who have expressed their interest or have been forced to cure their homosexuality in India?

\textsuperscript{360} Supra note 347.
\textsuperscript{361} Arvind Narain, Vinay Chandran (eds.), Nothing to Fix: Medicalisation of Sexual Orientation and Gender Identity (Sage, 2015)
\textsuperscript{362} Id.
Surely, many cases are archived that describe the types of treatment administered; but, again we do not have (rather, we cannot have) any qualitative assessment on the impact of these treatments over the queer-experiences. It is (and, was always) realistically impossible to create a register of all such cases.

Due to lack of adequate research (for whatever reasons, realistic and otherwise), there is no statistics as to the number of people treated by aversion therapy in India.\textsuperscript{363} Although, there are occasional reports of psychiatric abuse, which manage to elicit a column in the newspaper, these are easily forgotten.\textsuperscript{364} However, there are a few studies that I have been able to access in the course of this research, that somewhat address the aforesaid questions. The first among them that I would like to discuss are the experiences of three Psychiatrists, namely, P.V. Pradhan, K.S. Ayyar, V.N. Bagadia at the KEM Hospital, Bombay while they claim to have treated thirteen Gay individuals from Bombay with the use of behaviour modification techniques (behavioural therapy as discussed above). They have published their study in two separate papers published in the \textit{Indian Journal of Psychiatry} in the year 1982.\textsuperscript{365} Their sample of these thirteen Gay men come from diverse socio-economic and educational backgrounds and they become a part of this study when they are “diagnosed with homosexuality” as defined by the ICD-9 of the WHO by two consultants independently (presumably these two consultants were a part of the KEM Hospital, Bombay). The following is an extract from their published paper:

“Behaviour therapy consisted of the following treatments: (1) Aversive deconditioning to homosexual stimuli in imagination by a pre-determined voltage of alternating current passed between two wet saline -soaked gauze electrodes tied to the left forearm for a duration of two to five seconds. The current strength varied from 50 to 75 volts. (2) Aversive deconditioning (electrical) to homosexual stimuli, in reality using provocative male photographs. (3) Relief from electrical aversion by withdrawal of the electric current on seeing provocative female photographs. (4) Positive conditioning to heterosexual stimuli by combining heterosexual fantasy with relaxation. (5) Positive conditioning to homosexual stimuli by combining provocative female photographs with relaxation. (6) Positive conditioning to

\textsuperscript{363} Supra note 330 at 88.
\textsuperscript{364} Id.
heterosexual stimulate at home by combining sexual excitation—stimulation of genitals even up to ejaculation—with hetero-sexual fantasies and with seeing provocative female photographs.”

Each such session of behaviour therapy lasted for 20 to 25 minutes, wherein the time allocated for aversion treatment was 10 minutes each patient, followed with one or more types of conditioning techniques about 15 minutes. Behaviour therapy sessions ranged in frequency from two to five times per week. Now, there is this Bancroft’s scale to access the patient’s sexual inhibition or sexual excitation. Based on the patient’s subjective impression and therapist’s objective impression, the patient’s improvement was noted on the Bancroft’s scale. The findings of their study are as follows:

- “Eight (61%) of our thirteen patients showed very good improvement and of these four got married or engaged after treatment and had successful sexual intercourse with a female on a six month to one year follow-up.

- Our patients received between 15 to 45 sessions of behaviour therapy. Of the 5 patients who did not improve 3 had taken less than 25 and 2 had taken more than 35 sessions. Of the patients who improved, 1 had taken less than 25, four more than 25 and three more than 35 sessions. Thus, those who did not improve had taken a relatively lesser number of sessions.

- Seeing the results in the context of the duration of indulgence in homosexual behaviour, the results are: Of the, 2 patients with a duration of homosexual behaviour for 5 years or less one improved and one did not. Two out of 4 patients with homosexual behaviour between 5 and 10 years improved. Of the six patients with a duration of homosexuality between 10 and 14 years, 5 improved and 1 did not. The patient with a duration greater than 15 years did not improve. Thus, duration of homosexual behaviour does not appear to be of much significance as a prognostic factor in behaviour therapy.

- We observed the development of a depression in six of our patients. In five of our patients the depression was accompanied by an anxiety that they may lose their sexual drive totally and be neither homosexual nor heterosexual. One of our patients because depressed because his steady homosexual partner went abroad deserting him. The

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366 Id. at 82-83.
depression was treated with antidepressant drugs and behaviour therapy was continued in all cases.”

In another study conducted between the period of 1977 to 1982 by the duo of a Clinical Psychologist and a Junior Resident at the Department of Psychiatry, All India Institute of Medical Sciences, New Delhi on six homosexual persons including five gays and one lesbian. The paper is published by them in the *Indian Journal of Psychiatry* in 1983, which describes the study they had conducted and the results thereof. So, why did these six individuals seek medical help at the first place? The paper states that these persons sought help “because of varying degrees of social pressures and personal guilt. In two cases birth order acted as a spur, since the younger sibs were already married. Overt societal pressure increased considerably. The married patient presented only after he failed to consummate an arranged marriage, which he alleged was forced on him.”

All these six persons were prescribed with aversion therapy; as the authors describe in their paper: “Aversion therapy apparatus was set at 50 volts, with electrodes placed on left upper arm... Each picture was shown for one-minute duration. Subjects were asked to activate sexual feelings towards the picture. For the same sex pictures the subjects was given shock for a fraction of a second at an interval of 15 seconds. With opposite sex pictures, attractive music was played. Each session lasted for 30 minutes, spaced over a period of 2 to 3 months. An average of 40 sessions were given to each subject who completed the treatment. Termination point was reached when the subject felt reassured and showed an encouraging response to the set of pictures of the opposite sex.”

Out of these six persons, two of them dropped the therapy mid-way; as per what the paper reads out, one of them dropped out because he hailed from out of Delhi and could not make arrangements to stay for during the period of the treatment, the second person dropped out because he was deemed unfit for the study, as he failed to appreciate that his problem was psychological and demanded for medical treatment. After the aversion therapies to the four candidates, who completed the full duration were prescribed with additional behavioural programmes so that they could develop better social skills. Better social skills, what does that supposed to mean to the experts at this prestigious Delhi Hospital? Well, they say it themselves in their paper: “Our female subject preferred trousers and other male apparel. She was encouraged to wear feminine dresses. Subject 1 was given assertive therapy for his

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367 Id. at 83-85.
369 Id. at 235.
370 Id. at 235.
371 Id. at 236.
submissive behaviour. Married subject's wife was counselled regarding interaction with her husband. Subject 4 was encouraged to develop new hobbies and interests as he was dissatisfied with his job. Subjects were asked to maintain daily chart of frequency of homosexual and heterosexual feelings and acts. This also helped as a reinforcer in controlling the homosexual behaviour.\textsuperscript{372} So what were the results? Well, it seems that ‘marriage’ was the ultimate certificate that established the success of their studies. The authors report in their paper: “...subjects 1 and 2 are now happily married. They are well adjusted in their sexual relationships. Subject 3 has better social interaction with his wife and also feels sexual attraction for her. Subject 4 is not yet married but has stopped all homosexual contact. He has strong desire to get married and have heterosexual relationship, as if the secret to happiness passes only through marriage. Since he has a problem in making decisions, he is facing similar problems in making choice of a marital partner.”\textsuperscript{373}

Similar studies were conducted at other hospitals across different cities in India.\textsuperscript{374} Homosexuality was expressly listed as a psychosexual disorder under all the ICD manuals previous to the ICD-10 of the 1992. Since, these studies were conducted prior to 1990s, it could be presumed that the Doctors went as per the prescriptions of manuals prior to ICD-9, according to which homosexuality was considered a mental disorder. Now, even when ‘homosexuality’ no longer remains in the list of mental disorders in the ICD manuals, relied by Healthcare professionals in India, there is a legible and legitimate possibility of the use of such behavioural therapies on anyone who wants to get rid of his/her homosexuality, as ‘egodystonic homosexuality’ still remains in the body of ICD-10. The following reported-cases/participant-narratives show us some such instances of the administration of aversion therapies reported in India post the application of ICD-10 by trained medical and psychiatric professionals.

One such notorious reported-case is the ‘NHRC Case’, as is popularly reported in a couple of books, newspapers and journals.\textsuperscript{375} A petition was filled with the National Human Rights Commission (NHRC) at New Delhi in the case of a patient who was undergoing treatment at the Psychiatry

\begin{itemize}
  \item Id. at 235.
  \item Id. at 236.
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Department of the All India Institute of Medical Sciences, New Delhi under a Doctor for four years to cure him of his homosexuality. The treatment reportedly involved two components: counselling therapy and Drugs. During Counselling Therapy sessions, the Doctor expressly told the patient that he needs to curb his homosexual fantasies, as well as start making women rather than men as their objects of his desire. The patient is reported to have said in several newspapers, “[m]en who are confused about their sexuality need to be given the opportunity to go back to heterosexuality. I have never been confused but was nevertheless told that I had to be ‘cured’ of my homosexuality. The Doctor put me on drugs, which I had been taking for four years.”

It is also reported that, the Doctor had administered drugs intended to change the sexual orientation of the patient, providing loose drugs from his stock rather than disclosing the identity of the drugs through formal prescription. The patient reported experiencing serious emotional and psychological trauma and damage, as well as feeling of personal violation. When the patient narrated his story to Shaleen Rakesh, then Project Coordinator of the MSM project at Naz Foundation, Delhi (an organisation that works for sexual minorities in India), it was Shaleen who filed the petition at the NHRC under complaint no. 3920. Well, the NHRC choose to reject this complaint. Soon after this decision, Justice J.S. Verma, then Chairperson of the NHRC is reported to have said in his response to questions put forth by law students at a seminar in the National Law School of India University, Bangalore, that, the talk of homosexual rights is okay in other countries but there was little you could do when the law in India, Section 377 was against it and nothing could be done until this is repealed. He also added a conspiracy angle by throwing his suspicion on the entire Human Rights campaign that was focusing on this Gay Rights, by having that, the campaign is basically funded by international organisations and that there is no grassroots support or a local demand for such rights. Not just the Chairperson, NHRC himself, in fact, some other members of the Commission are also reported to have said that, “homosexuality is an offence under IPC, isn’t it? So, do you want us to take cognizance of something that is an offence?”

376 Supra note 330 at 89.
377 The Indian Express, 20th May, 2001 taken from Supra note 330 at 89.
378 See “India: Call on National Human Rights Commission to end Psychiatric Abuse against Homosexuals” Outright Action International, available at: https://www.outrightinternational.org/content/india-call-national-human-rights-commission-end-psychiatric-abuse-against-homosexuals (last accessed on 31st December, 2016). See Letter to the NHRC regarding the dismissal of Complaint # 3920 on Medical Treatment of Homosexuality by some students and faculty members of the National Law School of India University, Bangalore on 4th September, 2001 annexed in Supra note 330 at 120.
380 Id.
381 The Pioneer, 2nd August, 2001 taken from Supra note 330.
With respect to the participants, in this study, quite a good number of participants were subjected to the (dis)services of the medical/psychiatric establishment. Except a very few of them, most of the participants have had very negative, rather very traumatising and humiliating experiences with the Doctors, hospital staff and the psychiatric professionals. In most of the cases, the parents are seen to have expressed their concern for taking the queer son/daughter to the Doctor/Psychiatrist. The trail of negative experiences runs across all classes, age groups, and locations.

For Vihaan, who comes from a fairly educated and urbanised (in fact an NRI), upper-class family background, he found the medical Doctors to be much ignorant, insensitive, and judgmental about the knowledge of human body, gender and, sexuality. As he narrates his experiences of sheer embarrassment, shock, and humiliation to me: “She (her mother) was very shocked but sad. The fact that I was going through so much pain and she did not know what she could do to help me. And she didn’t know anything about this. Up until then she hadn’t heard anything about this (about being gender non-conforming) so she, like any other parent would do, took me to a doctor to see whether all my internal organs were fine. So those were the stupid things that she did. So that was the blunder that she did in ignorance. Its not that I could hate her for that, stay mad at her for because I understand. But it was the blunders that really aggravated my pain. So, one was that she took me to a gynaecologist and they had to subject me to ultrasounds and stuff to see. And the doctors are very insensitive there (this was Cochin). And, I remember the gynaecologist he is supposed to be a very renowned gynaecologist in the world actually. My mom said my daughter doesn’t feel like a girl and at that point they thought that I was a lesbian. I remember him saying that, “but she doesn’t have the figure of a lesbian.” So that is the kind of an understanding—that lesbians have a particular figure! The Doctor further told my mom: “I don’t think she has any internal body parts problem or any other male part in her body...” I was very infuriated, embarrassed, humiliated by that experience.” Vihaan’s mother’s concern took both of them to the Doctor; that time Vihaan was twenty-three-year-old.

Sourav, who comes from a very ordinary middle-class background, and a semi-urban locality kind of came out to his parents about his 10-year long love affair with his schoolmate. His parents didn’t initially react to it; but, when they noticed their then 19-year old son wearing sindoor, keeping long hair, their suspicion grew and they took him to the neighbourhood Doctor. This was the beginning of Sourav’s coming two-year long journey to see Doctors, Hospitals, Mental Asylums, and Psychiatry Departments across the country. He was first taken to Dr. Debal Laha, his neighbourhood Doctor, who very well entertained his parents and started a two-year long medication on
Sourav. As Sourav himself notes: “In 1999 I fell in love and in 2009 I kind of came out at home because by that time my femininity was forthcoming, I had long hair and I was in love with a man…and not all relationships are the same and loving a boyfriend is different from a friend so people at home started understanding a bit… That’s why I told people at home that I like Tapas in a different way, and they saw me wearing sindoor and they started getting suspicious of my relationship and began taking me to doctors. I can show you some of the documents from the doctors… Dr. Debal Laha, first treatment. See he had suggested some of these things to me… ECG, I was very emotional so that was seen as a pathology and the treatment started, and I was effeminate because of which I was given these medicines… I had a small problem in 1999 and you can see the prescription from 1999 it states I need a CT scan… Around this time I was very emotional and often became unconscious so this treatment was prescribed to me… And in 2009 again this same treatment was prescribed to me and along with this my femininity also became tied to this issue. That’s why my treatment started in 2009 around the end of 2008 and as you can see continued till 2011… But no solution is reached even after the treatments and follow-ups that is when I was taken to a psychiatrist Dr. Mahadan.” So, after a two-year long medication on Sourav to cure him of his effeminateness, when his parents couldn’t convert Sourav into a manly man, they looked up to Psychiatry for help.

As translated from Sourav’s interview, he said: “the psychiatrist Dr. Mahadan was in Serampore and he gives me these medicines and after I took those medicines I could not remember anything, and I started feeling like saying things that are not even spoken by women…Like how she sees her lover, how she forms her relationship…and in this tumult I began saying everything at home. This was such an antidepressant that it forced me to say everything. I would feel that if I speak I’d feel better.”

When the psychiatrist saw nothing much changing through his antidepressants, he referred Sourav to the Calcutta Medical College. This was the first time, Sourav was brought to a State-run Hospital. This time again, Sourav was tested through CT Scan, EEG, MRI and then, again referred to the Psychiatry Department of the Medical College. After a few months of running around there, he was referred to a Mental Asylum called Lumbini Mental Asylum, where he was not just admitted as an in-house patient, but was prescribed with 12-13 different medications each day. Sourav suddenly found himself under an even more strict regime, that mainly operated through surveillance and sanctions. Here, Sourav was taken through electro-shock therapy (another name for Aversion Therapy) for the next six months. At this private Mental Asylum, Sourav was made to maintain a register of his thoughts in a diary—each day he was expected to write his thoughts and feelings—in the evening the Doctor used to check what he has
written. As translated from what Sourav said: “...there are many things that are not in sync with reality and I should not think about those desires that cannot be achieved... Self-confidence... now I don't know what they meant by that, said, “turn your negative desires into positive ones, workout, 10 minutes walking, write all your feelings...” these were the suggestions along with regular medicines.”

After, Sourav’s ordeal at the Mental Asylum, he was referred to the Christian Medical College (CMC), Vellore in Tamil Nadu. There again he was subjected to the same routine medicines (mainly full of antidepressants) at the CMC’s Psychiatry Department. Here he was admitted as an in-house patient and was mainly given Counselling through a month-long course of sessions; after which Sourav was released to go home. After returning home, Sourav’s counselling continued for some more time and he was regularly subjected to emotional violence and occasional beating by his parents.

One positive thing happened in this entire process of two-three years, Sourav somehow kept continuing his graduation at the Serampore College and finally could complete his degree by 2011. Meanwhile, he came in touch with two of his seniors at the college who were working on their Doctoral studies and who helped him to get in touch with Pratay Gender Trust, Kolkata (an LGBT collective based in Kolkata) wherein, he attended a few Counselling sessions first and then, somehow, he convinced his parents to visit them. Gradually, his parents understood that there is nothing right/wrong in being effeminate. As translated from Sourav’s interview, where he says: “First I went for counselling sessions, and then they went to my house to speak to my family and counsel them. My family started visiting this place, and slowly things started to change turning into a family circle, my parents, my sister started attending programmes here...” Now, after six years, as Sourav gives me this interview, laughs and says “my parents had spent around Rs. 75,000/- on my medical expenses, I tell them if we still had that cash I could perhaps go for a breast surgery...”

Ratish is born in a lower-middle class farming family at a village situated around fifty kilometres from Kochi. Ratish was not taken by his parents to the Doctor, rather it was his newly wedded wife, who took him to the village Dispensary, told the Doctor that her husband can’t perform sex, and accordingly Ratish was prescribed medicines. However, Ratish couldn’t speak about his sexual choices before the Doctor, as he never preferred to be out before his family, wife or the village neighbourhood, on matters of his sexuality and gender non-conformity. Ratish382 who was forced into an arranged marriage by his mother’s constant emotional blackmail when he

382 Whose case will be discussed in detail in the next section.
was twenty-one; he continues to avoid returning his village home for the last seven years at least, and prefers to just send home some money each month from his earnings. Ratish is assigned male sex at birth; though according to him, he never fit in the male gender. For the last seven years or so, he identifies himself as transgender and, mainly earns his and his family’s livelihood through a two-shift job (one as an outreach worker for a MSM Health Programme, and the other as a transgender sex worker on the streets of Kochi). Also, he prefers to be called by his chosen-name Saaya, at least within the Transgender community. He said in the interview that he was made to take those medicines (as was prescribed by the Doctor to enhance his sexual abilities) for almost a year; and, he laughingly whispered to me that after taking those medicines he found himself even more sexually active with other males. So, he jokingly says that those medicines made him even more aligned to what he had sexually desired for himself. Ratish has negotiated his life swinging in the duality of his multiple social roles—one as a transgender male sex worker who prefers to liaise with male clients at nights in the vulnerability of Kochi’s deserted streets and dark alleys, second as a politically active transgender person in the queer community, third as a lover to his two year long relationship with his boyfriend who happens to be a sailor in the Navy, fourth as a father to his two year old son, fifth as a supposedly disciplined-domesticated husband and son of his wife and parents who keeps diligently sending money back home each month.

Aparna Di had to undergo medical violence, in emergency, at a time when she needed medical aid the most. Hers is a classic case, how our Medical fraternity often conflates one’s self-identified gender with one’s biological sex, and which in turn, results in causing sometimes an irretrievable damage to one’s life. As Aparna Di puts forth her experiences on record: “I was 18 and was crossing the deserted Maidan in Central Kolkata late at night, some guys started following me. Before I could do anything, some of them caught hold of me and that night, I was raped by their whole gang. I cried for help, but there was nobody available in the vicinity,” she said. “The first thing I did, after they left, was to go to the nearest government hospital for help. There, the nurses and Doctors instead of helping me out made fun of me and my condition. Nobody was ready to believe me, that a boy could be raped,” she said.

Similar, were the experiences of Tonu vis-à-vis another state-run hospital in Kolkata. Tonu who is assigned male sex at birth, comes from a middle-class family based in semi-urban Bengal. When Tonu was working at MANAS Bangla as a Peer Educator on a MSM Health Project, the job demanded her to visit Gay cruising spots (in the small town of Serampore) in the late evening hours. One thing, that the reader needs to keep in mind while understanding Tonu’s forthcoming narrative is: the geography of cruising places. For a space to qualify as fit for cruising, they need to be deserted, shady,
somewhat dark. During one such ill-fated evening, while she was doing her job of speaking to some of the men (who were habitual of visiting such secluded spaces), she suddenly in the middle of her conversation realised that a few other men surrounded her and soon, she was grabbed by her dupatta and she was repeatedly raped by the gang. She narrated the trauma that followed post that incident: “jokhon oder hoye glo, ami khub bethar modhe maa r kache poucholam. Maa prothome amake ekta oshud khaowa lo jate jodi HIV er virus body te theke thake tahale sheyta jate noshto hoye jaye. Tar porer din ta Sunday chilo, amra tar phole, Monday te PG Hospital e te gelam. Okhane Daktar ra khub baje bhabhe treat korlo amake, tara bishash hi korte chailo na je ekta purush o rape hote pare. Sheyi hanostar pore, ami khub bhoye pey gachilam. Thana-polish korar moton obosta te chilam na taar pore aar.” (when those men were done, I somehow walked in that painful condition and reached home. The first thing mother (Aparna Di, Tonu’s chosen-mother) did was to administer the medicine for preventing any HIV virus as I was penetrated without protection by all those men. Next day was a Sunday, so we went to the PG Government Hospital the day after, where I had a very humiliating experience dealing with the Doctors; nobody believed that a biological male could be raped. The extent of humiliation was such that, for the next few weeks, I was under that trauma. I was always scared to visit police stations, the experience at the hospital made me even more scared, I didn’t go to the Police thereafter.)

Similar instances of denial of treatment by Doctors, or instances of ridicule, shaming or outing of the queer by the Doctor (instead of treating the queer-patient) has been narrated by Anis Da as a part of his two-decade long experiences of being a queer-activist. Anis Da narrates two instances: 

“The first instance is when one of his friends had suffered from Anal Rupture and asked Anis Da to suggest a good Doctor for him. Anis Da said, “in the community many people look up to me as a great support system and therefore they tell me about their medical or personal problems and also, because they find me well connected, they sometimes ask for my advice. In this case one of my friends had his anus ruptured brutally and I suggested him to visit one of my known Doctors at Serampore. The shocking thing happened when the Doctor completely denied attending him after repeatedly poking this patient to reveal the reasons for having caused Anal Rupture. This was preposterous. After that incident I had stopped referring that Doctor to anyone but the main question remains, is it legally and ethically justifiable for Doctors to turn away patients who
are in need of urgent care and attention? In the case of that friend of mine, we had to use Traditional Healing methods to cure his Anal Rupture which of course was very painful for this friend. But always can you fight with such people?"

“The second instance is about a young and closeted Gay colleague of Anis Da’s who had developed Anal Warts and when he went to the Doctor, the Doctor again did the unexpected. Anis Da said, “in this case when this young boy visited the Doctor, the Doctor simply threatened him that he would tell his parents that he is into homosexual activities. In a small town like Chandannagar, where this boy used to live with his parents, it is very easy to identify any person by his surname or locality and the boy was young, unemployed and a closeted Gay. In that situation, as an activist, what could I have done? I had only one alternative that was of asking some of my Gay Doctor friends to help me with the requisite medicinal prescriptions and I did it.”

It is not that, all the participants who have experienced the Medical/Psychiatric fraternity vis-à-vis their gender or sexual non-conformity have compulsorily had had negative experiences; some few lucky ones have positive experiences also to share. For example, Maya’s mother took her to the District Medical Hospital (a state-run medical establishment in Trissur) when she came out to her about her sexuality. Maya says, “When I came out to my mother, she initially didn’t understand and took me to psychiatrists. To my luck, meeting all the psychiatrists that my mother took me proved indeed very helpful as they were all in my support and they were the ones who convinced my Amma. After learning this from the Psychiatrists, my Amma understood my situation and told me: be happy with what you are, don’t be upset about your character (being queer). So, when I met Shruthi, I told to Amma about her. First time, she wondered because she didn’t accept anything; after that, I slowly convinced her, and she agreed to meet Shruthi. Now, the things are fine, my mother often visits us for weeks together sometimes.”

When Sam was taken for counselling by his elder sister during his teenage to deal with his depression issues (as a result of his girlfriend’s forced marriage by her family), Sam supposedly had a much positive experience in his life overcoming that depression. When we see his experiences with the psychiatric fraternity, he seems to have had a much positive set of experiences, as compared to the other participants in this study. As translated from his narrative, he says: “I could not understand who to talk to at all. I suppressed everything in my mind. This was going on till I was asked
to go to a counsellor. One thing you will notice about counsellors that whatever is told to them will not be revealed to anyone. I still did not want to say anything to my family. I would ask my sister why she was taking me to the counsellor, whether she thought I was going mad. She had explained to me that this was really not an issue, that I should go and that she will also accompany me. She said that the doctor will only talk to me. So, I went and told the counsellor all the history. One thing that I told her by the end of it was that all this could not be told to anyone in my family. She had truly kept it a secret and when my sister had gone to speak to her, she had said that he would talk about this to my sister later. She had kept my trust.”

The same also holds partly true for Sourav as well, at least in the latter part of his experiences with the psychiatric fraternity. When his parents panicked after seeing their already effeminate son wearing female attire, their panic took them all (as a family) to undergo a two-year long ordeal of visiting Psychiatrists, Medical Doctors (in various cities), as discussed above. These were the first set of Doctors and Psychiatrists who attempted to treat Sourav of his homosexuality and effeminateness with antidepressants, counselling and Aversion Therapy. However, when nothing much changed in Sourav’s case, except that he became more under-confident and physically week, Sourav started visiting (at the instance of two of his queer friendly College Professors) the counsellors at the Pratay Gender Trust, Kolkata who helped him to get back his lost confidence and overcome the mental damage caused by the two-year long (mis)treatment caused by the first set of Doctors/Psychiatrists. These Counsellors at the Pratay Gender Trust, I call as the second set of Psychiatric professionals. These second set of Counsellors, also helped Sourav’s parents to understand that there is nothing right/wrong in being effemin ate; and, now that they have done all that they could perhaps rest now, and if possible accept their son as he is.

3.3.1. Certain Conclusive and Suggestive Remarks-II

Seeing the analysis presented in this section through the methodological lenses of the queer legal theory, certain concluding remarks and outstanding issues I think, arise for us to ponder upon. These are discussed in this section.

These much-illustrated above discussions unveil the (otherwise, hidden) politics of the existing medical/psychiatric epistemology that is taught and practiced in India as it is deeply imbued in the monolithic values of heteronormative and patriarchal standards. The contemporary Medical/Psychiatric professional is a product of this teaching machine.

These queer experiences depict insensitivity and sheer brutality of the medical establishment. Such queer narratives tell us how a hospital/Doctor’s
private clinic can turn into a site of horror and trauma for the queer. They also narrate the story of certain hidden moral pressures/panic over/by the medical/psychiatric establishment—the pressure to produce and replicate a heterosexual, cis-gendered society, that ensures that there is no break at service of the heteronormative economy of the private family and the biopolitical state. In other words, why is there a demand (and a supply to meet that demand) to straighten the queer? The heteronormative mind-set and training (i.e., informal cultural conditioning, plus the formal educational training in a medical/psychiatry college) of the Doctor/Psychiatrist conflates biological ‘sex’ with its aligned-gender and sexuality—such naturalised alignment/conflation results in the production of compulsory heterosexuality—which in turn, produces discriminatory judgments (e.g., the tendency to treat homosexuality/gender non-conformity) against the queer.

Yes, the state and its law have always been for retaining heteronormativity. Healthcare in India has always been well regulated by the state—whether private/public. Amidst this, the question that again pops up is: what are the constitutional expectations of the queer from the state and the judges? To address this question, this section presents two kinds of parallel queer narratives:

- The first kind of narrative includes the queer experiences showing how the supposed medical/psychiatric treatment translates as mis-treatment for the queer; and,
- Another parallel narrative includes the queer experiences that depict the heteronormative bias of the medical establishment—resulting in the denial of medical aid/care to the queer.

To my understanding, these two kinds of narratives present to us different problems and, hence, demand different approaches to deal them. Let’s call each of them as the first and the second problem for an easy presentation.

**The first problem:** The first kind presents a two-fold problem: (1) the socio-political forces that demand the queer to seek medical/psychiatric services at the first place—we need to understand what these socio-political forces are and how they operate very compulsively over the queer; (2) the (mis)treatment supplied by the medical/psychiatric professionals/machinery and how that is problematic for the queer. This is a very coherent narrative that is produced across classes, locations, genders, and sexes. The case-studies analysed by medical/psychiatric professionals in both public/private establishments like AIIMS, New Delhi, KEM Hospital, Bombay (as published in various journals, and reported under this section); and, the queer narratives narrated by the Vihaan, Sourav and Ratis present to us these two issues—socio-political pressure, and (mis)treatment by medical/psychiatric professionals.
Vihaan was taken by his mother to a Gynaecologist in Kochi when she learnt that her daughter thinks she is a boy. Vihaan was 21 at that point of time and he thought he would satisfy his mother’s concern by visiting a Doctor of his mother’s choice. For Sourav, he was taken to a neighbourhood Doctor in Serampore by his parents when they doubted that Sourav was in love (or some erotic/romantic relationship) with one of his male-classmates. Sourav was 17-year-old at that point of time. Ratish on the other hand was taken to the government dispensary in his village by his newly wedded wife, who was concerned (maybe puzzled) thinking why her husband was not sexually engaging with her. Ratish was again twenty-one at that time. Some of the cases that are reported across different medical journals (as reproduced in this section) also tell us similar reasons why the patient approached the Hospital/Doctor. For example, the AIIMS study conducted on six gay individuals between 1977 and 1982 provided that these persons sought help “because of varying degrees of social pressures and personal guilt. In two cases birth order acted as a spur, since the younger sibs were already married. Overt societal pressure increased considerably. The married patient presented only after he failed to consummate an arranged marriage, which he alleged was forced on him”.

What forces compel the queer to compulsorily have certain ontological location(s)? What compels the queer to seek medical/psychiatric services? We need to understand that the queer is surrounded by a variety of different forms of compulsions—as the structure around it is by and large homonormative and very much queer-phobic. In this it is only obvious that compulsion either manifests through some closed/intimate private quarters, such as parental/familial/kinship relationships, or it acquires public forms such as societal pressure to marry, or to reproduce. Also, it is only obvious that the queer in many cases end up normalising these forces—that at some point they refuse to see them coming as a direct result of years of social conditioning which they are constantly fed with. Result—the queer, either at its own instance or at someone else’s, ends up seeking the services of the medical/psychiatric establishment as if there is something to cure/fix/treat.

How to re-imagine change in this current power-structure? Queer Theory demands that such structures must be challenged at their very core. Violence, one of the tools of this power-structure, manifests both in private and public quarters. Private domains where such power emanates are family,

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383 This is the case with all the participants without any exceptions. It is just that the compulsions faced by each one of them varies by forms and degrees. Nonetheless, all the participants have narrated their tryst with compulsions of varying kinds. Various participant-narratives recorded and discussed in the different sections of this and the next chapter bear a testimony to this.
marriage and kinship. Public domains where such power regularly operates present in the form of classrooms, education curricula, neighbourhood, workspaces, popular culture, media, state propaganda, laws, medicine/psychiatry, etc. This way, heteronormativity (as a structure) operates its compulsions over the queer both at public and private spaces/levels—which means, the queer-strategies to challenge and counter them should consider the peculiarities of each of these levels/spaces. This study demands that we ponder upon finding ways to engage with the law as it operates both at these spaces/levels.

To my understanding, the power of violence that compels the queer within the private spaces of family, marriage and kinship (e.g., to seek medical/psychiatric interventions) could be dealt with the jurisprudence of ‘Domestic Violence’. The Indian law on domestic violence currently protects only the woman within relationships of domestic nature. I would suggest that, such laws be made gender-neutral, especially keeping in mind the queer-lived experiences as discussed. Also, such amendments must understand the variety of violence experienced by the queer within the domestic spaces of conventional kinship—marriage/live-in partners and biological family. In other words, what I am suggesting is that the law must be equipped to protect the queer and sanction the acts of violence that operate within one’s biological family and marital/other intimate relationships—so that, the demand to straighten the queer through medical/psychiatric interventions can be checked at their very origin.

Second, the law must engage with the powers (that demand/engender demands to straighten the queer) that operate in the public spheres of classrooms, education curricula, neighbourhood, workspaces, popular culture, media, state propaganda, laws, medicine/psychiatry, etc. The queer politics demands that the systemic operation of heteronormativity in these structures be checked/neutralised. To my understanding, this is an even deeper systematic problem, which needs to be dealt with a long-term political commitment. Unlike the previous problem of private violence, this one needs to be tackled at multiple levels with a set of multi-prong approaches. This almost demands a complete overhaul of our existing formal systems of knowledge—starting from reforming education curricula, or re-hashing pedagogies in school-teaching, to making the school experience/neighbourhood/the general social experience discrimination free. To suggest some basic legal interventions, I think a safe beginning could be made by introducing a robust legal mechanism to check acts of discrimination based on gender identity and sexuality in both public/private spheres.
The second part of the first problem is about understanding the (mis)treatment supplied by the medical/psychiatric professionals/machinery. Instead of referring the services of the medical/psychiatric fraternity as is provided to the queer as treatment, the queer politics problematizes such treatment standards and sees them with suspicion—therefore, I prefer to refer such practices as mis-treatments (the closest I could find in my understanding of the English language). This section deals in detail on how the queer politics problematizes the entire medical/psychiatric episteme and its practices; hence, there is no point in repeating that discussion here. Needless to say, that the queer is generally found to be situated at a very vulnerable spot, keeping in mind the history of pathologisation of the queer lives, and the position of trust that the Medical/Psychiatric professions generally enjoy in the popular/dominant imagery. The queer politics demands that this dominant imagination of right/wrong, accepted/unaccepted, productive/unproductive, healthy/unhealthy, moral/immoral needs to be challenged and re-imagined.

How does the queer politics imagine this change to happen in a transformative sense? If law has to be used as a means to drive this change then, to my understanding, there is a two-point legal intervention strategy that could be deployed to address this problem. They are:

i. Firstly, the professional bodies (like the statutory Indian Medical Council, or the registered societies such as the Indian Psychiatric Society, etc.) which formally regulate the standards of treatment in medicine and psychiatry must build sufficient consensus to call for changes within their existing episteme on human sexuality and its practice. What kind of changes does the queer politics demand in the law? To my mind, it could be suggested that a law be enacted to mandate such bodies to incorporate at least, the following basic-changes in their existing schema of things.

a. First, such bodies should denounce practices that pathologise non-heteronormative sexual and gender behaviours and make provisions for stringent sanctions against professionals who deploy standards such as Behavioural/Aversion Therapy, or/and the administration of drugs/hormones in the name of treatment.

b. Second, the educational standards deployed in the training of the medical/psychiatric professionals must be changed so that the existing and the future professionals develop the social perspectives needed for re-understanding the conventional epistemic notions of science that normalise the heteronormative schema and pathologise the other. So, for the future professionals, the existing curricula of their professional programme, needs induction of courses on social and political
perspectives on sexuality and gender. For the practicing professionals, continued training and education programmes could be used as a vehicle for effecting this change. In my opinion, ideally, these steps must come from within these professional communities, as no changes of this measure are possible to be wrought without a much-renewed political commitment/engagement of these professionals themselves. Though, the law could always be used in such cases to compel these professionals, as has been done previously in cases such as, the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994, or the Medical Termination of Pregnancy Act, 1971, et.al.

ii. Secondly, the law must acknowledge the vulnerability that the queer experiences when placed before the already trusted medical/psychiatric professional (as the dominant imagery entails). In my understanding, I think, again the need is the enactment of a strong anti-discrimination law that could be used as a vehicle to protect the queer against the public/private medical/psychiatric professionals and institutions in cases such as these (as discussed through the participant-narratives) where, discrimination is apparently visible on the grounds of gender/sexuality.

The second problem: Another parallel narrative includes the queer experiences that depict the heteronormative bias of the medical establishment—resulting in the denial of medical aid/care to the queer. This second problem mainly emanates from the transgender experiences of the likes of Aparna Di and Tonu (as discussed in this section). Both of these two participants narrate their experiences with state hospitals (based in Kolkata) after they were brutally raped by a gang of unknown men.

Aparna Di and Tonu’s testimony demonstrates the state of apathy and violence that very well reminds the queer of its social status—a lesser/non-human, who doesn’t deserve to be at least extended the basic minimum care of first-aid. The Doctors at a state-run hospital not just refused to treat Aparna Di and Tonu, but, they also ridiculed/demeaned them for being queer—perhaps, this all is a direct result of the much-internalised fear of the other gender/sexuality—the queer, which is deeply rooted in the psyche of the Medical training and practice. The Division Bench of the Supreme Court in its much-celebrated judgment in *Parmanand Katara v. Union of India*, reads the right to medical aid (especially, the right to first-aid) as a

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384 As recorded in their own voice, both Aparna Di and Tonu acknowledged the ridicule and distrust that they experienced in the hands of the Doctors and Medical Attendants who supposedly said: “how can a male be raped?”

385 AIR 1989 SC 2039.
fundamental right under the Right to Life as enshrined under the Article 21 of the Constitution; but, cases such as Aparna Di and Tonu unambiguously tell us that, having a *de jure* constitutional right means nothing in reality to the queer on the ground. The Medical Doctors employed at the state-run hospitals were not only under a constitutional obligation to medically attend the queer, but they were also obligated under the Item 13 of the Code of Medical Ethics framed by the Medical Council of India, as pointed out by the judges in the *Parmanand Katara Case*. This means that the Hospital/Doctors were negligent in the discharge of their duties and such negligence was a direct outcome of discrimination based on their internalised homo/trans/queer-phobia (*i.e.*, grounds based on gender and sexuality). Such cases remind us of how direly the queer needs the protection of anti-discrimination laws so, that agencies, both, public or private can be legally proceeded against, not just under the criminal law, but also under a much simpler civil action. It is not that sexual orientation or gender are not read within the constitution under Article 15(1); the Supreme Court in the *NALSA Case* has very much provided for it. This means, the foundational-jurisprudential ground work is much done in this regard; but, enforcement of this constitutional right against discrimination is yet to be realised on the ground level through adequate and effective law making which must provide a robust mechanism and adequate sanctions—both penal and punitive.

These instances unveil the covert-political basis that is deeply seated in the epistemological wisdom of Medical Sciences education and practice in India. Such insensitivity/inhumanity of the Medical fraternity very visibly reflects the (otherwise hidden) normative bias and basis of a hetero-patriarchal value-system that defines the Medical Education at its very core, of which the product is the contemporary Medical/Psychiatric Professional. I say this, 

386 The Supreme Court in that case had held: “(1) Article 21 of the Constitution casts the obligation on the State to preserve life. (2) There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. (4) Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life”, per Justice Rangnath Misra.

387 It reads as: “13. The patient must not be neglected. A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving notice to the patient, his relatives or his responsible friends sufficiently long in advance of his withdrawal to allow them to secure another medical attendant. No provisionally or fully registered medical practitioner shall wilfully commit an act of negligence that may deprive his patient or patients from necessary medical care.”

because very clearly, the Doctors normalised heterosexuality as the requisite basis of sexual assault; for them, it was a pre-resolved fact (a given) that, a biological male can never be raped. From where does the Doctor derive this knowledge? Perhaps, the answer lies partly in the medical education/training and, partly in the socio-legal schema—both in terms of its discursive value and its normative impact that celebrates and strives on the heteronormative value-system.

Now, how to invite the law to engage with this problem? I see there are two (very inter-woven) issues that problematize a transgender’s access to medical facilities (both at private and public). These are discussed below as the first problem and the second problem:

**The First Problem:** Though, the interpretative understanding of the Supreme Court clearly tells us that all persons have the right to access medical aid in all medical establishments (including establishments both public/private) as the same is read to be a part of the Article 21 of the Constitution. So, in theory, we all have a right to access medical aid at a medical establishment. This should also include a transgender/gender non-confirming person/ a sex-worker/ literally anyone. But, in reality we do not have a steady legal remedy available to proceed against any medical establishment/individual doctors in case we are refused our right to medical aid. In the instant lived experiences as narrated by Aparna Di and Tonu, both of whom decided to proceed against public hospitals, were clearly denied the right to admission, forget medical aid. What legal remedies are available to them: (1) they could have filed a contempt suit against the omission of the Hospital under the Contempt of Courts Act, 1971; or, (2) they could have proceeded with a criminal or/and tort case. What else could they have done against a public healthcare service provider?

To legally address this first problem, I think, we need a two-prong approach:

i. A statute is needed to materialise/transform the constitutional right to medical aid into a living reality—as merely having a right in theory is meaningless without an effective legal mechanism to access that right. Such potential legal change must address to the issues of accessibility due to the socio-legal barriers such as poverty, gender/sexual non-conformity, criminal status, etc.

ii. To address cases of refusal to medical aid on the grounds such as gender non-conformity (as is the case with Aparna Di and Tonu), a strong anti-discrimination statute with a robust mechanism is really needed which could pave the way to access right to medical aid without being discriminated on the grounds such as one’s perceived gender identity, or occupation or class, etc.
The second Problem: The second problem is relatively more complicated; in my understanding, as it involves not just the Doctors, and the queer, but it also involves the Law and Order Administration (namely the Police and Magistrates). What a person in Aparna Di or Tonu’s situation would have done? When Aparna Di was raped by a gang of men post mid-night at the secluded Maidan grounds in Central Kolkata, she had no one to approach to or seek help from; those were the days we didn’t have mobile phones, so that one could seek help? She was brutally assaulted in different parts of her body and she was profusely bleeding. What best could she have done in that situation? After those men were done, she had the courage to walk two kilometres barefoot to the nearest government hospital. Instead of attending her with immediate medical support, the priority of the Doctors and Hospital staff was to deny her admission, distrust her visible bodily injuries, and ridicule her for being effeminate. In her interview, she said that “the nurses instead of helping me out, made fun of me, and my condition. Nobody was ready to believe me, that a boy could be raped.”

As is the case, the queer body hangs in between life and death when put in a situation as that of Aparna Di and Tonu—this is worth concluding, keeping in mind their lived experiences vis-à-vis the public institutions, viz., the public hospitals and the law. I can draw here two possible scenarios; and, in between both these likely scenarios, the queer body is a hanging body to whose choice, on one side is life (seeking medical aid and then face police action, and then, maybe face criminal charges) or, to choose death instead, by not seeking medical aid. In both the events, the queer is at loss, just that in the first case, she acquires the loss by her own very act of going to seek medical aid (as that may invite police action and, further a likely prosecution or, a mere persecution); and, in the second, where the loss is when death acquires the queer’s life, because of the lack of queer’s own initiative in the first. In both the likely events, does the queer body have agency over its own life? If not, what are those socio-legal constructions that compel the queer to live in conditions of lack or, sheer absence of agency? Due to such lack/absence of agency, how does vulnerabilities embody the queer life? What are its modes of operation; and, how does the queer negotiate its life vis-à-vis such vulnerabilities?

In the first scenario, of course, the queer is vulnerable when it seeks medical aid (either from a medical institution or from a private Doctor)—what if, the Doctor informs the Police of an alleged act of “seducing or soliciting for the purposes of prostitution”389 or for having committed/attempting to commit an

389 Section 8 of the Immoral Traffic (Prevention) Act, 1956 penalizes acts of seduction/solicitation for the purposes of prostitution. It states: “Seducing or soliciting for purpose of prostitution—Whoever, in any public place or within sight of, and in such manner
‘Unnatural Offence’. Both these statutory offences are cognizable offences, which means that the Police has powers to arrest without a warrant. The language of both these provisions are termed with ambiguous expressions, such as “loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency” or “whoever voluntarily has carnal intercourse against the order of nature”. It is impossible to understand who the victim is, and who the perpetrator is, even if we try to see it in the statutory language of victim/perpetrator binary. The PUCL-K “Report on Human Rights Violations Against the Sexuality Minorities in India” has documented the kind of prejudice that hijras face in Bangalore. The report shows that this prejudice is translated into violence, often of a brutal nature, in public spaces, police stations, prisons and even in their homes. The Immoral Traffic Prevention Act (ITPA) of 1956 (amended in 1986), whose stated objective is to criminalise brothel-keeping, trafficking, pimping and soliciting, in reality targets the visible figure of the sex worker and enables the police to arrest and intimidate the transgender sex-worker population. The Transgender (whether sex-worker or not) is always vulnerable mostly at the public spaces (like a park or streets) as they are frequently reported to be as to be seen or heard from, any public place, whether from within any building or house or not—

(a) by words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees: Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.”

Section 377 of the Indian Penal Code, 1860 states: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.”


See Section 8(b) of the Immoral Traffic (Prevention) Act, 1956.

Section 377 of the Indian Penal Code, 1860.


See in general, Supra note 394 at 29-32.
subjected to Police atrocities—extortion, harassment, illegal detention, abuse, outing, shaming. One can see the recorded cases studied in the PUCK-K report, referred here.\(^{397}\) Albeit, most cases that are heard, and recorded demonstrate the extra-juridical acts by the Police—persecution. But more than anything else, such instances are possible only because legally, the Police has almost unbridled powers to do so, in the name of maintaining law and order.

It is therefore, a double-bind for the transgender to visit a hospital (specially, someone in the shoes of Aparna Di or Tonu), irrespective of whether the transgender person is involved in sex-work or not; as the vulnerability it faces is two-fold: (1) the queer which is hanging between life and death (as was the case with Aparna Di or Tonu) decides to visit the Hospital for medical aid, it may be treated or denied treatment; but, what if the Doctors themselves inform the Police, as these aforesaid provisions may seem plausible to the Doctor that such cases be reported;\(^{398}\) and, (2) if the Police gets involved, then the perpetually hanging sword of Section 377 or the anti-trafficking laws anyway legally enable the Police to at least harass, detain, abuse and shame the queer, if not officially press charges under these provisions, as the later could be quite hard for the Police to establish in a court.

Such a double-bind legally disables the queer-transgender (or any person on her behalf) to approach the Police, even if it decides to criminally proceed against the Doctors for the denial of treatment under provisions of causing Hurt,\(^{399}\) or voluntarily causing Hurt\(^{400}\) (the least a queer could legally do, if it chooses to access criminal justice). So, everybody is well placed under the law—the Doctors, the Hospital Staff, the Hospital itself, and of course who can touch the Police; who is at loss over here—the transgender who is a loath-able abject for the society, who is unacceptable in its own biological family, and, who doesn't have the right to medical aid, no right to freely access public spaces, even sometimes its own private premises, if it has one. So, such is the 'second problem' that comes out of Aparna Di and Tonu's experiences.

Now, what could be the ways to engage with the law, if law has to address the 'second problem'? To my mind, a three-prong approach could be deployed:

\(^{397}\) Id.

\(^{398}\) This could very well be the case seeing the broad language of Section 43 of the Indian Penal Code, 1860 that defines what a person is "legally bound to do". It states: "Legally bound to do—The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit."

\(^{399}\) Section 319, Indian Penal Code, 1860.

\(^{400}\) Section 321, Indian Penal Code, 1860.
i. Repeal Section 377, especially when the Criminal Law (Amendment) Act, 2013 has amended the definition of “rape” in the Indian Penal Code. Also, repeal the draconian, patriarchal, Victorian provisions such as that of Section 8 of the Immoral Traffic (Prevention) Act.

ii. Amendments should be incorporated in the definitions of Sexual Offences under the Indian Penal Code (such as rape, voyeurism, sexual harassment, etc.) so that such offences could be made gender-neutral.

iii. To address cases of refusal to medical aid on the grounds such as gender non-conformity (as is the case with Aparna Di and Tonu), a strong anti-discrimination statute with a robust mechanism is much needed which could pave the way to access right to medical aid without being discriminated on the grounds such as one’s perceived gender identity, or occupation, or class, etc.

3.4. Heteronormativity: the Politics of Regulating Adult Sexuality through the Institution of Marriage

This study was never about studying ‘sexuality’ from a heteronormative or a homonormative standpoint; the endeavour is rather to understand the politics that deploys ‘sexuality’ in law, education, science, culture, and language. It is important that we are able to identify the power relations, their origin, their domain and, their impact on the human relations. Is sexuality a liberated notion—free of all sorts of controls, free of the politics of ambiguity and sanctions? As Foucault demonstrates the proliferation of discourses centring sexuality through the course of Western Civilisation, he also emphasises the politics surrounding a ‘restrictive dispersion’ of sexualities. He questions through his historiographic demonstration of this transformation of sex into discourse that, “is this discourse not governed by the endeavour to expel from reality the forms of sexuality that were not amenable to the strict economy of reproduction... for is it not motivated by one basic concern: to ... constitute a sexuality that is economically useful and politically conservative?”

It appears that the principle of “compulsory/naturalised heterosexuality” is the reason for the production of a restrictive economy of sexuality. For the social norms compel a woman to become a machine of production for a man’s progeny that at all costs has to be continued to the next generation—who cares for the freedom of choice of the woman in a marriage, for her sexuality was never hers. As how the invisible social pressures rule the choices of an urban, educated boy in his 20s and snare him to get married; or how our young teenagers finds solace (blush) in

401 Supra note 68 at 36-37.
parading one’s girlfriend/boyfriend in spaces virtual/physical, among friends/strangers. The uncanny social norms keep pulling/managing our strings; we keep performing the already-scripted roles, making heterosexuality look as if, it is naturalised in us.

We do not use language, rather, it uses us. Language limits our thinking by the categories that it creates and anything beyond these constructed categories look alien/outsider to us. Language prepares our psyche; it defines our notions of acceptable/unacceptable. Marriage is a site of heteronormativity. As Jacqueline Hudak and Shawn Giammattei put forth in their work:

“This silence around heterosexuality maintains it as the default position, a position of dominance and superiority. For example, the descriptive terms, ‘couple,’ or ‘family’ refers to heterosexual couples or heterosexual families. Then there are couples and families who have to be named ‘gay’ or ‘lesbian’ because otherwise they are invisible. Within these heteronormative discourses, heterosexuality and heterosexual forms of relating are considered the norm. This maintains the illusion that only LGBT individuals have a sexual orientation and that it is unnecessary to examine the development of heterosexuality.”

Heterosexuality is the subject of an ideological structure that gets it normalised, naturalised, operationalised and institutionalised through marriage. Because, of its normative capacity, its impact, circulation and reach are ubiquitous. Heteronormativity is the ideology that institutionalizes heterosexuality, constitutes it as the standard for legitimate and prescriptive socio-sexual arrangements and engagements. Heteronormativity being the norm produces two conjoint normative expectations from the structural bodies: first, all individuals must perform either as male or female as they are born sexed either as male or female; second, love, sexuality, or any kind of intimate expression must be between the opposite sexes. The structural

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404 A. Perlesz, R. Brown, J. Lindsay, et.al. “Family in transition: parents, children and grandparents in Lesbian Families give meaning to “doing family”” 28 Journal of Family Therapy (2006) 175 at 183. They make the following distinction between heteronormativity and heterosexism: "We have defined heteronormativity as the uncritical adoption of heterosexuality as an established norm or standard. Heterosexism is the system by which heterosexuality is assumed to be the only acceptable and viable life option and hence to be
bodies include individuals, communities, institutions, irrespective of their affiliation to either the state or the society; they are families, schools, jails, media, law, police, courts, medicine, etc.; they all being part of the structure keep producing and reproducing heteronormativity. The work of the structure is to replicate the heterosexual model, its economy and its strategies. This makes the structure not only restricted to the social forms (like the family, clubs, religion, etc.), but it percolates deep down to institutions and normative lives of the other forms, like the economy, the political (e.g., the law, parliament, courts, market, labour, media, etc.) This way, there is an ideological expansion of heteronormativity in all parts of our lives, whether private or public. Louis Althusser with his work on ideology, interpellation and subjecthood is useful for us to understand this ideological expansion. Interpellation is the constitutive process where individuals acknowledge and respond to ideologies, thereby recognizing themselves as subjects. He defines ideology as “the imaginary relationship of individuals to their real conditions of existence” and explains how individuals are complacently involved in and subjected to the domination of the Ideological State Apparatuses (ISAs) like the family, schools, universities, media, literature, and the Repressive State Apparatuses (RSAs) such as the military, police, courts, legislature, etc. The individual is constantly interpellated by these agencies of the social, the economy, the state and all forms of the structure; the structure being ubiquitously reproduced through individual act and thinking in all forms of its life. In other words, ideology, interpellation, and subjecthood, mutually reinforce each other so that “ideology has always-already interpellated individuals as subjects, which amounts to making it clear that individuals are always-already interpellated by ideology as subjects, which necessarily leads us to (the) proposition: individuals are always-already subjects.” Heteronormativity as an ideology hails an entire structure of subjection and domination and as Foucault would say, it is possible because it is based on ‘discourse’. Foucault, who has worked to

superior, more natural and dominant”. Also see, Celia Kitzinger “Heteronormativity in Action: Family in after-hours Medical Calls” 52 Social Problems (2005) 477 at 478 where she describes heteronormativity as “the myriad ways in which heterosexuality is produced as a natural, unproblematic, taken-for-granted phenomenon.” For more on heteronormativity, see J. McCarl Nielsen, Glenda Walden, Charlotte Kunkel “Gendered Heteronormativity: Empirical Illustrations in Everyday Life” 41 Sociological Quarterly (2000) 283.

405 Althusser argues how individuals subject themselves to an ideology and remain complacent by allowing them to be dominated by it. He establishes this argument with his famous explanation: when a police officer shouts at you in the middle of a street, “Hey, you there!” Upon hearing this it is obvious that an individual would turn around “by this mere one-hundred and eighty-degree physical conversation, he becomes a subject”. See Louis Althusser, Lenin and Philosophy and Other Essays Translated by Ben Brewster, 127 at 174 (Monthly Review Press, 1971). His point is that, this is how we embody subjecthood and allow ourselves to be dominated.

406 Id. at 162.

407 Id. at 176.
extend the theories of Althusser, notes that, heteronormativity, has interpellated individuals, institutions, and cultures because of the power and knowledge that is produced, resonated, reproduced and amplified through ‘discourse’. Heteronormativity represents a sexuality-based-ideology, which has a history of its own. In other words, heteronormativity is the outcome of certain interplay of power, knowledge and strategy. As constructivists would do, Foucault argues that “Sexuality must not be thought of as a kind of a natural given which power tries to hold in check, or as an obscure domain which knowledge tries gradually to uncover. It is a name that can be given to a historical construct: not a furtive reality that is difficult to grasp, but a great surface network in which the stimulation of bodies, the intensification of pleasures, the incitement of discourse, the formation of special knowledge, the strengthening of controls and resistances, are linked to one another, in accordance with a few major strategies of knowledge and power.”

Foucault argues that the body of discourse consists of both, what is said and what is concealed. So, silence also is discursive that equally has the power to do the same impact, if not less. What can discourses do? Foucault says, it is in discourse, that power and knowledge join together. He also puts forth that, discourses create counter/reciprocal discourses. In this way, every discourse has a strategy with which it operates in a system. By this way, law itself is a discourse that works on a strategy. In abstract, a discourse cannot have a strategy. But it is when, the discourse is put in a social system, it acquires a strategy and certain objects, it has some methods and certain domains of operation. Foucault argues that all such discourses implanted with a strategy also create a counter/reciprocal discourse. He says, “discourse transmits and produces power; it reinforces it, but also undermines it and exposes it, renders it fragile and makes it possible to thwart it. In like manner, silence and secrecy are a shelter of power, anchoring its prohibitions; but they also loosen its holds and provide for relatively obscure areas of tolerance.”

Discourses can be both reinforcing the structure, and at the same time, it can be against the structure. When power is used through discourse as against a structure, it is not discourse or power that fights against that structure; rather it is the strategy/ideology/politics/agenda that fights against it, through

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408 Supra note 68 at 105-106.
409 See Foucault’s Rule of Tactical Polyvalence of Discourses in Supra note 68 at 100.
410 Id. at 103.
411 Supra note 68 at 101.
412 Note that, Foucault uses the expression “power” instead of “structure”. The usage of the expression “structure” is my addition. This is because, I think, structure is a better expression, as power or discourses are abstract notions that do not have affiliation to any agenda/structure/ideology/politics. Power/discourse becomes political (i.e., it becomes active) when knowledge combines power.
the tool of power and discourse, and vice-versa. So, I think, this way, a discourse is produced by a strategy/knowledge. Discourses basically employ a strategy that has some element of power which in turn causes certain impact/consequences onto the system/structure. For example, culture, jurisprudence and literature has for no-doubt created marriage for the sustenance of the heterosexual family, and its values, through the strategies of legitimacy and naturality; but at the same time, it also has created a counter discourse wherein, the other forms of sexualities have started demanding their rights under the legal and social order, sometimes using the same strategies of legitimacy/naturality, and sometimes not. Hence, it is always not possible that counter-discourses will use the same strategy of power as is used by the discourses.413

Since, heteronormativity institutionalises heterosexuality, its solemn duty becomes to protect the empire of heterosexuality; thus, it undertakes to use all strategies that are potent enough to hinder, and invisibilise all the other forms of sexualities.414 Since, the structure has already embodied heteronormativity, the other sexualities are forced to become “outsiders” to the structure.415 That means, in the domain of sexuality, heterosexuality is the dominant one, which has the backing of ideological apparatuses of the state and that of the society, whereas, all other forms of sexualities are peripheral ones, as Foucault would call them. Other than, understanding the role of heteronormativity as an ideological instrument (that institutes heterosexuality) we need to also appreciate the impact that it has over the individual lives, experiences, prospects, ambitions and performances. A very important aspect of the impact of heteronormativity is the unrestricted influx of essentialist relations drawn upon sex, gender, and sexuality.416 For an instance, heteronormativity dictates that a biological male individual is supposed to be performing the masculine gender, which demands him to have all the markers of his adulthood (that involves all major adult-experiences viz., dating, affair, hook-ups, or marriage, live-in relations, parenthood, etc.)417 to be spent with persons of opposite sexes and vice-

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413 In essence, discourse has no affiliation either, just like power. It is only under the application of certain strategies and knowledge domains that activates/politicizes discourse with an ideological bent. Hence, for the purposes of our discussion here, the usage of the expressions ‘discourse’ and “counter-discourse” entail different results, but in essence, they are the same; the former is hegemonic, whereas, the latter is counter-hegemonic.

414 See Judith Butler on Identities: how in order to create an identity, all other forms have to be killed or subdued. Supra note 44 and 24.

415 If marriage is the centre of this structure, then it is only meant for the heterosexual relations, and not for the other forms of sexualities. But, if that is the case what about the struggles of the Queer politics that demands to usurp and extend marriage to non-heterosexual relations. This raises the question: is ‘marriage’ always already heterosexual?

416 See our discussions in Section 2.1 of Chapter 3.

417 I am deliberately leaving out the sexuality of the childhood and geriatrichood from this discourse, because, I find myself convinced that, heteronormativity is instituted by the
versa. This dictate of the ideology of heteronormativity is sanctified, endorsed by the annals of law, language, culture, religion and science.

As a mark to this phenomenal outcasteing of sexualities, Hudak and Giammattei418 demonstrate how it creates a culture of other-isation, as if there is already an ‘other’ situated in the culture. As and when, the counter-hegemonic discourses against the ideological structure of heteronormativity mobilise and proliferate their strategies, often it is visible in language that, binaries are found to be created or are in want—binaries like couple/same-sex couple, marriage/gay marriage, love/lesbian love, relation/queer relation, et cetera are in vogue. Now, the induction of such binaries into language has a politics of its own, where I am not approaching in this section, but it looks interesting to see, how certain generic expressions (like love, relations, couples, or marriage) have been made to usurp the domains of ideological-loyalties, thus, making language divided into the war-camps of the ‘normal/original’ versus the ‘new-normal/duplicate’. Such endorsement of an ‘ideology’ vis-à-vis ‘others’ produces a counter-discourse of the real versus the fake, which gives rise to the privileging of anything heterosexual, as hierarchically upper in status in the order of desire. The domain of this discourse is rich with examples, from gender, sexuality, marriage, family, relations, love, hook-ups, etc. Consider the power of structure that entails heteronormativity to create a convergence of binaries like real men/trans men, genuine families/queer families, natural sexuality/unnatural sexuality, productive desires/unproductive desires, etc.419 Such essentialist narrative of gender and sexuality engendered by the ideology of heteronormativity continues to foster a powerful and privileged narrative in our culture, against which the politics of the Queer is about.420

Marriage is deployed at the service of the ideology of heteronormativity. Marriage is a site of power-play. In our society, marriage is often considered an inalienable part of one’s life.421 Marriage, being a social institution, it has the potential to snare up its new candidates to heights of delusion, privilege, compulsion and often regret, tyranny and oppression. Marriage has proven its potential for old candidates as well, who have remarried, re-re-married

418 Supra note 403 at 105-117.
420 See in general, Anne Fausto-Sterling, Sexing the Body: Gender Politics and the construction of Sexuality (Basic Books, 2000).
421 See our discussions in Section 2.4 of this Chapter.
and so on. Marriage is yet to acquire the status of a contract in our current socio-legal moors, for it is an institution that means a lot beyond that for many in our generation and previous to that.

In this section, I try to analyse the power relations surrounding the institution of marriage through some Indian Queer experiences. These narratives are divided into two categories: (1) the first category narrates the complex web of queer experiences of surrender/compromise/management of arranged and forced marriages as enforced by the monolithic hegemonic discourses of compulsory heterosexuality; and, (2) the second category narrates the queer experiences that depict a tactful escaping/challenging/subversion of the snares put forth by the monolithic hegemonic discourses of compulsory heterosexuality.

All these narratives also depict the powerful impact of marginalisation and privilege caused by the various intersectional markers such as class, sex, gender, age, location and education over the experiences of the queer. Based on the study of these lived experiences we would try to draw some phenomenological directions to further navigate our study of gauging the impact of Family jurisprudence on queer lives.

**First Category: Queer Stories of Arranged and Forced Marriages**

**Jeevan’s Case:** Jeevan, 32 at the time of the interview, was born in Palam Village, a semi-urban locality on the Delhi-Haryana Border. He continues to live in his family home in Palam with his wife and children and his brother’s family. He did not want to study further after 8th standard school education. He regrets that the environment at his home was not supportive for him to have continued his studies; also, he was never very keen on continuing it himself. He said, both his parents have never been to school and are traditionally farmers from Saharanpur, a District in Western Uttar Pradesh. They turned onto Delhi in the 1970s as immigrant labourers, where they got settled in one of the slums where both Jeevan and his elder brother were born in the 1980s. He doesn’t want to be referred as Gay or Straight, as he thinks these terms are unfamiliar to him. He considers himself to be erotically and emotionally drawn to people of his sex. Though, he is married and has a kid with his wife, he seldom has physical relations with her; baring his strong emotional bond with her. During the last ten years of his married life, he says, he has been sexually active with many men, but he avoids having any serious emotional attachment with any man. His family consists of his wife, a boy and his elder brother’s family. They live in their family home in Palam. His parents are dead. He says, he has a troubled relation with his elder brother’s family, though they live under the same roof and manage their living in just mere two rooms.
He says, he was quite effeminate in the childhood and was often disciplined by his parents and elder brother. The environment was generally very patriarchal as he has seen his mother being regularly battered by his dad. He says, he was aware of his sexual preferences very well from his schooldays but never dared to share it with anyone in the family or among his neighbourhood, or at school or in any of the numerous workplaces that he has worked till now. As he says in Hindi, “Itna to pata chal hi jaata hai, teerah-chaudah saal tak ki aap ladko mein interested ho” (this much everybody gets to feel after the age of thirteen-fourteen if one is interested in boys).

He says, he has had multiple sexual intercourses with boys in his school and with random men in Delhi’s traditional cruising areas. When asked about his experiences with these random men, he said, “ye to bohut common hota hai, aap bhi jaante ho. Kashmiri Gate Bus stand chale jao, ya palika, sab mil jaate hai” (to find sex is very common, you know at public spaces like the Kashmiri Gate Bus Stand or Pallika Bazar, you get men everywhere). He said, though, he was aware of his sexuality, his family never had an inkling about his activities. By the time, he turned 20, his elder brother was already married for two years then, and now, it was expected from him to get married. He says, “my father always had the final say in our lives and, his calculation was that, if he can get me married, I will be forced to shoulder the burden of the wife and then children and this will make me a responsible individual, who would go to work regularly and be a family man.” He couldn’t delay the growing marriage-pressure anymore and by the time he was 21, he was married off with a girl (three years younger to him) from one of their distant relatives at their native village in Saharanpur. He doesn’t consider anything violent has happened to him. He says, what has happened to him was natural and expected from anyone in his circumstances. As he says, “ab dekho, bichare maa-baap ko kya pata, hum kya hai. Unhe thode hi kabhi pata tha ki mai gaand marwata hoon, so unhone jo kiya, woh to humare bhale ke liye hi kiya na” (now, you see, what is the fault of the innocent parents, they are so miserable that they don’t even know that I get fucked by men; so, whatever they did was for my benefit only). About his wife, he says, she is very good and never complaints too much of what he earns. He has had multiple relationships with different men at different points of time after his marriage, but his wife had no idea of all that and she never even complaints too much, if they do not have sex for months together.

I think, in Jeevan’s case, there are multiple intersectional grounds that have played a major impact in his life: mainly, his lower-middle-class status, that has played in the form of his family background, his own educational background, his employment status. It looks, as if he always had very limited opportunities to create new vistas for himself; whatever, the family demanded
of him, he had to unrelentingly perform. We could deliberate or wonder upon some possibilities—what would have happened, if he had a permanent and stable source of income for himself; or, whether he would have had a better (maybe an independent) agency in his own marriage (or, decisions alike)?

He says, he loves to cross-dress and act like a woman. He has been doing it with a couple of his friends from the Hijra communities and he often accompanies them during Badhai which sometimes fetches him some extra bucks. On being asked, the reasons for him to have continued his association with his friends in the Hijra communities, he replied that, some of them are really good friends and also, being associated with them gives him a source of some additional income sometimes. Jeevan’s story, along with his wife’s sketches an image with gendered roles, it appears clear that the normative structure of heterosexuality coupled with intertwining issues of patriarchy, class-struggle, and lack of opportunities have created quite a difficult life for him and his family. The issues that could be pondered over through Jeevan’s story are: (1) In a conventional arranged marriage setting, does his wife has an opportunity to know his sexual preferences? (2) If someday the hidden secrets of Jeevan’s closeted life get revealed before his wife and children, what possibilities may occur? (3) with Jeevan’s marriage, how is his life and choices are further restricted by the social institution of marriage; consider where he says, that “ab shaadi ke baad kisi mard se dil lagane mein dar lagta hai” (after marriage, I am scared of getting attached with any man). What is very certain here, is that Jeevan’s life after marriage is an altered one, he has new challenges to deal with, his desires are now modified, bent and restructured to suit the ‘package of social expectations’ that marriage has brought with itself. This ‘package of social expectations’ is based on the heteronormative family-based value-system that demands obedience to the collective social values like family honour, and patriarchy—that together compels him to do and re-do the inalterable gendered scripts of public performance, etc. The fact that Jeevan continues to be sexually active in pursuing his erotic desires with men post marriage, and that he restrains to get emotionally attached to anyone, indicates that he is aware of the dreadful impacts of digressing from the social norms. The institution of marriage in his case has been successfully able to lay sanctions of personal guilt, shame, fear of family/social backlash—which together have a deep-seated impact on his psyche and behaviour.

**Nilay’s Case:** Nilay is born in the Hauz Khas village, an urban village located in Southern part of Delhi. He has attended a Government School in that locality. His family had settled there a few generations ago, his father works as a Peon in a government office, whereas his mother is a homemaker and is illiterate. He is 35 at the time of the interview. He is a biological male, who generally performs as a cis-gendered male when he is with his family,
workspaces, and all other public spaces. He prefers to perform effeminate, oftentimes with some female props, like dupatta, lehenga, etc. when he is in the closed quarters of his old time queer friends. At the same time, he quite carries a masculine body language in all other times. He considers himself a Bisexual male. He considers himself to be middle-class and repeatedly thanks his destiny for having a Security Guard’s job at a Government Office. Education-wise, he has completed his matriculation level school examination.

His family consists of both his parents, wife with a son, aged 15 years and a daughter, aged 10 years. He has two sisters elder to him, and both of them are married off to men in different cities. His sisters were married off during their teens, when Nilay was very young. He says, since, he is the only son, he always got special privileges but at the same time, the expectations were higher on him to get married. As he says in Hindi, “ek hi ladka hone ki wajah se mere maa-bapu ko humesha se ye tha ki meri jaldi naukri lag jaye aur fir wo meri shaadi karwa de” (the disadvantage of being the only son is that my parents always had the expectation from me that as soon as I get settled with a job, I should be getting married and give them grandchildren).

It appears that he comes from a conservative family background, as he never had the courage to speak his mind on matters of his sexuality, choices, or marriage with his parents or siblings. About his childhood experiences with his sexuality and body, he narrated his first sexual experience was with his own paternal uncle at the age of seven which continued for a couple of years till he moved out of the family house for professional reasons; he started exploring with other men from the age of fourteen at his school, and later with some neighbourhood boys who were around his age group. While narrating all this, he suddenly says, “magar mujhe ye to humesha se clear tha ke mujhe shadi to ek ladki se hi karni hai” (but, amidst all this, this much was certain, that I had to marry a girl only).

He said, he got married when he was twenty-one and that was an arranged marriage brokered by his maternal uncle’s family with a girl in their village. He said, “jab meri shaadi hui thi, tab mujhe bohut dar lag raha tha, kyonki usse pehle maine kabhi kisi ladki ke saath kuch bhi nahi kiya tha, par ek baar jab shaadi ho gai, to fir theek hi lagta hai, humara pehla baccha kareeban ek saal ke andar hi ho gaya” (when I was getting married, I was nervous, as I never had sex with any girl before that; but, once you get married, then everything works well, we had our first kid within a year). And, he takes a lot of privilege and relief while saying this.

He said, he really loves his wife, as she is very understanding and is never disobeying of his needs and wishes. So, does he still have sex with other men or women? To this, he said that it is easy to get men especially in his job
as he works during night hours sometimes when there are less people at office. He acknowledges that he has had a few sexual experiences with men at his office and its neighbourhood. But he adds, he prefers to be cautious at all times when having sex with men because of the shame and taboo attached with it. I sense some nervousness in his voice, when he said that; so, I asked, whether anything happened in particular that makes him so cautious.

He replies, that one of his office colleagues has tried to blackmail him on the grounds of his gay sexual intimacies at the office premises after the closing hours. The blackmailer claims to have made a video of him having sex with a stranger man. Nilay repeatedly says that, what he is scared the most is the shame and stigma attached to being gay, and in addition to it since, Gay sex is illegal in India, and because such acts are considered morally offensive, he is scared of losing his job, if not on the grounds of a criminal investigation against him, but at least on the grounds of a disciplinary action. He said, after that incident, he has never showed any interest with anyone at office for anything sexual, he just does his duty and returns back home.

He has never been affirming of his sexuality or his gender identity with his family, friend-circles or his workspaces. He opens up about his gender preferences and sexuality when he is with his old queer friends, but at all other times, he prefers to behave masculine and heterosexual.

In Nilay’s case, it is his class and his sexuality, added with his marital status; all the three play an intersectional role in impacting his life, his prospects and experiences. The class and the cultural background that he comes from plays an important role in his life, choices and the experiences. Specially, the educational and financial exposure of his parents were quite determining in terms of Nilay’s decision to drop out of school, as he says, there was not much of a resistance in his family while he took that decision. Though, his father managed to find a job for him in a Government Office, which had a positive impact in his life and choices, specially keeping in mind the stability of income and security that a Government job can offer in India. He cherishes his job, but he is also scared of losing it, as he is frequently now being blackmailed by one of his colleagues who claims to have recorded him having sex with a man. Because, of this incident, Nilay has lost his self-confidence, he thinks he is always under surveillance, even when he agreed for an interview, he didn’t allow me to audio-record our conversation, he has started seeing everything with suspicion. After learning that, I am a lawyer, he got a bit eased and started asking me the legal consequences of this blackmailing fiasco. It seems to me that he is not just scarred of losing his job, but he is equally scarred of losing his reputation and image before his children, wife and parents. The fact that, for all these years, he has accepted
the privileges of a masochistic, masculine image of a heterosexual man before his family, children and the society in general, so, he is scarred of losing those privileges. He thinks, he is vulnerable because of his sexual preferences, which is not completely unfounded in the socio-legal structure of India. Now, because he is aware of the social and legal consequences of being outed as Gay in India, he leads a repressive life, full of self-guilt, under-confidence and under the constant fear of forceful exposition and persecution.

To continue the privileges of the heteronormative order, he deploys the strategies of producing the normative man’s image (heterosexual/masculine), which traps him further to do everything to secure the coherence and safety of this image-production pattern. He has to keep repeating this scripted-pattern at every instance, whenever he is dealing with the heteronormative world. For instance, Nilay feels threatened when his rival colleague blackmails him for his sexuality, to which Nilay’s response is the strategy of denial, denial of his sexuality, denial of his pleasures. In Foucault’s terms, Nilay counters his opponent’s power of knowledge with his power to deny that knowledge.

For him, marriage could have been a compulsion but he has managed his marital role to the extent that he can use it as a strategy to negotiate and pursue his otherwise despised sexual desires. But the strategies of management of his marital role are limited with the presence of other stakeholders. For Nilay, his marital and consanguine family is not the only stakeholder in his sexual choices, his sexuality is a matter of concern for his workplace as well (as they can fire him on the grounds of both criminality and morality for his sexual behaviour). This makes Nilay a lifelong vulnerable entity who is subjected to the wishes and expectations of his heteronormative family and workplace structure. If Nilay loses his job, he is tensed about the educational future of his fifteen-year old son and the marital future of his ten-year old daughter, both of which are a costly affair in our neo-liberal and still-feudal socio-economic structure. To negotiate his vulnerable positionality, and to keep him safe in such treacherous heteronormative geographies, Nilay uses mechanisms of pretension, misrepresentation and denial as strategies of survival. His marriage plays a major role in keeping him disciplined, domesticated, and thus, caged up in the structure of heteronormativity. Here, marriage is a snaring tool used by the heteronormative structure to keep queer men like Nilay forever domesticated, enslaved and repressed.

**Rajiv’s Case:** Rajiv is born in a village of Western Uttar Pradesh, from where his parents hail. Though, very early in his life he found himself in Delhi as his parents, being migrant workers preferred to work in the near-most
neighbouring big city. So, from the last thirty-five years, Rajiv lives in Yusuf Sarai, an urban village located in South Delhi. His schooling was from the neighbouring Government School. He is 40 at the time of the interview. He is biologically a male and is living with HIV for more than fifteen years now. He associates himself more with the imagery of a cis-gendered male. With respect to his sexuality, he considers himself Gay, though, he is married. He is married for the last sixteen years. He calls himself to be middle class. He is a standard-tenth school-dropout, which means that he couldn’t complete his matriculation level school education. Though, it was as early as 1998 (when he was 17-year old) that he started his career working as a field agent with a Delhi-based NGO that was engaged in the public health projects of the MSM population. He continued there for the next twelve years on a meagre salary, until he got placed with an American NGO that works on AIDS awareness with an enhanced package. He said, he is satisfied with his current engagement as it pays him adequate and is very rewarding in terms of his overall growth.

His parents have never been to school and had migrated to Delhi in the 1980s for better job prospects. His father continues to work as a daily wager, whereas, his mother keeps working as domestic help in different households. Rajiv is one amongst the two of his younger brothers and three of his elder sisters. All his sisters are married off and they live in different parts of Delhi and the neighbouring cities, whereas his youngest brother lives with his wife and children at their joint family home in South Delhi, along with Rajiv, his wife and the parents.

Rajiv has had quite a conventional upbringing at his family. He says, he was sexually always and only attracted to men of older age groups. He narrates his first sexual experience with a man when he was seventeen-year old at Gautam Budha Park (a huge public park in Central Delhi famous for all sorts of cruising activities). He prefers to refer him as Pundit Ji (during the entire interview). Pundit Ji (I will refer him as PJ) was twenty-seven years older than him. It seems, as a young boy of seventeen, Rajiv was really impressed with PJ, because of the sheer importance and sense of security and worth that PJ used to usher over him. Rajiv says, he was hung in PJ’s charm for quite a couple of years; despite knowing that PJ was a married man with a nagging wife and a boy, two years younger than Rajiv. He called him Pundit Ji because; he was a priest (pundit in Hindi) by profession. He described the initial few years with PJ, both sexually and emotionally to me; he said, PJ never invited him to his house when his wife and children were in town. Rajiv described that his relationship with PJ was always full of complications, a few important ones let me produce here:

- Rajiv initially never liked when PJ used to refer him as a friend to his wife and son, but he soon convinced himself on this, thinking about
PJ’s marital compulsions. He says, “his wife always had a doubt over our relationship”.

- Within, a few months of their relationship, PJ was introduced to his family as a closed-friend and a mentor. Rajiv narrates that, since, PJ’s charming personality and his priestly profession were so impressing on his parents, that they never doubted that they were anything but friends. Then, Rajiv narrates a couple of incidents that made him suspicious of PJ’s constant engagement in secret liaisons with other men. He narrated a couple of incidents, where he found PJ having constant sexual relations with many men and young boys of his age. Though, PJ mostly denied all his allegations, but as the time passed, Rajiv was sure. Rajiv says, what offended him the most was that PJ always pretended to be monogamous with him, but then he was sure, as he says in Hindi, “jo insaan apni biwi ko dhoka de sakta hai, jhanse mein rakh sakta hai, to mai kis khet ki muli hoon” (for a man who can cheat on his wife, what am I before him).

- Rajiv says, “wo mujhe humesha shaadi karne ki salah dete the, kyonki ab meri job bhi lag gai thi. Wo humesha kehete the, ki ek mard ko humesha shaadi to karni hi padti hai, aur fir shaadi ke baad wo jis kisi ke saath sex karta fire, kisi ko koi farak nahi padta” (he always used to convince me of getting married, as I already started earning by then. His idea was that, a man must marry, and once, married, no one cares with whoever he sleeps with). Rajiv also adds here that, “Pundit Ji humesha se chahte the ki mai bhi un ki tarah shaadi karke life mein engage ho jau, taki hum dono ke haalaat ek jaise bane rahe” (PJ always wanted me to get married, so that I also get busy in life like him, I think, he wanted both of us to be similarly placed in our respective personal lives). It appears to me and to which Rajiv also corroborates at different places in the interviews, that PJ must have had his own selfish motives behind his subtle and constant push for Rajiv to get married.

Rajiv says, “there came a point in time when my parents were satisfied with whatever little I was earning as a field worker at the Delhi based NGO; now, they started pressuring me for marriage and I was delaying them more and more. At the same time, I felt an unsaid obligation to get married because my younger brother was already in love with a neighbourhood girl and wanted to quickly settle down with her.” Rajiv has never told his parents about his
desires for the same-sex, though, he says, his parents may have an inkling seeing his long-term commitment of love and hate with his previous-lover—PJ.

Now, it's been ten years that Rajiv is married with his wife who lives with him sharing his parental home. Rajiv says, he hardly has sex with his wife, owing to his same-sex sexual preferences. But, he adds that, he really loves his wife and both of them make a very good relationship, even though, he has informed his wife of his HIV status, she never told anyone in her family or neighbourhood about it. He said, usually his wife never complains him of anything but expects him to be loyal to her, as once, she discovered Rajiv getting intimate with PJ in their own bedroom. Rajiv says, from that day onwards, he never brings any of his same-sex lovers at home and he leads his sexual life away from home and away from his wife's knowledge. Rajiv said that, currently he is dating an Army man, from the last two years, and who recently got engaged with a girl. Rajiv says, even, if his boyfriend is engaged now, but, they have continued their meetings as they had always done almost every month. Rajiv says, he has no complaints to make to his boyfriend about his decision to get engaged, as he says, he is himself in a married relationship for the last ten years.

**Kishore's Case:** Kishore is located in a village in Northern Bangalore, an area which was urbanised hardly ten years ago and is still not very cosmopolitan in terms of its demographic quotient. He says, he comes from a middle-class background. He is a Gowda by caste and looks quite rooted in his gendered values and closeted approach to his bisexuality. He is very concerned of his privacy on matters of his sexuality, to the extent that he did not consent for our interview to be audio-recorded, except that he allowed me to make some quick field notes of his statements, which I narrated to him after the end of our interview. He is 25 at the time of the interview. He is biologically a male. He identifies himself a bisexual cis-gendered male, quite boastful of his andro-centric family values.

He is unmarried, but he sees himself getting married soon with a girl of his family's choice. During the interview, at several points, he has stressed the incumbent and uncompromising duty of a son and why should he get married in the Indian social setup. He looks deeply convinced by the arranged marriage system and doesn’t want to defy his parent’s trust on this matter at least.
As said to me in the interview—he has just begun his career as a fresh Engineering graduate and works during the night shifts. He speaks broken English and is visibly not very comfortable in speaking Hindi either.

His family consists of his middle-aged parents, his younger sister and himself. It seems to me that he comes from a conservative upbringing, as finds himself deeply obligated to his parent’s wishes and directions. As he speaks in his typical Bangalore-based broken English, “even a beggar family will bring up their child; parents do so much of sacrifice to bring us up, why can’t you return them back”. To which I ask in response, “Even if, it is to marry a girl against your wishes”, to which he replies, “parents will never do anything that is against our interests, so, even if they ask me to marry a blind girl, I will do that”.

In my opinion, Kishore comes from a deeply normative family-based value system. When I ask him about whether he is under any family pressure of getting married at the moment. He replies, that right now, his sister is 22 and all the family pressure and attention is on her, to get her married. I ask him, “have you made any efforts to talk to your sister, what if she is in love with someone or is she ready for marriage at all?” He replies, “no we don’t talk on such matters, she has to have an arranged marriage with a boy that we choose for her. Even if she is having some affair, we will not accept it. We feel that she can’t make her own choices, so she has to be told at each step, what to do, where to go”. Then, I shift the focus on him back; I ask him about whether he has made any attempts to explain his sexuality to his parents, to which he replies that, “I know my parents; they will never accept it, so, there is no point.” Then I rephrase my question, “have you ever tried to talk to them in general on matters of sexuality? What if they come to know about your Gay sexual life?” He replied, quite generally (as if he has an authority to speak on behalf of an undefined populace, at least of his sort), “no, I don’t see there is any point why one should do that. Even if one tells them, or if they get to know from somewhere, they don’t dare to tell the society that my son is Gay; just think about that”. Then, I asked him rather directly, “so engaging with men sexually is acceptable to you, and, talking about it with your family makes you feel ashamed of yourself?” to which, he responded in affirmative and repeated his earlier justifications of ‘family shame’ or ‘how being Gay is a cause of embarrassment’, ‘family-values’, etc.

He is completely closeted on matters of his sexuality with his family. On this, I try to inquire from him, whether lying to his parents make him feel guilty about it? To which he replied, “if it makes your parents happy, you should better lie to them always?”
I have found him on Grindr, where he had a picture-less profile with no details about himself or what is he looking for. It was almost like a ghost profile, but I could always find him online during the morning hours. The Grindr radar showed that we are 3 kilometres away from each other, and soon, he happened to ping me; I realised that he is primarily looking for a morning hook-up, so, I asked him to share his pictures, to which he adhered. The next question he asked was whether I have a safe place for sex or not? I asked him to meet first, and said that since, we live close by, it’s better to meet first and if we both find each other attractive, we can then think of moving ahead. He complied, and we exchanged our mobile numbers and I shared my location. We soon met outside my university, where we had quite a long chat. Here, I mainly asked him questions about his family and in general about his early sexual experiences. He said, at the age of fourteen, he had his first sexual experience with his Father’s sister’s son, who is seven years elder to him. They had quite frequent sexual intimacies and it continued for several years. At present, this cousin of his is married and has two daughters. He said, they do not have sexual relations anymore; neither do they talk about their earlier adolescent sexual experiences when they meet. Then he said, when he was nineteen, he had a girlfriend at his college and they had their affair going for almost two years. Meanwhile, he has had multiple sexual intercourses with her as well. Then, I ask him about his current sexual life. He said, “I never had much of a sexual life so to say till my college got over. Since, my parents never allow me to spend nights at any friend’s places, besides my college was quite close to the house, so I had very minimum chances of exploring myself sexually with either men or women. But from the last one year, that I am working, my sexual life has improved, for example, I can tell my parents that I have to stay late at office, or I can say that I have to go out at a colleague’s birthday party”. Then, I asked him as to how does he manage to meet boys; has it always been online applications like Grindr? To which, he replies, two years ago, he made a fake Facebook account (very similar to his Grindr account) and, before ten months, he joined Grinder. My next question was, has it always been just sex with guys or has he felt emotional with someone so far? He said, “there was this one very good friend of mine, he was bisexual, and we have had multiple discrete sex orgies with both men and women.” He said, he was attracted to him, both physically and emotionally, but he never dared to convey his feelings as he said, “I always knew, that he is a bisexual and we can never live like this, besides, just like me, he is soon going to get married”. He says, he doesn’t feel that his family has ever violated any of his rights for their selfish reasons. He just simply thinks that, his parents will never understand his sexuality, as discussed above.

His background is middle-class, where he is the first engineer in his family. His status of being the male child in his family earns him more privileges as
compared to his sister. He is normative and patriarchal in terms of his behaviour and wants to retain the same through his constant efforts of performing the role of a ‘good son’ and a ‘good brother’ by exercising control of the agency on behalf of his adult sister and by transferring his own agency to his parents. He is aware of the political threat that the queer pleasures pose to the heteronormative structures, as he is himself a participant in both the camps. His awareness of the power and might of the queer pleasures, makes him take efforts to keep proving his allegiance to the heteronormative structures (as he sees a secured future in the later), by pushing first, his sister and then, himself in the complexities of an arranged marriage. Here, we need to see that the technology of ‘arranged marriage’ as a full-blown machinery that is deployed by the hetero-patriarchal structure to thwart (or underground) all kinds of pleasure-seeking (by the children in a family) through the strategies of shaming, guilt-laying and by constantly demonising the ‘other’. In order to keep his positionality secured in the heteronormative structure, Kishore has to keep up (1) exercising control over his sister’s movement, her thoughts and her life, and (2) transferring his own agency to the parents; all in a bid to portray himself as the sanskari purush (this popular Hindi word is generally used satirically to mean the caricature of an ideal man/citizen who does everything to keep his culture sacrosanct—here, I am using it in the same way).

In terms of agency, he clearly said, he has had quite a less of it for his entire school and college life. He said, he has started acquiring more autonomy in terms of exploring himself sexually and emotionally with other men from the last one year that he is working. But to buy his autonomy from his parents, he has to use strategies of deceit, for example, when he has to meet someone new, or when he has to hook up with someone, he prefers telling his parents that he has to work for extended hours at office, or it is a colleague’s birthday party and, hence, he will be late for home. His desires are built up by the restraints put up by his family and his partial agreement to those restraints (in the name of family values) clubbed with his pleasure-seeking curious young mind, act as filters in terms of his exploring the city’s queer sexual life. But, the restraints of the heteronormative structure, of which he is himself a party, doesn’t allow him to do it without the fear of being found out or exposed; it is clear that he is very conscious of his privacy when it comes to these online chat forums (remember that he has been using fake/ghost profiles on Facebook and Grindr, which are without his original pictures, and also without any information about himself or of what he is seeking) shows his sense of insecurity of being caught or exposed, hence, these repressive defence mechanisms of lying, and deceit. In my understanding, this depicts his way of exercising power through which he is able to vent his desires. On one side, he yearns for spaces of autonomy against the restraining forces of his family’s norms, and on the other hand, he endorses and vows to deploy
the same when it comes to his sister’s autonomy, her future prospects of marriage, etc.

In terms of exploring his personal self (both sexually and emotionally), he allows himself to do it partially, not fully. Remember, when he said, that he found this one friend of his attractive both physically and emotionally, but never wanted to express his feelings before him. He preferred to remain a good friend of him and thus, exercised restraint in exploring his fullest potential and the consequences thereof. His justification was based in terms of his presumptive imagery of the supposed gendered role of a bisexual man in the Indian family setup, his duties to preserve the same, and hence, resulting in—strategies of closet, deceit and double-lives.

During the interview, he clearly expresses his dependence over the privileges of the heteronormative family system, the sense of protection and shelter that he is used to receive as a male child in this social setup. It seems that he derives his sense of worth and well-being in terms of his social security from this social system of a heteronormative structure. He sees himself imbued in it, conducting himself as a sincere foot-soldier with the object of securing the dominance and domain of the province of this heteronormative family structure intact. He directs his body, his actions in accordance of the values of this system; he finds himself insecure and highly conscious of his heteronormative figure when it comes to negotiating his desires of accessing queer pleasures vis-à-vis his commitment to the heteronormative structure. This is reflected through his partial access of the queer pleasures (where he feels secured in accessing only the material pleasures of queer sex and feels jittery and dilemmatic when he falls for a queer body emotionally). Hence, his endeavours of accessing the queer sexual pleasures remain forever partly undone.

**Ratish’s Case:** Ratish is born at a village located around 130 Kilometres from Kochi, Kerala. He is raised over there in a family of four, including his parents, and his two brothers. He has been to the nearby Government School in his village and has studied up to the twelfth-standard of School education. He said, he has appeared for the inter-school Exam twice, until he dropped out of school at the age of eighteen. He has started working since then with his father at his small farm lands, until migrated to Kochi for better job prospects. He is 32 at the time of the interview. He plays multiple gender roles, though, during all our interview sessions, he has identified as transgender. He often goes for sex work at night on the streets of Kochi, wherein, he prefers to cross-dress. He changes his name from Ratish to Saaya for all his clients. When he returns to his regular work, he mostly changes back to the attire of a male but prefers to behave effeminate. When he goes to solicit men for sex work on the streets of Kochi at night, he prefers
to cross-dress. When he goes back to his village to visit his family, wife and son, he prefers to behave more as a cis-gendered male. He acknowledges during the interview that he is compelled to live a dual-life, his role changes with the change in his surroundings and circumstances. He considers himself Gay, though; he is married and also has a 1 year old son. He was forcefully married against his wishes by his parents and family in the year 2009. Until marriage, he was partly working at a restaurant in Kochi as a waiter, and partly as a sex worker. After, living with his wife for two months of the marriage, he decided to migrate to Kochi, the nearby big city for the purposes of better job prospects. He considers himself coming from a lower-middle class background.

About his sexual and gender preferences, he says, he was always very certain rite from his childhood. He says, from the time he could remember, he always knew he wanted to dress up like other women in his locality; he also acknowledges that he was quite effeminate right from his schooldays and that was one of the reasons for him to be bullied at school. He says that, constant efforts on the part of his family to discipline his effeminateness and sanctioning him with physical violence and other psychological abuse, coupled with the bullying from his classmates has made him to believe that he must behave masculine as he is born as a male, whenever he is in a hetero-normative environment. Therefore, he plays two types of gender roles from at least the last ten years. He often goes for sex work at night on the streets of Kochi, wherein, he prefers to cross-dress. He changes his name from Ratish to Saaya for his clients. When he returns to his regular work, he mostly changes back to the attire of a male but prefers to behave effeminate. When he goes back to his village to visit his family, wife and son, he prefers to behave more as a cis-gendered male. He acknowledges during the interview that he is compelled to live a dual-life, as his role changes with the change in his surroundings and circumstances.

Ratish says that, he always had a few friends from the Hijra Community in the neighbouring village, with whom he had visited Kochi a couple of times. He decided to leave the village home and shift to Kochi and find a job over there. He says, he had dreams of his own about the city, about his new independent life. With the help from a few of his friends from the Hijra community, he was assured a place to stay in the city. He said, he took almost over a month to find himself a job of a waiter at a small restaurant. He keeps working at such places in such capacities for the next three years and also keeps sending some money back to his parents. He also started doing sex work at night to help augment his income. Ratish was affirmative of his gender and sexual preferences whenever he was situated at a space, wherein his queerness is not going to be judged adversely, e.g., all heteronormative spaces such as his family home, neighbourhood, and
school, he preferred not to cross-dress publicly, and to consciously behave normatively as expected from all cis-males of his age; on the other hand, we see the transformation in Ratish’s behaviour, the sense of autonomy in his decisions and the confidence, when he walks or solicits clients on the streets of Kochi, he does not have to hide his effeminacy as if there’s hardly anybody to judge him, and for those who do, as if he cares for them. To my understanding, his affirmativeness with regard to his sexuality or gender preferences are subject to the spatial and temporal dimensions of the complex ecosystems of his living, which changes accordingly.

It was the year 2009, when his family forced him to get married. He said, he had no interest in getting married, or having sex with a girl, but as he contends with his broken English, “papa ko laga, ladka bada shahar mein akele naukri karta hai, uska shaadi karao. Fir mera mummy mere ko dhamki diya suicide kame ke liye. Mai unko kaise bataye ki mai Gay hoon” (Dad thought that I earn in the big city and live alone, and that I must get married. And, my mother threatened me that, if I don’t marry, she would commit suicide. Now, tell me, how I tell him that I am Gay). It appears based on what he said, that his inability to convey his unwillingness for marriage aided to his parent’s already-default thought that they have a social liability to presume that he is interested in marriage and to further keep pushing him to get married; because of Ratish’s inability to tell his parents about his sexuality or his unwillingness for marriage, he finally had to get married under an arranged, family-brokered alliance. With whatever little force Ratish had, he kept delaying the parental pressure—finally, he had to give up to his mother’s tactics of emotional blackmail (when she once threatened, if he doesn’t marry, she will commit suicide).

He said, after the marriage, he decided couple of times to run away from home, but could not finally take that call; he went under severe depression, as after repeated attempts he was not able to consummate his marriage. He said to me that, because he never had any sexual attraction for women, he never had the libido to have sex with his wife. It was after two months of repeated but failed attempts to satisfy his wife’s sexual libido, he decided to leave his village-home on the pretext of joining his job back at Kochi. This was a time, he couldn’t land himself with a job, unlike the last time. He started staying with a friend, and restarted with sex work at night to have some income to survive in the big city.

When he returned after a couple of months to his family home, his wife convinced him to visit the village Doctor. His wife was hoping that the Doctor would cure him of his inability to have sex with her with some medicines; indeed, the Doctor prescribed him some medicines, which nonetheless affected his libido but for his wife; as Ratish playfully says, “wo sara
medicines lene ke baad, mera sex aur badh gaya” (after taking those medicines, my libido to have sex with men increased even more). He said, he continued those medicines for a few months, but never had sex with his wife during that period of time.

He said, he had to agree to what his wife demanded because he was always scared of coming out to his wife, as he always saw his sexuality as a social embarrassment not just to himself, but also to his family’s reputation in the village. He said, people do not understand at a small village, if you tell them you are gay. It is apparently clear that he is convinced that his profession of sex work, his constant shifts to the female gender, coupled with his homosexuality would in all possibilities make his family subject to socio-economic boycott, and social persecution. He said during the interview that he is scared that he could be the reason for ruining his parent’s reputation in the village. Therefore, his approach has been to keep his sexuality a secret, deep buried in his heart, as long as he can.

He said, his village neighbourhood, his school all had a very normative environment and there he mainly learned that he should not publicly display his effeminacy as that could always backfire against him and his family. Though, he said, his life at Kochi is much independent as he is financially and socially more autonomous than his village life. He said, he was comparatively freer; though, he also acknowledged that sex work on the night streets of the city could be really dangerous at times but could be equally rewarding as well. He said, there is mainly the fear of police harassment or physical abuse in the hands of the clients at night.

Now, when he visits his wife, children and family, he has to mentally prepare himself for it, and he has to transform his gender roles to suit the normative, androgenic ecosystem of such spaces. His exposure to his heteronormative environment at his village has constructed his mental frame to become such that he believes his sexuality or gender preferences are a cause of embarrassment and social ostracism for himself and his family owing to which he lives his life under the constant threat of being exposed.

He now has a two-year old son. He lives separately at Kochi where he mainly earns his livelihood as an outreach worker on a meagre salary and partly from his sex work. He is generally scared to visit his wife and children, mainly for personal reasons owing to his sexuality and gender preferences. As he says in broken Hindi during the interview: “mujhe ghar jaaane ko man nahi karta, phir bhi kabhi-kabhi jaana padta hai. unse milo to full tension ho jaata hai” (I really do not feel like visiting them, as when I visit them, I get under severe tension).
Ratish works in the daytime at the office, and at night either goes on for sex work or he lives at the office itself with a couple of other displaced and marginalised, run-away people (most of whom are HIV positive). He says, the AIDS control society office has become his home for the last so many years; but he adds with caution that it is not always so, as sometimes when they have inspections or some kind of a gag order from the government department, they have to vacate the office premises and find shelter at some or the other friends in the city. Ratish says, he has also spent his nights at the railway station, as he finds it the safest of all options to be at when he is shelter-less.

It seems that he takes his biological and consanguine family as a mere given, over which he never had a control, so he at times visits them but given some choices (which he clearly doesn’t seem to have) he says, “mujhe apne boyfriend ke saath rehna accha lagta hai” (I would love to live with my boyfriend).

He was in a five-year long relationship after he was forcefully pushed into marriage by his family. This man used to work in Kochi, with whom, in the words of Ratish, “humare beech both accha sex hua pure paach saal, wo mera dhyaan rakhte the. Fir finally, usne shaadi kari, to mane usse rishta tod dia.” (we have had a very good sex in those five years, he used to take a great care of mine. Finally, he got married, and I decided to leave him).

Ratish says, he has been able to come out of the trauma of leaving his previous partner and is currently dating a sailor who is stationed at the city’s naval base from the last one year. He said that, they are having a good time for the last one year. They often go for shopping, or to watch movies together, and additionally they have a good sex life. He says, he may stick with him, as he says, he will not get married and he thinks he is Gay and not a bisexual, unlike his previous partner.

For Ratish, his class plays a major role in terms of his accessibility to a better control of his life. He has expressed at multiple occasions during the interview, or at other occasions, his desire to have a better sense of financial security in his life. His class is determined not just in terms of his financial status, but moreover on the basis of his location (which happens to be a rural lower-middle class family background), coupled with his formal educational background (which makes him a school dropout after his eleventh standard).

His case makes him a site of multiple marginalisations; other than the class factors, he is also affected because of his non-normative gender and sexual preferences. He is caught in a dilemma, on one hand, he wants to lead a free, autonomous life, on the other hand, his closeted-ness has forced him
into marriage, and parenthood; this naturally endows him over with the social 
liability of maintaining his wife and his toddler son. His inability to have 
satisfactory sexual relations with his wife is further added with his inability to 
provide adequate maintenance to his family affects his relation with his wife. 
He finds himself under utter guilt because of his inability to look after his wife 
and son. At the same time, he sees an independent future for himself with his 
sailor boyfriend (or at least someone like that). As he says during the 
interview, “mujhe sapna hai ki kisi ka wife banu, magar meri tragedy hai bolo, 
yakya bhi bolo, mai kisi ka husband ho gaya” (that I dream to be someone’s 
wife, and see the irony of my life, I am somebody’s husband). He regrets his 
decision to consent for marriage; though, he also adds here that he was quite 
immature at 25, when he took that decision, and if the same happens with 
him today, he would never marry.

Sam’s Case: Sam comes from a small village called Sholop in Howrah 
district of West Bengal. He is assigned female sex at birth and is 30 at the 
time of the interview. He identifies himself a heterosexual transman coming 
from a middle-class background. Sam has a graduate degree in terms of his 
education.

During his late-teens, Sam had a period of mental depression; once he was 
out of it, he narrates how his family very naturally thought that a heterosexual 
marriage was the best solution to all of their and his problems. Sam’s 
experiences of a forced-marriage depict a classic intersectionality of sex, 
class and gender. Being biologically a female gave the family members an 
unequivocal right to negotiate their daughter’s sexual and marital choices 
with a man’s family; this became even more vital when Sam’s parents 
realised that the prospective groom comes from a higher economic class (as 
was the case with Sam’s ex-husband). The family of the queer in such 
instances usurps the individual’s choices and makes it a community/family’s 
collective-domain—Sam’s wishes were therefore ignored, and his parent’s 
wishes were given primacy—all in the name of family-values and the middle-
class bio-politics of the Indian social-scape. As he narrates: “There had still 
been no change in my mental state, neither an improvement nor any 
deterioration. After going through this phase, I said that I will not go to any 
counsellor any more. This kind of a situation continued for almost two years. 
Somehow, I passed my Higher Secondary exam, getting a second division. I 
got admission in a college. After I got admitted in the college, it was a co-ed 
college; I used to mix with some of my elder brother’s friends. I used to like 
male friends a lot. I wanted to do everything with them. I should have had 
more female friends but, I had a lot of male friends. I never felt any 
discomfort if we hugged or if there was any touch. When I got admitted in the 
first year, a good friendship with one of my brother’s friends developed. Ours 
is a very rural place. The entire thing was turned around. It was said that we
have a relationship. I had thought that the boy was a nice person, maybe he was not bad, he was right from his position. I was around 21 years old then and he was about 32 back then. However, he had spread among people that I had a physical relation with him. Then I had to deny everything and explained to him that this was just friendship and meant nothing else. Trust me but I was not thinking of anything else with him and I was not being able to say it properly to him. When I was trying to explain to him he said that this was not possible and that I was lying to him. The more I tried to make him understand he started spreading that I had a relation with him, that there was physical intimacy."

Further, he narrates his experiences of a forced marriage by his family members (for whom it was quite likely to have been swayed by the social/neighbourhood pressures on their family honour and their normative concerns for their girl’s future). As he narrates his story further: “This had such an impact that he brought his parents to my house and told my parents that he wanted to marry me. He was very desperate. He was my brother’s friend and lived in the same neighbourhood. He came from one of those very rich families. They had some factories and were very influential. They were also involved in some charity work. The fact that I had got a marriage proposal from such a family was very well accepted in my house. My family did not even contemplate about the fact that he had spread such a bad name; on the contrary, they were telling me that he was such a nice person that he was willing to marry me. Apparently in such cases boys never want to marry the girl. Imagine.”

He further narrates: “His male ego worked very strongly. He could not come to terms with the fact that a girl was refusing his proposal. He could even kill the person. When the proposal for marriage came to my house I told my sister that I could not get married. I told her that everything that he was saying were lies and begged her to believe me. At that point, my mother told me that if I did not get married she would commit suicide. There was complete mental torture. The situation became such that I had to marry. My mother was constantly telling me that if I did not get married she would commit suicide. She was also telling me that my sister who was elder to me was still unmarried and if I do something like this after such a bad word had spread in the entire neighbourhood, it would be difficult to marry off my sister. Maybe, my mother was right from her position, but at that point of time, no one understood me. No one even tried to understand me and even I was not being able to say anything to them even then. I was married off under a lot of pressure. The marriage happened among very close associates, their house was just five houses from mine. The marriage happened within the neighbourhood. You can imagine how it was when the marriage happened with an influential person from my own neighbourhood. In the beginning,
there was not too much trouble because in reality he knew what the truth was. No matter whether anyone else in the world knew the truth or not, but he did. He was giving me time. He would tell me that he knew I would take time because he had married me almost forcibly. He had accepted everything, that his male ego was getting hurt, that he could not accept the fact that I would leave him, that his friends were constantly telling him that only because I was educated how could I leave him and so on. His friends were forcing him to get married. It was not entirely his decision, he had also been mobilised to some extent. He had said that there was a physical relation between us, which is why the marriage eventually happened. After a month passed by after marriage, I was still not being physically intimate with him. This started leading to huge turmoil. So much disturbance was being created that neighbours from around the house could hear screams and shouts at night. It happened a few times that he had been physically intimate almost forcibly after coming back home drunk. It would become extremely abusive with him almost pinning me down and forcing himself on me. This continued for almost 2-3 months and on some nights, I had to deal with that pressure. He would shut the door from inside and you would not believe that a man could be mentally so out of control. The moment he would come out of this drive he was the nicest person. I don’t know what would happen to him in those moments, he became like a mad animal, and the moment it would pass, he himself would leave the room. He would not come to talk to me or do anything. This went on for 3-4 months and as the troubles kept increasing he called my elder brother one day, because they were friends, my brother and my husband- his name was Jayanta Ghosh. He called him one day, took him to terrace and told him that he was having physical problems with me, that I was not ready to be intimate with him at all and maybe I have a problem. The word reached my family. I was brought home after that and asked what the problem was. I told my mother to understand one thing first that if there was a physical relation between us before marriage as he had initially claimed, he would not have created an issue about this. I told her that I had spoken the truth that day and I was telling the truth this day too, that I was not being able to be physically intimate with him. That time when my back was absolutely against the wall I told my sister everything about myself and that I will never be able to accept this marriage. I told her that I had wanted to confide in her many times before but could not. An extreme feeling of guilt rose in my sister when she thought that as an educated school teacher she had not been able to understand her own younger sister. She felt that she has made a blunder with someone’s life. From that time she started supporting me. She said, let bygones be bygones, it is a rural area, and she told me that I don’t need to go back to his house, she will take care of what needs to be done. My sister could not tell my mother what the real issue was because my mother would not have understood. She just told my mother that I was facing many problems and was unable to stay with him anymore. My
mother said it’s alright and asked me to stay in my own house for six months after which she would see what to do. My husband would visit regularly but not speak to me. He would speak to my sister, my mother. One year passed this way, I stayed six months in this house and six months in that house. After a year, one day my husband came to my house and told everyone that he is taking me back to his house. He said that he would let me stay whichever way I wanted, let me do whatever I wanted, but he wanted to take me back with him. He said if I wanted to wear jeans in the house I could wear it, if I was comfortable wearing hot pants I would wear it, if I did not want to go out of the house I need not have to, if I wanted to work I could, basically I could do whatever I wanted to do. The final demand was that he would take me back. He also said that he would neither make my family suffer nor make me suffer. He again explained everything to me and said that he will live with me like a friend and that I should go with him. He mentioned that he harboured prestige in the neighbourhood and so on. With all this explanation, I was taken back with him and honestly for 2-3 months it was only a relation of friendship between us. He would ask me what I was doing, if I was going out for a meal etc. Three months went by this way. At the end of one year on this hand and three months later, it all went back to the same thing. That was just a big blunder. There was extreme physical violence, he would beat me up and it was a very critical situation. He would come back as drunk every day. I cannot tell you the amount of pain and suffering I went through feeling like a man myself and living with another in that way. I feel extremely pained even talking about it.”

He explains, how he gathered the courage to come out of his marriage: “After this phase continued for a while I just decided on my own. I did not say anything to anyone in my family, I just got my bag and came back home. I told my mother that I will not go back there, and if she does not want to keep me there I will go and stay somewhere else. I had become so desperate and brave within that I decided that I would not go back there no matter what. After that I spoke to my sister and finally applied for divorce. A situation was created where he just refused to give a divorce. After I came back home I again took up the job which I had done for a few days earlier. It was some electronics related job at Sony. That is when the talk about divorce came up and he did not agree to it. This continued for long. I continued to go for work. I was extremely depressed even then. I used to wear jeans, kurta and still wore sindur and sankha. I had to maintain this attire because of my family. You can also imagine the kind of talks that were doing the rounds in my neighbourhood after people heard that a woman has left her husband’s home.”
Second Category: Queer Stories of escaping/subverting Marriage
Akanksha Di’s case: She was born in a middle-class household comprising of her mother, father and her younger brother in the sub-urban town of Haldia, situated around 45 km in the north of Kolkata. Post-schooling, she has lived all her life in Kolkata till the date of the interview and has the plans to put the rest of her work-life in Kolkata itself. She is 52 at the time of the interview. She is assigned female sex at birth and considers herself a cis-woman. She is in relationship with her girlfriend Malobika Di for the last twenty-five years and lives with her in Kolkata. She is a Doctorate in Sciences and works as a scientist in a government enterprise.

After her father’s demise, Akanksha Di started working to support her family. It was soon after her graduation. Akanksha Di, was in a relationship with a boy at this point of time, and she also recalls, her being physically proximate with him for a couple of times but she also says, she never could feel satisfied with this boy. She recalls, she used to wonder as to why she is not getting comfortable with this newly found boyfriend of hers when it comes to seeking a romantic-erotic connect with him. For some time, she was under the impression that there is something wrong with her psyche or her own body that she was not able to satisfy herself in this relationship. She also thought that she may not suddenly become very comfortable sleeping with another man as she had some of the bad memories of her early teens when she was regularly being molested by one of her close maternal relatives. She thought therefore that this could be a phase and would pass off soon. However, this relation lasted only for a few more months and she was again back to her singledom. She specifically says, that till this time she never realised that she is lesbian.

She says, she always had a certain unknown disdain for the notion of marriage, but it was her age just like any other middle-class Bengali woman of her age to get married. Her mother started looking for suitable alliances for an arranged marriage. She says, she also for once thought that it would be a good way for her to get rid of her responsibility-laden role in the family and she could lead the life of some man’s wife and leading a normative life thereafter happily. Soon, this mirage was subverted by her life-long politics against the institution of marriage.

In the end of the year 1993, few years after her father’s demise she wrote a letter to her long-lost classmate (approximately after seven years they left touch, Malobika Di recalls with a blush on her face in a separate interview) Malobika who was at this point of time undergoing her Library-science training from a government institute in Patiala, a city in the Northern Indian state of Punjab. Akanksha Di says, she was unaware that that a letter of hers was soon going to open up an entirely fresh chapter in her life. This letter
acted as a new bridge between the two women who had lost almost all physical touch right after their school.

The year 1993 was the first year that Akanksha Di and her mother got somewhat settled in their new house in Kolkata though, she was still struggling with her career, her newly-acquired household responsibilities; getting in Malobika Di’s liberated company was quite influencing upon Akanksha Di’s thought-process. By this time, Malobika Di got cleared through a Government Public Sector Undertaking Exam and her first posting was at a small industrial town, close to Kolkata. She was now an officer with this Government Company and was holding some of the very new responsibilities at the age of 29. Their epistolary relation soon metamorphosed into one where they could now meet more frequently. It was during one of the weddings in Malobika Di’s family where they had an opportunity of spending an entire night with each other at Malobika Di’s house, where they remember discussing their future prospects with each other and how to make way through the rough terrains of the patriarchal family-structure.

It was soon after that wedding night that the two started planning their new future together; meanwhile, Akanksha Di’s mother broke the news of a new alliance for Akanksha Di’s marriage. They both laughingly recall how they strategically planned an escape from this marriage. According to that plan, Akanksha Di told her mother that the groom’s family was asking for a huge sum of Dowry and it was therefore not possible to personally agree for her into this marriage with such a family. Akanksha Di says, even till date her mother believes that this is what truly happened. Once, this alliance was strategically broken, Akanksha Di told her mother each time she made efforts to find a suitable alliance for her that she will not marry by selling the house or the family property for the sake of some stupid custom of paying dowry. Akanksha Di contemplates that she could take a stand because she was financially independent at this point of time and always thereafter.

When I asked her during our interview: “it is hard to believe that your family never knew your sexuality for all these years until you came out to them in 2009”; to which she said, “Aare baba, shobai jonto, shudhu keu mukhe boltona, aar ami officially totoknon porjonto kichu janai ni” (hey, everyone knew, it’s just that no one spoke to me about my sexuality directly in the family, until I conveyed it to them officially). She said, she would come out, only when she decides for herself to come out, not at the instance of the circumstances. She narrated the reasons for her coming out in June 2009 as a calculated one, as she very well knew that she would have to appear for some of the television and newspaper interviews after the Delhi High Court verdict hence, she was determined to tell her mother and brother’s family before she left the house that day. She never wanted someone else to tell her family that she is gay.
This could be marked as an act of self-affirmation of her sexuality before her family first time in a formal way.

She recons, that “it was strategically a mistake to come out to my professional circles and to the rest of the world, when Section 377, IPC still criminalises people of my sexual preferences." As a result of such considered decision-making, she has never outted herself on her own at her workspace as a lesbian; though she thinks that she has faced discrimination on the grounds of her marital status or sexuality at her office. This researcher asked, both of them in separate interviews that “it is quite uncommon that women of their age remain unmarried? So, has it not been a point of concern or gossip amongst the colleagues?” Akanksha Di replies, “it gets awkward at times to work in an environment of compulsory hetero-normativity where getting married after a certain point of time and then having children after some other point of time is the norm. Being unmarried and especially living with a partner of the same sex becomes difficult sometimes. But what unexpectedly happens at my office is that my colleagues never confront me directly with these questions, rather I know they may be speaking behind my back”. Although, Akanksha Di recalls, that even up to two-years before, her boss used to ask her repeatedly about seeing some alliances and get married.

Akanksha Di recalls certain instances of discrimination that she had faced until a couple of years ago at her office and she suspect that it could be because of her sexual orientation and/or may be because of her relationship status. She says, “there have been this one instance where I later realised that I was a victim of discrimination, a plot played by my boss and a couple of colleagues. What happened this time was that, when the names for some research papers had to be sent for publication then I was asked by my boss to put those names who were still doing their Doctorate Degrees as the first authors of certain critical research works and my name was suggested at the end; this way I lost some of the key credits that I deserved to have otherwise got as the first author of those research papers and I was deliberately denied of the same”. She alleges, that such kind of instances have occurred with her at her office multiple times in the past in different forms wherein she had been always singly targeted.

Her stable financial position for most of her adult life has really helped her to emerge as a strong person. The fact that she is a scientist with a premier government enterprise has enabled her career-wise to be on a stable footing. She says, she reveres her permanent government job as it not only provides her with her daily bread and butter but, it also helps her make significant contributions to the running of her activism at Sappho.
Along with her strong professional and financial grounding her steady academic base, her educational degrees have acted as a social-privilege in her favour. In fact, both of them have been quite privileged in a couple of ways because of their educational background, their successful careers as government employees, along with their cis-gendered body-language. This is coupled with their respective family backgrounds, as they both come from quite privileged middle-class backgrounds wherein both their parents were educated in some good ways. As Malobika Di’s family never resisted her unmarried status and they were never as pokey and nosy as Akanksha Di’s family.

In some ways, the educational and professional engagements of her mother could be said to have had a positive impact on her life and choices. For example, when I asked her about, “how did you choose to describe your sexuality and your decision to live with Malobika Di, to your mother? Did you use the English word partner or some alternative in Bangla? To which, she replied, “I was very direct with my mother; and I told her that I am a lesbian and I am in relationship with my Partner. Now, how did she understand the different layers in each of these expressions, I think you can better ask my mother about it? I have gathered that, my mother has been aware of lesbian relationships, as she has taught with a school all throughout her working life. It was not the case, that my mother was completely new to these expressions, such as same-sex love or lesbian.”

**Ri Di’s Case:** Ri Di comes from a middle-class household in Konnagar, a semi-urban township located around 40 km from Kolkata. She is settled over there with her family from her birth with having done her schooling in the same area. Though, by the time she came out of school (around the year 1998) she has worked partly in Kolkata and in other surrounding satellite suburbs of Kolkata like Serampore. For the last ten years she is working at Sappho, a Queer women’s collective in Kolkata and, she keeps shuttling daily from Konnagar to Kolkata travelling by the local trains. She is 37 at the time of the interview. She considers herself a cis-gendered lesbian woman. She has had her schooling from a Bengali-medium school in Konnagar. She appeared for her Higher Secondary school examinations but couldn’t make it through and, is working in the social sector, since then.

Ri Di comes from a traditional nuclear family in many senses. Though, her parents have had a love marriage quite against the wishes of their respective families, she acknowledges that she is conditioned well under a patriarchal and normative value system. She has a bitter-sweet relationship with her parents; she has said during both the interviews that “I take my parents as my responsibility now, as they have repeatedly failed to understand me as a person; they just want to understand me as their daughter”. Sadly, just after a
few months of our first interview in August, 2016 Ri Di’s mother passed away in a stroke.

She said, she had a 13-year old relationship with her school buddy (a female classmate) from 1996 to 2009. Her parents were much unaware of what was going on in her life, at least she never conveyed anything to them on her own. When I asked her, as to why she didn’t tell her parents about her 13-year long relationship with her female classmate? she replied, “such relations are considered a taboo in the family, no one told me that, but I always knew that my relationship with my girlfriend will never be accepted by my parents. So, I never attempted to come out to them.”

She says, until six years ago, there used to be a huge family pressure on her to get married. She has always successfully evaded all those pressures from time to time. She has narrated a couple of such instances to this interviewer; in one such instance, as she narrates: “kaaj shere bar jachi, giye hotthat dekhi je ekjon nijer familyr shathe mey dekhte esheche. Ekhon ki kori, taratari kore sharee pore jete holo tader kache, kintu okhane giye kichu emon kotha barta bollam je tara uthe chole galó” (it has happened many times, for example, one day after returning from work, I was surprised to see a guy has come over with his family to see me for an arranged marriage. What to do in that situation, I had to appear before them in saree. Well, I did it, but while the talks were going on, I started speaking some or the other things that irked them well and the boy’s family left). She says, just like that, she has strategically evaded all such marriage proposals. The primary reason being, she says, “I never wanted to get married”.

In another instance, when the family members of her elder sister’s matrimonial home convinced her parents that they will make sure that Ri Di gets married to ‘a good guy’. Ri Di says that, “these people along with my parents worked out a plan to present me before the family members of my supposed prospective groom without giving me any prior information about this. It just so happened that my parents informed me about this well-orchestrated event in the morning and literally ordered me to be there at so-and-so time.” Puzzled Ri Di calls her then girlfriend for advise, she said “let’s run away from the scene for a couple of days”, Ri Di recalls. Finally, Ri Di decides not to flee the scene but to confront the prospective groom’s family tactfully. She said, “when I sat for the meeting, I was asked all sorts of weird questions, like: Can you cook? Why don’t you have long hair? etc., etc. and I replied to all their questions with my subtle but taunting ways. For example, my response to the question on cooking was, yes, I know how to cook Hobishi” (a Bengali dish that is prepared when someone dies in the family, a synonym for funeral food—references to such a dish is considered inauspicious, in the general societal settings) She says, she did that not to
hurt anybody’s sentiments but to teach her parents a lesson that, marriage is her personal affair and being parents, they cannot force her to some XYZ marriage alliance just because she is their girl”.

She says, “Until five or six years ago, they emotionally used to try convincing me to get married.” She said, “their main argument used to be, being a girl in the Indian society is not an easy thing, who will look after you when your parents will die. Your father was not a government servant that you can claim pension as an unmarried daughter throughout your life”. She contemplates during the interview that, “they no more pester me to get married now anymore as I am 37. One major reason could be that today I am financially independent and in fact I’m one of the biggest supports for them financially and emotionally.”

Ri Di has experienced marriage pressure from her family and extended kinship for almost ten years in multiple-forms. As with the age, now that she is in her late 30s, the same acuteness has relatively reduced, though, she still has to face queries from various other social-circles (e.g., her regular-fellow commuters in public transports, or someone meeting her the first time) about her marital status. It is sometimes that, people just presume that a woman of her age must be married. This way, she depicts a classic stereotype that queers (mostly in her age) often experience in unknown social spaces, where the one’s individual-self is always socially perceived in terms of one’s marital status.

To my understanding, one of the main reasons why Ri Di could successfully evade/manage/escape/subvert all possible kinds of marriage pressures in her family and extended kinship attributes to her having a very supportive queer social-circle besides her, all the time. Rite from her late teens, she is associated with Sappho, the LBT women’s collective based in Kolkata. Besides, she has worked in different capacities in other queer groups including MANAS Bangla, an MSM health network. All this of her constant interaction within the queer-circles has earned her a very safe and supportive space and network of friends in the last twenty years. Not all the participants whose cases I have discussed in the first category have had this advantage. One could call this as an acquired social privilege as this intersects with her other social privilege-markers (e.g., her education and exposure, her employment in queer sectors, her being a cis-gendered woman, her middle-class background)—which, together have been at least able to quite positively impact Ri Di’s personal experiences in dealing with (and subverting or tactfully managing) the heteronormative familial discourse of compulsory marriage.
Shruthi’s Case: She is 24 at the time of the interview, considers herself a cis-gendered lesbian woman and is living with her partner Maya in Trissur for the last two years. She comes from a middle-class family background, based in Palakkad district of Kerala. She has completed her B. Com. and works with a shopping mall in Trissur.

Shruthi’s biological family comprises of her mother, father and her brother. Shruthi says, “for a long time, I have had a tough relation with my family, since, I eloped with my ex-girlfriend Sharanya. Though, now, three years have passed, and my relationship with my parents has improved; but, my brother still doesn't talk to me. He thinks, I have damaged the family honour, and for which I should be ashamed.”

Shruthi eloped with her long-time girlfriend immediately after her high school examination. She narrates her experiences of dealing with her family during that period. She describes how her family was frantically responding when she conveyed to her family about her location, movement and her intentions of continuing her relationship with her girlfriend; she explains how desperately her parents made attempts to file police complaints of abduction to get her forcefully sent back home, (as translated from Malayalam by Maya, her partner and another participant in this study): “See, my family comprises of my father, mother and my youngest brother. In 2013, me and my friend Sharanya left each of our respective homes and took shelter at Sahyatrika (a LBT Women’s Support Group based in Trissur) because our families got to know of our relationship. The Sahyatrika Office coordinated with Sangama’s Office (a Transwomen’s Support Group based in Bangalore) and sent both of us to Bangalore City where we lived with each other for the next two months. We were both around 21 years old at that time, no one was minor. After reaching Bangalore, we informed both of our families about our location. Soon, Sharanya’s family filed a habeas corpus petition and the Bangalore Police nabbed Sharanya. Initially, I refused to go back to my family. The Court asked both of us, if we wanted to stay with the family for some time, I refused but, Sharanya agreed. Now, this was the time when her family members brainwashed or emotionally blackmailed her to state in the court that she wants to live with her family. Soon, after that, I got the news that Sharanya got married.”

Well, I think those of us who have seen the misuse of habeas corpus petitions know that it is mainly deployed by the advocates, parents and police when young couples run away from home to live together.422 What happened
in Shruthi-Sharanya’s case is also not a new judicial response—our judges are known to entertain such cases and pass orders without considering the psychological trauma, stress and public embarrassment that such instances cause to a queer woman. In this case, the judge asked Shruthi and Sharanya whether they want to return back to their respective homes—to which Shruthi refused, but Sharanya under her family’s pressure agreed—after which the judge passed his order—within days of which, Shruthi got the news that Sharanya has been married-off by her family. This is a compulsory-outcome that the queer has to forcefully experience at the hands of the heteronormative social, judicial and the legal. Generally, in these kind of cases Sections 339, 340 and 361 of the IPC are pressed by the Police to nab one amongst the couple with charges of wrongful confinement, wrongful restraint, and offences of similar nature.

The instances, such as that of Shruthi-Sharanya subvert the hegemonic social discourse of what is considered as accepted/unaccepted, moral/immoral, honoured/dishonoured. This implies that there is an unwritten, extra-legal code of doing/making the right kind of love—I call it the ‘moral-societal code’. As we can see that, these are the junctions where the social and legal forces merge to punish the queer-despised relationships (and their participants) that dare to violate the ‘moral-societal code’ of love-making. The strategy of the socio-legal assemblage is very clear in such cases. See the two following steps to understand the way it works for the queer:

- **Step 1:** if a body refuses to follow the societal-moral code of conduct (of making love) then, the socio-legal assemblage puts in, the force and intimidation over such despised body and its lover, and, if the couple is too visibly adamant, then get them forcefully married-off (because the socio-legal assemblage very well knows that a queer-body (specially, a woman) is most helpless in such situations—both, socially and legally)? If the couple somehow manages to flee that space—then, the step 1 is re-deployed.

- **Step 2:** to nab the fleeing couple legally, the socio-legal assemblage greatly relies on the colonial mind-set of Police and Judges and use the IPC provisions on kidnapping/abduction to legally nab the fleeing couple. Once, they are again physically accessible—the step 1 is re-deployed.

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In this entire two-step strategy of the socio-legal assemblage, the message that reaches the queer is loud and clear, i.e., you can’t be allowed to live your life the way you desire; if you try to, then we will not kill you but, we will not also allow you to live.

The questions that come for us to ponder upon then could be: (1) What conditions caused Shruthi and Sharanya to flee/migrate from their respective family homes/villages to Bangalore? (2) Was the judge hearing the habeas corpus trial not judicially bound to pay attention to such circumstances? (3) What legal protections does an individual (of the likes of Shruthi-Sharanya) have to protect one’s body and one’s right to movement and free thought against the persons, public and private? (4) What legal protections does a person (of the likes of Sharanya, Ratish, and Sam) have against their forced marriage? (5) How can law be deployed to save the interests of that (often helpless) person who has to mostly succumb to the collective pressures of hegemonic socio-legal apparatuses and, put its forced-consent for marriage? (6) Keeping in mind, the abuse of the constitutional right to file habeas corpus petitions in considerable number of instances, (filed generally, by parents to recover their lost family honour) where the rights of the young couples are legally violated, (in the name of the process of law) should the legislature step-in and make substantial amendments in Sections 339, 340, 345 of the IPC to prevent similar-instances of future abuse, that end up being a tool for punishing love?

She narrates her experiences of dealing with her emotions, post Sharanya’s forced-marriage, the constant social embarrassment that her family had to face, and the guilt with which she lived for months. As she narrates: “It was very difficult for me to live in my family, face my parents on a daily basis, because the girl with whom I eloped was now getting married. I was very angry; I wanted to die, but the members of the community (the LGBT Community) kept in touch with me and they helped me to move on. My family was so disturbed and conscious of the social pressures in my neighbourhood that they decided to leave their ancestral home in Palakkad and shifted to another city completely, just to avoid the social ostracism, all because of me. There was a subtle blame on me for everything that was happening. Finally, I decided to move to Trissur as I was offered a job at Sahyatrika’s office. I continued working there for the next two years. I kept that hope alive that Sharanya will return someday into my life. You see the coincidence, even yesterday, when I was speaking to one of my relatives from my town, I enquired about Sharanya; and this relative told me that, Sharanya is living with her husband, though she is still not happy but she also advised me, to keep away from her. This relative also heralded a warning-laced advice to me that if, I tried to contact Sharanya, it may encourage her to leave her
family and husband and anything like that will further destroy her family life, and mine too; so, I should better keep away from her."

Certain questions emerge for us to ponder, after getting to learn Shruthi’s traumatic experiences of having to return home after facing the trauma of seeing her girlfriend getting married-off, facing the constant charges of causing embarrassment to the family honour—did Shruthi have any legal protections when her own biological family was emotionally and psychologically violating her? Did the lack of legal protection violate Shruthi’s fundamental right to expression, her right to life and personal liberty, and autonomy? If this is so, then it is surely problematic. Then, how can law be used as a tool to address such problems?

After, Shruthi lost her long-time girlfriend Sharanya to a forced-marriage, now, her own parents thought, that it is time that Shruthi should also be married. Shruthi explains the marriage pressure in her family and also narrates the tactical methods with which she manages this pressure. She narrates: “Yes, there is growing marriage pressure at home as I am getting 25 next year. But me and Maya have a Gay friend called Jishore, who has very similar family situations like Shruthi’s. He is the only child of his parents and they also come from a very ordinary middle-class background. There is tremendous marriage pressure at Jishore’s family as well, just like Shruthi’s. So, I and Maya have entered a hidden pact with Jishore that me (Shruthi) and Jishore will present each other as lovers in each of our respective families. We know that our families are happy that at least their children are going out with the opposite sex.”

Now, to me, this sounded a very risky deal listening all that these girls were planning and slowly getting into—what if any one of their respective families start pushing for a real marriage—in that case how will they respond. So, I asked them directly in our second interview: “Okay, after two or three years down the line, if the families say that, ohh, you are in love with Jishore, then marry Jishore. In such a case, what would be your response in case both of these families move towards a real marriage?” To this Maya responds: “Maya says, “yes, okay, but she wants to be with me. We have thought that, Me and Shruthi, Jishore and his future partner will take a single room where they can live together, and me and Shruthi can live the way we are. In society, we can live as married couples, and in reality, we can live the way we are. But unfortunately, Jishore is yet to get his boyfriend. Last week, we went to Jishore’s sister’s marriage and there we found that most of Jishore’s relatives were treating Shruthi as his future would-be and they were talking to her in that manner. Everybody came to talk to her. That time, Jishore came to me to say sorry.”
Then, I ask Shruthi, why doesn’t she directly tell her family about her reality or, is it that she is waiting to attain some more financial liberty? Shruthi responds: “I already told you that it is difficult for me to do that, as I have already given them a blow and I don’t want to see them hurt again. But I believe that, since they love me, they will be able to understand my situation someday. Also, whenever I visit them, I very subtly try to educate them through simple things like newspaper items, etc. For this, I keep collecting newspaper cuttings almost on a daily basis. I expect, that slowly they will understand that these kinds of relationships also happen.” Maya says, “it’s something like we have a Plan A and a Plan B, the slow acceptance of her family is the Plan A, and if that fails, then, the next thing is Jishore and the marriage plot.”

3.4.1. Certain Conclusive and Suggestive Remarks-III
The cases of all these participants provide us lived experiences of how ubiquitous the reach of marriage in the social thought and action is. These experiences also provide us an idea of how marriage as a social institution is normalised by the heteronormative structures of the social (viz., the family, neighbourhoods, friends’ circles, etc.). On the face of the facts in all these cases, it appears to many of us that: “oh, no! I can agree there may have been tremendous extraneous pressures on you, but, who asked you to get married? You were not a child while you consented to get married”, said one of my fellow academics with whom I was discussing this thesis. Well, on the face of the formal facts as were recorded, especially when you see it from a lawyer's lens, this looks to have a claim to truth but, when you see it from the standpoint of the subaltern—it comes to us that there are situations, social pressures, hierarchies where the subaltern can’t really speak out. The question for a socio-legal research then would be, what are the ways in which law’s role could be re-appropriated to address the challenges posed by these queer narratives vis-à-vis the heteronormative structures of marriage, family and kinship, in whose continuous-oppression, the law itself is a party. In other words, only if, law has to be used as a tool to re-address such problems, the most-fundamental question would be, what ought to be the ways in which law must re-order its own house?

As discussed above, this section comprises of two kind of narratives: (1) cases where, in terms of accessibility of social privileges, the participants had a much oppressed/marginalised positionality—basically, the narratives of Jeevan, Nilay, Ratish, Sam and Rajiv, who had to surrender/compromise/assimilate to the forces of compulsory heteronormativity; and, then the second category of narratives are (2) of those participants who were relatively better placed in terms of accessing certain vital social-privileges needed to sustain/manage/subvert similar social pressures—namely, cases of Akanksha Di, Shruthi, and, Ri Di. In the former
set of narratives, the common thread that binds all these participants in one bunch are their shared experiences in terms of the multiple intersectional disadvantages of class, education, employment, and location. Ontologically speaking, the location of these participants under the operation of social forces of normativity of the dominant/hegemonic culture produces vulnerability in all possible forms and degrees. For example, Ratish was never educated or exposed enough to have realised his potentials and powers of resistance—result, he gave-in to the familial exercise of the social power of marriage-pressure when his mother decreed that she will commit suicide if, Ratish doesn’t gets married. And, now, if you ask Ratish of his response to such pressures if the same has to happen to him now—his response is (as he said in the interview): “pehle mere ko itna maloom nahi tha, magar abhi mere ko aisa pressure aaya to mai kabhi shadi nahi karte” (I didn’t have much idea of the things around me, when I got married, but, if the same has to happen to me now, I would never get married). I see the reason behind this difference is Ratish’s growing exposure in the organised politics of Kochi’s queer-activism, which was hitherto missing when he gave-in to the social-pressures of compulsory marriage.

Whereas, in the second set of narratives the participants were relatively better placed in terms of their intersectional privileges of class, education, and employment (to speak the least)—hence, their shared experiences tell us that they were located in a social space where they could have afforded to subvert the hegemonic discourse of love-making and marriage.

The common thing we may notice in all these narratives (irrespective of their categorical classification) is their shared-experiences of heteronormative cultural conditioning. As Foucault says, discourse by itself is abstract—discourse gets a certain form and purpose once it is located in a certain social frame. A discourse is therefore, by its very nature never hegemonic or the lack of it. Discourse then, is a matter of a certain mobilisation and proliferation—and, once, a certain frame(s) is mobilised/proliferated into discourse; discourse (at least, in part) becomes a reflection of that social frame. Here, the discourses within the structures of family, schools, neighbourhoods, parks, etc. are already imbued in the ideological frame of heteronormativity, not from today, but, from generations. This way, the spectrum of the hegemonic frame of heteronormativity has historically produced a very rich form of social discourse—which in turn has very positively put the social structures to deploy the strategy of “normalisation of the dominant/hegemonic”. The result being, Nilay always knew at the core of his heart that one day he has to get married to a woman—never matter, how much so ever he keeps himself engaged in enjoying queer pleasures. Nilay

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423 Supra note 68.
424 I borrow the term “social frame” from Butler’s use of it in her writings. See Supra note 1.
here depicts one such illustration of the discursive power (of the hegemonic-heteronormativity) that had very successfully normalised ‘marriage’ in his thinking. Same is the case when we see Kishore’s position with respect to the idea of marriage. When I ask Kishore on his stand vis-à-vis marriage—he responds almost instantly that marriage, for him is a matter of a familial-obligation and, that he has to undertake it, at some point of time in his life to repay the debts of his parent’s hardships of raising him. Kishore is morally trained to think within certain parameters of the hegemonic heteronormative discourse—anything, other than that exposes him to vertigo and pain. He is culturally conditioned to live under a constant-uninterrupted network of moral guilt that extracts the commitment of heteronormative-performance (e.g., marriage) from him.

This way, normalisation produces the discourse of silence. As a matter of fact, all the participants (in the first category) were aware of their sexuality—nobody dared to speak out against the forces of the hegemonic discourse—all of them operated through the discursive power of silence by accepting marriage, as and when it came. Looking at it this way, entails us that, the social pressures on someone of the likes of Nilay, Jeevan, Sam, and Ratish would always result in an unhindered, un-resisted passage of the social institution of ‘marriage’ for generations to come. This way, marriage is normalised completely in our hegemonic structural discourse as is lived by the experiences of our participants (at least, in the first category). This gives heteronormativity an unhindered passage to all generations, across all times and spaces as a result of this culture of un-thinking. The queer politics certainly wants to disrupt the caravan of heteronormative trip.

What is the state’s role in the discursive production of the ‘normalisation of marriage’? To rephrase it: how does the state contribute its share to continuous production of heteronormativity, so that, the social structures are enabled to sell the concept of marriage to the generations, past, present and future? In short, what are the social and legal privileges that are offered to the candidates of marriage? In the existing socio-legal settings, it is a given that the state is deeply invested in the regulation of family and kinship through its laws, machinery, public money, and time. The biopolitical policies of the welfare state need to mandatorily pass through the social institutions of family and kinship to achieve its desired results. It is a myth that in a liberal regime of social contract, the state’s role is minimal or neutral within the lives of the social structures of family, and kinship. After all, these social structures form a major assemblage of the public and private interests—family and kinship (both heteronormative) form the link between the state and the individuals. This I call as the socio-legal assemblage. Once the individual

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425 See our discussions in Section 1.1 of this Chapter on Butler’s writings of un-thinking, performativity and the production of culture. Also, see Supra note 1.
subscribes to the socio-legal privileges as are offered by the socio-legal assemblage, it becomes a subject, and, those who don’t are considered as abject.

Why does the state do it? I have theorised the causal-factors that mobilise the state to adopt heteronormative policies as the state-policy, in the core body of this section and other sections of this chapter; so, I will not repeat them here. Instead, I will just use those conditionalities/causal-factors to argue that: the state is deeply invested in marriage and this needs to stop.

Of course, the original roots of marriage are traced from the social domains of the private structures, family, community, tribe and religion. Historically, for long marriage was a soul production of a private discourse. But, the public gets entangled in this private production with the emergence of the modern nation-state. Pre-constitutionally, the colonial state started involving itself in the hitherto private matters of the family, marriage, succession of property, etc. The colonial government also saw the potential in the population, and thus, started managing its private life through its renewed policies of colonisation couched in the name of welfare/civilising the east. Post-colonially, the sovereign Indian state continues to deploy the same strategies with a renewed vigour.

When PJ, a married man in his 50s motivates his extra-marital queer lover, Rajiv, who is in his early-20s to get married—as according to him once a man gets married, he gets a social licence to do anything he wants, as the socio-legal shield of marriage is invincible. What young Rajiv never understood at that point in time, is that this social privilege is exclusive to only the man in the marriage and comes at the cost of the women’s oppression. In the same way, when newly married Nilay thought that he can secretly keep feeding his intimate queer desires under the couch of his married status—he was soon proven wrong. A colleague at his office started blackmailing him by claiming that he has recorded Nilay getting sexually intimate with another man. Nilay now, lives his life under the constant threat of being exposed of his queer connections and of losing on his social privileges of a heterosexual married man. He is scared because, he thinks such a revelation of his intimate-self may ruin his career as a government employee and also disrobe him of the social image that he has earned before his wife and children. Clearly, in the second example, Nilay is situated at a much vulnerable position compared to his wife and children. This is the paradox of marriage, on one side, it privileges the first queer-participant (Rajiv) and, on the other, it disables the other queer-participant (Nilay). Of course, privileges come at a cost; and, in Rajiv’s case, a queer man’s privilege is the women’s oppression; whereas, in

\[426\] See in general, our discussions in Sections 2 and 3 of this Chapter.
Nilay’s case, the queer man’s oppression is the woman’s privilege—welcome to the marriage package.

Now, in the current political discourse, the state is not just any state, but, a welfare-state which has constitutionally got a role to play in the lives of these individuals. At least, that’s what its formal justification is of its political existence—in terms of the constitutional social contract of “we the people of India”. So, thinking in terms of the theoretical commitments of the constitutional Indian state—it has a formal obligation to invest on the capabilities of its individuals—at least, this is what the theoretical commitment is under the Part-III of the Constitution. For example, if the structure of marriage is oppressive to women, state’s solemn constitutional obligation is to empower the women (as individuals, and not just as someone’s wife or mother) to such extents that she acquires the capabilities to exercise self-determination, autonomy, and control over her body, labour, emotions, sexuality, and all those things on which currently, the patriarchal/heteronormative structures of marriage and family triumph. Clearly, the state hasn’t done effectively enough to empower the individual in and outside the marriage. In fact, the policy of the Indian state has been to reach the individual person in terms of that individual’s relation to the heteronormative/patriarchal structures of the social. It wants to touch the lives of someone’s wife, or someone’s son, or someone’s husband. This way, family and kinship act as intermediaries to the state’s biopolitical welfareism—and, that is why I call family and kinship the site of socio-legal assemblage.

Of course, there are no free lunches anywhere. Marriage is not a free lunch either; although it provides the security of a lifetime of privileges that guarantee a constant supply of social status and membership to anyone who subscribes it. However, this subscription was and is never free. Marriage extracts almost life-time of a commitment from its subscribers, which they have to keep performing. Who monitors and guarantees the lifelong extraction of such performance—the state and the social through its normative methods. Important point here is that, most of its subscribers do not understand that it is not a one-time service; rather it is almost a life-time commitment. This is where the role of the state becomes even deeper in terms of its investment with marriage. The state through its laws (or the lack of it) reinforces the social structures of family and kinship—so that, it can pass its constitutional onus of empowering the individual over to the weak shoulders of social structures of family and kinship. This is the reason why the state is always interested in protecting the family and its kinship—both of which are heteronormative in terms of their ideology and commitment. This

427 See Chapter-5 for a detailed discussion on the constitutional role of the Indian state.
way, the state weaves a seamless web around the individual, so that, it cannot not afford to deny marriage for long—meaning thereby, the individual (whether queer or not) has to fall in the trappings of marriage to become eligible to unlock the socio-legal privileges, that it is otherwise deprived of, being unmarried.

To illustrate this further, let me use the secular law on maintenance as provided through the Section 125 of the Code of Criminal Procedure, 1973. It clearly uses marital status of an adult female as the basis for her claim to maintenance under this said provision. However, under this law, any person is legally only obligated to maintain its adult unmarried daughter when she by reason of any physical or mental abnormality or injury is unable to maintain herself; which means that, once the daughter is married-off, it becomes the duty of her husband to maintain her further, as is stated by the same law. This way her legal privilege of maintenance is depended not on her subjecthood under the state (i.e., by merit of her citizenship status or human status); but, on her subjecthood to the social institution of marriage and her affiliation to family/kinship. Using Althusser’s thesis of subjecthood—this way, the individual becomes the subject of a Repressive State Apparatus, i.e., the family/marriage/kinship—as the state operates through these apparatuses of the social. This way, marriage/kinship/family acts as a discriminatory barrier for an individual’s legitimate claim of being maintained by the welfare state. The question for us, as an academic community to ponder upon is thus: “Was it not the state’s constitutional obligation anyway to maintain all its subjects, irrespective of their marital/kinship status? If it was and continues to be so, why does the state not do it on its own? Why it has to rely upon the services of these social structures? Whatever, be the reasons to these questions—political, economic or otherwise, the problem that this thesis wants to highlight is two-fold: (1) that the state is under a constitutional obligation to empower the individual, not on the basis of the individual’s affiliation to any social structure, but anyway in general; and, (2) the state’s reliance on the social structures (for the purposes of enabling its citizens) is constitutionally problematic and thus, it must rethink its policies of welfare.

428 Section 125(1)(c) of the Code of Criminal Procedure, 1973 states that, “Order for maintenance of wives, children and parents: (1) If any person having sufficient means neglects or refuses to maintain- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.”

429 Section 125(1)(a) of the Code of Criminal Procedure, 1973 states that, (1) If any person having sufficient means neglects or refuses to maintain-(a) his wife, unable to maintain herself.”
Both these issues are a subject of discussion in the Chapter-5, but, for now the purpose of this section is to underscore the two issues: (1) the problems faced by the queer through its experiences with the social structures of family/kinship that normalises marriage, thus, which demands a queer's compulsory compliance to the ideology of heteronormativity: and, (2) to re-imagine/re-evaluate the legal possibilities to address this problem.

The state-sponsored social thinking and practice of the ideology of heteronormativity not only produces the queer, but, it also produces layers of vulnerabilities around the queer. Some of these vulnerabilities are enforced by the social privileges that are offered by these heteronormative structures and in which marriage serves as a crucial entrance. If one’s affiliation to the social structures of family/kinship makes one a participant in the thinking and practice of the ideology of heteronormativity; then, marriage is the social/legal way to further strengthen/renew one’s commitment to heteronormativity. ‘marriage’ therefore, acts like an entrance that further deepens one’s already normative commitments. This entrance is the junction where the hegemonic social discourse (that normalises marriage) meets the legal discourse (which also normalises marriage). To my understanding, this junction is the site where two kinds of alternative commitments take shape: (1) either the already heteronormative participant (which may include queers) of family/kinship further renews its commitment to heteronormativity by entering marriage; or (2) its a site where the queer (though, who may originally be a part of the heteronormative family/kinship), gradually slips into zones of reluctance and, later this reluctance spins into vows of not to further renew its commitment to heteronormativity which is enacted through its refusal to enter marriage. This way, the queer can be found in both the camps—one, in the camp of the married and, second, in the camp of the unmarried. But, the normalising characteristic of the socio-legal assemblage always (by and large) provides one (queer or not) with the opportunity to enter the province of marriage. Yes, in some cases (as is the case with most of the queers) the normalising potential of the social ceases to act as a mere opportunity and acquires the dimensions of an inevitable compulsion. The experiences of forced or arranged marriages in the first category of narratives indicate this sad metamorphosis, namely through the narratives of Nilay, Jeevan, Rajiv, Sam and Ratish.

Unfortunately, the lived experiences of the participants discussed in this section indicate that, it takes a lot of multiple intersectional privileges to enter and, then continue to remain in the camp of the unmarried. In other words, if the queer has to refuse getting married, it has to be really powerful/privileged in terms of class, education, employment, age, sex, gender and/or location. This is concluded based on the second set of narratives, as provided by Akanksha Di, Ri Di, Shruthi and Sumita Di.
Now, I would further evaluate the first category of participants to demonstrate how the socio-legal assemblage produces further layers of vulnerabilities in the queer lives. Let’s look at the experiences of these participants. These queer experiences show that in all the cases, the queer had no final say in its own marriage. In all these cases, the marriage alliance was brokered, coordinated and effected by the elder kin (mainly parents) in these families. Yes, the queer was a participant as well in its own marriage but was not in a position of control/command/charge. As we can see in all these cases, due to multiple intersectional marginalities, the queer was merely in the position of a performer who had no other choice but to act on the (almost compulsive) directions of the social. In the case of Nilay, Rajiv and Jeevan, the heteronormative conditioning of the social was so powerful that it never allowed the queer to voice its opinion/refusal/disappointment in the case of its own marriage. The power of the hegemonic discourse of the social normalised the institution of marriage to such a level that the queer (Nilay, Jeevan and Rajiv) was completely in a state of denial of its sexuality. Thus, happened their marriage. In the case of Sam and Ratish, their marriages were literally forced upon them by the powerful hegemonic discourses. None of these two participants wanted to marry at that point—they even conveyed their thinking to their families, adopted quite a few possible range of tactics to evade/delay the marriage proposal(s)—ultimately, the brutal will of the social prevailed by slaughtering the queer hopes, emotions and desires. Finally, happened their marriage as well. These narratives tell us that despite being very well aware of one’s sexual preferences; the queer could very well be socially compelled to speak the discourse of silence—which is nothing short of the language of performing compulsory heterosexuality. This way, a queer (especially, the ones located at the positionality of the likes of the first category of participants) hardly has a choice but, to forcefully enter marriage—which makes its already-vulnerable position even further vulnerable.

There is another kind of vulnerability. To my mind, our discussion on this form of vulnerability can be approached by asking this question: if Jeevan, Nilay, Sam (or anyone in their position) did not have a social opportunity to decline marriage; did they have a legal opportunity to decline marriage under the protection of the law? I think, as the lived experiences of the queer participants tell us, living in India can get quite challenging at times, amidst all the state and social violence. We cannot forget that India is still under the grip of a regressive colonial mind-set that legally criminalises queer expressions, questioning their very existence; and, which further paves the way for a regime of state-supported persecutions to take place. The liberal state and its judges can always say, who stopped Jeevan, Sam or their equivalents to speak out—ultimately, marriage is a private matter between
two consenting adults in a free market economy where ‘the social’ (capitalist) and the ‘queer’ (labour) are equally free to bargain the terms of marriage (work contract). The liberal legal system is well known for deploying the principles of formal equality, especially in such instances when it has to throttle the minorities and the oppressed—it often forgets that the ‘queer’ never had the substantial opportunity to even compete at the basic level with ‘the social’ on matters of autonomy, expression and self-determination, forget about its bargaining capacity, for which one needs to have an equal standing, both formally and substantially. What the proponents of the liberal legal system also, ignore is that, the queer (in an equivalent position as that of the participants in the first category) is always in a state of double bind. On the one hand, if it speaks out its despised desires before the world, then it acquires the marked position of vulnerability (or enters a zone of risk) where it can either, be legally arrested for its intimacies under Section 377 or, where it runs the risk of being subjected to extra-juridical violence and/or persecution—all because of its act of affirming its sexuality before the world. On the other hand, if the queer doesn’t affirm its sexuality before the world, and, silently enters marriage, then (again it enters a zone of vulnerabilities) the tribulations of marriage demand that the queer lives its life in a state of permanent denial of its sexuality. One must understand that in the latter case, living a life in denial of one’s sexuality is hardly a choice here; rather, it is a forceful/compulsory act of denial as long as one wants to live under the socio-legal norms of a married life. But, does the queer (coming from the first category of narratives) have this choice, does it have power to express its wants or the lack of it?

In all these situations, where the queer refuses to gets married (e.g., the second category of participants); or where it rebels while being in the midway of marriage to affirm its sexuality (e.g. Sumita Di, Protul Da or Roji’s cases); or where it enters marriage silently and continues to live in a state of formal denial of its sexuality (e.g., the first category of participants). In all these cases, the queer runs the risk of prosecution as well as persecution by the socio-legal assemblage. The difference in between all these cases is just that of the degree of vulnerabilities in which the queer is placed.

430 See, how articulate is our Supreme Court when it relied on a similar comparison while it used Section 377 (the matter itself whose constitutional validity was in question before the court) as a reasonable differentia to classify the marked class of persons (those who indulge in carnal intercourse against the order of nature) and the unmarked class of persons (those who don’t indulge in carnal intercourse against the order of nature), without realizing that the first class of persons (the queer) was always marked by the law, and thus, was never free unlike the second category; the queer always lived a life under the threats and vulnerabilities of prosecution and/or persecution. See Justice Sanghvi’s reasoning in Suresh Kumar Kaushal Case, MANU/SC/1278/2013 at para. 42.
Now, going back to the question with which I started this discussion—if the queer (in the situations equivalent to the participants in the first category) did not have a social opportunity to decline marriage; did it have the legal opportunity to decline marriage under the protection of the law? The above explained discussion clearly describes how the queer is ensnared in the double-binds of the social-legal assemblage. To further nuance, this double-bind argument let me present a paradoxical analogy of the state of queer’s legal rights in this instant situation. Let’s take Jeevan’s case as the representative of all the narratives in the first category. Here, I will argue that the liberal claim that Jeevan always had the legal opportunity to remain unmarried is a myth. Now, did Jeevan in his circumstances, had the legal right to express before his family his sexual preferences/despised desires? The liberal junta will say, yes, Jeevan always had this opportunity. Now, if I deploy the language of rights in Jeevan’s case—the analysis comes something like this: if the law considers Jeevan to be an independent agent of its own, then yes, he surely has a legal right to express his sexuality. Now, if he has a legal right then, the further question is, against whom is this right enforceable? Is it the state, the society (in general) or is it against its own family? Of course, this is not clear in the law. If we still persist that yes, Jeevan still has a legal right, then the question that logically arises is—what remedy does Jeevan have under the law to enforce this legal right of his? Where can he petition to enforce this legal right of his? The ultimate question that arises, if one still persists that Jeevan has the legal right to speak his sexuality would be—where is the law under which Jeevan has this so called right to speak out? The resultant of this analysis is paradoxical, as it goes contrary to what the liberal legal propaganda has been propagating for all this while—a classic critique that exposes the myth/failure of the liberal legal promise.431

The instances, such as that of the narratives of Shruthi-Sharanya subvert the hegemonic social discourse of what is considered accepted/unaccepted, moral/immoral, honoured/dishonoured. This implies that there is an unwritten, extra-legal code of doing/making the right kind of love—I will refer it here as the ‘moral-societal code’. As we can see that, these are the junctions where the social and legal forces merge to punish the queer’s despised relationships (and its participants) that dare to violate the ‘moral-societal code’ of love-making. The strategy of the socio-legal assemblage is very clear in such cases:

- **Step 1:** if the queer refuses to follow the societal-moral code of conduct (of making love) then, the socio-legal assemblage puts in the force and intimidation over the despised couple, and, if the couple is

431 For a detailed discussion on the critique of the liberal law follow our discussions in this section. Also, see Supra note 14.
too visibly adamant, then get them forcefully married (because the socio-legal assemblage very well knows that the queer is most helpless in such situations—both socially and legally)? If the couple somehow manages to flee that space—then, the step 2 is deployed.

- **Step 2:** to nab the fleeing couple legally, the socio-legal assemblage greatly relies on the colonial mind-set of our Police and Judges and use the IPC provisions on kidnapping/abduction to legally nab the fleeing couple. Once they are again physically accessible—the step 1 is re-deployed.

In this entire two-step strategy of the state-social, the message to the queer is very clear—you can’t be allowed to live your life the way you desire—if you try to, then we will not kill you, but we will not also allow you to live.

The questions that come for us to ponder upon then could be: (1) Why did Shruthi and Sharanya had to run away from their respective family homes/villages and flee to Bangalore? What circumstances could have forced them to do so? (3) Was the judge hearing the habeas corpus trial not judicially bound to pay attention to such circumstances? (4) What legal protections does an individual (of the likes of Shruthi-Sharanya) have to protect one’s body and one’s right to movement and free thought against the persons public and private? (5) What legal protections does a person (of the likes of Sharanya, Ratish, and Sam) have against their forced marriage? (6) How can law be deployed to save the interests of that (often helpless) person who has to mostly succumb to the collective pressures of hegemonic social apparatuses and put its forced consent for marriage? (7) Keeping in mind the judicial misuse of habeas corpus cases in considerable number of instances (filed generally by the parents to save their lost family honour) where the rights of the young couples are legally violated (in the name of the process of law) should the legislature step in and make considerable amendments in Sections 339, 340, 345 of the IPC to prevent such misuse that end up being a tool for punishing love?

To my understanding, then, the queer lives are placed in a Kafkaesque situation, just like the man who keeps waiting for his entire life to get an entry in the law, and never is able to secure one, as the gatekeeper who sits before the law keeps denying him the entry. Finally, when the man is about to die he learns from the gatekeeper that: “No one else could be granted entry here (in the law), because this entrance was intended for you (the man) alone. I (the gatekeeper) shall now go and shut it” (emphasis mine).\(^{432}\) So, this is the paradox of the liberal legal system—where, the queer may have numerous constitutional rights assigned to it—but, when it wants to get an

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entry under the protection of these rights—it is simply denied. Such law has just got no meaning to the queer if it does not provide relief to the queer’s dying/diminishing demands of just getting an access to the law.

After writing the analysis in this section, I think, I am able to somewhat present before the readers—the state of the queer, amidst all the layered vulnerabilities in which it is situated deep beneath the hegemonic discourses of the socio-legal assemblage—waiting in permanent silence for its cursed life to get over. Of course, nothing may change for the queer in the life-time of my generation or for the ones to come, but, who knows? As an academic-work (the least that a researcher can contribute) is to offer a prescriptive analysis with a shameless gaze into the merciless eyes of the law—so, here I am doing this job hoping that my fellow academics can see some worth in this endeavour.

As one can see, the queer’s problem lies in the socio-legal assemblage that together builds upon a combined discourse of the public and private, the law and the social—which means that, for the vulnerable state of the queer under the hegemonic discourse of heteronormativity, the social is not the soul culprit, but, the law equally contributes to this culpability. The queer politics would demand this situation to change completely. This way, the problem is both social as well as legal—which means both should change if the queer’s concerns are to be really addressed. For social problems to resolve, in my understanding, if the change comes from within the quarters of the social itself, it would be most effective. But, keeping in mind the transformative power of the law, to my mind, a certain re-imagination of the law is needed to address the queer concern. What then could be re-imagined in the law? To my mind, the state must pull out of its current role as a contributor to the heteronormative discourse that reinforces the strength of the social to produce vulnerabilities for the queer. In other words, the law must have no business in reinforcing the structures of heteronormativity. Having said that, I am not suggesting that the law’s re-imagined role should be neutral but, that the law should actively engage with the social to radically neutralize its venomous past/present which has historically been oppressive to the queer. To enable this revised version of the law to work for all persons, instead of working for a few, the following are my key suggestive submissions:

i. The law must respect the non-married (the persons situated outside the province of marriage). Currently, the law privileges the married over the unmarried completely in tune and sync with the social. To change this, a law on anti-discrimination is needed so that acts or omissions amounting to discrimination by both public

and/or private persons on the ground of marital status could be checked;

ii. The law must effectively enable the queer so that it can fight vulnerabilities both in public and in private spaces on the grounds of its sexuality and gender expression. To do this, a two-prong strategy is a must:
   a. Section 377 of the Indian Penal Code, 1860 must be repealed;
   and,
   b. a law on anti-discrimination must be enacted to prevent all forms of vulnerabilities and discrimination in public and private spaces on the grounds of sexuality and gender expression.

iii. To enable the queer to resist marriage pressure within the family, the current law on Domestic Violence must be made gender-neutral, so that the queer could also be protected under its provisions.

iv. In cases, where the queer is already in a marital relationship, the spouse should not have the legal right to rape the queer in the guise of its marital status. In this case, repeal is sought to the exception-2 of the Section 375 of IPC; and, further an amendment is sought in the Section 375 so that rape could be made a gender-neutral offence.

v. Keeping in mind the judicial misuse of *habeas corpus* cases in considerable number of instances (filed generally by the parents to save their lost family honour) where the rights of the young couples are legally violated (in the name of the process of law) the legislature should step in and make considerable amendments in Sections 339, 340, 345 of the IPC to prevent such misuse that end up being a tool for punishing love.

vi. The law must enact a system of educating the child’s care-givers on matters of sexuality, and gender, so, that their notions and practices of child-care can be transformed to include respect for sexual and gender diversity. This law must also translate the effects of such re-defined role of care-giving to its beneficiary—the child. To do this, the schools (at least, among other care-givers) must mandatorily include ‘sexuality and gender education’ into their curricula, at various levels of the child’s educational progression. This is important so that, a child is trained to challenge the normalised status of marriage; and, further understands that life never stops because of one’s marital status. Such legal changes could be brought in through affecting necessary changes into the Right of Children to Free and Compulsory Education Act, 2009.
3.5. Heteronormativity: the politics of Regulating Child Sexuality and Preparation of the Heteronormative mind

Sexuality is constructed culturally as part of a discourse. If this is true, then, we must put our thoughts on these inquiries—how is a child’s sexuality shaped? What are the agents of its construction? What are the inclinations, interests and biases that construct the child’s sexuality? What impact does it carry into adulthood shaping one’s psyche, choices and judgments? And finally, if there is a hegemonic narrative to this discourse, then what are the queer narratives?

Foucault notes, partly a culture of silence and, partly the legacy of half-knowledge in the social customs, moral order and in the psychiatric dispensation of the eighteenth and nineteenth century had construct our notions on sexuality. For the practitioners and believers of non-normative sexual and gender choices, unfortunately, this is still the larger set of lived experiences in India. As he says, “it was one of the tenets of the eighteenth and nineteenth century medicine that precocious sex would eventually result in sterility, impotence, frigidity, inability to experience pleasure, or the deadening of the senses; by sexualising childhood, the idea was established of a sex characterized essentially by an interplay of presence and absence, the visible and hidden, masturbation and the effects imputed to it were thought to reveal in a privileged way this interplay of presence and absence, of the visible and the hidden.”

One of the very important parts of a child’s growth is the conditioning that the child is exposed to at the family, school, and the neighbourhood. It is important to note that, such “conditioning” happens at multi-layered levels of power. If Foucault is right at putting that, power plays at different levels through different centres, sources and junctions then we must see that a child is conditioned by the popular culture conveyed through her granny’s normative lullabies, or through the media, television sops, the heteronormative environment at school, neighbourhoods, the subtle impact of the restrictions put forth by the heteronormative marriage laws, court judgments, the medicine, science and culture, all of which is always already manipulated and opinionated. Will it be appropriate to presume that, children are pure, and that they don’t have a sexuality of their own? “But we psychologists or psychoanalysts or psychiatrists, or teachers, we know perfectly well that children’s sexuality is a specific sexuality, with its own forms, its own periods of maturation, its own highpoints, its specific drives, and its own latency periods, too. This sexuality of the child is a territory with its own geography that the adult must not enter”, says

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434 Supra note 68 at 153.
Foucault argues that, adults must not enter the territory of child sexuality. It is not that in our society, a child is free to exercise her sexuality at its will; it is that, it’s sexuality is generally not its own, rather, it has become a space owned by the adult caregivers on various pretexts: the act or omission on the part of a teacher in keeping a check on the sexual behaviour of her pupil is a commonplace in India, so is the case with parents, the subtle but violent acts on the part of parents and family members in controlling a child’s sexuality through different means is also common. It is often not battery, but through silence and tact, a child’s sexuality is subtly regulated. There are different jurisdictions of different caregivers, for example in the space of a family on matters of day-to-day experiences of the child, the mother may be in control, but often, the mothers do not have sufficient agency on crucial decisions of her child, e.g. the age of marriage, with whom to marry, what career the child must take. See Sam’s case, discussed below, wherein, when his father found her having sexually intimate relations with her neighbourhood girlfriend, the father decided to get her married off. Within months, Sam was forcefully married off with this man (the father’s chosen groom), only to have had a bitter divorce and continuous depression after years of physical and sexual violence at the hands of this husband and his family. See Akanksha Di’s case where, over matters of the child’s sexual experiences are dealt with a hushed approach within the confines of the family, without passing a bit of a hint to anyone in the position to help, such are the methods deployed often to control and subordinate the child’s sexuality. When the twelve-year old Akanksha Di confided to her mother, that her maternal uncle has been sexually active with her, and quite against her willingness, her mother’s response was to not believe her and then, pretend as if nothing happened, but, in so doing she passed a subtle but compulsive advice to her young daughter—start wearing sarees. Perhaps, her mother’s notion was that, if young Akanksha Di will start wearing sarees, instead of her hitherto regular attire of a frock with t-shirt, nobody would raise an evil eye on her. Of course, it did not help, and the maternal uncle continued to sexually violate Akanksha Di as and when he liked and this continued in her life for the next several years. While looking in the hindsight, the 53-year old Akanksha Di says, that at that age, “I got a strong and a clear message that, matters of sex cannot be discussed with my mother, besides I was never very comfortable to talk to my father or my brother about these issues.”

As Foucault suggests that, we are not dealing with one and the same power mechanism, perhaps, hence, the mother in the family has a sort of a standing and power over regulating the experiences of the child, as she is placed under a certain set of roles and limitations, whereas the father has a different

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power level, school teachers have a different role, so do the child’s peers, neighbourhood. Each of these agencies employ different tactics to regulate and subordinate the child’s sexuality and experiences in their own ways, in the peculiarity of their circumstances and locations. All these agents take upon themselves either personally, morally, socially or ethically the responsibility to mould, influence, sanction, pathologise or penalise the child’s naive psyche, as if they are entrusted with the great-utilitarian task of nation-building by creating an army of heteronormative foot soldiers who will in turn do their job of securing the bastion of heteronormativity like how they have learned from their adult-caregivers, once the batons are passed. Mind you, all of these agents are trusted bodies, always prepared at the service of their master-structure—the ‘heteronormative ideology’ but, if one sees in terms of the effectiveness of impact-making (on the child), the agent that is highly rated and most sought after is that of medicine and psychology.

Around eight years ago when the family members of fifteen year old Sourav, noticed that he started wearing *Shakha-Pola* and *Shindur* (shell-bangles and red-coloured powder worn typically by Bengali Hindu women as a mark of their married-status in India) at home and outside, first they resorted to physical violence; when that did not work, one of their relatives suggested that Sourav’s abnormality is curable by modern medicine. Sourav’s poorly-educated parents trusted the credibility of the Doctors; what they did not realise was that, the next fifteen months would become the worst nightmares, not just for their son, but, for themselves as well. Running across cities from one government hospital to the other, draining their already dry coffers, both financially and mentally; what comes out, that there was nothing to cure in Sourav’s case. But the medical doctors considered Sourav to be curable and subjected him to administration of steroids and electric shocks, all in the name of conversion therapy. After two years, the parents take a physically pale, and psychologically under-confident, Sourav back home. His case represents the state of medical approach to sexual and gender non-conformity, the apathy of the state-run healthcare departments and the abuse of public trust that modern medicine seems to enjoy. What the Doctors and family members failed to realise was that, Sourav was deeply in love with one of the boys in his class for the last ten-years; the fifteen-year old’s mind assumed the normative role of a woman, because, perhaps he thought a man can only be loved by the opposite gender. He said, during the interview that, he was just happy with the security that these symbols of marriage provide to a woman, and he thought he was already in that role. Why did the parents, Doctors, Counsellors try to manipulate with Sourav’s self-identified gender, his choices? Perhaps, they were all deeply imbued in the heteronormative meta-narrative that demands a specific concoction of sex, gender and sexuality—anything else served to it makes it feel threatened.

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437 See our discussions in Section 3.3 of this chapter.
In this section, we try to analyse the power relations surrounding the sexuality of children through some Indian Queer experiences. Based on the study of these lived experiences we would try to draw some phenomenological directions to further navigate our study of gauging the impact of Family jurisprudence on queer lives.

The field study that I undertook for this research has participants from diverse locations and backgrounds; one common element that I found during the analysis of their experiences was that—all of them have had heteronormative conditioning during their childhood, from all the agents of childcare; the only variation being in the levels/degree of its exposure and the ultimate impact of such conditioning. This means, that none of them have had their families, schools, neighbourhood, the medical or the juridical agencies welcome and celebrate their sexuality or gender differences. All the participants have had therefore different levels of heteronormative conditioning in their families, schools, neighbourhood, amongst their peers, and through the public agencies of law and medicine.

Each one of the participants have had their own experiences of violence, they may vary in degrees lesser or higher, but that’s a matter of one’s opinion. Some have had such experiences for too long in their childhood, some for a brief; some have had a long-standing impact of violence in their lives, some have been able to overcome it and move on; some have had a privileged upbringing or self-acquired abilities to move their lives the way they wanted, some of them have fallen prey to the structural snares; some had the ability of passing, they have been able to earn themselves positions of privilege, some got that opportunity but refused to fall for such privileges and have either emerged as leaders, or have been struggling to prove themselves, some of them are young, some middle-aged, some near old-age; some have been married, some divorced, and some are in relationships, and some have remained single. In this section, they speak their stories and leave us to interpret them thereon.

Jaya, aged 28, born biologically as male in a semi-urban town of Hooghly District, West Bengal was always an effeminate male child. She has done her schooling from a Bengali medium school in the same suburb. She considers herself coming from a middle-class family.

She said, she has had a very normative conditioning in her family. It is because of her effeminateness she had to experience violence at the family, especially from her brothers. She said, from her childhood, she was always curious to wear her mother’s clothes or put on her mother’s lipstick, bindi etc. Her parents, and later her brothers have always tried to discipline her by lying
guilt on her conscience. She said, “my mother used to scold me and later my father and then my brothers started whipping me each time I used to wear make-up or behave effeminate or cross-dress. The situation day by day worsened for me at my family until a day in 2005 when I decided to leave my family home.” She said, “in my childhood I have tried to behave like other males in the family or locality as everyone made me realise that being effeminate for a boy is something gravely wrong. So, in order to be a good boy, I tried to pretend like a boy, but it never actually happened.”

She said, “my transition towards accepting my gender and sexuality started with joining MANAS Bangla, the first Public Health intervention Project for the MSM population in West Bengal that started in the year 2003. It was after that I confidently started growing my hair, started cross-dressing in public. When my family members saw me like this, they reacted violently.”

She said, “since, my parents or my brothers were never sufficiently educated on gender issues initially, hence, they lacked the maturity to understand me as a person. As generally is the case in our society, being effeminate for a boy is never accepted or even tolerated, my family was not an exception. They thought, they could change me or make me normal by battering me or by shaming me.”

With regard to her school, she narrated one instance of violence—This was when Jaya was in the 7th standard, she went to the school one day with plucked eyebrows, this soon attracted the attention of her classmates who took her to the teacher’s common room, wherein she says, the teachers and the students laughed at her. She said, that one experience shattered her confidence level quite a lot.

Her act of wearing nail polish from her seventh standard school level used to often irk her teachers. She narrates that a teacher’s usual way of dealing with her defiance of the gender norms was through the tool of embarrassment, which was often inflicted upon her in the middle of a class, belittling her confidence as a student and the same has had a long-term impact on her psyche for quite a long time. Other than these negative experiences at her school on account of her gender and sexual choices, Jaya narrates her experiences at her family. She recounts during the interview, the violence she has had to undergo in the hands of her father and her two elder brothers who had resorted to regular battering when they saw their effeminate younger brother to be the cause of utter shame to their family’s name and honour in the neighbourhood. She said, she was being beaten almost every week for behaving effeminate or for dressing in female attire. They perhaps thought that such rampant physical violence would act as a fear psychosis
that would deter her desires and discipline her getting back her masculinity, which according to them she was born with.

Jaya’s family’s role in disciplining her is very closely connected with their desire to regulate her sexuality—to try their best to muzzle Jaya’s defiance and get back a heteronormative son (as was always expected, although, never said). For Jaya’s family, the gender of their daughter was always a product of a certain conflation of her biological sex and her assigned gender—their demand for retaining it that way clearly signifies their subtle yet very violent demand for a ‘normal/heterosexual’ child. At her childhood, Jaya was facing it all by herself. Her family members, mainly her brothers felt even more challenged when they saw her getting more confident day by day (after her joining MANAS Bangla). More Jaya was getting empowered; more grew their level of panic.

For Sam again, as a child, his sexuality was never a space for him to regulate, as it was always-already an occupied property of his family subjected to their collective management. For the rules of the game were never conveyed to him in express words, but, it was the power of their collective ecological gesture which very subliminally Sam learned through him being a part of that familial ecosystem—it was partly a language of silence and partly a language of authoritarian imposition of the collective will over her individual self. He says, “When I was in class 6, I was trying to figure out a few things about my identity and I realised that I was not like the other regular girls around me. This is all that I could realise when I was in class 6. There was a big dilemma in my mind regarding this and I did not know who to talk to about this, whether I should tell my mother, or my elder sister. I could not talk about this at all and I used to feel that I was the only one in the world who felt this way, maybe there was no one else. Slowly when I started growing up, there were bodily, physical changes that usually strike a girl of that age. I used to ask my mother about the changes that I saw in me”. He said, “When I was in class 9 these bodily changes started happening to me and I was still so ignorant about them, and so was my family. I belong to a small town.”

He narrates his experiences of his first intimate relationship, which happened to be with a person of the same sex and further explains his painful experiences of break-up with his partner after she (his partner) was forced to get married by her family: “It was in class 10 that I became attracted to a girl. My elder sister was a school teacher and she had a coaching class where students used to come from school. I used to really like one of her students. I liked looking at her, talking to her. She was not aware that I felt this way. She would talk to me as her teacher’s sister. One day I told her about myself, and I could do it very comfortably. All these days I could not talk about myself to
anybody in my family. However, as over a period of one year a certain friendship had developed between us, I told her that I was going through some major dilemma in my mind, hearing which you may even stop talking to me afterward. I felt that I could still talk to her about this. I told her about myself. Maybe she did not understand the whole issue, but she accepted me for who I was. We also went into a physical relation. What I mean by a physical intimate relation at that point was just hugging each other or kissing. I developed a lot of respect for her because of the respect that she had towards me, which my family did not. This relation lasted for almost three years, till I was in class 12, after which she married off by her family."

He further narrates his young days that he had spent in fear, mental stress and depression: “She (his then partner) was so brave that she had spoken to me about talking about this with my elder sister. She said that there was a lot of pressure from her family to get married and that she did not know what would happen, but still wanted to tell my elder sister and see what happened. I used to be so scared that in spite of fearing that the relation might break, I could not let her speak to my sister. I would tell her that she should let it be and not tell anyone. I would say that if the pressure was there she had to get married however painful it would be. After she got married I went into such depression that I was asked to see a counsellor. I was taken to a doctor after that. The doctor only said one thing that I was going through enormous mental stress. After she got married I used to cry a lot, nobody understood exactly why."

He further narrates his experiences post the marriage of his partner and shares his feelings of dejection, loneliness, lack of self-worth and family support: “Everyone thought that we were good friends, so I was upset because of that. That is how much they realised, that we were very close friends, which is why I was crying so much. These feeling within me started taking such a magnitude, because I had lost a person who understood me. After that I was taken to a doctor. My elder sister took me to the doctor for a general check-up after she saw that I was crying so much, not studying properly especially with my H.S. examination coming up.”

He regretfully concludes: “I had not let her say anything to my elder sister. I had realised later that maybe if she would’ve told her it would have been good.” He said, no one knew at all as to what was happening in her life at that point of time and she could also not tell her family, or the doctor anything at all. He narrates his helplessness: “It was not possible for the doctor too to understand what was wrong. He had said that something was causing me a lot of mental stress and I was referred to a psychiatrist. Someone, who deals with the mind. The doctor had said there was no physical problem.”
He explains her attempts to commit suicide: “I had attempted suicide twice after she got married. Once I had drank Harpic (a toilet cleansing agent) and I had to be admitted to the hospital. Once I had cut my hand. What I used to think at that time was that there was only one person who understood me and I have lost that person. I had no contact with her. It was a rural area and you can imagine that after marriage there is not much scope to connect.”

In all this while, we must also understand, that the message conveyed to the child is a subtle but a solid one, a message of ‘don’t ask, don’t tell’—in total extending the culture of silence on matters of sex creating newer folds of secrets in and around the knowledge of sex, making it look mysterious and increasing the craving to attain it, since it is kept farfetched from the reach and knowledge of the children. In our societies, is there any mechanism in place that guides the children about the polymorphous-ness of sex, without deploying the tools of guilt and shame? I ask this question because, I can see, none of us know, what would have happened, if young Sam or Jaya had the agency to make their own choices on matters of their sexuality? We would never know that, as it was never allowed to happen? Before children like Sam or Jaya could have thought anything, their future was already scripted by certain power-forms, call it an effect of heteronormativity or lack of knowledge on the part of their parents/teachers to deal with it; they probably saw their child’s behaviour as a challenge to the empire of heterosexuality, bi-gendered-ness, or may be their roles were itself already scripted and decided by some other power-forms, leaving them as mere performers. What were the fears that Sam had developed over the period of her adolescence which absolutely convinced her to not discuss his pain with anyone in the family, and instead suffer in silence, carrying his depression all within, and finally choosing to end her life but still not talk about her love. Such was the power of the normative structure that so successfully regulated her sexuality.

Akanksha Di is 52 at the time of the interview and is assigned Female sex at birth, and, she considers herself as a cis-gendered female and a lesbian. Though, she never very substantially realised her sexual orientation until she was in her 20s. Her family comprised of her father, mother, herself and her younger brother. She has lived her childhood in Haldia at her parent’s residence. She recalls that even her mother started working as a teacher in a local school at one point of time so that the family income could be enhanced, and her father could be supported at least to some extent in the discharge of his family duties.

As Akanksha Di recalls her childhood days, she says she was always put under quite a rigorous scrutiny and conservative conditioning by her parents, mainly from her mother’s end. She was not allowed to play outside the house
for long hours after sunset as the rule set by her parents was that both the children have to return home before sunset. She was always good with her studies and has always topped her class in the examinations. Both her parents always took pride in her daughter’s bright academic bent of mind. She remembers that she was often compared by her parents with her maternal-grandfather’s hugely successful professional image as an anthropologist. Her childhood was strained with all these high-held expectations and she recalls that these expectations almost became a kind of fencing or a boundary-wall for her while she was growing up.

She was often not allowed to mingle with anyone outside her class or to bring any friend home. The entire focus her parents kept for her, were her studies. She recalls during one of the interviews that, her only child friend with whom she was always easily allowed to go outside during the post-school hours of the twilight was her much younger brother and they would go to the nearby farm lands and used to mimic the tourist guide who guided their last summer’s Shantiniketan Trip. She used to play the role of that guide imagining herself to have been presenting her knowledge to a bunch of a mixed group of tourists and their eager children. As she says, she may have always wanted to play that responsible character in her real life and such childhood plays were a mere manifestation of that imagery that she was growing up with. She remembers her early childhood days when she was never allowed to play with much of the other neighbourhood children, barring a few, including her younger brother of course. She says, she couldn’t make any good friends during her entire school and college life owing to her parent’s forever-concerned pressures. To engage both the kids after the school hours, and to much avoid the influence of the neighbourhood children, their parents had them admitted to an organisation of brotocharis, formally called as the brotochari shongho (literally the group of celibates) where their routine was to exercise certain set of mass PT assemblages post their school hours. She recalls her occasional bunking of these classes with her brother and how they used to go to the farmlands to play some of their own games.

There was also another thing that shaped her future during the childhood and much-later teenage days. They were some occasional, often tacit norms in the family about how to keep her bodily and mental self-chaste. She has always had a healthy body and when she was undergoing her puberty she had bigger breasts than most of the other girls of her age-group. Hence, the caution that came up as an injunction to her was that she had to dress up like a grown-up Indian woman and not like how a child of her age dresses up. They were a pair of full sleeves blouse and a sarree that was now her new dress whenever she had to be outdoors or in front of any guests or relatives. She remembers wearing those right from the age of 11 or 12 and that had almost become her full-time dress by the time she was in her late teens and
then to her college days when she used to shuttle between Kolkata and Haldia. During our second interview, she revisits some more of the reasons as to why she was put under this new regime of tight control in terms of her dressing. It was in her early teens when she had multiple times been sexually abused by one of her closed male relatives and she clearly remembers sharing her trauma and agony with her mother almost soon after the first few such experiences. She recalls, her mother cautioning her of controlling her own bodily desires and suggesting her of changing her dressing sense. She says, may be her mother was of the impression that if a young woman is clad with saree then the males in the family and elsewhere would not fall tempted to do anything sexual. As she was a ‘good daughter’ to her mother, she complied with her mother’s suggestion. But then, she recalls that that even didn’t deter the evil designs of that male-relative in the future and the sexual molestation continued within the family for several more years. It was difficult for her to share her trauma with anybody else in the family, for once she already had a quite cold response from her closest confidante—her mother. She never had any friends as such to whom she could have confided with. She kept it all within herself and pretended to move on. She did, but the memories are still etched deep in her mind and during the interview her face and her uncomfortable body-language spoke tons of what was left unspoken.

In fact, much of her agony she shares during the second interview was the decision her parents made for her getting admitted to the most nearby science degree college for her under graduation, much against her good results in the Higher Secondary examinations and most against her will that dreamt her as a doctor. She felt sad about this decision of her parents and sadder about their reasoning that because she is a girl and hence, she cannot be let out beyond a certain proximity to the house even if it was at the cost of their much pride-winning daughter’s only career. She recalls that she always had to return home by taking the first local train back home rite after the classes and always had some or the other scrutiny and future surveillance plans waiting for her inside the house. She remembers, her developing a subtle rage against her parent’s over-cautious and guilt-laden conditioning that was developing somewhere in her conscious. She decided to cut through her image of a ‘good girl’ who was always supposed to be studious and a top-class result-yielding girl. She decided to sit with her books at her desk every evening after college was over; alas these books were not her course books but some of her favourite novels of Agatha Christie. She scored bare minimum, hardly sufficient to just pass her college examinations. This incident made her realise that she shouldn’t avenge her grievances against her parents by hurting her own self, her own precious career prospects like this.
As Foucault notes in the case of the these (perceived/supposed) vices of the children, it appears that an entire adult-led campaign was mobilised around the sexuality of children (maybe in the name of protecting the child’s interests) “constituting them as secrets, that is forcing them into hiding, ... searching out everything that might cause them or simply enable them to exist. Wherever there was the chance they might appear, devices of surveillance were installed; traps were laid for compelling admissions; inexhaustible and corrective discourses were imposed; parents and teachers were alerted, and left with the suspicion that all children were guilty, and with the fear of being themselves at fault if their suspicions were not sufficiently strong; they were kept in readiness in the face of this recurrent danger; their conduct was prescribed and their pedagogy recodified; an entire medico-sexual regime took hold of the family milieu.”

Young Akanksha Di’s body and sexuality was a space for her biological family/extended kinship to regulate. For it was never hers to take a call upon, to mould the way she perhaps may have wanted to. This way her family ensured that, as a female child, Akanksha Di’s role in the case of her own life was to merely keep performing the vertically-dropped directions as and when they were deemed fit by her parents. Her career choices were also decided and sealed by her parents, not based on her academic scores (even when they were high-order), but, based on the proximity of the college from her home. On matters not directly connected (though, may have a tacit but strong bearing) with sexuality—she had clear instructions of certain do’s and don’ts that she became used to following up in the course of her childhood. These are directions on—not to indulge outside the school, or much even within her class, friends were not welcome home, only person she was allowed to spend most of her time outside school was her own much younger sibling, and, very important of all—keep yielding good academic scores in the school. The message passed in short to her—be a good girl to us (parents), don’t trouble us, else we will lay some heavy guilt on you. So, such were the things which were much visible in the discourse of her childhood growing-up story. What was also present in family discourse in her childhood-growing up story (though with hardly much expressed/acknowledged visibility) were matters connected to her sexuality. Of course, attempts to regulate her movement and her potential to associate, were part of her parent’s bid to regulate her sexuality by placing the body under a regime of surveillance and guilt. But, in that, there was no hide and seek involved—the instructions were always clearly provided to her. But, on matters of her ‘sexualised self’, though there was policing and surveillance, the instructions carrying do’s and don’ts were not very visibly conveyed to her at all points of time during her entire childhood. When distressed Akanksha Di desperately wanted to speak to her

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438 Supra note 68 at 42.
mother of her being sexually abused by her uncle—her mother’s approach was cautioning her of controlling her own bodily desires and suggesting her of changing her dressing sense. The unsaid part of her mother’s expressed instruction was to let happen what was happening and, not to protest against it. Once, again the highly held secrets of sexuality were kept on high shelves away from the reach of the child—nothing was done to address her concerns—the child’s intellectual indulgence in sex was seen as an act worthy of drawing shame and guilt—and, the child was placed under a regime of further regulation.

Aparna Di was assigned male as her sex at birth. She is born in a middle-class Bengali household of North Kolkata. She did her schooling from one of the convents in Kolkata. Though, her roots are urban but, for her activism, she is now based completely in suburban Kolkata for the last 13 years. She is 35 years old at the time of the interview. Aparna Di’s biological family constitutes of her mother, father and her elder brother. Though, it’s been around 15 years that she has severed all her ties with them. Aparna Di says, she has had quite a normative conditioning by her family. She says, she has always been good at studies and has been quite an obedient child to her parents at least till her teens. She said, “I was way too effeminate as a young boy compared to the other boys in my locality or family. I used to wear my mother’s Sarrees, her petticoat, even I used to sometimes wear her undergarments. During my childhood, my usual dress when I used to be at home has always been my mother’s clothes and when I used to move out in my neighbourhood, my dress used to be my father’s Sando Genji (long sleeveless under-waist, generally white in colour worn by males in Eastern India in all informal settings) which I used to wear as a long skirt, as it would cover my small torso up to my little thighs and I used to stretch it up to my knees imagining that I am a woman walking on the streets in my little mini-skirt.” She said, “my elder brother, my parents had all gotten used to seeing me dress/cross-dress like that, so I think that could be the reason why they never reacted adversely.” So, you are saying that you were never disciplined or punished by your family for cross-dressing or behaving effeminate, asked the interviewer. She, said, “they were all quite used to seeing me behaving like that right from my early childhood, so that could be a reason why there was not much resistance. Maybe they had given up too early on their youngest kid. But because there is a lot of general policing on what kind of clothes females should be wearing and what not. I remember, I was once whipped by my father when he saw me wearing my mother’s panties and from then onwards my little brain understood the fact that I can wear my mother’s clothes but not all her clothes. It is not that I stopped wearing her panties in future, I still used to, but I became a bit secretive about them.” She says, “my parents had very rarely disciplined me for behaving effeminate,
their methods of discipline ranged generally from verbal proscriptions to occasional whipping.”

She says, during her schooldays, she was not aware of what does gender and sexuality mean for her. She said, she was not also aware of the senses in which she understands them today but “I was very active sexually in my neighbourhood and gender-wise I was always a non-conformist”. She narrates the story of her first relationship with a young man when she was in the 7th grade. She says, “The boy I was in love with at that time was 9 years older than me. I thought we used to really love each other. We had a very good emotional and erotic bonding. During that entire period of five or six years, I was in relationship with him. He used to make me feel like a girl and I was also contained of myself feeling like that. I never realised that gender could be so fluid. My boyfriend had very patriarchal set of notions, he used to pretend being monogamous and used to expect the same from me. It is now when I look back, I realise that how much he made me feel guilty for engaging in any erotic or emotional bonding with other boys at that time. I think it is because of his patriarchal tendencies I started believing all that what he pretended to practice a as the norm and I was unnecessarily made to feel guilty of not fitting in that.”

She says, “Otherwise I was an effeminate kid, right from the beginning but I had no clue at that time that I was born in the wrong sex.” She says, from the 10th standard and beyond she started reading more about non-confirming sexual and gender behaviours and that is when she started understanding herself better than before. She said, “during this time at the final years at school, I knew I was gay but never thought I would have to rebel against the family and eventually have to move out of home to buy my freedom. But yeah, once I did, I made it to here and I am very happy, I took that decision.”

With respect to the educational institutions, she had a lot more negative experiences to narrate. At her school, she says, she has met utter bullying by the other boys of her class, as it was an all-boy’s school. As she was always a good student, she secured a seat at one of the Kolkata’s finest colleges but her experiences over there were even horrible. She says, “I was more open and affirmative of my sexuality and gender at college and because I was already acknowledging and owning my conduct, I had to face a greater violence at college. The faculty especially never came to my help.” She said, “all the constant bullying by the college mates made me take the decision of quitting my graduation when I was in the final year.”

With respect to her Neighbourhood, she said at her locality of North Kolkata, where she grew up her childhood, she had been a constant target of bullying by her peers owing to her effeminate body-language and often because of
her non-normative dressing sense. She said, “I used to socialise in almost all groups of children, be it older boys and girls, or younger ones or be it my peers. Being a child, I always felt like a girl. My games were therefore different from what the boys of my age used to play. I was very bad when it came to cricket, which was played the most in my neighbourhood. I used to be scared of the ball, especially (she laughs). There was bullying at such levels right from my childhood that after a point of time around my 7th standard I stopped responding to them altogether. I remember, once, I was going to the market with my Daddy and some of my peers called names at me, I was not bothered as it was a regular affair with me by then, but I still remember how my father was embarrassed because of me. So, you can say that I grew up in an environment that made me feel guilty of expressing my innocent self.”

Aparna Di’s narrative of growing up with a non-conforming gender and sexuality in middle-class family and neighbourhood show us a cross-section of the public and private discourse outside and within a family vis-à-vis a child. No child is of course given a manual of do’s and don’ts by the family, neighbourhood or, even the school on matters of what constitutes the domain of sexuality, how much can a child venture in it, or what is acceptable to speak, and what is not, etc. Then, from where does the child get to learn about sexuality, and if it gets to learn, what does it understand about sexuality? Foucault would say, yes, the child very well gets to learn about sexuality—the source of such learning is based on its experiences of living in the middle of discourse that keeps happening all in the middle of the family, school, and neighbourhood. After all, some knowledge is to be transferred to the next generation so that the child learns what sexuality to normalise, how much to normalise—in short, the adult generation has to ensure that the seed of heteronormativity is safely planted in the child. But, the real questions for us to ponder upon are: in what forms does sexuality manifest in the discourse surrounding the child? What kinds of provocations are needed to trigger discourses on sexuality? What knowledge on/about sexuality is disclosed to the child, and what is kept hidden? And finally, since, the discursive production of sexuality is heavily-regulated by the adult world, in what forms does it reach the child—how much of it is conveyed through words, acts, silence, gesture, etc.?

Aparna Di’s parents never expressed much annoyance in their child’s cross-dressing tendencies—probably they normalised it, barring some occasional instances of verbal and physical proscriptions. But, when her father discovered her wearing her mother’s panties—discourse was provoked to engage with the child’s sexuality and some part of the sex’s secret was revealed to her by the father’s strong verbal protest followed with battery on the child’s body and mind. When her effeminacy provoked bullying and
abuse from the pupil at the school, college or the neighbourhood—she was further revealed of what is accepted of sexuality and what is despised. When her first boyfriend made her feel guilty about having multiple partners—young Aparna Dí realised the social-importance of monogamy in an intimate-relationship—and thus, she was revealed the power of male hegemonic control over the femme sexuality. Sexuality of the child is thus, constantly regulated to suit the requirements of the heteronormative structures and the patriarchal value-system, of which the child is a part. For, the field of the child’s sexuality was always-already occupied by the adult—just that sometimes, this adult was the parent, sometimes the neighbourhood, sometimes teachers, and sometimes one’s intimate partner.

Tonu comes from a middle class Bengali family located in sub-urban Kolkata at a township called Konnagar. She is 27 at the time of the interview. She was assigned male sex at birth. She considers herself a Rupantorkami naari (a transwoman). With respect to her biological family, she comes from a joint family set-up that consisted of her parents, her father’s four other brothers and their respective families. She lost her mother in the year 2000 in a fire accident when she was barely 12-year old. She says, “after the death of my mother, I was mainly mothered by the younger daughter (Didi) of my eldest paternal uncle and her mother (Jethima).” She decided to leave family home in the year 2009 owing to the resistance of the family members because of explicit expressiveness of her gender and joining the Hijra Cult.

She said, she has been an effeminate child right from her childhood. She said, “my family have tried to discipline me for being effeminate, mostly by resorting to verbal proscriptions on my body language, my accent, etc. and occasionally resorting to physical battering.” She said, “in the family speaking about anything sexual was always a taboo, therefore my curious queries of knowing my male body, my desire to become a female remained a mystery to me till I started working on sexual health issues at MANAS Bangla in 2003. I think, my father and my other family members have always kept a very strict binary notion about gender. So, as I was a male assigned at birth, they expected me to act and perform as a male for my entire life and when it didn’t happen, they created such unliveable circumstances around me that I was forced to leave my family.”

She was effeminate from her childhood, though she was in complete ignorance of her gendered self. She said, “I was very naive enough till my 9th standard to believe that babies are born when Parents go to the hospital and take out a baby of their choice from the Doctor’s almirah.” During her 10th Standard, she falls in love with one of her male classmates. She said, “getting into sexual relation with him was still difficult for me then, so I took almost a year to get physically intimate with him. There I have always felt like
a girl, and especially when we used to make love, I always thought I am the
girl and he is the boy.”

3.5.1. Certain Conclusive and Suggestive Remarks-IV

As I see it, based on the afore-discussed queer narratives on the regulation
of child sexuality, the problems are far more deeply seated in the systemic
operation of our social norms surrounding parenting, school to peer
education, peer to peer education. The above discussion by and large
problematises our current (and much conventional) notions of what
constitutes as supposedly good standards of parenting, school education, or
a good environment for the child to develop. These notions and practices are
deployed not just by the private apparatus of the social, but are equally
enforced by the state through its laws, or the lack of it. Such notions and
practices about child care and support (in both public and private domains)
are based on our love for the deeply held heteronormative values. To my
mind, the politics of the queer, wants to drive the change from the roots of the
problem. And I think, since, the problem is so deeply rooted in the very
fundamental operation of our societal institutions and structures, viz., the
family, schools, education curricula, general social environment—the
problem can be best addressed from within—through systematic changes in
the core functioning and constitution of these institutions and structures. In
other words, the problem must be addressed at the social level by the
institutions and apparatuses of the social itself.

However, to engender these changes, or at least, to enable the social
apparatuses to produce such changes, in my opinion, the law must step in.
The role of the law is needed to break the age-old, deep-rooted structures of
heteronormativity and to steer through the rubbles of the structure, the power
of change—this is the re-imagined role of the law, as expected from the
stand-point of this study. So, what is proposed for the academic community
to consider, deliberate and ponder upon—on the supposed, ambitious role of
law’s intervention? In my understanding, the law must step-in to neutralise
the ubiquitous hegemony of heteronormative values from our systems of
child care-giving (viz. parenting, school education, and all the apparatuses of
the social—that are responsible for the education of the child). Also, the law
must step in to free the child of the collective regulation of its sexuality within
public and private domains of care-giving.

I see a three-point, inter-dependent (but parallel and operational) set of
measures for our valued consideration on this issue of legal intervention:

i. The law must enact a system of educating the child’s care-givers
on matters of sexuality, and gender, so, that their notions and
practices of child-care can be transformed to include respect for
sexual and gender diversity. This law must also translate the
effects of such re-defined role of care-giving to its beneficiary—the child. To do this, the schools (at least, among other care-givers) must mandatorily include ‘sexuality and gender education’ into their curricula, at various levels of the child’s educational progression. Such legal changes could be brought in through making necessary changes into the Right of Children to Free and Compulsory Education Act, 2009.

ii. To support and sustain such legal interventions and to effectively enable the child to access legal remedies—a law on anti-discrimination must be enacted to prevent instances of bullying and exclusion in public and private spaces, such as the general school environment (playgrounds, classrooms, school trips, etc.), and the neighbourhoods (public parks, streets, etc.) on the grounds of sexuality and gender expression.

iii. Already, Protection of Children from Sexual Offences Act, 2012 checks the instances of child-sexual abuse within public and private domains. But, on matters of emotional, psychological and verbal abuse the child is still legally unprotected and thus, highly vulnerable. To address this, the legal notions of domestic violence must be extended to include children, so that all kinds of non-sexual domestic abuse (including domestic abuse on the grounds of child’s gender and sexuality) could be brought under its ambit. Such, changes could be brought in through making necessary changes into the Juvenile Justice (Care and Protection of Children) Act, 2015 or the current Protection of Women from Domestic Violence Act 2005.