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Gender Unfreedom: Gender Diverse Perspectives from Digital India

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In September 2019, the oldest dictionary publisher in the United States — Merriam Webster, formally introduced a non-binary definition for the pronoun “they.” Although the Oxford English Dictionary traces the use of the singular “they” back to the early 1300s (Baron 2018), recent institutionalisation of the pronoun in singular form gestures towards a larger socio-cultural change underway in the manner gender is perceived. The transformation, in part,¹ can be attributed to the constant negotiation of self on the Internet — particularly on personal blogging sites and social networking sites such as Instagram, Twitter and Tumblr — through the framework of self-determination.

In present times, cyber space is perceived as an interactionist and autonomous space, in which individuals can transcend the confines of their ‘lived-body’ (Jauréguiberry 2000) without fearing contempt, judgement or persecution. Widely referred to as a ‘safe space’ by users, digital platforms allow gender diverse individuals to fully express a range of identities that would be otherwise deemed unacceptable or abnormal in the offline world. As Internet services have become more and more accessible — Indian queer, transgender and gender non-conforming persons have created niches for themselves in cyber space in the form of LGBTQ+ organisations, political outfits, artist collectives, digital magazines and blogs among others. Within these niches, there operates a unique culture that develops organically and acts as a medium of interaction for gender diverse individuals as a way of recreating their identity through self-determination as opposed to present legal, cultural and socio-political notions of gender. These niches are discursive spaces that do not inherently exist to challenge the aforementioned institutions, but their mere existence pose a challenge to traditional cisgender, heteronormative, paternalistic structures that continue to dominate the socio-political landscape in India. Consider the following case study. In 2011, TV9, a local television channel, ran a story titled ‘Gay Culture Rampant in Hyderabad.’ The report was based on a series of covert investigations on the gay dating site PlanetRomeo. GaysiFamily, a popular queer Indian website, criticised the report, demanding that it be taken down immediately. Following Gaysi’s protestations, Adhikaar, an Indian LGBTQ+ organisation, sent an ultimatum to TV9 under the National Broadcasters Association raising complaints based on infringement of privacy through entrapment and discrimination against sexual minorities. Adhikaar’s move gained national momentum with Facebook petitions being set up and shared widely by queer persons, concerned citizens and activists. Even though TV9 justified their report claiming it to be investigative journalism, the Delhi High Court dismissed the justification and censured the channel for sensationalising LGBTQ+ life (Dasgupta 2017). Ultimately, the TV9 case study serves as an example of the ways in which queer mobilisation and advocacy in cyber space transcends geographic boundaries and threatens heteropatriarchal institutions.

The online ‘I’ has begun informing the offline Western world in a myriad of ways, as illustrated in Merriam Webster’s inclusion of the singular “they.” However, such a gender-neutral perspective is conspicuously missing from Indian legal and cultural discourse despite its growing relevance in Indian digital spaces. Despite having made strides for queer rights in recent years, with dismal LGBTQ+ representation in media, civil society, academia, government and the judiciary, progressive gender activism has failed to gain significant momentum in the country. Many of India’s archaic laws, which date back to colonial times, have thus remained unchanged. If amended, the legislations have still failed to meet basic expectations in terms of inclusivity and affirmative action. For example, it was only in the *NALSA vs. Union of India* judgement of 2014 that the Supreme Court upheld that transgender persons would be thereby legally recognised under the newly formed category of ‘Third Gender.’ With this

ruling, the Indian government would now recognise three genders: Male, Female and the ambiguously defined Third Gender. The judgement oscillates between a broad definition of ‘transgender’ as an ‘umbrella term’ for a variety of gender non-conforming identities and practices, and a more restricted definition based largely on *hijra* and *trans* women identities (Dutta 2014). While it recognises that gender identity is conceptualized in accordance with an individual’s self-identification as a man, woman, transgender or other identified category (Sikri 2014), it fails to foreground a gender diverse individual’s claim to personhood by ultimately succumbing to biological essentialism. The view of Indian Law becomes even more convoluted when one takes into consideration the widely criticised Transgender Persons (Protection of Rights) Bill of 2019. The Bill mandates a government arbitrated procedure for legal gender recognition — for which a transgender person must submit proof of medical transition for scrutiny.

Far from the self-deterministic model of cyber space, Indian legal systems place the onus of determination of identity on intermediaries instead of individuals themselves. In the offline world, self-expression does not qualify as legal validation. Hence, while ‘woman’ and ‘man’ ‘transgender’ may be construed as self-defined categories on the Internet when it comes to the language used in Indian law and policy, the terms have narrow definitions with limited real-world implications. Since a binary paradigm underscores constitutional law in India, anyone who identifies as a gender diverse individual, or *Third Gender* as held by the Supreme Court, is pushed into an ambiguous territory when it comes to laws relating to marriage, taxation, adoption, inheritance and welfare measures. Law operates invisibly in digital spaces; however, in the offline world, a gender diverse individual is condemned to negotiate a grey area between legality and illegality.

In conclusion, it is sufficient to say that present legal and policy frameworks are inept in capturing the diversity that the concept of gender presents. We see a different kind of *gender divide* here, in which, the online self and offline self are defined differently. Through the symbolic interaction of both selves, we note that the online ‘I’ is informed by the offline world while the opposite does not stand true. Autonomy to define oneself is limited in the legal domain and there is a significant lacuna in scholarship that captures this distinct symptom of living in a digital world. Although this article is an attempt to foreground further research in how the cyberself ought to be looked at in comparison with the legal self, one can only hope that gender diverse individuals, activists and responsible citizens can continue to strive against arbitrary legal, societal, governmental impositions that continue to misshape lived experiences.

Notes

1. Here it is important to note that affirming gender in cyber space is a luxury limited to those with access to electricity, a mobile phone and the Internet among other resources. Even with increasing internet penetration, differential access to these resources is determined by traditional social markers such as caste, class, religion, ethnicity, and gender among others. Therefore, it is imperative to acknowledge the contribution of scholars, social workers and community leaders from marginalised communities in transforming the perception of gender alongside the role of digital spaces.

References

- Baron, Dennis. 2018. “A brief history of singular ‘they.’” Oxford English Dictionary Blog. <https://public.oed.com/blog/a-brief-history-of-singular-they/>.
- Dutta, Aniruddha. 2014. “Contradictory Tendencies: The Supreme Court’s NALSA Judgment on Transgender Recognition and Rights.” *Journal of Indian Law & Society* 5:225.
- Dasgupta, Rohit. 2017. *Digital Queer Cultures in India: Politics, Intimacies and Belonging*. New York: Routledge

Jauréguiberry, Francis. 2000. "Le moi, le soi et Internet." *Sociologie et sociétés* 32 (2)
<https://doi.org/10.7202/001364ar>.

Sikri, A. 2014. "National Legal Ser.Auth vs Union Of India & Ors." Indian Kanoon.
<https://indiankanoon.org/doc/193543132/>.