RESEARCH ARTICLE

Power, policy, and transgender identities: A case study of gatekeeping by mental health professionals in accessing gender affirming surgeries in India

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Abstract

Background: *Transgender individuals seeking gender-affirming surgeries (GAS) are often denied or delayed by mental health professionals (MHPs). Studies on the gatekeeping of GAS have been mainly conducted in the Global North and primarily focus on the perspectives of health professionals. This case study from India incorporates health professional, community, advocate, and activist perspectives to contribute new evidence about MHP gatekeeping in GAS. The study aims to examine the role of power and gender in MHP gatekeeping of GAS in India.*

Methods: *A qualitative multi-method case study including thematic analyses of key informant interviews (n = 9) and policy analysis using the policy triangle framework.*

***Results*:** *Health professionals and transgender persons participate in the construction, performance, and reproduction of gender indicating the persistence of gender normativity in India which enables gatekeeping by MHPs. However, evidence suggests some signs of a change from binormativity to a culturally intelligible and historically familiar "trinormativity".*

Conclusion: *To understand MHP gatekeeping, there is a need to contextualise this example of biopower within the larger social construction of gender within which MHPs operate. A transition from binormativity to "trinormativity" enables MHP gatekeeping of transgender persons seeking GAS. This risks creating new forms of gender-related oppression, such as new hierarchies and class differences between the gender binary and the "third gender".*

Keywords: *transgender, gender-affirming care, qualitative research, India, readiness assessments, gatekeeping, mental health professionals*

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Introduction

Transgender persons seeking gender-affirming surgeries (GAS) are required to visit a mental health professional (MHP) to document "persistent, well-documented gender dysphoria" (GD) before being recommended to undergo GAS [1,2]. This step is envisaged to determine the individual's eligibility and readiness for GAS. In India, however, many MHPs are uninformed about transgender persons, GD, and GAS. They often make value judgements based on preconceived notions of gender and act as gatekeepers of GAS [3,4]. This MHP gatekeeping is despite recent policy changes, such as the 2014 judgement in the *National Legal Services Authority v Union of India* (*NALSA* judgement) [5] and the Transgender Persons (Protection of Rights) Act, 2019 [6]. Further, the power asymmetry between MHPs and transgender clients turns gatekeeping into a site of power play between the two, mediated by the state through laws such as the Transgender Act [7]. Studies of gatekeeping in gender transitions have been mainly conducted in the Global North, and few focus on community perspectives on MHP gatekeeping [7–11]. This case study from India incorporates a range of perspectives and aims to understand how power and gender play a role in MHP gatekeeping of GAS within the Indian context.

Policy context

Under British colonial rule, Section 377 of the Indian Penal Code criminalised any "carnal intercourse against the order of nature" — a vague term interpreted to include anal and oral intercourse, effectively criminalising sexual practices many transgender and homosexual individuals engage in [12,13]. The 1860 law was finally read down in 2018, in *Navtej Singh Johar v Union of India* [14], when the Supreme Court of India ruled that any consensual sexual act between adults is no longer a crime, decriminalising homosexuality in India. This was received with much celebration among the transgender community [15].

Secondly, the Criminal Tribes Act, 1871, classified various traditional transgender sub-cultures as "eunuchs" who are "criminal" and "addicted to the systematic commission of non-bailable offences" [12,16,17]. Although this law was repealed post-Independence, individuals' rights in the new Constitution were limited to the binary of male and female as determined by sex assigned at birth. Further, echoes of the Criminal Tribes Act, 1871, were present in other laws such as the Telangana Area Eunuchs Act, 1919[a] [17–19], which also

similarly criminalised the transgender community. Due to such laws, transgender persons routinely faced police harassment and systemic discrimination [12,17,19]. Many transgender individuals still do not possess government documentation, without which access to welfare schemes and higher education is highly restricted [12].

It was only after the NALSA judgment in 2014 that the constitutional and legal rights of cisgender male and female persons were extended to transgender persons [5]. It also allowed transgender persons the right to self-identify one's gender irrespective of sex assigned at birth and without undergoing GAS. However, by recognising transgender persons as a "third gender" it created a sense of hierarchy with cisgender persons and reinforced the binary understanding of gender. Further, despite recognising the right to equality and non-discrimination of transgender persons, the NALSA judgment did not outline any protections for them or include affirmative actions such as reservations [20].

The NALSA judgment necessitated legislation to implement its verdict. Following the failure of The Rights of Transgender Persons Bill, 2014, introduced by Tiruchi Siva [21], The Transgender Persons (Protection and Rights) Bill, 2016, was introduced but faced wide-spread criticism, as it proposed to create a district screening committee that would screen and certify requests for a transgender identity [22]. In 2018, this clause in the bill, along with others, was amended and, in December 2019, The Transgender Persons (Protection of Rights) Act (referred to as "The Transgender Act") was enacted [6]. This was the first central legislation recognising the right to identify as transgender, male, or female, regardless of sex assigned at birth. However, the act met with opposition from the transgender community because of its lack of welfare measures, the inclusion of mandatory GAS for identifying as male or female (other than the gender assigned at birth), and for violating the directives of the NALSA judgment such as the one on self-identification [23].

Gatekeeping and gender-affirming healthcare services

It is within this policy context that this study from 2020 delves into MHP gatekeeping, a practice that often occurs because international healthcare guidelines for transgender people require the documentation of "persistent, well-documented gender dysphoria" prior to GAS [1,2]. In India, GAS providers require transgender persons to obtain a certificate of GD from an MHP as part of the assessment of readiness for surgery [4]. GD is defined as a "discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth" [2]. It is diagnosed by MHPs due to its previous classification as a mental disorder. However, this is no longer the case since the launch of the latest versions of the *Diagnostic and Statistical Manual* of the American Psychological Association and the *International Classification of Disorders* (*ICD*) of the WHO [2,24].

Power and gender in gatekeeping

To understand MHP GAS gatekeeping, it is important to use the lens of power. This is because, preventing a transgender individual from obtaining GAS, is a form of power that the MHP has *over* them. In addition, it limits their power *to acces*s the desired GAS. Further, being located at the intersection of health and gender, it is important to incorporate theories of gender. Therefore, this study employs the concepts of *biopower* and the theory of *gender performativity* [25,26]. The selection of these two theories is based on their contemporary relevance and mutual compatibility, explained as follows.

The concept of *biopower* was introduced by Michel Foucault in the 1970s to describe a new form of power that emerged in the 17th century, where the state regulated human bodies by "foster[ing] life or disallow[ing] it to the point of death" [25: p. 138].

In the context of this study, biopower is a particularly useful concept because of its relevance in the field of psychiatry [27]. Psychiatric disorders are not conceptualised in the same manner as other medical diagnoses since they are rarely traced to a single bodily dysfunction and have the potential to be used to "legitimize social responses" in line with "pre-existing institutional arrangements" [28]. This subjectivity is particularly salient in the process of seeking GAS since GD involves a diagnosis of psychological distress related to one's body in terms of one's gender identity and not a biomedical illness [29]. Hence, although Foucault does not explicitly address gatekeeping, GAS gatekeeping — by virtue of its controlling access to a healthcare service that "fosters life" — can be considered a form of biopower. This is in line with the writings of scholars such as Sara Ahmed, on the role of gatekeeping in biopolitics in the context of feminist movements and academia [30].

The theory of *gender performativity*, as proposed by Judith Butler, looks at gender as a social construct, performed and reproduced through individual actions [26:p.25]. Applying a gender lens is particularly useful here, as there is evidence highlighting the gendered nature of gatekeeping [3,4,31]. Many authors argue that MHPs draw upon pre-existing cultural perspectives on gender, mental health, and patient competency when diagnosing GD and engaging in gatekeeping of GAS [8]. Others attribute MHP gatekeeping to the medical gaze[b] [7,8], mistrust in transgender persons' own accounts [10], lack of knowledge of transgender identities [11], and MHPs' belief in an essentialist model of gender (the idea that gender is biologically determined and immutable) [9]. Dewey and Gesbeck argue that MHPs use their medical gaze to perpetuate gender binormativity [8]. Gender performativity would view these as ways in which, through the actions of MHPs, societal gender norms play out and are reproduced.

Butler and Foucault share many intersections, particularly because Butler builds on the works of Foucault. Both perceive power as a pervasive force operating through institutions and discourses, shaping individual actions and identities. Both emphasise the social construction of gender and other identities. While Butler focuses on internalised norms that reproduce social norms through actions, especially with regard to gender and sexuality, Foucault focuses on the construction of identities through discourses [25,26].

Methods

As an exploratory study, this study employed key informant interviews (KIIs) and policy analysis to capture perspectives from diverse stakeholders while simultaneously examining key policy developments of the time relevant to GAS. The semi-structured KIIs were conducted with individuals possessing extensive professional experience in transgender health, each selected for their unique perspectives [Table 1]. Thus, purposive sampling was used, starting with the author's professional network. Subsequently, snowball sampling was used wherein participants suggested others. Of the ten individuals who were approached by email, one refused to participate given time constraints. The participants were from diverse regions of India.

The KIIs were conducted between April and August 2020. The author conducted all interviews and prepared verbatim transcripts manually. The interviews were conducted in English since all the participants were comfortable with the language.

Ten interviews were conducted with nine participants, including one repeat interview. Interviews ranged an average of 45 minutes in duration. Due to restrictions because of the Covid-19 pandemic, all the interviews were conducted remotely using Zoom, and the audio was recorded with consent. Brief handwritten notes were made during the interviews by the author, which were referred to during the analysis.

The study included a small but diverse sample, as it was supplemented by an additional method — policy analysis — and since it was intended to be an exploratory case study. The interviews focused on experiences and opinions about GD, GAS, MHP involvement in GAS, and the overall policy environment in India concerning GAS.

Two key policy documents were chosen for policy analysis because of their importance and impact in relation to transgender identities:

(1) *National Legal Services Authority v Union of India and others* (2014): This judgment of the Supreme Court of India was included, as it was the first judicial verdict to recognise the transgender identity as a third gender in India.

(2) The Transgender Persons (Protection of Rights) Act, 2019: This central government legislation was included as it was the first legislation to recognise transgender identity in India.

Table 1. Participant Summary

Particiant No.	Gender Identity	Profession	Reason for choosing
1	Cisman	Psychiatrist with experience caring for transgender persons	A trans-affirming psychiatrist who has spoken widely on trans access to mental healthcare
2	Transwoman	NGO officer	A transwoman who has experience herself of GAS and second-hand experience through her NGO
3	Cisman	Journalist	Has written about MHP gatekeeping
4	Cisman	Health Professional and advocate on trans access to healthcare	Vocal and leading advocate of trans-access to GAS
5	Transman	Activist associated with an NGO	A transman who has experience himself and second-hand experience through his NGO of GAS
6	Transwoman	Activist associated with an NGO	A transwoman who has experience herself and second-hand experience through her NGO of GAS
7	Cisman	Senior official in an NGO involved primarily in implementation support in addition to advocacy and research	Has extensively engaged with and spoken about trans access to GAS and is a leading activist
8	Gender non-binary	Health Professional with experience in facilitating gender affirmative services	Has experience themselves of receiving and facilitating GAS
9	Ciswoman	Lawyer-Advocate with experience in trans legal issues	Extensive experience facilitating GAS for trans clients

The policy analysis was conducted using the *policy triangle framework* [32]. Developed in 1994 to specifically study health policies, this framework analyses policies not only in terms of their content but also the actors behind them, the context in which they were framed, and the processes followed in their development [33]. The ethics approval for the study was received from the Research Ethics Committee at the London School of Economics and Political Science (Ref: # 1277).

The transcribed data and policy documents underwent analysis using NVivo [34], employing a two-stage thematic analysis method [35]. In the first stage, open coding was performed where data were read line-by-line to generate codes inductively. These codes and the coded data were examined against the research aim to identify overarching themes and were organised into a thematic framework. Subsequently, a second round of coding was conducted using this thematic framework, during which time, the data was examined using the theoretical approaches of biopower [25] and gender performativity [26].

Positionality and reflexivity statement

During the time of data collection, the researcher was a heterosexual, cisgender male studying abroad, thus occupying a position of privilege. He has previously worked as a policy consultant wherein he worked on LGBTQIA+ inclusion. Due to the author's prior experience, he could establish contact with several key informants, who were primarily English-speaking and educated. In the analysis, reflexivity was ensured by reflecting on the intention with which the respondents may and may not have shared information.

Results

Results from both the KIIs and policy analysis are presented together in this section. Given the case-study nature and narrow focus of the study, the achieved thematic saturation concerning the research question was considered sufficient.

The results are presented under the three broad themes that were generated with respect to the research question:

MHP gatekeeping and desire for GAS linked to binary gender norms

Participants spoke about a continuum of GAS gatekeeping practices — not just by MHPs but also by legal professionals, government officials, employers, families, relatives, and neighbours within the larger ambit of medical, social, and legal transitions. When speaking of their social transition, transgender persons shared accounts of running away from their homes either due to non-acceptance or the anticipation of non-acceptance from families, close relatives, and neighbours [31]. Regarding their medical transition, participants discussed surgeons and endocrinologists requiring clients to produce certificates of a psychiatric diagnosis of GD prior to GAS.

On approaching the MHP for the GD certificate, gatekeeping occurred in many forms, including body-shaming linked to notions of binormative gender norms. The norms were about who is an "ideal trans person" and the likelihood of a GAS outcome that would help the person align with binormative body ideals.

> *…psychiatrists have their own notions of who is an authentic or ideal trans person. And very often these judgements spill over into their interaction with clients. For example, [when] a client presents conventionally as masculine, like big bone and hirsute … they in their mind might think "so, this person is never going to be possibly feminine" and try to actively discourage that person from transitioning medically and just say "be like this" ... "because you are not gonna be happy with the result". (Participant 7)*

While gatekeeping could be considered a manifestation of biopower, the gendered nature of gatekeeping points to the power of gender norms, where notions of who is an ideal trans person are linked to ideals of gender binormativity, which exist at the policy level as well. In addition to gender binormativity, patriarchal notions that allocate more freedom to people who are male-assigned at birth may also play a role. This is indicated by limited evidence suggesting a higher level of gatekeeping for transmen who wanted to undergo a uterus removal [31].

> *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*. (NALSA 2014, 84)

> *We had a person who was rejected by a surgeon who had no hesitation performing vaginoplasty but rejected the transman saying, "You've not had [a child], how can I remove the healthy uterus of someone who has not experienced the joys of childbearing?"* (Participant 7)

While MHPs and other health professionals engaged with requests for GAS based on existing binormative gender ideals, participants reported that some transgender persons sought GAS not just to fit into the binary, but also to achieve binormative gender ideals of beauty due to the influence of peers. As Participant 5 mentioned, this need is also related to binormative structures such as toilets and school spaces. Lack of inclusive spaces results in adverse outcomes such as dropping out of school (Participant 4) [36].

> *Sometimes they were influenced by their partners, sometimes they were influenced by their friends... some of them were saying, "I want to be a beautiful woman; I want a handsome boyfriend."* (Participant 5)

Gatekeeping linked to the construction of the transgender identity as a separate normative third gender or "Transgender"

Participant narratives and policy excerpts suggested the construction of the transgender identity as a separate

normative "third gender" or *Transgender* [c] while holding on to gender binormative ideas. This may be for at least three reasons. First, the transgender identity is often (mis)understood as something someone is born with. This is exemplified in policy and legal documents by terms such as "born with", and "neither male/female", which indicate an essentialist notion of the third gender. Further, the position of transgender persons in the social hierarchy in relation to the binary genders is suggested in descriptions of the community as a "socially and educationally backward class", a category which is usually reserved for the oppressed castes in India.

> *Hijras/transgender persons who are neither male/female…* (NALSA 2014, 70)

> *We, therefore, declare: (1) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights.* (NALSA 2014, 127)

> *We direct 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….* (NALSA 2014, 128)

Second, the transgender identity is understood as a biological "defect", possibly equating it to an archaic understanding of the intersex identity as a "disorder of sex development". This is evident in the NALSA judgement, which explicitly defines transgender persons as those "born with bodies which incorporate both or certain aspects of both male and female physiology" (Page 17). Further, the Transgender Act, 2019, in its definition, also covers both transgender and intersex persons. Whether this has risen out of a misunderstanding that trans persons are all intersex persons is unclear but possible as the Act is wrongly translated in Hindi as "Intersex Act". One participant shared that the Act is possibly an adaptation of Australian intersex legislation.

> *They are confusing trans persons with intersex persons. So, [in] the Hindi version [it] is … actually not trans… English we say, 'Transgender Protection of Rights Act, 2019', but in Hindi it is called as 'Upalingan keliye Sourakshan Act' [Protection of intersex persons] aisa kuch [something like that]. What does Upalingan mean? Upalingan is the intersex.* (Participant 5)

> *The transgender bill that has been introduced comes from an adaptation of the intersex bill introduced in Australia. … So, it has* [the notion] *that all the transgender people have a genital defect that needs to be rectified.* [They think that] *so-called real transgenders don't have a proper genital organ.* (Participant 6)

Third, despite new laws, legal identification as transgender is mandated as a transition step before someone identifies within the gender binary of male and female. For example, according to the Transgender Act, 2019, a transgender person can get legal identification as *Transgender* in a single step [6]. However, to legally identify as male or female is a further step after identifying themselves as Transgender and then undergoing surgery.

> *After the issue of a certificate* [as Transgender]…, *if a transgender person undergoes surgery to change gender either as a male or female, such a person may make an application… to the District Magistrate for a revised certificate…* (Transgender Act 2019, 4)

All three reasons point to the construction of a separate normative Transgender identity in India.

Possibility of a transition from binormativity to trinormativity

The persistent gender normativity could be explained as a potential movement from binormativity to a culturally intelligible, historically familiar "trinormativity". Respondents suggested that the development of a Transgender identity may be related to "prominent" and "more representation" of traditional and cultural *transgender* identities historically and in the formulation of the Transgender Act, 2019. As Participant 4 mentioned, historically, the ethnocultural transgender communities such as *hijras* and *kinnars* were identified as a separate sect, received sanction from religions and kings employed them in courts to play different administrative roles. The NALSA judgment on page 13 also endorsees this view:

> *We notice that even though historically, Hijras/ transgender persons had played a prominent role, with the onset of colonial rule from the 18th century onwards, the situation had changed drastically.* (NALSA 2014, 13)

This social recognition continues and may have been the reason why the *hijra* and *kinnar* communities played a bigger role in the formulation of the Transgender Act.

> *The lead was taken up by the same group which worked for the NALSA judgment and therein you had more representation from the hijra and kinnar community.* (Participant 6)

Thus, it seems that several people in India may be attempting to understand the transgender identity while maintaining their existing binary gender notions through the construction of a "third gender" that sits alongside binary genders.

Discussion

Power through gatekeeping

These analyses align with the findings of Davis et al and Hilário, suggesting that GAS gatekeeping exhibits characteristics of power that play out through essentialist binormative notions [7,9]. MHP gatekeeping may be understood as an expression of the biopower ascribed to MHPs by society to "fix" the "pathological" [25]. The gendered nature of gatekeeping was further evidenced in how certain trans-identities were privileged over others [3, 31]. Thus,

MHP gatekeeping can be seen as a performance by the MHP to reproduce gender norms through the exertion of biopower to regulate human bodies along socially constructed gender norms.

Thus, gatekeeping practices by MHPs may reflect the biopower involved in reinforcing and reproducing gender norms. However, some transgender clients undergoing GAS may also be reproducing gender norms due to internalised binormativity. This is because, for many transgender persons, GAS is not just a means to reduce GD but also a means to fit into binormative gender ideals, for example, of beauty [3]. GD itself has been linked to internalised binormativity and transphobia, indicating the impact of the social context and social determination on GD [37]. Thus, both MHP gatekeeping and transgender persons seeking GAS can be understood not only as performative responses within existing constructions of gender and sex but also as a form of its reproduction [26]. Hence, both the MHP (by gatekeeping) and the transgender person (by desiring to fit into binary gender norms) participate in the performance and reproduction of societal gender norms. Therefore, this interpretation shifts attention from the biopower of MHPs to the ways in which gender norms are performed and reproduced by different actors in society, including both MHPs and transgender persons.

Trinormativity

While binormativity enables gatekeeping, there seems to be a shift to the culturally intelligible, historically familiar notion of trinormativity [38]. To explain this familiarity with trinormativity, I use the concept of "intelligible gender", proposed by Judith Butler, as suggested by Anuja Agrawal [26,39]. According to Butler, in an understanding that sex is also socially constructed, the idea of gender can be understood only as a cultural construction of an "intelligible" gender specific to each cultural setting. Based on this idea, Agrawal argues that the idea of the third gender or a normative *Transgender* may be a form of an "intelligible" gender in India. I suggest three possible explanations for this [39].

First, since binormativity may be a colonial imposition, the aggregating of all transgender persons into a third gender or a normative *Transgende*r can be seen as a colonial remnant made real through earlier laws such as The Criminal Tribes Act, 1871. It is probably a vestige of the same that *Transgender* is defined as "neither male/female" or as biologically "abnormal", which is not necessarily in opposition to the binary framework [5,39].

Second, features of the 2014 NALSA judgment betray an understanding of *Transgender* as a caste that people are "born with", as Agrawal writes [39]. Agrawal argues that in the Indian context, where the system of caste is based on certain presumptions regarding what people are "born into", such a rhetoric of transgender persons being "born that way" makes the notion of *Transgender* more intelligible [39]. Living Smile Vidya, similarly, argues that in India, "transphobia is a type of Brahminism" [40].

Third, a culturally intelligible concept of a unified *Transgender* is attractive to multiple actors because it allows for easier policy legislation; allows the Indian transgender movement to be linked to similar movements and issues internationally; and gives strength to social movements and policy advocacy despite the various schisms within the transgender community and the intersectionality of identities [41]. This has become particularly prominent through HIV/AIDS funding, its related programmes, and associated discourse [42]. Gayatri Reddy argues that the identities of gender minorities in India are constructed based on "modern" or "global" paradigms as well as "local" or "traditional" paradigms that coexist and interact in complex ways [43]. The idea of *Transgender* may thus be a product of the interplay between colonialism, casteism, and transnational interactions.

However, such essentialisation of a normative *Transgender* identity is potentially dangerous. For example, first, in the formulation of the Transgender Act, 2019, the government focused on the *hijra* community at the expense of those who do not identify as *hijra* or *kinnar*. Second, since the transgender identity is newer and seen as part of an "international discourse", a hierarchy and class difference is created between different local transgender identities (eg, *hijra* and *kinnar*) and the new identity of *Transgender* [4,42,44]. Third, by essentialising and creating a new term, there is a risk of it being a form of suppression of the very people it was meant to represent [25]. This is because gender-related oppression may be linked *less* to how many genders are accepted but *more* to "the degree of rigidity with which an intelligible gender is conceptualized and practiced in a particular society" [39]. Therefore, by creating a new normative *Transgender*, the oppression of transgender persons may increase by demanding conformity "within increasingly narrower confines" [39]. This comes out, for example, in discourses of "real" versus "fake" transgender identities [4].

These analyses identify three parallel projects in India: a continuum of gatekeeping that reifies the binary norm; the aspiration of transgender persons to undergo a gender transition (to fit into binary gender norms) which, again, reifies the binary norm; and the essentialisation of the transgender identity, which introduces a trinary norm. These three projects continue in parallel and suggest a move from binormativity to a culturally intelligible, historically familiar notion of trinormativity in India, with an increased risk of gender-related oppression.

Study limitations

There were several limitations to this study. The interviews were limited to English-speaking respondents, mostly from urban areas, with links to activism and non-governmental

organisations. This was because of the nature of the researcher's personal networks, which were used for recruitment. All interviews were conducted online because of Covid-19-related restrictions and meant that participants without internet access were excluded. Finally, other policy documents such as state-specific policies were not included in the study. Overall, this study needs to be considered an exploration of gatekeeping in gender transitions and shows the need for further inquiry.

Conclusion and the way forward

This study aims to investigate the role of power in MHP gatekeeping in GAS in India. It reveals that both health professionals and transgender persons participate in the construction, performance, and reproduction of gender. Consequently, the focus shifts from the biopower of the health professional to the power of socially constructed gender itself, which is expressed through MHP gatekeeping in GAS. Gatekeeping is enabled by a persistent gender normativity in India, from binormativity to a culturally intelligible, historically familiar trinormativity, with the risk of potentially creating new hierarchies, class differences, and forms of gender-related oppression.

Gatekeeping involves more than the biopower of MHPs; it also extends to the broader power of gender that operates through a range of actors, including transgender persons and MHPs. Recognising these different power structures helps in understanding their impact and navigating them effectively. As long as public spaces and welfare policies are gender-segregated (especially along the binary), delinking gender from personhood will continue to be a challenge. For example, when wards and toilets are organised along the gender binary and occasionally have a separate transgender or gender-neutral option, it becomes important to know who a man, woman, or transgender person is. In addition, this delinking of gender from personhood towards a post-gender or gender-neutral form of governance risks invisibilising gender-based social inequities.

A possible solution is this: Instead of considering gender identity and expression as something stable to each individual, it could be understood as contingent and emergent — like sexual orientation [45]. For example, gender is contingent on the social and cultural context that defines gender norms. It is emergent through the life course of an individual, with one's gender identity and expression changing as one continues to explore and gets to explore. I suggest that this contingency and emergent nature of gender can then be used as a basis for *gender rights of all* rather than the rights of a specific transgender community. This would then widen the discourse on gender non-conformity to people who identify as non-binary, gender fluid, gender non-conforming, gender questioning, and even cis-gender people who may not fit into typical gender norms in particular contexts or times. However, the *gender rights of all* movement should be a supplement or addition to the transgender and larger LGBTQIA+/queer rights movement and not a replacement or alternative to it.

Notes:

[a] In July 2023, the Act was read down by the Telangana High Court [46].

[b] "Medical gaze" is a concept introduced by Michel Foucault, which speaks of how doctors filter out aspects of an interaction with a client that do not fit within the biomedical paradigm of understanding the world [25].

[c] Italicised to denote the Indian idea of a unified transgender rather than the original umbrella term.

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Data Sharing: *Author is willing to share relevant anonymised data upon request.*

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